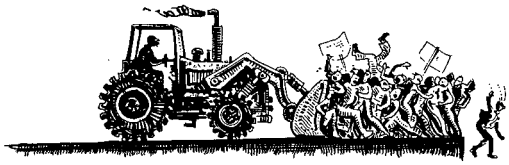

by Terry Eastland

Pete Wilson's Finest Hour

The legacy of a principled presidential run.

Pete Wilson is no longer a presidential candidate, but the California governor has managed to demonstrate the relevance of executive power to the formidable task of ending affirmative action. Wilson's executive labors, taken last summer, were reported at the time. But perhaps because of his decision in September to bench himself as a presidential candidate, they have been insufficiently parsed.

Wilson issued an executive order in June that repealed executive orders signed by three previous governors—including Ronald Reagan and George Deukmejian—whose imprecise language had assisted the rise of race- and sex-based affirmative action throughout California state government. The directive condemns not only numerical quotas but also preferential treatment, recognizing that it is the act of favoring one person over another on the basis of race or sex that is the essential evil; a quota, after all, represents the sum of one or more instances of preferential treatment. The order plainly supports nondiscriminatory recruitment, but just as plainly insists that hiring and contracting decisions must be based on merit. To promote conditions under which that might be done, the order abolished the many councils, committees, and boards—some 200 mainstays of the affirmative action culture—that had long advised the government on "diversity" issues. It also did away with affirmative action "performance recognition" awards, and the incentives they create to discriminate.

Since an executive order cannot trump an act of the California legislature, or, for that matter, federal law, there were limits to what Wilson could do. But within those limits he went about as far as his office allowed, commanding all state agencies, departments, boards, and commissions to "eliminate all state preferential treatment requirements that exceed federal statutory or regulatory, or state statutory requirements."

Wilson's office highlighted programs eliminated as a result of his order. The forestry department had been reserving 50 percent of its seasonal positions for minorities and women. The water resources department had been setting aside two-thirds of all student internships for minorities. And Caltrans had been making purchases under $500 from minority- and women-owned businesses, with no firms owned by people of the "wrong" race or sex allowed to compete.

But there were some programs that, owing to the legal authorities under which they operated, could be only partially changed. Under federal law, for example, Caltrans was required to award to minority firms some 10 percent of federal contracting dollars. On its own initiative, the agency had increased that figure to 27 percent. Wilson's order forced Caltrans to push the figure down to 10 percent, and no more. That Wilson could not go further shows that action against affirmative action is needed above all at the federal level. A governor can only do so much.

Wilson was limited in another area: He could not, on his own authority, end preferences in higher education. Appointed boards manage the affairs of the community college, California State University and University of California systems. But Wilson, who as governor appoints members of those boards, could and did ask them to comply with his order. On July 19, the board of regents for the most selective of the three systems, the University of California, voted to end preferences in both student admissions and faculty and staff employment.

ISMAEL ROLDAN

No doubt with an eye on the presidential race, Wilson's staff touted his executive order, claiming not improbably that he was the "nation's first governor to issue an executive order rolling back affirmative action." But the regents' decision represented a first in its own right, since no other public university had decided to forgo preferences. And the fact that the University of California, arguably the finest public university in the country, was doing away with preferences

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had symbolic importance, since UC had been the defendant in the 1978 *Bakke* case in which the Supreme Court had approved the use of race in admissions. Wilson, who is chairman of the board of regents, deserved a major portion of the credit for its decision. He had vigorously lobbied the board members, and he did not flinch from vicious personal attacks accusing him of racism.

There was still more to Wilson's attack on affirmative action. In August he filed a lawsuit to invalidate a group of state statutes requiring or encouraging preferences in employment and contracting. Under relevant Supreme Court rulings these statutes are unconstitutional, as Wilson concluded. He could have asked the legislature to repeal them, but there was no chance the Democratic legislature would have agreed. And—unlike a president—Wilson did not have the option of simply refusing to enforce laws he deemed unconstitutional; the state constitution prohibits the executive's non-enforcement of a statute unless an appellate court has ruled it is indeed unconstitutional.

According to the Supreme Court's decision in *City of Richmond* v. *Croson* (1989), a state must have a compelling reason for adopting a racial preference, and the preference must be "narrowly tailored" to minimize its discriminatory impact; otherwise, the preference is unconstitutional. The justification for a preference, the Court has elaborated, must be rooted in specific findings of discrimination. Wilson's lawsuit shows how California statutes are at odds with what the Supreme Court demands.

For example, one law requires all state agencies to establish affirmative action programs designed to achieve racial and ethnic proportionality in their work forces. In passing this law, however, the California legislature made no findings of discrimination against those the agencies would prefer in order to achieve proportionality. Nor did the legislature make such findings when it enacted a statute requiring the board of each community college district to establish affirmative action goals for hiring and promoting "persons who are underrepresented in the work force compared to their number in the population, including . . . women and persons of racial and ethnic backgrounds" in all university jobs.

The statutes involving contracting that Wilson challenges are laughably unconstitutional. Consider, for example, the law requiring agencies and departments to award to minorities a certain percentage of contracts for commodities, services, and construction. Again, in passing the law, the legislature offered no findings of discrimination against the minorities targeted for preferential treatment. The legislature was quite specific, however, about which groups it wished to target:

> an ethnic person of color and who is: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a per-

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POLITICS

by Grover G. Norquist

The Bad News Is Wrong

On Tuesday, November 7, Paul Patton was elected governor of Kentucky, after campaigning on a platform of tax cuts, the need to reduce the size of government, reforming the liberal state education act, imposing the death penalty, building more prisons, restoring prayer in schools, opposing gun control, and advocating a "concealed carry" handgun law.

He was the Democratic candidate.

Patton also kept Bill Clinton out of Kentucky during the campaign, and publicly stated that if the president continued his regulatory attacks on the tobacco industry, he would never vote for him again.

Desperate for good news after the election defeats of 1993 and 1994, the Democratic Party is eager to take Patton's off-year election victory as a sign that they have turned the corner—or at least stabilized their condition. But, despite the major media spin, all evidence points to the contrary.

The Democrats did not gain one governorship in the November elections, and only narrowly held on to Kentucky, one of but nineteen states with a Democratic governor. Holding Kentucky should have been easy; the state's party registration is 65 percent Democrat and 30 percent Republican, with only 5 percent unaffiliated. The previous Republican candidates for governor, in 1987 and 1991, received only 35 percent of the vote. Patton defeated his Republican opponent, Larry Forgy, by a mere 51-49 margin.

In fact, Forgy did better than any other Republican candidate for governor in Kentucky since 1967, when Louis Nunn became the first Republican governor of the state since 1947. In the last twenty-eight years, the only Kentucky Republican elected statewide has been Senator Mitch McConnell, who managed to win with 50 percent in 1984, the year of the Reagan landslide, and a whopping 52 percent in 1990.

Still, the Democratic National Committee immediately set to work to turn this mole hill into a mountain by pronouncing Patton's victory a repudiation of Gingrichism and the Republican budget proposal. Of course, if all they can muster in a Democratic state is a 51-49 win, they are in serious trouble.

Curt Anderson, political director of the Republican National Committee, worked with the Republican campaign in Kentucky. Anderson points out that tracking polls showed that when the Democrats ran negative ads on the Republican Medicare reform plans, the numbers were flat. "Morphing" ads comparing the Republicans to Gingrich did not move poll numbers, either.

But on October 23 Patton announced he was "going negative" and that it was "not going to be pretty." It was a strategy taken from the 1994 advice of former Democratic House whip Tony Coelho—avoid the issues, and go negative and personal. In 1994 it worked for Ted Kennedy against Mitt Romney in Massachusetts, and for Lawton Chiles against Jeb Bush for the Florida governorship. And it worked for Patton in Kentucky; the barrage of personal attacks on Forgy's business practices dropped his numbers six percent.

The Democrats found additional solace in the Virginia state elections, in which they had feared losing control of both houses and in fact only lost the state senate. In the house of delegates there was no change in the 52-48 Democratic advantage. But in the senate, Republicans defeated majority leader Hunter Andrews and won a net gain of two seats, ending Democratic control of the Virginia senate for the first time this century—in fact, for the first time in any century.

In 1983 Republicans had only nine seats in the 40-member chamber. That number climbed to ten seats in 1987, eighteen in 1991, and now to twenty. (The 20-20 split also means that Democratic lieutenant governor Don Beyer now finds himself in the ticklish position of holding the tie-breaking vote. He will doubtless be forced to take public positions on some of his party's less popular issues.)

In the house of delegates, Republicans held only thirty-three seats in 1983, half as many as the Democrats. In the dozen years since, Republicans have gone from those thirty-three seats to forty-seven, while Democrats have fallen from sixty-six to fifty-two (with one independent). A few more "victories" like this, and the Democrats will be out of power.

Virginia had been targeted by gun-control advocates because of Governor Allen's successful fight to pass a "concealed carry" gun law that allows all citizens without criminal records to carry concealed weapons in the state. Thirteen other states have passed concealed carry gun laws in the last two years, and Louisiana and Kentucky are expected to do so soon. A "backlash" of gun-control advocates was predicted for Virginia but didn't materialize; pro-gun advocates had a net gain of two seats in the state senate and one in the house.

In New Jersey, Republicans maintained control of the state assembly with a margin of fifty Republicans to thirty Democrats, down from the pre-election margin of 53-27. The state's average loss for assembly seats of the party controlling the governorship is eight. Yet Republicans maintained landslide majorities in both houses, which they first won in the wake

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