

If this, from *The Washington Times*, doesn't make the case for actively working to return the House and the Senate to Republican control, what does?

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269 tie: An electoral college 'doomsday'?

By Joseph Curl

On Nov. 5, the presidential election winds up in a electoral-college tie, 269-269, the Democrat-controlled House picks Sen. Barack Obama as president, but the Senate, with former Democrat Joe Lieberman voting with Republicans, deadlocks at 50-50, so Vice President Dick Cheney steps in to break the tie to make Republican Sarah Palin his successor.

"Wow," said longtime presidential historian Stephen Hess. "Wow, that would be amazing, wouldn't it?"

"If this scenario ever happened, it would be like a scene from the movie 'Scream' for Democrats," said Democratic strategist Mary Anne Marsh. "The only thing worse for the Democrats than losing the White House, again, when it had the best chance to win in a generation, but to do so at the hands of Cheney and Lieberman. That would be cruel."

Sound impossible? It's not. There are at least a half-dozen plausible ways the election can end in a tie, and at least one very plausible possibility - giving each candidate the states in which they now lead in the polls, only New Hampshire - which went Republican in 2000 and Democratic in 2004, each time by just 1.5 percent - needs to swap to the Republican column to wind up with a 269-269 tie.

There are currently 10 tossup states, according to RealClearPolitics.com, which keeps a running average of all state polls. If Republican presidential nominee Sen. John McCain wins Ohio, Virginia, New Hampshire and Indiana - not at all far-fetched - and Mr. Obama takes reliably Democratic states Pennsylvania and Michigan, and flips Colorado (in which he holds a slight poll lead), with the two splitting New Mexico and Nevada, the electoral vote would be tied at 269.

Absurd? Possibly, and there is not complete agreement among constitutional experts on whether a newly elected Congress or the currently sitting House and Senate would make the decision.

So try this scenario: The newly elected House, seated in January, is unable to muster a majority to choose a president after a 269-269 tie, but the Senate, which is expected to be controlled by Democrats, picks Sen. Joseph R. Biden Jr. from the Democratic ticket. If the House is still deadlocked at noon on Inauguration Day, Jan. 20, Mr. Biden becomes acting president.

Or try this one on for size: Neither the House nor the Senate fulfills its constitutional duty to select the president and the vice president by Jan. 20, so House Speaker Nancy Pelosi, California Democrat, becomes acting president until the whole mess is sorted out.

"That would cause all kinds of lawsuits: We would have 50 Floridas, and we might not know who the president is for two years," said Judith Best, a political science and Electoral College specialist at the State University of New York in Cortland.

The archaic system in the Constitution was set up in the days of oil lamps and horse-drawn carriages. After the presidential vote on the first Tuesday in November, electors have until the Monday after the second Wednesday in December, this year Dec. 15, to reach the state capital, where they cast their ballots for president.

The electoral vote is then transmitted "sealed to the seat of the government of the United States, directed to the president of the Senate," according to the 12th Amendment. If there's a tie, the 1804 amendment says, the House of Representatives "shall choose immediately, by ballot, the president."

"The Constitution says 'immediately,'" Mr. Hess said. "It's that word 'immediately' that makes me believe it's got to be the outgoing Congress that makes the decision, because we know that the Electoral College ballots are counted in December."

But despite the delicious possibility that Mr. Cheney would break a Senate tie to create a Obama-Palin White House, several other constitutional scholars say, forget the Constitution. They say the operative - and decisive - verbiage was set out in U.S. Code Title 3, Chapter 1, Section 15, in 1934.

"Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day," the section says. That, they say, means the new Congress would decide the president and vice president in the event of an Electoral College tie. Here's where things get dicey, though. Back to the Constitution, the 12th Amendment: "... in choosing the president, the votes shall be taken by states, the representation from each state having one vote." That means that a state's entire House delegation gets just one vote each - California, with 53 House members, would get one vote; Alaska, with its one representative, would get one vote.

Florida, for instance, has 16 Republicans and nine Democrats. That means the delegation would (almost certainly) vote 16-9 for Mr. McCain, while Colorado, with four Democrats and three Republicans, would vote 4-3 for Mr. Obama.

In the current House, Mr. Obama would win - 27 delegations have a majority of Democrats, 21 have a majority of Republicans, and two states, Kansas and Mr. McCain's home state of Arizona, are evenly split.

But those numbers will change Nov. 4, and Paul Sracic, associate professor in the department of political science Youngstown State University in Ohio, said they could change dramatically. Of the 27 state congressional delegations with a majority of Democrats, 25 of them would switch to deadlocked or Republican control if two or more seats change to Republican.

At least 26 state delegations in the House must agree before the next president can be chosen. But even if Democrats maintain a majority, there would be pressure on Democratic delegations to vote Republican in states where voters chose Mr. McCain.

It took 36 ballots in the House to select Thomas Jefferson as the third president after the 1800 election ended in a 73-73 tie. There was so much animosity after that election that Aaron Burr, elected vice president, faced off in a duel with Alexander Hamilton, who had thrown his support behind Jefferson. Burr shot Hamilton dead in a duel.

The number of electors, 538, is equal to the number of senators - 100 - and representatives - 435 - in the Congress, plus the three electors added in 1961 when the 23rd Amendment gave the District a say in U.S. presidential elections. Thus, there have been 10 presidential elections in which a 269-269 tie was possibly, but it has never occurred.

"The probability of a tie in 2008 is about 1.5 percent, which is slightly higher than we calculated at about the same time back in 2004," said Mr. Sracic, who enlisted the help of the university's math department to come up with a possible 1,024 combinations with the current 10 states now considered tossups.

"What really strikes you is how easy it would be for a tie to occur. Take the 2004 map and switch Iowa, New Mexico and Colorado into the Blue column, which is what the poll numbers indicate. Then, take New Hampshire and give it to McCain, which is what two recent polls suggest is going to happen. There is your tie."