

STEVEN A. GELLER
FLORIDA STATE SENATOR 1998-2008
MINORITY LEADER 2006-2008

May 21, 2008

Alexis Herman, Co-Chair
Democratic National Committee
Rules and Bylaws Committee
430 S. Capital Street SE
Washington, DC 20003

James Roosevelt, Co-Chair
Democratic National Committee
Rules and Bylaws Committee
430 S. Capital Street SE
Washington, DC 20003

Dear Chair Herman and Chair Roosevelt:

I have read a summary of Jon Ausman's appeals to be heard by your committee on May 31, 2008. Although I agree with most of Mr. Ausman's statements, I must respectfully disagree with a few of Mr. Ausman's comments. I also believe that you have not been given accurate information as to what occurred in Florida. I am asking you to review this letter, and distribute this letter prior to the May 31, 2008 committee meeting to your other committee members.

I have known and have been friends with Mr. Ausman for over twenty-five (25) years. I know him to be a good Democrat, with an excellent knowledge of the rules. I must point out, however, that Mr. Ausman is clearly not speaking on behalf of the elected Democratic legislative leadership. Please note that I am Senate Minority Leader of the Florida Senate and the duly elected Chair of the Senate Democratic Caucus.

Where I would disagree with Mr. Ausman is his statement where he appears to acknowledge that the elected Democratic legislative leadership and Party leadership did not do everything which we could to prevent non-compliance with the DNC Delegate Selection Rules. Despite any inaccurate information which you may have received, we did, in fact, do everything which we could to attempt to comply with the DNC Rules. That is one of the reasons that there is such great anger in Florida about the sanctions which have been taken against us.

It is my position, and I believe that this letter will conclusively show, that Florida Democrats did not do anything which merits penalties against us. Rather, this was something done by the Republican leadership over the objections of the Democratic leadership. This was not a case of the Democrats committing suicide; rather, I would allege that we were murdered by the Republicans.

The Republican Speaker of the Florida House of Representatives, Marco Rubio, issued a book detailing his 100 ideas to improve the State of Florida. One of those 100 ideas was to move the Presidential preference primary ahead of the dates permitted under the then existing DNC and RNC Rules. A candidate for Florida Senate, now Democratic Senator Jeremy Ring, also campaigned on a promise to try and move up the Presidential primaries.

At the request of the Speaker, the Republican Rules Committee Chair filed a bill to advance the date of the Florida presidential preference primary. Senator Ring in his first year of elected public office, following his campaign promises, also filed comparable legislation.

As everyone is aware, having a verifiable paper trail is a priority for Democrats nationwide. When the Senate Democratic Caucus adopted its five priority issues for the 2007 legislative session, one of those five issues was to achieve a verifiable paper trail. Surprisingly and fortunately, both our Republican Senate President (Ken Pruitt) and our Republican Governor (Charlie Crist) also supported a verifiable paper trail.

The result was predictable. The House bill, filed by the Republican Rules Chair, was amended to include both an early primary and a verifiable paper trail. In the Senate, the bill was taken away from Senator Ring, and placed into a Committee Bill filed by Republican Lee Constantine, the Chair of the Senate Ethics and Elections Committee. Senator Ring was permitted to stay on the bill as a co-sponsor.

It is interesting to note that Republican Governor Charlie Crist indicated that he would veto the bill calling for a verifiable paper trail if it did not have the early primary in it. By an astonishing coincidence, while Governor Crist is widely rumored to be potential running mate for Senator McCain, the bill was amended to add a third provision, changing Florida law and stating that in the future Florida elected officials would not need to resign to run for federal positions such as U.S. Senate or Vice President of the United States.

It is important to note that Karen Thurman, Chair of the Florida Democratic Party consistently nagged at least the Senate Democrats, and I presume the House Democrats, both in writing and in person, to vote against any bill which would move the Democratic primary prior to February 5, 2007, and/or to seek to amend any such bill that had both an early primary and a verifiable paper trail to change the early primary part to comply with the DNC Rules. Although many of us philosophically felt that it was appropriate to move the primary up to insure Florida getting an appropriate amount of attention, we did agree to support the Florida Democratic Party Chair and attempt to comply with DNC Rules.

It is undisputed that on April 26, 2007, Committee Substitute for Committee Substitute for Senate Bills 960 and 1010, by Republican Senator Lee Constantine et al., was heard on the floor of the Florida Senate. This is the bill which would have done several things, including the verifiable paper trail and moving up the primary date. It is undisputed that I, as Senate Democratic Leader, along with my Democratic Leader Pro Tempore, Senator Wilson, authored Amendment number 432676, which would have moved the date of the primary into compliance with DNC Rules. It is undisputed that I spoke in favor of the amendment. It is also undisputed

by anyone who has listened to the tape that the overwhelming majority of the Senate Democrats voted with me in favor of the Amendment. It is also undisputed that there are twenty-six (26) Republicans in the Florida Senate and fourteen (14) Democrats. It is undisputed that we lost on a voice vote, because there are more Republicans than there are Democrats.

It is my understanding some people have questioned my tone of voice in the debate. While I regret this, it is completely irrelevant. The fact is that I offered the Amendment, and, with the exception of Senator Ring, virtually all Democrats voted with me. I never had any chance of getting the Republicans to vote for an amendment which would contradict a deal made between the Republican Speaker, the Republican Senate President, and the Republican Governor. I must inquire as to what the members of this committee think would have been any different if I had stood up and made an impassioned speech and then received the same number of votes.

I have been in the Florida Legislature for twenty (20) years. I do not know the background of every member of the RBC. I can state that I made a choice in my tone of debate. The Senate Democratic Caucus had been extremely relevant in the 2007 legislative session despite our small numbers. I chose not to make an impassioned speech and then lose badly, where the highest number of votes I could possibly get would have been thirteen (13), although it is my recollection that one of our Democratic senators was missing that day. I did not wish us to be embarrassed, which is why I did not make a passionate speech that I knew would get the same number of votes as the speech that I made. The bottom line is that we offered the Amendment, almost all Democrats voted for it, and we were outvoted by Republicans.

Senator Ring is an intelligent Senator with a bright future ahead of him in the Florida Senate. He voted the way he should have, to fulfill his campaign promises. However, the DNC cannot take the vote of one first year Democratic Senator and make it appear that the Senate Democratic Leadership voted to violate the DNC rules.

It is undisputed that at the time of this vote, there were 77 Republican State Representatives, and only 43 Democratic State Representatives. It is also undisputed that in the House of Representatives, House Democratic Leader Dan Gelber and Democratic Leader Pro Tempore Cusack offered Amendment number 290105 which would also have changed the date of the Primary in order to comply with DNC Rules, but were defeated. In fact, the Republican Rules Chair and bill sponsor openly mocked Representative Gelber, and asked Representative Gelber, "Representative Gelber, let me get this straight, you are asking us to help the Democratic National Party to stop punishing the Florida Democratic Party. You're asking the Republican members of this caucus to help the National Democrats stop them from punishing the Florida Democrats. Is that accurate? (Laughter follows)" Sadly, it seems that the Republican Rules Chair was correct. The National Democratic Party was clearly not going to protect Florida Democrats from the Republicans, and apparently the only people that could have protected the Florida Democrats from the Florida Republicans were the Florida Republicans.

After the attempts to change the verifiable paper trail bill by making the primary date comply with the DNC Rules failed, Florida's Democratic Legislators were left with a choice. We could either vote for the bill, which had one of our top five priorities in it, (a verifiable paper trail), or we could vote against the bill because it had the early primary date in it. If we voted against the

bill which would have provided the verifiable paper trail, we would have violated Delegate Selection Rule 2(h) which required us to take all "provable positive steps" to obtain a verifiable paper trail. On the other hand, voting for the bill, which would give us a verifiable paper trail, would violate Rule 11, dealing with the timing of the delegate selection process. In other words, once the Republicans defeated our Amendment, we had to vote on a bill where if we voted for the bill we would violate Rule 11, while if we voted against the bill we would violate Rule 2. "Damned if you do, damned if you don't". Under this set of circumstances, it would have been a campaign issue against any of us to have voted against a verifiable paper trail, and we chose to vote in favor of a verifiable paper trail.

Rule 20 (C)(7) clearly states that if a state becomes subject to sanctions as a result of state law, then the DNC must conduct an investigation, and determine if the state Party and other relevant Democratic Party leaders and elected officials took all provable positive steps and acted in good faith in attempting to prevent legislative changes which resulted in state law that fails to comply with these rules. I would respectfully submit that it is quite clear that the State Chair of the Democratic Party repeatedly attempted to ensure that we would comply with the rules, and that both the Democratic Leader and Democratic Leader Pro Tempore in both the House and Senate filed amendments to attempt to comply with the rules, but we were defeated because of the overwhelming dominance of the Republican Party in the legislature. I would further respectfully submit that the RBC did not, in fact, conduct the investigation required by the rule, as no one from the DNC ever contacted me, Representative Gelber, or Karen Thurman to discuss what steps were taken.

It is my understanding that members of the RBC have suggested that after we were outvoted, what the State Party should have done was to have a post primary caucus. I ask the members of this committee to carefully examine all that that implies.

It is my understanding that there were discussions of the DNC offering to help pay for caucuses, although this was never made into a formal offer. The amount that had been discussed was financial assistance in the approximate amount of \$800,000.00. The plan the DNC discussed would have provided 120 polling places in a state of 18 million people. There are currently approximately 7,000 precincts in the State of Florida, which means that instead of 7,000 polling places we would have had 120. By comparison, the State of Iowa, with under 3 million people, has over 2,000 caucus sites. Iowa is also a much more homogenous state, with approximately 91% population of non-Hispanic whites, while Florida is a much more mixed state, with approximately 61% of non-Hispanic whites. That would further serve to complicate the caucus process.

In the year 2000, I was a member of the Florida Senate representing Broward and Palm Beach counties. I was one of our official watchers at the Broward County Courthouse during the recount. I was there when our slogan was "make every vote count". I was in the Florida Senate during the midst of one of our great constitutional crises of this country when the Speaker of the Florida House of Representatives (now Congressman) Tom Feeney advised us that the actual votes cast were merely advisory, and that the Florida Legislature had the ultimate authority to choose the presidential electors. I find it inconceivable that we here in Florida are now being told that we should have ignored the 1.75 million votes that were cast, and instead opted to have

a post primary caucus where if we were lucky we would have 5 to 7 percent of the turnout, where we would have systematically discriminated against our soldiers overseas, seniors, family's working during the caucus hours, etc. That goes against everything that we said in 2000 about making every vote count.

Some people have suggested that we should have in some fashion canceled the January 29, 2008 election. The people who suggest that clearly haven't read Florida law. Florida statutes say that there **shall** be a primary election on January 29th. Many municipalities were holding their primaries on that date, and it is inconceivable to suggest that we should have tried to suppress the vote among Democrats, meaning that only Republicans would be elected on that day. There was also a major tax referendum on the ballot that day, where our close allies in organized labor were urging as large a Democratic turnout as possible in opposition to that ballot. We had no choice. There was going to be a ballot that day. In fact, the turnout was the largest ever in the history of the State of Florida for a Democratic primary.

It is also important to understand that every major Democratic candidate was on the ballot on that primary. All candidates were not only invited to campaign in Florida, but were begged to campaign in Florida. If they chose not to, that was their choice. All candidates campaigned or did not campaign to the same extent, all candidates were on the ballot, and we believe that the votes of the 1.75 million Democrats on January 29, 2008 should count.

Some have suggested that Florida should have either had a caucus, mail ballot, or something else after the January 29, 2008 primary. This is not only impractical for the reasons that I have already set forth herein, it would also have been illegal.

Florida is one of the states that the Voting Rights Acts of 1965 applies to. There are specifically five (5) counties in Florida, (Hillsboro, Hendry, Hardee, Collier and Monroe), which require pre-clearance from the Justice Department before any change can be made in the method of holding elections. 28 CFR Part 51, Subpart A (51.7) clearly makes the selection of delegates to the National Party Conventions subject to pre-clearance. Even in the unlikely event that the Justice Department would have given pre-clearance for a method of selection which would have resulted in giving the selection process to 5% to 7% of the number of persons who actually voted, and even ignoring the public relations and constitutional effects that that would have had, it seems most unlikely that we could have prepared the application and received pre-clearance in time from the Justice Department, and certainly it would have been impossible to come up with any plans when we did not have time to know what we would do if the Justice Department denied our request for pre-clearance. Also, under Federal law, the Florida Party could not file for pre-clearance. Typically, the Attorney General files for pre-clearance. The Attorney General is also the individual charged with upholding the constitutionality of Florida's laws. It is most unlikely that Florida's Republican Attorney General (Former Congressman Bill McCollum), would have filed for pre-clearance instead of seeking to uphold Florida's January 29, 2008 state mandated primary.

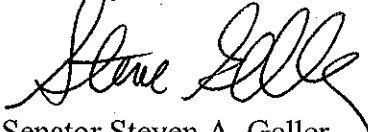
I also ask the RBC to consider the ramifications of not fully seating Florida's delegates in a fashion representative of the January 29, 2008 primary. I am aware of at least three polls which have been done of likely Democratic voters, asking what they will do if Florida's delegates to the

convention are not seated. All three polls show between 25% and 30% of likely Democratic voters will either stay home or vote Republican if our delegation is not seated. Florida is the largest "swing state" in the nation. It will hurt our ability to win the Presidency and increase our margins in Congress if many of Florida's Democrats don't vote Democratic because they are protesting this committee's decisions.

In summary, then, our position is as follows: the State Party Leadership and the Democratic Legislative Leadership did everything we could to comply with the Democratic Party Rules. Over our objections, the Republicans in the legislature combined a verifiable paper trail, an issue of great importance to us and required in the Delegate Selection Rules, with the early primary. Our attempts to change that were unsuccessful, because we were out-voted by the Republicans who have approximately two-thirds of the vote in both chambers. We could not vote against a verifiable paper trail. Regardless of what we would have done, there was going to be a primary on January 29, 2008. All of the presidential candidates were listed on that primary, and all campaigned or failed to campaign to the same degree in the state. Suggestions that we should have held a post primary caucus where at best, we would have had 5-7% of the number of voters in the primary would have not only been undemocratic, but also impossible, because it would have constituted a violation of the pre-clearance section of Voting Rights Act.

For all the reasons set forth above, I respectfully request that this committee exercise the authority granted to it under Rule 20(C)(7) and seat the entire Florida Delegation, with full votes as selected by the 1.75 million Democratic voters of the State of Florida on January 29, 2008.

Sincerely,



Senator Steven A. Geller
Democratic Leader
Florida Senate

Please send any replies to my law office:
Senator Steve Geller
100 West Cypress Creek Road
Suite 700
Ft. Lauderdale, FL 33309
(954) 491-1120