



Republican Party of Virginia
www.rpv.org

July 1, 2016

Kenneth H. Adams, Chairman
Waynesboro Republican Committee

VIA e-mail

Dear Chairman Adams,

On April 27, you requested my interpretation of the Party Plan's provision relating to the authority of a Legislative District Committee ("LDC") to determine method of nomination.

As you note, the Plan reads, in relevant part:

The Legislative District Committee shall determine whether candidates for Legislative District public office shall be nominated by Mass Meeting, Party Canvass, Convention or Primary, where permitted to do so under Virginia Law. Art. V, Sec. D, para. 1(a).

The central issue of concern you raise is the final clause "where permitted to do so under Virginia Law." The so-called Incumbent Protection Act purports to limit the authority of political parties to choose the method of nomination where an incumbent member of the General Assembly offers for re-election. *See* Va. Code §24.2-509(a).

The question presented is whether "Virginia Law" includes the Incumbent Protection Act.

In *Adams v. Alcorn*, plaintiffs¹ argued that the Incumbent Protection Act, because it unconstitutionally infringes on the Party's associational rights and, as such, is invalid, is not included in the term "Virginia Law." The court disagreed and found that the Party voluntarily subjected itself to the Act by including this language in the Plan, and, as such, lacked standing. *See* *Adams v. Alcorn*, No. 5:15CV0012 (W.D. Va. Apr. 2, 2015).

¹ You and the 24th Senatorial District Republican Committee, an LDC, were the plaintiffs in the case.
The Richard D. Obenshain Center • 115 East Grace Street • Richmond, Virginia 23219
804-780-0111 • FAX: 804-343-1060

The decision in *Adams* was affirmed on appeal by the Fourth Circuit. However, Judge Traxler, in his dissent, agreed with appellants' contention that "Virginia Law" includes only valid laws.² See 24th Senatorial District Republican Committee v. Alcorn, No. 15-1478 (4th Cir. Apr. 19, 2016).

The courts interpret the Plan as a contract pursuant to well-settled law on the interpretation of bylaws of voluntary associations. *Adams*, p. 11; 24th Senatorial District Republican Committee, p. 11. Contract construction principles require the court to interpret the contract as written, referring only to its text. Even applying this principle, the majority and dissent reach different conclusions about the "plain meaning" of the phrase "Virginia Law."

As General Counsel, however, my authority to interpret the Plan is derived from the Plan itself at Article X and governed by parliamentary law, rather than the law of contracts. As such, I must be guided by the first principle of interpretation for bylaws—"each society decides for itself the meaning of its bylaws." RONR (11th ed.), p.588, l. 25. Of course, this principle doesn't allow the Party to change the clear meaning of its bylaws, but it does allow for the interpretation of ambiguous provisions. *Id.*, p. 588, l. 26-p. 589, l. 1.

The State Central Committee found ambiguity in this provision. A view later supported by the analysis in Judge Traxler's dissent. During the pendency of the appeal, the State Central Committee adopted a resolution authorizing the Party to file a brief as *amicus curiae* and concluding, in relevant part that:

"The State Central Committee, as the governing body of the Republican Party of Virginia [is] endowed with the authority to make definitive determinations about application and interpretation of the Party's Plan of Organization...

"...[T]he [Incumbent Protection] Act is not incorporated into the Plan, nor is the application facilitated or acceded to by the Plan." Resolution adopted June 27, 2015

The State Central Committee resolved the ambiguity in the meaning of "Virginia Law" by adopting this resolution cited above in June of 2015.

As such, under the Plan, an LDC is empowered to select a method of nomination without regard to the Incumbent Protection Act.

² "In my view, the plain meaning of the Plan is the one that the Committee urges. Both the United States Supreme Court and the Supreme Court of Virginia have held that the law of a particular state includes the United States Constitution, such that an unconstitutional Virginia statute is no law at all." 24th Senatorial District Republican Committee, p. 28 (internal citations omitted).

This letter constitutes a ruling or interpretation of the Party Plan. Pursuant to Article X, it may be appealed to the Appeals Committee or directly to the State Central Committee within thirty days of the date it is posted on the RPV website.

Sincerely,

A handwritten signature in blue ink that reads "Chris". The signature is written in a cursive, flowing style.

Chris Marston,
General Counsel