



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

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COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE
COUNTIES, CITIES AND TOWNS
MILITIA, POLICE AND PUBLIC SAFETY

August 14, 2014

Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Re: Request for Opinion regarding Isle of Wight County's policy
to discriminate against political speech and association

Dear Attorney General:

Pursuant to VA Code § 2.2-505, I respectfully request an opinion from the Office of the Attorney General. Background information is as follows: The Isle of Wight County Fair is sponsored and financed, in whole or in part, by Isle of Wight County and is conducted on county property. The Board of Supervisors delegate authority to the Fair Committee for oversight and to conduct the business of the county fair. The Fair Committee reports to, and is assisted by, county employees and more specifically the Isle of Wight County Parks and Recreation director. The Isle of Wight County Fair has routinely been a huge success drawing crowds between 25,000 to 50,000 people each year and is easily the largest public event held in the County. Non-profit and government organizations can apply for a booth to discuss and disseminate their information to the public. These organizations are grouped together in a special location at the fair. These groups would include organizations such as VDOT, the Red Cross, the Gideons and other religious organizations, the N.A.A.C.P, the Sheriff's office, and various others to include elected officials, candidates and different political organizations. In years past, all these organizations were charged the same nominal fee of \$25, however in 2013 the Fair increased the fee for "political booths" to \$750. For the 2014 County Fair, Isle of Wight has implemented a policy to prohibit all "political booths."

In a July 29, 2014 letter from Isle of Wight County, the Board of Supervisors stated their policy to prohibit "political booths" at the Isle of Wight County Fair is supposedly based on numerous complaints during past years against "political booths". On 7 August 2014, pursuant to the Virginia Freedom of Information Act §2.2-3700, I requested a copy of any complaint which is referenced in their letter. On 13 August 2014, the Board of Supervisors responded that no such complaint exists in writing, only verbal comments.

Based upon a cursory review, Isle of Wight County's policy to prohibit "political booths" and even to discriminate by charging a fee greater than other non-profit and government organizations that provide information to the public is content discrimination and a violation of the First and Fourteenth Amendments. By using the word "discriminate" I mean to treat differently regardless of the motivation. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, once a venue is opened to assembly or speaking to some groups government may not then prohibit certain groups from assembling or speaking based upon the content of what they intend to say. Government may not select which issues are worth discussing in a public forum and must afford all points of view an equal opportunity to be heard, and "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." Police Dep't of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212, 1972 U.S. LEXIS 133(U.S.,1972). A government policy or regulation that discriminates based upon the content of the message would fall under strict scrutiny in determining its constitutional legality. The Court has recognized a compelling government interest to regulate some speech such as incitement, obscenity, or threats, which government may restrict the availability or access to a public forum to that group. However, it would seem that "political speech" would not be subject to these restrictions unless the Board of Supervisors believes it has a compelling government interest to limit political discourse. The Isle of Wight County Board of Supervisors asserts that their policy prohibiting "political booths" is not based upon the content of the speech expressed, but rather on other content-

neutral reasons, which one would speculate is based upon protecting the community at large. However, a mere assertion that a regulation or policy is based upon a content-neutral purpose and is not content discrimination is not enough to save it if, on its face, discriminates based on content. Turner Broad. Sys. v. FCC, 512 U.S. 622, 114 S. Ct. 2445, 129 L. Ed. 2d 497, 1994 U.S. LEXIS 4831. In the Board of Supervisor's letter of 29 July 2014, it states, "As such, your request to distribute political materials at the CASA dunking tank is not appropriate, as that would violate the spirit of the prohibition on political booths and grant you a special privilege not afforded to other political parties or candidates." By stating that the spirit of the prohibition would be violated by distributing political materials clearly shows that the purpose of the prohibition is based upon the content of the message and not other content-neutral reasons as asserted. Such a blanket policy to discriminate against "political booths" and to prohibit or limit the venue for political discourse or discussion of public interests would seem to be unconstitutional.

I respectfully request an opinion on the following:

- (1) The constitutional legality of Isle of Wight County charging "political booths" a fee greater than other non-profit or government organizations that provide information to the public.
- (2) The constitutional legality of Isle of Wight County's policy to prohibit "political booths" at the county fair.

With warmest regards, I am

Yours truly,

A handwritten signature in black ink, appearing to read 'Rick Morris', with a stylized flourish extending to the right.

Rick Morris
Member, House of Delegates

Encl: IOW, BoS ltr of 29 Jul 14