



March 12, 2009

Dear Members of the Illinois General Assembly:

As Chairman of the Illinois Republican Party, I am deeply troubled by the action taken earlier this week by the Democratic-controlled Illinois Senate Elections Committee to pass Senate Bill 600.

As the attached open letter from the Party's attorney Bill McGinley, of Patton Boggs demonstrates, Senate Bill 600 is an unconstitutional infringement on the First Amendment rights held by the Illinois Republican Party and its members.

It is important for you to review the attached information before proceeding with legislation that is both misguided and unconstitutional.

This legislation would allow Democrats, who control the Illinois General Assembly, to dictate the internal affairs of an opposition party.

As the attached open letter makes clear, political parties in Illinois have a right to freedom of association – in other words they have a right to be free from exactly this sort of meddling.

The Illinois Republican Party takes its First Amendment rights seriously and will not cede those rights to any governmental entity nor to any opposing political party.

If the legislature proceeds down the path of passing a bill that is unconstitutional on its face, the Illinois Republican Party will vigorously defend its rights under the United States Constitution.

A handwritten signature in black ink that reads "Andy McKenna".

Andy McKenna, Chairman
Illinois Republican Party

March 12, 2009

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Dear Members of the Illinois Republican Party:

This letter explains the constitutional basis for the Illinois Republican Party's opposition to SB600, a measure recently considered and passed by the Democratic-controlled Illinois Senate Elections Committee. This bill unconstitutionally infringes upon the core First Amendment rights of the Party and its members – rights that the Party will fight vigorously to protect should the legislature insist upon passing this unconstitutional bill.

The bill would eliminate the Party's right to elect State Central Committeemen by ward, township, and precinct, robbing it of a grassroots nominating process that is crucial to its identity – and for no particular reason other than the legislature's misguided belief that the bill represents good policy.

But that decision is not the State's to make; the First Amendment clearly protects a political party's right to operate without such unconstitutional oversight by government entities, including state legislatures. The Constitution vigorously "protects the right of citizens 'to band together in promoting among the electorate candidates who espouse their political views.'" *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000)).

The First Amendment freedom of association includes the Party's fundamental right to control both its character and message, including the right to control its composition and leadership. Those protections specifically include the right to be free from state interference into the Party's internal governance and leadership-selection processes, where such interference does not directly serve an overriding and compelling governmental interest. For example:

- In *Cousins v. Wigoda*, 419 U.S. 477 (1975), the Supreme Court strongly cautioned that an Illinois state law should *not* be given primacy over the National Democratic Party's rules determining the qualifications and eligibility of delegates to the Party's National Convention. In short, "Illinois' [claimed] interest in protecting the

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integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the National Party Convention.” *Id.* at 491. The Court relied on the principle that “[t]he National Democratic Party and its adherents enjoy a constitutionally protected right of political association” that could not be taken away by the Illinois legislature. *Id.* at 487.

- In *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981), the Supreme Court considered whether Wisconsin could insist that its delegates to the Democratic National Convention be seated, even though those delegates were chosen through a process that violated the Democratic National Committee’s rules. In ruling against the state, the Court concluded that “a State, or a court, *may not constitutionally substitute its own judgment* for that of the Party. A political party’s choice among the various ways of determining the makeup of a State’s delegation to the party’s national convention is protected by the Constitution.” *Id.* at 123 (emphasis added). This is so because “[f]reedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association’s being.” *Id.* at 122 n.22 (internal quotations omitted).
- In *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), the Supreme Court addressed whether Connecticut could enforce a closed primary law on a political party that sought to open its primary to independent voters. *Id.* at 211-212. The Court observed that “[t]he Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.” *Id.* at 224. The closed primary law therefore improperly burdened the party’s associational rights by placing limits upon the group of registered voters it could invite to participate in the “basic function” of selecting its candidates. As such, the Supreme Court held the statute unconstitutional. *Id.* at 225.
- Similarly, in *Eu v. San Francisco County Democratic Cent. Committee*, 489 U.S. 214 (1989), the Supreme Court refused to permit the State of California to impose a rule that would have banned primary endorsements and imposed restrictions on political parties. The statute in question would have restricted organization and composition of political parties’ official governing bodies, limited the terms of office for state central committee chairs, and required that such chairs rotate

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between residents of Northern and Southern California. The Court firmly concluded that “[t]hese laws directly implicate the associational rights of political parties and their members. . . . Freedom of association . . . encompasses a political party’s decisions *about the identity of, and the process for electing,* its leaders.” *Id.* at 229 (emphasis added).

- Finally, in *California Democratic Party v. Jones*, 530 U.S. 567 (2000), the Supreme Court overturned a California law passed by a majority of California voters, because the law would have forced California political parties to conform to a blanket primary system they did not wish to adopt. The Republican, Democratic, Libertarian, and Peace & Freedom Parties banded together to challenge the law. The Court explained: “we have continually stressed that when States regulate parties’ internal processes they must act within limits imposed by the Constitution.” *Id.* at 573. While “[California’s] legitimate state interests and [the parties’] First Amendment rights are not inherently incompatible[,] . . . the State of California has made them so by *forcing* political parties to associate with those who do not share their beliefs. And it has done this at the ‘crucial juncture’ at which party members traditionally find their collective voice and select their spokesman.” *Id.* at 586 (emphasis added).

These cases thus articulate Party members’ core constitutional rights, not only affirmatively to associate, but also defensively to define, confine, and control the Party as necessary to preserve its character, purpose, and effectiveness. *See, e.g., Ray v. Blair*, 343 U.S. 214, 221-22 (1952) (political parties may protect themselves from “intrusion by those with adverse political principles”).

Indeed, in the exceptional cases in which states have been permitted to regulate party affairs, it was either because the state interest was fundamental and truly compelling (such as prohibiting a political party from holding a segregated primary that excluded African-American voters, *see, e.g., Smith v. Allwright*, 321 U.S. 649 (1944)), or because the regulation did not burden the party’s rights (such as when a minor party was not permitted to engage in “fusion” candidacy, *see Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997)). Neither of those exceptions is applicable here: the rule at issue cuts to the very heart of the Illinois Republican Party’s ability to govern itself and select its standard bearers, and the State of Illinois has articulated *no overriding and compelling purpose whatsoever* that could withstand constitutional scrutiny. As the Court firmly concluded in

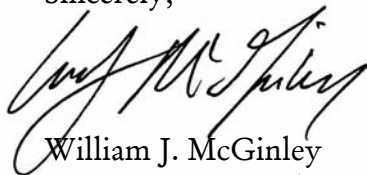
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Eu, “[f]reedom of association . . . encompasses a political party’s decisions *about the identity of, and the process for electing, its leaders.*” 489 U.S. at 229.

Given the decisive Supreme Court precedent protecting the Party’s rights in this area, it would be highly inappropriate, and decidedly contrary to law, for the Illinois legislature to interfere in the Republican Party’s internal governance by forcing it to adopt a selection scheme contrary to that of its own choosing. Importantly, it is legally immaterial that these proposed rules might be imposed on the Republican Party with the support of certain of its own members in the legislature: in *La Follette*, the challenged rule was passed by Wisconsin Democrats and successfully challenged by the national Democratic Party; and in *Jones*, the offending law was passed with a majority of votes by both Republicans and Democrats. Nor is the State’s intrusion any less unconstitutional now because the Party did not challenge previous statutory regulation: in *Tashjian*, the Court held unconstitutional a statute that had been in effect for decades before the Republican Party finally challenged it.

Proving our Party’s commitment to ensuring that this unconstitutional law is *never* enforced, last night our State Central Committee took swift and decisive action in passing the attached Resolution and Amendment to our Party Bylaws. As these measures unequivocally announce, the Party intends to defend vigorously its members’ sacrosanct constitutional rights of free association.

Sincerely,



William J. McGinley
Benjamin D. Wood
Kathryn Biber Chen