



Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Office: 614.227.2300
www.bricker.com

Christopher N. Slagle
Direct Dial: 614.227.8826
cslagle@bricker.com

Rachael N. Mains
Direct Dial: 614.227.4851
rmains@bricker.com

MEMORANDUM

TO: Chairman Paduchik

CC: Justin Bis, Executive Director

FROM: Bricker & Eckler LLP

DATE: August 31, 2022

RE: Organization of State Central Committee and Election of Officers

I. Introduction & Question Presented.

We understand questions have been raised regarding the organizational meeting of the Committee after a primary election. Please find below an overview of the applicable and controlling provisions of the Committee's Permanent Rules and Ohio law on these subjects.

II. Governance – September 9, 2022 Organizational Meeting.

Republican State Central Committee (the "Committee") members were elected during the August 2, 2022 primary election. To seat the committee members, the committee is meeting on September 9, 2022. The Committee meets after the official canvass of the election results are completed. *See generally* R.C. 3517.04 and Permanent Rules, Article II, Section 2. Pursuant to the Permanent Rules, the first meeting following the election is the Committee's official reorganization meeting. However, the Committee does not elect its officers during the reorganization meeting – officer elections, except as a result of a vacancy, and, otherwise as specifically provided for in the Permanent Rules – occur at a times specified in the Permanent Rules.

Under the Permanent Rules, there is a specific structure, process, and timeline for when officers of the committee are elected. Article II, Section 1 specifically provides that the committee meets in January of each odd-numbered year to meet and elect its officers by a majority vote of the seated members of the Committee. As specified in Article II, Section 1, the officers to be elected in January of each odd-numbered year are the Chairman, Vice Chairman, Secretary, Treasurer, and Assistant Treasurer. Note that the election of the National Committeeman and National Committeewoman are governed separately, but no less specifically, under the structure and process outlined in Article IX.

We also note that the Ohio Republican Finance Committee is merely an entity designated by the committee itself, by and through the Chairman, as the fundraising adjunct of the committee for fundraising purposes and is generally outlined within Article I, Section 4. These individuals are not elected, however, the Finance Committee members are integral parts of the Committee's organizational efforts.

We understand that some confusion exists around certain language contained in Article I, Section 2 of the Permanent Rules. Article I, Section 2 states, in part, that, with emphasis added:

“...at the first meeting of the State Central Committee following the election and qualification of its members, all of its officers, the chairman and co-chairman of the Ohio Republican Finance Committee, and the National Committeeman and National Committeewoman, shall be nominated and elected to the State Executive Committee, which shall then be merged into the Republican State Central Committee.”

Article 1, Section 2 is simply describing the functional process for the Committee's previously elected officers, the ongoing Ohio Republican Finance Committee members, and the previously elected National Committeeman and National Committeewoman – which constitute the State Executive Committee – to be merged with the newly elected members of the Republican State Central Committee. This language in Article I, Section 2, by its very words, does not create a new election of any of those individuals by or to the Committee.

The specific timelines and process for officer elections under Article II, Section 1, the election of National Committeeman and National Committeewoman in Article IX, and the designation of the Ohio Republican Finance Committee in Article I, Section 4 controls over any general provision or language found with the Permanent Rules.¹

It is questionable, at best, as to whether Ohio Revised Code 3517.04 could be upheld as a Constitutional statutory structure governing the internal operational aspects of a state political party. Again, for ORC 3517.04 to be upheld as a Constitutional infringement on the Committee's First and Fourteenth Amendment protections, the state itself would have to demonstrate a compelling state interest in governing the internal operations of the Committee and the statutory structure is the most narrowly tailored manner to accommodate that state interest. Courts have routinely ruled such statutory schemes to be unconstitutional. In fact, an early, but similar version, of ORC 3517.04 was ruled unconstitutional by the Ohio Supreme Court in *Socialist Labor Party v. Rhodes*, 318 F.Supp. 1262, which, again, stands for the clear proposition that absent a compelling state interest to the contrary, state statutes that attempt to regulate internal party organizational matters are unconstitutional infringements on a political party's First and Fourteenth Amendment protections.

¹ See generally *Aerel, S.R.L. v. PCC Airfoils, L.L.C.*, 448 F.3d 899, 903 (6th Cir. 2006). See generally *W. & Southern Life Ins. Co. v. Bank of New York Mellon*, 1st Dist. Hamilton No. C-170476, 2019-Ohio-388, ¶ 25.

Even if Ohio Revised Code 3517.04 could survive a Constitutional challenge, the Permanent Rules properly enacted by the Committee itself provide a specific process and time for the election of its officers – the statutory language, if the state could overcome the question of a compelling state interest in enacting it, simply cannot be more narrowly tailored than the Committee’s Permanent Rules regarding internal officer elections. The specific provisions of the Permanent Rules will take priority and govern the proper time and place for office elections. ORC 3517.04 is not applicable to the September 9, 2022 reorganizational meeting.

III. Applicable Legal Standards – Political Party Regulation under Ohio & Federal Law.

The Republican State Central and Executive Committee of Ohio (hereinafter “the Committee”) is a private, political association the internal governance of which is controlled almost exclusively by its elected members and any such internal operating rules and procedures adopted by the Committee itself. The United States Supreme Court and Ohio Supreme Court have each long held that political parties have Constitutionally protected First and Fourteenth Amendment protections and that any state-based regulations of political parties must be viewed with strict scrutiny. Meaning that any attempted state regulation of political parties shall be narrowly tailored to meet whatever compelling state interest being pursued.² In several cases, the courts have found in “limit[ing] a political party’s discretion in how to organize itself, conduct its affairs, and select its leaders” the State infringed upon strong and well-established associational rights requiring the highest level of scrutiny”.³

From the U.S. Supreme Court and under the Ohio campaign finance and election law structure, external election law functions and campaign finance regulations have been ruled to be substantial state interests narrowly tailored for the administration of elections. Thus, political parties may be subject to certain limited state statutes and regulatory requirements. However, internal political party organization and management, beginning with the U.S. Supreme Court of *Tashjian v. Republican Party of Connecticut*⁴, in 1986, have routinely overturned state efforts to interfere with internal political party organization, endorsement procedures, membership eligibility, and leadership elections. This judicial precedent continues today in that the judiciary

² *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989).

³ *Greenville Cnty. Republican Party Executive Committee v. South Carolina*, 824 F.Supp.2d 655, 668 citing *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989).

⁴ *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224, 107 S.Ct. 544, 554, 93 L.Ed.2d 514 (1986). (“The Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. ‘And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.’”)

should not, and will not, interfere in the internal affairs of political parties because they normally provide their own procedures and tribunals for the resolution of internal party affairs.⁵

By our records, the Committee adopted the initial version of the Permanent Rules upon which the current Rules are framed prior to the 1992 elections – so, a largely close version of the current Permanent Rules have been in place and governing the Committee’s operations for nearly 30 years. We understand the Committee had been operating with an internal bylaws framework dating back to the early to mid-1980s – similarly situated in time to the consideration of the *Tashjian* case.

IV. Conclusion.

In conclusion, the September 9 meeting is simply a reorganization meeting of the Committee with the newly members elected from the August 2, 2022 primary election being sworn in and seated. The next election of officers will take place at the Committee’s meeting in January 2023 in accordance with the specific provisions of Article II, Section 1 to the Permanent Rules. If you have any questions, please do not hesitate to let us know, and thank you.

⁵ See generally *State ex rel. McCurdy v. DeMaiores*, 9 Ohio App.2d 280, 281, 224 N.E.2d 353, 354 (8th Dist.1967). See also *Jones v. Geauga Cnty. Republican Party Cent. Committee*, 11th Dist. No. 2016-G-0056, 2017-Ohio-2930, 82 N.E.3d 16, ¶ 38 (“The appointment of political committee members and proposed changes to a county central committee’s bylaws are not matters over which the government has control, supervision, jurisdiction, or power.”). See also *Rosenberger et. al. v. Paduchik, et. al.*, Franklin C.P. No. 21 CV 7443 (May 27, 2022).