

A PROPOSAL FOR PRESIDENTIAL PRIMARY REFORM

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I

INTRODUCTION

The presidential nominating system is widely perceived as out of control and badly in need of reform. As I travel around the country, I constantly hear that the current system of seventy-one primaries and half as many caucus/convention arrangements is too long, ill-focused, debilitating, and apt to produce a candidate who is not the choice of the party rank and file. The system, it is also claimed, works against informed debate.

Despite the widely held belief that something is very wrong, there is no agreement yet as to what can or should be done. While the memory of the 1980 election is still fresh and debate centers on how different rules or mechanisms might have altered the outcome, I want to examine the primary election schedule, campaign financing, the selection of delegates, and the role of the media. After this analysis, I would like to suggest some alternatives to the present approach which could produce more representative candidates and more effective leadership.

A. The Primary Election Calendar

The current election calendar isolates and exaggerates the importance of the early contests, such as New Hampshire's primary or Iowa's caucuses. The media report this exaggeration, and are often unfairly blamed for it. More importantly, while the primary season begins in New England—where it has grown from a cottage industry into a cyclical economic boom—and generally moves south and then westward, it is not scheduled toward any given end. Events seem to occur almost randomly in the larger scheme of things, and crucial resources are often redirected or committed belatedly toward numerically inconsequential or otherwise dubious contests.

The existing arrangement—demanding endless hours of pre-election campaigning in hamlets, often meeting the same people repeatedly—favors unemployed candidates such as George Bush, Ronald Reagan, and Jimmy Carter, men without competing demands from other duties. Rather than benefiting from their incumbency, which highlights their abilities and exper-

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ience in governing, talented governors, mayors, senators, and representatives are disadvantaged by the demands of their offices.

Nominating campaigns are intensely competitive ventures, while governing is an intensely cooperative undertaking. Cooperation is particularly important in a federal system with its checks and balances, an overriding concept of limited government, a sophisticated bureaucracy, and an omnipresent and powerful press. Success in campaigning does not promise or portend success in governing. Therefore, it is reasonable to assume that the characteristics of a good president, one who can govern with competence, will probably not be exhibited by the primary election candidate. Occasionally, someone like Franklin Roosevelt blends these qualities, but this is rare. The problem here is how to create an environment which will favor candidates who are as adept at building coalitions as they are at campaigning for their nomination. Changing the primary calendar represents perhaps the single most significant way to alter the system for the 1984 election. By lending some form to the process, we reduce the likelihood that isolated events will establish "front-runners" and eliminate candidates in the early days and weeks of the primary season.

Several proposals have been discussed recently, all with some merit. I will mention them briefly to emphasize their diversity, and will examine them more closely later.

I favor limiting primaries collectively to the first Tuesday in each of four months—March, April, May, and June. A second proposal, favored by several members of the House and Senate, is for a regional primary system, with elections grouped into five regions, and order of occurrence determined by lot.¹ A third proposal is for a national primary, either with no regional differences, or with allowances for regional concerns and candidates: everyone would vote on one day in May.² A fourth proposal is to require all states to have primaries, regionally or otherwise, on one day, several days, or without restrictions.³ A fifth proposal is to scrap primaries altogether, and return to a system of caucuses that lead to a national convention.⁴

The proliferation of primaries unquestionably has destabilized the presidential nominating process. David Broder wrote in 1980 that the likely winners of the 1980 nominating race would not be the natural choices of the party professionals—Walter Mondale and Howard Baker—but would instead be two relentless candidates who had mastered the intricacies of saturation-campaigning and the delegate selection process over a period of years.⁵

1. See *infra* text accompanying notes 12-16.

2. See *infra* text accompanying notes 17-21.

3. See *infra* text accompanying note 22.

4. See *infra* pages 27-28.

5. Broder, *Changing the Primary System to Change the Candidates*, Wash. Post, June 4, 1980, at A19, col. 6.

Congress cannot legislate the balance between the two competing forces whose conflict pervades the presidential nominating system: egalitarianism and professionalism. Congress can, however, take the appropriate steps to insure that the system remains sensible and effective, by acting to protect the integrity of the system from the destabilizing effects of money, media, party rules, the changing roles of the political parties, and the election's schedule of events.

B. Financing Campaigns

Campaign finance laws enacted in the 1970's have generally benefited the public, although some refinements are needed. I think we need to make campaign strategy less dependent upon state and overall spending limits, and, in light of inflation, to increase individual and party contribution limits. We also need to amend the procedural requirements of the Federal Election Campaign Act⁶ to streamline reporting and disclosure rules which unduly burden the campaign machinery.

C. The Selection of Delegates

Rules governing the selection of delegates to the national conventions have been altered throughout the 1970's, particularly in the Democratic Party, the primary focus of my comments throughout this paper, since it is the party I know best. The changes were designed to increase participation at all levels by interested rank and file members in a uniform and open process. In contrast to our hopes and expectations, some of the changes have diminished the Democratic Party's creativity and vigor, and have unreasonably weakened the evaluative or brokering role of the party professionals at the conventions while strengthening the role of the independent candidate or interest group.

Differences among states' primary election ballots also unnecessarily confuse candidates, voters, and observers, thereby distorting the meaning of many elections. Some primaries are binding, while others are merely advisory, having no effect upon the selection of delegates to a convention. In some primaries voters select presidential candidates directly, while in others the voters choose indirectly, selecting delegates pledged to support certain candidates.⁷

6. 2 U.S.C. §§ 431-55 (1976 & Supp. IV 1980).

7. See T. DURBIN & M. SEITZINGER, *NOMINATION AND ELECTION OF THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES* 135 (1980). The "blind" primary, whereby voters choose delegates to the presidential nominating convention on ballots that do not indicate whether, or to whom, the delegates are pledged, has been outlawed in the Democratic primary, but was used again in 1980 by Republicans in New York, Pennsylvania, and Illinois.

Given the variety of state procedures by which candidates can get on primary ballots, it is likely that voters in any given state will miss an opportunity to vote for some recognized candidate in a primary. A uniform ballot would go far in correcting this situation, increasing uniformity and coherence in the process, without interfering in the states' right to have binding or nonbinding primaries.

D. The Role of the Media

The influence which the media exert on the presidential nominating system makes it imperative that the media have a clear focal point. My suggested primary schedule reform offers one choice.

From my experience as a candidate in 1976 and as an observer in 1980, campaign media resemble a loose cannon on a ship's deck in heavy seas. In both years, moving from primary to primary over four months encouraged a progressively deceptive "who's ahead" analysis of the campaign. Further, the careerism and fatigue attendant upon campaign journalism prohibit or impede adequate analysis of complex issues and personalities. A rational structure of events would make everyone's life easier, including the voter's, allowing more time for reflection upon major events and individual candidates.

II

PRIMARY SCHEDULE REFORM

Primary election reforms should focus on three goals: (1) encouraging a more informed choice of candidates by the voter and the party which combines the energy of newcomers with the judgment and perspective of experienced hands; (2) utilizing the candidates' time and resources more effectively in addressing the issues and defending their records; and (3) ordering events more rationally, thereby providing the media with a more complex and informative story to report—a story that does not lend itself to the shorthand of "who's ahead?"

The primary process has exploded in the past eight years. In 1972, sixty percent of the Republican delegate votes and fifty-six percent of the Democratic delegate votes came from primary states. By 1980, the proportions had increased to seventy-eight percent and eighty-one percent respectively.⁸ Tradition and strong party organizations sufficed until about 1968, but something new is needed today. Perhaps one of the following proposals provides part of the answer.

8. J. Gorman, Elections: Federal Presidential Primary Proposals 7 n.2 (Cong. Res. Issue Brief No. 75026) (Dec. 22, 1980).

*A. Mandatory Primary Dates Without
Regional Coordination*

I recommend that Congress legislate four dates, one each in March, April, May, and June, for the purpose of holding primary elections, whether binding or nonbinding. States themselves would choose whether and in which month to have a primary, thus having the flexibility to match their own traditional election calendar.⁹

My purpose is not to limit the number of primaries held. While a decline in the number of primaries might be desirable for reasons of economy and focus, it is appropriate to recognize that this is a state and party matter, and is not ultimately in the hands of the Congress. The primary and general elections are not national elections, but rather are a combination of state elections.

This proposal for four primary dates is superior to the regional approach in that it requires candidates to campaign in different parts of the country at the same time, fashioning a national campaign that addresses a broader series of questions and problems. This will help to minimize regional campaigning over issues such as energy price deregulation in the Northeast, water projects in the West and Southwest, labor laws in the South and West, and civil rights in the rural South or urban North. This proposal also would provide the media with a more representative sampling of national opinion, rather than encourage them to focus their attention on a regional subset of voters who may damage national candidates. Should my proposal prove in some ways inadequate, regional coordination is an option that could be examined more closely for 1988 or 1992.

My proposal offers about thirty days between primaries for candidates to adjust strategy, to comprehend events, and to build coalitions. Candidates presently do not have this time for planning and reflection.

The absence of a truly national campaign leads to the advice that speechwriter Judge Samuel Rosenmann gave to Franklin Roosevelt in 1936. When Roosevelt asked how to justify a contrary stand taken in the previous election in another region, Rosenmann said, "Mr. President, all I can tell you to do is deny categorically you ever gave that speech!"¹⁰ Regional campaigns could cause a dramatic increase in this casual disregard for the public record.

My proposal allows each state to choose the month in which it would hold a primary. It is interesting to see how the 1980 primaries might have

9. For a discussion of the impact of rule changes and proliferating primaries on the presidential electoral process, see, e.g., Pomper, *New Rules and New Games in Presidential Nomination*, 41 J. POL. 784 (1979).

10. A. SCHLESINGER, JR., *THE AGE OF ROOSEVELT: THE POLITICS OF UPHEAVAL* 621 (1960).

been arrayed, in approximate regional clusters, assuming that no state rescinded its primary law:¹¹

March: New Hampshire, Vermont, Massachusetts, New York, Connecticut; Alabama, Georgia, Florida, South Carolina; Puerto Rico; Illinois.

April: Kansas, Wisconsin; Louisiana; Pennsylvania.

May: Texas, Arkansas; Michigan, Indiana; Tennessee, North Carolina, Kentucky, Maryland, District of Columbia; Nebraska; Oregon, Idaho, Nevada.

June: California, New Mexico; Montana, South Dakota; West Virginia, Ohio; Mississippi; New Jersey, Rhode Island.

Such a hypothetical array suggests several regional clusters, incorporating one of the advantages of the regional primary plan, economy through less travel. It is quite possible, as well, that some states would rescind their primary laws, rather than be lost in the crowd on the first Tuesday of the month.

B. Alternative Proposals

1. Regional Primaries

Senator Bob Packwood of Oregon has suggested a regional approach to primaries.¹² Seventy days prior to each primary day, five predetermined regions would draw lots to determine the order in which they would run their primaries and the primaries would then be spaced three or four weeks apart.¹³

Should the Packwood proposal be enacted, and existing primaries rescheduled for their respective regions, the groupings would look like this:¹⁴

New England: Massachusetts, New Hampshire, Rhode Island, Vermont, Connecticut, New York, Pennsylvania, New Jersey.

Great Lakes: Michigan, Illinois, Indiana, Ohio, West Virginia, Kentucky.

11. This representation takes the 1980 campaign calendar and simply breaks it into four parts, one for each month. Would states change their primary election month under this proposal? Because elections have as much or more to do with local tradition and political self-interest, it is more likely that a state would shift its primary date within the same month than move to another month or season for purposes of national electoral strategy. Admittedly, New Hampshire is a notable exception.

12. *Changing the Manner of Electing the President and Vice President: Hearings on S. 964 Before the Senate Comm. on Rules and Administration*, 96th Cong., 2d Sess. (1980) (testimony of Robert Packwood).

13. *Id.*

14. *See id.* at 19.

<i>Southeast:</i>	District of Columbia, Maryland, North Carolina, South Carolina, Tennessee, Alabama, Georgia, Florida, Puerto Rico, Mississippi.
<i>Great Plains:</i>	South Dakota, Wisconsin, Nebraska, Kansas, Arkansas, Texas, Louisiana.
<i>West:</i>	California, Oregon, Idaho, Montana, Nevada, New Mexico.

While this proposal offers the advantage of surprise—eliminating the advantage of saturating a small, early caucus or primary state—it also requires the states to be unusually flexible in their election calendars. Some states might refuse to participate, citing the cost of a separate election, particularly when they will have only seventy days notice, while other states would be unable to adapt, since their legislatures meet only part of the year or every other year.

I object to the regional system primarily because it would allow a particular region to determine the front-runner and would eliminate candidates on the basis of regional or parochial concerns.¹⁵ It also denies the lesser-known candidate planning time. Seventy days is probably adequate for a well-financed candidate with a mobile and professional operation, but is perhaps not enough time for the less monied competitor who relies on volunteers.¹⁶ Moreover, the existing primary schedule follows a roughly regional pattern, with regional clusters occurring in each month of the season.

One variation on the Packwood proposal would have regions rotate the starting and subsequent positions with each election. This sacrifices the virtue of surprise and the concomitant financial savings.

Another variation on this proposal would establish permanent regional dates generally in accord with established patterns. New England would thus hold its primary first, and the West would come last. This variation would allow lesser known candidates more time to recruit volunteers, and more closely replicates the existing calendar. Some states might be inconvenienced, however, and the lack of flexibility could be a hazard in negotiating such an agreement among the states.

15. See remarks by the author on bills he has introduced, 123 CONG. REC. 6009-10 (1977) (on the proposed National Primary Election Act of 1977); 126 CONG. REC. E3366-67 (daily ed. July 2, 1980) (on the proposal for a Commission on Presidential Nominations, reintroduced into the 97th Congress); 121 CONG. REC. 4892-93 (1975) (on National Primary Elections Act of 1975).

16. See 123 CONG. REC. 6009-10 Part 5 (Mar. 2, 1977) (author's remarks on his proposed National Primary Election Act of 1977).

The amount of legal and clerical assistance required to meet 109 separate filing and election deadlines in 1976 is a good example of this. Financial backing and cash flow largely determine the level of sophistication—including the ability to plan, anticipate, and respond to the unexpected—that a campaign achieves.

2. A Single National Primary

Several members of Congress have recommended a single national primary as an alternative to the existing situation.¹⁷ This proposal has a number of disadvantages.¹⁸ It unduly favors celebrities and established national figures. It is antithetical to the concept of a federal system which draws talented individuals from the states into the national scene by virtue of their ability.

A national primary would be prohibitively expensive for all but the most affluent candidates and causes.¹⁹ A national primary would not allow the voter time to reflect upon how a candidate handles victory, failure, crisis, and confrontation. In addition, national primaries might weaken the two-party system.²⁰

To be meaningful, the proposal would require Congress not only to set the time and manner of the primary by choosing the date and imposing a uniform ballot code, but may require Congress to deal with caucuses, binding rules, cross-over voting, and other issues historically reserved to the parties and the states.

A national primary might come to resemble the short, intense, issue-oriented elections common in Europe. This approach always rates high in the opinion polls, but it has serious conceptual flaws that we have to address. America is a vast and diverse nation with serious regional prob-

17. Typical of the various proposals for a national primary was that proposed by Senator Lowell Weicker (R-Conn.) in 1977. See *Hearings on S. 1072 to Establish a Universal Voter Registration Program, and for Other Purposes; S. 926 To Provide for the Public Financing of Primary and General Elections for the United States Senate; S. 15, S. 16, S. 105, S. 962, S. 966, S. 1320, and S. 1344, Proposals to Amend the Federal Election Campaign Act of 1971 Before the Senate Comm. on Rules and Administration, 95th Cong., 1st Sess. 1009 (1977) (Exhibit 2)*. As part of a larger scheme to reform the process for nominating presidential candidates, Weicker proposed that a national presidential primary be conducted on the second Tuesday in August of each presidential election year. *Id.* at 1010-11. Should no candidate receive a majority of his party's votes in this primary, a runoff between the top two contenders in each party would follow three weeks later. *Id.* at 1013.

18. In their classic study of the presidential selection process, Polsby and Wildavsky trenchantly criticize the national primary proposals. POLSBY & WILDAVSKY, *PRESIDENTIAL ELECTIONS* 235-40 (3d ed. 1971).

19. As Polsby and Wildavsky suggest, by adopting a national primary and runoff, "the United States might have to restrict its Presidential candidates to wealthy athletes" with the money and stamina to compete. *Id.* at 236.

20. *Id.* at 236-37. The destruction of the two-party system would result from two factors. First, as a single party fastens its hold on the nation, interested voters will flock to it, leaving the other party to extremists who would further weaken the party by nominating doctrinaire candidates with no chance of appealing to the electorate as a whole. *Id.* at 238. Second, candidates would be able to entirely bypass the party system in favor of personal publicity campaigns. *Id.* at 239. The loss of the mediating influence of parties would allow uninformed voters to choose unqualified candidates for the presidency on the basis of often irrational criteria. As a result, the quality of presidential statesmanship would decline. *Id.* at 239-40.

lems, involving policies that are economically and politically incompatible with the goals and policies of other regions. The differences in size, homogeneity, and population density underscore America's uniqueness. West Germany and the United Kingdom, for example, are each about the size of Oregon; their populations, however, are respectively sixty-two million, fifty-six million, and two million.²¹ Comparing the differences also between the European parliamentary tradition and the American federal tradition, it is difficult to find much of Europe that we could emulate without significant modifications.

3. *Fifty Primaries*

Another proposal is for each state to have a primary, either along the schedule I propose or by regions.²² If primaries continue to proliferate as they have recently, the requirement that each state have a primary will, by 1988, become reality by default.

Ignoring the internal political needs and decisions that prompt states to enact primary laws, I believe the nation would benefit from a net reduction in the number of primaries, to about fifteen, with seven or eight being decisive in any one election year. Reducing the amount of time, money, spilled blood, and idle talk spent on extra primaries, some of which have no effect on delegate selection, would benefit both the public and the parties. Expansion of the process by act of Congress is feasible, but such expansion would constitute gross interference in the historical preserve of the states and the parties.

This proposal would also produce an impossibly expensive, exhausting race, remove all discretionary authority from the convention, relegate delegates to the status of electoral college agents ratifying the popular will, and force candidates in the process to forego the mutually beneficial (and I think crucial) personal, face-to-face experience of seeking support on the stump.

4. *No Primaries and a National Convention*

A last alternative which has received some acclaim lately is the selection of delegates solely through caucuses and state conventions, relegating pri-

21. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1 1970 CENSUS OF THE POPULATION, CHARACTERISTICS OF THE POPULATION, PART 39, OREGON 39-3, 39-7 (1973); DEP'T OF INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS, STATISTICAL OFFICE, UNITED NATIONS, DEMOGRAPHIC YEARBOOK 1979 164 (1980); DEP'T OF INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS, STATISTICAL OFFICE, UNITED NATIONS, 35 MONTHLY BULLETIN OF STATISTICS No. 12 2, 4 (Dec. 1981).

22. This proposal would, as logic suggests, have most of the disadvantages of the national primary. One key difference is that, under this proposal, unlike most national primary proposals, the political convention would remain to ratify the choice of the voters in the state primaries. However, if the delegates were legally bound, the resulting rigidity would deprive party leaders of the bargaining flexibility needed to select viable and qualified presidential candidates. Cf. POLSBY, *supra* note 18, at 241-42.

maries to the role of beauty contests. This system would place candidate selection in the hands of professionals capable of making an informed evaluation of the party's contenders.

Although special interests can affect a primary election, the same deleterious results can arise from a caucus arrangement, depending on how open the caucus is, how organized the local or state party is, and how determined the candidates' organizations and the special interests are. While the caucus process could strengthen party authority and encourage more discretionary control at conventions and elsewhere in the nominating process, it may also lead to perceptions that excessive decision-making power is reverting to the political bosses.

Primaries provide a place for new talent to surface and for candidates to exchange new ideas, as well as to reaffirm old values shared by the public and the party members. Primaries excite public interest in politics, and bring people into public affairs, whether as voters, candidates, or party workers. If we reject the notion of primaries, we run the risk of throwing out much that is good along with the bad.

Party machinery never existed to raise new ideas and tired hearts, but rather to regulate political careers and to serve a discretionary function in dispensing favors, providing constituent service, and resolving disputes at a lower level than the White House or City Hall. While the social base for such political power may be gone, parties can play a vital role in a reformed nominating system which includes primaries.

III

CAMPAIGN FINANCE REFORM

Even before the 1972 election and Watergate, it had become evident that the laws governing campaign finance needed an overhaul. Although the Federal Election Campaign Act of 1971²³ (FECA) included strict reporting and disclosure requirements, and established the framework for public financing of the general presidential election, these measures were not sufficient to control the abuses which occurred during the 1972 election. Congress responded by revising the FECA via the addition of sweeping campaign finance laws. The FECA and its amendments sought to decrease the influence of wealthy contributors and special interest groups, decrease political corruption, enhance political competition, and contain spiraling campaign costs.²⁴ While they have produced some beneficial results, they

23. Pub. L. No. 92-225, 86 Stat. 3 (1972) (amended 1974, 1976, 1980) (current version at 2 U.S.C. §§ 431-455 (1976 & Supp. IV 1980)).

24. See S. Rep. No. 92-96, 92d Cong., 2d Sess. 20-21, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 1773-74.

have also produced some unintended consequences, requiring a reexamination and refinement of the system.

The main legislation affecting presidential campaign finance is the original Federal Election Campaign Act, its 1974 amendments, and the Presidential Election Campaign Fund Act (the Fund Act).²⁵ Complementary legislation can be found in the 1976, 1977, and 1979 FECA amendments.²⁶ The law currently in force provides for:

- Matching funds for contributions of \$250 or less to qualified candidates during the primaries;²⁷
- grants to major political parties to help them pay for their conventions;²⁸
- full public funding for the general election campaigns;²⁹
- stringent reporting and disclosure requirements;³⁰
- limits on individual, group, and party contributions;³¹
- state and overall spending limitations during the primary season for those candidates who accept matching funds;³² and
- a spending limit in the general election when a nominee accepts federal funding.³³

25. FECA of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972); FECA Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974) (further amendments 1976, 1980) (codified as amended in scattered sections of 2, 5, 18, 26, 47 U.S.C. (1976 & Supp. IV 1980)); Presidential Election Campaign Fund Act, Pub. L. No. 92-178, 85 Stat. 497 (1971) (current version at 26 U.S.C. §§ 9001-9013 (1976 & Supp. IV 1980)).

26. FECA Amendments of 1976, Pub. L. No. 93-283, 90 Stat. 475 (1976) (amending both the FECA and the Fund Act); Act of October 12, 1977, Pub. L. No. 95-127, 91 Stat. 1110 (1977); FECA Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980) (acts codified in scattered sections of 2, 5, 18, 22, 26, 42, 47 U.S.C. (1976 & Supp. IV 1980)).

27. Matching funds were provided for in the Fund Act. If a candidate raises \$5,000 in each of 20 states, he is eligible for matching funds for contributions of \$250 or less raised after January 1 of the election year. 26 U.S.C. §§ 9033(b)(3), 9034 (1976 & Supp. IV 1980).

28. Party convention grants were provided for by the 1974 FECA amendments. 26 U.S.C. § 9008 (1976).

29. Full public funding of the presidential election was established by the Fund Act together with the FECA and is funded by a one-dollar tax checkoff system. If the nominee accepts public funds, he must agree to a spending limit, and to restrictions on private and group contributions. 2 U.S.C. § 441a (1976); 26 U.S.C. §§ 6096, 9003 (1976 & Supp. IV 1980).

30. See 2 U.S.C. §§ 433, 434, 437 (1976 & Supp. IV 1980).

31. The 1974 and 1979 amendments created the following contribution limits: individuals may give \$1,000 per candidate per election, with a total annual contribution limit of \$25,000; PACs may give \$5,000 per candidate per election, with no aggregate contribution limit; and parties can give, in the general election, contributions equal to two cents times the voting age population. 2 U.S.C. § 441(a) (d) (1976).

32. Primary spending limits were established by the 1976 amendments and currently are as follows: for each state, the greater of \$200,000 or 16c times the voting age population; and, a maximum of \$20 million for total primary spending. These restrictions apply only to candidates receiving matching funds. 2 U.S.C. § 441a(b), (c) (1976).

33. 2 U.S.C. § 441a(b) (1976).

While this legislation has been useful in decreasing the influence of large contributors and special interests, in containing the cost of the general election, and in increasing competition in the presidential nominating process, it has also created problems which hamper the nominating system. Most of these problems can be alleviated by minor revisions in the current law.

First, state and overall spending limits are too low, and these limits usually dictate political strategy. The state limits, set by a formula based on voting age population, do not take into account the political importance of a state or its delegate selection process. Limits are not higher for primary states, despite the fact that primary campaigns are more expensive than caucus activity. Adjustments are not made for states that are traditionally important, like New Hampshire. Even though all of the major candidates made an effort in New Hampshire, it has the same spending limit as Guam. In the system we have now, where one election can influence a million votes later on, spending limits cause serious problems. Candidates are often forced to buy regional media time and lodge staff in neighboring states in order to comply with the limits. While some propose to do away with the limits altogether, I think spending limits serve a very good purpose: they help preserve elections from the undue influence of money. I have proposed the four-day primary arrangement partly to reorder campaign spending priorities in line with a state's population.

Second, individual and party contribution limits are too low, if for no other reason than inflation. One thousand dollars in 1980 dollars was the equivalent of \$641 in 1975, when the law went into effect.³⁴ I think that it is necessary to increase the individual limit to between \$3,000 and \$5,000 to account for this change and temporarily offset the future inflation that can be anticipated. Parties are also playing a smaller role in campaign finance, and upward revisions in their contribution limit could help increase party participation, especially at the local level.

Third, the general election fund is underfinanced, forcing candidates to limit their activities. Because of the twenty-three million dollar spending limitation on the Carter and Ford general election efforts in 1976, both candidates curtailed travel and personal appearances in favor of reaching the voters through the mass media.³⁵ I think that it is essential for people to have ample opportunity to meet presidential candidates face-to-face. With this in mind, I introduced legislation in 1977³⁶ to increase the amount allotted for the general election fund, and hope to introduce more legislation shortly.

34. Smith, *Financing Campaign '80: Would You Believe Half a Billion?* N.Y. Times, Nov. 23, 1980, at E3, col. 1.

35. Broder, *Campaign Reform is a Failure*, Phila. Inquirer, Oct. 6, 1976, at A20, col. 1.

36. H.R. 5157, 95th Cong., 1st Sess.; 123 CONG. REC. 7788 (1977).

The final complaint with current campaign finance laws is that reporting and disclosure requirements have become so complex that candidates must spend precious funds and staff energy to keep a campaign on the right side of the law. It is not uncommon for as much as twenty percent of a campaign's budget to go into complying with FEC regulations.³⁷ Although these laws have benefitted the public by providing reports of who is giving what to whom, I voted with the Congress to pass the 1979 FECA amendments,³⁸ which in part reduce the amount of paperwork involved in disclosure and reporting.

IV

THE SELECTION OF DELEGATES

Following its angry convention and electoral defeat in 1968, the Democratic Party began to reassess its procedures for selecting delegates to the national convention. Hoping to involve more rank and file party members at all levels, several successive commissions successfully promoted key reforms: delegates could be chosen no more than one year prior to the convention; winner-take-all primaries were discouraged; minorities, women, and youths were to be represented in approximately equal proportion to their presence in the individual states; the period of choosing delegates was shortened in 1978 to four months; crossover voting³⁹ was eliminated; and delegations were increased in size by fifteen percent to include state, party, and elected officials.⁴⁰

The first three reforms were proposed by the McGovern and Fraser Commissions (1969-1971), and the latter three were proposed by the Winograd Commission (1977-1979), largely in response to persisting conflicts and the unintended consequences of the original reforms.⁴¹

When the forces of Chicago Mayor Richard Daley were displaced at the 1972 convention, they went to court contending that states and state parties have control over their own delegate selection process and do not need the certification of the national party. The Supreme Court ruled against them in *Cousins v. Wigoda*,⁴² holding that national party rules supersede state law in

37. Chapman, *An Expensive Hobby: Why Running for Office Costs So Much*, NEW REPUBLIC, Sept. 6-13, 1980, at 14.

38. FECA Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1980)(codified in scattered sections of 2, 5, 18, 22, 26, 42 U.S.C. (Supp. IV 1980)).

39. Crossover voting occurs when nonadherents of a party are permitted to "cross over" and vote in that party's primary.

40. For a fuller development of this point see S. WAYNE, *THE ROAD TO THE WHITE HOUSE* 86-90 (1980).

41. *Id.* at 87.

42. 419 U.S. 477 (1975).

matters of delegate selection. Thus, in the absence of gross constitutional violations, the national party is the master of its own house.⁴³

While primary election voter turnout increased from twelve million in 1968 (in seventeen states) to twenty-nine million in 1976 (in thirty states), and the numbers of women, minorities, and youths at the Democratic National Convention increased, much of this change came at the expense of the old hands.⁴⁴

The recent enlargement of delegations to accommodate elected officials and party officials is a healthy step toward restoring a balance between the rank and file and professionals. I therefore propose that candidates share control of delegate slate-making with party officials and elected officials. This can, and I hope will, be examined by the new rules commission, under North Carolina Governor Jim Hunt. Since delegates are bound under most state laws to vote for the candidate to whom they are pledged, and since the "faithless delegate" threat has never materialized significantly in the past, this proposal represents another way to return some authority and discretion to the party officials, who must carry the candidate slate locally in the general election.

Crossover voting continues to distort party primary results, often with serious consequences, either in terms of delegates awarded to the victor, or in the terms of the damage done to opponents.⁴⁵ The Winograd Commission's recommendation on crossover voting would have improved the 1980 selection process had it been rigorously enforced. Despite the ban on crossover voting, however, in 1980 seventeen Democratic primaries were given waivers.⁴⁶ The Supreme Court ruled recently in *Democratic Party v. Wisconsin ex rel. La Follette*,⁴⁷ that the states may enact laws allowing crossover primary voting, but reaffirmed that the national party may ignore the state law where it conflicts with national party rules, except where there are compelling constitutional reasons for the law.⁴⁸

Finally, it is essential to primary schedule reform that the time limit on primary and caucus activity be enforced.⁴⁹ Waivers were granted in 1980 to

43. See T. DURBIN & M. SEITZINGER, NOMINATION AND ELECTION OF THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES 133-41 (1980).

44. S. WAYNE, *supra* note 40, at 90. At the 1956 convention, 90% of the Senators, 33% of the Representatives, and all of the Governors were present. In 1976, only 18% of all Senators, 15% of the Representatives, and 45% of the Governors attended. *Id.* at 92.

45. Democratic National Committee, *Openness, Participation, and Party Building: Reforms for a Stronger Democratic Party*, 116 (1978) (Report of (Winograd) Commission on Presidential Nominations and Party Structure). See generally Adamany, *Cross-Over Voting and the Democratic Party's Reform Rules*, 70 AM. POL. SCI. REV. 536 (1976).

46. *Primary Crossover Votes*, 38 CONG. Q. 648 (1980).

47. 450 U.S. 107 (1981).

48. *Id.* at 126; see Barbash, *Court Deals Blow to Open Primaries*, Wash. Post, Feb. 26, 1981, at A1, A12.

49. 123 CONG. REC. E1115 (1977) (comments of Rep. Udall).

New Hampshire, Iowa, Minnesota, Maine, and Massachusetts. I would encourage the Hunt Commission to hold the line on this, and to see that primary schedule reform legislation is complemented by an appropriate time limit on all delegate selection activity.

V

THE ROLE OF THE MEDIA

With each passing election it has become increasingly clear to many observers that the media play an often pivotal role in electoral politics. While critics often argue that the media distort reality, those in the media predictably reply that the constraints of time and space often do not let a reporter tell all of the story.

The disproportionate attention given to the early contests in New Hampshire and Iowa are equally the responsibility of the primary election schedule, the candidates themselves, and the media. If you have what Bear Bryant used to call "schedule luck," or if you are simply perceived to have performed better than you did, your financial resources may leap skyward after an election. If you suffer the reverse fortune, it is very possible that your financial resources will dry up within a week.

I question whether, under the present primary schedule, the national media can avoid creating expectations for candidates, and then using those expectations as yardsticks by which to measure electoral performance. If you do better than expected on election day, you are currently a victor of sorts. But logic also holds that the inverse applies. Recall that Eugene McCarthy in 1968 and George McGovern in 1972 were declared the "real" winners of the February New Hampshire primary because they suffered only narrow defeats in races against anointed "front-runners," Lyndon Johnson in 1968, and Edmund Muskie in 1972 respectively. Indeed, Johnson withdrew from competition in April 1968, and Muskie never recovered. Further, Johnson won on a write-in ballot, which is difficult, but McCarthy actually won almost all of the delegates to the convention. So, who won?

The media focus on perceived leaders is partly explained by the great reader and viewer appeal of the "front-runner." This is particularly true of the passive, celebrity-oriented medium of television. Television is the prime source of news for sixty percent of the nation, with newspapers a distant second, attracting twenty percent of the nation.⁵⁰ This is hardly new. When I visited Washington and Lee University in Lexington, Virginia in October 1975, I saw, in a professor's office, a 1928 letter from Franklin Roosevelt to this professor's father—then a professor at the same university—thanking the man for his kind words regarding a party pamphlet which Roosevelt had

50. S. WAYNE, *supra* note 40, at 211.

written. Roosevelt remarked briefly that pamphleteering seemed to be a dying form of communication: people didn't seem to be reading much anymore. But this "new" business of radio fascinated him, and he speculated that soon people would get everything from detective stories to horse races, real and political, from their radios. Roosevelt's remarkable adaptability makes me think that the media should be viewed as a reacting agent, and not so much as an opinion maker.

We cannot prescribe a specific role or method for the media. We can, however, improve their reporting of the political campaign story by giving the media something more meaningful to seize upon and report. If candidates could be placed in an environment which rewarded debate more than public discussion of campaign strategy and "momentum," the voter would be far ahead in terms of understanding a candidate's approach to problems. By shortening the primary and caucus season to four designated days, one day in four successive months, we would allow the media to reflect upon and evaluate candidates' performances based upon four major clashes.

VI

CONCLUSION

Attempting to reform the presidential primary and nominating system reminds me of Oscar Wilde's characterization of second marriages: a triumph of Hope over Experience. While over 300 reform proposals have been introduced in the Congress since 1911, not one has ever become law. I have been here before, as candidate and reformer, and I am still hopeful in the face of this dismal record. Why doesn't Congress act? First, Congress is reluctant to impose any changes in the face of opposition from state parties and national committees, as well as from state governments. Second, there is a lack of consensus on what to do. I think the lack of consensus and the reluctance to act are closely related, and there is something we can do about both.

The Congress can adopt a four-day system of primaries, and enact the uniform ballot code. The Congress can also raise state and overall spending limits in light of inflation and need, similarly increase the allowable individual contribution limits to between \$3,000 and \$5,000 per election, and double the party contribution limits. Congress can further simplify reporting and disclosure, focusing on contributions at the "matching" level (\$250) and above.

The national committees can enact and enforce time limits on the primary and caucus processes. The Democratic National Committee should enforce its ban on crossover voting and set proportional representation levels at twenty percent for primaries and fifteen percent for caucuses, which would ensure candidates receiving those percentages of the votes some delegate representation at the convention. Elected officials—senators, representatives, governors, mayors of cities over 100,000 in population and

state party leaders—should be seated as voting delegates and should share with candidates the job of assembling slates of delegates to the conventions, recognizing the binding rules in most states.

Every four years we voice concern about how we elect our presidents, and every four years we vow to try to do something about it. As a candidate for the Democratic nomination in 1976, I saw first hand just how wasteful and difficult the process can be. I believe that a comprehensive review of the presidential nominating process is more urgently needed than ever before.

