



June 23, 2015

John Whitbeck, Chair  
Republican Party of Virginia  
115 E. Grace Street  
Richmond, VA 23219  
[chairman@rpv.org](mailto:chairman@rpv.org)

Dear Mr. Whitbeck:

The ACLU of Virginia has learned that the Republican Party of Virginia (RPV) may be considering holding a convention to select its delegates to nominate a presidential candidate in 2016, and, further, that the Party is being encouraged to charge "mandatory \$35 dollar delegate fees" in order to vote at the convention. It is our understanding that the governing body of the RPV might vote on this matter at its meeting this Saturday, June 27. While the RPV certainly has the right to select its presidential nominee by means of a convention, it may not finance the convention by charging its members to participate in the vote on the nomination. Such a fee would unfairly exclude Republicans from voting based on their economic means, and would invite prolonged and costly litigation.

The last time the RPV charged a fee for participation in a nominating convention was in 1994, when the party nominated its candidate for U.S. Senate. Three delegates challenged the fee under the Voting Rights Act. The Supreme Court ultimately determined that the fee was subject to preclearance by the Department of Justice under Section 5 of the Voting Rights Act, and that the plaintiffs were entitled to challenge the fee as a poll tax under Section 10 of the Voting Rights Act. *Morse v. Republican Party*, 517 U.S. 186 (1996).

In *Morse*, the Supreme Court noted that, when a state political party chooses a nominee for office, it is exercising power delegated by the state to determine who appears on the ballot, and, accordingly, its procedures must be consistent with federal constitutional and statutory norms. This principle goes back to 1944, when the Supreme Court ruled that the Democratic Party of Texas could not exclude African-Americans from voting in a primary election. The Court held that the party was "an agency of the State in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party." *Smith v. Allwright*, 321 U.S. 649, 663 (1944). Because Virginia allows political parties to choose the method of nomination, "the delegation of [state] authority . . . [is] more expansive, not less, for the Party is granted even greater power over the selection of its nominees." *Morse*, 517 U.S. at 199.

*Smith* and *Morse* make clear that, when the party determines who is eligible to select a nominee, it is bound by both the Constitution and the Voting Rights Act. Neither of these permit the RPV to charge a fee to vote for a nominee.

Although Section 5 preclearance is not currently an issue, Section 10 of the Voting Rights Act, which bars "any requirement of the payment of a poll tax as a precondition to voting," is still very much in force and may be enforced by private litigants or by the United States Attorney General.

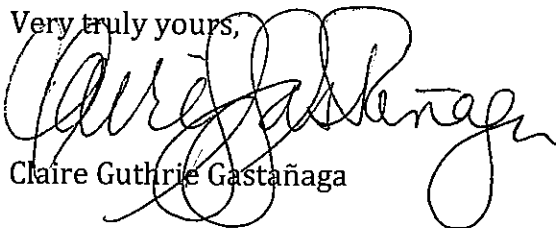
In addition to the Voting Rights Act, the Twenty-Fourth Amendment to the U.S. Constitution provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax." Since the RPV is exercising authority delegated by the State when it chooses its presidential nominee, the RPV, like the State, is prohibited from assessing a tax to participate in the decision.

Finally, the proposed fee would violate the Fourteenth Amendment to the U.S. Constitution. The Supreme Court has explained that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966). "The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay." *Id.* at 668.

The ACLU of Virginia supports the RPV's First Amendment right to choose its platform and its nominee, and its right to associate freely with those who share its values and ideas. The RPV may not, however, use its control over its nomination process to exclude voters in violation of the Constitution or the Voting Rights Act.

If the RPV votes this Saturday to nominate its presidential candidate by convention, it should expressly reject any fee for participation.

Very truly yours,



Claire Guthrie Gastañaga