

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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BILL NELSON, ALCEE L. HASTINGS, and  
JANET B. TAYLOR,

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.

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Case No. \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiffs, BILL NELSON, ALCEE L. HASTINGS, and JANET B. TAYLOR, sue the defendants, HOWARD DEAN, THE DEMOCRATIC NATIONAL COMMITTEE (“DNC”), and KURT S. BROWNING, in his official capacity as Secretary of State of the State of Florida, and allege:

**Preface**

As the United States Supreme Court has said:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

*Reynolds v. Sims*, 377 U.S. 533, 555-62 (1964). In Florida, Democrats believe that this fundamental principle was sacrificed by the failure to recognize and count tens of thousands of ballots in the 2000 Presidential election, a failure that has dramatically altered the course of our

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nation's history. In the aftermath of the shattering events of 2000, Democrats here and around the country have made continued efforts to assure that every vote counts so that voter disillusionment would give way to a broad renewal of faith in the electoral system. It is thus truly a monumental irony for the Democratic National Committee to issue a decree that no Florida Democrat's vote will count. But no such decree should be allowed to disenfranchise more than four million Florida Democrats. For the right to vote in a Presidential primary to have any meaning, those Presidential primary ballots must result in votes that are going to count at the party's national convention. Based on the reasons that follow, the authority of this Court is invoked so that, this time, the fundamental rights of voters in Florida will be recognized and protected.

**Preliminary Allegations**

1. This is an action for declaratory and injunctive relief to seek, among other things, a judicial declaration concerning whether the disenfranchisement of more than four million Democratic voters in Florida's Presidential primary election on January 29, 2008 violates the Due Process and Equal Protection Clauses of the United States Constitution, as well as 42 U.S.C. §1983 and Section Two of the Voting Rights Act, 42 U.S.C. §1973(c).

2. This Court's jurisdiction is predicated upon 28 U.S.C. §1331, which is activated by the claims under the First, Fifth and Fourteenth Amendments of the United States Constitution, as well as 42 U.S.C. §1983 and 42 U.S.C. §1973(c). The remedial authority relies on 28 U.S.C. §2201, as well as the inherent equitable powers of this Court.

3. Plaintiff, 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.

4. 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.

5. Plaintiff, JANET B. TAYLOR, is a citizen of and a registered Democratic voter in this state residing in Hendry County, Florida. A strong supporter of the Democratic Party principles, her outstanding public career includes her current service as the only African-American member of the Hendry County Board of Commissioners on which she is the Commissioner for District One.

6. Plaintiffs, BILL NELSON, ALCEE L. HASTINGS, and JANET B. TAYLOR intend to participate in selecting the Democratic Party nominee by voting in the Florida Presidential Primary on January 29, 2008. They also seek, to the extent practicable, to learn more about the candidates as a result of the candidates' campaign appearances in Florida. Moreover, the plaintiffs hope to share directly with one or more of the candidates their views about the issues that affect Florida and our nation during those campaign appearances. And plaintiffs may also choose to associate with others who share their values by becoming involved in local, even state-wide efforts, on behalf of a candidate for the Democratic nomination for the Presidency.

7. Defendant HOWARD DEAN is the Chair of the Defendant DNC, which is the governing committee of a national political party that is empowered 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 collective memberships, decisions, and actions of state Democratic organizations, including the Florida Democratic Party. Although headquartered in Washington, D.C., they conduct substantial and not isolated activities in the State of Florida within the meaning of §48.193, Fla.Stat. (2007).

8. 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. BROWNING is named as a defendant in this action solely in his official capacity and because he is a proper party to this action in light of the relief being requested. BROWNING and the Office of the Secretary of State are headquartered in Tallahassee, in Leon County, Florida.

9. This action is brought in the United States District Court for the Northern District of Florida because Tallahassee is the seat of Florida’s government, including its legislative functions and executive operations such as the tabulation and certification of election results in state-wide primary and general elections. Thus, a substantial part of the events giving rise to these claims have occurred or will be occurring in this judicial district within the meaning of 28 U.S.C. §1391(b).

**Florida’s Presidential Primary:**  
**Public Functions and Joint Action of**  
**The Major Political Parties**

10. The national and state Democratic Party organizations are political organizations that perform certain functions that are public as well as functions that are sufficiently intertwined with government operations as to constitute joint action with state authorities. The close and

interdependent nexus with government is recognized in the special status that Florida and other states confer upon the major political parties. In Florida, the 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 far exceed the statutory obligations of ordinary private corporations. §106.29(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). As another example of the special status accorded to major political parties in Florida, they are also granted the legal right to have one poll watcher in each polling room during elections, a prerogative that is not afforded to private corporations or even political action committees. §101.131(1), Fla.Stat. (2007).

11. In accordance with these and other laws of Florida, the Democratic Party's nominee enjoys 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). Correspondingly, this statute also embodies the performance of certain essential public functions in the candidate selection process, as well as joint action with the state and local government agencies that will conduct the primary and general elections. Illustrating the public functions and joint action entailed in major party status is the Florida Presidential Primary, in which the DNC, the Secretary of State, and other governmental functionaries have indispensable and inextricably intertwined functions to provide the means for Democratic voters in Florida to participate in the selection of the Democratic

nominee for President of the United States.

12. For example, in formulating the list of Democratic candidates for the Florida Presidential Primary, the 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.

The Secretary of State shall submit such list of names of presidential candidates to the selection committee on the first Tuesday after the first Monday in January each year a presidential preference primary election is held. Each person designated as a presidential candidate shall have his or her name appear, or have his or her delegates' names appear, on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidate's name from the ballot. The selection committee shall meet in Tallahassee on the first Tuesday after the first Monday in January each year a presidential preference primary is held. The selection committee shall publicly announce and submit to the Department of State no later than 5 p.m. on the following day the names of presidential candidates who shall have their names appear, or who are entitled to have their delegates' names appear, on the presidential preference primary ballot. The Department of State shall immediately notify each presidential candidate designated by the committee.

§103.101(a). Thus, 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. Necessarily, this statutorily-created selection process assumes that the votes cast for the approved candidates will truly count in the nomination process, since the manifest purpose of the Presidential primary election is the selection of delegates for the national conventions of the major parties.

13. Other provisions underscore further the collaborative effort and interdependence between state government and the major political parties. The names of candidates or delegates appearing on the primary ballot "shall be listed as directed by the Secretary of State,"

§103.101(8). Meanwhile, for those candidates who receive sufficient votes in the Florida Presidential Primary, Florida law assigns to the political parties the responsibility of determining which individuals will represent the various candidates as delegates at the party's national convention. §103.101. And of special significance here, while state and local government agencies conduct the primary election itself, to assure that those votes will truly count in the nomination process, Florida law directs that the delegates for specific candidates are allocated by party rule, §103.101(6).

14. Accordingly, the process for Presidential Primary voting has multiple, interdependent components that include the approval of candidate names by the public official-dominated Selection Committee, the actual operation of Florida's elections by state and local government agencies, and the allocation of delegates based on that election by the national parties in accordance with §103.101(6). This interdependent relationship between Florida's

government and the major political parties is indispensable to the fundamental right to participate in the selection of Presidential nominees. For the right to vote to have any meaning, Florida's electoral system requires not only that the votes be counted on election day, but that election ballots result in votes that are going to be counted at the major parties' conventions through the presence of delegates.

15. In implementing the joint and interdependent action that will result in 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 their time and more than eighteen million dollars 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 participate in the selection of its Presidential nominee.

16. The substantial public expenditures and massive 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). By guaranteeing to the DNC that the name of its nominee will be submitted to Florida voters and entitled to compete for the state's 27 electoral votes, the State of Florida confers upon the DNC the public function of determining who may gain a place on the ballot. §103.021(2) (top Presidential ballot positions allocated to the leading political parties.)<sup>1</sup>

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<sup>1</sup> Further underscoring the close interrelationship between government and the Democratic and Republican nominating processes, federal law provides that up to four million dollars in public funds shall be contributed for the

17. In similar fashion, the nation's other states also provide explicit statutory recognition and extensive governmental collaboration with the two major party organizations. Most states employ processes similar to Florida's, relying upon state and local government election workers as well as millions of taxpayer dollars to conduct the primary elections and count the votes that will determine the winner of delegates from each state.

18. To assure that voting in presidential primaries is meaningful, the election systems of Florida and other states rely on the DNC to allocate convention delegates to each state the DNC's allocation of delegates to each state. As a result, DNC's allocation of delegates constitute a public function as well as a function that is so intertwined with governmental operations as to constitute joint action. Collectively, these state electoral processes culminate in national selection processes that, by designating the two major party nominees, define the principal choices that are carried back to the state election systems for the general election. Moreover, decisions made by the DNC at the national level are tantamount to decisions of the state political parties acting in concert, and thus, its actions in accepting or rejecting a state's delegation constitute a collective form of state action. As a result, the actions of the DNC in apportioning delegates to the states, while not anchored to any single factor or mathematical formula, is nonetheless, subject to the basic protections of the United States Constitution

**Florida: A Microcosm of the United States**

19. 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

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Presidential nominating conventions of each major party. 26 U.S.C. §9008.

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.

20. But while representative of our nation's own traditions and diversity, voters here also confront issues that are especially critical to Floridians. Thus, Florida's substantial community of senior citizens, one of the country's largest, has compelling needs with respect to matters such as Medicare and Social Security. Florida's legacies also include a strong 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.

21. Because of the enormous impact the President can have on issues of special concern to Floridians, it is crucial that they have access to Presidential candidates during the primary campaigns. These are the months that provide the intensive process for candidates to learn about issues that are critical for a state and formulate positions that may become part of a future White House agenda. For that reason, Presidential campaigning in this state is vital so that Floridians can seek to exercise their First Amendment rights of free speech and association concerning the Democratic candidates, one of whom may well become the leader of the Free

World.

**Florida Democrats and Making Every Vote Count**

22. 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. Some dimensions of this legacy have endured for decades while other facets are more recent. 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. To say that Democrats in Florida have not forgotten the events of 2000 would be a profound understatement.

23. 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, Democrats worked tirelessly to develop voter education and to mobilize for voter protection so that on Election Day, any improper impediments to voting could be overcome. 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.

24. Thus, in the aftermath of 2000, Democrats in Florida have been striving to assure that every vote counts so that voter disillusionment would give way to a renewal of faith in the electoral system. That faith, though, as is discussed below, is apparently to be severely tested by an astonishing turn of events that would sabotage the principle of making every vote truly count through actions that, at present, would prevent any Democrat's vote from counting in the Florida Presidential Primary.

**The 2008 Presidential Primary Creates an Historic Opportunity for Floridians to Help Select the Nominee**

25. As Florida and the rest of the nation look ahead to 2008, a race for the White House is underway that appears to be one of the most wide-open contests in decades. Indeed, 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.

26. The candidacy of these as well as other outstanding individuals should be energizing Florida Democrats in the exercise of their most basic rights in our democracy, especially at a time when momentous public issues are crystallizing here and throughout the country. Most fundamentally, these rights encompass the constitutional entitlement to participate in the selection process by voting in the State of Florida Presidential Primary on January 29, 2008. Largely based on factors such as population and number of electoral votes, Florida is entitled to a total of 210 delegates for the Democratic National Convention, a great majority of which are allocated among the state's 25 Congressional Districts according to the

percentage of votes for a candidate in that congressional district.

27. While the fundamental right of voting to determine the Democratic nominee is paramount, Floridians also enjoy other essential prerogatives with respect to the Presidential nomination process. These rights include basic First Amendment entitlements centered upon speech and association, including the right to communicate their views to candidates while they are campaigning in Florida, the right to hear for themselves the views of the candidates, the opportunity to learn about the candidates and their positions through local media coverage of campaign appearances, the right to organize grassroots efforts on behalf of their candidate of choice for the State of Florida Presidential Primary, and the right to encourage candidates to focus upon issues of special concern to Florida voters.

**Disenfranchising an Entire State**

28. As they strive to overcome the unprecedented dimensions of the electoral disaster in 2000, Florida Democrats today are situated to exercise their fundamental rights in a primary election process with equally historic ramifications. Remarkably, however, as a result of actions that Florida Democrats have been powerless to prevent, the defendants have combined to create a Presidential primary election with a stunningly anti-democratic scenario – every one of the more than 4.25 million registered Democratic voters in Florida will be completely disenfranchised and their constitutional rights with respect to that election will be rendered meaningless.

29. The framework for wholesale disenfranchisement of millions of voters includes DNC rules that purport to impose a schedule for conducting Presidential primaries and caucuses. In fashioning its preferred calendar, 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 if any states do not follow its strictures, 50% of that state's delegates shall be forfeited as a penalty for non-compliance. Not only were the fundamental rights of the voters themselves ignored by such heavy-handed new rules, but also disregarded was the fact that 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 to January 29, 2008 after the DNC adopted the penalty-laced rule regulating the timing of primaries nationwide.

30. Indifferent to the Republican control of such matters, the DNC nonetheless has chosen to punish the completely innocent Democratic electorate of Florida by stripping away not only 50% of Florida's delegation – the sanction designated for offending the DNC's calendar by scheduling a January 29<sup>th</sup> primary - but all 210 of Florida's delegates to the Democratic National Convention. Thus, incredibly, the joint actions of the defendants have combined, in effect, to nullify every Florida Democrat's fundamental right to vote in one of the most important elections in recent history.

31. While few, if any, transgressions in the political process are more severe than debasing a citizen's right to vote, the foreseeable and proximate consequences of defendants' actions have inflicted further violations of the constitutional rights of Florida Democrats. As has long been recognized in this country, the right to have one's voice heard and one's views considered by the leaders of government is at the core of the First Amendment rights of free speech and political association. As courts have long recognized, "The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." And yet, during the Presidential nomination process, Florida voters will be denied the opportunity to

hear the candidates for themselves and correspondingly, the right to express their views to the candidates, by virtue of Florida's elimination from the Democratic Presidential nomination process.

32. As a direct result of the forfeiture of all of Florida's delegates and fueled by pressure from the state Democratic parties of Iowa, New Hampshire, Nevada, and South Carolina, the Democratic Presidential candidates have pledged not to campaign in Florida. Accordingly, except by attending fund-raisers, Democrats in Florida will be effectively prevented from exercising the First Amendment rights that citizens enjoy in the course of political campaigns with respect to the Presidential Primary. In addition to the diminution of free speech, the First Amendment rights that are being denied to plaintiffs include, among other things, associational rights such as the prerogative of party members to work together to advocate for the selection of the nominee to serve as the standard bearer who best represents the party's ideals. These, too, are fundamental rights and include "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters ... to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983). Not only will plaintiffs and other Democratic voters be excluded from their party's own processes of association, debate, advocacy and candidate selection, they will be denied any realistic opportunity to encourage independent and even Republican voters to consider the merits of Democratic candidates and their ideals. After all, because the Democrats' own contenders will be missing in action, Presidential campaigning in Florida will be a Republicans-only process during the critical stage of the campaign.

33. Even the exemption for fund-raising has troubling implications. 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, those Floridians who are not financially able to contribute to campaigns will be excluded completely from one of the most important primary elections in their lifetimes.

34. BROWNING, acting on behalf of the State of Florida and concurrently with the other defendants, continues with efforts to conduct a Presidential preference primary on January 29, 2008, even knowing that such action will disenfranchise more than four million Democrats and expend more than eighteen million dollars of taxpayers' money for what will be, in substance, a Republicans-only primary election. Along the same line, the actions taken by the defendants are effectively preventing the exercise of vital First Amendment rights by Florida Democrats and facilitating only the exercise of free speech and association rights by Republican voters.

**The Disenfranchisement of Florida Democrats**  
**Violates Core Constitutional Provisions**

35. The actions by the defendants in disenfranchising millions of voters violate constitutional and statutory rights of the highest order. Because the right to vote in elections is preservative of other basic civil and political rights, it is one of the most fundamental rights in our democracy. *Reynolds v. Sims*, 377 U.S. 533 (1964). Equally certain is the fact that this right includes any preliminary election integrally related to elections for national office. *Gray v. Sanders*, 377 U.S. 368 (1963). And this right cannot be denied to voters simply because they live in Florida. Our laws have long prohibited "geographic discrimination" which denigrates the power of one citizen's ballot in order to elevate the force of another's vote. *Gray v. Sanders*, 372 U.S. 368 (1963). Thus, in adherence to one of our most powerful traditions, Federal

constitutional and statutory law provide that Florida Democrats have a fundamental right to vote and their vote in Florida's Presidential Primary must truly count.

36. And yet the defendants would not only deny these fundamental rights, but they would impose disenfranchisement on a massive scale. In the annals of modern politics, no national party has inflicted so devastating and sweeping a "geographic discrimination" upon an entire state's electorate consisting exclusively of members of its own party. Indeed, even the Republican National Committee has pursued a more moderate course, eliminating half, rather than all, of the State's convention delegates so that, a least for the GOP, Presidential campaigning is presently viable in Florida.

37. In denying millions of Floridians the right to cast a meaningful vote, the DNC has refused to consider any viable potential compromises as suggested by plaintiffs, (Exhibit "A," Sept. 21, 2007 letter from Sen. Bill Nelson and Rep. Alcee L. Hastings). In fact, the DNC has discarded even its own directive of a 50% dilution in order to effect a 100% debasement of voter rights. (Exhibit "B," Sept. 21, 2007 letter from DNC Chair Howard Dean).

38. Whatever may be the reasons, neither a compelling nor a rational basis can justify the defendants' actions. Eliminating the voice of Florida from the Democratic nomination process will not advance any of the stated policy goals of the DNC. Indeed, the DNC has consistently championed voting rights and diversity, two of the many public policy interests being severely undermined here. Less than two months before erasing Florida Democratic voters from the Presidential nomination process, DEAN and the DNC proclaimed their commitment "to make sure every vote counts," emphasizing that "we all know what happened in Florida in 2000." Paradoxically, rather than honor its stated philosophy of striving to assure that every vote must be counted, the DNC is insisting that no Florida Democrat's vote will count.

39. Nor does the forfeiture of Florida's representation serve to advance the legitimate goal of improving the Democratic Party's chance of recapturing the White House in 2008. To the contrary, punishing an innocent electorate, demoralizing Florida Democrats, disrupting their organizational efforts, and minimizing the visibility of the future nominee to the people of Florida could, if anything, be harmful to the Democrats' hopes of winning this pivotal state. Indeed, by virtue of the defendants' actions in Florida, only Republican candidates 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. Rather than equal time to Democrats and Republicans to advocate for their parties' values and candidates, this Presidential Primary will allow Democrats, in effect, no time at all, giving Republicans a monopoly on major party campaigning in Florida. Remarkably, this result would require Democrats to leave the party representing their own values and register as Republicans in order to enjoy any meaningful participation in the Florida Presidential primary, an unconstitutional burden for voters and an obviously damaging scenario for the DNC. Stated simply, it is not rational for Democratic candidates and Democratic voters to be locked out of the Democratic processes in this state.

**COUNT I: EQUAL PROTECTION VIOLATION**

Plaintiffs reallege paragraphs 1 through 39 and, conjunctively and alternatively, further state:

40. This is a claim under 42 U.S.C. §1983 based on defendants' violation of the Equal Protection Clause found in the United States Constitution.

41. As has been described previously, the defendants, acting jointly, interdependently, and under color of state law, are committing substantial acts of geography-based disenfranchisement discrimination that deprive plaintiffs of Equal Protection of the law with

respect to the fundamental right of voting in the State of Florida Presidential Primary Election. Neither a compelling nor rational basis exists for such wholesale disenfranchisement of millions of voters, and thus, this Court should exercise its declaratory and equitable powers to provide remedy for the violations of Equal Protection.

WHEREFORE, plaintiffs respectfully request that this Court enter judgment declaring that the forfeiture of Florida's delegates to the Democratic National Convention is unconstitutional and violates 42 U.S.C. §1983. Plaintiffs further request that this Court enter such injunctive relief, preliminarily and permanently, as is appropriate to remedy the violations of plaintiffs' constitutional rights.

### **COUNT II: SUBSTANTIVE DUE PROCESS**

Plaintiffs reallege paragraphs 1 through 39 and, conjunctively and alternatively, further state:

42. This is an action under 42 U.S.C. §1983 based on defendants' substantive violation of the Due Process Clause found in the United States Constitution.

43. As has been described previously, the defendants, acting jointly, interdependently, and under color of state law, are committing substantial violations of plaintiffs' substantive rights to Due Process by denying them the fundamental right to vote and to have their votes truly count in the State of Florida Presidential Primary Election. Due Process is further violated by the effective elimination of plaintiffs' First Amendment rights of free speech and political association that plaintiffs are entitled to with respect to the Florida Presidential Primary. Neither a compelling nor rational basis exists for such wholesale disenfranchisement of millions of voters, and thus, this Court should exercise its declaratory and equitable powers to provide remedy for the violations of Due Process.

WHEREFORE, plaintiffs respectfully request that this Court enter judgment declaring that the forfeiture of Florida's delegates to the Democratic National Convention is unconstitutional and violates 42 U.S.C. §1983. Plaintiffs further request that this Court enter such injunctive relief, preliminarily and permanently, as is appropriate to remedy the violations of plaintiffs' constitutional rights.

**COUNT III: PROCEDURAL DUE PROCESS**

Plaintiffs reallege paragraphs 1 through 39 and, conjunctively and alternatively, further state:

44. This is an action under 42 U.S.C. §1983 based on defendants' violation of the procedural due process rights of plaintiffs.

45. As has been described previously, the defendants, acting jointly, interdependently and under color of state law, are committing substantial violations of plaintiffs' rights of procedural due process in denying them the fundamental right to vote and have their votes truly count in the State of Florida Presidential Primary election.

46. More specifically, defendants have failed to observe the basic procedural requirements that must be followed before valuable constitutional rights can be erased. In the DNC's own rules, it provides that the Democrats of any state will lose 50% of their delegates if either the state party or the state government disobeys the DNC's assignment of dates for Presidential primaries and caucuses. But this presumptive and draconian sanction of a 50% forfeiture for a calendar violation is unconstitutional and fatally flawed. Most basically, it fails to distinguish between circumstances that are within the control of the state's Democratic Party and those situations beyond the control of Democrats.

47. In fact, in Florida's Senate only 14 of the 40 members are Democrats while in the

Florida House of Representatives, Democrats hold just 42 out of 120 seats. Florida's Governor enjoys certain veto powers concerning new legislation, but he, too, is a member of the Republican Party. Plainly, with respect to legislative decisions concerning the scheduling of the Florida Presidential Primary, no amount of advocacy from Florida Democrats can override the overwhelming legislative majorities held by Republicans in Florida. And yet the DNC's rules impermissibly and irrationally attribute the decisions of a Republican-controlled state government to innocent Democratic voters who have no ability to compel compliance with the DNC's calendar. By imposing the same punishment on Democrats irrespective of whether they are consciously acting to violate DNC rules or whether they are, in effect, an innocent bystander to decisions controlled by a state's government, the 50% sanction violates procedural due process.

48. While the 50% sanction is, by itself, an egregious constitutional violation, as matters have developed, the defendants have severely compounded that transgression through a further procedural due process violation committed in order to eliminate the Florida delegation in its entirety.

49. In inflicting upon innocent Florida voters a punishment even more drastic than the unconstitutional 50% sanction the DNC has relied upon Rule 20(c) of its procedures as providing the basis for additional sanctions. But that provision fails to articulate any standards or aggravating factors that could justify the imposition of punishment in addition to the 50% confiscation of delegates that is already being imposed. Prior to stripping away the remaining half of Florida's delegates, the DNC was obliged to duly notify Florida's Democrats of any additional grounds for the forfeiture of any additional delegates. Instead, the DNC impermissibly relied on the same core violation that triggered the first 50% sanction. Since no such additional

factors were specified prior to the DNC's decision to double the punishment, no representative of Florida had any fair notice or opportunity to be heard concerning any grounds for forfeiting the remainder of Florida's delegates. Accordingly, this additional punishment was imposed without standards, notice or fair opportunity to be heard and, thus, is a further violation of procedural due process.

WHEREFORE, plaintiffs respectfully request that this Court enter judgment declaring that the forfeiture of Florida's delegates to the Democratic National Convention is unconstitutional and violates 42 U.S.C. §1983. Plaintiffs further request that this Court enter such injunctive relief, preliminarily and permanently, as is appropriate to remedy the violations of plaintiffs' constitutional rights.

**COUNT IV: VIOLATION OF SECTION TWO  
OF THE VOTING RIGHTS ACT**

Plaintiffs reallege paragraphs 1 through 39 and, conjunctively and alternatively, further state:

50. This is a claim based on violations of Section Two of the Voting Rights Act, 42 U.S.C. §1973.

51. Section Two of the Voting Rights Act prohibits states from imposing or applying any voting practice or procedure that dilutes, denies or abridges, the right of any citizen of the United States to vote on account of that citizen's race or color. More specifically, Section Two provides:

A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its member have less opportunity than other members of the

electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. §1973(b) (2007). Thus, Section Two can be violated not only by intentional discrimination but also by facially neutrally election schemes that have the effect of impairing minority voting participation.

52. In the present case, BROWNING, on behalf of the State of Florida, intends to conduct a primary election on January 29, 2008 for which Democratic candidates will not be campaigning and Democratic voting will be an exercise in futility. At the same time that Democrats are being excluded, Republican candidates and voters will enjoy meaningful participation in the election being conducted by state and local government at taxpayers' expense.

53. As a result of this Republicans-only election, minority members who are predominantly registered as Democratic voters, will suffer a disproportionate impact by virtue of the exclusion of Democratic voters. In the most recent election cycle, more than 81% of black voters were Democrats, some 5% were Republicans and the rest were not registered with either party. Accordingly, some 94% of the black voters who are registered with a major political party and who thus would otherwise eligible to vote in the Florida Presidential primary, are being effectively prevented from participating in the electoral process. By comparison, some 46% of white voters who are otherwise eligible to vote in the Florida Presidential Primary will be eliminated from effective participations, a level of dilution that is significantly less than the impact on black voters.

54. Seriously compounding the disproportionate impact upon black voting is the disproportionate impact on the attendant First Amendment rights of free speech and association.

These rights include basic First Amendment entitlements centered upon speech and association, including the right to communicate their views to candidates while they are campaigning in Florida, the right to hear for themselves the views of the candidates, the opportunity to learn about the candidates and their positions through local media coverage of campaign appearances, the right to organize grassroots efforts on behalf of their candidate of choice for the State of Florida Presidential Primary, and the right to encourage candidates to focus upon issues of special concern to Florida voters.

55. Strikingly, 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 and their vision for our state and nation. 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. By effectively conditioning access to candidates upon substantial financial contributions, the defendants are imposing the modern equivalent of a poll tax, a long condemned discriminatory practice. Irrespective of whether any such discrimination was intended, by limiting direct access to the Presidential campaign to financial contributors, the likely result is undercutting the influence of non-participating voters and creating a disproportionate and discriminatory impact. *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996).

56. The actions giving rise to this discrimination are predicated upon authority granted by state law and actions undertaken jointly with state authorities. By virtue of the discriminating impact of defendants' Republicans-only Presidential primary on January 29,

2008, the defendants have committed substantial violations of Section Two of the Voting Rights Act.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment declaring that the forfeiture of Florida's delegates to the Democratic National Convention and the accompanying ban on campaigning in Florida are violative of Section Two of the Voting Rights Act, 42 U.S.C. §1973. Plaintiffs further request that this Court enter such injunctive relief, preliminarily and permanently as is appropriate to remedy the violations of plaintiffs' rights.

DATED: \_\_\_\_\_

Respectfully submitted,