Coates' Canons Blog: The Candidate's Pledge under North Carolina Law

By Robert Joyce

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Want to run for elective office in North Carolina—state legislature, governor, county commissioner, sheriff, or some other office? For most offices you'll have to run in the primary election of your party. (A few offices—mainly city councils and school boards—are nonpartisan and do not have party primaries.) To run in the party primary, you'll have to file a notice of candidacy and pay a filing fee. If you are in fact on the books as a member of the party, are at least 21 years old, are not currently serving a sentence for a felony, and are a bona fide resident of the appropriate jurisdiction, your name goes on the primary ballot and you are on the way to being your party's nominee, with a spot on the general election ballot—if enough people vote for you.

But wait, there's one more step. The law requires you to sign a pledge: "I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election." That pledge is set out in a statute, G.S. 163-106. Look here.

What does that pledge mean? There are actually two ways to run for office. (Well, really three ways, see the end of this blog.) The regular one—the one that is overwhelmingly the most common—is the one just described. You run in a party primary, and if you win the primary you go on the ballot in the general election against the nominees of the other parties. But there is a second way to run for office. You don't file to run in the primary. You don't go on the ballot as a party nominee. In fact, you don't go on the ballot at all. Instead, you get up a petition and if enough eligible people sign it, you can run as a write-in candidate. That is, election officials count those votes for you when voters write your name on the ballot. If, however, you don't go through this petition process, the write-in votes for you are not counted. It's as of the voters had written in Mickey Mouse.

So the pledge that candidates are required to sign says this in effect: If I lose in the primary, so I am not the nominee of my party, I will not go through the petition process to have write-in votes for me count in the general election.

A beefier pledge

The candidate pledge is as old as the primary system itself, and it used to require more of the candidate.

Before 1915, there were no primary elections in North Carolina. The Democratic and Republican parties selected their nominees in conventions and the only time voters went to the polls was the general election. That year, the General Assembly enacted the state's first primary election law, requiring party nominees to be chosen by voters in a primary, not by delegates to party conventions.

As part of the primary law, candidates for the first time were required to sign a pledge. And this was a tougher pledge than candidates face today—it was a pledge "to support the candidate nominated in such primary." If you lose this primary election, the pledge said, you will support the bum who beat you.

In 1929, the General Assembly raised the pledge another level. Now, a candidate pledged not only to support the nominee of the party—the winner of the primary—in the race for the specific office, but "to support in the next General Election all candidates nominated by the [candidate's] Party." All candidates. If you ran in the primary for governor and lost, you were pledging to support not only the candidate who beat you in that race, but all nominees of your party, for president, Congress, General Assembly, commissioner of labor, county commissioner, and so on.

Thirty years later, the legislature added this to the pledge: "I further pledge myself that if I am defeated in said primary, I

will not run for any office as a write-in candidate in the next general election." You already have pledged to support all nominees of your party in all races, so it makes sense that you also pledge not to run as a write-in any race.

Pulling back on the pledge

As the pledge stood by 1971, it was to support all candidates nominated by your party and not to run as a write-in candidate in any race. That year, the General Assembly pulled back on the pledge in a subtle way. No longer was the pledge to support "all candidates" nominated by your party, but now it was to support "only candidates" nominated by your party. That meant that you would not support nominees of the other party, and you would not support write-in candidates, but it no longer meant that you had to support every one of your party's nominees for all offices. If you did not like your party's nominee for an office, you could simply support no one—especially not that jerk who beat you, or that unpopular presidential candidate who was dragging down the entire party.

Then in 1973 the General Assembly completely removed from the pledge the promise to support candidates of the party, leaving only the pledge not to run as a write-in candidate for any office.

In 2001, the pledge was fixed in its current form—no longer a pledge to support candidates, and no longer a pledge not to run as a write-in for any office—but only a pledge not to run as a write-in for the same office in which you just lost the primary.

The old voter's pledge and a constitutional challenge

Pledges have been required of voters as well as candidates. Let's say you are a registered voter affiliated with the Democratic Party. You wish to change your registration to Republican. Or the other way around. Or you are registered as "unaffiliated" and you wish to be affiliated with party. Or you are affiliated with a party and wish to become "unaffiliated." In any of these instances, you simply inform the county board of elections of your desire to change. See G.S. 163-82.17, here.

But once upon a time, it was not so simple.

When the primary election system was set up in 1915, for the first time elections officials had to inquire into the party affiliation of voters at the time of registration, so that the voters could be set up to vote in the proper party primary. The statute did not require a pledge, but it did require that the voter "intends to affiliate" with the party and "is in good faith a member thereof." It further provided that at the polls, the voter could be challenged by anyone, when voting in a primary election, on the grounds that the voter "does not intend in good faith to support the candidates nominated in the primary" by the party. No provision was made for a change in party affiliation.

When in 1939 a statute was added for changing party, it included this oath: "I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter." In the early 1960s, a voter in Forsyth County tried to change his party affiliation but refused to take that oath. After all, he said, he did not know who those nominees would be, what their views on public issues would be, or who the nominees of the other parties would be. How could he swear to support future unknown nominees? In a 1964 opinion, *Clark v. Meyland*, 261 N.C. 140, the North Carolina Supreme Court agreed with the voter. In changing party affiliation, the court said, a voter "cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates at the election—even by casting a write-in ballot."

In 1967, the General Assembly, in light of the *Clark* decision, removed from the party-change oath the promise to support future candidates of the party.

No challenge to the candidate's pledge

While the voter's pledge was struck down in *Clark*, there are no reported cases involving the candidate's pledge. The candidate's pledge was mentioned in passing in a 1948 decision of the state's high court, *States' Rights Democratic Party v. NC State Board of Elections*, 229 N.C. 179. The issue was whether voters who in the presidential election year of 1948 had already voted in the Democratic or Republican primary in May could sign a petition to form a new party—commonly

called the “Dixiecrats”—to be on the general election ballot in November. The State Board of Elections had ruled that such voters could not sign a petition to form the new party, but the court disagreed.

In passing, the court mentioned the candidates’ pledge, as it stood at that time—a pledge to support all the party’s nominees in the upcoming general election. It said that by imposing the pledge, the law “does attempt to place upon a candidate” the nominee-support obligation. The court did not explain further its characterization that the pledge was merely an “attempt” to impose an obligation, and, because the case did not require the court to rule on the lawfulness of the pledge, it did not do so.

Just 16 years later, the same court struck down the voter pledge in *Clark v. Meyland*, as described above, and just a few years later, in 1971, the General Assembly took the nominee-support provision out of the pledge, leaving it as only an obligation not to run as a write-in candidate.

The candidate pledge and the statute

The candidate pledge today is merely not to run as a write-in candidate in the same race as the one in which the candidate lost the primary. It is a watered-down version of a tougher pledge that candidates once had to make, a pledge that first arose in 1915.

But how enforceable is such a pledge? A federal court in 1964 struck down a comparable voter pledge and earlier, in 1948, the state’s Supreme Court had, in passing, drawn into question the legal effect of a statutorily-required pledge.

Whatever the enforceability of such a pledge might be, that question is probably not a problem in the current state of the law. That’s because the statute on write-in candidates itself, G.S. 163-123, here, explicitly says, “No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.” The statute specifically covers the very same ground as the pledge, meaning that even if there were no pledge, write-in votes would not be counted.

Special notes

Here are two special notes.

First, as hinted at above, there are really three ways to run for office. The first two, already discussed, are running in the primary and getting up a petition to have write-in votes count for you. The third is petitioning to be placed on the ballot as an unaffiliated candidate. The statue for this third way is G.S. 163-122, here. If you get enough people to sign a petition, you appear on the general election ballot as unaffiliated, along with the nominees of the parties. The statute specifically says that if you were a candidate in the primary, you cannot appear on the ballot as an unaffiliated candidate for the same office in the general election. The statute says that, but there is no candidate pledge to that effect.

Second, municipal elections—for mayor and city council—operate under their own rules and are, for the most part, conducted on a nonpartisan basis. As an example of the differences in rules, write-in votes count in municipal elections with no petition process. As another example, most municipal elections do not involve primaries at all. Municipal elections—and school board elections—are not the subject of this blog post.

Links

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