

In-Depth Analysis of Delegate Binding for Ron Paul Delegates to the 2012 GOP National Convention

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The concept of “Delegate Binding” means delegates to Presidential National Conventions can be “bound” to vote for a particular candidate on the first ballot for a presidential nominee, even if that candidate is *not* their choice, and even if doing so is *against* their conscience.

Some Ron Paul Delegates to the 2012 GOP National Convention may be faced with a decision as to whether to abide by or rebel against Delegate Binding on the first ballot. Additionally, Ron Paul Delegates may need to decide how to speak to others about Delegate Binding, including at the time of admission to the convention and during pre-first-ballot debates. This Analysis looks deeply into the Delegate Binding issue. I am hopeful it might help delegates to make these decisions. I also hope it might be useful to high-level Ron Paul strategists, particularly given strategic shift just announced today.

I humbly submit this document to be of service to Ron Paul, his campaign, our nation and our world, which is in an advanced state of emergency at the hands of tyrants. Any errors herein are my own. I apologize for the length — it would take too long to make it shorter. Comments, rebuttals and corrections are welcome and appreciated.

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1. What Is the Significance of Delegate Binding?

Delegate Binding is most significant in states that have two *distinct* processes for (a) voters expressing their “preference” for a presidential candidate, and (b) national convention delegates being selected. This distinction generally happens in the caucus states. For example, in Nevada the voters who attend Republican caucuses (typically a small percentage of voters) determine their “preferred” Republican candidate for President. They *also* select delegates to county conventions. Later, at the county conventions, delegates to the state convention are selected. Finally, at the state convention, delegates to the national convention are selected. Thus, the voter preference process and the national convention delegate determination processes are entirely *separate*.

Continuing with the Nevada example, Nevada gets 28 delegates to the 2012 Republican National Convention. On February 4th, caucus voters purportedly preferred Romney over Paul in a ratio of approximately 20 to 8. The media *misinterpreted* this by ignoring the fact that the delegate selection process was distinct, and claiming that Romney had “won” 20 delegates and Paul had “won” just 8 delegates. In fact, based on the *true* selection of delegates at the Nevada state Republican Convention on May 5th, Paul won 22 delegates, and Romney won just 6 delegates.

However, the rules of the Nevada Republican Party assert that the delegates get “bound” on the first ballot at the national convention in the ratio determined by the earlier

caucus vote, meaning 20 delegates are “bound” to vote for Romney. Delegate Binding can best be understood by sorting Nevada’s 28 delegates into four categories based on who they actually support, and who they are bound to — *the 14 delegates in the lower left bold box are bound against their will*:

Nevada has 28 national delegates	Bound to Romney	Bound to Ron Paul	By State Convention
Actually support Romney	6 delegates	0 delegates	6
Actually support Ron Paul	14 delegates	8 delegates	22
By Caucus	20	8	28

Of the 20 bound to Romney, 6 will be the delegates who actually support Romney, but the other 14 will be Ron Paul supporters who the establishment will attempt — via Delegate Binding — to coerce into voting for Romney on the first ballot.

Similar situations exist in many other states.

In states where national convention delegates are elected directly by the voters (such as many states with primary elections), Delegate Binding is less significant because, in general, the delegates elected in a particular jurisdiction (e.g. a congressional district) are those who support the candidate who won the primary in that jurisdiction. However, *after* becoming delegates, they might be persuaded *to change their minds and become Ron Paul supporters*. And yet, they will still be bound to vote for Romney on the first ballot.

2. Rules Governing the Republican National Convention

The Republican Party consists of the National Republican Party (“NRP”), the state Republican Party (“State RP”) in each state, and thousands of local Republican Parties. Each has its own rules, and many hold conventions.

The NRP is generally governed by the national conventions. But between conventions, it is governed by the National Republican Committee (“NRC”).

At this time, the NRP, including both the NRC and the 2012 Republican National Convention, is governed by *The Rules of the Republican Party As Adopted by the 2008 Republican National Convention* September 1, 2008 and Amended on August 6, 2010 by the Republican National Committee (“NRP Rules”). The amendment only affected Rule 15(b) regarding the *timing* of early primaries and caucuses. The convention is also governed by the Call for the Republican National Convention issued on December 31, 2011 by the RNC, which quotes all NRP Rules pertaining to the convention, and gives the delegate counts for each state.

2.1. No State or Federal Law Governs the Convention

The Republican Party is *not* a government agency, and it has the right to make its own rules free from government interference. To a very great extent, the NRP Rules *trump* state and federal law.

When states have enacted laws that interfered with the rule-making process of the Republican Party (or of the Democratic Party), the United States Supreme Court has held such laws as *unconstitutional because they violate the party's right of freedom of speech*. In Tashjian v. Republican Party of Connecticut (1986) 479 U.S. 208, 107 S.Ct. 544, the High Court struck down a Connecticut law that prevented the Republican Party from permitting independent voters to vote in the Republican primary. In California Democratic Party v. Jones (2000) 530 U.S. 567, 120 S.Ct. 2402, the U.S. Supreme Court struck down a California ballot proposition that would have created a blanket primary in which voters could vote for any candidate regardless of voter's or candidate's party affiliation.

Moreover, the U.S. Supreme Court has held that there is a “large public interest in allowing the political processes to function free from judicial supervision,” O'Brien v. Brown (1972) 409 U.S. 1 at 4, 92 S.Ct. 2718 at 2720. Regarding the selection and admission of delegates to the national convention, “the availability of the convention as a forum to review the recommendations of the Credentials Committee” largely eliminates the need for intervention of the courts. Id.

In short, *the government has very little business regulating how political parties select their candidates*.

In my humble opinion, this means that we — as Republicans generally, and specifically the Ron Paul delegates to the national convention — have substantial amount of power in interpreting the NRP Rules for ourselves.

In the next two subsections I will explore the very limited impact that state laws and State RP rules have on the Republican National Convention — some are *observed*, others are *avoided*.

2.2. State Laws Observed or Avoided by the NRP Rules

Consistent with the above-cited U.S. Supreme Court cases, the Republican National Convention is *not* governed by any state or federal law *unless the NRP Rules expressly provide for observing such a law*. For example, NRP Rule 15(a)(2) provides one of four methods by which delegates can be determined, where state law is observed:

(2) To the extent not provided for in the applicable Republican Party rules of a state, in accordance with any applicable laws of a state, insofar as the same are not inconsistent with these rules;

On the other hand, some NRP Rules describe a situation where state law shall *not* be observed, which means such law is avoided. For example, NRP Rule 15(c)(3) provides:

(3) No state law shall be observed that permits any person to participate in a primary delegate and alternate delegate selection process that also permits that person at the same primary to participate in the choosing of nominees of any other party for other elective office.

In effect, the NRP Rules are “picking and choosing” what state laws to observe and what state laws to avoid.

Significantly, the “picked” laws are used *solely to incorporate the procedures they define* — and not because of any “teeth” in such laws. This means that “violation” of state laws cited in the NRP Rules will have no penal consequences — nobody will be arrested or prosecuted for any criminal violation of such laws.

2.3. State RP Rules Observed or Avoided by the NRP Rules

Similarly, the Republican National Convention is *not* governed by any State RP rules *unless the NRP Rules expressly provide for observing such rules*. For example, NRP Rule 2(a) provides:

Where the rules adopted by a state Republican Party provide a method of election of the national committeeman and the national committeewoman, they shall be elected pursuant to such method.

On the other hand, some NRP Rules describe a situation where State RP rules shall *not* be observed, which means such rules are avoided. For example, NRP Rule 11(b) provides:

(b) No state Republican Party rule or state law shall be observed that allows persons who have participated or are participating in the selection of any nominee of a party other than the Republican Party,... to participate in the selection of a nominee of the Republican Party for that general election. No person nominated in violation of

In effect, the NRP Rules are “picking and choosing” which State RP rules to observe and which ones to avoid.

3. Does a Delegate Have a Right of Free Speech at the National Convention?

We will consider two forms of speech at the convention — (a) addressing the convention at the microphone, and (b) voting. The former is the topic of parliamentary procedure, the latter is a matter of individual choice.

3.1. Parliamentary Control of Certain Kinds of Delegate Speech and Conduct Is Reasonable and Necessary.

Without parliamentary procedure, a large body of contentious people will accomplish nothing at all. Parliamentary procedure brings order to large gatherings. It is the work of genius. It enables large assemblies to get things done in an orderly manner, without wasting everyone's time and getting nothing done.

NRP Rule 30, entitled "Rules of Order," provides:

The Rules of the House of Representatives of the United States shall be the rules of the convention, except that the current authorized edition of *Robert's Rules of Order: Newly Revised* ("*Robert's Rules of Order*"), shall be the rules for committees and subcommittees of the convention, insofar as they are applicable and not inconsistent with the rules herein set forth; provided, however, that the convention may adopt its own rules concerning the reading of committee reports and resolutions.

This means the parliamentary procedure rules that apply to delegate conduct at the convention *are those of the U.S. House of Representatives* ("US House Rules"),¹ "insofar as they are applicable and not inconsistent with" the rest of the NRP Rules.

In my humble opinion, this is reasonable and necessary (except as to certain provisions of NRP Rule 15 discussed below). It is *reasonable and necessary* for delegates to conduct themselves in accordance with parliamentary rules for making motions and amendments to motions, asking questions, debating, manner of voting, etc. If a delegate or small group of delegates "revolts" from the parliamentary rules — *e.g.* by insisting on making a new motion when an existing motion is still pending on the floor — it will disrupt the process and force the entire convention to deal with the disruption and waste a lot of people's time.

Numerous additional NRP Rules address order at the convention, and thereby *reasonably* govern delegate conduct. NRP Rule 31 limits the length of time a delegate may speak on any question to five minutes. NRP Rule 32 defines how to suspend the parliamentary rules. NRP Rule 33 addresses platform resolutions. NRP Rule 34 addresses minority reports from convention committees. NRP Rule 35 addresses motions to lay on the table. NRP Rule 36 addresses motions to call the question. All of these rules *reasonably* govern delegate conduct, and such a set of rules is necessary for the convention to get anything done at all.

¹ The US House Rules for the current (112th) Congress can be downloaded in pdf format here: <http://www.google.com/url?sa=t&rct=j&q=us%20house%20of%20representatives%20rule%20xv&source=web&cd=2&ved=0CFgQFjAB&url=http%3A%2F%2Fclerk.house.gov%2Flegislative%2Fhouse-rules.pdf&ei=8LquT-DcLuWliQKJ7YT4Aw&usg=AFQjCNHBQnuXH5JShtTU491ngiye3Bm49Q&cad=rja>

3.2. Coercing Delegates to Vote Against Their Conscience Is an Abomination to Liberty.

Voting is a form of *speech*. What about a rule that controls speech by *forcing* a delegate to vote *against* his/her conscience on a particular matter?

Delegate Binding attempts to do just that. At the 2012 convention, intense pressure will be focused on many staunch Ron Paul delegates to vote *against* their conscience *for Romney, Santorum or Gingrich* on the first ballot for President.

As discussed above, the NRP Rules regarding parliamentary procedure are based upon and expressly reference the Rules of the U.S. House of Representatives. And *nothing* in the House Rules forces any *congressman* to vote in a particular way on any matter.

Indeed the U.S. Constitution makes speech on the floor of the House *privileged*, not only regarding voting, but regarding any other form of speech:

for any speech or debate in either house, they shall not be questioned in any other place. (Article 1, Section 6, ¶ 1)

This means a congressman can *defame* someone on the floor of the House or Senate *with impunity*. It means a congressman cannot be sued civilly or prosecuted criminally for any vote or other speech made on the House floor. Indeed, the longstanding status quo is for a congressman to make a campaign promise to voters that he/she will vote a certain way on something and then break that promise when actually voting on the House floor! But the above-quoted clause from the U.S. Constitution makes it entirely *legal* for a congressman to break his/her campaign promises. The only potential consequence is getting voted out of office at the next election.

Freedom of speech is central and crucial to any form of liberty. The right to vote is likewise central and crucial to any form of liberty. Depriving a delegate of his/her free-speech right to vote by his/her conscience, and forcing him/her to instead vote for a candidate he/she abhors, is, in my opinion, an abomination to liberty.

3.3. Parliamentary Rules of Order Are Non-Discriminatory; Delegate Binding Is Discriminatory.

Parliamentary rules of order apply to all delegates equally. No group or subgroup is singled out as to who is entitled to make motions, participate in debate, raise points of order, information and personal privilege, and (except on the first Presidential ballot) vote.

Parliamentary rules of order do not discriminate on the basis of race, religion, country of origin, gender, sexual orientation, economic status, geographical region, state, county, congressional district, or political beliefs.

In striking contrast, Delegate Binding is blatantly discriminatory. In my view, it discriminates against certain delegates who based on their *political beliefs*, and also based on their *state* and/or *congressional district*.

Delegates who happen to get caught on the wrong side of the binding — either in their state at large, or in their congressional district — are forced to throw their voting power behind a candidate they abhor.

In principle, this is no different than forcing a devout Buddhist to take communion at a Catholic church. Or forcing a heterosexual to engage in homosexual activity. Or forcing blacks to use a different restroom than whites.

3.4. An Interesting Hypothetical Example Involving Polygamy

Consider an absurd but fascinating example. Mormons and Utahans have a history of embracing polygamy. In 1851 U.S. President Millard Fillmore appointed Brigham Young as the first Governor of Utah Territory. At the time of his appointment, Young had 44 wives (he subsequently married an additional 11 women). Several decades later when Utah became a state in 1896, polygamy was a hotly debated issue, and one of the conditions imposed by Congress for granting Utah statehood was that a ban on polygamy be written into the state constitution.

However, Ron Paul *staunchly* supports getting the government *out* of marriage, which would open the way for the practice of polygamy (for those so inclined by mutual, freely given consent) not only in Utah but throughout the United States. Furthermore, Mitt Romney is a Mormon!

Now, what if the NRP Rules included the following hypothetical rule?

On any motion before the convention to amend the platform to repeal bigamy laws and/or to encourage polygamy, all delegates from the State of Utah shall vote “Nay.”

Suppose such a motion were to come before the convention, and the Chair were to instruct the Sergeant at Arms to carefully watch the Utah delegation to enforce the rule. Suppose when the Chair says, “All in favor say Aye,” numerous delegates from *many* states, *including many from Utah*, all shout “Aye.” Should the Chair order the Sergeant at Arms *punish* the Utah delegates who broke the rule by voting “Aye” by removing *them* from the convention hall but *not* punish the delegates from *other* states who *also* voted “Aye”?

This hypothetical rule unreasonably *discriminates* against *certain* delegates (i.e. those from Utah who favor polygamy) *by forcing them to vote against their conscience*, while leaving *other* delegates (i.e. those *not* from Utah who *also* favor polygamy) *free to vote by their conscience*.

This hypothetical example very closely approximates the situation presented by Delegate Binding, which forces *certain* delegates (i.e. Ron Paul delegates who are

“bound” to vote for Romney, Santorum or Gingrich on the first ballot) to vote *against* their conscience for Romney, while permitting *other* delegates (who are *not* bound to Romney, Santorum or Gingrich) to vote for Ron Paul *with* their conscience.

3.5. The Republican Party Took the Lead in Abolishing Slavery. Delegates Are Not Slaves.

Historically, the Democratic Party was the party that supported slavery. The Republican Party was the party of the abolitionists, who wanted liberty for everyone, including the black slaves. The first Republican President was Abraham Lincoln, who was largely responsible for ending slavery.

The essence of slavery is one person (the “master”) forcing another person (the “slave”) to do things against his/her will. Slavery laws imposed a “duty” on a slave to obey his/her master.

That is precisely what Delegate Binding does — it enables party bosses (the “master”) to force delegates (as “slaves”) to vote against their will.

Delegates are not slaves.

4. Does a Delegate Have a “Duty to Obey” Delegate Binding?

The purpose of the U.S. Constitution is to protect this nation from tyranny. It worked for about a century. But gradually the tyrants figured out how to get around it, and today our Constitution is hanging by a very thin thread.

Central to the rise of tyranny within the United States has been the indoctrination of children and adults — by government schools, the media, the corporate work culture, income tax, excessive regulations, law enforcement, etc. — with the notion that they have a “duty to obey.” The one centrally unified lesson taught in our educational system, from pre-school through graduate school, is “do as you’re told” — in other words, “obey.” Pre-schoolers learn to obey their teachers’ instructions, even if the instructions are ridiculous. Grad-schoolers learn to obey the instructions of the funding sources for the grants they receive (or their professors receive), even when it means they will have to falsify scientific results.

Blind obedience is an abomination to liberty. It is precisely the opposite of what George Washington and his army fought for.

And so, does a delegate have a “duty to obey” Delegate Binding?

4.1. No Delegate Is Under Any Contract.

It takes four elements to make a contract: (1) parties capable of contracting (this excludes minors and insane people), (2) a lawful purpose (this excludes a murder contract), (3) consideration (each party must get something from the other), and (4)

consent (each party must give his/her consent, by signing or by handshake or otherwise). The word “agreement” is legally synonymous with “contract.”

If a person makes a contract to do something, then the person has a duty to do that thing under the contract. If Mary makes a contract with John for John to repair the gaping holes in the roof of her house in exchange for \$1,000, and she pays the money to him in advance, then he has a contractual duty to fix the roof (or refund the money). If John fails to fix the roof and fails to refund the money, then Mary can sue him in court for breach of contract.

However, delegates to the national convention are not parties to any contract. No agreement exists between a delegate and the party bosses, or between a delegate and anyone else. A delegate is elected and accepts the position. In accepting the position, the delegate does not agree to do or not do any particular thing. Nobody can sue a delegate in any court for breach of contract based on what the delegate did or did not do at convention.

Accordingly, Delegate Binding does not arise from any contract.

4.2. Are Delegates Under a Pledge?

A pledge is entirely different than a contract. A pledge has *none* of the four elements of a contract. A pledge is simply a *promise* to do or not do something.

Suppose John *promises* Mary he will fix her roof, and then Mary *relies* on that promise by going away on a one-month vacation *without making arrangements for someone else to repair the roof*. But John fails to repair the roof. While Mary is gone, there is a huge rainstorm, and when she comes back her house is flooded. Mary can sue John in court for *promissory estoppel*.

In some states, delegates are required — before being elected as delegates — to pledge (i.e. promise) to vote for a particular candidate on the first ballot. In those situations, voters are entitled to rely on such pledges/promises. If the delegate then breaks the pledge, the voters have been harmed, albeit a suit for promissory estoppel is unlikely.

But here in our Ron Paul campaign, I am not aware of any delegates who have actually pledged their support to any other candidate. And if any have done so, then it seems to me they should vote for that candidate on the first ballot.

4.3. Does a Delegate Have a Duty to Cast the Wisest Vote in the Best Interests of the United States?

“I have sworn on the altar of God eternal hostility against every form of tyranny over the mind of man.” — Thomas Jefferson

“If once the people become inattentive to the public affairs,... Congress and Assemblies, Judges and Governors, shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions.” — Thomas Jefferson

In my humble opinion, the highest duty of each delegate is to protect the United States from tyranny. This takes *wisdom*. It also takes *strength* to resist tyrannical influences to coerce the wise delegate into supporting tyranny.

In my humble opinion, every U.S. President over the past century has been a *puppet* of the elite tyrants (with the possible exceptions of two who were shot, Kennedy and Reagan, the latter of whom became more puppetlike after the shooting). The tyranny is destroying America. Ron Paul is patently *not* their puppet!

What is the higher duty for a delegate — *obeying* Delegate Binding? Or *casting the wisest vote* in the best interests of the United States to save our nation from tyranny?

4.4. Who Will Be Harmed If a Delegate Breaks the Binding?

It appears that Romney and the establishment he represents might be “harmed” if breaking Delegate Binding results in Romney losing the nomination. These people are all puppets of the elite tyrants, and the tyrants will most definitely be harmed, *as they should be*.

What about all the sleeping voters who believe all the media hype and, like sheep, voted for Romney? Will *they* be “harmed” if Ron Paul is elected and makes America great again? I don’t think so — I think they will be blessed. Their egos might have to experience a “rude awakening,” but the truth is always healthy in the long term, even if painful in the short term. Shattering false beliefs might “harm” *falsehood*, but I don’t think it harms any voting citizen!

4.5. What Are the Consequences If a Delegate Breaks the Binding?

Delegate Binding is a creature of the NRP Rules, which “pick and choose” certain state laws and State RP rules. Delegates are not under any legal or contractual obligation to obey Delegate Binding.

In the extremely unlikely event that the establishment retaliates against any delegate who break the Delegate Binding by a malicious criminal prosecution or a malicious civil lawsuit, the delegate will have powerful legal defenses. As for criminal prosecution, there is no law that requires a delegate to obey Delegate Binding, because Delegate Binding is a creature of the NRP Rules — not a creature of any law with criminal penalties. As for a civil lawsuit, there is no contract to sue on, nor (to my knowledge) is there any pledge to sue on, nor can they prove any damages.

What they could and might do, however, is to make threats and maybe jail a few delegates to make a good example. For myself, I would rather go to jail than renege on my duty as a citizen to resist tyranny.

“The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure.” — Thomas Jefferson

However, while retaliation against individual delegates seems unlikely, breaking Delegate Binding poses certain risks to Ron Paul winning the nomination, as discussed below in Section 11. Risks of Breaking Delegate Binding.

5. Is Delegate Binding Ever a Good Thing?

In my opinion, if delegates are *dishonest*, then binding them to vote for an *honest* candidate might be a *good* thing. But that’s *not* what we have here.

What we have are *honest* delegates supporting an *honest* candidate — Ron Paul. In my opinion, binding honest delegates to vote for a dishonest candidate is evil.

5.1. Shielding from Party Bosses.

It is my understanding that the concept of Delegate Binding originated as a good-faith attempt to solve an entrenched problem where evil party bosses were controlling political conventions, both Republican and Democratic. Delegates who wished to vote for one candidate got coerced into voting the way the bosses said to vote, and they did so even though the voters who sent them to convention wanted a different candidate.

Delegate Binding attempted to solve this problem by shielding delegates from the pressure of the bosses at convention. Delegate Binding eliminated the influence of the bosses, at least on the first ballot.

Here, however, the situation is reversed — the bosses want Delegate Binding, and Ron Paul delegates want to break the binding.

5.2. The Will of the People — Group Consciousness

One argument in favor of Delegate Binding is that it causes the first ballot at the national convention to more accurately reflect the will of the People.

But what, precisely, is the “will of the People” here? And *which* People?

As used in the Preamble of the U.S. Constitution, “We the People” refers to the nation *as a whole*. And it is We the People whose interests are at stake in a presidential election.

However, the number of people who vote in the caucuses and primaries is much smaller than the number who vote in the November general election. According to 2012 caucus and primary voter turnout statistics in 36 states thus far, as reported by George Mason University², only three states had turnouts greater than 20%. Fifteen states had turnouts between 10% and 20%. Eighteen states had turnouts below 10%. The average

² http://elections.gmu.edu/Turnout_2012P.html (viewed May 12, 2012)

by my calculation from these statistics is just 10.1% of eligible voters have voted in the 2012 caucuses and primaries. In striking contrast, the nationwide voter turnout for the general presidential election in November 2008, as also reported by George Mason University³, was 61.6% of eligible voters!

In my opinion, a major factor underlying the low caucus/primary voter turnout is that many (perhaps most) people are so numbed and dumbed by the media that they can't really see much difference between the candidates. Most people *know* these politicians are a bunch of liars and that their campaign speeches are not to be trusted. But they are ignorant about Ron Paul. They are asleep about Ron Paul.

Does the sleepy vote by a turnout of just 10.1% of the sleepy people eligible to vote truly reflect the Will of We the People?

Is this truly the Group Consciousness of We the People?

Should delegates be bound based on the will of just 10.1% of the sleepy people eligible to vote?

Or is the group consciousness of We the People more accurately reflected by those who are awake and aware?

And what about the group consciousness of the delegates at the national convention? It would appear that *they* might be more awake than the voters in general. Is *their* group consciousness reflected by Delegate Binding?

5.3. Why Hasn't Romney Won More Loyal Delegates?

According to the NRP Rule 13(a)(2), each state gets three *predetermined* delegates — the state's national committeeman, national committeewoman and chairman of the state's Republican Party ("Three Predetermined Delegates"). The remaining delegates are determined by, caucuses, primaries and state conventions.

If Delegate Binding is a *good* thing, then why is such a *disparity* developing between (a) the vote percentages Romney has (purportedly) won in the caucuses and primaries, and (b) the number of loyal delegates he has won?

For example, in the Maine Republican caucuses, Romney (purportedly) won 39% of the vote, while Ron Paul (purportedly) won 35% of the vote.⁴ But Ron Paul has now captured 100% of Maine's 21 *non*-predetermined delegates⁵.

³ http://elections.gmu.edu/Turnout_2008G.html (viewed May 12, 2012)

⁴ http://hosted.ap.org/dynamic/files/elections/2012/by_state/ME_Page_0211.html?SITE=CSPANLN&SECTION=POLITICS (viewed May 12, 2012)

⁵ <http://www.latimes.com/news/nationworld/nation/la-na-ron-paul-maine-20120507,0,2466313.story> (viewed May 12, 2012)

And in Nevada, Romney (purportedly) won 50% of the vote, while Ron Paul (purportedly) won only 19% of the vote.⁶ And yet Ron Paul has now captured 22 of Nevada's 25 *non*-predetermined delegates.⁷

If Delegate Binding is a *good* thing, then why, on the delegate front, has Ron Paul *trounced* Romney in states like Maine and Nevada?

Could it be that most Romney voters are, in reality, not so loyal? Did they vote for Romney based on media hype rather than any kind of deep personal commitment to Romney and ignorance about Ron Paul? Did they believe all the media hype that Ron Paul “can’t win”? Are many of them starting to wake up to the *truth* about Ron Paul? If so, will Delegate Binding serve such voters, who are just now waking up?

5.4. The People Will Have the Final Say in November.

Ultimately, the Republican Party is just that — it's a *party*. It nominates one candidate for President. *It does not elect the President.*

Delegate Binding is nothing more than a rule that influences what candidate the Republican Party nominates.

Ultimately, the People will have the final say in November — at least to the extent that establishment efforts to rig the vote counting process can be thwarted.

6. NRP Rules 15(a) and (c)(1) — The Basis of Delegate Binding

Delegate Binding arises from NRP Rule 15, and from the State RP rules and state laws it references.

The words “bind” and “bound” appear throughout Rule 15. The first part, Rule 15(a), states that the binding of delegates shall be (1) according to State RP rules, or (2) according to state law, or (3) a combination of both, or (4) by Rule 15(d), which is to hold conventions in each congressional district:

(a) Order of Precedence.

Delegates at large and their alternate delegates and delegates from Congressional districts and their alternate delegates to the national convention shall be elected, selected, allocated, **or bound** in the following manner:

⁶

http://hosted.ap.org/dynamic/files/elections/2012/by_state/NV_Page_0204.html?SITE=CSPANLN&SECTION=POLITICS (viewed May 12, 2012)

⁷ http://www.washingtonpost.com/blogs/the-fix/post/ron-paul-wins-majority-of-nevada-delegates/2012/05/06/gIQA1An15T_blog.html (viewed May 12, 2012)

(1) In accordance with any applicable Republican Party rules of a state, insofar as the same are not inconsistent with these rules; or

(2) To the extent not provided for in the applicable Republican Party rules of a state, in accordance with any applicable laws of a state, insofar as the same are not inconsistent with these rules; or

(3) By a combination of the methods set forth in paragraphs (a)(1) or (a)(2) of this rule; or

(4) To the extent not provided by state law or party rules, as set forth in paragraph (d) of this rule.

This seems to observe Delegate-Binding State RP rules and Delegate-Binding state laws.

The next part, Rule 15**(b)**, mentions the word “bind” in 15(b)(1), but its purpose is only the timing of caucuses, primaries and state conventions.

After that, Rule 15**(c)** makes numerous general comments about “elections or selections of delegates,” of which 15(c)(1), (7) and (12) include the words “bind” or “bound.”

Rule 15(c)(1) describes five different “manners” for Delegate Binding:

(1) Delegates and alternate delegates to the national convention may be elected, selected, allocated, **or bound** only in one of the following manners:

(i) by primary election;

(ii) by the Republican state committee, where specifically provided by state law;

(iii) by state and Congressional district conventions;

(iv) by any method consistent with these rules by which delegates and alternate delegates were elected, selected, allocated, **or bound** to the most recent Republican National Convention from that state;

(v) by Rule No. 13 (a)(2) of these rules.

The last of these five mentions Rule 13 (a)(2), which provides for the Three Predetermined Delegates from each state.

Rule 15(c)(7) uses the word “binding” but does no more than to encourage the participation of the military in the Republican Party process.

Additional references to Delegate Binding are made in Rule 15(c)(12) and Rule 15(e), which are discussed below in section 11. Risks of Breaking Delegate Binding.

7. NRP Rules 29 and 40 — One “Vote” per Delegate

NRP Rule 29(a) states that each delegate gets one “vote”:

(a) Each delegate to the convention shall be entitled to one (1) vote...

NRP Rule 40(d) states that the Presidential nomination is determined by a majority of “votes”:

When at the close of a roll call any candidate for nomination for President of the United States or Vice President of the United States has received a majority of the votes entitled to be cast in the convention, the chairman of the convention shall declare that the candidate has been nominated.

What, exactly, is a “vote”? The word “vote” is not defined in the NRP Rules.

According to *Black’s Law Dictionary, Sixth Edition*, the word “vote” is defined as follows:

Suffrage; **the expression of one’s will, preference, or choice**, formally manifested by a member of a legislative or deliberative body, or of a constituency or a body of qualified electors, in regard to the decision to be made by the body as a whole upon any proposed measure or proceeding or in passing laws, rules or regulations, or the selection of an officer or representative.

According to the online version of The American Heritage Dictionary of the English Language, the word “vote” is defined as follows:

1. a. A formal expression of preference for a candidate for office or for a proposed resolution of an issue: *Let's decide the matter by vote.*

Where is there any room in the definition of “vote” for Delegate Binding that forces a delegate to cast a “vote” that is patently *not* his/her “will, preference or choice”?

8. NRP Rule 32 — Suspension of the Rules

One strategy for overcoming Delegate Binding is to suspend the rules on Delegate Binding. NRP Rule 32 provides:

A motion to suspend the rules shall always be in order, but only when made by authority of a majority of the delegates from any state and seconded by a majority of the delegates from each of five (5) or more other states severally.

This means it takes six states to make a motion to suspend the rules — one state to move, and five states to second. Each state must do so based on the internal vote of a majority of its delegates. It seems clear that Ron Paul will control the internal votes of at least six states, such as Nevada and Maine, so making such a motion is doable.

Rule 32 does not, however, state the number of votes needed to *pass* such a motion. Rather, as quoted above, NRP Rule 30 provides that “The Rules of the House of Representatives of the United States shall be the rules of the convention,” which means, in my view, that we must look to the House Rules to see the number of votes to pass a motion to suspend the rules. House Rule XV provides:

Suspensions

1. (a) A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. The Speaker may not entertain a motion that the House suspend the rules except on Mondays, Tuesdays, and Wednesdays and during the last six days of a session of Congress.

(b) Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn but may not entertain any other motion until the vote is taken on the suspension.

(c) A motion that the House suspend the rules is debatable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

This is consistent with Robert’s Rules of Order.

It might be difficult or impossible to attain a two-thirds vote of the delegates. But in the event that a motion to suspend the rules is made, I would suggest, as a first draft, that it take the following form, and be made by the chairman of the delegation from the moving state:

Pursuant to Rule 32, the Great State of _____, by concurrence of a majority of its delegates, hereby moves to suspend any and all provisions of *The Rules of the Republican Party* concerning — and

only those provisions concerning — the binding of delegates at this convention to vote for a particular candidate on the first roll-call ballot for the Republican Party’s nomination for President of the United States, including, without limitation, suspending all delegate-binding provisions of Rule 15 and all applicable delegate-binding provisions referenced by Rule 15 that are found in the rules of any state Republican Party, in the laws of any state, or anywhere else.

9. NRP Rule 38 — Rejecting the “Unit Rule”

NRP Rule 38 talks about delegates NOT being bound:

No delegate or alternate delegate shall be bound by any attempt of any state or Congressional district to impose the unit rule.

I will talk about what an “attempt” might be below. But first, we must ask the following question:

What is “the unit rule”?

There is *no definition* of “unit rule” in the NRP Rules.

9.1. Useless Definitions of the “Unit Rule” That Are Too Vague.

In this section, I reject two purported definitions of “unit rule” because they are simply too vague to be precisely understood.

9.1.1. Mat Larson’s Definition of the “Unit Rule”

Mat Larson, who is evidently a Ron Paul delegate to the national convention, has posted a video⁸ on dailypaul.com entitled, *RNC Cheats Ron Paul And "the Unit Rule" Unbinds All Delegates!* (the “Larson Video”). In the video he states (at 2:16):

The unit rule basically means they can tell you who to vote for.

Mat immediately continues, “That is not true guys.” With all due respect to Mat, his definition of “unit rule” is vague and imprecise. Who is “they”? And what, precisely, does it mean for “them” to “tell you who to vote for”? Moreover, Mat’s definition is unsupported by any authority. It appears that he just made it up. And I’m all for creating our own interpretations, as I myself do below, but I think we should do so *precisely* and with a full understanding of the context we are in and what potential rebuttals and counterattacks we may face.

⁸ <http://www.dailypaul.com/230824/rnc-cheats-ron-paul-and-the-unit-rule-unbounds-all-delegates> (viewed May 12, 2012).

After some discussion of Rule 15 and whether it “takes precedence” over Rule 38, Mat states (at 2:57):

But the unit rule is the perfect example on how we don’t even have to abstain from voting, guys, on the first ballot. You can vote on your conscience...

In my humble opinion, Mat’s interpretation of Rule 38 is dangerously naïve. As discussed below in Section 11. Risks of Breaking Delegate Binding, if delegates blindly proceed based on Mat’s vague definition, it could potentially ruin Ron Paul’s chance at securing the nomination. A more careful look at the meaning of “unit rule” as well as a more carefully reasoned interpretation of Rule 38 are needed.

9.1.2. Merriam Webster’s Definition of the “Unit Rule”

The online version of the Merriam Webster Dictionary⁹ defines “unit rule” as follows:

a rule under which a delegation to a national political convention casts its entire vote as a unit as determined by a majority vote

This definition refers to a “delegation” and makes no reference to any geographical unit. *But what is a “delegation”?*

Each state has an overall “delegation.” Each congressional district has a “delegation.” Ron Paul has delegates in each state, who can be called a Ron Paul “delegation.” Likewise with Mitt Romney. And these politically affiliated “delegations” are entirely different from the geographical “delegations.”

Thus, with in a state, we have an overall state “delegation,” several congressional district “delegations,” a Ron Paul “delegation” and a Mitt Romney “delegation.” To which of these “delegations” does the Merriam Webster definition of “unit rule” apply?

A blogger called “neverquit” posted an article on DailyPaul.com entitled, *UPDATE : 5-11 Urgent : Ben Swann And Mat Larson Are Wrong About RULE 38 And Delegates Being Unbound Based On RNC Rules*¹⁰ (“Neverquit Blog”) in which he or she quotes Merriam Webster’s definition “unit rule”:

To debate this rule you must first understand what the UNIT RULE IS

This is defined very clearly in your state bylaws as well as the meriam websters dictionary. UNIT RULE MEANS : :

⁹ <http://www.merriam-webster.com/dictionary/unit%20rule> (viewed May 14, 2012).

¹⁰ <http://www.dailypaul.com/230881/urgent-ben-swann-and-mat-larson-are-wrong-about-38-and-delegates-being-unbound-based-on-rnc-rules> (viewed May 14, 2012).

A rule under which a delegation to a national political convention casts its entire vote as a unit as determined by a majority vote.

With all due respect to Neverquit, I disagree that this definition is clear. And without a clear definition of “delegation,” the Merriam Webster definition seems to me to be too vague for the purpose of interpreting Rule 38.

9.2. Five Reasonable, Well-Supported Definitions for the “Unit Rule”

I will now present five reasonable definitions of the “unit rule,” each based on some kind of authority. I have stated them here in concise, parallel language so they can be readily compared with one another:

Unit Rule Definition One. A majority of the delegates from a *state* bind a minority of dissenting delegates from that state to vote with the said majority.

Unit Rule Definition Two. A majority of the delegates from a *congressional district* bind a minority of dissenting delegates from that congressional district to vote with the said majority.

Unit Rule Definition Three. In a senatorial election, a majority of the voters in a *county* cause the votes of a minority of dissenting voters in that county to be counted for the candidate favored by the said majority.

Unit Rule Definition Four. A majority of the voters in a state bind, in a presidential election, all of the *electors* from that state to vote *in the electoral college* with the said majority.

Unit Rule Definition Five. A majority of the voters at *any stage of the delegate selection process* bind a minority of dissenting voters to vote with the majority.

There might be other definitions as well that are based on authority. My Westlaw subscription is limited to California and Ninth Circuit cases, plus the U.S. Supreme Court. If anyone has a nationwide Westlaw subscription, more references to “unit rule” will undoubtedly be found in case law.

In the following five subsections, I will discuss each of the five definitions in turn.

9.2.1. Unit Rule Definition One — Whole State Convention Delegates

Unit Rule Definition One. A majority of the delegates from a *state* bind a minority of dissenting delegates from that state to vote with the said majority.

This definition is supported by the online version of The American Heritage Dictionary of the English Language, where “unit rule” is defined as follows:

A rule of procedure at a national political convention under which a state's entire vote must be cast for the candidate preferred by a majority of the state's delegates.

And according to Dictionary.com (Based on the Random House Dictionary, © Random House, Inc. 2012), the “unit rule” is defined as follows:

a rule whereby a state's delegation votes as a unit, not recognizing minority votes within the delegation.

These two definitions are both based on the delegates from a whole state voting as a unit. In other words, under the “unit rule,” if a whole state has 25 delegates and 13 of them support candidate A, while the other 12 support candidate B, then all 25 of the state’s delegates must vote for candidate A.

The 1880 Republican national convention nominated James Garfield, who became the 20th President of the United States. According to Wikipedia,¹¹ the most contentious question at that convention was whether or not to apply the “unit rule,” which was understood back then to apply to entire states. If the unit rule *were* applied, then ex-President Ulysses S. Grant would easily win. If the unit rule were *not* applied, then there would be a deadlock.

In my view, the “unit rule” as understood and discussed back in 1880 was Unit Rule Definition One. Significantly, it says *nothing* about who the *voters* favored — it only applies to *delegates*. It is my understanding that back then there was no Delegate Binding as we understand it today — delegates were not “bound” by the results of caucuses or primaries. Once the delegates were chosen by the voters, however that might have happened, the delegates did whatever they wanted at the convention. The “unit rule” was an attempt to force the delegates from each state to vote with the majority in that state.

Prior to the start of the 1880 convention, James Garfield stated, “I regard it [the unit rule] as being more important than even the choice of a candidate.” Ultimately, the unit rule — in the form of Unit Rule Definition One — was rejected. 35 deadlocked ballots ensued until Garfield emerged the winner on the 36th ballot.

Evidently, NRP Rule 38 descended from the aftermath of the 1880 convention, because Rule 38 seems consistent with the decision at that convention to reject the Unit Rule Definition One.

Remember, Unit Rule Definition One says *nothing* about any Delegate Binding created by the voters at caucuses or in primaries.

¹¹ http://en.wikipedia.org/wiki/1880_Republican_National_Convention#cite_note-p27-47 (viewed May 12, 2012).

Interestingly, if Rule 38 were suspended and Unit Rule Definition One were applied, then it would actually work in Ron Paul's *favor* in some states. For example, in Nevada, Ron Paul has 22 delegates and Romney has 6 delegates. 22 is a clear majority. Hence, if the unit rule were enforced statewide and all delegates were forced to vote with the majority, then Ron Paul would get *all 28 Nevada votes*, and Romney would get 0!

9.2.2. Unit Rule Definition Two — Congressional District Convention Delegates

Unit Rule Definition Two. A majority of the delegates from a *congressional district* bind a minority of dissenting delegates from that congressional district to vote with the said majority.

The best authority on this is Rule 38 itself, which not only rejects the “unit rule” as applied to entire states, but also as applied to congressional districts.

At the national convention, each congressional district gets 3 delegates. If Unit Rule Definition Two were applied at the congressional district level, and 2 of the 3 delegates supported candidate A but the third delegate supported candidate B, then all three votes must be for candidate A.

Unit Rule Definition Two says *nothing* about any Delegate Binding created by the voters at caucuses or in primaries.

Newscaster Ben Swann of Fox 19 in Cincinnati made a video report¹² entitled, *RNC Lawyer Says All Delegates Are Unbound!* (the “Swann Video”). In the video he states (at 0:41):

So what is the unit rule? Well that rule requires that all delegates from one state or congressional district are required or bound to vote as a unit.

This seems to be combination of Unit Rule Definitions One and Two.

9.2.3. Unit Rule Definition Three — County Voters in Senatorial Election

Unit Rule Definition Three. In a senatorial election, a majority of the voters in a *county* cause the votes of a minority of dissenting voters in that county to be counted for the candidate favored by the majority.

This county-level rule is supported by Reynolds v. Sims (1964) 377 U.S. 533 at 588, 84 S.Ct. 1362 at 1395, where the U.S Supreme Court makes reference to “the use of Georgia's county unit rule in the election of United States Senators.” This appears to be a county-level application of the concept, but it is unrelated to convention delegates.

¹² <http://libertyvlogger.com/ron-paul/rnc-lawyer-says-all-delegates-are-unbound/> (viewed May 14, 2012).

9.2.4. Unit Rule Definition Four — Electoral College

Unit Rule Definition Four. A majority of the voters in a state bind, in a presidential election, all of the *electors* from that state to vote *in the electoral college* with the said majority.

This definition is what happens in the electoral college when “winner take all” laws in most states provide for a candidate who gets merely a majority of votes to take all the electoral votes.

The use of the term “unit rule” in connection with the electoral college is made in Williams v. Virginia State Board of Elections (E.D. Va. 1968) 288 F.Supp. 622, affirmed without comment by the U.S. Supreme Court at 393 U.S. 320. The United States Court of Appeal talks about the “unit rule” in connection with *the electoral college*.

9.2.5. Unit Rule Definition Five — Binding Dissenting Minorities in the Delegate Selection Process

Unit Rule Definition Five. A majority of the voters at *any stage of the delegate selection process* bind a minority of dissenting voters to vote with the majority.

This definition is broader than Unit Rule Definitions One or Two. It is supported by Democratic Party of U. S. v. Wisconsin ex rel. La Follette (1981) 450 U.S. 107 at 117, 101 S.Ct. 1010 at 1016, which involved a dispute over Delegate Binding based on voter preferences in the Wisconsin primary. The U.S. Supreme Court makes reference to “the unit rule” in a manner that appears to *generalize* the idea of *the binding of dissenting minorities to vote with the majority*, without being tied to any particular geographical level:

Among other measures recommended by the Commission were (1) the abolition of the unit rule at any stage of the delegate selection process so that majorities could not bind dissenting minorities to vote in accordance with majority wishes;

9.3. Does the Word “Bound” in Rule 38 Have the Same Meaning as the Words “Bound” and “Bind” in Rules 10, 13, 14, 15 and 16?

As quoted and discussed above, NRP Rule 15 repeatedly uses the words “bound” and “bind” in reference to delegates. Additionally, these two words are used in Rules 10, 13, 14 and 16, and, without going into all the details, it’s pretty clear that the meaning of “bound” and “bind” in these Rules (10, 13, 14 and 16) is the same as in Rule 15. And as discussed above, Rule 15 indicates that “binding” is determined by State RP rules or by state law. Hence, all the occurrences of “bound” and “bind” in Rules 10, 13, 14, 15 and 16 appear to be talking about Delegate Binding — i.e. binding delegates to vote for a particular candidate on the first presidential ballot.

Then, far removed from those five rules, Rule 38 makes a single use of the word “bound” in reference to delegates.

There are no other uses of “bound” and “bind” anywhere in the NRP Rules.

Does Rule 38 use the word “bound” in the same sense as “bound” and “bind” are used in Rules 10, 13, 14, 15 and 16? In other words, *is Rule 38 talking about binding delegates to vote against their will on the first presidential ballot?* Although we would like the answer to be yes, in my humble opinion, this question is difficult to answer.

A “no” answer is supported by the history of the “unit rule” going back to the 1880 convention, *which had nothing to do with binding delegates according to how voters voted in caucuses or primaries* (if there even were primaries back then) — it is my understanding that none of the 1880 delegates were “bound” in the sense we have today. Rather, the unit rule in 1880 had to do with how to count the votes when all the delegates expressed who they supported — whichever candidate was supported by the majority of a state’s delegates would get all the votes from that state. And as I stated above, such a rule would work in Ron Paul’s favor in several states.

A “yes” answer is supported by the fact that “bound” and “bind” are extensively used with a single unified meaning in five other rules. To toss in the word “bound” into Rule 38 with an entirely different meaning makes no sense. “Yes” is further supported by the fact that Rule 38 goes beyond the “entire state” definition to include “congressional district” unit voting, thereby releasing us from a strict 1880 historical interpretation. Moreover, the NRP Rules as we see them today have been re-written many times over the past 132 years, and the word “bound” was introduced by the authors of those revisions — if they intended “bound” to have a unique meaning in Rule 38, they should have used a different word so as to prevent any confusion or misinterpretation.

9.4. A Proposed Definition of the Unit Rule That Is Equivalent to Delegate Binding, Which Results in Rule 38 Clearly Rejecting Delegate Binding

As noted, NRP Rule 38 rejects Unit Rule Definitions One and Two. But Unit Rule Definition Five seems to suggest there are *other forms* of the “unit rule” *that are likewise rejected by Rule 38*.

Significantly, Definition Four involves the relationship between very different kinds of people — “voters” who vote in the November general election, and “electors” who vote in the electoral college in December. This is analogous to the relationship between “voters” who vote in caucuses and primaries, and “delegates” who vote at the national convention. And Definition Five seems to create some kind of bridge between voters and delegates.

Now, suppose we combine the principles in Definitions One through Five to create Definition Six. Specifically, we will apply the “unit rule” to the voters who participate in caucuses and primaries, *and we will include among such voters those individuals who subsequently become delegates to the national convention*:

Unit Rule Definition Six. A majority of caucus or primary voters bind a minority of dissenting voters, which dissenters happen to become delegates, to vote at convention the way the majority of the voters voted at the caucus or primary.

I believe Unit Rule Definition Six is equivalent to Delegate Binding.

Hence, if the words “unit rule” in Rule 38 includes Definition Six, then Rule 38 rejects Delegate Binding.

This interpretation of Rule 38 is strengthened by its “any attempt... to impose” wording:

No delegate or alternate delegate shall be bound by any attempt of any state or Congressional district to impose the unit rule.

Rule 38 not only prohibits delegates from being bound by the “unit rule” but also prohibits delegates from being bound by any attempt to impose the “unit rule.” While it would be a stretch, Unit Rule Definition Six might be construed as an “attempt to impose” the more *common* interpretation of “unit rule” in Definition One or Definition Two.

9.5. Do the Three Predetermined Delegates Enable a State to Impose Delegate Binding Without Invoking the Unit Rule?

The Neverquit Blog argues that states avoid violating Rule 38 — meaning they avoid the “unit rule” — because the Three Predetermined Delegates are not bound to any candidate:

The states get around this rule by not binding the ENTIRE group of delegates, they always have at least 1 delegate unbound and it is usually 3 unbound delegates. So they are not enforcing a UNIT RULE in any way.

Therefore; rule 38 does not apply to the argument.

In the Swann Video, Ben quotes Neverquit (at 0:52) and concurs (at 1:25) by saying “And that is true.” Ben then cites an example from Ohio, and says that Ohio’s Three Predetermined Delegates are not bound because they “have the freedom to vote however they choose.” Finally, Ben says (at 1:37), “Therefore the Blogger correctly states that this allows the RNC to get around the unit rule.”

With all due respect to Neverquit and Ben Swann, this argument fails for two reasons. First, it is based on a definition of “unit rule” that is *too vague*, as discussed above. Second, in at least one state (Nevada), the Three Predetermined Delegates *are* bound to vote for a particular candidate on the first ballot at the convention.

In Nevada, Delegate Binding is defined by Rule 10(D)(1) of the PROPOSED Rules for the 2012 Nevada Republican Party Convention.¹³ These proposed rules were adopted by the Nevada State Convention (I was there and voted “aye” to adopt with the rest of the Ron Paul delegates after learning that we were being *threatened* by the RNC with refusal to seat our delegates at the national convention if we struck out the binding rules). Rule 10(D)(1) provides:

Section 4 - Assignment of National Delegates and Alternates

Section 4.1 After their election, the NRP Secretary shall assign an obligation to vote for a particular Presidential Candidate to each National Delegate no later than ten calendar days after the close of the State Convention. The assignments shall be proportional to the votes each Presidential Candidate received in the Presidential Preference Poll.

Section 4.2 The NRP Secretary shall allocate National Delegates to the candidate of their choice by first allocating the three automatic delegates (Nevada Republican Party Chair, National Committeeman and National Committeewoman) to their preferred candidate.

Section 4.3 The NRP Secretary will next allocate the three prospective delegates from each congressional district receiving the highest number of votes to their preferred candidate to comply with RNC Rule 13 (a) (3).

Section 4.4 The Secretary will then allocate the remaining delegates for each candidate, beginning with the prospective national delegate for a given candidate receiving the most votes,...

Section 5 - Binding of National Delegates and Alternates

All National Delegates and Alternates, ex officio, At Large and Congressional District, shall be required to vote for the Presidential Candidate to whom they are bound. This requirement applies only to the first candidate vote at the Republican National Convention.

This means Three Predetermined Delegates (also called “ex officio” delegates”) do get bound. Indeed, they get the “first pick” of which candidate they are bound to. Next in line come the delegates elected from the congressional districts. And last in line are the delegates at large from Nevada.

¹³ <http://www.nevadagop.org/wp-content/uploads/2012/04/2012-Proposed-Convention-Rules.pdf> (viewed May 14, 2012).

Thus, in my humble opinion, Neverquit's argument that the Three Predetermined Delegates enable a state to impose Delegate Binding without invoking the unit rule fails, and is therefore irrelevant.

9.6. The 2008 Letter from Jennifer Sheehan, Legal Counsel for the RNC.

In the Swann Video, Ben explains (beginning at 2:29) that at the 2008 Republican national convention, a Utah delegate fought to break Delegate Binding. According to Swann, "In that fight to cast the dissenting vote, was this statement over the specific issue:"

Jennifer Sheehan, Legal Counsel for the RNC, plainly stated in a letter to Nancy Lord, Utah National Committeewoman, several weeks before the convention, "The RNC does not recognize a state's binding of national delegates, but considers each delegate a free agent who can vote for whoever they choose."

I have not seen the letter, and I don't know if Ben Swann has seen it. Evidently, it is based on Rule 38. Nor have I seen the version of the NRP Rules that was in effect at the time the Sheehan letter was written back in 2008.

What I do know is that *today's* NRP Rule 15 makes express reference to delegate binding, by incorporating State RP rules and state laws that bind delegates, as discussed above.

On May 14, 2012, I telephoned the RNC legal counsel's office. I was told that Jennifer Sheehan stopped working there a "a few years ago," and that the current Chief Counsel for the RNC is John Phillippe.

Is the Sheehan letter pertinent today? Would John Phillippe endorse that letter today in the face of the Ron Paul threat to the establishment? Or would Phillippe make a contrary finding and dismiss the Sheehan letter as irrelevant under the current NRP Rules? I don't know.

I think the Sheehan Letter, if it actually exists, is a strong point to make against Delegate Binding, but must be used with caution. And it would really help if someone could post an image of the entire, signed letter on the Internet together with the version of the NRP Rules that were in effect back at that time.

9.7. Tension Between Rule 38 and Rule 15

If Rule 38 and/or the Sheehan letter breaks Delegate Binding, *then what is the purpose for Rule 15 empowering State NRPs and state laws to create Delegate Binding?*

Mat Larson comments on this in his above-referenced video (at 2:21):

There're some people going around trying to say that Rule number 15 supercedes this law and says that basically what Rule number 38 is

trying to say is that if you are an unbound delegate the unit rule cannot be applied, basically saying that the unit rule, you are forced to vote for, say, Mitt Romney, even though you're an unbound delegate, you can vote for the moon man if you wanna. You can go ahead and vote for Newt Gingrich. They cannot do that, in that Rule number 15 is true, they cannot force any bound... unbound delegate, sorry guys, to vote for who they want.

...

Now, if someone knows this high-up lawyer, for some reason he thinks this lawyer-speak could get Rule number 15 superceded over 38, let us know.

It appears that Mat is referring to people who claim Rule 38 can only apply to unbound delegates, and that for bound delegates Rule 15 supercedes Rule 38.

However, there is *nothing* in the NRP Rules that gives any “precedence” to Rule 15 over Rule 38. And the NRP Rules are very sensitive to issues of precedence, as indicated in Rule 15(a), which is captioned, “Order of Precedence” and resolves conflicts between State NRP rules and state laws, giving precedence to the former.

Moreover, it makes no sense for Rule 38 to apply exclusively to *unbound* delegates — none of Unit Rules One through Five above (or even Six) applies exclusively to *unbound* delegates.

In my opinion, we must look further than Rules 15 and 38 to resolve this tension, as discussed below in Section 12. Interpreting Delegate Binding in the Context of the NRP Rules, Taken as a Whole.

10. Can NRP Rule 11 Override Rule 15 for Romney's Delegates?

Allegations are flying around that NRC Chairman Reince Priebus has violated Rule 11 by creating what amounts to a coalition between the RNC and the Romney campaign, including for fundraising purposes. These allegations are supported by credible evidence. Romney's campaign website states:¹⁴

Already hit your limit? If you've given the maximum of \$2,500 for the primary and \$2,500 for the general election to Romney for President, you can still give to the Romney Victory fund, our joint fundraising committee with the Republican National Committee by clicking here.

¹⁴ <https://www.mittromney.com/donate> (viewed May 12, 2012), and preserved in a snapshot here: <http://i45.tinypic.com/1040z03.jpg> (viewed May 12, 2012).

On or about April 25, 2012 when Gingrich dropped out, the Associated Press quoted Priebus as stating:¹⁵

Romney's strong performance and delegate count at this stage of the primary process has made him our party's presumptive nominee. In order to maximize our efforts, I have directed my staff at the RNC to open lines of communication with the Romney campaign."

In my humble opinion, this is prohibited by Rule 11 *unless, as to any particular state where Romney is campaigning, all three members of the RNC from that state have filed written approval thereof.* It is extremely unlikely that more than 150 members of the NRC have done so. But they might fake the records (I am uncertain as to whether Ron Paul currently has any supporters on the RNC).

NRP Rule 11 provides:

(a) The Republican National Committee shall not, without the prior written and filed approval of all members of the Republican National Committee from the state involved, contribute money or in-kind aid to any candidate for any public or party office except the nominee of the Republican Party or a candidate who is unopposed in the Republican primary after the filing deadline for that office. In those states where state law establishes a nonpartisan primary in which Republican candidates could participate, but in which the general election may not include a Republican candidate, the candidate endorsed by a convention held under the authority of the state Republican Party shall be recognized by the Republican National Committee as the Republican nominee.

(b) No state Republican Party rule or state law shall be observed that allows persons who have participated or are participating in the selection of any nominee of a party other than the Republican Party, including, but not limited to, through the use of a multi-party primary or similar type ballot, to participate in the selection of a nominee of the Republican Party for that general election. No person nominated in violation of this rule shall be recognized by the Republican National Committee as the nominee of the Republican Party from that state.

It would appear to me that in any state whose three members of the NRC have not all filed written approval of this RNC-Romney coalition, that Romney shall not be recognized as the Republican nominee for President in that state. And this appears to be so *regardless of what happens on any ballot at the convention.*

¹⁵ <http://www.washingtontimes.com/news/2012/apr/25/gingrich-signals-its-time-to-quit/> (viewed May 12, 2012).

And so, let's turn the Delegate Binding issue upside down and make it work *against Romney*. If Romney cannot be recognized as the Republican nominee for President in a particular state, what does that mean on the first ballot (or on any subsequent ballot) for the *Romney-bound* delegates from that state?

In particular, what does it mean for those Romney delegates who become disillusioned by all these shenanigans, wake up, and want to switch over to Ron Paul? Are they entitled to break their *Romney* binding on the first ballot *on the grounds that Romney is ineligible in their state under Rule 11*?

This possibility creates tension between Rule 11 and Rule 15.

11. Risks of Breaking Delegate Binding

Some people in the Ron Paul campaign are saying that the establishment is panicking. That's a good thing. But it also means they will do anything and everything to stop Ron Paul. Attempting to break the Delegate Binding might trigger the *worst* in them.

11.1. Might Not Get Seated at the Convention.

If the establishment becomes aware, prior to the convention, of a plan by any state's Ron Paul delegation to break Delegate Binding, there is a huge risk that they will find fault with the credentials of those delegates, or of the entire state's delegation, and *refuse to seat them at the convention*. The RNC has already threatened Ron Paul leaders in Nevada with such a tactic.

11.2. The Danger of Changing State RP Rules to Eliminate Delegate Binding — NRP Rules 15(c)(12) and (e)(1)

Rule 15(e)(1) says each State RP shall by October 1, 2011 certify and file with the NRC precisely *how* delegates will be bound at the 2012 national convention.

(1) On or before October 1 of the year before the year in which the national convention is to be held, each Republican state committee shall adopt rules, procedures, policies, and instructive materials (prepared pursuant to Rule No. 14(a)) governing the election, selection, allocation, **or binding** of delegates and alternate delegates to the national convention to convene during the following year and shall certify and file with the secretary of the Republican National Committee true copies of the same and of all statutes governing the election, selection, allocation, **or binding** of such delegates and alternate delegates.

The first sentence of Rule 15(c)(12) states that, *after October 1, 2011 a State RP cannot change the way it binds delegates* to the 2012 national convention:

(12) No delegates or alternate delegates shall be **elected**, selected, allocated, or bound pursuant to any Republican Party rule of a state or state law which materially changes the manner of electing, selecting, allocating, or binding delegates or alternate delegates or the date upon which such state Republican Party holds a presidential primary, caucus, convention, or meeting for the purpose of voting for a presidential candidate and/or electing, selecting, allocating, or binding delegates to the national convention if such changes were adopted or made effective after October 1 of the year before the year in which the national convention is to be held.

There was some discussion among the delegates at the Nevada State Republican Convention as to whether the convention might amend the State RP rules so as to remove the Delegate Binding. It is my understanding that there were *threats* from the NRC that such a move would result in the Nevada delegates not getting seated at the national convention.

No such attempt was made at the Nevada convention, and in my opinion that's a *good* thing. As I read Rule 15(e)(1) and Rule 15(c)(12), if the Nevada convention had changed the Delegate Binding rule (by eliminating it), that would have run afoul with the long-past October 1st deadline. The result? It appears to me that the RNC could reject the *entire manner* in which "delegates or alternate delegates shall be **elected**, selected, allocated, or bound," thereby rejecting the election of the delegates at the Nevada convention. I think the RNC might have used this as an excuse to reject the entire Nevada delegation from the national convention.

11.3. Establishment Delegates Bound to Santorum or Gingrich Might Also Break Delegate Binding and Vote for Romney.

If, during the first ballot, Ron Paul delegates begin breaking the Delegate Binding and it does not get quashed by the convention leadership, then it could backfire if Delegates bound to Santorum or Gingrich follow this example, break their own Delegate Binding and vote for Romney!

11.4. The Danger of NRP Rule 37(e)

NRP Rule 37(e) appears to accommodate some sort of contingency or emergency where the convention is "unable to conduct business." The existence of this situation is determined *solely* by the NRC. And in such an event the *only* convention business to be conducted is the roll call votes for President and Vice-President, and such a vote is, *dangerously*, "according to procedures authorized by" the RNC:

(e) If the Republican National Committee determines that the national convention cannot convene or is unable to conduct its business either within the convention site or within the convention city, then and only then, the roll call for nomination for President of the United States and Vice President of the United States shall be allowed to be conducted

according to procedures authorized by the Republican National Committee.

If the RNC invokes NRP Rule 37(e), then it will take a huge hit on its television contracts for convention coverage. But far more is at stake for the establishment than the value of those contracts if Ron Paul gets nominated.

If the two-thirds vote seems attainable, I recommend that, as soon as all the delegates are seated and the Credential Committee's final report is approved by the convention, that the following motion to suspend the rules be made (see my discussion above on motions to suspend the rules):

Pursuant to Rule 32, the Great State of _____, by concurrence of a majority of its delegates, hereby moves to suspend Rule 37(e) from this time until the convention is adjourned.

12. Interpreting Delegate Binding in the Context of the NRP Rules, Taken as a Whole

In my view, when interpreting the NRP Rules, a greater weight should be placed on the Rules in their *totality* — in their *wholeness* — than on any particular detail in them.

This is consistent with the way courts often treat bodies of law when inconsistencies are encountered in the law. Inconsistencies get resolved by looking to the entire body of law as a whole and asking what it says as a whole.

As discussed above, there may be inconsistencies between (a) Delegate Binding in Rule 15, and (b) various other provisions of the NRP Rules, including Rules 29 and 40 (one “vote” per delegate) and Rule 38 (no unit rule).

However, debate on any question is very limited in time, and there is insufficient time for presenting the “big picture” about the NRP Rules as this document does (and as court opinions sometimes do). And so, it is unclear to me how the “wholeness” argument might be made in debate.

13. The Need for Shrewd Calculus Down to the Last Minute.

In my humble opinion, any decision about breaking Delegate Binding should be made by Ron Paul himself in consultation with his top strategic advisors, based on careful calculations made right down to the last minute.

I think that ALL OF THE ABOVE should be considered, in the light of accurate, up to the minute assessments of the nominee each delegate is likely to vote for, as well as the best intelligence information that can be gleaned about the establishment's strategy and likely responses to breaking Delegate Binding. A computer model should be developed to assist in making these decisions, and the model should account for what

might happen if a particular state “passes” on the roll call, and what “test” state might be used to make the first attempt to break Delegate Binding.

This will require tight coordination with key Ron Paul delegates on the floor.

God bless Ron Paul, the entire Ron Paul organization and all the Ron Paul national delegates.

Mark Laurence Donald Emerson

P.S. Malicious people have posted a lot of false defamatory nonsense about me on the Internet. I invite you to judge me by this document, not by what malicious people who know very little about me (and know *nothing* about my character) have posted on blogs, Facebook pages, websites, blacklists and elsewhere. As for the many court cases, the most recent cases were decided in my favor, the woman responsible for repeatedly attacking me in court has recently demonstrated that her accusations against me were completely unfounded, and a process is currently underway to reconcile the entire, massive dispute and to clear my good name.