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For more information contact: Seth Berner 207-775-2452 sberner@gwi.net
David Bright 207-356-6062 david.bright@davidbright.us

The text of the challenge may be found at: http://www.davidbright.us/ChallengetoDNC_2020-05-03.pdf

Bernie supporters challenge Democratic Party plan to strip Sanders of at-large national convention delegates

Two Bernie Sanders Democratic activists have filed a formal challenge with the Democratic National Committee (DNC) and the Maine Democratic Party (MDP) seeking to prevent the party from stripping Sanders of some of his national convention delegate allocations and handing them over to Vice President Joseph Biden.

The Democratic Party says it can do so because it believes Sanders' declaration that he has suspended his campaign means he is no longer a candidate and therefore is not entitled to keep two classes of at-large national convention delegates that he won as a result of the Super Tuesday Presidential primary.

But Seth Berner of Portland, Maine, and David Bright of Dixmont, Maine, say that is not true, and that by all reasonable interpretation of party rules and federal statutes Sanders is still a candidate and remains entitled to all the delegates he has earned to date.

Berner and Bright argue in their formal challenge that the Party's interpretation violates both DNC's Delegate Selection Rules and the MDP's Delegate Selection Plan, which are the documents under which Maine's delegates to the Democratic National Convention are allocated and filled.

The cornerstone of these rules is proportional delegate representation, they say, whereby Presidential primary candidates who receive at least 15 percent of the vote in either congressional district or state-wide balloting are entitled to a proportion of that jurisdiction's allocation of national convention delegates as determined by the vote results.

The two challengers are both Sanders delegates to the Maine Democratic State Convention and both are seeking to be national convention delegates for Bernie Sanders. Sixty-one other Sanders delegates to the Maine Democratic State Convention have joined them in the challenge. All say that taking delegates away from Sanders deprives them of an opportunity to vote for Sanders delegates, an opportunity to become a Sanders delegate, or both.

Similar challenges are being considered around the country, and in an attempt to avoid conflicts, the DNC has promoted an agreement brokered between the Biden and Sanders campaigns that Sanders supporters will be able to elect Sanders at-large national delegates but those delegates would then be certified and attend the national convention as Biden delegates. The brokered agreement specifically authorizes Sanders-turned-Biden delegates to vote for Sanders at the national convention, but Berner and Bright argue this agreement is dishonest on its face, not only because it is not called for in the rules, but also in that it would make it appear that Biden has more support than he actually has.

"Call it what you want," Bright said, "but this is Democratic Party-sanctioned vote flipping. Yes, these Biden-in-name-only delegates can vote for Sanders, but the perception outside the smoke-filled room would be that Biden has a tighter lock on the nomination than he actually earned. The belief that Sanders has fewer delegates – and thus is likely to get fewer votes at convention – could keep Sanders voters away from the polls in upcoming primaries because they think their vote won't matter."

To support their contention that Sanders is still a bone fide candidate, Berner explained that each State has a specified number of delegates to the Democratic National Convention. How a State's delegates are allocated between candidates is strictly controlled by formal documents of the national and State Democratic Parties. There is little room under those documents for subjective decision making, he said.

The primary document is the *Delegate Selection Rules for the 2020 Democratic National Convention* of the Democratic National Committee (DSR). Based on the results of the Maine primary, 16 of Maine's 24 national delegates were earned in congressional district races and are not in contention. But in the Maine at-large categories, Biden and Sanders each earned three delegates, and Elizabeth Warren earned two. Because it is taking the position that Sanders is no longer a candidate, the DNC plan calls for the three Sanders delegates and two Warren delegates to be handed over to Biden.

The DNC is basing its position on two provisions in two separate documents, Berner said. DSR Rule 11(C) says that in the case of someone who "is no longer a candidate at the time at-large delegates are selected, his/her allocation shall be proportionately divided among the other preferences entitled to an allocation."

The DNC says Biden is the only candidate still in the race and thus gets all the at-large delegates. The challengers say Sanders is still in the race and therefore the rule does not apply. The DNC is basing its position on *Call For the 2020 Democratic National Convention* Section VI, stating that a candidate a candidate is one who plans to seek the nomination.

"Without question Sanders started out seeking the nomination, and was certified as a candidate by the DNC and that certification has not been withdrawn. In order for him to be considered to be no longer a candidate some formal step must be taken," Berner said.

Several candidates have taken such a formal step. Tom Steyer, Elizabeth Warren, Cory Booker, Kamala Harris and Amy Klobuchar have filed official statements with the Federal Elections Commission stating they are no longer seeking the nomination. Under the *Call To Convention VI* this effectively withdraws them as candidates.

But Sanders has not submitted such a statement, and in the absence of such a statement there is no basis for concluding the suspension of a campaign means he is no longer a candidate, Berner and Bright argue.

Additionally, Berner notes, a federal judge came to the same conclusion in ruling against the New York State Board of Elections' decision to cancel the upcoming Presidential primary in that state, writing "Sanders ... did not formally remove his name from the ballot. And ... neither the New York nor the national Democratic Party has amended the Delegate Selection Plan, which provides that delegates will be allocated based on the results of the primary election conducted by the state."

To be found to no longer be a candidate requires an action more than suspending a campaign, Berner says. He argues that the distinction between "suspended" and "withdrawn" is like the distinction between "separated" and "divorced."

"One who leaves one's spouse may well be separated, but in order to be divorced more than just leaving is necessary. Similarly, one who suspends his campaign might lose some benefits but in order to be considered 'no longer a candidate' something more than suspending the campaign is necessary. Even endorsing Candidate B does not mean that Candidate A has withdrawn, any more than moving in with another partner makes one divorced. So Sanders is still a candidate, and thus is entitled to all of the delegate allocations he earned in the primary," Berner explained.

"In fact," added Bright, "given the situation in the country today, without rallies and other public appearances, Sanders and Biden are pretty much operating the same way, using social and mass media to make their positions known. The only difference is Biden is all in for Biden and raising money for his campaign, while Sanders is using his status as a Presidential candidate to speak out on behalf of – and help to raise money for – numerous progressive down-ballot candidates as well as groups working to improve the health and safety of this country."

“Moreover,” Berner said, “unlike other candidates, Sanders has also made clear that he wants his name to stay on all the remaining primary ballots, that he still wants to collect delegates, and that he intends to bring those delegates to the national convention so as to be able to have a strong say in the future direction of the Democratic Party.”

Berner and Bright both said they also have a personal stake in the outcome. “Presently I am standing with Sanders,” Berner said, “and I will continue to stand with him as long as he remains a candidate. If I am elected an at-large delegate I do not want to be identified as a Biden supporter because I am not – at this time – a Biden supporter. There will be plenty of time after the convention to make other decisions, but that will be my own decision. What I don’t want is the Maine Democratic Party, or the Democratic National Committee, telling me who I am supposed to be affiliated with.”

“Or telling party members we’re affiliated with Biden when we’re not,” Bright added. “The state’s Presidential primary voters determined the delegate proportions, and those of us running under the Sanders banner must be allowed to represent the wishes of those voters. Both the Biden campaign and the Democratic Party need to be respectful of that.”

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