

MEMORANDUM

TO: Secretary Alexis Herman
Congressman David Price
Co-Chairs, Commission on Presidential Nomination Timing and Scheduling

CC: Members of the Commission on Presidential Nomination Timing and Scheduling

FROM: Phil McNamara, DNC Director of Party Affairs and Delegate Selection
Joe Sandler, DNC General Counsel

SUBJECT: Current National Party Rules & State Laws Affecting Timing of Nominating Process

DATE: May 10, 2005

This memorandum sets forth, for your consideration, issues surrounding the timing of the presidential nominating process and when primaries and caucuses may be scheduled. Specifically, this memorandum addresses the following three areas: (1) the Democratic National Committee's (DNC) authority over the process; (2) current national Party rules on timing, both DNC and RNC; and (3) pertinent state laws that impact the timing of the process, specifically the start of the process.

DNC Authority Over the Process

Each presidential election cycle, the DNC issues Delegate Selection Rules to govern the selection, in each state, of the delegates to the National Convention. Normally those rules are adopted at the first or second full DNC meeting held in the mid-year (e.g., 2006). Under these rules, the DNC requires each State Party to develop a written plan for the selection of delegates to the national nominating Convention, and to submit that plan to the DNC Rules & Bylaws Committee. The Committee reviews each plan for compliance with the Delegate Selection Rules. One of the rules governs the timing of presidential primaries and caucuses in each state.

If a State Party's plan does not comply with the rules, the Rules & Bylaws Committee can declare the plan in "non-compliance." Non-compliance with certain key rules—including the timing rule—results in an automatic, severe reduction in the number of delegates the state can send to the Convention. A plan in non-compliance for any reason also leaves the state's delegation open to a credentials challenge at the Convention.

Caucuses and party-run primaries are subject to the control of the national Party, the DNC, in the sense that no state law can dictate to a State Party how, whether or when to hold such a Party-run event, and no state law can make the DNC or the National Convention respect the results if the event does not conform to national party rules. With respect to primaries that are run and paid for by the state government, rulings of the Supreme Court and lower courts over the years have made clear that, ultimately, the DNC (and RNC) cannot force a state to hold or not hold a primary or tell the state when to hold it; but the national Party and its Convention do have the constitutionally-protected, inviolable right to disregard the results of that primary; to refuse to seat, at the Convention, delegates chosen based on that primary; and/or to force the State Party to hold an alternative, Party-run process (caucus) to choose the delegates to go to the Convention.

Current DNC Rules

Under the current DNC rules that were adopted by the DNC in January in 2002 which guided the 2004 delegate selection process and that this Commission is using as a reference point for its discussion:

- ! The “window” for all states other than Iowa and New Hampshire opens on the first Tuesday in February (February 5, 2008);
- ! Iowa is allowed to go 15 days earlier (January 21, 2008);
- ! New Hampshire is allowed to go 7 days earlier (January 29, 2008);
- ! All other states can go on Feb. 5 or later, as they wish—but not earlier.

Current RNC Rules

The national Republican Party writes its rules in a different way than the DNC. Republican delegate selection rules, including the comparable Republican rule on timing, must be approved by its national Convention. Accordingly, at the 2004 Republican National Convention the Republicans set their rules for the 2008 nominating process. Additionally, the RNC lacks the flexibility to in any way amend the rules. Under the RNC rules:

- ! The window for all states opens the first Tuesday in February;
- ! There is no exception for Iowa or New Hampshire;
- ! As under the DNC rules, there are automatic sanctions for violating the rule, i.e. a state’s delegation size is automatically reduced;
- ! But in 2004 nobody bothered to trigger the process for doing this because the Republicans had an uncontested nominating process.

Pertinent State Laws Affecting Timing

Both the states of Iowa and New Hampshire have adopted statutory provisions that impact the timing

of those two states events with regard to the start of the presidential nominating process.

Iowa State Law

! State law mandates that the precinct caucuses be held, for both Democrats and Republicans, on the same night;

! And that night must be at least 8 days before any other state's primary or caucus;

! Accordingly the Iowa caucuses are held on the 2nd Monday night before the New Hampshire primary.

New Hampshire State Law

! Requires that the New Hampshire primary be held on the Tuesday that is at least 7 days before any other state's primary;

! Within that constraint, the date may be set by the Secretary of State.