

Swimming in muddy waters

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Could super-delegates pick a president?

The close primary contest in the Democrat race has shone some sunlight on the role of their super-delegates.

These consist of members of congress, various other elected officials including governors, former elected officials and officials of the Democrat party hierarchy - a total nationwide of 795 super-delegates.

Some commentators are saying that neither Senator Clinton nor Senator Obama can win a clear majority of the regular delegates, selected as a result of the primary state voting and both will need to woo support of super-delegates.

As was noted in this column in the last edition of this paper, Democratic Party reforms in 1982 gave super-delegates about 20 percent of convention votes. This was done so that people at the top of the party might be able to block a popular, but politically extreme, candidate from seizing the nomination in the heat of the moment. The party's rules were rewritten to head off an insurgency. They wanted to avoid another George McGovern or Jimmy Carter who might be crushed in a general election. Stopping a candidate who might be too far to the Left to be elected seems to be the underlying purpose of the super-delegates. These unelected delegates therefore have more than twice the votes of the biggest state prize, California.

John Yoo, a professor of law, recently wrote an interesting piece about the dangers of the super-delegates in the Wall Street Journal. It revolves around the fact that many of the super-delegates are members of congress. What happens when the legislative branch helps pick a president? How does this affect the independence of the executive branch and the freedom of the president to make decisions independent of congressional opinion?

As Yoo points out, the Framers of our Constitution would not like this idea one bit. In Yoo's words, "They believed that letting Congress choose the president was a dreadful idea. Without direct election by the people, the Framers said that the executive would lose its independence and vigor and become a mere servant of the legislature."

Yoo cites an example that the Framers had in mind. All but one of America's first state constitutions gave state assemblies the power to choose the governor. James Madison said that this structure allowed legislatures to turn the governors into 'little more than ciphers'."

Professor Yoo also notes that during the Constitutional Convention in 1787, the governor of New York said that if Congress picked the president, he "will not be independent of it, and if not independent, usurpation and tyranny on the part of the Legislature will be the consequence. After weeks of debate, the Framers vested the presidency with its own base of popular support by establishing a national election. They wanted the president to represent the views of all the people, not the wishes of Congress.

During the reign of the Jeffersonians, the precursors to today's Democrats, a Congressional caucus picked the party's nominee in the early 1800s. The system finally broke down in the late 1820s under the weight of corruption and intrigue.

Imagine for a moment what will go on at the Democrat convention this summer if the two campaigns have to woo members of Congress. Just consider the deals that would have to be made. Imagine the inside bargains, the intrigue and the incredible power struggles with special interest groups.

The surviving nominee will not be unbloodied. He or she will go into office carrying enormous

amounts of repayment baggage.

As Yoo concludes, the Democrats have a system that could create a nominee and possibly a president who will become "the handmaiden of Congress instead of the choice of the American people."

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