

June 25, 2016

Dear Rules Committee Member:

I am writing to advise you of a rule I will propose to the Rules Committee for inclusion in the 2016 RNC Convention Rules.

This rule will codify each delegate's existing right—in accordance with court rulings and precedent from previous Republican National Committee Conventions—to cast their vote for the Republican nominee for President of the United States consistent with their conscience.

Preserving Delegates' Ability to Vote Their Individual Conscience

The secretary of the national convention shall receive and faithfully announce and record each delegate's vote in accordance with these rules. If any such delegate notifies the secretary of his or her intent to cast a vote of conscience, whether personal or religious, each such delegate shall be unbound and unconstrained by these rules on any given vote, including the first ballot for the selection of the Republican nominee for President of the United States, without the risk of challenge, sanction, or retribution by the Republican National Committee. Allowable personal reasons shall include the public disclosure of one or more any grievous acts of personal conduct by a nominee candidate, including but not limited to, criminally actionable acts, acts of moral turpitude or extreme prejudice, and/or notorious public statements of support for positions that clearly oppose or contradict the policies embodied in the Republican Party's platform as established at the national convention.

The matter of whether a delegate may vote their conscience—even when instructions or state party rules or state statute attempt to compel the delegate to vote otherwise—has been considered in past conventions. Each time, lacking an RNC rule to the contrary, the right of the delegate to vote their conscience has been upheld. The proposed rule makes explicit this right that has been repeatedly affirmed in past conventions, but of which not all delegates may otherwise be aware or may be uncomfortable asserting without specific supporting language.

The issue of an individual delegate insisting on voting his conscience contrary to instructions from his state party arose at the 1868 RNC Convention. At that convention, during the nomination for vice-president, the delegation from Pennsylvania had been instructed by their state assembly to vote as a unit for Andrew Curtin. Four delegates from Pennsylvania objected. The Convention upheld the right of the delegates to vote their conscience, and the four votes were recorded as 1 vote for Schuyler Colfax and 3 votes for Benjamin Wade.¹

The issue was settled more definitively at the 1876 RNC Convention when delegates from Pennsylvania again asserted their right to vote their conscience. When the chairman of the Pennsylvania delegation announced that all of its delegates had voted for John Hartranft, one of the delegates objected and stated that the vote had been reportedly incorrectly by the delegation's chairman. The chairman of the convention ruled "*that it is the right of any and every member equally, to vote his sentiments in the convention.*" After being appealed to the entire membership, an extensive debate ensued. Finally, the

¹ Haugland, Curly, *Unbound, The Conscience of a Republican Delegate* (Virginia: Citizens in Charge Foundation, 2016), 9-10

Convention voted to uphold the ruling that affirmed the right of each delegate to vote his or her conscience. ²

Supporting language was finally included in the Rules at the 1880 RNC Convention when James Garfield challenged sitting President Grant for the nomination. The rule provided for any delegate to object to the correctness of the vote reported by his delegation chairman and, in such case, for the votes of the delegation to be individually polled and recorded. ³ This is the original language that subsequently evolved into our current Rules 37b (which provides for a roll call of a delegation) and Rule 38 (which prohibits unit voting).

In 1912, the Convention ignored state statute that attempted to bind delegates to a primary result, and instead recorded the vote of individual delegates from Oregon and Illinois. This occurred to an even greater degree at the 1920 Convention. ⁴

Additionally, the U.S. Supreme Court ruled in 1976 against the interference of state law and state primaries on the internal process a political party uses to select its presidential and vice-presidential nominees. In *Cousins v. Wigoda*, the Court ruled: ⁵

"The States themselves have no constitutionally mandated role in the great task of the selection of the presidential and Vice-Presidential candidates. If the qualifications and eligibility of delegation to the National Political Party Conventions were left to state law "each of the fifty states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result." Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential candidates..."

The only time when delegates have been bound was in 1976 when a binding rule was adopted in order to prevent Ronald Reagan from defeating President Ford before being repealed in 1980.

In 1976, when a binding rule was proposed by Ford supporters, they acknowledged that the above-mentioned Supreme Court ruling meant that delegates could vote their conscience:

"I am saying that *Cousins v. Wigoda* in effect said that the party can do as it sees fit with regard to delegate selection matters, even though it is totally contrary to state law. We in fact are saying in this amendment that because of *Cousins v. Wigoda*... delegates could, without this resolution, vote contrary to State law." ⁶

After significant debate and disagreement, the binding rule was adopted by a narrow margin.

However, it was removed in the 1980 Convention. During the discussion proposing the removal of the rule, some of the comments regarding its removal included:

² Ibid. 11-12

³ Ibid. 14

⁴ Ibid. 19-20

⁵ Ibid. 62-63

⁶ Ibid. 30

"This amendment merely gets this committee and the Convention back on the road it was on prior to 1978 [sic]. This amendment was put in in 1976 as a result of some political shenanigans at that time. Now we are just going back to the old way."⁷

Additionally, after noting that state party bylaws and state statutes that attempt to bind delegates to primaries are likely unconstitutional in the face of court rulings, another member said:

"I believe we should go back to our previous wording. I think that the delegates who have been seated by this convention should vote their convictions in the full knowledge of the laws which apply to them and go back home if they vacate them and take their medicine."⁸

The rule was subsequently removed without a single vote in opposition, thus restoring the delegates' long-standing right to vote their conscience.⁹

Though it is clear that precedent, traditions, and rules of the Republican National Committee—as well as rulings of the U.S. Supreme Court—uphold the right of individual delegates to vote their conscience, the rule I propose will make the right of each delegate to vote their conscience explicitly clear for those delegates not familiar with the history on this matter.

I ask for your thoughtful consideration of this proposal. If you have any questions, suggestions, or concerns, I would very much appreciate your input.

Respectfully,

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⁷ Ibid. 36

⁸ Ibid. 37-38

⁹ Ibid. 38