

CRS Report for Congress

Presidential Nominating Process: Current Issues

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Summary

Every four years, the presidential nominating process generates complaints and proposed modifications, and the rapid pace of primaries and caucuses that characterized the 2000 and 2004 cycles will continue in 2008. 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) supports a regional primary plan that would rotate regional dates every four years.

The Democratic Party approved changes to its calendar rules again last year. In July 2006, 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. On August 25, 2007, the Democratic National Committee (DNC) stripped Florida of its national convention delegates because the legislature scheduled the 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. Ultimately, 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 vote by 50% at the convention.¹

In the 110th Congress, four bills to reform the nominating process by establishing a regional system of primaries and caucuses have been introduced (H.R. 3487, H.R. 1523, S. 1905, and S. 2024). The Senate Rules and Administration Committee convened a hearing on S. 1905 on September 19, 2007.

Front-loading is only the most recent among a list of complaints about the nominating system, which has avoided 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, and academics 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.

¹ Sean Forman, "Floridians Fared Reasonably Well in DNC Rules Committee Decision," *Miami Herald*, June 4, 2008, p. OP.

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Presidential Nominating Process: Current Issues

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 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.² 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, who had won 1.6% of the primary vote nationwide.³

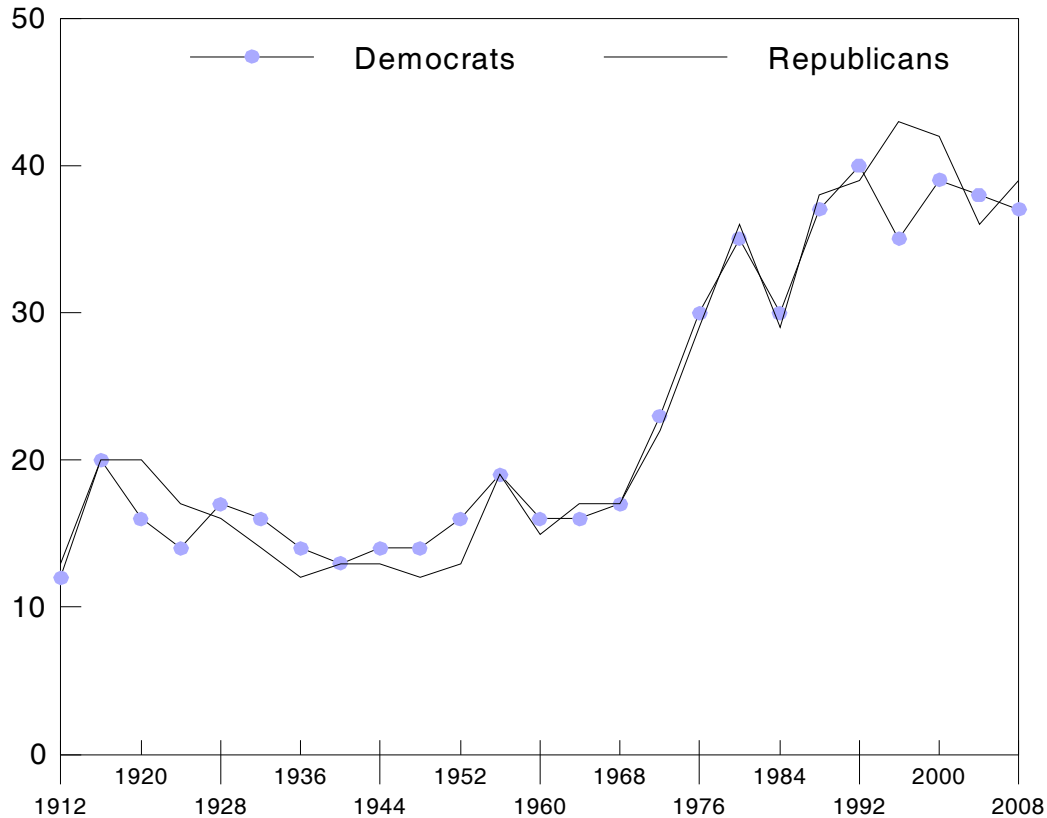
Pressure to change the nominating system mounted in the turbulent political climate of the 1960s due to the perception that the process was undemocratic. A transforming event occurred at the Democratic convention in 1968, where violent confrontations between war protesters and the Chicago police outside 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 1992, the number of states with Democratic party primaries increased from 15 to 40; states

² William Crotty and John S. Jackson III, *Presidential Primaries and Nominations*, (Washington, Congressional Quarterly Inc., 1985), p. 14.

³ Congressional Quarterly, *U.S. Guide to Elections*, 3rd ed. (Washington, D.C., CQ Press, 1994), p. 513.

with Republican Party primaries from 15 to 39, the most since the introduction of the primary in 1912. In 2004, Democrats scheduled 38 primaries, while Republicans scheduled 32.⁴ For 2008, Democrats have scheduled 37 primaries and Republicans plan to hold 39.

Figure 1. Number of Presidential Primaries, 1912-2008



Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics*. (Washington, CQ Press, 1998), p. 60, and press reports for 2000 and 2004 figures. 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 and set off a trend toward rescheduling in other states in order to better attract candidate and media attention.

⁴ Although 32 Republican primaries were scheduled, only 27 were actually held. Five were cancelled because only George W. Bush qualified for the primaries. See Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics 2006-2006* (Washington, D.C., CQ Press, 2000), p. 66.

2008 Election

For the first time since 1952, the nomination contest for both parties does 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 has not been the case on the Democratic side. Some observers have suggested that an inconclusive primary season could result in a “brokered” convention, whereby the nominee is chosen at the convention based on dealmaking and bargaining. Speculation about such an outcome has focused attention on the “superdelegates,” a category of automatic, *unpledged* delegates who are not required to declare a presidential candidate preference.⁵ The last Democratic nomination contest to feature a questionable convention outcome was in 1980, before the creation of the superdelegate category.⁶

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.⁷ Initially, the superdelegates were approximately 14 percent of all convention delegates; they will account for 20 percent of those who attend the 2008 convention.

The following categories comprise 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

⁵ While Republicans have a small number of automatic delegate slots reserved for party or elected officials, the term “superdelegate” is generally used only with respect to Democratic party delegates.

⁶ 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, CQ Press, 2001), pp. 140-141.

⁷ Democratic National Committee, *Report of the Commission on Presidential Nomination*, adopted by the Committee on March 26, 1982, p. 16.

- 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*	2,118
Republican	2,380	1,191

* Includes 796 superdelegates, who are 20% of the total delegates to the convention.

Calendar Changes, 1988-2008

Most of the changes to the calendar over the last two decades resulted from state legislatures 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.⁸

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.

⁸ Stephen J. Wayne, *The Road to the White House*, (Belmont, CA, Wadsworth, 2004), pp. 308-310.

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. 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. With the approval of two new 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. The New Hampshire primary was next, on January 22, while the South Carolina and Florida primaries followed a week after New Hampshire. Because Florida (January 29) and Michigan (January 15) were not among the states granted an exception to the timing rule, the Democratic national party has announced that the Florida and Michigan delegations will not be seated at the 2008 convention if the respective primary results are used to determine the selection of delegates.¹⁰

Republicans have already begun evaluating the performance of the nominating process in 2008, and Democrats are likely to follow once the primaries conclude on June 3. 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.¹¹ 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

⁹ The four exceptions to the specified period for holding initial delegate selection events are Iowa, New Hampshire, Nevada, and South Carolina. Other states are required to hold events between the first Tuesday in February 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 February or after the second Tuesday in June in the calendar year of the national convention.” Democratic National Committee, *Delegate Selection Rules for the 2008 Democratic National Convention*, as adopted by the Democratic National Committee, August 19, 2006, p. 12.

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

¹¹ Nicole Gaudiano, “Primary Schedule That Moves Del. Earlier Wins Initial RNC Vote,” *Gannett News Service*, April 9, 2008.

three successive dates. The order of the larger state groupings would rotate every four years. To be adopted for 2012, the plan will need to be adopted by the Republican National Committee, the rules committee of the national convention, and the convention itself. According to press reports, Republicans plan to seek the cooperation of Democrats in putting the plan into place in the states, as they did prior to the 2000 election.

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, and could be addressed jointly by the national parties if cooperation benefitted Democrats and Republicans alike. 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 three 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 system arguably would need to retain the link between popular participation and candidate choice, and also 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.¹² 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, for example).¹³ 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.

State election officials and the national party committees (jointly) sought to change the nominating system for the 2004 election cycle. After two years of study, the National Association of Secretaries of State (NASS) endorsed a regional primary proposal on February 12, 1999.¹⁴ 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.¹⁵ The regional order would rotate every four years.

Legislative Considerations

Several bills have been 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 establish four regions and a series of dates for holding primaries and caucuses, but would provide an exception for Iowa and New Hampshire. S. 2024 and H.R. 1523 would include all caucuses and primaries in an interregional plan for holding

¹² 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.

¹³ David S. Broder, “Coordinated Primaries?” *Washington Post*, March 16, 2000, p. A7.

¹⁴ “NASS Backs Rotating Regional Presidential Primary Dates,” *Election Administration Reports* vol. 29, no. 4, February 15, 1999.

¹⁵ 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].

the events. The Senate Rules Committee held a hearing on S. 1905 on September 19, 2007.¹⁶

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.¹⁷ 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 — turnout, the negative perception of the media's role in the process, the influence of organized interest groups, the high cost of campaigns, and the reluctance of potential candidates to enter the contest.

¹⁶The hearing record may be found at [<http://rules.senate.gov/hearings/2007/091907hrq.htm>].

¹⁷ See William G. Mayer testimony before the Senate Rules Committee, at [<http://rules.senate.gov/hearings/2007/091907hrq.htm>].