



Pat Mullins, Chairman
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Mr. Pat Mullins
Chairman
Republican Party of Virginia
115 East Grace Street
Richmond, Virginia 23219

Re: General Counsel Opinion

Dear Chairman Mullins:

This General Counsel Opinion responds to your request dated February 24, 2010. You have asked two questions:

1. May a Unit Committee amend its bylaws to limit the number of terms a Unit Chairman may serve?
2. If so, may a Unit Committee apply a newly adopted term limit retroactively, to disqualify a current or previous Chairman from standing for election as Chairman based upon his prior number of terms served?

For the reasons explained below, I am of the opinion that Unit Committees may not limit the number of terms a Unit Chairman may serve, prospectively or retroactively, in conformance with the Republican Party of Virginia's Plan of Organization ("State Plan" or "Plan").

Unit Committee Bylaws & the State Plan

The State Plan provides the framework for organizing all local and district committees of the Republican Party. Local and district committees may adopt their own bylaws, which often may go beyond the minimum standards established by the State Plan. However, unit and district committee bylaws must be consistent with the provisions of the State Plan. As explained by a General Counsel's Opinion dated July 29, 1996, a local unit committee's bylaw cannot be "inconsistent or in conflict with the Plan provision."

Interpreting the State Plan

The difficulty in applying this general rule lies in discerning a conflict – that is, deciding which local rules actually “conflict” with the State Plan versus those that merely augment the State Plan without creating a “conflict.”

One interpretative canon often used to ascertain a “conflict” is the doctrine of *expressio unius est exclusio alterius*, translated as “the expression of one thing excludes all others.” That is, if a governing rule, such as the State Plan, prescribes certain qualifications or powers, it necessarily excludes the addition of other qualifications or powers. This interpretative canon also is set forth in *Robert’s Rules of Order Newly Revised* (10th ed.), § 56 (at page 571), which sets forth certain principles for organizations to interpret their bylaws, including this one:

(4) *If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.* There is a presumption that nothing has been placed in the bylaws without some reason for it. There can be no valid reason for authorizing certain things to be done that can clearly be done without the authorization of the bylaws, unless the intent is to specify the things of the same class that may be done, all others being prohibited.

Robert’s Rules § 56 (at page 570) also provides that a rule must be interpreted “in harmony with the other bylaws.”

Another potentially relevant interpretative canon, which applies only in cases where an ambiguity appears in the text of an organization’s bylaws, is reference to the intent underlying the bylaws. According to *Robert’s Rules* § 56 (at page 570), “The interpretation should be in accordance with the intention of the society at the time the bylaw was adopted, as far as this can be determined.” Thus, if an ambiguity is perceived in a provision of the State Plan, one may interpret it according to the Party’s underlying intent in adopting the provision.

What the State Plan Provides Regarding Qualifications for Chairmen

The State Plan contains four provisions that are relevant to your questions.

Article VI, Sec. B.1 is entitled “Election and Term” and it provides:

The Chairman and other members of the [Unit] Committee shall be elected by the Mass Meeting, Party Canvass, Convention, or Primary called for the purpose of electing delegates to the Biennial District Convention for a term of two (2) years or until their successors are elected.

Article I, Sec. B is entitled “Participation” and it provides in pertinent part:

Mr. Pat Mullins, Chairman
Republican Party of Virginia
March 25 2010
Page 3 of 5

All Chairmen ... shall be members of the Republican Party of Virginia as stated in this Article and must be legally qualified voters of the respective Units or election Districts which they represent as Chairmen

Article I, Sec. A.1 supplies the qualifications for members of the Republican Party of Virginia:

All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin or sex, who are in accord with the principles of the Republican Party, and who, if requested, express in open meeting either orally or in writing[,] as may be required[,] their intent to support all of its nominees for public office in the ensuing election[,] may participate as members of the Republican Party of Virginia in its mass meetings, party canvasses, conventions, or primaries encompassing their respective election districts.

Another State Plan provision with relevance to the election of Unit Chairmen is Article VIII, Secs. 2 & 3, which, in pertinent part, establish the authority and limits of Unit calls and pre-filing requirements:

2. All calls for Unit Mass Meetings, Conventions or Party Canvasses shall be published in a newspaper of general circulation in the Election District not less than seven (7) days nor more than sixty (60) days ... prior to the Mass Meeting or Party Canvass

3. In order to be a requirement for any election [including Chairman] ... by a Mass Meeting, Party Canvass, or Convention, pre-filing shall be approved by the appropriate Official Committee and the pre-filing requirement included in the call.... Each person desiring to pre-file must file a statement prior to the deadline for pre-filing. The Official Committee or its Chairman, if authorized, may prescribe the use of a particular filing form for the required statement. The Official Committee may, at its option, establish a filing fee for candidates for nomination for public office, as long as such fee does not exceed twice the primary filing fee for that office.

Prior General Counsel Opinions

In researching your question, I have located two previous General Counsel Opinions that have some bearing on the questions, which are attached. First, a General Counsel Opinion dated July 29, 1996, concluded that the York County Republican Committee could not impose a dues requirement to restrict an individual's right to participate in mass meetings or conventions or to serve as a proxy, because such a requirement would conflict with the qualifications for membership and participation set forth in Article I, Sec. A (above).

Mr. Pat Mullins, Chairman
Republican Party of Virginia
March 25 2010
Page 4 of 5

Similarly, a General Counsel Opinion dated May 7, 2008, concluded that the Fluvanna County Republican Committee could not impose additional qualifications on prospective candidates for Chairman. In that matter, the Fluvanna County Republican Committee sought to require candidates for Chairman to have paid dues and to have attended a certain number of Committee meetings in order to be qualified as a candidate for Chairman. The General Counsel opined that the imposition of these additional qualifications effectively constituted a pre-filing requirement. Because these pre-filing requirements could not be satisfied within 30 days prior to a mass meeting, they conflicted with the publication requirements of Article VIII, Sec. 2 of the State Plan. Therefore, the dues and attendance requirements for candidates for Chairman were not allowed.

Analysis of Term Limits for Unit Chairmen

Based upon the State Plan provisions, the canons of interpretation, and the two prior General Counsel Opinions set forth above, I conclude that a local Unit Committee's imposition of a term limit conflicts with the State Plan and cannot be imposed as a qualification for candidates for Unit Chairman, retrospectively or prospectively. A term limit effectively imposes a restrictive qualification upon those who would present themselves as candidates for Unit Chairman. The term limit acts as a qualification for office because any person who serves the number of terms prescribed – in the past or in the future – becomes unqualified to stand for election as Unit Chairman.

Although a private political organization such as the Republican Party of Virginia could, if it chose to, impose term limits as a qualification, it has not done so. The Republican Party of Virginia could also adopt a provision in the State Plan merely permitting local and district committees to adopt such a qualification for office (with or without conditions). But the State Plan does not currently provide for such a restrictive qualification.

Instead, the State Plan establishes only two qualifications for Unit Chairman: (1) s/he must be a member of the Republican Party of Virginia and (2) s/he must be a legally qualified voter in the respective unit or election district. The State Plan further provides a limited list of qualifications to be a member of the Republican Party of Virginia in Article I, Sec. A.1 (above). And to the extent that additional pre-filing requirements may be imposed pursuant to Article VIII, Sec. 3 (and to the extent such pre-filing requirements may be considered qualifications for candidacy), such pre-filing requirements have been carefully circumscribed to include, for example, filing of a form and/or a reasonable filing fee. The express permission granted to unit and district committees to impose pre-filing requirements is an example of the kind of language needed to permit other conditions, such as term limits.

The qualifications provided in the State Plan thus appear to be the only qualifications the State Plan prescribes and permits. Having set forth a list of qualifications, canons of interpretation indicate that additional restrictive qualifications are intended to be precluded. Thus, imposition of a term limit qualification by a Unit Committee would conflict with the State Plan.

Mr. Pat Mullins, Chairman
Republican Party of Virginia
March 25 2010
Page 5 of 5

Furthermore, the addition of a term limit as a qualification for candidacy is analogous to the dues and attendance requirements at issue in the General Counsel Opinion of May 7, 2008. According to that Opinion, which is binding on the Party unless and until overturned by the State Central Committee, the imposition of a qualification that cannot be satisfied in the thirty days between publication of the call and the pre-filing deadline directly conflicts with the State Plan.

Finally, to the extent that the State Plan is deemed ambiguous on the subject of Unit term limits, one can look to the policy and intent embodied in the relevant provisions of the State Plan. Article I, Secs. A and B, as currently stated, reflect an intent to open the membership and leadership of the Republican Party of Virginia and its units as broadly as possible, without severe restrictions. The Party could have established any number of restrictive qualifications upon eligibility for leadership in the Party, but the State Plan intentionally avoids such restrictions, leaving qualification open to any member of the Republican Party of Virginia who lives in the unit. A term limitation is a restrictive qualification that countermands the animating policy currently stated in our State Plan.

Conclusion

For all of these reasons, a Unit Committee may not impose term limits on its Chairman or candidates for Chairman. Whether the State Central Committee may desire to entertain a provision permitting term limits, at any level and with any conditions, is a matter solely within the discretion of the State Central Committee.

Pursuant to Article X, Sec. A.1. of the State Plan, this General Counsel Opinion may be appealed to the Appeals Committee and/or State Central Committee within 30 days of the date that the Opinion is posted on the RPV website.

Sincerely,



Lee E. Goodman
General Counsel

Enclosures