



May 30, 2008

The Honorable Alexis M. Herman and James Roosevelt, Jr.  
Co-Chairs of Rules and Bylaws Committee  
Members, Rules and Bylaws Committee  
Democratic National Committee  
430 South Capitol Street, SE  
Washington, DC 20003

Re: Florida and Michigan

Dear Chair Herman, Chair Roosevelt and Members of the DNC Rules and Bylaws Committee:

This letter is submitted by the undersigned Counsel on behalf of Senator Hillary Clinton and Hillary Clinton for President. Thank you for your consideration of efforts to seat the Florida and Michigan delegations. More than two million voters in Florida and Michigan cast ballots during the Democratic Party's presidential primaries, but our Party's current posture is to prohibit those states from sending any delegates to the Democratic National Convention. That is an unacceptable outcome. It denies millions of voters who took every possible step to have a say in the election from doing so. It also jeopardizes our ability to reclaim the White House and expand our majority in Congress this November. Democrats in Florida and Michigan must be fully represented in the nomination process, and our leaders in those states must be encouraged to work hard to promote our Party's interests. One guiding principle alone should govern resolution of these challenges: the preferences expressed by the voters must be honored.

The Rules and Bylaws Committee (the "RBC") has received challenges to seat delegates from Florida and Michigan. Pursuant to RBC Regulation 3.2(C)(ii), we intervened to ask that *all* of Florida's and Michigan's delegates be seated with full votes. The Florida challenge asks to seat all delegates with full votes or, in the alternative, to award only one-half votes to each pledged delegate. While the Michigan challenge properly asks to seat all of the state's delegates with full votes, it proposes to arbitrarily shift all Uncommitted delegates to Senator Obama even though he received zero votes, and to arbitrarily take away four delegates from Senator Clinton. We offer these points to the RBC for its review and consideration as it prepares to meet on Saturday.



*I. The RBC has the Authority to Seat All of the Delegates from Florida and Michigan with Full Votes*

The RBC can and should seat all of the delegates from Florida and Michigan with full votes. In a recent analysis, the DNC Staff observed correctly that the penalty imposed on Florida and Michigan exceeded the guideline established in Rule 20(C)(1), which would reduce the voting power of pledged delegates by no more than 50% and unpledged delegates by 100% if a state holds its primary too early. But the Staff then concluded that the Committee “does not have the authority to reverse . . . these automatic sanctions” for failing to comply with the schedule set out in Rule 11. This conclusion is incorrect.

The RBC has broad powers to fully reinstate the Florida and Michigan delegations. Rule 20(C)(7) allows the RBC to forgive violations when a state party and other relevant Democratic party leaders and elected officials have taken provable, positive steps and acted in good faith to bring the state into compliance with the DNC’s Delegate Selection Rules. With the support of Senator Clinton, both states made good faith attempts and took provable, positive steps to bring their systems into compliance with the DNC Rules by trying to organize re-votes. In fact, the RBC Co-Chairs specifically acknowledged that the proposed Michigan legislation for a re-vote “would fit within the framework of the Rules.” (Letter from the Co-Chairs of the RBC, March 19, 2008). Although the states’ efforts to establish new processes that would comply with the Rules failed, under Rule 20(C)(7) the states’ attempts do provide a sufficient basis for the RBC to exercise discretion and to restore the entire states’ delegations with full votes.

Under the Rules, the RBC clearly has continuing jurisdiction over this matter and has broad authority to fashion any appropriate remedy Rule 19(D)(1), Rule 19(E), Rule 20(C)(5). Any of these provisions would suffice to reinstate Florida and Michigan’s full slate of delegates as elected.

It is a bedrock principle of our Party that every vote must be counted, and thereby every elected delegate should be seated. The States have already been punished because no campaign activity was conducted in Florida or Michigan. There is no requirement or need to punish their duly elected delegates who represent the 2.3 million voters in Michigan and Florida who participated in the nominating process.

*II. Actual Election Results Must Control the Allocation of Michigan’s Delegates*

The Michigan challenge seeks relief that would disregard the Party’s rules, the election results, and basic principles of fairness. While we strongly agree that Michigan’s delegation should be seated with full votes, the delegate allocation that the Michigan challenge proposes has no foundation in law or rule. Hillary Clinton won 73 delegates in Michigan. Barack Obama won none. “Uncommitted” won 55 delegates. The Michigan challenge suggests that Senator Obama should receive all of the “Uncommitted” delegates

*plus* four of the delegates that Hillary Clinton earned. In effect, the challenger requests the RBC to convert the "Uncommitted" line to Senator Obama, including the 36 "Uncommitted" delegate positions that have already been filled. Neither the DNC Rules nor the Michigan Delegate Selection Plan allow arbitrary reallocation of Uncommitted delegates to a candidate or arbitrary reallocation of delegates from one candidate to another.

Under DNC Rules, a vote for "Uncommitted" is accorded the same treatment as a named presidential candidate. Regulation 4.25 expressly provides, "'uncommitted' is treated as any other presidential candidate status for the purpose of allocating delegates and alternates." Other provisions also emphatically and repeatedly support the same conclusion (such as Rules 6(I); 10(C); 12(A); 12(B); 12(E); 12(G); 13(C); 13(D); 13(E); 14(C); 14(H) 18(D)(3); 18(F); and 20(C)(2)).

As the DNC Staff acknowledges on page 5 of its Staff Analysis of Michigan Challenge, "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 alternates 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.'"

Moreover, Rule 20(C)(2) expressly provides that "in the event a state party... allocates its pledged delegates or alternates to a presidential preference (including uncommitted status) other than as provided under Rule 13 of these rules," the delegation shall be sanctioned. Rule 13 requires that delegates "be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters." This Rule further provides that delegates shall be allocated to each presidential preference in proportion to the percentage of the primary vote won by each presidential preference.

Similarly, Michigan's delegate selection plan does not allow for arbitrary reallocation of delegates from uncommitted delegates to a candidate or from one presidential candidate to another. Michigan's plan in fact contemplates that there could be a situation in which "Uncommitted" would meet threshold and the Michigan delegate selection plan specifically provides: "Each presidential candidate (*including uncommitted status*) shall use his or her best efforts" to comply with the Party's goals.

Thus, delegates allocated based on the preference voters expressed when they cast their ballots for "Uncommitted" in the Michigan primary cannot arbitrarily be reallocated to Barack Obama because it would violate the fair reflection requirement under DNC Rule 13, the prohibition with respect to such reallocation as set forth in Rule 20(C)(2) and because the intent of the more than 238,000 individuals who voted for Uncommitted cannot now be determined. The voters may have been truly uncommitted or they may have supported Joe

Biden, John Edwards, or Bill Richardson. The RBC has no authority or factual basis upon which to supplant the judgment of these voters.

*III. If The Florida and Michigan Delegations' Strength Is Reduced By 50% - Which We Oppose - It Would Be Less Harmful to the Party and to the Voters and Delegates Who Participated in the Process in Good Faith to Dilute Each Delegate's Vote Than to Refuse to Seat 50% of the People in Each Delegation*

All Florida and Michigan delegates should be seated. However, if the RBC elects to level a 50% sanction under Rule 20(C)(1), it is more appropriate to allow all of the 185 pledged delegate from Florida and 128 pledged delegates from Michigan to represent the voters from their respective states at the convention, but to give each of them only a ½ vote. There would be greater representation and diversity in attendance at the national convention. Fewer voters, delegates, and Party leaders would feel demoralized and abandoned by our Party. After all, the slate of delegates has been picked already, so any pared down delegates would undoubtedly feel rejected and deprived of their statutory and constitutional right to represent their state as duly elected delegates. A halving approach avoids the serious credentials problems that would arise if half of the delegates from Florida and Michigan did not attend the convention. If the number of delegates is reduced, the resultant change in composition would likely mean that both states would be in danger of not complying with their respective Affirmative Action plans and Inclusion Programs.

There would also be a serious administrative and fairness burden to decide which delegates could not attend the convention. If the delegations must be pared, it is better to dilute each delegate's vote, than to shrink the number of enthusiastic Democrats already elected to the delegation.

As the Florida Democratic Party advised the RBC in its Memorandum of May 28, 2008, more than 6,000 voters participated in the District Level caucus elections on March 1, and the Party achieved a diverse pool of qualified delegate applicants at all levels of the process. Those who were elected delegate or alternate spent their time, effort and money to run as delegate candidates and they deserve to be seated at the national convention. The suggestion that there could be a new process to select a reduced number of delegates would be costly, unjust to those already elected and could not easily be accomplished in either state in a reasonable period of time given the June 21 deadline for completing the delegate process.

As the DNC Staff has noted, the 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)." Under Rule 20(C)(8), the RBC can use any "appropriate method" deemed most fitting to reduce the influence of the delegation – it can even allow each State to decide how to implement the DNC's decision.

Chair Herman, Chair Roosevelt and Members  
Rules and Bylaws Committee, DNC  
May 30, 2008  
Page 5

*IV. The Florida and Michigan Challenges Should Be Resolved Promptly by the RBC  
Rather than Waiting for the Credentials Committee to Act*

The RBC has jurisdiction over challenges pertaining to the submission, non-implementation and violation of state Delegate Selection and Affirmative Action Plans. Thus, the RBC has jurisdiction to resolve these challenges, and it should do so. Millions of voters in Florida and Michigan have waited patiently for more than four months to know whether their votes will count and whether they will play a meaningful role in determining who will be the Democratic nominee. It is time to resolve this pivotal matter.

We thank the RBC for its time and attention to these challenges and for consideration of the views expressed in this letter.

Respectfully submitted,



Lyn Utrecht  
General Counsel  
Hillary Clinton for President

cc: Joseph E. Sandler, General Counsel, Democratic National Party