



ALAN WILSON  
ATTORNEY GENERAL

November 12, 2013

Marci Andino, Executive Director  
South Carolina Election Commission  
2221 Devine Street  
Columbia, SC 29250

Dear Ms. Andino:

By your letter dated October 22, 2013, you have asked for the opinion of this Office regarding the impact the recently passed, Equal Access to the Ballot Act, which you reference as S.2, "has on political parties who nominate candidates through the convention process." Per your letter you explain:

The State Election Commission (SEC) is preparing to conduct candidate filing for the 2014 election cycle and needs an opinion to clarify what impact S.2 has on political parties who nominate candidates through the convention process. In South Carolina, only the Democratic and Republican Parties nominate candidates through a primary process. The Constitution, Green, Independence, Labor, Libertarian, United Citizens, and Working Families Parties all nominate candidates at conventions.

Recently, a group inquired about the impact of S.2 and suggested they may file a legal complaint challenging a political parties' right to hold a convention without first complying with Section 7-11-30(A) as shown below. Specifically, the group interpreted the section below to mean that a party cannot hold a convention without first having held a primary.

Our response follows.

#### Law/Analysis

We understand your question as asking whether the Equal Access to the Ballot Act, in particular, the Act's amendment of Section 7-11-30, operates so as to require all political parties to adopt a primary nomination system. We believe it does not. Rather, we believe the intent of the General Assembly in amending Section 7-11-30 was to change the procedure political parties

utilize when they wish to change *from* the primary nomination process, *to* a convention nomination process.

In determining whether the Equal Access to the Ballot Act's amendment of Section 7-11-30 of the Code operates so as to require all political parties to adopt a primary nomination system, we must first look to the statute's legislative intent. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."). When ascertaining legislative intent, South Carolina's appellate courts have stated, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). Indeed, "[t]here is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states." Jones v. South Carolina State Highway Dep't, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966).

Section 7-11-30 of the Code, titled "Nomination of candidates, party convention election procedures," states:

- (A) A party may choose to nominate candidates for all offices including, but not limited to, Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Circuit Solicitor, State Senator, and members of the State House of Representatives if:
  - (1) there is a three-fourths vote of the total membership of the convention to use the convention nomination process; *and*
  - (2) *a majority of voters in that party's next primary election* approve the use of the convention nomination process.
- (B) A party may not choose to nominate by party convention for an election cycle in which the filing period for candidates has begun.
- (C) A political party nominating candidates by party convention shall nominate the party candidates and make the nominations public not later than the time for certifying candidates to the authority charged by law with preparing ballots for the general or special election.

Ms. Andino  
Page 3  
November 12, 2013

Here, we believe the language from subsection (A)(2), stating “a majority of voters in that party’s next primary election” is indicative of the statute’s legislative intent. Specifically, because the phrase, “in that party’s next primary election” clearly assumes the party already nominates candidates via a primary election, it is the opinion of this Office that the General Assembly did not intend for Section 7-11-30 to apply to political parties that nominate candidates via the convention method. In other words, Section 7-11-30 should not be read as requiring all political parties to utilize the primary nomination process, but must instead be read as amending the procedure a political party utilizes if it wishes to change from the primary nomination process to a convention nomination process. Indeed, this is consistent with the legislative title to the Act, which explains that Section 7-11-30 of the Code was amended “to provide a procedure for the nomination of candidates by party convention by a three-fourths vote” and “a majority vote *in the party’s next primary election*[.]” 2013 S.C. Acts, 120 Legis. Sess., Act No. 61 (emphasis added). Likewise, this construction is also consistent with other portions of the Act, such as the amended Section 7-11-10, which states that candidates may still be nominated by “political party primary, by political party convention, or by petition.” S.C. Code Ann. § 7-11-10 (as amended by 2013 S.C. Acts, 120 Legis. Sess., Act No. 61). Thus, it is the opinion of this Office that Section 7-11-30, as amended by the Equal Access to the Ballot Act, does not operate so as to require all political parties to adopt a primary nomination system.

### Conclusion

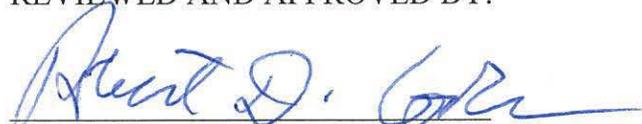
In light of our view of the statute’s legislative intent, we believe that Section 7-11-30, as amended by the Equal Access to the Ballot Act, does not require all political parties to adopt a primary nomination process, but should instead be construed as amending the procedure that political parties must utilize if they wish to change from the primary nomination process to a convention nomination process. Accordingly, because you have explained the Constitution, Green, Independence, Labor, Libertarian, United Citizens, and Working Families Parties all currently nominate candidates by convention, we believe Section 7-11-30 as amended would not affect these parties at the present time.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General