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Presidential Nominating Process: Current Issues

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Summary

The presidential nominating calendar for 2012 is not fully set, as some legislatures and state parties continue to consider date changes for primaries and caucuses. Consequently, the dates of the earliest contests in Iowa, New Hampshire, Nevada, and South Carolina have not been determined and may not be for some time. These states are exempt from both parties' national rules that do not allow delegate selection contests to be held before the first Tuesday in March.

Every four years, the presidential nominating process generates complaints and proposed modifications, often directed at the seemingly haphazard and fast-paced calendar of primaries and caucuses. The rapid pace of primaries and caucuses that characterized the 2000 and 2004 cycles continued in 2008, despite national party efforts to reverse the phenomenon known as front-loading. Because many states scheduled early contests in the 2000 cycle, both parties subsequently created task forces on the process. For a time the parties pursued a cooperative effort to confront problems associated with front-loading for 2004. In the end, Democrats approved moving up state primary dates for 2004, but retained Iowa and New Hampshire's early events; Republicans rejected a proposed reform plan. At the state level, the National Association of Secretaries of State (NASS) has long supported a regional primary plan that would rotate regional dates every four years.

The Democratic Party approved changes to its calendar rules again in July 2006, when the party's Rules and Bylaws Committee extended an exemption to Nevada and South Carolina (Iowa and New Hampshire were previously exempted) from the designated period for holding delegate selection events; and the Committee proposed sanctions for any violations. With the exception of these four states, Democratic party delegate selection rules dictate that the first determining step in choosing national convention delegates could not begin until February 5, 2008. The Rules and Bylaws Committee of the Democratic National Committee (DNC) stripped Florida of its national convention delegates on August 25, 2007, because the legislature scheduled the 2008 Presidential primary for January 29, a date that conflicted with party rules. Michigan Democrats also forfeited their national convention delegates by scheduling a January 15 primary. In the end, the DNC decided on May 31, 2008, to seat full delegations for each state with a half vote for each of the delegates, thereby reducing each delegation's vote by 50% at the convention. On the day before the national convention, the Credentials Committee restored full voting rights for both state delegations.

Front-loading is only the most recent among a list of complaints about the nominating system, which has resisted wholesale change despite criticism every four years from voters, the candidates, and the press. After several decades of debate, observers are divided on the best approach to reform. The lack of consensus for reworking the primary system is due partly to its complex design, which frustrates pursuit of a simple, obvious solution, and partly to the political parties pursuing their own variable interests concerning their delegate selection rules. The states further complicate the process by independently scheduling primary election dates. Congress, political commentators, academics, and others have offered various reform proposals over the years, but many important dimensions of reform depend on whether the parties are willing to change the system for choosing delegates to their national conventions. No bills have been introduced in the 112th Congress to revise the nominating process.

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The contemporary nominating system, in which primaries are the dominant feature, grew out of sweeping reforms adopted in the early 1970s. For the preceding 120 years, state delegations to the national party conventions had been largely chosen by party leaders or in closed caucus meetings that vested control in the party hierarchy. Although the primary was introduced by Progressive reformers just after the turn of the 20th century, it did not replace party control of the process for choosing delegates to the conventions for many decades. Florida was the first state to adopt a version of the primary in 1901, but Wisconsin's 1905 law was the first to provide for the use of the primary in presidential nominations.[1] By 1916, at least 20 states had a presidential primary in some form. However, many states quickly abandoned the method when the Progressive movement faded and the number of primaries dropped in the years following the First World War.

The number of primaries began to increase again after World War II, but they initially had little effect on winning the nomination. Candidates often chose one or more specific state primaries in which to compete to demonstrate their potential electability, but the primary process did not usually determine the selection of delegates and did not threaten party control of the state delegations. In the 1952 Democratic race, for example, Senator Estes Kefauver (TN) prevailed in 12 of the 15 primaries held, captured 64% of the vote nationally, but failed to win the nomination. Instead, the convention chose Governor Adlai Stevenson (IL), who had won 1.6% of the primary vote nationwide.[2]

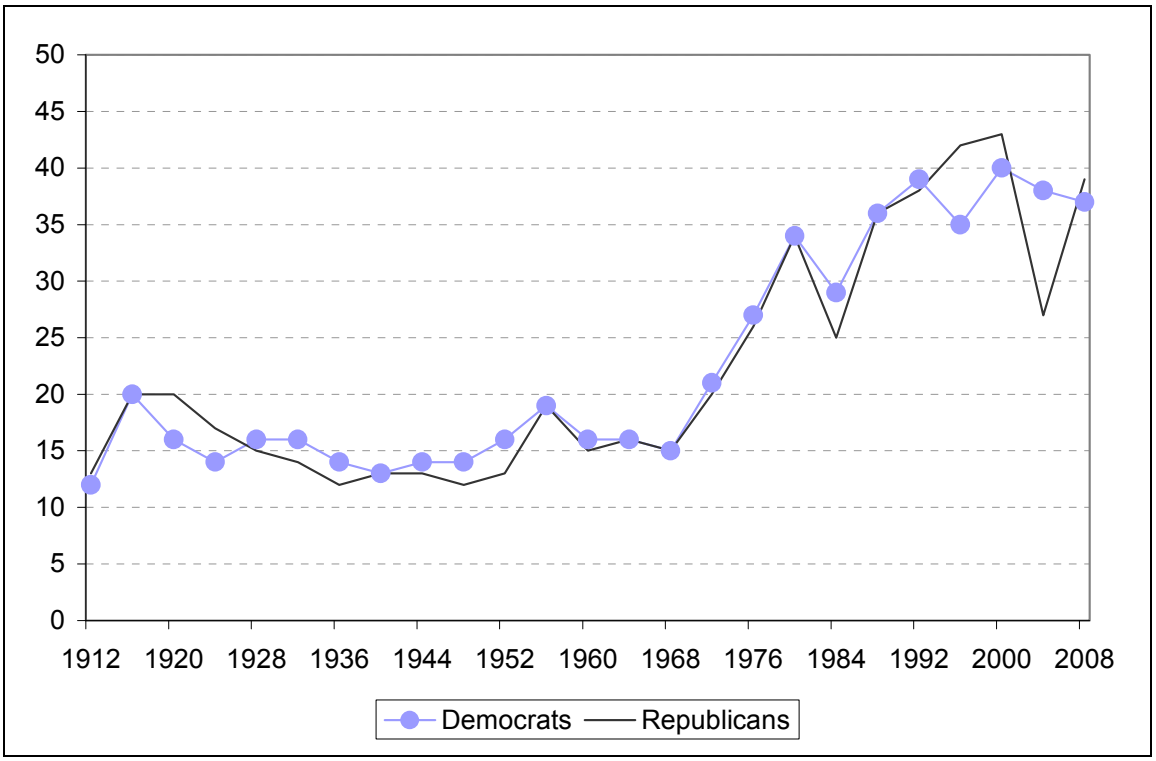
Pressure to change the nominating system mounted in the turbulent political climate of the 1960s, due to the perception that the process was undemocratic. A transforming event occurred at the Democratic convention in 1968, where violent confrontations between war protesters and the Chicago police outside the convention hall, and bitter credentials disputes inside, spurred Democrats to completely change the party's nominating rules. The new rules transferred the power of choosing delegates from party leaders to rank-and-file voters, opening the process to widespread popular participation for the first time. Many state parties switched to primaries to comply with the newly adopted national party rules. The Republican Party also modified its rules in the early 1970s. Subsequently, as shown in **Figure 1**, the number of party primaries in the states rose steadily. Between 1968 and 2000, the number of states with Democratic party primaries increased from 15 to 40; states with Republican Party primaries from 17 to 43, the most since the introduction of the primary. In 2004, Democrats scheduled 38 primaries and Republicans scheduled 32.[3] In 2008, Democrats scheduled 37 primaries and Republicans scheduled 39.

[1] William Crotty and John S. Jackson III, *Presidential Primaries and Nominations*, (Washington, DC: Congressional Quarterly Inc., 1985), p. 14.

[2] Congressional Quarterly, *U.S. Guide to Elections,* 4th ed. (Washington, DC: CQ Press, 2001), pp. 341-343.

[3] Although 32 Republican primaries were scheduled, only 27 were actually held. Five were cancelled because only George W. Bush qualified for the primary election. See Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics 2007-2008* (Washington, DC: CQ Press, 2008), p. 70.

Figure 1. Number of Presidential Primaries, 1912-2008



Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2007-2008*. (Washington, DC: CQ Press, 2008), p. 70. For 2008, figures are from the National Association of Secretaries of State.

The reforms of the 1970s fundamentally changed the structure of the nominating system and, in turn, led to changes in the dynamics of nomination politics. Under the old system, the drama of choosing the party's candidate occurred at the convention, where party leaders who controlled blocs of delegates would broker the choice of nominee. Reform redirected the suspense of the nomination contest to the states, where presidential candidates sought support directly from voters in primaries and caucuses, with the media highlighting the results. This new dynamic boosted the importance of the earliest events in Iowa and New Hampshire, which eventually set off a trend toward rescheduling in other states in order to better attract candidate and media attention. The front-loading phenomenon has prevailed for more than 20 years, but may have abated somewhat as a result of controversy over the calendar in 2008.

2008 Election

For the first time since 1952, the nomination contest for both parties did not include an incumbent President or Vice President. A crowded field of Republican and Democratic candidates entered the race as a result. Despite a fast-paced primary and caucus calendar that was expected to narrow the field quickly, that was not the case on the Democratic side. Some observers had suggested that an inconclusive primary season would result in a "brokered" convention, whereby the nominee would be chosen at the convention based on dealmaking and bargaining. Speculation about such an outcome that focused attention on the "superdelegates," a category of automatic, *unpledged*

delegates who are not required to declare a presidential candidate preference.[4] The last Democratic nomination contest to feature a questionable convention outcome was in 1980, before the creation of the superdelegate category.[5]

The 1984 Democratic convention was the first to include superdelegates, who were added in response to rule changes that had sharply reduced the influence of party leaders and Democratic office holders on the nominating process (see preceding section of this report). Following President Carter's defeat in 1980, the party added superdelegates as a counterbalance to the influence of rank and file voters. The superdelegates were introduced to promote party cohesion and to rally support for future nominees among party professionals and Democrats in the Congress. It was believed that party leaders and elected officials, given their own political experience and knowledge, could also help with evaluating and selecting nominees.[6] Initially, the superdelegates were approximately 14 percent of all convention delegates; they accounted for 20 percent of those who attended the 2008 convention.

The following categories comprised the superdelegates:

- all members of the Democratic National Committee;
- all Democratic Members of the U.S. House and Senate;
- Democratic Governors;
- distinguished party leaders (including former Presidents, Vice Presidents, and congressional leaders); and
- an additional number of delegates (one for every four members of the Democratic National Committee from the state), called "add-on" delegates.

Because Democrats assign *pledged* delegates in primaries and caucuses proportionally according to voters' Presidential candidate or uncommitted preferences (with a 15% threshold), the importance of the superdelegates increases according to the closeness of the race.

Table 1. Democratic and Republican National Convention Delegates, 2008

	Total Number of Delegates	Total Needed for Nomination
Democratic	4,234[a]	2,118
Republican	2,380	1,191

a. Included 796 superdelegates, who were 19% of the total delegates to the convention

[4] While Republicans have a small number of automatic delegate slots reserved for party or elected officials, the term "superdelegate" is generally used with respect to Democratic party delegates.

[5] President Carter entered the 1980 convention with a slim lead in delegate support. For the first time in party history, the convention was considering a rule to require delegates to be bound to their preference on the first ballot. Forces for Senator Edward Kennedy, who finished second in primary and caucus voting, sought to defeat the rule and attempt to throw open the voting on the first ballot. The rule was upheld and Carter was renominated on a 2,123 to 1,150 vote. See, for example, Congressional Quarterly, *National Party Conventions, 1831-2000*, (Washington, DC: CQ Press, 2001), pp. 140-141.

[6] Democratic National Committee, *Report of the Commission on Presidential Nomination*, adopted by the Committee on March 26, 1982, p. 16.

Democrats have revised the rules concerning superdelegates for 2012 to eliminate the "add-on" category and to require an expression of Presidential candidate preference from delegates in other categories (discussed in greater detail in the section below).

Calendar Changes, 1988-2008

Most of the changes to the calendar over the last two decades resulted from state legislatures and state parties scheduling earlier primary or caucus events, either individually or as part of a collective effort within a single region of the country. In the 1970s, attempts to organize regional primary events in New England, the Midwest, and the Pacific Northwest were unsuccessful. But in 1988, a March regional primary was successfully organized in 14 southern states. This southern "Super Tuesday" regional primary, however, failed to bolster the region's political strength in the nominating process, and by 1996 seven states had abandoned the event. None of the changes displaced Iowa and New Hampshire from their prominent role as the first caucus and primary, respectively, but they have further contributed to a perception that the system is confusing and unorganized.[7]

The 2000 calendar was the most front-loaded ever with respect to the number of delegates at stake, but not with respect to the number of primaries. California moved its primary from the last Tuesday to the first Tuesday of March, and New York also advanced its primary by two days to the same date (March 7). Ohio also moved up its primary to the first Tuesday in March, resulting in a crowded schedule of 16 primaries and caucuses that spanned the country and vastly increased the number of delegates to be selected. With the addition of California, New York, and Ohio on March 7, between 70% and 80% of the delegates needed to claim the nomination in either party were allocated as a result of voting on that date. As it happened, the contest for the nomination on both sides was declared over in the press by March 7, by which time voters in fewer than half the states had cast ballots.

National party changes after the 2000 election led to an earlier start in 2004, the most front-loaded calendar to date in terms of the number of primaries. A Republican task force approved a plan to set dates for primaries and caucuses—a first for a party that traditionally has deferred to the states on such matters. The change required approval at the national convention in August 2004 (and would have gone into effect for 2008). Known as the Delaware Plan, it would have created a four-month calendar, with the smallest states voting first, in February, followed by a group of larger states in March, with the largest states voting last in May. The plan was approved by the RNC rules committee and would have gone to the whole convention for approval, had not the convention rules committee voted the plan down.[8] Meanwhile, Democrats approved allowing states to hold contests on the first Tuesday in February, a month earlier than in 2000, with an exception for Iowa and New Hampshire.

In 2006, the Democratic National Committee (DNC) again revised its rules for the 2008 primary schedule, creating a calendar with the earliest start and the most front-loaded ever; 23 states held contests on February 5, the opening date for the window. With the approval of two new

[7] Stephen J. Wayne, *The Road to the White House*, (Belmont, CA: Wadsworth, 2004), pp. 308-310.

[8] Elaine G. Kamarck, *Primary Politics: How Presidential Candidates Have Shaped the Modern Nominating System*, (Washington, DC: Brookings Institution Press, 2009), p. 178.

exceptions to the DNC rule for holding primaries and caucuses during the specified "window,"[9] the Nevada caucus was scheduled for January 19, five days after the Iowa caucus, followed by the New Hampshire primary on January 22, with the South Carolina (and Florida) primary a week later. Because Florida (January 29) and Michigan (January 15) were not among the states granted an exception to the timing rule, the Democratic national party announced that the Florida and Michigan delegations would not be seated at the 2008 convention if the respective primary results were used to determine the selection of delegates.[10] Because the Florida and Michigan Democratic Parties relied on the January primary results to apportion delegates, the national Democratic Party on May 31, 2008, reduced the vote of both delegations by 50%, with each delegate having a half vote.[11] The decision by the Party's Rules and Bylaws Committee was controversial, as it used a combination of the primary results, exit polls, and uncounted write-in ballots to award 34.5 delegate votes to the Clinton campaign and 29.5 delegate votes to the Obama campaign (reflecting the 50% reduction in the total delegate vote). The Clinton campaign had advocated for a 73 to 55 split, based on the primary results.[12] In the end, the Credentials Committee of the Democratic National Convention restored full voting rights for the Michigan and Florida delegations the day before the convention began.[13]

National Party Rules Changes for 2012

Republicans began evaluating the performance of the nominating process even before the primaries and caucuses had concluded in 2008, and Democrats followed once the primary season ended. The Republican party's rules committee approved a plan that would impose a new system for choosing national convention delegates, known as the Ohio Plan, for the 2012 election.[14] Under the plan, Iowa and New Hampshire could vote during the first week of February, followed by South Carolina and Nevada any time after New Hampshire. Beginning the third week of February, small states, the territories, and Puerto Rico could begin voting, followed by separate groups of larger states on three successive dates. The order of the larger state groupings would rotate every four years. To be adopted for 2012, the plan needed to be approved by the Republican National Committee, the rules committee of the national convention, and the convention itself. According to press reports, Republicans planned to seek the cooperation of Democrats in putting the plan into place in the states, as they did prior to the 2000 election, but

[9] The four exceptions to the specified period for holding initial delegate selection events are Iowa, New Hampshire, Nevada, and South Carolina. Democrats refer to the timing of these events as the "pre-window." Other states are required to hold events between the first Tuesday in March and the second Tuesday in June. Democratic national party rules state: "No meetings, caucuses, conventions or primaries which constitute the first determining stage in the presidential nomination process (the date of the primary in primary states, and the date of the first tier caucus in caucus states) may be held prior to the first Tuesday in March or after the second Tuesday in June in the calendar year of the national convention." Democratic National Committee, *Delegate Selection Rules for the 2012 Democratic National Convention*, as recommended for adoption by the Democratic National Committee at its August 20, 2010, meeting, p. 10, Rule 11.

[10] Roger Simon, "DNC Ruling on Florida Primary a Crucial Test of Party Power," *The Union Leader*, August 28, 2007, p. A9.

[11] Dan Balz, *The Washington Post*, "Fla., Mich. Delegates Each Get Half a Vote; Compromise Prompts Anger From Clinton Campaign," p. A01, June 1, 2008.

[12] Ibid.

[13] Brian C. Mooney, *The Boston Globe*, "Delegates get prime floor seating Move upsets rule sticklers," August 26, 20008, p. A11.

[14] Nicole Gaudiano, "Primary Schedule That Moves Del. Earlier Wins Initial RNC Vote," *Gannett News Service*, April 9, 2008.

the effort stalled before the convention began. The convention did create the Temporary Delegate Selection Committee to review delegate selection procedures and make recommendations to the Republican National Committee (RNC). A two-thirds majority of the full committee was necessary to adopt any changes to the rules. Subsequently, the RNC approved at its 2010 summer meeting a window for holding delegate selection events that is similar to the Democratic Party's rule on the timing of delegate selection events. As the result of a revision to Rule 15 of *The Rules of the Republican Party*,[15] delegate selection events cannot be held before the first Tuesday in March, with an exception for Iowa, Nevada, New Hampshire, and South Carolina, which can hold their events on or after February 1.[16] The change imposes a timing rule for the first time ever for Republican delegate selection events, although it would not apply if Democrats fail to adhere to the same schedule.[17] A related change to Rule 15 requires states that hold contests before April 1 to allocate delegates on a proportional basis, but it does not impose a specific proportional system. The party did not previously require the use of a specific allocation method, and the new requirement seems intended to decompress the calendar by delaying the use of a winner-take-all system until April. Many state parties used winner-take-all in the past. In guidance that was provided to the state parties, the RNC counsel's office outlined a number of ways to implement proportional allocation. The requirement to award delegates proportionally applies in general, but the guidance leaves open the possibility that district level delegates could be awarded on a winner-take-all basis, with only the at-large delegates awarded on a proportional basis.[18] The four states that are exempt from the timing rule are also exempt from this requirement.

The goal of the adopted changes is to achieve a later start than in 2008, when the Iowa caucuses and the New Hampshire primary were held during the first week in January, and to relieve some of the front-loading of the calendar. By pushing the earliest contests into February and imposing a March starting date for other states—along with a requirement to award at least some delegates on a proportional basis—the front-loading that characterized 2008 may be relieved. An internal RNC memo about the changes noted that "the authority [granted by the 2008 convention] allowed the RNC to work with the Democratic Party for the first time in developing a consensus presidential nominating schedule that attempts to avoid a national primary."[19] Furthermore, a more prolonged contest that features events in different parts of the country could be beneficial to the party as its rank and file voters evaluate a large candidate field in an open contest. Because the

[15] The official rules of the Republican National Committee may be found at http://www.gop.com/images/legal/2008_RULES_Adopted.pdf.

[16] Republican National Committee, "Republican National Committee Approves 2012 Nominating Process," press release, August 6, 2010.

[17] Rule 15(b)(3) says "If the Democratic National Committee fails to adhere to a presidential primary schedule with the dates set forth in Rule 15(b)(1) of these *Rules* (February 1 and first Tuesday in March), the Rule 15(b) shall revert to the *Rules* as adopted by the 2008 Republican National Convention.

[18] The guidance provided to the state parties by the RNC counsel's office with respect to proportional allocation noted that under the "default formula," delegates would be awarded proportionally, based on the statewide vote. However, states that award delegates on a congressional district and at-large basis are only required to award the at-large delegates proportionally. Furthermore, states may establish a minimum threshold for the percentage of the vote that a candidate must receive to be eligible for delegates, but which may not exceed 20%. Consequently, there may be some variation in how states apply the requirement for the proportional allocation of delegates. States may also establish a threshold for winner-take-all allocation, provided it is not lower than 50%, which may also result in variation concerning the allocation of delegates to presidential candidates. Delegates elected independently on a primary ballot (who are not slated by a Presidential candidate's campaign) and those who are not bound at any time to vote for a particular candidate are not subject to proportional allocation. [18] RNC Counsel's Office, "New Timing Rules for 2012 Republican Presidential Nominating Schedule," memorandum, February 22, 2011, pp. 3-4.

[19] Ibid, p. 2.

new rules may delay most winner-take-all events until April, a more deliberative process may occur. However, the primary and caucus calendar is not yet settled because of the possibility that a number of states may schedule events earlier than the parties-sanctioned start date of March 6 (see calendar discussion below at the end of this section).

Democrats established the Democratic Change Commission (DCC) as the result of a resolution passed in August 2008 at the convention.[20] The DCC was charged with making recommendations to improve the process with respect to the timing of primaries and caucuses, the number of unpledged delegates (the superdelegates), and state party efforts to plan and implement the caucus process.

On the issue of timing, the DCC recommended that the 2012 window begin on the first Tuesday in March and the pre-window begin on February 1, and that regional clusters of primaries be encouraged, but not required. For example, the "Potomac Primaries" in 2008 featured simultaneous contests in the District of Columbia, Maryland, and Virginia on February 12. The recommendation would encourage similar voluntary, regional events. It would seem that the perceived benefits of a later calendar start and encouraging regional, staggered events are that they will address a general complaint that the current process starts too early, that it encourages front-loading, and that a sequential, more orderly calendar gives voters a better chance to evaluate the candidates. As the 2008 primary season demonstrated, the protracted contest seemed to energize the party's base, and the nominee was successful in the general election after having been tested in primaries in different parts of the country. The party accepted the recommendation to start the 2012 process on the first Tuesday in March and stipulated that the pre-window would begin 29 days earlier with the Iowa caucuses.[21]

Because of the inconclusiveness of the Democratic contest until nearly the end in 2008, some observers began to suggest that it could result in a "brokered" convention, whereby the nominee would be chosen at the convention based on deal making and bargaining. Speculation about such an outcome focused attention on the "superdelegates," the category of automatic, *unpledged* delegates who are not required to declare a presidential candidate preference (which includes all DNC members, Democratic Members of Congress, Democratic governors, and distinguished former party leaders). Superdelegates had played a prominent role in determining the nominee only once before, in 1984, and they were critical in determining the outcome in 2008. The total number of delegates in 2008 was 4,234 (including 796 superdelegates, who were 19% of the total), and the number needed for nomination was 2,118. The DCC recommended that one category of superdelegates be eliminated—the "add-on" bonus delegates—and that DNC members, Members of Congress, governors, and former party officials should be required to declare a candidate preference, rather than being designated automatically as unpledged delegates. The recommendation was intended to "give weight to primary voters' and caucus participants' preferences."[22] Ultimately, the DNC did eliminate the unpledged add-on delegates and kept intact other superdelegate categories (Members of Congress, DNC members, Governors,

[20] Democratic National Committee, "Report of the Democratic Change Commission," adopted December 30, 2009, p. 4.

[21] Democratic National Committee, "Delegate Selection Rules For the 2012 Democratic National Convention," as adopted by the Democratic National Committee, August 20, 2010, p. 10.

[22] DNC, "Report of the Change Commission," p. 1.

and former party and election officials), who are required to declare a presidential candidate or uncommitted preference within 10 days of completion of their state's delegate selection process.[23]

The final recommendation addressed a number of caucus-related issues from 2008: (1) complaints that the caucus process is unfair to students, the elderly, shift workers, and members of the military who may not have the time or ability to attend an event that lasts several hours and for which there is no absentee voting; (2) states that recently switched to a caucus process because state funding for a primary was not available were, at times, challenged to run a complicated, multi-tiered event and could benefit from peer input; and (3) adequate preparation is critical to ensure a smooth process, including site selection, participant education, and results reporting. The party plans to assist state parties by drafting "best practices" guidance with respect to the caucus process.

The calendar for 2012 is not set, as legislatures and state parties continue to consider date changes for primaries and caucuses. Consequently, the dates of the earliest contests in Iowa, New Hampshire, Nevada, and South Carolina—exempt from the timing "window"—have not been determined and may not be for some time. Florida and Michigan, which introduced such uncertainty in the calendar in 2008, do not have specific dates yet for 2012. The Arizona primary is set for February 28, ending speculation that the governor would set an even earlier date,[24] but other states that could still potentially move up the primary date include Colorado, Georgia, Wisconsin, Missouri, and New Jersey.[25] Because the calendar is likely to be consequential only on the Republican side (because there is an incumbent Democrat in the White House), a number of Republican state parties could move up caucus dates as well. These states include Alaska, Maine, North Dakota, and Washington.[26]

One notable trend for 2012 is that a number of states are considering moving, or have moved, to a later date on the calendar while only a few have moved up, resulting in a less front-loaded calendar thus far and possibly reversing the hallmark trend of the past two decades. At least 13 states that held primaries on February 5, 2008, are scheduled to hold 2012 primaries in March, April, May, or June. February 5 was the official start date in 2008 according to the Democrats' timing rule (Republicans didn't have such a rule in 2008). For example, California has moved its primary to June 5[27] and legislation is pending in New Jersey to move to that date as well;[28] the Connecticut, Delaware, and New York primaries are scheduled for April 24; the Alabama and Illinois primaries are scheduled in mid- to late- March;[29] and Utah has cancelled its primary.[30] In

[23] Article IV (C), DNC, "Call for the 2012 Democratic National Convention," as adopted by the Democratic National Committee, August 20, 2010, p. 4.

[24] Ginger Rough, *The Arizona Republic*, "Ariz. primary set for Feb. 28; Brewer won't seek early date," September 13, 2011, p. B1.

[25] For a discussion of the evolving presidential primary and caucus calendar, see the following websites: Frontloading HQ, available at http://frontloading.blogspot.com/; and The Green Papers, available at http://www.thegreenpapers.com/P12/events.phtml.

[26] See Frontloading HQ, available at http://frontloading.blogspot.com/.

[27] See http://www.sos.ca.gov/elections/elections_vr.htm.

[28] See http://www.njleg.state.nj.us/bills/BillsByKeyword.asp.

[29] For detailed information on Connecticut, Delaware, New York, Alabama, and Illinois, see http://frontloading.blogspot.com/p/2012-presidential-primary-calendar.html.

[30] Lisa Riley Roche, *Deseret News*, "Huntsman, Romney both say they'd be competitive in earlier Utah primary," June 28, 2011, available at http://www.deseretnews.com/article/705375352/Huntsman-Romney-both-say-theyd-be-competitive-in-earlier-Utah-primary.html.

other state action, the Wisconsin legislature approved a bill that awaits the governor's signature to move its primary from February to early April.[31] Washington cancelled its primary altogether.[32] The unprecedented cooperation between the two national parties to encourage a less compressed schedule of events was the likely catalyst, but other factors may reinforce these actions. In an era of budgetary austerity, states are considering balancing the possible additional cost of an early, separate presidential primary[33] against the goal of attracting candidate and media attention by being earlier. An early date does not guarantee, however, that a state will be the focus of media and candidate attention if it shares the date with other states. As a result, it is possible that 2008 represented the high point for front-loading and a more measured and orderly calendar will be in place for 2012.

Evaluating the Primary System

Most state primaries were adopted following rules changes of the early 1970s to reform the arguably undemocratic process used to select nominees. However, other complaints about the system continue to arise. In addition to front-loading, complaints include low levels of participation, the predominance of Iowa and New Hampshire, dissatisfaction with the field of candidates who enter the race, the length of the season (either too short or too long), the role of the media, and confusion about the complex rules that govern the process. Some of these perceived problems stem from the design of the nominating system, such as calendar length, which has been recently addressed jointly by the national parties because such cooperation seems mutually beneficial at present. But some complaints, about low turnout, for example, apply to elections generally, and it is unlikely that nominating reforms would resolve such a fundamental problem. Also, the role of the media and the field of candidates who choose to run are a third category of complaints that stem more from the current political culture than from electoral structure. Changes to the nominating system, even a wholly new method of choosing party candidates, would arguably do little to diminish these and other non-structural complaints.

Despite long-standing complaints, the existing primary system routinely accomplishes its fundamental task—the selection of general election candidates according to the voting results in the states and territories or insular areas. The system is indirect, relying on elected delegates rather than the popular vote to determine the nominees. However, it differs markedly from the system of years past, when party leaders dominated the process. Because a majority of delegates is required for nomination, rank-and-file voters are usually willing to rally around the candidate chosen at the convention, even in years marked by internal party division. Finally, since the reforms of the 1970s, presidential elections have been marked by strong two-party competition for the presidency—Republican nominees have won six general elections and the Democrats have won four in generally close elections. With a few notable exceptions, the primary system has produced generally competitive candidates for the fall election. To be successful, any new system would need to retain the link between popular participation and candidate choice, and also

[31] Jason Stein, *Journal Sentinel*, "Assembly passes bill to move presidential primary," September 13, 2011, available at http://www.jsonline.com/news/statepolitics/129738658.html.

[32] Washington Secretary of State Sam Reed, "Washington suspends 2012 presidential primary; regular state primary still on," press release, May 12, 2011, available at http://www.sos.wa.gov/office/osos_news.aspx?i=zwm8zI6TS07Z8OKbW30dOw%3D%3D.

[33] Ibid., Washington will reportedly save $10 million by cancelling its primary, according to Secretary of State Sam Reed.

address at least some of the problems attributed to the primary system. As long as the major parties continue to win the presidency, however, one party or the other is likely to have a vested interest in preserving the process that produced a victorious general election candidate.

Reform Proposals

Most reform proposals, including those introduced in Congress over the past 50 years, can be grouped in three categories according to the overall design of the resulting system: a national primary, regional primaries, and those that would establish a "window" for holding contests.[34] A national primary, the most far-reaching plan, would resemble the general election, with participants selecting nominees on a single day. Regional primary plans and standardizing proposals would require less change, but they would take different approaches. Most regional primary proposals would set specific, staggered dates for holding events. More recent regional proposals are those that would group states by geographic region, by time zone, or by population (the Delaware Plan and Ohio Plans, for example, as discussed previously on pages 4 and 5, respectively).[35] The National Association of Secretaries of State (NASS) endorsed a regional primary proposal on February 12, 1999.[36] Under the NASS plan, Iowa and New Hampshire "would retain their leading positions in the presidential selection process based on past tradition," to be followed by regional primaries in the East, South, Midwest, and West during March, April, May, and June.[37] The regional order would rotate every four years. A window plan sets a time frame for selecting delegates but leaves the specific choice of date and method—either a primary or caucus—to the states or state parties. The changes adopted by the Democratic and Republican National Committees for 2012 use this reform model.

Legislative Considerations

No bills have been introduced in the 112th Congress to alter the Presidential nominating process. In the 111th Congress, S. 1433 (Senator Nelson of Florida) would have established an inter-regional system for holding primaries and caucuses on six dates, between the second Tuesday in March and the second Tuesday in June. The states would have been divided first into regions, and again into sub-regions. One sub-region would have been selected from each region to hold events on the same date and the order of sub-region groupings would have rotated every four years.

Several bills were introduced in the 110th Congress to provide for an interregional system of Presidential primaries and caucuses (one state from each region), or a regional system of primaries and caucuses. S. 1905 and H.R. 3487 would have established four regions and a series of dates for holding primaries and caucuses, but would have provided an exception for Iowa and New Hampshire. S. 2024 and H.R. 1523 would have included all caucuses and primaries in an

[34] Congress has never approved legislation to reform the nominating process, although more than 300 such bills have been introduced since the adoption of the primary.

[35] David S. Broder, "Coordinated Primaries?" *The Washington Post*, March 16, 2000, p. A7.

[36] "NASS Backs Rotating Regional Presidential Primary Dates," *Election Administration Reports* vol. 29, no. 4, February 15, 1999.

[37] National Association of Secretaries of State (NASS), "State Officials Approve Regional Presidential Primary Plan," retrieved from NASS website on March 9, 2000 (no longer available). A description of the plan may be found at http://www.nass.org/index.php?option=com_content&task=view&id=74&Itemid=210.

interregional plan for holding the events. The Senate Rules Committee held a hearing on S. 1905 on September 19, 2007.[38]

Although Congress has authority to regulate the timing of congressional and presidential elections, arguably including presidential primaries, some observers maintain that congressional efforts to prescribe the methods of choosing national convention delegates may be restricted by the parties' constitutional rights of free association.[39] For nearly two centuries, the parties have determined their methods of choosing nominees without federal oversight and might resist a system imposed by Congress. Also, legislative action may not achieve the expected results. Were Congress to establish regional primaries or a national primary, for example, state parties whose interests were not served by the new system might switch to the caucus method in an effort to circumvent Congress. Alternately, a federally designed system might succeed in imposing order on a complex and controversial system.

A federally mandated calendar for primaries might be resisted for a variety of other reasons. First, elections are expensive, and states often hold their presidential primary together with their state primary to save money. Second, some states schedule primaries to accommodate state legislative sessions or to meet other scheduling needs. Third, some states have a traditional primary date that determines the election cycle for candidates at all levels of government. A federally mandated primary date, which might be subject to change every four years, could create ongoing scheduling problems in states that hold a single, combined primary.

Complaints about the nominating system usually peak just after the election season has concluded, when observers assess how well the system functioned. In this climate, proposed changes tend to address the perceived problems recently encountered. The long-term implications of such adjustments often receive less debate. Notably, a victory in the general election often tempers the views of party activists who criticized the process in the spring and summer.

Revision and experimentation with the presidential nominating system continues, building upon the reforms of the 1970s. This continual revision, which sometimes causes confusion, nonetheless demonstrates the flexibility of the system and, at least in theory, promises a result that stems from competition and evolution. It is an open question, however, whether a new system could better accomplish the task of selecting candidates who are the choice of most party voters. Even more in doubt is the extent to which such changes would alleviate broader complaints about the presidential nominating process—low turnout, the negative perception of the media's role in the process, the influence of organized interest groups and ideological voters, the high cost of campaigns, and the reluctance of some potential candidates to enter the contest.

[38] The hearing record my be found at http://rules.senate.gov/hearings/2007/091907hrg.htm.

[39] See William G. Mayer testimony before the Senate Rules Committee, at http://rules.senate.gov/hearings/2007/091907hrg.htm.

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