Supplementary Material

Chapter 7: The Republican Era—Foundations/Scope/State Action

Nixon v. Condon, 286 U.S. 484 (1932)

On July 28, 1928, James Condon, an election judge, refused to allow Dr. L.A. Nixon to vote in the Texas Democratic primary. Condon claimed his decision was legal because Texas law permitted the Executive Committee of the Democratic Party to determine who could vote in the Democratic primary and the Executive Committee had limited the ballot to "white Democrats." Nixon sued Condon for damages. He claimed the Texas law violated the Fourteenth Amendment. His suit was dismissed by a lower federal court and that decision was sustained by the Court of Appeals for the Fifth Circuit. Nixon appealed to the Supreme Court of the United States.

Nixon v. Condon *was Dr. Nixon's second appearance before the Supreme Court of the United States. In* Nixon v. Herndon *(1927), he successfully challenged a Texas law declaring that only white persons could vote in state primaries. Justice Holmes's unanimous opinion declared,*

> *We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth. That Amendment, while it applies to all, was passed, as we know, with a special intent to protect the blacks from discrimination against them. . . . The statute of Texas in the teeth of the prohibitions referred to assumes to forbid negroes to take part in a primary election the importance of which we have indicated, discriminating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case.*

The Texas state legislature responded to Nixon v. Herndon *by passing a new law, giving the executive committee of the state Democratic Party the power to prescribe voting qualifications.*

The Supreme Court by a 5–4 vote declared that Dr. Nixon had a constitutional right to vote in the Texas Democratic primary. Justice Cardozo's majority opinion declared that the law, by delegating the power to the executive committee, made that committee a state actor subject to constitutional limitations. Why does Justice McReynolds disagree? Nixon v. Condon *is the first case in which the five more liberal justices on the Supreme Court disagreed with the four more conservative justices on a question concerned with racial equality, with the more liberal justices taking the more racially egalitarian position. What do you think might explain this new ideological divide? That racial attitudes were beginning to align with economic attitudes? That conservatives believed n a more limited notion of state action regardless of race?*

JUSTICE CARDOZO delivered the opinion of the Court.

. . . . Whatever our conclusion might be if the statute had remitted to the party the untrammeled power to prescribe the qualifications of its members, nothing of the kind was done. Instead, the statute lodged the power in a committee, which excluded the petitioner and others of his race, not by virtue of any authority delegated by the party, but by virtue of an authority originating or supposed to originate in the mandate of the law.

. . . [T]he statute is explicit in committing to the state convention the formulation of the party faith. The state executive committee, if it is the sovereign organ of the party, is not such by virtue of any powers inherent in its being. It is, as its name imports, a committee and nothing more, a committee to be

chosen by the convention and to consist of a chairman and thirty-one members, one from each senatorial district of the state. To this committee the statute here in controversy has attempted to confide authority to determine of its own motion the requisites of party membership and in so doing to speak for the party as a whole. Never has the state convention made declaration of a will to bar negroes of the state from admission to the party ranks. Counsel for the respondents so conceded upon the hearing in this court. Whatever power of exclusion has been exercised by the members of the committee has come to them, therefore, not as the delegates of the party, but as the delegates of the state. Indeed, adherence to the statute leads to the conclusion that a resolution once adopted by the committee must continue to be binding upon the judges of election though the party in convention may have sought to override it, unless the committee, yielding to the moral force of numbers, shall revoke its earlier action and obey the party will. Power so entrenched is statutory, not inherent. If the state had not conferred it, there would be hardly color of right to give a basis for its exercise.

. . .

. . . We do not impugn the competence of the Legislature to designate the agencies whereby the party faith shall be declared and the party discipline enforced. The pith of the matter is simply this, that, when those agencies are invested with an authority independent of the will of the association in whose name they undertake to speak, they become to that extent the organs of the state itself, the repositories of official power. They are then the governmental instruments whereby parties are organized and regulated to the end that government itself may be established or continued. What they do in that relation, they must do in submission to the mandates of equality and liberty that bind officials everywhere. . . .

. . . Delegates of the state's power have discharged their official functions in such a way as to discriminate invidiously between white citizens and black. . . . The Fourteenth Amendment, adopted as it was with special solicitude for the equal protection of members of the Negro race, lays a duty upon the court to level by its judgment these barriers of color.

Separate opinion of JUSTICE McREYNOLDS.

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The act now challenged withholds nothing from any negro; it makes no discrimination. It recognizes power in every political party, acting through its executive committee, to prescribe qualifications for membership, provided only that none shall be excluded on account of former political views or affiliations, or membership or nonmembership in any nonpolitical organization. . . .

. . .

Petitioner insists that the committee's resolution was authorized by the state; the statute only recognizes party action, and he may not now deny that the party had spoken. The exclusion resulted from party action, and on that footing the cause must be dealt with. Petitioner has planted himself there. Whether the cause would be more substantial if differently stated we need not inquire.

. . .

If statutory recognition of the authority of a political party through its executive committee to determine who shall participate therein gives to the resolves of such party or committee the character and effect of action by the state, of course the same rule must apply when party conventions are so treated; and it would be difficult logically to deny like effect to the rules and by-laws of social or business clubs, corporations, and religious associations, etc., organized under charters or general enactments. The state acts through duly qualified officers, and not through the representatives of mere voluntary associations.

. . .

Political parties are fruits of voluntary action. Where there is no unlawful purpose, citizens may create them at will and limit their membership as seems wise. The state may not interfere. White men may organize; blacks may do likewise. A woman's party may exclude males. This much is essential to free government.

If any political party as such desires to avail itself of the privilege of designating candidates whose names shall be placed on official ballots by the state, it must yield to reasonable conditions

precedent laid down by the statutes. But its general powers are not derived from the state, and proper restrictions or recognition of powers cannot become grants.

It must be inferred from the provisions in her statutes and from the opinions of her courts that the state of Texas has intended to leave political parties free to determine who shall be admitted to membership and privileges. . . .

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The resolution of the executive committee was the voice of the party, and took from appellant no right guaranteed by the Federal Constitution or laws. It was incumbent upon the judges of the primary to obey valid orders from the executive committee. They inflicted no wrong upon Nixon.