

Voting Rights Amendment Kit

- Voting Rights Amendment Petition
- Basic Fact Sheet
- Question & Answer Sheet
- Op-Ed Pieces written by Congressman Jesse L. Jackson, Jr.
- Dear Colleague Letters
- Model Letter you can send to U.S. House and U.S. Senate members
- Model Resolution for Governmental and Secular Organizations to pass
- Model Resolution for Religious Organizations to pass
- Action Plan
 1. Call your U.S. Representative and urge them to support House Joint Resolution 28 (H.J. Res. 28), the Voting Rights Amendment.
 2. Call your two U.S. Senators and urge them to support a similar Voting Rights Amendment in the Senate.
 3. Send a letter to your U.S. Representative and two U.S. Senators urging them to support a Voting Rights Amendment (see draft of a model letter to House and Senate members).
 4. Sign and return the Voting Rights Amendment Petition.
 5. Copy the Voting Rights Amendment Petition and get as many others to sign and return it as you can.
 6. Get your state legislature, county commission, city council and/or various secular or religious organizations to pass a resolution in support of H. J. Res. 28 (see model governmental or secular and religious resolutions above).
 7. Write opinion pieces for your local newspapers and organizational newsletters.
 8. Go on or call local or national radio talk shows to talk about the need for a Voting Rights Amendment.
 9. Be a guest on television shows - commercial, cable or public access - to talk about the need for a Voting Rights Amendment.
 10. Meet with the editorial boards of your local newspapers to ask them to give editorial support for H.J. Res. 28, the Voting Rights Amendment.
 11. Meet with radio and TV writers of editorials and/or public service announcements asking for their support of a Voting Rights Amendment.

Voting Rights Amendment Fact Sheet

Most Americans believe that the "legal right to vote" in our democracy is explicit (not just implicit) in our Constitution and laws. However, our Constitution only provides explicitly for *non-discrimination in voting* on the basis of race, sex, and age in the 15th, 19th and 26th Amendments respectively.

Even though the "vote of the people" is perceived as supreme in our democracy - because voting rights are protective of all other rights - Justice Scalia in *Bush v. Gore* constantly reminded Al Gore's lawyers that there is no explicit or fundamental right to suffrage in the Constitution. The Supreme Court majority concluded: "*the individual citizen has no federal constitutional right to vote for electors for the President of the United States.*" (*Bush v. Gore*, 531 U.S. 98, 104 (2000))

Voting in the United States is based on the constitutional principle of states' rights. The 10th Amendment to the Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the State, are reserved to the States respectively, or to the people." Since the word "vote" appears in the Constitution only with respect to *non-discrimination*, the so-called *right to vote* is a "state right." *Only* a constitutional amendment would give every American *an individual affirmative citizenship right to vote.*

Our states' rights voting *system* means there are approximately 13,000 separately administered voting jurisdictions in the United States. Our "states' rights" voting system is *structured* to be *separate and unequal.*

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.

Without the constitutional right to vote, Congress can pass voter legislation - and Congressman Jackson supports progressive electoral reform legislation - but it leaves the "states' rights" *system* in place. Currently, Congress mostly uses financial and other incentives to entice the states to cooperate and comply with the law. It's one reason there have been so many problems with the recently passed Help America Vote Act and why many states still have not fully complied with the law.

Attorney General John Ashcroft sent a letter to the National Rifle Association. In it he wrote: "Let me state unequivocally my view that the text and the original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms." If Americans had a choice between the *RIGHT TO A GUN* and the *RIGHT TO VOTE*, it would be nearly unanimous. Americans would choose the right to vote! If that is the priority of the American people, then we should have the wisdom and political will to codify it in the form of a constitutional amendment. *House Joint Resolution 28 (H. J. Res. 28) is such an amendment!*

What are the advantages of fighting for human rights and constitutional amendments?

Human rights and constitutional amendments are:

- non-partisan* (they're neither Democratic nor Republican);
- non-ideological* (they're not liberal, moderate, or conservative);
- non-programmatic* (they don't require a particular means, approach or program to realize them); and
- non-special interest* (they're for *all* Americans).

We can *experiment* to find the best *means* of fulfilling such a constitutional right!

To fulfill the democratic ideal, an affirmative voting rights constitutional amendment still lies in the future. According to Harvard's Constitutional Law Professor Alexander Keyssar one-hundred-and-eight (108) of the one-hundred-and-nineteen (119) nations in the world that elect their representatives to all levels of government in some democratic fashion explicitly guarantee their citizens the right to vote in their Constitution. Both Afghanistan's Constitution and Iraq's interim legal document contains a right to vote.

The United States is one of the eleven nations in the world that doesn't provide an explicit right to vote in its Constitution.

YOU can help to change this!

To find out if your member of the House of Representatives is a co-sponsor of House Joint Resolution 28 go to <http://thomas.loc.gov>; enter H J Res 28 where it says "Bill Number"; click on Search; click on "Bill Summary & Status; and finally click on "Cosponsors."

Call your *U.S. Representative* and ask them to become a co-sponsor of House Joint Resolution 28!

Call your *two U.S. Senators* and ask them to introduce or co-sponsor a similar bill in the Senate!

Voting Rights Amendment Questions & Answers

Q. I'm a registered voter and every time there's an election I'm entitled to vote - and I vote. What do you mean I don't have a "right to vote?"

A. I mean as an American you don't have a *citizenship* right to vote. Voting in the United States is a "state right" not a "citizenship right."

Q. Who said I don't have a citizenship right to vote?

A. The U.S. Supreme Court in *Bush v. Gore* (2000). In their ruling the majority of the Justices said in very plain language, "*the individual citizen has no federal constitutional right to vote for electors for the President of the United States.*" It's electors in the Electoral College, not the direct popular vote of the people that elects the President and Vice President in the United States. State legislatures appoint electors to the Electoral College and those electors can, if they choose, ignore the popular will (vote) of the people in casting their vote for President and Vice President.

Q. What's the difference between a *citizenship right* and a *state right*?

A. The 1st Amendment contains *individual citizenship rights* that follow or go with you *from state to state* (that is, they are the same wherever you are in the U.S.); and they are protected and enforced by the federal government - you have equal protection under the law by the executive, legislative and judicial branches of the federal government. Therefore, as a result of the 1st Amendment, every American citizen has an *individual right* to free speech, freedom of assembly, and religious freedom (or to choose no religion at all), regardless of which state you are in - individual rights that are protected by the federal government. A *state right* is *NOT* an *American citizenship right* (that is, not protected by the federal government), but a right defined and protected by each state - and limited to that state. Therefore, when it comes to voting, each state is different (separate and unequal) because voting is a *state right*.

Q. But doesn't the 15th, 19th and 26th Amendments give African Americans, women and 18-year-olds the right to vote?

A. No! Each of those amendments are stated in the negative and guarantee African Americans, women and 18-year-olds respectively *non-discrimination in voting*. They do *not* grant them an affirmative individual right to vote that follows them from state-to-state.

Q. So what is the 1965 Voting *Rights* Act (VRA)?

A. Technically, it is misnamed. It should have been called the 1965 *Non-Discrimination* in Voting Act. The 1965 VRA was the implementing legislation of the 15th Amendment (ratified on December 18, 1870). It could only be implemented in our day after *Brown* (1954) overturned *Plessy* (1896).

Q. What about the 1993 Motor Voter Act and the 2002 Help America Vote Act (HAVA)?

A. Both are further implementing the 15th Amendment and both accept and do not challenge the *constitutional foundation* of "states' rights" in voting.

Q. Why do we need a Voting Rights Amendment?

A. Any power not given to the federal government by the Constitution belongs to the states. "Slavery" was *not* in the Constitution. It was protected by the 10th Amendment, the constitutional basis of "states' rights." The affirmative individual right to vote is *not* in the Constitution therefore it is a state right. Just as it took a 13th Amendment to overcome the limitations of the 10th Amendment to outlaw slavery, it will take a 28th Amendment (House Joint Resolution 28) to overcome the limitations of the 10th Amendment with respect to "states' rights" in voting.

Q. What are the provisions in House Joint Resolution 28?

A. *First* it would give every American an individual right to vote. *Second* when Americans turn 18 (male and female) and are required to register with the Selective Service System they would *at the same time automatically* be registered to vote. The Selective Service System would send their voter registration to their local board of election and in the future the U.S. Postal Service would automatically transfer any change of address from the old local board of election to the new board of election. *Third*, while this amendment does not eliminate the Electoral College it does require the Electoral College vote in every state to reflect the majority popular vote in that state. *Fourth* it would give Congress the power and authority to make laws that would provide a unitary voting system that is fair to all - that is, give every American citizen an equal access to vote, shield our voting system from fraud and abuse, insure that every vote is accurately counted, and review our voting system every four years to make sure it is the best and most secure voting system in the world.

Q. Does House Joint Resolution 28, the Voting Rights Amendment, eliminate the Electoral College?

A. No! The elimination of the Electoral College is proposed in House Joint Resolution 36 (109th Congress), which would allow us to elect the President and Vice President on the basis of a majority of the popular vote - or one-person, one-vote. The two ideas - a *right to vote* and *elimination of the Electoral College* - were deliberately separated because many Americans support only one or the other idea, but not both ideas together. H. J. Res. 28 only requires the Electors from each state to cast their Electoral College votes for the candidate who wins a majority of the popular votes in that state. Under the present Constitution, a state legislature can ignore the popular vote in a state and elect their own electors to the Electoral College regardless of the popular vote in the state - as the Republicans were prepared to do in Florida in 2000.

Q. What are the major objections to House Joint Resolution 28?

A. They fall in two broad categories: (A) a misunderstanding or a misstatement of the issue and problem; and (B) an argument that even though the "right to vote" is not *explicitly* in the Constitution - similar to *Roe v. Wade's* claim of a right to privacy - a fundamental right to vote can be *construed* to be there.

The following is a more detail explanation of the two objections.

(A) The misunderstanding or misstatement of the problem can best be illustrated by an exchange that took place between the Rev. Al Sharpton and Senator Bob Graham during a Democratic presidential primary debate. In light of the presidential fiasco in Florida in 2000, and during the South Carolina Democratic presidential candidate's debate on May 3, 2003, the Rev. Al Sharpton asked Florida Senator Bob Graham if he would support adding a voting rights amendment to the Constitution. In essence Senator Graham said the following: "I haven't seen the legislation, but probably not. I believe states should remain in control of election procedures. And I'm against federalizing the election process." Let's analyze his arguments.

First, it means Senator Graham essentially supports the *status quo* when it comes to voting rights because, under current law, 2000 could happen again in Florida or elsewhere - and many of the same voting problems were manifest in 2004 even though the election was not close enough for the media to highlight or refocus attention on them as intensely again.

- For example, in Ohio, even though the election outcome was not in doubt, months after the 2004 election, votes were still being counted.
- The winner of the popular vote losing has happened four times in our

history - 1824, 1876, 1888 and 2000.

- Most Americans are totally unaware that, nationally, according to a joint study by the California Institute of Technology and Massachusetts Institute of Technology, somewhere between four and six million votes were not counted in 2000 because many states had similar problems to what occurred in Florida.
- Other states' election systems didn't get the same exposure as Florida's because the winner in other states was not in doubt. For example, Illinois was worse than Florida - it didn't count nearly 200,000 votes with similar problems to Florida's - but because Gore won Illinois by 569,605 votes, the winner of the state's electoral votes was not in doubt. In Illinois and other states too, *most of the problems - with voting and machines - were concentrated in the poor and minority communities.*

"Amazingly, the government of the United States conducts and provides no official count of the vote for president." (*Overruling Democracy - The Supreme Court vs. The American People*, by Jamin B. Raskin, p. 66) Can you imagine the United States recognizing a close and hotly contested third world "democratic" election where the citizens had no right to vote, as much as six percent of the total vote was not counted; where there was no official results provided by the government; and where that country's Supreme Court declared it's personal and ideological friend the winner, even though the declared winner did not get the most popular votes?

Second it means Senator Graham supports "states' rights" when it comes to voting rights. Senator Graham and others need to be reminded that slavery was not supported directly in the Constitution. The word "slavery" never appeared in the Constitution. Slavery was supported constitutionally because states had a right - "states' rights" - to provide legal cover allowing private citizens to own other human beings. Today the same states' rights *system* continues with respect to voting.

Third, H. J. Res. 28 does not *federalize* voting any more than the First Amendment federalizes free speech or freedom of religion. The First Amendment's right to free speech and religion is an *individual citizenship right* (not a "federal right") applicable to every American that is protected by the federal government. It's an individual right that can be protected with federal legislation and upheld in a federal court of law. Likewise, a voting rights amendment would grant every American an *individual citizenship right to vote* that would ultimately be affirmed by Congress through legislation and validated through Supreme Court interpretation.

Fourth in essence, then, in the South Carolina debate, Senator Graham chose "states' rights" over an "individual right." Senator Graham chose Florida's

right to set an arbitrary December 12 deadline to count all the votes, which took precedence over every individual American's vote being counted.

Fifth Attorney General John Ashcroft sent a letter to the National Rifle Association asserting that every American has an individual constitutional **RIGHT TO A GUN**. In it he wrote: "Let me state unequivocally my view that the text and the original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms." Some agree and others disagree with that interpretation. However, the Supreme Court made it absolutely clear in *Bush v. Gore* - "there is **NO INDIVIDUAL CITIZENSHIP RIGHT TO VOTE...**" in the Constitution!

(B) There is a group of legal scholars who believe federal legislation can be written under our current constitutional construct and legal structure that would sufficiently solve all of our voting problems. If Congress had the will, under our current Constitution, it could do much more to strengthen the administration of a unitary voting system, protect the vote and fully count all votes. However, absent a voting rights amendment, any solutions to our most pressing voting rights problems will not be universal or sustainable.

How can we achieve equal protection under the law in voting in 13,000 separate and unequally administered voting jurisdictions? We can't!

Consider three problems that cannot be solved under our current Constitution but could be solved under the individual right to vote in House Joint Resolution 28: (1) the lack of voting rights or statehood in Washington, DC; (2) the issue of ex-felons; and (3) local elections.

First consider the political disenfranchisement of the citizens of Washington, DC. For example, Congressman Jackson was born in South Carolina, raised in Chicago and went to college in North Carolina. As an American citizen, two U.S. Senators and a U.S. Representative automatically represented him while in South Carolina, Illinois and North Carolina. However, when he went to high school in Washington, DC, *he was still a U.S. citizen, but he had no voting representation in Congress.*

Under the current Constitution, DC has tried to get such political representation through the process of a *constitutional amendment* - and it failed because not enough states ratified it. In 1993 the *legislative* route was tried and statehood was denied - the first time in American history a people were denied statehood that met all the historic criteria for admission as a state. They also tried the *judicial* route and the judges ruled against them. Ignoring the democratic ideal of voting, the court said, "The Equal Protection Clause does not protect the right of all citizens to vote, but rather the right of all *qualified* citizens to vote" (*Alexander v. Daley*, 90 F. Supp. 2d, 35, 66, emphasis added). "To be qualified, you must belong to a `state' within the meaning of Article I

and the Seventeenth Amendment and must be granted the right to vote by the state." (*Overruling Democracy - The Supreme Court vs. The American People*, By Jamin B. Raskin, p. 36).

Granting all Americans a constitutional *citizenship right* to vote would put the disenfranchised DC residents on an equal footing before the law with all other Americans and virtually make inevitable their gaining voting rights or statehood - and the resulting full political representation in Congress.

Second, under the current Constitution's states' rights voting structure, Congress *does not have the power or authority* to establish a unitary voting system. We are stuck with a states' rights structure and privatized election mechanics - that is, stuck with the Florida's, Illinois', Katherine Harris', Ken Blackwells' and Diebold's of the world. Under the Help America Vote Act (HAVA) - passed after the 2000-election debacle - Congress authorized \$3.8 billion to improve the administration of our election system. By the 2004 election only a hand full of states had fully implemented improved systems. New York had not even passed implementing legislation to *quality* to receive HAVA funds!

Third, even those legal scholars who say a fundamental right to vote can be *construed* to be in the Constitution admit that Congress can only pass a law that would apply to federal elections but would not apply to state and local elections.

It is obvious that the right to vote would be clearer and more secure if it were explicitly in the Constitution instead of having to be construed to be there!

DO AMERICANS HAVE THE RIGHT TO VOTE?
Op-Ed By Congressman Jesse L. Jackson, Jr. (D-IL-2)

Just below the political radar there's a basic democratic question being discussed or fiercely debated among academics, civil rights leaders and politicians from both political parties. The question? Is the *individual right to vote* guaranteed in our Constitution?

Bush v. Gore (2000) said, "the individual citizen has no federal constitutional right to vote for electors for the President of the United States." Thus, the simple answer appears to be "no."

Others, Harvard Law Professor Laurence H. Tribe among them, argue that the "equal protection" and "non-discrimination in voting" clauses of the Fourteenth and Fifteenth Amendments and Supreme Court precedents since *Brown* (1954), can be construed to grant the individual citizen the fundamental right to vote in the Constitution.

On July 1, during a Q & A session at the RainbowPUSH Coalition Convention in Chicago, former President Bill Clinton, after careful questioning, acknowledged, constitutionally, we have a voting system largely based on "states' rights" and he supported adding an individual voting rights amendment to the Constitution.

August 6, at the UNITY: Journalists of Color Convention, Roland Martin asked President George W. Bush: "In your remarks you said that 8 million people in Afghanistan registered to vote, and as you said, exercised their God-given right to vote...That may be a right from God, but it's not guaranteed in the U.S. Constitution...And in this age of new constitutional amendments, will you endorse a constitutional amendment guaranteeing every American the right to vote in federal elections?" President Bush responded: "I'll consider it."

In light of the fact that the current Constitution allows state legislatures, not individual voters, to select electors to elect the President through the Electoral College - as Florida's legislature threatened to do in 2000 if Gore had won the most popular votes - it would be wise for Democrats, Kerry-Edwards, indeed, anyone who believes in democracy, to see the value of adding an individual voting rights amendment to the Constitution and no longer allow "states' rights" almost absolute control over our election process.

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. My 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?

For example, I was born in South Carolina, raised in Illinois and went to college in North Carolina. While a resident in each of those states, the simple fact that I'm an American entitled me to representation by two Senators and a Representative. However, while working in Congress I live in DC where *American citizens* - with the same obligation to pay taxes and willingness to fight and die in defense of our nation - experience taxation without voting representation in Congress. They are *equal* American citizens in obligation but treated *unequally* politically. They've tried political enfranchisement through a constitutional amendment, an "equal protection" lawsuit, and statehood through the Congress, only to be rejected. An individual voting rights amendment would give them equal citizenship status and entitle them to equal representation in Congress.

Most Americans are aware that in 2000 Florida removed over 50,000 voters claiming, erroneously, they were ex-felons. Florida recently tried the same stunt again. Nationally, nearly five million ex-felons, who have fully paid their debt to society, are permanently barred from voting. As a legacy of slavery, such laws are disproportionately in the South where fifty-three percent of African Americans live. Only a voting rights amendment can overcome many states determination to exclude them.

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

And 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, 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?

DO AMERICANS HAVE THE RIGHT TO VOTE?
For Tavis Smiley's PBS "Election 2004 Special Features"
By Congressman Jesse L. Jackson, Jr. (D-IL-2)

The United States sees itself as the center of world democracy. But do Americans have the right to vote? Most Americans will be shocked to discover the answer is "No." Unlike the First Amendment's guarantee of freedom of religion, press and assembly, the *individual right to vote* is not guaranteed in our Constitution!

Most Americans are also unaware that, according to a joint study by Cal-Tech and MIT, somewhere between four and six million votes nationally were not counted in 2000. Many states had similar problems to what occurred in Florida. My state of Illinois was the worst. Florida got the attention only because of the closeness of their vote.

Voting in America is overseen by 13,000 different election administrations, all separate and unequal, which is reminiscent of the legal theory that established Jim Crow legal segregation for 58 years as a result of the 1896 *Plessy v. Ferguson* decision.

The 15th, 19th and 26th Amendments prohibit *discrimination* in voting on the basis of race, sex and age respectively, but they do not affirmatively guarantee the right to vote. Voting in America is (like slavery was) essentially a 10th Amendment issue - "states' rights." Slavery is gone - overcome by adding the 13th Amendment to the Constitution - but the states' rights *system* of voting remains.

The U.S. Supreme Court ruled in *Bush v. Gore* (2000) that "the individual citizen has no federal constitutional right to vote for electors for the President of the United States." In other words, Florida's state right to oversee the election took precedent over counting every individual vote - or, legally, states' rights triumphed over individual rights. As a result, George Bush instead of Al Gore is President of the United States today.

In essence the Court said, since there is no affirmative right to vote in the Constitution, what does the Florida state statute say? It said Katherine Harris (the Secretary of State; and co-chair of the Bush Campaign) is in charge of the election and, according to *Florida law* all the votes must be counted by midnight, December 12. Since the Court decision came down at 10 pm on December 12, she said, in essence, if you can't count all the votes in the next two hours George Bush is the President.

But just in case the Court had ordered all of the votes counted and it turned out that Al Gore had won the most popular votes in Florida, the Republican-controlled Florida legislature had a back-up plan. Based on the fact that there is no right to vote in the Constitution - and that the Constitution says the right to elect electors resides in the state legislature - the Florida legislature was prepared to ignore the six million popular votes, elect their own Bush electors and send them to Congress for certification. That would have been both legally and constitutionally permissible.

During a Q & A session at the Rainbow/PUSH Coalition Convention in Chicago former

President Bill Clinton, after careful questioning, acknowledged, constitutionally, we have a voting system largely based on "states' rights" and he supported adding an individual voting rights amendment to the Constitution.

At the recent UNITY: Journalists of Color Convention, Roland Martin asked President George W. Bush: "In your remarks you said that 8 million people in Afghanistan registered to vote, and as you said, exercised their God-given right to vote...That may be a right from God, but it's not guaranteed in the U.S. Constitution...And in this age of new constitutional amendments, will you endorse a constitutional amendment guaranteeing every American the right to vote in federal elections?" President Bush responded: "I'll consider it."

With the fall campaign likely to be another close race, it would be wise for Democrats, Kerry-Edwards, indeed, anyone who believes in democracy, to see to it that the value of adding an individual voting rights amendment to the Constitution becomes an issue in the 2004 campaign and no longer allow "states' rights" almost absolute control over our election process.

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.

But I'm *unconvinced*, absent a voting rights amendment, that any solutions to these and other of our most pressing voting rights problems will be universal or sustainable. How do we change the current system and prevent another "Florida" from happening? How can we achieve equal protection under the law in 13,000 separate and unequally administered voting jurisdictions?

My answer is, only by adding an affirmative right to vote amendment to the Constitution. Such an amendment would give Congress the power to establish a unitary voting system, insure that every vote is counted, and grant equal protection under the law for all voters. House Joint Resolution 28 is such an amendment. You can get involved by calling your congressperson and ask them to become a co-sponsor of this legislation.

"THE VOTE" IS CENTRAL ISSUE IN 2004
Op-Ed By Congressman Jesse L. Jackson, Jr.

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 are focused on *getting votes* - however, there may actually be something more fundamental.

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

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. Now it appears the 2004 election may be worse than 2000.

The President gave various reasons for going to war in Afghanistan and occupying Iraq, but now he says it was to establish democracy. An election of sorts was held in Afghanistan and one in Iraq is scheduled for January. Yet it is turning out that our own democracy and its voting mechanisms may *again* become the central issue in the campaign.

Many questions continue to surface. Will everyone entitled to vote actually be able to vote? Will all voters who cast legal votes have their votes counted accurately? Are the new electronic voting machines reliable or will they be manipulated? If a machine's results are suspicious can they be verified through a paper trail? Have legitimate new voters been disenfranchised by partisan election officials using technicalities to knock them off of the voter rolls?

Will polling places be moved or closed at the last minute with little or no notice? Will the worst and most unreliable voting machines (punch card) disproportionately end up in minority communities as happened in Chicago, Florida and elsewhere in 2000? We now know punch card voting machines are the least reliable, but skepticism over electronic voting has led many states to keep them in place. For example, in the critical swing state of Ohio, according to a Century Foundation study, only four of 31 Ohio counties that were eligible to replace punch-card machines are actually doing so. Nationally, 32 million voters "including many in key battleground states still live in jurisdictions that will use punch card ballots," likely meaning "far fewer African-American votes will count relative to uncounted votes by white citizens."

Will harassment play a role? Local election officials threatened to discount students who registered and planned to vote from their campus at Texas' Prairie View A & M until a judge stopped them. Will election officials in other college towns have other tricks up their sleeve? Will "Ballot Security" and "Ballot Integrity" bullies attempt to suppress the vote in minority communities, especially in the African American community, which has been documented as having happened on a regular basis?

Will the Defense Department - which is responsible for members of the military and

American civilians voting from abroad, approximately 6 million voters in all - have an efficient and fair system of voting? There are some indications it won't. Military people whom it is felt are more pro-Bush are being asked to FAX their "secret" ballot to the Defense Department to be passed on to their local election board, while civilian Americans thought to be more pro-Kerry have had difficulty getting their ballots on time.

Just as Florida's election officials engaged in some hanky panky with respect to alleged ex-felons in 2000, it was tried again in 2004 with only press exposure stopping them. Will the erroneous denial of so-called ex-felons' right to vote in 2000 turn out to be another embarrassment in 2004?

Finally, after 100 million-plus popular votes will the presidency again be decided by one vote by a Supreme Court Justice? It is almost certain with all of these shenanigans, questions and administrative fallacies that if the election is close, allegations of wrongdoing will surface and there will be dozens of lawsuits seeking to change the election results.

A recent *New York Times* editorial stated, "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 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." In other words, Americans are left to monitor their government-administered democracy with voluntary oversight!

Congress may or may not be *willing* to fix our flawed system. The reality is Congress is *unable* to fix it. Why? Because we have 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 - the main lesson of *Bush v. Gore*! 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 Congress 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.

FIGHTING FOR A *RIGHT TO VOTE* CONSTITUTIONAL AMENDMENT

Position Paper Presented

At The

Center For Voting & Democracy

"Claim Democracy Conference"

By Congressman Jesse L. Jackson, Jr.

American University's

Washington College of Law

Saturday, November 22, 2003

Most Americans believe that the "legal right to vote" in our democracy is explicit (not just implicit) in our Constitution and laws. However, our Constitution only provides for ***non-discrimination in voting*** on the basis of race, sex, and age in the 15th, 19th and 26th Amendments respectively.

The U.S. Constitution contains no explicit affirmative individual right to vote!

Even though the "vote of the people" is perceived as supreme in our democracy - because voting rights are protective of all other rights - the Supreme Court in ***Bush v. Gore*** constantly reminded lawyers that there is no explicit or fundamental right to suffrage in the Constitution - "the individual citizen has no federal constitutional right to vote for electors for the President of the United States." (*Bush v. Gore*, 531 U.S. 98, 104 (2000))

Chief Justice William Rehnquist and Associate Justice Antonin Scalia besieged Gore's lawyer with inquiries premised on the assumption that there is no constitutional right of suffrage in the election of a president, and state legislatures have the legal power to choose presidential electors without recourse to a popular vote. "In the eyes of the [Supreme] Court, democracy is rooted not in the right of the American people to vote and govern but in a set of state-based institutional arrangements for selecting leaders." (*Overruling Democracy - The Supreme Court v. The American People*, By Jamin B. Raskin, p. 7)

While a voting rights constitutional amendment would be strictly non-partisan, never-the-less, the 2000 election is a splendid example of the undemocratic nature of our currently administered election systems - and there are literally thousands of them. Each state and the District of Columbia (51), counties (3,067), and thousands of municipalities administer their own election system under **state** law, with great flexibility on many issues in the variously administered voting jurisdictions. That's the chaotic dynamic that was in play in Florida's 67 counties.

In 2000, if every American had had an **individual** constitutional right to vote, every vote would have had to be counted. However, under our current "states' rights" arrangement the **state legislature** and **state law** took legal precedence over the **individual vote** and the **individual voter**.

It is also important to point out that if candidate George Bush had lost in the Supreme Court in 2000, Florida's Republican-controlled legislature was prepared to ignore the six million popular votes cast in Florida. Under **state law**, they were determined to elect, select, choose, and hand pick, if necessary, their own "Bush presidential electors" and send them to Congress for certification - even if it had turned out that Al Gore won the most popular votes in Florida.

Thus, in terms of the political consequences of our present arrangement, if all of the votes legally cast in 2000 had been counted, Al Gore and not George Bush would be President of the United States today.

The principled commitment ought to be to honest, fair and efficient elections **for everyone, for all time**. However, after 2000, any Democrat who cannot support adding a voting rights amendment to the Constitution ought to be asked to explain why!

Thus, even if all votes had been counted and Al Gore had won Florida's popular vote, and his electors had been sent to Congress, under our current Constitution the Florida legislature could have sent their slate of Bush electors to Congress and it would have been perfectly legal - and a "strict constructionist" or necessary constitutional interpretation - for Congress to have recognized the Bush electors.

Only a Voting Rights Amendment can fix these flaws in our Constitution and administration of elections.

The 10th Amendment to the Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the State, are reserved to the States respectively, or to the people." Since the word "vote" appears in the Constitution only with respect to **non-discrimination**, the so-called **right to vote** is a "state right." **Only** a constitutional amendment would give every American **an individual affirmative citizenship right to vote**.

Without the constitutional right to vote, Congress can pass voter legislation - and I support progressive electoral reform legislation - but it leaves the "states' rights" **system** in place. Currently, Congress mostly uses financial and other incentives to entice the states to cooperate and comply with the law. It's one reason there have been so many problems with the recently passed Help America Vote Act, and why many states still have not fully complied with the law.

Our "states' rights" voting system is **structured** to be "**separate and unequal**." As we saw in the 2000 election, there are 50 states, 3,067 counties, tens of thousands of cities, and many different machines and methods of voting - all "separate and unequal."

There's **ONLY ONE WAY** to legally guarantee "an equal right to vote" to every individual American and that is to add a Voting Rights Amendment to the

Constitution!

The lack of basic political rights for all Americans was made even clearer in ***Alexander v. Mineta***, a case to gain political representation for the disenfranchised citizens in our nation's capitol, the District of Columbia. Ignoring the democratic ideal of voting, the court said, "The Equal Protection Clause does not protect the right of all citizens to vote, but rather the right of all *qualified* citizens to vote" (***Alexander v. Daley***, 90 F. Supp. 2d, 35, 66, emphasis added) "To be qualified, you must belong to a `state' within the meaning of Article I and the Seventeenth Amendment and must be granted the right to vote by the state." (*Overruling Democracy - The Supreme Court vs. The American People*, By Jamin B. Raskin, p. 36)

I believe that voting is not only a ***democratic right***, it's a ***human right***. That human right is not in our Constitution! That's why I have proposed legislation to add a voting rights amendment to the U.S. Constitution based on the INDIVIDUAL RIGHT of all Americans to vote. It was introduced in the U.S. House as House Joint Resolution 28. It reads as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

SECTION 1. All citizens of the United States, who are eighteen years of age or older, shall have the right to vote in any public election held in the jurisdiction in which the citizen resides. The right to vote shall not be denied or abridged by the United States, any State, or any other public or private person or entity, except that the United States or any State may establish regulations narrowly tailored to produce efficient and honest elections.

SECTION 2. Each State shall administer public elections in the State in accordance with election performance standards established by the Congress. The Congress shall reconsider such election performance standards at least once every four years to determine if higher standards should be established to reflect improvements in methods and practices regarding the administration of elections.

SECTION 3. Each State shall provide any eligible voter the opportunity to register and vote on the day of any public election.

SECTION 4. Each State and the District constituting the seat of Government of the United States shall establish and abide by rules for appointing its respective number of Electors. Such rules shall provide for the appointment of Electors on the day designated by the Congress for holding an election for President and Vice President and shall ensure that each Elector votes for the candidate for President

and Vice President who received a majority of the popular vote in the State or District.

SECTION 5. The Congress shall have power to enforce this article by appropriate legislation.'

With this amendment in the Constitution, **all of the votes** in 2000 - to the best of our human ability and using credible and uniform criteria - would have had to have been counted. No unnecessary or arbitrary timeline cutoff would have been allowed with regard to counting votes. And the Florida legislature could not have even thought about **ignoring the six million popular** Florida votes in order to **select** presidential electors independent of the popular vote. Under this amendment, the popular vote could never be ignored and an independent legislative selection of electors could never happen.

In light of the presidential fiasco in Florida in 2000, and during the South Carolina Democratic presidential candidate's debate on May 3, 2003, Rev. Al Sharpton asked Florida Senator, Bob Graham, if he would support adding a voting rights amendment to the Constitution. In essence he said the following: "I haven't seen the legislation, but probably not. I believe states should remain in control of election procedures. And I'm against federalizing the election process."

Let's analyze his statement.

1. It means Senator Graham essentially supports the *status quo* when it comes to voting rights because, under current law, 2000 could happen again in Florida or elsewhere. The winner of the popular vote losing has happened three previous times in our history - 1824, 1876 and 1888. Most Americans are totally unaware that, nationally, according to a joint study by the California Institute of Technology and Massachusetts Institute of Technology, somewhere between four and six million votes were not counted in 2000 because many states had similar problems to what occurred in Florida. Other states' election systems didn't get the same exposure as Florida's because the winner in other states was not in doubt. For example, Illinois was worse than Florida - it didn't count nearly 200,000 votes with similar problems to Florida's - but because Gore won Illinois by over 300,000 votes, the winner of the state's electoral votes was not in doubt. In Illinois and other states too, most of the problems - with voting and machines - were concentrated in the poor and minority communities.

"Amazingly, the government of the United States conducts and provides no official count of the vote for president." (*Overruling Democracy - The Supreme Court vs. The American People*, by Jamin B. Raskin, p. 66) Can you imagine the United States recognizing a close and hotly contested third world "democratic" election where the citizens had no right to vote, as much as six percent of the total vote was not counted; where there was no official results provided by the government; and where that country's Supreme Court declared it's personal and ideological friend

the winner, even though the declared winner did not get the most popular votes?

2. It means Senator Graham supports "states' rights" when it comes to voting rights. But I would remind Senator Graham and others, slavery was not supported directly in the Constitution. The word "slavery" never appeared in the Constitution. Slavery was supported constitutionally because states had a right - "states' rights" - to provide legal cover allowing private citizens to own other human beings. That same states' rights **system** was at work in the 2000 election with respect to voting and it continues today.

3. H. J. Res. 28 does not **federalize** voting any more than the First Amendment federalizes free speech or freedom of religion. The First Amendment's right to free speech and religion is an individual citizenship right applicable to every American - not a "federal" right - protected by the federal government and its courts. It's an individual right that can be upheld in a federal court of law. Likewise, a voting rights amendment would grant every American an **individual citizenship right to vote** that, because it would be a right for every American, would ultimately be validated by Congress through legislation, and the Supreme Court through interpretation.

4. In essence, then, in the South Carolina debate, Senator Graham chose "states' rights" over an "individual right."

5. Attorney General John Ashcroft sent a letter to the National Rifle Association asserting that every American has an individual constitutional **RIGHT TO A GUN**. In it he wrote: "Let me state unequivocally my view that the text and the original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms." Some agree and others disagree with that interpretation.

However, there can be no debate or disagreement about the right to vote. The Supreme Court made it absolutely clear in *Bush v. Gore* - there is NO INDIVIDUAL CITIZENSHIP RIGHT TO VOTE in the Constitution!

If Americans had a choice between the **RIGHT TO A GUN** and the **RIGHT TO VOTE**, it would be nearly unanimous. Americans would choose the right to vote! If that is the priority of the American people, then we should have the wisdom and political will to codify it in the form of a constitutional amendment.

What are the advantages of fighting for human rights and constitutional amendments? Human rights and constitutional amendments are **non-partisan** (they're neither Democratic nor Republican), they're **non-ideological** (they're not liberal, moderate, or conservative), they're **non-programmatic** (they don't require a particular means, approach or program to realize them), and they're **non-special interest** (they're for **all** Americans). We can **experiment** to find the best **means** of fulfilling such a constitutional right!

August 6th was the 38th anniversary of the signing of the 1965 Voting Rights Act. But the Voting Rights Act is really misnamed and, to some extent, misleading. It's not actually a voting *rights* act. In fulfillment of the 15th Amendment to the Constitution, added in 1870, the 1965 Voting Rights Act was actually a *Non-Discrimination in Voting Act*.

To fulfill the democratic ideal, an affirmative voting rights constitutional amendment still lies in the future. According to Harvard's Constitutional Law Professor Alexander Keyssar one-hundred-and-eight (108) of the one-hundred-and-nineteen (119) nations in the world that elect their representatives to all levels of government in some democratic fashion explicitly guarantee their citizens the right to vote in their Constitution. Both Afghanistan's Constitution and Iraq's interim legal document contains a right to vote. The United States is one of the eleven nations in the world that doesn't provide an explicit right to vote in its Constitution.

If we pass a new voting rights amendment, the next civil rights movement will emerge fighting for congressional legislation that can advance even further the central democratic idea of universal voting - only partially enabled through the 1965 Voting Rights Act, Motor Voter and the Help America Vote Act. With a voting rights amendment, a new civil rights movement would emerge to fight to fully implement the amendment, while also using the federal courts to interpret voting rights more fully.

WHAT CAN I DO? If you would like to help me put this voting rights amendment in the Constitution, call your congressperson at 202.225.3121 (or call their local office) and urge them to become a co-sponsor of H.J. Res. 28. If you need more information about this legislation call my office at 202.225.0773.

A Matter Of Priorities: An Immigrant President Or An American "Right To Vote"?

USA Today

December 7, 2004

By Congressman Jesse L. Jackson, Jr. (D-IL-2)

As a staunch Democrat I support the right of an immigrant to run and become President of the United States after an appropriate amount of time as a naturalized citizen in our country - yes even Republican Arnold Schwarzenegger. (Should the Constitution be amended for Arnold? Martin Kasindorf, December 3, 2004)

But I don't support an immigrant becoming President of the United States *before* the American people have a *citizenship* right to vote!

Most Americans will be surprised - shocked is more like it - to learn that the *right to vote* is *not* explicitly in the U.S. Constitution. Of the 119 nations that elect their politicians in some democratic manner, 108 of them have the constitutional right to vote - including Afghanistan and the interim document in Iraq. The U.S. is one of the 11 that don't!

You say, "I'm a registered voter and every time there's an election I'm entitled to vote - and I vote. What do you mean I don't have a "right to vote?"

I mean as an American you don't have a *citizenship* right to vote. Voting in the United States is a "state right" not a "citizenship right."

The U.S. Supreme Court in *Bush v. Gore* (2000) ruled in very plain language, "*the individual citizen has no federal constitutional right to vote for electors for the President of the United States.*" It's electors in the Electoral College, not the direct popular vote of the people that elects the President and Vice President. State legislatures appoint electors to the Electoral College and those electors can, if they choose, ignore the popular will (vote) of the people in casting their vote.

What's the difference between a *citizenship right* and a *state right*? The First Amendment contains *individual citizenship rights* that go with you *from state to state* (that is, they are the same wherever you are in the U.S.); and they are protected and enforced by the federal government - theoretically you have equal protection under the law by the executive, legislative and judicial branches of the federal government. Therefore, as a result of the First Amendment, every American citizen has an *individual right* to free speech, freedom of assembly, and religious freedom (or to choose no religion at all), regardless of which state you are in - individual rights that are protected by the federal government. A *state right* is *NOT* an *American citizenship right* (that is, not protected by the federal government), but a right defined and protected by each state - and limited to that state. Therefore, when it comes to voting, each state, county and local election jurisdiction - and there are 13,000 - is different (separate and unequal) because voting is a *state right*.

But don't the 15th, 19th and 26th Amendments give African Americans, women and 18-

year-olds the right to vote? No! Each of those amendments is stated in the negative and guarantees African Americans, women and 18-year-olds respectively *non-discrimination in voting*. They do *not* grant them an affirmative individual right to vote that follows them from state-to-state.

That's why I have proposed House Joint Resolution 28, which would add a citizenship right to vote to the Constitution as a new amendment.

Perhaps Democrats and Republicans can find common ground. Democrats should support a constitutional amendment that gives immigrant citizens the right to be President and Republicans should support a citizenship right to vote. Both would advance democracy.

Voting Rights Amendment Model Resolution

MODEL GOVERNMENTAL OR SECULAR RESOLUTION IN SUPPORT OF THE VOTING RIGHTS AMENDMENT

WHEREAS _____ is proud of its long and distinguished tradition of fighting for, protecting and preserving the vote; and

WHEREAS _____ has a diverse constituency; and

WHEREAS the preservation of equal access to the vote is essential to the welfare and security of a democratic society; and

WHEREAS the U.S. Constitution does not presently guarantee an individual citizenship right to vote, but only provides for non-discrimination in voting on the basis of race, sex, and age; and

WHEREAS in *Bush v Gore* (2000) the U.S. Supreme Court declared "the individual citizen has no federal constitutional right to vote for electors for the President of the United States"; and

WHEREAS voting in the United States is a *state right* and is overseen by approximately 13,000 different local election administrations, which are *separate and unequal* having a wide variety of voting standards; and

WHEREAS due to this disparity, an individual's right to vote is different in each state and local jurisdiction; and

WHEREAS the separate and unequal nature of voting rights does damage to American democracy, our election system and the values the _____ hold dear; and

WHEREAS the Constitution should ensure the right to vote with one universal standard which federal, state and local governments enforce equally; and

WHEREAS only an amendment to the U.S. Constitution can guarantee an individual citizenship right to vote, provide for a unitary voting system and make sure that every vote is counted; and

WHEREAS only an amendment to the U.S. Constitution would give Congress the power to establish a unitary voting system that would overcome the separate and unequal administration of elections and grant equal protection under the law for all voters.

THEREFORE BE IT RESOLVED THAT _____ AFFIRMS its strong support for putting an individual citizenship right to vote in the U.S. Constitution; and

BE IT FURTHER RESOLVED THAT THE _____ SUPPORTS congressional legislative and state ratification efforts to enact a constitutional amendment that guarantees an individual citizenship right to vote; and

BE IT FURTHER RESOLVED THAT THE _____ will transmit a copy of this resolution to all U.S. Senators and all U.S. Representatives accompanied by a letter urging them to support efforts to pass a constitutional amendment guaranteeing an individual citizenship right to vote; and

BE IT FURTHER RESOLVED THAT THE _____ will transmit a copy of this resolution to Governor _____, and appropriate members of the State Legislature, accompanied by a letter urging them to support efforts to pass a constitutional amendment guaranteeing an individual citizenship right to vote; and

FINALLY BE IT RESOLVED THAT THE _____ will transmit a copy of this resolution to President Bush and the Attorney General of the United States accompanied by a letter urging them to support efforts to pass a constitutional amendment guaranteeing an individual citizenship right to vote.