06-766 NEW YORK BOARD OF ELECTIONS V. TORRES

DECISION BELOW:462 F3d 161

LOWER COURT CASE NUMBER: 06-0635-cv

QUESTIONS PRESENTED:
1. In American Party of Texas v. White, 415 U.S. 767 (1974), this Court held that it is "too plain for argument" that a State may require intraparty competition to be resolved either by convention or primary. Did the Second Circuit run afoul of White by mandating a primary in lieu of a party convention for the nomination of candidates for New York State trial judge?

2. What is the appropriate scope of First Amendment rights of voters and candidates within the arena of intraparty competition, and particularly where the State has chosen a party convention instead of a primary as the nominating process?

(a) Did the Second Circuit err, as a threshold matter, in applying this Court's decision in Storer v. Brown, 415 U.S. 724 (1974) and related ballot access cases, which were concerned with the dangers of "freezing out" minor party and non-party candidates, to internal party contests?

(b) If Storer does apply, did the Second Circuit run afoul of Storer in holding that voters and candidates are entitled to a "realistic opportunity to participate" in the party's nomination process as measured by whether a "challenger candidate" could compete effectively against the party-backed candidate?

3. In Bachur v. Democratic National Party, 836 F.2d 837 (4th Cir. 1987) and Ripon Society v. National Republican Party, 525 F.2d 567 (D.C.. Cir. 1975) (en banc) the Fourth and D.C. Circuits applied a rational basis balancing test to weigh the co-equal, but competing First Amendment rights of political parties in setting delegate selection rules against those of voters and candidates. Did the Second Circuit err in preferring the First Amendment rights of voters and candidates by first determining that New York's convention system severely burdened those rights and then subjecting the party's rights to strict scrutiny review?

CERT. GRANTED 2/20/2007