



Written by [Steve Byas](#) on July 12, 2016

Federal Judge Rules Virginia Cannot Bind Delegates to Vote for Trump

Robert Payne, senior judge for the U.S. District Court for the Eastern District of Virginia, has ruled unconstitutional Virginia's statute that provides criminal penalties for delegates who do not follow the results of the presidential preference primary. Payne, nominated in 1992 by President George Herbert Walker Bush, declared late Monday that the statute "exceeds the powers retained by the Commonwealth of Virginia under the Constitution of the United States and cannot be enforced."



The essence of the ruling is that Virginia may not impose any criminal penalties on delegates to the Republican National Convention in Cleveland, Ohio, who refuse to vote for Donald Trump. Trump received about a third of the vote in Virginia's primary, narrowly edging out Senator Marco Rubio (R-Fla.). Under Virginia's state primary law, a candidate does not have to receive a majority of the vote to win all the state's delegates, but just a plurality (more votes than anyone else). Under Virginia law, a Class 1 misdemeanor provided that any delegate who did not vote according to the outcome of the Virginia primary could be sent to jail "for not more than twelve months," or face a "fine of not more than \$2,500, either or both."

A delegate from Virginia, Carroll Correll, Jr., sued to overturn Virginia's statute, arguing that a state law should not be able to interfere in what is a private matter of a political party. The case's judgment, *Correll v Herring*, only restrains the state of Virginia from punishing Correll. Judge Payne did not address the issue of whether a political party can bind a delegate under party rules.

In his decision, Payne wrote,

Because Defendants have not demonstrated that Section 545 (D) advances a compelling state interest, it is not necessary to address whether the statute is narrowly tailored. Nonetheless, it is significant to note that Defendants have tacitly conceded the point by failing to offer any evidence or argument that the statute is narrowly tailored.

For the foregoing reasons, Correll is entitled to judgment that Section 545 (D) is an unconstitutional burden on his First Amendment rights of free political speech and political association. Therefore, the Court so declares and will enter judgment on that score on his behalf on Counts I and II.

Under Count I, the judge held that the statute could keep a delegate from voting "consistent with party rules," while under Count II, the judge said the statute is a violation of the First Amendment rights of "free association."

During the hearing, Judge Payne asked, "Is he entitled to get a criminal penalty for making that



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decision or is that a party matter to drub him out of the party?" He repeatedly asked the attorney general's lawyers how the state could enforce a law that seems to dictate the internal affairs of a political party. The attorney general's lawyers replied that no one had ever been prosecuted for violating the delegate law, and that they had no intention of bringing any charges against Correll.

The judge cited testimony by Erling "Curly" Haughland, who has written a book — *Unbound: The Conscience of a Republican Delegate* — positing the thesis that the rules of the Republican National Convention have historically allowed delegates to vote their consciences at any Republican National Convention. In his book, Haughland and his co-author, Sean Parnell, detail the history of Republican conventions since 1856 (the first year the Republican Party fielded a candidate for president) on this subject. The authors argue that state governments should not be allowed to pass laws interfering with how a private organization such as a political party chooses its candidates for public office, including president of the United States.

Donald Trump's campaign issued a statement claiming a win in the case, because under the decision the party can still pass rules to bind delegates to the results of presidential primaries in the several states, even if state governments cannot do so.

Those such as Correll, however, contend that they do not argue with the right of the national convention to pass whatever rules they wish, but they say they now know that they will not have to worry about facing jail time or a fine from the state simply because of the way they vote in what should be a party, not a legal, matter.

The Rules Committee is meeting this week to adopt the rules for the 2016 convention. Each convention adopts its own rules, and the rules of the previous convention cannot bind this year's convention. Whatever rules the committee makes must be approved by the entire convention on the first day of the convention.

Whether delegates are "bound" by the results of the state's primary or by state party rules is irrelevant to how they vote on the party's rules. A delegate bound for Trump could vote to unbind the delegates from the results of a state's primary or a state's party rules, or a delegate bound for Senator Ted Cruz (R-Texas) or for Senator Marco Rubio (R-Fla.), could likewise choose to pass a rule to bind the delegates.



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