

The democratic legacy of Kenneth McClintock

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I was sad when I read Kenneth McClintock's statement announcing he would not run for office in next year's general election.

I should have been glad because he is by far the candidate with the widest electoral support that the New Progressive Party (NPP) has for resident commissioner. But, his performance as president of the Senate, his dignified and courageous resistance against the challenge that the president of his party mounted against him, his reasonable positions and his ability to maintain his cool while under fire, have earned my respect. My sadness was for him as a person and for his family and for the loss of a political adversary with whom you can differ but always within the realm of respect, civility and cordiality.

The battle he and four of his fellow senators fought successfully in the Superior Court of San Juan against the sanctions imposed upon them by the NPP excluding them from the ballot, will have lasting effects on the workings of our parties and the functioning of our democracy. The opinion by Judge Oscar Dávila Suliveres elucidates the sphere of the rights of voters within the parties, the rights of the parties themselves, the authority of the parties over the elected officials, the authority of the party's caucuses in the Legislative Assembly and the party discipline to implement the party's platform.

Our Electoral Law provides three basic rights that were an issue in the case before Judge Dávila: The right of every member of a political party to dissent from his/her party's positions on matters not covered by the party's platform or by its regulations; the right to due process in disciplinary matters, and the right to appear on the ballot in a primary. The law further provides a procedure to disqualify a member of a party from participating in a primary. The procedure is not an internal party procedure, but one before the Superior Court.

The rights of those senators were infringed upon by the NPP and the procedure was not followed. But the NPP argued before Judge Dávila that the NPP's constitutional right of association prevailed over the rights and procedures provided by our electoral law. Thus, the broader issue brought before Judge Dávila was one for the proper constitutional allocation of the rights of the voters and members of the parties and the rights of the parties as such. In other words, whether our Electoral Law is constitutional.

The rights of voters within the parties was an issue in the transition between the generation of Luis Muñoz Marín and Miguel Ángel García Méndez and my generation and that of Carlos Romero Barceló. Our Electoral Law reflects the participatory vision of our generation through legislation approved between 1973 and 1984.

Nomination through primaries moved forward in Puerto Rico when I was president of the Senate during the term of 1969-1972. A major issue had been created by Gov. Sánchez Vilella when he demanded the PDP should hold a primary to nominate its gubernatorial candidate for the 1968 election. The electoral law at the time provided for a nominating convention as the mechanism for nominating the candidate for governor, therefore the PDP did not agree to the request. Sánchez lost the nomination, left the PDP, bought the franchise of a third party and ran against the PDP bringing about the first electoral defeat of the PDP in history.

Ferré won the governorship and the NPP the House, but the PDP won the Senate and I was elected president of that body. We took the first steps to provide for compulsory primaries for certain positions at that time. When I was elected governor in 1972, we went all the way and provided for primaries for all elected positions. Primaries have prevailed ever since as the method for nominating candidates under our electoral law. So have voters' rights in our electoral legislation.

Judge Dávila found the provisions of our electoral law to be in accordance with the Constitution because they enshrine the compelling interest of the Commonwealth to protect voters' rights and to foster the expression of views and participation in the democratic process. His opinion contains the principles that the parties must follow to provide for internal democracy, ballot access in the primaries for its members and party discipline in the Legislature.

First of all, members of a party have the right to express their views and dissent, if necessary, from the leadership in all matters not contained in the party's platform or in its regulations. This means that if a party holds certain positions to be important for pursuing the ideals of the party it must place them in the platform or in the regulations to secure the disciplined allegiance of the members of the party.

Regarding the discipline of the members elected to the Legislature to vote in order to implement the decisions of the party's caucuses, the opinion sets out that the organisms of the party such as the NPP's directorate, or the PDP governing board or its general assemblies can not give binding instructions to the members elected to the Legislature. The senators and representatives are elected by the people and the only party mechanism that can tell them how to vote is a majority of the party caucus regarding matters in the party's platform or in the regulations.

Voting for the president of the Senate was not in the NPP platform nor was it in its regulations. Therefore, the NPP senators were free to vote for the member they preferred. In the future, the parties will have to include these matters in their regulations.

Another important matter covered by the opinion is due process. Expelling members from a party or imposing sanctions such as denial of ballot access to primaries requires due process which means a hearing and notice must be afforded, that one may present evidence, cross-examine witnesses and that one may argue one's case before those who adjudicate it. Furthermore, with regards to disqualifying a member

from participating in a primary, the process that is due is the one provided by the Electoral Law, which is one before the Superior Court, not before party organisms.

Judge Dávila has made a major contribution to voters' rights within our democracy. His opinion is part of the legacy that Kenneth McClintock's bitter struggle with the NPP leadership leaves behind as a milestone in the unfolding of democracy in Puerto Rico.

