

TO: Bill Redpath
FROM: Gary Sinawski
SUBJECT: Convention Registration Fee and *Morse v. Republican Party of Virginia*
DATE: 02/18/10

I have been asked whether the LNC Convention Oversight Committee's decision to charge a registration fee to delegates at the LP national convention in St. Louis might be affected by *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996). I understand that some party members object to the registration fee on the grounds that it allegedly violates the LP's bylaws, is an illegal poll tax, and perhaps for other reasons. Alicia Mattson has reviewed the bylaws and convention rules in her capacity as a Professional Registered Parliamentarian and believes that a registration fee is permitted. The LP's designated Professional Registered Parliamentarian and two other non-LP parliamentarians agree.

I also believe it is permissible for the LP to charge a convention registration fee. While the LNC's decision to do so is unaffected by the *Morse* case, familiarity with that case might be useful.

In *Morse*, the Republican Party of Virginia had decided to select its candidate for U.S. Senate at a nominating convention open to RP adherents who paid a registration fee. Several RP adherents challenged the registration fee as a poll tax forbidden by the U.S. Constitution and by Section 10 of the Voting Rights Act of 1965. Virginia is a "covered jurisdiction" under Section 5 of the Voting Rights Act, in that it has a history of discrimination in voting on the basis of race or color. Under Section 5, changes in procedures that affect voting in covered jurisdictions must be "precleared" by the U.S. Attorney General or by the U.S. District Court for the District of Columbia before they can take effect. Among the issues in *Morse* were whether the registration fee in question was subject to Section 5's preclearance requirements, whether it was a poll tax, and whether Section 5 creates a "private right of action" which entitled the plaintiffs to challenge the registration fee. The lower court said that the plaintiffs were not entitled to challenge the fee and indicated that the preclearance requirements do not apply to the selection of delegates to a state nominating convention.

The Supreme Court reversed the lower court. Its "decision" is over 100 pages long and consists of five separate opinions by various combinations of justices. A majority of five justices agreed that Section 5 does create a private right of action which enabled the plaintiffs to challenge the registration fee, and remanded the case to the lower courts. Those five justices also seemed to agree that a political party can be subjected to the preclearance requirements of Section 5 to the extent that the party is authorized by a covered jurisdiction (such as the state of Virginia) to exercise public electoral functions

(such as selecting candidates for public office at primary elections or at conventions that are the functional equivalent of primary elections).

It seems clear to me that the LP can safely charge registration fees for its conventions and that such fees will not run afoul of the *Morse* case. Unlike the state of Virginia, the Libertarian Party is not a “covered jurisdiction” within the meaning of the Voting Rights Act, and the LNC’s decision to charge registration fees is not subject to preclearance under the Act. Therefore, the private right of action created by Section 5 cannot be used by LP members to challenge the registration fee. Nor, in my opinion, could the LP registration fee be successfully challenged on constitutional grounds, because there is no “state action” involved at LP conventions. In contrast to the national LP, the Republican Party of Virginia is a qualified party under applicable state law; the convention at issue in the *Morse* case involved state action because it was authorized by state law and was held for the purpose of selecting a candidate for federal office who would be listed on the general election ballot as the Republican nominee.

This memo is not privileged and confidential and may be shared with other members of the Libertarian Party in your discretion. Let me know if you need anything further on the subject.