

Republican Party of Virginia

Patrick M. McSweeney
General Counsel

September 24, 2014

By email

Mr. Gary Chatelain
Chairman
Augusta County Republican Committee

Dear Mr. Chatelain:

This is in response to your request for a ruling on a question regarding the voting membership of your Committee.

Your question involves consideration of Article VI(B)(1) and Article X of the State Party Plan and Article IV(C)(2) and Article XI of the Bylaws of the Augusta County Republican Committee (ACRC). Article VI(B)(1) of the State Party Plan provides that the members of each unit committee are elected at a mass meeting, convention or canvass every even-numbered year for a term of two years. The ACRC Bylaws provide for the election of at-large and precinct members of the Committee. For precinct membership, the Bylaws specify that each precinct is entitled to one member for each 300 votes cast for the Republican candidate for Governor and President in the last elections.

Article X of the State Party Plan establishes the procedure for appeals from any actions of a mass meeting. The third sentence of Article XI of the Bylaws states that “[d]ecisions of the...Mass Meeting, are final except as provided in Article X of the State Party Plan.” That article of the State Party Plan authorizes and directs the Committee to “decide all controversies and contests arising within its jurisdiction.” Appeals to the Committee under that article from actions taken or decisions made at a mass meeting must be made in writing within thirty days of the action or decision appealed from.

I note that the composition of the Committee’s membership is determined in the first instance at the biennial mass meeting called for that purpose. Any challenge to the actions taken at such a mass meeting must be initiated within thirty days of that mass meeting. As I am informed that no appeal was made from the vote on Committee membership at the 2014 mass meeting called for the election of members, the vote on membership is final and is not subject to collateral or belated challenge. The Committee members elected as precinct members at the 2014 mass meeting, therefore, are entitled to vote for the remainder of the two-year term of such members unless removed in the interim pursuant to Article IV(E) of the Bylaws.

There is a further basis for not applying the limitations on precinct membership set forth in Article IV(C)(2) of the Bylaws at this time and under the circumstances. I have been advised that the limitation has been in the Bylaws for approximately six and a half years, but has never before

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been enforced or implemented at a biennial mass meeting or otherwise. Provisions of law or regulation may not be applied arbitrarily. For example, it is well-settled that a law or regulation may not be enforced selectively or in a discriminatory manner. Likewise, a law or regulation may not be allowed to remain unobserved, ignored or unenforced for a period of years while persons change their position only to have that law or regulation suddenly imposed on them. The principle underlying this rule is obviously related to the principle underlying the requirement that a challenge to the violation of such a law or regulation be made within a prescribed period of time or subsequently precluded. The rule that has developed in regard to unobserved, ignored or unenforced legislation and government regulations obviously applies with equal force to the rules of a political association such as the ACRC. Committee members have been elected without challenge during the six and a half years since the precinct membership limitation was adopted and in apparent violation of that limitation. Those members have paid their dues and have been permitted to vote. Some would be deprived of their voting rights if the limitation in Article IV(C)(2) were to be applied now. As there is no methodology for determining which members would lose their voting rights, the decision to choose who would be adversely affected would necessarily be an arbitrary one. This compels the conclusion that a challenge based on Article IV(C)(2) must be made, not long after the election is held, but rather in a timely fashion so that any violation can be corrected within the mass meeting itself or at a new mass meeting ordered for that purpose after a successful appeal.

To summarize: The Committee can ratify, amend or delete Article IV(C)(2) of its Bylaws as it chooses, but it cannot now deny Committee members elected at the 2014 mass meeting of their right to vote based upon Article IV(C)(2) of the Bylaws.

Very truly yours,

/s/

Patrick M. McSweeney
RPV General Counsel

cc: RPV Chairman
RPV Executive Director