Michigan Law Review

Volume 33 | Issue 6

1935

CONSTITUTIONAL LAW - DISCRIMINATION AGAINST NEGROES - CONTROL OF PARTY MEMBERSHIP

Everett S. Brown
Political Science, University of Michigan

CONSTITUTIONAL LAW — DISCRIMINATION AGAINST NEGROES — CONTROL OF PARTY MEMBERSHIP — The petitioner, R. R. Grovey, allegedly a citizen of the United States and of Texas, and possessing all the qualifications of

a voter, was refused a ballot for a Democratic party primary because he was of the Negro race. Grovey demanded ten dollars damages from the respondent, Albert Townsend, the county clerk, a state officer. The Revised Civil Statutes of Texas provide for primary elections and regulate absentee voting. When Grovey demanded of Townsend an absentee ballot it was refused in virtue of a resolution of the state Democratic convention of Texas, adopted May 24, 1932, as follows:[1]

> "Be it resolved, that all white citizens of the State of Texas who are qualified to vote under the Constitution and laws of the state shall be eligible to membership in the Democratic party and as such entitled to participate in its deliberations."

The complaint charged that "the respondent acted without legal excuse and his wrongful and unlawful acts constituted a violation of the Fourteenth and Fifteenth Amendments of the Federal Constitution." [2] *Held,* by the United States Supreme Court, in a unanimous decision, that there was no ground for holding that the respondent had "in obedience to the mandate of the law of Texas discriminated against the petitioner or denied him any right guaranteed by the Fourteenth and Fifteenth Amendments." [3] *Grovey v. Townsend,* (U. S. 1935) 55 Sup. Ct. 622.

This case is another in the long series resulting from the attempts of the Southern states to bar the Negro from the polls.[4] In immediate sequence, it follows *Nixon v. Herndon* [5] and *Nixon v. Condon,*[6] both arising from acts of the Texas legislature. In *Nixon v. Herndon* a Texas statute of May 1923, which enacted that "In no event shall a Negro be eligible to participate in a Democratic party primary election held in the State of Texas," [7] was pronounced null and void as contrary to the provisions of the Fourteenth Amendment. Immediately after the announcement of this decision, the legislature of Texas enacted a new statute which provided that, "Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party. . . ." [8] The Supreme Court, in *Nixon v. Condon,* held that this was a delegation of state power to the state executive committee, and made its determination conclusive irrespective of any expression of the party's will by its convention, and the subsequent action of the committee barring Negroes from the party primaries was state action prohibited by the Fourteenth Amendment. Three weeks after the decision in *Nixon v. Condon,* the Democratic party met in state convention and adopted the resolution quoted above that only white Democrats might participate in the party primaries. In the present case, the Supreme Court stated that "the

[1] Quoted, 55 Sup. Ct. 622 at 623.
[2] 55 Sup. Ct. 622 at 623.
[3] 55 Sup. Ct. 622 at 627.
[4] See Evans, "Primary Elections and the Constitution," 32 MICH. L. REV. 451 (1934).
[5] 273 U. S. 536, 47 Sup. Ct. 446 (1927).
[6] 286 U. S. 73, 52 Sup. Ct. 484 (1932).
[7] Tex. Rev. Civ. Stat., 1925, art. 3107.
[8] Tex. Laws 1927, c. 67, p. 193.

qualifications of citizens to participate in party counsels and to vote at party primaries have been declared by the representatives of the party in convention assembled, and this action upon its face is not state action." [9] The Court followed closely the reasoning of the Supreme Court of Texas in *Bell v. Hill* [10] that political parties in Texas "arise from the exercise of the free will and liberty of the citizens composing them; that they are voluntary associations for political action, and are not the creatures of the state"; [11] and that the Democratic party has the power to determine who shall be eligible for membership and, as such, eligible to participate in the party's primaries. It declared itself unable to regard the action taken by managers of the primary election in obedience to the mandate of the state convention as state action, or to hold that the state convention of the party had become "a mere instrumentality or agency for expressing the voice or will of the state." [12] Presumably the line must be drawn somewhere between "voluntary associations for political action" and "state action," but in the light of the steadily increasing control of political parties by state legislation that line has become very thin indeed. The last chapter in this story has not yet been written.

EVERETT S. BROWN *

[9] 55 Sup. Ct. 622 at 624.
[10] (Tex. 1934) 74 S. W. (2d) 113.
[11] 55 Sup. Ct. 622 at 625.
[12] 55 Sup. Ct. 622 at 626.

* Professor of Political Science, University of Michigan.