

From: Richard Winger
Sent: Friday, November 20, 2009 4:55 PM
To: Robert Bennett
Subject: pres. electors are sometimes elected as independents

Dear Professor Bennett, I have read the draft Faithless Presidential Electors Act that is dated November 17, 2009. The draft seems to assume that all presidential electors are always nominated by state political parties. But sometimes presidential electors are elected via a state's independent candidate procedures.

For example, in 1968, George Wallace was listed on the Mississippi general election ballot as an independent candidate. Wallace did not create a political party nationally in 1968, nor did he create one in some states, including Mississippi. His presidential elector candidates in Mississippi were elected, and they were independent candidates.

Similarly, in 1924, when Robert La Follette carried Wisconsin, his electors were independent candidates. La Follette was opposed to creating a new political party in 1924 and he explicitly refused to create a new party. He was an independent candidate with the ballot label "Progressive". State ballot access laws forced him to create Progressive Parties in certain states, but in Wisconsin he was a pure independent candidate and no party in Wisconsin nominated those elector candidates who were elected.

On another topic, because Congress has passed a new law this year, states will be required to mail foreign absentee ballots at least 45 days before the election. This will cause states to print their general election ballots earlier than they have in the past. That increases the probability that presidential candidates will die in the period after November ballots are printed, but before presidential electors meet in December. In 1912 the Republican Party nominee for vice-president died before the November election, but after ballots in all states had been printed. So your proposal is really not just dealing with presidential candidates who die between the November election and the December electoral college meeting, but also dealing with presidential candidates who die after ballots are printed but before the November election. Yet your discussion doesn't really seem to point this out.

Under our current system, if Barack Obama had died in mid-October, I suspect the Democratic National Committee would have convened in emergency session and declared that Hillary Clinton was to be the Democratic Party's presidential nominee. But your proposal seems to rob a national party of the flexibility to make that type of decision, and seems to dictate that in that situation the Democrats would be stuck with Joe Biden.