

## **Who Owns Our Elections? The Struggle to Reclaim Our Vote and Our Democracy**

A Talk for the Unitarian Universalist Society of Amherst  
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I'm honored to be with all of you today, on this day that we honor Dr. Martin Luther King, Jr. His words remain ever present for us today. His spirit remains ever with us, and the struggle that he and so many others waged for democracy, for justice, for the right to vote in this country remains ever current to this day.

I am going to talk today about the question of who owns our elections. When I began my work in voting rights, 15 years ago as an attorney starting in this field, I focused on this question of the power of moneyed interests in our political process, and I remain focused on that today: the question of how we finance our political campaigns and how that controls who is able to run, what the debate is on the social and economic issues of our day, and who gets to win and govern as a result of that moneyed influence.

And then in 2004, in November 2004, I was awakened to a new dimension of this moneyed influence. It was the question of how we control the way we conduct elections on election day itself. I received a phone call the day after the November 2004 election, one hour after Sen. Kerry conceded, from an attorney friend of mine who had gone to Columbus, Ohio, to volunteer for election protection efforts there.

He was calling everyone he knew in the voting rights field to sound the alarm. And he called me and said, "I have to tell you: from where I'm sitting, this does not smell right." And he began to go through that litany of reports that we now know to be true—people standing in line for ten hours or more in order to vote, people being harassed and intimidated from voting, people showing up at the precinct where they had voted all their lives and not appearing on the voting rolls. And then he told me about the jumping-screen problem, and I said, "What's the jumping-screen problem?"

And he said, "You're really going to have to talk to voters in Youngstown, OH, where we got many of these kinds of complaints and where they were using electronic voting machines for the first time.

So I began to investigate this question the day after the election. He helped put me in touch with voters who had called in to that election hotline. And I'll never forget I had a phone-call conversation with a woman named Jeanne White, an elderly voter in Youngstown, OH, who voted all her life at this one precinct. And she told me what happened to her on election day 2004.

She said she went into that precinct at 8 am on election day, like she always does, to vote first thing in the morning. And she went into the voting booth and saw that electronic voting machine for the first time. And she began to cast her vote for various offices. And when she reached the President of the United States, she said she punched on the screen "Kerry" and the screen flashed up "Bush." And she yelled out, "They're cheating already!" And she got the whole precinct up in arms over whether or not her vote was being properly counted, whether or

not these machines were properly working. And she began to talk to neighbors and friends and others, in that precinct and others in the community, who had had this happen to them as well.

She became a client of mine in the recount case we eventually waged, fighting for the right to a recount, a full recount of the Ohio 2004 presidential election—a recount that, while it went forward, was never meaningful. And the Secretary of State and other officials throughout the state resisted, and we never had a meaningful count of the vote. But the story of Jeanne White is a story of one citizen rising up and demanding public control and public accountability in the vote-counting process.

Now, how did we get to this place, where some 40 states use this technology (direct recording electronic voting machines, computerized voting) for the counting of our votes: a technology that has proven to be unreliable, not trustworthy, for the counting and recording of our votes?

Now we have to remember first the debacle of Florida 2000 to tell this story. Where, as we remember, there was this hanging chad fiasco and a Supreme Court that, for the first time in this nation's history, selected the President of the United States.

As a result of that Florida 2000 election, Congress tried to rush to get it right, and passed the Help America Vote Act of 2002. And in the process, the elections industry, the voting machine manufacturers, saw an opportunity to make literally billions of dollars: \$3.2 billion of taxpayer money they spent on new technology. They rushed to Congress and said, "We have the answer to this hanging chad problem, and it's these new computer voting machines."

And so they, in the monopoly they have and the moneyed power that they have, convinced those in Congress who were rushing to get it right to shift from a paper ballot system to this new, fancier computerized voting system: no paper ballots, no hanging chads.

What we know now is that we have gone from a problem that was extremely serious, a tragic moment in our democracy, to one that is even far worse today, as we enter another national election. And the question will once again be asked, "Are our votes going to be counted? Will we have an electoral outcome that the people trust?" This is not a democracy that people can really have faith in when our votes themselves, we believe, are not being properly counted.

The Sarasota example is the latest example of what can go so wrong with this new technology. In November 2006, once again, there were questions all over the country around the use of this new technology. But in Sarasota it reached a particular peak.

Eighteen thousand people went to the polls in Sarasota to vote for various offices, including the hotly contested congressional race. There was only one problem: their votes were not counted. They went missing. We had a very hotly contested race between two candidates: Vern Buchanan, a Republican, and Christine Jennings, a Democrat, to replace then-former Secretary of State of Florida's position who had run for Congress and was going to run for the Senate.

There was a difference in the margin of some 400 votes. And yet the machine failed to record a vote for 18,000 people in this race. It did not fail to record a vote for Governor or for Senator for those voting. But somehow, we are led to believe by election officials, they simply blanked that race. They chose not to vote in that hotly contested race. This is called an undervote rate, and this undervote rate was far, far higher than anywhere else in that particular county with

respect to other races and, in fact, than anywhere else in the state. It is not an undervote rate that is believable from the standpoint of voter intent. Something else went wrong.

So Voter Action, which is an organization where I am now the legal director, went ahead and contested this election with other public interest organizations in court on the grounds that there ought to be a re-vote. When you have this kind of disparity, with a margin of victory of less than 400 votes and 18,000 missing votes, something went wrong. You have to do the election over. And there is precedent for this in voting rights law. While rarely used, it is the remedy that must be used when you have this kind of disparity.

First we had to demonstrate that there was something that went wrong with the machines. So we sought the source material: the source code and other access to these machines to be able to make our case. And ES&S (Election Systems and Software), one of the four big companies that engages in marketing this technology around the country, said, "You can't have access to this kind of source code. You can't have access to our machines. We have proprietary control over this." And, sure enough, the Florida courts upheld that principle—that somehow these private companies have the right to prevent access, even in a contested election, to investigate what went wrong when we have this kind of voting disparities.

Who owns our elections?

And then we turn to August 2007, when Dan Rather produces a report called "The Trouble with Touch Screens" for HDNet, the network that he's now a part of, on a show called "Dan Rather Reports." In it he presents evidence far more alarming than anything I have seen as a voting rights attorney on this question, and anything, I think, that has come forward.

He demonstrates that these U. S. voting systems companies may have engaged in commercial fraud, in knowingly marketing defective products across the country. He goes to Manila, to a factory in the Philippines which has been assembling iVotronics for ES&S, the Election Systems and Software company—the same machine, the iVotronic, that was used in Sarasota, FL; the same machine that's being used statewide in South Carolina in this coming Saturday's Democratic primary.

This is a machine being assembled in the Philippines with workers who have come forward on camera in the Dan Rather report, stating that they have tested the machines there by means of shaking them (and that is what they were told to do) to determine whether or not there was something wrong. But they had further tested it, and they have come forward to say that some 30% to 40% of the machines being shipped to the United States from this factory have been defective.

Now ES&S, hearing some of the problems that were happening with this factory in the Philippines -- which, by the way, it chose not to report to the Election Assistance Commission, (the federal agency, toothless, that's supposed to oversee all of this), chose not even to report that they supposed this has an effect [and that] the factory in the Philippines engaged in this.

The Dan Rather report also came forward with another individual, a U.S. citizen who had gone over to Manila to oversee this and, as a result of some of the concerns he witnessed and heard, [and] he came forward on camera to state the same thing, that in fact ES&S was fully warned about this, fully aware that this technology that it was producing at this factory and shipping to the United States was defective in 30% to 40% of these machines, 15,000 plus machines, and yet it went ahead.

But the second part of the report gets us back to Florida 2000, because Dan Rather also went and interviewed former employees of the Sequoia Voting Systems Co., another one of the “Big Four” (Hart InterCivic, Diebold, ES&S, and Sequoia). And Sequoia had been producing the paper for the printing of ballots in a number of states, including Florida, in 2000.

And he goes back and he finds the employees who had been engaged in this in Florida at that time, who have come forward to say that they had fully warned the company before that election that their shift to Boise Cascade had caused a reduction in the quality of the paper, that the paper itself was defective, and that it would result in the kind of hanging chad fiasco that we eventually saw. They also state on camera that they were told, days after the election and after this fiasco in 2000, to get rid of everything from Boise Cascade, get rid of all of the remaining paper to prevent any kinds of questions that might come forward.

So here we have it: private companies engaged in producing the paper for the printing of the ballots with no oversight, no accountability; private companies now engaged in marketing this defective technology (computerized voting machines) with no real oversight, no accountability; and no paper ballots from which to derive voter intent.

If we want to conduct a recount or an audit in South Carolina this coming Saturday, forget about it. There’s nothing to recount. There’s nothing to audit. The vote is cast within the computer, and it is up to us as a people to somehow have faith and trust that our votes will be properly counted.

Well, democracy is built on far more than trust. It’s built on transparency, it’s built on accountability, and it’s built on the assurance that our votes will be properly counted. And today I think that what we have is a serious crisis of confidence in our election process, when we cannot trust and we cannot see that our votes are being properly counted.

Now I found myself in New Hampshire this past Wednesday for the start of the presidential primary recount there, where questions had been raised as to whether or not the optical scan technology properly worked. The optical scan technology, for those of you who don’t know, is a technology by which you mark a paper ballot and then it gets scanned through a machine. And the first tally that night from those machines is from the memory cards that were in the machines.

There are some jurisdictions in New Hampshire that hand count, but 80% of the votes are secretly counted by a private company, LHS (a subcontractor of Diebold), that manages and services all of these machines. So I showed up because I had heard some rumors that there was a problem in the transparency of this process. And sure enough, when I got there I learned that the Secretary of State’s office and the Attorney General’s office in New Hampshire does not require all the towns and municipalities across the state of New Hampshire to preserve the memory cards.

In fact, there had already been reports that some of these towns had been returning the memory cards within days after the election to LHS, the private company. That’s where the votes are first counted, first recorded, and first reported. So, if there is a recount to happen (and that is ongoing now in New Hampshire), and if there was any discrepancy between the paper ballots—and that is a critical difference of course: there are paper ballots to count—and the original tallies reported on election night, there will be no way of going back and determining what happened

without the preservation of these memory cards. It's like saying preserve the underlying program (Excel) in your computer, but don't preserve the data within Excel.

The fact of the matter is, if we're going to engage in using any of this technology, we have to have an opportunity to go back. The computerized voting machines don't even provide that, but the optical scan machines do so long as the memory cards are preserved and the paper ballots can be audited, if not recounted.

Now I asked the Secretary of State of New Hampshire, who was present at this recount, "What would you do if there's a discrepancy that shows up here? And how will you go back and investigate what went wrong?" His response was, "What if? What if ice were to fall from the sky?"

I subsequently emailed that to some colleagues of mine in the field, and a number of them responded, "Ice does fall from the sky."

We have started a campaign to reclaim our democracy at [voteraction.org](http://voteraction.org), in which we are urging people around this country to call upon the United States Congress to launch a full investigation into the U.S. voting systems industry to determine what they have known, and when they have known it, about the marketing of their products all across the country, and whether they have engaged in fraud in the marketing of these products. We believe this is akin to the Big Tobacco moment when, as you remember, the seven CEOs of the tobacco companies were forced to come to Congress, raise their right hand, and swear under oath what they have known and when they have known it about the health effects of the products they had been marketing.

We think that the CEOs of the big four election industry companies need to come before the U. S. Congress and swear under oath what they've known. What did they know about the paper quality in Florida 2000? What did they know about the machines being marketed out of Manila in the Philippines? What have they known about all of these reported problems in state after state where this technology has been used? Let's force them to testify, and let's have it open to the light of day, for all of us to know the state of our democracy in the privatization of our elections.

Now, on this day that we honor Dr. King, I think it's critical that we remember, of course, that central to that struggle was the struggle for the right to vote. It was a struggle that Dr. King defined as a foundation stone for political action. "Voting," he said, "is the foundation stone for political action." And he also discussed the need urgently to do this for every other right that was at stake, every other question: this question of who owns the power. "So long as I do not firmly and irrevocably have 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 edicts of others."

He also spoke about the challenges of creating change, particularly in this situation where the right to vote was not present for so many people. "One of the difficult lessons we have learned," he stated, "is that you cannot depend upon American institutions to function without pressure. Any real change in the status quo depends upon continued creative action to sharpen the conscience of the nation and establish a climate in which even the most recalcitrant elements are forced to admit that change is necessary."

So there's no question that these big companies have control, have undue influence. But it is also true that there are Jeanne Whites of this nation—that all of us have a capacity to stand up and demand that our votes be counted; to stand up and demand that we have public control of our public elections; and to stand up and demand that our democracy count for all of us.

I would just end with this statement from Dr. King, which came at a time, of course, when he had expanded his message to talk about the Vietnam war and his opposition to the Vietnam war. And he states that, after he gave that celebrated sermon in April 1967, that one day a newsman came and said to him, “Dr. King, don't you think that you're going to have to stop now opposing the war and move more in line with the administration's policies? As I understand it, it has hurt the budget of your organization, and people who once respected you have lost respect for you. Don't you feel that you've really got to change your position?”

He says, “I looked at him and I had to say, ‘Sir, I'm sorry you don't know me. I'm not a consensus leader. I do not determine what is right and wrong by looking at the budget of the Southern Christian Leadership Conference. I've not taken a sort of Gallup poll of the majority opinion. Ultimately, a genuine leader is not a searcher for consensus but a molder of consensus.’”

“On some positions,” he went on, “cowardice asks the question, ‘Is it expedient?’ and then expedience comes along and asks the question, ‘Is it politic?’ Vanity asks the question, ‘Is it popular?’ Conscience asks the question, ‘Is it right?’”

Let us stand up for our conscience. Let us take back our democracy.