

Keeping the Courthouse Door Open to Everyone — This Time

By Rochelle Bobroff and Ian Millhiser

On Oct. 17, in *Brunner v. Ohio Republican Party*, the Supreme Court effectively reversed a three day-old 6th Circuit decision that could potentially have limited new voter registration in Ohio. In reaching its decision, the 6th Circuit not only divided along ideological lines, it also flatly ignored binding Supreme Court precedent that restricts court access. While it is completely inexcusable for the 6th Circuit to exempt the

Republican Party from following such binding precedent, that precedent has unfairly slammed the courthouse doors shut on numerous low-income Americans. So it is not surprising that the Republican Party did not want to be bound by it.

Brunner concerns the Republican Party's claim that Ohio Secretary of State Jennifer Brunner violated the Help America Vote Act by not implementing certain procedures to screen new voter registration forms for irregularities. A District Court judge issued a temporary re-

straining order requiring Brunner to implement these procedures, and the en banc 6th Circuit allowed the ruling to stand. In its opinion, the Supreme Court held that two of its prior decisions — *Gonzaga v. Doe* and *Alexander v. Sandoval* — establish that the Help America Vote Act does not permit the Republican Party to sue in order to enforce its provisions.

The fact that this Supreme Court decision was even necessary, however, is ironic given the author of the en banc 6th Circuit's opinion. That opinion was written by Judge Jeffery Sutton, a George W. Bush appointee and a former clerk to Supreme Court Justice Antonin Scalia. Sutton has a long history of activism against lawsuits by disadvantaged individuals seeking to enforce federal laws, including his own argument before the U.S. Supreme Court in *Sandoval*, in which Sutton successfully convinced the court to dismiss the claims of victims of race discrimination. Nor was *Sandoval* Sutton's only foray into this area of the law, as he also litigated another important case in which he successfully convinced a District Court judge to deny court access to children being deprived of Medicaid coverage.

In light of the many years Sutton spent convincing federal courts to deny court access to private plaintiffs, there is little doubt that he is very familiar with the Supreme Court's decisions in *Sandoval* and *Gonzaga*, in which the court drastically limited the ability of private individuals to enforce federal law. Yet his opinion in *Brunner* suggests that these Supreme Court cases should not apply to the Republican Party. Instead of carefully applying *Sandoval* and *Gonzaga*, Sutton's opinion says that the question of whether the Republican Party can sue to enforce the Help America Vote Act is "close," and that this alleged closeness justified exempting the Republican Party from *Gonzaga* and *Sandoval*.

But the question of whether the Republican Party can sue under the Help America Vote Act is not,



law. Similarly, in *Caswell v. City of Detroit Housing Com'n*, the 6th Circuit held that a recipient of federally funded housing vouchers also could not enforce federal housing law after his voucher payments were prematurely terminated, and in *Hughlett v. Romer-Sensky*, the same court held parents who are entitled to state-managed child support services may not sue to ensure that they receive those services in a timely manner.

By applying one standard to low-income families, and another to the Republican Party, the 6th Circuit employed an unconscionable double standard, and the Supreme Court rightly held that the Republican Party is subject to the same legal standards as everyone else. That does not mean, however, that *Gonzaga* was correctly decided. It is wrong to deny Medicaid recipients the benefits Congress intended for them to receive; it is wrong to force public housing residents to endure dangerous conditions Congress sought to eliminate; and, if Congress truly did enact the Help America Vote Act to benefit groups like the Republican Party, then it is wrong not to allow that party to enforce the act in federal court.

Indeed, claims such as these were heard in federal court for over 20 years, until a Supreme Court hostile to civil rights claims erected unprecedented technical barriers in its 2002 *Gonzaga* decision. Although Friday's decision gave the Ohio Republican Party a taste of what it is like to be on Medicaid or live in public housing, equality is not a substitute for fairness. *Gonzaga* was wrongly decided and should be overruled.

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