

IN THE COURT OF APPEALS OF MARYLAND

No. 51, September Term 1995

NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE et al.,

Appellants,

v.

STEVEN GOLDING et al.,

Appellees.

On Appeal from the Circuit Court for Baltimore City
(Hon. Robert I. H. Hammerman)

REPLY BRIEF FOR THE APPELLANTS

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REPLY BRIEF FOR THE APPELLANTS

Appellees do not dispute that settled law forbids courts to interfere with the internal affairs of a voluntary private association unless economic or property rights are involved, and they do not claim that any such rights are implicated in this controversy over which NAACP subgroup's officers certain members are entitled to elect. Appellees do not deny that this general principle applies with particular force where, as here, the organization's governance is at issue. Appellees likewise do not disagree that, even in those rare instances in which courts may entertain lawsuits aimed at a group's internal affairs, association members first must exhaust whatever internal remedies the association provides. And appellees do not take issue with the general rule that, where members suing a voluntary private association raise a justiciable issue on which internal remedies have run their course, the courts owe deference to the association's own interpretation of its governing documents.

For the most part, rather than contend that the circuit court adhered to these controlling principles, appellees advance untenable arguments. First, they assert that neither the NAACP's consistent past practice nor the interpretation of its Board warrant consideration because, appellees claim, the Branch Constitution unmistakably gives three-dollar youth members over the age of 17 the right to vote in Senior Branch elections. Second, appellees advance several arguments tenuously based on Maryland corporations law, although that law does not apply to either appellant. Third, appellees try

to justify judicial intrusion here by labeling "arbitrary and capricious" the Board's interpreting the election provisions in the Branch Constitution in accord both with consistent past practice and with the pervasive separate treatment of youth members in the structure and operation of the NAACP. Fourth, Appellees assert that they exhausted internal NAACP remedies before filing suit, although they did not even invoke the NAACP's primary mechanism for resolving election disputes. Finally, Appellees advance the peculiar notion that the rule of judicial restraint regarding the internal affairs of voluntary private associations demeans the NAACP and all African Americans, and that instead the NAACP should be treated as a uniquely incompetent ward of the courts.

Appellees' contentions do not obscure the circuit court's reversible errors in mislabeling its own construction the "clear" meaning of the Branch Constitution, in substituting its own judgment for that of the NAACP, and in lending unwarranted judicial aid to plaintiffs who scorned the procedures of the very organization they sought to restructure.

1. Appellees urge this Court to disregard the normal restraints upon judicial intrusion into the internal affairs of a private voluntary organization, contending that the Branch Constitution clearly guarantees the right to vote in Senior Branch elections to three-dollar youth members over age 17. As we explained in our opening brief (at 23-24), that is not the case, and the circuit

court erred as a matter of law in holding to the contrary. The circuit court reached its conclusion only by both ignoring the context of the provisions it plucked from the Constitutions and by taking it upon itself to supply missing terms in preference to those supplied by the NAACP.1/

Although separate provisions of the Branch Constitution identify the minimum basic membership and minimum youth membership fees (E. 46), and the minimum voting age for "any member in good standing in Branch elections" (E. 27), no provision answers the question presented here: whether persons who are youth members but have not purchased regular ten-dollar memberships may vote in Senior Branch elections. No provision sets forth the membership fee that members aged 17 to 20 must pay if they wish to vote in a Senior Branch rather than in the Youth Council or College Chapter to which the Branch must remit all three-dollar youth memberships it receives (E. 40). That omission creates an ambiguity.2/ It is plain that

1/ Appellees state incorrectly (Br. 3) that the Branch Constitution is the governing instrument of the NAACP. In fact, the National Constitution -- which gives the Board the power to "establish all major policies" of the NAACP and to "authorize[]" the Branch Constitution (E. 19) -- prevails over all NAACP documents (other than the Articles of Incorporation). The Branch Constitution states that all Branch activity must be "in conformity with" the National Constitution and the directions of the Board, and that each Branch is "a subordinate unit" of the NAACP that is "subject to the general authority and jurisdiction of the Board of Directors and the Association." E. 36-37.

2/ Appellees assert (Br. 7) that, by seeking counsel's advice and issuing an interpretation of the minimum voting age provision, the

the Board, not a court, should fill that gap. Not only does the Board have "full power and authority" to establish all major policies, amend the Constitutions, define the NAACP's principles, and determine whether the conduct of individuals or branches conforms to those principles (E. 18-19, 33, 48-50), but membership in the NAACP is expressly subject to the "consent of the Board of Directors," which also can "create such additional categories of membership and establish such fees as it may deem desirable." E. 17.

In addition to its silence about the minimum membership fee required to vote in the Senior Branch, the Branch Constitution leaves undefined (and therefore within the discretion of the Board) other critical terms relating to eligibility to vote in Branch elections. The circuit court, however, denied the Board the right to give meaning to such terms as "satisfactory evidence of * * * membership" (E. 37), "bona fide member of the Branch" (E. 43), and "requisite minimum membership fee" (ibid.), and instead restructured the organization from the bench.

Moreover, contrary to the circuit court's impression, the Branch Constitution plainly identifies Branch members as those who are recorded on the rolls of the Branch, and for whom the Branch receives the local share of dues (E. 37, 43). By contrast, the

Board "admit[ted]" that the provision not only has a "plain meaning" but that the meaning contradicts the Board's interpretation. On the contrary, the Board's actions are consistent only with a view that the language was ambiguous.

uncontested evidence showed that three-dollar members' names were not recorded on the rolls of the Branch, and that instead their names, and the local share of their dues, went to the appropriate youth group. E. 40, 133-136, 138-143. On that additional ground, appellees did not prove their case.

As explained in the opening brief (at 22-26), so long as an organization's governing body gives due consideration to the issues raised when it interprets its own rules, and its interpretation comes within the range of supportable readings, the courts must not substitute their own judgment as to what a provision means. The Board's interpretation of the Branch Constitution was clearly within the permissible range, reflecting both the structure of the NAACP in light of its governing documents, and its consistent past practice. The circuit court erred in substituting its own, different interpretation.

2. Appellees press several arguments purportedly based on the Corporations and Associations Article of the Maryland Code. As we pointed out in our opening brief (at 13 n.2), no Maryland corporation is involved in this case: defendant NAACP is a voluntary private association incorporated under the laws of New York, and defendant NAACP Baltimore Branch is an unincorporated voluntary private association.

To the extent that the law of corporations controls this case, the circuit court lacked subject matter jurisdiction. This Court has held repeatedly that "the courts of this state are without

jurisdiction to hear * * * complaints" against "a foreign corporation concerning its internal affairs." O'Hara v. Frenkil, 155 Md. 189, 194, 141 A. 528, 530 (1928) (complaint alleging improper voting at stockholders' meetings). "[Q]uarrels and dissensions" over internal corporate affairs must be brought in "the courts of the state which created the corporation." Id. at 193, 141 A. at 530. See also Berger v. Bata Shoe Co., 197 Md. 8, 13, 78 A.2d 186, 188 (1951); Condon v. Mutual Reserve Fund Life Ass'n, 89 Md. 99, 116, 42 A. 944 (1899); North State Copper & Gold Mining Co. v. Field, 64 Md. 151, 153-155, 20 A. 1039, 1041 (1885) (action to compel restoration of membership rights); Wilkins v. Thorne, 60 Md. 253 (1883). The election dispute in this case undeniably concerns the internal affairs of the NAACP: "the act complained of affects the complainant solely in his capacity as a member of the corporation, * * * and is the act of the corporation * * * through its agents, the board of directors." Field, 64 Md. at 154, 20 A. At 1040. Accordingly, not only is appellees' attempt to impose Maryland corporate law on a New York corporation a frivolous choice-of-law suggestion,^{3/} but, to the extent that this action concerns the internal corporate affairs of the NAACP, the judgment must be reversed and remanded for dismissal on jurisdictional grounds.

^{3/} E.g., Restatement (Second) of Conflict of Laws § 304 (1971); CTS Corp. v. Dynamics Corp., 481 U.S. 69, 89 (1987) (suggesting federal constitutional basis for choice of law rule); Edgar v. MITE Corp., 457 U.S. 624, 645-646 (1982) (under Commerce Clause, a state "has no interest in regulating the internal affairs of foreign corporations").

3. Only the law of voluntary private associations even arguably could give the circuit court power over defendants' internal affairs; we have shown that, under that law, the judgment of the circuit court should be reversed. Appellees try to resurrect their case by arguing (Br. 6-8) that the Board's refusal to allow three-dollar youth members to vote in Senior Branch elections was arbitrary and capricious.^{4/} That argument relies on the proposition that the Board's action amounted to "a change in the way [the NAACP] governs itself." Id. at 7.^{5/} But the uncontradicted evidence showed precisely the opposite: the consistent NAACP practice has allowed youths 17 to 20 to vote in Senior Branch elections only if they purchase a ten-dollar regular adult membership. See NAACP Opening Br. 5-6.^{6/} It is scarcely arbitrary or capricious to

^{4/} Appellees also launch accusations (Br. 11) of "fraud" and "bad faith," but they do not even begin to support those claims with record evidence (there is none) or legal analysis.

^{5/} Appellees claim (at 2) that the Board "reinterpreted" the Branch Election Manual and that as a result three-dollar youth members "now" can not vote in Senior Branch elections. Appellees identify no evidence either of a prior inconsistent Board interpretation, or of a prior practice allowing three-dollar youth members to vote in Branch elections.

^{6/} Appellees (at 12) accuse us of "ignor[ing] the affidavit filed with the pleadings controverting the notion that youth members never voted in branch elections," but appellees did not even make a futile effort to have the affidavit admitted into evidence at the trial of this matter. As an out-of-court statement offered to prove the matter asserted while depriving defendants of the opportunity to cross-examine the witness, the affidavit plainly is inadmissible hearsay that falls within no exception. Md. R. 5-801 et seq.; see, e.g., Kapiloff v. Locke, 276 Md. 466, 471, 348 A.2d 697, 699-700 (1975); Aaron v. City of Baltimore, 207 Md. 401, 411, 114 A.2d 639, 643 (1955); see Spivey v. United States, 912 F.2d 80, 85 (4th Cir.

interpret documents to be consistent with practice; on the contrary, where a voluntary private organization interprets and applies a rule consistently, no court can interfere. Freeman v. Sports Car Club of America, Inc., 51 F.3d 1358, 1363 (7th Cir. 1995).

Appellees also claim that the Board "acted with caprice" because it "acted beyond its powers." Br. 7. The Board acted well within its powers, however, in interpreting the Branch Constitution. Not only does it have the power to establish all major policies governing NAACP affairs, but the Board alone has the express power to authorize the Branch Constitution, not merely to interpret it. E. 18-19. Appellees (at Br. 5-6) characterize the Board's interpretation as an "amendment" to the Branch Constitution and suggest that it is therefore violates the Maryland Code. That argument founders for several reasons. First, the Board made no "amendment," but simply answered a question that was not answered by the text of the Branch Constitution, and answered it in a way that was consistent with actual practice. Second, as explained above, appellees' reliance on the Maryland Code is misplaced.

1990) (affidavit filed with pleading is not evidence) (construing analogous federal rule). The affidavit filed with appellees' motion for temporary restraining order (R. 31-36) is inadmissible for the additional reason that it is irrelevant: the affiant did not state whether he purchased his membership at the regular membership rate. That he may have voted in Branch elections as a youth member in the 1950s proves nothing, for the issue in this case is not whether youths may vote in Branch elections, but whether they may do so without purchasing a ten-dollar regular membership.

Third, the cited provisions would not apply even if the NAACP were a Maryland corporation. Section 2-607, for example, applies only to amendments of the corporate charter or the articles of incorporation (see also Md. Code Ann., Corps. & Ass'ns, §§ 1-101(e), 2-601 to 2-612): no such document is at issue. As for Section 2-109, which governs corporate by-laws, the National Constitution (which provides for the selection of corporate directors and officers) explicitly grants the power of amendment to the Board alone. E. 33. The Branch Constitution plainly is not the corporate by-laws of the NAACP.

Finally, appellees are mistaken when they assert that the Board cannot amend the Branch Constitution. On the contrary, even the circuit court recognized that "the Board can decide to amend the constitution" in order to clarify the fee requirements for voting rights. E. 156. And only the Board may amend the National Constitution (E. 33) with which the Branch Constitution necessarily must comply (E. 36-37).

4. Appellees baldly contend (Br. 8-10) that they exhausted the NAACP's internal remedies and thus did not resort to the courts prematurely. On the contrary, appellees did not invoke, much less exhaust, the NAACP's principal election remedy: the challenged ballot procedure (E.55) with review under Section 15 (E. 44-45, 57). Instead, appellees rushed into court before even the informal pre-election remedy under Section 16 had run its course. See NAACP Br. 8-9, 19-20. Members must exhaust internal remedies before filing

suit; they cannot simply initiate and then abandon a preliminary remedy. By disdaining the internal procedures of the NAACP, appellees forfeited whatever access to the courts they otherwise might have had.

5. Appellees conclude (at 10-12) with a bizarre argument that, because the NAACP is an important social and political force, its internal procedures should be subjected to greater judicial (and thus state) control.^{7/} Appellees contend that letting the NAACP run its own affairs like any other private voluntary organization is an act of "judicial paternalism" that fosters a supposed "general belief that Americans of African descent are inferior." Br. 11. Appellees insist that the NAACP and its members instead must be treated like small children needing exceptional supervision by the courts, not with the same hands-off deference that insulates the internal affairs of the Democratic Central Committee, the Federalist Society, the Sierra Club, or the Masonic Orders.

^{7/} Appellees also claim (Br. 8, 11) that the courts should interfere in the internal governance of the NAACP because some youths, already three-dollar members, purchased additional three-dollar memberships based on the misrepresentation (presumably by appellee Little, see E. 76) that those youth memberships conferred full adult voting rights in the Baltimore Branch. If the NAACP somehow were vicariously responsible for Mr. Little's ambitious misrepresentations (putting aside the utter failure of any appellee so affected to present a grievance to the NAACP), the proper remedy for a contract entered into by unilateral mistake (where there is no evidence of intent to mislead) would be rescission -- refunding the fees for their additional youth memberships -- not specific performance. Appellees' mistaken purchases provide do not provide a justification for the circuit court to assume the internal management of the NAACP.

To state appellees' argument is to reject it. If anything, the courts and other agencies of the state should take an especially restrained approach to an organization such as the NAACP. The historical use of state-law injunctions to regulate the conduct and policies of the NAACP does not invite repetition, whether judicial intervention is requested by the state or by dissenting members. See, e.g., NAACP v. Alabama ex rel. Flowers, 377 U.S. 288 (1964); NAACP v. Button, 371 U.S. 415 (1963); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293 (1961); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958). The cited cases suggest that an intrusion by any instrument of the state into the NAACP's internal affairs -- with the resulting leverage over its policy-making -- may threaten to interfere with members' associational rights under the First Amendment. That alone is a powerful reason to accord the NAACP the same deference given other groups.

The policy of judicial non-interference in the internal affairs of private voluntary associations allows people to organize freely into groups bound together by common interest, without risking a lawsuit every time a member disagrees with a group's private procedures. The policy of judicial restraint also reflects a clear and discerning vision of which disputes belong in courts, and which are better left to private resolution. Seven in ten Americans belong to at least one nonprofit membership organization, forming 22,000 national groups and innumerable groups of lesser size and scope. 1 Encyclopedia of Associations vii, ix (1995). For reasons

of judicial economy as well as associational liberty, courts long have stepped aside and let members resolve their disputes on their own so long as no economic or property right is involved. Nothing forces appellees to the NAACP; if they are not satisfied with the NAACP's separate electoral tracks for reduced-rate youth members and full-freight basic members, they may pursue their political goals by joining other associations, or by forming their own.

Appellees have presented no reason to affirm the circuit court's unwarranted intrusion into the NAACP's internal affairs. Both settled law and sound policy require the judgment below to be reversed and the injunction vacated.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court should be reversed.

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