AFFIDAVIT FOR FLORIDA CHALLENGE NUMBER ONE:
FLORIDA'S DEMOCRATIC UNITED STATES SENATOR, DEMOCRATIC UNITED STATE REPRESENTATES AND MEMBERS OF THE DEMOCRATIC NATIONAL COMMITTEE 'SHALL' BE DELEGATES TO THE 2008 DEMOCRATIC NATIONAL CONVENTION

I, Jon M. Ausman, hereby state the following:

1. My name is Jon M. Ausman;

2. My address is 2202 Woodlawn Drive, Tallahassee, Florida, 32303-3915;

3. My telephone number is 850-321-7799;

4. My agent of record is Jon M. Ausman, Member, Democratic National Committee, 2202 Woodlawn Drive, Tallahassee, Florida, 32303-3915, 850-321-7799, Ausman@embarqmail.com;

5. I am a registered or enrolled Democratic voter in the State of Florida;

6. I am a resident of the State of Florida;

7. I subscribe to the substance, intent and principles of the Charter and Bylaws of the Democratic Party of the United States;

8. On or about Saturday, 25 August 2007, the Rules and Bylaws Committee of the Democratic National Committee (DNC) voted to deny Florida's Democratic United States Senator, Democratic United States Representatives and Members of the Democratic National Committee their right to be delegates to the 2008 Democratic National Convention if the Florida Democratic Party (FDP) did not submit an acceptable delegate selection plan within thirty (30) days of the transmittal by letter of this decision of the Rules and Bylaws Committee to the Florida Democratic Party;

9. On or about Tuesday, 28 August 2007, the Co-Chairs of the DNC Rules and Bylaws Committee transmitted a letter to FDP Chair Karen Thurman stating the FDP Delegate Selection Plan was in non-compliance for "violation of timing" and that the DNC Rules and Bylaws "Committee voted to increase the delegate reduction equal to a 100% reduction of all pledged and unpledged delegates allocated to Florida";

10. The Charter of the Democratic Party of the United States in Article Two states "The National Convention shall be composed of delegates equally divided between women and men. The delegates shall be chosen through processes

which…provide for all of the members of the Democratic National Committee to serve as unpledged delegates" (Article Two, Section 4(h)(i);

11. The Charter of the Democratic Party of the United States in Article Two states "The National Convention shall be composed of delegates equally divided between women and men. The delegates shall be chosen through processes which…permit unpledged delegates consisting of…the Democratic members of the United States Senate and the Democratic members of the House of Representatives" (Article Two, Section 4(h)(iii)2);

12. The Charter of the Democratic Party of the United States in Article Two states "The National Convention shall be composed of delegates equally divided between women and men. The delegates shall be chosen through processes which…permit unpledged delegates consisting of…former Chairs of the Democratic National Committee" (Article Two, Section 4(h)(iii)7);

13. The Charter of the Democratic Party of the United States in Article Ten states "Each official body of the Democratic Party created under the authority of this Charter shall adopt and conduct its affairs in accordance with written rules, which rules shall be consistent with this Charter…." (Article Ten, Section 3);

14. The Charter of the Democratic Party of the United States in Article Ten states "Bylaws of the Democratic Party shall be adopted to provide for the governance of the affairs of the Democratic Party in matters not provided for in this Charter." (Article Ten, Section 2);

15. The Bylaws of the Democratic Party of the United States in Article Two states "In addition to the Committees otherwise provided for in the Charter or in these Bylaws, there shall be the following standing committees of the Democratic National Committee….Rules and Bylaws Committee" (Artilce Two, Section 10(a)(iii));

16. The DNC Rules and Bylaws Committee is the subordinate creation of the Charter of Democratic Party of the United States;

17. The DNC Rules and Bylaws Committee is mandated as an "official body of the Democratic Party created under the authority of this Charter" that it "shall adopt and conduct its affairs in accordance with written rules, which rules shall be consistent with this Charter." (Article Ten, Section 3);

18. The Democratic National Committee shall issue a Call for the Democratic National Convention as mandated in the Charter of the Democratic Party of the United States in Article Three, Section 1(a);

19. The Call for the Democratic National Convention is a subordinate creation of the Charter of the Democratic Party of the United States;

20. The Call for the Democratic National Convention was adopted by the Democratic National Committee on or about Friday, 2 February 2007;

21. The Call for the Democratic National Convention states in Article II "Only delegates and alternates selected under a delegate selection procedure approved by the DNC Rules and Bylaws Committee and in accordance with the rules shall be placed on the Temporary Roll of the 2008 Democratic National Convention." (Article II, A);

22. The Delegate Selection Rules for the 2008 Democratic National Convention was adopted by the Democratic National Committee on or about Saturday, 19 August 2006;

23. The Delegate Selection Rules for the 2008 Democratic National Convention is a subordinate creation of the Charter of the Democratic Party of the United States;

24. The Delegate Selection Rules states "In the event the Delegate Selection Plan of a state party provides or permits a meeting, caucus, convention or primary which constitutes the first determining stage in the presidential nominating process to be held prior to or after the dates for the state as provided in Rule 11 of these rules....none of the members of the Democratic National Committee and no other unpledged delegate allocated pursuant to Rule 8.A from that state shall be permitted to vote as members of the state's delegation." (Rule 20,C,1,a);

25. The Charter of the Democratic Party of the United States in Article Ten states "The Charter may be amended by a vote of a majority of all of the delegates to the National Convention, provided that no such amendment shall be effective unless and until it is subsequently ratified by a vote of the majority of the entire membership of the Democratic National Committee. This Charter may also be amended by a vote of two-thirds of the entire membership of the Democratic National Committee." (Article Ten, Section 1);

26. No amendments to the Charter of the Democratic Party of the United States have been passed allowing the removal of Members of the Democratic National Committee, Democratic Members of the United States Senate and Democratic Members of the United States House of Representatives as delegates to the Democratic National Convention;

27. The motion adopted by the DNC Rules and Bylaws Committee "to increase the delegate reduction equal to a 100% reduction of all pledged and unpledged delegates allocated to Florida" conflicts with the language in the Charter of the Democratic Party of the United States stating that the following shall be delegates: "members of the Democratic National Committee, Democratic members of the United States Senate and the Democratic Members of the House of Representatives, former Chairs of the Democratic National Committee."

28. The remedy I seek is for the DNC Rules and Bylaws Committee to revisit its motion of 25 August 2007 and adopt a motion which "shall be consistent with this Charter" of the Democratic Party of the United States;

29. The remedy I seek is for the DNC Rules and Bylaws Committee to revisit its motion of 25 August 2007 and specifically state the following shall be voting delegates to the 2008 Democratic National Convention as mandated by the Charter of the Democratic Party of the United States: "members of the Democratic National Committee, Democratic members of the United States Senate and the Democratic Members of the House of Representatives, former Chairs of the Democratic National Committee."

30. I have been injured by the action of the DNC Rules and Bylaws Committee in the following specific ways: members of the Democratic National Committee that represent my interests have been denied their mandated right to be delegates; the Democratic Member of the United States Senate who represent my interests has been denied the mandated right to be a delegate; the Democratic Members of the United States House of Representatives who represent my interests has been denied the mandated right to be delegates; the former Chair of the Democratic National Committee who represents the interests of Florida has been denied the mandated right to be a delegate; the Democratic candidates for President of the United States have not campaigned in Florida; the national media has ignored the interests of Florida; and, the opportunity to energize the Democratic base in Florida because of vigorous primary campaigning has been missed;

31. The following is a list witnesses likely to be called to testify in support of the challenge: Karen Thurman, Chair of the Florida Democratic Party (214 South Bronough Street, Tallahassee, Florida, 32301, 850-222-3411); Jon Ausman, Member of the Democratic National Committee (2202 Woodlawn Drive, Tallahassee, Florida, 32303-3915, 850-321-7799); Janee Murphy, Secretary of the Florida Democratic Party (214 South Bronough Street, Tallahassee, Florida, 32301, 813-503-7391); Terrie Brady, Member, Democratic National Committee (214 South Bronough Street, Tallahassee, Florida, 32301, 904-571-2707);

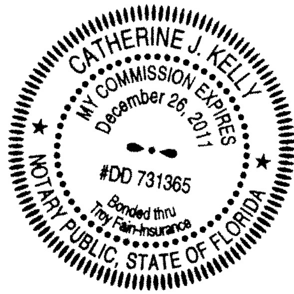
32. The following documents are likely to be offered in support of the challenge: the Charter and Bylaws of the Democratic Party of the United States; the Call for the 2008 Democratic National Convention; Delegate Selection Rules for the 2008 Democratic National Convention; Regulations of the Rules and Bylaws Committee; Summary of Findings on Florida Delegate Selection Plan; correspondence from and to the Co-Chairs of the DNC Rules and Bylaws Committee; correspondence from and to the DNC Secretary; legal documents from Ausman et al v. Browning filed in the Federal District Court of North Florida (4:2007CV00519); correspondence from and to Jon M. Ausman, Member of the Democratic National Committee.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and declare that the facts stated in it are true.

STATE OF FLORIDA
COUNTY OF LEON

Sworn to (or affirmed) and subscribed before me this 12th of March, 2008, by

Jon M. Avesman
(name of person making statement)



Catherine J. Kelly
Signature of Notary Public

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Name of Notary Typed, Printed or Stamped

Personally Known ✓ OR Produced Identification __________
Type of Identification Produced ______________________________

AFFIDAVIT FOR FLORIDA CHALLENGE NUMBER TWO: WHEN A VIOLATION OF TIMING OCCURS BY A STATE PARTY THE NUMBER OF PLEDGED DELEGATES SHALL BE REDUCED BY FIFTY PERCENT (50%)

I, Jon M. Ausman, hereby state the following:

1. My name is Jon M. Ausman;
2. My address is 2202 Woodlawn Drive, Tallahassee, Florida, 32303-3195;
3. My telephone number is 850-321-7799;
4. My agent of record is Jon M. Ausman, Member, Democratic National Committee, 2202 Woodlawn Drive, Tallahassee, Florida, 32303-3915, 850-321-7799, Ausman@embarqmail.com;
5. I am a registered or enrolled Democratic voter in the State of Florida;
6. I am a resident of the State of Florida;
7. I subscribe to the substance, intent and principles of the Charter and Bylaws of the Democratic Party of the United States;
8. The State of Florida Republican dominated legislature passed a bill providing for Florida's presidential preference primary to be moved forward to Tuesday, 29 January 2008, and for the use of optical scan voting machines with a paper verifiable ballot;
9. The Florida Democratic Party opposed moving the primary forward to 29 January 2008 and in written correspondence with the Florida Senate and House asked that if a move occurred it respected the 5 February 2008 window adopted by the Democratic National Committee;
10. Efforts, however belated, by the Democratic leaders of the Senate and House to move the primary to 5 February 2008 or later failed;
11. The 2008 Delegate Selection Rules for the Democratic National Convention were adopted on or about Saturday, 19 August 2006;
12. The Delegate Selection Rules in Rule 20 states "In the event the Delegate Selection plan of a state party provides or permits a meeting, caucus, convention or primary which constitutes the first determining step in the presidential nominating process to be held prior to or after the dates for the state as provided

in Rule 11 of these rules...the number of pledged delegates elected in each category allocated to the state pursuant to the Call for the National Convention shall be reduced by fifty percent (50%), and the number of alternates shall also be reduced by fifty percent (50%)." (Rule 20,C,1,a);

13. The Call for the 2008 Democratic National Convention was adopted by the Democratic National Committee on or about Friday, 2 February 2007;

14. The Call for the 2008 Democratic National Convention assigned a total of 185 pledged delegate votes and 31 alternates to Florida (Appendix B);

15. On or about Saturday, 25 August 2007, the DNC staff issued a review of the Florida Delegate Selection Plan which recommended to the Rules and Bylaws Committee to find the plan in non-compliance because "The material deficiency is entirely related to the date of the presidential preference primary and the resulting violation of timing";

16. The DNC staff review stated "A state Plan that violates the timing provisions of Rule 11 is in Non-Compliance with the Rules and is subject to provisions of Rule 20.C. These sanctions include the automatic reduction of delegates and alternates and the prohibition of presidential candidate campaign activities outlined in Rule 20.C.(1) and the imposition of additional sanctions as provided in Rule 20.C.(5) and Rule 20.C.(6)."

17. On or about Saturday, 25 August 2007, the Rules and Bylaws Committee of the Democratic National Committee (DNC) "voted to increase the delegate reduction equal to a 100% reduction of all pledged and unpledged delegates allocated to Florida";

18. On or about Tuesday, 28 August 2007, the Co-Chairs of the DNC Rules and Bylaws Committee transmitted a letter to FDP Chair Karen Thurman stating the FDP Delegate Selection Plan was in non-compliance for "violation of timing" and that the DNC Rules and Bylaws "Committee voted to increase the delegate reduction equal to a 100% reduction of all pledged and unpledged delegates allocated to Florida" based on Rule 20.C.1.(a), Rule 20.C.5 and Rules 20.C.6 of the 2008 Delegate Selection Rules;

19. The Charter of the Democratic Party of the United States in Article Ten states "Each official body of the Democratic Party created under the authority of this Charter shall adopt and conduct its affairs in accordance with written rules, which rules shall be consistent with this Charter...." (Article Ten, Section 3);

20. The Rules and Bylaws Committee is required by the Charter of the Democratic Party of the United States to "conduct its affairs in accordance with written rules" (Article Ten, Section 3);

21. The 2008 Delegate Selection Rules for the Democratic National Convention state in Rule 20.C.(1).(a) "In the event the Delegate Selection Plan of a state party provides or permits a meeting, caucus, convention or primary which constitutes the first determining stage in the presidential nominating process to be held prior to or after the dates for the state as provided in Rule 11 of these rules…the number of pledged delegates elected in each category allocated to the state pursuant to the Call for the National Convention shall be reduced by fifty (50%) percent, and the number of alternates shall also be reduced by fifty (50%) percent";

22. Rule 20.C.(1).(a) mandates that a timing violation "shall" result in a reduction of the pledged delegates and alternates by fifty percent(50%);

23. The Rules and Bylaws Committee, by imposing a penalty of a one hundred percent (100%) reduction violated Rule 20.C.(1).(a) as the only finding of non-compliance was the timing of the Florida Presidential Preference Primary;

24. The Rules and Bylaws Committee justified the one hundred percent (100%) reduction in Florida's pledged delegates based on 2008 Delegate Selection Rule 20.C.(6);

25. Rule 20.C.(6) states "Nothing in these rules shall prevent the DNC Rules and Bylaws Committee from imposing sanctions the Committee deems appropriate with respect to a state which the Committee determines has failed or refused to comply with these rules where the failure or refusal of the state party in not subject to subsections (1), (2) or (3) of this section C";

26. The only written justification for a penalty against the Florida delegate selection plan was a violation of timing as defined in Rule 20.C.(1);

27. Rules 20.C.(6) specifically states that the Rules and Bylaws Committee shall "not" imposed additional penalties on Florida since it is being penalized under Rule 20.C.(1);

28. The Rules and Bylaws Committee justified the one hundred percent (100%) reduction in Florida's pledged delegates based on 2008 Delegate Selection Rule 20.C.(5);

29. Rule 20.C.(5) states "Nothing in the preceding subsections of this rule shall be construed to prevent the DNC Rules and Bylaws committee from imposing additional sanctions, including, without limitation, those specified in subsection (6) of this section C, against a state party and against the delegate from the state which is subject to the provisions of any of subsections (1) through (3) of this section C, including, without limitation, establishing a committee to propose and implement a process which will result in the selection of a delegation from the affected state which shall (i) be broadly representative, (ii) reflect the state's

division of presidential preference and uncommitted status and (iii) involve as broad participation as is practicable under the circumstances";

30. The only written justification for a penalty against the Florida delegate selection plan was a violation of timing as defined in Rule 20.C.(1);

31. Rule 20.C.(5) specifically states the Rules and Bylaws Committee may impose "additional sanctions including…those specified in subsection (6)";

32. Rule 20.C.(6) specifically states the Rules and Bylaws Committee shall "not" impose additional penalties on Florida since it is being penalized under Rule 20.C.(1);

33. The Call for the Democratic National Convention states in Appendix B that Florida shall have 121 district level pledged delegates, 40 at-large pledged delgates and 24 party leaders and elected officials pledged delegates for a total of 185 pledged delegates (Article B, page 33);

34. The Call for the Democratic National Convention states in Appendix B that Florida shall have

35. A fifty percent (50%) reduction of 185 pledged delegates is 92.5;

36. A fifty percent (50%) reduction of 31 pledged alternates is 15.5;

37. The 2008 Delegate Selection Rules for the Democratic National Convention states "In determining the actual number of delegates or alternates by which the state's delegation is to be reduced, any fraction below .5 shall be rounded down to the nearest who number, and any fraction of .5 or greater shall be rounded up to the next nearest whole number (Rule 20.C.1.(a));

38. The 2008 Delegate Selection Rules for the Democratic National Convention mandates for a timing violation by Florida a reduction of 93 pledged delegates and 16 pledged alternates (Rule 20.C.1.(a));

39. After a fifty percent (50%) reduction Florida should have 92 pledged delegates and 15 pledged alternates;

40. The motion adopted by the DNC Rules and Bylaws Committee "to increase the delegate reduction equal to a 100% reduction of all pledged and unpledged delegates allocated to Florida" is inconsistent with the 2008 Delegate Selection Rules for the 2008 Democratic National Convention;

41. The remedy I seek is for the DNC Rules and Bylaws Committee to revisit its motion of 25 August 2007 and adopt a motion which shall be consistent with the 2008 Delegate Selection Rules for the 2008 Democratic National Convention;

42. The remedy I seek is for the DNC Rules and Bylaws Committee to revisit its motion of 25 August 2007 and specifically state that Florida shall have 92 pledged delegates as voting delegates and 15 alternates to the 2008 Democratic National Convention;

43. The remedy I seek is for the DNC Rules and Bylaws Committee to revisit its motion of 25 August 2007 and specifically state that Florida shall have 185 pledged delegates as voting delegates, three (3) add-on unpledged delegates as voting delegates and 31 alternates to the 2008 Democratic National Convention;

44. I have been injured by the action of the DNC Rules and Bylaws Committee in the following specific ways: Florida is entitled to representation, even if reduced, at the 2008 Democratic National Convention; denial of delegates means Florida shall have no input on the Democratic nominees for President and Vice President, on the 2008 Democratic Platform or on proposed amendments to the Charter and Bylaws of the Democratic National Convention; the Democratic candidates for President of the United States have not campaigned in Florida; the national media has ignored the interests of Florida; and, the opportunity to energize the Democratic base in Florida because of vigorous primary campaigning has been missed;

45. The following is a list witnesses likely to be called to testify in support of the challenge: Karen Thurman, Chair of the Florida Democratic Party (214 South Bronough Street, Tallahassee, Florida, 32301, 850-222-3411); Jon Ausman, Member of the Democratic National Committee (2202 Woodlawn Drive, Tallahassee, Florida, 32303-3915, 850-321-7799); Janee Murphy, Secretaryof the Florida Democratic Party (214 South Bronough Street, Tallahassee, Florida, 32301, 813-503-7391); Terrie Brady, Member, Democratic National Committee (214 South Bronough Street, Tallahassee, Florida, 32301, 904-571-2707);

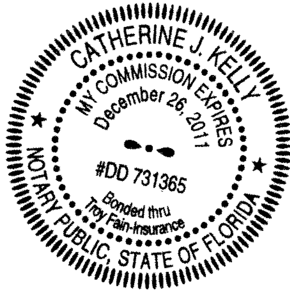
46. The following documents are likely to be offered in support of the challenge: the Charter and Bylaws of the Democratic Party of the United States; the Call for the 2008 Democratic National Convention; Delegate Selection Rules for the 2008 Democratic National Convention; Regulations of the Rules and Bylaws Committee; the DNC Rules and Bylaws Committee staff review of the Florida Delegate Selection Plan; correspondence from and to the Co-Chairs of the DNC Rules and Bylaws Committee; correspondence from and to the DNC Secretary; legal documents from Ausman et al v. Browning filed in the Federal District Court of North Florida (4:2007CV00519); correspondence from and to Jon M. Ausman, Member of the Democratic National Committee.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and declare that the facts stated in it are true.

STATE OF FLORIDA
COUNTY OF LEON

Sworn to (or affirmed) and subscribed before me this 11th of March, 2008, by

____
(name of person making statement)



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Signature of Notary Public

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Name of Notary Typed, Printed or Stamped

Personally Known ✓ OR Produced Identification __________
Type of Identification Produced _______________________________

DNC RULES AND BYLAWS COMMITTEE
IMPLEMENTATION CHALLENGES CONCERNING FLORIDA NATIONAL CONVENTION DELEGATION
FILED BY JON AUSMAN ET AL

STAFF ANALYSIS

Pursuant to Rule 20(B)(2) of the Delegate Selection Rules, Jon M. Ausman, a member of the Democratic National Committee (DNC) from Florida, and other Democrats from Florida, filed two implementation challenges on March 20, 2008.

The first challenge requests the Rules and Bylaws Committee ("RBC") to reinstate all of Florida's unpledged delegates (also known as "superdelegates"). The basis for the challenge is that the Charter of the Democratic Party of the United States (the "Charter") provides that delegates shall be chosen through processes which "provide for all the members of the DNC to serve as unpledged delegates,"[1] and which "permit unpledged delegates" consisting of several other categories including all Democratic Members of Congress and Democratic Governors.

The second challenge claims that the RBC did not have authority, under the Delegate Selection Rules for the 2008 Democratic National Convention (the "Delegate Selection Rules") themselves, to impose any reduction in the number of pledged delegates from Florida beyond the 50% reduction automatically imposed by Rule 20(C)(1)(a). This challenge asks the RBC to "revisit" its action of August 25, 2007 and to allocate to Florida 50% of the pledged delegates and alternates originally provided for in the Call to the 2008 Democratic National Convention (the "Call").

Both of these challenges were properly filed and met the applicable procedural requirements for a properly filed implementation challenge. No adverse party was named in either challenge. Under the circumstances, the Co-Chairs previously determined that the provisions of Regulation 3.4 of the Regulations of the RBC requiring an answer and referral to the State Party were inapplicable.

The purpose of this Staff Analysis is to identify the issues that the Committee would need to address to resolve these Challenges; and to provide background information and analysis with regard to those issues.

Summary of Challenge I

Challenge One cites and relies upon the following provisions of the Charter:

> Article Two, Section 4. The National Convention shall be composed of delegates equally divided between men and women. The delegates shall be chosen through processes which:
> ….
>
> (h) notwithstanding any provision to the contrary in this Section:
>
> (i) provide for all of the members of the Democratic National Committee to serve as unpledged delegates, ...
>
> (iii) permit unpledged delegates consisting of:
>
> 1) the President and Vice President of the United States, if Democrats,
> 2) the Democratic members of the United States Senate and the Democratic members of the House of Representatives,

[1] Charter, Article Two, Section 4(h)(i)

3) the Democratic Governors,
4) former Democratic Presidents and Vice Presidents of the United States,
5) former Democratic Majority and Minority Leaders of the United States Senate;
6) former Democratic Speakers and Minority Leaders of the United States House of Representatives;
7) former Chairs of the Democratic National Committee,
8) such delegates shall not be permitted to have alternates and such delegates shall constitute an exception to Subsection (b) of this Section 4.

In essence, the Challenge contends that these Charter provisions require that all of these categories of individuals be allowed to serve as voting delegates to the Convention. According to the Challenge, since the Delegate Selection Rules have only the status of Bylaws, the provisions of the Charter take precedence over the Delegate Selection Rules. The action of the RBC enforcing the Delegate Selection Rules conflicts with these Charter provisions, it is argued, and is therefore invalid.

Analysis of Challenge I

Challenge One presents issues of interpretation and application of the provisions of the Charter, the Call, and the Delegate Selection Rules.

Background

The language at issue reflects the evolution of the Party's rules concerning the role of Party leaders and elected officials at the National Convention. The 1972 and 1976 Rules did not confer on Party leaders or elected officials any special right or ability to serve as delegates to the National Convention. In fact, one of the Delegate Selection Rules prohibited any person from serving automatically as a delegate by virtue of Party or elected office.

The Winograd Commission, which issued its report in 1978 with respect to the Delegate Selection Rules for the 1980 Convention, summarized the debate over the role of Party leaders and elected officials as follows:

> Some felt certain officials should be made automatic voting delegates because of their role as publicly recognized policy makers. Others point out that, if elected officials choose to run for delegate status, they are in the difficult position of having either to take seats from grass roots supporters in their home districts or to take an at-large seat and thereby further unbalance the composition if they are white males.[2]

In response to these competing concerns, the Winograd Commission recommended, and the DNC adopted, a new delegate selection rule providing for a new category of pledged Party leader and elected official delegates from each state, equal to 10 percent of the state's base delegation.[3]

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[2] Winograd Commission, OPENNESS, PARTICIPATION AND PARTY BUILDING: REFORMS FOR A STRONGER DEMOCRATIC PARTY 100 (1978)
[3] *Id*. at 100-101; 1980 Delegate Selection Rules 7(D)

As of 1980, there were no unpledged delegates. The languages of the Charter—now Article Two, Section 4(g)—provided that delegates were to be chosen through processes which "prohibit unpledged and uncommitted delegates…."

The Hunt Commission, which issued its report in 1982 proposing new Delegate Selection Rules for the 1984 Convention, recommended creating a new category of *unpledged* Party leader and elected official delegates. The provision for what the press now calls "superdelegates" originated with this Hunt Commission recommendation. The Commission explained:

> [We regard] this as an important way to increase the convention's representativeness of mainstream Democratic constituencies. It would help restore peer review to the process, subjecting candidates to scrutiny by those who know them best…..It would strengthen party ties among officials, giving them a greater sense of identification with the nominee and the platform. And the presence of unpledged delegates would help return decision-making discretion and flexibility to the Convention.[4]

The Hunt Commission recommended, and the DNC adopted, a new delegate selection rule conferring automatic, unpledged delegate status on each State Party chair and vice-chair and 3/5 of the Members of the U.S. Senate and U.S. House Democratic Caucuses.[5]

The language of the Charter was amended to authorize the DNC to allocate delegate positions for "Democratic elected public officials" designated in the Call to the Convention.[6]

In 1986, following the work of the Fairness Commission, chaired by Don Fowler, the DNC adopted a further change to the Delegate Selection Rules for the 1988 Convention, to provide that automatic unpledged delegate status would be conferred on all DNC members; all Democratic Governors; and 4/5 (rather than 3/5) of the Members of the Democratic Caucuses of the U.S. Senate and U.S. House. A conforming change to the Charter was made at that time, providing that "delegates shall be chosen through processes which…notwithstanding any provision to the contrary in this Section: (i) provide for all of the members of the Democratic National Committee to serve as unpledged delegates."[7]

The Delegate Selection Rules were further amended for 1992 to provide for all Democratic Members of Congress and certain former senior party officials to serve as automatic unpledged delegates.

Discussion of Analysis

The language of the Charter provides that the delegates "*shall* be chosen through processes which. . . *provide for* all of the members" of the DNC to serve as unpledged delegates.[8] The language further provides that the delegates "*shall* be chosen through processes which. . . *permit* unpledged delegates

[4] Report of the Commission on Presidential Nomination 16 (1982)
[5] 1984 Delegate Selection Rule 8(A)
[6] Charter, Article 2, Section 5
[7] Charter, Article Two, Section 4(h)(i)
[8] Charter, Article Two, Section 4(h)(i)

consisting of" all of the Members of Congress and Democratic Governors, and certain other officials and former officials.[9]

Based solely on the plain language of the Charter, then, it can be argued that the Delegate Selection Rules *must* provide for all DNC Members to serve as automatic unpledged delegates but that the DNC itself can, in the Delegate Selection Rules, determine whether to confer such status on Members of Congress and Democratic Governors and the other specified officials in Article Two, Section 4(h)(iii). The Charter can be amended only by a two-thirds vote of the full membership of the DNC,[10] whereas the Delegate Selection Rules, which have the status of bylaws, were adopted by a majority of the members of the DNC. Arguably, then, Rule 20(C)(1) of the Delegate Selection Rules was invalidly adopted insofar as it provides that, if a State Party violates Rule 11 (the "Timing Rule"), none of the members of the DNC from that state are permitted to serve as delegates to the Convention.

On the other hand, it can be argued that taken as a whole, the language of the Charter cannot fairly be read to require that *any* category of delegates actually be seated at the Convention if that category is chosen under a Delegate Selection Plan which itself violates the Delegate Selection Rules. The language of Article Two, Section 4 of the Charter sets out the basic principles to which the Delegate Selection Rules must conform: full, timely and equal opportunity to participate (subsection a); fair reflection of presidential preference (subsection b); prohibition of the unit rule (subsection c); prohibition of fees and poll taxes (subsection d); restriction of participation to Democrats only (subsection e); prohibition of processes beginning before the calendar year of the Convention (subsection f); and prohibition of *any* unpledged delegates (subsection g).

As noted above, after these fundamental principles were set out in the Charter, language was added in Article Two, Section 4, Subsection (h) that "notwithstanding" the general absolute prohibition of *any* unpledged delegates, the "processes"' *i.e.*, the Delegate Selection Rules, should "provide for all of the members of the Democratic National Committee to serve as unpledged delegates." It could well be the case that, this language was simply intended to mean that the DNC would be *permitted* to confer automatic unpledged delegate status on all members of the DNC, notwithstanding the general ban on unpledged delegates.

Indeed, it could be contended that the Charter language could *not* have been intended to mean that all DNC members are automatically entitled to serve as delegates even if they were chosen through a process or certified under a delegate selection plan that violates the Delegate Selection Rules or provisions of the Bylaws. For example, if the DNC Members from a state were chosen through a process that is not one of those listed in Article Two, Section 3(a) of the Bylaws, presumably the Secretary of the DNC could refuse to accept the certification of such DNC Members as unpledged delegates, despite the language of Charter Article Two, Section 4(h)(i).

This view may find further support in Article Two, Section 2 of the Charter which provides that, in the event that a state law conflicts with the Charter or "other provisions adopted pursuant to authority of the Charter," which would include the Delegate Selection Rules, "State Parties shall be required to take provable positive steps to bring such laws into conformity and to *carry out such*

[9] Charter, Article Two, Section 4(h)(iii)
[10] Charter Article Ten, Section 1

other measures as may be required by the National Convention or *the Democratic National Committee*" (emphasis added). It could be contended that the DNC, in approving Rule 20(C)(1) of the Delegate Selection Rules, was mandating that in a state in which state law set the date of a presidential preference primary in violation of the Delegate Selection Rules the State Democratic Party would be required to run an alternative process complying with those Rules. Under this interpretation, in imposing the automatic sanctions of Rule 20(C)(1), the DNC was exercising authority conferred by the Charter itself: the authority to require a State Party to "carry out such other measures" that the DNC sees fit, to ensure that Party rules prevail over state law.

Summary of Challenge II

Challenge Two argues, in essence, that the RBC acted beyond its authority in imposing sanctions on the Florida Democratic Party beyond those imposed automatically under Rule 20(C)(1). The Challenge implies that, in order to impose a penalty in addition to the penalties of Rule 20(C)(1), there must be some reason or basis in addition to the violation of the Timing Rule. According to the Challenge, the RBC, "by imposing a penalty of a one hundred percent (100%) reduction violated Rule 20(C)(1)(a) as the only finding of non-compliance was the timing of the Florida Presidential Preference Primary."[11]

The Challengers acknowledge that Rule 20(C)(5) authorizes the RBC to impose additional sanctions against a state Party for violation of the Timing Rule, proportional representation or the threshold.[12] At the same time, however, the Challengers point to the language of Rule 20(C)(6), which authorizes the RBC to impose additional sanctions, specifically including "reduction of the state's delegation," only where the "failure or refusal of the State Party is not subject to subsections (1)(2) or (3) of this section C," meaning the violation did *not* involve the Timing Rule, proportional representation or the threshold.[13]

Analysis of Challenge II

Resolution of Challenge Two would require the RBC to address at least four separate issues:

(1) Whether the RBC had authority to impose the additional sanction of 100% reduction of the State's delegation.

(2) If the RBC grants the Challenge in whole or in part and allows pledged delegates to be seated, whether the allocation of delegate positions among presidential preferences should be based in any way on the results of the January 29, 2008 state-run presidential preference primary.

(3) If the RBC grants the Challenge by revoking the additional challenge and leaving only a 50% reduction in pledged delegates in place, and uses the results of the primary, whether the RBC has the authority to seat all of the individual delegates

[11] Affidavit for Florida Challenge Number 2 ("Challenge No. 2") ¶23.
[12] Challenge No. 2 ¶29
[13] Challenge No. 2 ¶¶ 27, 32.

selected by FDP in accordance with its Delegate Selection Plan, but grant each delegate a one-half vote.

(4) If the RBC does not have or does not choose to exercise such authority, how the remaining 50% delegate positions are allocated among presidential preferences: specifically, whether the allocation of positions be applied to the full complement of delegates with the 50% reduction then applied after such allocation is made; or whether instead the 50% reduction should be applied to the number of delegate positions in each category, followed by the allocation among presidential preferences.

(5) If either option under (4) is chosen, how will the pledged delegate positions be filled (i.e. slating of delegates).

Issue 1: Authority to Impose of Additional Sanctions

Challenge Two is based on an interpretation of Rule 20(C) that emphasizes the fact that between the two provisions authorizing additional sanctions - Rule 20(C)(5) and 20(C)(6) - the specific subsection referencing "reduction of the state's delegation" is Subsection (C)(6). That subsection applies only in the case where a State Party's noncompliance is for a reason *other* than violation of the Timing Rule, proportional representation or the threshold. The Challengers believe that this structure indicates an intent to limit the Committee's authority to reduce a state's delegation to situations where rules *other* than the Timing Rule, proportional representation or the threshold have been violated.

On the other hand, this argument would seem to ignore the plain language of Rule 20(C)(5), which provides that "Nothing in the preceding subsections of this rule shall be construed to prevent the DNC Rules and Bylaws Committee *from imposing additional sanctions*, including without limitation those specified in subsection (6)," against a State Party "which *is* subject to the provisions of any of subsections (1) through (3). . ." (emphasis added). Rule 20(C)(5) thus expressly confers on the RBC specific authority to impose "additional sanctions" on a State Party which "is subject to" subsection (1), *i.e.*, which has violated the Timing Rule. Those additional sanctions may include those specified in subsection (6), which as noted specifically refers to "reduction of the state's delegation." Thus it seems clear that the RBC had authority to further reduce the pledged delegation of the Florida Democratic Party which had already become subject to the automatic sanctions of Rule 20(C)(1).

The legally more defensible view seems to be that the RBC had authority, in its discretion, to impose the additional sanction that it did impose in August 2007, but by the same token, that the RBC now has discretion to revoke those additional sanctions, thereby leaving in effect the automatic sanction of Rule 20(C)(1), *i.e.*, a 50% reduction in pledged delegates.

Issue 2: Discussion of Use of Results of Jan. 29, 2008 State-Run Primary

Challenge Two as submitted requests that the number of pledged delegate positions simply be reduced by 50% from 185 pledged delegate positions to 92 delegate positions. The Challenge does not address how these delegate positions would be allocated among presidential preferences.

The initial issue presented is whether, if *any* pledged delegates from Florida are to be seated, whether those delegate positions should be allocated based on the results of the January 29, 2008 primary.

On the one hand, it can be argued that since the timing of that primary violated the Timing Rule, the Delegate Selection Rules require that it be treated as non-binding, and therefore that the results of the primary simply should not be taken into account in any way. Further, a case can be made that the RBC implicitly deemed the primary to be non-binding. The RBC took the position that Delegate Selection Rule 20(C)(1)(b) — depriving a presidential candidate of pledged delegates from a state in violation of the Timing Rule if that candidate campaigns in the state — was inapplicable because as a result of the RBC's imposition of a 100% reduction in delegates, there simply were no delegates to be awarded and so campaigning would not matter.

On the other hand, if the RBC does determine that Florida should be allowed to send some pledge delegates to the Convention (leaving aside for the moment the separate issue of how many), there must be *some* basis for allocating those delegates among presidential candidates (preferences). A fundamental principle of delegate selection is expressed in the provision of the Charter requiring that delegates be chosen through processes which "assure that delegations fairly reflect the division of preferences expressed by those who participate in the Presidential nominating process."[14] Similarly, Rule 13(A) of the Delegate Selection Rules provides that, "Delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters…."

In this case, it can be argued, there is no basis for ensuring "fair reflection" of presidential preference other than to use the results of the January 29 primary. Further, under the law establishing the January 29 primary, presidential candidates were not required to take any affirmative steps in order for their names to appear on the primary ballot, and were not permitted under applicable state law to withdraw their names unless they declared themselves no longer a candidate for the nomination.[15] Thus, the names of all those seeking the Democratic nomination for President in fact appeared on the ballot for the January 29 primary.

Issue 3: Discussion of Authority to Permit Delegates to Cast Half Votes

If the RBC does decide to use the results of the primary to allocate delegate positions among presidential candidates, the next question presented is how to do so.

If the RBC decides to grant Challenge Two, leaving in place a 50% automatic reduction in pledged delegates, one approach would be to restore the total number of pledged delegate positions but simply allow each delegate to cast a half-vote. The issue is whether the RBC has authority to authorize such a means of effectuating the 50% reduction.

On the one hand, there is no specific authority conferred in the Call, the Charter or Bylaws or the Delegate Selection Rules for the RBC to allow delegates to cast half-votes. Furthermore, the

[14] Charter, Article Two, Section 4(b)
[15] Section 103.101(2), Florida Statutes (2008)

language of Rule 20(C)(1) and Rule 20(C)(8) appears to contemplate that the actual number of pledged delegate positions would be reduced, rather than allowing the full number of pledged delegates allocated to the state to cast half votes. Rule 20(C)(8), which allows a State Party to set out in its Delegate Selection Plan a method and procedure by which the 50% reduction of a delegation under Rule 20(C)(1) will be accomplished, further provides that if the State Party does not do so, then the RBC "shall, by lottery, or other appropriate method determined by the DNC Rules and Bylaws Committee, determine which delegates and alternates shall not be a part of the state's delegation."

On the other hand, the Delegate Selection Rules appear to confer broad authority on the RBC to determine exactly how to implement the 50% reduction in pledged delegates imposed by Rule 20(C)(1)(a). While the Rule mandates that "the number of pledged delegates elected in each category allocated to the state pursuant to the Call for the National Convention shall be reduced by fifty (50%) percent," the Rule does not actually specify whether the reduction is to be accomplished on the basis of delegate positions or delegate votes. Further, Rule 20(C)(8), while as noted apparently contemplating a reduction in delegate positions, rather than in delegate votes, does not limit the RBC to such an approach but confers on the RBC authority to require the State Party to follow any "other appropriate method determined by" the RBC.

Issue 4: Discussion of Allocating Remaining Delegate Positions Among Presidential Preferences Based on Primary Results

If the RBC grants the Challenge, leaving in place a 50% reduction, and uses the results of the primary, but does not seat all pledged delegates with half-votes, the question would remain as to how to allocate the reduced number of delegate *positions* among presidential candidates.

Rule 20(C)(1)(a) simply states that "the number of pledged delegates elected in each category allocated to the state pursuant to the Call shall be reduced by fifty (50%) percent…." Rule 20(C)(8) provides that a state party may provide in its Delegate Selection Plan "the specific method and procedures by which it will reduce its delegation pursuant to this Rule 20 in the even the state party …becomes subject to this Rule 20 by which categories of delegates must be reduced by fifty (50%) percent….." The FDP's Delegate Selection Plan does not set out any such method or procedures.

The specific question raised by this language is whether the allocation of delegate positions among presidential candidates should be made *before* or *after* this reduction in delegate positions is effected.

If allocation is made before, then the full original number of delegate positions based on the results of the January 29 primary would be allocated based on the primary results, in each category, as if there had been no sanction, and then the total number of pledged delegates awarded to each candidate would simply be cut in half. This method would produce roughly the same result, in terms of allocation, as seating a full delegation allocated based on the primary results and allowing each pledged delegate to cast a half vote.

If allocation is made after, then the number of pledged delegates, district by district, would first be cut in half; the number of at-large delegates would be cut in half; the number of pledged Party leader and elected official (PLEO) delegates would be cut in half; and *then* the allocation would be

made based on the district by district primary results for the district-level delegates and based on the statewide results for the at-large and PLEO delegates. An argument in favor of this approach is that it seems more faithful to the literal, plain language of Rule 20(C)(1)(a), which appears to contemplate that the number of pledged delegate *positions* in each category will be reduced as a first step, *before* the allocation of positions among presidential preferences is made.

Issue 5: Filling Delegate Positions

As noted, the FDP has completed the selection of delegates as if no sanction had been imposed, filling all delegate positions originally provided by the Call, and allocating those positions based on the results of the Jan. 29 primary. Several issues are presented with respect to the status of that process.

First, reportedly the Obama campaign did not participate at all in the selection process, including the candidate right of approval process, because the campaign did not recognize the legitimacy of the primary. The question is whether the delegate positions allocated to Sen. Obama should be filled anew, through a process involving new filings by delegate candidates and the exercise of candidate right of approval by the Obama campaign.

Second, if the RBC grants Challenge No. 2 but does not seat the full delegation with one-half votes, then some delegates already chosen will be seated and others will not be. The question is how that determination will be made. One possibility is to require the FDP quickly to submit, for RBC approval, a method for making these determinations, as contemplated by Rule 20(C)(8) of the Delegate Selection Rules. Another possibility would be simply for the RBC to mandate that the highest vote getters of the appropriate gender in each category be awarded the delegate positions to which the FDP is entitled as a result of the resolution of the Challenge.

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May 12, 2008

Alexis Herman
James Roosevelt
Co-Chairs
Rules and Bylaws Committee
Democratic National Committee
430 S. Capitol St., S.E.
Washington, D.C. 20003

Dear Co-Chairs Herman and Roosevelt:

Enclosed please find a challenge filed on behalf of the Michigan Democratic Party (MDP) as authorized by its Executive Committee at its meeting on May 7, 2008.

The MDP challenges the decision of the Rules and Bylaws Committee ("RBC") disqualifying 100% of the Convention delegates from Michigan. The MDP requests that the RBC reconsider and reverse its decision of December 3, 2007 and now order that the entire 157-member Michigan delegation to the 2008 Democratic National Convention be seated with full voting strength. The MDP further requests that the 128 pledged delegates be allocated 69 for Hillary Clinton and 59 for Barack Obama.

The Michigan Democratic Party requests that the RBC consider this challenge at its May 31, 2008 meeting.

The challenge and petition filed by Joel Ferguson et al concerning the seating of the Michigan delegation is withdrawn.

Sincerely,

Mark Brewer

Joel Ferguson

cc: Executive Committee
Delegate Working Group

PAID FOR BY THE MICHIGAN DEMOCRATIC STATE CENTRAL COMMITTEE, 606 TOWNSEND, LANSING, MI 48933, 517-371-5410
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Challenge of the Michigan Democratic Party: Michigan's Entire 157-Member Delegation to the 2008 Democratic National Convention Should Be Seated at Full Voting Strength, With the Pledged Delegates Allocated <u>69 for Hillary Clinton and 59 for Barack Obama</u>

Statement of Facts

1. On August 30, 2007, the Michigan Legislature approved a January 15, 2008 presidential primary date. The Governor signed the legislation.

2. The Michigan Democratic Party decided to use that primary to allocate its delegates to the 2008 Democratic National Convention.

3. On or about December 3, 2007, the Rules and Bylaws Committee of the Democratic National Committee (DNC), through its Co-Chairs, informed Mark Brewer, Chair of the Michigan Democratic Party that, as a result of its finding of Non-Compliance and violation of timing, the RBC had voted a delegate reduction of 100% of all pledged and unpledged delegates allocated to Michigan.

4. Absent the penalty, Michigan's state delegation would include 128 pledged and 29 unpledged delegates, of whom two are unpledged add-ons.

5. On January 15, 2008, Michigan held its Democratic Presidential primary.

6. Approximately 600,000 voters cast their ballots in the Michigan Democratic Presidential Primary. This compares to the approximately 160,000 who participated in the 2004 presidential process.

7. Hillary Clinton received 55% of the primary vote making her eligible for 73 of Michigan's 128 pledged delegates to the 2008 Democratic National Convention.

8. Barack Obama voluntarily withdrew his name from the primary ballot. His and John Edwards supporters organized efforts to cast votes for Uncommitted status which received 40% of the votes cast making it eligible for 55 pledged delegates to the National Convention.

9. The rest of the candidates on the ballot received a total of 5%.

10. For the reasons stated more fully below and in order to facilitate accommodation of the various interests and competing claims regarding the allocation of pledged delegates to the National Convention, the Executive Committee of the MDP proposes that the apportionment of pledged delegates should be 69 for Hillary Clinton and 59 for Barack Obama. This would reduce Clinton's 73 delegates to which she was entitled under the January 15 primary results to 69.

11. This compromise recognizes and uses in part the results of the January 15 primary to allocate the Michigan delegates.

I. The Entire 157-Member Michigan Delegation Should Be Seated At Full Voting Strength.

"We will fight, we will contest and we will win the state of Michigan."
-John McCain
Rochester Hills, MI
May 7, 2008

Michigan Democrats have already endured a substantial penalty for moving their primary to January 15th. There have been no visits of any kind by Barack Obama to Michigan since July of 2007, nearly 10 months. Hillary Clinton's few visits during that same period have been almost exclusively private fundraising events.

Further punishment in the form of no Michigan delegation or a reduced Michigan delegation at the National Convention will only aid the Republicans in their effort to win Michigan in November.

Michigan has been and will be a battleground state. There is no Electoral College formula for a Democrat to win the White House which does not include Michigan's 17 electoral votes.

As indicated by the quote above, Republicans intend to contest Michigan. John McCain has made several visits to Michigan, most recently on May 6 and 7. Republicans in the state continually point to the absence of the Democratic candidates and the 100% delegation penalty imposed by the RBC as evidence that Democrats do not care about Michigan and why voters should vote Republican.

Because Michigan Democrats have already suffered a substantial penalty and because further punishment will only hinder efforts to win Michigan for the Democratic nominee in November, the entire 157-member Michigan delegation should be seated at full voting strength.

II. The Pledged Delegates Should Be Allocated 69 For Hillary Clinton And 59 For Barack Obama.

A group of 4 prominent Michigan Democrats – Senator Carl Levin, Congresswoman Carolyn Cheeks-Kilpatrick, UAW President Ron Gettelfinger and National Committeewoman Debbie Dingell – was asked by Governor Granholm to help resolve the dispute over the seating of the Michigan delegation. The group of 4 came to be known as the Delegate Working Group.

This is their analysis and recommendation as to the allocation of pledged delegates.

The Clinton campaign has taken the position that the results of the January 15 primary should be honored and that Clinton should receive 73 pledged delegates in accordance with the vote she received. The Obama campaign has taken the position that the January 15 primary results should be ignored and that the 128 pledged delegates should be seated but evenly divided between the two candidates.

Both candidates have a basis for their argument. The January 15 primary result was flawed because Obama's name was not on the ballot. He took his name off the ballot. As a result, that Working Group did not totally agree with the Clinton campaign's position that the outcome of the primary should be honored and that the pledged delegates should be apportioned 73/55 (Clinton/Obama).

At the same time, the Working Group did not accept the position of the Obama campaign that the primary should be totally ignored and the pledged delegates should be evenly apportioned 64/64 between the two candidates, given the fact that almost 600,000 Democrats voted in the January 15 primary, 55% of whom voted for Clinton and 45% of whom voted for Uncommitted or other candidates.

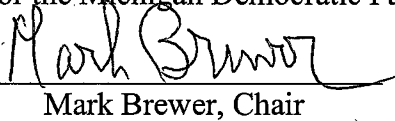
Based on this analysis, the Working Group recommended that the pledged delegates be apportioned 69 to Clinton and 59 to Obama. That approach splits the difference between the 73/55 position of the Clinton campaign and the 64/64 position of the Obama campaign, based on the Working Group's belief that both sides have fair arguments about the Michigan primary.

The Executive Committee of the MDP considered this recommendation of the Working Group at its meeting of May 7, 2008 and voted overwhelmingly to endorse it.

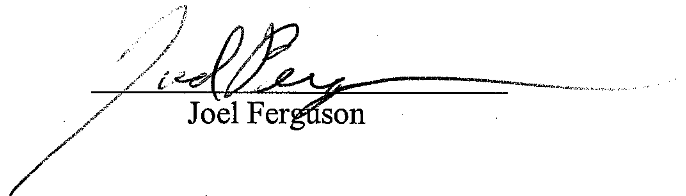
III. Remedy

For all these reasons, the Michigan Democratic Party respectfully requests that Michigan's entire 157-member delegation to the 2008 Democratic National Convention be seated at full voting strength, with the pledged delegates allocated 69 for Hillary Clinton and 59 for Barack Obama.

For the Michigan Democratic Party:



Mark Brewer, Chair



Joel Ferguson

May 12, 2008

DNC RULES AND BYLAWS COMMITTEE
IMPLEMENTATION CHALLENGES CONCERNING MICHIGAN NATIONAL CONVENTION DELEGATION
FILED BY MICHIGAN DEMOCRATIC PARTY

STAFF ANALYSIS

Pursuant to Rule 20(B)(2) of the Delegate Selection Rules, the Michigan Democratic Party ("MDP") filed an implementation challenge on May 12, 2008. The Challenge requests that the Rules and Bylaws Committee ("RBC") reconsider and reverse its decision of December 3, 2007 and order that the entire 157-member Michigan delegation to the 2008 Democratic National Convention be seated with full voting strength. The MDP also requests that of the 128 pledged delegates, 69 be allocated to Senator Hillary Rodham Clinton and 59 be allocated to Senator Barack Obama.

This challenge was properly filed and met the applicable procedural requirements for a properly filed implementation challenge. No adverse party was named in the challenge. Under the circumstances, the Co-Chairs previously determined that the provisions of Regulation 3.4 requiring service of an answer and referral to the State Party were inapplicable.

The purpose of this Staff Analysis is to identify the issues that the Committee would need to address to resolve this Challenge; and to provide background information and analysis with regard to those issues.

Summary of Challenge

As noted, the Challenge seeks to have the RBC reverse its decision of December 3, 2007 and "to order that the entire 157-member Michigan delegation to the 2008 Democratic National Convention be seated with full voting strength."[1]

The Challenge notes that the MDP decided to use, to allocate its pledged delegates to the National Convention, a state-run presidential preference primary held on January 15, 2008. The timing of that primary violated Rule 11 of the Delegate Selection Rules (the "Timing Rule"). The RBC decided to impose a delegate reduction of 100% of the entire delegation.[2] The Challenge does not indicate that the State Party's decision to use the January 15, 2008 primary comes after the State Party originally planned to conduct its own Party-run primary on February 9, 2008.

The basis for the challenge is that "Michigan Democrats have already endured a substantial penalty for moving their primary to January 15th;[3] that "[f]urther punishment in the form of no Michigan delegation or a reduced Michigan delegation at the National Convention will only aid the Republicans in their effort to win Michigan in November;"[4] and that "Michigan has been and will be a battleground state."[5]

With respect to the allocation of delegate positions among presidential preferences, the Challenge notes that the name of Senator Hillary Clinton appeared on the ballot for the January 15 primary, but that Senator Barack Obama "voluntarily withdrew his name from the primary ballot." According to the Challenge, Senator Obama's campaign and the campaign of former Senator John

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[1] Cover Letter from Michigan Democratic Party ("MDP") Chair Mark Brewer to RBC Co-Chairs, May 12, 2008
[2] Challenge ¶¶1-3
[3] Challenge §I
[4] *Id.*
[5] *Id.*

Edwards "organized efforts to cast votes for Uncommitted status which received 40% of the votes cast…."[6]

According to the Challenge, Senator Clinton's campaign has taken the position that the results of the January 15 primary should be honored and that Senator Clinton should receive 73 pledged delegates based on the results of the primary. The Challenge indicates that Senator Obama's campaign has taken the position that the January 15 primary results should be ignored and that the 128 total pledged delegates should be allocated evenly between the two presidential candidates, meaning that Senator Clinton would receive 64 pledged delegates and that Senator Obama would receive 64 pledged delegates.

The Challenge proposes that 69 pledged delegates should be allocated to Senator Clinton and 59 to Senator Obama.

Analysis of Challenge

Resolution of this Challenge would require the RBC to address at least six separate issues:

1. Whether the RBC has authority to restore 100% of the MDP's delegate positions as requested in the Challenge.

2. If the RBC restores any delegate positions, whether the allocation of delegate positions among presidential preferences should in any way be based on the results of the January 15, 2008 state-run presidential preference primary.

3. If the allocation is based in any way on the results of that primary, how that allocation should be determined given that most of the active candidates then seeking the nomination did not appear on the ballot for that primary.

4. If the RBC grants the Challenge by revoking the additional sanctions and leaving only a 50% reduction in pledged delegates in place, and uses the results of the primary, whether the RBC has the authority to restore the full number of delegate positions to the MDP but grant each delegate a one-half vote.

5. If the RBC decides not to restore all delegate positions with one-half votes, how will the remaining 50% delegate positions be allocated among presidential preferences: specifically, whether the allocation percentages should be applied to the full complement of delegates with the 50% reduction then applied after such allocation is made; or whether instead the 50% reduction should be applied to the number of delegate positions in each category, followed by the allocation among presidential preferences.

6. If either option under (5) is chosen, how will the pledged delegate positions be filled (i.e. slating of delegate candidates).

Issue 1: Discussion of Authority to Restore 100% of MDP's Delegate Positions

[6] Challenge, Statement of Facts ¶8

As noted, the Challenge does not address the RBC's decision, on December 3, 2007, to impose a 100% reduction in the MDP's delegation, but rather requests that 100% of the delegate positions be restored, at full voting strength, based on political considerations.

An initial question presented by this request is the scope of the authority of the RBC. Rule 20(C)(1) of the Delegate Selection Rules for the 2008 Democratic National Convention (the "Delegate Selection Rules") provides that if a State Party violates the Timing Rule, the number of pledged delegates elected in each category allocated to the State under the Call to the 2008 Democratic National Convention (the "Call") "*shall* be reduced by fifty (50%) percent. In addition, none of the members of the Democratic National Committee ("DNC") and no other unpledged delegate …from that state shall be permitted to vote as members of the state's delegation" (emphasis added). Rule 20(C)(4) further provides that once the RBC determines that a State Party has violated the Timing Rule, "the reductions required under those subsections [Rule 20(C)(1), (2) & (3)] shall become effective automatically and immediately and without further action of the DNC Rules and Bylaws Committee, the Executive Committee of the DNC, the DNC or the Credentials Committee of the Democratic National Convention."

In imposing the 100% reduction in the delegation, the RBC was acting pursuant to its authority under Rule 20(C)(5), which provides that nothing in the automatic sanction provisions "shall be construed to prevent the DNC Rules and Bylaws Committee from imposing additional sanctions, including, without limitation, those specified in subsection (6) of this section C…. against a state party and against the delegation from the state which is subject to the provisions of any of subsection (1) through (3)…." Subsection (6) of Section C authorizes the imposition of specific sanctions including "reduction of the state's delegation."

Based on this language, a strong argument can be made that, while the RBC has authority to revoke the discretionary additional sanctions imposed under Rule 20(C)(5), the RBC cannot revoke or prevent the operation of the automatic sanction provision of Rule 20(C)(1) which, by its terms and the terms of Rule 20(C)(4), takes effect without any action of the RBC.

To be sure, the Credentials Committee of the Convention is vested with broad authority, under the, to "determine and resolve questions concerning the seating of delegates and alternates to the Convention." As the Party's highest authority, the Convention itself, on the recommendation of the Credentials Committee, could arguably determine that the MDP should be provide all the delegate positions originally allocated to it, without regard to the sanctions imposed by the Delegate Selection Rules. By contrast, however, the RBC's authority is limited to hearing challenges regarding alleged violations of an approved Delegate Selection Plan, Delegate Selection Rules 20(B)(2), and in resolving such challenges the RBC is limited to finding that actions taken in the delegate selection process comply or do not comply with the State Party's delegate selection plan and to requiring corrective action to bring about compliance.[7]

For these reasons, it seems clear that while the RBC could revoke its additional sanctions, leaving in place the automatic sanctions of Rule 20(C)(1), it does not have authority to reverse or prevent the imposition of those automatic sanctions.

[7] *Id*. 20(B)(3)

One caveat to this conclusion is the argument that Rule 20(C)(1) can be applied so as to deprive members of the DNC and other individuals of the right to attend the Convention as unpledged voting delegates. Although it was not made in this challenge, there is a countervailing argument that unpledged delegates have a right to attend the Convention as voting delegates by virtue of the language of the Charter, Article Two, Section 4(h). That language provides that delegates "shall be chosen through processes which," among other things, "provide for all of the members of the Democratic National Committee to serve as unpledged delegates." This argument is analyzed in the separate staff analysis of the Challenge submitted by Jon Ausman et al. regarding the seating of delegates from Florida. As noted in that Analysis, there is merit to both positions—that the RBC does have power, by virtue of the Rules, to preclude the unpledged delegates from serving at the Convention and that it does not have such power by virtue of the Charter.

Issue 2: Discussion of Use of Results of January 15, 2008 Primary

If the RBC determines that any of the pledged delegate positions should be restored to the MDP, the first question presented is whether the results of the January 15, 2008 primary should be used in any way in allocating the results.

On the one hand, if the RBC does determine that Michigan should be allowed to send some pledged delegates to the Convention, there must be some basis for allocating those delegates among presidential candidates (preferences). A fundamental principle of delegate selection is expressed in the provision of the Charter requiring that delegates be chosen through processes which "assure that delegations fairly reflect the division of preferences expressed by those who participate in the Presidential nominating process."[8] Similarly, Rule 13(A) of the Delegate Selection Rules provides that, "Delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters…." In this case, it can be argued, there is no basis for ensuring "fair reflection" of presidential preference other than to use the results of the January 15 primary.

On the other hand, it can be argued that the primary as a whole could not possibly have served as a "fair reflection" of presidential preference because most of the candidates then running for the nomination were not on the ballot. Under the law establishing the January 15, 2008 presidential preference primary, any presidential candidate that did not wish his or her name to appear on the ballot could cause his or her name not to appear on the ballot by filing an affidavit with the Secretary of State.[9] Pursuant to this provision, all candidates seeking the nomination at that time withdrew their names from the presidential primary ballot with the exception of Senator Clinton, Senator Christopher Dodd, U.S. Rep. Dennis Kucinich and former Senator Mike Gravel.

The result of the primary was that only two presidential preferences exceeded the 15% threshold: Senator Clinton and "Uncommitted."

Issue 3: Allocation If Primary Results Are Used

The Challenge requests that a specific number of pledged delegate positions, in the aggregate, be awarded to Senator Clinton and to Senator Obama, respectively. Even if the RBC determined that

[8] Charter, Article Two, Section 4(b)
[9] MCLS §168.615a(1)

the results of the January 15, 2008 primary should be used to allocate delegate positions, however, it is far from clear that RBC would have authority simply to award delegate positions to any preferences other than Senator Clinton and "Uncommitted."

The Challenge alleges that Senator Obama's "and John Edwards supporters organized efforts to cast votes for Uncommitted status……"[10] Nevertheless, there is no specific authority whatsoever in the Delegate Selection Rules or the Call for the RBC to award delegate positions won by the "Uncommitted" preference to a particular candidate or candidates. To the contrary, the Charter, Article Two, Section 4(g), provides that "delegates or alternate expressing an uncommitted preference shall be permitted to be elected at the district level, if such preference meets the applicable threshold and qualifies for at large or similar delegates or alternates, such at large or similar delegates or alternates shall be allocated to that uncommitted preference as if it were a presidential candidate."

On the other hand, it can be argued that the voters expressing the "Uncommitted" preference were expressing a preference for at least one of the candidates whose names did not appear on the January 15 ballot, rather than rejecting the entire field. Therefore, following the principle of fair reflection of presidential preference, it can at least be said that the "Uncommitted" delegate positions should be considered as being allocated *collectively* to the candidates whose names did not appear on the ballot: Senator Barack Obama, former Senator John Edwards, Senator Joseph Biden and Governor Bill Richardson.

Based on this logic, a strong argument can be made that in awarding delegate positions to "Uncommitted" status in the unusual circumstances presented by the Michigan challenge, the RBC would at least have the authority to make special provisions for the exercise of candidate right of approval in the selection of delegates to fill these pledged "Uncommitted" positions. The Delegate Selection Rules clearly require that "Uncommitted" be treated like any other presidential preference, including with respect to candidate right of approval. Rule 12(E) provides that delegate candidates removed from the list of bona fide supporters by a presidential candidate representative cannot "be elected as a delegate or alternate at that level pledged to that presidential candidate (including uncommitted status)." Further, Rule 12(E)(2) provides that "*Presidential candidates (including uncommitted status*), in consultation with the state party, may remove any candidate for at large and pledged party leader and elected official delegate or alternate position[s] from the list" as long as one name remains for every position (emphasis added). This language suggests that uncommitted status is to be treated as a presidential candidate to the greatest extent possible in the candidate right of approval process.

Normally, there is no candidate representative for the "Uncommitted" preference and thus no means of exercising candidate right of approval. But in the circumstances of the Michigan primary, there *is* a means of effectuating the clear intent of the Rules. Those candidates appearing on the January 15 primary ballot were able effectively to exercise candidate right of approval over the delegate candidates for the pledged delegate positions awarded to them. Those candidates who withdrew their names were not able to do so.

At the least it would appear that the RBC could grant to those candidates—the ones who withdrew their names from the January 15 primary ballot — *collectively* the right to exercise candidate right

[10] Challenge, Statement of Facts ¶8

of approval with respect to the eligibility of persons to be considered to fill the "Uncommitted" pledged delegate slots. It is possible that these candidates—only one of whom actively remains in the race—could work out among themselves the mechanics of approving the persons to be considered for the "Uncommitted" pledged delegate positions.

Issue 4: Discussion of Authority to Permit Casting of Half Votes

If the RBC does decide to impose a 50% reduction and to use the results of the January 15, 2008 primary to allocate delegate positions among Senator Clinton and "Uncommitted," the next question presented would be exactly how to do so.

If the RBC decides to go as far as it legally can in granting the MDP Challenge, it would revoke the additional December 2007 sanctions and leave in place a 50% automatic reduction in pledged delegates. One approach would then be to allocate the full complement of delegate positions assigned to Michigan in the Call and simply allow each delegate to cast a half-vote. The question is whether the RBC has authority to do that.

On the one hand, there is no specific authority conferred in the Call, the Charter or Bylaws or the Delegate Selection Rules for the RBC to allow delegates to cast half-votes. Furthermore, the language of Rule 20(C)(1) and Rule 20(C)(8) appears to contemplate that the actual number of pledged delegate positions would be reduced, rather than allowing the full number of pledged delegates allocated to the state to cast half votes. Rule 20(C)(8), which allows a State Party to set out in its Delegate Selection Plan a method and procedure by which the 50% reduction of a delegation under Rule 20(C)(1) will be accomplished, further provides that if the State Party does not do so, then the RBC "shall, by lottery, or other appropriate method determined by the DNC Rules and Bylaws Committee, determine which delegates and alternates shall not be a part of the state's delegation."

On the other hand, the Delegate Selection Rules appear to confer broad authority on the RBC to determine exactly how to implement the 50% reduction in pledged delegates imposed by Rule 20(C)(1)(a). While the Rule mandates that "the number of pledged delegates elected in each category allocated to the state pursuant to the Call for the National Convention shall be reduced by fifty (50%) percent," the Rule does not actually specify whether the reduction is to be accomplished on the basis of delegate positions or delegate votes. Further, Rule 20(C)(8), while as noted apparently contemplating a reduction in delegate positions, rather than in delegate votes, does not limit the RBC to such an approach but confers on the RBC authority to require the State Party to follow any "other appropriate method determined by" the RBC.

Issue 5: Discussion of Allocation of Remaining Delegate Positions Among Presidential Preferences Based on Primary Results

If the RBC grants the Challenge, leaving in place a 50% reduction in delegate positions, and decides to use the results of the January 15 primary, but does not restore all delegate positions with half-votes, then the question would remain as to how to allocate the reduced number of delegate positions as between Senator Clinton and Uncommitted.

Rule 20(C)(1)(a) simply states that "the number of pledged delegates elected in each category allocated to the state pursuant to the Call shall be reduced by fifty (50%) percent…." Rule 20(C)(8)

provides that a state party may provide in its Delegate Selection Plan "the specific method and procedures by which it will reduce its delegation pursuant to this Rule 20 in the event the state party …becomes subject to this Rule 20 by which categories of delegates must be reduced by fifty (50%) percent….." The MDP's Delegate Selection Plan does not set out any such method or procedures.

The specific question raised by this language is whether the allocation of delegate positions among presidential candidates should be made *before* or *after* this reduction in delegate positions is effected.

If the allocation is made before, then the full original number of delegate positions based on the results of the January 15 primary would be allocated based on the primary results, in each category, as if there had been no sanction, and then the total number of pledged delegates awarded to each candidate would simply be cut in half. This method would produce roughly the same result, in terms of allocation, as seating a full delegation allocated based on the primary results and allowing each pledged delegate to cast a half vote.

If allocation is made after, then the number of pledged delegates, district by district, would first be cut in half; the number of at-large delegates would be cut in half; the number of pledged Party leader and elected official (PLEO) delegates would be cut in half; and *then* the allocation would be made based on the district by district primary results for the district-level delegates and based on the statewide results for the at-large and PLEO delegates. An argument in favor of this approach is that it seems more faithful to the literal, plain language of Rule 20(C)(1)(a), which appears to contemplate that the number of pledged delegate positions in each category will be reduced as a first step, *before* the allocation of positions among presidential preferences is made.

Issue 6: Filling Remaining Delegate Positions

As noted, the MDP is in the process of completing the selection of delegates as if no sanction had been imposed, filling all delegate positions originally provided by the Call, and allocating those positions based on the results of the Jan. 15 primary.

If a determination is made to award the positions originally allocated to the "Uncommitted" preference collectively to the candidates whose names were not on the ballot and to allow them to exercise candidate right of approval, then the RBC presumably would have to require the MDP to undertake a new selection process, including filing by delegate candidates and candidate right of approval, to fill those positions.

In addition, if the RBC decides that it cannot or should not permit the casting of half votes, the 50% automatic reduction in pledged delegates would mean that half of the people already chosen could not serve as delegates and would require some mechanism to determine which persons should fill the remaining positions. Rule 20(C)(8) permits a state party to include in its delegate selection plan "the specific method and procedures by which it will reduce its delegation" if it becomes subject to Rules 20(C)(1), (2) or (3). MDP did not include any such method or procedures in its delegate selection plan. The RBC would therefore have to decide whether to require the MDP to provide for such a method in a revision to its plan or whether the RBC would simply want to impose a particular mechanism for making this determination.

CHRONOLOGY OF KEY DATES & STEPS
DEVELOPMENT OF 2008 CALENDAR, FLORIDA & MICHIGAN

This document gives the key dates and activities in the DNC Rules and Bylaws Committee (RBC) development of the 2008 presidential primary and caucus calendar, including drafting the rule on timing as well as the activities related to Florida and Michigan. This document attempts to answer the question "how did we get here" and has been prepared for the Committee's May 31, 2008 meeting.

GENERAL CALENDAR & RULES DEVELOPMENT BACKGROUND

July 25, 2004	2004 Democratic National Convention approved a resolution establishing a "Commission on Presidential Nomination Timing and Scheduling "charged with the responsibility of "studying the timing of presidential primaries and caucuses and developing appropriate recommendations to the Democratic National Committee for the nominating process beginning in 2008."
March 12, 2005	The Commission held its first meeting in Washington, D.C. Congressman David Price D-NC) and former U.S. Secretary of Labor Alexis M. Herman served as Co-Chairs of the 40-member Commission, which became known as the "Price-Herman Commission." Commission members included Senator Carl Levin and DNC member Debbie Dingell both of Michigan and Congressman Kendrick Meek of Florida. The Commission held five meetings over the course of ten months and heard testimony from a number of experts and from a variety of state party officials, party leaders, elected officials, national organizations and academics. Numerous timing scenarios were developed and debated extensively by Commission members.
December 10, 2005	At its final meeting, the Commission adopted its Report and Recommendations. The Commission concluded that, while its members "understand and appreciate the valuable role the Iowa caucuses and New Hampshire primary have played in the Democratic nominating process," a "majority of Commission members expressed serious concerns that Iowa and New Hampshire are not fully reflective of the Democratic electorate or the national electorate generally—and therefore do not place Democratic candidates before a representative range of voters in the critical early weeks of the process." The Commission "favored an approach that would preserve the first in the nation status of Iowa and New Hampshire but address the diversity, representation and participation issues in a meaningful way by including other states in the pre-window period in a schedule in which they would play an important role alongside Iowa and New Hampshire." The Commission also recognized that effective implementation of the Party's rule on timing required the support of the party's presidential candidates and urged "the RBC to impose appropriate obligations on presidential candidates to support, cooperate with and otherwise participate in making the timing system successful in achieving its fundamental goals."
March 11, 2006	RBC met and agreed to accept the Commission's recommendations as the framework for drafting the 2008 rule on timing. The RBC also voted to invite State Parties to apply to be one of the early contests alongside Iowa and New Hampshire in the pre-window period.

April-June 2006	RBC meets each month, either in person or via telephone conference call, to evaluate the 11 state Parties that applied to conduct the new early pre-window events. In total, eleven state Democratic parties submitted extensive written presentations and testified at length before the RBC at this series of meetings. In evaluating the states that applied, the RBC was guided by the Commission's recommendation that racial and ethnic diversity; geographic diversity; and economic diversity, including union density, be highlighted in the selection of the new pre-window states. Florida did not apply at any time to be one of the states that would be allowed to hold its primary prior to February 5, 2008. Michigan did submit an application to be one of the new early "pre-window" states alongside Iowa and New Hampshire. The State Party proposed to conduct either a traditional tiered caucus or a Party-run primary.
July 22, 2006	RBC recommended to the full DNC that the Iowa caucuses take place no earlier than January 14, 2008; that one caucus be held between the Iowa caucus and the New Hampshire primary, and that the caucus be held in Nevada, a state with a significant and growing Latino population, a sizeable Asian American and Pacific Islander community, a strong organized labor presence, and in the western region of the country where the Democratic Party was making electoral gains. The RBC further recommended that one primary be held between the New Hampshire primary and the opening of the window on February 5, and that that primary be held in South Carolina, a southern state that has prior experience in hosting an early event and a state in which African Americans represent a significant share of the Democratic electorate.
August 19, 2006	At its meeting in Chicago, the full Democratic National Committee voted to adopt the *Delegate Selection Rules for the 2008 Democratic National Convention*. Included was the rule on timing (the "pre-window" and "window" periods) as well as provisions for enforcing those rules. The vote on the Rules was taken by voice vote. As best the DNC staff could determine, and as the press reported, only members of the New Hampshire delegation voted against the proposed Rules.
August 31, 2007	All eight Democratic presidential candidates signed a "pledge" sponsored by the states of Iowa, New Hampshire, Nevada and South Carolina not to campaign in states that hold primaries before the opening of the window. It should be noted that this pledge was organized by the four early states and had no relationship to the DNC RBC. It is presented here as merely a point of information.
December 1, 2007	RBC met and considered requests from the states of Iowa, New Hampshire and South Carolina to hold their respective caucuses and primaries on different dates than provided in the rules. The representatives of each state Party testified before the RBC that the date changes were necessary to preserve the spirit and intent of the goals of the early pre-window period. The representatives further acknowledged that the date changes were necessary because other states had scheduled events in the pre-window period. The Nevada State Party Chair testified to the RBC that the Nevada State Party had concluded that it was in its best interests to hold its caucus on the date provided in the rules, but that it supported the requests of the other three (3) states to move.

FLORIDA CHRONOLOGY

January 23, 2007	Legislation was introduced in the Florida legislature to move the date of the state government-run primary from the first Tuesday of March (March 4, 2008) to January 29, 2008, which would violate the Party's rule on timing.
April 5, 2007	RBC Co-Chairs wrote to Democratic members of the Florida congressional delegation notifying them that the proposed legislation had passed the Florida House of Representatives and was pending before the State Senate to move the date of the primary. The letter detailed the automatic sanctions in the rules for states that violate the rule on timing. The letter concluded by urging the congressional representatives to use their "leadership and influence to oppose and help to defeat the state legislation that would put Florida's presidential primary in violation of DNC rules."
March-April 2007	DNC officials and Florida Democratic Party officials had discussions about the status of the pending legislation and what activities the DNC could engage in to try to influence Democratic state legislators to bring Florida's system into compliance with DNC Rules.
May 7, 2007	DNC officials and Florida State Party officials met in-person in Annapolis, Maryland, to discuss the pending legislation and strategies about how to cope with the legislation that was expected to be signed into law.
May 21, 2007	Legislation moving the state's presidential preference primary to January 29, 2008 was signed into law by Governor Charlie Crist.
May - early June 2007	With assistance of DNC officials, Florida Democratic Party developed a plan for an alternative, Party-run 100% vote by mail process that would be scheduled for a date complying with the rules.
June 10, 2007	The Florida State Democratic Executive Committee voted to make the January 29, 2008 primary binding and to draft a Delegate Selection Plan based on that primary.
June 15, 2006	DNC Chairman Gov. Dean met with members of the Florida congressional delegation.
July – early August 2007	Discussions between the DNC and FDP officials continued. The DNC developed a proposed State Party-run caucus system, with congressional district caucuses to take place after February 5, 2008. That system would fully comply with the DNC's Rules and afford an opportunity for all Florida Democrats to vote for the Democratic presidential nominee. The DNC offered to pay approximately $880,000 to implement the caucus system.
August 4, 2007	The Florida State Democratic Executive Committee adopted a 2008 Delegate Selection Plan based on use of the January 29, 2008 primary and that plan was submitted to the RBC on August 7, 2007.
August 11, 2007	An in-person meeting was conducted between DNC officials and Florida State Party officials, including RBC Co-Chair Jim Roosevelt, State Chair Karen Thurman, and several Florida DNC members. During that private meeting, the DNC officials informed the FDP representatives that, if the State Party persisted

	in its refusal to adopt an alternate plan complying with the rules it was likely that the RBC would not only allow the automatic sanctions to go into place (50% reduction in pledged delegates and a 100% loss of unpledged delegates), but would likely use its authority to further reduce Florida's delegation to zero (0) delegates.
August 25, 2007	RBC considered Florida's amended 2008 Delegate Selection Plan based on the January 29, 2008 state government-run primary. By voice vote, with only one (1) "no" vote cast, Committee found the Plan in "Non-Compliance" for violating Rule 11.A. Under the authority of Rules 20.C.1, 20C.5, and 20.C.6 RBC imposed a 100% loss of delegates (pledged and unpledged) and alternates.
August 28, 2007	RBC Co-Chairs formally notified the State Party in writing of the RBC's finding of Non-Compliance. Pursuant to the Committee's Regulations, the State Party was given 30-days upon receipt of the written notification to submit a revised Plan that complied with the rules.
September 2007	Throughout the month of September, DNC officials had conversations with a number of Florida party leaders, elected officials and FDP officials. Through all of those conversations the DNC reiterated that the FDP had the option to use a Party-run caucus process to allocate delegates and that the DNC was willing to pay for it. On September 29, 2007 State Chair Karen Thurman notified the RBC Co-Chairs that the FDP was reaffirming the Plan previously submitted based on the January 29, 2008 primary. Chair Thurman's letter acknowledged that the FDP spent months considering potential Party-run alternatives that would have complied with the DNC Rules but that the FDP did not consider any of those alternatives to be acceptable.
October 5, 2007	The RBC Co-Chairs formally notified the State Party that the Plan remained in Non-Compliance and that the delegate and alternate reduction imposed at the August 25, 2007 RBC meeting was now in place.
October 31 2007	Pursuant to state law, State Chair Karen Thurman submitted to the Secretary of State a list of presidential candidates whose names would appear on the January 15, 2008 primary ballot. Chair Thurman named all eight (8) Democratic presidential candidates.
January 29, 2008	Florida presidential preference primary.
Early-March 2008	Discussions resumed between DNC officials and State Party officials about holding an alternative Party-run process before June 10, 2008 that would comply with the rules. These discussions included, among other things, consideration of a new state-run primary taking place in the spring of 2008 funded by the state; a new state-run primary taking place in the spring of 2008 funded by private contributions raised by the FDP; and a Party-run vote-by-mail process, taking place in the spring of 2008. In the course of these discussions, the FDP submitted to the DNC, in March 2008, for informal review and discussion, a written plan for an alternative, party-run vote by mail process in

	which ballots would be mailed out to all Florida Democratic voters on May 9, 2008 and returned to the FDP for counting by June 3, 2008.
March 17, 2008	State Chair Karen Thurman announced that after careful consideration of various alternatives, it was logistically impossible to conduct an alternative Party-run nominating event before June 10, 2008.
March 17, 2008	Florida DNC member Jon Ausman filed two (2) challenges seeking the reinstatement of Florida's delegates.
April 2, 2008	Gov. Dean met with State Chair Karen Thurman, Sen. Bill Nelson and members of the Florida Democratic congressional delegation. Following the meeting, the participants issued a joint statement that a delegation from Florida will be seated at the Convention.
April 25, 2008	The RBC Co-Chairs notified Committee members that the RBC would meet May 31, 2008 in Washington, D.C. to consider the Ausman challenges as well as a challenge concerning Michigan filed by Joel Ferguson.

MICHIGAN CHRONOLOGY

April 2006	Michigan applied to be considered one of the new early "pre-window" states alongside Iowa and New Hampshire. The State Party proposed to conduct either a traditional tiered caucus or a Party-run primary.
April 28, 2007	Michigan State Central Committee adopted a 2008 Delegate Selection Plan based on a February 9, 2008 "State Party-run primary" with in-person voting centers, vote-by-mail and internet voting following a 30-day public comment period. (In the past this process has been called a "caucus" by the State Party, or a "firehouse primary.") The February 9, 2008 Party-run primary would allocate delegate and alternate positions among presidential preferences. The 2008 Plan was submitted to the DNC RBC for its consideration.
June 27, 2007	Legislation was introduced in the Michigan legislature to move the date of the state government-run primary to January 2008, which would violate the Party's rule on timing. The legislation also provided a mechanism for the government to record those voters who take a Democratic ballot, thereby meeting the Party's rules standard of "declaration and recordation."
June 30, 2007	RBC considered proposed Michigan 2008 Plan and heard presentation from State Chair Brewer on internet voting. RBC postponed taking a formal vote on the Plan until its next meeting in order for the State Party to provide more detailed information concerning its internet voting component.
August 25, 2007	RBC considered Michigan's 2008 Plan for a February 9, 2008 Party-run primary and found the Plan in "Conditional Compliance." The only deficiency indicated at the time was Committee staff's desire to more fully evaluate the internet voting component.

August 30, 2007	Legislation establishing a January 15, 2008 state government-run presidential preference primary passed the legislature and was signed into law by Governor Jennifer Granholm on September 3, 2007.
September 11, 2007	Pursuant to state law, State Chair Mark Brewer submitted to the Secretary of State a list of presidential candidates whose names would appear on the January 15, 2008 primary ballot. Chair Brewer named all eight (8) Democratic presidential candidates.
October 9, 2007	Sen. Joe Biden, former Sen. John Edwards, Sen. Barack Obama, and Gov. Bill Richardson filed the necessary affidavits to remove their names from the January 15, 2008 presidential primary ballot. Sen. Hillary Clinton, Sen. Chris Dodd, former Sen. Mike Gravel, and Cong. Dennis Kucinich's names remained on the ballot.
November 27, 2007	Michigan State Executive Committee voted to amend the state's 2008 Delegate Selection Plan. The amended 2008 Plan allocated delegate and alternate positions among presidential preferences using the results of the January 15, 2008 state government-run primary. The amended Plan was submitted to the DNC RBC for its consideration.
December 1, 2007	RBC considered Michigan's amended 2008 Delegate Selection Plan based on the January 15, 2008 state government-run primary. Committee found the Plan in "Non-Compliance" for violating Rule 11.A. Under the authority of Rules 20.C.1, 20C.5, and 20.C.6 RBC imposed a 100% loss of delegates (pledged and unpledged) and alternates.
December 3, 2007	RBC Co-Chairs formally notified the State Party in writing of the RBC's finding of Non-Compliance. Pursuant to the Committee's Regulations, the State Party was given 30-days upon receipt of the written notification to submit a revised Plan that complied with the rules.
January 7, 2008	The 30-day time period for the State Party to submit a revised and corrected Plan expired. RBC Co-Chairs formally notified the State Party that the Plan remained in Non-Compliance and that the delegate and alternate reduction imposed at the December 1, 2007 RBC meeting was now in place.
January 15, 2008	Michigan state government-run primary.
February 9, 2008	Date of originally planned State Party-run primary featuring in-person voting centers, vote-by-mail, and internet voting.
March 2008	Legislation was drafted for the state government to conduct a new Democratic only presidential preference primary in either May or June 2008. The primary would be conducted by the government, but paid for by the State Party. However, the legislature adjourned without taking action on the proposal to conduct a second Democratic primary.
April 4, 2008	The State Party announced that it was logistically impossible for the State Party to conduct an alternative Party-run nominating event before June 10, 2008.

	That same day, DNC Chairman Gov. Howard Dean, Sen. Carl Levin, Cong. Carolyn Cheeks Kilpatrick, DNC member Debbie Dingell, and UAW President Ron Gettlefinger released a joint statement that a delegation from Michigan would be seated.
April 17, 2008	DNC at-large member Joel Ferguson filed a challenge seeking the reinstatement of Michigan's delegates. The challenge sought to reinstate all unpledged delegates with a full vote each and all of the pledged delegates with a half vote each.
April 25, 2008	The RBC Co-Chairs notified Committee members that the RBC would meet May 31, 2008 in Washington, D.C. to consider the Ferguson challenge as well as challenges concerning Florida filed by Jon Ausman.
May 12, 2008	Through State Chair Mark Brewer, Michigan State Executive Committee filed a challenge seeking the reinstatement of Michigan's delegates. The challenge sought the reinstatement of all delegates (pledged and unpledged) with a full vote each. The challenge requested the 128 pledged delegates be allocated 69 to Sen. Hillary Clinton and 59 to Sen. Barack Obama. At the same time, Joel Ferguson formally withdrew his challenge filed on April 17, 2008.