



presidential primary. Electors that had voted in their home-state presidential primary were deemed to have violated Section I.C.1.c of the Delegate Selection Plan, which reads:

*No person shall participate or vote in the nominating process for the Democratic presidential candidate who also participates in the nominating process of any other delegation to the 2020 Democratic National Convention or of any other political party for the corresponding presidential elections. (Rule 2.E.)*

In addition, the PRCC and PRCS noted that the registration form requires electors to affirm that they had not participated in another state's nomination process. Electors that had voted in their home-state presidential primaries were deemed to have submitted a false attestation, which reads:

*I possess the qualifications required to vote at this Regional Convention in that I will be an eligible voter on November 3, 2020 and I have not participated and will not participate in the delegate selection process (caucus, primary, or other method) of any other delegation to the 2020 Democratic National Convention or in the nominating process of any other political party for the corresponding elections.*

On May 14 and May 15 2020, several disqualified electors submitted a challenge to the Committee challenging their disqualification. They were joined by several leaders of Democrats Abroad Country Committees, who argued that the disqualification of their electors harmed their country committees due to the reduction of their voting contingent.

Challengers argued that voting in another state primary was not equivalent to participation in another nominating process, which was interpreted as “an act or an instance of appointing or submitting a name for candidacy to that delegation... [and] would include such actions as being an elector, endorsing a candidate, or running directly in another delegation.”

The Committee reached the opinion that, *contra* the arguments of the challengers, voting in another presidential primary does constitute participation in another nominating contest. Votes in a state primary determine how that state's delegates are allocated between Presidential candidates, much like how votes in the Global Presidential Primary determines how Democrats' Abroad delegates are allocated between candidates.

A plain reading of the rule would state that an elector cannot vote or participate in multiple nomination contests simultaneously. To argue otherwise would ignore this plain reading in favor

of an overly narrow interpretation. Nor would such an interpretation stand in other Democratic Party contexts.

Challengers also argued that the phrase “participate or vote” in the DSP implies that voting and participation are two separate activities. However, this neglects other sections of the DSP where “participation” is used as a synonym for voting, such as section C 1 a., which states:

*A person who wishes to participate in the Global Primary and is not a member of Democrats Abroad must first join Democrats Abroad by completing a membership form prior to participating in the Global Primary, which may be done on or before the dates of the Global Primary. (Rules 2.A. & 2.C. & Reg. 4.3.)*

Furthermore, disqualified electors submitted a false affirmation upon registering for the Convention. Any ambiguity in the DSP is removed in the registration form, which clearly states that voting in a primary or caucus constitutes participation in another state’s nomination contest. Thus, in attesting that they had not participated in another primary or caucus, disqualified electors submitted false information.

Thus, the Committee finds that the disqualification of electors due to voting in their home state primaries to be valid, and said electors would not be allowed to participate in the Asia-Pacific Regional Convention.

This decision is final and may be challenged pursuant to Section VIII of the Delegate Selection Plan. *See* Section III.C.6.a.(iv).

CONCURRING OPINION: by Tom Schmid, Chair

I join the majority opinion, but write separately to address the interpretation of Section I.C.1.c of the Delegate Selection Plan (DSP). The parties agree that the operative text of the DSP is found in Section I.C.1.c, which states: "No person shall participate or vote in the nominating process for the Democratic presidential candidate who also participates in the nominating process of any other delegation to the 2020 Democratic National Convention or of any other political party for the corresponding presidential elections. (Rule 2.E.)" Based on this, the challengers assert that "voting in another primary does not amount to 'participating in the nominating process of any other delegation to the 2020 Democratic National Convention.'" *Challenge*, at 1.

In interpreting the DSP, the Committee must first attempt to ascribe words their plain meaning. If the rule is ambiguous, i.e. subject to more than one reasonable interpretation, the Committee may review other sources to resolve the ambiguity. *See* Interpretive Ruling 2018-1 (DPCA Exec. Comm., Jan. 4, 2018). I find the text of Section I.C.1.c to be ambiguous by the narrowest of margins. Specifically, the phrase "nominating process of any other delegation" could be read two ways: the Presidential nominating process of another state party (i.e., delegation to the 2020 Democratic National Convention) or the nominating process for the delegates themselves.

The ambiguity, and the challengers' confusion, arises due to a misunderstanding of what is meant by "nominating process". The "nominating process" serves but one purpose: nomination of the Democratic Party candidate for the President of the United States. The phrase "nominating process" appears 16 times in the Delegate Selection Rules for the 2020 Democratic National Convention (adopted Aug. 25, 2018). In each instance, the phrase is related to the overall Presidential nominating process, not a narrowly focused delegate nominating process. Delegate Selection Rules, at Rule 2.E, G, H.2.d, J.1, K.6; Rule 12.A; Rule 15.A-D; Rule 21.C.1.a.

Again, there is but one "nominating process". The delegate selection process of a state party is the way in which Democratic voters within the jurisdiction of the state party express their preferences for the Democratic nominee for president. This process begins, in the case of Democrats Abroad, with voting in the Presidential primary and continues with the selection of delegates at conventions. Delegates are proportionally assigned to Democrats Abroads' Global and Regional Conventions, based on the cumulative preference vote for each Presidential candidate in the Global Presidential Primary. *See generally* Delegate Selection Rule 14 (Fair Reflection of Presidential Preferences). Consequently, the GPP is directly related to, and a part of, the delegate selection process. Moreover, this primary process is referred to in the Delegate Selection Rules as the "first-determining step". *See e.g.* Delegate Selection Rule, 2.K.5 ("...the allocation of national delegates [must] be locked in at the final expression of preference at the first determining step, as determined by the State's Plan, subject to recount.") The

first-determining step is clearly the initial stage of a process that leads toward the determination of the presidential nominee.

Thus, despite some initial ambiguity, an understanding that the phrase “nominating process” applies to the entire delegate selection process provides clarity in the interpretation of Section I.C.1.c. Properly interpreted, the rule states: No person shall participate or vote in the nominating process for the Democratic presidential candidate who also participates in the nominating process [*for the Democratic presidential candidate*] of any other [*State Democratic Party*].

A careful examination of the rule demonstrates the challengers’ flawed logic. The rule lays out two fundamental elements. The first is “participating or voting in the nominating process for the Democratic presidential candidate.” Challenger Gaul, for example, satisfied this element by voting in the Massachusetts Democratic presidential primary. The second element is “participating in the nominating process [*for the Democratic presidential candidate*] of any other [*State Democratic Party*].” Challenger Gaul would clearly satisfy this element by participating in the Democrats Abroad AP Regional Convention (as well as the Global Convention) as an elector for at-large National Convention delegates. Reading the rule in this manner clearly demonstrates that voting in a state presidential primary bars participation in the first- or subsequent-determining steps of other state parties.

Given that the aforementioned logic is detrimental to the challengers, they attempt to reverse it. The challengers argue that because Gaul did not vote for a *delegate* in Massachusetts (instead voting for his *presidential* preference), he is now entitled to “participat[e] or vot[e]” in the Democrats Abroad nominating process for the Democratic *presidential* candidate. Applying this logic, Gaul gets to participate in the presidential primary in Massachusetts, and he can also vote in the DA Global Presidential Primary, participate in the selection of DA’s delegates, or both! This interpretation of the DSP is patently unreasonable, inconsistent with the principle of one person, one vote, and opens the door to voting in multiple state primaries by unilaterally declaring the participation in one Presidential primary as being unrelated to the selection of delegates.

As explained above, the minor ambiguity found in Section I.C.1.c is adequately explained by understanding that there is only one “nominating process” and that process is for the purpose of determining the Democratic Party nominee for the President of the United States. Because the challengers attempted to participate in this single process in two different party jurisdictions, they were properly disqualified as electors at the Asia-Pacific Regional Convention.

There is no doubt that the disqualification of electors for voting in state primaries is harsh. The drafters of the DSP have good reason to require delegate candidates to “buy into” the entire

Democrats Abroad delegate selection process. Democrats Abroad's National Convention delegates are expected, in addition to supporting their presidential preference group, to walk the Convention floor and promote both Democrats Abroad and the interests of overseas voters. It is, therefore, reasonable to require delegates to exclusively participate in our delegate selection process, including perhaps an affirmative requirement to participate in the Global Presidential Primary. But this reasoning need not be extended to electors, as the text of Section I.C.1.c clearly does by the phrase "no person".

Electors serve Democrats Abroad and earn their role as electors through the work they put into their country committees. While they may be prohibited from running for delegate by participating in a state primary, they should not be prohibited from representing the constituents of their country committees. However, the role of this Committee is to apply the law, not to draft it. Section I.C.1.c, and the rest of the DSP, was approved by the DPCA Executive Committee, the DPCA itself, and the DNC Rules and Bylaws Committee. I have great faith that the impact of Section I.C.1.c on electors will be mitigated in 2024, and we will not encounter this issue again. But it would be an abuse of the responsibility placed in this Committee to supplant the heavily deliberated rules of the DSP with this Committee's own judgment, simply to obtain a politically preferred outcome. Holding the DSP in such disregard would endanger the integrity of our democratic processes by inculcating an organizational tradition of non-compliance and disregard for the rule of law.

For these reasons, I concur with the majority.