

"RIGHTING THE VOTE" ...
SHOULD LEAD TO THE "RIGHT TO VOTE"

By Congressman Jesse L. Jackson, Jr.
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INTRODUCTION

Both personality and issues will affect who is elected President in 2004. Most agree George W. Bush's personality and John Kerry's issues are most appealing. Both parties and candidates are talking about a wide variety of issues and focused on *getting votes*. But could it be there is actually a more fundamental issue that is central to this campaign than jobs, health care and fighting terrorism?

What may actually be central in this campaign is the *foundation* upon which our democracy rests - *the vote itself!*

The 15th Amendment, added to the Constitution in 1870, outlawed discrimination in voting on the basis of race. Following the 1954 *Brown* "equal protection" decision, the 1965 Voting Rights Act was the 15th Amendment's implementing legislation and was supposed to outlaw discrimination and secure the vote for a broad range of minorities. And after the election debacle of 2000, most Americans thought Congress had basically fixed our voting system when it passed the Help America Vote Act (HAVA) and provided over \$2 billion to implement it.

So why are we here today to make sure that those who have legally registered to vote are actually allowed to vote? Why are we here to make sure that "Ballot Watch" or "Ballot Security" bullies don't intimidate voters, especially minority voters, on their way to or at the polls? Why are we even concerned that all votes cast may not be accurately counted? How can this be in the most advanced democracy in the world?

A recent *New York Times* editorial put it this way: "In a well-run democracy, the government would be running elections of...unquestioned integrity...But the mechanics of American democracy are deeply flawed, and Congress, state governments and local elections officials have been *unwilling* (italics mine) to do what is necessary to fix them. If this election is going to be a fair and honest one, concerned citizens will have to do their part to ensure that every vote counts."

Congress may or may not be *willing* to fix our flawed system. The hard reality is Congress is *unable* to fix it. Why? Because our Constitution has provided us with a "states' rights" voting system and Congress has *no power* to fix it. Unlike free speech, assembly and religion, *there is no individual right to vote in the Constitution!* And *the Constitution has not authorized Congress to fix it!*

Only by adding an affirmative individual right to vote to the Constitution - *and assigning Congress the power* - can the peoples' representatives design and implement a unitary

voting system that provides every American an equal opportunity to vote and assures them that every vote will be counted accurately.

In short, then, we are here today as American citizens, in the most advanced democracy in the world, *given the assignment to monitor our government-administered democracy with voluntary oversight!*

I hope that our focus today on protecting and "righting (r-i-g-h-t-i-n-g) the vote" in the election of 2004 leads us - logically and politically - to fight for the "right to vote"!

I. PROTECTING THE VOTE

We have no choice. We must protect the vote! We must *volunteer* to protect the vote in our democracy because we cannot trust the people running our current government to protect it for us. They stole the election in 2000. They will steal it again in 2004 if they can get away with it and if we are not vigilant. The Bush Administration has the same *spirit* as those who opposed adding the 15th Amendment in the first place. Many of them are the same people who objected to the *Brown* decision in 1954. Some of those in charge of our current government opposed the 1965 Voting Rights Act. And we know they will attempt to weaken Sections 2 and 5 when the Voting Rights Act comes up for extension in 2007. We have seen the current *spirit* in the past.

That *spirit* recently led this administration's Homeland Security Department to attempt to disenfranchise thousands of new Latino voters on the Florida rolls - until a judge intervened. We know the *spirit* of suppressing minority voters is alive and well in 2004 - and it goes beyond Michigan's state legislator, John Pappageorge. We know about Republican "Ballot Watch" and "Ballot Security" teams heading into minority communities in Philadelphia, New Jersey, Louisiana and elsewhere to intimidate minority voters. We know about disinformation and misinformation campaigns that tell our people they can show up days after an election and vote, and polling places that are closed or moved at the last minute without notification.

We know the *spirit* of telling minority voters that they could be arrested if they show up to vote and have outstanding parking tickets or overdue rent. We know the *spirit* of demanding that voters produce identification when it's not required, taking photographs of voters and singling out immigrant voters for special scare tactics.

In many cases the government itself has been involved in the mischief. In South Dakota's hard-fought statewide congressional race poll workers illegally turned away Native American voters who could not provide photo identification. We know in Texas a white district attorney threatened to prosecute students at Prairie View A&M if they registered to vote from campus, even though they are entitled to do so by law. In Florida in 2004 we know the Governor's election official, Glenda Hood, tried the same ex-felon disenfranchisement stunt that Katherine Harris pulled in the 2000 campaign - to the benefit of the Governor's brother. She continued until the press exposed it. And we're all suspicious of how the *provisional ballots* are being treated.

In Florida, Ms. Hood insisted that thousands of registration forms on which a citizenship box was not checked was invalid even though elsewhere on the forms each applicant had sworn that he or she was a citizen. We know sin is deeper than skin. In Ohio, Ken Blackwell tried to use similar technicalities to disenfranchise voters until publicly embarrassed. He tried to knock new voters off of the rolls if they did not use 80-pound paper stock to register to vote. We also discovered the security problems associated with electronic voting. Yet the President of the Diebold electronic voting machine company in Ohio - in a Bush fundraising letter - said he would do everything in his power to deliver Ohio for the President. Finally, we are all familiar with the continued disenfranchisement of ex-felons in many states, which has an unmistakable racial component to it.

But change is on the way. You represent - for the first time in American history - a coordinated nationwide nonpartisan voluntary election-monitoring effort to protect and insure the integrity of the vote. The Lawyers' Committee for Civil Rights Under Law, People for the American Way, Election Protection (www.electionprotection2004.org), the RainbowPUSH Coalition, the NAACP, the NAACP Legal Defense Fund and many other vote conscious organizations are putting volunteers on the ground in swing states like Florida and Ohio to distribute voters' bills of rights, and to identify and report problems at the polls. You are training volunteers to provide immediate help to voters who have problems. You are providing voters with access to roving teams of lawyers who are prepared to board jets in order to get to problem areas or go to court if necessary.

The *New York Times* points out that you have provided a volunteer legal staff and a nationwide toll-free hot line (866-OUR-VOTE) to answer questions and field reports of trouble. There is a special program coordinating law-student volunteers, Impact2004 (www.impact2004.org) which is providing low-cost transportation in the swing states of Ohio and Pennsylvania.

Verifiedvoting.org, a leading critic of electronic voting in its current form, has started an election protection program called TechWatch (www.verifiedvoting.org/techwatch), which is signing up thousands of volunteers, particularly computer scientists. TechWatch says its volunteers will observe the pre-election "logic and accuracy" done on the voting machines, watch actual voting on Election Day and monitor the post-election vote counting. Their goal is not only to identify electronic voting problems in this election, but also to start developing a database that can be used to evaluate and improve electronic voting in the future.

II. BEYOND "RIGHTING THE VOTE" FIGHT FOR THE "RIGHT TO VOTE"

What is the major lesson we should have learned from *Bush v. Gore* in 2000? *Bush v. Gore* said, "The individual citizen has no federal constitutional right to vote for electors for the President of the United States." *In other words the American people have no individual right to vote in their Constitution!* Therefore, I argue, following our fight to protect the vote in 2004 - which I fully and strongly support - we must fight to put an affirmative individual right to vote in the Constitution. I've introduced such an

amendment in the last two Congresses - House Joint Resolution 28 - and we are approaching 50 co-sponsors.

Surprisingly, to me, there are actually some who argue against such an amendment. They argue that the "right to vote" can be *construed* to be in the Constitution based on a combination of the 15th Amendment's prohibition against discrimination in voting, the 14th Amendment's "equal protection" clause, the new interpretation of the 14th Amendment in *Brown*, and court precedent since. They argue, similar to *Roe v. Wade*, that the right to "privacy" and therefore "choice" for women - which the Supreme Court *construed* as being in the Constitution - is a fundamental right. They rightly argue that a right doesn't always have to be *explicitly* in the Constitution to be a fundamental right.

I'm *convinced* that if Congress had the will, under our current Constitution, it could do much more to strengthen the administration of a unitary voting system, and protect and fully count all votes. Most Americans are unaware, however, that, nationally, according to a joint study by Cal-Tech and MIT, somewhere between four and six million votes were not counted in 2000 because many states had similar problems to what occurred in Florida. The state of Illinois was the worst.

But I'm *unconvinced*, absent a voting rights amendment, that any solutions to our most pressing voting rights problems will be universal or sustainable. How can we achieve equal protection in 13,000 separate and unequally administered voting jurisdictions?

Without an *individual* voting rights amendment, any law Congress passed would only apply to *federal* elections, not state and local elections.

With a *citizenship* right to vote, the language of the 14th Amendment and the question of ex-felons - indeed as in Maine and Vermont, the question of current felons being allowed to vote - melts away.

With an *individual* right to vote in the Constitution, the nearly 600,000 disenfranchised citizens living in our nation's Capital, the District of Columbia, have a greater claim before the Congress and the Federal Courts to equal protection under the law. Therefore, their case for statehood or voting rights - two U.S. Senators and a U.S. Representative - would be strengthened.

If the individual right to vote is already in the Constitution, why didn't it take precedent over Florida's *arbitrary* December 12 deadline to count all the votes? In my view the reason is, constitutionally, states' rights overruled the individual's right to have their vote counted.

Finally, wouldn't individual voting rights be stronger and more secure if the right to vote was *explicitly* in the Constitution rather than *implicitly construed* to be there?

III. BEYOND THE "RIGHT TO VOTE," END THE ELECTORAL COLLEGE

Beyond "righting the vote" in 2004, and beyond adding a "right to vote" amendment to the Constitution, we must fight for a purer form of representative democracy in America. The gold standard of democracy is "one person, one vote."

It's time the American people did to the election of their President and Vice President what we did by adding the 17th Amendment with respect to U.S. Senators - let the American people elect them directly instead of having state legislatures select them for us.

Similarly it's time the American people, our republican form of government and our representative democracy were allowed to elect their President and Vice President directly instead of indirectly through the Electoral College. I've introduced legislation to end the Electoral College (House Joint Resolution 109), which requires the winner to receive a *majority* of the votes in order to be elected. The majority requirement would force Congress to adopt the Instant Runoff Voting (IRV) method of electing candidates and I have introduced legislation to achieve that goal as well - House Resolution 5293.

The rationale for establishing the Electoral College in the first place violated the one-person, one-vote principle. The Electoral College was established to make sure the small states and slave-owning southern states, which were interested in protecting their peculiar institution, would have *disproportionate* power and, therefore, a disproportionate say over who would be elected President and Vice President.

The American people understand democracy and are fully mature democrats. It's time to end the paternalism and plantation politics of the Electoral College.

CONCLUSION

Protect the vote on November 2nd. Yes. End schemes to undermine the vote. Yes. Demand an end to discrimination and harassment in voting. Yes. Make sure that all legal votes are fully and accurately counted. Yes. That's your mission today.

But beyond November 2nd it's time to fight to add an individual *right* to vote as a new amendment to the Constitution. Beyond November 2nd it's time to fight for one-person, one-vote, and bring an end to the Electoral College.