

Brief summary of Judicial Watch, Inc. and Allied Educational Foundation

Alexis De Tocqueville: the Ideology of Political Associations

Alexis De Tocqueville was one of the first to identify the tendency of those who enjoy political equality to live in greater social isolation from those around them. As equality spreads there are more and more people whose material resources allow them “to look after their own needs.” As they “owe no man anything,” they “hardly expect anything from anybody. They form the habit of thinking for themselves in isolation. The political problem arising from this tendency is that this outcome is exactly what the enemies of liberty would prefer. “Despotism...sees the isolation of men as the best guarantee of its own permanence.”

Yet in Tocqueville’s view, American society had evolved institutions that could counter the dangerous tendency toward social atomization—private associations. Tocqueville observed that “Americans of all ages, all stations in life, and all types of disposition are forever forming associations.” These associations combat the tendency towards isolation. With this unity comes political strength and the ability to resist tyranny. Unfortunately, the central government comes to see political associations as rivals. “Among democratic peoples it is only through association that the citizens can raise any resistance to the central power. The latter therefore always looks with disfavor on associations that are not under its thumb.” Thus, although political associations are particularly necessary for democratic societies, they are often hard to establish and maintain within those societies.

Political Parties and Freedom of Association

The right to freely associate is “almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society.” Each group, regardless of its message, has a right to associate without government interference or control. This right “is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular ideas. **When a**

state changes a political party's governing structure, forcing the party to associate with those whom it disagrees, "such forced association has the likely outcome—indeed ...the intended outcome—of changing the parties' message."

The U.S. Supreme Court has found no burden more severe on a political party's associational freedom than forced association. "Election regulations that impose a severe burden on associational rights are subject to strict scrutiny" and are upheld "only if they are narrowly tailored to serve a compelling state interest."

Minimal Burden or Unrestrained Power

Considering only the inconvenience to individual party members, the Tenth Circuit incorrectly concluded that SB 54's burden on the Utah Republican Party was minimal. Because the burden was determined as minimal, Utah's regulation could be justified if it were "reasonable." The Tenth Circuit could then rely on what it described as dicta from the Supreme Court opinions to conclude that SB 54 was a valid regulation on the Utah Republican Party's constitutional rights. Had the Tenth Circuit concluded that SB 54 was a severe burden on the Utah Republican Party, as it should have concluded, then SB 54 would be valid only if SB 54 serves a compelling state interest, which is a much more difficult requirement for the state to meet than just showing that a regulation is reasonably important.

The Tenth Circuit's decision ultimately sanctioned a significant expansion of states' power to intrude on the internal affairs of political parties. The ruling threatens to impair parties' ability to function as the truly free and independent associations that Tocqueville saw as so necessary for American democracy. Unless this Court intervenes, "freedom of association would prove an empty guarantee," and the independence of every political party's governing structure would be at risk.

Judicial Watch is a nonpartisan, public interest organization. It fights for accountability in law, politics and government. One of its primary functions is investigating claims of misconduct by government officials.

The Allied Educational Foundation is a nonprofit charitable and educational foundation. It seeks to empower Americans through education and legal action on topics of civil liberty and constitutional freedoms.