

Protecting the Freedom to Vote

The Voter Empowerment Act of 2012

Liz Kennedy

The ability to cast a ballot that will be counted is a fundamental freedom that protects the other essential rights that Americans hold dear. The freedom to vote is how Americans, regardless of privilege or economic status, maintain the power to hold their elected representatives accountable for the decisions that impact their lives.

A legitimate government “of the people, by the people, and for the people”¹ must vigorously promote and protect the freedom to vote so that all eligible voters can participate in this fundamental exercise in self-government. Right now, already powerful interests are threatening our freedom to vote, and the ability of us all to exercise our constitutional right to participate in our democracy.

Strengthening our democracy means facilitating civic inclusion and democratic participation. The Voter Empowerment Act of 2012, HR 5799, has the goal of improving our electoral system to provide more access to the ballot, integrity in our election systems, and accountability in our elections. Today, our freedom to vote is jeopardized by both systemic weaknesses and direct attacks aimed at undermining the franchise:

- Bureaucratic barriers block our freedom to vote with red tape. Our antiquated system puts the burden of registration on each individual, with unnecessarily restrictive registration procedures.
- Our electoral system threatens the voting rights of hundreds of thousands of voters each cycle through byzantine and non-standardized voter roll purges.² When these machinations lead to eligible voters being dropped from the rolls, or challenged, their right to vote can be denied on the basis of bureaucratic error or even malfeasance.
- Some otherwise eligible American citizens are barred from voting because of past crimes, even if they have completed their sentences and are otherwise restored to society.
- Voters continue to face underhanded attempts to keep them from the polls through tricks and deceptive practices, such as information being distributed calling on members of certain parties to vote on days after Election Day.

The numbers tell the tale of how red tape can present barriers that keep people from voting. Approximately 131 million American citizens voted in the 2008 elections.³ Over 146 million people were registered to vote in 2008, according to the US Census Current Population Survey.⁴ So, the voting rate

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for people who were registered to vote was ninety percent, while the voting rate for citizens of voting age was only sixty-four percent.⁵

Today, approximately 51 million eligible Americans are still not registered to vote, according to the Pew Center on the States.⁶ This represents almost one in four citizens, disproportionately low-income voters, people of color, and younger Americans.⁷ This suggests that a major focus for increasing citizen participation in elections should be to decrease the bureaucratic barriers to becoming registered to vote.

Eligible Americans should never find themselves shut out of the system and denied the right to participate in choosing their government representatives because of bureaucratic error. Yet a Cooperative Congressional Election Study by Harvard Professor Stephen Ansolabehere reported that in the 2008 election 2 to 3 million registered voters were prevented from voting because of registration or other administrative problems, and 9 million eligible Americans were not registered because of residency rules or registration deadlines.⁸ Reportedly, the number of people barred from voting in 2008 exceeded the popular vote margin of the 2000 and 2004 presidential elections.⁹ The study concluded that “registration continues to create significant barriers to getting into the electoral system and to voting on Election Day.”¹⁰

Anyone can get caught up in the red tape and find their freedom to vote impinged upon. Former U.S. Representative Lincoln Davis knows something about elections and government, yet this year when he went to polls in his hometown where he’d been voting since 1995, he was denied the right to vote.

“We walked in and they told me I was not a registered voter. I had been taken off the list . . . These are people who I grew up with. I told them I live here. I went to school about 20 yards away. . . It’s always been this way and today, for some reason, they change it. I had a sense of uneasiness when I was told that I was not allowed to vote. They didn’t offer me a provisional ballot¹¹, or anything, just told me I wasn’t registered. . . . He said I would have to re-register, and I told them I’m already registered, I’m not going to re-register. I’m a former member of Congress, state senator, House member, mayor and all my life, I’ve been involved in the community, coaching Little League, participating in Boy Scouts and serving on boards here, and I’m denied the right to vote. It just doesn’t make sense.”¹²

Representative Davis had been improperly “purged” from the voting rolls.¹³ If it can happen to a former Congressman, it can happen to anyone.

Americans deserve an election system that is much more responsive to their needs, and which facilitates their participation in democratic governance. The Voter Empowerment Act would reform our system so that all eligible Americans can participate, and so that we maintain an electoral system that can be a model for democracy throughout the world by:

- Automating voter registration so government protects and promotes our freedom to vote.
- Instituting Election Day Voter Registration so that eligible voters aren’t denied their right to vote at the polling place without recourse.
- Prohibiting insidious deceptive practices where fraudulent information is distributed to prevent people from voting.

- Protecting voters by guarding against attempts to remove eligible voters from the voting rolls or use bureaucratic chicanery to challenge eligible voters at the polls.
- Restoring voting rights to all citizens who have been restored to society.

This is a critical moment in our democratic self-government. Money is flooding into elections, amplifying the voices of the richest few and special interests.¹⁴ Big monied interests are able to drown out the voices of the average person to an even larger degree than ever before.¹⁵ According to Montana Supreme Court Justice Nelson:

“It is utter nonsense to think that ordinary citizens or candidates can spend enough to place their experience, wisdom, and views before the voters and keep pace with the virtually unlimited spending capability of corporations to place corporate views before the electorate. In spending ability, bigger really is better; and with campaign advertising and attack ads, quantity counts. In the end, candidates and the public will become mere bystanders in elections.”¹⁶

Indeed, recent polling shows that because big donors have so much more influence over elected officials than average Americans, over a quarter of Americans say they are less likely to vote. Over forty percent of all Americans, *and nearly half of those with low incomes or less education*, believe their votes don't matter very much.¹⁷

We need to respond at this moment by ensuring the freedom to vote is available to all eligible voters, particularly those on the margins. To counter the undue influence of money in government, American voters should be empowered to exert control over their government. We can use the ballot box to hold elected representatives accountable for implementing solutions to the problems that affect our lives.

We have travelled a long road to ensure that eligible Americans are not blocked from voting on the basis of race, gender, or financial qualification. Only within the last fifty years landmark voting rights legislation was adopted to make the democratic dream closer to a reality for citizens who were being blocked from participation. It was only in 1965 that the Supreme Court recognized that a poll tax was unconstitutional because “voter qualifications have no relation to wealth....”¹⁸

Unfortunately, many states are adopting laws that will make it harder for eligible Americans to vote. These laws make it harder to vote by requiring identification to vote, requiring proof of citizenship to register, restricting voter registration drives, and curtailing early voting. They may abridge the freedom to vote of 5 million eligible American voters.¹⁹

Some proponents of the new voting restrictions are explicit that their goal is to make it harder for Americans to vote. The New Hampshire House Speaker wanted to end his state's Same Day Registration program because young people are “foolish”, lack “life experience” and “just vote their feelings” - “voting as a liberal. That's what kids do” he was taped as saying.²⁰ Leading conservative Paul Weyrich was explicit about his view of a participatory democracy and a citizen's role in self-government years ago when he told a gathering of conservative religious leaders:

How many of our Christians have what I call the goo-goo syndrome? Good government. They want everybody to vote. **I don't want everybody to vote. Elections are not won by a majority**

of 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 voting populace goes down.**²¹

But generations of Americans didn't fight for our rights so that only some Americans could vote, but for the rights of all eligible Americans to vote. Representative John Lewis recalled the history and the stakes involved in the fight to achieve voting rights in a stirring speech on the floor of the House of Representatives in May:

"Just think, before the Voting Rights Act of 1965 it was almost impossible for many people in the state of Georgia, in Alabama, in Virginia, in Texas, to register to vote, to participate in the democratic process. . . . We should be opening up the political process and letting all of our citizens come in and participate. People died for the right to vote. Friends of mine. Colleagues of mine."²²

Participating in elections is a fundamental right of citizenship, a necessary element of what it means to be a free, self-governing people. Martin Luther King, Jr. explained that:

"The denial of this sacred right is a tragic betrayal of the highest mandates of our democratic traditions and it is democracy turned upside down. So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind — it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact — I can only submit to the edict of others."²³

The reforms addressed in the Voter Empowerment Act are aimed at protecting the right to vote and participate in choosing our elected representatives, fulfilling the promise of American democracy.

Modernize the Voting Registration system

Our current system of voter registration is archaic, inefficient, and badly needs modernization. It prevents more eligible voters from casting a ballot than any other part of the election process. We need to upgrade our system to prevent mistakes and manipulation from burdening our freedom to vote.

Facilitating voter registration and promoting participation is the government's duty. The Voter Empowerment Act puts the responsibility for registering voters squarely on the government by automating the registration process. When eligible citizens interact with the government, they will be asked if they consent to being registered to vote, and will be added to the rolls through a paperless process if they do. This shifts the administrative burden off of the individual voter and onto the government to register eligible citizens to vote.

The bill also provides for online voter registration access to utilize technology to mitigate time and transportation constraints that impede participation.

Voter Registration on Election Day

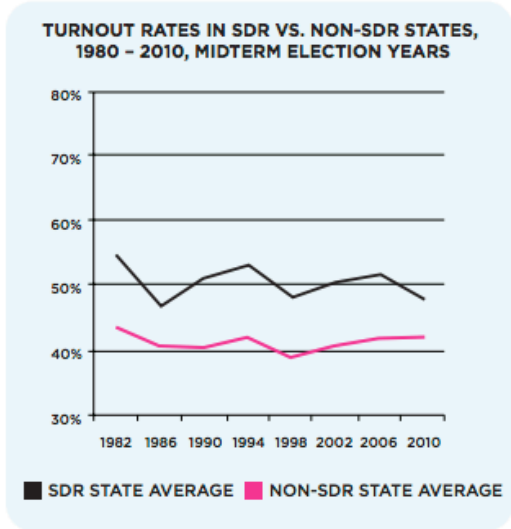
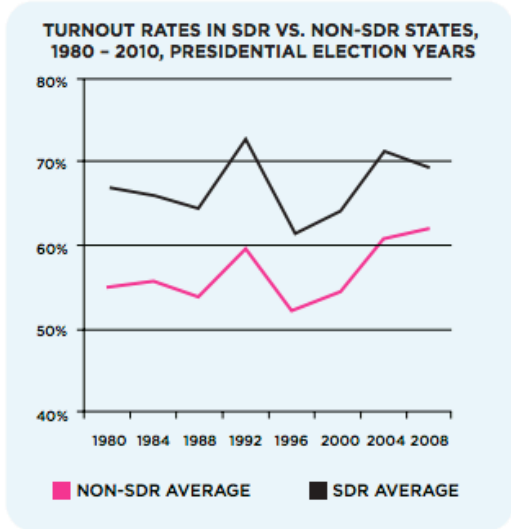
Automating voter registration will vastly improve our current, antiquated registration system. But no system is perfect. Some eligible citizens can be expected to fall through the cracks and on Election Day learn that their names had not been added or had been incorrectly removed from the voter rolls.

The Voter Empowerment Act anticipates and corrects failures in automated registration by allowing for Same Day Registration. Eligible individuals could register to vote, or correct inaccurate existing registration information, and cast a ballot on Election Day.

It is the government's responsibility to maintain voting lists. However, long-time voters are at risk of being stricken from the rolls as a result of purges and other faulty list maintenance activities. Currently, if a voter shows up at the polls on Election Day and finds that there has been a problem with his registration, or that her name no longer appears in the poll book, the voter has little recourse. Same Day registration correction means that a voter is no longer without recourse when faced with registration problems that threaten their right to vote.

Same Day Registration increases political participation, without undue costs or administrative burdens.²⁴ Over a million Americans used Same Day Registration to cast a ballot in the 2008 elections;²⁵ almost 640,000 Americans in states with the program used Same Day Registration to participate in the November 2010 election.²⁶ Same Day Registration is so popular with voters that an overwhelming majority of Maine citizens used a so-called "People's Veto" on the November 2011 ballot to reinstate Same Day Registration after the nearly forty-year old program was repealed by the state legislature.²⁷

Same Day Registration is currently available in nine states and the District of Columbia.²⁸ Connecticut, which just enacted Same Day Registration legislation, will become the tenth state in 2013. States allowing Same Day Registration have consistently led the nation in voter participation. Indeed, the top five states for voter turnout in 2008 all had Same Day Registration,²⁹ and average voter turnout was seven percentage points higher in Same Day Registration states in the 2008 presidential elections. North Carolina witnessed the greatest increase in voter turnout over the previous presidential election, one year after Same Day Registration was adopted.³⁰



Source: United States Election Project, http://elections.gmu.edu/voter_turnout.htm, using Voting Age Population

Experts have projected substantial voter turnout increases in states that have considered adopting Same Day Registration, with average voting projected to rise by over 4 to nearly 9 percent. Even greater

State	Projected Overall Turnout Increase
California	4.8%
Hawaii	5.3%
Massachusetts	4.9%
Maryland	4.3%
Nebraska	5.4%
New Mexico	4.4%
New York	8.6%
Vermont	4.8%
West Virginia	5.4%
Total Average	5.3%

increases are estimated for young people, low-income populations, people of color, newly naturalized citizens, and those who have recently changed residences.

Source: Percentages compiled from Michael Alvarez and Jonathan Nagler, Demos, *Election Day Voter Registration* reports, CA, HI, MD, NE, NM, NY, VT, WV.³¹

These Same Day Registration projections are overlaid over traditional voter registration systems, where the onus for registration remains with the individual citizens. Much of that burden would shift to the government with the automated voter system proposed in the Voter Empowerment Act. But no system is infallible; some number of eligible voters can be expected to be left off the voter rolls on Election Day. Coupling automated voter registration with Same Day Registration, as proposed in the Voter Empowerment Act, offers an opportunity to create a truly universal voter registration system where every eligible citizen can participate in our elections.

Other Important Protections for the Freedom to Vote

The Voter Empowerment Act tackles several other important areas of election administration and democratic participation that need to be improved to protect our voting rights.

Prohibits Voter Caging and Inappropriate Challenges

This legislation will protect voting rights by declaring that no eligible voter can be denied the right to register or vote based on the fact that mail was returned as undeliverable. Voter caging is the practice of sending mail to voters, and using returned mail to create lists which are then used to purge registration lists or challenge voters when they show up to vote. The bill requires that any voter challenge be backed up by independent evidence and in the case where challenges are brought by those other than election officials that challenge must be brought on the basis of personal knowledge.

This provision is critical for protecting the rights of Americans to vote, particularly this year when there is an organized attempt to challenge the eligibility of voters at the polls.

Deceptive Practices

The last several election cycles have seen an increase in efforts to deceive or mislead voters about the voting process in ways that would prevent them from voting. For example, communities of color have been targeted by inaccurate information about where and when to vote. This legislation would make it a felony to knowingly provide false information with the “intent to prevent” another person from voting. It puts the power of the federal government behind fighting these despicable practices, and creates a private right of action so that individuals who were victims of these misinformation campaigns can sue for the parties responsible for denying them their rights.

Democracy Restoration

It is not consonant with our best democratic practices to strip American citizens who have been convicted of felonies of their right to vote. Over five million Americans are currently denied the right to vote because of felony convictions, even though three-quarters of them are no longer incarcerated and two million have fully completed their sentences, parole, or probation periods. This legislation establishes a national standard for ex-offenders to vote in Federal elections when they are no longer incarcerated.

Military and Overseas Voting

Military and other overseas voters have encountered difficulties such as being removed from voter registration lists because of their absence from the state. Congress passed the Military and Overseas Voter Empowerment Act (MOVE) in 2009 to improve access and facilitate participation by setting standards, such as mailing absentee ballots 45 days prior to a federal election. This legislation would improve measures designed to hold States accountable for failing to implement the MOVE Act.

Integrity of Election Administration

Too often those charged with administering our elections have inadequate resources commensurate with their tasks. For example, many Election Day problems could be avoided with improvements in poll worker training and standards for polling place practices, provided in this legislation. This bill would require that election officials not have a vested interest in the outcome of an election by barring them from participating in campaigns. This bill would also improve the administration of provisional ballots and sets standards for voting machines. Finally, the bill creates a National Voter Hotline, so that if problems do arise they can be reported and addressed in real time so as to ensure that all eligible Americans can exercise their right to vote and be involved in choosing their elected representatives.

¹ Abraham Lincoln, "The Gettysburg Address" (1863), <http://showcase.netins.net/web/creative/lincoln.html>.

² Gary Fineout, Fla. Elections Chiefs Skeptical of Voter Purge, The Palm Beach Post (May 16, 2012), available at <http://www.palmbeachpost.com/news/state/fla-election-chiefs-skeptical-of-voter-purge-2359747.html>.

³ Thom File and Sarah Crissey, *Voting and Registration in the Election of November 2008*, U.S. Census Bureau (May 2010), <http://www.census.gov/prod/2010pubs/p20-562.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ The Pew Center on the States, *Inaccurate, Costly and Inefficient Evidence That America's Voter Registration System Needs an Upgrade* (February 14 2012), <http://www.pewstates.org/research/reports/inaccurate-costly-and-inefficient-85899378437>.

⁷ *Id.*

⁸ Stephen Ansolabehere, Testimony before the Senate Rules Committee at 19 (March 11, 2009), available at http://vote.caltech.edu/drupal/files/news/03112009Ansolabehere_Testimony.pdf.

⁹ Ian Urbina, *Hurdles to Voting Persisted in 2008*, The New York Times (March 10, 2009), available at http://www.nytimes.com/2009/03/11/us/politics/11vote.html?_r=2&scp=3&sq=voting&st=Search.

¹⁰ *Supra* note 8.

¹¹ Provisional ballots are not even counted in many instances. In 2008, nearly one third of provisional ballots cast were rejected, and of those ballots nearly 70% were rejected for registration related problems. U.S. Election Assistance Commission, *2008 Election Administration and Voting Survey*, June 7, 2010; <http://www.eac.gov/assets/1/Documents/2008%20Election%20Administration%20and%20Voting%20Survey%20EAVS%20Report.pdf>.

¹² Nicole Young, Former U.S. Rep. Lincoln Davis says he was denied right to vote (March 6, 2012) <http://www.wbir.com/news/article/209528/2/Former-US-Rep-Lincoln-Davis-says-h>.

¹³ Ansley Haman, Former U.S. Rep. Lincoln Davis sues State of Tennessee over voting rights (March 12, 2012) <http://timesfreepress.com/news/2012/mar/12/former-us-rep-lincoln-davis-sues-state-over-voting/>.

¹⁴ Adam Lioz and Blair Bowie, *Auctioning Democracy: The Rise of Super PACs and the 2012 Election*, Demos and U.S. PIRG (February 2012) available at <http://www.demos.org/publication/auctioning-democracy-rise-super-pacs-and-2012-election>.

¹⁵ Liz Kennedy, Demos, *10 Ways Citizens United Endangers Democracy* (January 19, 2012), available at http://www.Demos.org/sites/default/files/publications/CU_TopTen_1.pdf.

¹⁶ *Western Tradition Partnership v. Bullock*, 2011 MT 328 (2011) (J. Nelson, dissenting).

¹⁷ The Brennan Center for Justice, *National Survey: Super PACs, Corruption, and Democracy* (April 2012), http://www.brennancenter.org/content/resource/national_survey_super_pacs_corruption_and_democracy.

Roughly a third of African American, Latino, lower-income, and less educated Americans say they would be less likely to vote because of the disproportionate influence on big Super PAC donors on elected officials.

¹⁸ *Harper v. Virginia*, 383 U.S. 63 (1966).

¹⁹ Wendy Weiser and Lawrence Norden, *Voting Law Changes in 2012*, The Brennan Center for Justice, (October 2011), available at http://brennan.3cdn.net/92635ddafbc09e8d88_i3m6bjdeh.pdf.

²⁰ Peter Wallsten, *In states, parties clash over voting laws that would affect college students, others*, Washington Post, PostPolitics, (March 8, 2011) available at http://www.washingtonpost.com/wp-dyn/content/article/2011/03/06/AR2011030602662.html?tid=nn_twitter.

²¹ Paul Weyrich, transcription of “I don’t want everybody to vote” (Goo Goo)” video of speech given in 1980, available at <http://www.youtube.com/watch?v=8GBAsFwPglw>.

²² Representative John Lewis, House of Representatives floor speech (May 9, 2012), available at <http://dilemma-x.net/2012/05/12/video-u-s-congressman-john-lewis-democrat-gives-fiery-speechvoting-rights-amendment-is-pulled-by-paul-broun-republican/>.

²³ Martin Luther King, “Give Us the Ballot” Address at the Prayer Pilgrimage for Freedom (May 1957) <http://mlk-kpp01.stanford.edu/index.php/kingpapers/article/give-us-the-ballot-address-at-the-prayer-pilgrimage-for-freedom/>.

²⁴ Dēmos, *Small Investments, High Yields: A Cost Study of Same Day Registration in Iowa and North Carolina* (February 15, 2012), available at <http://www.Dēmos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf>.

²⁵ Dēmos, *Voters Win with Same Day Registration* (February 4, 2010), available at http://www.demos.org/sites/default/files/publications/VotersWinSDR_2010_Demos.pdf.

²⁶ Dēmos, *Voters Win with Same Day Registration, 2010 Midterm Elections Fact Sheet*(May 26, 2011) available at http://www.demos.org/sites/default/files/publications/VotersWinSDR_2010_Demos.pdf.

²⁷ Eric Russell, *Mainers Vote to Continue Election Day Registration*, Bangor Daily News (November 8, 2011), available at <http://bangordailynews.com/2011/11/08/politics/early-results-indicate-election-day-voter-registration-restored/>.

²⁸ States with Same Day Registration available are Idaho, Iowa, Maine, Minnesota, Maine, Montana, New Hampshire, North Carolina, Wisconsin, and Wyoming.

²⁹ Dēmos, *Voters Win with Same Day Registration* (February 4, 2010), available at http://www.demos.org/sites/default/files/publications/VotersWinSDR_2010_Demos.pdf.

³⁰ *id.*

³¹ R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in California*, Dēmos (May 3, 2001), http://www.Dēmos.org/sites/default/files/publications/CA_EDR_Report-Dēmos.pdf; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in Hawaii*, Dēmos (February 16, 2011), http://www.Dēmos.org/sites/default/files/publications/Elections_Day_Registration_Hawaii.pdf; R. Michael Alvarez and Jonathan Nagler, *Same Day Voter Registration in Maryland*, Dēmos (February 25, 2010), http://www.Dēmos.org/sites/default/files/publications/SameDayRegistration_Maryland_Dēmos.pdf; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in Massachusetts*, Dēmos (March 20, 2008), <http://www.Dēmos.org/sites/default/files/publications/mass.pdf>; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in Nebraska*, Dēmos (October 16, 2009), http://www.Dēmos.org/sites/default/files/publications/Nebraska_EDR_Report-Dēmos.pdf; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in New Mexico*, Dēmos (February 19, 2009), http://www.Dēmos.org/sites/default/files/publications/SDR_new_mexico.pdf; R. Michael Alvarez, Jonathan Nagler, and Catherine Wilson, *Making Voting Easier: Election Day Registration in New York*, Dēmos (April 21, 2004), <http://www.Dēmos.org/sites/default/files/publications/NY%20EDR%20report%202004%20-%20FINAL%282%29.pēēēdf>; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in Vermont*, Dēmos (April 4, 2008), <http://www.Dēmos.org/sites/default/files/publications/vermont%20%282%29.pdf>; R. Michael Alvarez and Jonathan Nagler, *Election Day Voter Registration in West Virginia*, Dēmos (November 15, 2008), <http://www.Dēmos.org/sites/default/files/publications/EDR%20in%20West%20Virginia%20-%202008%20report.pdf>.