

Challenge to the Disqualification of The Regional Convention Elector Status of Gordon Gaul IV and All Others Like Him

Submitted to: Asia Pacific Credentials and Rules Committee

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Context

A number of members of Democrats Abroad voted in their respective state presidential primaries rather than in the Global Presidential Primary, believing that doing so would not disqualify them from acting as electors in their respective Regional Conventions and in the Global Convention. The Asia Pacific Credentials and Rules Committee recently notified these members that they are disqualified from participating as electors in the Asia Pacific Regional Convention pursuant to Section I.C.1.c of the Delegate Selection Process (DSP).

Section I.C.1.c. provides;

c. 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.)

Rule 2.E. of the Delegate Selection Rules for the 2020 Democratic National Convention (Rules), cited in the DSP section above, provides that “No person shall participate or vote in the nominating process for a Democratic presidential candidate who also participates in the nominating processes of any other party for the corresponding elections.”

Argument

Based on the text of the DSP, the Rules, and the documents that govern the Delegate Selection Process (including the Charter and Bylaws of the Democratic Party of the United States, the Call for the 2020 Democratic National Convention, the Regulations of the Rules and Bylaws Committee for the 2020 Democratic National Convention, the Charter of Democrats Abroad) (see DSP Section A.2), voting in a state presidential primary does not disqualify an individual from participating as an elector in a Democrats Abroad Delegate Selection Convention.

First, voting in another primary does not amount to "participating in the nominating process of any other delegation to the 2020 Democratic National Convention." (DSP Section I.C.1.c.) (emphasis added). The nominating process of any delegation is an act or an instance of appointing or submitting a name for candidacy to that delegation. Participating in the nominating process of another delegation would include such actions as being an elector, endorsing a candidate, or running directly in another delegation. It does not include voting in a presidential primary.

The language of the section supports this interpretation. The section indicates that “no person shall participate *or vote*” in the nomination process “who also participates in the nominating process” for another delegation. (DSP Section I.C.1.c.) (emphasis added). The language suggests that participating and voting are two distinct activities; voting is not participating. That the word “vote” appears in the former clause but not the latter suggests that voting is not a disqualifying activity. Further, the section cites to Rule 2.E, which speaks only to disqualification based on participation in the nominating process for another political party. The section does not reference any other rules or regulations that speak to the issue of disqualification based on an individual’s participation in the nominating process of any other delegation. Thus, the rule cannot be interpreted to mean more than what the text itself says. The drafting history of the DSP also supports this interpretation. Where a member of the public suggested that the language be amended to include “any other state party primary process” as part of the disqualifying activity, the DSP drafting committee *declined* to incorporate this language. (*See* Public Comment No. 12).

Here, the disqualified members did not engage in activities that amount to participation in the nominating process of another delegation. They merely voted in their respective state primaries. On the contrary, as elected representatives of Democrats Abroad, these members have demonstrated their commitment to participating in the process for Democrats Abroad. For example, one of the disqualified electors, Gordon Gaul IV, signed onto creating the current DSP, is a DPCA Representative, and former Vice Chair of DA Japan. The DSP was not intended to disqualify members like him from serving as voting representatives.

According to the Credential Committee, the disqualified members were on notice of their disqualification when they signed a Declaration that imposed additional restrictions not set forth in the DSP or other governing documents. The Declaration states in relevant part:

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, nor voted in any other manner in the Democrats Abroad Primary.

This language, if not read in alignment with the DSP and other governing documents, imposes additional requirements without having the authority to do so. As explained above, voting—whether in a caucus, primary, or other method—is not considered participating in the delegate nomination process under the DSP. Electors sign this Declaration in order to effectuate Section B.1.a of the DSP, which requires:

Participation in the Primary shall be open to any person who: (i) is a member of Democrats Abroad; (ii) has the interests, welfare, and success of the Democratic Party of the United States and of Democrats Abroad at heart; (iii) subscribes to the substance, intent, and principles of the Charter and Bylaws of the Democratic Party of the United States and the Charter of Democrats Abroad; (iv) will participate in the Primary in good faith and wishes to participate as a Democrat; and (v) will be eighteen (18) years of age or older on or before November 3, 2020. Each individual participating in the Primary

must sign a Declaration to the effect of the preceding sentence in the form of the Declaration set forth as Attachment 10 hereto. A person who wishes to participate in the Primary and is not a member of Democrats Abroad must first join Democrats Abroad by completing a membership form prior to participating in the Primary.

Insofar as the Declaration requires electors to promise that they have not voted in their state primaries, the Declaration goes beyond the text of the DSP and subjects electors to additional requirements that neither the text or the DSP nor the drafter's intent support.

The purpose of the DSP, in line with Democratic Party values, is to promulgate guidelines to ensure a fair delegate selection process. Every elector at the Convention was allowed to vote in the presidential primaries. To exclude some of these people because they chose to cast their votes in a state primary instead of the Global Presidential Primary runs against these principles of fairness. The DSP was not intended to arbitrarily disqualify devoted Democrats Abroad members from continuing to support and participate in the organization, and upholding the act of doing so would be of great detriment to the goals of the Democratic Party Committee Abroad.