

## **Basic Facts & Arguments For Adding A “Right To Vote” Amendment To The U.S. Constitution**

- In a democracy voting is *fundamental*. An individual right to vote is a *moral imperative*, the most fundamental *legal right* and *protective of all other rights*.

➤ **“I have fought against white domination and I have fought against black domination. I’ve cherished the ideal of a democratic and free society in which all persons live together in harmony and [with] equal opportunities. It is an ideal, which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.” Nelson Mandela in his so-called “*I Am Prepared To Die*” speech in an apartheid South African courtroom on April 20, 1964.**

- Nelson Mandela was willing to *die* for the ideal of democracy. Fortunately, all we in the U.S. have to do is aggressively *advocate for its fulfillment*.
- Fundamental rights should be *explicitly* guaranteed to the American people in the U.S. Constitution.
- The right to vote may be a "moral right," but it is not currently an explicit "legal right" in our Constitution.
- You have a *state right* to vote, but *not a U.S. citizenship right* to vote. You have an Illinois, South Carolina, Utah, Louisiana Maine, Georgia, Indiana, Ohio, Alabama, New York, Florida or other *state right* to vote, but *not an American right to vote*.

- Some legal professionals and voting rights experts argue that the right to vote is *already* in the Constitution as a result of current federal legislation on the books and legal precedents from previous SCOTUS rulings. If one concedes that such a right *may* be there *implicitly*, wouldn't it be *better* if it were there *explicitly*? And, if one argues that it *is* already there explicitly, then the question becomes “where”?

**➤ Prior to becoming President of the United States, Barack Obama, as a professor of constitutional law at the University of Chicago, began each of his constitutional law classes sharing with his students the surprising fact that a “citizenship or individual right to vote” is *not* in the Constitution.**

**➤ Of the 119 nations that elect their public officials using some form of democratic elections, 108 have the right to vote in their constitution, but the United States is one of the 11 nations - including Azerbaijan, Chechnya, Indonesia, Iran, Iraq, Jordan, Libya, Pakistan, Singapore and the United Kingdom - that does not explicitly contain a citizen's right to vote in its constitution.**

- The Roberts Court is a conservative “states’ rights” oriented Supreme Court and their ideological orientation is toward limiting any interpretation of a federal statute that infringes on a state’s control over their voting process.
- The Supreme Court has been all over the place when it comes to voting rights. In *Reynolds v. Simms* (1964) the Court held that the right to vote is fundamental and any alleged infringement on the right to vote must be “carefully and

meticulously scrutinized.” In *Illinois State Board of Elections v. Socialist Workers Party* (1979) the Court held that the right to vote is a fundamental right subject to strict scrutiny. But in *Rodriguez v. Popular Democratic Party* (1982) the Court noted that the Constitution “does not confer the right to suffrage upon any one,” and that “the right to vote *per se* is not a constitutionally protected right.” And in *Burdick v Takushi* (1992) the Court held that the right to vote in any manner through the ballot is not absolute and any law imposing a burden on the right to vote is not necessarily subject to strict scrutiny.

- So I dare anyone to ask ANY member of Congress or ANY voting rights expert these two simple questions: (1) Where in the Constitution is the fundamental individual "right to a gun" located? (2) Where in the Constitution is the fundamental individual "right to vote" located? I think most will immediately tell you that the answer to the first question (in light of *Heller*) – is the 2<sup>nd</sup> Amendment. I also think most will have a harder time trying to answer the second question just as succinctly.
- When LBJ signed the landmark 1965 Voting Rights Act into law, he proclaimed that, “the right to vote is the basic right, without which all others are meaningless.”
- Yet "nowhere in the United States Constitution is there an *explicit* (italics added) declaration of the right to vote. Initially the Constitution appears to have left that right up to the states." (Source: *Oxford Companion to the U.S. Supreme Court*)
- The U.S. Constitution evolved so that the 15<sup>th</sup>, 19<sup>th</sup> and 26<sup>th</sup> Amendments *outlaw discrimination in voting on the basis of race, sex and age respectively*, but they do not guarantee *all* eligible and *each* individual American citizen an explicit affirmative individual, citizenship or federal right to vote. A voting rights constitutional amendment would *fulfill* the 15<sup>th</sup>, 19<sup>th</sup>

and 26<sup>th</sup> Amendments.

- The Constitution has been amended 17 times since the Bill of Rights and 7 of those amendments pertain to voting: 14<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup> and 26<sup>th</sup>, but none of them add the explicit, fundamental or individual right to vote to the Constitution.
- Commencing after the Civil War, a series of constitutional amendments were adopted that addressed the right to vote. The Fourteenth Amendment (1868) contained the words “right to vote,” but voting only applied to males. In other words, the 14<sup>th</sup> Amendment was explicitly sexist! The words "male" and "female" had never before appeared in the Constitution. The 15<sup>th</sup> Amendment (1870) prohibited states from denying the right to vote on account of “race, color, or previous condition of servitude.” The 17<sup>th</sup> Amendment (1913) permitted the direct election of U.S. senators. The 19<sup>th</sup> Amendment (1920) outlawed discrimination in voting on the basis of sex, thus enfranchising women. The 24<sup>th</sup> Amendment (1964) banned poll taxes. The 26<sup>th</sup> Amendment (1971) directed states not to discriminate in voting against qualified citizens on the basis of age - i.e., those who were age eighteen or older. Finally, the Equal Protection and Due Process Clauses of the 14<sup>th</sup> Amendment (1868) came to be read as preventing states from enacting suffrage laws that conflict with the fundamental principles of fairness, liberty and self-government. Yet none of these amendments *affirmatively* or *explicitly* granted the individual American citizen the right to vote.
- The right to vote may be in the Constitution *implicitly*, but it’s not there *explicitly*. Wouldn’t voters and voting rights lawyers be in a stronger position if it were there explicitly? It would seem illogical and ridiculous to argue that it’s *better* to have the right to vote in the Constitution implicitly rather than to have it there explicitly. And in light of *Shelby* and all the partisan voter suppression efforts going on in the states controlled by Republican governors and legislatures, to borrow a phrase from

former half-Governor Sarah Palin, couldn't one ask, "How's that implicit right to vote thing working out for ya?"

- In *Minor v. Happersett* (1875), the U.S. Supreme Court rejected a claim by a Missouri woman that as a citizen the Constitution gave her a right to vote. The Court rejected her claim, indicating that citizenship did not necessarily include the right to vote; states could decide who had that right.
- It was not until the 1960s that the Supreme Court affirmatively addressed the constitutional right to vote. In *Baker v. Carr* (1962), the Court reversed its earlier decision of *Colegrove v. Green* (1946), holding that the courts could hear disputes involving reapportionment and redistricting. Then in *Reynolds v. Sims* (1964), it embraced the principle of equal representation for an equal number of people—i.e., one person, one vote. More important, in *Reynolds* the Supreme Court ruled that the right to vote in *federal elections* was located in the Article I, Section 2 of the Constitution description of the House of Representatives as “chosen...by the People of the several States,” and in the references to the election of senators found in the Seventeenth Amendment.
- Locating a constitutional text to support the right to vote in state elections is more problematic. In *Harper v. Virginia State Board of Elections* (1966), in striking down the imposition of a poll tax in *state elections*, the Supreme Court ruled that the right to vote in *state elections* was located in the 1st Amendment by way of the 14<sup>th</sup> Amendment's Due Process and Equal Protection Clauses. Although the tax met traditional constitutional standards, it was neither racially discriminatory nor indefensible as rational policy, but the court found that it unconstitutionally singled out the poor.
- On December 12, 2000, in *Bush v. Gore* the U.S. Supreme Court ruled that “the individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election

as the means to implement its power to appoint members of the Electoral College” - i.e., states’ rights - because the Constitution, in creating the Electoral College, left it up to the states regarding how electors would be chosen. What all these decisions suggest then is that the constitutional right to vote is highly qualified, resting more in what states cannot do regarding discrimination against specific individuals than in affirmatively granting a right to vote.

- Does that mean the statement in *Bush v. Gore* **only** applies to Electoral College members? Not according to Maryland State Senator, American University Law Professor and Yale Law School Lecturer, Dr. Jamin Raskin. He says, "*Americans* enjoy no such right to vote. We know that both from the absence of an *explicit* statement of universal voting rights anywhere in the Constitution or Bill of Rights and from numerous Court decisions that have rejected various voting rights arguments made by disenfranchised populations. In other words, **the individual citizen’s right to vote for president (and presidential electors) comes into being only when the state decides to conduct a popular election for president in the state.** This always has been a discretionary decision, a point underscored by the Florida legislature’s readiness in 2000 to cast the state’s electors for George W. Bush if its leaders felt that the state courts mishandled the election litigation - i.e., if all the votes cast had been counted and Al Gore had come out with the majority popular vote or plurality. In *Bush v. Gore* "*states' rights*" won because there was ***no individual right to vote*** in the Constitution." With a “right to vote” in the Constitution, *all of the individual votes* would have ***had*** to be counted even if the ***Florida statute and state deadline*** was Midnight, December 12.
- Can you imagine the United States recognizing a close and hotly contested *third world* "democratic" election where individual citizens had no right to vote; where the brother of the presidential candidate was the governor of the state that decided the winner of the election; where as much as 6% of the total vote was not

counted; where there were no official results provided by the government, but a winner was declared on the basis of a mere 537 vote margin with over 100 million votes having been cast; and where the country's Supreme Court declared its personal and ideological friend the winner, even though the declared winner got 550,000 *fewer* popular votes nationally? Well, that's exactly what happened in the United States in 2000.

- In *Alexander v. Mineta* plaintiffs argued that DC residents were being denied 14th Amendment equal protection under the law because U.S. citizens couldn't vote for U.S. Senators or Representatives. But the District Court found - and the Supreme Court summarily agreed - that American citizens have no constitutional right to vote for federal representatives to Congress. As the majority put it: "The Equal Protection Clause does not protect the right of all citizens to vote, but rather the right of all *qualified* (emphasis added) citizens to vote." To be "qualified," a citizen must belong to a "state" within the meaning of Article I and the 17th Amendment and must be granted the right to vote by a state.
- The same holds true, of course, for citizens convicted of felonies, even after they have done their time and paid their dues to society, and live in states where every other right has been restored to them. In *Richardson v. Ramirez* the Supreme Court held that states do not violate the 14th Amendment when they disenfranchise ex-offenders.
- Four states, Virginia, Kentucky, Florida and Iowa, do not allow ex-felons to vote except when granted the right by petitioning the governor or a clemency board.
- Thirteen states allow felons to vote once they are released from prison: Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, Ohio, Oregon, Pennsylvania, Rhode Island, New Hampshire, North Dakota and Utah.

- Maine and Vermont allow both incarcerated and ex-felons to vote regardless of previous convictions or current sentencing.
- All other states withhold voting rights until after the completion of probation or parole.
- In sum, the continuing disenfranchisement of millions of U.S. citizens in Washington, D.C., the Territories and in the states - if they are ex-offenders - demonstrate that we do not in fact have what the citizens of most democratic nations on earth have: a universal and constitutionally guaranteed right to vote. And even if we think that this missing right is important only to “marginal” or “outsider” groups of citizens, we learned in *Bush v. Gore* that this is decidedly not the case. After all, the Court began its analysis by observing that the constitutional right to vote for presidential electors does not exist, leaving Floridians to the mercy of the states—and ultimately to the Supreme Court itself.
- The non-existence of voting rights for millions of "marginal," "outsider" and “ex-felon” Americans means that the voting rights of *all* Americans are weakened as a result.
- The Constitution does not provide for a fundamental individual right to vote, but on June 26, 2008, in *District of Columbia v. Heller*, the U.S. Supreme Court ruled that the 2nd Amendment *did* guarantee a “fundamental individual right to a gun.” So we have the ironic situation that the world's so-called leading democracy has a fundamental individual right to a gun but not the fundamental individual right to vote.

➤ **If Republicans and Democrats can defend and advocate for the fundamental individual right to a gun, which benefits the gun manufacturers and the NRA; surely Republicans and Democrats can defend and advocate for the fundamental**

**individual right to vote, which would benefit the American people and our democracy.**

- Democrats are now pushing a constitutional amendment to counter the financial advantage the SCOTUS's *Citizens United* and *McCutcheon* decisions have given the rich and corporations that favors Republicans. It's an amendment that **directly** affects politicians and the Democratic Party - which the RPC supports - but it mostly **indirectly** affects the average voter who does not make political contributions. But a RTVA **directly** affects the average voter!
- Has this missing "right to vote" in the Constitution been shown to have negative consequences? A Caltech/MIT Voting Technology Project in 2001 estimated that 4-to-6 million votes in the 2000 election were lost and not counted due to administrative problems.
- The U.S. Senate Rules Committee on March 11, 2009, released a comprehensive study by the Massachusetts Institute of Technology (MIT's collaborative effort of 30 research teams that involved 34 different research organizations) of the 2008 election revealing astounding problems with the United States voter registration and voting system that resulted in an estimated 7 million eligible and registered voters nationally (through no fault of their own) not being allowed to vote for a variety of reasons – e.g., voter ID issues; computer errors (no match/no vote comparisons); an absentee ballot not sent; a voter registration form not turned in by a third party; wrongful purges; uncounted provisional ballots; too few polling places; non-compliance with the mandates of the Help America Vote Act (HAVA) by Departments of Motor Vehicles and other designated government agencies; long lines at polling places; the allocation of voting machines; bad ballot design; ex-felon issues; dirty tricks of voter suppression (e.g., robo calls and leaflets giving misdirected or false information to voters); lack of voter education and

- information; inadequate election resources; name changes (because of marriage or divorce) not recorded with voter registrars; and more.
- The 2009 MIT study also found that an *additional* 9 million potential voters who tried to register were prevented from doing so for a variety of technical reasons – e.g., missed deadlines; changes in residency; or other non-essential issues.
  - According to a U.S. Senate survey released by Senator Charles E. Schumer (NY-D) on May 13, 2009, in the 2008 election more than one-fourth of the ballots requested by U.S. military personnel deployed overseas – and other eligible voters living abroad – went either uncollected or uncounted.
  - The facts above pertain to voters who were disenfranchised in *past elections*, but *add to those numbers* voter facts from the 2012 Brennan Center For Justice new voter study which has documented that the new laws restricting voting in the states (voter suppression) will "make it more difficult for at least 5 million American to cast ballots" in *future elections* - e.g., in 2012. We saw the long lines and the delays on Election Day 2012 in Florida and other states. Only because (mostly minority) voters were extremely determined not to have their vote denied – waiting in line over 8 hours in some instances – were they eventually able to vote. And "the new barriers fell most heavily on the young, students, the elderly, minorities, women and low-income voters, as well as voters with disabilities."
  - That is different from most democratic nations in the world, including Canada, which has people working full time on registering unregistered voters.
  - In 2008, there were approximately 230 million people of voting age, 212 million eligible to vote, 168 million registered, and 133 million who actually voted; but approximately 79 million eligible voters did not participate, including 44 million who were not

registered and 35 million who were registered but did not vote.

- Voter suppression today is being done in the name of poll tested phrases such as “voter security” and “anti-voter fraud,” and it is overwhelmingly achieved through regulatory, legislative and administrative means such as restricting early voting, ending same-day registration (which increases voter participation by an average of 7%) and requiring various forms of voter ID, resulting in the modern-day equivalents of poll taxes and literacy tests.
- Voter ID legislation has been the latest fashionable form of voter suppression in state legislatures over the past decade with nearly 1,000 such bills having been introduced in 46 states, including the following 20 states that did not have voter ID laws before 2011 - California, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, West Virginia and Wisconsin – with 18 states having passed major voter ID legislation since 2001.
- At the beginning of 2011, 27 states had non-photo voter ID laws, but 14 of these 27 states – Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Missouri, Montana, Ohio, South Carolina, Tennessee, Texas and Virginia – considered legislation in 2011 to require photo ID at the polls that would make it more difficult for senior citizens, those from low income families, young people, minorities and those with English as their second language to vote – inclusive of the 12 percent of all eligible voters who do not have a driver’s license.
- Even in the absence of any credible evidence that (individual) voter fraud exists or is a problem, the Brennan Center for Justice, a public policy and law institute, reported that in 2013 alone, 31 states introduced at least 80 (institutional) restrictive voting bills - all led by RNC Chair

Reince Priebus and Republican state governors and legislatures – that included laws that require photo ID, demand proof of citizenship, make it more difficult for students to register and reduce early voting. Many of these laws will have a disproportionate and negative impact upon voters who are minorities, elderly, students or indigent, those most likely to vote Democratic. Lawmakers in 9 of the 15 states fully or partially covered by Section 5 of the Voting Rights Act have introduced restrictive voting laws.

- Less than two months after *Shelby*, North Carolina where many counties were subject to preclearance Republican Governor Pat McCrory signed HB 589 into law. According to *The American Prospect* HB 589 would “turn the state with the South’s most progressive voting laws, and the region’s highest turnout in the last two presidential elections, into a state with perhaps the most restrictive voting laws in the nation.” The law cut a full week of early voting days, stiffened voter identification requirements, ended same-day registration and killed a state-sponsored voter registration drive that encouraged 16-and-17-year-olds to pre-register to vote.
- Dr. Martin Luther King, Jr., on NBC-TV's *Meet The Press*, April 17, 1960, said, "I think ultimately the federal government should set forth a uniform pattern of registration and voting so that no citizen will have a problem at this point."
- By contrast, in 1980, Paul Weyrich, the radical right-wing Republican political strategist, told 15,000 conservative clergy in Dallas, “I don’t want everybody to vote. Elections are not won by a majority of the people. They never have been from the beginning of our country and they are not now. As a matter of fact, our leverage in the elections quite candidly goes up as the voter populace goes down."
- U.S. Senator Richard Durbin on January 6, 2005 in a U.S. Senate

floor statement said: "In the case of *Reynolds v. Sims*, the Supreme Court of the United States made it clear that we have a constitutional right to vote....That decision...handed down in 1964 appears clear and unequivocal. But wait. Four years ago that same Supreme Court, in the case of *Bush v. Gore*, reached a different conclusion and stated that 'the individual citizen has no Federal constitutional right to vote'....It appears that this statement by the highest court in the land is inconsistent with a decision reached 40 years ago. So where do we stand today? There is great uncertainty. Congressman Jesse Jackson of my home State of Illinois is proposing a constitutional amendment to make it clear and unequivocal that we have a constitutional right to vote in America. I am loath to jump on the bandwagon for constitutional amendments. I have seen some things done here that are not very proud moments in the history of the Senate when it comes to offering constitutional amendments, but I will take this one seriously."

- One of the main reasons for the dysfunction of our nation's voting system is the lack of uniform national standards in the administration of elections by state and local election officials. Our voter registration and voting system is comprised 50 states (plus DC), 3,143 counties and 13,000 "separate and unequal" local election jurisdictions. If the principle of "separate and unequal" was unacceptable for education in 1954 it is unacceptable for voting - the foundation of our democracy - in 2014.
- The U. S. dismal voting record - its "turnout" ranks 170th among 180 nations - is also due to the fact that we make voting more difficult than any other industrialized democracy and the initiative to register to vote rests almost entirely with the individual instead of obligating the government to take the initiative to register and educate voters.
- "Modernizing the registration system is the most crucial step.... Congress needs to mandate (and help pay for) a computerized

system that registers people whenever they interact with government agencies, and follows them from state to state. The Brennan Center for Justice estimates this would add 50 million people to the rolls permanently and save money through greater efficiency and accuracy." (*New York Times* Editorial, February 12, 2013)

➤ **In a speech at the LBJ Library on December 13, 2011, Attorney General Eric Holder said, "All eligible citizens can and should be automatically registered to vote. The ability to vote is a right – it is not a privilege."**

➤ Objectively and factually - and apart from partisanship - the lack of a citizenship right to vote in the Constitution (most likely) enabled George Bush instead of Al Gore to be elected President in 2000. An investigation by a consortium of newspapers following the 2000 Florida vote - looking at a broader group of rejected ballots than those covered in the court decisions, 175,010 in all - found that Mr. Gore probably would have won if the court had ordered a full statewide recount of all the rejected ballots. An individual right to vote in the Constitution would have **required** (remember the Supreme Court **stopped the vote counting** on Friday before the Tuesday deadline) that all of the votes be counted no matter how long it took. In other words "states' rights" - a Florida law that said all of the votes had to be counted **by midnight, December 12** - took precedence over "individual rights" **because** there is no individual right to vote in the Constitution. "The findings indicate that Mr. Gore might have eked out a victory if he had pursued in court a course like the one he publicly advocated when he called on the state to 'count all the votes'." (*New York Times*, November 12, 2001)

- If there had been an individual right to vote in the Constitution all of the votes would have had to be counted. Because there is no right to vote, "states' rights" - i.e., Florida's Secretary of State, Kathleen Harris - was in charge of the election and because the **state law** said that all the votes had to be counted by midnight, December 12, George Bush became President.
- Australia and New Zealand have mandatory voting and fines people who don't vote.

➤ **There is “*no official legal vote tally*” for President of the United States other than the Associated Press, which compiles all state and DC totals and adds them together for a total vote count.**

- Expanding opportunities at city agencies for non-partisan voter registration and citizenship education beyond the requirement of the National Voter Registration Act (NVRA) would promote more engaged citizens and would likely increase civic participation.
- To begin to rectify this situation voter registration and education should be systematically encouraged in the nation's public, private and parochial high schools and colleges, and students should be taught, in a factual and non-partisan way, the history of suffrage and the mechanics of voting as a way of increasing voter knowledge, education, registration and participation.
- High school graduates should come across the stage at graduation time with a diploma in one hand symbolizing knowledge and wisdom, and a voter registration card in the other symbolizing power and responsibility.
- If missed at high school graduation, college students should be

give the opportunity to register to vote when they register and pay for classes.

- Fighting for human rights and a "right to vote" constitutional amendment is: (a) **non-partisan** - not Democratic, Republican or independent; (b) **non-ideological** - not liberal or conservative; (c) **non-programmatic** - it doesn't tell you what legislative program(s) will allow you to reach the goal; and (d) **non-special interest** - it doesn't apply just to minorities, women, businesspersons, labor, lesbians and gays, gun owners or any other special interest group. *It applies to all Americans!*

**“I would not look to the U.S. Constitution, if I were drafting a Constitution in the year 2012. I might look at the Constitution of South Africa. *That was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights (italics and bold added)*, had an independent judiciary. ... It really is, I think, a great piece of work that was done. Much more recent than the U.S. Constitution.”**

Supreme Court Justice Ruth Bader Ginsburg  
Al Hayat TV in Egypt, February 1, 2012.

**"What is striking is the role legal principles have played throughout America's history in determining the condition of Negroes. They were enslaved by law; emancipated by law; disenfranchised and segregated by law; and finally, they have begun to win equality by law. Along the way, new constitutional principles have emerged to meet the challenges of a changing society. The progress has been dramatic, and it will continue."**

Justice Thurgood Marshall  
May 6, 1987.

## WHAT CAN A MEMBER OF THE PUBLIC DO TO CORRECT AND IMPROVE THIS SITUATION?

Some Actions That Are Needed:

- State referendums on the 2016 ballot (e.g., 300,000 legal signatures in Illinois to get a non-binding referendum (question) on the state-wide ballot).
- State, County and Local legislative resolutions.
- Organizational resolutions – civil rights, voting rights, civic, political, labor, women, environmental, youth, senior and other organizations.
- Ask all candidates at their public forums to speak to the issue of a RTVA and ask them for a public endorsement.
- Ask all candidates if they support a RTVA on organizational candidate questionnaires (e.g., the NRA and other gun advocate organizations always asks if a candidate supports the right-to-a-gun contained (according to *Heller*) in the 2<sup>nd</sup> Amendment, and all right-to-life groups ask if a candidate supports a right-to-life constitutional amendment.)
- Personal endorsements by high profile people – Politicians, Entertainers, Sports figures, etc.
- RTVA public petition drives.

## WHAT CAN A MEMBER OF CONGRESS DO TO CORRECT AND IMPROVE THIS SITUATION?

- Personally affirm as a matter of principle that every eligible American citizen should be guaranteed an *explicit* affirmative individual right to vote in the U.S. Constitution.

- **Become a co-sponsor of H. J. Res. 44, introduced by Congressman Mark Pocan (D-WI), which would add a “right to vote” amendment to the U.S. Constitution and grant Congress the authority to legally create a unitary voting system in the United States.**

**113th CONGRESS**

**1st Session**

**H. J. RES. 44**

**IN THE HOUSE OF REPRESENTATIVES**

**February 14, 2013**

**JOINT RESOLUTION**

Proposing an amendment to the Constitution of the United States regarding the right to vote.

*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:*

<p><b>House Joint Resolution 44</b> <b>Section 1. Every citizen of the United States, who is of legal voting age, shall have the</b></p>
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**fundamental right to vote in any public election held in the jurisdiction in which the citizen resides.**

**Section 2. Congress shall have the power to enforce and implement this article by appropriate legislation.**

#### **ADDENDUM I:**

There are some - legal scholars and others - who differ and argue that a "right to vote" *is* in the Constitution, if not explicitly, then *implicitly*. For those with this point of view we raise the following four questions:

(1) *Where* in the original Constitution is the explicit, individual, citizenship or fundamental right to vote located - excluding or without reference to citing any implicit right to vote contained in federal legislation and/or federal court decisions?

(2) If the explicit individual and fundamental right to vote for all Americans *is* in the original Constitution, why are the other "right to vote" amendments necessary - especially the 15th, 19th and 26th Amendments?

(3) If the right to vote *is not* in the original Constitution, which one of the seven "right to vote" amendments added since contains an *explicit* fundamental or individual right to vote?

(4) And if the "right to vote" were only *implicitly* in the Constitution, wouldn't it be better and stronger if we had the "right to vote" *explicitly* in the Constitution?

#### **ADDENDUM II:**

In a telephone conference call discussion several years ago that Congressman Jesse L. Jackson, Jr. and other members of Congress (e.g., John Conyers, Maxine Waters), had with voting rights advocates and constitutional scholars and Harvard Constitutional Law Professor Lawrence Tribe of the Harvard University Law School - who did not support and/or did not believe that adding an individual "right to vote" amendment to the U.S. Constitution was necessary – Professor Tribe finally had to answer "No" to each of the following questions.

Professor Tribe, your argument is that Congress already has all the authority it needs to write all the necessary federal laws to guarantee and protect the "right to vote" for all Americans.

1. Is the "individual right to vote" *explicitly* in the Constitution? Prof. Tribe - "No, it is *implicitly* there as a result of Federal legislation and Federal court decisions."
2. If the Congress passes a federal law that provides a uniform voting system for Federal Elections, would it also apply or be in effect for state, county and local elections as well? Prof. Tribe - "No, they would not be obligated by federal law to use the same voting system, but it is unlikely that state, county and local election authorities would not use it and would create separate election systems."
3. Would a Federal voting rights law overrule states barring ex-felons from voting in state, county and local elections? Prof. Tribe - "No. Jesse if you want ex-felons to vote in all elections you should introduce a constitutional amendment that would allow ex-felons to vote." Jesse responded (tongue in cheek): "That's a *sure* winner – me running around the country with an amendment to allow ex-felons to vote."