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Commentary

New Try at Reining in Political Parties

By Frank Askin

Two of New Jersey's most independent lawmakers — one a Republican, the other a Democrat — have introduced a bill that would curtail some of the power of county political bosses. Not surprisingly, party leaders say the legislation would violate the constitutional rights of the Democratic and Republican parties to freedom of association.

The opponents are relying on a literal reading of an 18-year-old U.S. Supreme Court opinion which, on rereading, appears to be a tale of constitutional litigation gone awry.

In 1989, the Supreme Court, in a case arising in California, issued a unanimous opinion that has been generally read to hold that political parties (including the Democrats and Republicans) are private associations whose internal composition and operations are beyond government regulation. The decision, *Eu v. San Francisco County Democratic Committee*, invalidated several provisions of California law governing the activities and structure of political parties in the state. It has always seemed to me that the California attorney general made only a halfhearted attempt to defend the statute.

In its opinion, the Court ignored the role that major parties play in governing us — both in law and in fact. For example, New Jersey political party committees can appoint state legislators when a member dies or resigns from office. The parties also choose the members of the county election boards who supervise our elections. We certainly wouldn't allow a truly private club like the Elks or the League of Women Voters to do that. (This is aside from the fact that anyone with the barest knowledge of how government works in New Jersey knows that no one gets appointed to a judgeship or other significant state position without the approval of the county political boss.)

The issue arises anew in New Jersey because Sens. Loretta Weinberg, a Democrat, and Diane Allen, a Republican, both of whom have been long embroiled in infighting with their respective county party chairs, joined to co-sponsor the Party Democracy Act. Their legislation would govern the procedures that party committees have to follow, including the adoption of a constitution and bylaws, public disclosure of their membership lists and use of voting machines when they make appointments to public office. It's certainly hard to find fault with such regulations. If the party committees are going to exercise such public functions, why shouldn't the state require that they operate in a fair and transparent manner?

The problem is caused by the Supreme Court's opinion in *Eu*. That's where the Court ruled unconstitutional the California law that not only forbade political parties from endorsing and campaigning for candidates in the party primaries, but also regulated the parties' internal affairs, including the composition and structure of their county committees.

In *Eu*, the Court ruled that the state defendant had failed to demonstrate any "compelling interest" in interfering with the parties' internal operations. On the other hand, the opinion also indicated that the attorney general of California, whose job it was to defend the statute, did not put up much of a fight. The state's main argument was that it was promoting '"stable government and protecting voters from confusion and undue influence." The Court responded that "curbing intraparty friction" was not a compelling interest. There is no indication that the state suggested that the party bodies were performing government functions.

That history seems to leave New Jersey's Party Democracy Act in murky waters.

If the *Eu* opinion is read literally, it seems to say that the state's extensive regulation of political parties is unconstitutional, and, thus, the PDA is a useless effort to improve on an irredeemable system.

On the other hand, *Eu* could (and should) be limited to political parties that do not perform governmental functions such as appointing those who supervise elections and filling vacancies in public office.

The briefs filed by the State of California in the Supreme Court made no mention of any governmental functions performed by the parties in California. In fact, the brief stated that the parties have to abide by the statutory restrictions only if they wish to participate in state-funded primary elections.

If Sens. Weinberg and Allen manage to push their bill through the Legislature over the objections of powerful party leaders, maybe we will finally get to find out what the Supreme Court really meant in the *Eu* case. ■

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