



Republican Party of Virginia

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April 21, 2014

VIA E-MAIL

Mr. John Whitbeck, Chairman
Tenth Congressional District Republican Committee
P.O. Box 650552
Potomac Falls, VA 20165

Re: Request for Ruling or Interpretation of the State Party Plan

Dear Chairman Whitbeck:

On April 8, 2014, you requested a General Counsel ruling or interpretation of the Republican Party of Virginia Plan of Organization (“Party Plan”) pursuant to Article X.A.1. of the Party Plan. Specifically, you have asked for an interpretation of Article I of the Party Plan as it relates to qualification for participation in the Tenth Congressional District Party Canvass scheduled for April 26.

I lay out here the applicable provisions of the current version of Party Plan. Article I.A.1. (“Paragraph 1”) of the Party Plan states: “All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin or sex, who are in accord with the principles of the Republican Party, and who, if requested, express in open meeting either orally or in writing as may be required their intent to support all of its nominees for public office in the ensuing election may participate as members of the Republican Party of Virginia in its mass meetings, party canvasses, conventions, or primaries encompassing their respective election districts.”

Article I.A.2. (“Paragraph 2”) provides: “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.”

Article I.A.4. (“Paragraph 4”) states: “In addition to the foregoing, to be in accord with the principles of the Republican Party, unless otherwise stipulated by the appropriate Official Committee, a person otherwise qualified hereunder shall not have participated in Virginia in the nomination process of a party other than the Republican Party with in [sic] the last five years.”

The Richard D. Obenshain Center • 115 East Grace Street • Richmond, Virginia 23219
804-780-0111 • FAX: 804-343-1060

PAID FOR AND AUTHORIZED BY THE REPUBLICAN PARTY OF VIRGINIA. CONTRIBUTIONS ARE NOT TAX DEDUCTIBLE.

Article I.A.5 (“Paragraph 5”) provides: “A single exception to Paragraph 4 shall be approved for a voter that renounces affiliation with any other party in writing, and who expresses in writing that he/she is in accord with the principles of the Republican Party and intends, at the time of the writing, to support the nominees of the Republican Party in the future. Any voter that utilizes the foregoing exception, and thereafter participates in the nomination process of a party other than the Republican Party, shall not have the benefit of the exception identified in this paragraph thereafter. Within 30 days of receipt, the Official Committee shall provide a copy of this signed renunciation statement to the Republican Party of Virginia, to be maintained for a period of 5 years.”

Also, in attached Exhibit A, I have reproduced the language of Article I as it appears in the Party Plan for your easy reference and convenience.

Before responding to the ten hypothetical voters you posit, I would like to provide you with some history and background of Article I. Paragraph 1 of that article establishes the qualifications for participation in party actions, and it has been the subject of many rulings and interpretations from past General Counsel. These opinions have consistently held that the requirements of Paragraph 1 of section A apply prospectively, not retrospectively, *i.e.*, a voter may be required to state their intent to support the Party’s nominees in the ensuing election, but may not be excluded for failing to support the Party’s nominees in past elections.

Two amendments to Article I made in June 2004 and on December 7, 2013, added further qualification requirements. The June 2004 amendment added the provision regarding disqualification for participation in another party’s nominating process, now found in section A, Paragraphs 4 and 5. These provisions were further amended by adding the recordkeeping provision to Paragraph 5 with regard to signed renunciation statements. Prior to that amendment’s adoption on December 7, 2013, no records were required to be maintained regarding voters who took advantage of the Paragraph 5 exception.

On December 7, 2013, the State Central Committee amended the Plan by adding Paragraph 2, which reads, “[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 action ... for a period of four (4) years.” This provision can only be applied to voters who made statements of intent after the adoption of the amendment on December 7, 2013.

With that background, I will proceed to address each of the hypothetical voters you posit, asking whether such a voter could be excluded from voting in the April 26 party canvass under Article I.

Hypothetical No. 1: A voter who voted in the 2013 state-wide Democrat primary. Such a voter could be excluded under Paragraph 4 because of participation in the nominating process of another party within the last five years. However, that voter may use the exception provided for in Paragraph 5 with respect to the April 26 canvass.

If that voter has previously used the exception provided for in Paragraph 5 and thereafter participated in the nomination process of a party other than the Republican Party, then that voter shall not have the benefit of the Paragraph 5 exception again in connection with the April 26 canvass.

Hypothetical No. 2: A voter who voted in the 2008 Democrat Presidential primary. Such a voter could not be excluded under Paragraph 4 because the 2008 Democratic Presidential Primary occurred more than five years ago.

Hypothetical No. 3: A voter who voted in the December 16, 2013 Mass Meeting in the 33rd State Senate District, signed a statement of intent during the nominating process and then subsequently publicly supported the Democrat or Independent Green candidate. Such a voter could be excluded subject to Paragraph 2. Having signed a statement of intent after the adoption of the December 7, 2013 amendment to the plan, Paragraph 2 is applicable.

Hypothetical No. 4: A voter who voted in a Republican Party nominating process prior to April 26, 2014 and signed a statement of intent and then publically supported a Democrat or Independent candidate and/or voted in the nominating process of another party.

A voter who signed a statement of intent and participated in a Republican Party nominating process *after* December 7, 2013, could be excluded for public support of a candidate in opposition to a Republican nominee in the election to which the nominating process related.

A voter who participated in the nominating process of another party within the last five years, regardless of whether he or she had participated in a Republican Party nominating contest and regardless of whether he or she supported a candidate in opposition to a Republican nominee, could be excluded based on Paragraph 4 subject to the exception in Paragraph 5.

Hypothetical No. 5: A voter who was a Delegate to the 2013 Republican State-Wide Convention and then subsequently supported the Democrat or Libertarian candidate in the general election.

Such a voter could not be excluded. The 2013 nominating process for statewide candidates preceded the December 7, 2013 adoption of Paragraph 2.

Hypothetical No. 6: A voter who was the campaign manager for a Republican candidate in the primary who was defeated, and the campaign manager/voter subsequently publicly criticized the Republican Party and endorsed a non-Republican candidate in a written editorial in a local newspaper.

Such a voter could not be excluded on these facts alone. Article I does not have any provision relating to campaign managers in particular. They are treated as any other voter.

If the voter in question voted in the primary in which the candidate for whom he or she served as manager, that primary occurred after December 7, 2013, and a statement of intent was required to participate in that primary, then Paragraph 2 would provide a basis to exclude the voter based on public support of a candidate in opposition to a Republican nominee.

Hypothetical No. 7: A voter who endorsed a Republican candidate for Delegate and when his chosen candidate lost in the Primary, was seen at a polling place by several witnesses openly stating he was a Republican and he was supporting the Democrat for Delegate.

Such a voter could not be excluded, except in the circumstances described above in Hypothetical No. 6.

Hypothetical No. 8: A former Republican Delegate abandons his seat and moves into a Senate District to run as an independent against the Republican nominee and in the process attacks the local Republican Party openly in mailings, emails and other communications.

Such a voter could not be excluded unless he or she participated in the nominating process that selected the nominee he or she subsequently opposed, the nominating process included a statement of intent that the voter signed after December 7, 2013, and the nominating process was held after December 7, 2013.

Hypothetical No. 9: A former candidate for the Republican nomination for Delegate in 2011 supports the Democrat who is running against the incumbent Republican delegate in the 2013 General Election and is seen by several witnesses having the Democrats signs in his/her yard.

Such a voter could not be excluded. Article I does not have any provision relating to former candidates for Republican nomination. They are treated as any other voter.

Because the 2013 General Election preceded December 7, 2013, he or she could not be excluded under Paragraph 2.

However, if it is discovered that that voter participated in the nomination process of a party other than the Republican Party within the last five years, then that voter could be excluded under Paragraph 4 subject to the exception in Paragraph 5.

Hypothetical No. 10: A voter who supported an Independent candidate for local Constitutional Office in the 2011 general election and now is a member of the local Republican Committee.

Such a voter could not be excluded. The 2011 General Election preceded December 7, 2013. So, even if the voter's support of the Independent candidate was public, the Independent candidate opposed a Republican nominee, and the voter signed a statement of intent as part of the nominating process for that office, the voter could not be excluded.

However, if it is discovered that that voter participated in the nomination process of a party other than the Republican Party within the last five years, then that voter could be excluded under Paragraph 4 subject to the exception in Paragraph 5.

You also asked whether the Tenth Congressional District Republican Committee could institute a rule that would disqualify any of these hypothetical voters not disqualified under the Party Plan. The District Committee could not institute such a rule. The Party Plan sets out the complete qualifications for participation in party actions. Except where the Plan specifically provides an option to an official committee, no official committee may add to or subtract from the requirements for participation. *See, e.g.*, Art. I.A.3.

This letter constitutes a ruling or interpretation of the Party Plan under Article X.A.1. Pursuant to Article X, this opinion may be appealed to the Appeals Committee or the State Central Committee.

Sincerely,

/s/ Cortland C. Putbrese
Cortland C. Putbrese,
General Counsel

EXHIBIT A

ARTICLE I **Participation in Party Actions**

SECTION A. Qualifications

1. All legal and qualified voters under the laws of the Commonwealth of Virginia, regardless of race, religion, national origin or sex, who are in accord with the principles of the Republican Party, and who, if requested, express in open meeting either orally or in writing as may be required their intent to support all of its nominees for public office in the ensuing election may participate as members of the Republican Party of Virginia in its mass meetings, party canvasses, conventions, or primaries encompassing their respective election districts.
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.
3. Paragraphs 4 and 5 shall cease having any effect at such time as the Election Laws of the Commonwealth of Virginia shall provide for party registration, at which time only those registered as Republicans may be deemed to be in accord with the principles of the Republican Party, unless otherwise stipulated by the appropriate Official Committee.
4. In addition to the foregoing, to be in accord with the principles of the Republican Party, unless otherwise stipulated by the appropriate Official Committee, a person otherwise qualified hereunder shall not have participated in Virginia in the nomination process of a party other than the Republican Party with in the last five years.
5. A single exception to Paragraph 4 shall be approved for a voter that renounces affiliation with any other party in writing, and who expresses in writing that he/she is in accord with the principles of the Republican Party and intends, at the time of the writing, to support the nominees of the Republican Party in the future. Any voter that utilizes the foregoing exception, and thereafter participates in the nomination process of a party other than the Republican Party, shall not have the benefit of the exception identified in this paragraph thereafter. Within 30 days of receipt, the Official Committee shall provide a copy of this signed renunciation statement to the Republican Party of Virginia, to be maintained for a period of 5 years.
6. In order to be eligible for election as a Delegate or Alternate Delegate to any convention, an individual must be registered to vote no later than the prefiling deadline established by the Official Committee or, if prefiling is not a requirement, no later than the date of election as a Delegate. A person who has made application for registration and meets all other requirements of Section A, but whose name does not appear on the local registration books solely because of the books having been closed in connection with a local election, will nevertheless be deemed a legal and qualified voter.

SECTION B. Participation

All Chairmen and members of Official Committees, delegates to Conventions, and voters in Mass Meetings or Party Canvasses provided for in the State Party Plan shall be members of the Republican Party of Virginia as stated in this Article and must be legally qualified voters of the respective Units or election Districts which they represent as Chairmen, members, delegates or voters.

Participation in the nomination of any candidate for public office may not be conditioned on the payment of a registration fee, except as provided for in Article VIII, Section A.1.e.