House Bill 1446

Testimony in Opposition

Mr. Chairman and Members of the Government and Veterans Affairs Committee,

My name is Andrew Bornemann, I am a lifelong resident of North Dakota, and have been involved in politics for most of my life. I am writing to you to respectfully request a Do Not Pass recommendation from this committee.

House Bill 1446 would effectively remove the rights of a political party to select it's own candidate, along with significantly raising the number of petition signatures required to run for a statewide office.

Not only would this be detrimental to political parties in this state and discourage political involvement by everyday citizens, I believe it would also be an infringement on political party's first ammendment rights to freedom of association. Having looked into several US Supreme Court Cases, it seems that the Supreme Court has already held a similar position.

From *California Democratic Party v. Bill Jones, California Secretary of State*, : (see footnote 1)

> *"**The Court has recognized that the First Amendment protects "the freedom to join together in furtherance of common political beliefs,**" Tashjian, supra, at 214—215, **which "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only,**" La Follette, 450 U.S., at 122. **That is to say, a corollary of the right to associate is the right not to associate. " 'Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.' "** Id., at 122, n. 22 (quoting L. Tribe, American Constitutional Law 791 (1978)). See also Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984).*
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> ***In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views.***
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> ***Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "select[s] a standard bearer who best represents the party's ideologies and preferences."** Eu, supra, at 224 (internal quotation marks omitted). **The moment of choosing the party's nominee, we have said, is "the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."** Tashjian, 479 U.S., at 216; see also id., at 235—236 (Scalia, J., dissenting) (**"The ability of the members of the Republican Party to select their own candidate … unquestionably implicates an associational freedom");** Timmons, 520 U.S., at 359 **("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer"** (internal quotation marks omitted)); id., at 371 (Stevens, J., dissenting) (**"The members of a recognized political party unquestionably have a constitutional right to select their nominees for public office").***"

In a state with open primaries, it is a completely untenable position to hold that removing a party's ability to place a candidate on the primary election ballot is not removing their ability to select a candidate. Along with the fact that current state law allows any person to run as a candidate of any party, under their own choice and with no prior affiliation or approval from the party which they chose to represent, it is an easy argument to make that a political party's right not to associate is already compromised.

In *March Fong EU, Secretary of State of California v. San Francisco Democratic Central Committee*, the Court held that a ban on a political party issuing primary endorsements was unconstitutional: (footnote 2)

> *"**The ban on primary endorsements in §§ 11702 and 29430 violates the First and Fourteenth Amendments. By preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampers the party's ability to spread its message and hamstrings voters seeking to inform themselves about the candidates and issues, and thereby burdens the core right to free political speech of the party and its members. The ban also infringes a party's protected freedom of association rights to identify the people who constitute the association and to select a standard-bearer who best represents the party's ideology and preferences, by preventing the party from promoting candidates at the crucial primary election juncture. Moreover, the ban does not serve a compelling governmental interest. The State has not adequately explained how the ban advances its claimed interest in a stable political system or what makes California so peculiar that it is virtually the only State to determine that such a ban is necessary.**"*

While the opposition will likely argue that an open primary election will result in a more popular candidate bearing the party name in the general election, and thus being in the better interest of the party, the argument of the state protecting a party from itself has been struck down by the US Supreme Court on multiple occasions, including again in California Secretary of State v. San Francisco Democratic Central Committee:

> *"**The explanation that the State's compelling interest in stable government embraces a similar interest in party stability is untenable, since a State may enact laws to prevent disruption of political parties from without but not from within. The claim that a party that issues primary endorsements risks intraparty friction which may endanger its general election prospects is insufficient, since the goal of protecting the party against itself would not justify a State's substituting its judgment for that of the party. The State's claim that the ban is necessary to protect primary voters from confusion and undue influence must be viewed with skepticism, since the ban restricts the flow of information to the citizenry without any evidence of the existence of fraud or corruption that would justify such a restriction.** Pp. 222-229."*
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> *...*
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> *"**It is no answer to argue, as does the State, that a party that issues primary endorsements risks intraparty friction which may endanger the party's general election prospects. Presumably a party will be motivated by self-interest and not engage in acts or speech that run counter to its political success. However, even if a ban on endorsements saves a political party from pursuing self-destructive acts, that would not justify a State substituting its judgment for that of the party."***

In the interests of preserving the first ammendment rights of political parties, and the rights of the citzens of this state, and to prevent costly litigation which this bill would assuredly cause, and which the State would almost as assuredly lose, I urge this committee to vote for a “Do Not Pass” recommendation on HB 1446.

Sincerely,

Andrew Bornemann,

Kintyre, ND.

Footnotes:

1. (California Democratic Party v. Bill Jones, Secretary of State of California, (99-401) 530 U.S. 567 June 26th, 2000.)

2.

489 U.S. 214
109 S.Ct. 1013

103 L.Ed.2d 271

March Fong EU, Secretary of State of California, et al., Appellants
v.
SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.

No. 87-1269.

Argued Dec. 5, 1988.

Decided Feb. 22, 1989.