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La Raza Unida Party v. Dean: Texas Minority Party Nomination Procedure Made More Burdensome

Prior to the November elections of 1970, La Raza Unida[1] attempted to qualify its political organization for ballot positions in county and precinct elections.[2] The procedure to be followed for such qualification is outlined in the Texas Election Code.[3] It is not made clear in the statute, however, whether the petition for ballot status should contain the names of the nominees. The party submitted its petition without listing the nominees, and the county judges and clerks refused to put La Raza on the ballot. The party sought writs of mandamus from the Texas supreme court[4] to compel the county officials to put the party on the ballot. *Held, petition denied*: The party should have certified the nominees before obtaining signatures on the nominating petition. *La Raza Unida Party v. Dean*, 462 S.W.2d 570 (Tex. 1970).

I. Regulation of Political Parties

The first amendment guarantee of freedom of association[5] is a necessary complement to the right to vote, at least under our present system of voting by political party. Although the amendment itself originally applied only to the federal government, judicial construction of the fourteenth amendment has made it applicable to the states as well.[6] Generally, only a "compelling state interest" can justify the restriction of first amendment freedoms.[7]

As a result of the privileged rights of suffrage and freedom of association, the right to form and associate with political groups is unrestrained so long as another constitutional provision is not thereby transgressed.[8] It has been

[1] La Raza Unida is a coalition of Mexican-American citizens. Spokesmen for the group claim it to be more of a concept than a political party, but for purposes of this case it is considered a political party.

[2] The Texas counties involved are Dimmit, La Salle, and Zavala. La Raza Unida Party v. Dean, 462 S.W.2d 570 (Tex. 1970).

[3] Tex. Election Code Ann. art. 13.54 (1967):

> Any political party without a State organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor under the provisions of this title by primary elections or by a county convention held on the legal primary election day, which convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of 8:00 a.m. and 10:00 p.m. on the date set by law. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent (3%) of the entire vote cast in such county at the last general election.

[4] *See, e.g.*, Roy v. Drake, 292 S.W.2d 848 (Tex. Civ. App.—Dallas 1956); Clancy v. Clough, 30 S.W.2d 569 (Tex. Civ. App.—Galveston 1928).

[5] The first amendment does not in so many words enumerate a "freedom of association." However, the courts have included this right among first amendment guarantees. UMW, Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217 (1967); NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958).

[6] New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and cases cited therein.

[7] NAACP v. Button, 371 U.S. 415, 439 (1963).

[8] In this area would fall the cases in which political groups are formed by private individuals in order to impose private racial restrictions. The discussion of these attempts

stated that the people have an "inalienable" right to organize and operate political parties.[9] To have an effective voice in government the individual must be able to align himself with others who think the way he does, and his right to do so must not be lightly abridged. "No right is more precious in a free society than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."[10]

The internal management of the political party is left largely to the party itself.[11] As an incident to the broad control over elections and election procedures[12] given to the states, however, the party is closely regulated in those situations where it comes into direct contact with these elections.[13] The primary purpose of allowing the states this regulatory power is to avoid fraud and wrongdoing in the election processes.[14] This control also has been substantiated as a general exercise of the police power,[15] as the regulation of an organ charged with the public interest,[16] as the exercise of a plenary power,[17] or as a condition attached to the privilege of appearing on the public ballot.[18]

II. ARTICLE 13.54

In the interest of clarity and uniformity of application, election regulations are generally codified. Texas is one state whose standards are almost entirely statutory.[19] Nevertheless, the precise question presented in *La Raza Unida Party v. Dean*[20] has not been determined previously. The few cases under the statute are not in point.[21] However, other courts under somewhat similar statutes or situations have been much more liberal in construing the election procedure so as to allow the independent candidate or the minority party to be placed on the ballot.

For example, in *State ex rel. Harry v. Ice*[22] a statute called for a certificate acknowledging signatures on a petition to nominate a minority candidate.[23]

would be too lengthy to consider here; suffice it to say that if such groups are deemed to be performing a "public function" such that their action may be considered state action, they can be reached under the fourteenth amendment. *See, e.g.*, Smith v. Allwright, 321 U.S. 649 (1944); United States v. Classic, 313 U.S. 299 (1941).

[9] Sarlls v. State *ex rel.* Trimble, 201 Ind. 88, 166 N.E. 270 (1929).

[10] Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

[11] *See* note 8 *supra.*

[12] DeCesare v. Board of Elections, 104 R.I. 136, 242 A.2d 421 (1968); State *ex rel.* Edwards v. Reyna, 160 Tex. 404, 333 S.W.2d 832 (1960). Statements to this effect could be found in every jurisdiction.

[13] This regulation is subject to constitutional limitations. *See* Newberry v. United States, 256 U.S. 232 (1921); Ray v. Blair, 257 Ala. 151, 57 So. 2d 395 (1952); Koy v. Schneider, 110 Tex. 369, 221 S.W. 880 (1920). For example, it is subject to the right to suffrage. Koy v. Schneider, 110 Tex. 369, 221 S.W. 880 (1920).

[14] Fugate v. Johnston, 251 S.W.2d 792 (Tex. Civ. App.—San Antonio 1952).

[15] Hooper v. Stack, 69 N.J.L. 562, 56 A. 1 (Sup. Ct. 1903).

[16] Lett v. Dennis, 221 Ala. 432, 129 So. 33 (1930).

[17] Kenneweg v. Allegheny County Comm'rs, 102 Md. 119, 62 A. 249 (1905).

[18] Commonwealth v. Rogers, 181 Mass. 184, 63 N.E. 421 (1902). For a general discussion, see Comment, *Political Parties and Primary Elections Under Fifteenth Amendment*, 21 CALIF. L. REV. 240 (1933).

[19] Hamilton v. Munroe, 116 Tex. 153, 287 S.W. (1926); Brewster v. Massey, 232 S.W.2d 678 (Tex. Civ. App.—Fort Worth 1950), *mandamus overruled*; Hamilton v. Monroe, 287 S.W. 304 (Tex. Civ. App.—Waco 1926), *error dismissed.*

[20] 462 S.W.2d 570 (Tex. 1970).

[21] *See* Notes of Decisions, 9 TEX. ELECTION CODE ANN. 511 (1967).

[22] 207 Ind. 65, 191 N.E. 155 (1934).

[23] Law of Mar. 11, 1901, ch. 219, §§ 7, 9, [1901] Ind. Laws 62 (repealed 1945); Law of Mar. 4, 1905, ch. 113, § 12, [1905] Ind. Laws 64 (repealed 1945).

The petition was filed before the statutory deadline, but the acknowledgement was late. The court, nonetheless, held this to be sufficient compliance. In *Bacon v. Holzman*[24] a restrictive time limit caused disqualification of some signers of nominating petitions for candidates for municipal offices, but the court refused to enforce the time limit strictly to cause disqualification of candidates.

In an earlier Texas case, *Morris v. Mims*,[25] a new minority party attempted to nominate candidates for state offices. In the absence of any statute defining the procedure to be followed, the party followed the procedure required of more established parties. The Secretary of State refused them ballot position, but the Texas court of civil appeals said that any reasonable method showing appreciable public support for the party was sufficient.

III. LA RAZA UNIDA PARTY V. DEAN

The court in *Raza Unida* began by setting out the text of article 13.54 of the Texas Election Code, and then restated it in the order the court thought it should be followed.[26] The crucial point to be determined was whether the nominees were required to be on the petition *before* it was circulated for signing. While the statute was not clear on this point, the court construed the statute to require it. This, said the court, was "the only logical and reasonable interpretation."[27] The court feared that if this were not the procedure, the new party could foist unacceptable nominees on the signers of the petition.

There is, however, a substantially more logical and reasonable interpretation that should have been applied here. If the party nominees are known before signatures for the petition are sought, the signatories have no voice in the selection of the nominees. They are asked, in effect, to ratify the choices of the party leaders. This seems to be putting the cart before the horse. The nominees are choosing the party, rather than the party electing the nominees.[28]

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[24] 264 F. Supp. 120 (N.D. Ill. 1967).

[25] 224 S.W. 587 (Tex. Civ. App.—Austin 1920).

[26] As interpreted by the court, art. 13.54 applies chronologically as follows when the nomination is by convention:

> (1) election at precinct conventions of delegates to a county convention; (2) nomination of candidates by the county convention; (3) certification by the party county chairman of nominees to the county clerk; (4) signing under oath, by qualified voters, equal to or greater than three per cent of the entire vote cast in the county at the last general election, of a written application with the county judge; (5) filing of the written application with the county judge; (6) printing of the names of the nominees on the ballot in a separate column under the name of the party.

462 S.W.2d at 571.

[27] *Id.*

[28] In fact, a federal court has stated that when a party is formed from the top down, it is to be treated as a campaign for an independent. The independent candidate was George Wallace. The court stated:

> This has all the appearance of a fictional party formed from the top down for the purpose of trying to comply with the Ohio law to get Mr. Wallace's name on the ballot rather than a duly organized party from the bottom up in search of a leader . . . . He has built a national organization around himself. This classifies him as a potential independent candidate rather than as a party candidate.

Socialist Labor Party v. Rhodes, 290 F. Supp. 983, 988-89 (S.D. Ohio 1968). This type of analysis, properly applied in *Raza Unida*, would result in the characterization of the petition as one to nominate a party rather than any particular individual or individuals.

The court stated that it was interpreting the statute in harmony with statutes governing the right of independent candidates to a place on the ballot. While the court was correct to construe the statute in context with other election provisions,[29] it is apparent that the court harmonized it with the wrong ones. The aim of an independent candidate is to get *his* name on the ballot, while the primary goal of a new party is to get the *party* designation on the ballot. It would seem more logical to govern a new political party nomination petition in line with the treatment of established political parties. Thus, the better procedure would be to insure first that the three per cent requirement for the party can be met, and once met and certified, to have the nominating convention.[30]

The thrust of the court's argument is that the state has an interest in seeing that a voter does not have to act in ignorance of the consequences of his act. It is difficult to see how that reasoning applies. The voter knows what he is doing without the procedure required by the court: he is hoping to form a new party in which he can choose nominees more in tune with his way of thinking. He signs the petition in the same way that the Democrat or Republican registers—not knowing at the time who his party's candidate will be, but knowing he will have a chance in the primary to vote for the man of his choice.

It would further seem that the court was unduly strict in interpreting the statute, especially in the light of the constitutional guarantees involved.[31] Election statutes in general are to be construed in the same manner as other statutes.[32] However, in view of the favored position of the right to vote, courts will often liberally interpret those statutes whose strict interpretation might weaken that right.[33] In situations like the one before this court other courts have considered the applicable statutes in a way that would allow the newly formed party to be admitted to the election, if possible.[34] Frequently the procedures outlined in election statutes are deemed mandatory only if they are necessary to preserve the right of suffrage.[35] That reservation would not be applicable here.

The dissenting opinion brings out the fact that La Raza Unida made every conceivable administrative effort to find out if the procedure they had followed was the correct one. In two opinions from the Attorney General[36] and one from

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[29] *See, e.g.*, Ulmer v. Currie, 245 Miss. 285, 147 So. 2d 286 (1962).

[30] *See* note 28 *supra.*

[31] *See* notes 5-9 *supra.*

[32] Duncan v. Burke, 234 Cal. App. 2d 171, 44 Cal. Rptr. 85 (1965); Ulmer v. Currie, 245 Miss. 285, 147 So. 2d 286 (1962); Wessendorf v. Donohue, 54 Misc. 2d 1045, 284 N.Y.S.2d 213 (Sup. Ct.), *aff'd*, 28 App. Div. 2d 1095, 283 N.Y.S.2d 879, *aff'd*, 28 App. Div. 2d 1095, 285 N.Y.S.2d 281 (1967).

[33] Bacon v. Holzman, 264 F. Supp. 120 (N.D. Ill. 1967); Walker v. Thetford, 418 S.W.2d 276 (Tex. Civ. App.—Austin 1967), *error ref. n.r.e.*; Fugate v. Johnston, 251 S.W.2d 792 (Tex. Civ. App.—San Antonio 1952); State *ex rel.* Paggi v. Fletcher, 50 S.W.2d 450 (Tex. Civ. App.—Beaumont 1932), *error dismissed.*

[34] State *ex rel.* Richardson v. Stewart, 58 Mont. 707, 198 P. 1118 (1920); Morrissey v. Wait, 92 Neb. 271, 138 N.W. 186 (1912); Morris v. Mims, 224 S.W. 587 (Tex. Civ. App.—Austin 1920). *See also* notes 23-25 *supra*, and accompanying text.

[35] *See, e.g.*, Ferrell v. Harris County Fresh Water Supply Dist. No. 23, 241 S.W.2d 242 (Tex. Civ. App.—Galveston 1951).

[36] TEX. ATT'Y GEN. OP. NOS. M-621, M-646 (1970).

the Secretary of State,[37] the party received conflicting views. However, neither opinion indicated that La Raza Unida was in error on the technicality on which the majority based its holding.[38] "We ought not, therefore, to hold, if we can avoid such a result, that our election laws should be construed to prevent the organization of new parties, the advocacy of new political views, or the adoption of new designations."[39] This should be especially true when the new party has done all that could be asked of it in an attempt to comply with the statute.

From a practical viewpoint the decision is also open to attack. In the formation of new political parties, timing is often a critical factor. Candidates from a major party are not likely to switch their allegiance to a splinter party until they have exhausted their chances for nomination in the more broadly based party.[40] Thus, the minority party under the construction of this court is forced into selecting nominees early, who may have far less chance of election than a more widely known individual the party might obtain later.

There is no mention in the opinion of any possible constitutional objections to the decision. Whether there are such objections most likely depends on the impact of a recent United States Supreme Court decision,[41] where the Court implied that the constitutional harm need not be a direct result of the application of the statute. It may be that the right to vote is substantially diminished if for technical reasons a citizen is not allowed to vote for an emerging new party.[42] Also, the right of freedom of association is weakened when the new group is thwarted from its lawful purpose as a result of technical discrepancies in its formation.

IV. CONCLUSION

The statute construed here regulates the right of individuals to form political parties and to petition for nomination of persons politically compatible with them for public office. Certainly this should not be an unrestrained right, or election ballots would be so long as to be unmanageable.

[37] Secretary of state opinions are not published. The dissent mentions the existence of this particular opinion. 462 S.W.2d at 572.

[38] The dissent states that the attorney general opinions went against the party and the secretary of state opinion for the party. 462 S.W.2d at 572. However, at least in the attorney general's opinions, the question resolved against the party was not the issue decided by the court. The point resolved against La Raza dealt with their apparent failure to file the petition in the current voting year. TEX. ATT'Y GEN. OP. NO. M-646 (1970). La Raza asked the attorney general whether the nominees should be named before circulating the petition. The opinion reads:

> In answer to your question, you are advised that the written application filed with the county judge may be filed before the new political party has held its primary county convention for the reason that Article 13.54 does not place a fixed time limit on the filing of such application, but merely states that such application 'shall have been made' to the county judge.

TEX. ATT'Y GEN. OP. NO. M-621 (1970).

[39] Davidson v. Hanson, 87 Minn. 211, 92 N.W. 93 (1902).

[40] *See* Williams v. Rhodes, 393 U.S. 23, 33 (1968). *See also* Kozusko & Lambert, *The Uncertain Impact of Williams v. Rhodes on Qualifying Minority Parties for the Ballot*, 6 HARV. J. LEGIS. 236, 250 (1969).

[41] Williams v. Rhodes, 393 U.S. 23 (1968). *Williams* involved the right of George Wallace to ballot position for the presidential elections in Ohio.

[42] *Id.* at 31.