

March 8, 2012

Mark,

This will address Adrian Wyllie's March 6, 2012 e-mail to you (Re: "LNC Mandatory Floor Fees Violate Florida Law"), which is reproduced below. The question presented is whether Florida law prohibits charging registration fees to Florida delegates to the Libertarian National Convention. I understand that the LNC wants to charge all delegates to the National Convention a basic registration fee of approximately \$94.00.

Section 103.095(2) of the Florida election code [Fla. Stat. § 103.095(2)] provides in pertinent part that "[e]ach elector registered to vote in the minor political party in which he or she has so designated has a fundamental right to fully and meaningfully participate in the business and affairs of the minor political party without any monetary encumbrance." This provision was added to the Florida election code in May 2011 and does not yet appear to have been enforced by Florida officials or to have been construed by any court.

The short answer to the question presented is probably yes: The LP of Florida is a "minor political party" within the meaning of Fla. Stat. §§ 97.021(18) and 103.095(1). Sending delegates to the Libertarian National Convention is certainly part of the "business and affairs" of the LP of Florida within the meaning of Section 103.095(2). And requiring those delegates to pay a registration fee could be considered a "monetary encumbrance" on their "fundamental right to fully and meaningfully participate in the business and affairs" of the LP of Florida within the meaning of Section 103.095(2). Under Fla. Stat. §§ 104.091 and 104.41, a violation of Section 103.095(2), or aiding or abetting such a violation, is a misdemeanor of the first degree. I do not believe that a violation of Section 103.095 would result in termination of the LP of Florida's minor party status, as Adrian Wyllie suggests, because the penalty of termination seems to apply only to failure to meet the filing requirements of Section 103.095.

However, it is far from certain that Florida election officials or Florida courts would construe garden variety registration fees, like those charged by the LNC, to be a "monetary encumbrance." If Florida officials or courts did take the position that a registration fee was a prohibited "monetary encumbrance," this position and the statute that gives rise to it would in my opinion be unconstitutional under the U.S. Supreme Court's decision in *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989). That decision stands for the proposition that political parties have the right to organize and govern themselves as they see fit, which certainly includes the right to charge registration fees to convention delegates.

The LNC's choices in this matter appear to be (1) waive registration fees for the Florida delegation as the best way to avoid running afoul of Florida law; (2) ask the LP of Florida to cover the registration fees as a way to avoid imposing a monetary encumbrance on individual delegates, while recognizing that this alternative carries some risk of being deemed a subterfuge; or (3) require Florida delegates to pay their

registration fees as a way to ensure that all delegates are treated alike and to assert the LNC's constitutional rights under the Supreme Court decision mentioned above. I would personally opt for the third alternative, in light of my interest in preserving and expanding the rights of third parties. However, this is a political decision which I am not authorized to make.

I would be happy to discuss this further if you like.

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