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OCTOBER TERM, 1966

No. 483

NEIL REITMAN, et al.,
Petitioners,
vs.
LINCOLN W. MULKEY, et al.,
Respondents.

CLARENCE SNYDER,
Petitioner,
vs.
WILFRED J. PRENDERGAST, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of California

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The California State Central Committee of the Democratic Party hereby respectfully moves for leave

to file a brief *amicus curiae* in this case in support of respondents, as provided in Rule 42 of the Rules of this Court. The consent of the attorneys for the respondents has been obtained. The consent of the attorneys for the petitioners was requested but refused.

The California State Central Committee of the Democratic Party is the official Democratic Party organization in the State of California. (California Elections Code, Division 6, Chapter 2.) The Democratic Party by platform and practice is committed to the protection and enhancement of the civil rights of all and is dedicated to the principle that the people through their constituted agencies should take appropriate steps to insure that those rights at all times remain meaningful and significant.

Amicus filed an *amicus curiae* brief in *Lewis v. Jordan,* (California Supreme Ct., Sac. No. 7549), in support of a petition seeking to prohibit the inclusion on the election ballot of Proposition 14, the same Proposition whose constitutionality is here at issue. *Amicus* believes that the Court should be cognizant of the impact of Proposition 14 on California and its citizens and for that reason seeks leave to present certain arguments and policy considerations in a more generic fashion than have been presented by the parties in these cases. We believe that our contribution should assist the Court in its consideration of the broader aspects of this litigation and of the con-

sequences its decision will have on race relations in California and throughout the nation.

Dated, San Francisco, California,
March 7, 1967.

Respectfully submitted,
GERALD D. MARCUS,
Attorney for California Democratic State Central Committee, Amicus Curiae.

DANIEL N. LOEB,
ROSS E. STROMBERG,
HANSON, BRIDGETT, MARCUS & JENKINS,
Of Counsel.

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On Writ of Certiorari to the Supreme Court of California

BRIEF OF THE CALIFORNIA DEMOCRATIC STATE CENTRAL COMMITTEE AS AMICUS CURIAE

INTEREST OF AMICUS

Amicus is the California State Central Committee of the Democratic Party. Under California law it is it's official representative body.

The Democratic Party of California is deeply committed to the principle that each man should have equal opportunity to fulfill his own potential; that this opportunity should not be denied or limited because of his political or religious beliefs or national origin or the color of his skin.

The Democratic Party of California has continuously worked at all levels of government—local, regional, state and national—to achieve this goal. It has consistently sponsored legislation through its elected representatives to eliminate such discrimination and to promote the brotherhood of all men. It is deeply troubled by the strategem employed in the state initiative here involved because it would weave racial segregation in housing into the legal framework of our state.

In appearing here, Amicus is representing and expressing the concern of its membership consisting of persons of all races, creeds, colors and of many different countries of national origin, and in furtherance of its efforts to promote a fair and just society in which all men can strive—with equal chance for success—for life, liberty and happiness.

ARGUMENT

Proposition 14, which if declared legal would become Section 26 of Article I of the California Constitution, provides in its operative part:

> ". . . Neither the State nor any subdivision or agency thereof shall deny, limit, or abridge, di-

> rectly or indirectly, the right of any person who is willing or desires to sell, lease, or rent any part or all of his real property, to decline to sell, lease, or rent such property to such person or persons as he, in his absolute discretion, chooses."[1]

Although carefully drawn so as to appear nondiscriminatory on its face and dressed in the appealing and bland lamb's clothing of freedom of property, the obvious purpose of Proposition 14 was to foster discrimination in the sale or rental of housing, and provide an environment in which such discrimination would operate unimpeded by any governmental resolution. Proposition 14 was launched in the wake of the enactment of certain statutes regulating discrimination in housing, particularly the Rumford Fair Housing Act. (*California Health and Safety Code,* § 35700, et seq.) The official ballot argument in favor of Proposition 14 referred specifically to the Rumford Act and its prohibition of the refusal to sell or rent property because of race, color, religion, national origin or ancestry. As stated below by the California Supreme Court:

> "Proposition 14 was enacted against the foregoing historical background with the clear intent to overturn state laws that bore on the right of private sellers and lessors to discriminate, and to forestall future state action that might circum-

[1]Also by express definition such absolute discretion is not limited to private individuals but also extends to "partnerships, corporations, and other legal entities and their agents or representatives" except the state or its subdivisions. Nor is Proposition 14 limited to single-family dwellings; all "residential real property" is affected regardless of the size or the number of units involved.

> scribe this right. In short, Proposition 14 generally nullifies both the Rumford and Unruh Acts as they apply to the housing market." [*Mulkey v. Reitman,* 64 C.2d 529, 534-5, 50 Cal.Rptr. 881, 413 P.2d 825 (1966).]

Although petitioners have sought to defend Proposition 14, as a simple restoration of the *status quo ante* equivalent to a legislative decision to repeal legislation, it is manifest that the proposition in effect goes far beyond the repeal of the California Fair Housing legislation. It provides for virtually a total sterilization of the state and local governmental entities in the area of housing segregation. Its prohibition of interference with private discrimination does not relate to two or three specific legislative enactments alone, but rather sweeps within its ambit of prohibition the legislative, judicial and executive branches and administrative agencies at the state level, as well as all state agencies and subdivisions. It effectively eliminates any power—legislative, executive or judicial—of the State government or local governments of California to directly work toward the elimination of discriminatory housing in California.

The effect of Proposition 14 is, therefore, a strong reinforcement to the continuation of segregated housing in California. Beyond the initial impact on the maintenance of ghetto housing, Proposition 14 in turn affects those areas related to segregation in housing. By helping to maintain segregated housing, it limits efforts to ameliorate "de facto" segregation in primary and secondary public schools. Racial imbalance

in schools is maintained by the continuation of imbalance in housing.

In addition, employment opportunities of minority group members are limited by an inability to secure housing away from the core area of cities and in areas where potential jobs exist, thereby compounding the difficulties of Negroes and other minorities in securing employment. Opportunities already narrowed by educational limitations or outright discrimination are narrowed still further by inaccessibility.

Beyond the effect on educational and job opportunities for the minority group members, segregated housing most certainly affects the individual discriminated against in terms of his or her view of himself and his attitude towards the society in which he lives. This Court noted this in *Brown v. Board of Education,* 347 U.S. 483 (1953) where, in describing the effect of school segregation on the Negro child, Chief Justice Warren stated:

> "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (At p. 494.)[2]

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[2]Compare the similarly expressed concern of the Supreme Court of the State of California:

> "So long as large numbers of Negroes live in segregated areas, school authorities will be confronted with difficult problems in providing Negro children with the kind of education they are entitled to have. Residential segregation is in itself an evil which tends to frustrate the youth in the area and to cause antisocial attitudes and behavior." *Jackson v. Pasadena City School District,* 59 Cal. 2d 876 at 881, 382 P. 2d 878 (1963).

Segregation in housing condemns many minority group members to living in overcrowded ghettos, with the concomitant conditions of inadequate, unhealthy and often unsafe living conditions.[3] By the fact of segregation as well as the conditions in which he is forced by segregation to live, the minority group member bears the "badge of servitude" or the burden of second-class citizenship. As a result, debilitating feelings of inferiority or futility may be generated on the one hand, or, on the other, the individual may view himself as surrounded by a hostile society and react in an anti-social manner. The not unexpected consequences from the feelings of futility on the part of the individual or his hostility to and rejection of the society which discriminates against him, is the resort to crime or generalized rioting. As stated by the California Supreme Court:

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[3]Horowitz, *Fourteenth Amendment Aspects of Racial Discrimination in "Private" Housing,* 52 Calif. Law Rev. 1, 28-30 (1964) wherein the author states that the denial of access to housing is no less significant than the injuries to the discriminatees in the voting, transportation, hospital, and restaurant in state-owned premises cases. This Court is aware of the stifling effect of housing discrimination on the health and wellbeing of individuals. In *Berman v. Parker,* 348 U.S. 26, 32-33 (1954), where the taking of property by eminent domain to eliminate and prevent substandard housing conditions pursuant to the District of Columbia Redevelopment Act of 1945 was found constitutional, Mr. Justice Douglas, speaking for the court, stated:

> "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river."

Yet petitioners would have this Court say that discrimination in housing deserves constitutional protection.

> "Discrimination in housing leads to lack of adequate housing for minority groups . . . , and inadequate housing conditions contribute to disease, crime and immorality." [*Burks v. Poppy Construction Co.*, 57 Cal. 2d 463, 471, 20 Cal. Rptr. 609, 370 P. 2d 313 (1962).]

The effect of Proposition 14 is not limited, however, to the sterilization of the state and its subdivisions in the area of segregated housing nor to the debilitation of any attack on this root cause of other problem areas of minority group members. Rather the proposition, in addition, places the seal of approval of the State of California on discrimination in housing. It is, in purpose and in effect, a constitutional guarantee of the right to discriminate in the sale or rental of housing. It is, further, the provision of the means and, in fact, an open invitation to and endorsement of discrimination in housing.[4]

An analogous situation was presented to this Court in *Anderson v. Martin,* 375 U.S. 399 (1967). There, the State of Louisiana required the Secretary of State of Louisiana to print on all ballots the race of each candidate running for office. The Court struck down the Louisiana statute because the State was furnishing the vehicle for the operation of racial prejudice

[4]The question here, of course, goes beyond the issue of housing segregation in California. Should this Court sustain Proposition 14, it will be an open invitation to other states to enact similar provisions. Also, given the impetus of such a decision, what is to prevent others in California or elsewhere from launching high-priced, well-publicized initiative campaigns to impart constitutional dignity to similar covert schemes, such as to the "right" of absolute discretion in hiring or firing employees, thereby repealing existing fair employment statutes.

and by so doing, in light of existing "private attitudes and pressures", was encouraging the voters to discriminate on the basis of color.

In like manner, Proposition 14, given the context of "private attitudes and pressures" with regard to minority housing and the existing legislation, constitutes the provision of a vehicle for the operation of private discrimination; moreover, by enshrining the right to discriminate in the State's Constitution it provides sanction for and encouragement of discrimination in housing by the State of California.

The right to acquire, own, and dispose of property free from discrimination stands among those rights protected by the Fourteenth Amendment.

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that amendment as an essential precondition to the realization of other basic civil rights and liberties which the amendment was intended to guarantee." *Shelley v. Kraemer,* 334 U.S. 1, at 10 (1948).

Petitioners would have this Court emasculate this right and subordinate it and other civil rights to the ill-disguised right to discriminate envisioned by Proposition 14.

CONCLUSION

The Democratic State Central Committee does not contend that the Rumford Fair Housing Act and other California legislation relative to discrimination in housing cannot be amended or modified. Proposition 14, as already indicated, goes beyond modification or even repeal of California's Fair Housing legislation; it provides for the total removal of the State of California and all its subdivisions from the area of discrimination in housing. By so doing, California is not only prevented from any activities in this area, but is by this limitation, debilitated in its ability to work on other minority group problems.

In addition, the Democratic State Central Committee believes that Proposition 14, providing the vehicle for discrimination and by encouraging discrimination by the providing of a constitutional right to discriminate, is state action in violation of the 14th Amendment of the U. S. Constitution.

Dated, San Francisco, California,
March 7, 1967.

Respectfully submitted,
GERALD D. MARCUS,
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