

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

BILL NELSON, ALCEE L. HASTINGS,
CORRINE BROWN, JANET B. TAYLOR,
EUGENE A. POOLE, SAM OSER,
CARLOS DE ZAYAS, and LUIS
FERNANDEZ,

Plaintiffs,

vs.

HOWARD DEAN, THE DEMOCRATIC
NATIONAL COMMITTEE, and KURT S.
BROWNING in his official capacity as
Secretary of State of the State of Florida,

Defendants.

Case No. 4:07cv427-RH/WCS

**PLAINTIFFS' RESPONSE TO DEFENDANTS HOWARD DEAN'S AND
DEMOCRATIC NATIONAL COMMITTEE'S STATEMENT OF MATERIAL
FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to Local Rule 56.1(A), Plaintiffs BILL NELSON, ALCEE L. HASTINGS, CORRINE BROWN, JANET B. TAYLOR, EUGENE A. POOLE, SAM OSER, CARLOS DE ZAYAS, and LUIS FERNANDEZ submit this response to *Defendants Howard Dean's And Democratic National Committee's Statement Of Material Facts As To Which There Is No Genuine Issue To Be Tried.*

1. Plaintiffs dispute any indication in paragraphs 10 and 11 that the parties' "values and ideals" are embodied in any rules governing the timing of early primaries and caucuses. Indeed, the DNC's website quotes its Charter as embracing "political freedom in the framework or meaningful participation by all citizens." Charter of the Democratic

2. Party of the United States. Article 1, Section 4, similarly speaks to “equal opportunities to participate in decisions concerning the selection of candidates.” In similar fashion, the Defendants’ contentions are also undermined by Article 2 of the Charter. Neither the Democratic Party’s platform nor its Charter provide any support for the assertion that an orderly calendar is a core Democratic value.

3. Paragraph 19 confers no legal authority to confiscate delegates as Defendants might suggest. Further, paragraph 19 misstates the rules which do not explicitly or adequately describe the grounds and authority to take away more than fifty percent of the state’s delegates.

4. The first 13 words of paragraph 20 are inaccurate and objectionable because, among other things, they rely on the McNamara Declaration which, in turn, lacks any foundation of personal knowledge concerning such assertions as “full knowledge” or “open defiance”.

5. The reference in paragraph 21 to “that Legislation” is unclear and therefore objectionable since the law that was actually passed included numerous different components of election law. To the extent that Defendants’ contention implies that all such support was directed to the change in the primary date, it is mistaken and reflects assumption rather than any personal knowledge of McNamara and should be disregarded accordingly.

6. The first sentence of paragraph 20 is inaccurate as to Florida, ignoring Section 103.01 of the Florida Statutes, the controlling case law and even the DNC’s own rule 13H.

7. Paragraphs 23 and 26 are inaccurate as well as irrelevant. The DNC has not proposed to fund a plan that would be adequate for Florida and the referenced financial contribution is far below what would be necessary in this State. Paragraphs 27, 28, 29, 31 and 32 are also irrelevant and appear to contain inaccuracies. If the discussions at various meetings are deemed material by the Court to the pending motions, discovery will be needed concerning those meetings and their participants.

Statement of Material Facts to be Tried

8. If the discussions between the FDP and the DNC are considered material – and they are not – there would be disputed issues concerning whether the requirements of procedural due process have been met.

9. If the feasibility of party-run caucuses is a material issue – and it is not – there would be disputed issues concerning whether conducting such processes on a state-wide basis is viable in Florida and whether the necessary resources are available for state-wide caucuses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 16, 2007, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Mailing Information for Case No.: 4:07cv427-RH/WCS. Counsel of record currently identified on the Mailing Information list to receive e-mail notices for this case are served via Notices of Electronic Filing generated by CM/ECF. Counsel of record who are not on the Mailing Information list to receive e-mail notices for this case have been served via U.S. Mail.

By: /s/ Kendall Coffey_____