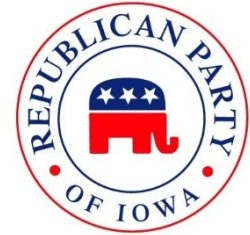


Republican Party of Iowa

621 East 9th Street

Des Moines, IA 50309



TO: Interested Parties

FROM: Jeff Kaufmann
Chairman, Republican Party of Iowa

DATE: May 27, 2015

SUBJECT: Participation in 2015 Straw Poll Preliminary Meetings

Several individuals who are considering running for the Republican nomination for President in 2016, but who have not yet declared their candidacies, have questioned their ability to participate in the preliminary planning meetings for the 2015 Iowa Straw Poll (the “Straw Poll”) while they “test the waters” for a potential candidacy. Such individuals have expressed concerns that their participation in these preliminary meetings will trigger “candidate” status under federal election laws and require them to register as candidates with the Federal Election Commission (the “Commission”). In short, participation in the preliminary planning meetings for the Straw Poll would not cause these individuals to trigger candidate status.

Iowa Straw Poll Preliminary Meetings

In the lead up to the August 8, 2015 Straw Poll, the Republican Party of Iowa (“RPI”) will hold a number of preliminary meetings to address certain logistical issues for participants, potential participants, consultants and vendors. At these preliminary meetings, RPI will distribute draft rules for the Straw Poll, circulate a draft map and layout of the Straw Poll, provide an overview of the event’s activities, and address logistics about speaking order and ticket sales. Participation in the Straw Poll and any preliminary meetings leading up to the Straw Poll are by invitation only. RPI has invited declared candidates for President, as well as individuals who are not candidates but are considering running for President in 2016.

The first meeting, which will take place on May 28th, is an informational meeting only. RPI officials intend to field any logistical questions regarding the setup and production of the Straw Poll, which is, by design, different from past straw polls. Importantly, by attending this meeting, candidates and potential candidates are not officially committing to participating in the Straw Poll in August.

Federal Law Governing “Candidate” Status and “Testing the Waters”

Under federal campaign finance laws, an individual becomes a “candidate” when he or she receives or makes in excess of \$5,000 in contributions or expenditures. 52 U.S.C. § 30101(2). However, the Commission’s Regulations provide that the terms “contribution” and

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“expenditure” do not include funds or payments made solely to determine whether an individual should become a candidate. 11 CFR §§ 100.72(a); 100.131(a).¹ Permissible “testing the waters” activities include, but are not limited to, conducting polls, making telephone calls, and travelling. *Id.*

When an individual raises or spends more than \$5,000 and engages in activities indicating that he or she has decided to run for a particular office, the “testing the waters” exemption is no longer available. 52 U.S.C. § 30101(2). Examples of activities that indicate that an individual has decided to become a candidate include: (1) using general public political advertising to publicize his or her intention to campaign for Federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and, (5) taking action to qualify for the ballot under state law. 11 CFR §§ 100.72(b); 100.131(b).

Participation in Straw Poll Preliminary Meetings will not Trigger “Candidate” Status

RPI does not require that an individual be a declared candidate for President in order to participate in the preliminary meetings for the Straw Poll. **An individual, or his or her political organization, simply need to be invited guests.** As explained above, RPI has extended invitations to its preliminary meetings to both declared candidates and individuals who are still considering running for President. This was precisely the model used for RPI’s May 16th Lincoln Dinner, where individuals who were not declared candidates at the time were extended invitations through their respective political organizations, and they attended and spoke on behalf of those organizations. Those individuals did not trigger “candidate” status merely by attending and speaking at the Lincoln Dinner.

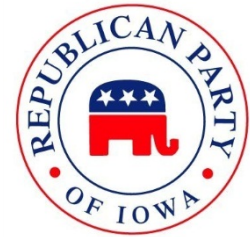
The same can be said for those individuals’ participation, or their political organizations’ participation, in the Straw Poll preliminary meetings, which will not involve any of the political pomp and circumstance of the Lincoln Dinner, and will only address logistical matters for the Straw Poll. Furthermore, these individuals are not even obligated to participate in the Straw Poll by virtue of their or their political organizations’ attendance at the preliminary meetings. By

¹ So long as an individual is “testing the waters,” he or she is not required to file a Statement of Candidacy or file disclosure reports with the Commission unless and until the individual subsequently decides to run for federal office or conducts activities that indicate he or she has decided to become a candidate. *See id.*, *see also* Advisory Op. 1979-26 (Grassley).

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attending or having agents of their political organizations attend RPI's May 28th meeting, candidates and potential candidates are not even officially committing to participating in the Straw Poll. Likewise, because RPI's invitation to attend the preliminary meetings was extended generally to organizations, and not solely to "candidates," individuals who have not declared their candidacies may send representatives from their political organizations to participate in the lot space lottery, to be held at later preliminary meetings, without triggering "candidate" status.

Moreover, none of the preliminary meetings will require an individual who is still considering running for President to declare his or her candidacy or make or authorize statements that refer to himself or herself as a candidate. Participation in such preliminary meetings will also not entail taking action to qualify for the ballot under state law. As Republican National Committee General Counsel, John Ryder, stated in a January 8, 2015 memo, "the straw poll has absolutely no bearing on the official presidential nomination process" and has "absolutely no connection to any primary, caucuses or state convention."²

In summary, none of activities or events surrounding the Straw Poll's preliminary meetings would qualify as activities that indicate that an individual has decided to become a candidate for President. *See* 11 CFR § 100.72(b). At most, participation in such meetings could qualify as "testing the waters" activity that does not trigger candidate status, and which is permissible under the Commission's Regulations.

² Memorandum from John Ryder, RNC General Counsel, to Jeff Kaufmann, Republican Party of Iowa Chairman, *Presidential Straw Poll at 2* (Jan. 8, 2015) (*available at* http://images.politico.com/global/2015/01/08/memo_re_iowa_presidential_straw_poll.pdf).