LaRouche v. Fowler: The Democratic National Committee has a choice

by Debra Hanania-Freeman and Bruce Director

If someone were to tell you a story that included an attorney for the Democratic National Committee (DNC, the body that governs the Democratic Party) arguing before a panel of Federal judges that the 1965 Voting Rights Act ought to be declared unconstitutional, chances are you would think the story was fictional. If the storyteller added that the DNC attorney based his argument on opinions authored by Supreme Court Justices Antonin Scalia and Clarence Thomas, you would most certainly raise your eyebrows in disbelief.

Indeed, when representatives of Lyndon LaRouche's campaign for the Democratic Party Presidential nomination recently recounted the story to members of the DNC who were attending a meeting in Washington, D.C. a few weeks ago, the DNC members responded with shocked disbelief. It seems that the Democratic Party's Washington apparatus failed to inform its own members about what they were up to. And, while that is hardly a surprise, the fact remains that the story is true.

It is time tell the story that the Democratic Party's Washington, D.C.-based apparatus wants to keep under wraps.

In 1996, Lyndon LaRouche sought the Democratic Party Presidential nomination, as he had done in four previous Presidential elections. His campaign committee was certified to receive Federal matching funds, his name appeared on the ballot in 26 states which held primary elections, and more than 600,000 Democrats cast their votes for Lyndon LaRouche.

But, what most people didn't know was that on Jan. 5, 1996, Donald Fowler, who, at the time was Chairman of the DNC, unilaterally and without consultation, issued a letter to all state party chairmen. In that letter, Fowler said that, under the powers he claimed were granted to him by DNC rule 11(k), he was declaring that Lyndon LaRouche was *not a bona fide Democrat!* He based his declaration on defamatory characterizations of LaRouche, which he knew were false.

Fowler: 'disregard votes for LaRouche'

In a patently illegal move, Fowler ordered the state parties to "*disregard* any votes that might be cast for Mr. LaRouche." He went on to insist that state chairs "should not allocate delegate positions to Mr. LaRouche and should not recognize the selection of delegates pledged to him at any stage of the delegate selection process." Fowler threatened that if anyone dared disobey him, he would refuse to seat that state's *entire* delegation at the Democratic Party National Convention.

The issue came to a head when LaRouche received more than 15% of the votes cast in Virginia's 2nd Congressional District Caucus and Louisiana's 6th Congressional District Democratic primary. According to party rules, LaRouche was entitled to a delegate in each of these jurisdictions. But, citing Fowler's command, Democratic Party officials in those states simply tossed votes cast for Lyndon LaRouche into the trash, and refused to certify delegates for LaRouche!

In Arizona, state Democratic Party officials cancelled the Democratic primary election, rather than allow LaRouche's name to appear on the ballot. In Texas, again citing orders from Fowler, state officials refused to seat duly elected LaRouche delegates at the Texas State Democratic Convention.

As it happens, all four of these states—Virginia, Louisiana, Arizona, and Texas—are jurisdictions that, under the Voting Rights Act, must pre-clear any and all changes that affect voting, with the U.S. Department of Justice. And, as you might have guessed, neither Rule 11(k), nor Fowler's Jan. 5, 1996 decree, was ever submitted for pre-clearance.

Now, the simple fact is, that Lyndon LaRouche and his Presidential campaign committee would have preferred not to sue. And, every effort was made to avoid such action. But, Fowler rejected each and every effort to settle the matter. Ultimately, no truly responsible and patriotic American, no lover of justice, could have stood by, and allowed Fowler to take the votes of thousands of voters, in this case largely minority voters, and disregard them because he didn't agree with their choice of candidate. So, in August 1996, Lyndon LaRouche, still a candidate for the Democratic Presidential nomination, and a group of minority voters, went to Federal court and sued the Democratic National Committee, its then-Chair Donald Fowler, as well as the Democratic parties of Virginia, Louisiana, Arizona, and Texas, for violations of the Voting Rights Act of 1965.

The simple facts are indisputable. The actions of the named defendants were precisely the kind of behavior the Voting Rights Act was intended to prevent. Fowler's arbitrary use of Rule 11(k) had a specific effect: It nullified the vote of minority voters who either voted for Lyndon LaRouche, or

Former Chairman of the Democratic National Committee Donald Fowler, who ordered state parties in 1996 to "disregard any votes that might be cast for Mr. LaRouche."

who had sought to be LaRouche delegates to the Democratic National Convention.

Attorneys for Fowler and the DNC argued in court that they were not required to seek pre-clearance under the Voting Rights Act, because, although the states named are covered jurisdictions under the Act, the DNC is not! The state parties, on the other hand, argued that they could not be held responsible. They said they didn't make the rules; the DNC did! It was an argument the Nazis tried at Nuremberg. And, although it didn't work there, it is still not clear what the outcome of this case will be. Whatever the outcome, those voters, whose votes were callously tossed away in 1996, have suffered irreparable harm.

Ironically, the Catch-22 argument that the DNC and the state parties employed in court, is exactly what the Voting Rights Act hoped to stop. Prior to 1965, local governments and political parties routinely resorted to similar "shell game" tactics to get around Federal court decisions outlawing discrimination in voting. Back then, no sooner would the court rule against one tactic, than the perpetrators of the discrimination would cook up a new one. Congress intervened by requiring that any change in voting practice be pre-cleared *before* it could be enacted. Congress's intent was to place the burden on the perpetrator, *not* the victim.

This time, lawyers for the DNC even argued that, as a private organization, it is not required to abide by the Voting Rights Act! But, since 1972, political parties *have been required* to pre-clear their delegate selection rules, the primary rules, and any other functions related to voting.

Voting Rights Act under attack

In 1996, the Supreme Court held that the Virginia Republican Party was subject to the Voting Rights Act pre-clearance requirements, in a case connected to the manner in which it conducted its nominating convention (see *Morse v. Republican Party of Virginia,* 116 S.CT.1186 [1996]). In the majority opinion, Justice John Paul Stevens said that it was still to be decided, whether national party rules were also subject to the Voting Rights Act. In a dissenting opinion, Justices Scalia and Thomas argued that, indeed, national party rules were covered under the Voting Rights Act, but *the Act itself should be declared unconstitutional*.

On Aug. 16, 1999, oral arguments were heard before a three-judge panel (David B. Sentelle, Thomas Penfield Jackson, and Henry H. Kennedy) of the U.S. District Court for the District of Columbia, on a motion brought by Fowler et al. to dismiss the case. Speaking for Fowler and the other defendants, attorney John C. Keeney, Jr. shocked observers with the argument that Scalia and Thomas were right; that the Voting Rights Act whould be declared unconstitutional if applied to the Democratic National Committee (see *Documentation*). Those familiar with the career of attorney Keeney's father, Jack Keeney, however, were less than surprised. The elder Keeney has presided, for more than three decades, over a campaign of terror and harassment, run by the Department of Justice's permanent bureaucracy, against black public and elected officials.

Arguing for LaRouche and the minority voters, attorney James Schoener said, "They ignore the fact hat when Congress passed the first Voting Rights Act in 1965, they did it in reaction to the actions of the National Convention of the Democratic Party. I'm old enough to remember watching the television screens where they were discriminating against a group of black delegates from Mississippi. The Mississippi Freedom Party was asking to be recognized. And the Democratic Party said, *'No! No!* We won't allow that.'

"Congress looked at it. It was distasteful. And they came back in the next year. The 1965 Voting Rights Act said, 'We are not going to have that.' "

Today, we are on the eve of a new Presidential electoral cycle. Don Fowler is long gone as DNC Chair. But the apparatus he represented is still very much in place. That apparatus attempted to do away with even the pretense of a primary process this time around. As early as 1998, they attempted to anoint the unelectable Vice President Al Gore as the Democratic Presidential nominee. (Don Fowler's son serves as the field director of Gore's campaign.) Lyndon LaRouche and his Democratic supporters vowed to prevent that, for it would

amount to certain defeat for the Democratic Party.

And, although LaRouche has succeeded in dislodging Gore from his "front-runner" status—indeed, many believe that Gore will soon be out of the race—Fowler's friends at DNC headquarters are still conniving to maintain their stranglehold on the nominating process and to squelch legitimate debate. Some still brazenly vow that Democrats who cast their primary ballots for LaRouche are Democrats whose votes will be tossed in the trash.

The ultimate verdict in *LaRouche v. Fowler* could be a decisive factor. But, it is unlikely that the case will be resolved in time. Spokesmen for LaRouche have indicated that if the DNC were willing to admit they were wrong in 1996, apologize, and not do it again during this electoral cycle, LaRouche would probably be prepared to move on. And, whether Don Fowler's friends like it or not, the vast majority of DNC members seem inclined to agree.

Documentation

DNC calls Voting Rights Act 'unconstitutional'

The following are unedited excerpts from the court transcript of the Aug. 16, 1999 oral argument in the case of Lyndon H. LaRouche, Jr. et al. v. Don Fowler, individually; and chairman, Democratic National Committee, et al. *The hearing was held in Washington, D.C., before judges David B. Sentelle, Thomas P. Jackson, and Henry H. Kennedy. Attorneys for the plaintiffs were James Schoener, Odin Anderson, and Nina Ginsberg. Representing the defendants was John Keeney, Jr.*

The defendants have moved to dismiss the case. Our excerpts begin with a discussion of the 1996 case of Morse v. Republican Party of Virginia, *in which dissenting Supreme Court Justices Scalia and Thomas argued that national party rules were covered under the Voting Rights Act, but that the Act itself should be declared unconstitutional.*

Judge Sentelle: You have conceded that Scalia's opinion would encompass national party rules, right?

Mr. Keeney: Well, I said that Justice Scalia says that the majority encompasses all national party rules. and Justice Stevens—

Judge Sentelle: And Justice Scalia was joined by Justice Thomas, right?

Mr. Keeney: That is correct.

Judge Sentelle: And if you add those two and these five, then you can make a recombinant majority who says that either they're covered or we have not yet decided whether they're covered, right?

Mr. Keeney: Well, except what the dissent would do is something different, Your Honor. The dissent is going to put into question the constitutionality of the entire act. And that's a different question than the statutory interpretation.

Judge Sentelle: Yes, it is, but it clearly doesn't support your motion to dismiss today.

Mr. Keeney: I think it does, Your Honor, for the following reasons. What we have is four Justices who say the Voting Rights Act is unconstitutional to the extent that it reaches even state parties holding state party conventions in covered jurisdictions. So those are those four.

There is no doubt, because of the citations they make to national party rules, where they come out with respect to the national party. Then we switch over and look at the two lead opinions for the splintered majority. We have Justice Stevens, obviously, with footnote 19. We also have Justice Breyer, who is very clear about what is not covered and that they are only dealing with the specific circumstance before them.

So looked at from that point of view, Your Honor, what I see is four Justices who are going to strike down the Voting Rights Act as unconstitutional if it's extended.

Judge Sentelle: If they get this case back, those four, presumably, are bound by a precedent that says it is not unconstitutional, right

Mr. Keeney: No, Your Honor. I don't think they're going to say that. I think they are going to say that *Morse* dealt with a different situation and that Justice Breyer's three-Justice concurrence made it clear that they were dealing only with the situation that was presented in that case of a state party convention.

About the best you can take away from the *Morse* case is that it is very much limited to its facts. And just so the record is clear, Your Honor, because I think it should be clear, preclearance involves two different things. There are state law preclearances. And every one of these state parties precleared their own rules, their own regulations, and their own procedures.

What we are talking about now is whether a state party has to preclear the Democratic National Committee's rules and the Democratic National Committee chair's interpretation of the rules. If that is correct, then we're in a situation in which the next time this comes up for either the Democratic or the Republican party, it may well not be on a leisurely timeframe. Indeed, it might likely come up at the convention. And a rule which says that a DNC chair cannot interpret its rules to have an effect on any party delegation from a covered state would cause serious constitutional concerns, as well as serious separation-of-powers concerns with respect to entrusting the administrative executive branch of an opposing party in the middle of a partisan political party convention having to decide the issues that the Supreme Court, starting from 1972 on, has tried desperately not to have to decide, which is having the court substitute—

Judge Sentelle: I think you're creating a lot more precedent than I think this case can possibly create.

Mr. Keeney: Well, no, Your Honor. I want to be—

Judge Sentelle: If we decide that they have to preclear a rule that they have adopted well in advance of the convention, that somehow says that the other party can come in during the convention and dictate to them? Counsel, go back to this case.

Mr. Keeney: Yes, Your Honor.

Judge Sentelle: I know I asked you about *Morse,* but *Morse* controls. That hypothetical you just made up isn't from the same universe as this case.

Mr. Keeney: Well, actually, Your Honor, with all due respect, it is. They are asking two things to be precleared.

Judge Sentelle: With all due respect, forget that hypothetical. We'll go back to this case. . . .

Mr. Schoener: The defendants have questioned the jurisdiction of this court. They ignore the fact that when Congress passed the first Voting Rights Act in 1965—and they did it in reaction to the actions of the national convention of the Democratic Party—

I am old enough to remember watching the television screens where they were discriminating against a group of black delegates from Mississippi, the Mississippi Freedom Party, that was asking to be recognized. And the Democratic Party said, "No. No. We won't allow that."

Congress looked at it. It was distasteful. And they came back in the next year. The 1965 Voting Rights Act said, "We're not going to have that. We're not going to have it in states that have a history of discrimination. You now will have to preclear your actions with the District Court for the District of Columbia or the Attorney General before they may be effective." And they said, "We're going to put the burden on you. if you want to change it, you come to us first. We're going to put the burden on the perpetrator and not on the victim."

That's what the Voting Rights Act was all about. And we even have in the state of Michigan, the state of Michigan—

Judge Sentelle: You might want to move toward why there are covered jurisdictions before us today and what those jurisdictions are.

Mr. Schoener: I am sorry, Your Honor?

Judge Sentelle: We have in front of us a motion to dismiss that has got a lot to do with what in front of us is or isn't a covered jurisdiction. I haven't heard you say a whole lot about that yet, counsel.

Mr. Schoener: Covered jurisdictions, Your Honor?

Judge Sentelle: How long do you plan to take to argue today? . . .

Mr. Schoener: . . .The lower court in Arizona cancelled that election [in 1996] at the request of the Democratic Na-

tional Committee and the Democratic Party of Arizona, depriving the rest of that slate [of candidates supporting LaRouche]. There was a full slate. They had paid their filing fee.

LaRouche had paid $1125.00 filing fee. He was a serious candidate. And they were deprived of the right to vote and to become candidates.

In the other cases—in fact, the Virginia Democratic Party has already been declared to be subject in the dicta, I agree, of Justice Stevens in the *Morse* case, which said the Republican Party and the Democratic Party of Virginia are unique, and they are given certain rights and are, therefore, subject to preclearance of their party rules.

Your Honor, this is not unusual. Party rules have been submitted for change since 1972. A very interesting article of the *Harvard Civil Rights Law Review* in 1972 points out that such disparate party organizations, such as New York Democratic Party, the North Carolina Democratic Party, the Republican Party of Alabama, as well as the Democratic Party of Alabama in 1972, when this Act was new, had already submitted [for preclearance].

Judge Sentelle: Have the national parties ever submitted anything?

Mr. Schoener: Not to my knowledge. Your Honor, I have written three letters to the Justice Department asking for that information. I finally called about two weeks ago and said, "Can I get an answer to this?" and they said, "They're working on it upstairs, and we're sorry. We can't give you an answer now."

Judge Sentelle: We'll look forward to your FOIA suit, I guess.

Mr. Schoener: I guess that's the way I am going to get it. . . .

There is one thing that we have in this particular case. We have an Act that the Congress has said should be broadly construed. It should be construed against the perpetrator and give the victim a chance to at least place their position on the record. And that's why we say this National Committee, when it acted, assumed the cloak of state action. It assumed a position of ordering those states in those states that are subject to the Voting Rights Act.

Two changes occurred. One was the rule, and where was the rule issued out of? The District of Columbia. The letter that became an order to these various covered jurisdictions was issued out of here.

This is the court that should have and should take jurisdiction. As Justice O'Connor also pointed out, they expected this court to become the experts on the Voting Rights Act. And I submit that there have been a lot of things come through the District Court for the District of Columbia on voting rights things. And the court is obviously well-versed in what the act is all about. And I think that under those circumstances, there is no question that this court is the proper jurisdiction. . . .

Weldon hearings seek to revive Cold War

by Jeffrey Steinberg

Rep. Curt Weldon (R-Pa.) turned a hearing room in the stately Rayburn House Office Building into a three-ring circus on Oct. 26, by flashing what he proclaimed was a replica of a Soviet-made "suitcase nuclear bomb" in front of a room packed with press, Congressional staffers, and observers, including 50 college students bused in from his home district for the occasion. The show-and-tell routine by Weldon and a former CIA officer, Peter Pride, took place at the outset of hearings on "Russian Threat Perceptions and Plans for Sabotage Against the United States," which featured Cambridge MI6 historian Christopher Andrew and former KGB London station chief Oleg Gordievsky.

Andrew is the co-author of the recently released book, *The Sword and the Shield: The Mitrokhin Archive and the Secret History of the KGB,* a huge hoax proclaiming that the Soviets had recruited tens of thousands of agents in every key institution of the West, and had planted vast caches of arms, radio transmitters, and other sabotage tools in every NATO country (see "New British 'Big Lies' Target Russia, Germany, and United States," *EIR,* Oct. 1, 1999).

Andrew had earlier co-authored an equally flagrant hoax with Gordievksy, in which they claimed that Moscow was moments away from launching a thermonuclear attack on the United States in late 1983, in response to President Reagan's March 23, 1983 announcement of the Strategic Defense Initiative (SDI), which the authors claimed the Soviets had misinterpreted as a plan for an American nuclear first strike against the U.S.S.R.

But, whatever propaganda the Cambridge don and his KGB "defective" had in store for the U.S. Congress, was upstaged by the "suitcase nuke" antics. Weldon, the chairman of the Subcommittee on Military Research and Development of the House Armed Services Committee, began the hearing with a prepared statement in which he promised to provide "some of the most startling testimony ever to be received by the United States Congress." While he was ostensibly referring to Andrew and Gordievsky, Weldon proceeded to deliver his own tirade, charging that Moscow had planted suitcase nukes inside the United States, and citing as his source, a former colonel with the Soviet GRU military intelligence agence, Stanislav Lunev, who had appeared at similar "scare-