University of Miami Law Review

Volume 6 | Number 4 Article 13

6-1-1952

Constitutional Law -- Elections -- Discrimination in Party Primaries

In 1951 the Western District began to shift its position when it limited the earlier statute[15] to contracts made within the state.[16] In the instant case, the same court was faced with new statutes which expressly extend the right of direct action to policies written and delivered outside the state[17] and require foreign insurers to consent to direct suit as the price of doing business locally.[18] The court held the "no action" clause a valuable property right in that it (1) prevents exposure of a foreign insurer to a jury, and (2) fosters cooperation by the insured in defending the action. Completely reversing its former stand, the court held these laws to contravene the due process clause of the Fourteenth Amendment.[19] Although the districts are thus harmonized, this opinion does not discuss the previous discord and makes only perfunctory reference to cases controlling the Eastern District. Instead, it stresses the exposure of foreign insurers to "all of the dangers of bias and prejudice of which human nature is capable in determining both liability and the amount of recovery."[20]

The reasonableness of a jury award is an unusual test in determining whether such a contract right has been unconstitutionally impaired. Does the instant court mean to imply that the same contract right which is impaired because the suit was brought in federal court would have remained unimpaired if the action had been brought in a state court? It is submitted that the United States Supreme Court and Eastern District Court test, that of inquiring whether the statute confers unwarranted extraterritorial power,[21] is the sounder and more durable one.

CONSTITUTIONAL LAW — ELECTIONS — DISCRIMINATION IN PARTY PRIMARIES

Plaintiffs sought to enjoin defendants from prohibiting Negroes from voting in defendants' private political association primary which greatly affected the subsequent state-regulated primary and general election. *Held*, that where a state-regulated primary exists, a private political association is not governed in its party primary by constitutional and statutory provisions

---

15. La. Rev. Stat. tit. 22 § 655 (1950).

16. Bayard v. Traders & General Ins. Co., 99 F. Supp. 343 (W.D. La. 1951); Recent Case, 65 Harv. L. Rev. 688 (1952).

17. La. Rev. Stat. tit. 22 § 655 (1950).

18. La. Rev. Stat. tit. 22 § 983 (1950).

19. U. S. Const. Amend. XIV, § 1.

20. Bish v. Employers" Liability Assur. Corp. Ltd., 102 F. Supp. 343, 347 (W.D. La. 1952).

21. Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934); Home Ins. Co. v. Dick, 281 U.S. 397 (1930); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924); Belanger v. Great American Indemnity Co. of N.Y., 89 F. Supp. 736 (E.D. La. 1950); Wheat v. White, 38 F. Supp. 796 (E.D. La. 1941).

prohibiting such discrimination. *Adams v. Terry*, 193 F.2d 600 (5th Cir. 1952).

While the right to vote is granted by the state,[1] racial discrimination in the granting of such rights is prohibited by the Fourteenth[2] and Fifteenth Amendments.[3] Early decisions established that racial discrimination in state-regulated primaries was an invasion of constitutional rights.[4] However, racial discrimination in primaries of private political associations was not forbidden —even where there were no state-regulated primaries.[5] Today, *in the absence of state regulation* of primary elections, a political party which has a definite impact on the final general election is held to perform the public function of a state agency,[6] and as such, it is subject to the restrictions contained in the Fourteenth and Fifteenth Amendments.

The instant case is distinguished from past cases by the existence of a state primary as well as a party primary. The issue is whether an effective private political association is considered an agency of the state. Conflicting views now exist. One, based upon underlying principles of past decisions, declares an effective political party to be an agent of the state.[7] The instant case expresses the contra view: that where a state-regulated primary exists, wherein more than one party can actively participate, an effective political association is considered as an individual and therefore not affected by the Fourteenth and Fifteenth Amendments.

Based on the historical development of the electoral process, it is submitted that the better rule would declare an effective political party to be an agency of the state.[8] A political party once classified as a state agency *because of its effectiveness* should not be permitted to revert to the status of

1. U.S. CONST. Art II § 1, United States v. Reese, 92 U.S. 214 (1875); *see* Mason v. Missouri, 179 U.S. 328, 335 (1900); Mills v. Green, 67 Fed. 818, 829 (C.C.D.S.C.), *rev'd on other grounds*, 69 Fed. 852 (C.C.D.S.C.), 159 U.S. 651 (1895); McPherson v. Blacker, 146 U.S. 1, 38 (1892); *In re* Green, 134 U.S. 377, 379 (1890); United States v. Cruikshank, 92 U.S. 542, 555-556 (1875); Fedesco v. Board of Supervisors of Elections, 46 So.2d 514 (La. App. 1949).

2. Nixon v. Herndon, 273 U.S. 536 (1927); Chapman v. King, 154 F.2d 460 (5th Cir. 1946); *see* Joyner v. Browning, 30 F. Supp. 512, 517 (D. Tenn. 1939).

3. Meyers v. Anderson, 238 U.S. 368 (1913); Neal v. Delaware, 103 U.S. 370 (1880); Oregon-Wisconsin Timber Holding Co. v. Coos County, 71 Ore. 462, 142 Pac. 575 (1914).

4. Nixon v. Herndon, 273 U.S. 536 (1927); Nixon v. Condon, 49 F.2d 1012 (5th Cir. 1931); Joyner v. Browning, 30 F. Supp. 512 (D. Tenn. 1939).

5. Grovey v. Townsend, 295 U.S. 45 (1935); Grisby v. Harris, 27 F.2d 942 (5th Cir. 1928); Drake v. Executive Committee, 2 F. Supp. 486 (S.D. Tex. 1933); Robinson v. Hollman, 181 Ark. 428, 26 S.W.2d 66 (1930); Mason v. County Democratic Executive Committee of Dallas, 74 S.W.2d 326 (Tex. Civ. App. 1934); County Democratic Executive Committee v. Booker, 53 S.W.2d 123 (Tex. Civ. App. 1932); White v. Lubbock, 30 S.W.2d 722 (Tex. Civ. App. 1930).

6. Smith v. Allwright, 321 U.S. 649 (1944); Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947); Brown v. Baskin, 78 F. Supp. 933 (E.D.S.C. 1948).

7. Smith v. Allwright, 321 U.S. 649 (1944); Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947).

8. U.S. CONST. Art. I, §§ 2, 4 U.S. CONST. AMEND. XIV, XV, XVII; Collins v. Hardyman, 341 U.S. 651 (1951); Smith v. Allwright, 321 U.S. 649 (1944) (a state cannot nullify its grant to the people by casting its electoral process in a form which permits a private organization to practice racial discrimination in the election); United States

an individual solely because *another* state agency (state-regulated primary) exists. If it is *in fact* an integral part of the state's election machinery, it is *in fact* performing a function of the state and should be governed by the provisions in the Fourteenth and Fifteenth Amendments.

CONSTITUTIONAL LAW — SELF-INCRIMINATION — IMPLIED WAIVER

Appellants, as sureties for fugitives, appealed from a contempt citation based upon their refusal to answer the court's questions concerning the whereabouts of the fugitives. *Held*, that the privilege against self-incrimination was impliedly waived by voluntary assumption of the obligations of a surety. *United States v. Field*, 193 F.2d 92 (2d Cir.), *cert. denied*, 72 Sup. Ct. 202 (1951).

The privilege against self-incrimination is recognized as a personal right. It may be waived, but only by the individual concerned.[1] Wigmore indicates that specific waiver of the privilege may be made by contract or other binding pledge, and that such waiver becomes irrevocable.[2] However, there seems to be little support for this view.[3] Several English and American courts have held such contracts against public policy and deemed the only valid waiver to be voluntary testimony in open court.

In 1930, New York investigations impelled a movement to require a specific waiver of the privilege as a prerequisite for holding certain public offices. The state constitution outlines qualifications for such offices, and the additional requirement was contested as an abridgement of the privi-

---

v. Classic, 313 U.S. 299 (1941); Meyers v. Anderson, 238 U.S. 368 (1915); Yick Wo v. Hopkins, 118 U.S. 356 (1885) ("If a law fair on its face is applied with an evil eye to make illegal discrimination between persons in circumstances material to their rights, it is within the prohibition of the constitution"); Perry v. Cyphers, 186 F.2d 608 (5th Cir. 1951); Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947); White v. County Democratic Executive Committee, 60 F.2d 973, 974 (5th Cir. 1932); Brown v. Baskin, 78 F. Supp. 933 (E.D.S.C. 1948); United States v. Malphurs, 46 F. Supp. 903 (S.D. Fla. 1942); James v. Marineship Corp., 25 Cal.2d 721, 155 P.2d 329 (1945) (constitutional provisions against discrimination because of color evidence a definite national policy); Buttz v. Marion Circuit Court, 225 Ind. 7, 72 N.W.2d 225 (1947); Allen v. Tobin, 155 Neb. 212, 51 N.W.2d 338 (1952); Application of Stillwell Political Club, 109 N.Y.S.2d 331 (1951); *see* County Democratic Executive Committee v. Booker, 53 S.W.2d 123, 125 (Tex. Civ. App. 1932) (dissent). But see Chapman v. King, 154 F.2d 460, 464 (5th Cir. 1946).

1. State v. Allison, 116 Mont. 352, 153 P.2d 141 (1944); McConnell v. State, 180 Okla. Crim. Rep. 688, 197 Pac. 521 (1921); Scribner v. State, 90 Okla. Crim. Rep. 465, 132 Pac. 933 (1913); 8 WIGMORE, EVIDENCE § 7a (3d ed. 1940) (waiver of rules of evidence).

2. 8 WIGMORE, EVIDENCE § 2275 (3d ed. 1940).

3. See Note, *Waiver of the Privilege Against Self-Incrimination by Public Officers*, 30 COL. L. REV. 1160 (1930).

4. State v. Rockola, 339 Ill. 474, 171 N.E. 559 (1930) (pre-trial agreement to testify, though morally binding, cannot subject defendant to contempt proceedings if he claims the privilege); *In re* Sales, 134 Cal. App. 54, 24 P.2d 916 (1933); Lee v. Read, 5 Beav. 381 (1842). *Contra:* United States v. Thomas, 42 F. Supp. 722 (D. Del. 1942).