Republican Party of Virginia
www.rpv.org

November 10, 2015

John Whitbeck, Chairman
Republican Party of Virginia

Jo Thoburn, Chairman
Tenth Congressional District Republican Committee

VIA E-mail

Dear Chairmen Whitbeck and Thoburn,

You have requested my opinion regarding the application of the automatic removal provisions relating to members of Official Committees to the use of such a member's name in support of a candidate in opposition to a Republican nominee.

The provision of the Plan at issue is the second paragraph of Article VII, Section C:

> A member of an Official Committee is held to a higher standard of support for nominees of the Republican Party than an individual who merely participates in a mass meeting, party canvass, convention or primary. Therefore, a member of an Official Committee is deemed to have resigned his Committee position if he (a) makes a reportable contribution to and/or (b) allows his name to be publicly used by and/or (c) makes a written or other public statement in support of a candidate in opposition to a Republican nominee in a Virginia General or Special Election. Such member may be re-instated by a majority vote of the other members of the Committee.

Two specific passages are relevant and I will address each in turn.

The operative portion of the provision, "a member of an Official Committee is deemed to have resigned," makes the removal rule self-executing. If the chairman of an Official Committee is made aware that one of the three conditions—(a), (b), or (c)—applies, the chairman will take note that the member has resigned. It is an automatic sanction, not a discretionary choice.

Unlike the preceding paragraph of the removal provision, the automatic sanction does not provide for extensive procedural due process protections. The first paragraph requires a two-thirds vote of the other members of the Official Committee after charges have been proffered and the member is allowed thirty days to appear and defend himself.

Because the Plan holds support of a candidate in opposition to a Republican nominee to be a serious offense that requires immediate recourse, it provides fewer procedural due process protections. The Plan provides general notice through the provision of the specific offenses that trigger the automatic sanctions (in contrast to the specific notice provided in the charges under paragraph 1) and provides a *post hoc* procedure to reinstate a removed member by majority vote of the Official Committee (in contrast to the opportunity to answer charges prior to a two-thirds vote under paragraph 1).

The condition relevant to this request is (b) "… if he allows his name to be publicly used by … a candidate in opposition to a Republican nominee…." Art. VII, Sec. C. Does a write-in effort on behalf of a member of an Official Committee in opposition to a Republican nominee not publicly repudiated by the member meet this condition?

Candidate is not defined by the Plan, but the Code of Virginia provides a definition at §24.2-101, which states, in relevant part:
> For the purposes of Chapters 8 [Recounts and Contested Elections], 9.3 [Campaign Finance Disclosure Act of 2006], and 9.5 [Political Campaign Advertisements], "candidate" shall include any write-in candidate. …. For the purposes of Chapters 9.3 and 9.5, "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 of Chapter 9.3. (internal citations omitted; chapter captions added)

As a "write-in candidate" has procedural protections through recounts and election contests and is subject to the campaign finance disclosure and advertising disclaimer requirements, the Code treats them as candidates. Additionally, in the instant case, the member has a candidate campaign committee that has not filed a termination report, so would qualify under the disclosure and disclaimer laws as a candidate regardless of a write-in effort.

The plain meaning of the word candidate and, in particular, the use of candidate in the term "write-in candidate" both support the conclusion that the member is a candidate for purposes of the Plan. The context of the provision also supports the result. Sanctions are intended to apply to situations showing support for someone running against a Republican nominee. This is distinct from simply opposing or failing to support a Republican nominee which does not trigger sanctions. A write-in candidacy has the same electoral consequences as support for an opponent of a Republican nominee, particularly where, as here, the nominee would otherwise be unopposed.

A write-in campaign, which included signs and letters to the editor, using the member's name certainly constituted public use of his name. The question is whether he allowed it. An essential element of the question is whether the member was aware of the effort. In this case, the effort was quite public, but the Chairman took the additional step of providing notice to the member and giving him an opportunity to act on that notice. As the member was aware, the question then becomes what constitutes "allowing." The plain meaning of allow includes "to let something happen," or "to permit." "Acquiesce" is a common synonym. Antonyms are most instructive and include "disavow," "repudiate," "reject," and "dispute." In the absence of any effort to publicly oppose the write-in effort, the member clearly allowed the public use of his name in support of a candidate in opposition to a Republican nominee.

This letter constitutes a ruling or interpretation of the Party Plan pursuant to Article X, Section 1. As such it may be appealed to the Appeals Committee or the State Central Committee within 30 days of its posting on the RPV website.

Sincerely,

Chris Marston,
General Counsel