STATE OF TENNESSEE
OFFICE OF THE
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November 19, 2013

Opinion No. 13-90

Enforceability of Private Act Creating DeKalb County Democratic Party Executive Committee

QUESTION

Is 1949 Tenn. Priv. Acts, ch. 771, as amended by 1972 Tenn. Priv. Acts, ch. 374 (the "Act"), creating the DeKalb County Democratic Party Executive Committee, enforceable?

OPINION

No, this statute unconstitutionally burdens the associational rights of the Tennessee Democratic Party and its members in DeKalb County and therefore is unenforceable.

ANALYSIS

Section 1 of Chapter 771 of the 1949 Tennessee Private Acts, as amended by Chapter 374 of the 1972 Tennessee Private Acts, provides in relevant part:

> That there is hereby created and established in DeKalb County, Tennessee, a Democratic Party Executive Committee, consisting of forty (40) members, to be elected along with, and on the same ballot, as the State Democratic Primary Election is held in August, 1972, and each two (2) years thereafter, from the nineteen voting precincts in DeKalb County, Tennessee, the designation of the precincts, and the number of Executive Committeemen or Committeewomen to be elected from each such precinct being as follows [listing nineteen precincts and the number of members to be elected from each]:
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> . . . .
>
> Said committeemen or committeewomen shall qualify to have their names placed upon the official ballot in the said August, 1972 election by filing a petition in the time, and manner, as provided by general law for candidates to qualify in the State Primary Elections to be held in August of 1972, and succeeding state elections, and each of said committeemen and/or committeewomen shall serve for a period of two (2) years from September 1, 1972, and until their successors are elected. Each subsequent election for a two-year period shall be held each two years in the same way and manner as the first

> election hereinbefore provided, and qualifications, and the way and manner of qualifying to run as candidates in said election, shall likewise be the same as for the first two-year period.
>
> The members of the Democratic Party Executive Committee who are now serving under the provisions of Chapter No. 771 of the Private Acts of 1949 shall continue to hold office, and serve in this capacity, until September 1, 1972, following the August, 1972 election of new members under this Act, and/or until the new members are qualified.

Section 2 of the Act provides:

> That said Democratic Party Executive Committee shall be the general governing and controlling body for the management of the party affairs of the Democratic party within said County, and shall be vested with all the powers and operated with all the duties now prescribed by law for such Democratic Executive Committees.

The opinion request advises that the boundaries of the precincts listed in the Act can no longer be ascertained and that no required election has been held in recent years. Further, the request notes that the Act does not require reapportionment as the DeKalb County population changes. The request asks whether, in light of these problems, the Act is enforceable.

A political party's "determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the [United States] Constitution." *Tashjian v. Republican Party of Conn.,* 479 U.S. 208, 224 (1986). In *Eu v. San Francisco County Democratic Cent. Comm.,* 489 U.S. 214 (1989), the United States Supreme Court found unconstitutional several California statutes restricting the organization and composition of state central political party committees, the limits on the term of office for the state central committee chair, and the requirement that the chair rotate between residents of northern and southern California. *Eu*, 489 U.S. at 229-33. The Court found that each of these restrictions limited a political party's discretion in how to organize itself, conduct its affairs, and select its leaders. *Id.* at 230. The Court found that because these were constitutionally protected associational rights, the State of California's restrictions could only be upheld if they served a compelling state interest. *Id.* at 231. The Court found that California had not shown that its "regulation of internal party governance is necessary to the integrity of the electoral process." *Id.* at 232. The Court therefore rejected California's claim that the restrictions served a compelling interest in the democratic management of the political party's internal affairs or in limiting regional friction. *Id.* at 232-33.

Under the Act, the General Assembly directed that the DeKalb County Democratic Executive Committee have forty members elected in the democratic primary from a list of precincts, some of which apparently no longer exist. Members must be elected to two-year terms. The Act thus sets the size of a single county executive party committee, the method by which its members must be elected, and the terms they must serve. The Act clearly imposes

restrictions limiting the Tennessee Democratic Party's discretion in how to organize itself, conduct its own affairs, and select its leaders in DeKalb County. This Office is unable to identify any compelling State interest "necessary to the integrity of the electoral process" that these restrictions serve. *See Eu*, 489 U.S. at 232. For this reason, the Act unconstitutionally burdens the associational rights of the Tennessee Democratic Party and its members in DeKalb County and is unenforceable.

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