



**Republican
National
Committee**

Counsel's Office

MEMORANDUM

TO: INTERESTED PARTIES

FROM: RNC COUNSEL'S OFFICE

DATE: February 2011

**RE: EXAMPLES OF "PROPORTIONAL DELEGATE ALLOCATION"
LANGUAGE FOR PRESIDENTIAL NOMINATING PROCESS**

I. *The Rules of the Republican Party Revised In August 2010 Pertaining to the 2012 Republican National Convention's Delegate Allocation Process*

During the Republican National Committee's ("RNC") Summer Meeting in August 2010, the RNC adopted revised rules governing the 2012 presidential nominating schedule and the methods for allocating delegates to the 2012 Republican National Convention. Rule 15(b)(2) of the revised *Rules of the Republican Party* requires that "[a]ny presidential primary, caucus, convention, or other meeting held for the purpose of selecting delegates to the national convention which occurs prior to the first day of April in the year in which the national convention is held, shall provide for the allocation of delegates on a proportional basis." The new Subsection (2) requires that any state holding its presidential nominating process prior to April 1 include some form of proportional delegate allocation, as determined by the state. Any state holding its process on or after April 1 would be allowed to allocate national convention delegates on a winner-take-all basis.

II. *Legislative History for New "Proportional Allocation" Requirement for States Holding Delegate Selection Process in March 2012*

The RNC Temporary Delegate Selection Committee ("TDSC") recommended the Rules change after a thorough review of the Party Rules and the presidential nominating process. The TDSC also recommended the following guidelines to help serve as the legislative history for this Rules change particularly related to the definition of "proportional basis," the new requirement for states conducting their presidential nominating process prior to April 1. The guidelines are intended to serve

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as examples of the proportionality rules that would allow a state to comply with the revised Rules. These guidelines were provided to the full RNC in advance of the RNC's vote approving the rule change and constitute important legislative history that should be considered by states when crafting proportional allocation rules.

“Proportional allocation basis’ shall mean that delegates are allocated in proportion to the voting results, in accordance with the following criteria:

- i. Proportional allocation of total delegates based upon the number of statewide votes cast in proportion to the number of statewide votes received by each candidate shall be the default formula for calculating delegate allocation, if no specific language is otherwise provided by a state.*
- ii. If total delegate allocation is split between delegates at-large and delegates by congressional district, delegates at-large must be proportionally allocated based upon the total statewide results.*
- iii. If total delegate allocation is split between delegates at-large and delegates by congressional district, delegates by congressional district may be allocated as designated by the state based upon the total congressional district results.*
- iv. A state may establish a minimum threshold of the percentage of votes received by a candidate that must be reached below which a candidate may receive no delegates, provided such threshold is no higher than 20%.*
- v. A state may establish a minimum threshold of the percentage of votes received by a candidate that must be reached above which the candidate may receive all the delegates, provided such threshold is no lower than 50%.*
- vi. Proportional allocation is not required if the delegates either are elected independently on a primary ballot not in accordance with a primary presidential candidate’s slate or are not bound at any time to vote for a particular candidate.”*

These parameters are included here to provide important guidance. Each state's "proportional allocation" system is left to the state's discretion, but substantial departure from these guidelines carries significant risk that the state's allocation method will be ruled non-compliant according to national Party Rules.

III. Suggestions for Adjusting 2008 Language for 2012 Compliance

The following suggestions address the primary allocation issues that many states may confront when developing their 2012 delegate selection plans. This is not an exhaustive list of concerns, but suggests language adjustments that many states may want to consider when developing Party Rules for conducting their 2012 delegate selection process.

A. Previous “Winner-Take-All” States Based on Total Statewide Vote

In 2008, twelve states allocated all of their delegates to the plurality winner of the statewide primary. This system was characterized as “winner-take-all,” and is not allowed under the revised Rules unless the state holds its presidential nominating system on or after April 1, 2012. Section (v) of the proportional allocation guidelines above allow for a similar “winner-take-all” end result beginning in March, as long as a candidate receives a majority of the votes cast within a state. If a candidate does not achieve a majority vote, then the delegates would be allocated proportionally based on the percentage of statewide votes received. Small language changes to current state law or state party rules could reach this same result.

The example language below incorporates the majority vote threshold requirement that would allow for a “winner-take-all” outcome and still maintain compliance with the new “proportional allocation” requirements for states conducting their process in March.

“Presidential candidates receiving 15% of the net Republican Primary vote will receive a corresponding percentage of the overall delegates to the Convention, both at-large and district, as well as their alternates. If one presidential candidate receives a majority (50%) of the net Republican Primary vote, that presidential candidate will receive all of the overall delegates to the Convention, both at-large and district, as well as their alternates.”

B. Previous State Language Allocating AL Delegates to Statewide Winner and CD Delegates to CD Winner

In 2008, eleven states allocated their AL delegates on a “winner-take-all” basis according to the total statewide vote and their CD delegates on a “winner-take-all” basis according to the total CD vote. The revised Rules allow this system to occur beginning on or after April 1, 2012. Sections (ii) and (iii) of the proportional allocation guidelines above would allow for a similar result for states conducting their process in March, with relatively minor revisions to the 2008 allocation language. The new guidelines allow for CD delegates to continue to be allocated on a “winner-take-all” basis according to the total CD results, as long as

the AL delegates are allocated proportionally according to the statewide results. At the same time, the AL proportionality language could incorporate the majority vote threshold to allow for an AL “winner-take-all” scenario, if one candidate reaches a majority vote. Example language for this modification could be:

“Each candidate shall be awarded at-large delegates authorized by the National Committee of the political party proportionately, according to the ratio of votes they received to the total votes cast on a statewide basis; provided however, no delegates shall be awarded to any candidate receiving less than fifteen percent (15%) of the vote, and such votes shall be allocated among the other candidates in proportion to their total vote. If one candidate receives a majority (50%) of the total statewide votes cast, then that candidate shall be awarded all at-large delegates from that state.”

IV. Examples of “Proportional Allocation” Processes as Defined by State Republican Parties in 2008

The following language provides examples of how various state Republican Parties voluntarily implemented the “proportional allocation” system in 2008. These examples all meet the thresholds established by the guidelines above, but are not an exhaustive list of states that would be in compliance using their allocation processes established for the 2008 presidential nominating cycle.

A. Examples using Statewide Proportionality

New Hampshire State Law 659:93(I):

Summary: The presidential primary is held and, based on the results certified by the Secretary of State, delegate/alternate slots are allocated on a proportional basis to each presidential candidate who meets the 10% statewide threshold (NH RSA 659:93(I,II)).

Exact Language:

“I. The secretary of state shall apportion delegates to the national party conventions among the candidates voted for at the presidential primary by determining the proportion of the number of votes cast for each presidential candidate to the total votes cast for all presidential candidates of the same political party, rounded to the nearest whole number.

II. A presidential candidate must receive at least 10 percent, before any rounding to the nearest whole number, of the total vote cast for all presidential candidates of his political party to be eligible for a share of the apportioned delegates.

III. In the event the apportionment of delegates according to paragraphs I and II leaves one or more delegates unassigned by the process of mathematical distribution, said delegates shall be apportioned to the presidential candidate of that party with the highest number of votes.”

New Mexico State Law 1-8-60(c)(1):

Summary: National convention delegates are bound for the first ballot to the participating presidential candidates in proportion to the percentage of the vote received by each candidate in the statewide primary. Only those presidential candidates receiving 15% or more of the primary vote are entitled to commitments (NMSA §1-8-60(c)(1)).

Exact Language:

(C)(1) “Each candidate and the uncommitted category shall be entitled to a share of the total vote allocated to the delegation that is equal to the proportion that the vote he received in the presidential primary bears to the total combined vote received by all qualified candidates; provided that no candidate shall be excluded who has received at least 15 percent of the total vote cast for candidates for president of that party, and no candidate shall be excluded in violation of any political party rules.”

B. Examples using Congressional District (CD) and At-Large (AL) Proportionality

Alabama Republican Party’s 2008 Presidential Preference Primary Resolution ¶ 6:

Summary: A presidential candidate who receives more than 50% in any CD will receive the top 3 delegates from his slate. If no candidate receives a majority, the candidate with the most votes receives the top 2 delegates from their filed slate and the next highest candidate receives 1 delegate from their filed slate (subject to the 20% minimum received in the CD). If only 1 candidate receives 20% or more, that candidate receives all 3 delegates. AL delegates are allocated as a winner-take-all if one candidate receives 50%; otherwise, AL delegates are allocated on a proportional basis with a 20% minimum statewide threshold, and are selected from each qualified candidate’s at-large slate in order of the number of votes each delegate received.

Exact Language:

“All delegates from the State at Large shall be awarded to a presidential candidate who receives a majority of the votes in the Republican presidential preference primary election in the state. If no presidential candidate receives a majority of the votes in the state, then the allocation shall be as follows: Based on the relationship that the number of votes received by each presidential candidate

bears to the total number of votes cast for candidates receiving at least 20 percent of the vote cast in the Republican presidential primary election in the entire State, the Steering Committee of the Alabama Republican Executive Committee shall apportion pro rata the number of delegates from the State at Large each of the presidential candidates is entitled to receive rounded to the nearest whole number; provided that a presidential candidate must receive at least 20 percent of the total vote cast in the State in the Republican presidential preference primary election in order to be entitled to any of the twenty-four State at Large delegates. Uncommitted delegate positions shall be similarly awarded, and committed and uncommitted delegate positions in the State at Large and in each congressional district shall be awarded by counting uncommitted presidential votes as if they were cast for a single, duly qualified presidential candidate.

All delegates from each congressional district shall be awarded to a presidential candidate who receives a majority of the votes in the Republican presidential preference primary election in that district. If no presidential candidate receives a majority of the votes in a congressional district, then the presidential candidate who receives the most votes in that congressional district shall receive two (2) delegates and the presidential candidate who receives the second most votes in that congressional district shall receive one (1) delegate, provided that a presidential candidate must receive at least 20 percent of the total vote cast in the district in the Republican presidential primary election in order to be entitled to any of the three delegates from that district. If only one presidential candidate receives 20 percent or more of such total vote in the district, such presidential candidate shall be awarded all of the delegates from that district.”

Mississippi Republican Party’s “Resolution of the State Executive Committee of the Mississippi Republican Party” (Rule 3 and 4):

Summary: The winner of a plurality of the vote in each individual CD is entitled to the delegates from that CD. The winner of the majority of the vote for the state is entitled to all of the state’s AL delegates. If there is no majority winner for the statewide vote, the AL delegates are allocated proportionally if a candidate receives at least 15% of the statewide vote.

Exact Language:

“Rule 3: The vote in the Republican Presidential Preference Primary shall be canvassed within each Congressional District, and the winner of a plurality of the vote cast within each Congressional District shall be entitled to that Congressional District’s three delegates and three alternate delegates to the Republican National Convention to be elected at the State Convention. A majority shall not be required for a candidate to be entitled to all three of the delegates and alternate delegates to be selected from each Congressional District. The persons to serve as delegates and alternate delegates to the Republican National Convention bound to vote for the winner of a plurality within each Congressional District shall be

selected at the Congressional District caucus at the Republican State Convention pursuant to these rules.

Rule 4: The vote in the Republican Presidential Preference Primary shall be canvassed within the State at-large, and the winner of a majority of the vote cast within the state shall be entitled to the state's 23 at-large delegates and 23 alternate delegates to the Republican National Convention to be elected at the State Convention.

In the case that no candidate receives a majority of the votes cast in the Presidential Preference Primary, each presidential candidate receiving fifteen (15) percent or more of the vote statewide shall be allocated delegates and alternates accordingly based on their percentage of the vote total of said candidates who passed the 15% threshold. All fractional proportions of a delegate/alternate shall be rounded to the nearest whole number. At-large delegates and alternate delegates to the Republican National Convention shall be selected at the Republican State Convention pursuant to these Rules."

V. Summary

The RNC Counsel's Office is willing to provide any assistance necessary to help state Republican parties maintain compliance with the revised Party Rules, particularly related to the timing and allocation methods of the 2012 delegate selection process. Please contact our office at (202) 863-8638 for additional information or requests for help.