LaRouche v. Fowler case is back in court

by Bruce Director and
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Attorneys for Lyndon LaRouche, Jr. and nine Democratic voters argued the appeal in the voting rights case, *LaRouche et al. v. Fowler et al.,* before a three-judge panel of the D.C. Court of Appeals on Oct. 14. The outcome of this case is being watched around the country. At stake is whether rules of a national party must comply with the U.S. Constitution and the 1965 Voting Rights Act.

LaRouche et al. filed suit in August 1996 against the Democratic National Committee (DNC) and its former chairman, Donald Fowler, who colluded with state party officials to exclude LaRouche and his delegates from the Democratic Party Presidential nominating convention. The exclusion was based on a letter-directive from Fowler, which declared that "LaRouche is not a bona fide Democrat" and said that votes cast for him, or delegates pledged to him, were to be "disregarded." Fowler claims his actions were merely an expression of the party's right to say who is or is not a member of the Democratic Party. But, in this case, the actions by Fowler violated the constitutional right to vote of life-long African-American Democrats and others. Thus, Fowler et al.'s actions violated both the Constitution and the Voting Rights Act.

Despite Fowler's letter, LaRouche gained enough votes in the Louisiana primary and in a Virginia caucus to be awarded one delegate from each state. But, local party officials, acting on orders from Fowler, disregarded the votes and denied LaRouche any delegates. Just weeks before the convention, the suit was filed in U.S. District Court in Washington, D.C. The case was heard by Judge Thomas Penfield Jackson, who dismissed the case without referring it to a special three-judge panel, as required by the Voting Rights Act.

The appeals panel which heard the case on Oct. 14 consists of three judges: David Sentelle, a conservative Republican who appointed Kenneth Starr as independent counsel; Laurence Silberman, a neo-conservative who was involved with Oliver North's operation; and Merrick Garland, a young Clinton appointee who served as Deputy Assistant Attorney General in the Criminal Division of the Justice Department. Arguing for Fowler et al. was John Keeney, Jr., son of the notorious career Justice Department official John Keeney, Sr.

At the oral argument, neither side had much chance to deliver their prepared statements, as all three judges conducted vigorous questioning. The questioning focussed on whether 1) the case was moot, 2) District Court Judge Jackson was wrong to dismiss the case, 3) the DNC and Fowler's actions were covered under the Voting Rights Act, and 4) LaRouche and his co-plaintiffs had sued in the proper Federal court.

At the outset, the judges stated that if this case is moot, they need not deal with any of the other issues. Fowler had argued that since the 1996 election is over, and LaRouche's delegates weren't seated, there is nothing left to litigate. James F. Schoener, arguing for LaRouche and his co-plaintiffs, said the case is not moot. "LaRouche is a candidate for the year 2000, these rules are still in place, and this could happen again," he said. When asked the same question, Keeney answered, "There is no way to know if this will happen again. We don't know what our new chairman will do." Rather incredulous, Judge Silberman replied, "You don't expect us to believe that this won't happen again?"

The judges seemed concerned that Judge Jackson had exceeded his authority by dismissing the case without appointing a three-judge court, as required by the Voting Rights Act. Legally, such a dismissal is possible only if the case is frivolous. "This isn't a frivolous case," Judge Garland stated. Jumping into the fray, Judge Silberman asked Keeney, "If Fowler's letter had been addressed to Jesse Jackson, do you think it would have been dismissed without referring it to a three-judge court?" Keeney said yes. "Do you think any district court in the nation would have given this treatment to the case if it had concerned Jesse Jackson?" Silberman later said, "I personally believe that the Democratic Party has the right to exclude someone whose views they don't like. But no one has ever ruled on that yet. Shouldn't that be referred to a three-judge court?" All three judges noted that this case presents novel issues.

Next, examining the DNC and Fowler's claim that national party rules are not subject to the Voting Rights Act, Judge Sentelle asked Keeney, if his position were the law, "would not the [early 1960s] white primary cases"—the cases which began to curb racial discrimination in voting—"have to be reversed?" Keeney replied, "The outcome in those cases was correct." Keeney had to admit that the national Democratic Party had sanctioned the white primaries, but he refused to acknowledge the similarity to Fowler's actions in the LaRouche case.

Not allowing Keeney to have his cake and eat it too, Judge Sentelle fired back a question about the recent Supreme Court case of *Morse v. Republican Party of Virginia,* where the court found the Virginia GOP violated the Voting Rights Act because it required delegates to pay an entry fee to a nominating convention. "Isn't excluding someone based on their views more serious than requiring them to pay a fee?" Keeney replied that exclusion because of views, was the only correct basis to exclude someone.

A opinion in the case is expected soon, although there is no set time by which the judges must issue it.

In 1945, the world looked with horror at the genocide by Britain's marcher-lord Hitler, and cried out,

"Never again!"

On April 4, 1997, the world stood by, as Britain's marcher-lord Yoweri Museveni proclaimed,

"My mission is to see that Eritrea, Ethiopia, Sudan, Uganda, Kenya, Tanzania, Rwanda, Burundi, and Zaire become federal states under one nation. . . . As Hitler did to bring together Germany, we should also do it here. Hitler was a smart guy, but I think he went a bit too far by wanting to conquer the whole world."

Dachau, Germany, 1945

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