From Slave Republic to Constitutional Democracy: The Continuing Struggle for the Right to Vote

by Jamin Raskin

"Why is George Bush in the White House? The majority of Americans did not vote for him. I tell you this morning that he's in the White House because God put him in there."

Lieutenant-General William Boykin, Deputy Undersecretary of Defense for Intelligence, United States Department of Defense

In their indispensable book, Radical Equations, Bob Moses and Charles Cobb describe the epiphany the 26-year-old Moses had in 1960 when he arrived as a volunteer in Mississippi and got to know Amzie Moore, president of the NAACP in Cleveland, Mississippi. Moore was not interested in sit-ins to desegregate restaurants or lawsuits to enforce Brown v. Board of Education. In an area where violence and oppression had left 98% of African Americans off the voter rolls and too terrified to register, Moore "had concluded that at the heart of Mississippi's race problem was denial of the right to vote," Moses writes. "Amzie wanted a grassroots movement to get it, and in his view getting that right was the key to unlocking Mississippi and gaining some power to initiate real change. I had not given that idea any thought at all; I didn't know before I began talking to Amzie that the Mississippi where he lived was a Congressional district that was two-thirds black."

The voting rights movement launched in Mississippi nearly got Moses killed, but it led to the Voting Rights Act of 1965 and the creation of some long-suppressed majority-African American and Hispanic Congressional districts (that would later be attacked by the Rehnquist Court). Knocking on doors in apartheid Mississippi, Moses developed the visionary rhetoric of "one person, one vote." This "radical equation" captured the imagination of the Warren Court in the early 1960s redistricting cases like Baker v. Carr and Reynolds v. Sims, and later infused democratic movements from Poland to South Africa. The many thousands of college and law students who just went out to monitor the polls and participate in "election protection" in 2004 are part of this legacy of struggle for democratic rights.

The mechanisms of disenfranchisement have grown more complex and insidious.

That struggle is as important today as it was four decades ago, but the mechanisms of disenfranchisement have grown more complex and insidious. Racial minorities are no longer disenfranchised by white primaries, poll taxes and literacy tests, but rather by a series of background structural exclusions and dilutions, as well as the resilient dirty tricks and sleight-of-hand that reappear at election time. Moreover, convincing people of the efficacy of voting remains a problem: While basic voting rights remain necessary to generate upward social motion for people at the bottom of the society, they hardly seem to be sufficient to do so. Indeed, Bob Moses himself has thrown his own magnificent energy over the last many years into the Algebra Project, whose thesis is that movement-style math education is a key project for social change in the age of high technology.

Even if other concerns, like algebra education and health care for all, command urgent attention today, voting rights remain not only the paradigmatic expression of first-class citizenship and social standing, but also the crucial currency of democratic politics and the precondition for instrumental public action on other problems. But achieving universal suffrage, as we shall see, is still a maddeningly elusive goal, with millions of American citizens, a majority of them African-American and Hispanic, disenfranchised by law, and basic democratic principles in constant danger on the ground. To understand why basic voting rights are still contested terrain, we need to revisit the basic dynamics and institutions of our political history.

A Slave Republic of Christian White Male Property-Holders

Our last great Republican President — Abraham Lincoln — gave poetic definition to the American vision of democracy: a government "of the people, by the people and for the people." But this tantalizing ideal has little to do with our beginnings, as Lincoln knew. We began as a slave republic of wealthy Christian white male property owners. The Constitution established no popular right to vote but left suffrage requirements up to the state legislatures, which imposed a gauntlet of race, gender, religious, property, wealth and age qualifications. It also vested in each legislature the power to appoint two United States Senators for the state, thus giving smaller slave states like South Carolina or Alabama the same U.S. Senate representation as large Northern states like New York, Pennsylvania or Massachusetts.

The character of the U.S. House of Representatives was defined by Southern resolve to entrench slavery in the Constitutional fabric. The first trick

(please turn to page 4)
was to count slaves in the process of determining how many seats in the U.S. House of Representatives each state would be apportioned. So millions of slaves, none of whom could vote (obviously), were used to inflate the size of the Southern Congressional delegations controlled by their masters. Indeed, the Southern states argued that slaves should be counted as full persons in the census, while the Northern states argued that the slaves, being disenfranchised, should not be counted at all. The two sides settled on the infamous “Three-Fifths” provision — counting each slave as three-fifths of a person for the purposes of reapportionment, a clear and ominous victory for political white supremacy. As Garry Wills has shown in The New York Review of Books, the resulting Southern delegations to Congress, swollen with the “slave power,” checkmated any moves against slavery.

With both the House and Senate institutionalizing America’s original sin, Article II of the Constitution fused and reproduced these pro-slavery features in the design of the Presidential selection process. The Electoral College system awards each state a number of Presidential electors equal to the number of U.S. House members it has, plus an extra two “add on” electors for its U.S. Senators. In the event of a failure of any candidate to assemble an Electoral College majority, the President is chosen in a “contingent election” in the House of Representatives where each state, regardless of size, casts one vote, thus again making the states, rather than the people, the functional base of the system.

Southern blueprints to rig our political architecture worked like a dream. The “slave power” proved extremely effective at both dominating Congress — which for decades enforced a rule against even raising slavery as an issue — and also winning and manipulating Presidential elections. Four of the first five U.S. Presidents were Virginia slave masters who brought their household slaves with them into the Presidency: George Washington, Thomas Jefferson, James Madison and James Monroe. And the reign of slave power continued on and off until the nation plunged into Civil War.

Because of the Electoral College and our racial geography, most votes cast by African Americans in Presidential elections will count literally for nothing.

Even after the Civil War, the Electoral College propped up white supremacy and thwarted its opposition. In the 20th Century, Southern politicians cleverly used the Electoral College to block civil rights for African Americans. Racist Southern Democrats like Strom Thurmond (1948), Harry Byrd (1960) and George Wallace (1968) practiced the quadrennial art of leaving the Democratic Party to run for President as Independents, taking substantial chunks of Presidential electors with them and sending a sharp message to the national Democratic Party about the political perils of racial integration. LBJ presciently remarked after passage of the Voting Rights Act of 1965 that the Democratic Party would lose the South for a generation — and so it has.

Today, the Solid South provides a majority of Electoral College votes in the Republican Party’s Presidential coalition. If you glance at a red-blue map of 2000, you will find that the old Confederacy is the beating heart of George W. Bush country. Furthermore, because of the nation’s racial demography and geography and the winner-take-all method of allocating electors still used by all states except Maine and Nebraska (and perhaps Colorado, as I write), most votes cast by African-Americans in Presidential elections will count literally for nothing. In 2000, more than 90% of African Americans voted for Democrat Al Gore, but 58% of all African Americans lived in states that gave 100% of their electoral college votes to Bush. This means that, in 2000, most African Americans voted in states where their ballots ended up having no effect on the election outcome. The one Southern state where the African-American vote clearly could have made a critical difference in 2000 was Florida, which makes all of the devious strategies to cancel out African-American votes there both entirely comprehensible and deeply appalling.

- The Civil Rights Struggle Dismantled American Apartheid But Did Not Establish an Affirmative Constitutional Right to Vote.

Through the process of social and political struggle, the American people have taken down many barriers to voting. The most significant changes have been embodied in Constitutional amendments, although often that alone has not been enough to overcome elite resistance to voting by the poor and racial minorities. The 15th Amendment banned race discrimination in voting (1870), but we still had to follow through with the Voting Rights Act of 1965; the 17th Amendment gave us direct election of U.S. Senators (1913) — a populist victory that Justice Scalia recently lamented at Harvard Law School; the 19th Amendment banned sex discrimination in voting (1920); the 23rd Amendment gave citizens living in the District of Columbia the right to participate in

(Please turn to page 13)
Most Americans think that we have a Constitutional “right to vote.”

Presidential elections (1961); the 24th Amendment banned poll taxes in federal elections (1964); and the 26th amendment lowered the voting age to 18 for qualified voters in the states (1971).

But this ad hoc sequence of democratizing and anti-discrimination amendments for particular groups still does not add up to an affirmative universal right to vote, the kind that the International Covenant on Civil and Political Rights calls for and that, for example, post-apartheid South Africa actually has. The South African Constitution defines the new Republic as a “sovereign democratic state” with “universal adult suffrage” and a “multiparty system of democratic government.” In South Africa, “Every adult citizen has the right to vote in elec-
— thus, Vice-President Gore had 500,000+ votes more than Bush in 2000 but still lost. Yet most people also assume that a majority popular vote controls which candidate captures the Electoral College votes in their own state. But the 2000 Presidential election taught us that this is false.

In 2000, the Florida Supreme Court ordered a statewide manual recount of 175,000 ballots that for various reasons could not be read by the state’s obsolescent punchcard machines. At that point, leaders of the Republican-controlled Florida legislature in 2000 declared that the legislature would not be bound by this recount and would independently select the state’s Electoral College members. This announcement stunned many Americans.

Harvard Kennedy School of Government Professor Alexander Keyssar, in the Political Science Quarterly (Summer 2003), likened it to “a half-forgotten corpse” that “had suddenly been jarred loose from the river bottom and floated upward into view.”

But in its opinion in Bush v. Gore, the Supreme Court’s majority emphasized that the Florida legislature was acting well within its powers. The Court stated that the “individual citizen has no federal Constitutional right to vote for electors for the President of the United States.” Thus, even when legislatures grant the people the right to vote in Presidential elections, they can always revoke it and “take back the power to appoint electors.” Even if the people seek to bind themselves in their state constitutions to abide by a popular vote for president, they cannot restrain legislatures that resolve in the future to appoint electors of their own choosing.

The events of 2000, however extreme they seemed at the time, may prefigure the collapse of already fragile democratic norms in close Presidential elections. As the nation’s demographics shift, undermining the natural strength of the contemporary Republican Party, we can expect to see aggressive partisan tactics by its leaders in state legislatures — and their lawyers in the Supreme Court and other tribunals — working to accumulate 270 electors by hook or by crook. Indeed, the Texas Constitution was amended shortly after the 2000 election to provide that if the popular vote seems ambiguous or difficult to count, the Texas legislature shall have the right to immediately appoint electors of its choosing. This provision is redundant, of course, given the Court’s analysis of the problem, but it is properly read as a statement of collective political intentions by a flagship Republican legislature that last year, with ferocious partisan precision, also moved heaven and earth to “gerrymander” U.S. House districts to favor Republicans. I write before the 2004 election, which has the benefit of thousands of volunteer lawyers on the ground. But if any state legislature decides to take advantage of the ample confusion and controversy in the electoral system to appoint electors without regard to the popular vote, the people will have little structural recourse.

The Electoral College presents a massive challenge to democratic values and a standing invitation to political mischief. But, even if we assume that we are stuck with it for the time being, the electors should at least be directly chosen by the people of each state. The only way to strip the legislatures of their dangerous power over selection of the electors and establish real popular control of each state’s electoral votes is by way of Constitutional amendment.

Because America has no Constitutional right to vote, it also has no national electoral commission to protect voting rights and fair elections. Rather, we have hundreds of partisan officials at the state and local level supervising our elections — people like Florida’s Secretary of State in 2000, Katherine Harris, who co-chaired the Bush for President campaign in Florida, or Ohio Secretary of State Kenneth Blackwell, who co-chaired his state’s Bush for President campaign in 2004. We have no national ballot but a maze of state ballots. We have no single system of voting but everything from punchcard machines to the “optical scan” method to the paranoia-inducing “black box” computers without paper receipts. Our election systems are increasingly designed, not by public agencies but by private corporations, many of them run by political activists. The CEO of the Diebold Corporation, which is the largest maker of the new voting computers, spent a weekend at President Bush’s ranch and wrote a fundraising letter to fellow Republicans in which he pledged to deliver Ohio’s Electoral College votes to President Bush.

In this electoral jungle, voting rights are weak but voting wrongs are
everything. Our votes are lost, miscounted, passed over and suppressed in every election. This reality was shown by the outrageous practices that came to light in Florida in 2000. Journalist Greg Palast, in Harper’s, has documented that more than 50,000 persons – half of them African American or Latino — were falsely accused of being felons and then illegally removed from the state voter registration list before the election by a private company with which Secretary of State Katherine Harris contracted to purge felons from the rolls. These citizens were among the 600,000 convicted felons who were already disenfranchised by law. After the election, the state promised to restore the illegally purged voters and not to do it again.

There were other irregularities. Thousands of Florida voters who actually made it into the voting booth lost their votes to that masterpiece of design error, the Palm Beach “butterfly ballot.” Tens of thousands more “overvote” ballots — where voters followed ambiguous instructions and checked off the name of “Al Gore,” for example, and then also wrote it in separately — were cast aside and forgotten. Above all, more than 175,000 ballots were simply left uncounted when they failed to register on the punchcard ballot tabulations. Although the Florida Supreme Court ordered all of the ballots to be counted, a 5-4 majority on the U.S. Supreme Court quickly moved in to stop the vote-counting.

Florida was illustrative of our electoral practices, where we all belong to a reserve army of the disenfranchised that can be mobilized in different places at different times. According to the July 2001 report of the CalTech and MIT Voting Technology Project (“Voting: What It Is, What It Could Be”), “between four and six million presidential votes were lost in the 2000 election.” Some 2 million votes were simply never counted, primarily because of “faulty equipment and confusing ballots”; between 1.5 and 3 million votes were lost in the mazelike vagaries of the voter registration process; and up to 1.2 million votes were lost “because of polling place operations” — meaning technical malfunctions, problems with lines and hours, negligence, understaffing and underfunding. Significantly, this study reports that these problems are even worse in state elections than federal ones.

More than 8 million Americans, a majority of them African-American and Hispanic, belong to communities that are absolutely or substantially disenfranchised by law.

After 2000, many were convinced that all we needed was technological reform to improve the picture. The Help America Vote Act of 2002 (HAVA) put billions of dollars into state efforts to replace the punchcard machines with electronic voting and, most positively, required state provisional voting laws that will allow voters to cast challenged ballots if there is a problem at the polls.

But HAVA did not fundamentally change the picture of official indifference to voting rights and in fact made certain things worse. The statute created no legal redress for voters who are wrongfully excluded from the voter rolls, nor did it pass any criminal or civil penalties for officials who actually violate a person’s right to vote. There are no real teeth in the statute when it comes to defending voting rights against government misconduct. And it has created some practices and implications unfriendly to voting. Several courts this year upheld the power of states under HAVA to toss out provisional ballots cast by bona fide voters who vote in the wrong precinct. This would be unthinkable if the fundamental right to vote were rooted in the Constitution rather than the grace of state legislatures.

We also face the recurring problem of the modern Republican Party practicing scare tactics to intimidate minority voters. Just as Southern white Democrats suppressed black voting in Mississippi, today’s Republicans are always looking for ways to intimidate and deter racial minorities in the political process. A seminal example took place early in the Reagan years, in New Jersey’s 1981 gubernatorial election. The Republican National Committee launched a National Ballot Security Force, which sent letters to registered Democrats in African-American and Hispanic communities. Any letters received (Please turn to page 16)
turned as undeliverable became the basis for challenging voters and trying to get them deleted from the rolls.

“On election day,” Laughlin McDonald, writes in *The American Prospect*, “the security force dispatched armed off-duty police officers wearing official looking armbands to heavily black . . . precincts in Newark, Camden and Trenton.” They patrolled the polls and posted signs advertising a $1,000 reward for anyone offering information leading to the arrest and conviction of people violating election laws. This kind of “ballot security” operation has become standard operating procedure in today’s Republican Party, which understands, as one of its Michigan state legislators put it in 2004, that victory depends on suppressing the black vote.

More than 8 million American citizens, a majority of them African-Americans and Hispanics, remain absolutely or substantially disenfranchised by virtue of exclusionary voting policies that the courts have found Constitutionally acceptable or even obligatory.

Unlike the haphazard disenfranchisement that randomly affected millions in 2000, there is a larger institutionalized disenfranchisement taking place that rarely enters the headlines. More than 8 million Americas, a majority of them racial and ethnic minorities, still belong to communities that are absolutely or substantially disenfranchised by law. This is a population of voteless persons larger than the combined populations of Wyoming, Vermont, Alaska, North Dakota, South Dakota, Montana, Delaware, Maine and Nebraska. The unrepresented fall into three groups:

There are 570,898 taxpaying, draftable U.S. citizens living in the District of Columbia who lack any voting representation in the U.S. Congress. Although Washingtonians pay more federal taxes per capita than the residents of every state but Connecticut, are subject to military conscription and can vote in Presidential elections under the terms of the 23rd Amendment, they have been continually frustrated in their efforts to achieve voting representation in the United States Senate and House of Representatives. This is a double injustice, since Congress acts not only as their national legislative sovereign but ultimately as their local legislature as well under the terms of the Constitution’s “District Clause” (U.S. Const. art. I, 17, cl. 8), which confers upon Congress “exclusive Legislation” over the District.

Over 4 million American citizens living in the Territories have no mechanism for participation in federal elections and no voting representation.

District residents have only a non-voting Delegate in the House, Rep. Eleanor Holmes Norton, who has been brilliantly nimble but so far unsuccessful in promoting equal voting rights for her constituents against the frosty indifference of most politicians.

The District’s effort to climb up to a level of equal membership in America has been a lonely one, and the Constitution has been effectively mobilized as an enemy to the cause. In the early 1990s, a bill to grant a petition for statehood for D.C. failed by a 2-1 margin in the House of Representatives and never saw the light of day in the Senate. Members of Congress repeatedly invoked the Constitution itself as the warrant for continuing disenfranchisement.

In 2000, just a few months before its decision in *Bush v. Gore*, the Supreme Court rejected an Equal Protection attack on Congressional disenfranchisement of the District by affirming a 2-1 decision of the United States District Court for the District of Columbia in a case called *Alexander v. Mineta* (90 F.Supp.2d 35 [D. D.C. 2000], aff’d by 531 U.S. 940). The plaintiffs in the suit, which was brought by the District’s lawyer, alleged that their disenfranchisement in the U.S. Senate and House of Representatives was unconstitutional. The District Court majority found that: “The Equal Protection Clause does not protect the right of all citizens to vote, but rather the right of all qualified citizens to vote.” To be a “qualified” citizen for purposes of national legislative representation, you must live in a state and have the state grant you the vote. Thus, the District population, nearly 70% of which is African-American, Hispanic and Asian-American, is simply in the wrong place.

The effort that has come nearest to accomplishing voting rights in Congress for District residents was the proposed D.C. Voting Rights Constitutional amendment, which would have treated the District constituting the Seat of Government as though it were a state for the purposes of Congressional representation. The proposed amendment passed Congress in 1978 by more than a two-thirds majority in both the House and Senate, with overwhelming Democratic support and substantial Republican backing as well. It failed in the states when it found itself desperately short of national allies against a ferocious conservative opposition.

There are 4,129,318 American citizens living in the federal Territories of Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands who have no right to vote for President and no voting representation in the Congress. These 4+ million U.S. citizens living in the Territories are subject to the sovereignty of Congress under the “Territorial Clause” of the Constitution (art. IV, 3, cl. 2). But they have no mechanism for participation in federal elections and no voting representation in national government. The largest Territorial population is in Puerto Rico, home to 3,808,610 people as of the 2000 Census. In 1917, the Jones Act gave all Puerto Ricans U.S. citizenship, and in 1952 the island gained “Commonwealth” status. But, like the District’s
Eleanor Holmes Norton, the Puerto Rican “Resident Commissioner” still acts only as a non-voting Delegate in the House of Representatives. Also like residents of the District of Columbia, Territorial residents are shut out of the Senate completely. Unlike Washingtonians, Puerto Ricans have no voice even in Presidential elections.

Citizens living in the Territories have all the responsibilities of other American citizens except that they do not pay federal taxes (unless they work for the federal government). Some people believe that this exemption justifies complete disenfranchisement. This is certainly not the view of Puerto Ricans and other Territorial residents, who pay heavy local taxes, serve in the armed forces, are subject to the draft and consider themselves part of the country. According to the U.S. Court of Appeals for the Second Circuit, the “exclusion of U.S. citizens residing in the territories from participating in the vote for the President of the United States is the cause of immense resentment in those territories — resentment that has been especially vocal in Puerto Rico” (Romeu v. Cohen, 265 F.3d 118, 127 [2d Cir. 2001]). As Judge Pierre Leval observed in that case, the political exclusion of Puerto Ricans “fuels annual attacks on the United States in hearings in the United Nations, at which the United States is described as hypocritically preaching democracy to the world while practicing nineteenth-century colonialism at home.”

Yet repeated lawsuits against the disenfranchisement of Puerto Ricans in Presidential elections have failed. The Constitution makes no provision for Territorial residents to be represented in the national government and therefore reduces citizens living in Territories to colonial status. This second-class seating is a central obsession of Puerto Rican politics and equally significant in other Territories. There is little sympathy for seeking independence from the U.S., which seems an ever more far-fetched option. But Congress has refused to act in an effective way to grant Puerto Ricans a real choice among statehood, independence, the status quo and “enhanced commonwealth” status. The political rights of citizens in the Territories should not wait any longer for a choice of political forms that never emerges. The 23rd Amendment, which gave residents of D.C. the opportunity to vote in their first Presidential election in 1964, set a precedent for using Constitutional amendments to enfranchise citizens who have no residence in a state and to recognize them as a permanent part of the national community.

We are the only nation on earth that disenfranchises the people of its capital city.

There are more than 4 million citizens disenfranchised, many of them for the rest of their lives, in federal, state and local elections as a consequence of a felony criminal conviction. According to The Sentencing Project and Human Rights Watch, in their report, “Losing the Vote: The Impact of Felony Disenfranchisement,” citizens who have been disenfranchised in their states because of criminal convictions amount to about 2% of the country’s eligible voting population. In four states — Florida, Mississippi, Virginia and Wyoming — citizens disenfranchised because of their criminal records constitute fully 4% of the adult population.

Felon disenfranchisement is less a strategy of individual moral rehabilitation than mass electoral suppression. This analysis seems unavoidable when we consider that 1.4 million ex-offenders, mostly African Americans, are permanently disenfranchised in eight states. In Florida in 2000, 600,000 voteless citizens were former felons who already did their time and paid their dues to society. They will never get their suffrage rights back under current law, which operates like a political death sentence, unless they beg for, and receive, electoral clemency from the state’s Governor, presently Jeb Bush.

As one might expect in a period of racially-tilted law enforcement, these policies have dramatic effects on the composition of the electorate. In Florida, a shocking 31% of all African-American men are permanently disenfranchised. In both Delaware and Texas, 20% of African Americans are disenfranchised. In Virginia and Mississippi, about 25% of the black male population has been permanently locked out of the electoral process.

Felon disenfranchisement is at odds with the principle of universal suffrage, which is why the policy has begun to fall around the world. Last year, the Canadian Supreme Court in Sauve v. Canada (Chief Electoral Officer) struck it down as violative of Canada’s constitutional right to vote, holding: “Denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy.”

But our Constitution creates the contrary implication. In 1974, the U.S. Supreme Court in Richardson v. Ramirez (418 U.S. 24, 56 [1974]) found that felon disenfranchisement does not violate the requirement of “equal protection” in Section 1 of the 14th Amendment because Section 2 explicitly authorizes states to disenfranchise persons convicted of “rebellion, or other crime” without losing any Congressional representation. Unless this decision is reversed, only a Constitutional amendment can en-
franchise more than 4 million people who have been convicted of felonies and stripped of their voting rights or, at least, the 1.4 million ex-offenders who have served their time but are likely to remain disenfranchised until they die.

Catching Up to the World — and Ourselves

Americans are waking up to a central and surprising flaw of American politics—our deeply vulnerable right to vote. But, in a certain sense, this only scratches the surface of our difficulties, which include: runaway partisan gerrymandering that destroys competitiveness in most U.S. House races and gives us an incumbent reelection rate often exceeding 95%; a U.S. Senate with no African-American members except the (presumably) newly elected Senator from Illinois, Barack Obama; winner-take-all elections that systematically cancel out the voting strength and interests of tens of millions of people; blatant official discrimination against third parties and independents in ballot access rules and debate participation; the continuing dominance of big money in government and elections; and the unnecessary disenfranchisement of non-citizens in local elections.

But these second-generation issues will be difficult to address until we deal with the primary fact that we have not protected voting as an affirmative Constitutional right. In the global context, this departure of American constitutionalism from well-established international norms is ironic. For the United States was the first nation conceived in popular insurgency against tyranny and in favor of representative constitutionalism. It was Bob Moses and our modern Civil Rights activists, battling the political oppression of apartheid Mississippi, who produced the slogan of “one person, one vote” that swept the earth at the end of the 20th Century.

Today, our political Constitution looks frail and incomplete in the face of modern universal suffrage principles visible all over the world. We are the only nation on earth that disenfranchises the people of its capital city. Our felony disenfranchisement policies are backward compared to those of other advanced democracies. Our election systems are raggedy, and our electoral practices disfavor real electoral competition and diverse representation.

The world was shocked to witness our electoral train-wreck in 2000, and many of us were astonished to read the Supreme Court’s pronouncement that we have no Constitutional right to vote for President. But no one should have been surprised, for the evidence is all around us. A right-to-vote Constitutional amendment is necessary not only to redeem the demoralizing chaos we experienced in the election of 2000 but to maintain the trajectory of our democratic development against competing forms of government also lurking within our society, such as empire and national security state. Already the entire Congressional Black Caucus has endorsed a right-to-vote Constitutional amendment proposed by Congressman Jesse Jackson, Jr. Dozens of other members of Congress have voiced their support as well. There are signs that the “election protection” movement that intervened in the 2004 election will not fold up its tent, but will place democracy advancement high up on the agenda.

The history of the United States can be read as a struggle for inclusive democracy against structures of domination and exclusion. Many of the amendments we have added since the Bill of Rights have been suffrage-expanding or democracy-deepening amendments. But they have had a sharply limited effect. Without a universal Constitutional right to vote granting every possible presumption in favor of the people, almost any electoral policy can be turned against the electorate by partisan state election officials. We need to show the political maturity of a nation now to inscribe the people’s right to vote directly into the people’s covenant.

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Additional Reading


The Center for Voting and Democracy, the nation’s leading voting reform organization — www.fairvote.org.