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Comment

VOTESCAM

by Hendrik Hertzberg August 6, 2007



At first glance, next year's Presidential election looks like a blowout. But it might not be. Luckily for the incumbent party, neither George W. Bush nor Dick Cheney will be running; indeed, the election of 2008 will be the first since 1952 without a sitting President or Vice-President on the ballot. At the moment, survey research reflects a generic public preference for a Democratic victory next year. Still, despite everything, there are nearly as many polls showing particular Republicans beating particular Democrats as vice versa. So this election could be another close one. If it is, the winner may turn out to have been chosen not on November 4, 2008, but five months earlier, on June 3rd.

Two weeks ago, one of the most important Republican lawyers in Sacramento quietly filed a ballot initiative that would end the practice of granting all fifty-five of California's electoral votes to the statewide winner. Instead, it would award two of them to the statewide winner and the rest, one by one, to the winner in each congressional district. Nineteen of the fifty-three districts are represented by Republicans, but Bush carried twenty-two districts in 2004. The bottom line is that the initiative, if passed, would split the Republican ticket something in the neighborhood of twenty electoral votes—votes that it wouldn't get under the rules prevailing in every other sizable state in the Union.

The Tuesday after the first Monday in June is California's traditional Primary Day. But it's not the one that everybody will be paying attention to. Five months ago, the legislature hastily moved the Presidential part up to February 5th, joining a stampede of states hoping to claim a piece of the early-state action previously reserved for Iowa and New Hampshire. June 3rd will be an altogether sleepier, low-turnout affair. There may be a few scattered contests for legislative nominations, but the only statewide items on the ballot will be initiatives. More than two dozen have been filed so far, ranging from a proposal to start a state-run Internet poker site to pay for filling potholes to a redundant slew of anti-gay-marriage measures. Few will make it to the ballot. Many are not even intended to; they're a feint in some byzantine negotiation, or just a cheap attempt to get a little attention—for a two-hundred-dollar fee, anyone can file one. (Actually getting one on the ballot requires more than four hundred thousand signatures, and the outfits that collect them usually charge a dollar or two per signature.) Initiative No. 07-0032—the Presidential Election Reform Act—is different. It's serious. Its backers have access to serious money. And it could pass.

Nominally, the sponsor of No. 07-0032 is Californians for Equal Representation. But that's just a letterhead—there's no such organization. Its address is the office suite of Bell, McAndrews & Hiltachk, the law firm for the California Republican Party, and its covering letter is signed by Thomas W. Hiltachk, the firm's managing partner and Governor Arnold

Schwarzenegger's personal lawyer for election matters. Hiltachk and his firm have been involved in many well-financed ballot initiatives before, including the recall that put Arnold in Sacramento. They specialize in initiatives that are the opposite of what they sound like—the Fair Pay Workplace Flexibility Act of 2006, for example. It would have raised the state minimum wage slightly—by a lesser amount than it has since been raised—and, in the fine print, would have made it impossible ever to raise it again except by a two-thirds vote in both houses of the legislature, while, for good measure, eliminating overtime for millions of workers.

“Equal Representation” sounds good, too. And the winner-take-all rule, which is in force in all but two states, does seem unfair on the face of it. (The two are Maine and Nebraska, which use congressional-district allocation. But they are so small—only five districts between them—and so homogeneous that neither has ever split its electoral votes.) It would be obviously unjust for a state to give all its legislative seats to the party that gets the most votes statewide. So why should Party A get a hundred per cent of that state's electoral votes if forty per cent of its voters support Party B? No wonder Democrats and Republicans alike initially react to this proposal in a strongly positive way. To most people, the electoral-college status quo feels intuitively wrong. So does war. But that doesn't make unilateral disarmament a no-brainer.

If California does what No. 07-0032 calls for while everybody else is still going with winner take all by state, the real-world result will be to give Party B (in this case the Republicans) an unearned, Ohio-size gift of electoral votes. In a narrow sense, that's good if you like Party B, but not so good if you like Party A (in this case the Democrats). Or if you think that in a democracy everybody ought to play by roughly the same rules. Nor, by the way, is Party B the only offender. Last week, the Democratic-controlled legislature of North Carolina, a state that has gone Republican in every Presidential election since 1976, enthusiastically took up a bill to do the same mischief as the California initiative. The grab would be smaller—it would appropriate perhaps three or four of North Carolina's fifteen electoral votes for the Democrats—but the hands would be just as dirty.

The California initiative flunks even the categorical-imperative test. Imagine, as a thought experiment, that all the states were to adopt this “reform” at once. Electoral votes would still be winner take all, only by congressional district rather than by state. Instead of ten battleground states and forty spectator states, we'd have thirty-five battleground districts and four hundred spectator districts. The red-blue map would be more mottled, and in some states more people might get to see campaign commercials, because media markets usually take in more than one district. But congressional districts are as gerrymandered as human ingenuity and computer power can make them. The electoral-vote result in ninety per cent of the country would still be a foregone conclusion, no matter how close the race.

California Initiative No. 07-0032 is an audacious power play packaged as a step forward for democratic fairness. It's the lotusland equivalent of Tom DeLay's 2003 midterm redistricting in Texas, except with a sweeter smell, a better disguise, and larger stakes. And the only way Californians will reject it is if they have a chance to think about it first. ♦

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