

Donald E. Showalter  
Glenn M. Hodge  
Gregory T. St. Ours  
Charles F. Hilton  
Daniel L. Fitch  
Thomas E. Ullrich  
Stephan W. Milo  
Humes J. Franklin, III  
Jeffrey R. Adams

## WHARTON ALDHIZER & WEAVER<sup>PLC</sup>

ATTORNEYS AT LAW

THE AMERICAN HOTEL  
125 SOUTH AUGUSTA STREET  
SUITE 2000  
STAUNTON, VIRGINIA 24401  
WWW.WAWLAW.COM

TELEPHONE  
STAUNTON (540) 885-0199  
HARRISONBURG (540) 434-0316

FAX (540) 213-0390

WRITER'S E-MAIL: JADAMS@WAWLAW.COM

Lauren R. Darden  
Derek J. Brostek  
P. Marshall Yoder  
Ginger T. Chapman  
James L. Johnson  
Ashley H. Waterbury  
Alexandra E. Humphreys  
Lucas I. Pangle  
Briana A. Stevens

*Reply to the Staunton office*

June 17, 2019

*Via email*

Heather Hays Lockerman  
Senior Assistant Attorney General/Chief  
Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, Virginia 23219  
[hlockerman@oag.state.va.us](mailto:hlockerman@oag.state.va.us)

Alex W. West  
Assistant Attorney General  
Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, Virginia 23219  
[awest@oag.state.va.us](mailto:awest@oag.state.va.us)

Re: 97<sup>th</sup> House of Delegates District; Certification of Republican Candidate

Dear Heather and Alex:

I am writing you on behalf of Scott Wyatt and Scott Wyatt for Delegate. Mr. Wyatt was a candidate for the Republican nomination for the 97<sup>th</sup> House of Delegates District (the "District").

As you likely are aware, there has been an ongoing dispute regarding the legitimate method of nomination, and the identity of the real nominee, for the District. Fortunately, the

Ms. Heather Hays Lockerman  
Mr. Alex W. West  
June 17, 2019  
Page 2

essential facts are clear. And, remarkably, there is a Virginia Supreme Court case that is precisely on point, which provides a clear road map to the final resolution of the matter.

Our request of you at this time is simple. We request that, in light of the competing claims in this matter, the Department of Elections delay taking any action at this time, for two reasons. First, delay will allow internal party processes to be completed. The State Central Committee of the Republican Party of Virginia (“RPV”) will be meeting this coming Saturday. As the highest decision-making body of the RPV, its decisions (or silence, to the extent it leaves decisions taken at a lower level undisturbed) will provide additional clarity in this matter, one way or the other. Second, delay will avoid embroiling the Department in resulting litigation, if any. This matter is an intra-party dispute that does not implicate the Department. We would certainly like to keep it that way, and we believe that is in the Department’s interest as well.

### **FACTUAL SUMMARY**

This matter has been through more twists and turns than I can provide at this time, but the following summary is sufficient for the day.

#### **I. Selection and Call of the Convention.**

The 97<sup>th</sup> Legislative District Committee (the “97<sup>th</sup> LDC”) of the Republican Party of Virginia (the “RPV”) selected a convention (the “Convention”) as the method of nomination for the Republican candidate for the 97<sup>th</sup> House of Delegates District (the “District”). A copy of the ELECT-516 provided to the Department of Elections to that effect is attached as **Exhibit A**.

The chairman of the 97<sup>th</sup> LDC, Tom Miller, issued a call for the Convention (the “Call”) to be held on May 4, 2019. A copy of the Call is attached as **Exhibit B**. In reliance on the Call, the Republican unit committees in the District held mass meetings and selected delegates and alternate delegates for the Convention. Those delegates were certified to the Convention as provided by the *Plan of Organization of the Republican Party of Virginia* (the “Plan”), the governing document of the RPV.<sup>1</sup>

---

<sup>1</sup> *Plan*, Art. VII, § H.

**II. Attempt to Change the Method of Nomination.**

As of May 1, 2019, (i) the delegates to the Convention had already been elected and certified and (ii) the time period for military participation in the Convention had opened.<sup>2</sup> In short, the nomination process had commenced, and votes had been cast and counted. Notwithstanding which, two members of the 97<sup>th</sup> LDC purported to make and pass a motion cancelling the Convention and changing the method of nomination to a party canvass, to be held on June 1, 2019.<sup>3</sup>

Chairman Miller and the third member of the committee strenuously objected, on the ground that such a change violated the *Plan, Robert's Rules of Order*, which is incorporated into the *Plan*, and the decision of the Virginia Supreme Court in *Chichester v. Reamy*. 157 Va. 55, 59 (1931) (Holding that party committee could not rescind motion to nominate candidate by primary shortly before primary was to be conducted, because “the rights of the [party] voters to choose the candidates of the party had already attached”).

**III. Conduct and Outcome of the Convention.**

The Convention was conducted as scheduled on May 4, 2019. Mr. Wyatt was selected as the Republican nominee at the Convention. That result was certified to the Department using ELECT-511 by Chairman Miller.

**IV. Contest by Mr. Wyatt.**

Under Article X, Section B, of the *Plan*, “contests and controversies” such as the dispute in this case over the method of nomination, are decided in the following way. First, the contest is brought before the committee that made the original determination in question.<sup>4</sup> That committee is given fourteen days to decide the contest.<sup>5</sup> Once the contest is disposed of by that committee, or thirty days has passed and it is left undecided, the matter can be appealed to the Congressional District Committee within which the original committee is located.<sup>6</sup> Similarly, once an appeal is disposed of by a Congressional District Committee, or thirty days has passed and it is

---

<sup>2</sup> The process for military participation in the Convention commenced thirty days prior to the date of the Convention. Call, p. 2.

<sup>3</sup> There is some dispute as to whether the vote to cancel the Convention was taken at a validly called, unadjourned meeting. Mr. Wyatt believes that it was not. However, that point is not material to the proper resolution of this matter and we assume in this letter, *arguendo*, that the vote was taken at a validly called, unadjourned meeting.

<sup>4</sup> *Plan*, Art. X, § B.2.

<sup>5</sup> *Plan*, Art. X, § B.5.

<sup>6</sup> *Plan*, Art. X, § B.2 and 5.

undecided, then the matter is ripe to be heard by the State Central Committee, the RPV's highest decision-making body.<sup>7</sup>

On May 9, 2019, Mr. Wyatt brought a contest to the purported vote to cancel the Convention and change the method of nomination to a party canvass (the "Contest"). A copy of the Contest is attached as **Exhibit C**. However, the 97<sup>th</sup> LDC refused to hear the Contest during the 14 day period provided *Plan*. Instead, on May 18, 2019, the 97<sup>th</sup> LDC resolved to hear the Contest on June 5, 2019, *four days after the party canvass, which was the subject of the Contest, was scheduled to be held*.

Mr. Wyatt appealed the 97<sup>th</sup> LDC's disposition of the Contest to the First Republican Congressional District Committee (the "1<sup>st</sup> CDC"), the official committee with authority under the *Plan* to hear an appeal of the Contest. At a hearing conducted on May 20, 2019 (the "Hearing"), the 1<sup>st</sup> CDC heard Mr. Wyatt's appeal. A copy of the minutes of the Hearing are attached as **Exhibit D**. At the Hearing, the 1<sup>st</sup> CDC made the following findings:

- As a factual matter, the 97<sup>th</sup> LDC had disposed of the Contest and, therefore, an appeal to the 1<sup>st</sup> CDC was ripe.
- By changing the method of nomination after the certification of the delegates, the 97<sup>th</sup> LDC had violated the *Plan*.

Based on its findings, the 1<sup>st</sup> CDC made the following rulings, by way of remedy:

- The convention was the valid and legitimate method of nomination for the Republican candidate for the District.
- Scott Wyatt was the properly nominated Republican candidate for the District.
- The purported party canvass was not a legitimate RPV nomination process.

#### V. Defiance of the 97<sup>th</sup> LDC.

The majority of the membership of the 97<sup>th</sup> LDC has chosen neither to appeal nor to abide the findings and rulings of the 1<sup>st</sup> CDC. To the contrary, they (purportedly) held the party canvass, and declared Chris Peace the nominee as a result of the outcome of that process.

---

<sup>7</sup> *Plan*, Art. X, §§ B.3 and 5 and C. In this regard, it is worth pointing out that neither the Chairman of the State Central Committee nor the Executive Director of the RPV have any unilateral power to make decisions on these matters for the RPV. With regard to nominations, contests and appeals, the RPV speaks always and only through its official committees.

Ms. Heather Hays Lockerman  
Mr. Alex W. West  
June 17, 2019  
Page 5

As part of their effort, they have purported to remove Tom Miller as chairman of the 97<sup>th</sup> LDC, and appoint John Hubbard in his place.<sup>8</sup> Mr. Hubbard, in defiance of the findings and ruling of the 1<sup>st</sup> CDC, has submitted an ELECT-511 naming Chris Peace as the Republican nominee for the District.

### LEGAL ISSUES

As a political party, the RPV has first amendment associational rights to determine its internal processes and procedures.<sup>9</sup> That includes the procedures by which it adjudicates disputes that arise among its members and official committees.

Mr. Wyatt has invoked those procedures, and the 1<sup>st</sup> CDC has clearly and unequivocally ruled that (i) the Convention was the legitimate nomination process for the District and (ii) Mr. Wyatt is the nominee. Unless and until the ruling of the 1<sup>st</sup> CDC is overruled, it remains the final and definitive word of the RPV on the matter, and must be respected by all parties. To this date, no such appeal has been made, much less granted.

Moreover, as discussed above, there is a Virginia Supreme Court case that is directly on point, and that affirms this result no less than the language of the *Plan* and the findings and rulings of the 1<sup>st</sup> CDC. The facts of *Chichester v. Reamy*, 157 Va. 55, 59 (1931), are uncannily similar to the current fracas. In that case, the Stafford County Democratic Committee had chosen a primary as the method of nomination for certain offices. As in this case, shortly before the nomination was to be conducted, the committee purported to change the method.<sup>10</sup> As in this case, the matter was referred to the relevant congressional district committee, which overruled the county committee and found that the late-breaking change of the method of nomination was impermissible. And, again as in this case, the membership of the county committee defied the congressional district committee and continued to assert that the method of nomination had been changed.

---

<sup>8</sup> There is some dispute regarding the removal of Mr. Miller and appointment of Mr. Hubbard. Again, this is an issue that we believe to be tangential to the fundamental question, so for the purpose of this letter we assume without conceding that Mr. Hubbard is the current chairman of the 97<sup>th</sup> LDC, since the identity of the chairman is irrelevant to the fundamental questions: what was the legitimate method of nomination, and who is the legitimate nominee?

<sup>9</sup> *Cal. Democratic Party v. Jones*, 530 U.S. 567, 573 (2000); *see also Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986).

<sup>10</sup> In *Chichester* the original method was a primary, so while the candidates had qualified for inclusion on the primary ballot, the actual electoral process had not commenced when the change was made. In this case, the original method was a Convention, and the voting for the delegates had already been conducted, and military participation in the Convention had commenced when the change was made.

Ms. Heather Hays Lockerman  
Mr. Alex W. West  
June 17, 2019  
Page 6

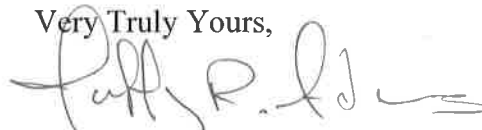
The matter came before the Supreme Court on a petition for a writ of *mandamus*. The Court held that the change of the method of nomination was impermissible, and issued a writ of *mandamus* requiring the chairman of the county committee to recognize the outcome of the primary as the nominees of the party for the offices in question.

### CONCLUSION

On the strength of both the 1<sup>st</sup> CDC findings and rulings, and the *Chichester* decision, Mr. Wyatt is the legitimate nominee of the RPV for the District. Moreover, we believe that this result will be clarified at the upcoming meeting of the State Central Committee of the RPV and will, if necessary, be upheld by the courts in a *mandamus* action against Mr. Hubbard.

Given that internal party processes are ongoing, and legal processes are likely to be commenced if Mr. Hubbard continues to defy the 1<sup>st</sup> CDC, we respectfully request that the Department of Elections defer any action at this time and allow those administrative and legal processes to proceed. Doing so will prevent the Department from becoming embroiled in a dispute that is not of its making, and which it can easily and properly avoid.

Very Truly Yours,



Jeffrey R. Adams

JRA

19012869.DOCX

cc: John Hubbard (*via email*)  
Tom Miller (*via email*)  
Cortland Putbrese (*via email*)  
Chris Marston (*vis email*)  
Scott Wyatt (*via email*)