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CARTER'S ELECTION REFORM PROPOSAL

President Carter has introduced a wide-ranging election reform proposal, which he contends will "work toward an electoral process which is open to the participation of all our citizens, which meets high ethical standards, and which operates in an efficient and responsive manner." The package includes the following elements: direct popular election of the President and Vice President, election-day registration for Federal elections, public financing for House and Senate election campaigns, and relaxation of the Hatch Act restrictions on partisan political activism by Federal employees. Each of these proposals would alone constitute a major policy initiative. As a package, they reinforce each other to weaken or dismantle structures and barriers which in traditional political theory have been closely connected with the view of America as a balanced democratic republic as distinct from an absolute, uniform majoritarian state.

H.R. 5400, S. 1072: Universal Registration Act

This bill would require the states to eliminate pre-registration requirements for Federal elections. Instead of having to register in advance, a citizen could do so at his polling place on Election Day itself. The voter would have to sign an affidavit certifying that he meets the legal qualifications for voting, and produce some form of identification--such as a driver's license--to establish his place of residence, or an affidavit from another voter.

A Federal grant of 20 cents times the number of voters in the last Presidential election would help the states pay for the higher administrative costs of registering voters under the new rules. An additional grant would be available to encourage states to adopt election-day registration for state and local elections. Yet another grant would be available for states which developed "outreach" plans to encourage greater voter registration before election day, and these which might include registration by mail, mobile units, and bilingual programs. Both of these "bonus grants" would be based on the same

20-cent formula as the basic subsidy. The maximum total subsidy to any state would, therefore, be 80 cents per voter. The administration estimates that these subsidies would cost the Federal Treasury \$48 million for each Federal election.

The bill provides for a \$10,000 fine and five years imprisonment for fraud in vote registration.

Is It Desirable?

The bill's supporters, and many of its opponents as well, take for granted that it is desirable to increase the number of people who vote. In his March 22 message to Congress, President Carter said "I am deeply concerned that our country ranks behind at least twenty other democracies in its level of voter participation." He urged that the country "take one immediate step toward solving this serious problem by removing antiquated and unnecessary obstacles which prevent voters from participating in the electoral process." Supporters point out that only 54% of the voting-age population in America turned out to vote in 1976; in the Western European countries the usual participation is about 80%.

As William Buckley observed, behind the Administration's arguments lurks "the notion that that which people ought to do is rightly encouraged by making it physically easy for them to do." As applied to voting, this notion undermines the ideal of the Founding Fathers that successful democracy requires a certain measure of civic idealism among the electors, such that they will at least occasionally consent to place the common good over self-indulgence and personal convenience. One may doubt that a voter who is unwilling to meet the modest demands on his time and forethought imposed by pre-registration requirements will be willing to devote the serious attention to candidates and issues needed to make an intelligent decision on Election Day. Supporters of automatic registration, post-card registration, and similar devices seem to think that voting is a kind of secular sacrament--that the most "legitimate" election is necessarily the one which involves the largest popular participation. But if this premise is taken seriously, automatic registration does not go far enough: we should compel people to vote.

Will It Succeed?

Even if we assume that the mechanical goal of more bodies in the booths is desirable, this bill may still fall short of meeting it. Is the sense of alienation from politics which is felt by many citizens a product of their staying outside the electoral process? Or is their failure to vote a product of their alienation? If the latter, declining turnouts are only symptoms of a more basic disease which the administration bill leaves untouched.

In January 1975 the Bureau of the Census released a report on voter participation from 1966 to 1974. The Bureau found that 31.9% of the voting-age population failed to register in 1974 (as compared with 26.4% in 1966). But only 3.8% gave "unable to register" as the reason, as compared with 15.3% who said "not interested" and 2.9% who said that they "dislike politics."

Table 4. Reported Voter Participation and Reason for not Registering of Persons of Voting Age: November 1966 to 1974

(Numbers in thousands. Civilian noninstitutional population)

Whether voted and reason not registered	1974		1972		1970		1968		1966	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total.....	141,299	100.0	136,203	100.0	120,701	100.0	116,335	100.0	112,800	100.0
Registered.....	87,889	62.2	98,480	72.3	82,181	68.1	86,374	74.3	79,295	70.3
Voted.....	63,164	44.7	85,768	63.0	65,888	54.6	78,964	67.8	62,518	55.4
Not registered.....	45,026	31.9	33,242	24.4	34,091	28.2	28,942	23.1	29,735	26.4
Reason not registered:										
Not a citizen.....	4,005	2.8	3,530	2.6	3,052	2.5	2,680	2.3	2,285	2.0
Residence requirement not satisfied.....	1,931	1.4	1,988	1.5	4,956	4.1	3,022	2.6	5,612	5.0
Unable to register.....	5,436	3.8	4,203	3.1	4,014	3.3	3,602	3.1		
Not interested.....	21,635	15.3	14,256	10.5	17,131	14.2	14,366	12.3	18,703	16.6
Dislikes politics.....	4,044	2.9	2,513	1.8						
Other reasons.....	5,417	3.8	4,977	3.7	3,899	3.1	2,564	2.2		
Reason not reported.....	2,558	1.8	1,775	1.3	1,239	1.0	707	0.6	3,134	2.8
Registration not reported....	8,384	5.9	4,461	3.3	4,430	3.7	3,019	2.6	3,770	3.3

Note: Includes persons 18 years old and over in Georgia and Kentucky, 19 year old and over in Alaska, 20 years old and over in Hawaii, and 21 years old and over in the remaining States in 1966, 1968, and 1970. Includes all persons 18 years old and over in 1972 and 1974.

Source: Advance report on "Voter Participation in November 1974," issued by the Bureau of the Census, U. S. Department of Commerce, January 1975.

Other data confirm this study:

(1) There has been a long-term decline in voter turnout from the beginning of the century (the turnout was 73% in 1900), though barriers to broad participation--poll taxes, literary tests, requirements of sex and age--have been lowered or removed altogether during this period.

(2) The ten states in which it was hardest to register and vote--based on a 1971 study by the Young Democrats--had average turnouts of 63.3% in 1968 and 56.1% in 1972. The average turnouts for the entire country in those years were 60.6% and 59.6%.

(3) States which have adopted devices like election-day registration or postcard registration usually do not get dramatic spurts in voter turnout. For example, Texas has postal registration, but its turnouts from 1960 to 1972 were closely comparable to those of neighboring Louisiana and Arkansas.

(4) A 1960 study by the Survey Research Center at the University of Michigan concluded that relaxing of registration requirements makes only about a 3% difference in voter turnout. Compared to the 15% to 30% gaps between voter turnouts in America and in Western Europe, this 3% figure is strikingly close to the 3.8% reported by the Census Bureau.

Kevin Phillips points out that there are political, economic, and cultural factors which help account for this country's "inferior" performance. American politics are more stable and less ideologically-oriented than the politics of any European state: there is not as much at stake in any given national election. Europe's multi-party parliaments give the ideological fringe more reason to come to the polls. So does the proportional representation which characterizes some European systems, and which gives parliamentary seats to parties which would lack any representation in a system of single-member districts.

A subtler cause of Europe's larger turnouts is homogeneity within stratified social classes. A Glasgow dockworker's allegiance to the Labor Party is reinforced by nearly all the signals he receives in everyday life: family, friends, co-workers, newspaper. But Americans are more apt to move from place to place and from class to class, and are, therefore, subject to more of what Kevin Phillips calls "cross-pressures." Phillips cites a 1963 Princeton study: "When asked whether they would be displeased at a political intermarriage within the family, almost twice as many Britons as Americans replied in the affirmative, and over three times as many Germans. In a setting as polarized as the German, voters have considerably less doubt about how to vote or whether to vote than they do in less polarized settings."

In short, the gap between European and American turnouts is caused mostly by factors which are beyond our control--and which most Americans would prefer not to change even if they could.

Fraud

Another possible objection to this bill is that it would increase the opportunities for fraud. The hard data on this subject are still fragmentary, since Wisconsin and Minnesota--the models for the Administration proposal--began universal registration only in 1976. It should also be remembered that these are both "good government" states, where politics have been rather less prone to organized vote-stealing and other crooked maneuvers than elsewhere. Nevertheless, there are some alarming signals. Lines were long at polling places in both states last fall; so long that overburdened officials in some Wisconsin cities decided to let people vote without checking their identity in any way. And presumably there must have been some voters in both states who had to leave the polls without voting

because they did not have time to stand in line.

Resources are limited at the polling places, even with Federal subsidies--especially in Wisconsin where state law imposes a limit of 3 officials at any one polling place! Authorities may, therefore, face a Hobson's choice between lax identity checks, which encourage fraud, and more exacting checks which lengthen waiting time and effectively disfranchise those voters, foresighted but busy, who do take the trouble to register in advance but who lack the spare time to wait for hours on Election Day.

HATCH ACT RELAXATION: H.R. 10

For most employees of the Federal Executive Branch, this bill would remove the prohibitions on active participation in political management or political campaigns which have been in force since the Hatch Act was passed in 1939.

First Amendment Issues

Supporters of H.R. 10 contend that the First Amendment, and simple equity, demand that Federal employees should have the same rights to unfettered political activism as other citizens.

Opponents contend that the First Amendment cuts both ways. It allows Congress to protect Federal employees from coercion and intimidation by their supervisors or unions calculated to harrass them into helping candidates whom they do not wish to support. It also allows Congress to protect citizens outside the government from arbitrary harrassment by political activists who should come to hold positions in the Civil Service.

Coercion of Employees

Because of their direct interest in public-policy decisions and access to policy makers, supervisors and union officers are naturally subject to temptation to use the powers which their positions give them over their colleagues and subordinates to pressure these employees into political activism. Such coercion would, of course, be illegal whether we had a Hatch Act or not; but the Act has peculiar advantages over all other forms of protection. The Hatch Act is the only possible safeguard under which an employee need not expose himself to retaliation by stepping forth to complain about improper episodes. Nothing else can provide the same security to employees whose political convictions do not coincide with those of superiors or union officers, or who for other reasons would prefer to stay out of politics. That there are many such employees is attested by both Anthony Mondello, former general counsel of the Civil Service Commission, and Dennis Garrison, former executive vice president of the

American Federation of Government Employees. (The latter, not surprisingly, is a strong foe of the Hatch restrictions.) Both have testified before Congress that employees who want to avoid political entanglements often use Hatch as a shield.

The 1939 Sheppard Committee investigations established that executive employees had indeed seized pre-Hatch opportunities for coercion. Some examples: (1) Employees of the Works Progress Administration in Kentucky were canvassed by their superiors. Employees whose political views turned out to be contrary to those of a powerful Kentucky Senator lost their jobs. (2) WPA workers were informed by superiors that there would be "no excuse" for failing to attend a political rally. (3) WPA workers were ordered to change their voter registration from Republican to Democratic. (4) An IRS supervisor read his subordinates a prepared statement endorsing a Maryland Senatorial candidate.

It should be noted that most the the abuses uncovered by the Sheppard Committee involved the WPA, an early anti-poverty program, and included coercion of impoverished holders of public-service jobs. Since the number of employees in such programs, and of the poor who are dependent on them, is now considerably larger, the opportunities for abuse are also more numerous.

Coercion of Citizens

The poor are not the only citizens outside the bureaucracy who are subject to harrassment. The expansion of the size and scope of Federal grants and Federal regulations necessarily means an expansion of the opportunities for abuse for Federal officials. These officials are often in a position to reward political allies and punish enemies. In addition to the traditional areas of corruption like selective awards of contracts and licenses, there are many possible conflicts between a civil servant's professional duties and his partisan interests which do not involve money in any way. Federal employees who conduct safety inspections of factories, or who evaluate environmental impact statements, or who have custody of raw information gathered by census takers can make life quite difficult for people they do not like. So can officials of the Veterans Administration or administrative law judges of the Federal Trade Commission.

But direct harrassment of citizens is not the only reason to fear the possibility that the administrative machinery of a Federal agency will become an extension of an external political movement. Another danger is the possible short-circuiting of our democratic command system, in which--theoretically--administrators are subject to policy-makers who are subject to elected officials who are subject to people. It is true that reality often falls short of this ideal: the bureaucracy's leverage on policy is unavoidably great, and already subject to misuse. But for Federal employees to take a direct

interest in partisan politics increases temptations to thwart the electorate's will by sidetracking or sabotaging policy initiatives which they have reason to dislike. A good deal of such sabotage takes place already, of course; but it is usually motivated more by the bureaucracy's self-interest than by external partisan goals. The history of "affirmative action" guidelines from HEW, for example, shows how easy and how common it is for bureaucrats to thwart the will of the electorate. Opponents of H.R. 10 contend that it should not be made any more common or easier.

Conclusion

In the final analysis, the merits of the Hatch Act depend on whether one is more anxious to protect the rights of some government employees to get into politics, or to protect the rights of other government employees to stay out of politics, to protect citizens from harrassment by politicized bureaucrats, and to prevent administrative decisions from being distorted by political pressure. The case for the Hatch Act is summarized by attorney John Bolton: "The monopoly of legitimate coercive power vested in the government and the access to it by government employees warrant restraints on the government and its workers so that the state's power is not used in unintended ways."

H.R. 5157, S. 926. FEDERAL FINANCING OF HOUSE AND SENATE RACES

These bills would provide Federal subsidies to candidates for House and Senate seats. The Senate bill provides for subsidies only to Senatorial candidates; the House bill would subsidize individuals seeking office in both House and Senate. The House bill would subsidize general-election campaigns but not primary campaigns; the Senate bill would subsidize both.

The House bill would provide matching payments for contributions from individuals up to \$100 per contributor, to candidates whose aggregate eligible contributions totalled at least \$10,000. Total matching payments could not exceed \$50,000. The Senate bill is roughly similar, with a total expenditure ceiling of \$300,000 or 20 cents times the state's voting-age population.

The Labor Loophole

Supporters of this legislation contend that it would reduce the influence of special-interest groups. Opponents argue that organized labor is able to take advantage of the opportunity to spend unlimited amounts of union dues money on partisan communications with the unions' members. They point out that labor spent more than \$18 million

in this fashion on behalf of the Carter-Mondale ticket, a tactic which is effectively denied to business and other groups. In effect labor was able to double the \$23 million spending ceiling for the Democratic Presidential campaign.

Incumbents

Another weakness of this legislation is the advantage it gives to incumbents. The staff salaries, office accounts, travel-expense reimbursements, and mailing privileges available to incumbents give them a headstart which can usually be overcome only by hefty contributions to their challengers. Any measure which tends to equalize contributions tends automatically to handicap non-incumbents. Where incumbents have built-in advantages, these are retained; where challengers have a chance to offset those advantages, they are blocked. As the 1976 elections showed, House incumbents are already powerfully entrenched; this legislation would make them even less vulnerable.

Equity for Busy Citizens

Any measure which tends to equalize spending would reduce the power of citizens who have many dollars but little time. The political leverage of business executives declines while that of students rises, for the latter have ample spare time to spend on volunteer activities on which there is no aggregate ceiling. Opponents of this legislation contend that the state has no right to redistribute raw political power among interest groups.

Is It Necessary?

Supporters contend that this legislation would diminish the unhealthy clout of financial "fat cats." Opponents suggest that fat cats are more formidable in Herblock cartoons than in reality: the Republicans have long been better financed than the Democrats, but have been unable to stave off a long-term decline in actual voting strength. Furthermore, fat cats tend to seek out candidates who are already expected to win: business-financed political action committees gave more money in 1976 to Democratic than to Republican candidates for Congress.

A final weakness in the proposed bills is that they would pour millions of Federal dollars into lopsided races whose outcomes could not be effected by any kind of election reform..

S.J.RES. 1: DIRECT ELECTION OF PRESIDENT

This proposed amendment to the Constitution would abolish the

Electoral College and substitute direct popular election of the President and Vice President. If no ticket receives at least 40% of the popular vote, the proposed amendment would require a runoff election between the two leading tickets.

An Historical Myth

Opponents of the Electoral College have implied that the College's existence prevented popular-vote winners from occupying the White House in three nineteenth-century elections: 1824, 1876, and 1888. In point of fact, there were three major candidates in 1824, none of whom won an Electoral College majority. Henry Clay threw his support to John Quincy Adams in the House of Representatives, guaranteeing the defeat of Andrew Jackson; similar alliances would still be possible under the proposed amendment. The 1876 outcome was caused by sweeping charges of vote fraud and by the appointment of a special commission to resolve those charges. The 1888 election was the only clearcut case of the College's thwarting the popular vote: one Presidential election out of forty-seven.

It should be remembered that "minority" Presidents are still quite possible under the proposed amendment, since a candidate need get only 40% of the vote.

Effects on Federalism

Especially if combined with the other elements of the Administration's election-reform package, the proposed amendment would clearly erode the Federalist structure of the American policy. It would tend to reduce the states to administrative units of an undiluted democratic monolith, and thereby to undermine a traditional safeguard for the rights of minorities. It would help transform our limited democracy into an absolute democracy. If one shares Rousseau's mystical exaltation of the General Will, this of course is a good thing. If one shares Aristotle's, Cicero's, Bodin's, Montesquieu's, Blackstone's, Burke's, Hamilton's, Madison's, Jay's, and Tocqueville's respect for the "mixed regime," it is not.

Two-Party System

As long as the Electoral College is allowed to stand, voters and office-seekers have a powerful disincentive for seeking out narrowly based, ideological-fringe parties, which are "shut out" of the final score. Direct popular vote would focus more attention on the performance of such parties, and would also give them a chance to force the mainstream parties in their direction through bargaining prior to the runoff elections. The tendency of the amendment is to encourage a more free-wheeling, fragmented, ideologically-oriented

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politics. If one thinks that the parliamentary democracies of Western Europe are superior to the American regime, or if one just prefers excitement to stability, this is a good thing. If not, not.

"Balanced Inequities"

The proposed amendment would disrupt the electoral structure of "balanced inequities" which gives certain advantages to both large and small states, to both cosmopolitan and homogeneous states, to both cities and rural areas. Under the status quo, for example, small states have more Electors than they would "deserve" if we relied on strict egalitarian mathematics. But large, urban states enjoy the unit rule which enable a slight popular majority to control a large solid block of electors. As Senator John F. Kennedy observed in 1956, these local advantages and disadvantages must be viewed as a whole, a "solar system of government power." In Kennedy's words, "If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to change the others." The effects of such change are difficult to predict, and even more difficult to deflect if they should prove undesirable.