

Memorandum

October 2, 2019

To Jim Roosevelt: Co-Chair, DNC RBC
Lorraine Miller: Co-Chair DNC RBC

Cc Patrice Taylor: Director DNC RBC
(by email: taylorp@dnc.org)
Belinda Biafore: Chair WV DP
(by email: bbiafore@ma.rr.com)

From Selina Vickers: Democrat of West Virginia

Re Delegate Selection Plan of West Virginia for 2020 Democratic National Convention

Note: Included on pages 2 – 10 are many of the relevant provisions of the Charter and Bylaws and the national Delegate Selection Rules (“DSR”), and RBC Regs, as well as of the WV Bylaws, WV Plan, and WV Code. The specific issues begin on page 10.

I am a registered Democrat residing in Fayette County, West Virginia (“WV”), and for the past 4 years, I have been very active in Democratic party affairs, including attending the 2016 Democratic National Convention as a delegate. I am the President of the Fayette County chapter of the Federation of Democratic Women (although I’m not representing them in this memo or challenge). I also attend as many of the meetings of the DNC’s Rules and Bylaws Committee (“RBC”), other DNC Committees and full DNC meetings as possible. I attended virtually all of the meetings of the Unity Reform Commission. And, although I am not a member, I also attend most of the meetings of the West Virginia Democratic Executive Committee (“ExCom”), which is the state Democratic central committee of WV. As President of my county chapter of the WV Federation of Democratic Women, I hold an ex-officio seat on my county Democratic executive committee.

I will make myself available to the RBC to answer any questions, and provide any further documentation or testimony that may be helpful to the committee.

Preliminary matter: Challenge to the WV delegate selection plan adopted by the ExCom on March 30, 2019:

On April 13, 2019, I and 27 other registered WV Democrats filed a challenge (attached hereto as [Exhibit A](#)) to the WV Delegate Selection Plan for 2020 (“WV Plan”), which had been adopted by the ExCom on March 30, 2019. Your letter to me, dated June 4, 2019, noted that: “your challenge lacks a certificate of service indicating that the West Virginia Democratic Party has been properly served with your challenge ...” as required by RBC Regs 3.3(B). “Given this procedural failing, a valid complaint is not technically pending before the Committee.” ... Nevertheless, we recognize the important issues you have raised and shall give them due

consideration through our normal processes. ... [T]he Committee will consider the substantive claims raised in your submissions.... If your challenge raises material defects with the Plan which prevents the Committee from finding the Plan to be in compliance with the Call, rules, and regulations, the Committee will take the appropriate action to ensure that the Plan is brought into compliance.”

As shown by the electronic proof of receipt, which is a screen shot of my computer, attached hereto as [Exhibit B](#), I sent the challenge to ExCom Chairwoman Biafore on April 13, 2019 at 23:52 hour, which email was read by Biafore the next day, April 14, at 00:21 hours. As I understand it, typically a certificate of service merely requires the sender/server of the document to state (not under oath nor sworn to by a notary public), that the document was sent to and served on the person at the address shown in the certificate of service. See for example the certificate of service from the website of the U.S. Department of Justice, attached hereto as [Exhibit C](#), which merely requires the signature of the sender/server, not sworn to or notarized. By contrast, the electronic proof of receipt that is [Exhibit B](#) does not rely merely on the unsworn assertion of the sender/server; rather it is independently generated by a computer showing **actual receipt** by the recipient, which a certificate of service does not.

Since I wanted to make sure that I had complied with Regs 3.3(B), I sent an email to Patrice Taylor of the RBC, April 14, 2019 at 10:30 am (screen shot from my computer attached hereto as [Exhibit D](#)) informing her that: “I have the **read receipts** related to the challenge filed yesterday. Let me know if I need to send those to anyone. Thank you.” [Emphasis added.] The “read receipts” in my email to Taylor ([Exhibit D](#)) referred to the email screen shot ([Exhibit B](#)) showing that Biafore had received and opened my email to her transmitting the challenge. I did not receive a response from Taylor.

In short, [Exhibit B](#) shows that our complaint was filed with, served on and actually received by the ExCom, by way of its Chairwoman, within the 15 days required by the DSR and RBC Regs. And even if the RBC determines that [Exhibit B](#) does not constitute a technical “certificate of service”, given that, beyond doubt, the challenge was filed with, served on and **actually received** by Biafore, and given that no other parties (other than the challenging parties) are involved in this matter, there would be no prejudice to the ExCom if the RBC determines that the challenge, was, in fact, filed and served on the ExCom, and that the ExCom had actual notice of the challenge within the 15 days permitted.

Also attached is the letter to you from me and my 27 fellow challenging parties, dated June 27, 2019 (attached hereto as [Exhibit N](#)), responding to your letter to me, dated June 4, 2019, explaining the circumstances in connection with the filing and serving of our challenge, and explaining that we had never filed a challenge before, did not have a lawyer to assist us, and did not have the funds to hire lawyer to do so, and requesting you to use your discretion under the rules to accept and process our challenge.

I, therefore, request that the RBC determine that the electronic proof of service ([Exhibit B](#)) constitutes proof of service within the meaning of the Regs, and that my email to Taylor ([Exhibit D](#)), to which I received no response, effectively alerted the RBC that proof of service existed.

The purpose of this memorandum is to focus the RBC's attention on the following specific issues which, unless remedied, should preclude the WV Plan from being found in compliance. In addition, given that the ExCom does not have an Affirmative Action Plan or an Affirmative Action Committee (as distinct from the temporary AA Plan and the AA Committee in the WV Plan) as required by the Charter and Bylaws, and given its lack of compliance with other important provisions of the Charter and Bylaws of the National Democratic Party, including that the membership of the ExCom is not equally divided and, in addition, does not include members from diversity constituencies in numbers that reflect the support of such groups of the Democratic Party and Democratic candidates in WV, the ExCom is not sufficiently constituted to adopt and administer a delegate selection plan until comes into full compliance with all of the provisions of the Charter, Bylaws, DSR and Regs.

The presidential primary in WV is a government run process. The Democratic presidential primary is scheduled for May 12, 2020. The statewide Democratic convention, to be attended by approximately 750 Democrats delegates to be elected in 55 county conventions on March 28, 2020, will convene on June 12 – 13, 2020. In June, delegates to the state convention will caucus by their respective congressional districts to elect district delegates to the 2020 National Convention. Under the current version of the WV Plan, the ExCom elects PLEO and at-large delegates and at-large alternates to the 2020 National Convention.

The Ex Com, is composed of 88 members, of which 68 are elected every 4 years in Democratic primaries from the 17 state senate districts. The most recent primary elections were in 2018. Because of 2 vacancies (1 male position from SD 8 and 1 ex-officio), the current number of actual members is 86.

A: Abbreviations:

- AA Committee: Affirmative Action Committee referred to in the WV Delegate Selection Plan
- AA Plan: Affirmative Action Plan of the WV Delegate Selection Plan
- Biafore: Belinda Biafore, Chairwoman of the WV Democratic Executive Committee
- [Bylaws: Bylaws of the National Democratic Party, as amended by the DNC, August 25, 2018](#)
- [Challenge: Challenge filed by Selina Vickers, et al., April 13, 2019, to the WV Delegate Selection Plan, adopted by the ExCom, March 30, 2019](#)
- [Charter: Charter of the National Democratic Party, as amended by the DNC , August 25, 2018](#)
- DNC: Democratic National Committee
- [DSR: National Delegate Selection Rules for the Democratic National Convention adopted by the DNC, August 28, 2018](#)
- ExCom: The 88 member West Virginia Democratic Executive Committee
- March 30 plan: See WV Plan below
- Plan exhibits: In the context of the WV Plan, this phrase includes all exhibits, appendices, plans, programs, documents, and the like, included in or referred to in the WV Plan, and, in addition, required by the DSR and RBC Regulations

- RBC: Rules and Bylaws Committee of the DNC
- [RBC Regs: Regulations of the DNC Rules and Bylaws Committee for the 2020 Democratic National Convention, adopted by the RBC, December 1, 2018](#)
- SD: Senate district
- [WV Bylaws: Bylaws of the West Virginia Democratic Executive Committee, adopted, April 14, 2018, after less than the required 30 day comment period](#)
- [WV Code: The laws of the state of WV](#)
- [WV Plan: The proposed Delegate Selection Plan for the 2020 Democratic National Convention, adopted by the ExCom, March 30, 2019, apparently as subsequently amended](#)

B: Charter of National Party (“Charter”):

Charter, article 1: “The Democratic Party of the United States of America shall”

...

“**Section 4.** Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in **decisions** concerning the selection of candidates, **the formulation of policy**, and the **conduct of** other Party affairs, without prejudice on the basis of sex, race, age (if of voting age), color, creed, national origin, religion, economic status, sexual orientation, gender identity, ethnic identity or disability,” [Emphasis added.]

Charter, article 8: “Full Participation. **Section 1.**The Democratic Party of the United States shall be open to all who desire to support the Party and who wish to be known as Democrats.

...

“**Section 3.** To encourage **full participation by all Democrats**, with particular concern for minority groups: Blacks, Native Americans, Asian/Pacifics, Hispanics, women and youth in the delegate selection process and in all party affairs, as defined in the Bylaws, the National and State Democratic Parties **shall adopt and implement an affirmative action program** which provides for representation as nearly as practicable of the aforementioned groups, as indicated by their presence in the Democratic electorate. This program shall include **specific goals and timetables** to achieve this purpose.” [Emphasis added.]

Charter, article 9 “General Provisions”

...

“**Section 12:** All meetings of the Democratic National Committee... and all other official party committees, commissions and bodies shall be **open to the public**, and votes shall not be taken by secret ballot or use of the unit rule.” [Emphasis added.]

Section 16: “[T]he **membership** of the Democratic National Committee, ... **Democratic state central committees**, and all national official party conventions, committees, commissions, and like bodies, shall be **equally divided** as practicable

between men and women (determined by gender self-identification) ...”[Emphasis added.]

C: Bylaws of National Party (“Bylaws”):

Bylaws, article 2 “Democratic National Committee. **Section 1.** “Duties and Powers. The Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions, This responsibility shall include, but not be limited to:

...

“(j) Taking such other action as may be necessary and proper to carry out the provisions of the Charter, these Bylaws, the resolutions and another official actions **to achieve the objectives** of the Party and the Convention;”[Emphasis added.]

Bylaws, article 2, “Section 11 Participation in All Party Affairs.”

“(a) The Democratic Party of the United States shall be open to all who desired to support the Party and who wish to be known as Democrats.”

...

“(b)(i) The National, State, and Local Democratic Party organizations **shall undertake affirmative action programs** designed to encourage the **fullest participation of all Democrats at all Party affairs. All party affairs** shall mean **all activities** of each official Party organization commencing at the lowest level and continuing up through the National Democratic Party. Such activities shall include but need not be limited to the processes in which **delegates are selected** to the National Democratic Convention, party officials are nominated or selected; **party policy, platforms, and rules are formulated;** and regular programs of voter registration, public education and public relations development sponsored in cooperation with the Democratic National Committee. [Emphasis added.]

“(b)(ii) National and State Democratic Parties shall carry out programs to facilitate and **increase the participation of low and moderate income persons.** These programs shall include provisions and resources for outreach and recruitment to achieve representation and equitably minimize economic factors which act to bar full participation by such persons. [Emphasis added.]

“(b)(iii) State and National Parties shall act affirmatively to develop and implement appropriate education, training, fund- raising and **outreach programs directed at low and moderate income Democrats** and **shall implement rules and regulations** of the Party in their most constructive interpretation to affect increased participation and representation by people of low and moderate income.” [Emphasis added.]

...

“(c)(i) Each state or territorial Party shall require each unit of the Party which holds such meetings to **publicize effectively and in a timely fashion the dates, times, and places**

of all such meetings, and the name or names of the person responsible for such meetings. [Emphasis added.]

“(c)(ii) Notice of meetings shall be published as required in this Section prior to the meeting.”

...

“(f) If a state or territorial Party is alleged to have failed to comply with this section [11], the alleged non—compliance should be referred to the Democratic National Committee for review provided that any person alleging non—compliance at any level shall be a resident of the affected jurisdiction and provided that any person alleging non—compliance of a state or territorial Party with this section shall have exhausted all remedies provided by the state or territorial Party.”

D. National Delegate Selection Rules (“DSR”):

Rule 1. “Publication and Submission of State Party Rules”

...

“C. Each State Party shall provide for a **thirty (30) day of public comment** to solicit opinion on the State’s Delegate Selection Plan, Affirmative Action Plan and Outreach and Inclusion Program prior to adoption. All written public comments submitted to the state Democratic Committee shall be submitted along with the plans to the” RBC. [Emphasis added.] [Reference to footnote 1 omitted.]

Rule 4: “An Open Party”

...

B.3 “The time and place for all public meetings of the Democratic Party on all levels should be publicized fully and in such matter as to ensure timely notice to all interested persons.”

Rule 5 “Non Discrimination” ... “C. “each State Party shall developed and submit Party outreach programs, including recruitment, education and training in order to achieve full participation by such groups in diversity in delegate selection process and at all levels of the party affairs.”

Rule 6 “Affirmative Action”

...

“A. ... State Democratic Parties shall adopt and implement affirmative action programs with specific goals and timetables for African Americans, Hispanics, Native Americans, Asian Americans and Pacific Islanders and women.”

...

“F. Before the State Party submits its [AA] Plan to the DNC, Rules and Bylaws Committee, the Affirmative Action Committee shall review the proposed outreach program required in Rule 5.C.

Rule 10. “Pledged Party Leaders and Elected Official Delegates”.

...

“**B.** A state’s party leader and elected official delegates may be chosen by a state convention or by a committee consisting of a quorum of district– level delegates. They may also be chosen by the State Party Committee, as recognized by the Democratic National Committee, but only if the state’s Delegate Selection Plan is in full compliance with these rules, and provided:

“**B.1.** Membership on the State Party Committee is apportioned on the basis of population and/or some measure of Democratic strength; [and]

...

“**B.5.** Membership of the State Party Committee complies with the equal division requirements of Article 9, Section 16 of the Charter [equal division]....”

Rule 11 “Selection of At-Large Delegates”

...

“**B.** A state’s at – large delegates and alternates shall be selected by one of the bodies, subject to the same condition specified in Rule 10.B.”

E. RBC Regulations (“RBC Regs.”):

RBC Regs. 2.2 “Formal Submission. Each State Party Committee shall include the following documentation with the submission of its Plan to the RBC:”

“**E.** a statement from the State Democratic Chair certifying that the proposed Plan **including all attachments and appendices** was placed on the State Party website during the 30 – day public comment period.” [Emphasis added.]

“**F.** a statement from the State Democratic Chair certifying compliance with Rule 1.C. which requires a 30 – day public comment period prior to the adoption of the Plan by the State Party Committee, provided that the State Party has **publish specific guidelines** for the submission of public comments;” [Emphasis added.]

“**I.** a statement from the Chair of the State Party Affirmative Action Committee certifying compliance with Rule 6.F. which requires that the Affirmative Action Committee has reviewed and approved the proposed Affirmative Action Plan and Outreach and Inclusion Program, including any numerical goals established;”

“**J.** a statement from the State Democratic Chair certifying that the State Affirmative Action Committee composition complies with Rules 5.C, 6.A., and 7 and that the names, demographic data and contact information of members was submitted to the RBC no later than 15 days after their appointment.”

E. Bylaws of the WV Party (“WV Bylaws”) (attached hereto as [Exhibit E](#)):

Article I, section B provides in part: “The time and place of all public meetings of the Democratic Party on all levels shall be publicized at least five (5) calendar days.”

Article IV, section C, “Voting: Any member of the Committee [ExCom] who is unable to attend in person any meeting of the Committee **shall** appoint by proxy a Democratic elector who is a resident of the **same political subdivision**. [Emphasis added.]

Article IV, section F “Regular meetings: Notice shall be sent to the members and officers of the Committee in accordance with Article IV, Section D, Paragraph 1,” which requires notice to be mailed to the last known post office address of the member at least 5 days before the meeting is to be held.

Article VI “State Nominating Convention” ... “**Section C** Calling of State Convention: 1. The State Conventions shall be held in each presidential election year at which nominations shall be made for presidential electors.[sic] District Level Delegates and Alternatives [sic] to the National Convention”

F. WV Delegate Plan, what I understand to be the most recent version on file with the RBC (“WV Plan”):

Section III, C.4.c: “These [pledged PLEO] delegates will be selected by the WV State Democratic Committee.”

D.5.b: “These [at– large delegates] will be selected by the WV State, Democratic Executive Committee.”

Section VIII “Affirmative Action and Outreach and Inclusion Program”

A.1.a. “a program of effective affirmative action is **hereby adopted** by the West Virginia State Executive Committee.” [Emphasis added.]

A.1.d: “... West Virginia **has developed** Party outreach programs. Such programs include, education and training,... “ [Emphasis added.]

A.1.e: “In order to encourage full participation by all Democrats in the delegate selection process and in all Party affairs, the West Virginia Democratic Party **has adopted** and will implement affirmative action programs with **specific goals and timetables** for African Americans, Hispanics, Native Americans, Asian/Pacific Americans and women. To further encourage full participation in the process, the State Party **has established goals and timetables** for LGBTQ + Communities, people with disabilities and youth.” [Emphasis added.]

A.2.a. “An affirmative Action Committee **shall** be appointed by the State Democratic Chair on March 1, 2019.” [Emphasis added.]

“ **A.2.b.** The State Chair shall certify in writing to the RBC of the DNC the names, demographic data and contact information of the Affirmative Action Committee within 15 days of their appointment.”

“**A.2.c.** The Committee shall consist of members from each delegate district representing the Democratic constituency groups set forth in the Introduction to the Affirmative Action Plan.”

“**A.2.d.** The Affirmative Action Committee shall be responsible for:

1. “Reviewing the proposed Delegate Selection and Affirmative Action Plans and making recommendations to the State Democratic Chair.
2. “Directing the implementation of all requirements of the Affirmative Action section of this Plan.
3. “Implementing a **specific outreach and financial assistance programs** for persons of low and moderate income to encourage their participation and representation in the national convention **delegation financial assistance program for delegates and alternates.**” [Emphasis added.]

A.3: “Implementation of the Affirmative Action Plan shall begin on **September 1, 2019, with a distribution of the press kits....**” [Emphasis added.]

C “Efforts to Educate on the Delegate Selection Process”

“**C.1.** Well publicized educational workshops will be conducted in each delegate District, beginning in September 2019. The times, dates, places and rules for the conduct of all education workshops, meetings and other events involved in the delegate selection process should be effectively publicized by the party organization and include mailings to various organizations representative of the Democratic voting electorate.”

D. “Efforts to Publicize the Delegate Selection Process”

“**D.2:** The State Party should have a Delegate Selection media Plan for using all available and appropriate resources, such as social media, websites, email list, newspapers, radio and television, to inform the general public how, when and where to participate in the delegate selection process.”

“**D.4.** Not later than September 1st 2019 the State Party will make information about the delegate selection process available on its website and publicize the resource through press releases and communications to Party leaders, activists an targeted constituency.”

G: West Virginia Code (“WV Code”):

Chapter 3. Elections, article 1. General Provisions and Definitions, section 3-1-9: Political Party Committees, subsection “(h) Any meeting of any political party executive committee shall be held only after **public notice** and **notice to each member** is given according to the party rules and shall be **open to all members affiliated with the party.**” [Emphasis added.] (excerpt of the WV Code attached hereto as [Exhibit F.](#))

H: Additional documents for reference. Included with this memo are the following.

1. Our challenge of April 2019 to the proposed WV delegate selection plan, adopted by the ExCom at its March 30 meeting (“challenge”).
2. My pre-March 30 comments (attached hereto as [Exhibit G](#)) to the WV delegate selection plan which was adopted by the ExCom at its March 30, 2019 meeting.
3. What I understand to be most recent version of the WV Delegate Selection Plan (attached hereto as [Exhibit H](#)).

I: Ex Com.

The WV ExCom is composed of 88 possible members (including 2 current vacancies : 1 ex officio and 1 male from SD 8) of which:

- A) **68** are elected every 4 years in primary elections (the most recent being 2018) from the 17 Senate Districts (2 men and 2 women from each SD); plus
- B) **8** additional members: 3 at-large and 5 are ex-officio: 1 Democratic Leader of the House and 1 Democratic Leader of the Senate; 1 President of Federation of Democratic Women; 1 President of Young Democrats; 1 President of County Chairs Association; plus
- C) **13** officers (of which 3 are elected from the senate districts, so only an additional 10 for the full count): Chair, First Vice Chair, Second Vice Chair, Associate Chair, 3 Congressional District Vice Chairs, Recording Secretary, Associate Secretary, Treasurer, Parliamentarian, Executive Director and Residence Secretary (NOTE: The ExCom Chair appoints the Executive Director and the Residence Secretary); plus
- D) the National Committeewoman and National Committeeman.

Because of 2 vacancies, the current actual membership is 86.

Of the 86 actual current members (not including the 2 vacancies: 1 ex officio and 1 male from SD 8), 46 are men and only 40 are women (as far as I know, none are gender non-binary), a far cry for being equally divided. When the male vacancy for SD 8 is filled, the number of men will be 47 compared to 40 women.

Nor does the diversity of the ExCom measure up to that required by the Charter and Bylaws. Based on what I know, there are no Asian American, no American Indians and no African American members; at most, only 1 Hispanic member, 1 LGBTQ+ member, and small number of youth. I do not know how many, if any, disabled persons are members.

J. The issues:

I. The members of the WV ExCom are not equally divided, and, therefore, the ExCom is not legally constituted under the Charter and Bylaws to adopt and administer a delegate selection plan.

The ExCom adopted a proposed delegate selection plan at its meeting on March 30, 2019, subject to ongoing amendments. To the best of my knowledge, the current actual membership of 86 includes 46 men, 40 women, and no gender non-binary members. Since this lack of the equal division violates Charter, article 9, section 16, which requires that the “membership” of Democratic state central committees “shall be equally divided,” the membership of the ExCom is not legally constituted to adopt and administer a delegate selection plan until its “membership” is brought into compliance with the Charter.

The lack of regard that the top leadership of the ExCom has for important policies of our National Party, and, most importantly, the Democrats in WV, including equal division and inclusion of members of various diversity groups, was on full display at its meeting in June 2016 which elected its 11 officers (2 of the 13 officers are appointed by the Chair – the Executive Director and Residence Secretary), and DNC Committeeman and a Committeewoman, to 4 year terms and elected the PLEO and at-large delegates and at-large alternates to the 2016 National Convention. Biafore organized a slate of 11 officers, 8 of whom were Anglo males and only 3 Anglo women -- herself, and the 2 women elected for the 2 secretarial positions to take notes of ExCom meetings. The DNC Committeeman and DNC Committeewoman elected were both also Anglo. There was no mention at that meeting of the need to have the officers equally divided or that the group should include members of diversity constituencies. At this same meeting, PLEO and at-large delegates and at-large alternates were elected to the 2016 National Convention with no discussion or consideration of diversity goals or targets and 2016 WV delegate selection plan. (Link to the video of that meeting:

<https://www.youtube.com/watch?v=jMVBFIYNEQ&feature=youtu.be>)

Another indication of the complete disregard of ExCom leadership for fundamental policies of our Party is Biafore’s lead role, as a member of the board of the WV Federation of Democratic Women at its annual business meeting on September 14, 2019, to defeat a resolution calling on the State Federation to use its resources to assist in effectively addressing the lack of equal division on the ExCom. During July 2019, the Fayette County chapter of the Federation had adopted a resolution titled: “Call for Equal Division Resolution 2019” (annexed hereto as [Exhibit I](#)) which was offered at the State Federation meeting. Biafore led the charge at that meeting successfully to defeat the resolution.

II. Section III.C.4.c and section III.D.5.b of the WV Plan provides that the ExCom shall select the PLEO and at-large delegates and the at-large alternates to the 2020

National Convention. Since the ExCom is not equally divided, in violation of Charter article 9, section 16, this provision of the WVA Plan is not permissible.

As stated in section I above, the ExCom is not equally divided in violation of the Charter and the Delegate Selection Rules, nor does its membership reflect appropriate diversity as required by the Charter and Bylaws. DSR 10.B. permits state central committees, such as the ExCom, to elect PLEO and at-large delegates and at-large alternates only if they comply with the equal division requirements of Charter, article 9 section 16. Given the lack of compliance in this regard, the WV Plan must be revised to authorize election of PLEO and at-large delegates and at-large alternates by another body.

In addition, as described in section XVII below, membership of the ExCom does not meet the minimum goals for specific diversity constituencies and, therefore, should not be permitted to elect PLEO and at-large delegates and at-large alternates.

On June 12 - 13, 2020, the Democratic statewide convention will convene. The approximately 750 delegates from our 55 counties to that convention will be elected or certified on March 28th by the Chairs of the Democratic County Committees. WV Bylaws, article VI. Thus, this convention will be the most broadly representative and most recently elected body of WV Democrats, and, therefore, the WV Plan should provide that the PLEO and at-large delegates and at-large alternates should be elected by this convention as permitted by DSR Rule 10.B.

To be noted, although subsection D of section III of the WV Plan refers to: "At-Large Delegates and Alternates," and D.1 refers to "2 at-large alternates," section D.5 only refers to the selection of "at-large delegates." There appears to be no provision in the WV Plan for the actual election of at-large alternates. Since WV Bylaws, article VI.C.1 provides that the state convention is to nominate "District level Delegates and Alternatives [sic] to the National Convention," the WV Plan should be amended to require the 2 at-large alternates are to be elected by the state convention in compliance with the WV Bylaws.

It should be also noted that at the March 30 meeting of the ExCom, which considered and adopted the first version of the WV Plan (subject to ongoing amendments post March 30), members of the ExCom urged that the WV Plan should provide that the June state convention be authorized to elect the PLEO and at-large delegates and the at-large alternates, rather than being elected by the ExCom. During the course of the discussion, Chairwoman Biafore, who presided at the March 30 meeting, implied that the state convention could not be trusted to elect the diversity delegates needed to meet minimum target goals; she implied, the state convention very likely would elect non-diverse candidates, thus requiring her to tell them that they could not attend as delegates because diversity delegates must be elected, all of which would cause a great uproar at the state convention. Biafore said to one member during the discussion: "Are you going to be the one that tells someone 'you can't go?'" She allowed much misinformation to be shared as factual during the discussion, including the underrepresented target groups that needed to be included were veterans, union members and "old" people, and did not correct statements about diversity "requirements," even when asked directly about them. She did not clarify that the targets were "goals," not "requirements." At one point she implied that WV would lose delegates to the 2020 National Convention. Despite the complete lack of diversity among the

membership of the ExCom, she implied that the ExCom could be trusted to manage the election of needed diverse PLEO and at-large delegates. Link to the March 30, 2019 ExCom meeting: <https://www.youtube.com/watch?v=WX1peL4cFv8&t=2428s>

Although some ExCom members supported an amendment to the WV Plan to allow the state convention to elect the PLEO and at-large delegates and at-large alternates, the amendment failed, likely due to the misinformation given and allowed to stand as fact, as well as using and allowing fear tactics about causing an “uproar” at the state convention.

III. WV Bylaws article VI, section C.1 requires the state convention (which will be held June 12 – 13, 2020) to nominate/select “District Level Delegates and Alternatives [sic] to the National Convention. ...,” which is not permissible under the national DSR.

District level national convention delegates are not elected on the ballot in WV; rather they will be elected by delegates to the June 2020 state convention convened as congressional district caucuses. Since the above quoted provision suggests that district level national convention delegates are to be elected by the **whole** state convention, which would be impermissible under the national DSR, the WV Plan must be amended to include a provision clarifying this provision of the WV Bylaws.

IV. Certain members of the ExCom did not receive notice of the March 30 meeting, and, therefore, the meeting was not properly convened or constituted to adopt delegate selection rules.

Article IV, section F of the WV Bylaws provides that: “Notice shall be sent to members and officers of the Committee in accordance with Article IV, section D, paragraph 1,” which requires that the chair shall give “each individual member of the Committee written notice thereof by mailing same to the last known post office address of each, at least five (5) days before such meeting is to be held....” *See also* WV Bylaws, article I, section B (which requires “the time and place of all public meetings for the Democratic Party on all levels to be publicized at least five (5) calendar days”); WV Code, chapter 3, article 1, section 3-1-9(h) (“Any meeting of any political party executive committee shall be held only after **public notice** and **notice to each member** is given according to party rules and shall be open to **all members affiliated with the party.**” (emphasis added)).

Among those who did not receive written notice of the March 30 meeting were Robert Ofsa (SD 6) and Joe Jividen (SD 1). Effective notice is, of course, **fundamental** to being able to participate in all party affairs as required by the Charter and Bylaws and by WV Bylaws. Since there was the lack of notice to certain members of the ExCom in violation of the WV Bylaws; Charter, article 1, section 4; Bylaws, article 2, section 11(c)(i) and (ii); DSR 4.B.3; and WV Code, chapter 3, article 1, section 3-1-9(h). the March 30 ExCom meeting was not properly noticed, and, thus, not properly convened and, therefore, its actions adopting the Plan were invalid.

In addition, it is my understanding that since adoption of the March 30 version of the WV Plan, several additional versions have been created by way of amendments, with each new version presumably superseding the prior; yet, there is no evidence of when and where the meetings to **formulate** and adopt those amendments took place, nor is there any evidence of any notice of such meetings, all in violation of the rules heretofore cited. Charter, article 1, section 4 requires “rules of procedure to afford all members of the Democratic Party full, timely and equal opportunity to **participate in decisions** concerning the selection of candidates, the **formulation of policy**, and the **conduct of other party affairs**. *See also*, Charter, article 9, section 12; Bylaws, article 2, section 11(b)(i) (requires Party organizations to undertake affirmative action programs designed to encourage the full participation of all Democrats in all party affairs,” including “party policy, platforms and rules are **formulated**...” (emphasis added); Bylaws, article 2 section 11(c)(i) (“each unit of the Party which holds such meetings...[shall] **publicize effectively** and in a timely fashion the dates, times, and places of such meetings and the name or names of the person responsible for such meetings.”) (emphasis added); Bylaws, article 2, section 11(c)(ii) (“Notice of meetings shall be published as required by this Section prior to the meeting.”); WV Bylaws, article I, section B, and article IV, section F.

V. Proper notice and effective advanced publicity of the March 30, 2019 ExCom meeting (and any subsequent meeting of the ExCom, or any group thereof) to formulate, discuss or adopt any amendment or changes the WV Plan was not provided in advance to every member of the ExCom, to Democrats, and those who wish to associate as Democrats, and to the press, all in violation of the WV Bylaws, the Charter, Bylaws and the WV Code, and, therefore, the meeting of March 30 was not legally constituted to adopt the delegate selection plan.

There is no evidence that a press release or other effective advance public notice and publicity was provided to Democrats and those who wish to associate with Democrats and to press outlets throughout the state announcing the date, time, location and proposed agenda of the meeting on March 30 and the names of those calling the meeting; nor is there any evidence that such information was provided on the website of the ExCom on March 30 or during at least the 5 days preceding, all in violation of the WV Bylaws, article I, section B (requires that meetings at all levels of the Party “shall be publicized a least five (5) calendar days”); Charter, article 1, section 4; Bylaws article 2, section 11(b)(i); Bylaws, article 2, section 11 (c)(i) (all Party meetings to be “**publicized effectively** and in a timely fashion the dates, times, and places of all such meetings, and the name or names of the person responsible for such meeting” (emphasis added); Bylaws, article 2, section 11(c)(ii) (“notice of meetings shall be published as required in this Section prior to the meeting.”); DSR 4.B.3 (“all public meetings of the Democratic Party on all levels should be **publicized fully** and in such manner as to ensure timely notice to all interested persons.”) (emphasis added) WV Code, chapter 3, article 1, section 3-1-9(h): “Any meeting of any political party executive committee shall be held only after **public notice and notice to each member** is given according to the party rules and shall be **open to all members affiliated with the party**.”(emphasis added).

I note in particular Charter, article 1, section 4, which requires “Standards and rules of procedure to afford **all members** of the Democratic Party full, timely and equal opportunities to **participate in decisions** concerning the selection of candidates, the **formulation of policy** and

the conduct of other party affairs ...” (emphasis added); likewise, Bylaws, article 2, section 11(b) (i) (“party policy, platforms, and rules are **formulated**” (emphasis added)) and WV Code, chapter 3, article 1, section 3-1-9(h).

In addition, it is my understanding that since the March 30 version of the WV Plan, several additional versions have been created and adopted, presumably each new version superseding the prior; yet, there is no evidence of when and where the meetings to **formulate** or adopt those changes took place; nor is there any evidence of any effective notice and advanced publicity of such meetings, all in violation of the rules heretofore cited.

VI. It does not appear that the ExCom has adopted and implemented “an affirmative action program” or the “specific goals and timetables” all as required of state parties by Charter, article 8, section 3, and Bylaws, article 2, section 11(b)(i).

Apparently the ExCom has not adopted an Affirmative Action Plan (other than the temporary one included in the WV Plan), nor does it have an AA Committee. Since the ExCom has not complied with these very fundamental requirements, any delegate selection plan which it adopts is not legally valid.

VII. No affirmative action outreach was conducted prior to the March 30 meeting, or any subsequent meetings, in connection with the formulation and adoption of the delegate selection plan, including any amendments or changes thereto, to notify and encourage members of groups specifically referred to in the Charter, Bylaws and DSR about these meetings to formulate and adopt policy and rules.

The WV Bylaws do not include an Affirmative Action Plan and Outreach Program (“AA Plan”), nor is there any reference to such in the WV Bylaws. In addition, there is no provision for or reference in the WV Bylaws to an Affirmative Action Committee.

There is no evidence that prior to the March 30th meeting, or prior to any subsequent ExCom meetings, however informal and closely held they may have been, at which policy or rules were formulated, discussed or adopted to amend the proposed March 30 plan that the ExCom conducted any affirmative action outreach to the groups referred to in the Charter (including no evidence of information being provided to specialty press for such groups), as required by the Bylaws, DSR, and WV Plan, to notify those groups and to encourage members of such groups, and those who identify with them, to participate in the March 30 and subsequent meetings involving formulating and amending the WV Plan.

In particular, references made to Bylaws, article 2, section 11 (b)(i) which requires State Democratic Party organizations to “undertake affirmative action programs designed to encourage the fullest participation of all Democrats at all party affairs,” including in connection with “party policy, platforms, and rules are **formulated**....,” [Emphasis added.]

Given the critical importance of effectuating affirmative action outreach to designated groups, until the requirements of the Charter and Bylaws regarding affirmative action have been fully

complied with by the ExCom, it should not be permitted to adopt or administer a delegate selection plan, and any WV Plan adopted should not be considered valid.

On June 11, 2016, **during the actual proceedings of the state convention**, the ExCom convened in another room and elected the PLEO and at-large delegates and alternates to the 2016 Democratic National Convention. Because of the ongoing state convention, many of us who otherwise ordinarily would have attended the Ex Com meeting were unable to do so. Based on the video recording of that meeting (Link to the video of that meeting: <https://www.youtube.com/watch?v=jMVBFILYNEQ&feature=youtu.be>), there was no instruction provided to the meeting of the need to ensure that the delegation as a whole needed to include requisite representation from certain historically underrepresented groups as required by the Charter, Bylaws, DSR for 2016, and the WV Plan for the 2016 National Convention. As a result, the number of members of certain diversity groups included in the WV 2016 delegation to the National Convention was well below the minimum target goals. -0- Asian American & Pacific Islander elected (0.0% compared to target goal of 1.0%); only 1 African American elected (only 2.0% compared to target goal of 6.0%); -0- Hispanics elected (0.0% compared to target goal of 2.0%) and; -0- Native Americans elected (target goal of 1.0%); and 2 disabled persons elected (only 5.0% compared to the target goal of 23.0%).

At that same ExCom meeting, 11 ExCom officers were elected to 4 year terms without any discussion about or instructions given as to the necessity of complying with equal division and affirmative action goals. With the exception of Biafore and the 2 Anglo women elected to the 2 secretarial positions, the other 8 officers elected were Anglo males. The DNC National Committeeman and Committeewoman are also Anglo.

VIII. The 7 member Affirmative Action Committee (“AA Committee”) in the WV Plan was not timely established and, in addition, because several of its members were not appointed before the March 30 meeting of the ExCom to adopt the WV Plan, they did not have the opportunity to review the Plan, or the affirmative action provisions of that Plan and to give their suggestions and other input as required by the DSR and the WV Plan.

The WV Plan, adopted March 30, 2019, provides that an Affirmative Action Committee “shall be appointed by the State Democratic Chair on March 1, 2019” and that the State Chair “shall certify in writing to the RBC of the DNC the names, demographic data and contact information of the Affirmative Action Committee within 15 days of their appointment.” WV Plan, section VIII.A.2.a and 2.b.

The AA Committee “shall be responsible for: 1 reviewing the proposed Delegate Selection and Affirmative Action Plans [sic] and making recommendations to the State Democratic Chair.” WV Plan, section VIII.A.2.d.

Biafore’s letter to the RBC of March 1, 2019 (attached hereto as [Exhibit J](#)) incorrectly states that the 7 individuals named in the letter were appointed to the AA Committee” on February 16, 2019. As described in issue #6 of our challenge ([Exhibit A](#)), I personally communicated with 3 of those 7 individuals: A) with Rod Purdue on the evening of March 29, the day before the WV

Plan was adopted, who told me that he was not aware, at that time, that he was on the AA Committee and he had not seen the draft of the proposed WV Plan; B) with Chase Jarrell on April 1, who told me that, at that time, he was not aware that he was on the AA Committee and had not reviewed the draft WV Plan before it was adopted on March 30; and C) with Lora Walker on March 31, the day after the Plan was adopted, who told me that, at that time, she was not aware that she had been appointed to the AA Committee nor had she seen the draft WV Plan. Also it is unknown who of the other members of the AA Committee had been given the opportunity to review and give input about the AA Plan before March 30 meeting.

In light of the importance placed on affirmative action in the Charter and Bylaws and in the DSR, given that **nearly 50% of the AA Committee** did not know, before the Plan was adopted, that they had been appointed to that Committee and **had no input into the draft WV Plan, and in particular, no input into the Affirmative Action provisions of WV Plan**, Chairwoman Biafore's letter, misstating the facts, is very unsettling, and calls into question the accuracy of other communications from her.

In addition, WV Plan, section VIII.A.2.c provides that the AA Committee “shall consist of members from each delegate district representing the Democratic Constituency groups set forth in the Introduction to the Affirmative Plan.” Presumably the phrase “each delegate district” refers to each congressional district, but Biafore’s letter of March 1 does not indicate which of WV’s 3 congressional districts each of the 7 members resides in.

IX. At least 3 of the 7 members of the AA Committee did not have the opportunity to review the “specific outreach and financial assistance programs for persons of low and moderate income” described in WV Plan, section VII. A.2.d.3.

Among its other responsibilities, the AA Committee is required to implement a “specific outreach and financial assistance program for persons of low and moderate income to encourage their participation and representation in the national convention delegation financial assistance program for delegates and alternates.” Since, as described in section VIII above, at least 3 of the 7 members of the AA Committee did not know that they have been appointed to the Committee until immediately before or after the March 30 meeting of the ExCom when the WV Plan, which includes the AA Plan, was adopted, they did not have the opportunity to review these programs before adoption.

In addition, it is unknown whether the other 4 members of the AA Committee had been given the opportunity to review these programs before the adoption of the WV Plan on March 30..

Given this material defect, the WV Plan must be reposted for another 30 day comment period, but not until after ExCom State Chairwoman has certified in writing that all members of the AA Committee have reviewed these programs and have provided her with their comments.

X. The letter to the RBC from State Chairwoman Biafore, dated March 1, 2019 ([Exhibit J](#)) does not comply with RBC Regs. 2.2.J.

Biafore's letter of March 1 does not include A) the contact information for the 7 members, B) nor does it indicate who is the Chair of the AA Committee, and C) does not indicate which of the 3 congressional districts each of the members resides in.

XI. There does not appear to be a letter from the Chair of the State Affirmative Action Committee as required by RBC Regs. 2.2.I.

RBC Regs. 2.2.I requires a "statement from the **Chair of the State Party Affirmative Action Committee** certifying compliance with Rule 6.F." [Emphasis added.] I have been unable to identify a letter from the Chair of the State Affirmative Action Committee certifying compliance with DSR 6.F which requires that: "Before the State Party submits its Plan to the DNC Bylaws Committee, the Affirmative Action Committee **shall** review the proposed outreach program referred to in Rule 5.C." [Emphasis added.] To my knowledge, the **State Party** does **not** have an Affirmative Action Committee. If such committee exists, it not included or referred to in the WV Bylaws. The only Affirmative Action Committee is the temporary one established under the WV Plan, the life of which AA Committee apparently began during March 2019 and presumably will expire upon the adjournment of the 2020 Democratic National Convention.

Even if reference RBC Regs. 2.2.I to "chair of the State Party Affirmative Action Committee" means the Chair of the temporary AA Committee established in the WV Plan to administer the WV Plan, there is no evidence of the required letter.

XII. WV Bylaws do not include provisions for, or even refer to, programs to facilitate and increase the participation of low and moderate income persons, as required by Bylaws, article 2, section 11(b)(ii) and (iii).

The WV Bylaws include no provisions, or even passing reference, regarding efforts to "facilitate and increase the participation of low and moderate income persons," or to "act affirmatively to develop and implement appropriate education, training, fundraising and outreach programs directed at low and moderate income Democrats ... to affect increased participation and representation by people of low and moderate income," as required by Bylaws, article 2, section 11(b)(ii) and (iii); nor is there any evidence that the ExCom made any effort in this regard, in particular prior to the March 30 meeting or any subsequent meetings and other processes **formulating** changes to and amending the March 30 draft proposal.

The failure to fulfill these requirements in connection with the formulation and adoption of the WV Plan and any subsequent changes or amendments thereto, alone is sufficient to find that the meeting of March 30, and any meetings thereafter, in connection with the WV Plan were not legally constituted, and, thus, the adoption of the WV Plan and any subsequent amendments or changes thereto may not be considered by the RBC until the ExCom fully complies with these requirements.

XIII. Neither the initial WV Plan, adopted on March 30, nor, to my knowledge, any subsequent revisions, changes or amendments thereof, include the exhibits, attachments, appendices, plans, programs and other documents and information referred to in the WV Plan, DSR and RBC Regs, were published on the website of

the ExCom, or by way of any other publicly accessible format, during the 30 day comment period preceding March 30.

RBC Regs 2.2 (formal submission) lists 12 separate items of information and documentation to be submitted with the submission of a delegate selection plan by a state party.

Under RBC Regs. 2.2 and 2.2.E, the draft WV Plan, which is to be subjected to a 30 day pre-adoption public comment period, is to include all exhibits, appendices and other documents and information (collectively referred to in this memorandum as “plan exhibits”) referred to, but not included, in the body of the Plan and a “statement from the State Democratic Chair certifying that the proposed Plan including all attachments and appendices was placed on the State Party website during the 30 – day public comment period”.

When I initially questioned Chairwoman Biafore by email on March 24, about the whereabouts of the plan exhibits to the WV Plan, she responded that same day that: “ the exhibits will be the affirmative action letter and letter of media outlets that will be notified. The attachments will not happen until after comment period, which will include things like statement from chair confirming comment period [sic] confirming meeting, attaching public comment [sic] ,blank copies of forms to be used for filings, etc....” Copy of that email correspondence is attached hereto as [Exhibit K](#).

A complete delegate selection plan, **including the plan exhibits**, was **not published** during the 30 day public comment period, prior to adoption at the March 30 ExCom meeting, in violation of DSR and RBC Regs. The recent version of the WV Plan, as subsequently amended, with plan exhibits, must be subject to a new 30 day comment period and subsequent consideration by ExCom before it may be considered by the RBC.

To the best of my knowledge, at least the following were not included with the draft plan during the 30 day public comment period, nor, to my knowledge, have they been made available to all members of the ExCom, and to Democrats and those who wish to be associated with Democrats, and accessible to the media.

1. **“Program of effective affirmative action is hereby adopted** by the West Virginia State Executive Committee.” WV Plan, section VIII.A.1.a.[Emphasis added.] It is not obvious from this provision whether this section VIII is the AA plan or whether there is some other more detailed plan being referred to? If the latter, where is it?
2. “West Virginia **has developed Party outreach programs**. Such programs include training...” WV Plan, section VIII.A.1.d. [Emphasis added.] Where are specific details of these outreach programs?
3. “To further encourage full participation in the process, the State Party **has established goals and timetables** for LGBTQ + Communities, people with disabilities and youth.” WV Plan, section VIII, A.1.e. [Emphasis added.] Where are the specific details of these timetables?

4. The AA Committee shall be responsible for implementing “a specific outreach and **financial assistance programs** for persons of low and moderate income...” WV Plan section VIII.A.2.d.3. [Emphasis added.] Where are the specific details of these “financial assistance programs”?

5. “Implementation of the Affirmative Action Plan shall begin on September 1, 2019, with a **distribution the press kits...**” WV Plan, section VIII.A.3. [Emphasis added.] Although the ExCom apparently has distributed a “2020 Delegate Selection Plan Starter Kit” (“Kit”) (attached hereto as [Exhibit L](#)), it appears that the Kit was **formulated** and adopted by the ExCom, or some subgroup thereof, without any notice, publicity, or participation by the whole ExCom or by Democrats in general. Noted, in particular, is reference in Charter article 1, section 4 (“full, timely and equal opportunities to participate in decision concerning the ...**formulation** of policy, and the conduct of other Party affairs ...”); Bylaws, article 2, section 11 (b)(i) (“party policy, platforms and rules are **formulated** and regular **programs of ... public education and public relations**”) (emphasis added).
 - The filing date for PLEO delegates is shown as May 15, 2020 in the chart on the second page of the Kit, compared to May 12, 2020 in the chart on the last page.
 - There is no reference whatsoever in the Kit to equal division or diversity goals.

6. The WV Plan refers to well publicized “**educational workshops** to be conducted in each delegate District beginning in September 2019.” WV Plan, sec. VIII.C.1. [Emphasis added.] Where is the plan for such workshops, and when and how were the format and contents of such workshops formulated and adopted? *See* reference in #6 immediately above to Charter article 1, section 4 to “full, timely and equal opportunities to participate in decisions concerning the ...**formulation** of policy, and the conduct of other Party affairs ...”; Bylaws, article 2, section 11 (b)(i) (“party policy, platforms and rules are **formulated** and regular **programs of ... public education and public relations**”) (emphasis added). It is now October 2, and I am unaware of any educational workshops that have occurred, even though, for example, the statewide Federation of Democratic Women had a 3 day convention where an educational workshop would’ve been ideal. Instead, rather talking about the importance of the upcoming selection of delegates to the 2020 National Convention and some of the key issues involved in selecting delegates, ExCom Chairwoman Biafore used her time at that convention to defeat a resolution concerning the lack of equal division on the ExCom.

7. “The State Party should have a Delegate Selection **media plan**” WV Plan, section III.D.2. [Emphasis added.] If such a media plan exists, apparently it was formulated and adopted without notice or publicity regarding the meeting at which such formulation and adoption transpired. *See* reference in #6 immediately above to Charter article 1, section 4 to “full, timely and equal opportunities to participate in decision concerning the ...**formulation** of policy, and the conduct of other Party affairs ...”; Bylaws, article 2, section 11 (b)(i) (“party policy, platforms and rules are **formulated** and regular **programs of ... public education and public relations**”) (emphasis added).

8. Statement from the State Democratic Chair certifying that the draft WV Plan, including plan exhibits, was placed on the ExCom's website during the 30 – day public comment period. RBC Regs 2.2.E.
9. Blank copies of all forms to be filed with the state or State Party by delegate and alternate candidates. RBC Regs 2.2.J.

It is my understanding that, in addition to my comments ([Exhibit G](#)) to the WV Plan, which I filed with the ExCom before it's meeting on March 30, other individuals filed comments as well, but I question whether those comments of others were provided to the RBC?

- XIV. The WV Plan, complete with plan exhibits, was not posted for the full required 30 day comment period as required by DSR 1.C before being adopted by the ExCom on March 30, and, therefore, the most recent version of the Plan with plan exhibits must be posted for a new 30 day comment period before it can be adopted by the ExCom. Even if the initial draft of the WV Plan with plan exhibits had been posted for 30 days, the subsequent amended versions of the WV Plan with plan exhibits have not been posted for the required 30 day comment period.**

The March 30 version of the WV Plan was not posted for the complete 30 day period as required by DSR 1.C which states in pertinent part: "Each State Party shall provide for thirty (30) day period of public comment to solicit opinion on the State's Delegate Selection Plan, Affirmative Action Plan and Outreach and Inclusion Program prior to adoption. All written public comments submitted to the state Democratic Committee shall be submitted along with the plans to the...." RBC. Attached as [Exhibit M](#) is a copy of the ExCom's press release dated February 28, 2019, captioned "The WVDP releases Delegate Selection Plan for 2020 Democratic National Convention," and which also states: "All comments must be submitted by March 29th." Given that February had only 28 days this year, the fact that public comments had to be submitted by March 29 was not the full 30 days required by the DSR.

In addition, the draft WV Plan posted on the ExCom web site for the public comment period was not a complete plan because the plan exhibits were not included. The most recent version of the Plan along with plan exhibits must be posted for an additional 30 day comment period before being considered and adopted by Ex Com for consideration by the RBC.

- XV. At the March 30 meeting, the motion to adopt the draft WV Plan included a statement that it would be the subject to ongoing amendments. It does not appear that there has been any public notice of meetings at which such amendments have been formulated and adopted.**

At the March 30 meeting, Tom Vogel, a non-voting officer of the ExCom (because he is not elected from a senate district) and acting parliamentarian, moved the adoption of the draft WV Plan, which motion included a provision that, post adoption, the WV Plan would continue to undergo amendments. To my knowledge, there has been no public notice of meetings at which

such amendments were formulated and adopted as required by, among other provisions, Charter, article 1, section 4; Charter, article 8, section 3; Bylaws, article 2, section 11 (a) and (b)(i); Bylaws, article 2, section 11(b)(ii) and (iii); DSR 1.C; DSR 3 (A) and (C); and WV Bylaws, article 1, section B; WV Code, subsection 3-1-9(h).

Before the most recent version of the draft WV Plan can be considered to have been adopted by the ExCom, the ExCom must convene a meeting, preceded by A) a 30 day public comment period, B) require public notice to the ExCom, Democrats in general and the press, C) affirmative action outreach, and D) outreach to low and moderate income individuals encouraging them to participate, at which meeting the most recent draft of the WV Plan, including plan exhibits, is presented for discussion, including accurate information about the diversity goals.

XVI. The individual who made the motion at the March 30 meeting to adopt the draft WV Plan was not legally entitled to make the motion and, therefore, the adoption of the WV Plan was invalid.

Tom Vogel, the Vice Chairman of the 2nd Congressional District of the ExCom and appointed on March 30 as acting parliamentarian of the ExCom, made the motion at the March 30 meeting to adopt the draft WV Plan. At that time he was not a duly elected member of the ExCom and, therefore, pursuant to WV Bylaws, article IV, section E(1), which provides that “no other officers may vote unless they are duly elected members of the committee,” he was not permitted to make motions.

And although a voting member of the ExCom may, by proxy, authorize another to vote in her, his, or they stead, both individuals (the one designated in the proxy and the one giving the proxy) must reside in the same political subdivision, as required by WV Bylaws, article IV, section (C) which provides, in pertinent part: "Any member of the Committee ... shall appoint by proxy a Democratic elector who is a resident of the **same political subdivision.**" [Emphasis added.] A voting member of the ExCom “A” may designate another individual “B” to act as the proxy of A, even if B is not a voting member of the ExCom, but both A and B must reside in the same Senate District.

Larry Puccio, of Fairmont, one of the 3 at-large members of the ExCom due to having been an immediate past president of the ExCom, who resides in **SD 13**, gave his proxy to Vogel for the March 30 meeting. But Vogel, who is not a voting member of the ExCom, resides in **SD 17**. Thus, Vogel could not act as Puccio's proxy and did not have the power and authority to make the motion to adopt the WV Bylaws. The adoption of the draft WV Plan on March 30, based on Vogel's motion, is therefore invalid.

XVII. The membership of the ExCom, as a whole, does not reflect the various diversity constituencies as indicated by their presence in the Democratic electorate, and, therefore, is not properly constituted to adopt and administer a delegate selection plan.

To the best of my knowledge, with the possible exception of someone who may be a Hispanic woman, the ExCom includes no Asian-American, African American or Native American members. I don't know the number of LGBTQ +, youth or disabled members. As noted above, the ExCom does not have an Affirmative Action Plan and an Affirmative Action Committee, other than the temporary AA Plan and temporary AA Committee included in the WV Plan which will expire upon the adjournment of 2020 Democratic National Convention. Although the ExCom leadership undoubtedly will point to the fact that 68 of its 88 total membership are elected in primaries, and presumably diversity individuals chose not to run for election, or if they did, were not successful, there are 11 officers who are elected by the ExCom every 4 years (the next election of officers by the ExCom will be in June 2020) and 2 at-large members, and the 2 National Committeepersons, all 15 of whom could be used to meet the minimum diversity goals. As noted above, at the June 13, 2016 meeting of the ExCom to elect its 11 officers, nothing was said during that meeting about the need to meet minimum diversity goals, and thus, with the exception of the election of Chairwoman Biafore and 2 women as secretaries, all of the remaining 8 elected as officers were Anglo men. In addition, if the 13 officers and 2 at-large positions are not sufficient to meet minimum diversity goals, the ExCom could create at-large positions for the purpose of achieving appropriate diversity on the ExCom as a whole.

The ExCom, as currently constituted, does not come close to meeting diversity goals, and, therefore, should not be permitted to adopt or administer a delegate selection plan until it comes into compliance with the Charter and Bylaws in this regard.

Conclusion: The fact is that the ExCom is run by a very small, inside group who show little, if any interest in a broad inclusive Democratic Party. All too often, this "inside" leadership group simply does not provide full and accurate information to the broader ExCom membership to permit them to make informed decisions. The actions described above in connection with the post March 30 formulation and adoption of subsequent amendments and changes in connection with the WV Plan, underscore that Democrats, and those who wish to be associated as Democrats, and individuals from key diversity groups, have virtually no input into the formulation and decision-making processes of the ExCom regarding the very important issues of how our delegates and alternates to the 2020 Democratic National Convention are to be selected. For example, the decision to have the ExCom, whose membership is 99.99% white, and majority male, elect the PLEO, at -large delegates and at -large alternates rather than by the more broadly based, much more diverse, recently selected delegates who will compose the June 2020 State Convention. It should not go without notice that without any prompting regarding diversity, the 2016 state convention delegates in their congressional district caucuses elected the only African American delegate and 1 of 2 LGBTQ+ delegates to the 2016 national Convention, compared to the ExCom, which adopted the 2016 delegate selection plan, yet made no mention of diversity goals when electing PLEO and at- large delegates and at- large alternates to the 2016 Democratic National Convention.

The current WV Plan before the RBC was adopted by the ExCom in violation of applicable rules, and, therefore, the most recent version of the WV Plan, including plan exhibits, must be subject to a new 30 day comment period and subsequent consideration and adoption by the ExCom.

In addition, the ExCom as currently constituted does not comply with or conform to a number of the key requirements of Charter, Bylaws, SDR and RBC Regs, and, therefore, may not legally adopt and administer a delegate selection plan until it does so.

Relief requested:

1. That the electronic proof of receipt ([Exhibit B](#)) be determined to constitute a valid certificate of service so as to permit the RBC to accept and process our challenge ([Exhibit A](#)) to the WV delegate selection plan adopted by the ExCom on March 30, 2019, as subsequently amended.
2. Whether or not the relief requested in paragraph #1, immediately above, is granted, the following relief is also requested:
 - A. That the WV delegate selection plan pending before the RBC not be found to be in compliance until after the ExCom brings itself into full compliance with the provisions of the National Party Charter and Bylaws, including with the equal division and diversity composition of the ExCom, and including adopting and implementing an Affirmative Action Plan and establishing a permanent Affirmative Action Committee for the ExCom.
 - B. In addition, that the current delegate selection plan pending before the RBC, along with all plan exhibits as specifically defined herein for the WV Plan, be subjected to a new 30 day public comment period, before being considered for amendment and adoption by the ExCom, but only after the ExCom has come into compliance with the Charter and Bylaws.
 - C. That the delegate selection plan adopted by the ExCom and is subsequently amended, require that the PLEO and at-large delegates and at -large alternates be elected by the June 2020 state convention rather than by the unrepresentative ExCom.
 - D. That the RBC send a representative A) to those meetings of the ExCom convened for the purpose of discussing and adopting a delegate selection plan, B) to those meetings of the ExCom convened to elect PLEO and at-large delegates and at-large alternates to the 2020 Democratic National Convention, and C) to the meeting of the ExCom convened to elect its officers for the next 4 years.
 - E. That the ExCom members receive education from the RBC about their responsibility under the Charter and Bylaws of the National Democratic Party concerning equal division, affirmative action and inclusion of low to moderate income people who want to participate as Democrats.

Exhibits annexed:

- A. [Challenge to the WV delegate selection plan adopted by the ExCom on March 30, 2019, as amended, filed and served by Selina Vickers, et al. on April 13, 2019.](#)

- B. [Screen shot of electronic proof of service on Belinda Biafore, Chairwoman of the ExCom, of the challenge of Selina Vickers, et al. to the delegate selection plan.](#)
- C. [Form of US Department of Justice certificate of service from USDOJ web site.](#)
- D. [Screen shot of email from the computer of Selina Vickers to Patrice Taylor, dated April 14, 2019, notifying Taylor of the “read receipts” in Vickers' possession evidencing service of the challenge on Biafore.](#)
- E. [Bylaws of the West Virginia Democratic Executive Committee, as amended, as of April 14, 2018.](#)
- F. [West Virginia Code, chapter 3 \(elections\), article 1 \(general provisions and definitions\), section 3-1-9 \(political party committees\), subsections \(a\) - \(h\).](#)
- G. [Pre-March 30, 2019 comments by Selina Vickers about the WV delegate selection plan.](#)
- H. [Most recent version of the WV delegate selection plan on file with the RBC.](#)
- I. [July 2019 resolution of the Fayette County chapter of the Federation of Democratic Women concerning equal division.](#)
- J. [Letter, dated March 1, 2019, from Belinda Biafore to the RBC certifying certain information about the members of the temporary Affirmative Action Committee.](#)
- K. [Email correspondence between Selina Vickers and Belinda Biafore, all dated March 24, 2019, regarding exhibits and other documents and information in connection with the delegate selection plan.](#)
- L. [Press Kits distributed by the ExCom.](#)
- M. [Press release, issued by the ExCom, dated February 28, 2019.](#)
- N. [Letter to RBC Co-Chairs from Selina Vickers and 27 other challenging parties, dated 6.27.2019](#)

Amended October 5, 2019 to correct the email address for Patrice Taylor, add hyperlinks to Exhibits and some documents referred to within, and add notation for Exhibit N. (SV)

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