

A DEMOCRATIC DELEGATE’S DUTY

Joseph Crupi*

Under the rules of the Democratic National Committee, convention delegates pledged to a presidential candidate “shall in all good conscience reflect the sentiments of those who elected them.” This provision contains several ambiguities, and interpretative decisions made by delegates could determine the outcome of a presidential nominating contest. However, no scholarship in law or political science has provided interpretive guidance to the Democratic delegates who must apply the rule. This Article fills that gap, analyzing the text and purpose of party rules to clarify the scope of a delegate’s obligations. Drawing on this analysis, the Article argues that delegates have a duty to represent the evolving views of their voters. To determine how voters’ views may have changed after a primary election, delegates might consider both direct evidence, such as opinion polls and statements by individual voters, as well as indirect evidence, such as political similarities between candidates and candidate endorsements. The Article then considers how a delegate’s duty would apply in various challenging scenarios, including the Democratic Party’s 2024 presidential nominating process. In 2024, delegates likely acted in accordance with their duty to voters by nominating Vice President Kamala Harris, though many delegates appear to have voted for the vice president for reasons that were inconsistent with their obligations under party rules. Finally, the Article makes recommendations for amending the Democratic National Committee’s rules to eliminate potential sources of controversy.

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INTRODUCTION

Presidential nominating contests are governed primarily by political party rules.¹ While a nomination process must adhere to constitutional requirements, state and federal law provides political parties almost total freedom to select their presidential candidates in the manner of their choosing.² As such, the rules that political parties adopt

1. See Michael T. Morley, *Reforming the Contested Convention: Rethinking the Presidential Nomination Process*, 85 *FORDHAM L. REV.* 1073, 1083 (2016) (describing political parties' ability to force compliance with party rules in the face of conflicting state law); Zachary M. Bluestone, *The Unscripted Evolution of Presidential Nominations: From Founding-Era Idealism to the Dominance of Party Primaries*, 39 *HARV. J.L. & PUB. POL'Y* 963, 995 (2016) (noting that courts recognize political parties' right to make decisions regarding candidate selection under the First Amendment); William Gallo, *Must Bound Republican Delegates Vote for Trump?*, *VOICE AM.* (June 22, 2016, 2:07 PM), <https://www.voanews.com/a/must-bound-republican-delegates-vote-for-trump/3387513.html> [<https://perma.cc/R7HC-NZTM>] (quoting Heather Gerken commenting that political parties may decide whether a delegate revolt is allowed regardless of conflicting state law).

2. See Morley, *supra* note 1; Bluestone, *supra* note 1.

to manage a nomination process are extraordinarily consequential.³ Seemingly minor provisions in party rules may determine who is chosen as the party's nominee and, by extension, who is elected president of the United States.⁴

Despite their importance, political party rules on presidential nominations are an understudied area in legal scholarship.⁵ This lack of scholarly attention may be due in part to the dearth of interpretative controversies to analyze and critique.⁶ Three characteristics of the nominating process may help explain the relative infrequency of public controversies related to party rules. First, there are simply few opportunities for disputes to arise. Political party rules governing presidential nomination processes become relevant only once every four years when presidential elections are held. Given that a dispute over party rules would likely arise only during a competitive nominating contest, it is perhaps unsurprising that ambiguities in party rules might go unacknowledged over several election cycles. Second, parties actively work to reduce the likelihood of divisive disputes over party rules. Party leaders may coalesce behind a particular candidate ahead of the primaries, reducing the likelihood of a competitive nominating contest.⁷ Parties also typically seek to present a united front at their nominating conventions, treating the convention as the coronation of the winning candidate rather than as a deliberative decision-making process.⁸ Third, the internal workings of political parties are not always subject to exacting scrutiny and oversight. Parties have recently taken significant strides toward transparency,⁹ but party processes have historically been

3. Stephen Gardbaum & Richard H. Pildes, *Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive*, 93 N.Y.U. L. REV. 647, 647–48 (2018).

4. See DAVID P. REDLAWSK ET AL., WHY IOWA?: HOW CAUCUSES AND SEQUENTIAL ELECTIONS IMPROVE THE PRESIDENTIAL NOMINATING PROCESS 13 (2010) (noting that changes to election rules could lead to different candidates and outcomes).

5. Gardbaum & Pildes, *supra* note 3, at 648; Bluestone, *supra* note 1, at 964 (“For no subject has the disparity between relative importance and attention received been more acute than for the law applicable to the presidential nomination process . . .”).

6. See Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835, 1884 (1988) (discussing the reactive nature of legal scholarship).

7. Anthony J. Gaughan, *Was the Democratic Nomination Rigged? A Reexamination of the Clinton-Sanders Presidential Race*, 29 U. FLA. J.L. & PUB. POL’Y 309, 337 (2019).

8. L. Sandy Maisel et al., *Unconventional Wisdom: The Future of Presidential Nominating Conventions*, 5 NEW ENG. J. POL. SCI. 229, 229 (2011).

9. See ELAINE C. KAMARCK, PRIMARY POLITICS: EVERYTHING YOU NEED TO KNOW ABOUT HOW AMERICA NOMINATES ITS PRESIDENTIAL CANDIDATES 167 (2023) (noting the increasing transparency of delegate selection processes by 2016).

opaque.¹⁰ Most early party documents were not preserved, so efforts to interpret party rules may be complicated by limited public records.¹¹ For legal scholars interested in party rules, it might seem that there is relatively little to study.

Because there are few instances where ambiguities in party rules are likely to be debated and clarified publicly, party rules contain a host of potential controversies. If certain questions were to surface during a politically charged presidential nominating convention, these ambiguities could lead to a crisis in the party. One such potential source of controversy is the rule describing the duties of pledged delegates at the Democratic National Convention. Under Rule 13.J of the Delegate Selection Rules for the 2024 Convention, “Delegates elected to the national convention pledged to a presidential candidate shall in all good conscience reflect the sentiments of those who elected them.”¹² Concerningly, no one seems to know how this rule ought to be interpreted. Political scientist Robert DiClerico describes the rule as “ambiguous.”¹³ According to Elaine Kamarck, a political scientist and member of the Democratic National Committee’s (“DNC”) Rules Committee since 1997,¹⁴ “Since it’s never been used, we don’t really know what it means, but you can imagine it means something pretty serious.”¹⁵ The DNC’s Rules and Bylaws Committee provides no guidance on interpreting the rule in its regulations,¹⁶ and of the scholarly sources that mention the rule, none offers any significant analysis on how the rule ought to be applied in challenging scenarios.¹⁷

10. See *id.* at 10 (noting that presidential nominations prior to 1972 were decided by political parties); Gaughan, *supra* note 7, at 315, 323 (describing the lack of transparency in certain Democratic Party processes).

11. Donald R. McCoy, *The Records of the Democratic and Republican National Committees*, 14 AM. ARCHIVIST 313, 314 (1951).

12. DELEGATE SELECTION RULES FOR THE 2024 DEMOCRATIC NAT’L CONVENTION r. 13.J (DEMOCRATIC NAT’L COMM. 2024) [hereinafter DELEGATE SELECTION RULES 2024].

13. Robert E. DiClerico, *In Defense of the Presidential Nominating Process*, in CHOOSING OUR CHOICES: DEBATING THE PRESIDENTIAL NOMINATING PROCESS 51, 64 (Robert E. DiClerico & James W. Davis eds., 2000).

14. Curriculum Vitae of Elaine Kamarck, <https://www.brookings.edu/wp-content/uploads/2016/07/Kamarck-CV-January-20166.pdf> [<https://perma.cc/MD99-77NF>].

15. Eugene Daniels, *Democrats’ Foremost Expert on Party Rules Explains How Biden Could Be Replaced*, POLITICO (July 13, 2024, 3:46 PM), <https://www.politico.com/news/magazine/2024/07/13/how-biden-could-be-replaced-at-democratic-convention-00167907> [<https://perma.cc/TP7F-AQ3C>] (interviewing Elaine Kamarck).

16. See DEMOCRATIC NAT’L COMM., REGULATIONS OF THE RULES AND BYLAWS COMMITTEE FOR THE 2024 DEMOCRATIC NATIONAL CONVENTION.

17. See generally KAMARCK, *supra* note 9, at 187; Michael T. Morley, *Floor Fight: Protecting the National Party Conventions from Manipulation*, in THE BEST CANDIDATE: PRESIDENTIAL NOMINATION IN POLARIZED TIMES 203, 214 (Eugene D.

In the event of a controversy, there would likely be no way to definitively determine how the rule should be interpreted.¹⁸ Party conventions are brief affairs, usually lasting only a few days.¹⁹ It would be difficult—if not impossible—to fully air and resolve a complex dispute about party rules in such a short amount of time. Moreover, delegates might not have the full length of a convention to settle a disagreement. If a violation of Rule 13.J were to occur, it would likely occur during a roll call vote at the convention. A presidential candidate becomes the Democratic Party's official nominee when the Secretary of the Convention declares that a candidate has won a majority of delegate ballots on a roll call vote.²⁰ Delegates would therefore have little time to identify a possible violation and raise a complaint. Determining whether a violation of the rule occurred could also be a fact-heavy endeavor, and with thousands of pledged delegates at a convention,²¹ it could be prohibitively difficult to evaluate whether each delegate had fulfilled their obligation to their voters.

There does appear to be a scholarly consensus that Rule 13.J would at least permit delegates to vote against a candidate to whom they

Mazo & Michael R. Dimino eds., 2020); KENNY J. WHITBY, STRATEGIC DECISION-MAKING IN PRESIDENTIAL NOMINATIONS: WHEN AND WHY PARTY ELITES DECIDE TO SUPPORT A CANDIDATE 34 (2014); ROBERT J. PELLEGRINI, IDENTITIES FOR LIFE AND DEATH 607 (2010); Ole O. Moen, *Partistyre, Folkestyre og Amerikansk Eksepsjonalisme i Presidentvalget 2008* [Party Rule, Popular Rule, and American Exceptionalism in the 2008 Presidential Election], 66 *INTERNASJONAL POLITIKK* [INT'L POL.] 423, 427 (2008) (Nor.); DiClerico, *supra* note 13; Harvey L. Schantz, *The Presidential Selection Process*, in AMERICAN PRESIDENTIAL ELECTIONS: PROCESS, POLICY, AND POLITICAL CHANGE 9, 22 (Harvey L. Schantz ed., 1996); Elaine Ciulla Kamarck, *Should Convention Delegates be Formally Pledged?: No*, in CONTROVERSIAL ISSUES IN PRESIDENTIAL SELECTION 76 (Gary L. Rose ed., 1991); HERBERT E. ALEXANDER & BRIAN HAGGERTY, FINANCING THE 1984 ELECTION 139 (1987); PETER W. SCHRAMM & DENNIS J. MAHONEY, THE 1984 ELECTION AND THE FUTURE OF AMERICAN POLITICS 42 (1987); ELAINE C. KAMARCK, STRUCTURE AS STRATEGY: PRESIDENTIAL NOMINATING POLITICS SINCE REFORM 324 (1986); RUTH K. SCOTT & RONALD J. HREBENAR, PARTIES IN CRISIS: PARTY POLITICS IN AMERICA 284 (2d ed. 1984); DAVID EUGENE PRICE, BRINGING BACK THE PARTIES 176 (1984); Melvin L. Schweitzer & David A. Schulz, *Nominating a President: The Democratic Rules and Their Politics*, 1 J.L. & POL. 7, 26 (1983).

18. See Morley, *supra* note 17 (noting the apparent inability of the DNC to enforce the rule).

19. See Maya Homan, *When and Where Will the DNC and RNC Be Held This Year?*, USA TODAY (June 10, 2024, 1:15 PM), <https://www.usatoday.com/story/news/politics/elections/2024/06/10/rnc-dnc-2024-dates-cities-convention/74042429007/> [<https://perma.cc/KCF4-MWX2>].

20. PERMANENT PROCEDURAL RULES OF THE 2024 DEMOCRATIC NAT'L CONVENTION r. C.4.i. (DEMOCRATIC NAT'L COMM.) [hereinafter PERMANENT PROCEDURAL RULES 2024]

21. 3,770 pledged delegates were selected for the 2024 Democratic National Convention. CALL FOR THE 2024 DEMOCRATIC NAT'L CONVENTION app. B (DEMOCRATIC NAT'L COMM.) [hereinafter CONVENTION CALL 2024].

were pledged under certain circumstances.²² Scholars point to several scenarios that could allow pledged delegates to abandon their candidate, such as a candidate's illness,²³ felony conviction,²⁴ or extramarital affair.²⁵ Nevertheless, these scholars do not explain how a delegate might apply Rule 13.J to determine whether they were permitted—or compelled—to support a different candidate.

Although Rule 13.J is unlikely to factor heavily in most nominating contests, how delegates interpret this rule could determine the outcome of the race in several scenarios. If no candidate has won enough pledged delegates to secure the nomination, candidates may seek to persuade delegates pledged to their opponents to change their allegiance on the first ballot. Known as a contested convention, such an event could test the extent to which delegates feel obligated to abide by the expressed preferences of primary election voters.²⁶ A brokered convention, in which no candidate receives a majority of votes after the first round of balloting,²⁷ could create additional complexities. Brokered conventions may involve negotiations among several groups with varying interests, possibly requiring delegates to compromise to reach an agreement on a nominee.²⁸ Additionally, if the candidate to whom a delegate is pledged withdraws from the race, a delegate must decide whether and how they remain obligated to reflect their voters' sentiments. The rule may also complicate a delegate's decision should there be a significant change in circumstances involving their candidate. If a candidate experiences a health issue or scandal, a pledged delegate may have little clarity about what voters' sentiments are or how best to reflect them.

In many of these potential scenarios, the stakes are high. In the case of a scandal, for example, a delegate may need to decide whether they will abandon the candidate whom voters selected or continue to support an individual whom they now believe is unfit for the presidency. How delegates manage such difficult decisions may have implications far beyond the immediate presidential election. A delegate's choice to

22. See, e.g., Morley, *supra* note 17 (stating that delegates are not required to support the candidate to whom they are pledged); WHITBY, *supra* note 17 (claiming that the rule gives delegates some discretion in deciding which candidate to support); DiClerico, *supra* note 13 (noting that delegates could reflect voters' changing views); Schantz, *supra* note 17 (recognizing that the rule permits delegates to change their minds).

23. WHITBY, *supra* note 17.

24. Daniels, *supra* note 15 (quoting Elaine Kamarck).

25. *Id.*

26. Elaine Kamarck, *What Is a Brokered Convention? What Is a Contested Convention?*, BROOKINGS INST. (Feb. 21, 2020) <https://www.brookings.edu/articles/what-is-a-brokered-convention-what-is-a-contested-convention/> [<https://perma.cc/7NUL-3CXY>].

27. *Id.*

28. *Id.*

support a candidate other than the one to whom they are pledged could affect the perceived legitimacy of the presidential nominating process, and any outcome that appears to be determined by party insiders rather than primary election voters could weaken trust in the political system.²⁹ Therefore, clarifying a delegate's obligations well in advance of a divisive nominating convention is important not only to guide delegates through a complex process, but also to maintain public faith in democracy.

The need to clarify a delegate's duty to their voters is particularly critical given the prevalence of misleading information about DNC rules. Ahead of the 2024 Democratic National Convention, many public commentators asserted that pledged delegates could independently choose whom to support based on their own conscience, with no mention of a delegate's duty to reflect the sentiments of their voters.³⁰ After President Biden withdrew from the 2024 nominating contest,

29. See Carolina Plescia et al., *Do People Want a 'Fairer' Electoral System? An Experimental Study in Four Countries*, 59 EUR. J. POL. RSCH. 733, 735 (2020) (noting that perceived procedural fairness in elections contributes significantly to democratic legitimacy).

30. See, e.g., C.A. Bridges, *Do Florida Democratic Delegates Have to Vote for Biden Now that He Dropped Out? Your Questions Answered*, TALLAHASSEE DEMOCRAT (July 21, 2024, 8:54 AM), <https://www.tallahassee.com/story/news/politics/elections/2024/07/21/biden-drops-out-florida-delegates-vote/74491287007/> [<https://perma.cc/C3N7-YPTY>] (asserting that "the 'good conscience' clause was added so delegates at the DNC can vote for anyone they choose if they, in all good conscience, represent their beliefs even if the person didn't win the primary in their state"); Leah Askarinam, *Biden Says Delegates Can Vote Their Conscience — And He's Right. But Mass Defections Remain Unlikely*, ASSOCIATED PRESS (July 12, 2024, 5:12 PM), <https://apnews.com/article/biden-delegates-good-conscience-convention-79d532219da1bdf0981ff5ff98e84002> [<https://perma.cc/XQB3-VJAN>] (claiming that delegates "are bound only by their consciences to actually cast their votes for" the candidate to whom they are pledged); Natalie Wallington, *These Are the Kansas Delegates Who Will Help Pick New Democratic Presidential Nominee*, KAN. CITY STAR (July 22, 2024, 4:15 PM), <https://www.kansascity.com/news/politics-government/election/article290313969.html> [<https://perma.cc/G4XX-XNHH>] (stating that "delegates' decision will now be based on party consensus, discussions with other Democrats and their own conscience"); Jamie Kennedy, *California Democratic Delegates Hustle to Get Behind New Presidential Nominee*, SPECTRUM NEWS (July 23, 2024, 1:20 PM), <https://spectrumnews1.com/ca/la-west/politics/2024/07/23/california-delegate-president-kamala-harris> [<https://perma.cc/BFE6-MUSK>] (quoting a political analyst as saying, "The Democrat Party has what's called a conscience clause, where they are pledged to a candidate, except for a case in which they can't in good conscience vote for that candidate."); Louis Jacobson & Amy Sherman, *Is It Really 'Unlawful' to Replace Biden on the Democratic Ticket? Election Law Experts Say No*, PBS NEWS (July 24, 2024, 8:53 PM), <https://www.pbs.org/newshour/politics/is-it-really-unlawful-to-replace-biden-on-the-democratic-ticket-election-law-experts-say-no> [<https://perma.cc/2ZF9-HTXR>] (asserting that "[u]nder party rules, delegates can decide not to back the candidate they represent if 'in all good conscience' they feel they cannot support them").

some commentators went as far as to describe delegates pledged to President Joe Biden as “free agents” who would “choose a candidate on their own without voter input.”³¹ Respected scholars in law and political science offered similar opinions. A prominent legal scholar claimed that “delegates may choose Harris or, for that matter, anyone they wish to be their candidate for president,”³² and a leading political scientist contended that Rule 13.J allows delegates to “vote their conscience.”³³

Delegates themselves described their decision with little regard for their duty to their voters. One delegate pledged to Biden stated that “now we are free as individual delegates to endorse who we choose.”³⁴ Another delegate wrote, “the rules are clear: delegates can vote for whom they choose ‘in good conscience,’ and the majority wins.”³⁵ Reported discussions among delegates regarding possible candidates to replace Biden included assessments of alternative candidates’ electability as well as delegates’ personal preferences, with no mention of delegates’ continuing obligation to voters.³⁶

Statements within the DNC that emphasized a delegate’s discretion and ignored a delegate’s duty to their voters were not limited to individual delegates. Indeed, the DNC itself provided a similarly simplistic interpretation of the body’s rules. At a Rules Committee meeting shortly before the 2024 Democratic National Convention, the DNC’s counsel advised delegates that they were free “to vote their conscience” and “choose any qualified candidate.”³⁷

31. Bonnie Berkowitz et al., *How Democrats Can Pick a New Candidate, Step by Step*, WASH. POST (July 21, 2024), <https://www.washingtonpost.com/politics/2024/07/21/open-convention-democrats-biden-drop-out/> [https://perma.cc/BD6M-BL3R].

32. Erwin Chemerinsky, *Republicans Will Sue to Challenge Harris as the Democratic Nominee. Can They Win?*, S.F. CHRON. (July 23, 2024), <https://www.sfchronicle.com/opinion/openforum/article/kamala-harris-democratic-nominee-lawsuit-19589591.php> [https://perma.cc/LU9E-4X6P].

33. Daniels, *supra* note 15 (quoting Elaine Kamarck).

34. Jonathon Ambarian, *Several Montana Democratic Delegates Announce Support for Harris as Presidential Nominee*, KTVH (July 25, 2024, 8:53 PM), <https://www.ktvh.com/news/several-montana-democratic-delegates-announce-support-for-harris-as-presidential-nominee> [https://perma.cc/6BXX-4NA8].

35. Jerry Goldfeder, *A DNC Delegate Who’s Backing a Winner*, N.Y. DAILY NEWS (July 24, 2024, 5:00 AM), <https://www.nydailynews.com/2024/07/24/a-dnc-delegate-whos-backing-a-winner/> [https://perma.cc/JET9-H8D5].

36. See Christopher Cadelago, *Democratic Delegates Erupt Over Biden’s Nomination in Private Chats*, POLITICO (July 18, 2024, 5:00 AM), <https://www.politico.com/news/2024/07/17/california-democratic-delegates-private-chats-biden-00169210> [https://perma.cc/A6FP-X6SM].

37. *DNC Rules Committee Debates Presidential Nomination Rules*, C-SPAN, at 54:53–55:21 (July 24, 2024), <https://www.c-span.org/video/?537316-1/dnc-rules-committee-debates-presidential-nomination-rules>.

Each of these statements fails to rigorously engage with the text of Rule 13.J. The rule states that pledged delegates “shall in all good conscience reflect the sentiments of those who elected them.” It does not state that delegates are permitted to follow their conscience to support the candidate of their choice. Rule 13.J establishes that pledged delegates have a duty to their voters; delegates may not simply decide for themselves how they will vote.

Determining precisely what Rule 13.J means is far from a simple task. The rule contains several ambiguities that could lead to good faith interpretive controversies. Voters often cast ballots for presidential primary candidates and individual delegates at different times, and delegates may disagree about which group of voters they are required to represent.³⁸ Some delegates could understand their obligation to reflect voters’ sentiments to mean following voters’ preferences as expressed at a primary contest, while other delegates might interpret these sentiments as feelings that may evolve over time.³⁹ Different delegates could interpret the good conscience stipulation to allow for different levels of discretion,⁴⁰ and they could differ on how the rule ought to be interpreted in light of other apparently conflicting provisions in party rules.⁴¹

This Article will wade through these potential controversies with three distinct audiences in mind. First, the Article will provide guidance for Democratic delegates in interpreting Rule 13.J as it is, identifying and analyzing various possible interpretations of the rule. Second, the Article will offer the DNC a roadmap for clarifying the rule to reduce the likelihood of future disputes. Third, the Article will illustrate the need for scholarly engagement with party rules and provide an example of how more rigorous research on political party processes may help strengthen the electoral system.

The Article will focus exclusively on the rules and processes of the Democratic Party. Although the Republican Party is not immune to controversies regarding delegates’ obligations,⁴² the rules of the Republican National Committee (RNC) are comparatively simple.⁴³ Delegates in the Republican Party are bound to a candidate for at least one round of voting at the convention, provided that the candidate remains

38. *See infra* Section IV.F.

39. *See infra* Section IV.E.

40. *See infra* Section IV.C.

41. *See infra* Part III.

42. *See* Gallo, *supra* note 1 (describing a potential delegate revolt in the Republican Party).

43. *See generally* THE RULES OF THE REPUBLICAN PARTY ¶ 16(a) (43d REPUBLICAN NAT’L CONVENTION 2024) [hereinafter REPUBLICAN PARTY RULES 2024].

in the race.⁴⁴ If a bound delegate supports an alternative candidate, RNC rules stipulate that “such support shall not be recognized.”⁴⁵

This Article is divided into six parts. Part I describes the DNC’s delegate selection process, providing background on who delegates are and how they are elected. Delegates to the Democratic National Convention include both unpledged “superdelegates” and three categories of pledged delegates: district-level delegates, at-large delegates, and party leader and elected official (“PLEO”) delegates. Pledged delegate slots are apportioned to states and awarded to presidential candidates based on the results of presidential preference primary elections. Individual delegates are selected to fill these slots either through the primaries or through a separate party process. The complexity of the process creates many opportunities for conflict and confusion, and challenges in interpreting Rule 13.J are due in part to the complex nature of the delegate selection system.

Part II discusses the history of Rule 13.J. Following the tumultuous convention of 1968, the DNC adopted an array of changes that established the modern nominating process. However, party leaders began to reconsider some of these changes after the party experienced disappointing election outcomes. Developed after the Democratic Party lost the presidency in 1980, Rule 13.J replaced a prior rule which had bound delegates to their candidates. The change was intended to grant delegates the flexibility to adapt to changing circumstances and situations where voters’ preferences were unclear.

Part III considers other provisions in the DNC’s rules that may appear to conflict with a delegate’s duty to voters. Under the rules, pledged delegates must generally commit to supporting a particular candidate at the convention. DNC rules also provide that delegates cannot be mandated to vote against the candidate to whom they are pledged and that delegates may cast their ballot for the candidate of their choice, regardless of whether the candidate was placed in nomination. While these provisions may seem to be in tension with Rule 13.J, the best interpretation of these rules is compatible with a delegate’s duty to reflect their voters’ sentiments.

Part IV analyzes the text of Rule 13.J. Though the rule does not clearly contemplate an enforcement mechanism, it does establish a duty that delegates owe to their voters. This duty requires delegates to reflect their voters’ sentiments, which are not limited solely to views expressed through the presidential preference primaries. Delegates may have some

44. *Id.* r. 16(a)(1).

45. *Id.* r. 16(a)(2).

discretion in how they reflect these sentiments, but they are obligated to carry out their duty to voters in good conscience. The group of voters to whom a delegate owes a duty is not well defined, and each possible interpretation faces practical difficulties. Where aspects of Rule 13.J remain ambiguous, delegates may be guided by the purpose of the rule.

Part V applies insights from the purpose, text, and context of Rule 13.J to decisions that delegates might face at a convention. The Part provides guidance for delegates who must interpret and apply the rule and considers how delegates ought to respond to challenging scenarios, including an analysis of delegates' obligations during the 2024 Democratic presidential nominating process.

Part VI evaluates Rule 13.J from a policy perspective and provides recommendations for revising the rule. Despite its ambiguities, the rule strikes a sensible balance between delegate autonomy and delegate accountability. The DNC would benefit from clarifying the rule to ensure that pledged delegates understand their duty to their voters.

I. THE DELEGATE SELECTION PROCESS

The process of selecting delegates to the Democratic National Convention is notable for its complexity. The delegate selection process is regulated by DNC rules, which require each state party to adopt its own plan for selecting delegates.⁴⁶ While state parties have some flexibility in how they structure the delegate selection process, the DNC determines how delegates are allocated to states, how candidates win delegate votes, and how individual delegates may be chosen. The delegate selection process is further complicated by the need to both allocate delegate votes to presidential candidates and elect the individual delegates who will cast their ballots at the convention.⁴⁷ In many states, the nominating process involves two different election events—the presidential preference primary and the selection of delegates who will vote for a presidential candidate at the national convention.⁴⁸

Choosing the party's delegates is often a contentious process.⁴⁹ The shared responsibility between the national party and state parties

46. DELEGATE SELECTION RULES 2024 r. 1.A.

47. See *infra* text accompanying notes 74–86.

48. *Id.*

49. See, e.g., Alexander Willis, *Alabama Democratic Party Chair Considering Legal Challenge over Delegate Denials*, ALA. DAILY NEWS (Aug. 14, 2024), <https://aldailynews.com/alabama-democratic-party-chair-considering-legal-challenge-over-delegate-denials/> [<https://perma.cc/3XJC-GG6V>]; Will Weisert & Leah Askarinam, *DNC Restores NH's Delegates After a Second Nominating Event Unknown to Many Democrats*, NBC10 Bos. (May 1, 2024, 8:21 AM) <https://www.nbcboston.com/news/local/dnc-restores-nhs-delegates-after-a-second-nominating-event-unknown-to-many-democrats/3355680/>

in managing the nomination process has frequently led to disputes, some of which have no clear solution under party rules.⁵⁰ For example, during the close nominating contest between then-Senators Barack Obama and Hillary Clinton in 2008, state Democratic parties in Florida and Michigan scheduled their presidential preference primaries before February 5, in violation of DNC rules.⁵¹ To further complicate matters, Obama was not listed on the ballot in Michigan's unsanctioned primary, and forty percent of primary voters in the state selected an uncommitted presidential preference.⁵² After hours of debate and angry protests, the DNC Rules Committee decided to seat the Florida and Michigan delegates but to provide each delegate with only half a vote at the convention.⁵³ The Committee also awarded additional delegates to Obama based on the number of uncommitted primary voters in Michigan.⁵⁴ This resolution was hardly satisfactory to Clinton's supporters, and one Clinton campaign advisor described the decision as an effort to "hijack" delegates.⁵⁵

DNC rules establish two categories of delegates that attend the Democratic National Convention: unpledged delegates and pledged delegates.⁵⁶ Unpledged delegates—also known as automatic delegates or superdelegates—are party leaders and elected officials, including members of the DNC as well as Democratic members of Congress, governors, and current and former presidents and vice presidents.⁵⁷ Unless a presidential candidate has already secured a delegate majority, unpledged delegates are not permitted to vote for a candidate on the first ballot at the convention.⁵⁸ If no candidate secures the nomination on the

[<https://perma.cc/EBW8-XR4Q>]; Katharine Q. Seelye & Jeff Zeleny, *Democrats Approve Deal on Michigan and Florida*, N.Y. TIMES (June 1, 2008), <https://www.nytimes.com/2008/06/01/us/politics/01rules.html> [<https://perma.cc/MSU3-JVSH>].

50. See, e.g., Weisert & Askarinam, *supra* note 49; Seelye & Zeleny, *supra* note 49.

51. Seelye & Zeleny, *supra* note 49.

52. *Id.*

53. *Id.*

54. *Id.*

55. ABC News, *Clinton Camp Erupts as Fla., Mich. Delegates Get Half-Votes*, ABC NEWS (May 31, 2008, 9:45 AM), <https://abcnews.go.com/Politics/Vote2008/story?id=4969619&page=1> [<https://perma.cc/6WBS-CN5C>].

56. CONVENTION CALL 2024 app. B.

57. DELEGATE SELECTION RULES 2024 r. 9.A.

58. PERMANENT PROCEDURAL RULES 2024 r. C.4.f. The rule prohibiting unpledged delegates from voting on the first ballot was adopted by the party in 2018 following controversy over the role of unpledged delegates in the 2016 nominating contest. Adam Levy, *DNC Changes Superdelegate Rules in Presidential Nomination Process*, CNN (Aug. 25, 2018, 7:33 PM), <https://www.cnn.com/2018/08/25/politics/democrats-superdelegates-voting-changes/index.html> [<https://perma.cc/6DZM-MJM8>].

first ballot, unpledged delegates may participate in subsequent rounds of voting.⁵⁹

Pledged delegates who are selected to attend the convention generally pledge their support to a particular candidate. Delegate candidates must identify their presidential preference or uncommitted status,⁶⁰ and presidential campaigns are able to review the list of people who have filed as delegate candidates for their candidate and remove those who have not been confirmed as bona fide supporters.⁶¹ Pledged delegates account for the vast majority of delegates at a convention,⁶² and they are the only delegates permitted to vote on the first ballot.⁶³ The DNC further divides pledged delegates into three categories: district-level delegates, at-large delegates, and PLEO delegates.⁶⁴ Each category of pledged delegate is selected through a distinct process.⁶⁵

The DNC's process for selecting pledged delegates may be divided into three phases. First, delegate votes are apportioned among U.S. states, territories, and the District of Columbia.⁶⁶ Second, delegate votes are allocated to presidential candidates based on the results of presidential preference primaries or caucuses.⁶⁷ Third, individual delegates are selected to fill these delegate vote slots.⁶⁸

The DNC apportions an initial base of delegate votes among the states and the District of Columbia.⁶⁹ The size of each delegation is determined by "a formula giving equal weight to the sum of the vote for the Democratic candidates in the three most recent presidential elections and to population by electoral vote."⁷⁰ From each state's base of delegate votes, seventy-five percent are designated as district-level delegate votes, and twenty-five percent are delegated as at-large delegate votes.⁷¹ States with more than one congressional district receive additional delegate votes, equal to fifteen percent of their base amount,

59. PERMANENT PROCEDURAL RULES 2024 r. C.4.g.

60. DELEGATE SELECTION RULES 2024 r. 13.A.

61. *Id.* r. 13.F.

62. The 2024 Democratic National Convention included 3,770 pledged delegates and 749 unpledged delegates. CONVENTION CALL 2024 app. B.

63. *See* PERMANENT PROCEDURAL RULES 2024 r. C.4.f.

64. *See infra* text accompanying notes 71–72.

65. *See infra* text accompanying notes 83–86.

66. *See infra* text accompanying notes 69–73.

67. *See infra* text accompanying notes 74–79.

68. *See infra* text accompanying notes 80–86.

69. CONVENTION CALL 2024 art. I.B.

70. *Id.*

71. DELEGATE SELECTION RULES 2024 r. 8.C.

designated for pledged party leaders and elected officials.⁷² Pledged delegates are also apportioned in different amounts to U.S. territories.⁷³

Based on the results of presidential preference primaries or caucuses, delegate votes are allocated to presidential candidates. For district-level delegates, DNC rules state that delegate votes are to be allocated proportionally to candidates based on the vote within that district.⁷⁴ However, a candidate must win at least fifteen percent of the vote in a district to be allocated delegates.⁷⁵ States may define a district as either a congressional district or a subdivision smaller than a congressional district,⁷⁶ and states may select from several delegate allocation formulas approved by the DNC to allocate district-level delegates among their districts.⁷⁷ At-large and pledged PLEO delegate votes are allocated to candidates based on the statewide primary vote or expressed presidential preference.⁷⁸ A candidate must win at least fifteen percent of the vote statewide to be allocated at-large or pledged PLEO delegates.⁷⁹

In addition to apportioning delegates among states and allocating delegate votes to candidates, there is the matter of selecting the individual delegates themselves. The DNC requires each state Democratic party to adopt a Delegate Selection Plan.⁸⁰ While many aspects of these state plans are mandated by DNC rules,⁸¹ state parties do have some discretion in how they structure their delegate selection process.⁸² District-level delegates may be selected directly on the primary ballot or by a caucus composed of people in the district who support the delegate's presidential candidate.⁸³ A state party may select their at-large⁸⁴ and PLEO⁸⁵ delegates through the state party committee, a state convention, or a committee composed of at least forty percent of district-level delegates.⁸⁶

The complexity of the delegate selection process may create opportunities for conflict or confusion within the party. Some of these

72. *Id.* r. 14.B.

73. CONVENTION CALL 2024 art. I.E.

74. DELEGATE SELECTION RULES 2024 r. 14.B.

75. *Id.*

76. *Id.* r. 8.C.

77. *Id.* r. 8.A.

78. *Id.* r. 11.C.

79. *Id.* r. 14.E.

80. *Id.* r. 1.A.

81. *Id.* r. 1.A, r. 1.B.

82. *Id.* r. 10.B.

83. *Id.* r. 13.G.

84. *Id.* r. 11.B.

85. *Id.* r. 10.B.

86. *Id.* r. 10.B, r. 16.

difficulties are foreseeable. For example, conflicts between the DNC and state parties are a predictable consequence of the organizations' differing interests. This type of conflict is inherent in multi-tiered decision-making processes and may in fact indicate that the system is operating as intended. At the same time, the complexity of the delegate selection process can cause unintended challenges. When a new rule is added to a complex system, it is difficult to anticipate all of the different ways that the rule may operate in different scenarios. The story of Rule 13.J provides one such example of how changes to a complex system can lead to unanticipated problems.

II. THE HISTORY AND PURPOSE OF RULE 13.J

The rule that became Rule 13.J was adopted after the contested Democratic convention of 1980 and followed a decade of major changes in the party's presidential candidate selection process. The rule replaced a provision that had previously bound delegates to their candidates and sought to provide delegates with greater flexibility at the national convention.⁸⁷ This Part will trace the history of Rule 13.J to identify the purpose of the rule and establish a starting point for resolving some of its ambiguities.

The participatory primary system by which political parties select their presidential nominees is a relatively recent development in U.S. politics. During the first two centuries of American democracy, ordinary voters played little to no role in the nomination process.⁸⁸ Delegates to the national convention were selected through internal party processes at the state level.⁸⁹ Once at the convention, these delegates generally operated as "free agents."⁹⁰ The presidential nomination was decided at—not before—the convention.⁹¹

Events at the Democratic National Convention in 1968 provided the impetus for change. The convention came at a turbulent time in Democratic politics.⁹² Incumbent President Lyndon B. Johnson had announced four months before the convention that he would not seek

87. Robert E. DiClerico, *Evolution of the Presidential Nominating Process*, in CHOOSING OUR CHOICES: DEBATING THE PRESIDENTIAL NOMINATING PROCESS, *supra* note 13, at 3, 20.

88. Elaine C. Kamarck, *Returning Peer Review to the American Presidential Nomination Process*, 93 N.Y.U. L. REV. 709, 711–12 (2018).

89. *See id.* at 712.

90. *Id.* at 713.

91. *Cf. id.* at 712.

92. *See generally* DARCY G. RICHARDSON, A NATION DIVIDED: THE 1968 PRESIDENTIAL CAMPAIGN (2002).

the party's nomination for another term.⁹³ The party was in the midst of a partisan realignment, with White supremacists in southern states gradually leaving the party as Democratic leaders embraced the civil rights movement.⁹⁴ Martin Luther King, Jr. was assassinated in April of 1968, only months before the convention, bringing the conflict over civil rights to the fore of the national consciousness.⁹⁵ Just two months later in June, Democratic presidential candidate Robert F. Kennedy was assassinated while on the campaign trail.⁹⁶ At the same time, the party was bitterly divided over the United States' involvement in the war in Vietnam.⁹⁷ Held in Chicago in August of 1968, the Democratic National Convention was marred by violent clashes between police and anti-war protesters in the surrounding area.⁹⁸ The proceedings of the convention were also heated.⁹⁹ The 1968 convention saw more delegate credentials challenges than any prior DNC convention, including challenges based on charges of racial discrimination, rules violations, and undemocratic procedures.¹⁰⁰

In response to the chaos in Chicago, the DNC created a commission to review the party's nominating process.¹⁰¹ The Commission on Party Structure and Delegate Selection, known as the McGovern-Fraser

93. *Johnson Withdraws: The Renunciation*, CNN TIME, Apr. 12, 1968, AllPolitics, <https://www.cnn.com/ALLPOLITICS/1996/analysis/back.time/9604/15/index.shtml> [<https://perma.cc/L4WU-ER8T>].

94. See Harold W. Stanley, *Southern Partisan Changes: Dealignment, Realignment or Both?*, 50 J. POL. 64, 68 (1988) (demonstrating White southerners' shift away from the Democratic Party between 1952 and 1984); Ilyana Kuziemko & Ebonya Washington, *Why Did the Democrats Lose the South? Bringing New Data to an Old Debate*, 108 AM. ECON. REV. 2830, 2865 (2018) (arguing that party realignment occurred in response to Democrats' introduction of civil rights legislation).

95. ALAN PIERCE, *THE ASSASSINATION OF MARTIN LUTHER KING, JR.* 4–7 (Melanie A. Howard ed., 2005).

96. Ashley Montgomery, *Robert Kennedy Was Killed 55 Years Ago. How Should He Be Remembered?*, NPR (June 5, 2023, 5:00 AM), <https://www.npr.org/2023/06/05/1179430014/robert-kennedy-rfk-assassination-anniversary> [<https://perma.cc/G28V-KGHE>].

97. Kent G. Sieg, *The 1968 Presidential Election and Peace in Vietnam*, 26 PRESIDENTIAL STUD. Q. 1062, 1064 (1996).

98. Ron Elving, *Chicago '68 Recalls a Democratic Convention and a Political Moment Like No Other*, NPR (Aug. 12, 2024, 6:00 AM), <https://www.npr.org/2024/08/11/nx-s1-5068593/chicago-68-democratic-national-convention> [<https://perma.cc/BW3Z-B6WT>].

99. See generally NICOLAS W. PROCTOR, *CHICAGO, 1968: POLICY AND PROTEST AT THE DEMOCRATIC NATIONAL CONVENTION* (2022).

100. John R. Schmidt & Wayne W. Whalen, *Credentials Contests at the 1968—and 1972—Democratic National Conventions*, 82 HARV. L. REV. 1438, 1438–39 (1969) (discussing procedural moves to contest the legitimacy of delegates selected to the convention and to appoint replacements).

101. KAMARCK, *supra* note 9, at 15.

Commission, proposed a number of reforms popular with the anti-war wing of the party.¹⁰² The Commission called on state parties to “adopt procedures which will provide fair representation of minority views on presidential candidates.”¹⁰³ It also recommended several changes to make party processes at the state level more transparent, like requiring every participant at a state party caucus to declare a presidential preference.¹⁰⁴ The DNC adopted many of the Commission’s recommendations, including rules requiring the fair reflection of minority views¹⁰⁵ and more transparent party processes.¹⁰⁶ The new rules made the traditional party caucuses more challenging to manage, and as a result, more states began to adopt a binding presidential preference primary.¹⁰⁷ The rule changes enacted before and during the 1972 convention transformed the presidential nomination process.¹⁰⁸ While party elites had previously determined the Democratic candidate for president, the balance of power had begun to swing toward the party’s voters.¹⁰⁹

In 1974, the DNC created the Commission on the Role and Future of Presidential Primaries, and in 1976, the party expanded the body’s scope, renaming it the Commission on Presidential Nominations and Party Structure, also known as the Winograd Commission.¹¹⁰ This Commission proposed several reforms ostensibly aimed to ensure that incumbent President Jimmy Carter was able to secure the nomination at the 1980 Democratic National Convention.¹¹¹ One of the rules proposed by the Winograd Commission and adopted by the DNC bound delegates to stand by the candidate whom they were elected to support on the first ballot.¹¹² The rule, derisively referred to as the Robot Rule,¹¹³ stated:

All delegates to the National Convention shall be bound to vote for the presidential candidate whom they were elected to support for at least the first convention ballot, unless released in writing by the presidential candidate. Delegates who seek to violate this rule may be replaced with an alternate of the same presidential preference by the presidential candidate or that candidate’s authorized

102. *Id.*

103. *Id.* at 105.

104. *Id.* at 16.

105. *Id.* at 107.

106. *Id.* at 16.

107. *Id.* at 20.

108. *Id.* at 15–16.

109. *See id.*

110. DiClerico, *supra* note 87, at 17.

111. *Id.* at 17–19.

112. KAMARCK, *supra* note 9, at 205.

113. *Id.* at 207.

representative(s) at any time up to and including the presidential balloting at the National Convention.¹¹⁴

Heading into the 1980 convention, President Carter held a significant advantage in allocated delegates over his challenger, Senator Ted Kennedy.¹¹⁵ After an attempt to change the Robot Rule in the Rules Committee was defeated, Kennedy filed a report to contest the rule at the convention.¹¹⁶ The Kennedy campaign aggressively lobbied delegates to oppose the rule, but at the convention, Kennedy failed to secure the votes necessary to change the rule and free delegates to support his candidacy.¹¹⁷

Carter lost his re-election bid in the 1980 general election, and the DNC formed the Commission on Presidential Nominations, known as the Hunt Commission, to review the rules governing the DNC's presidential nominating process.¹¹⁸ The Commission was created in response to concerns that previous reform efforts had tilted the balance of power too far toward primary voters.¹¹⁹ Party insiders believed that primary voters failed to adequately consider candidates' general election prospects when casting their ballots,¹²⁰ leading the party to nominate weak presidential candidates.¹²¹ As one Commission member put it, the party saw its problem as "[t]oo much democracy" and "too many defeats."¹²²

To address these concerns, the Hunt Commission introduced reforms to give party officials a greater voice in the nominating process and to restore "a measure of decision-making discretion to the national convention."¹²³ The Commission considered a range of issues, including

114. *Id.* at 205.

115. *Id.* at 206.

116. *Id.* at 206–07.

117. *Id.* at 208.

118. DiClerico, *supra* note 87, at 19.

119. *Id.*

120. Susan Estrich, *The Robot Rule*, RASMUSSEN REPS. (Mar. 26, 2008), https://www.rasmussenreports.com/public_content/political_commentary/commentary_by_susan_estrich/the_robot_rule [<https://perma.cc/ZAT9-TW8W>].

121. Thomas E. Mann & Norman Ornstein, *Delegates of Steel: Why Superdelegates Should Be Welcomed, Not Feared*, BROOKINGS INST. (Feb. 15, 2008), <https://www.brookings.edu/articles/delegates-of-steel-why-superdelegates-should-be-welcomed-not-feared/> [<https://perma.cc/KA5M-4X46>]; Raymond J. La Raja & Jonathan Rauch, *Voters Need Help: How Party Insiders Can Make Presidential Primaries Safer, Fairer, and More Democratic*, BROOKINGS INST. (Jan. 31, 2020), <https://www.brookings.edu/articles/voters-need-help-how-party-insiders-can-make-presidential-primaries-safer-fairer-and-more-democratic/> [<https://perma.cc/GAZ6-L6D9>].

122. Estrich, *supra* note 120.

123. *Excerpts from Democratic Commission's Report on New Convention Rules*, N.Y. TIMES, Mar. 27, 1982 (§ 1), at 10, <https://www.nytimes.com/1982/03/27/us/>

how long the primary season ought to be, whether states should be allowed to hold primaries open to non-Democratic voters, whether the party should retain its proportional representation system, whether delegates should be pledged to a candidate, whether candidates ought to be able to approve their delegates, whether to keep the Robot Rule, how to increase the number of women and minority delegates, and how to improve engagement with elected officials and party leaders.¹²⁴ The Commission agreed to do away with the Robot Rule without opposition, but the question of how to include elected officials and party leaders in the nominating process proved to be more controversial.¹²⁵ The Commission's chair, North Carolina Governor Jim Hunt, proposed allowing elected officials and party leaders to act as unpledged delegates.¹²⁶ However, opponents on the Commission argued that doing so would run counter to the party's goal of increasing delegate diversity, as most elected officials and party leaders were White men.¹²⁷ Ultimately, the Commission recommended that the DNC create a new category of unpledged delegates, referred to informally as superdelegates, and also recommended that the DNC replace the Robot Rule with a rule stating that "each delegate shall in good conscience reflect the sentiments of those who elected them."¹²⁸ Discussing the reasons for the change, Governor Hunt explained: "We must also give our convention more flexibility to respond to changing circumstances and, in cases where the voters' mandate is less than clear, to make a reasoned choice."¹²⁹

While the Hunt Commission's recommendations were incorporated into DNC rules, the rule changes did not have the intended effect of making conventions more deliberative.¹³⁰ Although delegates were no longer strictly bound to voters' expressed presidential preferences, they continued to vote in line with primary election outcomes.¹³¹ Indeed, the Democratic Party has since continued the trend toward promoting a greater role for the party's voters.¹³² After controversy over the role

excerpts-from-democratic-commission-s-report-on-new-convention-rules.html [https://perma.cc/NQ93-ZD73].

124. Jacob M. Schlesinger, *Democrats Reform Some Reforms*, HARV. CRIMSON (Nov. 23, 1981), <https://www.thecrimson.com/article/1981/11/23/democrats-reform-some-reforms-pin-two/> [https://perma.cc/L8YG-3J26].

125. *Id.*

126. James E. Clyburn, *An Open Letter to My Democratic Colleagues and Party Leaders*, POLITICO, <https://www.politico.com/f/?id=00000155-69c5-d0c4-a1fd-fbc710260001>.

127. *Id.*

128. *Id.*

129. KAMARCK, *supra* note 9, at 192 (quoting Jim Hunt).

130. *Id.* at 186–87.

131. *Id.*

132. *See id.* at 28–29.

of unpledged superdelegates during the 2016 nominating contest, the DNC amended its rules to prevent superdelegates from voting on the first ballot at the national convention.¹³³

The history of the adoption of Rule 13.J provides several insights into the rule's intended purpose. First, the Rule was intended to increase delegates' flexibility at the convention.¹³⁴ By eliminating the Robot Rule, the DNC dispensed with the idea that pledged delegates could never abandon their candidate so long as that candidate remained in the race. By implication, under at least some circumstances, a delegate would be permitted to vote against the candidate to whom they were pledged.

Second, while the Hunt Commission rejected the Robot Rule, it sought to preserve the idea of "the voters' mandate."¹³⁵ This mandate appears to be expressed through Rule 13.J's reference to voters' sentiments. Hunt argued that delegates should have flexibility when "the voters' mandate is less than clear."¹³⁶ While not logically necessary, it may be fairly understood to be implied that, when the voters' mandate is clear, the Hunt Commission intended that delegates would have an obligation to follow it.

Third, the Hunt Commission developed Rule 13.J in anticipation of a scenario in which delegates might have difficulty discerning the will of their voters.¹³⁷ This fact could inform the interpretation of Rule 13.J's ambiguous phrase *in all good conscience*. Simply requiring delegates to reflect voters' sentiments could be too strong of a requirement considering the possibility that delegates might have an incomplete understanding of what their voters want. By requiring delegates instead to reflect voters' sentiments in good conscience, the committee might have sought to establish a more lenient standard that would not place delegates in an impossible situation. In this context, the phrase *in all good conscience* might therefore mean that delegates are obligated to make their best effort to reflect voters' sentiments based on the information available.

Fourth, in addition to changing the nature of a delegate's obligation, the adoption of Rule 13.J also appears to have changed the extent to which delegates could be held accountable for any violations of their duty. When the DNC eliminated the Robot Rule, it also did away with the rule's enforcement provision that allowed a presidential candidate

133. Levy, *supra* note 58.

134. See KAMARCK, *supra* note 9, at 192 (quoting Jim Hunt).

135. See *id.*

136. *Id.*

137. See *id.*

to replace a disloyal delegate. Rule 13.J provides no mechanism for enforcing a delegate's duty to their voters. Given the provision's history, it is likely that the absence of an enforcement mechanism in Rule 13.J was an intentional decision. As such, it is possible that the Hunt Commission meant for a delegate's duty to be followed as a matter of conscience, with no anticipation that compliance with the rule would be rigorously enforced by the party.

III. THE CONTEXT OF RULE 13.J

Rule 13.J does not occur in isolation, and it must be read in the context of the surrounding rules. In addition to its place in the Delegate Selection Rules, Rule 13.J is also incorporated into the Call for the 2024 Convention and the Permanent Procedural Rules of the 2024 Convention. These various sets of rules contain several provisions that might appear to conflict with Rule 13.J. Under the rules, pledged delegates must make a commitment to support a particular candidate during voting.¹³⁸ The rules also appear to provide that delegates cannot be mandated to vote against their presidential choice¹³⁹ and that delegates are free to cast their ballot for their candidate of choice.¹⁴⁰ Nevertheless, these provisions do not necessarily conflict with Rule 13.J, and the best reading of the DNC's rules preserves a delegate's obligation to reflect the will of their voters.

A. "A Delegate's Signature . . . Shall Be Considered a Pledge"

Pledged delegates who do not identify as uncommitted must make a commitment to vote for a particular candidate.¹⁴¹ Rule C.4.b of the Permanent Procedural Rules stipulates that "a delegate's signature on a candidate's nominating petition shall be considered a pledge by that delegate to support that candidate during the voting."¹⁴² While certain pledges may be legally enforceable,¹⁴³ a delegate's pledge to support a

138. *See infra* Section III.A.

139. *See infra* Section III.B.

140. *See infra* Section III.C.

141. DELEGATE SELECTION RULES 2024 r. 13.A.

142. PERMANENT PROCEDURAL RULES 2024 r. C.4.j.

143. *See, e.g.,* Melissa J. Durkee, *The Pledging World Order*, 48 YALE J. INT'L L. 1, 4 (2023) (recognizing that pledges in the context of international agreements may be binding or non-binding); William Drennan, *Charitable Pledges: Contracts of Confusion*, 120 PA. ST. L. REV. 477, 481 (2015) (noting that U.S. courts generally enforce charitable pledges); Jorge L. Contreras, *Patent Pledges*, 47 ARIZ. ST. L.J. 543, 548 (2015) (arguing that certain patent pledges should be enforceable but not others).

candidate likely is not.¹⁴⁴ Nevertheless, a delegate's pledge does appear to establish some obligation within the context of party rules. DNC rules therefore determine the nature and scope of a delegate's pledge to their candidate.

The drafters of Rule 13.J were certainly not oblivious to the commitment a pledged delegate makes to a candidate. Indeed, the rule explicitly addresses its obligations to delegates who are pledged to a presidential candidate. As such, it would likely be erroneous to view a delegate's commitment to their candidate and a delegate's commitment to their voters as competing obligations, one of which must take precedence over the other. Given that the drafters of Rule 13.J intended the rule to provide greater flexibility to convention delegates,¹⁴⁵ Rule 13.J may be best understood as modifying the nature and limitations of a delegate's pledge to their candidate. In this reading, a delegate's pledge to a candidate carries with it both an obligation to represent a certain group of voters as well as the ability to withdraw support for a candidate under certain conditions.

B. "No Delegate . . . Shall Be Mandated"

Rule 13 of the Delegate Selection Rules includes a range of provisions related to delegates' presidential preference, but only Rule 13.J and the immediately preceding rule, Rule 13.I, directly address the rights and responsibilities of delegates when voting for a presidential nominee at the convention. Together, the rules read:

- I. No delegate at any level of the delegate selection process shall be mandated by law or Party rule to vote contrary to that person's presidential choice as expressed at the time the delegate is elected.
- J. Delegates elected to the national convention pledged to a presidential candidate shall in all good conscience reflect the sentiments of those who elected them.¹⁴⁶

There are multiple ways that a delegate's duty under Rule 13.J could be understood to interact with Rule 13.I. The rules could be read as conflicting, as mutually reinforcing, or as simply referring to different activities. This final interpretation—that Rule 13.I and Rule 13.J refer to different activities but are not in conflict—is the interpretation most strongly supported by the text and history of the rules.

Upon a first reading, Rule 13.I and Rule 13.J could easily be understood as conflicting. Rule 13.J appears to constrain a delegate's

144. See Gallo, *supra* note 1 (quoting Heather Gerken as arguing that a delegate revolt would likely be legally permissible).

145. See *supra* Part II.

146. DELEGATE SELECTION RULES 2024 r. 13.I, r. 13.J.

discretion, and 13.I seems to provide that, under certain common circumstances, a delegate's discretion may not be constrained. Under this interpretation, Rule 13.I would establish a condition where Rule 13.J does not apply. Specifically, delegates would not be obligated to follow their duty to voters if it meant voting against the candidate to whom they were pledged.

Alternatively, the rules could be read as mutually reinforcing. If the word *sentiments* in Rule 13.J is understood to mean voters' expressed preferences in the presidential preference primary, the two rules could be read to establish first a right and then a duty to support the candidate to whom a delegate is pledged. In this reading, Rule 13.I would provide that a pledged delegate is always permitted to support their chosen candidate, and Rule 13.J would provide that a delegate indeed has an obligation to support this candidate. However, this interpretation relies on a narrow interpretation of the word *sentiments*. As will be discussed in the following Part, the term likely encompasses much more than just voters' expressed presidential preference at the time of the primary vote.¹⁴⁷ As such, reading Rule 13.I and Rule 13.J as mutually reinforcing is not consistent with the best interpretation of the text of Rule 13.J.

Finally, the rules could be read not as conflicting but as referring to different activities by different actors. The verb phrase *shall reflect* in Rule 13.J refers to an action to be taken by pledged delegates. In contrast, the clause *no delegate . . . shall be mandated* in Rule 13.I does not address what actions a delegate ought to take. Rather, Rule 13.I merely limits the enforcement actions that may be taken by unspecified actors based on law or party rules. In this reading, a delegate would still have a duty to reflect the sentiments of their voters. However, under Rule 13.I, a delegate could not be forced to carry out this duty if doing so would require them to vote against the candidate to whom they were pledged.

The text, history, and context of the rules all favor interpreting Rule 13.J and Rule 13.I as alternately establishing a duty and limiting enforcement activity, not as establishing conflicting rights and duties. Drafters of a text generally do not intend for different provisions in that text to be in conflict. Indeed, textualists have long held that "provisions of a text should be interpreted in a way that renders them compatible, not contradictory."¹⁴⁸ Moreover, if the two provisions were in fact conflicting, it would be logical for Rule 13.I to have been adopted as a qualification to a delegate's duty established in Rule 13.J. However,

147. See *infra* Section IV.E.

148. ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 180 (2012).

Rule 13.I predates the adoption of Rule 13.J,¹⁴⁹ indicating that Rule 13.I was not adopted with the intent to limit the scope of a delegate's obligations to their voters under Rule 13.J. A reference to Rule 13.I in the Delegate Selection Rules as providing "protection against coerced vote" further supports the idea that the provision is focused on restricting enforcement rather than limiting a delegate's duty.¹⁵⁰

C. *"Delegates May Vote for the Candidate of Their Choice"*

The Permanent Procedural Rules of the 2024 Democratic National Convention incorporate Rule 13.J¹⁵¹ and include several additional rules that govern the conduct of the convention.¹⁵² Rule 13.J is incorporated under Subsection E.1 of the Permanent Procedural Rules,¹⁵³ which covers voting for the presidential nominee and minority reports from the Rules Committee or the Credentials Committee.¹⁵⁴ Subsection C.4, which addresses the nomination of the Democratic presidential candidate,¹⁵⁵ includes a provision, Rule C.4.j, that would appear to grant delegates significant discretion. In its entirety, the rule reads:

Eligible delegates may vote for the candidate of their choice whether or not the name of such candidate was placed in nomination. Any vote cast other than a vote for a presidential candidate meeting the requirements of Article VI of the Call and Rule 13.K. of the 2024 Delegate Selection Rules shall be considered a vote for "Present."¹⁵⁶

On its face, the rule would seem to allow a delegate to support any candidate that they choose, placing the rule in conflict with a delegate's duty to reflect their voters' sentiments under Rule 13.J. However, reading Rule C.4.j in context provides an opportunity to interpret the two rules as complementary rather than conflicting. Subsection C.4 of the Permanent Procedural Rules also establishes the qualifications for placing a candidate on the convention ballot¹⁵⁷ and voting procedures in

149. See 1976 DELEGATE SELECTION RULES OF THE DEMOCRATIC NAT'L COMM. r. 10.E (DEMOCRATIC NAT'L COMM. 1976) quoted in Memorandum from Elaine Kamarck, Exec. Dir., Compliance Rev. Comm'n, to Eiler Reuenholt, Off. of Sen. Daniel Inouye 1 (Apr. 24, 1980), <https://evols.library.manoa.hawaii.edu/server/api/core/bitstreams/f69068a0-6a9d-492d-b6f7-968bdcac6e52/content> (including Rule 13.I, then numbered as Rule 10.E, in the rules for the 1976 convention); *supra* Part II (discussing the adoption of a version of Rule 13.J after the 1980 convention).

150. See DELEGATE SELECTION RULES 2024 r. 1.B.9.

151. PERMANENT PROCEDURAL RULES 2024 r. E.1.h.

152. *Id.* pmbl.

153. *Id.* r. E.1.h.

154. *Id.* r. E.1.

155. *Id.* r. C.4.j.

156. *Id.*

157. *Id.* r. C.4.b.

the event that the nomination is not decided on the first ballot.¹⁵⁸ Within this context, it appears possible that Rule C.4.j was intended to address the prospect of a brokered convention. If no candidate is able to secure a delegate majority on the first round of voting, delegates would then negotiate among themselves to select a nominee on the subsequent ballots. Rule C.4.j would provide delegates with flexibility in these negotiations by expanding the candidate options beyond those candidates who had completed the procedures to be placed in nomination.

Another provision in Subsection C.4 might appear to present a challenge to this interpretation. Rule C.4.g provides in part that:

On the second, and any subsequent, roll call vote on the nominating contest for President, only the two candidates who have respectively received the highest number of votes on the first roll call shall be eligible for nomination.¹⁵⁹

In other words, if no candidate is able to secure a delegate majority on the first ballot, the convention would move to a runoff between the top two candidates. In a runoff, there would be neither a need nor an opportunity to consider candidates beyond the top two finishers in the first round. Since candidates advancing to a runoff would likely have been placed in nomination already, Rule C.4.j would appear to have no purpose for voting after the first round.

However, Rule C.4.j may be a holdover from a previous version of the rules that would have allowed for more flexibility in a brokered convention. The runoff provision in C.4.g was not included in either the Permanent Procedural Rules for the 2020 Convention¹⁶⁰ or the Temporary Procedural Rules in the Call for the 2024 Convention.¹⁶¹ Therefore, it is possible that the original intent behind Rule C.4.j was to provide flexibility in a brokered convention, although this intent was later rendered obsolete by the addition of the runoff provision. As such, Rule C.4.j could be read as a possibly outdated exception to standard nominating procedures that is fully compatible with Rule 13.J.

Another possibility is that Rule C.4.j was intended to ensure that delegates could reflect their voters' sentiments even if their voters did not support any of the candidates who had been placed in nomination. Prior to the 2024 convention, the DNC held a virtual roll call vote to

158. *Id.* r. C.4.g.

159. *Id.*

160. *See* PERMANENT PROCEDURAL RULES FOR THE 2020 DEMOCRATIC NAT'L CONVENTION r. C.5.c (DEMOCRATIC NAT'L COMM. 2020).

161. *See* TEMPORARY PROCEDURAL RULES FOR THE 2024 DEMOCRATIC NAT'L CONVENTION r. C.7.c (DEMOCRATIC NAT'L COMM. 2024).

select its nominee.¹⁶² At the time of the vote, the only candidate who had been placed in nomination was Vice President Kamala Harris.¹⁶³ Nevertheless, not all delegates supported Harris. While President Biden had won the overwhelming majority of delegate votes in the presidential preference primaries, over thirty Democratic delegates were selected with an uncommitted status.¹⁶⁴ These uncommitted delegates were elected as part of a movement protesting Biden's approach to the conflict in Gaza.¹⁶⁵ Because these delegates were not pledged to a presidential candidate they were not subject to a pledged delegate's duty under Rule 13.J.¹⁶⁶ But Rule C.4.j provided a way for these uncommitted delegates to represent the views of their voters by casting a ballot for someone other than Harris, even if these votes would only be recorded as "Present."¹⁶⁷ Several uncommitted delegates did just that, writing in the names of Palestinian children who had been killed by U.S.-provided weapons.¹⁶⁸

While Rule C.4.j does provide flexibility for delegates to vote for a broader range of candidates, it does not necessarily mean that delegates have discretion to vote for whomever they choose. Read in context, the rule appears intended to provide an exception to nominating procedures, not an exception to a delegate's obligation. A pledged delegate may vote for the candidate of their choice, but their choice must still be guided by their duty to reflect the sentiments of their voters.

IV. THE TEXT OF RULE 13.J

Rule 13.J contains several ambiguities, leading some scholars to conclude that its meaning is uncertain.¹⁶⁹ However, although many aspects of the rule may be subject to multiple interpretations, some interpretations are better supported than others. Drawing on the history

162. Robert Yoon, *Harris Wins Democratic Presidential Nomination in Virtual Roll Call. Here's How the Process Worked*, AP NEWS, (Aug. 6, 2024, 9:00 PM), <https://apnews.com/article/kamala-harris-nomination-virtual-roll-call-explainer-c42bbf87ac85f359b84607ea55d1ca4a> [<https://perma.cc/9AWZ-2BE4>].

163. *Id.*

164. Clay Masters & A Martínez, *Will the Democrat's Uncommitted Delegates Support Kamala Harris?*, NPR (July 22, 2024, 3:35 AM), <https://www.npr.org/2024/07/22/nx-s1-5048065/will-the-democrats-uncommitted-delegates-support-kamala-harris> [<https://perma.cc/E2QN-5EEK>].

165. *Id.*

166. *See infra* Section IV.A.

167. *See* Yoon, *supra* note 162 (reporting that "votes cast for someone other than Harris in the roll call were counted as 'present'").

168. Branko Marcetic, *Palestinians Received Both Harassment and Support at the DNC*, JACOBIN (Aug. 22, 2024) <https://jacobin.com/2024/08/uncommitted-dnc-palestine-protests> [<https://perma.cc/UY3P-5MB8>].

169. *See supra* text accompanying notes 13 and 15.

and purpose of the rule, this Part will examine the text of Rule 13.J.¹⁷⁰ Ultimately, the text supports a reading of the rule that requires delegates to represent the possibly shifting views of their voters.

A. *“Delegates Elected to the National Convention Pledged to a Presidential Candidate”*

Rule 13.J of Delegate Selection Rules for the 2024 Democratic National Convention provides that “*Delegates elected to the national convention pledged to a presidential candidate* shall in all good conscience reflect the sentiments of those who elected them.”¹⁷¹ The group of delegates to whom the rule applies is defined by two criteria. These delegates are “elected to the national convention” and “pledged to a presidential candidate.” Unpledged delegates (superdelegates) fulfill neither of these conditions. They are granted their positions as delegates by virtue of their office, not through an election, and are not pledged to a presidential candidate. District-level delegates, at-large delegates, and pledged PLEO delegates are generally all elected to the convention and pledged to a candidate¹⁷² and are therefore subject to Rule 13.J. Delegates in these categories may, however, be elected as uncommitted delegates. Uncommitted delegates are not pledged to a presidential candidate, and therefore they would not be subject to the rule.

B. *“Shall”*

Rule 13.J provides that delegates pledged to a candidate “*shall* in all good conscience reflect the sentiments of those who elected them.”¹⁷³ The use of the word *shall* in the rule presents one principal source of controversy. Does Rule 13.J obligate delegates to act in a certain way? Or do delegates have discretion to choose how they vote? Both delegates and public commentators have expressed the view that delegates have substantial discretion.¹⁷⁴ Yet a plain reading of the rule’s text offers support for the idea that it does in fact create an obligation.

170. See Anita S. Krishnakumar, *Backdoor Purposivism*, 69 DUKE L.J. 1275, 1342–43 (2020) (arguing that textualist and purposivist interpretative approaches often overlap).

171. DELEGATE SELECTION RULES 2024 r. 13.J (emphasis added).

172. *Id.* r. 13.B.

173. *Id.* r. 13.J (emphasis added).

174. See *supra* text accompanying notes 30–37.

Legal scholars have argued that the word *shall* is archaic,¹⁷⁵ ambiguous,¹⁷⁶ and a sign of poor drafting.¹⁷⁷ Use of the word is uncommon in normal language.¹⁷⁸ When used in legal writing, *shall* carries many different possible meanings.¹⁷⁹ It may be used to state a duty, right, direction, circumstance, precondition, subsequent condition, future occurrence, or intention.¹⁸⁰

Nevertheless, one meaning is more common than others. According to an analysis by one legal scholar, “most drafting manuals restrict the meaning of *shall* in legal setting to one sense—*has a duty*.”¹⁸¹ Black’s Law Dictionary similarly emphasizes that *shall* typically implies a duty, particularly when the word is related to a right or benefit:

As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term “shall” is a word of command, and one which has always or which must be given a compulsory meaning as denoting obligation. . . . But it may be construed as merely permissive or directory (as equivalent to “may”), to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense.¹⁸²

In Rule 13.J, contextual clues provide additional indication that *shall* should be read as mandatory rather than permissive. *Those who elected them* is a group to which a delegate might reasonably be expected to owe a duty, and the phrase *reflect the sentiments* reads as a constraint rather than a permission. Therefore, despite *shall*’s various meanings, its use in Rule 13.J establishes a delegate’s non-discretionary obligation to their voters.

C. “In All Good Conscience”

Rule 13.J provides that delegates pledged to a candidate “shall in all good conscience reflect the sentiments of those who elected them.”¹⁸³ This phrase presents possibly the most consequential interpretive

175. Olga A. Krapivkina, *Semantics of the Verb Shall in Legal Discourse*, 18 JEZIKOSLOVLJE [LINGUISTICS] 305, 305 (2017).

176. PETER BUTT & RICHARD CASTLE, MODERN LEGAL DRAFTING: A GUIDE TO USING CLEARER LANGUAGE 99–104 (2001) (Croat.).

177. BRYAN A. GARNER, A DICTIONARY OF MODERN ENGLISH USAGE 939 (2001).

178. Krapivkina, *supra* note 175, at 313.

179. GARNER, *supra* note 177, at 939.

180. BUTT & CASTLE, *supra* note 176, at 99–100.

181. Krapivkina, *supra* note 175, at 313.

182. *Shall*, BLACK’S LAW DICTIONARY (5th ed. 1979).

183. DELEGATE SELECTION RULES 2024 r. 13.J (emphasis added).

question raised by the rule. According to Kamarck, “There is no definition, nor is there any history about what constitutes ‘in all good conscience.’”¹⁸⁴ Despite this uncertainty about its precise meaning, the phrase’s grammar, usage in similar contexts, and ambiguity all support a reading of the rule that requires a delegate to reflect their voters’ sentiments.

The grammatical structure of Rule 13.J indicates that a delegate has an obligation to their voters, not to their own conscience. The prepositional phrase *in all good conscience* modifies the verb phrase *shall reflect*. In the context of the rule, *in all good conscience* therefore appears to refer to the manner in which a delegate is to reflect their voters’ sentiments. The rule seems to require delegates to act in good conscience only in the performance of this specific activity, not in the context of their convention duties more broadly. As such, the phrase does not appear to give delegates a license to make their own independent determination about which candidate they will support.

Consider the following similarly structured example: *you shall in all good faith negotiate the agreement*. The most natural reading of this sentence is that both the action and the manner in which the action is performed are required. You shall negotiate the agreement, and you shall do so in good faith. The example does not contemplate what you would be required to do if you were for some reason only able to negotiate in bad faith. The example simply requires you to do both. Moreover, the example requires you to act in the specified manner only when performing the specified activity. You are not being asked to do everything in good faith. Likewise, it seems most natural to read Rule 13.J to require delegates to (1) reflect the sentiments of those who elected them and (2) act in all good conscience specifically in the performance of this action.

Additionally, this reading is consistent with how the phrase is used in the context of formal rules. *In all good conscience* rarely appears in laws or rules, possibly because of the phrase’s ambiguity. The phrases *in all good conscience* and *in good conscience* do not appear once in the U.S. Code.¹⁸⁵ However, *in good conscience* is found in the rules of several small nongovernmental organizations,¹⁸⁶ in judicial opinions,¹⁸⁷

184. Elaine Kamarck, *Are Convention Delegates Bound to Their Presidential Candidate?*, BROOKINGS INST. (July 11, 2024) <https://www.brookings.edu/articles/are-convention-delegates-bound-to-their-presidential-candidate/> [https://perma.cc/53Z8-44GG].

185. Searches for the terms in the U.S. Code provided no results. See U.S.C., <https://uscode.house.gov/browse.xhtml>.

186. See *infra* text accompanying notes 190 and 191.

187. See generally Sarah M.R. Cravens, *In Good Conscience: Expressions of Judicial Conscience in Federal Appellate Opinions*, 51 DUQ. L. REV. 95 (2012).

and in jury instructions, both real¹⁸⁸ and fictional.¹⁸⁹ Consider the following examples:

- “When a minister enters a secular calling with a view to permanency, he or she shall in good conscience consider the reasonableness of demitting the ministry.”¹⁹⁰
- “The [Distinguished Real Estate Instructor] shall in good conscience confine her/his instructional activities to the educational objective of his/her organization.”¹⁹¹
- “If, however, there’s no reasonable doubt, then you must, in good conscience, find the accused ‘guilty.’”¹⁹²

In each example, the specified action must be performed. There is no indication that one must first determine whether one can in good conscience perform the action. Indeed, it would make little to no sense to ask if one’s conscience would permit one to “consider the reasonableness of demitting the ministry” or to “confine [one’s] instructional activities to the educational objective of [one’s] organization.”

Nevertheless, the precise meaning of *in all good conscience* remains unclear. The phrase could be understood to mean *in a manner demonstrating good conscience, as required by conscience*, or *without cause for feeling guilt*. In the run up to the 2024 Democratic National Convention, many public commentators and delegates appeared to read *in all good conscience* to mean *if permitted by conscience*.¹⁹³ In this reading, the word *in* limits the circumstances under which an act is done; if a delegate is not able to reflect the sentiments of their voters in good conscience, then the delegate would be released from their obligation. As noted above, this is not how this construction is typically used. However, delegates may have found this interpretation compelling given the context in which the phrase is often encountered. *In all good conscience* and *in good conscience* are often used when explaining that a person cannot perform a certain activity because doing

188. OKLAHOMA CRIMINAL COURT OF APPEALS, DEADLOCKED JURY CHARGE, OUJI-CR 10-11.

189. See *infra* text accompanying note 192.

190. UNITED CHURCH OF CHRIST, CONSTITUTION AND BYLAWS OF THE HAMPSHIRE ASSOCIATION OF THE MASSACHUSETTS CONFERENCE OF THE UNITED CHURCH OF CHRIST art. IV, § 10, at 2 (2015).

191. REAL ESTATE EDUCATORS ASS’N, DISTINGUISHED REAL ESTATE INSTRUCTOR CODE OF ETHICS 9.

192. 12 ANGRY MEN (Orion-Nova Productions 1957). Quote retrieved from *12 Angry Men: Rudy Bond: Judge*, IMDB, <https://www.imdb.com/title/tt0050083/characters/nm0094036> [<https://perma.cc/7GUS-98X9>].

193. See *supra* text accompanying notes 30–37.

so would be in violation of their conscience.¹⁹⁴ An address by Martin Luther King, Jr. and a judge's dissenting opinion provide paradigmatic examples of this usage:

- "We cannot in all good conscience obey your unjust laws and abide by the unjust system."¹⁹⁵
- "I cannot in good conscience or consistent with my oath, agree to affirm the judgment below. Justice is being mocked here."¹⁹⁶

In each of these examples, however, the meaning of the phrase and the meaning of the statement as a whole are unambiguous. Furthermore, compared to the interpretive insights gained from the phrase's use in formal rules, statements in which the phrase is used to express principled opposition are likely less relevant in determining the meaning of Rule 13.J.

Indeed, the fact that the meaning of *in all good conscience* is ambiguous in the rule lends support to an interpretation that maintains a delegate's obligation to their voters. Law does sometimes provide exemptions for individuals who cannot comply with a rule on the basis of conscience or belief. However, formal rules that establish a right of conscientious objection typically do so unambiguously.¹⁹⁷ If the intent behind Rule 13.J was to establish a delegate's right to conscientiously object to their duty to reflect their voters' sentiments, it would be quite strange for this purpose to be obscured by such ambiguous language. However, if the drafters of the rule did not intend for the phrase *in all good conscience* to significantly modify the rule's meaning, they may have been less concerned with eliminating all possible ambiguities.

The observation that *in all good conscience* does not significantly change the meaning of the rule under the most well-supported interpretation could prompt a concern that this interpretation might

194. See, e.g., Jo Bridgeman, *Beyond Best Interests: A Question of Professional Conscience?*, in PARENTAL RIGHTS, BEST INTERESTS AND SIGNIFICANT HARMS: MEDICAL DECISION-MAKING ON BEHALF OF CHILDREN POST-GREAT ORMOND STREET HOSPITAL v GARD 149–50 (Imogen Goold et al. eds., 2019) ("[T]hey could no longer, in all good conscience, participate in the provision of ventilation to maintain his life"); FRANKLIN JEFFREY PLATT, SIR THOMAS WILKES: A STUDY IN ELIZABETHAN DIPLOMACY, GOVERNMENT, AND PATRONAGE 40 ("She said she could not in all good conscience loan so much money to his enemies.").

195. MARTIN LUTHER KING JR., THE TRUMPET OF CONSCIENCE 74 (1968).

196. *Ferguson v. Knight*, 809 F.2d 1239, 1247 (6th Cir. 1987) (Jones, J., dissenting).

197. See, e.g., 50 U.S.C. § 3806(j) ("Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."); 42 U.S.C. § 300a–7(d) ("No individual shall be required to perform or assist in the performance of any part of a health service program or research activity . . . if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.").

violate the rule against surplusage. There are, however, at least two reasons why the drafters might have included the phrase despite its apparent subtlety. First, the fact that adherence to the rule is determined based on a delegate's conscience may serve to highlight the absence of external enforcement mechanisms. Given candidates' previous ability to replace disloyal delegates under the Robot Rule, the rule's mention of a delegate's conscience may have been an attempt to make this change more explicit. Second, the inclusion of the phrase *in all good conscience* avoids placing delegates in an impossible position in cases where they lack a good sense of their voters' sentiments. In line with the rule's intent, the phrase seems to establish a subjective standard for judging voters' sentiments and provide delegates with some flexibility when "the voters' mandate is less than clear."

D. "Reflect"

Rule 13.J provides that delegates pledged to a candidate "shall in all good conscience *reflect* the sentiments of those who elected them."¹⁹⁸ In the context of the rule, the best interpretation of the word *reflect* would indicate that a pledged delegate's duty generally obligates them to follow the will of their voters. The will of the voters may change over time, and it may also conflict with the outcomes of a presidential preference primary.

Reflect is an imprecise and somewhat odd choice of word to express a delegate's duty. As a transitive verb referring to a non-physical action, definitions of *reflect* in Webster's Seventh New Collegiate Dictionary include "to bring or cast as a result" and "to make manifest or apparent."¹⁹⁹ In the context of the rule, delegates seem to be obligated to make voters' sentiments apparent in their decision process. Used in this way, the word *reflect* appears to mean something stronger than *consider* but also something less demanding than *adhere to*.

One possible implication of the use of *reflect* in the rule is that a delegate might have more than one permissible option when choosing which candidate to support. A delegate presented with complex or incomplete information about what their voters want could conceivably reflect their voters' sentiments by prioritizing different candidate qualities. The apparent flexibility provided by the word *reflect* could also help delegates navigate scenarios where their voters disagree or where different methods of measuring voter sentiment might yield different results. For example, one candidate might be the first choice

198. DELEGATE SELECTION RULES 2024 r. 13.J (emphasis added).

199. *Reflect*, WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY (1972).

for a majority of a delegate's voters, but another candidate might rate higher on a poll measuring candidate acceptability. In such a scenario, a delegate might have some discretion in how they represent their voters.

The flexibility provided by the word *reflect* might also allow a delegate to cast their ballot strategically. A delegate could be permitted to vote contrary to their voters' preferred candidate if doing so would increase the likelihood of an outcome that better reflected the sentiments of their voters. For example, if the candidate preferred by a delegate's voters stood little chance of winning, that delegate could reasonably interpret their duty to allow them to vote for a candidate with a realistic chance of securing the nomination. It is not clear, however, that a delegate's obligation to reflect the sentiments of their voters would require them to vote strategically. Here again, the rule might not clearly specify a single course of action.

E. "The Sentiments"

Rule 13.J provides that delegates pledged to a candidate "shall in all good conscience reflect *the sentiments* of those who elected them."²⁰⁰ Much like *reflect*, *sentiments* is a curious word choice in this particular context. The word frequently carries an emotional connotation not commonly associated with a formal set of rules. According to one scholar, "the term [*sentiment*] tends to straddle thought and feeling."²⁰¹ Webster's Seventh New Collegiate Dictionary offers several definitions for the word *sentiment*, including "an attitude, thought, or judgment prompted by feeling" and "a specific view or notion."²⁰² As the definition indicates, sentiments are often associated with feelings, but the word can also include concepts such as *views* and *notions* that are not necessarily linked to an emotional response. This range of meaning is consistent with how the term is used elsewhere to describe voters' internal states.²⁰³ In a political context, the word *sentiments* is sometimes used to describe impressions on a positive to negative scale.²⁰⁴

200. DELEGATE SELECTION RULES 2024 r. 13.J (emphasis added).

201. James Chandler, *Sentiment*, OXFORD RSCH. ENCYCLOPEDIA LITERATURE (Mar. 31, 2020).

202. *Sentiment*, WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY (1972).

203. See Frank Mols & Jolanda Jetten, *Understanding Support for Populist Radical Right Parties: Toward a Model That Captures Both Demand-and Supply-Side Factors*, 5 FRONTIERS COMM'NS 1, 8 (2020) (alternately associating sentiments with emotions such as fear and anger and with public opinion generally).

204. See Aparup Khatua et al., *Predicting Political Sentiments of Voters from Twitter in Multi-Party Contexts*, 97 APPLIED SOFT COMPUTING J. 1, 2 (2020) (describing voter sentiments about political parties as positive or negative); William A. Galston, *How Voters Feel about the Economy: 4 Takeaways from the Latest Polls*, BROOKINGS INST. (Mar. 28, 2024)

While the use of *sentiments* in the rule is somewhat unclear, it does appear that the term is meant to include more than just voters' preferences as expressed through a primary election. The affective connotations of the word suggest that *sentiments* is a richer, more expansive concept than merely a vote. Moreover, it is unlikely that the drafters of Rule 13.J would have used such an imprecise term to refer to voters' preferences as expressed through primary elections, particularly given the availability of a clearly defined alternative: *expressed presidential choice*. At the 1976 Democratic National Convention, some delegates understood a reference in the rules to a delegate's "expressed presidential choice" to mean a choice that could be made at a delegate's discretion.²⁰⁵ However, the party's Compliance Review Commission clarified that "the time of the individual's expressed presidential choice is the time of election."²⁰⁶ Ahead of the 1980 convention, the Compliance Review Commission further explained that the use of the phrase throughout the rules referred to "the candidate [a delegate] has said he would vote for when he was elected a delegate and not the candidate he decides to vote for on August 13, 1980."²⁰⁷ The Hunt Commission likely would have been aware of these decisions. Had the members of the Commission intended Rule 13.J to refer to voters' preferences at the time of their vote, it is likely that they would have used *expressed presidential choice* or a similarly well-defined term.

Delegates might look to several sources for information about their voters' preferences. While not the only factor, voters' expressed presidential choice in primary elections would often provide a strong indication of what those voters want. Primary election votes may hold less weight in certain scenarios, for example, when only one candidate is listed on the primary ballot.²⁰⁸ Nevertheless, absent conflicting information, delegates may typically presume that the will of their voters is reflected by their votes in the presidential preference primary. Determining a delegate's duty may be more complex in situations where a delegate has reason to believe that primary election votes are no longer a reliable indicator of what their voters want. In these scenarios, public opinion polling could be a valuable resource in assessing voter

<https://www.brookings.edu/articles/how-voters-feel-about-the-economy-4-takeaways-from-the-latest-polls/> [https://perma.cc/SQ2Z-5MCZ].

205. Memorandum from Kamarck, *supra* note 149.

206. *Id.*

207. *Id.* at 3.

208. See Kaleigh Rogers, *Is Kamala Harris the Presumptive Democratic Nominee? Not Quite.*, ABC NEWS (July 23, 2024, 3:05 PM), <https://abcnews.go.com/538/kamala-harris-presumptive-democratic-nominee/story?id=112198203> [https://perma.cc/6DR3-J2WJ] (quoting Caitlin Jewitt).

sentiments. Delegates could also make commonsense assumptions about how their voters would respond to new information. For example, if it was discovered that a candidate had embezzled from their previous employer, a delegate would normally be justified in assuming that this information would negatively influence voters' sentiments toward that candidate.²⁰⁹

Perhaps the most common scenario in which a delegate would be required to consider factors beyond their voters' expressed presidential choice is when a delegate's candidate withdraws from the race. Candidates who have ended their campaigns frequently endorse another candidate who remains in contention.²¹⁰ A withdrawing candidate's endorsement may provide useful—though not dispositive—information about how a delegate ought to vote. A delegate must still be responsive to other sources of information, such as public opinion polling and the endorsed candidate's record and policy positions.

F. “Of Those Who Elected Them”

Rule 13.J provides that delegates pledged to a candidate “shall in all good conscience reflect the sentiments of *those who elected them*.”²¹¹ Rule 13.J does not bother to define further who these electors are, perhaps because the definition might appear to be straightforward. Unfortunately, it is anything but. A pledged delegate could reasonably understand *those who elected them* to refer to any one of several different, partially overlapping groups of people. Given this ambiguity, delegates should be guided by the purpose of the rule when determining whose sentiments they are obligated to reflect.

Defining the group of people who elected a delegate is complicated by the fact that some delegates are selected through a two-stage process, where presidential preference voting and the selection of individual delegates happen separately. In some states, slates of delegates are

209. See DiClerico, *supra* note 13 (“[I]f by virtue of behavior or revelation, a presidential candidacy were dealt a severe blow, causing a significant national decline in public support, convention delegates would certainly be free ‘in all good conscience’ to reflect that change in sentiment when voting on the convention floor.”).

210. See, e.g., Lauren Egan, *Joe Biden Endorses Kamala Harris as the Democratic Nominee*, POLITICO (July 21, 2024), <https://www.politico.com/live-updates/2024/07/21/joe-biden-drops-out-election/joe-biden-endorses-kamala-harris-00169991>; Elena Moore and Miles Parks, *Pete Buttigieg and Amy Klobuchar Endorse Joe Biden*, NPR (Mar. 2, 2020), <https://www.npr.org/2020/03/02/800856100/sen-amy-klobuchar-ends-presidential-campaign> [<https://perma.cc/WJF9-V782>]; Dan Roberts, *Bernie Sanders Officially Endorses Hillary Clinton for President*, GUARDIAN (July 12, 2016, 11:28 PM), <https://www.theguardian.com/us-news/2016/jul/12/bernie-sanders-supports-hillary-clinton-president> [<https://perma.cc/HEC6-PK8K>].

211. DELEGATE SELECTION RULES 2024 r. 13.J (emphasis added).

selected prior to the primary elections, and delegates are listed on primary election ballots alongside the presidential candidates.²¹² In other states, delegates are selected to fill delegate slots allocated to candidates after the primary elections.²¹³ In Florida, for example, district-level delegates are selected through elections at a post-primary caucus.²¹⁴ At-large delegates and PLEO delegates are selected at a later meeting by a committee of the district-level delegates.²¹⁵

The most straightforward reading of Rule 13.J would appear to be that delegates owe their duty to the group of people who elected them to their position as a delegate. The word *them* in Rule 13.J unambiguously refers to delegates, not presidential candidates. While presidential candidates do secure delegate slots through the presidential preference primaries that may help them win the party's nomination, at no point in the nomination process are presidential candidates elected. Under this reading, district-level delegates in Florida would be obligated to reflect the sentiments of those who elected them to their delegate position at the post-primary caucus. Similarly, at-large and PLEO delegates would appear to be answerable to the district-level delegates who selected them to their positions.

Such a literal interpretation of Rule 13.J could have troubling implications. Post-primary district caucuses are not always well attended, and district-level delegates might be elected by only a small number of individuals. Under the interpretation above, delegates would have an obligation only to a narrow subset of the Democratic electorate. This concern is not merely hypothetical. In California, several district-level delegates were elected at their district caucuses with fewer than 20 votes.²¹⁶ One delegate was elected with only 11 votes.²¹⁷ In such cases, it is possible that the delegates personally know each caucus-goer who voted for them. Indeed, *those who elected them* could be the delegate's friends and family, and a delegate might be able to determine their sentiments related to the nomination simply by posing the question

212. See Josh Kurtz, *Selection Process for Democratic Convention Delegates Irks Some Lawmakers*, MD. MATTERS (Apr. 22, 2024), marylandmatters.org/2024/04/22/selection-process-for-democratic-convention-delegates-irks-some-lawmakers [https://perma.cc/8Z72-BDF2].

213. See FLA. DELEGATE SELECTION PLAN FOR THE 2024 DEMOCRATIC NAT'L CONVENTION § III(A)(2) (FLA. DEMOCRATIC PARTY 2023) [hereinafter FLA. DELEGATE SELECTION PLAN 2024].

214. *Id.*

215. *Id.* § III(D)(5)(b)(1), § III(C)(4)(c).

216. Biden for President District Level Delegate Elections Results 6, 9, 11, 12, 13 (2024), <https://cadem.org/wp-content/uploads/2024/04/Biden-for-President-District-Level-Delegate-Elections-Tally-Final-Results.pdf> [https://perma.cc/V2YE-KT22].

217. *Id.* at 9.

in the family group chat. The possibility that a presidential nomination could be determined by such a small and idiosyncratic group does not appear to be consistent with the purpose behind the adoption of Rule 13.J.

Interpreting the rule to mean that a pledged delegate ought to reflect the sentiments of the people who selected them for their position as a delegate would also lead to an odd situation for at-large and PLEO delegates. Under DNC rules, these delegates may be selected by the state party committee, a state convention, or a committee composed of district-level delegates.²¹⁸ It would seem strange for these delegates to be required to reflect the sentiments of the state party committee. Further, in states where at-large and PLEO delegates are selected by district-level delegates, state-level delegates would then seem to be required to reflect the personal views of district-level delegates, even while the district-level delegates remained obligated to reflect the views of their voters.

To avoid these perplexing outcomes, *those who elected them* could be interpreted to include voters in a presidential preference primary. This interpretation would be consistent with the way that some state parties describe their delegate selection process. For example, the California Democratic Party's Delegate Selection Plan states that district-level delegates are "elected by a presidential preference primary followed by a post-primary caucus." This interpretation is also likely more consistent with the way that a typical U.S. voter would understand the clause *those who elected them*.²¹⁹

Given the clause's ambiguity, delegates could reasonably interpret *those who elected them* to include primary voters or to refer only to the people who selected them as delegates. While the latter interpretation would be more clearly aligned with the rule's literal meaning, a reading focused on ordinary meaning in the broader context of the nomination process would support the inclusion of primary voters. Policy considerations also counsel in favor of a broader definition of the clause. Defining *those who elected them* to include primary voters would prevent situations where delegates were beholden to state political elites or a small number of post-primary caucus voters.

In addition to determining whether *those who elected them* should be read to include primary voters, delegates also face the question of which group in any vote may be understood to have elected them. Assuming that a delegate interprets *those who elected them* to include

218. DELEGATE SELECTION RULES 2024 r. 10.B, r. 16.

219. Cf. Kevin Tobia et. al., *Statutory Interpretation from the Outside*, 122 COLUM. L. REV. 213, 281 (2022) (arguing that "ordinary meaning sometimes mandates nonliteral statutory interpretations").

primary voters, should the delegate be understood to be elected by the Democratic electorate as a whole, all people who actually voted in the Democratic primary, or only those voters who cast a ballot for the delegate's candidate? Each possibility is a plausible reading of the clause. The people who voted for the delegate's candidate would clearly fall within the definition of *those who elected them*. However, it would also not be unusual to say that the Democratic primary voters or the Democrats nominated a candidate even when many of these voters did not vote in favor of that candidate. While each interpretation is a plausible reading of the text, no one interpretation would provide adequate guidance in all scenarios that a delegate might face.

However, interpreting *those who elected them* to refer only to those voters who cast a ballot for the delegate's candidate is the only interpretation that is consistent with the nature of the Democratic primary election process. DNC rules require that district-level delegates' votes be allocated to candidates proportionally.²²⁰ Interpreting *those who elected them* to mean either the entire electorate or all Democratic primary voters could require these delegates to oppose the candidate to whom they were pledged, undermining the purpose of the proportional representation system. Imagine, for example, that a delegate's candidate won 20% of the vote in the delegate's district while a rival candidate won 80% of the vote. If the delegate were obligated to reflect the sentiments of all voters or of the entire electorate, the delegate would likely be required to support their candidate's opponent. This outcome would effectively nullify the 20% of the vote won by the delegate's candidate.

This interpretation is difficult to apply, however, if a state does not hold a primary vote. When only one candidate has gained ballot access, some states may choose not to hold a presidential preference primary at all. This move is common when a candidate is the presumptive nominee, perhaps due to incumbent status or because other candidates have withdrawn from the race. For example, the Florida Democratic Party canceled its 2024 presidential preference primary and awarded all the state's pledged delegates to President Biden.²²¹ As a result, no

220. DELEGATE SELECTION RULES 2024 r. 14.B.

221. Rachel Tucker, *Why Aren't Florida Democrats Having a Presidential Preference Primary?*, WFLA NEWS CHANNEL 8 (Mar. 19, 2024), <https://www.wfla.com/news/florida/why-arent-florida-democrats-having-a-presidential-preference-primary/> [<https://perma.cc/HAE8-8Q2P>].

votes were cast for presidential primary candidates,²²² and Florida's 224 pledged delegates were selected only through the state party's caucus.²²³

Again, delegates may have some discretion in how they interpret and apply the rule. The most compelling reading of *those who elected them* would include only those individuals who voted in favor of a delegate or that delegate's candidate. However, delegates may be justified in adopting a broader interpretation in circumstances that may not have been anticipated by the drafters of the rule. For states that do not hold a presidential preference primary, delegates could interpret *those who elected them* to mean only the people who selected them as a delegate, or they could consider interpreting the clause to mean the group of individuals who likely would have cast a ballot had the vote been held. The clause's ambiguity and the inadequacy of each possible interpretation create an untenable situation for pledged delegates, and the DNC would do well to clarify exactly whose sentiments a delegate is obligated to reflect.²²⁴

V. APPLYING RULE 13.J

Absent guidance in DNC regulations, individual delegates bear the responsibility of interpreting and applying Rule 13.J. As noted previously, questions of interpretation are unlikely to lead to disputes with a formal resolution, and the rule does not appear to contemplate a mechanism for enforcement. Delegates must determine for themselves what is required by their duty to reflect the sentiments of those who elected them.

This Part seeks to provide guidance to the convention delegates who must interpret and apply Rule 13.J. Section A will identify general principles for how delegates should identify and act on voters' sentiments. Section B will apply this approach to the 2024 Democratic nomination process, and Section C will consider how delegates might apply the rule in a range of challenging hypothetical scenarios.

A. General Principles

Pledged delegates have a duty to reflect the sentiments of their voters. Voters' sentiments may include views that are not fully captured by the results of a primary election, and voters' sentiments may also change

222. *Presidential and Congressional Primaries: Florida Results 2024*, CNN, <https://www.cnn.com/election/2024/primaries-and-caucuses/results/florida> [<https://perma.cc/7CDL-745Q>].

223. FLA. DELEGATE SELECTION PLAN 2024 § III(A)(6)(c); CONVENTION CALL 2024 app. B.

224. *See infra* Part VI.

over time. While delegates are obligated to reflect these sentiments, they have some discretion in how they carry out this obligation. While there is some ambiguity about how a delegate ought to define their voters, delegates would generally be well served to focus on primary voters in the jurisdiction they were selected to represent who voted either for the delegate or for the delegate's candidate. When a delegate's precise obligations are unclear, delegates should strive to adhere to the spirit of the DNC's rules and make an effort in good conscience to represent their voters well.

For most pledged delegates during most nominating contests, determining their obligation under Rule 13.J is straightforward. In the absence of evidence to the contrary, delegates may presume that their voters' sentiments are aligned with their expressed presidential choice in the presidential preference primary. This means that, as long as the candidate to whom a delegate is pledged remains in contention, a delegate will typically be obligated to continue supporting that candidate. There are, however, two situations in which a delegate's decision may be more complex: when negative information about the candidate comes to light and when the candidate withdraws from the race.

If new information comes to light that leads to a change in voter sentiments, a pledged delegate would have a duty to reflect the shifting views of their voters. Voters may gain new information about a candidate between the time that a delegate is elected and the time of the convention vote to determine the party's nominee. If voters overwhelmingly favor standing by the candidate or overwhelmingly favor supporting a particular alternative candidate, the delegate would likely be obligated to follow voters' preferences. However, if voter opinion is ambivalent, divided, or ambiguous, the delegate may have more than one permissible course of action.

If a delegate's candidate withdraws from the race, the delegate would need to determine how to cast their ballot to best reflect the sentiments of their voters. Delegates may be guided by several sources of information, including the withdrawing candidate's endorsement, the ideological similarity of remaining candidates to the withdrawing candidate, and the expressed views of voters. Delegates should take care that these sources of information accurately reflect their voters' views. For example, if the withdrawing candidate was the sole competitive participant in the presidential preference primary elections, then their endorsement may not necessarily align with the sentiments of the delegate's voters. Here again, delegates may have more than one permissible course of action if there is not a clear consensus among their voters.

While public opinion polling may be a helpful resource, delegates should use caution when relying on polls to track their voters' sentiments. Polls may not isolate the views of a delegate's voters. Pledged delegates represent voters at either the state or district level, which may not correspond to the population surveyed. Some polls may identify respondents as Democratic voters, but most do not identify groups of respondents based on which candidate they voted for in a presidential preference primary. Additionally, survey questions might not correspond with the decision that a delegate must make. For example, a survey question that merely asks whether voters believe a candidate should withdraw from the race does not necessarily tell a delegate how they ought to mark their ballot. In certain circumstances, an even deeper skepticism toward polling data may be warranted. For example, if most voters are relatively uninformed about alternative candidates, opinion polls may reflect little more than name recognition. In such a scenario, delegates may be justified in disregarding polls as a source of evidence about voters' views. While delegates may have a greater degree of flexibility in the absence of reliable polling data, they nevertheless remain obligated to reflect their voters' sentiments to the best of their ability.

While it may be illustrative to identify how delegates ought to respond to various circumstances, adherence to Rule 13.J is ultimately based on a delegate's subjective determination about their voters' sentiments. Delegates must decide in good conscience what they think their voters want and how best to reflect those desires at the convention. Even when circumstances provide delegates with more than one permissible option, delegates are still guided and constrained by their own beliefs about their voters' views.

B. The 2024 Democratic Nomination

The 2024 Democratic nomination process highlighted the potential importance of Rule 13.J in selecting the party's candidate. It also provides an illuminating case study on how delegates might respond to changing circumstances. This Section will consider the obligations of pledged delegates both before and after President Biden's withdrawal from the race.

Heading into the summer of 2024, President Biden had secured the overwhelming majority of delegate votes with no significant challengers in the presidential preference primaries.²²⁵ But following

225. See *2024 Delegate Tracker and Primary Election Results*, NBC NEWS (July 23, 2024), <https://www.nbcnews.com/politics/2024-primary-elections/delegate-tracker> [<https://perma.cc/5J9Q-MXS5>].

a debate performance that raised questions about his mental acuity,²²⁶ the sentiments of Democratic voters began to turn against Biden. A poll conducted at the end of June immediately after the debate showed only a slight majority of Democrats thought Biden should remain in the race,²²⁷ and in the following weeks, Biden's slide in the polls continued. By mid-July, several polls had found that Democratic voters favored replacing Biden as the party's nominee.²²⁸

Around the same time, pollsters began asking Democratic voters about their preferences for a replacement candidate should Biden withdraw. One poll surveying Democratic and independent voters showed Vice President Harris would convincingly win a ranked choice matchup against other potential Democratic candidates.²²⁹ Another poll found that 79% of Democratic respondents would approve of Harris as the nominee if Biden were to drop out of the race.²³⁰

At this point in the nominating contest, delegates pledged to Biden faced a difficult decision. While national polls showed that Democrats favored replacing Biden, many of these polls were close, and a substantial number of Democrats still wanted him to remain in the race.²³¹ Moreover, for many delegates, these polls might not have

226. See Stephen Collinson, *Biden's Post-Debate Crisis Is Now Evolving into a Genuine Threat to His Reelection Bid*, CNN (July 3, 2024, 4:16 AM), <https://www.cnn.com/2024/07/03/politics/joe-biden-campaign-crisis/index.html> [<https://perma.cc/E6GF-UJFX>].

227. Anthony Salvanto et al., *Increasing Numbers of Voters Don't Think Biden Should Be Running After Debate with Trump — CBS News Poll*, CBS NEWS, (July 1, 2024, 9:38 AM), <https://www.cbsnews.com/news/poll-debate-should-biden-be-running-mental-abilities/> [<https://perma.cc/DWY2-WNES>].

228. Cameron Easley, *Democratic Voters Remain Divided Over Ditching Biden*, MORNING CONSULT (July 15, 2024, 5:16 PM), <https://pro.morningconsult.com/analysis/democratic-voters-remain-divided-over-ditching-biden> [<https://perma.cc/A3SM-JVLG>] (finding that 48% of Democratic voters favored replacing Biden while 43% did not); *Most Say Biden Should Withdraw from the Presidential Race*, AP-NORC CTR. FOR PUB. AFF. RSCH. (July 17, 2024), <https://apnorc.org/projects/most-say-biden-should-withdraw-from-the-presidential-race/> [<https://perma.cc/7ENG-WEG6>] (finding that 65% of Democrats wanted Biden to withdraw from the race while 35% did not); David Montgomery & Kathy Frankovic, *Trump's Lead, Biden's Age, Harris, Vance, and Conventions: July 13 - 16, 2024 Economist/YouGov Poll*, YouGov (July 17, 2024, 2:57 PM), <https://today.yougov.com/politics/articles/50102-trump-lead-biden-age-harris-vance-conventions-july-13-16-2024-economist-yougov-poll> [<https://perma.cc/VAW7-SKK5>] (finding that Democrats favored Biden stepping aside by three percentage points).

229. Deb Otis, *New Ranked Choice Poll Shows Kamala Harris Is the Consensus Choice for Democrats If Biden Withdraws*, FAIRVOTE (July 15, 2024), <https://fairvote.org/potus-and-vp-poll-july2024/> [<https://perma.cc/H6FD-4J5G>].

230. Montgomery & Frankovic, *supra* note 228.

231. See Salvanto et al., *supra* note 227.

reflected their voters' views. The polls measured opinion nationwide, not at the district or state levels. The polls also categorized respondents as Democrats or Democratic voters, not as Biden primary voters. Although most Democratic primary voters did vote for Biden, many did not.²³² In Hawaii, for example, only 66% of Democratic primary voters cast their ballot for President Biden.²³³

In addition to considering polling data, delegates could have also considered the possible sentiments motivating their voters' preferences. For example, many voters may have stood by Biden because they believed he had the best chance of winning in the general election. Other voters may have wanted Biden to remain in the race to avoid a chaotic convention. If a delegate believed that an alternate candidate had better odds of winning the general election and that the party could quickly unify around that candidate, the delegate may have been able to reflect the sentiments of these voters by supporting a candidate other than Biden. In this case, a delegate's duty to reflect their voters' sentiments might lead to a different decision than a duty to reflect voters' preferences.

Importantly, delegates would not have been justified in supporting another candidate based on their own personal views. It would not have been enough for a delegate to believe that an alternate candidate would unite the party or perform better in the general election, absent evidence of the importance of these factors to voters. Indeed, under Rule 13.J, it would not have mattered that a delegate felt they could not support Biden in good conscience. A delegate would only have been justified in acting on these beliefs to the extent that doing so would have been reflecting the sentiments of their voters.

To further complicate matters, delegates would have had to determine the level of voter support necessary to vote contrary to the candidate to whom they were pledged. Rule 13.J offers no indication of how delegates ought to act in such a scenario. One delegate could have reasonably decided to support an alternate candidate if a simple majority of their voters appeared to favor that candidate over Biden. However, another delegate might have understandably wanted a higher threshold of voter support to abandon a candidate who had easily won every state primary.²³⁴ Other delegates may have decided that an uncompetitive primary season revealed little about voters' sentiments

232. See *Democratic Presidential Primaries and Caucuses 2024*, CNN, <https://www.cnn.com/election/2024/primaries-and-caucuses/results/democratic-party/president> [<https://perma.cc/4FQ8-KSA4>].

233. *Id.*

234. See *id.*

and excluded Biden's primary victories from their analysis altogether.²³⁵ Still other delegates could view their decision through the lens of the DNC's proportional primary system, reasoning that a candidate who has lost roughly half of their voter support in a jurisdiction should also lose half of their pledged delegates.

In mid-July 2024, most delegates likely would have been permitted under Rule 13.J to support either Biden or Harris for the presidential nomination. Given the information available, delegates acting in good conscience might reasonably have come to different conclusions about which course of action would better reflect the sentiments of their voters. However, just because either option may have been permissible does not mean that delegates could have based their decision on the flip of a coin or on their own personal preferences. Delegates still had an obligation to make their decision based on their best understanding of their voters' sentiments.

However, delegates were never forced to decide whether they would, in fact, vote against Biden. On July 21, 2024, Biden announced that he was withdrawing from the race.²³⁶ Shortly thereafter, Biden endorsed Harris to replace him on the party's ticket,²³⁷ and Democratic delegates quickly coalesced around her candidacy.²³⁸ Delegates officially nominated Harris through a virtual roll call vote before the convention, with no other candidates listed on the ballot.²³⁹

Delegates likely acted correctly in rallying around Harris, but many may have done so for the wrong reasons. Given the strong support for Harris in opinion polls, Biden's endorsement, and the practical difficulty of selecting another candidate, most delegates likely had a duty to back the vice president under Rule 13.J. Nevertheless,

235. See Rogers, *supra* note 208 (quoting Caitlin Jewitt arguing that uncompetitive primaries revealed little about voters' preferences).

236. Peter Nicholas & Dareh Gregorian, *President Joe Biden Drops Out of 2024 Presidential Race*, NBC NEWS (July 21, 2024, 1:54 PM), <https://www.nbcnews.com/politics/2024-election/president-joe-biden-drops-2024-presidential-race-rcna159867> [<https://perma.cc/7UH8-WVSF>].

237. Zeke Miller et al., *Biden Drops Out of 2024 Race After Disastrous Debate Inflamed Age Concerns. VP Harris Gets His Nod*, AP NEWS (July 21, 2024, 10:49 PM), <https://apnews.com/article/biden-drops-out-2024-election-ddfde72838370032bdcff946cfc2ce6> [<https://perma.cc/6KHF-EQH2>].

238. Alex Seitz-Wald et al., *Majority of Pledged Democratic Delegates Endorse Harris on First Full Day as a Candidate*, NBC NEWS (July 22, 2024, 11:01 AM), <https://www.nbcnews.com/politics/2024-election/democrats-coalesce-harris-nomination-rcna163027> [<https://perma.cc/2KVV-NP94>].

239. Melissa Quinn et al., *Kamala Harris Passes Threshold Needed to Become Democratic Presidential Nominee in DNC Roll Call Vote*, CBS NEWS (Aug. 3, 2024, 2:58 PM), <https://www.cbsnews.com/news/kamala-harris-dnc-vote-democratic-nominee-threshold-delegates/> [<https://perma.cc/3RCU-ELDR>].

statements by several delegates indicated that they may not have made this decision based on their obligation to their voters. One delegate indicated that he would follow the party when making a decision to replace Biden.²⁴⁰ Others noted that their support was based on Harris's policy positions, experience, or electability.²⁴¹ None of these delegates, however, mentioned Harris's support among their voters.²⁴²

C. Challenging Scenarios

The 2024 nominating process illustrated one possible scenario that could test delegates' application of Rule 13.J, but many of the most difficult questions posed by the rule have yet to present themselves during a nominating contest. Considering beforehand how delegates ought to respond could help avert a crisis if these questions were to arise at a convention. The following hypothetical scenarios explore how delegates might apply Rule 13.J under various alternative scenarios that could have occurred before the 2024 convention.

1. The Delegate with a Conscience

Suppose that prior to Biden's ill-fated debate, a delegate pledged to Biden disagreed so strongly with one of Biden's policy statements that they decided they could no longer in good conscience support Biden's candidacy. At this point, public opinion had not yet begun to shift against Biden. Even if some voters may have disagreed with Biden's statement, there was no evidence that new policy disagreements had led a significant number of Biden voters to withdraw their support.

In this scenario, the delegate would likely remain obligated under Rule 13.J to support Biden. The delegate's own conscientious objection

240. Nick Corasaniti & Taylor Robinson, *These Obscure Democrats Could Soon Become Kingmakers*, N.Y. TIMES (July 6, 2024), <https://www.nytimes.com/2024/07/06/us/politics/biden-replacement-dnc-delegates.html> [https://perma.cc/5S8P-TWP8] (quoting a delegate as saying he would "explore my conscience but follow Democrats' suggestion" when replacing Biden).

241. Stephen Gruber-Miller & Brianne Pfannenstiel, *Iowa DNC Delegates Endorse Kamala Harris for President after Biden Drops Out. Here's Why*, DES MOINES REG. (July 22, 2024, 3:43 PM), <https://www.desmoinesregister.com/story/news/politics/2024/07/22/iowa-dnc-delegates-endorse-kamala-harris-for-president/74504278007/> [https://perma.cc/KFR5-KWDU] (quoting delegates emphasizing Harris's policy positions and experience when explaining their support); Allison Kite, *Kansas, Missouri Delegates Help Make Harris Presumptive Democratic Nominee for President*, KAN. REFLECTOR (July 23, 2024, 10:19 AM), <https://kansasreflector.com/2024/07/23/kansas-missouri-delegates-help-make-harris-presumptive-democratic-nominee-for-president/> [https://perma.cc/Z7RD-TT7T] (quoting delegates emphasizing Harris's experience and electability when explaining their support).

242. See sources cited *supra* note 241.

would be insufficient grounds for backing an alternative candidate. If the sentiments of the voters who elected the delegate are clear, then the delegate has a duty to reflect those sentiments. Despite this obligation, DNC rules do not force a delegate to violate their conscience. If a delegate cannot in good conscience carry out their obligations under party rules, they may resign from their position and be replaced by an alternate.²⁴³

2. *The No-Information Delegate*

Imagine that there was no information about voters' views following Biden's disastrous debate. Pollsters never asked respondents whether they wanted Biden to remain in the race, and news outlets did not conduct interviews to gauge the reaction of Democratic primary voters. Other than their own impressions from the debate, delegates pledged to Biden had no new information about what their voters might want.

In this scenario, Rule 13.J would still require delegates to make a good conscience determination about their voters' sentiments. Absent new information, delegates may generally presume that voters' views are aligned with the outcome of the presidential preference primary. However, suppose that a delegate was convinced that Biden's debate performance was so bad that many, if not most, of Biden's primary voters would no longer support him. Given their beliefs about changes in voters' views, this delegate might have been permitted to vote against Biden at the convention. Whether the delegate ought to vote for an alternative candidate would depend on the how the delegate viewed voters' likely sentiments about those alternative candidates compared to Biden. If the delegate was convinced that their voters would back a particular alternative candidate, the delegate might be obligated to support that candidate at the convention. If, on the other hand, the delegate could not imagine their voters supporting any of the alternative candidates, the delegate could be duty bound to cast their ballot for Biden.

3. *The Low-Information Delegate*

Suppose that after the debate, a single national poll showed that about 70% of respondents wanted Biden to drop out of the race, 10% wanted Biden to remain in the race, and 20% were unsure or had no opinion. Suppose further that, to gain more information, a district-level delegate spoke with ten Biden primary voters at a local fair. Four of these local voters wanted Harris to replace Biden as the party's nominee. Another two thought that Biden should probably withdraw from the

243. DELEGATE SELECTION RULES 2024 r. 19.D.

race, but they did not have a strong opinion about which candidate the party should nominate in his place. Two more of the local voters were ambivalent; they still felt loyal to Biden, but they also recognized that he did not appear ready to serve another term. The final two voters wanted Biden to remain in the race because they felt that the party would not be able to unite around another candidate in time for the convention.

While the information available to the delegate is not high quality, the delegate might still be able to draw some inferences about their voters' sentiments. Since the national poll would probably include many respondents who never supported Biden's candidacy, the delegate could safely conclude that significantly less than 70% of Biden voters nationwide wanted him to withdraw. Nevertheless, the low percentage of respondents who thought that Biden should remain in the race would seem to indicate that many Biden voters no longer supported him. The delegate would not have high confidence that their conversations at the fair were representative of the sentiments of all Biden voters in the district, but the delegate would be able to glean several pieces of useful information from these interactions. First, few Biden voters wanted Biden to remain in the race, and those who were unsure seemed to lean against Biden's candidacy. Second, Harris was the only person mentioned as a possible replacement for Biden, and she appeared to have significant support from at least a sizeable minority of Biden voters. Third, at least some voters who continued to support Biden did so because of practical concerns about the nomination process, and they might change their minds if a strong alternative candidate were to emerge.

Based on this information, the delegate's best course of action would likely be to support Harris at the convention. Although the delegate's information about their voters' sentiments is far from conclusive, all signs point toward a decisive shift away from Biden and toward Harris. Harris's popularity with Democrats and her position as the incumbent vice president would also offer indirect evidence that she would be an acceptable candidate for most Biden primary voters. Nevertheless, if the delegate felt uneasy about the quality of information available and placed a high value on primary elections as a source of information about voters' sentiments, the delegate could determine in good conscience that they should continue to support Biden in the absence of more robust evidence of voters' changing views.

4. The Wide-Open Race

Suppose that after Biden dropped out of the race, no clear alternative candidate emerged, and Biden did not endorse any of the contenders for the nomination. Polls showed that voters were evenly split among several

candidates, each with notable similarities to and differences from Biden. Given voters' divided opinions, a delegate might be uncertain about which course of action would best reflect the sentiments of their voters. In this case, the delegate might have the flexibility to vote for any one of a number of viable candidates. However, the lack of a clear voters' mandate would not allow the delegate to vote for just any candidate. For example, a delegate would be acting in conflict with their voters' sentiments if they cast their ballot for a candidate who did not align with the policy platform of the Democratic Party. Even in cases where the lack of clear information provides delegates with some flexibility, the requirement to reflect voters' sentiments still limits the extent of a delegate's discretion.

VI. REVISING RULE 13.J

While delegates can—and indeed must—apply Rule 13.J despite its ambiguities, many of these ambiguities could be resolved by amendments to the rule or interpretive regulations. The DNC could create a more stable presidential nominating process by clarifying aspects of the rule, thus promoting party unity and public faith in democracy.²⁴⁴ This Part will first evaluate Rule 13.J from a policy perspective before proposing possible changes to the DNC's rules and regulations.

A. *Rule 13.J as Policy*

Though the rule has played only a minor role in nominating contests since its adoption, Rule 13.J is well suited to fulfill its intended purpose. The rule provides a thoughtful balance between delegate autonomy and delegate accountability. On one hand, delegates have the flexibility to consider multiple options, and they may sometimes be required to exercise their decision-making capabilities. On the other hand, delegates remain constrained by their voters' sentiments, centering the will of Democratic voters and safeguarding the legitimacy of the nominating process.²⁴⁵ As such, DNC rules strike a delicate balance that guards against potential dangers from both populist candidates and rogue delegates.

244. Cf. Morley, *supra* note 17, at 204 (arguing that parties should establish permanent rules in advance of a convention).

245. Cf. Tabatha Abu El-Haj, *Networking the Party: First Amendment Rights and the Pursuit of Responsive Party Government*, 118 COLUM. L. REV. 1225, 1232 (2018) (discussing the importance of political party networks that encourage responsiveness to the public).

The central role of the party's voters in selecting the nominee could raise concerns about the potential for a populist demagogue to win the nomination without the support of a voter majority²⁴⁶—much like how Donald Trump won the 2016 Republican nomination.²⁴⁷ However, several DNC rules make this possibility much less likely to occur in the Democratic Party's candidate selection process. While the Republican National Committee allows state parties to hold winner-take-all and winner-take-more primaries,²⁴⁸ the DNC requires that district-level delegates be allocated proportionally to candidates.²⁴⁹ It would therefore be more difficult for a Democratic candidate to amass a majority of delegate votes in a contest where no candidate secures a majority of the popular vote. Heading into a convention, Rule 13.J gives Democratic delegates some flexibility to vote strategically,²⁵⁰ in contrast to Republican delegates who are bound to their candidate.²⁵¹ Finally, Democratic superdelegates would present an additional barrier for a populist candidate in the event that the nomination is not decided on the first ballot.²⁵²

Delegates' apparent freedom to decide how they will reflect their voters' sentiments may raise concerns about the possibility of rogue delegates, but here again, DNC rules provide safeguards. Presidential candidates' ability to approve or disapprove of individual delegates during the delegate selection process provides some assurance that chosen delegates would be aligned with the candidate to whom they are pledged.²⁵³ Although Rule 13.J does not appear to contemplate an enforcement mechanism, the party does have procedures to address unexpected circumstances. The Convention Chair is empowered to

246. See Gardbaum & Pildes, *supra* note 3, at 651 (expressing concern with the "populist system for candidate selection" in the United States).

247. See *2016 Republican Popular Vote*, REAL CLEAR POL., https://www.realclearpolitics.com/epolls/2016/president/repUBLICan_vote_count.html [<https://perma.cc/Z65C-ZWEF>] (showing that Trump did not win a majority of the popular vote in the 2016 Republican primary elections).

248. Kevin Uhrmacher et al., *Republicans Adjusted Rules for Their Primaries After 2012, and It's Helping Trump*, WASH. POST (Mar. 9, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/primaries/explaining-the-presidential-primary-process/> [<https://perma.cc/W5UF-66P6>] (discussing how changes in Republican Party rules were designed to favor the frontrunner).

249. DELEGATE SELECTION RULES 2024 r. 14.B.

250. See *supra* Section IV.D.

251. REPUBLICAN PARTY RULES 2024 r. 16(a).

252. PERMANENT PROCEDURAL RULES 2024 r. C.4.g (providing that superdelegates may cast a ballot in subsequent rounds if the nomination is not decided after the first round of voting).

253. See DELEGATE SELECTION RULES 2024 r. 13.F.

interpret DNC rules,²⁵⁴ and they may also convene the Rules Committee to establish processes for any matter that may arise.²⁵⁵ As one legal scholar has noted, whether a political party's delegates would be permitted to revolt against party rules is ultimately a question "for the party to decide."²⁵⁶

B. Opportunities for Change

Despite its laudable ability to balance various party interests, many aspects of Rule 13.J remain ambiguous. These ambiguities could lead to disputes at party conventions, damaging party unity as well as public perceptions of the party's nominating process. As such, party rules may benefit from clarifications or revisions. Many such modifications would simply involve incorporating the interpretive guidance provided in Part IV into DNC regulations. However, certain changes may also involve policy judgments, requiring the DNC to weigh the merits of competing interpretations.

Some might wonder whether it could be in the party's best interest to allow the rule to remain ambiguous. In this view, since it would be prohibitively difficult to specify how delegates ought to act under all possible circumstances, an ambiguous rule could provide delegates with greater flexibility to respond to a wide range of scenarios. The problem with this reasoning is that the rule's ambiguity does not provide greater flexibility so much as it creates confusion about the degree of flexibility which delegates are permitted to exercise. If the party intended delegates to have more discretion, then it would be simple enough to make this intent explicit in the rules. The DNC does not need to state the precise circumstances under which a delegate may vote against their candidate, but it would be wise to clarify the nature of a delegate's obligations under party rules.

Most importantly, the DNC should clarify that Rule 13.J creates a duty to reflect voters' sentiments, not a license for delegates to make decisions based solely on their own conscience.²⁵⁷ The DNC could adopt interpretive regulations to clarify the nature of a delegate's obligations. These regulations might explain that the phrase *in all good conscience* requires delegates to make a sincere effort to reflect voters' sentiments,

254. PERMANENT PROCEDURAL RULES 2024 r. G.

255. *Id.* r. O.

256. *See* Gallo, *supra* note 1 (quoting Heather Gerken discussing a potential delegate revolt at the Republican National Convention).

257. *See supra* Section IV.C.

providing delegates with limited discretion in how they carry out their duty to represent voters.²⁵⁸ Regulations might further note that the word *sentiments* refers to the possibly changing views of voters, distinct from voters' expressed presidential preference in a primary election.²⁵⁹

The DNC should also clearly define the group of voters whose sentiments a delegate is obligated to reflect.²⁶⁰ To avoid the possibility that a small number of people are able to dictate a delegate's vote, the DNC should clarify that a delegate ought to represent the views of primary election voters rather than the views of the voters who selected the individual delegate at a state party convention or other convening.²⁶¹ Of the primary election voters in the delegate's jurisdiction, delegates ought to be required to represent the views of only those who voted for the delegate's candidate. This clarification would protect the proportional allocation of delegate votes, ensuring that a delegate pledged to a candidate who won a minority of votes would not be required to vote for a candidate who won a majority. The DNC should also clarify a delegate's rights and duties in a state that did not hold a presidential preference primary. In such a scenario, a delegate could be required to represent the interests of all Democratic voters in their jurisdiction. While this requirement would present a problem in the context of a competitive primary, it is unlikely to lead to difficulties when a state's primary election is uncontested. Moreover, this requirement could encourage state parties to hold primaries when only one candidate has qualified for ballot access, reducing the likelihood of a delegate going to the convention with no voters.

Additionally, the DNC should clearly identify how Rule 13.J is intended to interact with Rule C.4.j of the Permanent Procedural Rules of the 2024 Democratic National Convention and Rule 13.I of the 2024 Delegate Selection Rules.²⁶² The DNC should clarify that neither of these provisions conflicts with a pledged delegate's duty to their constituents. To remove any ambiguity, the DNC could revise Rule C.4.j from the current text—*delegates may vote for the candidate of their choice*—to simply *delegates may vote for a candidate*.²⁶³ This change would eliminate confusion about whether the rule expands a delegate's discretion and make clear that the rule is intended to provide an

258. *Id.*

259. *See supra* Section IV.E.

260. *See supra* Section IV.F.

261. *See id.*

262. *See supra* Sections III.B & III.C.

263. *See supra* Section III.C.

exception to nomination procedures. Similarly, the DNC could change the word *mandated* in Rule 13.I to *forced* or *compelled* to emphasize that the provision pertains to enforcement, protecting certain delegate votes from challenges without nullifying any obligations delegates might have.²⁶⁴

The DNC might also consider a policy change to Rule 13.J, expanding the rule to include delegates who are elected as uncommitted. Like delegates pledged to a candidate, uncommitted delegates represent a certain group of voters, and it is logical that a duty to reflect voters' sentiments should extend to these delegates as well. Uncommitted delegates may be elected to represent a particular perspective at the national convention,²⁶⁵ but given that they are not pledged to a candidate, their decisions may involve more discretion. Moreover, while district-level uncommitted delegates may be selected by a caucus of uncommitted voters,²⁶⁶ they are not subject to an external approval process as delegates pledged to a candidate are.²⁶⁷ Therefore, uncommitted voters may benefit from protections under Rule 13.J to an even greater extent than primary voters who support a presidential candidate.

CONCLUSION

Under Rule 13.J of the DNC's Delegate Selection Rules, pledged delegates have a duty to reflect their voters' evolving sentiments. The rule provides delegates with the flexibility to respond to changing circumstances but also constrains delegates' discretion. While delegates are not bound to vote for the candidate to whom they are pledged, neither do they have complete freedom to cast a ballot for any candidate. As such, Rule 13.J strikes a balance between delegate autonomy and delegate accountability. This balance both furthers the party's interest in selecting a strong presidential candidate and safeguards the legitimacy of the nomination process. Nevertheless, ambiguities in the rule could lead to disputes at a convention, particularly given the prevalence of misleading and erroneous information about party rules. The Democratic National Committee would therefore be wise to clarify aspects of the rule by revising the text or issuing interpretive regulations.

Political party rules form an essential but understudied part of the democratic process in the United States. Alongside federal and state law, party rules establish the rules of the game that may, in many cases, determine the outcome of a presidential contest. Given the importance

264. See *supra* Section III.B.

265. See Masters & Martínez, *supra* note 164.

266. DELEGATE SELECTION RULES 2024 r. 13.G.

267. See *id.* r. 13.F.

of these rules to election law broadly understood, it is critical that scholars anticipate and engage with potential controversies that may arise at party nominating conventions. Particularly in legal scholarship, opportunities exist to provide new insights on political party rules that may bolster the stability and legitimacy of the electoral system.