



Written by [Steve Byas](#) on June 22, 2016

Will Delegate Revolt Against Trump Succeed?

A group calling itself “Free the Delegates” is claiming that its effort, begun with just a few dozen delegates, can now count on several hundred delegates and alternates as part of its campaign to release Republican National Convention delegates from their “binding” to Donald Trump.

CNN has reported, “Interviews with more than a dozen donors, party, campaign and congressional officials make clear the concerns that have moved beyond bruised feelings over personal slights — and even beyond the top donors who simply won’t give to the New York billionaire.”



The group is driving an effort to change party rules so the delegates who are now bound to Trump (or anyone else, for that matter) can vote however they want in Cleveland, and ignore the results of the state caucuses and primaries. Each convention has full power to set its own rules for the convention. The Rules Committee, made up of one man and one woman from each state’s delegation to the Republican National Convention, will meet prior to the convention, and pass rules for the convention. These rules then have to be approved by the entire convention.

While delegates may be committed by either state party rules or state laws to vote for Trump at the convention, the delegates could, for example, vote as they wish on the party rules.

What is driving this resurgence in anti-Trump sentiment, which seemed to dissipate after Trump beat Cruz in Indiana? Usually at this point in the process, party regulars have coalesced behind the presumptive nominee in the name of party unity. And expected Democratic Party opponent Hillary Clinton certainly unites activist Republicans like hardly anyone else.

A big part of the answer is that many grassroots Republicans are becoming nervous at Trump’s declining poll numbers, fearing a Clinton win in November. Then, there are worries that Trump wants to soften the strong pro-life plank in the party platform; and his recent wavering on Second Amendment rights in the aftermath of the Orlando shooting have angered many. This growing uneasiness among regular Republicans, who usually rally around the nominee, combined with the persistent opposition of the more “Establishment” Republicans — who don’t like Trump’s trade positions, is giving added life to the movement.

The effort by neoconservative leader Bill Kristol to run a third-party candidate appears to have failed to gain traction. Such a third-party effort never had more than a whisker of a chance of actually winning. While Kristol and others like him were apparently quite content for such an undertaking to reach its logical outcome — the division of the Republican Party and the election of Hillary Clinton — that scenario was totally unacceptable to activist Republicans who go to national conventions, and really care about conservative issues. There may be hundreds of delegates who are no doubt lukewarm about Trump, but they are in absolute fear of a second Clinton presidency.



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There is no question that there exist many strongly conservative Republicans who are not fond of Donald Trump. But there are also many Establishment Republicans who detest Trump for their own reasons, and are disdainful of these very same conservative Republicans that might be less than enthusiastic about Trump. After all, it should be remembered that former Florida Governor Jeb Bush publicly said that he intended to win the Republican nomination by running a moderate campaign, without the Republicans' more conservative base. Apparently, the Republican base had seen two Bushes before, and decided to decline a third.

Some prominent backers of Jeb Bush are taking advantage of the uneasiness of these conservative Republican activists to join in on the rebellion against a Trump nomination. Tim Miller, a former communications director for Bush and for the anti-Trump PAC, Our Principles, has said, "My view is an extremely unqualified candidate calls for an unprecedented response."

Open primaries are cited by some who justify denying Trump the nomination at the convention. In many of the early states, delegates were chosen and bound by the results of state primaries in which Democrats and Independents participated, raising the issue for strong Republicans of why should Democrats and Independents pick our candidate?

This is, of course, not a new concern. In past years, such "open" primaries have largely benefitted more moderate and establishment candidates such as Bob Dole and John McCain over more conservative candidates, such as Pat Buchanan. This year, instead of helping the more establishment candidates, it greatly helped fuel the candidacy of Donald Trump, whose anti-free trade and anti-immigration rhetoric drew many Democrats and Independents to cross over and vote for Trump in the Republican primaries.

While the issue of open primaries is a legitimate one, and one that the Republican Party should certainly address for future elections, it is extremely doubtful that Jeb Bush would have been bothered had it helped him defeat Senator Rand Paul and Senator Ted Cruz.

Even more fundamental is the whole issue of state-mandated presidential primaries choosing political party candidates. They were a creation of the progressive movement in the early part of the 20th century. It certainly does not seem like a very conservative, limited government concept to allow state law to dictate how a private organization, such as a political party, picks its candidates. After all, if state law can determine the method by which a party picks its nominees, what is to stop them from dictating positions in party platforms through an election, one in which Democrats can vote in Republican primaries, and vice-versa? This is like allowing Methodists to show up at the local Baptist church to pick its deacons.

In fact, the U.S. Supreme Court has ruled that forcing state parties to bind its delegates via the results of a state-conducted primary, particularly an open primary, is unconstitutional. One case was brought to the court by the Democratic Party in Wisconsin, and the Court said, in its majority opinion, in 1983:

The voters in Wisconsin's "open" primary express their choice among Presidential candidates for the Democratic Party's nomination; they do not vote for delegates to the National Convention. Delegates to the National Convention are chosen separately, after the primary, at caucuses of persons who have stated their affiliation with the Party. But these delegates, under Wisconsin law, are bound to vote at the National Convention in accord with the results of the open primary election. Accordingly, while Wisconsin's open Presidential preference primary does not violate National Party rules, the State's mandate that the results of the primary shall determine the allocation of votes cast by the State's delegates at the National Convention does.



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Despite this, should Trump, at this point, be denied the nomination by a rules change at the Republican National Convention, it would most likely lead to a serious rupture within the Republican Party, and ensure the election of Hillary Clinton in November. While conservatives unhappy with Trump might prefer a candidate more to their taste, it is quite possible that the results of this action would lead to either the nomination of a candidate more like the type they have come to resent (such as a Bush, Bob Dole, or John McCain) or defeat in the general election to Clinton. Or most likely, both. After all, Bush left the Republican Party in shambles by 2008, and Dole, McCain, and Mitt Romney led the party to defeats in 1996, 2008, and 2012.

Sadly, many of the same forces that have run these establishment candidates for the past several election cycles seem quite content to lose to a Democrat, just so long as it keeps a true conservative Republican from getting the nomination, or just one they fear they cannot control — such as Trump.



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