10-1978

Marchioro v. Chaney

Lewis F. Powell Jr.

(Could call for Response from State)

Appellants challenge Wash. law limiting size of State Republican Committees to two members from each county — w/o regard to population of the county. Claim in denial of E/P and freedom of Association. Wash S/Ct upheld statute, & I'm inclined to agree.

Preliminary Memo

December 8, 1978 Conference
List 1, Sheet 1

No. 78-647

MARCHIORO, et al. v. CHANEY, et al. (State of Wash.)	Appeal from Wash. S.Ct. (Dolliver, for himself and 4 others; Horowitz, dissenting for himself and 2 others; Stafford, dissenting separately) State/Civil	Timely

1. SUMMARY: Appellants challenge a Washington statute that prescribes that "[t]he state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting," RCW 29.42.020, on the ground that, by limiting the number of committeepersons per county, the statute operates to abridge appellants' freedom of association.

Please see p. 10.

2. FACTS & DECISION BELOW: The Washington State Democratic Party is comprised of several related bodies. The State Party Convention is the supreme authority; it meets every two years, has plenary authority over party organization and policies, and elects delegates to the National Democratic Party meetings. Between state conventions, the Democratic State Committee is the statewide governing body. It meets four times a year. Appellants and appellees agree that the State Committee makes intraparty rules governing the statewide operations of the party as a political organization between conventions and that it raises and distributes some money to party candidates. As far as is relevant here, the State Committee does not perform direct electoral functions. See Petn. 4 n. 4.

RCW 29.42.020, quoted above, requires state committees of the state's major parties to be composed of two representatives from each of the state's 39 counties. Pursuant to this formula, the three most populous counties -- with more than 50% of the state's population -- elect only 8% of the members of the State Committee, while 30 counties -- with only 23% of the population -- elect 77%. Thus a minority of party members in rural counties exercise principal control over the Washington Democratic Party between conventions.

In 1976, the State Democratic Convention adopted a charter provision stipulating that the State Committee shall be composed of two representatives elected from each of the state's

39 counties and of one representative elected from each of the state's 49 legislative districts. The result would be partly to even out the voting power of the counties' respective residents and, relatedly, to give residents of legislative districts a greater voice than they enjoyed under a system of county-wide elections.

At the next meeting of the State Committee, the Committee refused to seat the newly elected district representatives, including four of appellants, on the ground that RCW 29.42.020 forbade participation of more than two representatives from each county. Those appellants and four others -- including three party chairpersons for the three most populous counties in Washington and a county representative on the State Committee -- brought suit in state court against the State Committee and its chairman for a declaratory judgment. They argued that the state statute as applied to bar implementation of the Convention's charter provision and to bar four of the appellants from serving as committeepersons, impermissibly burdened appellants' rights of freedom of association. Another challenge, not pertinent here, was also pressed. The state was served with a copy of the complaint but did not intervene or appear as amicus to defend the statute. The trial court granted summary judgment for appellants, reasoning that the "statute purports to control the inner workings of a voluntary political association" without a compelling state interest. Petn. App. B-3.

The Supreme Court of Washington reversed, holding that "RCW 29.42.020 is not a substantial burden on plaintiffs' right of free association for political purposes." Petn. App. A-15. The court observed that the real inquiry was whether the state law substantially impeded appellants' efforts to achieve the general stated objectives of the Democratic Party, reproduced in appendix hereto. The court found no such burden. The court expressed its view that this dispute was in actuality a factional dispute within the Democratic Party, which was best resolved by "intraparty politicking." Petn. App. A-15. Finally, the court acknowledged that charter provisions adopted by the Democratic State Convention are generally binding on the State Committee but held that the provision involved herein was not presumably because it was prohibited by a valid state law, namely, RCW 29.42.020.

The four dissenting justices concluded that the state statute did impose a substantial burden on appellants' First Amendment rights and that a compelling state interest had not been adduced to substantiate the law. There was a burden even accepting the majority's own analytical framework because among the Democratic Party's stated objectives was the aim to "[administer the party organization in accordance with rules and standards which will facilitate achieving the goals of the party." Petn. App. A-23.

3. CONTENTIONS: Appellants contend that the state law is unconstitutional in that it bars several of them from serving in their elected positions on the State Committee, and it nullifies each appellant's right as a party member to elect and be represented by a State Committee composed as directed by the State Party Convention.

Appellants purport to find support in this Court's decision in Cousins v. Wigoda, 419 U.S. 477 (1975). There the Court sustained a challenge to a state injunction forbidding 59 persons from serving as party-approved delegates to the Democratic National Convention issued because they had not been selected in accordance with state law. The injunction was held to constitute an insufficiently justified burden on the First Amendment rights of the delegates and the party generally. The Court reached the same conclusion with respect to an injunction forbidding the delegates from participating in a post-convention caucus to select Illinois representatives to the Democratic National Committee.

Appellants also rely on strong language in Ripon Society v. National Republican Party, 525 F.2d 567 (CA DC 1975) (en banc) cert denied, 424 U.S. 933 (1976), recognizing a "right not only to form political associations but to organize and direct them in the way that will make them most effective." 525 F.2d at 585. Additional support is found in Fahey v. Darigan, 405 F. Supp. 1386 (D. R.I. 1975), in which the court struck down a state statute mandating the size of political party ward committees

Appellants point out as well that the Washington S.Ct. gave inadequate consideration to a particular article of the party's charter listing "Basic Principles," two of which are clearly burdened by the state statute at issue. These principles include the propositions that all party members shall enjoy equal rights and opportunities in all proceedings of the party at all levels and that, in all elections in which party policy is determined or party officials elected, appropriate procedures shall provide for full and equal participation and fair, proportional representation.

Appellees attempt to downplay the policymaking role of the State Committee. They allege, too, that the amounts of money raised and distributed have been small and have gone to the administration of the State Committee, payment of debts and distribution to Democratic Party candidates nominated to run for office. Appellees also suggest that appellants have not been seated in part because not all of the district representatives have been elected, and it has been the consistent position of the State Committee not to seat any until all have been chosen. Appellees place some reliance on a provision of the party's charter that says when any part of the charter is in conflict with state statutes the latter will control.

Appellees argue that the seminal freedom-of-association cases such as NAACP v. Alabama, 357 U.S. 449 (1958), dealt with state interference with the freedom of individuals to form groups, not state regulation of the internal structure of the groups that

resulted. Appellees distinguish Cousins on the ground that it involved a national convention and the nomination of national candidates. The issue here concerns state regulation of part of a state political party. Cousins dealt, moreover, with the advancement of ideas and the selection of candidates, functions supposedly not involved in the instant case.

Appellees observe that Ripon Society simply held that the Equal Protection Clause did not mandate a one-person one-vote formula for delegates to the 1976 National Republican Convention, and thus is inapposite here on two counts: the constitutional issue involved was different and a national convention figured prominently in the situation there considered.*/ The language in Ripon Society supporting appellants' position is, in appellees' view, overbroad dictum. Appellees do not attempt to distinguish Fahey, but contend that it was wrongly decided.

Finally, appellees contend that the state statute is justified as a measure designed to regularize the election process. The statute ensures that each major political party shall have an administrative body between state conventions, thus preserving the stability and integrity of the electoral process. Appellees point to the statutes of numerous states that have undertaken to regulate the composition of political party state committees.

---

*/ Actually, the language on which appellants rely was an important part of the Ripon court's analysis in regard to whether a party should be constitutionally compelled to adopt a certain operational mode.

In reply, appellants generally attack appellees' attempt to establish that freedom of association does not encompass a state political party's internal governance. They contend that even if the state has a compelling interest in maintaining stability in the electoral process, the state has not chosen the least restrictive means here. A requirement that there be a state committee with at least two persons per county would serve the interest of stability and any interest in ensuring that all areas of the state are represented. Six of the 30 states noted by appellees permit the state party itself to determine the composition of state committees. Several of these states use the "minimum but no maximum" approach. Twelve other states mandate a formula based on one-person one-vote principles (which everyone concedes is not constitutionally compelled under the circumstances of this case), which involves the substantial interest in ensuring equal representation. Twelve other states have laws similar to Washington's, which in appellants view makes this case even more significant.

4. DISCUSSION: There is some question in this case whether the decision below rests on a nonconstitutional ground. In the final section of its opinion, the court ruled that the charter provision at issue here is not binding on the State Committee, though the charter generally does govern the affairs of that committee. The dissenters pointed out that the majority's analysis rests on the general state-law principle that the charter governs absent the intervention of applicable statutory provisions,

and on the further assumption that the statute involved here is valid. The majority, of course, thought that the statute was valid and the dissenters disagreed. Thus, the ultimate question appears to be the constitutional one of the validity of RCW 29.42.020 insofar as it interferes with the internal governance of the party.

As noted above, appellees point out that the charter itself provides that applicable state laws shall control over parts of the charter "found to be in conflict with such statutes." Motion to Affirm at 5 n. 2. The court below did not explicitly rely on this provision, however. Its holding of the nonbinding effect of the charter provision in dispute seems best explained by the theory of the dissenters, just discussed. Thus, it would appear that the only issue resolved by the court below and presented in this appeal is whether RCW 29.42.020 might constitutionally bar the individual appellants' assumption of office and generally frustrate the implementation of the specific and recently enacted charter provision expanding the number of committee seats.

That issue does not seem insubstantial. Though there is some dispute about just how important the State Committee really is, and though it concededly is less important than a national nominating convention in relation to the effective implementation of the Democratic Party's political objectives, the Committee does seem to have a substantial role in the ongoing maintenance of the state party organization. Indeed, that is the premise of the state's efforts to regulate the committee's internal operation,

according to appellees. To the extent that the Washington statute forces uneven representation, then, it would appear to have a substantial effect on the ability of party members to participate effectively in a significant aspect of party activity as well as a clear direct effect on persons elected under the charter provision designed to ensure fairer representation. At least some inquiry into the magnitude and character of the state's interest would seem to be warranted. But the court below did not even reach that stage, being of the view that there was no cognizable burden on constitutional rights to begin with. Were that inquiry conducted, appellants' least-restrictive-alternative analysis might well prevail.

As an initial matter, it might prove useful to call for the views of the State of Washington on these issues. Evidently, the state has remained silent thus far.

CFR Washington. There is a motion to affirm.

11/27/78 Sasso Opinion in petition

ME

This looks like a difficult case, and one that would be difficult to dismiss as insubstantial. Before voting, however, it might be wise to ask for the views of the State of Washington. It might shed light on how squarely the federal question is presented; further, if the State A G says the law is unconstitutional, ~~it would~~ appts' position would be strengthened. E.G.

APPENDIX

The purpose and objectives of the Democratic Party as listed by the charter are:

1. Adopt and promote statements of policy to serve as standards for Democratic elected officials and goals for the people of the state.
2. Nominate and assist in the election of Democratic candidates at all levels who support the goals of the party.
3. Administer the party organization in accordance with rules and standards which will facilitate achieving the goals of the party.
4. Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and the conduct of other party affairs without discrimination on the basis of sex, race, age (except where state and federal law precludes participation), religion, economic status or ethnic origin.
5. Promote fair campaign practices and fair adjudication of disputes.
6. Raise and disburse monies needed for the continuing operation of the Party.
7. Work with elected Democratic public officials at all levels to achieve the goals of the Democratic Party.
8. Encourage and support codes of political ethics governing all public officials in the conduct of their offices.
9. Encourage voter registration and voting.

Charter of the Democratic Party of Washington, art. 2, Purposes and Objectives (June 12, 1976).

Argued ....., 19... *Assigned* ....., 19... No. 78-647

Submitted ....., 19... *Announced* ....., 19...

MARCHIORO

vs.

CHANEY

Also motion to affirm.

Noted

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.				✓									
Brennan, J.				✓									
Stewart, J.						✓	for WSFQ						
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.							join 3						
Powell, J.							join 3						
Rehnquist, J.						✓							
Stevens, J.							Pass						
.....													

LFP/lab 3/6/79

To: Bruce Date: March 6, 1979

From: L.F.P., Jr.

No. 78-647 Marchioro v. Chaney

This is an appeal from a decision of the Supreme Court of Washington that sustains the validity of the provision of state code § 29.42.020, providing:

> "The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting."

The State of Washington has regulated the composition of state committees of the major parties since 1909. I believe (though I am not certain) that the provision here challenged has been on the books since 1927.

Nevertheless, in 1976, the Washington State Democratic Convention adopted a charter provision that, in addition to the two delegates per county, would increase committee membership by one additional member from each of the state's forty-nine legislative districts.

Appellants in this case are persons who were elected from legislative districts pursuant to the 1976 change in the democratic charter. Apparently they have not been allowed to participate as members of the committee because of the state statute. Accordingly, they instituted this suit. Appellees include the State Democratic Committee itself. Thus, this is a contest between individuals who have been elected - under the scheme adopted by the State Convention - and the existing State Democratic Committee.

The challenge is based on an alleged First Amendment denial of associational rights. The Washington Supreme Court, 5-4, held that there was no substantial burdening of such rights.

Appellees point out that the state has a strong interest in regulating the two major parties, that it has done so since 1909, and that the Democratic controlled legislature of the state has declined to change the statute at issue.

I am inclined to think there is no burdening of appellees' rights in any constitutional sense.

L.F.P., Jr.

I'm Out

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Argued during my absence due to surgery

Circulated: MAY 16 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-647

Karen Marchioro et al., Appellants, v. Neale V. Chaney et al. | On Appeal from the Supreme Court of Washington.

[May —, 1979]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Since 1927 a Washington statute has required each major political party to have a State Committee consisting of two persons from each county in the State.[1] The question pre-

[1] RCW 29.-42.020 provides:

"*State Committee.* The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chairman and vice-chairman who must be of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a notice mailed at least one week prior to the date of the meeting shall constitute sufficient notice. At its organizational meeting it shall elect its chairman and vice-chairman, and such officers as its bylaws may provide, and adopt bylaws, rules and regulations. It shall have power to:

"(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;

"(2) Provide for the election of delegates to national conventions;

"(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

"(4) Provide for the nomination of presidential electors; and

sented by this appeal is whether the Washington Supreme Court correctly held that this statute does not violate the First Amendment of the United States Constitution.[2]

The powers of the Democratic State Committee are derived from two sources: the authorizing statute and the Charter of the Democratic Party of Washington. The statute gives the State Committee the power to call conventions, to provide for the election of delegates to national conventions and for the nomination of presidential electors, and to fill vacancies on the party ticket.

The principal activities performed by the State Committee are authorized by the Charter of the Democratic Party of Washington. The Charter provides that the State Committee shall act as the Party's governing body when the Convention is in adjournment.[3] And it gives the State Committee authority to organize and administer the Party's administrative apparatus, to raise and distribute funds to candidates, to conduct workshops, to instruct candidates on effective cam-

---

"(5) Perform all functions inherent in such an organization.

"Notwithstanding any provision of this 1972 amendatory act, the committee shall not set rules which shall govern the conduct of the actual proceedings at a party state convention."

Between 1909 and 1927 the statute provided for one member to be elected from each county.

A "major political party" is defined as "'a political party of which at least one nominee for president, vice-president, United States senator, or a state-wide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year . . . .'" RCW 29.01.090.

[2] The First Amendment provides in pertinent part:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. *William* v. *Rhodes*, 393 U. S. 23, 30–31.

[3] Charter, Art. IV (G)(1), App. 10.

paign procedures and organization, and generally to further the Party's objectives of influencing policy and electing its adherents to public office.[4]

Under both Party rules and state law, the State Convention rather than the State Committee, is the governing body of the Party. The Charter explicitly provides that the Convention is "the highest policy-making authority within the State Democratic Party" [5] And the State Supreme Court has unequivocally held that the "State convention of a major political party is the ultimate repository of State-wide authority. . . . The State Convention is implicitly empowered to establish the permanent State organization of the party, create committees, delegate authority, and promulgate, adopt, ratify, amend, repeal or enforce intra-party State-wide rules and regulations." [6]

In 1976 the State Democratic Convention adopted a Charter amendment directing that the State Committee include members other than those specified by state statute. The Charter amendment provided that in addition to the two delegates from each of the State's 39 counties, there should be one representative elected from each of the State's 49 legislative districts. Pursuant to this Charter amendment new legislative district representatives were elected to serve on the State Committee. At the January 1977 meeting of the State Committee, a motion to seat these newly elected representatives was ruled out of order, apparently in reliance on the statutory definition of the composition of the Committee.[7]

---

[4] Charter, Art. IV (G)(1), (2), (5), App. 10–11; Charter, Art. VII (C)(1), App. 19.

[5] Charter, Art. V (F).

[6] *King County Republican Central Committee* v. *Republican State Committee*, 79 Wn. 2d 202, 211–212, 484 P. 2d 387, 392 (1971). See also *Marchioro* v. *Chaney*, 90 Wn. 2d 298, 313, 582 P. 2d 487, 496 (1978).

[7] An appeal from that ruling was defeated by a vote of 56 to 17. App. 4–5.

Thereafter, members and officers of the State Democratic Party, including four who had been elected as legislative district representatives, instituted this action for declaratory and injunctive relief in the King County Superior Court. Among their contentions was a claim that the statutory restriction on the composition of the Democratic State Committee violated their rights to freedom of association protected by the First and Fourteenth Amendments.[8]

The Superior Court granted appellants' motion for a partial summary judgment. On appeal, a divided State Supreme Court reversed that part of the trial court's judgment that invalidated the statutory definition of the central Committee.[9] The state court reasoned that although "substantial burdens" on the right to associate for political purposes are invalid unless " 'essential to serve a compelling state interest,' " [10] these appellants failed to establish that this statute had imposed any such burden on their attempts to achieve the objectives of the Democratic Party. Since this initial burden had not been met, the court upheld the constitutionality of the challenged statute.

We noted probable jurisdiction, —— U. S. ——, and now affirm the judgment of the Washington Supreme Court.

The requirement that political parties form central or county committees composed of specified representatives from

---

[8] Appellants also challenged the requirement of RCW 29.42.020 and .030 that the two persons elected as county delegates be one man and one woman. Appellants argued that this requirement violates the Washington State Equal Rights Amendment, Wash. Const., Art. XXX. The Washington Supreme Court rejected the claim, 90 Wn. 2d, at 308, 582 P. 2d, at ——. Appellants do not seek review here of the "one man and one woman" requirements of the statute. Nor do they raise any claim based on the Equal Protection Clause of the Fourteenth Amendment. See n. 16, *infra*.

[9] *Marchioro* v. *Chaney*, 90 Wn. 2d 298, 582 P. 2d 487 (1978).

[10] *Id.*, at 309, 582 P. 2d, at 493, quoting *Storer* v. *Brown*, 415 U. S. 724, 729.

each district is common in the laws of the States.[11] These laws are part of broader election regulations that recognize the critical role played by political parties in the process

[11] In 22 States, political parties are required by state law to establish state central committees composed of an equal number of committee members from each unit of representation.

See Cal. Elec. Code §§ 8660, 9160 (Supp. 1978); Fla. Stat. Ann. § 103.111 (Harrison 1975 & Supp. 1977); Idaho Code § 34.504 (Supp. 1977); Ind. Code Ann. § 3–1–2–1 (Burns 1972); Iowa Code Ann. § 43.111 (West Supp. 1977); Kan. Stat. Ann. § 25.3804 (Supp. 1976); Mass. Ann. Laws, ch. 52 § 1 (Law. Co-op. 1978); Mich. Comp. Laws Ann. § 168.597 (West 1967); Miss. Code Ann. § 23–1–3 (Supp. 1977); Mo. Ann. Stat. § 115.621 (Vernon Supp. 1978); Mont. Rev. Codes Ann. § 23.3403 (Supp. 1977); Nev. Rev. Stat. § 293.153 (1975); N. J. Stat. Ann. § 19:5–4 (West 1964); N. D. Cent. Code § 16–17–11 (1971); Ohio Rev. Code Ann. § 3517.03 (Page 1972); S. C. Code § 7–9–90 (1976); S. D. Comp. Laws Ann. § 12–5–16 (1975); Tenn. Code Ann. § 2–1304 (Supp. 1977); Tex. Elec. Code Ann., tit. 13, § 38 (Vernon Supp. 1978); Vt. Stat. Ann., tit. 17, § 730 (1968); Wash. Rev. Code Ann. § 29.42.020 (Supp. 1976); W. Va. Code § 3–1–9 (Supp. 1978); Wyo. Stat. §§ 22–4–105–110 (1977). Election laws in five States establish state party central committees in which the number of committee members from each unit of representation bears a rough relationship to party membership. See Ariz. Rev. Stat. Ann. § 16–233 (West 1975); Colo. Rev. Stat. § 1–14–108 (2) (Supp. 1976); La. Rev. Stat. Ann. § 18:285 (1) (West 1969 & Supp. 1977); Ore. Rev. Stat. § 248.075 (1977); Utah Code Ann. § 20–4–2 (1976).

Political parties are required to establish county central committees comprised of an equal number of committee members from each unit of representation by state law in 21 State.

See Cal. Elec. Code §§ 8820–8825, 9320–9325 (West 1977) (limited to certain counties); Colo. Rev. Stat. § 1–14–1081 (1) (Supp. 1976); Fla. Stat. Ann. § 103.111 (Harrison 1975 & Supp. 1977); Idaho Code § 34–502 (Supp. 1977); Ind. Code Ann. § 3–1–2–1 (Burns 1972); Kan. Stat. Ann. § 25–3802 (1973); La. Rev. Stat. Ann. § 18:285 (9) (Supp. 1978); Md. Ann. Code, art. 33, § 11–2 (Supp. 1977); Mass. Ann. Laws, ch. 52, §§ 2–4, 2–9 (Law. Co-op. 1978); Mich. Comp. Laws Ann. § 168.599 (West 1967 & Supp. 1978); Miss. Code Ann. § 23–1–3 (Supp. 1977); Mo. Ann. Stat. § 115.607 (Vernon Supp. 1978); Mont. Rev. Codes Ann. §§ 23–3401, 23–3402 (Supp. 1977); N. J. Stat. Ann. § 19–5–3 (Supp. 1977); Ohio Rev. Code Ann. § 3517.03 (Page 1972); S. C. Code § 7–9–60 (1976); S. D.

of selecting and electing candidates for state and national office. The State's interest in ensuring that this process is conducted in a fair and orderly fashion is unquestionably legitimate; "as a practical matter there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer* v. *Brown*, 415 U. S. 724, 730. That interest is served by a state statute requiring that a representative central committee be established, and entrusting that commitee with authority to perform limited functions, such as filling vacancies on the Party ticket, providing for the nomination of presidential electors and delegates to national conventions, and calling statewide conventions. Such functions are directly related to the orderly participation of the political party in the electoral process.

Appellants have raised no objection to the Committee's performance of these tasks.[12] Rather, it is the Committee's

---

Comp. Laws Ann. §§ 12–5–13, 12–5–14 (1975 & Supp. 1977); Tex. Elec. Code Ann., tit. 13, § 18 (Vernon Supp. 1978); Wash. Rev. Code Ann. § 29.42.030 (Supp. 1976); W. Va. Code § 3–1–9 (Supp. 1978); Wis. Stat. Ann. § 8.17 (West 1967 & Supp. 1977).

See Note, Equal Representation of Party Members on Political Party Central Committees, 88 Yale L. J. 167, 168–169, and nn. 5–6 (1978).

[12] By appellants' own admission, the Committee's electoral functions are performed rarely; moreover, when they are performed, they conform with the one-person, one-vote principle. "Although the state committee on rare occasions performs certain ballot access functions, see RCW 29.18.150 and 29.42.020 (filling vacancies on certain party tickets and nominating presidential electors) and Wash. Const., Art. II, § 15 (selecting nominees for certain interim legislative positions), when it does so it is constitutionally required to comply with the principle of one-person, one-vote. See, *e.g.*, *Seergy* v. *Kings County Republican County Comm.*, 459 F. 2d 308, 313–314 (CA2 1972); *Fahey* v. *Darigan*, 405 F. Supp. 1386, 1392 (RI 1975). The state committee has recognized this and has stipulated to the entry of an injunction ordering that the state committee be:

"enjoined from filling vacancies on the Democratic ticket for any federal or state office to be voted on by the electors of more than one county or

other activities—those involving "purely internal party decisions," Brief for Appellants, at 5 n. 11—that concern appellants and give rise to their constitutional attack on the statute.

The Committee does play a significant role in internal party affairs: The appellants' description of its activities makes this clear:

> "Between state conventions, the Democratic State Committee is the statewide party governing body. It meets at least four times each year, exercises the party's policy-making functions, directs the party's administrative apparatus, raises and distributes funds to Democratic candidates, conducts workshops to instruct candidates on effective campaign procedures and organization, and seeks generally to further the party's objectives of influencing policy and electing its adherents to public office. Insofar as is relevant here, the state committee is purely an internal party governing body." Appellants Brief, at 4–5.

None of these activities, however, is required by statute to be performed by the Committee.[13] With respect to each, the

---

selecting Democratic nominees for interim legislative appointments to represent multi-county districts by any method that contravenes the one-person, one-vote rule. *Cunningham* v. *Washington State Democratic Comm.*, Civ. No. C75-901 (WD Wash., permanent injunction entered Nov. 28, 1977).

"As a result of this injunction, RCW 29.42.020—which results in gross deviations from one-person, one-vote—has been superseded insofar as applied to the state committee when it performs electoral functions." Brief for Appellants, at 4 n. 11.

[13] In addition to its enumerated functions, the Committee is authorized by RCW 29.42.020 to "[p]erform all functions inherent in such an organization." See n. 1, *supra*. The Committee's role in internal party affairs, however, is clearly not "inherent" in its performance of the limited electoral functions authorized by statute.

source of the Committee's authority is the Charter adopted by the Democratic Party.[14]

In short, all of the "internal party decisions" which appellants claim should not be made by a statutorily composed Committee are made not because of anything in the statute, but because of delegations of authority from the Convention itself. Nothing in the statute required the Party to authorize such decisionmaking by the Committee; as far as the statutory scheme is concerned, there is no reason why the Convention could not have created a new committee composed of members of the State Committee and such additional membership as might be desired to perform the political functions now performed by the State Committee. The fact that it did not choose such an alternative course is hardly the responsibility of the state legislature.

The answer to appellants' claims of a substantial burden on First Amendment rights, then, turns out to be a simple one. There can be no complaint that the Party's right to govern itself has been substantially burdened by statute when the source of the complaint is the Party's own decision to confer critical authority on the State Committee. The elected legislative representatives who claim that they have been unable to participate in the internal policymaking of the Committee should address their complaint to the Party which has chosen to entrust those tasks to the Committee, rather

---

[14] Indeed, it is the Charter provisions, rather than the state statute, which appellants themselves cite as authority for their description of the Committee activities at issue here. See Brief for Appellants, at 4 nn. 5–10. Thus, it is Art. IV (G)(1) of the Charter which provides that the Committee is the statewide governing body, shall raise funds for candidates, and shall exercise the Party's policymaking functions. And it is subsection (2) of that same Article which authorizes the Committee to direct the Party's administrative apparatus, while subsection (5) requires it to meet at least four times per year. Finally, the source of the Committee's authority to conduct workshops for candidates is found in Art. VII (C)(1) of the Charter.

than to the state legislature. Instead of persuading us that this is a case in which a state statute has imposed substantial burdens on the Party's right to govern its affairs, appellants' own statement of the facts establishes that it is the Party's exercise of that very right that is the source of whatever burdens they suffer.[15]

The judgment of the Washington Supreme Court is affirmed.

---

[15] *Cousins* v. *Wigoda*, 419 U. S. 477, upon which appellants place their primary reliance, does not support their claim here. In *Cousins*, unlike this case, there was a substantial burden on associational freedoms. This fact alone distinguishes the two cases, and renders *Cousins* inapposite. Moreover, in *Cousins* it was emphasized that the State was attempting to regulate the National Party, whose activities transcend the borders and particular interests of any single State. *Id.*, at 409. Finally, in *Cousins* there was no dispute as to the right of the Democratic Party to decide which delegates should be permitted to participate: it was conceded by the respondents there, and emphasized in all of the opinions, that "(t)he convention was under no obligation to seat" the delegation elected in accordance with state law. *Id.*, at 488; 491–492 (REHNQUIST, J., concurring); 496 (POWELL, J., concurring in part and dissenting in part). Here, on the other hand, the Party's right to decide who may sit on the State Committee *is* the issue. The Washington Supreme Court has held that regardless of what the Party might wish, the Committee may not include any members other than those specified by statute. That is the law of the State; the only federal question is whether that law violates the First Amendment.

May 16, 1979

78-647 Marchioro v. Chaney

Dear John:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 17, 1979

Re: No. 78-647 Marchioro v. Chaney

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 17, 1979

Re: 78-610 Columbus Board of Education
v. Penick

Dear Byron:

Please join me.

Respectfully,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 17, 1979

Re: No. 78-647 - Marchioro v. Chaney

Dear John:

I await the dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United St.
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1979

Dear John:

Re: 78-647 Marchioro v. Chaney

I join.

Regards,

WEB

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1979

Re: No. 78-647 - Marchioro v. Chaney

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
								4/2/79
join JPS 5/26/79	Join JPS 5/21/79	Join JPS 5/17/79	Join JPS 5/17/79	Join JPS 5/17/79	Join JPS 5/22/79	out letter 5/16/79	Join JPS 5/17/79	1st draft 5/16/79
				Join JPS 5/29/79				
				78-647 Marchioro v. Chaney				