

A Different Question Needs to Be Asked

This letter is in response to *The Greene County Record* editorial, "Can Republicans stop an election?", dated March 12 and adapted from *The Roanoke Times*. I believe one of the questions asked in that editorial needs to be reexamined.

About three-fourths of the way through the editorial, the author asks: "...should the district's next senator be decided by a handful of people in a convention room or by the voters?" In reality, the question should have been: Should the district's next senator be decided by the incumbent or by a process wherein ALL of a party's candidates have an equal standing? With the Incumbent Protection Act granting ONLY the incumbent the right to designate the method used to select a party's candidate, all other candidates' 14th Amendment rights of "equal protection" is violated. On the other hand, if the 24th Legislative District Committee decides on the method, then NONE of the announced candidates have a say! Thus, they are all treated the same and the "equal protection" of ALL is maintained.

To further substantiate this argument, we need look no further than the prior *Miller v. Cunningham* case that came before the 4th Circuit Court of Appeals in 2007. (This was a follow-on case to the earlier *Miller v. Brown* case which only alluded to the unconstitutionality of the Incumbent Protection Act (IPA) under certain circumstances.) In that ruling, Judge Wilkinson wrote: "To me, the unconstitutionality of this provision is clear.... [T]he incumbent selection provision at issue here facially discriminates in favor of incumbents, shutting down the political process and violating the most essential requirements of equal protection. Moreover, the provision also contravenes the First and Fourteenth Amendment rights of political parties to free association.... [F]ailure to address the constitutionality of this provision can only mean more litigation down the road. I see no reason to refrain from striking down a provision that plainly runs afoul of our most fundamental constitutional rights." Unfortunately, the courts failed to strike down the IPA as Judge Wilkinson recommended; and the 24th District Committee is now embarking on the litigation that he foresaw.

In summary, the 24th District Committee is in no way trying to "stop an election" or disenfranchise voters. It is trying to preserve the "equal protection" of new candidates and the "freedom of association" of political parties; both of which are Constitutional rights that will lead to fairer elections that benefit ALL residents of Virginia, not just those in the 24th Senatorial District!

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