# HAIL TO THE CHIEF!

*An Exhibit on Presidents and Mississippi in Presidential Elections*

Joseph L. Rauh, Jr. Eleanor K. Holmes, and H. Miles Jaffe. *Brief Submitted by the Mississippi Freedom Democratic Party for the Consideration of Credentials Subcommittee of the Democratic National Committee, the Democratic National Committee, Credentials Committee of the Democratic National Convention, Delegates to the Democratic National Convention* [1964].

*Department of Archives and Special Collections*
J.D. WILLIAMS LIBRARY
THE UNIVERSITY OF MISSISSIPPI
*18 August 2008 - 18 August 2009*

July 28th "traditional" state convention in no way changes this. Let us examine what did in fact happen there.

To begin with, the "traditional" Party adopted a resolution stating that:

> "In keeping with the fair-play of Chapter 32 of the Laws of Mississippi of the First Extraordinary Session of 1963 providing for one slate of electors to support the candidates for President and Vice-President of the National Democratic Party, and a separate slate of electors who have announced their purpose not to support the said candidates of the National Democratic Party, that the voters of Mississippi will definitely have the opportunity, in the November, 1964, General Election, to cast their election ballots for the Presidential and Vice-Presidential Nominees selected by the National Democratic Party at the Atlantic City Convention with electors pledged to support said Nominees."

The pledge contained in the above resolution is meaningless under the existing laws of the State of Mississippi. Unless electors pledged to President Johnson and his running mate win the September primary,[77] there is no way of their getting on the ballot under existing Mississippi law. Apparently, Governor Paul Johnson understands this very well. Thus he "said in his keynote address [at the State Convention] that he was ready to call a special session of the Legislature 'to make sure that everyone in the state has a right to a choice' in November."[78]

Even Governor Johnson now recognizes that, under the existing laws of Mississippi, President Johnson and his running mate will not be on the ballot in November with pledged electors. He therefore promised to call a special session of the legislature to get President Johnson on the ballot. *But he has not done it.* The significant point is that the Governor, after saying he would call a special session of the legislature to change the law of Mississippi, has failed to do so and there is nothing to stop the reconvened convention of September 9th from reversing the meaningless pledge it gave at its July 28th Convention.

Furthermore, and equally importantly, the resolution of the "traditional" Party quoted above is *not* in conformance with paragraph (1) of the rules. Paragraph (1) requires that there be assurance that the presidential and vice presidential nominees will be on the ballot with pledged electors *"under the Democratic Party label and designation."* The resolution of the "traditional" Party does not mention "under the Democratic Party label and designation"; that resolution would be fully met if the electors for President Johnson and his running mate were placed on the ballot as independents, but this would, of course, wholly fail to satisfy paragraph (1) of the rules.

Nor can this refusal to promise to put the electors for President Johnson and his running mate on the ballot "under the Democratic Party label and designation" possibly be considered an oversight. Paragraph (1) of the rules is crystal clear. The Freedom Party with no real experience in politics followed the rule with precision (see p. 19, *supra*). The "traditional" Party had a reason for leaving out this part of the pledge—they wanted to find a way of letting Mississippians vote Democratic and still not vote for President Johnson. Consequently, they decided to withhold the Democratic Party label and designation from President Johnson, so they could use it for

[77] It now appears unlikely that there will even be a September primary as required by law.

[78] *New York Times,* July 29, 1964, p. 18.

unpledged electors or for electors pledged to Senator Goldwater.

As pointed out earlier in this Brief, Mississippi is sending a Joe Doakes delegation which can pledge nothing as far as the leadership of the "traditional" Party is concerned. Thus, any pledge by the delegates at this Convention to put the electors for President Johnson and his running mate "under the Democratic Party label and designation" would be meaningless. What is more, such a pledge would be worthless for the "traditional" Party violated the pledge it gave four years ago on this same point. At that time, in accordance with the rules of the National Convention, the "traditional" Party undertook to assure that the electors for President Kennedy and Vice President Johnson would be on the ballot "under the Democratic Party label and designation." After making this pledge, the "traditional" Party put *two* slates of electors on the ballot under the designation of "the Democratic Party of the State of Mississippi"—one pledged to Kennedy-Johnson and one unpledged. In other words, after promising to give the nominees of the 1960 Convention the benefit of the Party label, it added a slate of unpledged electors under that Party label and thus rendered the label worthless in violation of its pledge under paragraph (1) of the rules. As if to compound their infraction of the rules, the Mississippi "traditional" Party leaders then supported the unpledged slate as the real Democratic Party of the State of Mississippi.

This is the situation as the Democratic Convention meets at Atlantic City: the laws of Mississippi prevent President Johnson and his running mate from being on the ballot with pledged electors; the Governor promises a special session, but does not call it and instead awaits a reconvened session of the state convention to determine



his course. The state convention adopts a resolution which is meaningless under the laws of Mississippi and which does not meet the rules because it does not promise the Party label to President Johnson and his running mate (a provision of the rules which it breached in 1960). If the rules of this Convention are to mean anything, the "traditional" state delegation cannot be seated under paragraph (1).

B. *Paragraph (2) of the Rules of the Convention Forbids the Seating of the Delegation of the "Traditional" Party Because The Delegates Do Not Come As "Bona Fide Democrats" Willing to "Participate in the Convention in Good Faith."*

Paragraph (2) reads in full as follows:

> "(2) It is understood that the Delegates to the Democratic National Convention, when certified by the State Democratic Party, are bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith, and therefore no additional assurances shall be required of Delegates to the Democratic National Convention in the absence of credentials contest or challenge"

This provision is clear. First, it means that, "in the *absence* of credentials contest or challenge," all delegates who meet the requirements of paragraph (1) with respect to candidates being on the ballot will be seated without any issue being made of good faith. But, second, it equally means that in the *presence* of credentials contest or challenge, the delegates must demonstrate that they "are bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith." In a nutshell, where, as

here, there is a contest or challenge, the delegates must demonstrate their good faith to the Convention. To read paragraph (2) any other way would be to violate the standard rule of construction requiring that "each word will have a meaning, and not so read that one word will cancel out and render meaningless another. . . ." [79]

Although the history of this paragraph (2) is scant, what history there is also supports the construction that paragraph (2) is an addition in substantive requirement to paragraph (1) and that challenged delegates must demonstrate their good faith. The addition of this second paragraph to supplement the undertaking in the first paragraph was a concession to the "Loyal Democrats," at the time led by Governor Daniels of Texas, who feared that the Loyalists in the South would be destroyed by a weaker pledge.[80] Two challenges were presented in 1956 and the issue was whether the "traditional" delegations from Mississippi and South Carolina could conform to paragraph (2) of the rules:

> "To the South Carolina 'loyalists' Rawlings [Chairman of the Credentials Committee] explained that delegates elected in accordance with the rules of their state would be seated unless it were demonstrated that they 'are not Democrats to the point where they do not comply with the Call.' He re-read the Call and inquired whether it had been read to the state convention and 'whether or not those delegates subscribed to *those resolutions.*' The state chairman of the official party assured him that it had been read at the convention, and that the delegates were elected subject

[79] *Tonis* v. *Board of Regents of U. of State of New York,* 67 N.E. 2d 245, 248, 295 N.Y. 286, 293 (1946).

[80] Holtzman, *The Loyalty Pledge Controversy in the Democratic Party,* 1960, p. 21.



> to the Call and would subscribe to the *rules* proposed in it." [81] (italics supplied)

The Mississippi Democrats also agreed to conform to the Call assuring the Chairman that the state convention had been conducted "in absolute compliance with the Call." [82]

That same year, 1956, Adlai Stevenson stated that he was not then in accord with the loyalty oath. "But, speaking generally, I just don't believe that honorable men who have been elected to high office *as* Democrats and *by* Democrats will come to a Democratic Convention if they are publically, secretly, or even conditionally pledged to support the Republican candidate. . . ." [83]

Indeed, this was the interpretation put on paragraph (2) by the Chairman of the Credentials Committee of the National Convention in 1956. A rival Mississippi delegation appeared to challenge the "traditional" Party. The following colloquy took place:

> "Sweetland: 'Now, under the rules under which we are now operating, under the present rules of the Democratic National Committee, isn't an exception made in requiring a pledge of loyalty to the Party in the case of contested delegations, where such pledges may be required?' "
>
> "Rawlings: 'Yes, I think that is true.' " [84]

Under paragraph (2) of the rules, there can be little question that where, as here, there is a contest or chal-

[81] Holtzman, *op. cit.,* p. 26.

[82] Holtzman, *op. cit.,* p. 26.

[83] Holtzman, *op. cit.,* p. 24.

[84] *Official Proceedings of the Democratic National Convention,* 1956, p. 822.

lenge, the challenged delegation must show its good faith. *And this the "traditional" delegation cannot do.*

As we have already seen, the "traditional" state convention recessed so it could reconvene in September and then come out for Goldwater (see pp. 31 to 32, *supra*). The "regulars" of Mississippi are unwilling to throw in their lot with the National Democratic Party. They proclaim their independence of it; they attack its leaders; they support its opposition. They bar Negroes (overwhelmingly for President Johnson) from voting. They come here for the sole purpose of warming 68 seats so that loyal Democrats cannot have them. It is hard to conjure up anything more clearly bad faith than coming to a Convention not to help the National Party win, but rather to exclude someone else.

* * * * * * *

Both under paragraph (1) and paragraph (2) of the rules the Mississippi Democratic Party delegation cannot legally be seated. The only procedure at this Convention under which the "traditional" delegation could possibly be seated would be to suspend the rules and seat them *despite the rules.* Yet everyone knows that the "traditional" Mississippi delegation could not obtain the votes of two-thirds of the delegates to this Convention needed to suspend the rules and seat them; they could not get one-third or one-sixth to take such action. Certainly it is not the task of the Credentials Subcommittee of the National Committee or the Credentials Committee of the Convention to suspend the rules. Rather it is their duty to interpret and apply the rules—so doing, the "traditional" delegation cannot possibly be seated.



## II

**The Delegation of the "Traditional" Party Should Not Be Seated Because the State Convention Which Selected and Certified it was Illegal and Unconstitutional.**

It is hard to believe that anyone—even the "traditional" Party itself—will have the temerity to challenge the proposition that the state convention which selected and certified the "traditional" delegation was both illegal and unconstitutional. For the state convention of the "traditional" Party was the culmination of a process of exclusion of Negroes in blatant violation of the Fourteenth and Fifteenth Amendments to the Constitution. Negroes were excluded from every aspect of the political process leading up to the state convention—registration, precinct conventions predicated on registration, county conventions and finally the state convention—and this exclusion permeated and invalidated the state convention.[85] It is thus unnecessary to go beyond this simple proposition. Nevertheless, to make assurance doubly sure, we are adding the points contained in the succeeding pages.

A. *The Convention of the "Traditional" Party was Illegal and Unconstitutional Because That Party Runs the State of Mississippi and Uses Its Power to Exclude Negroes From Registration and Participation in the Political Processes of the State.*

Nowhere else in this country has a single party such pervasive control of the entire state governmental machinery as has the Mississippi Democratic Party. As Governor

---

[85] *Nixon* v. *Herndon,* 273 U.S. 536 (1927); *Nixon* v. *Condon,* 286 U.S. 73 (1932); *United States* v. *Classic,* 313 U.S. 299 (1941); *Smith* v. *Allwright,* 321 U.S. 649 (1944); *Terry* v. *Adams,* 345 U.S. 461 (1953); *Davis* v. *State,* 23 So. 2d 87, 156 Fla. 178 (1945).

Paul Johnson said in his keynote address to the July 28th state convention:

> "The Mississippi Democratic Party, for the past 89 years, is the framework, or the structure, through which Mississippians maintain political unity, and operate self-government."

Hence that Party is almost solely responsible for the daily state-sponsored discrimination against Negroes in all areas of life in violation of the Fourteenth Amendment. And that Party, through its control of the State, is the primary barrier to the aspiration of Mississippi Negroes to vote—all in violation of the Fourteenth and Fifteenth Amendments.

Yet, 20 years ago, the Supreme Court ruled that a political party may not obstruct the free exercise of the right to vote. The leading case, *Smith* v. *Allwright*,[86] forbids the exclusion of Negroes from primaries through the denial of party membership pursuant to a resolution of the party convention. In the *Allwright* decision, the Supreme Court quoted extensively from a Texas opinion to make a point no less applicable to Mississippi:

> "Since the right to organize and maintain a political party is one guaranteed by the Bill of Rights of this State, it follows that every privilege essential or reasonably appropriate to the exercise of that right is likewise guaranteed,—including, of course, the privilege of determining the policy of the party and its membership."[87]

In a later decision, *Terry* v. *Adams*, the Supreme Court refused to allow the evasion of the Constitutional responsi-

[86] 321 U.S. 649 (1944).

[87] *Id.*, at 655, quoting *Bell* v. *Hill*, 74 S.W. 2d 113, 120, 123 Tex. 531, 546 (1934).



bilities outlined in *Smith* v. *Allwright*. Since its own primaries were subject to state regulation and therefore to Constitutional requirements, the Democratic Party of Texas had simply ratified the results of the primaries of the Jaybird Party which claimed the right to exclude Negroes, having declared itself a voluntary club. The Supreme Court pierced the facade and found that the real purpose of the Texas Democratic Party, not unlike that of the Mississippi Democratic Party here, was to "strip Negroes of every vestige of influence in selecting officials who control the local county matters that intimately touch the lives of citizens."[88]

No stronger case for unseating a delegation from a state party committed to racial segregation can be found than these words from the Supreme Court in the *Allwright* opinion:

> "The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any State because of race. This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied."[89]

The Supreme Court's decisive language is a mandate that the "traditional" Mississippi delegation be unseated for its participation in discriminatory practices that rob Negroes of the franchise.

[88] 345 U.S. 461, 470 (1953).

[89] *Smith* v. *Allwright*, 321 U.S. 649, 664 (1944).

B. *The "Traditional" Party and Its Convention Are Regulated in Detail By the State and Its Actions in Excluding Negroes Are State Action in Violation of the Fourteenth Amendment.*

The State of Mississippi not only regulates party primaries, but also provides an extensive scheme for the regulation of the internal affairs of political parties and their state conventions.[90] Significantly, this scheme of state control is not at the mere suffrance of the legislature, but is a constitutional duty imposed by Article 12 of the Mississippi Constitution, which requires in Section 24 that:

> "The legislature shall enact laws to secure fairness in party primary elections, conventions, and other methods of naming party candidates."

Using its authority under this section, the Mississippi legislature has declared that "It shall be unlawful for any person or group of persons to set up or establish any political party in this state, except in the manner provided by the laws of this state . . ."[91] When this section is read together with the quoted section of the Mississippi Constitution, the conclusion is unavoidable that the state has undertaken to regulate political parties, thereby creating a relationship between state and party not unlike that recognized between state and primary in the cases that have come before the Supreme Court.[92]

The type of state regulation prescribed for political parties and state conventions closely parallels legislation regulating state primaries. A party must register with the

[90] See *Mississippi Code*, § 3105 et seq.

[91] *Mississippi Code*, § 3107-06.

[92] See n. 85 and pp. 47 to 49, *infra*.



state before it can conduct primaries or elections.[93] A wealth of detailed regulations surrounds the election of the state, district, and county committees of a party as well as the party convention itself.[94] The statute, for example, prescribes the mode of selection of delegates, the number of votes each county has at the convention, the apportionment of delegates, etc.[95] Whenever the statute requires the convening of the electors of the party, its language belies an interpretation condoning exclusion.[96] The barring of Negroes from the state convention is thus at odds with Mississippi law. And the extensive state regulation of the "traditional" state Democratic Party would, if followed, free a body intimately and officially tied in with voting rights from the unfairness that would and has tainted the electoral process in violation of the Fifteenth Amendment.

It is more than coincidental that the type of state regulation prescribed for political parties and state conventions in Mississippi closely parallels legislation regulating state primaries in Mississippi and the rest of the country. For the purpose of both kinds of legislation is precisely the same—to insure fairness in the pre-election procedure so that free elections will not be subverted somewhere early in the process. What has been said of the state's relation

[93] *Mississippi Code*, § 3107-03.

[94] *Id.*, § 3107.

[95] *Ibid.*

[96] For example, Sec. 3154, providing for the election of municipal executive committees mandates that the chairman of the county executive committee "shall . . . call a mass meeting of the electors of their political faith," and Sec. 3155 requires publication of that call, for a three-week period preceding the mass meeting, apparently to assure the largest representation.

to party primaries is equally applicable to the convention situation:

> "Under the holding in *Smith* v. *Allwright,* any statutory regulation or recognition of a primary election would seem to be sufficient to warrant the conclusion that the state had taken the party and its officials as their agents in the conduct of a necessary part of the whole electoral process, and as a matter of public policy had elected to treat the party primary as a legitimate part of that process.[97]

Whether or not the exclusion is from primaries or from the convention of the chief political organ of the state, the result is the same—ostracism from political activity based solely on race. The Democratic National Convention should not ratify the unconstitutional practices of the State of Mississippi by seating delegates whose position in their state and Party flows from layers of unconstitutional conduct, and who are pledged to continue the subjugation of a people in violation both of the Constitution and the law.

* * * * * * *

It is no answer to this fundamental legal and Constitutional argument to suggest that it might also be applicable to one or more other southern states. To begin with, there are no contesting delegations in any of the other southern states. Furthermore, Mississippi "is not like any place else."[98] Its exclusion process—from registration, from precinct conventions, from county conventions, from the state convention—is so complete that *not a single Negro*

[97] *Annotation,* 151 A.L.R. 1121, 1122.

[98] *Special Report, Southern Regional Council, Law Enforcement in Mississippi,* July 14, 1964, p. 6.



*was permitted in the state convention which elected the delegates to Atlantic City.* In other words, Mississippi Negroes were not merely hampered in joining in the selection of delegates to this Convention; they were totally excluded from the process of choice. Not only in this respect, but also in the state-wide and unending harassment and terror used to keep Negroes from the polling booth, Mississippi differs from other southern states.

Finally, it should never be forgotten that it is a crime to exclude Negroes from voting.[99] The "traditional" delegation to this Convention is part and parcel of a conspiracy to commit that crime. While criminal action is not possible in Mississippi because white juries will not convict white men for excluding Negroes from political processes, it is a totally different thing for delegates at this Convention to condone these felonies. This Convention would, indeed, be compounding a felony if it were to seat the "traditional" delegation and turn away the Mississippi Freedom Democratic Party.

## III

### Any Fair Comparison of the Two Parties Can, in Law and in Equity, Lead Only to the Seating of the Delegation Representing the Freedom Party.

As has been pointed out earlier, Mississippi is not like any place else, and that is the starting point of any legal analysis of the relative merits of the two delegations.

In order to illustrate this point, let us take a hypothetical case. Suppose Senator John Doe of State X, leading a conservative delegation to the Democratic National Convention, was challenged by a liberal delegation headed by Governor Richard Roe. The Convention would have little

[99] 18 U.S.C. §§ 241, 242.

difficulty in finding a standard to use in determining which of the two delegations to seat. The standard could only be: "Which of the delegations better represents the registered Democratic voters of State X?" Since State X has a primary election for delegates to the National Conventions, all that the Democratic National Convention would have to do would be to determine which group was elected in the Democratic primary. And the same situation would apply in State Y where two delegations were sent to the Democratic National Convention representing rival state conventions—the question would be which of those two state conventions better represented the registered Democrats of State Y?

But this test simply does not work in Mississippi. Over forty per cent of the population, *the group most likely to support the nominees of this Convention,* has been excluded from the "traditional" Party and thus from the political processes of the State of Mississippi. The "traditional" Party cannot ask this Convention to use the test as to who represents the registered Democratic voters of Mississippi when it has itself blocked the Negroes represented by the Freedom Party from becoming registered voters. In more legal terms, the "traditional" Party is estopped from contending that Freedom Party people are not registered voters when it is solely responsible for their not being registered.

What then should be the standard to determine which of the two competing Mississippi groups is to be seated at this Convention? Based on the legal precedents available and applying them to a situation where one of the contesting groups is excluded from the other contesting group, the following standard should govern: Where two groups, each representing a substantial number of Democratic voters or potential Democratic voters, appear at the Convention and ask to be seated, the Convention should choose that group which exhibits good faith to the National Party and carries on its activities fairly and openly. Or, to couch this standard in terms of paragraph (2) of the rules discussed earlier (pp. 43 to 46, *supra*), the Convention should choose that group which has "the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith. . . ."



It is clear, of course, that the Freedom Party does represent a substantial number of actual and potential Democratic voters. Its registration of over 50,000 persons accomplished in the face of harassment and terror is a remarkable achievement, and there can be little doubt that the Party actually represents the full Negro potential vote of 435,000 Mississippi Negro citizens, as well as at least some white citizens. The ability of the Freedom Party to carry on precinct meetings and county conventions throughout the State and to carry on a state convention in the face of this same harassment and terror demonstrates the great depth of feeling for the Freedom Party among the Negroes of Mississippi. Its Statement of Loyalty (p. 19, *supra*) and its other activities demonstrate that it has the ability and the intention to operate in accordance with the rules of the National Party. In a word, *it is not a paper party;* it is a real party with a great potential for the future. It is the only hope for the National Democratic Party in Mississippi.

Two points remain to be developed. First, the legal precedents do in fact support the proposition that the Convention should choose the group which exhibits good faith to the National Party and carries on its activities fairly and openly. Second, applying such a standard, the Convention must choose the delegation representing the Freedom Party.