

ORIGINAL

In the

Supreme Court of the United States

KAREN MARCHIORO, Et al.,

Appellants,

--VS--

NEALE V. CHANEY, Et al.,

Appellees,

No. 78-647

Washington, D. C.
March 26, 1979

Pages 1 thru 37

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Appellants, :

v. :

No. 78-647

NEALE V. CHANEY, ET AL., :

Appellees. :
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Washington, D. C.

Monday, March 26, 1979

The above-entitled matter came on for argument at
10:05 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

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and Schorr, 500 Maynard Building, Seattle,
Washington 98104; on behalf of the Appellants

DANIEL P. BRINK, ESQ., Trethewey & Brink, 1500 Park
Place, Seattle, Washington 98101; on behalf of
the Appellees

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 647, Marchioro v. Chaney.

Mr. Goldmark, you may proceed whenever you are ready.

ORAL ARGUMENT OF CHARLES A. GOLDMARK, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. GOLDMARK: Mr. Chief Justice, and may it please the Court:

A Washington statute, Revised Code of Washington 29.42.020, regulated the state committees from Washington's major political parties. One requirement of this statute is that these state committees be composed of two persons from each county in the state, no more, no less, and none other.

The issue presented here is whether this requirement that the state committees be composed of two persons per county, no more, no less, and none other, can be constitutionally applied to bar the Democratic Party of Washington from establishing its state committee composed of two persons from each county plus one person from each legislative district in the state.

QUESTION: Mr. Goldmark, as I understand it, in the Supreme Court of Washington, you also challenged the requirement that the composition of the committees be one man and one woman. You don't renew that here?

MR. GOLDMARK: Mr. Justice Rehnquist, that is correct, we do not challenge that requirement here.

QUESTION: And the last amendments didn't change that sex provision?

MR. GOLDMARK: Mr. Justice Blackmun, to my knowledge they did not. The appellants challenge here only the two person per county requirement and the court below ruled that this provision was severable from the remainder of the statute.

The appellants are eight members and officers of the Washington Democratic Party. Four of them were persons elected as legislative district representatives to the Democratic State Committee and denied their seats on the basis of the challenged statute. The appellees are the Democratic State Committee and its Chairman at the time this suit was instituted.

The State of Washington was served, as required by state law, with a copy of the complaint when this litigation began and notified of the appeal to the Washington Supreme Court. It has not appeared at any stage in this proceeding.

The Democratic State Committee is the governing body of the Washington Democratic Party. In 1970, the Washington Supreme Court in the case of King County Republican Central Committee v. Republican State Committee, interpreted the authority of state committees regulated by RCW 29.42.020. The court ruled there that these party state committees have

the inherent power to govern the statewide operations of parties as political organizations.

QUESTION: Between conventions.

MR. GOLDMARK: Between, subject only to the overriding authority of the party state convention. That is correct, Mr. Justice Rehnquist, they only govern between conventions.

QUESTION: And they are defined and provided for by legislation enacted by the legislature of your state, aren't they?

MR. GOLDMARK: Mr. Justice Stewart, that is correct.

QUESTION: How long has that been true?

MR. GOLDMARK: I am not aware, Your Honor. The statute authorizes the party state committees to call conventions and to plan them. It specifically precludes them from setting rules to govern the operations of the conventions.

QUESTION: They are creatures of statute, aren't they, the state committees?

MR. GOLDMARK: They are ---

QUESTION: I will tell you why I am asking these questions. This is for me a puzzling case and I am sure you are going to be helpful in straightening me out. If a state committee is a creature of statute and if it performs some sort of statutory function in the State of Washington, it is one thing. If it is a private organization, it is another.

In other words, I suppose the Federal Trade Commission, to take the national government, which is a creature of statute, couldn't all of a sudden have a meeting and say we are going to expand our membership to fifteen and then have argument with the government of the United States saying that their rights of association have been impaired because the statute provided for a lesser number.

On the other hand, I suppose it is equally clear that a garden club could have a legitimate constitutional claim if a legislature, federal or state, said or purported to direct what its membership should be. These committees are creatures of statute, aren't they?

MR. GOLDMARK: Mr. Justice Stewart, it is not clear that --

QUESTION: They are not voluntary, self-selecting organizations.

MR. GOLDMARK: The Democratic Party has been characterized in the King County Republican Committee case as a voluntary political association. That association has the right to establish a governing body. Whether the statute that regulates what that governing body does actually creates it, regulates it or as I believe the court also said in that case, gives it statutory body in being, may only be matters of terminology because it seems clear that this is a voluntary association and this regulation regulates the way in which it

can do certain functions.

QUESTION: Well, it creates it almost, doesn't it, the statute?

MR. GOLDMARK: The 1970 --

QUESTION: It says what a state committee is and of what it shall be composed and then it gives it certain statutory duties and in that respect it is not unlike any governmental agency.

MR. GOLDMARK: The statement of the Washington Supreme Court interpreting this statute was that the party state committee had inherent power, not statutory power, but inherent power to govern the statewide operations of a party as a political organization, and that is a quote from the court's decision.

QUESTION: In how many other states are the political parties created and defined by state statute?

MR. GOLDMARK: Mr. Justice Stewart, it is not clear to me whether they are created by the statute --

QUESTION: Or defined by state statute.

MR. GOLDMARK: To the appellants' knowledge, they are regulated in approximately 32 states. Twenty of those merely reference the existence of a state committee and leave the composition to the party's choice. Four of them establish a minimum number but allow the remainder to be added by the party. Fourteen mandate that the party state committee shall

be composed on the basis of one person, one vote. Twelve, like Washington, set an absolute figure.

QUESTION: Don't almost all of them provide for elections of county delegates or representatives and then provide that the county delegates shall elect the state committee?

MR. GOLDMARK: Mr. Justice Rehnquist, not to my knowledge. In a number of instances, congressional district organizations, for example, are entitled to elect representatives to the state committee or legislative district organizations, not all are county based but most have a constituency of some kind like a county.

QUESTION: Mr. Goldmark --

QUESTION: The state's attorney general is noticeably absent from this litigation. Has he ever been in it at all trying to defend the statute?

MR. GOLDMARK: Mr. Justice Blackmun, he has not. The appellants served the attorney general with a copy of their complaint when the suit began and notified him of the appeal for the Washington Supreme Court. He has not appeared in any state --

QUESTION: And also the amended complaint.

MR. GOLDMARK: That is correct, Mr. Justice Marshall.

QUESTION: Mr. Goldmark, I didn't hear your last sentence. His what?

MR. GOLDMARK: He was also served with a copy of appellants' amended complaint and notice of the appeal from the trial court to the Washington Supreme Court.

QUESTION: Then he has never --

MR. GOLDMARK: He has never appeared.

QUESTION: -- been in the litigation at any stage?

MR. GOLDMARK: That is correct.

QUESTION: What I wanted to ask, aside from that, are there any other marker that we can find that shows the interest that the state has in this statute?

MR. GOLDMARK: The appellants are not aware of any, Mr. Justice Marshall. I would like to --

QUESTION: Did you serve him pursuant to some state requirement that he must be served if a state statute of constitutional --

MR. GOLDMARK: Mr. Justice Brennan, yes, I did. The Washington declaratory judgment statute requires the attorney general to be served in any suit challenging the constitutionality of a state statute.

QUESTION: But leaves it to him whether or not he shall defend it?

MR. GOLDMARK: That is correct, Your Honor.

I would like to add in further response to the question of Mr. Justice Stewart that even if the statute is the sole power that gives this committee being, it is clear that

the functions the statute requires that committee to perform are protected by freedom of association. The statute authorizes and requires that committee to call and plan state party conventions. That is an activity protected by freedom of association.

QUESTION: Well, that is almost the question in this case.

MR. GOLDMARK: The statute requires the Democratic State Committee to provide for election of delegates to the Democratic National Party Convention. As this Court knows from the case of Cousins v. Wigoda, the power within a party to provide for the election of delegates to national conventions is considered to be extraordinarily political and a vital matter within that party.

QUESTION: Now, this statute which is quoted in your brief refers to the state committee of each major political party. I suppose elsewhere in the legislation major political party is defined one way or the other.

MR. GOLDMARK: That is correct, Mr. Justice Stewart. A major political party is one that received 5 percent or more of the total vote cast in any preceding statewide election.

QUESTION: Generally there are two in your state --

MR. GOLDMARK: That's correct.

QUESTION: -- that would meet that definition?

MR. GOLDMARK: The major benefit of being a major

political party is that you are allowed to participate in state primaries, minor political parties must hold state conventions in order to place their candidates on the general election ballot.

QUESTION: How were these parties structured before this statute was passed?

MR. GOLDMARK: The record does not show, Mr. Chief Justice.

QUESTION: It is not a matter of which we could take judicial notice if we knew about it?

MR. GOLDMARK: Mr. Chief Justice --

QUESTION: Generally, was it purely a voluntary organization like a parent-teachers association or a garden club, as Justice Stewart suggested, just a voluntary group that organized itself?

MR. GOLDMARK: That would be my assumption. This statute, the state of Washington has had statutes regulating the composition of party state committees since 1907. If the Democratic Party in Washington is like other political parties in American history, it was a voluntary political association up until about the 1890's when the Court will recall there were abuses enough in primary election systems and other areas to cause states to gradually bring political parties within their regulatory power.

QUESTION: Well, it is almost a definition, first of

all, isn't it, the state committee of each political party shall consist of.

MR. GOLDMARK: Mr. Justice --

QUESTION: And there is nothing in there that says that some other Democratic political voluntary organization isn't entirely free to form itself and have whatever rules it wants to, but the legislature has defined what a state committee of each major political party is.

MR. GOLDMARK: Mr. Justice Stewart, perhaps I could explain further the ruling of the court in this case with respect to the charter enacted by the Democratic Party which may further shed light on your concern.

That charter was adopted by the Democratic State Convention in 1976. The charter is contained in the party's joint appendix. It is to establish the Democratic Party's permanent statewide organization. Article 4.G. of that charter states that the Democratic State Committee shall be the governing body of the party while the convention is in adjournment. In the decision below, the Washington Supreme Court held that the Democratic State Convention has the supreme party authority, is implicitly empowered, it did not say empowered by statute but implicitly empowered to establish the party's permanent statewide political organization and to delegate authority within that organization.

QUESTION: You say the Democratic State Party? That

is what you just said.

MR. GOLDMARK: The Democratic State Convention meeting in 1976 adopted the charter. Excuse me, Mr. Justice Rehnquist, the Washington Supreme Court further held that the Washington Democratic State Convention was implicitly empowered to establish the party's permanent statewide organization and to delegate authority within that organization.

QUESTION: And that is a relatively voluntary organization, I take it?

MR. GOLDMARK: That is correct, Your Honor.

QUESTION: What is an example -- supposing the Democratic State Central Committee were on the outs with the Democratic State Party as represented by the state convention, what sort of serious burdens could the Democratic State Committee put on the Democratic State Convention or Party?

MR. GOLDMARK: For example, Your Honor, if the Democratic State Convention adopted a party platform which the state committee then refused to implement, that would be a very substantial burden on the party's freedom of association.

QUESTION: Well, how would a Democratic State Committee composed such as this is by statute play a role in implementing the platform of the state party?

MR. GOLDMARK: Because that is its inherent function. It is, as you will notice, clause 5 of this statute authorizes

the state committee to perform all inherent functions of such organization. And the court in the decision below held that the Democratic Party State Convention is implicitly wmpoered to establish its permanent statewide party organization and delegate authority within it, and that was the statutory state committee. But the court below held that the Democratic Party charter is binding authority on the Democratic State Committee absent valid state law to the contrary.

QUESTION: But nothing that the state central committee could do would prevent the members of the Democratic State Party or the people who adhered to the platform adopted at the convention from espousing their views as to how good a platform it was.

MR. GOLDMARK: A political party is an organization established to influence policy and to win elections. The only permanent statewide organization that members of the Democratic Party have, the only organization carry this out between conventions is the Democratic State Committee. If this committee does not implement the party's platform, raise money, as the record shows it does, it raises money for Democratic candidates and distributes money to those candidates, if the committee does not perform these functions as the convention desires, that will be a very substantial burden on --

QUESTION: Well, can't the party itself raise money

quite apart from the activities of the state central committee?

MR. GOLDMARK: The state central committee is under the common law of the state under this statute and under the party's charter its governing body. If the Democratic Party attempted to establish some other organization, the appellants have no doubt that it would be denounced as an illegal body.

QUESTION: Are you saying that the Supreme Court of Washington would tell you if the Democratic Party had a fund raising event in Seattle or Spokane and Takoma that wasn't sanctioned by the state central committee, that you couldn't have that event?

MR. GOLDMARK: No, Mr. Justice Rehnquist, I am not suggesting that. I am suggesting that this is the party's permanent statewide organization. It has the authority, when the Democratic State Committee speaks on an issue, it speaks with the authority of the Democratic Party. It elects the party's chairman, it elects the state chairman. When he speaks, he speaks with the authority of the Democratic Party. For the convention to establish some other body would not only be contrary to state law, it would be extraordinarily divisive with the party. This is the group that leads this party. Party members have no other organization to look to for this function.

The record is clear that this state committee raises and distributes money to party candidates, passes

resolutions and performs all the normal functions of the governing body of a political party. Four of the appellants were elected as members to serve and participate in its decisions and have been denied from doing so on the basis of this statutory requirement and there is no evidence anywhere in the record of any compelling state interest of the State of Washington that justifies the such a burden.

QUESTION: The legislature has defined what the state committee is and what it shall consist of. Now, it is not at all unusual for a legislature, state or federal, to set up advisory committees. There was a committee almost a generation ago set up by the federal government, I don't know if it was by legislation or resolution or what, an antitrust study group, of which my Brother Stevens was a member, and I am sure that whatever it was, whether it was legislation or a resolution or an executive order, whatever it was, set up what the membership of that should be. Now, could that organization have had a meeting and said we want to double our membership and have a member from every state, once the government, legislative or executive, had set it up and defined it?

MR. GOLDMARK: I do not believe that organization had its genesis in a voluntary private association of --

QUESTION: There is no indication that this one did, either. There is no indication that this one did, either.

What we have before us is a legislative act defining what a state committee is.

MR. GOLDMARK: Your Honor, the appellants believe, as the Washington Supreme Court has said and with the Court's indulgence I will read it, the statement that appears on page five of appellees' brief in which the Washington Supreme Court stated the powers of the state committees and stated their role under the statute: "Representative of a permanent state party organization, though subordinate to the overriding power of the party's state convention" -- so the two are linked, the state convention has power over this body --

QUESTION: Is the state convention -- I will interrupt just for a moment to say is that defined by statute anywhere?

MR. GOLDMARK: It is not, Mr. Justice Stewart -- "is a state committee created by RCW 29.42.020. As a committee designed to function on a statewide level, it is necessarily invested with the inherent power to adopt rules and regulations for its own internal government, as well as to promulgate, subject to the overriding authority of the state convention, intraparty rules governing statewide operations of the party as a political organization during the interval between conventions."

For this reason, appellants submit that state law regulates the activities of the Democratic State Committee.

It does not so create them and to stip them of any First Amendment protection.

QUESTION: Mr. Goldmark, doesn't everything you have read say it is all subject to what the convention dictates?

MR. GOLDMARK: Yes, Mr. Justice --

QUESTION: And can't the convention do anything it wants to?

MR. GOLDMARK: Yes, Mr. Justice Stevens, and it has.

QUESTION: What?

MR. GOLDMARK: And the convention has. The convention, in its charter --

QUESTION: Take the platform, for example, you gave when Mr. Justice Rehnquist was talking, say the central committee says it shall be A and the convention says it shall be B. It will be B, won't it?

MR. GOLDMARK: That is correct, Mr. Justice Stevens. That is what this suit is about. The convention said the state committee shall be two persons per county --

QUESTION: No, no, forgetting the membership, talk about -- forgetting about the -- on any issue except who shall comprise the membership of the state central committee, wouldn't the convention's views prevail?

MR. GOLDMARK: No, Mr. Justice Stevens.

QUESTION: In what example would they not prevail?

MR. GOLDMARK: To give you an example of something that occurred during the pendency of this case -- and I refer to a matter outside the record, something contained in the minutes of the Democratic State Committee meeting, and I believe the Court may take judicial notice of this under the case of Texas Railway v. Potter, 291 U.S., simply for the fact the state committee took such an action. The Democratic State Party platform for a number of years has espoused repeal of state sales taxes on food and drugs. At a meeting prior to a general election to vote on an initiative which would have accomplished this repeal, the state committee adopted a resolution opposing it. Now, what remedy does the state convention have to bring the state committee into line?

QUESTION: It doesn't have to. It just says the policy of the party shall be to favor it, instead of opposing it and that controls under the statute.

MR. GOLDMARK: The state convention meets every two years. It has no power during the interim except through the party's representatives on the state committee to see that its mandates are carried out. In litigation, if the party cannot control the composition of its state committee so that the state committee is responsive to the party, it has no means except litigation which courts properly are reluctant to bring.

QUESTION: The situation is now that what a state

committee is is defined by statute. Now, your remedy is to go to the legislature of the State of Washington and have them either repeal that statute or amend it, but the whole definition of what is a state committee is contained in a statute of your state.

QUESTION: But he says he can come here and get us to amend it.

MR. GOLDMARK: Common law of the State of Washington gives the Democratic Party the authority to assign functions to its state committee, the same state committee regulated by the statute and to delegate authority to it.

QUESTION: It is not just regulated, it is created, it is defined by the statute, insofar as one can see, created by the statute.

MR. GOLDMARK: Mr. Justice Stewart, I must respectfully disagree with your choice of terminology. Given the decisions of the Washington Supreme Court in the King County Republican case and in the decision of the court below, it seems odd that the Democratic State Convention can ask its state committee to do anything as the court below ruled except establish the composition of the party's state committee.

QUESTION: What if the Democratic State Convention, Mr. Goldmark, had said that the Democratic State Central Committee shall not be subject to any elections at all but simply be appointed by the Democratic State Convention every

two years and the Washington State legislature passed a statute saying, no, you are going to have some elections. Would you feel you had as strong a case?

MR. GOLDMARK: Well --

QUESTION: In other words, the Democratic State Party was asserting its authority over the central committee by saying that instead of having the central committee having its members elected, they were going to be appointed by the state convention.

MR. GOLDMARK: It seems to me if the convention as a large body who is going to appoint these people, it would have to elect them.

QUESTION: But suppose it said then that the chairman of the convention would appoint them?

MR. GOLDMARK: It is not clear to me whether that would be proper. I do know in California, for example, virtually every member of the party's state committee is appointed by the party officers, for example. The governor appoints two members, the secretary of state appoints two members. This seems to be a common practice in a number of states.

QUESTION: What if the convention decided that the central committee should be composed of two members from each county but the legislature then said, oh, no, the central committee should be selected on a population basis?

MR. GOLDMARK: Mr. Justice White, I have thought about that question and it is not clear to me whether the state would have a compelling state interest in forcing a state committee to be apportioned on the basis of one person, one vote. In this case, the two person per county requirement of this statute has already been superceded by federal court injunction requiring the state committee to vote on the basis of one person, one vote whenever it exercises those electoral functions, the federal court ruling that the Fourteenth Amendment required it to do so when it performed these electoral activities.

QUESTION: What is the status of that litigation?

MR. GOLDMARK: That was a stipulated injunction between the Democratic State Committee and the parties in that case. The state committee only exercises these electoral functions on --

QUESTION: It seems like most party political troubles that we have in most states, that they settle within the convention politically and in Washington they settle them in court.

MR. GOLDMARK: There is no way for the party to settle this in the court, Mr. Justice Marshall, because it can't control its own state committee. What the convention decides can only be settled by litigation because it has a state committee whose composition it cannot control. That is

the substantial burden on freedom of association.

QUESTION: So that is the difference from other states where you vote it down, in other words, politically?

MR. GOLDMARK: Yes, Mr. Justice Marshall.

QUESTION: So we will be supervising the parties eventually?

MR. GOLDMARK: Mr. Justice Marshall, it is the appellants' belief that the parties are free to decide how their governing bodies are composed and assert power over them through the political process of --

QUESTION: And you go to the legislature and change the act.

MR. GOLDMARK: The fact that the legislature can remove a burden on freedom of association and provide that remedy does not excuse the substantial burden it is creating in --

QUESTION: Well, wasn't that act passed by a political party or do you have nonpartisan elections?

MR. GOLDMARK: The state legislature is controlled by political parties. It is a fact of political life that often legislatures and politicians in office are not exactly excited about having strong, over responsive party organizations and prefer to see one built around individuals.

QUESTION: Mr. Goldmark, could the state statute say that the party's central committee shall be composed of

the following ten people and then list an accountant, a lawyer, an engineer, and just list ten people? It doesn't say they have to be from anywhere, it just says that is going to be the governing body of the party. Would that be unconstitutional, too?

MR. GOLDMARK: Mr. Justice White, only if the party decided that it wished a governing body of some different --

QUESTION: Well, it does, it does, it decides that it wants --

MR. GOLDMARK: Two persons per county.

QUESTION: -- it wants two lawyers and it goes right down the list and says they want two of everybody.

MR. GOLDMARK: The party's preference should control.

QUESTION: Well, why is that?

MR. GOLDMARK: Because it is a voluntary political association that has a right to decide for itself how its governing body shall be composed. The composition of the party's governing body can be as important to the success of that party as the choices it makes in the platform.

QUESTION: Do you think the state can impose a duty on the party that the party doesn't want to perform?

MR. GOLDMARK: I don't know, Mr. Justice White.

QUESTION: Do you suppose it can prevent the party from doing something that the party wants to do?

MR. GOLDMARK: If the party wishes to take a position on a particular issue, it certainly can do that. If it wishes to conduct a voter education program on a particular issue, I do not believe the state could prevent it from doing that, absent some compelling state interest at the particular time.

QUESTION: Is there some law in Washington or under the Constitution that would prevent -- if you don't like the rules about the Democratic Party or the Republican Party in Washington, there is no reason you can't form another one, form another party and run it the way you want it.

MR. GOLDMARK: This is not a realistic alternative for members of the Democratic Party because --

QUESTION: Yes, I know, because you want to take advantage of the provision for getting candidates on the ballot.

MR. GOLDMARK: We are not, Mr. Justice White, taking advantages of provisions for getting candidates on the ballot. The functions performed by this committee, exclusive of those activities, are themselves calling and planning state conventions, electing delegates to national conventions, are all protected by freedom of association under this Court's prior decisions.

QUESTION: Mr. Goldmark, I wanted to ask you one question before you sit down. If I understand your position

correctly, if you just reversed the positions in this case and said you wanted just two representatives per county and the state statute required the legislative representation, you would say that the statute would be equally unconstitutional?

MR. GOLDMARK: Yes, Mr. Justice Stevens.

QUESTION: And is it your position then that no matter what the requirement in the statute is, it would be subject to this attack under the First Amendment?

MR. GOLDMARK: No, Mr. Justice Stevens. As I indicated in a question to Mr. Justice White, the state may have a compelling state interest in requiring political party state committees to be apportioned on the basis of one person, one vote, otherwise I can conceive of no other --

QUESTION: One party member per -- one voting party member or one voter per -- I mean what --

MR. GOLDMARK: You see, the constituencies of state committee members are composed of approximately equal numbers of party members or the electorate.

QUESTION: That would be a compelling state interest, by having every county represented would not be a compelling state interest?

MR. GOLDMARK: Yes, Mr. Justice Stevens, I said it might.

MR. CHIEF JUSTICE BURGER: Mr. Brink.

ORAL ARGUMENT OF DANIEL P. BRINK, ESQ.,

ON BEHALF OF THE APPELLEES

MR. BRINK: Mr. Chief Justice, and may it please the Court:

I think to understand the question, we do have to go back into the background of the system, the political structure of the State of Washington and the governmental structure. It has been a -- we are still a fairly young state, but of some seventy years duration has there been this structure of 39 counties, with 39 separate governments, each having their own elected representatives -- excuse me, legislative, executive and judicial branches, they elect their own county judges, the county commissioners and executives, prosecuting attorneys, county clerks and so on down the line.

The state has authorized by a section, just one following this, and in the same basic enabling act in 1907 the existence of county committees which are composed of precinct committeemen elected in each county. These organizations, of course, parallel the county governments. Then the county committee of each county selects two members to the state committee. Originally it was just one in 1907. In 1927, as I recall, they added the rights of one man and one woman from each county.

QUESTION: Now, when you say "they added," that is

the state legislature?

MR. BRINK: The state legislature, yes, Your Honor. The powers of the county committee are not restricted by statute. And when it is stated here that there can be no other organization speaking for the Democratic Party, that is simply not true. Each county speaks for itself and sometimes most vociferously, and they are not always in concert.

However, the state charter attempted to put the counties in line a little bit and did say that they do have a limitation upon them and that is that they should attempt at least to follow the policy set forth in the national platform the state platform and the county platform.

The state committee, as I said, is elected by the -- composed of these people from the county committees, two from each, and just provides a skeleton of the state party and is an administrative, not an electoral and not a policy-making body. The policy-making is reserved to the state convention. The charter itself requires the state committee to follow the policies set forth by the state convention and by the state charter.

It is important to understand that the functions of the state committee are relatively limited. I would like to talk to you about what it does and what it does not do. It does not do a lot of the things represented by counsel.

By statute, it comes into being every --

QUESTION: May I ask, is its powers limited to the five specified in the statute?

MR. BRINK: Its powers by statute are limited to those. However, it has been assigned additional functions by the state convention. In further answer to that, Your Honor, the state convention can, of course, assign additional committees to do additional things. The state convention is all powerful in the view of the Washington State Supreme Court, in any event.

QUESTION: What do you think, Mr. Brink, is the federal issue involved in this case?

MR. BRINK: I do not believe there to be a federal issue because I do not believe there to be an infringement at all upon anybody's rights to associate. The state committee does not nominate candidates, it does not even endorse candidates, it does not participate in the election process. It is simply an administrative function to try to glue these 39 counties together to provide communication, one to the other.

It is our position, as the appellees, that there is no issue under the First Amendment.

QUESTION: Well, do you make your case, if you demonstrate to us that there is no federal issue involved in the case, that it is a matter for the state legislature, the people of Washington?

MR. BRINK: Mr. Chief Justice, that is of course our position.

QUESTION: Well, why not focus sharply on that?

MR. BRINK: I will attempt to. The state legislature has been requested in the past on several occasions in the last ten years to change this composition makeup of the state committee. The legislature, which is made up by one man, one vote basis, has declined to do so. In fact, it hasn't even considered it strongly enough to pass from one house to the other.

I don't know how I can answer your question further.

QUESTION: Well, is there anything in the Washington law that would prevent the convention from forming a committee, call it whatever you wanted to, to perform all the functions that the convention wanted it to perform except the ones that the statute says the central committee has to perform?

MR. BRINK: I agree, Your Honor, I think that is correct that they can do so, that they could form a committee for fund raising, they could form a committee --

QUESTION: So that insofar as -- so that you think the issue really is here whether or not it is constitutional for the state to say that the committee, that the central committee that is to perform these five functions has to be two from each county? You think that is the issue?

MR. BRINK: If the legislature said it should be

two from each county and --

QUESTION: To perform these particular functions.

MR. BRINK: -- just these limited functions, that does not impinge upon anybody's rights of association or expression.

QUESTION: I understand you say that is really the only issue that is here.

MR. BRINK: That is to us the only issue here.

QUESTION: Because the party could provide for -- under the statute, the party could have all the other functions that the state committee might be given to perform that could be assigned to another committee.

MR. BRINK: It can. In fact, they have set up a judicial committee by the charter. They did not set up a separate finance committee. That has --

QUESTION: This category five, perform all functions inherent in such an organization, how broad is that?

MR. BRINK: That is not very broad in view of the King County Republican case in which the Washington State Supreme Court said that subject to the overriding power of the state convention. So I suspect the legislature, when it said inherent was saying, well, do whatever you can.

QUESTION: Even the exercise of one, two, three and four under the case you mentioned, were subject to the overriding authority of the convention?

MR. BRINK: Absolutely, that is the holding of the Washington State Supreme Court back in 1971 in King County Republican case.

This Court has not so far as we can tell gone so far as to --

QUESTION: So you say that under the Washington law, while there must be a central committee with two members from each county, the convention could remove -- could say that the committee has no functions?

MR. BRINK: They could theoretically do that, in our view.

QUESTION: And we will set up another committee to do all the things we want them to do and we will have this committee composed any way we want it to be?

MR. BRINK: Right, but they must allow the state central committee as set up by statute to exist to attempt to coordinate at least the election procedures of the 39 different counties and their own county committees, and it does provide an element of stability between conventions. It is there, it is official, the secretary of state knows he can call up the state chairman of either party and plan ahead for conventions. This is the most important function, it seems to me, of the state committee, and that is to initiate the election procedures by calling conventions, setting dates, having the precinct committeemen and their various precincts

set the dates for precinct caucuses, for county caucuses, and then for the state convention. But as also limited by statute, they can't tell the state convention what to do in its own convention.

The cases that this Court is cited to of *Kusper v. Pontikes* and *Cousins v. Wigoda* are just so far and away from what we are involved here. Those were -- *Cousins v. Wigoda* involved a national political party convention and as to which delegation from the State of Illinois should be seated, the one that was elected under the state law or the one that was selected in accordance with rules of the national convention. And the state did attempt to interfere and this Court said it was an interference, but that was a national convention case. The Court was very concerned and well it should be, it is of importance to all parties, all citizens that this convention be held without interference from fifty states. It is also in the case of *Kusper v. Pontikes*, that was a nomination case on a state level against the State of Illinois and where an Illinois statute prevented the appellee from voting in the Democratic primary because she had within 23 months previously voted in a Republican primary.

Now, the Washington state committee does not affect at all primary elections, it does not permit, prevent, deprive anyone from participating in primary or general elections. The *Rippon Society* case is simply not in point

again, a national convention case, in which the Republican -- and also was a Fourteenth Amendment case. There is no Fourteenth Amendment issue here, nor is there one raised here.

Assuming that there would be any kind of a burden upon the appellants, there is a state interest in maintaining the stability and integrity and continuity of the major political parties in the state. You become a major political party in Washington state by getting 10 percent of the vote at the last general election, and then if the new party, new major party is still in being, it can qualify for the primary ballot without a separate convention. As a matter of fact, I think the only time we had a party that achieved this was the Progressive Party back in 1948, and then, of course, by the year 1950 nobody was interested to pick up the fact that they were a major party, so we have a lot of minor parties that come and go and a lot of them on the ballot.

QUESTION: What party was that in '48?

MR. BRINK: The Progressive Party, Your Honor. They got enough vote to qualify for the next time but they didn't follow through.

QUESTION: I see.

MR. BRINK: The state committee is not the policy-maker but it is important that it retain communications or maintain communications between these county organizations who are all out speaking for themselves as well. It has the same

constituency as those county committees. We suggest the statute is narrowly drawn and serves a state interest to maintain this continuity of the major parties.

It is our suggestion that the Court affirm the Washington State Supreme Court.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Brink.

Do you have anything further, Mr. Goldmark? You have about three minutes.

ORAL ARGUMENT OF CHARLES A. GOLDMARK, ESQ.,

ON BEHALF OF THE APPELLANTS -- REBUTTAL

MR. GOLDMARK: This case cannot be distinguished from Cousins v. Wigoda. There, this Court held that a party's choice in the composition of its higher governing body was a choice protected by freedom of association. The matter there was regulated by state law, yet the Court held that the state of Illinois could not interfere with the delegates chosen by the party to attend the Democratic National Convention, or, more importantly, a state caucus held to elect members to the Democratic National Committee. And this Court said that the membership in that state caucus was protected by freedom of association because the representatives elected to the Democratic National Committee would be involved in planning the next Democratic National Convention.

QUESTION: Well, didn't the Illinois court there

enjoin those representatives from presenting themselves as delegates to the national convention?

MR. GOLDMARK: Yes, Mr. Justice Rehnquist, and that is the effect of this statute. It has prevented four appellants from presenting themselves to the state committee and participating in its deliberations.

QUESTION: So you must have to say that the state central committee created by statute in Washington is of the same political and associational significance as the Democratic or Republican National Conventions sitting every four years to choose a presidential candidate?

MR. GOLDMARK: It is of the same significance for freedom of association. The fact that a national party convention was involved in Cousins means that states may have different interests in regulating. A state may not have an interest in regulating a national party convention for its membership, whereas it may in regulating participation in state party matters. But both are protected. The difference in compelling interest does not relate back to strip away the First Amendment protection of the association of party members. And Cousins did hold that state interference in a state party caucus to choose representatives to the Democratic National Committee was protected.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 10:51 o'clock a.m., the case in the above-entitled matter was submitted.)

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