

Why Christie Chose Door No. 3

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Frank Lautenberg was a truly extraordinary U.S. senator. He did much good for the state and the nation. But in death he created quite a political conundrum in New Jersey.

A completely ambiguous New Jersey statute gave Gov. Chris Christie three options for setting the date of a special election to fill the vacant Senate seat — in addition to temporarily appointing someone to serve in the interim.

For many governors, the chance to hold a special election for a U.S. Senate seat formerly held by a member of the opposite party would be a golden opportunity. For Christie, it also created a dilemma.

Door No. 1 would have allowed him to set the election for November 2014 and allowed his appointee to serve a full year and a half. This would have been a bonanza for the Republican Party.

Door No. 2 would have allowed him to set the election for this November's general election, when Christie himself is up for re-election. However, it would have also meant that the Democratic ticket would have been headed by a popular Democrat, most likely Mayor Cory Booker of Newark. And that might have posed a threat to Christie by bringing out a large Democratic vote, especially among racial minorities, in what otherwise is expected to be a low turnout election.

However, choosing Door No. 1 might well have turned out to be a backdoor to Door No. 2 because it would have surely provoked a Democratic lawsuit that very well might have been successful because of the ambiguity of New Jersey law.

The relevant New Jersey statute provides two contradictory methods for election of a senator to fill the vacancy.

(1) There will be an election to choose his successor at the next general election (which is November 2013) — unless the vacancy occurred within 70 days before that election, which it did not.

(2) If the vacancy occurred within less than 70 days before the next primary election (which it did), the election of a successor will not occur until the second general election thereafter, which would be November 2014.

Talk about making legislation in a sausage factory!

Should the governor have decided to call the election for 2014, you can be reasonably certain the Democrats would have challenged it in court. And it is my guess that such a challenge would have had a reasonable chance of success based on rulings of the New Jersey Supreme Court, which seems attuned to the idea that voters should have the opportunity to select their own representatives.

The precedent for that would be, coincidentally, another case involving Frank Lautenberg. When Sen. Robert Torricelli suddenly resigned just prior to the 2002 election in the wake of an ethics scandal, the Democratic Party appointed Lautenberg to run in his place after the deadline for naming a replacement had passed. But the Supreme Court ignored the statutory deadline and put Lautenberg on the ballot on the ground that voters should have a choice. That might suggest that voters should not have to wait two years to choose their senator.

Door No. 3, part of the same statute, allowed the governor to set a special election prior to this November. And this provided Christie the only sure opportunity of not having to compete against a Booker-led Democratic ticket this November — by setting the election for mid-October. The only downside is the accusation of wasting some \$24 million by holding two elections within three weeks time.

Was Christie really concerned about facing a Booker-led ticket this November? Most experts seem to think he need not have been. But Christie has to be concerned not just with winning re-election, but with winning by a landslide, as he considers the possibility of a presidential run in 2016 and bolstering his national reputation. He also has to balance his standing among national Republicans against his potential vulnerability in New Jersey on issues like gun control and reproductive rights as he heads into a campaign against a female Democrat, state Sen. Barbara Buono.

For all of these reasons, the unfortunate passing of Lautenberg presented as many obstacles for Christie as opportunities. It seems he decided to play it safe. •

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