

## MEMORANDUM

TO: Interested Parties

FROM: Joe Sandler and Aditi Prasad

SUBJECT: Constitutionality of State Party Actions to Induce Primary Candidates to Adopt  
The “People’s Pledge”

DATE: April 8, 2026

This memorandum addresses the constitutionality of actions that State Democratic Parties may take to induce candidates running for the Democratic nomination for elected offices to adopt the “People’s Pledge.”

### **I. Background & Question Presented**

By way of background, Democratic Party members want to encourage candidates running for the Democratic nomination for elected office to adopt the People’s Pledge. The People’s Pledge is a voluntary agreement among candidates aimed at inhibiting independent expenditures in their election contest. The agreement calls for candidates to call on organizations to refrain from making independent expenditures and typically provides that, if an independent expenditure is nevertheless made in support of a candidate or opposition to their opponent, that candidate’s campaign will contribute, to a charity of the opponent’s choice, an amount equal to that spent on the independent expenditures (or equal to an agreed percentage of that amount).

We have been asked whether State Democratic Parties could use various tools at their disposal to induce candidates running in Democratic primaries to adopt the People’s Pledge. Those tools might include, among other things, the State Party’s endorsement (in states in which the state party formally endorses in the primary); censure for refusal to adopt the People’s Pledge or violating the Pledge; access to the State Party voter file; and inclusion in State Party-sponsored candidate debates and forums.

This Memorandum assesses whether such efforts by a State Party to inhibit independent expenditures would raise any constitutional concerns, given the Supreme Court’s holding in *Citizens United v. Federal Election Commission*<sup>1</sup> that there is a constitutional right under the First

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<sup>1</sup> 558 U.S. 310 (2010)

Amendment for any entity, including corporations, to make independent expenditures for or against candidates.

## **II. Summary**

The short answer is that as long as a State Party with the power to grant primary ballot access did not condition such access on adoption by a candidate of the People’s Pledge, use of any of the other means a State Party may have to induce candidates to adopt the pledge would not run afoul of the First Amendment or federal law. Except where the State Party controls ballot access, State Parties are private associations not themselves constrained by the First Amendment. To the contrary, state political parties have their own substantial First Amendment associational rights that generally grant them autonomy to set their own internal rules, structure endorsement processes, and encourage candidates to align with party-preferred values or campaign practices. In our view, State Party inducements for adopting the “People’s Pledge” will be constitutional if such inducements do not condition access to the ballot.

It should be noted that this Memorandum addresses only the issue of whether efforts to induce candidates to adopt the People’s Pledge are consistent with the U.S. Constitution and federal law, and does not address any other issues that may arise in connection with a State Party’s use of a specific means to induce candidates to adopt the People’s Pledge.

## **III. Legal Analysis**

### **A. Requirement for State Action**

In *Citizens United*, the Supreme Court found that a provision of the federal campaign finance laws that prohibited use of corporate funds for certain independent expenditures violated the First Amendment. The First Amendment applies to the federal government and through the Fourteenth Amendment) to the States (and their subdivisions, such as local governments). As the Supreme Court has explained, the Free Speech clause of the First Amendment “constrains governmental actors and protects private actors. To draw the line between governmental and private, the Court applies what is known as the state-action doctrine. Under that doctrine, “...a private entity may be considered a state actor when it exercises a function ‘traditionally exclusively reserved to the State.’”<sup>2</sup>

### **B. Status of State Parties**

State political parties are typically recognized as private voluntary associations.<sup>3</sup> Party committees have their own associational rights protected by the First Amendment, including the

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<sup>2</sup> *Manhattan Community Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019).

<sup>3</sup> *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214 (1989) (ruling that partisan political parties enjoy First Amendment freedoms of association and thus throwing out a state law providing

right to endorse or oppose candidates, allocate resources, and structure their own internal processes. This includes the party's right to limit its membership in the manner of its choosing and to choose a candidate-selection process that it believes will produce the nominee who best represents its political platform.<sup>4</sup>

A political party's associational rights "are circumscribed, however, when the State gives the party a role in the election process...."<sup>5</sup> Thus, state political parties are generally not treated as state actors unless they are performing a function usually reserved to the state, like controlling ballot access or administering publicly run primaries. It is only when a state political party's actions are likened to state acts that questions may arise about the degree of constitutional permissibility of those acts.

### **C. Permissible Actions By a State Party to Induce Nomination Candidates to Adopt People's Pledge**

With the exception of conditioning ballot access on agreeing to the People's Pledge, none of the other means a State Party might use to induce candidates to adopt the People's Pledge would raise constitutional concerns. As a general rule, internal decision-making about candidate endorsements or opposition, distribution of party resources, and voluntary agreements tend to fall outside the definition of state action.<sup>6</sup> By way of example:

- 1) **Endorsement**: In those states in which the State Democratic Party formally endorses a candidate in a primary, the State Party could condition eligibility for the endorsement on agreement to adopt the People's Pledge. A party committee has a First Amendment right to endorse, support or oppose a candidate in a primary.<sup>7</sup> This right also can be exercised through censure of a candidate for refusing to adopt the People's Pledge, or if adopted, violating the People's Pledge.
- 2) **Access to voter file**. A State Party could, as a legal matter, condition candidates' access to the State Party voter file, for use in the primary, on the candidates' agreement to the People's Pledge. The State Party would in no way be exercising state power in doing so. Any candidate would be free to obtain the base voter file (just the registration information

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that governing bodies of parties "shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election").

<sup>4</sup> *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, (2008). See to the same effect, *California Democratic Party v. Jones*, 530 U.S. 567, 574-75 (2000); *Democratic Party of the United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981).

<sup>5</sup> *Lopez Torres*, 552 U.S. at 203.

<sup>6</sup> See *Jones*, 530 U.S. at 575 (noting a political party's "important" right to select the party's nominee); see also *Lopez Torres*, 552 U.S. at 202 (political parties also have a First Amendment right "to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform").

<sup>7</sup> *Eu*, 489 U.S. at 224-25.

and vote history that the Secretary of State or Board of Election collects) directly from the Secretary of State or Board of Elections.

The valuable information on the file consists of the responses to prior contacts with the voter by the party and its candidates, predictive modeling scores, etc. that the State Party has appended to the voter records in the file. The State Party is free to determine the criteria for access to that information.

- 3) **Debates and Forums**. As a constitutional matter, a State Party that sponsors or co-sponsors a candidate debate or forum, for the primary or nomination, could condition a candidate's participation on agreement to the People's Pledge. A private organization sponsoring a debate does not engage in state action. For example, in *Johnson v. Comm'n on Presidential Debates*,<sup>8</sup> third-party candidates challenged their exclusion from the 2016 presidential general election debates sponsored by the Commission on Presidential Debates. That Commission is a private organization originally created, and endorsed by, the DNC and RNC. The Court held, among other rulings, that the candidates did not state a claim under the First Amendment because it "is fundamental that the First Amendment binds only the actions of the Government and does not apply to actions of private persons or entities."<sup>9</sup> "[T]he hosting of a debate is not a public function 'because the First Amendment protects private parties' rights to put on (and select the content of) debates."<sup>10</sup>

#### **D. Conditioning Ballot Access Would Be Constitutionally Impermissible**

In those states in which the State Democratic Party controls candidate access to the primary ballot, and there is no alternative means for a candidate to obtain access to the ballot, a state party could not condition access to the ballot on agreement to the People's Pledge. That is because "when the state grants political parties the right to nominate candidates and then gives those nominees special access to the ballot, ... the parties' procedures constitute state action."<sup>11</sup> When party officials "participate in what is a part of the state's election machinery, they are election officers of the state de facto if not de jure, and as such must observe the limitations of the Constitution."<sup>12</sup>

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<sup>8</sup> 202 F. Supp. 3d 159 (D.D.C. 2016), *aff'd*, 869 F.3d 976 (D.C. Cir. 2017).

<sup>9</sup> *Johnson*, 202 F. Supp. 3d at 173.

<sup>10</sup> *Id.* at 174 (quoting *DeBauche v. Trani*, 191 F.3d 499, 509 (4<sup>th</sup> Cir. 1999)).

<sup>11</sup> *Montano v. Lefkowitz*, 575 F.2d 378, 383 n. 7 (2d Cir. 1978). *See to the same effect*, *Seergy v. Kings County Republican County Comm.*, 459 F. 2d 308 (2d Cir. 1972).

<sup>12</sup> *De La Fuente v. S.C. Democratic Party*, 164 F. Supp. 3d 794, 799 (D.S.C. 2016)(quoting *Rice v. Elmore*, 165 F.2d 387, 391 (4<sup>th</sup> Cir. 1974)).

Similarly, if State law confers on the party the power to select a nominee through a convention, and gives that nominee automatic placement on the general election ballot, the party's conduct of the convention would constitute state action. For example, the Supreme Court held that the conduct of a state convention by the Virginia Republican Party constituted state action making the party subject to the Voting Rights Act in the conduct of that convention.<sup>13</sup> “[S]tate delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party’s action the action of the State.”<sup>14</sup>

### CONCLUSION

In our view, for the reasons set forth above, except in those cases in which a State Democratic Party conditions access to the ballot on agreement to the People’s Pledge, a State Party could, notwithstanding *Citizens United*, use any other tools or resources at its disposal to induce a candidate to adopt the Pledge.

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<sup>13</sup> *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996).

<sup>14</sup> *Id.* at 199 (quoting *Smith v. Allwright*, 321 U.S. 649, 660 (1944))