

THE RIGHT TO VOTE:
A CONSTITUTIONAL AMENDMENT STRATEGY

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A Right to Vote Amendment

In their book, A More Perfect Union, Jesse Jackson, Jr. and Frank Watkins set the problem out clearly in their chapter on “Politics”:

*“Most Americans believe that the right to vote is cardinal among all human rights. This right, when seen in its entirety as a right to have your vote counted and weighed equally throughout the political process, is the key to all other rights...Even though the right to vote is the supreme right in a democracy, the Supreme Court in *Bush v. Gore* told Americans there is no explicit fundamental right to suffrage in the Constitution.”*

Representative Jackson, Jr., has since sought to remedy that flaw in our Constitution, by introducing an amendment that would add the explicit “right to vote” to the U.S. Constitution.

This paper is my attempt to take an initial look at what would have to be done to pass such a “right to vote” amendment. Despite widespread verbal support in our nation for the right to vote, I do not believe passage of such an amendment will be an easy task.

Models

Perhaps this is a result of the years I spent in the 1990s, working on campaign finance reform and voting reforms such as fusion and instant runoff voting. These reforms strike me as obvious, straightforward improvements—yet despite years of struggle by talented organizers, sometimes even backed by foundation funding, our gains have been minimal. We have had some victories, especially in ballot initiative states, and Maine and Arizona are now “clean money” states; today the Working Families Party in New York is making skillful and important use of that state’s electoral fusion (cross-endorsement) laws; and the voters of San Francisco have passed instant runoff voting (though we all know that the bureaucracy of the city managed to avoid implementing it for this year’s mayoral race, thus denying Rob Richie, Steve Hill, and the Center for Voting and Democracy a showcase example of how IRV would work—since it is very likely that a very progressive Green, Matt Gonzalez, would now be mayor had IRV been implemented as voted). For the most part, the system has gone on with business as usual, relatively unaffected by years of effort.

I also remember the years I watched the National Organization for Women and a determined group of feminists fight state-by-state across the country, coming agonizingly close to passing the Equal Rights Amendment, only to be stymied in the end by a small group of legislators in a small group of states. And remember—like the right to vote, the equality of men and women before the law is a reform that seems so obvious as to not need debating. Yet somehow the far right managed to convince even millions of women that they should demand that their second-class citizenship be retained.

These fights are relevant examples for us to consider—Clean Money campaign finance reform, voting reforms, and the E.R.A. All of them have been large struggles, requiring years of effort, real funding, skillful organizing. They are the models we should keep in mind as we consider a right-to-vote Constitutional Amendment, because I do believe that making the right to vote explicit will require years of organizing; large amounts of funding; and a leadership effort capable of galvanizing support groups and chapters in Congressional and even state legislative districts all across the country.

To pass such an amendment, we are going to need a multi-year, state-by-state campaign effort, on the magnitude of a large state Senatorial campaign, if not that of at least a long-shot Presidential campaign.

A Right to Vote Amendment:

Article V of the U.S. Constitution sets out the amendment process:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress....”

The U. S. Constitution has been amended 27 times, roughly once every 12 or 13 years since the original Bill of Rights was passed. Perhaps add... “Ten of these were the Bill of Rights, and two were the passage and repeal of prohibition.” Obviously, it is not a simple matter to pass a Constitutional Amendment, particularly one which will alter our politics, by reforming the people’s right to vote.

However, a large proportion of these Constitutional changes, as Professors Jamin Raskin and Alex Keyssar and others have pointed out, have been reforms connected to the right to vote. And as we noted above, Congressman Jesse Jackson, Jr., among others, has suggested that it is time for a Constitutional Amendment verifying our right to vote.

Congressman Jackson, Jr., believes that this is not only a next step on the long march towards civil rights in a nation founded in original sin, a nation built on legal slavery, a nation fundamentally split between states' rights and the Federal government's goal of a more perfect Union. He also believes a right to vote amendment is the next logical response to Justice Antonin Scalia's surprising—and enraging—comment during the Supreme Court hearings on *Bush v. Gore*, when he reminded us all that there is no Constitutionally guaranteed right to vote.

How to Proceed?

Let me assume for a moment that we all agree on the usefulness and necessity of a guaranteed right to vote. Let me also assume, for the moment, that we have all come to agreement on the language of such a Constitutional Amendment. The question that I hope to address is, how might we proceed to try to pass such an amendment? How can we build support for such an amendment? Can we build coalition and funding support for such a mobilization?

In my humble opinion, as the emailers often phrase it, ratification through conventions is a non-starter for us. I believe, that we have to start our push for this right to vote with progressive and liberal and voting rights organizations; and based on my sense of where progressive and liberal institutions and voting rights activists are at this time, I believe that an overriding fear of the power of the radical right in this country would make a convention ratification process almost impossible. Perhaps I am wrong—but I believe progressive fears of conservative power would prevent even many of our friends and neighbors from supporting such a path.

This leaves me with the much “easier” route—or at least one with precedents—of proposing a Constitutional Amendment by the vote of 2/3 of both houses of Congress, followed by the need for only 38 state legislatures to ratify it—or 39, should either D.C. or the Iraq oil fields attain statehood prior to that time.

A piece of cake, obviously...

A Campaign-Style Mobilization

There is an old, appropriate, and over-used saying that may apply here—if the only tool you have is a hammer, everything looks like a nail. Some of you know me as a reformed foundation executive; but most of my life has been spent in electoral politics and issue campaigns, from a campus anti-Vietnam War activist in New Mexico to the anti-Iraq War rally in Hyde Park, London, last February, and from a county coordinator for the George McGovern presidential campaign in 1972 up through my current role as advisor to the Dennis Kucinich presidential campaign.

Along the way, I helped elect a Latino Governor in New Mexico; helped elect the first African American women to the U.S. Senate; did some get-out-the-vote training for

African National Congress (ANC) operatives in South Africa; and advised both Ralph Nader and Jesse Jackson in their campaigns for President.

I tell you this partly so you will understand that I do have some knowledge of reform politics, and partly so that you can evaluate my biases towards electoral-style mobilizations—because the latter is where I believe our only chance lies for this amendment.

I say this because I have concluded that, like the E.R.A. battle, a right-to-vote amendment that in some ways seems like it should be a “no-brainer” for the public will actually turn out to be a difficult battle, with an overextended progressive coalition able to offer little direct help, and with the likelihood of strong opposition developing from entrenched conservative forces. If I am not mistaken, some extremely smart activists like Heather Booth, who was a part of the battle for the E.R.A., also share this concern.

And as Rob Richie suggested to me, the forces that have always really believed that voting was a privilege, not a right, will find some “unintended consequence” to seize upon to rally their troops against our amendment. In the E.R.A. battle, don’t forget, one such issue that was raised, over and over, was unisex bathrooms—an objection that did serious damage in many states, even though it had nothing to do with reality.

Then, of course, there is that minor detail that even though the country is basically split 50-50, the institutional advantages are almost all on the conservative side—the Presidency (at least for now), the Congress, the Supreme Court, stacked courts elsewhere, a strong presence in the state legislatures, and the lethal combination of an increasingly corporatized mass media which is cowed by an aggressive cadre of right-wing operatives in TV, radio, and the newspapers.

So, to pass this amendment, we will have got to put together a national campaign, with real funding (in the millions), with a strong grassroots and internet presence, with chapters/networks in dozens of targeted Congressional districts, and eventually, in targeted state legislative districts.

In all honesty, it is a daunting task. It probably cannot succeed without a leader, without a national political figure who makes it his or her priority to help raise the money, to help inspire the volunteers, to help generate the publicity necessary to put pressure on recalcitrant representatives.

My suggestion, which comes as no surprise, is Congressman Jesse Jackson, Jr., to fill that role—but then, that’s an easy recommendation for me to make.

Gathering Votes

Clearly it is no small matter to gather the support of 2/3 of the U.S. House and also 2/3 of the U.S. Senate, particularly with a Constitutional Amendment that could be interpreted to suggest that the electoral college has to go, as a violation of one-person,

one-vote. Insofar as the electoral college becomes an issue, it will become even tougher to convince voters in small, conservative states that they should abandon the electoral college, given the propaganda that is constantly spewed out about how beneficial the electoral college is for small states.

And given that progressives cannot even gather a majority vote on most issues in either body of Congress, how realistic is it that we could put together two-thirds of each body for the right to vote? And given that progressives are nowhere near control in most state legislatures, how realistic is it that we could put together three-fourths of those bodies to ratify a proposed right to vote amendment?

Right now, it is obviously not realistic. So I guess I'm done...It's impossible...

Just kidding; but it will have to be done one district at a time, one state at a time; and it will take leadership; time; money; commitment; and organization.

I would suggest the usual beginning, forming c3 and c4 organizations to promote the passage of this Constitutional Amendment (and perhaps others). Congressman Jackson, Jr., and Watkins have suggested formation of "*A More Perfect Union*", with both a c3 and a c4 incarnation, to fight for this reform, along with health care and high quality equal education as rights. I second that.

This raises a serious strategy consideration—whether to attempt to run a right-to-vote Constitutional Amendment on its own, or as part of a combined strategy to push several such amendments at once. Jackson and Watkins suggest pushing right-to-vote in combination with the right to a high-quality public education and the right to high-quality, universal, comprehensive health care.

Such a combination would clearly be a multi-year struggle, perhaps even multi-decade struggle. After all, the addition of a "public education right" and "health care as a right" would guarantee serious, well-funded, well-organized opponents.

There would also be advantages, however, not least of which would be a potential broadening of the progressive reform coalition to include most of the grassroots elements of the progressive team, plus millions of working Americans directly affected by the institutions targeted (the public schools, the health care system). The inclusion of health care and education as Constitutional issues would broaden the mobilization into more diverse communities, and more direct grassroots work, making sure that the effort is not bounded by the relative lack of diversity on the web. There would also be some economies of scale for our organizing—the gathering of signatures, for example, could be done all at once, and the educating of constituents in key electoral districts would often overlap.

On the other hand, one of the few advantages we have here is that the right-to-vote issue is so "fair" that it seems harder to oppose. In addition, there is no obvious constituency to oppose it. I know that one will be created soon enough, but it is not the

same as taking on the Pentagon budget, for instance, or the health care industry, where the opponents are not only skilled and powerful, but also directly dependent on the outcome.

Whether the Constitutional Amendment is launched alone, or in conjunction with others, it will still need c3 and c4 support; it will need a large and growing internet list of donors and activists; it will need organizers, funding, targets for outreach. These c3 and c4 organizations—and eventually perhaps even a 527 or a PAC—would carry the burden of educating and mobilizing voters in targeted Congressional—and eventually, state legislative—districts, to “encourage” their representatives to validate the right to vote.

This would be a long-term project. It would require leadership, and a serious commitment of time from those leaders. And it will demand a lot of money, especially because it is my informed political judgement that this project will get lots of verbal support from important progressive institutions, but not much actual support, given how burdened those institutions and activists are with their day-to-day struggles to survive and grow in today’s climate. We will be able to build strong coalitions; but we will have to raise our own money to succeed.

Leadership

I believe that the success of a right-to-vote amendment will be dependent on a core group of visible political leaders who will commit to the project for a long time. Absent that, it cannot succeed.

There must be a leader or leaders who will make it their job to campaign for this amendment in district after district, on campuses and in classrooms and at Rotary Clubs and in union halls, month after month; who will travel to new places to start chapters to support this effort; who will personally help raise both c3 and c4 money to fund organizers, pay for ads, produce web site videos, print direct mail.

At the risk of putting Frank Watkins and Congressman Jackson, Jr., on the spot, I suggest that the Congressman fits the bill.

Note that it is a tremendous opportunity, since campaigning for a Constitutional Amendment gives such a leader the role of mobilizing and galvanizing chapters in at first dozens, and eventually hundreds, of Congressional districts across the country. It gives that leader a chance to introduce himself or herself to voters and constituencies in every part of the nation, on an issue that most voters will find self-evidently good—their right to vote. It gives that leader a chance to raise money to use for travel and staff and building lists and creating ads and producing mail.

In short, it provides a relatively non-controversial means of building a nationwide campaign organization or network, without having to run for President. And in truth, this is even better at first than a Presidential run—because you do not have to spend all your time in January in Iowa and New Hampshire.

Building an Internet Presence

The theft of the 2000 election in Florida still angers a large slice of the voting public. So imagine a combined on-the-ground and on-the-web petition drive, that reminds voters of those dark days, including the straightforward, almost “taunting” remarks of Justice Scalia about the absence of a guaranteed right to vote for President. I believe such a petition could garner a huge amount of signatures, if launched and promoted in the right ways.

I believe the 2000 Florida felony fraud is the best hook next year. Imagine a petition drive that began in Florida, with rhetoric recalling the refusal to count every vote; reminding voters of the privatization of a public election by paying a Republican firm to wrongly purge falsely identified felons from the voter rolls, more than half of them African Americans; remembering the faulty, older machines in the so many minority base neighborhoods.

These signatures could become the basis of an initial network of supporters, and donors, and volunteers. Chapters could be formed, to press their representatives for a more perfect union. The public could be educated, the voters could be mobilized, the press could be prodded to examine the issue.

One early goal of the internet and grassroots push would be to add sponsors to the House concurrent resolution or resolutions that are put forward on behalf of these Constitutional amendments. The leader or leaders in Congress will ask his/her colleagues to sign on; while the grassroots agitation puts neighborhood pressure on those who have not yet done so. This part is not rocket science; it is just plain hard work, one district at a time. What the internet does is provide us with an opportunity to communicate and mobilize large forces, and to raise real money from small donors more cheaply than ever before, even keeping in mind its limitations given the digital divide.

Before Howard Dean, no one had run a Presidential campaign so heavily oriented towards the internet. Before MoveOn.org, no issues organization had been able to raise money so successfully around issues, to ignite voter passion about key issues in a timely way, to create a sense of togetherness and common goals among a cyberspace community. Before last February 15th, a peace gathering of 10-15 million people in almost 700 different cities around the world would have been considered impossible.

The internet has made those things possible, and it can play a key role in building the national capacity to begin to educate and communicate with legislators on this issue. At first, legislators will tend to shrug off the idea of a right-to-vote Constitutional Amendment (or a high-quality public education amendment, or a right to good health care amendment). But over time, as constituent chapters form, and letters and emails arrive in the office, and pressure grows—especially for an issue that is so “common sense” on its face—these same legislators may begin to sing a different tune.

The creative use of the internet to build a unified, strong, large nationwide constituency could be the tool that is needed to begin to move this issue.

Staffing

To succeed, *A More Perfect Union*, or whatever our right-to-vote effort will be called, must be well staffed, with energetic, trained, skilled young organizers who can be placed around the nation. This movement will have a real volunteer component; but like a major electoral campaign, at its core it must have paid staff (and paid well enough that they will stick with this project for a while, too).

Can we imagine an organization with at least one paid staffer in 20 states, with traveling regional organizers to fill in the blanks, and launch new state and local chapters? Can we match that with a serious core of campaigners operating out of a long-term national office? Can we add on to that the literature, ads, and mail necessary to target key districts at key times?

Of course we can. Numerous progressive organizations have such capacity. The Clean Money campaign that Ellen Miller and then Nick Nyhart built has at times almost reached this capacity. It can be done again, if there is leadership.

I predict, however, that progressive organizations will not transfer much of their capacity to this new effort, even when they support it verbally; this project cannot be launched on that basis. A broad winning coalition of key groups can be put together—but the actual resources committed to a right-to-vote project from existing organizations, however verbally supportive, will likely be small. The money will have to be raised the old-fashioned way—by asking foundations for it.

No, I'm kidding, sort of. Actually, the money will have to be raised by combining foundation money with big donor money with dues-paying members in chapters around the nation with speaker fees from the leaders with internet appeals with house parties—that's how this can be funded in a serious way.

Funding

I suspect there is little doubt in any of our minds that such an amendment effort would take large amounts of money—in the millions, to start, repeated for several/many years. The campaign finance reform efforts of recent years provide one reference point, though this effort will require staff members in even more states. Another comparison tool could be national election campaigns, where by the end of the third quarter of 2003, for instance, the Dean campaign had pulled in more than \$20 million, and even the lower-funded Kucinich campaign had raised about \$3.4 million (well over \$5.5 million, if you take FEC match money into account).

I do not think this can be done with foundation money alone, if only because it is so hard for even the most tenacious foundations to remain with such a long-term project.

This amendment campaign, if it is undertaken, will require some wealthy backers, who will spend money at first to help build up a base of grassroots donors who can sustain the project over a period of years.

It is my educated guess that had the internet been effectively operational for issue-based campaigns in the mid-1990s, that Public Campaign, perhaps during and right after its successful Maine initiative, would have been able to use direct solicitations and house parties to build a mass base of donors, to help sustain it in future years. Particularly as the problem of special interest corruption became much more highlighted about 10 years ago, I am quite sure that there was a strong potential donor base out there for small donations—but at that point, they were too dispersed and too costly to reach. The internet can help change that. Certainly the E.R.A. campaign would have been able to build up a massive grassroots donor base of women in districts and states throughout the country, and raised millions and millions of dollars through the internet, had it been available.

It is entirely possible, of course, that the money will not be forthcoming. As an obvious example, despite the incredible, groundbreaking, important work that the Center for Voting & Democracy has done over the past decade, it has never received funding at the level I am discussing. Perhaps a proposed right-to-vote Constitutional Amendment drive will suffer the same fate; but that is why I am suggesting that the project must have political champions, visible public personalities, to drive the project home to the funding community, and to help personalize the message for the mass media and for activists.

Organization

Or, coming at this issue from a different angle, it is impossible to conceive of this project succeeding without a real “campaign-like” organization, with a core central office, a field director, and a skilled organizing staff placed in 15-20 states around the country, and gradually rotating/building to all 50. For one thing, it is absolutely impossible to imagine a right-to-vote amendment ever passing without strong support and enthusiasm from African-American and Latino voters—and due to the “digital divide,” many of these voters will have to be reached in person, as part of an organized outreach campaign that includes people without an internet presence.

The organizers would work with the volunteer chapters, with the goal of launching at least one in every Congressional district in the country. The organizers would work with the volunteers to run creative visibility events, do phone-banking and door-knocking in targeted neighborhoods, and find ways to generate free media.

The core staff would also include a professional high-dollar fundraiser, with experience in working with wealthy donors. It would have a press secretary, to direct the outreach to the media, and the coordination of the public message. And in this day and age, of course, it would have a professional web guru, to guide the building of a mass internet presence.

The campaign would also need to create the ability to oversee the creation and sending targeted direct mail of professional quality in numerous districts, and running paid ads in many places.

Many of your organizations have already raised money on this scale, and built organizations with this large a capacity. So it's not like this is an impossible task. But we must conceive of it as a long-term, expensive, complicated task from the beginning, because all of these positions and activities, as those of you who come from the campaign world or the nonprofit sector can attest, cost real money. Yet all of them are necessary if we are to contemplate a successful campaign effort, taking place over a period of many years.

How Much Is Enough?

The current rule of thumb for aspiring Presidential nominees these days is \$20 million raised in the year prior to the primaries. That figure, of course, has to take into account that the opponents of each candidate are also trying to raise the same \$20 million, which may not be the case (at least at first) when we begin the process of building a game plan to pass a right-to-vote Constitutional Amendment.

But I do not believe we can think small. Our opponents in 2000 were willing to essentially taunt the voting public with the Constitutional fact that there is no guaranteed right to vote for President—and obviously no guaranteed right to have that vote counted. They were playing hardball, willing to publicly spit in the eye of 225 years of fitful, but significant, progress in moving towards one-person, one-vote, and it appears to me that they did not pay too heavy a price for their anti-democracy sentiments..

To get over the obstacles they will undoubtedly place in our path, money and organization and leadership will be essential. If we don't believe we have them in adequate amounts, it might be best not to venture down this path.

Is It Worth It?

There are always opportunity costs when considering a new struggle. Given the high costs and significant obstacles facing this effort, is it worth it.

I say yes, for several reasons.

First, such a campaign takes us back to our democracy roots. The right-to-vote is the key to our democracy, the cornerstone of change and reform. Fighting for this right helps us educate a new generation of activists, helps remind us all of many of America's best moments—the civil rights movement, the suffragists, the Populists, the Progressives, the union movement, the abolitionists—all of whom helped expand our democracy beyond its initial all-white, all-male, all-propertied electorate.

Second, the right to vote does challenge the strict constructionism of the Constitution directly. Are we obligated to live out our national history continually bound by the flaws in a document that protected slavery? Are we eternally bound to an electoral college system that advantages the status quo, and distorts our elections? Can we finally generate enough of a tailwind to focus on the fact that since Carol Moseley-Braun's defeat in 1998, the Senate has no African American members and no Latino members, not to mention far too few women.

Third, this struggle is valuable for the future in the same way that the battle for full public financing has been valuable, though it has yet to fully succeed. This struggle will be valuable in the same way that the E.R.A. fight was valuable, though ultimately the Constitutional Amendment did not succeed.

The very struggle to educate the public, to mobilize our friends, to point out the myriad of ways in which American democracy has failed to reach its full potential, made those two campaigns a success, even if they never achieve their stated goals.

We live in an apolitical nation, one in which television dulls the senses, cools the passion for reform, enhances the passivity of the electorate. We should take advantage of whatever opportunities arise for breaking through to real politics—and I believe that the 36-day fight in Florida 3 years ago remains one such opportunity.

I believe that the residual anger over that electoral travesty still burns in the African American community, in particular. I am impressed that even at the height of the post-9/11 support for George W. Bush, that one out of every six Americans was still willing to tell an anonymous pollster that the election was “stolen”; and another 1/3 would still tell that pollster that Bush “won on a technicality.” My political instinct is that the Florida fraud is a wound that has never healed, and that the anger among base Democrats is a large part of what is fueling Howard Dean's popularity—because standing up on to the President about the war with Iraq became a proxy for the repressed anger that millions of progressive voters felt about a Democratic Party that would not even fight hard for the people's right to vote.

If any of that is at all true, we should not let this “teaching moment” pass. We should take advantage of the memory of the Florida fiasco to educate a new generation, to mobilize a new group of supporters, to build a movement to expand our Constitution.

We should take the advice of our friend, the Senator Paul Wellstone, who was always looking for a chance to educate and mobilize at the same time. So I will close with some words of inspiration from Paul, words that Heather Booth sent me, words that Paul offered in a training session with young activists in Iowa in 1998:

“I do not believe the future will belong to those who are content with the present, I do not believe the future will belong to the cynics, or to those who stand on the sideline. The future will belong to those who have passion, and to those grassroots

heroes who are willing to make the personal commitment to make our country better. The future will belong to those who believe in the beauty of their dreams.”

At its heart, I believe the American story is a story about the struggle to expand our democracy, to enlarge the right to vote to include more and more people. That’s when we have been at our best; that’s a dream worth fighting for...