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Via Mail and E-Mail

Mr. Steve Kendall
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Re: General Counsel Opinion

Gentlemen,

You have requested a General Counsel opinion regarding the conduct of a Legislative District Convention to be held on Saturday, August 13, 2011, for the purpose of nominating a legislative candidate. In light of the breadth of the issues you raise, and the limited time to respond, I will provide you a general overview of the provisions of the Republican Party of Virginia's Plan of Organization ("Party Plan") with respect to the conduct of a Legislative District Convention, and relevant provisions of Robert's Rules of Order Newly Revised (10th ed.) where it fills gaps in the Party Plan. I expect that this overview will cover the questions you have posed, although in somewhat different order. I assume that the 59th Legislative District Committee has not adopted by-laws regarding the conduct of a Convention. If by-laws were in place, they would supersede Robert's Rules. Likewise, the rules adopted by the Convention itself supersede Robert's Rules. This opinion is limited to discussion of a Legislative District Convention called for the specific purpose of nominating a candidate (the rules may differ for other kinds of conventions). Any reference to "Convention" is limited to that kind of convention. Legislative District Committee is abbreviated "LDC"; Legislative District is abbreviated "LD."

Governing Authority

You ask for confirmation regarding the sources of authority that govern Republican Party conventions in Virginia. The Party Plan is quite explicit on this point. Art. VIII, Sec. J.4. provides:

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All ... Conventions ... shall, to the extent applicable, be governed by and conducted in accordance with, giving precedence as listed to, the following: the State Party Plan; District or Unit Plan or By-Laws; rules adopted by a designated Rules Committee; and otherwise in accordance with *Robert's Rules of Order*.

For purposes of conducting a LD Convention, note that the Convention rules proposed by the Rules Committee and adopted by the Convention as a whole can vary from, and supersede, contrary provisions of Robert's Rules. Therefore, discussions of Robert's Rules in this opinion could be displaced by the rules adopted by the Convention. However, in the absence of a clear rule in the Party Plan, or a clear Convention rule, the Republican Party of Virginia regularly relies upon Robert's Rules to fill gaps. Since the Convention has not convened and adopted rules, much of this opinion relies upon Robert's Rules.

According to a prior RPV General Counsel opinion (dated August 15, 2006, attached), the section of Robert's Rules that applies to a convention to nominate a candidate is § 60, Conventions Not Of A Permanent Society (pp. 621-623). The General Counsel opinion opined that under this section, the temporary convention retains inherent authority to organize itself. This General Counsel opinion remains binding on the Party (including the 59th LDC) under Art. X of the Party Plan.

You ask whether other informal sources of guidance can be used by Convention organizers and leadership to guide the conduct of the Convention. Such informal sources can be used as general guides to fill gaps, but they carry no weight, and cannot be relied upon, in the event that they contradict the sources set forth above. However, to the extent guidance from an informal source does not contravene the Party Plan, it can be incorporated into the Convention rules adopted by the Convention. Once those rules are adopted by the Convention, the rules are authoritative—by virtue of the precedence afforded Convention rules.

Legislative District Committee's Role in Planning the Convention

Several of your questions inquire about the proper role of the LDC in planning and organizing the LD Convention. The authority and role of the LDC in planning and organizing the LD Convention is prescribed principally by the Party Plan and to a lesser extent by Robert's Rules.

Convention Arrangements

Art. V, Sec. D.1.b. provides that the LDC shall call the LD Convention “and make arrangements therefore, including the time and the place and ... the basis of representation.”

You ask whether the authority to make “arrangements” encompasses certain details of the conduct and organization of the Convention. The Party Plan does not define “arrangements.” The Party Plan suggests that “arrangements” encompass logistics such as the “time and place” of the Convention. Likewise, Robert's Rules and common usage indicate that the term “arrangements” encompasses only the physical and logistical aspects of a Convention, such as facilities, a convention hall, seating plans, travel details, hotel reservations, security, and similar

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administrative plans for a Convention. This meaning appears throughout Robert's Rules (see, e.g., § 59 at p. 589, p. 612-13 and § 60 at p. 621). Therefore, the "arrangements" provision of Art. V, Sec. D.1.b. of the Party Plan does not grant the LDC authority to dictate the organizational procedures or substantive business of the Convention.

Proposed Convention Rules & Order of Business

Art. VIII, Sec. J.1. provides that the LDC "shall prepare the rules and order of business for the conduct of a Convention in advance thereof. Said rules and order of business shall then be submitted to the Committee on Rules of such Convention for its consideration and report to the Convention."

Under this provision, the LDC is authorized to prepare (1) proposed rules for the Convention and (2) a proposed order of business for the Convention, and to submit these to the Rules Committee for its consideration. Once the proposed rules and order of business have been submitted, the Rules Committee may accept them, alter them, or reject them and substitute its own. Once the Rules Committee agrees (by majority vote) upon a set of proposed rules and an order of business, the Rules Committee reports its proposed rules and order of business to the Convention as a whole. The Convention as a whole can adopt the report or may amend the report (i.e., amend the proposed rules or order of business) through parliamentary procedure (i.e., propose amendments from the floor which are voted on). In some cases, a vote to adopt convention rules may require a two-thirds vote (see generally, Robert's Rules pp. 599-601). Once the Convention votes to adopt the rules, they become the formal Convention Rules that govern the conduct of the Convention.

Appoint Committees

There are two key committees necessary for the conduct of a LD Convention to nominate a candidate: Credentials Committee and the Rules Committee.¹ Robert's Rules, § 60 (pp. 621-622) provides that the proposed members of these committees may be appointed by the sponsoring organization, here the LDC, prior to the convening of the Convention, or may be appointed by the temporary chairman at the Convention. You indicate that these Committees have been appointed prior to the Convention and are preparing to organize the Convention to be held this week. Robert's Rules, § 60 (pp. 621-622), provides that if the LDC has appointed these committees in advance of the Convention, then the temporary chair of the Convention does not appoint them (or alter them) at the Convention. Instead, the pre-appointed members are presented to the Convention as the proposed committees. Importantly, the Convention as a whole must vote to ratify the committees appointed by the LDC before the committees can be formed. Alternatively, the Convention may, through proper parliamentary procedure, vote to amend the membership or substitute their own preferences altogether. The Convention retains the ultimate authority to select its own committees.

¹ Robert's Rules discusses four committees: (1) Credentials Committee, (2) Rules Committee, (3) Program Committee, and (4) Resolutions Committee. The Party Plan combines the Rules Committee and the Program Committee into one committee that receives the LDC's proposed rules and order of business. A Resolutions Committee is not typically relevant at a LD Convention convened solely to nominate a candidate.

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Agree Upon Person to be Nominated as Temporary Chairman

Robert's Rules, § 60 (p. 621), provides that "The sponsoring group's [here the LDC] choice for temporary chairman and the person who is to nominate him should be agreed upon in advance." This pre-agreement is optional. Robert's Rules uses the term "should." Therefore, a LDC may agree upon a temporary chair or may leave the matter to the Convention. If your LDC has agreed (by majority vote) upon a temporary chairman and the person who is to nominate the temporary chairman, then the LDC Chair, who will preside over the Convention until election of the temporary chair, must abide by the LDC's agreement. The Chair is an agent of the LDC and is bound by the LDC's majority vote in this respect.

However, the LDC's prior agreement cannot bind the Convention as a whole. The Convention body has the right to vote for or against the individual pre-selected and nominated by the LDC, or to nominate and elect a different person. Again, the ultimate authority to organize the Convention resides in the Convention body.

Legislative District Committee Chairman's Role in Planning the Convention

The LDC Chair also is vested with independent authority in connection with the planning and organization of a Convention in three key respects.

Art. V, Sec. D.2.b. provides that the LDC Chair shall issue the call for the Convention.

Art. VIII, Sec. H.1.a. requires the LDC Chair to certify to the Credentials Committee the names of all delegates and alternates elected at the Unit mass meetings. This duty is mandatory. It is not discretionary. The LDC Chair's certification duty is discussed in more detail below.

Once the Convention is convened, Art. V, Sec. D.2.b. provides that the LDC Chair "shall preside until a temporary organization is in effect." You ask whether the LDC Chair must honor the organizing decisions made by the LDC prior to the Convention. The LDC Chair must honor his LDC's majority vote with respect to the four subjects enumerated above—specifically, the LDC's (1) arrangements, (2) submission of the LDC's proposed rules or order of business to the Rules Committee, (3) appointment of Committees, and (4) nomination of a temporary chair. As the Chair of the LDC, he is bound by the majority votes of the LDC on these specific matters which are within the authority of the LDC. The LDC Chair cannot countermand one of these decisions. However, the Convention as a whole can countermand these decisions and the LDC Chair is bound to comply with any contrary decisions adopted by the Convention.

LDC Chair's Certification of Delegates

As mentioned above, one of the LDC Chair's non-discretionary duties is to prepare the initial roll of delegates and alternates certified to him by the respective Unit Committees in the LD. This is a critically important function because the initial roll of certified delegates determines which delegates are seated for the early organizational votes on temporary chair and approval of the members of the Credentials Committee, who will in turn decide any challenges to the

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qualifications of the delegates. You have asked for clarification regarding the LDC Chair's preparation of the roll and specifically whether contested delegates (or delegations) should be placed on the initial roll.

According to Art. VIII, Sec. H.1.a. of the Party Plan, the Chairman of each Unit Committee must certify the names of the delegates and alternates who are elected at the Unit's mass meeting to the LDC Chair. "The certifications shall be delivered to the Chairman of the Official Committee which called the Convention [here, the LDC Chair] prior to the convening of the Convention." Then, "[s]uch Chairman [the LDC Chair] shall be responsible for the preparation of a roll of all such certifications which roll shall thereafter govern the procedures of the Convention, unless and until changed by the Convention."

Certification Formalities

In the case of LD Conventions, Art. VIII, Sec. H.1.a., does not prescribe formalities for the "certification" of elected delegates to the LDC Chair. It merely requires the certification to be delivered to the LDC Chair and the LDC Secretary before the Convention convenes.² The absence of prescription or formalities appears to contemplate a relatively informal process given the local nature of such elections. Email delivery, for example, should suffice. Unless there is a serious doubt about the legitimacy of the list delivered by the Unit Chair, or whether the list was submitted by the Unit Chair, the LDC Chair should accept the delivery and include the names on the initial roll certified to the Convention. Questions about the lists submitted can and should be resolved through informal means and communications between the LDC Chair and the respective Unit Chairs. This process obviously requires good faith and fair play by the LDC Chair. However, if informal means do not satisfactorily resolve the questions, then the LDC Chair should exclude the questionable list from the roll of certified delegates and refer the list in doubt to the Credentials Committee for a determination by that Committee and the Convention.

Timeliness of Delivery of Certifications

The Party Plan, Art. VIII, Sec. H.1.a., requires Unit Chairs to deliver their certifications of delegates and alternates to the LDC Chair "prior to the convening of the Convention." The Party Plan does not prescribe a deadline for delivery of certifications as a number of days in advance of a LD Convention.³ However, for administrative efficiency, the official calls for LD Conventions often to set a deadline, either a date certain or certain number of days prior to the Convention, for delivery of Unit certifications. You ask whether delivery of a Unit's certified list of delegates "prior to the convening of the Convention" as required by the Party Plan, but after the deadline published in a convention call, requires the LDC Chair to include the certified delegates on the initial roll of delegates?

² By contrast, the Party Plan expressly prescribes certain formalities for certifications in connection with Congressional District Conventions and State Conventions, such as inclusion of the convention call with the certification. See, Art. VIII, Sec. H.1.b. & c.

³ By contrast, the Party Plan, Art. VIII, Sec. H.1.c., sets specific deadlines for delivery of delegate certifications in advance of Congressional District Conventions (7 days) and State Conventions (14 days).

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Under a plain reading Art. VIII, Sec. H.1.a. of the Party Plan, the LDC Chair must include on the initial roll “all such certifications.” The term “such certifications” refers back to “[t]he certifications ... delivered to the Chairman ... prior to the convening of the Convention.” This interpretation is buttressed by the provision that follows in Art. VIII, Sec. H.1.d, which provides that a “delegate or alternate who is not certified in accordance with the above requirements shall be seated only by a majority vote of the Credentials Committee, or in the event of the failure of the Credentials Committee to seat, by a vote of the Convention.” A Unit certification delivered “prior to the convening of the Convention” is made “in accordance with the above requirements.” Therefore, the initial roll of delegates prepared by the LDC Chair and submitted to the Convention must include all delegates certified by the Unit Chairs “prior to the convening of the Convention.”

The deadline set in the convention call is important, however, and should not be ignored. The failure of a Unit Chair to deliver his certifications to the LDC Chair by the deadline set in the convention call may be a basis for a challenge to the delegates (or delegation) certified late under the call. If a challenge is made to delegates certified by their Units after the deadline set in a call, the matter must be resolved by the Credentials Committee as it would handle any other challenge to the qualifications of a delegate (or delegation).

According to a RPV General Counsel Opinion (dated May 18, 1994, attached), a late Unit certification is a matter that must be decided by the Credentials Committee. The 1994 General Counsel opinion addressed a situation slightly different than the situation presented here. In that opinion, the question was a certification apparently made after the 7-day deadline expressly established by the Party Plan for Congressional District Conventions. In that case, certifications violated the Party Plan, and were not made, in the language of Art. VIII, Sec. H.1.d., “in accordance with the above requirements” set by the Party Plan. Here, by comparison, you present a situation where the certifications were made within the time frame prescribed by the Party Plan (i.e., “prior to the convening of the Convention”), and therefore literally “in accordance with the above requirements” under Art. VIII, Sec. H.1.d. That distinction is important, because delegates certified after a deadline expressly established by the Party Plan (7 days for a Congressional District Convention) cannot be seated except by an affirmative vote of the Credentials Committee or the Convention as a whole to be seated under Art. VIII, Sec. H.1.d., while delegates certified by the deadline established by the Party Plan (“prior to the convening of the Convention” for a Legislative District Convention) are seated but may be subject to challenge before the Credentials Committee or Convention as a whole. In the two scenarios, the burden shifts as to the seating of the delegates.

The 1994 General Counsel opinion is quite instructive here, because there was, in addition to the Party Plan deadline, a convention call deadline as well. The question was whether delegates certified after the deadline published in the convention call should be seated. The General Counsel opined that “failure of a unit to certify its delegates within the specified period is not automatically grounds for refusing to seat the delegation.” Thus, it would be improper for a LDC Chair to exclude such delegates from the initial roll. The General Counsel continued:

I conclude that a delay in delivering a unit delegate list or the absence of required signatures may be a cause for review by the Credentials Committee and, if necessary, for denying the delegates their seats [for cause] (e.g., lack of qualifications, voting irregularities, etc.), but that the delegation should be seated notwithstanding the failure to file within the seven days required by the Plan or the failure or refusal of the Permanent Chairman, Permanent Secretary or Current Unit Chairman to certify the results. Any other resolution would work a wholesale injustice on the delegation and present a grave opportunity for misuse of position.

The 1994 General Counsel opinion reasoned that a pre-Convention deadline for delivery of Unit certifications is an administrative deadline to assist in Convention preparation, but is not a substantive qualification for being seated at the Convention. Thus, missing the administrative deadline does not exclude the delegates from the initial roll of certified delegates submitted to the Convention and Credentials Committee. Whether the delegates are challenged, and how the Credentials Committee and Convention resolve the challenge, is a matter to be determined by those respective bodies. The 1994 General Counsel opinion remains binding upon the Party under Art. X of the Party Plan.

Delegate Votes on Organizing the Convention

Before a Convention can take formal actions, it must officially form itself into a single voting body. Once the Convention is convened, Robert's Rules, § 60 (pp. 621-622), explains the general process by which the Convention is organized to conduct formal business. Briefly:

- there may be initial ceremonies or speeches presided over by the LDC Chair;
- nomination and election of the temporary chair;
- nomination and election of a temporary secretary;
- vote to ratify (or amend) the Credentials Committee (the Credentials Committee will then finalize its report);
- receive report of the Credentials Committee;
- vote to accept (or amend) the Credentials Committee report.

The delegates included on the LDC Chair's initial roll of certified delegates, and registered and present at the Convention, vote on these initial organizing matters. However, delegates may still be challenged before the Credentials Committee and Convention.

Until the Credentials Committee report has been adopted, the Convention has not formed itself to conduct business. Once the Credentials Committee report has been adopted, the Convention is formed and will elect a permanent chair, permanent secretary, approve the Rules Committee report, and will proceed to nominate a candidate.

Delegate Challenges

Who Votes?

You have asked who is entitled to vote on the Credentials Committee report to accept—or amend (also known as a delegate challenge)—the Credentials Committee report. Robert’s Rules, § 60 (p. 622), references pp. 595-598 on this question, and the answer to your question is found on pp. 597-598 of Robert’s Rules: “On an amendment proposing changes in the list of delegates, none of the delegates involved in the case can vote. Those seated by the [Credentials] committee, though contested in a case not yet reached, can vote on all cases except their own. On the question of adopting the Credentials Committee’s report or on motions connected with its consideration, only those persons whose names are on the list of voting members reported by the committee (as this list stands after any amendment already approved by the convention) are entitled to vote.”

Campbell County Challenge

You also ask a fact-specific question regarding the seating of the Campbell County delegation. You represent that the Campbell County Unit Committee held two mass meetings to elect delegates. The second mass meeting was held in light of questions raised about the legitimacy of the first mass meeting. The same delegates were elected at each mass meeting. After each mass meeting, the Unit Chair delivered lists of the elected delegates to the LDC Chair. The first certification was delivered prior to the deadline stated in the Convention Call. The second certification was delivered after the deadline set by the Convention Call, but in advance of the Convention. You ask whether these delegates must be included on the initial roll prepared by the LDC Chair. Per the analysis above, the answer is yes, they must be included on the initial roll. In addition to the reasons explained above, the Campbell County Unit delivered its first list of elected delegates to the LDC Chair in advance of the deadline set in the convention call.

However, whether the delegates so certified are qualified, and whether the mass meetings were valid, is a matter to be determined by the Credentials Committee and the Convention as a whole.

Conduct of Formal Business

Once the Credentials Committee report is adopted by majority vote, it becomes the official roll of voting members of the Convention for the conduct of all official business. The Convention then proceeds to other formal business:

- nomination and election of a permanent chair;
- nomination and election of a permanent secretary;
- receive report of the Rules Committee;
- vote to accept (or amend) the Rules Committee report;
- proceed to nominations.

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Conclusion

I hope this letter covers the questions you raised. Pursuant to Art. X of the Party Plan, this General Counsel opinion may be appealed to the Appeals Committee and/or the State Central Committee.

Sincerely,



Lee E. Goodman
General Counsel

Attachments: RPV General Counsel Opinion, August 15, 2006
RPV General Counsel Opinion, May 18, 1994

cc: Patrick Mullins, Chairman
Michael Thomas, First Vice Chairman
David Rexrode, Executive Director
Chip Padgett, Chairman, 59th Legislative District Committee