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Constitutional Law--Elections--Is There a Constitutional Right to Change Parties?

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CONSTITUTIONAL LAW—ELECTIONS—IS THERE A CONSTITUTIONAL RIGHT TO CHANGE PARTIES?

I. INTRODUCTION

As the political agitation, unrest, and tumult of the 1960's increased, the American system of government responded in a variety of ways, one of which was an increased interest in the fairness of the election process. The Congress enacted the Voting Rights Act of 1965[1] in an effort to enforce equality for racial minorities in the election process. The United States Supreme Court began to hand down decisions which also sought to expand the freedom of the ballot, most dramatically in the "one-man, one-vote" cases, *Baker v. Carr*[2] and *Reynolds v. Sims*.[3] The legislative response concentrated particularly on the serious problem of dilution of minority groups' votes by changes made by the State in the election procedure.[4] Thus, the Voting Rights Act *prevents* certain groups from voting—where their voting tends to dilute the voting strength of others. (A quick annexation to dilute the voting strength of inner city blacks may be unlawful under the Act, for example.) The judicial response concentrated on the problem of equal protection, and *increasing* the participation of otherwise excluded groups. Thus, whereas one of the aims of the Voting Rights Act is prevention of vote dilution, the judicial constitutional decisions aim at *broadening* the right to vote. A useful oversimplification would be that the legislative design (in one section of the Voting Rights Act) has the effect of narrowing the group of legitimate voters, whereas the judicial design has the effect of broadening the group.

These two streams of federal enforcement of federally protected rights flowed side by side with little apparent inconsistency until they met in a Charleston, South Carolina tempest called the City Democratic Primary, held on June 8, 1971. The difficulties centered on a set of ambiguous South

1. 42 *U.S.C.* §1973 (1971).
2. 369 U.S. 186 (1962).
3. 377 U.S. 533 (1964).
4. 42 *U.S.C.* §1973(c) (1971).

Carolina election laws, particularly one statute, which prescribed an oath to be taken by each voter, which had the effect of preventing him from changing parties for one year.[5] A special three-judge District Court held, *per curiam,* that primary elections were no diffrent from other elections and that the oath prescribed by state statute requiring each voter to swear that he had not voted "in any other party's primary election . . . held this year" was unconstitutional because no "compelling state interest" could justify it. *Gordon v. Executive Committee.*[6]

II. BACKGROUND

After the death of Congressman L. Mendel Rivers, Republican and Democratic primary elections were held to nominate candidates for the special election to the United States House of Representatives from the First Congressional District of South Carolina. The *Republican* primary for the congressional race was held on February 20, 1971. Later that year, on June 8, 1971, a *Democratic* party primary election was held in the City of Charleston to nominate candidates for the offices of Mayor and Aldermen. A political and legal quarrel arose between the two Democratic candidates for Mayor, William Ackerman and J. Palmer Gaillard, Jr., as to whether those persons who had voted in the February 20 *Republican primary for Congress* were entitled to vote in the June 8 *Democratic primary for Mayor.* The controversy grew out of the election laws of the State of South Carolina. The Ackerman faction contended that the law required the voters to take the following oath as a prerequisite to voting:

> I do solemnly swear or affirm that I am duly qualified to vote at this primary election and in this club, and that I have not voted before at this primary election or in any other party's primary election, convention, or precinct meeting held this year.[7]

Thus, those voting in the Republican primary for Congress in February would not be able to vote in the Democratic pri-

5. "The managers at each box shall require every voter to take the following additional oath and pledge: 'I do solemnly swear or affirm that I am duly qualified to vote at this primary election and in this club, and that I have not voted before at this primary election or in any other party's primary election, convention, or precinct meeting held this year." 23 S.C. CODE ANN. §400.71 (Supp. 1970).

6. 335 F. Supp. 166 (D.S.C. 1971).

7. 23 S.C. CODE ANN. §400.71 (Supp. 1970).

mary for Mayor in June. The Executive Committee of the Democratic Party of the City of Charleston disagreed with this contention.

The position of the Executive Committee in regard to the oath was expressed in a resolution passed by that body prior to the primary election in June. The resolution stated that Section 57 of Title 47 of the South Carolina Code[8] provides that municipal primaries shall be conducted pursuant to the South Carolina Election Law (Title 23 of the Code), unless the Uniform Municipal Election Law is adopted by a municipality. This uniform law, not having been adopted by the City of Charleston, the South Carolina Election Law is applicable. The Election Law applies, however, to *state* and *county* elections, and is applicable to *municipal* elections only by virtue of Title 47 (Municipal Corporations), "it being necessary . . . to apply the provisions of said election law [Title 23] *mutatis mutandis*[9] so that same will have the same effect on municipal elections as on County and State elections."[10] Thus, under the Executive Committee's interpretation, Section 400.71 of Title 23 of the 1962 South Carolina Code, the oath section, should be read *mutatis mutandis*. That is, the oath requires "that a voter must not have voted in any other *municipal* party's primary election, convention or precinct meeting held this year."[11]

The Attorney General of South Carolina stated in an opinion dated May 27, 1971 that "those individuals who participated in the Republican Congressional Primary election . . . are not eligible to vote in the Municipal Primary Election of the Democratic Party of the City of Charleston . . ."[12] The Executive Committee, disagreeing with the Attorney General's

8. This section provides that "Municipal primary, general and special elections in South Carolina shall be conducted pursuant to the South Carolina Election Law, except as otherwise provided in Title 47, as amended, and the provisions of this article if same are adopted and made applicable within the municipality as hereinafter provided."

9. "With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary as to names, offices, and the like." *Black's Law Dictionary* (4th Ed. 1968).

10. Resolution of the Executive Committee of the Democratic Party of the City of Charleston, on file with the Board of State Canvassers of Municipal Primaries, State Headquarters of the South Carolina Democratic Party.

11. *Id.* Emphasis added.

12. Letter from the Attorney General, Daniel McLeod, to James M. Condon and Arnold S. Goodstein, May 27, 1971.

conclusions of law, published a notice "to all registered electors" urging them to vote, warning that they might be challenged at the polls, and citing the Attorney General's statement that the challenge procedure was "the appropriate means of preserving the rights of all persons in this heated controversy."[13]

Seven hundred and forty-four persons who had voted in the February 20 Republican primary for Congress voted in the Democratic primary for Mayor.[14] As the court phrased it, "The election was close enough that, if the votes under attack had been disregarded, the result could have been changed."[15]

Three days of testimony were taken by the Executive Committee after the election. Candidate Gaillard was certified the winner. Those votes challenged as invalid by the Ackerman faction because the voters had voted in the Republican primary were counted. An appeal was taken by the Ackerman faction to the Board of State Canvassers of Municipal Primaries. The appeal was heard before the Board on July 6, 1971, and that body certified the Executive Committee's findings.[16]

A suit was then filed by Flossie Gordon and Lucille Morris, registered voters of the City of Charleston, alleging that the Executive Committee had failed to comply with the requirements of Section 5 of the Voting Rights Act of 1965 by altering the provisions of Title 23 of the South Carolina Code. The three-judge Court was convened pursuant to Section 5.[17]

III. FEDERAL PROTECTION OF THE VOTE: TWO TESTS

A. *The Voting Rights Act Test: Was There A Change In Procedure?*

The plaintiff-voters contended that their votes had been diluted by the action of the Executive Committee. The Complaint stated:

13. The News and Courier, June 1-8, 1971.

14. 492 were challenged. 252 were not challenged. Gordon v. Executive Committee, 335 F. Supp. 166, 168 (D.S.C. 1971).

15. *Id.*

16. In Re: Appeal of William Ackerman, on file with the Board of State Canvassers of Municipal Primaries, State Headquarters of the South Carolina Democratic Party.

17. "Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court." 42 U.S.C. 1973(c) (1971).

> . . . The purpose and effect of the changes was to manipulate the composition of the electorate to debase and dilute the effectiveness of Plaintiffs' votes and the votes of black electors represented by Plaintiffs.[18]

The Complaint relied on the Voting Rights Act for relief.[19] The Court, of course, was convened only because of the provisions of that Act. Thus, the single issue posed was whether or not the Democratic Party administered "any voting . . . procedure . . . different from that in force or effect on November 1, 1964"—the standard imposed by Section 5.[20]

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18. "Complaint for Injunction & Declaratory Relief," C.A. #71-852, in the United States District Court, District of South Carolina, Charleston Division."

19. *Id.* The Complaint alleges, in part, that:

> . . . The State of South Carolina and its subdivisions are subject to the requirements of the Voting Rights Act, 42 U.S.C., Section 1973b, one of the provisions of that act forbids any change in voting laws unless pursuant to 42 U.S.C., Section 1973. Defendant Executive Committee has not obtained a declaratory judgement in the United States District Court for the District of Columbia that the change in qualification, prerequisites, standard, practice, or procedure to the Attorney General of the United States to allow the Attorney General to offer any objections within sixty days. ? ? [Sic.]
>
> . . . Defendant Executive Committee's refusal to comply with the above laws stated in Paragraph 10 constituted a change in voting laws within the meaning of 42 U.S.C., Section 1973c.
>
> . . . None of the changes alleged herein was cleared in the manner required in 42 U.S.C., Section 1973c.
>
> . . . The purpose and effect of the changes was to manipulate the composition of the electorate to debase and dilute the effectiveness of Plaintiffs' votes and the votes of black electors represented Plaintiffs.

20. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure

The Court saw two potential changes in procedure: one, administrative and two, statutory. In the first category, administrative, there was no change by the Executive Committee from the interpretation given Section 23-400.71 in the February Democratic Primary for Congress:

> All that was ruled there [in the special congressional election in February] was that one who had voted in a primary of one party could not participate in the primary of another party held to select the nominee in the same general election. That was exactly the construction given Section 23-400.71 by the City Executive Committee in connection with the primary election involved in this proceeding.[21]

In the second category, statutory, there was obviously a change in the application of Section 23-400.71 to the election procedure:

> It is clear from the express language of the statute that the ruling of the Executive Committee *was violative* of that part of this Statute which purported to disqualify the voter from exercising his freedom of the ballot in the Democratic primary merely because he had voted in the primary of another party within one year.[22]

In other words, the Committee had made a change in the application of the laws' express provisions (though this interpretation of the statute had been used previously—in February). A strict use of the Voting Rights Act Test, with no other considerations, might have led the Court to rule in favor of the plaintiff-voters. The Court, then, would have had to order a new election. But the Voting Rights Act Test is only one test of freedom of the ballot. The court was obliged to apply another test, the constitutional test, which, in a sense, overshadows the Voting Rights Act Test.

B. *The Kramer Test: Is There A "Compelling State Interest"?*

The court found that there had been a change in procedure, but that this change was mandated by the constitutional suspicion of durational requirements for voting, that is, the Executive Committee would have been acting unconstitu-

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to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. 42 *U.S.C.* 1973(c) (1971). Section 23-400.71 of the South Carolina Code was adopted prior to November 1, 1964.

21. Gordon v. Executive Committee, 335 F. Supp. 166, 169 (D.S.C. 1971).

22. *Id.* at 168. (Emphasis added).

tionally if it had enforced the Section 23-400.71 oath which enforced a time limit on what the court found to be the voter's right to change parties.[23] Thus, the constitutional test, or *Kramer* Test, came into direct conflict with the legislative test, or Voting Rights Act Test, and the court opted for the former.

In *Kramer v. Union School District*,[24] the United States Supreme Court held that the State of New York could not limit the franchise in school district elections to owners (or lessees) of taxable realty, and parents (or guardians) of children in public schools, the two distinct groups enfranchised under the New York election laws. To so limit the franchise would deny equal protection to those persons excluded. The court said, relying heavily on the import of the "one-man, one-vote" decisions, that *Reynolds v. Sims*[25] had laid down the rule that statutes limiting the right to vote "must be carefully and meticulously scrutizied."[26] Statutes diluting the vote are strictly scrutinized, but "[n]o less rigid an examination is applicable to statutes *denying* the franchise to citizens who are otherwise qualified by residence and age."[27] *Kramer* rejected—for election cases—the long established rule that a statute does not deny equal protection if it is "rationally related" to a legitimate governmental objective in favor of a much stricter standard for election statutes,[28] that standard being "whether the exclusion [of voters] is necessary to promote a compelling state interest."[29]

Kramer applied the new standard to elections for school board officials. The standard was applied to election on

23. The wording of the oath ("I have not voted . . . in any other party's primary election . . . this year") if enforced, prevents the voter from changing his party affiliation for one year. Thus a voter who becomes disenchanted with party A a few months after he votes in party A's primary cannot vote in party B's primary for the remainder of the year. This, in effect, limits the voter's right to vote.

24. 395 U.S. 621 (1969).

25. 377 U.S. 533 (1964).

26. *Id.*, at 562.

27. Kramer v. Union School District, 395 U.S. 621 at 626 (1969).

28. *Id.*, at 627-8.

29. *Id.*, at 636.

revenue bonds in *Cipriano v. City of Houma*[30] and to elections on general obligation bonds in *Phoenix v. Kolodziejski*.[31]

The lower federal courts were promptly faced with novel constitutional questions involving the new *Kramer* standard, mainly durational residency requirements for voter registration. Did a voter have to live in a state for six months before he could vote? In *Affeldt v. Whitcomb*[32] a three-judge District Court found Indiana's six-month durational residency requirement for voter registration unconstitutional under the *Kramer* test.[33] Similar results were reached in *Burg v. Canniffe*[34] and *Blumstein v. Ellington*.[35]

The court in the present case brings primary elections under the same *Kramer* umbrella as school board elections, bond elections, and durational residency requirements for voter registration. Certainly the South Carolina statute "denies the franchise" to those of one party in another party's primary. The questions posed are: Who is in which party? Can a voter be prevented from voting in Party A's primary just because he voted in Party B's primary to select a nominee for a different office within the past year? Is a primary analagous to a general election and to voter registration? If it is, is there a "compelling state interest" in "locking" a voter into a party for any period of time at all?

30. 395 U.S. 701 (1969). The court held that provisions of a Louisiana statute which gave only "property taxpayers" the right to vote in elections to approve the issuance of revenue bonds by a municipal utility was unconstitutional as denying equal protection.

31. 399 U.S. 204 (1970).

32. 319 F. Supp. 69 (D.C. Ind. 1970).

33. "Although Indiana unquestionably has the power to impose reasonable residence restrictions on the availability of the ballot . . . that power does not encompass the imposition of standards which are discriminatory and inconsistent with the equal protection clause of the Fourteenth amendment . . ." *Id.*, at 73.

"The standard by which the six months durational residency requirement must be scruntinized is the so-called 'compelling interest' test." *Id.*, at 74.

34. 315 F. Supp. 380 (D. Mass. 1970).

35. Civil No. 5815 M.D. Tenn., Aug. 31, 1970. For a fuller discussion of the durational residency requirement, see Comment, *Constitutional Law-Elections-Durational Residency Requirement*, 23 S.C.L. REV. 320 (1971).

IV. CAN THE PRIMARY BE SUBJECTED TO THE KRAMER TEST?

A. *The Primary Before Kramer*

The primary election in American politics was a response to the corruption of party caucauses and conventions. There is no constitutional right to nominate. It is a "political privilege, which may be regulated by the legislature" in the exercise of the police power.[36] The state is free to regulate elections and limit the electorate—within constitutional boundaries.[37]

The primary election comes under federal supervision where federal rights are violated. *Smith v. Allwright*[38] firmly established the principle that primaries were an integral part of the election process and that parties could not claim to be "private clubs," but were, in fact, agents of the state. The South Carolina white Democratic primary was ruled illegal under the *Smith* reasoning.[39] Thus, parties cannot prevent a voter from voting because of race.

The question posed in *Gordon,* though, is not discrimination on the basis of race; it is whether the state can require a voter to show some degree of party loyalty in order to protect the integrity of the primary. The legislature, ordinarily, can define membership in a party.[40] Thus, "a voter who is a member of one political party may be excluded from participating in the party primaries of other parties . . ."[41] The purpose of such legislation is to prevent members of one party from "raiding" the primary of another party. "It has consistently been held that any reasonable test of party affiliation may be required by the legislature."[42]

A Maryland case, *Hennegan v. Geartner,*[43] held that a statute prohibiting a voter from changing his registered party

36. 25 AM. JUR.2d *Elections* §129 (1966).

37. *Id.,* §152.

38. 321 U.S. 649 (1943).

39. *See* Rice v. Elmore, 165 F. 2d 387 (4th Cir. 1947) and Brown v. Baskin, 78 F. Supp. 933 (D.S.C. 1948).

40. 25 AM. JUR. 2d *Elections* §159 (1966).

41. *Id.*

42. "Various means of testing party affiliation are employed, the simplest being a denial of the right to vote at a party primary election unless the applicant voted at the last general election with the political party holding such primary election. . . ." *Id.*

43. 186 Md. 551, 47 A.2d 393 (1946).

affiliation within six months of a primary election was constitutional.[44] Of course, in Maryland, there was a system of party registration.[45] Previous to *Kramer*, the general rule that primaries could be reasonably regulated by durational requirements for voting went unchallengd. *Kramer* and its progeny have now produced, for the first time, a direct constitutional attack on durational requirements for voting in primaries.

B. *Does Kramer Apply To Primaries?*

The court in *Gordon* reasoned as follows:

> Voting is a fundamental matter in a free and democratic society . . . which is preservative of all rights. . . . For this reason, the trend of recent decisions, with few exceptions, affirms that durational residential requirements of one year, or even six months, as a prerequisite for voting, are unconstitutional limitations upon a citizen's right of suffrage. Such limitations must have a "sound or compelling purpose" to meet the constitutional test. . . . We can perceive no basic difference between a durational residence restriction and one which, using a like durational standard, bases the restriction upon the manner in which one had previously voted. No sound or compelling purpose can possibly justify "locking" a citizen into a party and denying him for a full year freedom to change parties. Such an arbitrary restraint upon the voter is both unreasonable and unconstitutional.[46]

Put simply, the court, using the *Kramer* standard, put the burden of justifying the durational requirement on the state and in this case the court could find no compelling reason why a voter should be "locked" into a party for a full year.

The court's opinion did not discuss the problem of one party "raiding" (or crossing over into) another party's primary,[47] yet apparently this is what the statute was designed

44. "The direct primary is a creature of the Legislature, designed for the purpose of permitting the members of a party to select their candidates under official supervision and control. . . . The Legislature is not classifying voters. It is exercising its inherent power to safeguard elections, and is regulating elections as it is authorized by the [Maryland] Constitution. There is no fundamental right in any voter to participate in the primaries or conventions of parties other than the one to which he belongs." *Id.*, at 553, 47 A.2d at 396.

45. Whereas in South Carolina there is no registration by party.

46. Gordon v. Executive Committee, 335 F. Supp. 166, 168 (D.S.C. 1971).

47. For example, only one candidate files for election in party A's primary election. The filing date has passed for party A's primary. Members of party A, realizing their candidate is automatically nominated, vote in party B's primary for the weakest candidate. Where one party is much stronger than another party, it might send forth its "extra" votes (especially where there is a "political machine") to swamp viable candidates in the weaker party.

to prevent. Presumably, under the statute, those who voted in any party's primary could not then vote in another party's primary for any office for one year. It is debatable whether this provision had any real effect on party raiding because, ordinarily, primaries for different major offices are separated by more than one year.[48] Thus, even under the protection of the statute, a voter could vote in a Democratic primary for Mayor in June, 1971 and still vote in a Republican primary for Congress in July, 1972. More importantly, the state does not enforce the provision. It is the duty of the candidates' poll watchers to challenge voters whom they suspect have voted in other primaries.[49] On the other hand, the statute has been credited by some with preventing defections in one election because the voters in question may wish to vote in a particular primary election in the near future. For example, black voters in the First Congressional District might well have not supported a Republican in the Congressional race because they did not wish to be challenged in the Democratic primary for Mayor of the City of Charleston.

The court was careful to point out that the offending section of the statute did not negate the entire statute.[50] The intent of the statute, according to the court, "was to prevent a voter from participating in nominating primaries of two parties in the same election,"[51] the same result reached, in a different fashion, by the Executive Committee. Hence, the court left a minimum protection. A voter must still choose a party for at least one election. He can only vote in one primary

48. Congressman Rivers's death began a chain of events unlikely to recur in a century: Mayor J. Palmer Gaillard, Jr. ran for the Democratic nomination for Congress in February and lost. Meanwhile, Charleston physician, Dr. James Edwards, ran for the Republican nomination for Congress. Many City of Charleston voters who normally vote in the Democratic primary for Mayor voted for Edwards in the Republican Congressional primary. No serious Republican opposition has ever been offered in the mayoral race in Charleston. Thus, the Democratic primary is the "meaningful election" under the *Smith v. Allwright* reasoning. The Court might have applied the *Smith v. Allwright* "meaningful election" doctrine, but it did not choose to do so.

49. 23 S.C. CODE ANN. §345, 376, 383 and 400.2 *et seq.* (1962 and Supp. 1970).

50. "Courts should sustain, and administrative officials may apply, that part of the statute which is constitutional, if such can be done without violating completely the legislative purpose." Gordon v. Executive Committee, 335 F. Supp. 166, 169 (D.S.C. 1971).

51. *Id.*

to select candidates for the same major office. Apparently the state has a "compelling interest" in preventing a voter from voting in all primaries, that is, both primaries for the same office. The court did not describe this "compelling interest" or offer any reasons why such a minimum protection should be left the traditional primary system.

V. CONCLUSION

The immediate effect of the *Gordon* decision in South Carolina will probably be minimal, because the oath statute did not completely prevent short term party switching anyway. It may have some effect, insofar as black voters will now not have to fear voting outside the Democratic party in particularly strategic elections and returning at a more convenient or strategic time. Similarly, conservative voters may keep a foothold in both the Republican and Democratic parties by selective primary voting. In short, the decision will probably contribute to the general shifting of party loyalties from office to office and election to election.

The impact of *Gordon* is not in its immediate context, however, but in the wider area of federal regulation of primaries in general. Applying *Gordon* to other states may result in political chaos, as the majority of states have gone to greater lengths than South Carolina to protect against primary raiding.[52] *Gordon* is a blow at the party system in favor of greater flexibility on the part of the voter, who may now claim a constitutional right to change parties at least once every six months.[53]

52. For a fuller discussion of the anti-raiding statute, see Note, *The Constitutionality of Anti-Fusion and Party-Raiding Statutes,* 47 COL. L. REV. 1207 (1947) and Mitau, *Judicial Determination of Political Party Organizational Autonomy,* 42 MINN. L. REV. 245 (1957).

53. The United States Supreme Court has never faced this issue, and no appeal was taken from the *Gordon* three-judge court to the Supreme Court. In a related case, *Lippitt v. Cipollone,* 40 U.S.L.W. 3340 (U.S. Jan. 18, 1972), the Supreme Court affirmed a District Court's decision which held that a candidate might be prevented by a state statute from running in a primary if he has recently changed parties to do so. The Ohio statute held that "[n]o person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the next preceding four calendar years." OHIO REV. CODE §3517.013 *et seq.* (Page Supp. 1970).

The lower court in *Lippitt* held that the state had a compelling interest in protecting the integrity of political parties in this fashion.

Gordon may be open to serious attack on its application of the "compelling state interest" standard. The State of South Carolina did not participate in the hearing or present a brief on behalf of the statute's constitutionality. (The Plaintiffs, of course, defended the statute's constitutionality in response to questions from the bench.) Merely stating that no "compelling purpose can possibly justify 'locking' a citizen into a party . . . for a full year" is not proving it. Most states feel that they have a compelling interest in preserving the party system as a functioning nominating and election process. If anti-raiding statutes are held unconstitutional because of the durational requirements, raiding may go unchecked to the eventual detriment of the electoral process and freedom of the ballot. The constitutional broadening of the vote may go too far and hamper the legislative attempt, through the Voting Rights Act, to prevent unfair dilution of a party's or race's or faction's vote.

Gordon has applied a sound doctrine to an area which is, at best, difficult to predict. It would seem that a citizen does have a constitutional right to change parties whenever he pleases. If he does not, then, for that period of time during which the voter cannot change parties, he has effectively lost his right to vote.

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Four Supreme Court justices dissented from the affirmance (handed down without oral argument): Justices Brennan, Douglas, White, and Powell. Mr. Justice Douglas wrote a dissenting opinion to the affirmance in which he said, in part: "Not only does the denial of appellant's right to seek the nomination . . . seriously impair his right of political expression, but the 'compelling state interest' advanced by the appellees and accepted by the court below seems alien to our political and constitutional heritage. The right to run for public office seems a fundamental one."

Thus in *Lippitt* the Supreme Court was not faced with a Voting Rights Act problem, nor with the right to vote. The disciplining of a candidate, to insure party regularity, may be a "compelling state interest," whereas preventing a voter from voting is not.

With *Lippitt* affirmed by an obviously divided Court, and with *Gordon* left unappealed, it remains to be seen what direction the Supreme Court will take on the right to change parties.