

The Way Democracy Will Be: Equality, Universality and Reform

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Thanks so much for your introduction, Todd – your scholarly writings and dedication to better elections deserve a round of applause all in themselves. My thanks also to the organizers of this conference and to today's remarkable group of speakers who have so much to contribute to our understanding of the future of electoral reform. It's particularly special to have this opportunity in Ohio. Not only is Ohio a flashpoint for talking about electoral reform, but it's where FairVote was founded some 16 years ago.

In 1991, my wife Cindy Terrell and I formed a group in Washington State called "Citizens for Proportional Representation" – CPR, "resuscitating our democracy." We thought that was rather clever, but that year a former congressional aide also started a group with the same name in Washington, D.C., while a campaign to bring the choice voting method of proportional voting back to Cincinnati city council elections also used it, exclamation point and all. There was something in the air – something to do, perhaps, with how in 1992 Ross Perot burst on the political scene in the presidential race and how term limits swept the nation. The end of the Cold War provided a warming to people's perception of the possible and a hunger for better choices and different voices – even as it set the stage, I believe, for a growing division between the major parties that ironically plays such a central role in the decline of better choices when combined with winner-take-all voting rules.

But that hunger didn't help us pass choice voting in Cincinnati, much to my enduring regret. Cindy and I went to Cincinnati for the final weeks of that campaign, but we lost 55% to 45%. Still, we met terrific people who joined us in backing choice voting, including former Cincinnati mayor Ted Berry and former Ohio governor Jack Gilligan. The various "CPR" strands gathered in Cincinnati in 1992 for a founding conference for our new national group, with reformers from 17 states. Among the speakers that day was Kathy Barber, our honoree from last night. Kathy has been a wonderful ally, and her writings deserve wide readership. Indeed I think anyone interested in advancing redistricting reform should do so grounded in Kathy's reporting and analysis of the experience with proportional voting in cities like Cincinnati, Cleveland, New York and Toledo – so instructive for showing what the choice voting method of proportional voting *does* provide for full representation and universal voter choice and does *not* provide as far as splintering our political system.

Over the years, CPR begat the Center for Voting and Democracy which in turn became FairVote. We've evolved a comprehensive vision of providing an equally secure, meaningful and effective vote for all Americans, one we see as founded on the principles that we are all created equal and government is of, by and for the people – and, as Martin Luther King said, that it is time to make real the promise of democracy.

Achieving our vision rests upon bold, but achievable reforms: a constitutionally protected right to vote, universal voter registration, a national popular vote for president, instant runoff voting for executive elections and proportional voting for legislatures. We gather those reforms under the umbrella "the way democracy will be. Another way to say it, perhaps, is "the way democracy *would* be" if we were starting afresh. I think our revolutionary founders would embrace our reforms if transported into today's realities, and it brings me hope for the

future to see the tremendous support we gain from young people. Each of the last two summers, for example, we have had 17 volunteer interns working for us and turned away twice that number. Students at more than half of our nation's top 30 universities as rated by *U.S. News* now elect student leaders with instant runoff voting or choice voting. It's a great pleasure to connect these young reformers with long-time reformers like Kathy and our chairman, John Anderson, the former independent candidate for president.

For all of our grand ambitions, we are solution-oriented. We want to win. Perhaps nothing better defines our approach right now than National Popular Vote's plan for presidential elections. Talking about a more equitable system of electing our president makes particular sense in Ohio, so I'm going to feature this proposal today.

I will start with a bold prediction: 2008 will be the last state-by-state vote for president in American history. And it's about time. The Electoral College is the single most disliked feature of the Constitution. The current system is more than just an antiquated anachronism that can elect the candidate that loses the national vote; it entrenches political inequality, with disproportionately damaging impact on small states, urban America, young people and people of color – indeed the great majority of Americans.

Left as it is, the Electoral College system is nearly certain to relegate two-thirds of the population to the sidelines for years to come. Almost all of modern presidential campaigns' record-breaking resources today are targeted at just a handful of "battlegrounds" that are disproportionately white – and shrinking in number. Voter mobilization money, advertising dollars, campaign energy, candidate visits and almost certainly policy decisions are all targeted to sway voters in some dozen states. In the final weeks of the 2004 campaign, major party presidential and vice-presidential candidates traveled a whopping 61 times to Florida -- but not once to 26 other states. More money in that period was spent on ads in Florida than the total spent in 45 other states. Not only that, but due to hardening partisan voting patterns and more sophisticated campaign techniques, the number of swing states is far smaller – and more consistent election to election – than just two decades ago.

And watch out, Ohio – it doesn't take much for a state to tip from battleground to also-ran. We've seen a sharp decline in swing states. In the close elections in 1960 and 1976, for example, 10 out of 11 of our largest population states were battlegrounds; now only four of these states are, joined by only one of the 13 smallest population states and a minority of the ones in between.

One clear measure of impact is on voter turnout. With voter registration and mobilization targeted only on swing states, we're seeing a rising difference in turnout based on whether one's state is a battleground – a gap of nearly 10% among all eligible voters in 2004, and fully 17% among eligible voters under 30, nearly twice what it was in 2000. Analyses of turnout patterns over time suggest this gap will likely continue for the rest of this young generation's lives – and may well widen.

For some, this kind of inequity only earns a shrug as an immutable part of our political system. But that's all about to change due to the National Popular Vote plan, an ingenious proposal emanating from the states that would use two of states' constitutionally sanctioned powers to guarantee election of the national popular winner in all 50 states and the District of

Columbia. Introduced publicly less than a year ago and backed by state legislators from across the spectrum, I predict the National Popular Vote plan will explode onto our political scene in 2007. Legislators are committed to backing it in all 50 states, and several states may enact it. Just yesterday the national AP wire ran a story on how the bill has bipartisan support in North Dakota, although the story was marred by quotes from alleged presidential scholars that reflect embarrassingly inaccurate understanding of the current system – shooting from the lip sadly seems particularly true when academics talk about the Electoral College.

The National Popular Vote plan does not call for abolishing the Electoral College. Rather, it builds on the fact that the Constitution already grants states the power to make the Electoral College work for all Americans. Maine and Nebraska currently allocate electoral votes to the candidate who wins each congressional district - -a terrible idea on a national scale, but an example of how states can choose to do what's best for their people and the nation. During the lifetime of our founders, states regularly tinkered with rules for allocating electors – only settling on today's typical winner-take-all by state rule in the 1830s.

States therefore have every right to allocate all their electors to the national popular vote winner rather than the state winner. One state on its own is unlikely to make this choice, but if a group of states representing a majority of the Electoral College did so, then the nationwide popular vote winner would achieve an Electoral College victory every time. That's what the National Popular Vote plan does. By simple statute states will choose to enter into a binding agreement called an interstate compact – a constitutionally protected power with hundreds of examples, like ones governing the Port Authority and water rights for the Colorado River. The agreement would become active only when it became decisive in electing the president -- that is, when joined by states representing at least a majority of electoral votes who collectively agree to award all their votes to the winner of the national popular vote. That number of states could be as small as 11 or as large as 39, and probably will be about half of the 50 states.

Once we have a national popular vote, presidential campaigns will seek votes everywhere in a true 50-state effort. Every vote - in every part of every state - will be equal. Americans will get involved in presidential campaigns in their own cities, suburbs and small towns. Candidates for our one national office will have incentives to speak to everyone, and all Americans should have the power to hold their president accountable.

I'm co-author of the book *Every Vote Equal*, whose primary author John Koza is a consulting professor at Stanford and which has great detail about the plan, and thus I'm hardly a neutral observer. But the National Popular Vote plan is not only powerful in itself. I believe it will be the key to unlock a new wave of major reforms. If we can change how presidential elections are run, the American people will be hungry for more, as a century ago the Progressive Era created a climate for several major reforms. I see an opening of our political imagination, a realization that often it is simply institutional inertia that gets in the way of change. We'll also have very practical conversations about whether we need more coherent protections of the right to vote across states lines, with states suddenly having incentives to have more of its people vote, not less.

I'm going to more briefly summarize other key elements of our reform agenda – reforms that are already advancing on their own momentum and in my eyes deserve long talks in

themselves – I’ve brought along plenty of literature and hope you all can take some about topics that catch your interest.

An inclusive presidential primary schedule:

As part of presidential election reform, we’d like to make contests for major party nominations more inclusive by giving more states an opportunity to participate. Under the American Plan, small population states vote first in order to give outsiders a chance, with larger states generally holding later contests, with gaps to allow time for re-examination of frontrunners. Within each category, states would take turns going first. The proposal has won the support of the Young Democrats of America and the California Democratic Party, and I suspect the upcoming mad dash for the presidential nominations – with some predicting the races effectively over by the first week in February – will create new momentum for reform in 2012.

Constitutional right to vote:

We need a democracy in which every eligible citizen has an equally protected right to vote in fairly administered elections that enshrine the twin principles of accountability and transparency. To achieve this goal we support a series of voting rights reforms, the centerpiece of which is an affirmative constitutional right to vote. While, the Help American Vote Act improved elections by some key measures, we still have bizarrely decentralized protection of the right to vote. Grounded in the fact that at our nation’s founding there was no consensus on who should vote, individual states and many counties and cities set much of their own electoral policies and procedures in areas such as ballot design, polling hours, voting equipment, voter registration requirements and ex-felon voting rights. As a result, approximately 13,000 jurisdictions make independent decisions about voting in our highest elections, quite often with little-to-no accountability before or after elections. In Ohio, for example, did anyone lose their job after the incredibly long lines experienced by many voters in 2004?

More fundamentally, some nine million American citizens are denied the right to vote for representation in Congress because of where they live. About half are people convicted of felony offenses, while others are citizens living in our territories and the District of Columbia. When voting remains essentially a state right, such abuses of voting rights can happen. That’s why we work closely with our board member Congressman Jesse Jackson Jr., who soon will reintroduce his proposed right to vote amendment, likely with more than 60 co-sponsors, including all African American U.S. House Members. To boost the effort, we seek to join with allies in calling on local governments to pass a resolution endorsing a right to vote amendment in the U.S. Constitution while calling for concrete improvements of their own elections. City elections can fall far short of the standards for state and federal elections, but also have the potential to surpass those standards. Cities can expand the franchise to allow legal immigrants or people with felony convictions to vote in their local elections – including right here in Ohio. And yes, as a start toward expanding the franchise, let’s pass the D.C. Vote proposal that would finally award our nation’s capital a vote in Congress, the body that directly oversees its local government.

Universal voter registration, starting with young people:

We support universal voter registration, starting with young Americans who are soon to be eligible to vote. As a nation, we are a complete outlier as far as voter registration, with barely seven in ten eligible voter registered – and too many registered more than once. Having incomplete and inaccurate voter rolls not only deprives potentially millions of people from voting, but increases the chances of election administration problems such as long lines and improperly processed registration forms. It also means that unregistered adults do not receive voter guides or other information that would have helped them prepare to vote and know where to vote.

Given that we don't have a single citizenship list to use as a basis for automatic voter registration, we propose that states implement compulsory voter registration laws in a manner similar to state laws that require all car-owners to have auto insurance and all residents to obtain health insurance policies. With an opt-out provision for those who object to registration for political, religious, or other reasons, citizens would be required to register to vote and the state would adopt policies designed to make access to secure registration easy.

As an interim step, we propose that states commit to registering all people to vote before they reach the voting age of 18. Hawaii allows people to do advance registration upon turning 16, which is a sensible, easily administered change that goes well with policies that allow for systematic registration of young people soon to be eligible to vote at DMV's and in schools. We have high hopes for this change moving in states in 2007, ideally with plans to introduce voting to young people with information on voting mechanics in their community, the history of voting in the United States and what offices are elected in their area.

Instant runoff voting:

There is a crowd in our democracy. When more than two candidates run, the candidate with the most votes can win despite being opposed by a majority of voters. This "spoiler" dynamic discourages outsider candidacies, suppresses new ideas and can overturn the basic principle of majority rule. Traditional runoffs seek to ensure majority winners, but force candidates to raise more money, cost taxpayers millions and hurt voter turnout. Instant runoff voting (IRV) elects candidates with majority support, accommodates voters having better choices and encourages candidates to reach out to more people – all in one election. Used for national elections in Ireland and Australia, IRV allows voters to rank candidates in order of preference, rather than vote for just one. Their ballot initially counts for their first choice. If you have a majority winner, you're done. If not, the weak candidates are eliminated, and supporters of those candidates have their ballot count for their runoff choice who's still in the running. As pointed out on the election law listserv this week, the strategy behind a new effort to boost Barack Obama's prospective presidential campaign is like IRV Contributions will go to the Obama campaign if he runs, but to the DNC as a second choice if he doesn't.

The growing campaign for IRV reached a watershed moment in 2006, winning an average of 62% of the vote in three major jurisdictions with a combined population larger than that of a dozen states. North Carolina also passed a new law to use IRV for certain vacancy elections,

and to put IRV in place on a pilot basis in up to 10 cities this year and 10 counties next year. Vermont's legislature voted to have its secretary of state study the feasibility of statewide IRV elections in 2008, while South Carolina joined two other southern states in having overseas voters cast IRV ballots in the first round of runoff elections to ensure the military and other voters have a vote that counts in runoffs. As we move to newer voting equipment that is ready to run IRV elections, I see its rapid expansion. It addresses real problems with our politics, including "spoiler" controversies and the troubling inequity we see when so many decisive elections happen in low turnout primaries or runoffs where electorates are significantly older, whiter and wealthier than the general election electorate.

Proportional voting:

Last, but far from least, we need proportional voting for our legislative elections. While a worthy reform, independent redistricting speaks only to how winner-take-all districts are drawn and would have only a glancing direct impact on most voters. The fact that our legislative bodies poorly reflect America's political views and racial, cultural and gender differences derives primarily by denying representation to up to 49% of voters through winner-take-all elections. In contrast, proportional voting ensures the right to rule belongs to a majority, but the right to representation belongs to all. It grants like-minded groupings of voters their fair share of seats – 51% of the vote earns a majority, but 20% earns 20% of seats. It creates a clear means for a majority of voters to join together to vote for a change in leadership.

Used around the world and in dozens of American cities, proportional voting comes in a variety of forms. We see two routes for proportional voting likely moving in the United States in ways that will provide all voters with meaningful choices in every election and boost representation of women and racial minorities, but only modestly open up our two-party system:

- 1, First, states could elect legislators in multi-seat "superdistricts", using a candidate-based proportional system like the choice voting method used in Cambridge and Ireland and once used in Ohio cities like Cincinnati. Each district would elect several seats, enabling representatives to speak for different communities of interest within the superdistrict and resulting in both major parties representing nearly every district. Illinois had a generally praised experience with a proportional voting method based on voting for individual candidates called cumulative voting; used in three-seat districts for its state House of Representatives from 1870 until 1980 – a history, like that of cities in Ohio and elsewhere with choice voting, that shows proportional voting is a homegrown idea.

2. Developed by reformers in Michigan, the district plus proposal involves adding "accountability seats" to the legislature to compensate for partisan unfairness in district elections. For example, in a 100-seat legislative chamber, 20 accountability seats might be added to 80 district seats. Voters would have two votes: one in their local district and one to determine the legislative leadership by using the 20 accountability seats to ensure the party with majority of votes wins a majority of seats. Voters would elect a representative in the 80 local district races, just as they do now, and then cast an "accountability vote" to determine overall control of the legislature. The 20 accountability seats would be allocated to ensure that a party's share of seats in the legislature corresponded to its share of the accountability vote.

For example, if a party won 54% of the total vote, but only 39 of the 80 district seats, it would get 15 of the 20 accountability seats to ensure an accurate share of 54 seats. A party would need to win a minimum share of accountability votes to win seats, such as 5%. A party could award accountability seats in different ways.

In the district plus system, no voters would be left in an election where their participation was effectively meaningless. Even if living in a lopsided partisan district, the prospect of helping one's preferred party would provide (1) voters with an incentive to turnout and (2) parties an incentive to campaign vigorously everywhere. Furthermore, the state legislative leadership would be directly accountable to the voters; if a majority wanted new leadership, they could elect a new speaker.

I've put a lot out there for discussion. Let me end with my belief that pro-democracy reformers would do well to broaden their vision of both what is needed for reform and how to achieve it, to build on the political imagination and likely political success of such ideas as the National Popular Vote plan. I believe voters will respond well to bold proposals that they believe will make a real difference in their democracy. At the same time, there rarely is a one-size-fits-all approach ready to move in all states. We need to organize ourselves to be nimble in how we advance reform, seizing moments where they arise and organizing national groups such that they can support local and state reformers when those opportunities arise. We need to explore creative strategies like citizen assemblies that can put electoral reform measures on the ballot for a vote, as pioneered in Canadian provinces in recent years. We need to work with Secretaries of State and other state leaders who are committed to making democracy work. We have much to learn from states and their leaders – both in how their democracy functions and how to win reform. It's a particular pleasure to lay out my vision of reform before such an audience today