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Recent Cases: Constitutional Law — Civil Rights — Elections — Right of Negroes to Vote in Pre-Primary Election

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Constitutional Law—Civil Rights—Elections—Right of Negroes
To Vote in Pre-Primary Election

Since 1889 the Jaybird Democratic Association of Fort Bend County, Texas has conducted an election in which candidates for local and county offices have been chosen prior to the official Democratic Party primary election. The winner of the Jaybird election has usually filed as a candidate in the Democratic primary and, with few exceptions, has been elected to office. All white voters eligible to participate in the primary and general elections are eligible to participate in the Jaybird primary, but Negroes are specifically excluded. There is no "formal" connection between the Jaybirds and any party holding an election on the official primary day. The Jaybirds do not have a state organization, are entirely self-financed, and do not comply with the state law governing local political parties. Plaintiffs brought action for a decree declaring that they and all Negroes were entitled to vote in the Jaybird election. On appeal to the United States Supreme Court, held: denial of voting privileges in this pre-primary election constituted a violation of the provisions of the Fifteenth Amendment.

The Fifteenth Amendment states that "The right of citizens of the United States to vote shall not be denied by the United States or by any State on account of race, color, or previous condition of servitude." Early decisions held that the Amendment applied to states only in

2 The action relied on the provisions of 16 Stat. 140 (1870), 8 U.S.C. § 31 (1946), as well as the Fifteenth Amendment. See also 17 Stat. 13 (1871), 8 U.S.C. § 43 (1946), and 12 Stat. 284 (1861), as amended, 17 Stat. 13 (1871), 8 U.S.C. § 47 1946), which were involved in the original proceeding, but not the final decision.
4 U.S. Const. Amend. XV; § 1.
cases where the denial of the right to vote was the result of "state action."  

Subsequent decisions have been concerned with determining what constitutes an election involving "state action." A Texas statute denying Negroes the right to vote in primaries was held to be unconstitutional.\(^6\) Party prevention of voting rights to Negroes in the primaries was also held violative of the Amendment where a state statute gave the party the right to determine qualifications for voting in the primaries.\(^7\) In 1935, it was held that Texas Democratic party discrimination in the primaries was outside the protection of the Amendment, there being no "state action" involved.\(^8\) This decision was expressly overruled in 1944,\(^9\) and primary elections brought within the scope of the Amendment's protection where such elections were conducted in accordance with state election laws. Several recent decisions have held that elections which are actually primaries are within the Constitutional prohibition against racial discrimination regardless of whether held under rules of state law,\(^10\) or in the absence of any election law.\(^11\)

In the instant case the Court held that the Amendment includes any election in which "public issues are decided or public officials selected."\(^12\) This conclusion is founded mainly upon a federal statutory provision which grants suffrage in all elections, without distinction of race, "... any ... custom, usage ... of any State or Territory, or by or under its authority, to the contrary notwithstanding."\(^13\) As originally passed, this statute was the first section of the Enforcement Act of the Fifteenth Amendment.\(^14\) After a portion of that act was held to be inappropriate legislation in that it applied to individual, and not state action,\(^15\) the majority of the act was repealed,\(^16\) leaving section one in its original form. As pointed out by the dissent, the court

\(^7\) Nixon v. Condon, 286 U.S. 73 (1932).
\(^8\) Govey v. Townsend, 295 U.S. 45 (1935).
\(^10\) Perry v. Cyphers, 186 F.2d 608 (5th Cir. 1951).
\(^11\) Following the decision in Smith v. Allwright, 321 U.S. 649 (1944), South Carolina repealed its law governing primaries in an attempt to circumvent that ruling. Racial discrimination practiced by the Democratic Party in the conduct of its primaries was held violative of the Fifteenth Amendment, Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), cert. denied, 333 U.S. 875 (1948); Baskin v. Brown, 174 F.2d 391 (4th Cir. 1949).
\(^12\) Terry v. Adams, 73 Sup. Ct. 809, 813 (1953).
\(^14\) Ibid.
\(^15\) United States v. Reese, 92 U.S. 214 (1875).
made no mention of the requirement of state action laid down in the original decisions involving the Enforcement Act\(^\text{17}\) and subsequent Fifteenth Amendment decisions,\(^\text{18}\) and the court failed to consider the constitutionality of the statutory provisions regarding custom and usage. The statute is used as a means of applying the Amendment's protection to individual action, even though the state is in no way connected to that action. The court justified its holding on the ground that since the Jaybird election has become an integral part of the county election machinery, the state is under a duty to control such action. If there is racial discrimination present, the Negro's constitutional rights have been denied.\(^\text{19}\)

As a result of this case, it would seem that if the state does not assume responsibility for such elections, its inaction, if there is racial discrimination present, constitutes a denial within the meaning and protection of the Fifteenth Amendment.

John S. Schaper, '56

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\(^{17}\) The constitutionality of any provisions of this statute has never been in issue before the court. The statute has been involved in several cases, but has never before been used as a means of interpreting the Fifteenth Amendment.

\(^{18}\) See cases cited supra notes 5 through 9 and note 15.

\(^{19}\) In addition, see U.S. Const. Amend. XIV.