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August 12, 2016

Via Email (chris.marston@gmail.com)

Christopher M. Marston, General Counsel
The Republican Party of Virginia
The Richard D. Obenshain Center
115 East Grace Street
Richmond, Virginia 23219

Re: Appeal of General Counsel Opinion

Dear Mr. Marston:

I am writing in response to Jeffrey Ryer's appeal of your opinion dated July 1, 2016. As the lawyer who argued the *Adams v. Alcorn* case, I would like to offer you and the members of the Appeals Committee some insight into how the courts understand the role of the Party as definitive interpreter of the Plan, as well as some thoughts on the proper interpretation of Article V(D)(1)(a).

The Courts Acknowledged the Party is the Definitive Interpreter of the Plan.

The courts' interpretations of the Plan are not binding on the Party. In fact, strange as it may seem, the opposite is true. The judges in the case recognized that, under Article X of the Plan, the Party is the definitive interpreter of the Plan.

The District Court and the Court of Appeals judges who heard the case asked about the Article X process during oral argument. In their questioning, the judges acknowledged that Article X makes the Party itself the definitive interpreter of the Plan. The District Court stated in its written opinion that "the Plan states that the Party's State Central Committee has 'final authority' within the RPV for interpretation of the Plan".

Of course, during the litigation the Party had not yet interpreted Article V(D)(1)(a) of the Plan using the Article X process. Accordingly, the judges had to provide their own interpretations of the Plan in order to decide the case. But the judges were merely filling the interpretive gap left by the silence of the Party. The judges did not and could not displace the Party's authority under Article X to definitively interpret the Plan.[1]

The Party has Never Submitted to Unconstitutional Enactments.

The appeal asks the Party to submit to the Incumbent Protection Act, *even if it is unconstitutional*. However, submission to unconstitutional enactments is at odds with the text of the Plan and the policy of the Party.

The language of the Plan in question here is: "where permitted to do so under Virginia Law." Notice that the text does not say 'Virginia Election Law' but 'Virginia Law', which is to say the law of Virginia in its entirety.

The United States Constitution is the law of Virginia; indeed, it is the supreme law of the Commonwealth. *See, e.g.*, *Howlett v. Rose*, 496 U.S. 356, 367 (1990). On the other hand, an unconstitutional law is void and no law at all. *See Marbury v. Madison*, 5 U.S. 137, 180 (1803). Accordingly, if the Incumbent Protection Act is unconstitutional–as it manifestly is–then it is not 'Virginia Law' as that term is used in the text of the Plan.

The Party's refusal to submit to unconstitutional laws also appears in Article II (24) of the Plan, which incorporates the definition of "Primary" as found in "the Election Laws of the Commonwealth of Virginia, except to the extent that any provision of such laws . . . infringe the right to freedom of association". Note that the Plan carefully preserves the Party's right to challenge laws it believes to be unconstitutional.

The Party has consistently acted on this policy of non-submission. For example, in the recently concluded nomination for President, the Party refused to obey an unconstitutional Virginia statute that purports to require it to allocate delegates on a winner-take-all basis.

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[1] The courts' role is to interpret the Plan, and do so in such a manner as gives effect to all of its provisions. Thus, the courts are not free to ignore Article X or the definitive interpretations rendered pursuant to it.

It is my hope that these insights will guide the deliberations of the Appeals Committee and reassure them that by upholding your ruling, they will be neither defying the courts nor amending the Plan, but merely doing their duty under Article X of the Plan.

Very truly yours,

Jeffrey R. Adams

JRA

cc: John Whitbeck *(via email)*
Ken Adams *(via email)*
Scott Sayre *(via email)*

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