

the DNC. The delegates from each state are chosen through a process adopted by the state's Democratic Party. (*Id.* ¶¶4-5).

3. Beginning in 1968, each state party's process has been required to comply with principles or rules established by the Democratic National Committee; and for each presidential election starting in 1976, the DNC has established formal Delegate Selection Rules to govern the selection, in each state, of its delegates to the National Convention. (*Id.* ¶ 7).

4. These rules require each State Democratic Party to develop a written delegate selection plan and to submit that plan to the DNC's Rules and Bylaws Committee ("DNC RBC") for review and approval (*Id.* ¶ 9).

5. The delegate selection process in each state involves two basic functions: (i) the allocation of delegate position among presidential candidates, *i.e.*, how many delegates from that state will go to the Convention pledged to each candidate; and (ii) the selection of the actual individuals to fill those position, *i.e.*, the selection of the people who will attend the Convention as delegates and alternates. (*Id.* ¶ 10).

6. Generally state parties use either a primary or a caucus/convention system. In a primary system, the state party uses the state-government run or a party-run primary election to allocate delegate positions, and then a party-run meeting (caucus) to fill those positions. (*Id.* ¶11).

7. In a caucus system, the state party uses a series of party-run meetings—caucuses—both to allocate delegate positions and to select the persons to fill those positions. A caucus/convention system does not involve use of the state's electoral machinery. Of the 56 states and territories that will send delegates to the 2008

Democratic National Convention, 20 will use party-run caucus/convention systems. (*Id.* ¶¶ 12-13).

8. The DNC’s Delegate Selection Rules (attached to the McNamara Declaration as Exhibit A) govern all aspects of these processes and reflect the values and ideals of the Party in a variety of ways—for example, requiring transparency and openness in the process, ensuring participation by all voters who are registered as or identify themselves as Democrats, prohibiting discrimination and requiring affirmative action programs to achieve diversity in the delegations. (McNamara Dec. ¶ 14).

9. One aspect of the rules that also reflects these values and ideals are the provisions governing the timing of primaries and first-tier caucuses—the state party’s event at which voters express their preference for President. (*Id.* ¶15)

10. For the last 38 years, a series of DNC commissions and bodies has deliberated the complex question of when states should first be able to hold these events and which states, if any should be allowed to hold events before all other states. The results of these deliberations have been reflected in the rules for each cycle governing the sequence and timing of primaries and caucuses. (*Id.* ¶ 15).

11. These deliberations have involved delicate balancing of the value of showcasing smaller less populous states where more personal “retail” campaigning is still possible against the competing value of giving a role to larger, more racially, ethnically and economically diverse states. And in setting the timing of caucuses and primaries, the Party has also had to balance the value of giving Democratic voters a longer time period to scrutinize the candidates, by stretching out the process, against the competing value of

uniting the Party and rallying around a nominee earlier in the process and thereby conserving resources for the general election. (*Id.* ¶ 16).

12. For the last several cycles, the DNC Rules set the earliest date on which a binding primary or first-tier caucus could be held, with exceptions allowing Iowa to hold its caucuses and New Hampshire to hold its primary before that date. (*Id.* ¶ 17). Until the 2004 election, that date was the first Tuesday in March.

13. Then, in 2000 the Republican Party for the first time issued rules setting the earliest date for Republican primaries and caucuses as the first Tuesday in February. The DNC then matched the Republican rule and set its earliest date for that same day, but with the usual exceptions for Iowa and New Hampshire. (*Id.* ¶¶ 18-19).

14. After strenuous objections were voiced by Michigan Democratic Party leaders, the DNC agreed to create a commission to study the issue. In December 2005, after a nearly year-long process involving numerous hearings and meetings, that commission (the “Price-Herman Commission”) found that the traditional role of Iowa and New Hampshire should be balanced against the need to place candidates before a range of voters more reflective of the Party’s diversity. (*Id.* ¶¶ 20-22).

15. The Price-Herman Commission recommended adding 1-2 additional caucuses between the Iowa caucuses and the New Hampshire primary, and 1-2 additional primaries after the New Hampshire contest but before February 5, 2008, the first date on which all other states could start to hold their events. (*Id.* ¶ 23).

16. During 2006, the DNC RBC invited state Democratic Parties to apply to be one of the states allowed to hold those pre-February 5 events. Eleven state parties did so. Florida was not among them. (*Id.* ¶¶ 26-27)

17. After another extensive round of presentations and meetings, the DNC RBC recommended a set of rules providing that the Iowa caucuses would take place no earlier than January 14, 2008; that one caucus would be held between the Iowa caucus and the New Hampshire primary, and that this caucus would 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 this primary be held in South Carolina, a southern state in which African-Americans represent a significant share of the Democratic electorate. All other state parties would be required to hold their primaries or first caucuses on or after February 5, 2008. (*Id.* ¶¶ 25-28).

18. The full DNC adopted those rules in August 2006 by a near-unanimous vote, with Florida's DNC members voicing no objection. (*Id.* ¶ 29).

19. To ensure that the DNC can effectively enforce the Delegate Selection Rules, those rules provide for imposition of sanctions on state parties violating certain fundamental strictures, including the one governing timing of primaries and caucuses. The Rules provide that any state party violating that rule automatically loses 50% of its pledged delegate positions and that the DNC members, Democratic Members of the state's congressional delegation and others normally entitled to attend the Convention as unpledged voting delegates will not be permitted to so attend. (*Id.* ¶¶ 30-31; Exhibit A, Rule 20(C)(1)-(3)). In addition, the Rules confer on the RBC the authority

to impose additional sanctions, including further reductions in the state party's delegation to the Convention. (*Id.* ¶ 31; Exhibit A, Rules 20(C)(5) & (6)).

20. With full knowledge and in open defiance of the DNC's rules and sanctions, the Florida Legislature proceeded to enact a law, HB 537, changing the state's presidential preference primary from the second Tuesday in March (which would fully comply with the DNC's Rules) to the last Tuesday in January. (*Id.* ¶49).

21. That legislation was initially sponsored or co-sponsored in both the state House and Senate by Democratic legislators and was strongly supported by the state's Democratic state legislative leadership and lawmakers at every stage of the process. (*Id.* ¶¶ 38-49). The bill was signed into law in May 2007, amending section 103.101, Florida Statutes.

22. In a state in which the state government runs a presidential preference primary in violation of the DNC's timing rules, the state's Democratic Party is free to disregard the results of that primary—treating it as a non-binding “beauty contest”—and to use a party-run caucus/convention process instead, to allocate delegate positions among presidential candidates in compliance with the DNC's timing rules, thereby avoiding any sanctions. Democratic state parties did exactly that in Vermont in 1984; in South Dakota in 1988; and in Arizona, Delaware and Washington State in 2000. (McNamara Dec. ¶¶ 34-36).

23. Following enactment of the new law, DNC and Florida Democratic Party (“FDP”) officials began extensive discussions about development of an alternative, party-run caucus/convention plan that would comply with DNC rules and thereby avoid any sanctions. (*Id.* ¶ 50).

24. An initial vote-by-mail plan was developed by FDP but in June, 2007, the FDP's Executive Committee voted instead to submit to the DNC a plan making the January 29 primary binding. (*Id.* ¶ 51).

25. Discussions and meetings between the DNC and FDP continued in June, July and August, during which time the DNC developed a plan for a party-run congressional district caucus system that would comply with DNC rules and afford an opportunity for all Florida Democrats to vote for President. The DNC even offered to cover the entire cost of implementing that system. (*Id.* ¶ 52).

26. The FDP rejected this offer. (*Id.* ¶53).

27. At a meeting on August 11, 2007, FDP officials were forewarned that it was likely not only that the automatic sanction of 50% reduction in delegates would be imposed but that, unless FDP agreed to run a process complying with the rules, the State Party was likely to lose 100% of its delegates. (*Id.* ¶55).

28. At a meeting on August 25, 2007, the DNC RBC considered Florida's plan to use the January 29 primary in violation of the DNC rules. At that meeting, representatives of the FDP were afforded an extensive opportunity be heard. (*Id.* ¶ 56).

29. The DNC RBC 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 underlying those rules, lest the nominating process descend into chaos, with each state free to leapfrog other states in a never-ending cycle. Members of the Committee were also cognizant of the fact that every other Democratic State Party in the country had, despite considerable political counter-pressures, submitted a plan complying with the DNC's timing rule. (*Id.* ¶ 56-57).

30. DNC Delegate Selection Rule 20(C)(7) allows the DNC RBC to determine that no sanctions are to be imposed on a state party by reason of violation of the timing rule, if the State Party proves by “clear and convincing evidence” that “the state party and other relevant Democratic party leaders and elected officials took all provable, positive steps and acted in good faith to achieve legislative changes to bring the state law into compliance” with the Party rules. (McNamara Dec. Ex. A, Rule 20(C)(7)).

31. At the August 25, 2007 meeting, however, the RBC concluded that Florida Democratic party leaders and elected officials had not acted in good faith to oppose the legislation moving the primary date, given that Democratic legislators were original co-sponsors of the legislation in both chambers and that virtually all Democratic state legislative leaders and lawmakers actively supported the legislation at every stage of the process. (McNamara Dec. ¶¶ 38-49, 58).

32. At the August 25 meeting, after discussion of all of these issues, by a voice vote with only one dissenting vote, the DNC RBC found the Florida 2008 Delegate Selection Plan in non-compliance with the timing rule, thereby triggering the automatic reduction of the State Party’s delegation by 50% and the disenfranchisement of the state’s DNC members and Democratic Members of Congress to attend the Convention as delegates. As part of the same motion, the DNC RBC voted to further reduce the state’s total number of pledged and unpledged delegates to zero, as authorized by the Delegate Selection Rules. (*Id.* ¶59).

33. Under provisions of the RBC’s internal regulations, the FDP was given an additional 30-day period of time following that meeting in which to submit a revised Plan that complied with DNC Rules, but the FDP did not do so. (*Id.* ¶¶ 60-62).

34. DNC Rule 20(C)(1)(b), provides that a presidential candidate who campaigns in a state that violates the window will not be entitled to receive any pledged delegate positions from that state. (*Id.* ¶32).

35. Since the FDP is not currently entitled to send delegates to the Convention, this provision of the Rules (providing that presidential candidates campaigning in a state that violates the timing rule are not entitled to delegates) is inapplicable. Certain presidential candidates signed a letter pledging not to campaign in Florida but that pledge did not result from any action or request of the DNC. (*Id.* ¶ 64).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served via CM/ECF to Kendall Coffey and Jeffrey B. Crockett, Coffey Burlington, Office in the Grove, Penthouse, 2699 S. Bayshore Drive, Miami, Florida 33133 and Ronald G. Meyer, Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, Tallahassee, Florida 32301 on October 30, 2007.

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