
Alter: Is California GOP Trying to Steal the 2008 Election?

There's some malicious mischief at play in efforts to reform our electoral system.

By Jonathan Alter

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Aug. 13, 2007 issue - Our way of electing presidents has always been fertile ground for mischief. But there's sensible mischief—toying with existing laws and the Constitution to reflect popular will—and then there's the other kind, which tries to rig admission to the Electoral College for strictly partisan purposes. Mischief-makers in California (Republicans) and North Carolina (Democrats) are at work on changes that would subvert the system for momentary advantage and—in ways the political world is only beginning to understand—dramatically increase the odds that a Republican will be elected president in 2008.

Right now, every state except Nebraska and Maine awards all of its electoral votes to the popular-vote winner in that state. So in mammoth California, John Kerry beat George W. Bush and won all 55 electoral votes, more than one fifth of the 270 necessary for election.

Instead of laboring in vain to turn California Red, a clever lawyer for the state Republican Party thought of a gimmicky shortcut. Thomas Hiltachk, who specializes in ballot referenda that try to fool people in the titles and fine print, is sponsoring a ballot initiative for the June 3, 2008, California primary (which now falls four months after the state's presidential primary). The Presidential Election Reform Act would award the state's electoral votes based on who wins each congressional district. Had this idea been in effect in 2004, Bush would have won 22 electoral votes from California, about the same number awarded the winners of states like Illinois or Pennsylvania. In practical terms, adopting the initiative would mean that the Democratic candidate would likely have to win *both* Ohio and Florida in 2008 (instead of one or the other) to be elected.

Hiltachk, who is lying low for now, is a former campaign lawyer for Gov. Arnold Schwarzenegger. The governor's office says Schwarzenegger has no position on the initiative and "had absolutely nothing to do with its development." But whichever way Schwarzenegger goes, several GOP presidential candidates and their financial backers have already offered to help boost the plan. Just interested in good government? They've shown a curious lack of interest in backing the same idea in Red States.

Presumably, the argument to voters in TV ads would be to "make your vote count" and bring the presidential candidates back to California, which has been so reliably Democratic in recent elections that it receives few postprimary visits from candidates in either party. The Democrats would likely counter by saying that Republicans are trying a backhanded way to corrupt the election. With the presidential nominations settled by the time the initiative would be put up to vote, expect big money to be spent on both sides trying to win over the wild cards of California politics—the millions of independents.

Congressional districts, whose lines are drawn by backroom deals, are a weak structure for picking a president. With only three or four of California's districts up for grabs (as a result of gerrymandering, which keeps them noncompetitive), the state would be visited by the candidates only slightly more often under the Hiltachk plan than under the status quo. And if the idea was somehow adopted nationally, it would mean competing for votes in only about 60 far-flung congressional districts—roughly 7 percent of the country. Everyone else's vote would not "count," if you want to look at it that way.

The monkey business underway this month in North Carolina is just as egregious—though with only three or four electoral votes at stake, probably less consequential. Democrats, who usually lose the state in presidential contests but control the legislature and the governor's mansion, make no secret of their desire to win partisan advantage by going to the congressional-district formula.

At least in North Carolina it's clearly constitutional. Article II, Section I of the U.S. Constitution stipulates that the selection of electors is up to state legislatures "in such manner as the Legislature thereof may direct." When power is delegated to the electorate in referenda, the legal authority gets fuzzy; the Constitution, of course, supersedes state law. In any event, the Hiltachk referendum will face a challenge in court.

Is there a better way to make every vote count? Yes, and it doesn't require a constitutional amendment abolishing the Electoral College. All it would take is some good mischief in state legislatures. In February, a bipartisan coalition of former senators led by Birch Bayh, Jake Garn and Dave Durenberger unveiled a campaign for a national popular vote. Under the plan, state legislatures would pass bills that pledged to award their state's electoral votes to the winner of the national popular vote. It's not clear which party this would help, but if adopted by as few as 11 states, it would guarantee that the candidate with the most votes actually won the election. Anybody got a problem with that?

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