

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 08-cv-60774-Marra-Johnson**

**STEVEN A. GELLER, et al.,**

Plaintiffs

v.

**DEMOCRATIC NATIONAL COMMITTEE**

Defendant.

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**DEFENDANT DEMOCRATIC NATIONAL COMMITTEE'S  
STATEMENT OF MATERIAL FACTS AS TO WHICH  
DNC CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED**

The Defendant, the Democratic National Committee ("DNC"), pursuant to Local Rule 7.5, submits this Statement of Material Facts in Support of Its Motion for Summary Judgment and states:

1. The nominee of the Democratic Party for President of the United States is chosen by the delegates to the Democratic National Convention held during each presidential election year. A vote of the majority of delegates to the Convention is required to nominate the Party's presidential candidate. The delegates to the Democratic National Convention are chosen through a process developed and implemented by each State Democratic Party. That process is required to comply with certain rules—the Delegate Selection Rules—adopted by the Democratic National Committee ("DNC"). Declaration of Philip McNamara ("McNamara Dec.") ¶¶4-5.

2. The DNC's Rules and Bylaws Committee ("DNC RBC") is a standing committee composed of thirty (30) DNC members which is, among other things, responsible

for overseeing the development, implementation and enforcement of the DNC Delegate Selection Rules. (*Id.* ¶6). Under the Delegate Selection Rules, the DNC requires each State Democratic Party to develop a written plan for the selection of delegates to the national nominating Convention and to submit that plan to the DNC RBC. (2008 Delegate Selection Rules, attached as Exhibit A to McNamara Dec.). The Committee reviews each plan for compliance with the Delegate Selection Rules. (*Id.* Rules 1(D) & (E)). (*Id.* ¶7-9).

3. The Delegate Selection Rules address two basic aspects of delegate selection: (i) the allocation of delegate positions among presidential candidates, *i.e.*, how many delegates from each state will be pledged to each presidential candidate; and (ii) the selection of the actual individuals to fill those positions, the delegates and alternates who will attend the Convention. The Rules also provide for selection of other categories of pledged delegates and for all DNC members, the state's Democratic Members of Congress and, if any, Democratic Governor and certain other officials to attend the Convention automatically, by virtue of their positions, as "unpledged delegates," meaning delegates officially not pledged to any presidential candidate (also called "superdelegates"). . (Rules 9(A) & (B)). (McNamara Dec. ¶10).

4. The allocation of delegate positions to presidential candidates is accomplished, by the State Democratic Party, either through a primary or a caucus/convention system. In a primary system, the State Party uses the state government-run or a party-run primary to allocate delegate positions, based on proportional representation, subject to a 15% threshold; separate party run meetings are held to fill those positions. In a caucus system, the State Party uses a series of party-run meetings both to allocate delegate positions and to select persons to fill those positions. Caucus/convention

systems do not involve use of any electoral machinery of the state government in any way. (*Id.* ¶¶11-12). Of the 56 states and territories that will send delegates to the 2008 Convention, twenty (20) have used caucus or party-run primary systems not involving any use of their states' electoral machinery. (*Id.* ¶ 13 & Exhibit B)

5. The Delegate Selection Rules govern all aspects of the delegate selection process and reflect the values and ideals of the Democratic Party of the United States in a variety of ways. One of the key elements of delegate selection addressed by the Delegate Selection Rules is the sequencing and scheduling of presidential preference primaries or caucuses. Over the course of the last 39 years, a series of different party commissions and bodies have studied the complex question of when states should first be able to hold such events during the election cycle and which states, if any, should be allowed to hold events before all the other states. (*Id.* ¶¶ 14-15).

6. These deliberations have involved delicate balancing, for example, of the value of showcasing smaller less populous states where more personal "grassroots" campaigning is still possible; the competing value of giving a role to larger, more racially, ethnically and economically diverse states reflective of the Party's constituency; the value of giving Democratic voters a longer chance to examine and scrutinize the candidates, by stretching out the process; and the competing value of rallying around a nominee earlier in the process and thereby conserving resources for the general election against the Republican nominee. (*Id.* ¶16).

7. Prior to 1996, the national Republican Party had no rules addressing the timing of presidential primaries and caucuses. Beginning for 2000, the RNC rules forbid any state from holding an event before the first Tuesday in February. In adopting the 2004

Delegate Selection Rules, the DNC moved the beginning of the Democratic Party “window” to the same date as the Republicans: the first Tuesday in February—with exceptions for Iowa (15 days earlier) and New Hampshire (7 days earlier). (*Id.* ¶¶17-19).

8. After further controversy about the calendar during the 2004 nominating cycle, the DNC decided to form a special DNC commission to study and make recommendations with respect to the calendar for 2008. That Commission, which became known as the “Price-Herman Commission,” held five meetings over the course of ten months and heard testimony from a number of experts and a variety of state party officials, party leaders, elected officials, national organizations and academics. (McNamara Dec. ¶¶20-21). 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.” (*Report of the Commission on Presidential Nomination Timing and Scheduling*, p. 39).

9. In the end, 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.” (*Id.* at p. 41). Specifically, the Commission recommended that there be one or two first-tier caucuses between the Iowa caucus and the New Hampshire primary; and that following the New Hampshire primary, and prior to the opening of the regular

window on February 5, 2008, there be one or two presidential preference primaries. (McNamara Dec. ¶24).

10. There followed a lengthy and deliberative process by the DNC RBC to implement the Price-Herman Commission recommendations and determine which states should hold such events. Beginning in March 2006, state Democratic parties were invited to apply to be the ones to hold their events “pre-window,” *i.e.*, to hold primaries or caucuses before February 5, 2008, the first date on which all other states would be permitted to hold such events. In total, eleven state Democratic parties submitted such applications; Florida was not among them (*Id.* ¶¶26-28).

11. At the end of that process of considering states for early events, the DNC 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 in which African-Americans represent a significant share of the Democratic electorate. All other states would be required to hold their first-tier caucus or presidential preference primary on or after February 5, 2008. (*Id.* ¶29).

12. The proposed Delegate Selection Rules for 2008, including the calendar described in paragraph 11 were adopted by the full DNC in August 2006 with no objection from the Florida Democratic Party. (*Id.* ¶30).

13. The 2008 Delegate Selection Rules also contain provisions for enforcing those Rules. Rules 20(C)(1)-(3) provide that any state submitting a plan violating any of three rules (the Timing Rule, proportional representation or threshold) will automatically lose 50% of the state's pledged delegate positions and that the DNC members, members of the Congressional delegation and other unpledged delegates ("superdelegates") will not be able to attend the Convention as voting delegates. In addition, Rules 20(C)(5)&(6) confer on the DNC RBC the authority to impose additional sanctions, including further reduction of the state party's delegation to the Convention. (*Id.* ¶¶31-32).

14. Violations of other Delegate Selection Rules do not result in imposition of the automatic sanctions described in paragraph 32. In particular, contrary to the allegations of the Complaint in this case, ¶57, violation of Rule 2(H), dealing with voting systems, would *not* result in imposition of the automatic sanctions. (*Id.* ¶¶33-34).

15. In the case in which a state government-run primary is scheduled for a date that violates the DNC's rules, the affected State Party may easily avoid any of these sanctions simply by using a Party-run process to allocate delegate positions and by scheduling that process for a date that complies with the Rules. The State Parties of Vermont in 1984, South Dakota in 1988 and Arizona, Delaware and Washington State in 2000, all treated their states' presidential preference primaries—which were set by state law in violation of the DNC's Timing Rule—as non-binding contests and instead ran alternative,

Party-run processes to allocate delegate positions among presidential candidates. (*Id.* ¶¶36-38).

16. In April 2007, the Florida legislature enacted and in May, 2007, the Governor of Florida signed into law, a measure providing for a binding presidential preference primary to take place on January 29, 2008, in violation of the DNC's rules. H.B. 537, amending section 103.101(1), Florida Statutes. (*Id.* ¶40).

17. Even before the law was signed by Governor Crist in May 2007, DNC and FDP officials began discussions about how to cope with the new law. In May and June 2007, with assistance by the DNC, the FDP developed a plan for an alternative, party run vote by mail process that would be scheduled for a date complying with the rules. On June 10, 2007, however, the Florida Democratic State Executive Committee (FDSEC) voted to make the state-run, January 29 primary binding and submitted to the DNC RBC a delegate selection plan based on that primary. (*Id.* ¶¶40-43).

18. Throughout July and early August 2007, discussions between the DNC and FDP officials continued. The DNC then developed a proposed State Party-run caucus system, with congressional district caucuses to take place after February 5, 2008; the DNC offered to pay the costs of implementing that system. 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. However, after considerable further discussions between FDP and the DNC, and among the leaders and elected officials of FDP, the FDP rejected this offer. (*Id.* ¶¶43-44).

19. On August 4, 2007, the FDP approved submission of a delegate selection plan based on use of the January 29, 2008 primary, in violation of the DNC's Timing Rule, and that plan was submitted to the DNC RBC on August 7, 2007. (*Id.*¶45).

20. On August 25, 2007, the DNC RBC met in Washington, D.C. to consider 32 state delegate selection plans, including the plan submitted by Florida. Prior to adoption of any motion to sanction the FDP, the DNC RBC Committee heard extensive presentations by FDP State Chair Karen Thurman, Florida Democratic National Committeeman Jon Ausman, and Florida Democratic National Committeewoman Terrie Brady. Members of the Committee then discussed the issue at length, carefully weighing the impact of sanctions against the need for the DNC to be able to enforce its rules on timing to vindicate the goals and values identified by the Price-Herman Commission, and lest the nominating process descend into chaos, with each state free to leapfrog other states in a never-ending cycle. (*Id.*¶47).

21. After that discussion, by a voice vote with only one (1) "no" vote cast, the DNC RBC found the Florida 2008 Delegate Selection Plan in non-compliance with the Delegate Selection Rules because of the violation of the DNC's rule on timing. Under DNC Rule 20(C)(1)(a), that finding triggered the automatic reduction of the State Party's delegation by 50% and the disentitlement of the state's DNC members and Democratic Members of Congress to attend the Convention as delegates. As part of the same motion, under Rule 20(C)(5) and 20(C)(6), the DNC RBC voted to further reduce the state's total number of pledged and unpledged delegates to zero. (*Id.*¶49).

22. Discussions between the DNC and the FDP about holding an alternative process complying with the DNC rules took place at various times during the period from

October 2007 through and including April 2008. These discussions included, among other things, consideration of a new state-run primary taking place in 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. The FDP decided, however, that there was not a consensus among its elected officials and Party leaders for pursuing any of these options and did not ultimately submit any new plan to the DNC RBC for formal consideration. (*Id.* ¶¶55-57).

23. Had the FDP actually adopted a plan for an alternative, party-run process, and had the FDP then formally submitted that adopted Plan to the DNC RBC for its review and approval, and had the DNC RBC approved such a plan, it was expected that the FDP would submit that plan to the U.S. Department of Justice for pre-clearance under section 5 of the Voting Rights Act, 42 U.S.C. §1973c. Officials of the DNC and FDP discussed, at various times, the need to submit any such plan for pre-clearance. Since no such plan for an alternative, party-run process was ever submitted by the FDP to the DNC, there was never a plan to submit to the U.S. Department of Justice for pre-clearance. (*Id.* ¶58).

24. Had the FDP submitted a plan for an alternative, party-run process, using vote by mail balloting, those ballots would have been optical scan ballots the use of which by the State Party would have fully complied with Rule 2(H) of the Delegate Selection Rules. (*Id.* ¶59).

25. The DNC Rules provided for South Carolina to hold the first primary in the South, on January 29. When the FDP insisted on using the state-run primary scheduled for the same date, the South Carolina Democratic Party requested permission from the RBC to move its primary earlier and the RBC agreed in order to effectuate the intent of the Timing



**CERTIFICATE OF SERVICE**

I hereby certify that on June 12, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

\_\_\_\_\_/s/ James M. Miller

**SERVICE LIST**

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United States District Court, Southern District of Florida**

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