

WILLIAM J. OLSON, P.C.

ATTORNEYS AT LAW

370 MAPLE AVENUE WEST, SUITE 4

VIENNA, VIRGINIA 22180-5615

TELEPHONE (703) 356-5070

FAX (703) 356-5085

E-MAIL: [wjo@mindspring.com](mailto:wjo@mindspring.com)

<http://www.lawandfreedom.com>

114 CREEKSIDE LANE  
WINCHESTER, VA 22602-2429  
TELEPHONE (540) 450-8777  
FAX (540) 450-8771

WILLIAM J. OLSON  
(D.C., VA.)

JOHN S. MILES  
(D.C., MD., VA. OF COUNSEL)

HERBERT W. TITUS  
(VA. OF COUNSEL)

JEREMIAH L. MORGAN  
(CA ONLY)

ROBERT J. OLSON  
(VA)

May 22, 2012

via e-mail to [matt@okgop.com](mailto:matt@okgop.com)

Mr. Matt Pinnell  
Chairman  
Oklahoma Republican Party  
4031 N Lincoln Boulevard  
Oklahoma City, OK 73105

Re: Challenge to Legitimacy of Oklahoma State Republican Convention Selection of At-Large Delegates & Alternates to the Republican National Convention

Dear Mr. Pinnell:

We represent and are writing to you on behalf of the following individuals:

- Steve Dickson, in his capacity as a duly-credentialed delegate to the Oklahoma State Republican Convention held in Norman, Oklahoma on May 12, 2012;
- Lukus Collins, in his capacity as a duly-credentialed delegate from Oklahoma's 5th Congressional District to the Republican National Convention to be held in Tampa, Florida during August 27-30, 2012;
- Jerry Essary, Jr., in his capacity as Chairman of the Beckham County Republican Party; and
- Jake Peters, in his capacity as one of the at-large delegates and alternates to the Republican National Convention elected in Norman.

**Purposes of Letter**

The purposes of this letter are to: (i) challenge the legitimacy of the purported selection of at-large delegates and alternates to the Republican National Convention at the May 12, 2012 Oklahoma Republican Party Convention; and (ii) request you take certain actions to ensure that Oklahoma Republicans are represented at the Republican National Convention in Tampa, Florida during August 27-30, 2012 by a delegation selected in accordance with the Oklahoma State Party and Convention rules and procedures.

## The Convention

There were numerous irregularities at the Convention held in Norman, but we focus in this letter on some of the most egregious.

Prior to the state convention, and pursuant to Rule 18(a) of the Rules of the Oklahoma Republican Party<sup>1</sup> (hereinafter “Party Rule”), the Oklahoma State Republican Party Executive Committee nominated a slate of 25 Delegates-at-large and 25 Alternates-at-Large.

Pursuant to Rule VI.A.1 of the Rules and Order of Business of the Oklahoma Republican State Convention of May 12, 2012<sup>2</sup> (hereinafter “Convention Rule”), the State Executive Committee reported to the Convention the Executive Committee’s at-large slate of nominees.

Before conducting a vote on the slate in its entirety, as provided for in Convention Rule VI.A.2, the Convention Chairman Marc Nuttle entertained a motion to allow a competing complete slate of candidates for Delegate and Alternate positions to be elected by ballot and roll call vote. The Convention Chairman announced that motion failed.

Following that, the Convention Chairman called for a voice vote on the Executive Committee’s slate. That vote failed to reveal whether the slate had received a majority, whereupon the Chairman called for a standing vote, and on the basis of that vote, the Convention Chairman declared the Executive Committee’s slate of at-large delegates and alternates to have been elected.

The ruling of the Convention Chairman was appealed. The Convention Chairman called for a voice vote on the appeal from the ruling of the chair. When the outcome of that vote did not reveal if the appeal was successful, the Chairman called for a standing vote and, based on that standing vote, announced that the appeal from the ruling of the chair had been defeated. A roll call vote was called for, as required by party rules, but was ruled out of order by the Convention Chairman.

The convention moved quickly to the National Committeeman election, the platform and, finally, “other business,” whereupon delegate Brady Wright raised a point of order noting that the at-large delegate slate of the Executive Committee had not been elected by a roll call vote as required by the Party Rules. The Convention Chairman ignored the point of order,

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<sup>1</sup> [http://gallery.mailchimp.com/512354e730a88fee4fcc330f7/files/ORP\\_Rules\\_Amended\\_August\\_27\\_2011.pdf](http://gallery.mailchimp.com/512354e730a88fee4fcc330f7/files/ORP_Rules_Amended_August_27_2011.pdf)

<sup>2</sup> [https://docs.google.com/file/d/1i\\_DQOx1sGssemoGPSyoTxeOj15qRjqjW5FKp-w-m2f\\_TRGAK6ebTAn0X-bOR/edit?pli=1](https://docs.google.com/file/d/1i_DQOx1sGssemoGPSyoTxeOj15qRjqjW5FKp-w-m2f_TRGAK6ebTAn0X-bOR/edit?pli=1)

invited a motion to adjourn, and purportedly adjourned the Convention, calling for a standing vote without regard to chaotic conditions then prevailing. As there were still items of business pending, the motion to adjourn was out of order. *See* Convention Rule IX.D. Thus, Delegate Jake Peters declared the chair vacant and offered to take nominations for a new chair which was submitted to a vote and Peters was elected the new chairman as the convention proceeded in the parking lot outside of the hotel, the time for holding the convention inside the hotel having expired.

At that point, duly-credentialed delegates using proper procedures, including a roll call vote, elected a complete slate of at-large delegates and alternates to the Republican National Convention outside.

### The Rules

Party Rule 18(d) provides, in pertinent part, as follows:

At the State Convention convened for the purpose of electing Delegates-at-Large and Alternates-at-Large to the Republican National Convention, qualified nominations of the States Executive Committee shall be placed before the convention by the State Chairman.... **Election of the Delegates-at-Large and Alternates-at-Large shall be by roll call vote.** [Emphasis added.]

Convention Rule IV.D requires that a roll call vote shall be conducted by at least 3 tellers “who shall count the vote” and would proceed, as follows:

(a) “the Convention Secretary shall call the Permanent Roll by delegations, announcing the number of votes to which each delegation is entitled in accordance with that Roll”;

(b) “Voting in open delegations shall be mathematically apportioned by dividing the number of votes allowed to that delegation by the number of delegates voting on that ballot, provided that no one delegate shall cast more than two whole votes”; and

(c) “the Chairman of each delegation ... shall announce the new ballot vote of the delegation, the cumulative decimal vote total of all county delegations shall be the final vote and the total of any delegation vote shall not exceed the total allowed by the Permanent Roll of this Convention.”

Thus, the requirement of a “roll call vote” is not a mere formality. Rather it is required to be carefully conducted to ensure that: (i) only the votes of credentialed delegates entitled to vote are counted as provided in Party Rule 16(g); and (ii) the vote is taken into

accordance with the proportional weighting of delegates by county as required by Party Rule 16(e).

And, further to fulfill the purpose of preserving a written record of the vote should there be a later challenge, Convention Rule VI.B.1 prescribes that the vote be “conducted by **ballot** for the slate of candidates recommended by the State Executive Committee.” (Emphasis added.)

### **The Challenge**

Neither a voice vote nor a standing vote meets the specific requirement of a roll call vote by ballot, and neither serves the important purposes underlying the rules requiring a roll call vote. Yet that is how the Convention Chairman determined that the State Executive Committee’s slate of at-large delegates and alternates were elected while the convention was meeting inside.

Our clients objected to that process at the Convention, and now, with this letter, renew that objection to that extra-legal process. In short, our clients claim that, because the process by which at-large delegates and alternates were selected did not comply with Party Rule 18(d) and Convention Rule VI.B.1, the inside convention in Norman failed to elect legitimately any at-large delegate or alternate.

Rule 15 of the RNC’s “The Rules of the Republican Party”<sup>3</sup> supports this claim. Subsection (a)(1) of that rule states that “Delegates at large and their alternate delegates ... shall be elected ... [i]n accordance with any applicable Republican Party rules of a state.” Any election conducted by a process which is contrary to a state party rule, such as here, would, for that reason alone, be void.

### **Relief Requested**

On behalf of our clients, we respectfully request that you exercise your duty and power as Chairman of the state party to ensure that only lawfully-elected delegates and alternates attend the Republican National Convention.

Should you agree that all delegates and alternates selected outside are legitimate, our clients would ask that you certify them to the Republican National Committee and to the Republican National Convention.

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<sup>3</sup> [http://www.gop.com/images/legal/2008\\_RULES\\_Adopted.pdf](http://www.gop.com/images/legal/2008_RULES_Adopted.pdf) (as adopted by the 2008 Republican National Convention on September 1, 2008, and amended by the Republican National Committee on August 6, 2010).

On the other hand, should you believe that no delegates and alternates have been lawfully elected, our clients ask that you take steps to maintain the *status quo* until properly-selected delegates and alternates are chosen. Specifically, our clients request that as to the delegates and alternates unlawfully selected:

- no delegation caucus or other meeting take place,
- no National Convention committee assignments or elections occur,
- the Republican National Committee is advised that the delegates and alternates selected inside were improperly and unlawfully selected, and
- you make every effort to cease and desist from normal pre-convention actions, pending the state party's issuance of a new call for a state convention, and the selection of delegates and alternates at that convention according to party rules.

### **Remedial Action**

In view of the foregoing facts, we ask that you respond to this letter immediately, and advise us whether you are willing to recognize the delegates and alternates elected outside, or whether you intend to issue a new call for a new convention to select delegates and alternatives to the Republican National Convention — this time, in accordance with all applicable rules. If not, you will force our clients to take other action to ensure that the Party Rules are followed.

Should you choose not to take corrective action, our clients are prepared to make every effort to make sure that the at-large delegates and alternates chosen in violation of the Party and Convention Rules are challenged by at-large delegates and alternates that were elected in compliance with those rules immediately after the unlawful effort to terminate the May 12, 2012 convention. For example, plans have begun for the delegation that was properly elected to travel to Tampa to present their case to the national Credentials Committee.

Additionally, we have been asked to investigate the possibility of taking this matter to court in association with local counsel in Oklahoma. While courts “are traditionally reluctant to interfere with the internal operations of political parties,”<sup>4</sup> and while we also highly regard the constitutionally-guaranteed freedom of association that protects the autonomy of political parties, even political parties are legally bound to abide by their own rules and procedures. *See Reform Party* at 760. Political party autonomy is protected, but only when it concerns matters of internal management and political affairs. *See Redfearn v. Republican State Committee*, 362 F. Supp. 65 (D.Del. 1973).

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<sup>4</sup> *See Reform Party v. Gargan*, 89 F. Supp. 2d 751, 760 (W.D. VA. 2000), and cases cited therein.

Moreover, the selection of delegates and their alternates to a party's presidential nominating committee, is intimately connected with the election of a president, the manner of which is well within the authority of state legislatures. *See* Article II, Section 2, U.S. Constitution. Indeed, section 20-104 of the Oklahoma Election Code (26 O.S. § 20-104) contains very specific provisions governing the allocation of delegates to the national presidential nominating conventions, including a mandate to vote for the presidential candidate who won the Oklahoma preferential primary.

The Oklahoma Election Code is one of the strictest in the nation governing ballot access for the electors for President through stringent provisions governing the recognition of political parties and primary elections. Because the Republican Party is one of the two parties recognized for the purpose of ballot access, the process by which delegates are elected should be considered "an integral part of the State's election system,"<sup>5</sup> and thus subject to the well-settled due process rule that a state agency must follow its own rules and procedures. *See Stainback v. Mabus*, 671 F. Supp. 2d 126, 138 (D.D.C. 2009).

This is not an issue that can be ignored or papered over. It is vital that Republicans, Oklahomans, and all Americans be convinced that the process by which the Republican Party selects its nominees is open, fair, and in accordance with party rules. We await your response.

Sincerely yours,

/s/

Herbert W. Titus

HWT:gw

cc: Reince Priebus, Chairman, Republican National Committee  
Marc Nuttle, Convention Chairman  
A.J. Ferate, Counsel, Oklahoma Republican Party

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<sup>5</sup> *See Redfearn*, 362 F. Supp. at 72-73. *See also Smith v. Alwright*, 321 U.S. 649, 660 (1944).