

# THE SUTTON LAW FIRM

March 30, 2011

VIA E-MAIL ONLY

Mr. Scott Voights  
[scottv1@cox.net](mailto:scottv1@cox.net)

RE: California Republican Assembly Policy Proposal

Dear Scott:

You have asked us to review the proposed policy ("Policy") which was recently submitted to the Board of Directors of the California Republican Assembly ("CRA") to determine whether the policy is permitted under the CRA Bylaws and any state laws governing the operation of nonprofit organizations like CRA. As we set forth below, we believe that the proposed Policy conflicts with the CRA bylaws, may violate state law, and that implementation of the Policy would require an amendment to CRA's Bylaws which is approved by CRA delegates at a convention.

## BACKGROUND

The process for selecting delegates to CRA conventions is outlined in Section 13.10 of the CRA Bylaws.<sup>1</sup> That section explicitly states that delegates to all CRA conventions shall be elected by the membership of each chartered Republican Assembly or, if the bylaws of a chartered Republican Assembly allow, by its officers. (Bylaws section 13.10; all further references are to the Bylaws unless otherwise specified.) The names of the delegates elected by each charter Republican Assembly must be forwarded to the Credentials Committee or the Membership Secretary at least twenty days prior to the convention.

Nothing in the Bylaws allows the CRA Board to play any role in selecting delegates to the convention, nor do the Bylaws grant the CRA Board the ability to remove delegates or impose additional qualification requirements for delegates.

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<sup>1</sup>Delegates are individuals authorized to represent or vote on behalf of members and are exercising memberships rights even though they might not be members themselves. (Cal. Corp. Code 5056(d)(1).)

The Policy purports to impose the following additional qualification requirement on individuals elected to serve as delegates: “. . . Convention Delegates and Alternates must reside in the geographical boundaries of their respective chartered Republican Assemblies.” The Policy is intended to take effect immediately, and if passed, urges the Convention Rules Committee and the Credentials Committee to implement the Policy. The CRA President asked the CRA Board to vote on the proposal by the end of the day on Thursday, March 31, 2011.

### ANALYSIS

#### A. The Policy Conflicts With CRA’s Bylaws.

The proposed policy appears to conflict with CRA’s Bylaws because it attempts to impose an additional qualification on delegates and operates to limit the ability of chartered Republican Assemblies to elect delegates of their own choosing.<sup>2</sup>

The Bylaws do not outline any qualifications which a person must meet in order to be selected as delegate. Unlike the provisions of the Bylaws dealing with membership in general (e.g., requiring members to be registered Republican voters), the Bylaws specifically omit any specific qualifications for serving as a delegate. In addition, the Policy attempts to shift the authority to select delegates from the chartered Republican Assemblies to the Board and then delegate that authority to the Convention Rules Committee and the Credentials Committee. The Bylaws specifically requires that each delegate be “. . . elected by the membership of the chartered Republican Assembly that he represents . . . .” (Section 13.10.) By allowing the Board to impose its own qualifications for delegates and by delegating the authority to the Convention Rules Committee and the Credentials Committee, the Policy will limit the ability of the chartered Republican Assemblies to elect delegates of their own choosing based on their own criteria as required by the Bylaws.

If the CRA Board wants to impose qualifications on who can serve as delegates or otherwise limit the manner in which the chartered Republican Assemblies select delegates, the proper way to do so would be via an amendment to the Bylaws as discussed below.

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<sup>2</sup>It is also worth noting that process by which the CRA Board is going to consider the Policy likely violates the Bylaws as well. In her email, the CRA President asked all Board members to vote on the Policy by March 31, 2011 despite the fact that the Bylaws allow for fifteen days for Board members to return their vote. (Section 9.04.)

B. The Policy May Violate State Law.

Under California law, rules regarding the selection and removal of delegates must be set forth in CRA's Bylaws. (Cal. Corp. Code section 5152 [“where delegates are provided for, the bylaws shall set forth . . . any reasonable method for delegates' selection and removal . . .”]; emphasis added.)<sup>3</sup> Moreover, any amendments to the Bylaws specifically require approval “by a two-thirds vote of the Delegates and Delegates-at-Large present and voting.” (Section 23.01.) In other words, any new delegate qualification requirements and any process for the removal of duly elected Delegate must be contained in the CRA's bylaws – not a Board policy - and those requirements can only be changed by a vote of the delegates at a convention.

Delegate approval of any such changes is consistent with state law, which prohibits a Board of Directors from approving any bylaw change that would materially and adversely affect member voting rights. (Cal. Corp. Code section 5150(a).) This rule reflects a general policy against any action which would serve to entrench a current Board of Directors, or which would otherwise dilute or change the voting rights of existing members. Yet, it appears that is evidently the aim of the proposal, which seeks to limit the ability of members to elect particular delegates (who in turn would vote on a number of CRA issues, including the election of Directors, endorsements, etc.) through their chartered Republican Assembly.

The impact on members' voting rights seems particularly pronounced in the present situation. If implemented, the Board policy will likely result in the disqualification of a number of delegates. Chartered Republican Assemblies affected by such disqualification may not have time or the ability to vote to replace disqualified delegates, thus limiting their ability to have their voice heard at the annual convention on April 15<sup>th</sup>. State law forbids such an impact on a member's voting rights without member approval.

CONCLUSION

Because the proposed Policy attempts to impose an additional qualification on delegates and operates to limit the ability of chartered Republican Assemblies to elect delegates of their own choosing, it is likely that the policy violates the Bylaws. Moreover, because state law requires that the Bylaws set forth the method for selected and removal of

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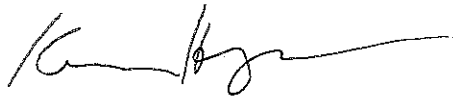
<sup>3</sup>Although the CRA was founded prior to the enactment of the California's current laws governing non-profit corporations, those laws outline the general legal concepts applicable to the CRA.

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delegates, the Policy may violate state law. If the CRA Board wants to impose qualifications on who can serve as delegates or otherwise limit the manner in which the chartered Republican Assemblies select delegates, we would recommend that the Board do so via a duly noticed amendment to the CRA Bylaws approved by the delegates at a convention.

Feel free to call with any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Heneghan', with a long horizontal flourish extending to the right.

Kevin Heneghan

KRH/slf  
#1463.01