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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT, FOURTH DIVISION

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GREGORY BLACKSHIRE, et al.,	)	Appeal from the Circuit
	)	Court of Cook County,
Plaintiffs-Appellees,	)	Illinois, County
	)	Department,
v.	)	Chancery Division
	)	
NATIONAL ASSOCIATION FOR THE	)	No. 94 CH 10461
ADVANCEMENT OF COLORED	)	
PEOPLE, INC., et al.,	)	
	)	Honorable Aaron Jaffe
Defendants-Appellants.	)	Presiding

BRIEF AND ARGUMENT OF DEFENDANTS-APPELLANTS

Oral Argument Requested

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## **INTRODUCTION**

Plaintiffs brought this breach of contract action, seeking an injunction ordering defendants National Association for the Advancement of Colored People, Inc. ("NAACP") and the NAACP Southside Branch ("Southside Branch") to permit several thousand youth members to vote in a scheduled Southside Branch election of officers. The trial court entered judgment for plaintiffs, ordering NAACP to permit the youth members to vote in that election. This Court stayed that order pending appeal. No questions are raised on the pleadings.

## **ISSUES PRESENTED FOR REVIEW**

1. Whether the trial court properly issued an injunction regulating the NAACP's election of officers without first requiring plaintiffs to pursue the exclusive internal remedies set forth in the NAACP's constitution and bylaws.

2. Whether the trial court erred in holding that the NAACP's Constitution "clearly" entitles members who purchase only a three-dollar youth membership, rather than a ten-dollar adult membership, to vote in Branch officer elections, where

a. no constitutional provision expressly addresses whether three-dollar youth members may vote in Branch officer elections;

b. the NAACP's national Board of Directors reasonably interpreted the NAACP's Constitution to require the purchase of a ten-dollar adult membership to be eligible to vote in Branch officer elections; and

c. the NAACP has never permitted three-dollar youth members to vote in Branch officer elections.

## **JURISDICTION**

Pursuant to Supreme Court Rules 301 and 304, this Court has jurisdiction over this appeal from a final judgment entered by the trial court on March 21, 1995. C. 178. A notice of appeal was filed on April 13, 1995. C. 187.

## STATEMENT OF FACTS

Parties. Defendant NAACP is an incorporated voluntary association organized under the laws of the State of New York. C. 58, 78.<sup>1/</sup> Defendant Southside Branch is an unincorporated, voluntary association that is a constituent and subordinate unit of the NAACP. C. 81. Plaintiff Earl King is an adult member of the NAACP. Plaintiffs Gregory Blackshire, Milton Mosley, Marvin Mosley, Devon Hill, Christopher Jones, and Mark Barksdale are youth members of the NAACP. C. 3.

Authority of the Board of Directors. The Constitution of the NAACP ("National Constitution") (C. 57) expressly authorizes the NAACP's national Board of Directors to manage the affairs of the organization and to "[e]stablish all major administrative and other policies governing [its] affairs." C. 60. The Board has the power to prescribe minimum membership fees, along with "the power to create such additional categories of membership and establish such fees as it may deem desirable." C. 59, 82. The Board is also responsible for "defini[ng]" "the principles, aims and purposes" of the NAACP with reference to the National and Branch Constitutions, and is the final adjudicator of matter of membership status and discipline. C. 99.

Classes of Membership. There are two basic classes of membership in the NAACP, exclusive of various life memberships and literature subscriptions not pertinent here. C. 96-97. First,

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<sup>1/</sup> C. refers to volume one of the record; T. refers to volume two.

there are basic ten-dollar adult memberships, required of all persons 21 or older. C. 96. Second, there are three-dollar youth memberships, which are available only to persons under 21 years of age. Id.

The Senior Branch is the local group organization for adult members of the NAACP. The NAACP has more than 1600 Senior Branches throughout the United States, including the Southside Branch. The Branch Constitution (C. 80) sets out the rules governing the Senior Branches, including their election of officers.

The NAACP also has about 650 Youth Councils, which provide opportunities for younger members to participate in the organization and to elect delegates to local bodies and the NAACP Annual Convention. C. 234-235.<sup>2/</sup> The Branch Constitution expressly distinguishes between the Senior Branches and the Youth Councils: "Youth Councils and Senior Branches have coordinate status within the Association's framework." C. 102. Each Senior Branch in the vicinity of a Youth Council must appoint a Senior Advisor to the Council. Id. Branch membership records are kept separate from Youth Council membership records. C. 90; T. 158. Because the policies and interests of Senior Branches and Youth Councils may diverge, the Branch Constitution sets forth a specific process for resolving disputes between a Branch and a Youth Council. Id.

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<sup>2/</sup> The NAACP also has college and high school chapters, not directly pertinent here.

Branches and Youth Councils vote separately to elect their own delegates to the Annual Convention (C. 66-67), they vote separately on proposed policy changes at separate legislative meetings (C. 66), and they vote separately in referenda if the Board disapproves Convention actions (id.). In addition to the leadership and delegate positions apportioned to the Youth Councils, several seats on the national Board are set aside to be nominated and filled by youth members. C. 61.

Eligibility to Vote. The Branch Constitution states that "[m]embers in good standing" are eligible to vote in a Branch election. C. 93. A "member in good standing" is defined as a "bona fide member of the Branch" 30 days prior to the election, and is defined further as "one who has paid the requisite minimum membership fee to the Branch." Id. Article V, Section 12, which has engendered the present controversy, states that "[t]he minimum voting age for any member in good standing in Branch elections shall be 17 years. Where there is an active Youth Council (25 members or more) members 17-20 years of age can vote in the Youth Council or the Branch." C. 93-94.

On October 15, 1994 the NAACP's national Board of Directors interpreted Article V, Section 12 as follows: "Should a youth choose to participate in a Branch election, said youth must pay the minimum adult membership." C. 106 (emphasis in original). That

interpretation was set forth in a memorandum to the Branches, Youth Councils, and College Chapters on October 21, 1994.<sup>3/</sup>

The Southside Branch Election. The Southside Branch was scheduled to hold officer elections on November 19, 1994. In accordance with the constitutional provisions outlined above, only Branch members in good standing as of October 19, 1994 would be eligible to vote. Southside Branch officers planned to stop accepting applications at 8 o'clock p.m. on October 19. Shortly before 8 o'clock p.m., plaintiff Earl King, a candidate for Branch president, arrived at the Southside Branch's office and submitted over 3,000 youth membership applications, each with a three-dollar youth membership fee. King claimed, contrary to the October 15 interpretation of the Board of Directors, that the 3,000 youths, who included the other six plaintiffs in this case, were eligible to vote in the November 19 election. C. 7, 171-172; T. 15, 168.<sup>4/</sup> When informed that the youths were ineligible to vote in the Branch officer elections because they had not paid an adult membership fee, plaintiffs filed this law suit, alleging breach of contract and violations of the Illinois Constitution.<sup>5/</sup> On November 18, 1994 the trial court granted plaintiffs a temporary restraining

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<sup>3/</sup> The Board was prompted to interpret Section 12 by a dispute in the Maryland courts similar to the one here. See C. 201.

<sup>4/</sup> Plaintiffs acknowledge that the new memberships submitted by King constituted, at that time, a majority of the Southside Branch. T. 96. Thus, King was seeking to guarantee his election as president.

<sup>5/</sup> The constitutional allegations were later dismissed. C. 178.

order, staying the election pending disposition of their complaint.  
C. 42.

Past Practice. At a January 10, 1995 "trial" at which the trial judge accepted only proffers from counsel as to testimony that proposed witnesses would have provided, uncontroverted evidence showed that Youth members had never been allowed to vote in elections for officers in the Southside Branch or other Senior Branches. Indeed, the proffered testimony demonstrating NAACP's historic policy of distinguishing between the voting rights of three-dollar and ten-dollar members was voluminous:

Cleopatra Robinson, secretary of the Southside Branch and a member since the 1950s, would have testified that members who had not paid adult membership fees had never been allowed to vote in Branch elections and had never even been sent notices of elections. T. 159.

Charles Davis, a former secretary and election supervisory committee chairman of the Southside Branch, would have testified that in his 35 years of Branch membership the roster of members eligible to vote "has never included the roster of the NAACP Chicago branch youth council" because youth council members "are not considered members in good standing of the branch." Rather, only those who had paid for a ten-dollar membership had ever been considered members in good standing for purposes of voting in Branch elections. T. 163-164.

Sid Finley, a Branch member for 50 years and former Executive Director, would have testified that three-dollar youth members had never been allowed to vote in Branch, as opposed to Youth Council, elections. T. 166.

Ernestine Brown, a Branch member since 1958 and former Youth Council advisor, would have testified that "[i]n the history of my working in the organization, youth council do not vote in the adult branch." T. 127.

Pennson Whatley would have testified that after he had become a three-dollar youth member of the Southside Branch at Chicago State University, he paid ten dollars to become an adult member in September 1994 because then

Executive Director Sid Finley told him that an adult membership was necessary in order to vote and fully participate in the Branch elections. T. 128-129.

Dennis Hayes, NAACP's General Counsel, would have testified that the Board of Directors' October 1994 interpretation of the Constitution to require a ten-dollar membership in order to vote was consistent with decisions made earlier at Board meetings in 1991 and 1992. T. 172.

Plaintiffs offered no testimony to support their allegation (C. 4) that prior to October 1994 three-dollar youth members were permitted to vote in Branch elections.

Internal Remedies. The NAACP provides a variety of administrative remedies for challenging the conduct or results of Branch elections, both before and after an election takes place.

First, under Article V, Section 16 of the Branch Constitution, at any time in the three months preceding a Branch election members may petition the National Office to intervene in the election process, and the National Office has the authority to suspend an election or take other corrective action. C. 95. Plaintiffs did not utilize this internal avenue of relief.

Second, NAACP's Manual on Branch Election Procedure provides that persons wishing to vote in a Branch election but who are not on the roster of eligible voters may cast "challenged ballots." These challenged ballots are placed in a blank envelope and sealed, preserving the challengers' votes in the event their right to vote is upheld after the election. C. 226-227. Plaintiffs did not utilize this challenged ballot procedure.

Third, under Article V, Section 15 of the Branch Constitution, up until five days following a Branch election members may submit

formal complaints to the National Office regarding the conduct of elections, and the National Office has the authority to order a new election. C. 94. In fact, this procedure was used to have a Southside Branch election voided in 1984. C. 164. Plaintiffs did not utilize this internal avenue of relief.

Moreover, the Branch Constitution highlights the paramount importance that the NAACP places on members' using these internal remedies before taking their disputes to court. A member who "resort[s] to civil litigation without having pursued the remedies within the framework of the Association" engages in "conduct not in accord with the principles, aims and purposes" of the NAACP. C. 99. Indeed, such circumvention of the NAACP governing structure in favor of resort to the courts merits expulsion from the organization. Id.

The Chancery Court's Orders. On March 15, the trial court entered a Memorandum Opinion and Order, permanently enjoining the NAACP and the Southside Branch from denying three-dollar youth members the right to vote in the Branch election of officers. C. 171. The court held, as a matter of contract law, that the constitutional provisions "clearly" demonstrate the entitlement of three-dollar youth members to vote. C. 174.

The court gave no consideration to (and in fact did not mention) the past practice of the Southside Branch or other Senior Branches with regard to allowing such members to vote. Nor did it give any weight to the Board of Directors' October 15 interpretation of Article V, Section 12, instead finding that

interpretation "suspect" because notice of it was not sent out until October 21. C. 175.

In addition, the court held that the general requirement that internal remedies be exhausted prior to litigation "is not applicable to the case at hand" because the grievance procedure set forth in Article V, Section 15 is "inherently flawed" for two reasons. First, it "only applies to post election controversies, not pre-election controversies." C. 176. (The court did not mention Section 16's authorization of pre-election intervention by the National Office, nor the challenged ballot procedure to contest voting ineligibility, discussed supra p. 8.) Second, because Section 15 requires that a post-election complaint in large branches be signed by at least 25 members (C. 94), plaintiffs could not bring such a complaint "without successfully recruiting additional members." C. 176. Requiring plaintiffs to exhaust such procedures, the court concluded, would unfairly "penaliz[e]" them. Id.

On March 21, 1995 the trial court issued an Injunction Order, rescheduling the Southside Branch officers elections to April 29, 1995, and adding all those who were three-dollar youth members as of October 19, 1994 to the list of eligible voters. On April 20, 1995 the trial court denied NAACP's motion for a stay of the election pending appeal. C. 241. On April 28, 1995 this Court granted a stay of the trial court's Injunction Order.6/

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6/ This Court's stay order is attached hereto in the Appendix beginning on page A-16.

## ARGUMENT

Alexis de Tocqueville's comment a century and a half ago that "Americans of all ages, all stations in life, and all types of disposition are forever forming associations" (Democracy in America 485 (J. Mayer & M. Lerner, eds. 1966)) rings even more true today. The Encyclopedia of Associations lists 22,000 private associations at the national level, but a fraction of the vast number of local and regional associations. 1 Encyclopedia of Associations (1995). Seven out of ten Americans belong to at least one association. Id. The millions of disputes emanating from such associations would, absent Illinois' well-established principle of judicial nonintervention in their internal affairs, engulf the courts of this state with a flood of such squabbles.

This case involves unwarranted judicial intervention into the internal affairs of the Southside Branch of the NAACP -- a voluntary private association -- in derogation of its past practices, its authorized interpretations of its own rules, and its provision of internal administrative remedies for internal disputes. The trial court's intrusion into the Southside Branch election was particularly inappropriate before the election had been held and before plaintiffs made any attempt to utilize the available internal remedies.

Because the trial court ruled that plaintiffs were entitled to an injunction as a matter of contract law, the standard of appellate review is de novo. Bank of Ravenswood v. Polan, 256 Ill. App. 3d 470, 474 (1st Dist. 1993), app. denied, 155 Ill. 2d 561

(1994); Zale Constr. Co. v. Hoffman, 145 Ill. App. 3d 235, 240 (1st Dist. 1986). The injunction order should be reversed because the court impermissibly imposed its own view of the NAACP's constitution, overriding the reasonable interpretation of the elected NAACP leaders who are authorized to construe and implement the NAACP's constitutional principles and policies, ignoring the NAACP's past practice which is perfectly consistent with that interpretation, and relieving plaintiffs of the obligation to exhaust internal remedies before resorting to litigation.

**I. THE TRIAL COURT IMPERMISSIBLY INTERVENED IN THE INTERNAL AFFAIRS OF THE NAACP ON BEHALF OF PLAINTIFFS WHO FAILED TO EXHAUST THEIR INTERNAL REMEDIES**

The trial court's injunction regulating the Southside Branch's election of officers improperly interfered with the internal affairs of a private association, in conflict with well-recognized legal principles. First, the internal disputes of private associations are not justiciable absent a violation of a civil or property right. No such violation occurred in this case. Second, even where access to the courts is otherwise appropriate, it is barred unless plaintiffs first exhaust all internal remedies afforded by the association. Plaintiffs did not exhaust or even pursue the remedies afforded by the NAACP and Southside Branch. Third, courts should defer to reasonable constructions of an association's constitution or bylaws by the association's authorized leadership. In this case, the NAACP's Board of Directors' construction of the organization's constitution was reasonable and consistent with the NAACP's past practice.

**A. Courts Should Not Interfere In The Internal Affairs Of A Voluntary Association Absent A Violation of Civil Or Property Rights**

It has long been the rule in Illinois that, with only limited exceptions, "an association will be left free to enforce its own rules and regulations as it sees fit." Ginossi v. Samatos, 3 Ill. App. 2d 514, 525 (1st Dist. 1954); accord Hill v. Mercury Records Corp., 26 Ill. App. 2d 350, 356 (1st Dist. 1960).<sup>7/</sup> As one court put it, "It is well established that courts will not interfere with the internal affairs of voluntary associations, except in such cases as fraud or lack of jurisdiction." Proulx v. Illinois High Sch. Ass'n, 125 Ill. App. 3d 781, 787 (4th Dist. 1984) (internal quotes and citations omitted). See also Treister v. American Academy of Orthopaedic Surgeons, 78 Ill. App. 3d 746, 755 (1st Dist. 1979) (recognizing "the necessity of judicial restraint from interfering with or regulating the affairs and decisions of a

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<sup>7/</sup> Because the injunction regulates the elections of the Southside Branch, an Illinois association, Illinois common law applies. Although "the incorporation of a non-profit-making association does not put its members in a materially different situation" (Chafee, The Internal Affairs of Associations Not for Profit, 43 Harv. L. Rev. 993, 997 (1930)), it might be argued that New York law would apply to the NAACP (but not the Southside Branch) because the national organization is a corporation organized under the laws of New York. The trial court did not rely on any principles of New York law, however, and plaintiffs pressed none. Moreover, the central issues in this case concern the extent to which Illinois courts may interfere in the internal affairs of private membership organizations. In any event, New York courts uphold the principle of judicial non-interference into the affairs of incorporated organizations similar to the NAACP. See In re Election of the Officers and Directors of F.I.G.H.T., 360 N.Y.S.2d 564, 569 (Sup. 1974) (noting that the court was "not dealing with a stock corporation or one organized for profit," and that the "avowed purposed of FIGHT to unify the black people of Rochester would not be served by the court's intervention").

private, voluntary association"), app. denied, 79 Ill. 2d 630 (1980).

Federal courts in Illinois have also recognized that Illinois law requires courts to be "liberal in their treatment of private associations, leaving the members to arrange their affairs as they choose." Parsons College v. North Central Ass'n of Colleges and Secondary Sch., 271 F. Supp. 65, 70 (N.D. Ill. 1967); Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 542 (7th Cir.) ("courts are generally not available to an association or its members to review actions of a voluntary association with respect to its own members"), cert. denied, 439 U.S. 876 (1978).

Courts in other jurisdictions, too, uphold this longstanding general presumption against judicial encroachment into the domain of private associations. E.g., Black v. Fox Hills N. Community Ass'n, 599 A.2d 1228, 1231 (Md. App. 1992); Harden v. Colonial Country Club, 634 S.W.2d 56, 60 (Tex. App. 1982) ("policy of non-intervention in the affairs of private, non-profit associations" is "wise and necessary"); Sims v. Ransom, 67 N.Y.S.2d 416, 417 (Sup. 1946) (noting "extreme reluctance of courts to interfere in the internal affairs of private associations").

That rule of judicial restraint applies, with particular relevance to this case, to challenges to the enforcement of an association's constitution or bylaws. As the Illinois Supreme Court has put it, courts will generally "not intervene in questions involving the enforcement of bylaws and matters of discipline in voluntary associations." American Fed'n of Technical Eng'rs v. La

Jeunesse, 63 Ill.2d 263, 268 (1976); accord Werner v. International Ass'n of Machinists, 11 Ill. App. 2d 258, 272-273 (2d Dist. 1956); California Trial Lawyers Ass'n v. Superior Court, 231 Cal. Rptr. 725, 729 (App. 1986) (cautioning "against judicial involvement in controversies requiring the interpretation of bylaws"). The Illinois Supreme Court's long-established rule is that "[c]ourts will not interfere to control the enforcement of by-laws of such associations; but they will be left free to enforce their own rules and regulations by such means, and with such penalties as they may see proper to adopt for their government." Engel v. Walsh, 258 Ill. 98, 103 (1913).

The general rule against judicial intrusion into the internal affairs of private associations applies as long as no "civil or property rights" of an association's members are at stake. Ginossi, 3 Ill. App. 2d at 525-526 (court has no jurisdiction to interfere in internal affairs of private association "in the absence of violations of civil or property rights"); Hill, 26 Ill. App. 2d at 356 (judicial interference is inappropriate where "no property or civil rights are invaded"); Dallas Athletic Club Protective Comm. v. Dallas Athletic Club, 407 S.W.2d 849, 850 (Tex. Civ. App. 1966).

The right to participate in a private organization's elections or hold elective office is not a civil or property right guaranteed by the courts. Illinois ex rel. Michajlowski v. Tanaschuk, 317 Ill. App. 130, 145 (1st Dist. 1942) (holding church office is not a civil or property right); Talton v. Behncke, 199 F.2d 471, 474

(7th Cir. 1952) (labor union president lost no "property" when he was recalled from office). Rather, it is but a "political right incident to the privilege of membership." Indiana ex rel. Givens v. Superior Court, 117 N.E.2d 553, 555-556 (Ind. 1954); see also Kenneck v. Pennock, 157 A. 613 (1931). A court of equity thus lacks power to restrain or compel the officers of a voluntary private association in the exercise of their powers to hold internal elections. Givens, 117 N.E.2d at 555. The presumption against interfering with private associations is at its strongest when the judicial power is invoked to displace a group's self-governance.

Indeed, plaintiffs alleged injuries only to their status within the Southside Branch; they did not (and could not) allege any deprivation of the ability to vote for officers of and representatives from the Youth Councils to which their memberships were properly assigned. Their claim to a ballot in a private group's election simply is not the kind of right that can support an injunction. Because, then, plaintiffs have no civil or property right at stake, but only a complaint about the conduct of NAACP's internal elections, judicial intrusion is not warranted. See Proulx, 125 Ill. App. 3d at 786-787 (reversing preliminary injunction against voluntary association because plaintiffs' alleged "right" to participate in interscholastic athletics is not a "protectable right").

There are at least two strong rationales for this rule of judicial restraint. To begin with, "courts lack the expertise to

review the judgments of private associations." Trefny, Comment, Judicial Intervention in Admission Decisions of Private Professional Associations, 49 U. Chi. L. Rev. 840, 843 (1982). Judicial attempts to construe rules and laws of private organizations -- often arcane or charged with historic and particularized meaning -- may lead courts into what Professor Chafee called the "dismal swamp." Chafee, supra n. 6, at 1024. Another important reason for the rule is that organizations like the NAACP and the Southside Branch are voluntary associations. Members who are unhappy with decisions of the NAACP's Board of Directors, with the NAACP's interpretation of its constitution, or with the conduct of its elections are free, if they choose not to work for their desired changes within the organization, to leave and start or join another organization. Thus, "the judiciary `must refrain from interfering in the affairs of a private association absent a showing of economic necessity'" that compels a member to participate in the organization. Nicholson v. Chicago Bar Ass'n, 233 Ill. App. 3d 1040, 1046 (1st Dist.), app. denied, 147 Ill. 2d 629 (1992), quoting Treister, 78 Ill. App. 3d at 755. Because plaintiffs did not and could not allege any such economic necessity, and because they had no civil or property rights at stake, they were not entitled to judicial relief.

**B. The Injunction Order Was Improper Because Plaintiffs Failed to Exhaust Their Internal Remedies**

Even if the trial court was not wholly without power to enjoin the NAACP and the Southside Branch, the court committed "serious

error" by "extend[ing] the scope of judicial review too far into the internal domain of private associations." National Ass'n of Sporting Goods Wholesalers, Inc. v. F.T.L. Marketing Corp., 779 F.2d 1281, 1286 (7th Cir. 1985) (applying Illinois law). The deeply rooted requirement that members of a private association must exhaust their internal remedies before seeking judicial relief applies with even more than the usual -- and controlling -- force in the circumstances of this case.

It is settled law in Illinois that "members of voluntary associations are required to exhaust their internal remedies prior to instituting legal action." Logan v. 3750 N. Lake Shore. Dr., Inc., 17 Ill. App. 3d 584, 587 (1st Dist. 1974); accord Local 165, IBEW v. Bradley, 149 Ill. App. 3d 193, 202 (1st Dist. 1986); Michel v. Carpenters' Dist. Council, 12 Ill. App. 2d 510, 513 (4th Dist. 1957); Tanaschuk, 317 Ill. App. at 146. Courts may not review actions of associations unless the complaining members first have availed themselves of all internal remedial avenues. Engel, 253 Ill. at 104. Whatever limited judicial review may be available to members of private associations, it certainly must follow, not precede, the remedies available within the organization. Local 165, 149 Ill. App. 3d at 202; Madden v. Atkins, 151 N.Y.S.2d 633, 638 (N.Y. 1958).8/

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8/ Exceptions to the exhaustion requirement, as to the general rule against judicial intervention in the affairs of voluntary associations, are limited to cases involving civil or property rights. E.g., Logan, 17 Ill. App. 3d at 588-590 (property right to sublet cooperative apartment); Ginossi, 3 Ill. App. 2d at 517 (recognizing exception for violation of "civil rights"). A  
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Indeed, "[t]he general rule requiring exhaustion of administrative remedies as a prerequisite to judicial relief applies with equal if not greater force to the administration of voluntary associations." Freeman v. Sports Car Club of America, Inc., 51 F.3d 1358, 1365 (7th Cir. 1995). There are several rationales for this requirement. First, even if the constitutions of private associations are deemed contracts, they "have been historically regarded as unique," imposing an obligation to attempt internal resolution before going to court. Bradley, 149 Ill. App. 3d at 202. By joining a voluntary association one has voluntarily agreed to resolve disputes through the machinery provided by the association. North Dakota v. North Central Ass'n of Colleges and Secondary Sch., 23 F. Supp. 694, 699 (E.D. Ill.), aff'd, 99 F.2d 697 (7th Cir. 1938). Courts should not be party to members' attempts to evade the procedures contained in and afforded by the very documents the members seek to enforce. In this case, where the Branch Constitution specifically proscribes resort to litigation without first having exhausted internal remedies (C. 99), plaintiffs are in an especially poor position to allege the inapplicability of the internal remedies.<sup>9/</sup>

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complaint regarding participation in an election of a private association does not implicate such rights and thus requires exhaustion of internal remedies before resort to the courts. Tanaschuk, 371 Ill. App. at 145.

<sup>9/</sup> Under the contract theory of Rotary Club v. Harry F. Shea & Co., 120 Ill. App. 3d 988 (1st Dist. 1983), relied on by the trial court, it was plaintiffs who violated their contractual obligations by failing to utilize the NAACP's internal procedures. See Sanjuan (continued...)

Second, an association can settle an internal controversy more expeditiously than a court. Logan, 17 Ill. App. 3d at 589. If plaintiffs had taken advantage of the remedies afforded by Sections 15 and 16 of Article V, this controversy might well be history.

Third, without the exhaustion requirement, state courts would be besieged with innumerable challenges by aggrieved members of the host of voluntary associations. See Proulx, 125 Ill. App. 3d at 788. Any softball team bench-warmer could haul his or her manager into court for violating perceived rights and misconstruing the team's bylaws. Thus, the exhaustion principle is solidly grounded in law and common sense as well as history, playing a vital role in preserving the autonomy of private associations.

The trial court found the exhaustion of remedies principle "not applicable" to this case, first, because the Branch Constitution supposedly provides only for post-election remedies.

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v. American Bd. of Psychiatry, 40 F.3d 247, 249 (7th Cir. 1994) (covenant not to sue professional association before utilizing internal procedures is enforceable under Illinois law). The court's conclusion, then, that the NAACP breached its contract with plaintiffs as a matter of law is obviated by plaintiffs' failure to perform their contractual duties. See George F. Mueller & Sons, Inc. v. Northern Ill. Gas Co., 32 Ill. App. 3d 249, 253 (1st Dist. 1975) ("for one to recover upon a contract, he must have performed his part of the contract").

Moreover, plaintiff King violated an express provision of the NAACP's written election materials. The Manual on Branch Election Procedure states that a "membership solicitor is required to turn in the membership as soon as possible in order to assure that the member receives the benefits of being a member." C. 232. By turning in over 3,000 ballots at the eleventh hour, King plainly failed to adhere to that straightforward and reasonable requirement.

C. 176. But the court did not so much as mention the pre-election remedies afforded by Article V, Section 16, remedies that were utilized successfully in 1984 (C. 164) but ignored by plaintiffs in this case. Plaintiffs cannot plausibly contend that they lacked sufficient time to seek National Office intervention before the scheduled election because it was plaintiffs' choice to submit several thousand applications at the eleventh hour and thereby constrain their pre-election options. The court also failed to consider the failure of plaintiffs to utilize the challenged ballot option (see supra p. 8), another internal means of relief that allows members deemed ineligible to vote to fill out and preserve their ballots.

The court's second basis for finding the exhaustion requirement "not applicable" was that the post-election remedy afforded by Article V, Section 15 was "inherently flawed" because the seven plaintiffs would have needed the signatures of 25 members to initiate National Office review. C. 176. Obtaining the necessary signatures, however, should hardly have been a problem in this case where over 3,000 members allegedly were aggrieved. Moreover, the court's position leads to absurd results: the more trivial the dispute, the easier access a member would have to the state courts, while those with ample support for their complaints would be required to utilize the administrative process required by the Branch Constitution. Under this "rule," all election disputes would be determined by the courts, as challengers could handpick 24 or fewer named plaintiffs in order to evade altogether the NAACP's

administrative remedies. That cannot be a proper application of the law.

The trial court ultimately based its judgment on one proposition: plaintiffs might not have been able to obtain the exact relief they wanted when they wanted it if they had proceeded through the available NAACP channels. Such an "injury" is not cognizable in a court of equity. Because plaintiffs did not exhaust their administrative remedies, the trial court's injunction was improper as a matter of law.

**II. THE TRIAL COURT ERRED IN RULING THAT THE NAACP CONSTITUTION "CLEARLY" ENTITLED PLAINTIFFS AND OTHER THREE-DOLLAR YOUTH MEMBERS TO VOTE IN THE BRANCH ELECTION**

The trial court erred as a matter of law in ruling that the Branch Constitution, which says not a word about whether three-dollar youth members can vote in Branch elections, "clearly" entitled plaintiffs to injunctive relief. The court should have deferred to the authorized and reasonable construction of the NAACP's constitutional provisions by its Board of Directors, especially given the uncontroverted evidence that past practice was consistent with that construction. See City of Clinton v. Moffitt, 812 F.2d 341, 344 (7th Cir. 1987) (under Illinois law, district court should not have ignored evidence bearing on the interpretation of an ambiguous contract provision).

**A. The NAACP Constitution Does Not State Whether Three-Dollar Youth Members May Vote In Branch Elections**

The trial court's holding (C. 174) that the Branch Constitution "clearly" permits three-dollar youth members to vote in Branch elections is insupportable as a matter of law. The relevant provisions simply do not expressly address whether three-dollar members are entitled to vote in Branch elections. "Members in good standing," defined as "bona fide member[s] of the Branch" 30 days prior to the election, are eligible to vote (C. 93), but the Constitution does not say whether three-dollar youth members are bona fide members of the Branch.

Moreover, although the Constitution states that "members 17-20 years of age can vote in the Youth Council or the Branch" (C. 93-94), it does not say whether such members are required to have paid for a ten-dollar, rather than merely a three-dollar, membership.

Thus, the trial court's conclusion that these questions are "clearly" addressed by the textual provisions is unfounded. See Farm Credit Bank v. Whitlock, 144 Ill.2d 440, 447 (1991) (contract that is "capable of being understood in more sense than one" is not clear and unambiguous); Mid-City Indus. Supply Co. v. Horwitz, 132 Ill. App. 3d 476, 481 (1st Dist. 1985) (same); Zale Constr., 145 Ill. App. at 243 (where neither party's contract interpretation is required by contract language, contractual provision is not clear and unambiguous).

**B. The Trial Court Should Have Deferred To The Reasonable Interpretation Of The NAACP Constitution By The NAACP's Board Of Directors**

The trial court should not have disregarded the construction of the Branch Constitution by the NAACP's Board of Directors that limits the right to vote in Branch elections to members who have paid the ten-dollar adult membership fee. C. 106.

The trial court -- indeed, this Court -- may not agree with the Board's construction, but deference to the Board's construction is appropriate as long as it is reasonable and not arbitrary or capricious. La Jeunesse, 63 Ill. 2d at 268; Robinson v. Illinois High Sch. Ass'n, 45 Ill. App. 2d 277, 286 (2d Dist. 1963), cert. denied, 379 U.S. 960 (1965); Werner v. International Ass'n of Machinists, 11 Ill. App. 2d, 258, 272 (2d Dist. 1956); Maher v. IBEW, 15 F.3d 711, 714 (7th Cir. 1994) ("We must defer to a union's interpretation of its own constitution so long as the interpretation is not unreasonable"); Charles O. Finley & Co., 569 F.2d at 535 (recognizing broad authority of association's commissioner to interpret association's rules); Burge v. American Quarter Horse Ass'n, 782 S.W.2d 353, 355 (Tex. Civ. App. 1990) ("a voluntary association has the right to interpret its own organic agreements such as its by-laws"); California Trial Lawyers, 231 Cal. Rptr. at 728 ("the judiciary should generally accede to any interpretation by an independent voluntary organization of its own rules which is not unreasonable or arbitrary"); Kentucky High Sch. Athletic Ass'n v. Hopkins County Bd. of Educ., 552 S.W.2d 685, 687 (Ky. App. 1977) (courts are not to substitute their interpretations

of bylaws so long as association's interpretation is "fair and reasonable"); Danese v. Ginesi, 654 A.2d 479, 482 (N.J. Super. App. Div. 1995) (recognizing "an association's right to adopt, administer and interpret its own rules without judicial intervention").

Several courts specifically have recognized the importance of deferring to associations' own constitutional interpretations concerning internal elections. E.g., Givens, 117 N.E.2d at 555 (denying challenge to union election and stating that an association's "right to interpret and administer [its constitution and bylaws] is as sacred as the right to make them"); Dallas Athletic Club, 407 S.W.2d at 851 ("The board of directors of the Club is the proper body to interpret its By-Laws in connection with elections," not the courts).

In this case, the Board's construction merits especial deference because the National and Branch Constitutions expressly endow the Board with administrative and interpretive authority over constitutional questions, membership, and elections. See Eads v. Sayen, 281 F.2d 791, 795 (7th Cir. 1960) (stressing interpretive authorization given by union's constitution to Board of Directors); Local #2206, Am. Fed'n of Gov't Employees v. Chamblee, 323 So.2d 346, 348 (Ala. 1975); United Bhd. of Carpenters v. Local No. 14, 178 S.W.2d 558, 567 (Tex Civ. App. 1943) ("the power to interpret a law or rule of a voluntary association is generally vested in some officer, committee, or board of the association"). The Board has the undisputed right to "defin[e]" the constitutional

"principles, aims and purposes of the NAACP" (C. 99), to "prescrib[e]" the "requisite membership fees" (C. 82), and to "[e]stablish all major administrative and other policies" (C. 60).

Deference to the interpretation of organizations' constitutions and bylaws by their authorized leaders respects both the autonomy of private associations and the greater capacity of their leaders to interpret the meaning of their own documents. As one Illinois court put it, courts must show "a decent respect for the integrity" of voluntary associations because courts "are ill-equipped, intellectually and otherwise, to override and second-guess the decisions of administrators who live and work with their particular areas on a daily basis." Proulx, 125 Ill. App. 3d at 788.

In this case, the Board's interpretation of the constitutional provisions governing eligibility to vote in Branch elections was plainly reasonable. There is nothing unreasonable about interpreting the "minimum membership fee" requirement in Article V, section 11 (C. 93) to mean the adult membership fee, especially in light of the structural separation between Senior Branches and Youth Councils that is emphasized in Article XV (C. 102) and the requirement that Branches remit all dues from three-dollar memberships to the applicable youth group. C. 90. Further, in light of these provisions, it was eminently reasonable for the Board to determine that Article V, Section 12 (C. 93-94) means simply that a youth member 17 or older has the option of voting in the Senior Branch election if he or she has purchased a ten-dollar

adult membership. Significantly, Section 12 does not refer to a "youth member," but rather to a "member in good standing" and to "members 17-20 years of age." C. 93-94.

Moreover, the voluminous and uncontroverted proffered testimony that the Southside Branch and other NAACP Branches had never allowed three-dollar youth members to vote in Branch elections (T. 156-172) further bolsters the reasonableness of the Board's interpretation. This evidence of past practice and consistent interpretation should not have been ignored by the trial court. Where an association has "interpreted and applied [a] rule consistently, no court could interfere.'" Freeman v. Sports Car Club of America, Inc., 51 F.3d 1358, 1363 (7th Cir. 1995); Kupec v. Atlantic Coast Conference, 399 F. Supp. 1377, 1380 (M.D.N.C. 1975) (denying injunction to overturn "the interpretation given [association's] rule by all [its] members since its adoption"). NAACP's longstanding practice of permitting only members who had paid the adult membership fee to vote should not be displaced by a court's contrary construction.

The Board did not engage in any undue degree of policymaking in rendering its interpretation. In an analogous case, a California court upheld a private board's determination that a bylaws provision barring a run for president if one had been an officer for less than one year did not bar the election of a candidate whose service fell five days short of this seemingly unambiguous requirement. California Trial Lawyers, 231 Cal. Rptr. at 727-728. Reversing the trial court's vacation of the election,

the court of appeals held that because, in context, the provision was not "so clear and unambiguous," the court "should have deferred to the board's interpretation and application of its own rules." Id. The NAACP Board's interpretation in this case falls well short of the expansive interpretation upheld in California Trial Lawyers, and well within the boundaries of the discretion recognized generally in the case law. It should not have been disregarded or overridden by the trial court.

In sum, the NAACP Board acted, in accordance with its past practice and with its constitutional structure that designates specific avenues through which three-dollar members may vote and seek leadership positions, to ensure that the cut-rate membership afforded youths did not allow them to displace votes of the adult, full-freight members of the Senior Branch. The Board's reading was reasonable, and thus the trial court was not entitled to substitute -- and to enforce -- its judgment to the contrary.

**CONCLUSION**

The judgment of the trial court should be reversed.

Respectfully submitted,

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