

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' STATEMENT OF THE MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE TRIED**

Plaintiffs, BILL NELSON, ALCEE L. HASTINGS, CORRINE BROWN, JANET B. TAYLOR, EUGENE A. POOLE, SAM OSER, CARLOS DE ZAYAS and LUIS FERNANDEZ, respectfully submit this *Statement Of The Material Facts As To Which There Is No Genuine Issue To Be Tried* pursuant to Rule 56.1 of the Local Rules for the United States District Court for the Northern District of Florida. This submission accompanies and is made in support of Plaintiffs' Motion for Partial Summary Judgment.

1. The Democratic Party, including the Democratic National Committee and the Florida Democratic Party, considers the fundamental right to vote to among our most important rights because it is "preservation of all others". The DNC is committed to

arguing that voting should be meaningful and embodies such principles within its Charter and its Rules.

2. BILL NELSON is a citizen of and a registered Democratic voter in this state residing in Orange County, Florida. A lifelong Democrat, his support of the ideals of the Democratic Party is manifested by one of the most distinguished public service careers in Florida history, including his current service as the senior United States Senator from Florida. By virtue of his position as U.S. Senator and his membership in the Democratic Party, Senator Nelson is one of Florida's "super-delegates," and as such has an automatic entitlement to participate fully as one of the 210 members of Florida's delegation to the Democratic National Convention. Affidavit of Karen Thurman, par. 2 (hereafter "Thurman, par. "___").

3. Plaintiff ALCEE L. HASTINGS is a citizen of and a registered Democratic voter in this state residing in Broward County, Florida. He, too, is a strong supporter of Democratic Party principles and his outstanding public career includes congressional service that began with his 1992 election to the U.S. House of Representatives as the first African-American from Florida since the post-Civil War period. Among other responsibilities, Congressman Hastings is presently the Democratic Chair of Florida's Congressional Delegation. By virtue of his position as a Member of Congress and his membership in the Democratic Party, Congressman Hastings is one of Florida's "super-delegates," and as such has an automatic entitlement to participate fully as one of the 210 members of Florida's delegation to the Democratic National Convention. (Thurman, par. 3)

4. Plaintiff CORRINE BROWN is a citizen of and a registered Democratic voter in this state residing in Duval County, Florida. As a native of Jacksonville, she began her public service career in the Florida House of Representatives, where she served for ten years and was a delegate to the 1988 Democratic National Convention before becoming one of the first African-Americans to be elected to the U.S. House of Representatives from Florida since Reconstruction. Congresswoman Brown has represented Florida's Third Congressional District since 1993, during which time she has, among other things, co-sponsored legislation regarding civil rights, and served as a member of the Congressional Black Caucus and the Congressional Progressive Caucus. She, too, is one of Florida's "super-delegates," and as such has an automatic entitlement to participate fully as one of the 210 members of Florida's delegation to the Democratic National Convention. (Thurman, par. 4)

5. Plaintiffs BILL NELSON, ALCEE L. HASTINGS, CORRINE BROWN, JANET B. TAYLOR, EUGENE A. POOLE, SAM OSER, CARLOS DE ZAYAS, and LUIS FERNANDEZ are registered Democratic voters in Florida and have announced and advised of their firm intention to participate in selecting the Democratic Party nominee by voting in the Florida Presidential primary on January 29, 2008. They also seek to learn more about the candidates as a result of the candidates' campaign appearances in Florida. The Plaintiffs have also advised that they hope and intend to share directly with one or more of the candidates their views about the issues that affect Florida and our nation during campaign and during Florida campaign. Plaintiffs further have announced their intention to associate with others who share their values by becoming involved in local

and state-wide efforts, on behalf of a candidate for the Democratic nomination for the Presidency. (Thurman, par. 5)

6. Defendant HOWARD DEAN is the Chair of the Defendant DNC, which is the governing committee of a national political organization that is allowed by federal and state law to function as one of the nation's two major political parties. In connection with their activities in Florida and throughout the country, DEAN and the DNC represent the state and territorial Democratic organizations of the United States, including the Florida Democratic Party ("FDP"). (Thurman, par. 6)

7. Defendant KURT S. BROWNING ("BROWNING") is the Secretary of State of the State of Florida and is responsible for, among other things, the enforcement of state election laws and the implementation and oversight of state-wide elections, including the Florida Presidential primary. He also is responsible for compiling and reporting vote totals for state-wide elections in Florida. (Thurman, par. 7)

8. The national and state Democratic Party organizations are political organizations that perform functions that are significantly intertwined with government operations. In Florida, the Florida Democratic Party is one of the two major party organizations regulated by multiple elements of state election law which prescribes detailed criteria for state-wide and local committee structures and operations. §103.091, Fla. Stat. (2007). Also set forth by law are reporting, structural, and operational requirements that differ from and exceed the statutory obligations of ordinary private corporations. §106.29, Fla. Stat. (financial reporting); §103.091(3) (copy of Constitution, by-laws, and rules and regulations to be filed with Department of State); §103.091(4)

(members of county committee to be elected every four years, through qualifying with Secretary of State and receiving a plurality of votes by party members). (Thurman, par. 8)

9. The Florida Democratic Party receives portions of the filing fees paid to the Florida Secretary of State by Democratic candidates when they become candidates for public offices in partisan elections. The Florida Democratic Party is entitled to have ten of its members serve on the DNC. Its Chair serves along with nine others selected by the Florida Democratic Party. Additionally, an eleventh Floridian serves on the DNC by virtue of his at large appointment by the DNC's Chair. (Thurman, par. 9)

10. In accordance with these and other laws of Florida, the Democratic Party's nominees enjoy the status of a major party candidate, a duopoly shared only with the Republican Party. Such recognition by the State of Florida guarantees a position on the general election ballot for the party's nominees. §100.051 Fla. Stat. (2007). (Thurman, par. 10)

11. Historically, the Democratic Party, like its Republican counterpart, has selected its nominee for the Presidency based on the voting of delegates to the national conventions held during each Presidential election. The delegates who gather every four years for the Presidential nomination conventions include delegates from states based on allocations by the DNC and RNC based primarily on population factors, but also including, to a lesser extent, elements such as the success of party candidates within the state. As to each state, the mechanisms have varied for determining which candidates would gain delegates from that state. (Thurman, par. 11)

12. Presidential primaries were initiated in the early 1900's by states that wanted to assure that the power over the selection of delegates who choose a party's nominee for the Presidency would be conferred upon the voters rather than party leaders. (Thurman, par. 12)

13. The principal purpose of the Presidential primary election is the selection of delegates for the national conventions of the major parties. Prior to 1968, however, most states did not use primary elections and instead awarded delegates based on methodologies that included party caucuses as well as decisions made by party leadership within the state. (Thurman, par. 13)

14. After the bitter 1968 Democratic convention in Chicago, Illinois, the Democratic Party appointed a commission led by South Dakota Senators George McGovern and later Congressman Donald Fraser to reform the Presidential nomination process. As a result of the work of the Commission on Party Structure and Delegate Selections from 1969 to 1972, known generally as the "McGovern – Fraser Commission," significant changes were put into effect. The rules promulgated by the McGovern – Fraser Commission were conceived to make the delegate selection process more representative, and to facilitate greater participation by women and minorities. Many states, in furtherance of these directives, enacted legislation to create Presidential primaries to ensure that delegate selection would be essentially a function of the popular vote. (Thurman, par. 14)

15. Although Florida had previously utilized presidential primaries to select delegates, in 1971, its legislature enacted a new law for the Presidential primary elections

reflecting some of the goals of the McGovern – Fraser Commission, such as making the delegate selection process more open, more representative and more reflective of the will of Florida’s voters. In accordance with the Presidential primary system enacted in 1971, Florida voters have gone to the polls every four years to cast their vote for candidates seeking the nomination by one of the two major parties. In the course of the nine of Florida’s Presidential primaries during this period, only Democratic or Republican candidates have appeared on the Presidential primary ballot. (Thurman, par. 15)

16. Florida’s election laws require a Presidential preference primary for the selection of Republican and Democratic Party delegates in accordance with the legislative intent that Florida’s delegates to the party’s convention will reflect the results of Florida’s votes. DNC rules 12 and 13 provide in a detailed fashion that the selection of delegates (committed to the various candidates) shall be determined based on the results of the Florida presidential preference primary. A caucus could not be used to select delegates to the Democratic convention, both because it would be financially unachievable and logistically unrealistic to put into practice. Nor is the state-wide process to use mail-in ballots a real possibility since the estimated expense of \$7 million is far beyond the available financial resources of the FDP. Further, the Florida Democratic Party rules, enacted pursuant to the DNC delegation, also provide that the primary shall determine the selection of delegates, as has been done in the past for many years under a substantially identical statute (although the primary was in March rather than January in previous years). (Thurman, par. 16)

17. In all nine Presidential primary elections in Florida, the results of the voting within Florida's Congressional District have been used to award, from the delegates allocated to Florida, a certain number of delegates for each candidate winning sufficient votes. (Thurman, par. 17)

18. All nine of the Presidential primary elections since the 1971 legislation were funded entirely by public funds. (Thurman, par. 18)

Presidential Selection Commission

19. In formulating the list of Democratic candidates for the Florida Presidential primary, the Florida Democratic Party must submit to the Florida Secretary of State "a list of its Presidential candidates to be placed on the Presidential preference ballot or candidates entitled to have delegates appear on the Presidential preference primary ballot." §103.101, Fla.Stat. (2007). This list is then submitted by the Secretary of State to the official State of Florida Presidential Candidate Selection Committee which is constituted as follows:

There shall be a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be a nonvoting chair; the Speaker of the House of Representatives; the President of the Senate; the minority leader of each house of the Legislature; and the chair of each political party required to have a Presidential preference primary under this section.

§103.101(2) (emphasis added). Thereafter, Florida's Presidential Candidate Selection Committee determines which proposed candidates for each party will actually appear on the Presidential primary ballot. §103.101(a). (Thurman, par. 19)

20. In contrast to other primary elections in which the individual candidate secures a ballot position through the individual's own filings, with respect to the Presidential primary, it is a governmental body, jointly with the political parties, that determines whose names will be submitted to the voters. (Thurman, par. 20)

21. During the present election cycle, the names of the Democratic candidates have been delivered to the Florida Presidential Selection Committee by the Florida Democratic Party based, in turn, on the list of candidates provided by the DNC. The DNC's list designates the Democrats who are authorized by the DNC to participate in the DNC-sanctioned debates. Currently, eight names have DNC approval and those are the same eight candidates who are to be considered by the Florida Democratic voters on January 29, 2008. (Thurman, par. 21)

22. In implementing the selection of the two major party nominees, Florida's Secretary of State, its 67 county supervisors of elections, and thousands of permanent and temporary employees of state and local government will expend an estimated \$18 million of taxpayer funds to conduct a primary election so that primary votes are tabulated and delegates are thereby selected for the Democratic and Republican National Conventions. Thus, the DNC, like its Republican counterpart, enjoys the benefit of major expenditures of public resources so that Florida voters will be able to participate in the selection of its Presidential nominee. (Thurman, par. 22)

23. The substantial public expenditures and election efforts by state and local governments do not end with the primary process. The nominees ultimately selected at the major party conventions will appear automatically in Florida and throughout the

nation on the ballot as the two major party candidates in the general election on November 4, 2008, §100.051, Fla.Stat. (2007). The State of Florida thus assures the DNC that the name of its nominee will be submitted to Florida voters, §103.021(2) (top Presidential ballot positions allocated to the leading political parties) and entitled to compete for the state's 27 electoral votes. (Thurman, par. 23)

Florida

24. With more than 18 million residents, Florida is the nation's fourth most populous state. It is also one of the most diverse states and has been frequently described as a "microcosm of the United States." Underscoring Florida's role as a nation's barometer is its history concerning elections for the Presidency. With the exceptions of 1992, which included a significant third party candidacy, and the razor-thin Kennedy-Nixon election of 1960, the winner of Florida's electoral votes has become President in every election subsequent to 1924. (Thurman, par. 24)

25. While representative of our nation's own traditions and diversity, voters in Florida also confront issues that are especially critical to Floridians. For example, Florida's substantial community of senior citizens, one of the country's largest, has compelling needs with respect to matters such as Medicare, Social Security, and seniors and military and veteran's issues. And Florida maintains a strong and long-standing commitment to open government as well as distinct environmental concerns such as the Florida Everglades and offshore drilling. Likewise, Floridians, due to the realities of their state's geography, have an especially strong interest in issues such as the proposed National Catastrophe Fund. Also striking are issues that arise due to the state's role as the

nation's bridge to the Americas and the Caribbean. As a result of its diverse character and gateway position, Florida, more than other states, confronts a range of distinctive hemispheric concerns ranging from Cuba's Communist dictatorship to the need to accord fair treatment to Haitian refugees. Therefore, while Floridians care deeply about issues of broad national interest such as the war in Iraq and improving our health care, they also have distinctive concerns with a Florida focus that are more effectively discussed and developed through candidate appearances in Florida. (Thurman, par. 25)

26. Because of the enormous impact the President can have on issues of special concern to Floridians, it is important that they have access to Presidential candidates during the primary campaigns. With respect to a number of Presidential candidacies, these are months that can provide a valuable process for candidates to learn about issues that are important to state's residents and formulate positions that may become part of a future White House agenda. (Thurman, par. 26)

27. According to recent statistics, Florida presently has an estimated 4.25 million voters who are registered Democrats. While Florida's Democrats represent a richness of ethnic, cultural, social, and economic diversity, they also, to an overwhelming degree, embody traditions that include a strong commitment to the fundamental right to vote and to assuring that every vote will truly count. (Thurman, par. 27)

28. In 2000, Florida was the epicenter of an unprecedented and ultimately unsuccessful battle to secure a recount in the Presidential election. That extraordinarily intensive process, which enveloped Florida and the nation for weeks, resulted in the

rejection of tens of thousands of paper ballots that, if counted, would have changed not just an election, but the future course of national and world events. (Thurman, par. 28)

29. Widespread disillusionment followed that debacle throughout the nation, but especially in Florida. In succeeding elections, though, many in this state renewed and redoubled their efforts to restore voter confidence and enhance voter participation by taking concrete and visible efforts to protect voting and ensure that votes would be counted in the future in various settings including the general elections of 2002, 2004 and 2006, hundreds, if not thousands, of Florida's Democrats worked hard to develop voter education and to mobilize for voter protection so that on Election Day any improper impediments to voting could be overcome. (Thurman, par. 29)

30. Democratic leaders and voters have also taken steps to address the widespread use of electronic voting systems that have provided no paper trail, a recurring source of legitimate concern and voter discouragement. Recently, Florida has taken a major step to enhance confidence in elections by eliminating the use of paperless machines and requiring that all voting systems have a verifiable paper trail. (Thurman, par. 30)

31. In the aftermath of 2000, Democrats in Florida and elsewhere have been striving to assure that every vote counts. (Thurman, par. 31)

32. As Florida and the rest of the nation look ahead to 2008, a wide-open race for the White House is underway. Not since 1952 has the country entered into the Presidential campaign season with neither an incumbent President nor an incumbent Vice President among the contenders. Moreover, for Democrats, this election presents historic

opportunities, including the prospect that, for the first time, a female, an African-American or a Hispanic candidate could reach the Oval Office. (Thurman, par. 32)

33. In fashioning its calendar for the delegate selection by the states, the DNC has awarded electoral exclusivity for the entire month of January, 2008 to only four states, Iowa, Nevada, New Hampshire and South Carolina. For those who disobey its calendar, DNC rules specify that 50% of that state's delegates shall be forfeited as a penalty for non-compliance. (Thurman, par. 33)

34. In states like Florida, Democrats do not control the timing of the state's primaries. In fact, as matters developed, the Republican-dominated legislature, with the encouragement and signature of Florida's Republican Governor, changed the primary date. On May 21, 2007, Florida's Governor signed into law Chapter 2007-30 amending §103.101 to provide that every four years, the Florida Presidential primary will take place on the last Tuesday in January. This switch from March 11, 2008 to January 29, 2008 was caused by the Republican-controlled state government of Florida after the DNC adopted the rules regulating the timing of primaries nationwide. There was nothing the Democratic minority in the legislature could do to stop it, although many individual Democrats supported the overall legislation because it was part of a package containing a "paper trail" legislation for ballots which Democrats, for obvious reasons, viewed as highly desirable. (Thurman, par. 34)

35. Despite its announcement that half of the delegates might be lost by a non-compliance with the DNC's desired schedule, the DNC has chosen to punish Florida, including its 4.25 million Democratic voters, by stripping away not only 50% of Florida's

delegation – the sanction explicitly designated for contravening the DNC’s calendar - but *all* 210 of Florida’s delegates to the Democratic National Convention. (Thurman, par. 35)

36. This means that the primary appears to be essentially meaningless, as DNC Rule 13.H states, and eliminates any incentive for a candidate to campaign in Florida. Further, for Senator Nelson, Congressman Hastings, and Congresswoman Brown this preclusion would operate to divest them of rights they already enjoy as “super-delegates.” For Commissioner Taylor and many other Floridians, the right to pursue service as a delegate is being denied. Unless the current scenario is dramatically changed, all plaintiffs will lose the right to make a meaningful vote as to the Democratic nominee for President. (Thurman, par. 36)

37. As a result of circumstances including the forfeiture of all of Florida’s delegates and, we are told, efforts by the state Democratic parties of Iowa, New Hampshire, Nevada, and South Carolina, the Democratic Presidential candidates have pledged not to campaign in Florida, except by attending fund-raisers. (Thurman, par. 37)

38. Due to the exemption for fund-raising, candidates will be able to raise money in Florida, but cannot deliver their message to its people or hear directly from them by meeting with them. Moreover, because fund-raisers will provide the only venue for Democratic Presidential candidates in Florida, those Floridians who are not financially able to contribute to campaigns will apparently be excluded from one of the most important primary campaigns in their lifetimes. (Thurman, par. 38)

39. The DNC has consistently championed voting rights and diversity. Less than two months before erasing Florida Democratic voters from the Presidential

nomination process, DEAN and the DNC sent waves of e-mails around the country proclaiming their commitment “to make sure every vote counts,” emphasizing that “we all know what happened in Florida in 2000.” (Thurman, par. 39)

40. With its stated philosophy of striving to assure that every vote must be counted, the DNC has taken steps to assure that no Florida Democrat’s vote will count toward the selection of any delegates to the Democratic National Convention. By virtue of what has happened in Florida, only Republican candidates for the Presidency will campaign in Florida during the primary campaign months and only Republican voters will be able to cast effective votes in the Presidential primary process. (Thurman, par. 40)

41. As a result of the forfeiture of all of Florida’s delegates to the Democratic nominating convention, minority members who are predominantly registered as Democratic voters will suffer a disproportionate impact by virtue of the exclusion of Democratic voters. (Thurman, par. 41)

42. In the most recent election cycle, more than 81% of African-American voters were Democrats, less than 5% were Republicans and the rest were not registered with either party. Accordingly, roughly 94% of the African-American voters who are registered with a major political party and thus eligible to vote in the Florida Presidential primary are being effectively prevented from participating in the electoral process. By comparison, a far lesser percentage of eligible white voters will be eliminated from effective participation in the Florida Presidential primary, establishing a disparate and discriminatory impact on African-American voters. (Thurman, par. 42)

43. Fund-raisers will provide the only venue for Democratic Presidential candidates and Democratic voters, including minority members. Because attendance at fund-raisers usually requires a financial contribution, however, less affluent voters are unlikely to have access to the candidates at such events. Not only will lower income Floridians apparently have no opportunity to see or meet candidates for themselves, even local media coverage concerning local issues will be largely eliminated due to the lack of public forums and other campaign events where media are present. (Thurman, par. 43)

44. By effectively conditioning access to candidates upon substantial financial contributions, the likely result is undercutting the involvement of non-participating voters and creating a disproportionate and discriminatory impact. (Thurman, par. 44)

45. According to news reports, Iowa and New Hampshire have moved forward their delegate selection process with announcements that January 3rd is the new date for caucuses in Iowa, and January 8th is the date for the New Hampshire primary. It is also being reported that Nevada's caucuses may take place on January 19, 2008, and that South Carolina's Republican primary will be on the same day while that state's Democratic primary will be a few days later, on January 23, 2008. The two states enjoying a decades-long tradition of early Presidential processes – Iowa and New Hampshire – will participate weeks ahead of Florida's primary. In other words, Florida's primary schedule, while not in the control of Florida Democrats, would still allow the four states an earlier role in the selection of the Democratic nominee. (Thurman, par. 45)

46. The removal of Florida's 210 delegates and the elimination of campaigning by major Democratic candidates in Florida prior to January 29, 2008 is contributing to positive media coverage for Republican party candidates and campaigns. "GOP Hopefuls Get Fired Up" Florida's new early primary is paying off for GOP voters ...") *Miami Herald, 1B (Oct. 21, 2007)*. "Party Reaction to Florida Primary Hurts Democrats" ("As a result, expect many visits by Republicans seeking votes for the party nomination and trying to gain momentum for the general election in November"), *South Florida Sun-Sentinel (Sept. 4, 2007)*. "Christ Says He'll Veto Any Change In Presidential Primary Date," *Associated Press State and Local Wire (Sept. 4, 2007)*.

47. As of April, 2006, the official estimate of Florida's population was 18,349,132, making it the nation's fourth most populous states. *The Florida Legislative Econographic News (2007 Vol. 1)*. According to that legislative source, 8.7% of Florida's population is 75 and older. The 2007 report also makes the following statements concerning Florida's diverse inhabitants: "Of those, 79.9 percent were White, 15.0 percent Black or African American, and 5.2 percent other races." ... "It is estimated that Florida's Hispanic population is growing at about twice the rate as the total population (27.7% versus 12.1% for the 2000-2005 period). In 2005, 19.1 percent of Florida's population was Hispanic, up from 16.8 percent in 2000."

48. As is reflected on Exhibit B of the Defendants' Statement of Material Facts, caucuses are used in the U.S. Territories and in thirteen states ranging in population size from Wyoming to Washington which, as can be judicially noticed, do not include any of the nation's ten most popular states.

49. In the Florida Senate, there are currently 26 Republican members and 14 Democratic members (<http://flsenate.gov/Legislators/index.cfm?Tab=legislators>). In Florida's House of Representatives, 78 members are Republican and 42 of Florida's State Representatives are Democrats (<http://www.myfloridahouse.gov/Sections/Representatives/representatives.aspx>).

DATED: November 5, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 2007, the foregoing was served via the Court's CMIECF electronic filing system to the following:

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