



Mountain Musing

An election like no other

By Wally Gordon

No matter how old you are, you've never seen an election like this one, certainly in New Mexico and possibly in the

nation.

In New Mexico, at the top of the ticket, Democrats own the field. President Obama, Senate

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candidate Martin Heinrich and House candidates Michelle Lujan Grisham and Ben Ray Lujan are all strongly ahead in every public and private poll; so is Republican Steve Pearce in southern New Mexico.

So it's all boring. Game's over. There are no stakes on the table. Right? Wrong.

Despite the open-and-shut tone of the top campaigns, an unprecedented battle for the state House and Senate is being waged further down the ballot. Political action committees, with Gov. Susana Martinez's far in the forefront, are throwing a million dollars or more into the war for the Roundhouse.

The opening cannon was fired by Martinez's committee, which decided to fire all the ammunition it had (at least half a million dollars) into an all-out effort to defeat the Senate's two leading Democrats, President pro tem Tim Jennings and Majority Leader Michael Sanchez, as well as 20 other Democrats, most of them in the House, where a single GOP gain could give them the majority. The governor has even launched a vicious assault on the House's one independent, Andy Nuñez, who has been a Martinez loyalist and sponsor of her most important legislative initiative, an effort to repeal the law that allows undocumented workers to obtain driver's licenses.

So far as any one can remember, no governor has ever inserted himself (or herself) so deeply in so many legislative races. It is an extraordinarily risky adventure for Martinez. If she fails in the two-pronged effort to capture the House and oust the Senate leadership, she would be left in the lurch, with little power to influence either house for the remainder of her time in Santa Fe. But

her more serious problem is what happens if she wins. As the former Republican Party chairman Harvey Yates Jr. wrote in an op-ed article, the Senate will become even more liberal without the moderating influence of Jennings and Sanchez. Jennings was chosen president pro tem with the support of every Republican and only six conservative Democrats. Sanchez has frequently been able to achieve enough bipartisan conservative support to bury the Senate's Democratic liberals. In the House, a handful of Democrats have sided with Republicans to create a conservative majority on several issues, including driver's licenses. It is unlikely Democrats in either house would be anxious to align themselves with a governor who went all out to defeat them.

At the very bottom of the ballot, below legislative races, judge-ships and bond issues, are five constitutional amendments.

In voting for a candidate, if you later decide you made a mistake, you can correct it in two years or four and kick the incumbent out of office. But if you make a mistake on a constitutional amendment, you are stuck with it, as likely as not, forever.

Three of the amendments deal with the Public Regulation Commission, the most troubled public body in the state. There have been times of late when four out of five commissioners were under indictment, being investigated or in ethical hot water. Crime and misbehavior seem to be the order of the day.

All three of the amendments would rein in the high-flying PRC, which was described by Fred Nathan, executive director of Think New Mexico, as the most powerful state regulatory body in the nation. It supervises almost every aspect of New Mexicans' lives. Until a few years ago, that responsibility was divided

between an appointed Public Utility Commission, which did an honest and competent job, and an elected Corporation Commission, which was pretty much of a mess. This being New Mexico, instead of dumping the Corporation Commission, the Legislature chose to dump the PUC, folding its regulatory functions into the elected Corporation Commission, which it renamed the PRC. The result has been just about as bad as any sane person would expect.

The three PRC amendments on the ballot all do good but modest things. One would require commissioners to have some qualifications beyond being 18-year-old registered voters in New Mexico. The other two would take away the PRC's responsibility for regulating insurance and registering corporations.

Only the amendment on qualifications has been seriously controversial. The amendment merely says the Legislature can require PRC candidates to have some qualifications, but doesn't say what qualifications. Since current commissioners and candidates have no technical qualifications at all, several (but not all) naturally oppose the amendment, giving as their reason that the amendment should specify what credentials they need to have. However, writing into the constitution a list of skills—utility lawyer, financial administrator, regulator, etc.—would further clutter up our already dreadfully long state constitution and probably require a future constitutional amendment to add or subtract details.

Another proposed amendment would add a public member and a municipal judge to the Judicial Standards Commission, the only body that has the power to investigate, reprimand, penalize or even remove misbehaving judges. This, too, seems to me like a thoroughly sensible idea.

The final amendment would

make the public defender an independent agency instead of one subject to the governor's authority. Thus public defenders would have equal status with the prosecutors they face in court. Again, this seems to me like a reasonable and useful change.

Two PRC seats are on the ballot. For District 3, which includes Santa Fe County, there is a strong candidate but no competition. Democrat Valerie Espinoza, coming off effective service as Santa Fe County clerk, is unopposed.

In District 1, which is basically Bernalillo County, Karen Montoya, the rather controversial Bernalillo County assessor, is the Democrat who seems to have a wide margin over her Republican opponent, Christopher Ockrider, an attorney specializing in business law.

The election nationally is as unusual as it is in New Mexico. The dismal prospect hangs over the presidential election of an indecisive, confusing, much delayed or conflicting outcome.

One possibility is that the national popular vote could favor one candidate (probably Mitt Romney) and the electoral vote a different candidate (probably Barack Obama). That is certainly the way the election could end up as of the latest polls six days before the final ballots are cast.

But that is hardly the most problematic outcome. There are so many states that are so closely divided (well within the margin of error of the polls) that there are several ways the electoral vote itself could end in a 269-269 tie, with 270 required for election.

In all states, voters do not directly choose a president, although most think they do. In fact they choose a slate of electors selected by a political party and in theory committed to support its candidate.

What would happen if the

electoral vote tied?

First, there could well be endless appeals, which might not be decided by the constitutional December deadline and doubtless would land at the doorstep of the Supreme Court, as the Bush-Gore 2000 contest did.

Second, one or more electors might choose to vote differently from the way a majority of voters in their state did. Most, but not all, states allow such a shift, and those laws that do prohibit it may be unconstitutional. Electors are chosen not because they are statesmen or independent thinkers but because they are loyal party hacks, and most will remain faithful to their party. But it is possible that one or several might not, as happened in 1876, when five Democratic electors were persuaded to change sides in return for Republican Rutherford Hayes's promise to end Reconstruction.

It is even possible that the Electoral College vote would initially produce a winner, but one or two electors would switch sides and create a tie.

Finally, if the tie could not be broken otherwise, the current House would decide the next president, with each state having one vote. With the House delegations of 33 states controlled by Republicans, Romney would win. In the Senate, with each senator having one vote, Democrat Joe Biden would become Romney's vice president.

So will we know in six days who is to be the next President? Right now, your opinion is worth as much as that of any expert.

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