
UPDATE on ExComm status of MCRC Proposal with COMPROMISE SOLUTION INCLUDED

Jeff DeWit <chairman@azgop.com>
To: Jeff DeWit <chairman@azgop.com>

Thu, Aug 31, 2023 at 10:55 PM

Dear AZGOP Executive Committee Members (ExComm),

I am reaching out to provide a crucial update considering the resolution proposed by the Maricopa County Republican Committee (MCRC) on August 26th, 2023, six days ago. This resolution insisted that the AZGOP withdraw from the Presidential Preference Primary, set for March 19, 2024, by September 1, 2023. This deadline was a mere six days after the MCRC first told anyone that this resolution, or idea, even existed.

First, I want to point out very clearly that my job is not to personally weigh judgment on a matter which is to be brought for a vote of the Executive Committee. I will not stand in the way of any idea that could improve election integrity, and I believe we all want to see fair and honest elections. It is easy to predict my actions, I will always do as state law and our Bylaws dictate.

I approached this with a mindset of collaboration, and a desire to see if it was a doable thing. Upon detailed consultation with our Legal Counsel, it is now evident that acting on this resolution would breach our bylaws, placing the AZGOP at risk of countless legal complications. The rushed resolution was proven to be problematic and an invitation for entities such as the Department of Justice to intervene in our election. To do something this large requires more time than six days, as our legal counsel has clearly explained.

That legal directive is attached to this email, and I have copied the summary below:

*"The Party is required to adhere to State law in running its national convention delegate selection process. While the Party is permitted to opt out of the PPE, state law says that decision should have occurred by September 1, 2023. Setting aside State law, the Party's delegate selection plan is required to be delivered to the RNC no later than October 1, 2023. The Party's Bylaws specifically mandate that the Secretary notifies the Executive Committee of any special meeting a minimum of 30 days before the proposed meeting date. **Considering this, any attempt to convene an emergency meeting without adhering to this 30-day notice would not only contravene the Bylaws but would also render the meeting unlawful.***

*Moreover, the Party suffers a significant reduction in delegates for failure to deliver its selection Plan by the required date and may not be able to participate at all if it fails to deliver a plan. An opt out of the PPE with the intention of moving to a more closed delegate selection process almost guarantees the Party will be sued on equal protection and due process grounds. The Party has no well-articulated plan to replace the PPE and no money with which to communicate this change to Arizona Republican voters. As a result, the Party would almost certainly be forced back into the PPE by court order. **There is simply not enough time or resources to make that shift in this presidential election cycle while upholding the requirement of the Bylaws that the Party act fairly to all primary candidates.***

Also in the letter from our longtime legal counsel:

We are very nearly certain that the Party would face a lawsuit on Federal and State due process and equal protection grounds alleging that a shift to an alternative is massive voter disenfranchisement. This decrease in participation likely violates RNC Rule No. 15. Any change in the process now leaves the Party almost defenseless to lawsuits from Republicans.

Due to the MCRC not even mentioning this idea until six days before the legal deadline, by the time they introduced the proposal it was already too late to hold the Executive Committee vote to withdraw from the Presidential Preference Primary. I am concerned by the few voices we have heard who have suggested that we suspend or ignore our Bylaws, which cannot be acceptable.

Another potential issue, which we found too late to have vetted by counsel but will do so if needed is a new law that was passed. This law aims to stop any private monies from funding elections. I have copied the language below:

16-407.01. Election administration; private monies prohibited

Notwithstanding any other law, this state and a city, town, county, school district or other public body that conducts or administers elections may not receive or expend private monies for preparing for, administering or conducting an election, including registering voters.

Nevertheless, there's a compromise solution that would allow the MCRC to manage a parallel election for Maricopa County exclusively.

While many of our Arizona counties lack the resources and infrastructure of MCRC, the MCRC believes that they could run such an efficiently managed election which could set a precedent for elections nationwide. We hope that the MCRC submits a detailed written proposal, including budget, to the Executive Committee of running a parallel election for Maricopa County only. Rumor suggests the MCRC possesses a 269-page plan, which hasn't yet been sent in to be reviewed by the Executive Committee. When they send that in, we will immediately forward it to the entire committee, and we recommend they do so soon. The MCRC has committed to funding the entire venture, ensuring no financial impact on the state party or other counties. Upon receiving this written proposal, the AZGOP will provide the necessary 30-day notice for an ExComm vote to allow the MCRC to run a parallel election to the state-run election exclusively for Maricopa County.

Going forward, I hope the MCRC will engage in dialogue with the AZGOP and other counties before introducing major initiatives. It's vital that MCRC and the AZGOP align their strategies for future elections.

What's particularly concerning about the MCRC's recent proposition is that it bypassed Bylaw protocol. We are a ground-up organization, built from our hardworking and passionate grassroots PCs. A resolution of this magnitude should have been voted on by the PC base of each district, with the Chairman of each Legislative District then relaying the wishes of their PCs by voting in a similar fashion at the MCRC, and then up to the AZGOP. Our PCs need to be included, which gets "buy-in" from across the base.

You entrusted me with the role of Chairman in January of this year. I promised to uphold the sanctity of our conservative principles, ensure election integrity, and consistently prioritize the Precinct Committeemen (PC) as the backbone of our party. They're the unsung heroes, pounding the pavement and representing our core values.

It appears many Legislative District Chairs endorsed the resolution without involving their respective PCs in the decision-making process, leading to some unhappy PCs sending me emails. This kind of oversight, whether inadvertent or deliberate, silences the voices of those we count on the most, especially during election seasons.

I hope you all know my sincerity in wanting to fix our elections, get that Senate seat in Republican hands, and take back the White House. **During my time as Chairman so far, the Republican Party of Arizona has engaged in litigation in the following election integrity cases:**

AFEC v Fontes: CV-202300202: Restoring Integrity and Trust in Elections (RITE), the Arizona Free Enterprise Club, and Arizona GOP [sued](#) Secretary of State Fontes for authorizing an illegal expansion of the database of signatures used to verify ballots, including the addition of potentially unreliable signatures. The state filed a [motion to dismiss](#) and intervenors filed motions to dismiss on May 22, 2023 with a consolidated response filed on June 16. The court held a hearing on the motion to dismiss on July 7, 2023. The Judge has 90 days to rule.

The AZGOP will engage in litigation on appeal upon any ruling dismissing the case to uphold [HB 2492](#) (Proof of Citizenship) Challenges:

- There are eight lawsuits challenging H.B. 2492 (and other legislation) that require proof of citizenship for registrants using the National Voter Registration Form:
 - The eight lawsuits were consolidated. The RNC was granted intervention in the consolidated cases.
 - The state's motion to dismiss was denied on February 16, 2023.
 - The Arizona Speaker of the House of Representatives and Senate President's motion to intervene as defendants was [granted](#) on April 26, 2023.
 - The RNC filed a [motion](#) for summary judgment on May 15, 2023, which was joined by the state legislator intervenors. Plaintiffs filed their responses and cross motions for summary judgment on June 5, 2023. On July 5, the RNC [filed](#) a reply in support of partial summary judgment. On July 19, plaintiffs filed their replies in support of summary judgment.

- There was a hearing on the motion for summary judgment on July 25 and the judge set trial for November 6, 2023.

The AZGOP is paying \$18k in legal fees for the case to protect our right to a meaningful post-election hand count arising from the 2020 election.

The AZGOP joined with RNC to issue a statement objecting to numerous provisions in AZSOS Fontes' draft Elections Procedures Manual. We are prepared to engage in litigation to protect the rights of the voters of Arizona.

On a previous email to the AZGOP Executive Committee, I want to again point out the following which was included:

“On the recent talk about Democrats trying to keep President Donald Trump off the ballot, **please know that the AZGOP will engage in aggressive litigation with no regard to cost to make sure that President Trump WILL APPEAR ON THE BALLOT IN ARIZONA. We will not allow the Democrats to dictate our candidates, and we will mount a vigorous legal offense to protect them.”**

It's essential that we rally together during these pivotal moments to ensure we're unified in our decisions and actions. We are genuinely eager to listen, learn, and take any appropriate action to safeguard our state and nation's electoral integrity.”

On another note, I am proud that I was present at the passing of the RNC's national resolution in Milwaukee last week, and I do wish to seek a vote on the exact measure by our ExComm at a future meeting. I attached a copy of that resolution to this email.

In closing, I would like to reiterate that the unsettling rise in reported intimidation toward members cannot be overlooked. This level of divisiveness isn't aligned with the Republican Party's core values. It's imperative we remember our collective mission for our state and this great nation.

Thank you for your unwavering dedication during these challenging times. Together, we will uphold the Conservative principles we hold dear and win in 2024.

Warm regards,

Jeff

Jeff DeWit

AZGOP Chairman





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August 31, 2023

Jeff DeWit
Chairman
Arizona Republican Party
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via email to chairman@azgop.org

RE: Opting out of the PPE

Dear Mr. Chairman:

You have asked for an opinion on the legality of the Arizona Republican Party (the “Party”) opting out of Arizona’s upcoming Presidential Preference Election and instead using a closed alternative to determine the voting direction to give the Party’s delegates to the 2024 Republican National Convention. In sum, we believe a move at this late date would violate RNC rules and State law as well as expose the Party to a substantial risk of costly litigation. Such a change will likely result in the disapproval of the Party’s delegate selection plan by the Republican National Committee. Disapproval of the plan will significantly reduce the Party’s opportunity to participate in the National Convention.

Background

Arizona does not have a Presidential “primary,” instead it holds a Presidential Preference Election (“PPE”). The purpose of the PPE is to “give qualified electors (Republicans) the opportunity to express their preference for the presidential candidate [of their party]. ARS § 16-241.A. Party delegates to the Republican National Nominating Convention are legally required to vote for the candidate that received the highest number of votes in the PPE on the first nominating ballot at the national convention. ARS § 16-243.B. After the first ballot and/or when other conditions are met, Arizona’s national convention delegates are free to vote for the nominee of their choice. *Ibid.*

This focused purpose – providing direction to the Party’s national convention delegates – highlights the legal reality that the ultimate guidance on the delegate selection process to the national convention and instruction to those delegates as to whom they should support in choosing the Party’s nominee are derived from the Rules of the Republican National Committee and the bylaws of the Arizona Republican Party.



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Rules of the RNC

The Rules of the RNC (the “Rules”) instruct the state parties to “achieve the broadest possible participation . . . in the delegate selection process.” Rule No. 15 of the Rules of the Republican Party, as adopted by the 2020 Republican National Convention and amended by the Republican National Convention on April 14, 2022. “All citizens who are qualified are urged to participate.” *Ibid.* Should a State Party wish to add additional qualifications to participation in the PPE, those qualification shall be adopted before October 1 of the year preceding the national convention (October 1, 2023). *Ibid.*

Each State Party is required to submit a delegate selection plan to the RNC by, in this case, October 1, 2023. Rule No. 16(f)(1). No changes to the delegate selection plan are permitted after October 1, 2023. Rule No. 16(f)(2). A state party that violates these rules is subject to having its total number of national convention voting delegates reduced to a total of 9, including delegates and alternates. Rule No. 17(a). Failure to have an approved plan may result in the RNC denying credentials to any Arizona delegate.

Bylaws of the AzGOP

State law allows each recognized political party to set forth their own process for picking national convention delegates in their party bylaws. ARS §16-243.A. The Bylaws of the Arizona Republican Party set forth that process in Article VI of the Bylaws of the Arizona Republican Party, revised and approved January 28, 2023. The Bylaws do not provide guidance on who national convention delegates should support at the national convention. However, the Bylaws do provide that they may not conflict with Arizona Revised Statutes. Art. 1.D. As noted above, **State law directs** delegates to support the winner of the PPE. ARS §16-241.A.

We are aware that there is a request for a Special Meeting of the Executive Committee to consider proposals to revise and amend the Party’s national convention delegate plan. The Party’s bylaws generally require the Secretary of the Party to deliver notice of the special meeting call to members of the Executive Committee at least 30 days prior to the meeting date. Given the number and geographical dispersion of Executive Committee members this 30-day notice period ensures the maximum number of Committee members are present and ready to participate in the meeting.

The Party’s Bylaws also require the Party to “treat all Republican candidates fairly during the primary . . .” Art. IV.C.2. We note that there is an exception to this fairness standard for the PPE but *only when an incumbent Republican president is seeking re-election. Ibid.*

Integration of National Rules and State Bylaws

RNC Rules require the Party to submit its’ National Convention Plan by October 1, 2023. That plan is to set out both the delegate selection process and the process for determining



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who those delegates shall support on the first nominating ballot. Rule No.16(a)(1). The Party's bylaws provide that delegates shall support the winner of the PPE on the first ballot. ARS 16-243. To the extent the Party wanted to develop alternative delegate support rules it would have to amend the Party bylaws. An amendment would require a meeting of, at a minimum, the Executive Committee. Art. 1.B. of the Bylaws. Such a meeting requires 30 days' notice of the Call. Art. III.C. There are not enough days between the day a special meeting could be called to order and the October 1 due date for the National Convention Plan to authorize a change in the mechanism for first ballot delegate voting. In addition, it is hard to believe that any change in the delegate process at this juncture complies with the fairness requirement of the Bylaws.

Arizona Case & Session Law

Case law in Arizona accepts the political parties are not required to participate in the PPE. *See Arizona Democratic Party v. Hull*, No. CV96-00909 (Maricopa County Super. Ct. Feb. 1, 1999). Session law requires a party that wishes to opt out of the PPE to notify the Secretary of State by, in this case, September 1, 2023. *See* HB2751 §19, 54th Legislature, 1st Sess. (Ariz. 2019).

Constitutional Issues

In accordance with RNC Rules and State law, currently all and any persons timely registered as a Republican may express their presidential preference in the PPE. As of July 2023, there are approximately 1,500,000 persons that could cast a vote in the Republican PPE. That number will surely grow as people registered as no party preference reregister with one party or another next year for the express purpose of participating in the PPE.

The Party opted out of the 2020 PPE. We note that the Democratic Party did hold a PPE and 613,000 Democrats cast a vote, equaling a 49% turnout. In the 2016 Republican PPE, approximately 1,100,000 Republicans cast a ballot for a 55% turnout.

Assume for sake of discussion that in a 2024 Republican PPE the turnout is 50%. Approximately 750,000 Republican from across the State will have had their voice heard in instructing the Party's National Convention delegates whom to support on the first candidate nomination ballot. Shifting from a PPE to anything else would be a massive change in how Arizona Party members express their presidential preference. For sake of discussion and given the amount of time and dollars available to communicate changes, assume that 15% of Arizona Republicans would engage in an alternative. So instead of 750,000 Arizona Republican's getting their voice heard approximately 225,000 would participate. We are very nearly certain that the Party would face a lawsuit on Federal and State due process and equal protection grounds alleging that a shift to an alternative is massive voter disenfranchisement. This decrease in participation likely violates RNC Rule No. 15. Any change in the process now leaves the Party almost defenseless to lawsuits from Republicans.



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Summary

The Party is required to adhere to State law in running its national convention delegate selection process. While the Party is permitted to opt out of the PPE, state law says that decision should have occurred by September 1, 2023. Setting aside State law, the Party's delegate selection plan is required to be delivered to the RNC no later than October 1, 2023. The Party's Bylaws specifically mandate that the Secretary notifies the Executive Committee of any special meeting a minimum of 30 days before the proposed meeting date. Considering this, any attempt to convene an emergency meeting without adhering to this 30-day notice would not only contravene the Bylaws but would also render the meeting unlawful.

Moreover, the Party suffers a significant reduction in delegates for failure to deliver its selection Plan by the required date and may not be able to participate at all if it fails to deliver a plan. An opt out of the PPE with the intention of moving to a more closed delegate selection process almost guarantees the Party will be sued on equal protection and due process grounds. The Party has no well-articulated plan to replace the PPE and no money with which to communicate this change to Arizona Republican voters. As a result, the Party would almost certainly be forced back into the PPE by court order. There is simply not enough time or resources to make that shift in this presidential election cycle while upholding the requirement of the Bylaws that the Party act fairly to all primary candidates.

Sincerely,

Wilenchik & Bartness

A handwritten signature in blue ink, appearing to read 'Lee Miller', written in a cursive style.

Lee Miller

REPUBLICAN

NATIONAL COMMITTEE

RESOLUTION URGING A “RETURN TO EXCELLENCE” IN AMERICAN VOTING AND ELECTIONS

WHEREAS, To present a formal Resolution from the Republican National Committee for declared opposition to voting manipulation schemes and to return to the functional and historic balloting and polling experience that Americans understand, appreciate, and love;

WHEREAS, The mission of the Republican Party is to act as the party that encourages and allows the broadest possible participation to all voters and to assure that the Republican Party is open and accessible to all Americans;

WHEREAS, Ensuring the integrity of our voting and election administration is critical and foundational to maintaining a civil and decent society decentralized from a federal government as the Founders intended;

WHEREAS, Americans expect accurate and swift determinations as it pertains to elections and the administration of elections;

WHEREAS, Elections have been under assault from those on the Left as they attempt to implement schemes and intentionally inject chaotic administrative changes that have drastically changed how elections are conducted in hundreds of the most populous counties and regions across the nation;

WHEREAS, Election officials are obligated to apply polling place access equitably in states, and should not eliminate polling places in order and to move to “vote center” models that make polling place access more difficult in more conservative areas;

WHEREAS, Democrats are passing non-citizen voting laws in liberal cities, which the Republican National Committee has previously resolved to oppose and ensure only United States citizens decide our elections;

WHEREAS, Republican officials are explicitly asking for decisive direction and support from the national Republican apparatus and elected Republican leadership;

WHEREAS, The grassroots activists of the Republican Party have discovered and made it abundantly clear that there are recognized problems with electronic election procedures and intentional complications of instituted systems that complicate, belabor, and slow down our election processes;

WHEREAS, Election experts agree that the most resilient voting systems use paper ballots, either marked by hand or with an assistive device, and are verified by the voter before any means of tabulation; and

WHEREAS, The Republican National Committee has unanimously opposed complicated election schemes like Ranked Choice Voting that is a clear example of the chaos being pushed on our states and territories; therefore, be it



RESOLVED, The Republican National Committee boldly opposes means of voting that do not have the proper safeguards in place and are exclusively electronic and calls on every county and state in the nation to use as the default ballot systems, which are fully auditable, namely hand-marked, voter-verified paper ballots to ensure every voter is memorialized by a paper record;

RESOLVED, The Republican National Committee calls on secretaries of state of each state to implement anti-counterfeit ballot printing, tracing and verification procedures;

RESOLVED, The Republican National Committee formed a special Election Integrity Committee designed to offer ideas, suggestions and reports on election equipment and voting procedures and it will integrate its findings of best practices through the Election Integrity Department and communicating its findings on voting schemes, balloting systems, election equipment, and safeguards to elected officials, candidates, and voters;

RESOLVED, The Republican National Committee supports the rights of counties and states that are willing and able to competently and efficiently implement voting procedures that do not require the use of machines and those that implement hand counting procedures that are fully auditable;

RESOLVED, The Republican National Committee calls on state legislatures, county, and municipal governments to pass laws and municipal codes and rules that allow for full transparent hand-counting procedures that are planned, timely and fully observable by the public and the registered parties for geographically defined audits and recounts;

RESOLVED, The Republican National Committee calls on all Republican officeholders to defend the historic practice of geographically-defined and assigned precinct, ward and localized polling places for means of balloting and tabulating paper ballots by geographic unit;

RESOLVED, The Republican National Committee stands firmly behind voter identification laws and calls on state legislatures to pass laws to ensure every voter is verified to be the actual voter regardless of method in which they vote at the time of voting, casting, or delivering a ballot;

RESOLVED, The Republican National Committee hereby opposes any and all efforts for states to unreasonably expand time periods for early or vote-by-mail that makes ballot counting procedures intentionally unmanageable or incapable to complete expeditiously following the conclusion of an election on election day;

RESOLVED, The Republican National Committee calls for elimination of temporary or ‘pop-up’ voting locations, drop boxes, and any other voting center that are not fairly defined and bound to a designated geographic territory and where voting locations exist, namely by precinct, so that voting is accessible equitably by legal precinct, ward or defined geographic unit in order to provide impartial access for all voters; and

RESOLVED, The Republican National Committee calls for a necessary “return to excellence” or in other words, a return to the simple and proven methods of precinct, ward or geographically-defined localized voting with auditable balloting procedures using paper ballots, in fair, reasonable limited time periods, using proper identification to strengthen voter confidence and to ensure that American election procedures can be a fair and open process for all to participate.