

Changing the Rules in the Middle of the Game

September 22. If you are playing a game of cards, you generally know the rules in advance and plan accordingly. The game is Black Jack; you have twenty on your first two cards; you hold—and usually you win. But what if, after you hold, the dealer declares that thirty, not twenty-one, is the winning count. You lose, and you feel cheated. They changed the rules in the middle of the game—to your disadvantage.

Welcome to Colorado. Amendment 36 on the Colorado ballot this November changes the rules of the presidential election. It stipulates that the state's electoral votes, rather than all going to the plurality winner in the state, will be divided proportionally according to the popular votes received for each presidential candidate. And the voter-initiated ballot item specifies that, if the amendment passes, it will take effect for this election. Essentially, it changes the rules in the middle of the game.

This amendment is fascinating for campaign watchers to a number of reasons. First, in a sense it is a response to the 2000 presidential election, in which the popular vote winner did not win the Electoral College vote. Proponents of Amendment 36 claim that the system they propose allows the result of the election to more closely follow popular sentiment. Score one for democracy.

But, second, the opponents are crying, "Foul!" This is not an effort to enhance democracy, they claim; it is an effort to help the Democrats. Republican candidates for President have carried Colorado in every election save two since the 1950s. If George W. Bush wins Colorado in this election with a margin of 55%-45%, under existing law he would receive all nine electoral votes. If Amendment 36 passes, he will receive five votes and Senator Kerry will receive four. It is not coincidence, opponents claim, that Rick Ridder, the manager of the "Make Your Vote Count" campaign, is a long-time Democratic consultant. The amendment, in their view, is merely an effort to help Senator Kerry's campaign and to hurt President Bush's.

From a third perspective, the opponents are not above politics themselves. Colorado's Republican Governor Bill Owens opposes the amendment. He says it will take power away from Colorado, because the state's votes and their influence would be divided. Probably true, but unstated is the fact that he is a backer of President Bush, who Owens feels would be hurt if Amendment 36 passed. In fact, the principal proponents of the amendment are Democrats; the opponents, Republicans. The democratic value of the amendment has little to do with whether it will pass or not.

Let's not stop there. A fourth reason this amendment fascinates campaign watchers is that if it passes and the loser of the popular vote in Colorado wins the electoral vote by fewer than four votes—remember the 2000 election—passage of this amendment would be the determining factor in electing a new president. And, if nothing else is clear, it is absolutely certain that supporters of the losing presidential candidate would challenge the result in court. If you think that the result in 2000 was muddied, this result would set a new standard. Lawyers on both sides are already gearing up for this battle.

We will not even think about predicting the likely outcome of this vote. But we do feel we should note for you how complex the campaign is. It involves democratic

values, partisan politics, state power, voter initiatives as opposed to legislative action, and a number of other variables, all of which would be important in any effort to rid our electoral system of the cumbersome electoral college as a central feature of presidential elections. Not only is this amendment important in the context of the 2004 campaign, it is also worth watching for those interested in how an effort to change the presidential election process might fare.

And finally, this case tells us something about journalism. Watch the pack. Within the last week, the *Wall Street Journal*, the *Washington Post*, and the *New York Times* have all published articles on this topic. And now we have too. That is often how coverage of presidential elections evolves.