The Phyllis Schlafly Report

Eagle Forum
Leading the pro-family movement since 1972

VOL. 37, NO. 7 | P.O. BOX 618, ALTON, ILLINOIS 62002 | FEBRUARY 2004

Looking at Some 2004 Election Issues

Are there things about our country and our culture you want to change? Activist judges? Same-sex marriage? Protecting the Pledge of Allegiance? Political bias in universities? Public school curriculum? Taxes? Pornography on television?

Our Constitution gives us the opportunity to make a lot of changes by electing new candidates to Congress every two years and electing a President every four years. This is the way we can change laws, policies, taxes — and, yes, our culture.

It's time for each of us to encourage all citizens to embrace their citizenship not merely as a duty and privilege, but as an opportunity to participate in rebuilding the moral fabric of our nation.

There is no time in recent years when every vote will count more than on Tuesday, November 2nd — when Americans will decide who will become our President with the power to name up to four Supreme Court Justices, and who will represent us in Congress to deal with the many challenges of our times.

One Way the Democrats Plan to Win

The Democrats think they have one key to winning the 2004 elections. Get the votes of convicted felons. Don't laugh; the Democrats are deadly serious. The nation's four million convicted felons could be enough to swing next November's election. Surveys show that the overwhelming majority would vote Democratic if they could, so felons are a voting bloc the Democrats are itching to harvest.

In addition to providing the magic bullet to elect their candidates in November, this issue reprises all the sour-grapes whining by the Democrats about Bush winning Florida in 2000. The Democrats know that if felons had been allowed to vote in Florida, Al Gore would have won Florida and be president today.

The laws of 48 states place restrictions on the ability of convicted felons to vote. State laws vary widely in imposing restrictions. State laws may distinguish between those who are now behind bars and those who have been released, or whether they are repeat offenders, or whether they are violent or nonviolent offenders, or whether they are parolees or probationers. Only Maine and Vermont allow convicts to vote even if they are still in prison.

Allowing felons to vote is highly unpopular with the American people, but the laws are amended from time to time. Since 1996, nine states have repealed a few of their voting barriers for convicted felons, while three states made their laws tougher. These changes don't appear to have anything to do with partisanship or geography. The states easing their bans were Alabama, Maryland, Virginia, Connecticut, Delaware, Nevada, New Mexico, Texas and Wyoming, while the states that toughened their policies were Massachusetts (by constitutional amendment), Utah and Kansas.

The Democrats haven't a chance for wholesale repeal of these laws. So the Democrats are doing what liberals always do: they line up the American Civil Liberties Union and other left-wing lawyers and then seek out activist judges to issue rulings that elected legislators will not make. Lawsuits have been filed to overturn the laws that bar felons from voting in Florida, New York, New Jersey, and Washington State.

The Democrats are using a study made by two sociologists, one at the University of Minnesota and the other at Northwestern University, who suggest that, since 1978, seven U.S. Senate races plus the 2000 presidential election would have turned out differently if felons had been allowed to vote. The professors estimate that Florida felons would have given Al Gore an additional 60,000 votes, more than enough to wipe out Bush's narrow margin of victory.

To try to give convicted felons the franchise, the Democrats are playing the race card, asserting that state laws have a "disparate impact" on blacks and Hispanics and therefore violate equal-protection guarantees. The laws of course are color-blind, and furthermore, it is no more discriminatory to deny felons their franchise than to deny them cer-

tain categories of employment, child custody, or gun ownership.

Florida's law permits felons to regain their voting rights by executive clemency, and Florida's department of corrections has agreed to assist felons navigate the restoration process. Officials estimate that 130,000 Florida felons will soon be empowered to vote, but the Democrats are still going forward with their lawsuit.

The Eleventh Circuit U.S. Court of Appeals in Atlanta by 2-1 reversed a District Court ruling in December and ordered a trial on the race allegations in Florida even though the plaintiffs presented no evidence of any racial animus. The Circuit Court decision was written by one of Clinton's most controversial nominees, Judge Rosemary Barkett.

The dissenting opinion in the Eleventh Circuit case pointed out that the 14th Amendment, Section 2, "explicitly allows states to disenfranchise convicted felons." A provision barring felons from voting was put into Florida's first Constitution, when blacks weren't allowed to vote anyway, so it could not have had a racial reason. Furthermore, the dissent explained, in the time period when Florida re-adopted the rule against voting by felons, no "disparate impact" on minorities existed, so there could not have been any racial bias in the re-adoption of the rule.

The U.S. Constitution reserves the matter of voting regulations to state legislatures and specifically authorizes the disenfranchisement of felons. We should not permit activist judges to change the laws.

Do Voters Really Have Equal Protection?

Most Americans assume that the election of the House of Representatives is fairly based on the geographic distribution of our population. Then why did the constitutionally mandated reapportionment of 2000 result in the fact that it takes only 35,000 votes in a California district to win a House seat, while it takes 100,000 votes to win a House seat in Indiana, Michigan or Mississippi?

The U.S. Supreme Court ruled in *Reynolds v. Sims* (the 1964 landmark case that dictated one person one vote for state legislatures) that "the Equal Protection Clause guarantees the opportunity for equal participation by all voters." The Court forbade "diluting the weight of votes because of place of residence."

As a result of the 2000 reapportionment, eight states gained at least one more House seat: California, Nevada, Arizona, Colorado, Texas, Florida, Georgia and North Carolina. Ten other states lost at least one seat: Oklahoma, Mississippi, Illinois, Wisconsin, Tennessee, Michigan, Ohio, Pennsylvania, New York and Connecticut.

None of these states lost a seat because of a declining population. In fact, they all increased their populations.

This redistribution of seats in the House of Representatives also shifted the balance of power for the 2004 presidential election. The number of votes each state has in the Electoral College exactly mirrors the size of its congressional delegation, so California and Florida will be even more important in 2004 than in 2000.

The reapportionment of the House of Representatives every ten years is required by the U.S. Constitution. Since the total number of seats is fixed at 435, it's a zero-sum process: one-state's gain must be another state's loss.

A new study just released by the Center for Immigration Studies explains what caused twelve congressional seats to be transferred from some states to other states. This shift in House seats was based on the 2000 census which counted the residence of persons — not of voters.

The persons who were counted in the 2000 census included seven million illegal aliens and twelve million other non-citizens (legal non-citizens and temporary visitors who are mainly foreign students or guest workers). This count created congressional districts with large non-voter populations.

When the Clinton Administration failed to enforce our federal immigration laws, and when Governor Gray Davis's administration encouraged illegals to come to California in large numbers by nullifying the initiative that would have cut off state-financed social services (Proposition 187), the Democrats accomplished a change in the political landscape to benefit their candidates.

In California's 31st district, 43% of the residents are non-citizens, and in the 34th district, 38% are non-citizens. In Florida's 21st district, 28% of residents are non-citizens. The non-citizens are (hopefully) non-voters. But their very presence gives enormous weight to the legitimate voters in those districts.

The Constitution does not require us to include non-citizens in the reapportionment count. However, in 1979 and 1988, the courts refused to hear a challenge to the practice of including illegal aliens in the census count for purposes of reapportionment.

Congress can define who meets the test of residency for the census count, and what procedures are used to do the counting. The only question is whether Congress has the will to make the needed changes.

The winners in this distortion are not the illegals or the non-citizens, but the citizen voters in the districts that have large populations of illegals and non-citizens. The current process makes the votes of some American citizens count for much more than citizens in districts where almost everyone is a U.S. citizen.

Reynolds v. Sims warned that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized" even though this means "enter-

ing into political thickets and mathematical quagmires." Congress ought to address this issue before the 2004 elections.

The recent California recall election didn't inflict us with the predicted post-election court challenges because, fortunately, the poll results were decisive. However, when we look at the famous red and blue map of the 2000 presidential election, we must assume that the 2004 election will be close, with the potential of producing legal wrangling.

In addition to dealing with the equal protection problems of reapportionment, Congress should make other changes to improve the integrity of the election process. Among these changes should be requiring proof of citizenship to vote, and banning foreign language ballots (since the law requires that immigrants be able to speak English in order to become a naturalized citizen).

Foreign Language Ballots Are a Bad Idea

Federal law requires that if more than 5 percent (or 10,000 voting-age citizens) in a county don't speak English, the county must follow the language-access provisions of the Voting Rights Act and translate election materials into their language. Foreign language ballots are a terrible idea and, furthermore, they don't make any sense.

Only U.S. citizens may legally vote. In order to become a naturalized American citizen, our laws require that you demonstrate "an understanding of the English language, including an ability to read, write and speak . . . simple words and phrases . . . in ordinary usage in the English language."

Printing ballots in foreign languages is fundamentally anti-democratic because fair elections depend on public debate on the issues and candidates. People who don't understand the public debate are subject to manipulation by political-action groups that can mislead them in language translations and then tell them how to vote.

How did we get foreign language ballots? The Voting Rights Act of 1965 was one of the big achievements of the civil rights movement of the sixties, but the black Americans who were supposed to be the beneficiaries of that movement all speak English. The act was hijacked by a 1975 amendment that added a "language minority" section.

In the 2002 election, the Department of Justice ordered more than 335 jurisdictions in 30 states to provide ballots, signs, registration forms, and informational brochures in foreign languages. This unfunded mandate cost the states at least $27 million.

Denver and seven other Colorado counties were required to print election ballots in Spanish (as well as English) at a cost to Denver of an additional $80,000 to $100,000 for ballots and translators. Two Colorado counties had to provide language services for Navajo and Ute residents.

Counties required to provide Vietnamese ballots in 2002 included Harris County, Texas, and three in California: Los Angeles, Orange and Santa Clara. Santa Clara County printed ballots in Vietnamese, Chinese, Spanish and Tagalog, the national language of the Philippines. San Mateo County printed ballots in Spanish and Chinese. Alameda County printed ballots in Spanish and Chinese.

Queens, New York provided ballots in Korean. Ballots in Chinese and Spanish were used in Manhattan, Brooklyn and Queens. Cook County, Illinois must provide ballots in Chinese as well as Spanish.

Los Angeles printed ballots in seven languages: Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese, as well as English. Montgomery County, Maryland offered ballots in Spanish. Counties with percentages of Hispanics that may have to provide Spanish-language ballots in 2004 include Prince George's in Maryland and Arlington and Fairfax in Virginia.

The Voting Rights Act is actually very discriminatory It doesn't cover all immigrants who don't speak English; it applies only to "those language minorities that have suffered a history of exclusion from the political process: Spanish, Asian, Native American, and Alaskan Native."

The requirement for foreign language ballots is always aggressively monitored and enforced by the Department of Justice. I wish the Department would be just as aggressive in making sure that votes are not cast by persons ineligible, such as those who are dead, non-citizens, not registered, moved away, registered in more than one jurisdiction (in 2000, hundreds voted in both Florida and New York), felons, mentally incompetent, or living in nursing homes where their vote is coopted and cast by someone else.

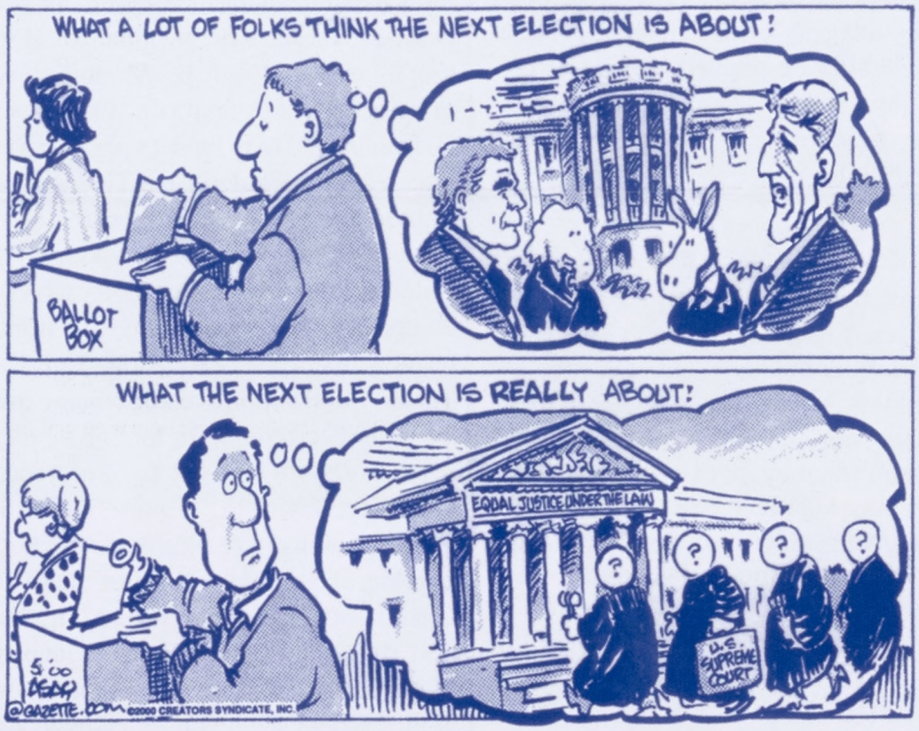
'A Sad Day for Free Speech'

It was big news last December when the U.S. Supreme Court in *McConnell v. Federal Election Commission (FEC)* upheld new restrictions on certain soft-money contributions to political campaigns. But most of the media neglected to mention that the Court created a very big loophole in the law of so-called campaign finance reform. George Soros, the billionaire liberal with global ambitions who has pledged $25 million to defeat George W Bush, is free to continue pumping his millions into the campaign this year through a so-called independent campaign. His big spending is not affected by the Supreme Court ruling.

NARAL Pro-Choice America announced in February that it will spend $25 million to defeat President Bush and elect candidates who support abortion. NARAL claims that its status enables it to run television, radio and print ads advocating the defeat of Bush "right up until Election Day."

Justice Antonin Scalia called the Supreme Court's decision "a sad day for free speech because of the restrictions the bill places on citizens groups." He said the ruling "cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government." Justice Clarence Thomas called it "the most significant abridgment of the freedoms of speech and association since the civil war".

But Big Media are very happy. Big Media were big promoters of the Campaign Finance bill when it went through Congress, and the media are rejoicing that the controversial law was upheld by the Supreme Court. The *New York Times* called it "a stunning victory for political reform," while the *Washington Post* said it was "cause for celebration." No wonder these big newspapers are happy! Big Media are not restricted.



This Campaign Finance law prohibits certain groups and corporations from broadcasting advertising against federal candidates one or two months before an election, at the same time that corporations such as the *New York Times* and the *Washington Post* are exempt. As Justice Anthony Kennedy wrote, the bill provides a "safe harbor" to "the mainstream press." He said that the law is the codification of an assumption that the mainstream media alone can protect freedom of speech.

We hope Congress will overturn the Supreme Court ruling by passing a new bill that respects freedom of speech for all American citizens. But meanwhile, we must turn our attention to the big 2004 election.

The Phyllis Schlafly Report

PO Box 618, Alton, Illinois 62002

ISSN0556-0152

Published monthly by the Eagle Trust Fund, PO Box 618, Alton, Illinois 62002. Periodicals Postage Paid at Alton, Illinois. Postmaster: Address Corrections should be sent to the Phyllis Schlafly Report, PO Box 618, Alton, Illinois 62002. Phone: (618) 462-5415.

Subscription Price: $20 per year. Extra copies available: 50¢ each; 3 copies $1; 30 copies $5; 100 copies $10.

http://www.eagleforum.org **eagle@eagleforum.org**

Another CBS Travesty

When you think about so-called "campaign finance reform" restricting the political speech of ordinary American citizens — while at the same time completely exempting Big Media from any rules or limits — think about the outrageous way Big Media continually attacks conservative politics and culture.

Last October, CBS-TV tried to air a malicious, full-of-false-dialogue caricature of Ronald and Nancy Reagan, and retreated only after the network was deluged with tens of thousands of angry emails. CBS's track record reveals not merely *Bias*, as documented in Bernard Goldberg's book; CBS is determined to move America politically to the left and culturally to the sexually deviant.

CBS-TV proved again during the Super Bowl that it is determined to offend our moral sensibilities and trash our culture. CBS can't duck responsibility for shocking 100 million Super Bowl viewers because CBS hired MTV to provide the half-time entertainment. It wasn't merely Janet Jackson's nudity; the MTV production was full of sexual lyrics and objectionable simulated behavior.

Drudge reported that "the decision to go forward went to the very top of the network," as indeed it must have. It's always been CBS's policy to exercise dictatorial control over everything that is aired, and it's impossible to believe that this outrage wasn't cleared at the top.

In recent years, the FCC has been all too lax in enforcing the decency laws. If the FCC is to retain any credibility it must take action against CBS for this unprecedented shocker during the most-watched television show of the year. Fines are not enough punishment; they are just a cost of doing business. CBS should be barred from broadcasting the Super Bowl for the next ten years. We hope Congress will take vigorous action.