



Republican Party of Virginia
www.rpv.org

February 22, 2016

Craig Orndorff, Chairman
Shenandoah County Republican Committee
467 Toll House Rd
Maurertown VA 22644

Dear Chairman Orndorff,

On February 16, you requested my opinion regarding three questions related to the disqualification of voters from party actions under Art. I, Sec. A, para. 2.

The qualifications for participation in Article I of the Party Plan have long provided that legal and qualified voters who are “in accord with the principles of the Republican Party, and who, if requested, express ... their intent to support all of its nominees for public office in the ensuing election” may participate in mass meetings, party canvasses, conventions and primaries (collectively, “nominating events”). Art. I, Sec. A, para. 1

In December 2013, the Plan was amended to include what is now numbered as paragraph 2: “A voter who, subsequent to making a statement of intent, publicly supports a candidate in opposition to a Republican nominee shall not be qualified for participation in party actions as defined in Article I for a period of four (4) years.”

The “statement of intent” in paragraph 2 refers back to the expression of intent to support all Republican nominees in the ensuing election that is a condition of participation in paragraph 1.

My predecessor as general counsel, Cortland Putbrese, extensively addressed this provision in an opinion letter dated April 21, 2014, applying Art. I, Sec. A. to 10 hypothetical situations. I commend this letter to your attention as an excellent overview of the qualifications for participation in party actions.

As your questions are not squarely addressed in that letter, I answer them here in the order in which they must be resolved to make a determination on an individual’s qualification to participate.

First, you must determine whether a particular statement of intent comes within the scope of paragraph 2. Specifically, you note that all delegates to the 2015 Shenandoah Convention were required to sign a statement of intent that included language derived from paragraph 1. You pose two questions with regard to individuals who signed that statement.

All delegates were declared elected pursuant to the call as there were fewer candidates seeking election than there were delegate seats available, so no precinct mass meetings were held to elect delegates. You ask whether the fact that an election did not actually occur impacts the application of paragraph 2. No. It does not. The statement was made as a condition of election as a delegate. By filing for election as delegates, these voters participated in a party action within the meaning of Article I. That no mass meeting had to be held did not change their status as participants. So, any voter who filed to become a delegate made a statement of intent within the meaning of paragraph 2.

In a second situation, you note that a convention delegate from board of supervisors district A did not participate in the nomination of a candidate for district B (and, indeed did not participate in the nomination of any candidate for board of supervisors as the district B supervisor's staggered term was not up in 2015). You ask if this limits the scope of the statement of intent made by the delegate from district A such that support for an opponent of the Republican nominee in district B would not be a violation of paragraph 2. No. The statement of intent is "to support all of [the Republican] nominees for public office in the ensuing election;" it is not limited to the candidates in whose nomination the delegate participated.

Second, you ask who decides whether an otherwise qualified individual should be excluded from serving as a delegate to the 2016 Shenandoah County Republican Convention under paragraph 2. If precinct mass meetings are held, the decision rests with the meeting. If the mass meetings are cancelled as they were in 2015, the convention itself makes the decision by acting on the report of the credentials committee. The credentials committee should not include in its report anyone who it believes does not meet the qualifications for participation, but the convention can amend the report to include someone omitted, or to exclude someone who was included if it disagrees with the recommendation of the committee.

Note that Art. VIII, Sec. A, para. 10 requires that a unit chair "document the reason(s) for determining that an individual, who is seeking election ... as a convention delegate, has been disqualified for the reason that the individual does not meet the Qualifications for Participation as stated in Article I and/or the unit's pre-filing requirements, if any, and shall provide such documentation with the certification of delegates...."

This recently enacted provision of the Plan makes your next questions particularly relevant. You ask what evidence should be considered in making this decision. In the ordinary course, the issue would be raised by a challenge to an individual before the credentials committee, either by application of another individual or based on its own

knowledge. The committee can consider any evidence available to it and give the evidence whatever weight it deems appropriate, including not only evidence presented to the committee, but evidence gathered by the committee or its agents in investigating a claim.

Finally, you ask what constitutes “publicly support[ing] a candidate in opposition to a Republican nominee.” Art. I, Sec. A, para. 2. You note that Art. VII, Sec. C., provides some guidance in this regard, specifically, an individual publicly supports a candidate in opposition to a Republican nominee if he “(a) makes a reportable contribution to” that candidate, “(b) allows his name to be publicly used by” that candidate, or “(c) makes a written or other public statement of support of” that candidate. You point out one other clear example, running against the Republican nominee. These four criteria are an excellent guide to the meaning of public support and should be used to guide the deliberations of anyone called upon to judge a particular action.

You raise several other examples and ask if they fall within the meaning of publicly supporting. In evaluating those examples, you should be guided by three questions:

1. Can the action be clearly attributed to the individual? Examples of clearly attributable actions include a signed letter to the editor printed in a newspaper; a Facebook post from an account that the individual has been known to use before; an action observed by several others who know the individual; records of a meeting or an organization that record the individual’s involvement in group action. Examples of actions that cannot be clearly attributed include speculation by one other individual, anonymous speech, actions by groups of which the individual is a member where there is no indication that the individual instigated or approved of the action, mere appearance on a list or at an event without more.
2. Is the action public? Examples of public action include widespread dissemination of spoken or written remarks, repeated appearances in support of a candidate, such as attending several rallies while cheering and waving signs, the display of a yard sign at the individual’s home or a bumper sticker on his personal vehicle. Examples of non-public actions include comments made only to a few individuals, appearance at occasional events as an observer, rather than a participant.
3. Does the action constitute electoral support? The context of the Party Plan limits coverage to electoral support. Attending the wedding of a candidate in opposition to a Republican nominee might show personal or emotional support, but would not constitute electoral support. Agreeing with a candidate in opposition to a Republican nominee on an issue being debated by a governing body might show policy support, but, alone, would not constitute electoral support (However, praising an opponent’s position and denigrating the Republican nominee for holding a different position could constitute electoral support).

There is no bright line test available for what constitutes “public support.” The Plan properly places the decision-making authority at the organizational level best able to

observe potentially problematic conduct where it can be evaluated by those knowledgeable about the individual and the circumstances.

This letter constitutes a ruling or interpretations under Article X of the Party Plan and may be appealed to the Appeals Committee or the State Central Committee within thirty days of the date it is posted on the RPV website.

Sincerely,

A handwritten signature in blue ink that reads "Chris". The signature is written in a cursive, flowing style.

Chris Marston,
General Counsel