**2A Briefs**

While both affirmative speakers may use and should know the evidence on their case, this collection of evidence is gathered specifically for second affirmative speakers. After the negative team addresses areas of your case, refer to this section for evidence to help build your defense, particularly in the 2AC of the round.

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2A EVIDENCE: REPEALING THE 17TH AMENDMENT

HARMS

17th Amendment links to unfunded mandates on the States

Gene Healy 2010 (Vice president at the Cato Institute. B.A. from Georgetown University, J.D. from the University of Chicago Law School.) published by the Cato Institute, “REPEAL THE 17TH AMENDMENT?” 8 June 2010. <http://www.cato.org/publications/commentary/repeal-17th-amendment>

Together with the 16th Amendment establishing an income tax, the 17th Amendment helped transform the states into little more than administrative units for the federal behemoth. The feds have the gold, and they increasingly make the rules — in education, health care, and more. Over the next decade, Obamacare will lead to $34 billion in new state spending on Medicaid alone, according to the Congressional Budget Office. With the Senate co-opted, state attorneys general can only look to the federal courts to save them from that unfunded mandate.

17th Amendment causes unfunded mandates

Dr. John S. Baker, Jr. 2012. (Distinguished Scholar in Residence at Catholic University School of Law and Professor Emeritus of Law at Louisiana State University Law Center) 13 May 2012 – Essay #61 – Amendment XVII: Direct Election of Senators “ <http://www.constitutingamerica.org/blog/blog/tag/seventeenth-amendment/>

By shifting the selection of senators to the general electorate, the 17th amendment not only accomplished those purposes; but it also meant that senators no longer needed to be as concerned about the issues favored by state legislators. Predictably, over time, senators voted for popular measures which involved “unfunded mandates” imposing the costs on the states. Senators were able to claim political credit for the legislation, while the states were left to pay for new national policies not adopted by the states. Such unfunded mandates would have been unthinkable prior to adoption of the 17th amendment

At least 328 unfunded mandates were enacted by Congress between 2004-2012

Robert Jay Dilger and Richard Beth 2013. (Dilger - Senior Specialist in American National Government. Beth - Specialist on Congress and the Legislative Process. Both with Congressional Research Service) Unfunded Mandates Reform Act: History, Impact, and Issues 25 Apr 2013 <http://www.fas.org/sgp/crs/misc/R40957.pdf> (brackets added)

CBO reports that from 2004 through 2012, 170 laws were enacted with at least one intergovernmental mandate as defined under UMRA [Unfunded Mandates Reform Act]. These laws imposed 328 mandates on state and local governments, with 15 of these mandates exceeding UMRA’s threshold, 14 with estimated costs that could not be determined, and 299 with estimated costs below the threshold. CBO also reported that hundreds of other laws had an effect on state and local government budgets, but those laws did not meet UMRA’s definition of a federal mandate.

Impact to State education budget problems: Hurts US economy long term

Elizabeth McNichol 2012. ( Senior Fellow specializing in state fiscal issues, with Center on Budget and Policy Priorities; former staff member of the Joint Finance Committee for the State of Wisconsin Legislature specializing in property taxes and state aid to local governments; M.A. in Political Science from the Univ of Chicago) <http://www.cbpp.org/cms/?fa=view&id=3747>

State and local governments already have shed 641,000 jobs since August 2008; additional rounds of cuts will lead to further job losses in the months ahead. The cuts have also led states to cancel contracts with vendors, reduce payments to businesses and nonprofits that provide services, and cut benefit payments to individuals — all steps that remove demand from the economy. There are long-term effects as well: By diminishing the quality of elementary and high schools, making college less affordable, and reducing residents’ access to health care, the cuts threaten to make the U.S. economy less competitive in coming decades.

Impact: Hurting state budgets is bad for jobs, education, health care, and the economy

Elizabeth McNichol 2012. ( Senior Fellow specializing in state fiscal issues, with Center on Budget and Policy Priorities; former staff member of the Joint Finance Committee for the State of Wisconsin Legislature specializing in property taxes and state aid to local governments; M.A. in Political Science from the Univ of Chicago) <http://www.cbpp.org/cms/?fa=view&id=3747>

The state budget gaps of the last five years led to $290 billion in cuts to public services and $100 billion in tax and fee increases. Those actions lengthened the recession and delayed the recovery. Because spending reductions were dominant, hundreds of thousands of jobs were lost; undermining education, health care and other state priorities, which likely will cause future economic harm to states.

17th Amendment increased the power of special interests

Gene Healy 2010 (Vice president at the Cato Institute. B.A. from Georgetown University, J.D. from the University of Chicago Law School.) published by the Cato Institute, “REPEAL THE 17TH AMENDMENT?” 8 June 2010. <http://www.cato.org/publications/commentary/repeal-17th-amendment>

Indeed, “the increased power of special interests was the purpose of the 17th Amendment,” Zywicki writes. “It allowed them to lobby senators directly, cutting out the middleman of the state legislatures.” Maybe that’s why corporations and urban political machines — Progressives’ supposed enemies — supported the amendment.

Members of the House favored adoption of the 17th Amendment because it would make them more attractive to special interests

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

Members of Congress noted that malapportionment favored Republicans, and that direct election of senators favored urban wealthy and poor, while it worked against middle class farmers. On the other hand, the House had great incentive to see the Seventeenth Amendment adopted. Once senators represented the people-a body already represented in the House of Representatives-there was greater congruence between the electors and their representatives in Congress, and less opportunity for interference from the states. For Representatives in the House, the Seventeenth Amendment reduced the opposition to their constituencies, thereby increasing their power and making their votes more important to special interests.

Special Interests: Power of lobbyists went up post-17th because they could now focus directly on the Senators instead of the state legislators

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

As senators refocused on a mass electorate rather than a relatively small group of legislators, they became amenable to the influence of powerful lobbies. The Seventeenth Amendment reduced the cost of lobbying by eliminating the state legislatures as a countervailing source of control over U.S. senators. Direct election enabled lobbyists to focus directly on the senators rather than on the entire state legislature.

Impact: Special interest power undermines democracy

Lee Hamilton 2006. (Director of the Center on Congress at Indiana University. He was a member of the U.S. House of Representatives for 34 years) “We Pay A High Price for Special-Interest Lobbying” 6 Apr 2006 <http://congress.indiana.edu/we-pay-high-price-special-interest-lobbying>

But tax breaks, pollution, oil dependence, global warming and a host of bad public policy decisions are only the half of it. We pay an even higher price in the dislocation endured by our political system. We depend in a representative democracy on the accountability of our legislators and on knowing how they arrive at the decisions they make; yet weak reporting requirements undermine our ability to know all of the lobbying that aims to affect the votes of our representatives. We depend on the notion that our lawmakers owe their attention and their allegiance to the ordinary people who send them to Washington; yet it is getting easier every year to believe that the voters have been surpassed by big campaign contributors, corporations that put their private jets at legislators' disposal, and the lobbyists who organize these inducements. We depend on the idea that we, the people, can be heard in the halls of power, and that the interests of every side will be fairly weighed as legislation and regulations are crafted; yet if polls are to be believed, large numbers of Americans now believe they don't stand a chance against wealthy special interests.

17th Amendment increases federal power and weakens the States

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

State legislatures understood that when Congress preempted or otherwise made state laws ineffective, the state legislatures became less relevant in their lawmaking capacity and more relevant in their role as regulators of the state's senators. When state legislatures lost all control over their senators through the Seventeenth Amendment, they became virtually irrelevant to the process of monitoring federal legislation through the state's senators. In subsequent years, as Congress preempted more and more state legislation, state legislatures were powerless to prevent their slide into ignominy.

States have become nearly powerless to defend their position – creating big expansion of the power of Congress

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

The Senate's slide to popular democracy unyoked states and the national government in a way that has left the states nearly powerless to defend their position as other legitimate representatives of the people. As the United States moved into the Twentieth Century, it was inevitable that Congress would aggressively exercise power over matters such as commerce and spending for the general welfare in ways that no constitutional prophet would have foreseen. The lack of foresight of the circumstances under which Congress would exercise its powers did not excuse our failure to maintain those constitutional structures that assure the tempered, essential use of such powers.

Impact: Protection of state sovereignty is for the benefit of individuals

Sandra Day O’Connor 1992. (Supreme Court Justice) majority opinion of the Court in the case of NEW YORK v. UNITED STATES, 505 U.S. 144 at page 147, 19 June 1992 <http://www.supremecourt.gov/opinions/boundvolumes/505bv.pdf>

A departure from the Constitution’s plan for the intergovernmental allocation of authority cannot be ratified by the “consent” of state officials, since the Constitution protects state sovereignty for the benefit of individuals, not States or their governments, and since the officials’ interests may not coincide with the Constitution’s allocation.

Impact: Federalism secures and enhances freedom for individuals

Anthony Kennedy 2011. (US Supreme Court Justice) 16 June 2011, opinion of the Court in BOND v. UNITED STATES <http://www.supremecourt.gov/opinions/10pdf/09-1227.pdf>

The federal system rests on what might at first seem a counterintuitive insight, that “freedom is enhanced by the creation of two governments, not one.” Alden v. Maine, 527 U. S. 706, 758 (1999). The Framers concluded that allocation of powers between the National Government and the States enhances freedom, first by protecting the integrity of the governments themselves, and second by protecting the people, from whom all governmental powers are derived. Federalism has more than one dynamic. It is true that the federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-à-vis one another. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right. But that is not its exclusive sphere of operation. Federalism is more than an exercise in setting the boundary between different institutions of government for their own integrity. “State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.’” New York v. United States, 505 U. S. 144, 181 (1992) (quoting Coleman v. Thompson, 501 U. S. 722, 759 (1991) (Blackmun, J., dissenting)).

SOLVENCY

Why the Sergeant At Arms? Because he enforces the law on the floor of the Senate. It’s his job to keep out anyone who isn’t supposed to be in there, like any Senators elected not in accordance with our plan

US Senate Official Website in a page undated but written no earlier than 2007 . (ethical disclosure about the date: we know this page was written in 2007 or later because it referenced Terrance W. Gainer as the Sergeant At Arms, and he took office in 2007) “Office of the Sergeant at Arms and Doorkeeper” <http://www.senate.gov/reference/office/sergeant_at_arms.htm>

As chief law enforcement officer of the Senate, the Sergeant at Arms is charged with maintaining security in the Capitol and all Senate buildings, as well as protection of the members themselves. The Sergeant at Arms serves as the executive officer of the Senate for enforcement of all rules of the Committee on Rules and Administration regulating the Senate Wing of the Capitol and the Senate Office Buildings and has responsibility for and immediate supervision of the Senate floor, chamber and galleries. The Sergeant at Arms is authorized to arrest and detain any person violating Senate rules, including the President of the United States.

ADVANTAGES

Pre-17th Amendment system protected federalism

Prof. Todd Zywicki 2010. (George Mason University Professor of Law) 15 Nov 2010 NATIONAL REVIEW, “Repeal the Seventeenth Amendment“ <http://www.nationalreview.com/articles/252825/repeal-seventeenth-amendment-todd-zywicki>

Under the original arrangement, senators had strong incentives to protect federalism. They recognized that their reelection depended on pleasing state legislators who preferred that power be kept close to home. Whereas House members were considered representatives of the people, senators were considered ambassadors of their state governments to the federal government and, like national ambassadors to foreign countries, were subject to instruction by the parties they represented (although not to recall if they refused to follow instructions). And they tended to act accordingly, ceding to the national government only the power necessary to perform its enumerated functions, such as fighting wars and building interstate infrastructure.

State election of Senators blocks federal encroachment and protects the people

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 (first brackets added, others in original) <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

The mechanism by which the states could most readily defend against federal encroachment was their representation in the Senate. [quoting James Madison:] "[T]he equal vote allowed to each state, is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and the instrument for preserving that residuary sovereignty. " State legislatures stood to mediate between the national government and the people, both for the state's account and the account of the people. As Alexander Hamilton said,  
[T]he state Legislature, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens, against encroachments from the Federal government, will constantly have their attention awake to the conduct of the national rulers and will be ready enough, if any thing improper appears, to sound the alarm to the people and not only to be the VOICE but if necessary the ARM of their discontent. Accordingly, the Constitution entrusted to state legislatures the duty to elect the state's senators.

DISAD RESPONSES

“17th Amendment gave accountability” – Turn: 17th reduced accountability of Senators. There’s no effective means of making Senators accountable to the people

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 (ellipses and brackets in original) <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

During the debates over the Seventeenth Amendment, one representative asked, "to whom [is] a Senator ... responsible? Is he responsible to the Legislature that elected him? ... [T]o whom is he responsible after it expires?" Another argued that "the constant shifting of the membership of State Legislatures removes any possibility of accountability to the body which elects. ' But what was the alternative? Were the people a more stable body and better positioned to demand accountability? The people only appeared to be more stable because they were more faceless than the legislature; it was precisely because the people could not be identified that senators felt beholden to the people as a body. It is easy to say that one is answerable to the people when the people have no effective means of calling their representatives to accountability

“Direct election makes Senators closer to the people” – Turn: Direct election may make people LESS represented

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

Direct election may also have given the people less representation in Washington. If the Amendment diminished the stature of state legislatures, it has failed to spur American voters to the polls to secure their representation in senatorial elections. Voter participation has remained low. This non-voting segment of the population is unrepresented in the choice of senators. To put it another way, senators may not accurately reflect their constituents because their constituents do not vote. The same could be said, of course, for state legislators, who are also elected by a relatively small proportion of the electorate. However, even if state legislators do not fully reflect their constituents either, they are at least physically and metaphorically closer to their constituents; the smaller the group represented the more likely representatives will reflect-or at least understand-the interests of their constituents. Prior to the Seventeenth Amendment, senatorial elections were extremely important occasions in which all legislators were likely to participate. Thus, in pre-Seventeenth Amendment elections, all persons were likely to have been (at least nominally) represented in the voting for U.S. senators. Given the level of participation in modern elections, we cannot say the same today.

“Popular vote is better at democracy” – Turn: that’s a bad thing. Constitutional republic is better, and the Founders knew it

Prof. Todd Zywicki 2010. (George Mason University Professor of Law) 15 Nov 2010 NATIONAL REVIEW, “Repeal the Seventeenth Amendment” <http://www.nationalreview.com/articles/252825/repeal-seventeenth-amendment-todd-zywicki>

Empowering state legislatures to elect senators was considered both good politics and good constitutional design. At the Constitutional Convention in Philadelphia, the proposal was ratified with minimal discussion and recognized as the approach “most congenial” to public opinion. Direct election was proposed by Pennsylvania’s James Wilson but defeated ten to one in a straw poll. More important than public opinion, however, was that limitations on direct popular sovereignty are an important aspect of a constitutional republic’s superiority to a direct democracy. As Madison observes in Federalist 51, “A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

“Democracy!” – Response: Federalism is an essential servant of democracy, a different manifestation of it

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

Federalism and democracy are not in opposition in Congress any more than they are in the Electoral College; they work in concert to hold the relationships among the national government, the states, and the people in constitutional equipoise. Neither is federalism a competitor to democracy, but its willing servant. Federalism suggests to the democratic impulse that it should confine itself to local rather than to national resolution; that uniformity of government is not required and may, therefore, not be demanded. Thus, federalism is a different manifestation of democratic will: Democracy demands that individual voices be heard; federalism asks, "How great the din?"

“Accountable to the People” – Response: 17th didn’t make senators accountable

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

While proponents of the Amendment expressed great confidence in the judgment of the people as electors, they manifested no concern for the future of the states and the severing of important ties between the Senate and state legislatures. They also failed to see that popular election alone relieved senators of any real accountability to their new constituency.

“17th increases democracy” – Responses: 1) Protecting the Constitution outweighs. 2) Some Senate functions work better if it is insulated from public passions

Prof. Todd Zywicki 2010. (George Mason University Professor of Law) 15 Nov 2010 NATIONAL REVIEW, “Repeal the Seventeenth Amendment” <http://www.nationalreview.com/articles/252825/repeal-seventeenth-amendment-todd-zywicki>

Establishment media and liberal politicians have mocked tea partiers’ calls for repeal of the Seventeenth Amendment as anti-democratic. To be sure, indirect election would be less democratic than direct election, but this is beside the point. Notably, those who are most shocked by the proposal to repeal the Seventeenth Amendment are also the most vociferous in denouncing democratic election of judges. The Framers understood what today’s self-interested sloganeers of democracy do not: What matters is not whether a given method of selecting governmental officials is more or less democratic, but whether it will safeguard the constitutional functions bestowed upon each branch and conduce to their competent execution. Indeed, certain of the Senate’s duties — such as its role as a type of jury for impeachment proceedings — make sense only if it is somewhat insulated from the public’s passions of the moment, as was well demonstrated by the farcical Senate trial of Bill Clinton.

“Corruption of State Legislatures” – Response: No worse than corruption of voters post-17th

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 (brackets and ellipses in original) <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

Perhaps the most thoughtful opponent of direct election reform was New York Senator Elihu Root. Admitting that there were "rumors, suspicions, and occasionally proofs of corrupt conduct on the part of State legislatures," he questioned whether there was any "claim ... that the wise men who framed our Constitution were mistaken in their belief that wise and intelligent and faithful State legislatures would make the best possible choice for Senators of the United States. ' Given these "exceptional and occasional cases," he asked, why "abandon ... rather than reform the system," when the "whole proposition rests upon the postulate of the incapacity of the people of the United States to elect honest and faithful legislatures[?]' Root's point was well taken. The proponents of the Amendment had brought forth evidence of corruption, but they had failed to show that it resulted from the structure of the present mode of election and that structural change in the mode of election would cure the problem. If the people had proven so notoriously inept in electing state legislators, what made us think they would prove more capable of electing U.S. senators?

“Corruption” – Response: Very little corruption pre-17th Amendment

Prof. Todd Zywicki 2010. (George Mason University Professor of Law) 15 Nov 2010 NATIONAL REVIEW, “Repeal the Seventeenth Amendment” <http://www.nationalreview.com/articles/252825/repeal-seventeenth-amendment-todd-zywicki>

Critics of repeal have also contended that election of senators by state legislatures was, and would be today, unusually prone to corruption and bribery. But research by historian C. H. Hoebeke found that of the 1,180 Senate elections between 1789 and 1909, in only 15 cases was fraud credibly alleged, and in only seven was it actually found — approximately one-half of 1 percent.

“Corruption” – Response: Authors of the 17th Amendment didn’t think it would prevent corruption, and they were right

Prof. Todd Zywicki 2010. (George Mason University Professor of Law) 15 Nov 2010 NATIONAL REVIEW, “Repeal the Seventeenth Amendment” <http://www.nationalreview.com/articles/252825/repeal-seventeenth-amendment-todd-zywicki> (“progressive era” refers to the early 20th century time period when the 17th Amendment was written)

And even in the progressive era it was not believed that direct election of senators would prevent corruption. Among the Seventeenth Amendment’s staunchest supporters were urban political machines (hardly advocates of clean government), which understood that direct election would boost their control of the Senate as they drove and bribed their followers to the polls.

“Corporate Influence” – Response: Corporate influence went up post-17th because it takes more money to win a statewide popular election

Prof. Jay S. Bybee 1997. (Associate Professor of Law, Louisiana State Univ.) ULYSSES AT THE MAST: DEMOCRACY, FEDERALISM, AND THE SIRENS' SONG OF THE SEVENTEENTH AMENDMENT , Northwestern University Law Review, Vol 91 No. 2 <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1365&context=facpub>

Moreover, the proponents of the Amendment had perhaps overlooked that state-wide races conducted to the electorate rather than to the legislature would prove far more expensive than congressional races or the then current senate races, and the need for money could only encourage the influence of corporations and political machines. If the proponents' real concern was eliminating corporate influence, the Amendment may have only facilitated the influence. The proponents thought that corporations would have less influence with the electorate than with the legislature, but direct election turned the corporations' attention from the legislature to the candidates themselves, lowering the costs of securing influence.

2A EVIDENCE: REVERSING CITIZENS UNITED

AFFIRMATIVE PHILOSOPHY

Evaluating speech requires taking into account the identity of the speaker

Aristotle (around 2300 years ago) quoted by Malcolm Heath “Aristotle on Comedy” <http://www.docstoc.com/docs/71002445/Aristotelian-Comedy>

But ‘correctness is not the same thing in ethics and poetry’ (Poet. 1460b13f.). Aristotle’s point in the Ethics is that the more recent style of comedy is a better guide to the standards of behaviour to be observed in everyday life. Nothing follows from this about his evaluation of the different styles of comedy as comedy. When poetry is in question, ‘in evaluating any utterance or action one must take into account not just the moral qualities of what is actually done or said, but also the identity of the agent or speaker’ (Poet. 1461a4-7).

BACKGROUND

The purpose of Section 203 of BCRA: To close a loophole in the *Buckley v. Valeo* decision that allowed corporations to campaign for/against candidates by avoiding certain ‘magic words’

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (brackets and ellipses in original)

Congress crafted §203 in response to a problem created by *Buckley*. The *Buckley* Court had construed FECA’s definition of prohibited “expenditures” narrowly to avoid any problems of constitutional vagueness, holding it applicable only to “communications that expressly advocate the election or defeat of a clearly identified candidate,” 424 U. S., at 80, *i.e.*, statements containing so-called “magic words” like “ ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [or] ‘reject,’ ” *id.*, at 43–44, and n. 52. After *Buckley*, corporations and unions figured out how to circumvent the limits on express advocacy by using sham “issue ads” that “eschewed the use of magic words” but nonetheless “advocate[d] the election or defeat of clearly identified federal candidates.” *McConnell*, 540 U. S., at 126. “Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads.” *Id.*, at 127. Congress passed §203 to address this circumvention, prohibiting corporations and unions from using general treasury funds for electioneering communications that “refe[r] to a clearly identified candidate,” whether or not those communications use the magic words. 2 U. S. C. §434(f)(3)(A)(i)(I).

VOTING CRITERION: Whether corporations have the same free speech rights as individuals. We will earn an Affirmative ballot when we prove that they do NOT.

[This is an optional way to structure the AFF case. Use it if you want.]

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

In light of the facial challenge to the constitutionality of the BCRA, the core issue of the Citizens United opinion became whether corporations have the same free speech rights as individuals, specifically in the context of electioneering.

MINOR REPAIR RESPONSE

“Just do more disclosure” – Response: Disclosure is good, but it won’t solve for the failures of *Citizens United*

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE,SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

There are some who believe that any problem that Citizens United created could be remedied simply by more effective disclosure. It is critical that this Committee recognize that however important disclosure is, disclosure alone could not reveal the actual influence of unlimited independent expenditures. This point is clear from both academic work and practical political experience. Marcos Chamon and Ethan Kaplan, for example, in their work describing the “Iceberg Theory of Campaign Contributions,” point out that the incentive produced by a $10,000 contribution to a candidate is the same as the incentive produced by a $2,000 contribution to that candidate, plus a credible threat of an $8,000 contribution to that candidate’s credible opponent. Given that equivalence, it’s not surprising the contributor would opt for the smaller contribution. But obviously, the influence of that $8,000 would be completely missed even by the most effective disclosure statute.

HARMS/SIGNIFICANCE

*Citizens United* overturns 100 years of democratic decision-making by state legislatures and Congress on the subject of corporate electioneering

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (brackets in original)

Today’s decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in *Austin*, for more than a century. The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and debating BCRA. The total record it compiled was *100,000 pages* long. Pulling out the rug beneath Congress after affirming the constitutionality of §203 six years ago shows great disrespect for a coequal branch.

Citizens United triggered an explosion in campaign money and influence of big donations

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE,SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

This not to say that before Citizens United, large contributions or expenditures did not matter. Of course they did. But Citizens United and its progeny have changed the way that large expenditures can matter. And that change in turn has inspired an explosion in the level — both the amount and the size — of such contributions.

Corruption takes many forms: corporate influence is part of the spectrum of corruption

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf. Corruption operates along a spectrum, and the majority’s apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other’s backs—and which amply supported Congress’ determination to target a limited set of especially destructive practices.

Citizens United boosts the corrupting influence of concentrations of campaign money from a few large donors

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE,SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

And so has the demand for Super PAC spending soared: As the Sunlight Foundation reports, in the 2011-12 cycle so far, more than a quarter of a billion dollars has been raised by Super PACs. Of the $142 million spent so far, negative spending has outstripped positive spending 2 to 1. OpenSecrets.org reports that through April, “outside spending in all its forms has doubled since 2008, but independent expenditures have more than tripled.” And while there are questions about whether that growth was truly caused by Citizens United, there can be no question that changes in the concentration of funding have been driven by changes caused by Citizens United. Whether there was a comparable amount of money in 2008 or not, the number of large funders has grown. In my view, it is this concentration that defines the corruption, for it is this concentration that creates the corrupting dependence.

Big donations give a tiny few extraordinary influence on elected officials – who are no longer dependent on “The People”

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE,SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

By structuring an election system in which candidates must rely upon small contributions from citizens only, the system assures that candidates pay attention to the needs of those contributors — and hence the needs of these citizens. But when contributions are concentrated in the very few, those few have a corrupting influence, because the government’s dependence upon them conflicts with a dependence upon the people “alone.” Yet concentrated influence is exactly what the current system of campaign funding induces. As many have recognized, it is as if America runs two elections each election cycle — one a money election, and one a voting election. To succeed in the latter, you must succeed in the former first. But while in the voting election, all citizens can participate, in the money election — at least when contributions are unlimited — only a tiny slice of America can participate meaningfully. Those tiny few have extraordinary influence relative to the rest of us. And so long as effective contributions are unlimited, candidates will continue to be dependent upon those tiny few, and hence not “dependent upon the People alone.”

Soviet style democracy – The only votes that matter are the 1% who fund the campaigns

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

But the problem with the post-Citizens United campaigns is not the amount of money. It is the source. Again, to qualify as a viable candidate in elections from school board to president, you increasingly need the effective approval of the tiniest slice of the 1%. Without that approval — expressed in contributions, not votes — the vast majority of candidates have no chance in the voting election. For most, winning the (tiny fraction of the) 1% election is thus a necessary condition for winning in the 99% election. We ridiculed Soviet “democracy” when it effectively did the same thing, by requiring every candidate be cleared by the Politburo before being allowed on the ballot. Yet most in America today don’t even recognize the parallel that we have produced here.

Distorting influence on the political process caused by corporations maximizing shareholders’ wealth

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

Relying on decades of similar legislation and precedent that reacted to that legislation, Congress carefully crafted and enacted the restricting regulation: the Bipartisan Campaign Reform Act of 2002 (“BCRA”). The impetus for the enactment was Congress’s finding that corporations can create a distorting effect in the political process due to their ability to accumulate massive amounts of wealth and their duty to zealously advocate singlemindedly for the wealth maximization of their shareholders.

Corporate spending has corrupting influence, and is not entitled to complete First Amendment protection, since it is not the speech of members of the public

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide “that the special characteristics of the corporate structure require particularly careful regulation” in an electoral context. *NRWC*, 459 U. S., at 209–210.50 Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also “furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information,” *Beaumont*, 539 U. S., at 161, n. 8 (citation omitted).

There’s a difference between corporate speech about issues and corporate speech about candidates

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

The Bellotti Court found that corporations are entitled to certain First Amendment protections and that the corporation did not lose the protection of that amendment simply because it was a corporation and not a natural person. The majority used the Bellotti opinion to support the idea that no distinctions could ever be made between corporations and individuals with respect to free speech rights. The majority did not seem troubled by the fact that the issue in Bellotti and the issue in Citizens United had a crucial distinction. Indeed, cases like Austin v. Michigan Chamber of Commerce (decided after Bellotti) confronted the exact issue before the Court in Citizens United and upheld the relevant statute. Those cases distinguished Bellotti because the restriction in Bellotti related to referendum items, items not likely to incite corruption, and not individual politicians seeking office.

Difference between “issue” advertising and “candidate” ads: Candidates must be accountable to the people

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The difference is that the statute at issue in *Bellotti* smacked of viewpoint discrimination, targeted one class of corporations, and provided no PAC option; and the State has a greater interest in regulating independent corporate expenditures on candidate elections than on referenda, because in a functioning democracy the public must have faith that its representatives owe their positions to the people, not to the corporations with the deepest pockets.

INHERENCY

Citizens United is a dramatic break from the past, for repealing limits on corporate campaigning.

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The majority’s approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907, ch. 420, 34 Stat. 864. We have unanimously concluded that this “reflects a permissible assessment of the dangers posed by those entities to the electoral process,” *FEC* v. *National Right to Work Comm.*, 459 U. S. 197, 209 (1982) *(NRWC)*, and have accepted the “legislative judgment that the special characteristics of the corporate structure require particularly careful regulation,” *id.*, at 209–210.

PLAN ADVOCACY

Corporations don’t deserve the same speech rights as humans, because they have conflicts of interest with eligible voters. Lawmakers have a compelling duty to prevent corporate spending from harming elections

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

Advocacy: 35 members of the Delaware state legislature want Congress to pass a constitutional amendment overturning Citizens United

Letter to Delaware Senator Thomas Carper. 10 June 2013 <http://united4thepeople.org/images/DE.pdf>

We, the Undersigned Members of the Delaware General Assembly, call upon you to join your colleagues and pass a constitutional amendment reversing the United States Supreme Court’s 5-4 ruling in Citizens United v. Federal Election Commission (2010), which declared that corporations enjoy the First Amendment political rights of the people, and which toppled dozens of state and federal laws and two decades of judicial precedents allowing the regulation of direct corporate (for profit, not for profit, including unions) expenditures related to political campaigns. There is no more critical foundation to our government than citizens’ confidence in fair and free elections. The Citizens United decision directly undermines this confidence, and was issued in the absence of any evidence or searching inquiry to refute the fair assumption that unbridled and opaque spending in politics harms American democracy.

Businesses and Unions opposed reversing Citizens United and wanted to uphold the previous campaign finance laws

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (“Austin” was a Supreme Court decision that was the court’s position before it overturned the rules in Citizens United)

In fact, no one has argued to us that *Austin*’s rule has proved impracticable, and not a single for-profit corporation, union, or State has asked us to overrule it. Quite to the contrary, leading groups representing the business community, organized labor, and the nonprofit sector, together with more than half of the States, urge that we preserve Austin.

AFF upholds Founders’ intent for proper use of the First Amendment

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The Framers thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends. Even “the notion that business corporations could invoke the First Amendment would probably have been quite a novelty,” given that “at the time, the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign.”

Corporate campaign finance restrictions have a long history as a necessary means of preventing corruption and upholding citizen confidence in government, and the Supreme Court was upholding them before *Citizens United*

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (brackets and ellipses in original)

In sum, over the course of the past century Congress has demonstrated a recurrent need to regulate corporate participation in candidate elections to “ ‘[p]reserv[e] the integrity of the electoral process, preven[t] corruption, . . .sustai[n] the active, alert responsibility of the individual citizen,’ ” protect the expressive interests of shareholders, and “ ‘[p]reserv[e] . . . the individual citizen’s confidence in government.’ ” *McConnell*, 540 U. S., at 206–207, n. 88 (quoting *Bellotti*, 435 U. S., at 788–789; first alteration in original). These understandings provided the combined impetus behind the Tillman Act in 1907, see *Automobile Workers*, 352 U. S., at 570–575, the Taft-Hartley Act in 1947, see *WRTL*, 551 U. S., at 511 (Souter, J., dissenting), FECA in 1971, see *NRWC*, 459 U. S., at 209–210, and BCRA in 2002, see *McConnell*, 540 U. S., at 126–132. Continuously for over 100 years, this line of “[c]ampaign finance reform has been a series of reactions to documented threats to electoral integrity obvious to any voter, posed by large sums of money from corporate or union treasuries.” *WRTL*, 551 U. S., at 522 (Souter, J., dissenting). Time and again, we have recognized these realities in approving measures that Congress and the States have taken.

DISADVANTAGE RESPONSES

“Bad idea to overturn Supreme Court decisions quickly” – Response: That’s what the majority in Citizens United did, and they said it was the right thing to do if we’re on the wrong course

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013> (brackets in original)

With expressed deference to precedent, the Citizens United majority reiterated its previous position that “[s]tare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.” The Court made clear that it would respect precedent unless respecting precedent put it “on a course that is sure error.”

Founding Fathers – would never have crossed their minds to mention corporations in the Bill of Rights. No way Founders’ intent can support the *Citizens United* decision

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

Justice Stevens responded to Justice Scalia directly, retorting that the very idea of giving individual rights to a corporation was so inconceivable to the Founding Fathers that it would never have crossed their minds to specifically write into the Constitution that corporations were not entitled to individual rights. Like Justice Stevens, scholars have also criticized the majority’s invocation of originalism in support of their Citizens United decision. One such commentator states that the opinion “fails to persuade” that the Framers actually wanted to empower corporations with First Amendment rights. And that, instead, the opinion “takes us on a long journey” and nowhere arrives at evidence of original intent.

“Founders intent” – Response: The Founders mistrusted corporations

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013> (brackets in original)

Justice Stevens went on to explain that, in fact, corporations were feared in the early days of our nation. Justice Stevens cited scholars from the era of our Constitution’s founding, writing repeatedly that corporations were “soulless” and could “concentrate the worst urges of whole groups of men.” In an early case from 1819, then Chief Justice Marshall (ironically cited by the majority for his Marbury opinion) wrote that, “[a] corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it.”

“Founders intent” – Response: Thomas Jefferson would have had no concept at all of corporations claiming First Amendment rights

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

Justice Stevens discussed what the Founding Fathers would have understood about corporations: at the end of the eighteenth century there were only a few hundred corporations in the entire country, and each needed to specifically petition its local state governments for a charter that would entitle it to do anything at all. Since these corporations were very much at the mercy of the state for all of their rights, the notion today that corporations should not be subject to congressional regulation would be absurd to men like Thomas Jefferson. In Justice Stevens’s words, this notion is not merely a misinterpretation of the Constitution in a close case, but is absolutely “implausible.”

“Founders Intent / Freedom of Speech” – Response: Founders never intended any constitutional guarantees for corporate speech

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

(“The framers of the First Amendment could scarcely have anticipated its application to the corporation form. That, of course, ought not to be dispositive. What is compelling, however, is an understanding of who was supposed to be the beneficiary of the free speech guaranty—the individual”). In light of these background practices and understandings, it seems to me implausible that the Framers believed “the freedom of speech” would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

“Corporations deserve free speech” – Response: If that’s true, then they also deserve the right to vote

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

If taken seriously, our colleagues’ assumption that the identity of a speaker has *no* relevance to the Government’s ability to regulate political speech would lead to some remarkable conclusions. Such an assumption would have accorded the propaganda broadcasts to our troops by “Tokyo Rose” during World War II the same protection as speech by Allied commanders. More pertinently, it would appear to afford the same protection to multinational corporations controlled by foreigners as to individual Americans: To do otherwise, after all, could “ ‘enhance the relative voice’ ” of some (*i.e.*, humans) over others (*i.e.*, nonhumans). *Ante*, at 33 (quoting *Buckley*, 424 U. S., at 49).51 Under the majority’s view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.

“Corporations have to be involved in elections… or else!” – Response: The “or else” should have happened in 1907, when Congress banned all corporate donations to candidates. Neg needs to prove anything bad happened in 1907

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

A century of more recent history puts to rest any notion that today’s ruling is faithful to our First Amendment tradition. At the federal level, the express distinction between corporate and individual political spending on elections stretches back to 1907, when Congress passed the Tillman Act, ch. 420, 34 Stat. 864, banning all corporate contributions to candidates. The Senate Report on the legislation observed that “[t]he evils of the use of [corporate] money in connection with political elections are so generally recognized that the committee deems it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials.” S. Rep. No. 3056, 59th Cong., 1st Sess., 2 (1906). President Roosevelt, in his 1905 annual message to Congress, declared: “ ‘All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders’ money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.’ ” *United States* v. *Automobile Workers*, 352 U. S. 567, 572 (1957) (quoting 40 Cong. Rec. 96).

“Censorship of speech” – Response: It’s carefully targeting corruption, not censoring speech

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

So let us be clear: Neither *Austin* nor *McConnell* held or implied that corporations may be silenced; the FEC is not a “censor”; and in the years since these cases were decided, corporations have continued to play a major role in the national dialogue. Laws such as §203 target a class of communications that is especially likely to corrupt the political process, that is at least one degree removed from the views of individual citizens, and that may not even reflect the views of those who pay for it.

“Stifles free speech” – Response: Every corporate shareholder can do as much free speech as they want

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (an MCFL organization is an entity incorporated under section 501c4 of the tax code that does not accept corporate or union money and was therefore not restricted by BCRA’s limits on corporate campaign advertising)

Like all other natural persons, every shareholder of every corporation remains entirely free under *Austin* and *McConnell* to do however much electioneering she pleases outside of the corporate form. The owners of a “mom & pop” store can simply place ads in their own names, rather than the store’s. If ideologically aligned individuals wish to make unlimited expenditures through the corporate form, they may utilize an *MCFL* organization that has policies in place to avoid becoming a conduit for business or union interests.

“AFF will ban corporate speech” – Response: There was no “ban” on corporate speech before *Citizens United*

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (brackets in original)

Pervading the Court’s analysis is the ominous image of a “categorical ba[n]” on corporate speech. *Ante*, at 45. Indeed, the majority invokes the specter of a “ban” on nearly every page of its opinion. *Ante,* at 1, 4, 7, 10, 11, 12, 13, 16, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 33, 35, 38,40, 42, 45, 46, 47, 49, 54, 56. This characterization is highly misleading, and needs to be corrected. In fact it already has been. Our cases have repeatedly pointed out that, “[c]ontrary to the [majority’s] critical assumptions,” the statutes upheld in *Austin* and *McConnell* do “not impose an *absolute* ban on all forms of corporate political spending.” *Austin*, 494 U. S., at 660; see also *McConnell*, 540 U. S., at 203–204; *Beaumont*, 539 U. S., at 162–163. For starters, both statutes provide exemptions for PACs, separate segregated funds established by a corporation for political purposes. See 2 U. S. C. §441b(b)(2)(C); Mich. Comp. Laws Ann. §169.255 (West 2005). “The ability to form and administer separate segregated funds,” we observed in *McConnell*, “has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court’s unanimous view.” 540 U. S., at 203.

Constitution does permit restrictions on the speech of some to prevent a few from drowning out the many

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The majority emphasizes *Buckley*’s statement that “ ‘[t]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.’ ” *Ante*, at 33 (quoting 424 U. S., at 48–49); *ante*, at 8 (opinion of ROBERTS, C. J.). But this elegant phrase cannot bear the weight that our colleagues have placed on it. For one thing, the Constitution does, in fact, permit numerous “restrictions on the speech of some in order to prevent a few from drowning out the many”: for example, restrictions on ballot access and on legislators’ floor time. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 402 (2000) (BREYER, J., concurring). For another, the *Buckley* Court used this line in evaluating “the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections.”

Status Quo before Citizens United did not suppress altogether nor exclude corporations from public dialog

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html> (brackets and ellipses in original)

At the time Citizens United brought this lawsuit, the only types of speech that could be regulated under §203 were: (1) broadcast, cable, or satellite communications; (2) capable of reaching at least 50,000 persons in the relevant electorate; (3) made within 30 days of a primary or 60 days of a general federal election; (4) by a labor union or a non-*MCFL*, nonmedia corporation; (5) paid for with general treasury funds; and (6) “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The category of communications meeting all of these criteria is not trivial, but the notion that corporate political speech has been “suppress[ed] . . . altogether,” *ante*, at 2, that corporations have been “exclu[ded] . . . from the general public dialogue,” *ante*, at 25, or that a work of fiction such as *Mr. Smith Goes to Washington* might be covered, *ante*, at 56– 57, is nonsense. Even the plaintiffs in *McConnell*, who had every incentive to depict BCRA as negatively as possible, declined to argue that §203’s prohibition on certain uses of general treasury funds amounts to a complete ban. See 540 U. S., at 204.

MODEL AMENDMENT TEXT

Text of proposed constitutional amendment written by Sen. Bernie Sanders of Vermont, quoted by Edward McClelland (journalist) 13 Mar 2013 WARD ROOM “Senator Introduces Amendment to Overturn ‘Citizens United’“ <http://www.nbcchicago.com/blogs/ward-room/Senator-Introduces-Amendment-to-Overturn-Citizens-United-197790761.html>

SECTION 1.  
Whereas the right to vote in public elections belongs only to natural persons as citizens of the United States, so shall the ability to make contributions and expenditures to influence the outcome of public elections belong only to natural persons in accordance with this Article.  
SECTION 2.  
Nothing in this Constitution shall be construed to restrict the power of Congress and the States to protect the integrity and fairness of the electoral process, limit the corrupting influence of private wealth in public elections, and guarantee the dependence of elected officials on the people alone by taking actions which may include the establishment of systems of public financing for elections, the imposition of requirements to ensure the disclosure of contributions and expenditures made to influence the outcome of a public election by candidates, individuals, and associations of individuals, and the imposition of content neutral limitations on all such contribution and expenditures.  
 SECTION 3.  
Nothing in this Article shall be construed to alter the freedom of the press.   
 SECTION 4.  
Congress and the States shall have the power to enforce this Article through appropriate legislation.

2A EVIDENCE: DISCLOSE ACT

BACKGROUND / DEFINITIONS

“PACs” and “Super PACs” – Political Action Committees

Financial Times 2011. (British news magazine) Financial Times Lexicon “super-Pac” (ethical disclosure about the date: The article is undated, but copyrighted in 2013. However, its text refers to events in 2011, so we chose this older date to be completely fair.) <http://lexicon.ft.com/Term?term=super_Pac>

The Citizens United Supreme Court decision loosened the restrictions on who can give how much to political action committees (pac), giving rise to what has become known as “super-Pacs”. Super-Pacs are groups that may spend unlimited amounts to influence elections but may not co-ordinate with their chosen candidate’s campaign. They are technically independent, but can run advertisements for or against any candidate or issue. In reality, however, each candidate has a super-Pac that supports them and few voters can tell the difference between ads run by a candidate’s campaign and those by the super-Pac of its supporters.

HARMS / SIGNIFICANCE

Voters misled: Corporations create fake shell groups that buy ads, and the public doesn’t know who’s really funding it

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- **Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S.** **House of Representatives 11 May 2010** <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Currently, federal disclaimers only require identification of the sponsoring organization. Too often, however, this organizational name is that of a benign-sounding shell entity created solely for the election. Use of front groups veil that underlying funders are actually business corporations with specific, profit-driven agendas. Examples from the states illustrate this problem. In a recent Colorado ballot measure election, for example, a group called “Littleton Neighbors Voting No” spent $170,000 to defeat a zoning restriction that would have prevented a new Wal-Mart. When the disclosure reports for these groups were filed, it was revealed that “Littleton Neighbors” was exclusively funded by Wal-Mart, and not a grass roots organization. The DISCLOSE Act’s top donor disclaimer approach would have made Wal-Mart’s participation evident on the face of the advertisements and empowered voters with the information necessary to make an informed decision.

Voters are kept in the dark by trade associations covering corporate campaign spending

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- **Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S.** **House of Representatives 11 May 2010** <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1> (ellipses in original)

The threat of secretive trade association spending is not a theoretical fear. This is already a demonstrated problem in several states. For instance, in a 2000 Michigan senate race, Microsoft used the US Chamber of Commerce to fund $250,000 in attack ads against a candidate. Microsoft’s involvement in the election would have gone unreported but for the efforts of an investigative journalist who exposed the expenditure.[44] Unfortunately, the Chamber has been allowed to keep the underlying contributing corporations secret. Consequently, “the public will never know who is funding the Chamber’s attack ads and get-out-the-vote efforts because the Chamber … is not required to itemize its political activities.”

Trade associations’ secret spending: Creates risks to shareholders without their knowledge

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- **Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S.** **House of Representatives 11 May 2010** <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Thus, corporations have long made anonymous contributions to trade associations, allowing them to engage in political spending for corporate interests. The effects are severely troubling: The use of trade associations as conduits for political spending allows companies to give political money and then claim they didn’t know that it ended up supporting organizations and candidates with which they may not want to be publicly associated. It also prevents investors and directors from learning about indirect corporate political spending and being able to evaluate the risks that trade association spending creates for shareholder value.

Corruption takes many forms: corporate influence is part of the spectrum of corruption

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf. Corruption operates along a spectrum, and the majority’s apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other’s backs—and which amply supported Congress’ determination to target a limited set of especially destructive practices.

Campaign spending buys influence and affects public policy

Professor Lawrence Lessig 2012. ( JD from Yale; Professor of Law at Harvard Law School, and Director of the Edmond J. Safra Center for Ethics at Harvard Univ ; clerked for Judge Richard Posner on the 7th Circuit Court of Appeals and Justice Antonin Scalia on the United States Supreme Court.) “Big Campaign Spending: Government by the 1%,” Published by the Atlantic, July 10, 2012, <http://www.theatlantic.com/politics/archive/2012/07/big-campaign-spending-government-by-the-1/259599/>

A tiny number of Americans -- .26 percent -- give more than $200 to a congressional campaign. .05 percent give the maximum amount to any congressional candidate. .01 percent give more than $10,000 in any election cycle. And .000063 percent -- 196 Americans -- have given more than 80 percent of the individual super-PAC money spent in the presidential elections so far. These few don't exercise their power directly. None can simply buy a congressman, or dictate the results they want. But because they are the source of the funds that fuel elections, their influence operates as a filter on which policies are likely to survive. It is as if America ran two elections every cycle, one a money election and one a voting election. To get to the second, you need to win the first. But to win the first, you must keep that tiniest fraction of the one percent happy. Just a couple thousand of them banding together is enough to assure that any reform gets stopped.

Corporate spending has distorting influence on the political process

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013>

Relying on decades of similar legislation and precedent that reacted to that legislation, Congress carefully crafted and enacted the restricting regulation: the Bipartisan Campaign Reform Act of 2002 (“BCRA”). The impetus for the enactment was Congress’s finding that corporations can create a distorting effect in the political process due to their ability to accumulate massive amounts of wealth and their duty to zealously advocate singlemindedly for the wealth maximization of their shareholders.

Soviet style democracy – The only votes that matter are the 1% who fund the campaigns

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

But the problem with the post-Citizens United campaigns is not the amount of money. It is the source. Again, to qualify as a viable candidate in elections from school board to president, you increasingly need the effective approval of the tiniest slice of the 1%. Without that approval — expressed in contributions, not votes — the vast majority of candidates have no chance in the voting election. For most, winning the (tiny fraction of the) 1% election is thus a necessary condition for winning in the 99% election. We ridiculed Soviet “democracy” when it effectively did the same thing, by requiring every candidate be cleared by the Politburo before being allowed on the ballot. Yet most in America today don’t even recognize the parallel that we have produced here.

Big donations give a tiny few extraordinary influence on elected officials – who are no longer dependent on “The People”

Prof. Lawrence Lessig 2012. (Professor of Law and Leadership at Harvard Law School) 24 July 2012 testimony before the SENATE JUDICIARY COMMITTEE,SUBCOMMITTEE ON THE CONSTITUTION,CIVIL RIGHTS AND HUMAN RIGHTS <http://www.judiciary.senate.gov/pdf/12-7-24LessigTestimony.pdf>

By structuring an election system in which candidates must rely upon small contributions from citizens only, the system assures that candidates pay attention to the needs of those contributors — and hence the needs of these citizens. But when contributions are concentrated in the very few, those few have a corrupting influence, because the government’s dependence upon them conflicts with a dependence upon the people “alone.” Yet concentrated influence is exactly what the current system of campaign funding induces. As many have recognized, it is as if America runs two elections each election cycle — one a money election, and one a voting election. To succeed in the latter, you must succeed in the former first. But while in the voting election, all citizens can participate, in the money election — at least when contributions are unlimited — only a tiny slice of America can participate meaningfully. Those tiny few have extraordinary influence relative to the rest of us. And so long as effective contributions are unlimited, candidates will continue to be dependent upon those tiny few, and hence not “dependent upon the People alone.”

Corporate spending has corrupting influence, and legislative restrictions are justified

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide “that the special characteristics of the corporate structure require particularly careful regulation” in an electoral context. *NRWC*, 459 U. S., at 209–210.50 Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also “furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information,” *Beaumont*, 539 U. S., at 161, n. 8 (citation omitted).

INHERENCY

Counterplan / Minor Repair “Reverse Citizens United” – Response: Regulating campaign finance is wrong solution – instead, need more disclosure

Ilya Shapiro 2012. (J.D., attorney; senior fellow in constitutional studies at the Cato Institute; former special assistant/advisor to the Multi-National Force in Iraq on rule of law issues ; former adjunct professor at the George Washington University Law School; J.D. from Univ of Chicago Law School. ) 24 July 2012 “Citizens United Doesn’t Mean What Campaign Finance ‘Reformers’ Think It Does” <http://www.cato.org/blog/citizens-united-doesnt-mean-what-campaign-finance-reformers-think-it-does> (ellipses in original)

The underlying problem, however, is not the under-regulation of independent speech but the attempt to manage political speech in the first place. Political money is a moving target that, like water, will flow somewhere. If it’s not to candidates, it’s to parties, and if not there, then to independent groups or unincorporated individuals acting together. Because what the government does matters and people want to speak about the issues that concern them. To the extent that “money in politics” is a problem, the solution isn’t to try to reduce the money—that’s a utopian goal—but to reduce the scope of political activity the money tries to influence. Shrink the size of government and its intrusions in people’s lives and you’ll shrink the amount people will spend trying to get their piece of the pie or, more likely, trying to avert ruinous public policies. … The solution is rather obvious: Liberalize rather than further restrict the campaign finance regime. Get rid of limits on contributions to candidates—by individuals, not corporations—and then have disclosures for those who donate some amount big enough for the interest in preventing the appearance of quid pro quo corruption to outweigh the potential for harassment. Then the big boys who want to be real players in the political market will have to put their reputations on the line, but not the average person donating a few hundred bucks—or even the lawyer donating $2,500—and being exposed to boycotts and vigilantes. Let the voters weigh what a donation from this or that plutocrat means to them, rather than—and I say this with all due respect—allowing incumbent politicians to write the rules to benefit themselves.

Non-profit organizations spend millions on federal elections and don’t have to disclose it

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Nonprofit organizations have made significant amounts of independent expenditures in federal races without ever having to disclose the identity of their funders. For example, in 2008, the NRA and the Defenders of Wildlife, both 501(c)(4)s, spent $17 million and $3 million respectively on independent expenditures advocating for the election or defeat of federal candidates. The current disclosure regime, however, does not require disclosure of the sources of the funds used to pay for such expenditures—as a result, the funders of these ads remain unknown.

Trade associations create an end-run around disclosure of corporate election-related spending

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Trade associations pose a particularly troublesome problem after Citizens United. As noted above, federal law pre-Citizens United required trade associations to pay for express advocacy through a PAC.[42] Now, trade associations can spend directly out of their corporate treasuries which, in turn, can be funded by the corporate treasuries of their members. [43] Thus, trade associations hold the potential for an end-run around disclosure of unrestricted corporate election-related spending.

“Super PACs” allow secret funding of campaigns

Blair Bowie and Adam Lioz 2012. (Bowie, Democracy Advocate for U.S. PIRG, Public Interest Research Group, a non-profit advocacy group; has given briefings on Capitol Hill to Congressional offices on preserving democracy post-Citizens United; formerly with Green Corps, the field school for environmental organizing, on campaigns for the Sierra Club, Corporate Accountability International, the Human Rights Campaign, and the League of Conservation Voters. Lioz – attorney, formerly with PennPIRG/PennEnvironment; J.D. from Yale Law School) “AUCTIONING DEMOCRACY: THE RISE OF SUPER PACS AND THE 2012 ELECTION,” February 8, 2012, Published by Demos (Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.) <http://www.demos.org/publication/auctioning-democracy-rise-super-pacs-and-2012-election>

Because Super PACs—unlike traditional PACs—may accept funds from nonprofits that are not required to disclose their donors, they provide a vehicle for secret funding of electoral campaigns. 6.4% of the itemized funds raised by Super PACs cannot be feasibly traced back to an original source.

Big outside spenders drown out small contributions

Blair Bowie and Adam Lioz 2012. (Bowie, Democracy Advocate for U.S. PIRG, Public Interest Research Group, a non-profit advocacy group; has given briefings on Capitol Hill to Congressional offices on preserving democracy post-Citizens United; formerly with Green Corps, the field school for environmental organizing, on campaigns for the Sierra Club, Corporate Accountability International, the Human Rights Campaign, and the League of Conservation Voters. Lioz – attorney, formerly with PennPIRG/PennEnvironment; J.D. from Yale Law School) “DISTORTED DEMOCRACY: POST-ELECTION SPENDING ANALYSIS,” November 12, 2012 by the United States Public Interest Research Group <http://www.uspirg.org/sites/pirg/files/reports/post%20election%20megaphones%20FINAL.pdf>

A new analysis of data through Election Day from the Federal Election Commission (FEC) and other sources by U.S. PIRG and Demos shows how big outside spenders drowned out small contributions in 2012: just 61 large donors to Super PACs giving an average of $4.7 million each matched the $285.2 million in grassroots contributions from more than The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide “that the special characteristics of the corporate structure require particularly careful regulation” in an electoral context. *NRWC*, 459 U. S., at 209–210.50 Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also “furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information,” *Beaumont*, 539 U. S., at 161, n. 8 (citation omitted).

SOLVENCY / ADVOCACY / ADVANTAGES

Near-consensus: Everyone advocates campaign funding disclosure

Liz Kennedy 2012 (attorney for Demos working on money in politics, voting rights, and corporate accountability; formerly an Attorney in the Democracy Program at the Brennan Center for Justice at NYU School of Law; worked as a litigation associate at Cravath, Swaine & Moore LLP; J.D. from NYU School of Law) “TESTIMONY IN SUPPORT OF THE DISCLOSE ACT, UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION,” 29 Mar 2012, <http://www.demos.org/publication/testimony-support-disclose-act-united-states-senate-committee-rules-and-administration>

In the otherwise controversial arena of campaign finance, there has been a near-consensus—across the political and ideological spectrum—regarding the benefits of robust disclosure of the sources and amounts of campaign funds. As noted above, the Supreme Court extolled these benefits in the very decision that laid the groundwork for Super PACs.

We need DISCLOSE Act to close the loopholes, improve transparency, and get information to voters

Liz Kennedy 2012 (attorney for Demos working on money in politics, voting rights, and corporate accountability; formerly an Attorney in the Democracy Program at the Brennan Center for Justice at NYU School of Law; worked as a litigation associate at Cravath, Swaine & Moore LLP; J.D. from NYU School of Law) “TESTIMONY IN SUPPORT OF THE DISCLOSE ACT, UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION,” 29 Mar 2012, <http://www.demos.org/publication/testimony-support-disclose-act-united-states-senate-committee-rules-and-administration>

“DISCLOSE would close the loopholes in the disclosure regime. It would require the identification of donors who give over $10,000 in a two-year cycle to any organization that engages in political spending, unless these donors prohibit the organization from using their money to fund political spending or the organization only funds its political activities through a separate account. This would improve transparency and allow the public to see who is really providing the financial backing for efforts to influence elections. With this information a voter can learn about the funder’s own motivation and interests, and judge their political speech accordingly.

We need the DISCLOSE Act to solve for anonymous – and misleading – campaign ads

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Similarly, the Committee for Truth in Politics, a 501(c)(4) ironically dedicated to “honesty in government,” aired deceptive television advertisements attacking financial reform and Senators Max Baucus and Jon Tester just this year. The Committee for Truth in Politics has refused to make the minimal disclosures required by current law. But even if it had complied with existing law, it still would not have to identify the source of its funds. Federal disclosure requirements need to be strengthened so that those who fund these ads are actually disclosed to the public. Section 211 of the DISCLOSE Act ends this anonymous donor problem by requiring, for the first time, that all donors over certain dollar thresholds be named in public reports to the FEC.

DISCLOSE Act rules would have revealed Florida sugar company donating money through deceptive fronts

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

The DISCLOSE Act’s top donor disclaimer approach would have made Wal-Mart’s participation evident on the face of the advertisements and empowered voters with the information necessary to make an informed decision. The top five donor disclaimer would also have helped identify that in Florida’s 2006 gubernatorial primary, the US Sugar Corporation funneled approximately $1 million in independent expenditures through deceptively-named fronts—“Florida’s Working Families” and “The Coalition for Justice and Equality.”[36] US Sugar was the largest contributor to each of these committees, providing $700,000 of the $1 million spent by the Coalition for Justice and Equality and $200,000 of Florida’s Working Families’ $275,000 budget.[37] These expenditures were all made in support of Candidate Rod Smith and totaled 30% of the expenditures that candidate Smith spent in the primary.[38] Had Florida required disclaimers analogous to the DISCLOSE Act’s major donor disclaimers, the public would have been well aware of US Sugar’s leading role in these seemingly grassroots committees, thereby providing valuable voter information and allowing detection of any quid pro quo arrangements.

DISCLOSE Act solves for secret spending by trade associations

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

Indeed, some veiled spending by trade organizations in the 2010 elections is already underway. Americans for Job Security, a 501(c)(6), has reportedly spent over $1 million on advertisements attacking a candidate in the Arkansas democratic congressional primary.[51] Although Americans for Job Security need not disclose the identity of its contributors under current law, the targeted candidate has filed a complaint with the FEC demanding that the underlying donors be identified.[52] The DISCLOSE Act would eliminate this black box spending by requiring trade associations who fund electioneering communications and independent expenditures to name their donors over a certain dollar threshold.

We need disclosure now to mitigate or prevent the next scandal

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1> (brackets added)

While corporate bans were in place in the 1990s, corporations found two loopholes to insert their money into the electoral process. One was by giving soft money donations to political parties. Another tactic was funding sham issue ads—ads which purport to be about an issue but attack or praise a candidate for federal office right before his or her election. Funders of these sham ads often hid behind fake or misleading names. In spite of these problems, it took the implosion and bankruptcy of Enron, a huge campaign contributor to both political parties, before BCRA [Bipartisan Campaign Reform Act] was finally passed after years of attempts. BCRA closed both the soft money and the sham issue ad loopholes. Of particular relevance here, BCRA created regulations for electioneering communications, including a comprehensive disclosure regime for such communications. As explained above, these provisions were upheld by the Court in McConnell and Citizens United eight to one. As this historical review shows, there have been long cycles of grave scandals followed by reform efforts. Congress need not wait for a crisis, however, before it acts. Instead, given what we have learned from the past, Congress should set reasonable disclosure rules now so that the next scandal is prevented or mitigated.

Secret spending is exploding: We need DISCLOSE Act to give voters information and root out corruption

Adam Skaggs 2012. (J.D. from Brooklyn Law School; senior counsel for the Brennan Center’s Democracy program; formerly an attorney at Paul, Weiss, Rifkind, Wharton & Garrison LLP ) 13 July 2012 Letter to Senate Urging Support for the DISCLOSE Act of 2012 <http://www.brennancenter.org/analysis/letter-senate-urging-support-disclose-act-2012> (brackets and ellipses in original)

Since 2010, secret spending through tax-exempt non-profits has exploded, and now accounts for the majority of outside spending in federal elections. The DISCLOSE Act of 2012 would bring transparency to our elections, and ensure that voters have the information they need to make informed decisions at the ballot box. DISCLOSE would establish a disclosure system that is fully consistent with the Supreme Court’s repeated recognition that transparency is necessary to enhance voters’ knowledge and root out corruption in the political system. I urge you to support this essential piece of legislation.

Success example: Minnesota used a similar plan that enlightened voters

Ciara Torres-Spelliscy 2011. (JD from Columbia Law School; attorney, Counsel for the Democracy Program at the Brennan Center; testified before Congress about responses to Citizens United. Before joining the Brennan Center, she worked as an associate at the law firm of Arnold & Porter LLP and was a staff member of Senator Richard Durbin) Transparent Elections after Citizens United <http://www.brennancenter.org/sites/default/files/legacy/Disclosure%20in%20the%20States.pdf>

As will be discussed in more detail below, Minnesota changed its laws after Citizens United to provide transparency around political spending by corporations. During the 2010 governor’s election in Minnesota, the public learned before the election that corporate donors Target, 3M, and Best Buy all provided indirect funding of a particular candidate for governor. This allowed the public to take this financial support into account when assessing the candidates. As it turns out, the candidate supported by the corporate donations lost in a very close election. Meanwhile, shareholders in these companies were also able to demand accountability for this spending.

DISCLOSE Act would close the loopholes and let voters better judge political speech

Liz Kennedy 2012 (attorney for Demos working on money in politics, voting rights, and corporate accountability; formerly an Attorney in the Democracy Program at the Brennan Center for Justice at NYU School of Law; worked as a litigation associate at Cravath, Swaine & Moore LLP; J.D. from NYU School of Law) “TESTIMONY IN SUPPORT OF THE DISCLOSE ACT, UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION,” 29 Mar 2012, <http://www.demos.org/publication/testimony-support-disclose-act-united-states-senate-committee-rules-and-administration>

DISCLOSE would close the loopholes in the disclosure regime. It would require the identification of donors who give over $10,000 in a two-year cycle to any organization that engages in political spending, unless these donors prohibit the organization from using their money to fund political spending or the organization only funds its political activities through a separate account. This would improve transparency and allow the public to see who is really providing the financial backing for efforts to influence elections. With this information a voter can learn about the funder’s own motivation and interests, and judge their political speech accordingly.

DISCLOSE Act solves for trade association concealment of corporate campaign spending

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

The DISCLOSE Act will also address a very serious problem that has allowed trade associations to shield corporate political spending from the public eye. Trade associations organized under section 501(c)(6) of Internal Revenue Code are currently not required to divulge the identity of those funding their political activities; similarly, most corporations do not reveal how much they have given to trade associations.[39] Thus, corporations have long made anonymous contributions to trade associations, allowing them to engage in political spending for corporate interests.

DISADVANTAGE RESPONSES

“Threats and retaliation against donors” – Responses: 1) remedies exist; 2) benefits of disclosure outweigh. These issues were argued before Federal District Judge Morrison England over a California state law that required disclosure of donors in the “Proposition 8” campaign about same-sex marriage. The points Judge England made were reported in the San Francisco Chronicle in 2009:

SAN FRANCISCO CHRONICLE 2009. (Bob Egelko, journalist) 30 Jan 2009, “Prop. 8 campaign can't hide donors' names” <http://www.sfgate.com/bayarea/article/Prop-8-campaign-can-t-hide-donors-names-3174252.php> (brackets added)

He [federal Judge Morrison England] noted that some of the reprisals reported by the Prop. 8 committee involve legal activities such as boycotts and picketing. Other alleged actions, such as death threats, mailings of white powder and vandalism, may constitute "repugnant and despicable acts" but can be reported to law enforcement, the judge said. Even if there have been illegal reprisals, that would be insufficient reason to grant a wholesale exemption for a multimillion-dollar initiative campaign, England said. He also rejected the Prop. 8 campaign's argument that the $100 disclosure limit established in 1974 should be increased for inflation, saying some states require reports of contributions as low as $25 and the Supreme Court has never invalidated them. Any desire by donors to remain anonymous is outweighed by the state's authority to require "full and fair disclosure of everyone who's involved in these political campaigns," England said.

“IRS Abuse / Corrupt Auditing” – Response: Super-PACs are tax-exempt

Dylan Matthews 2013 (journalist for the Washington Post) “The IRS controversy isn’t about taxes. It’s about disclosure.” 21 May 2013 <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/21/the-irs-controversy-isnt-about-taxes-its-about-disclosure/>

At some level, the scandal around the IRS’s targeting of conservative 501(c)4 groups has nothing to do with taxes. That may sound weird – 501(c)4 is a section of the Internal Revenue Code, the entire 501(c) section exists to list groups that are exempt from some federal taxes, the IRS is the tax man, etc. But there’s no universe in which the groups in question are going to pay taxes. Think about it. Let’s say they instead register as 527 groups, enabling them to make unlimited independent expenditures. Those organizations don’t have to pay taxes on contributions they receive either. Or maybe they want to be super-PACs (which are 527s, technically, for tax purposes), which can spend unlimited amounts to openly support candidates. They don’t pay taxes on contributions either.

Benefits of disclosure justify the burdens

Susan Liss, Ciara Torres-Spelliscy, Mimi Marziani, Angela Migally 2010. (Liss - Democracy Program Director, Brennan Center for Justice at NYU School of Law. Spelliscy , Marziani and Migally – attorneys with Brennan Center for Justice at NYU School of Law)- Testimony of The Brennan Center for Justice at NYU School of Law Before the Committee on House Administration, U.S. House of Representatives 11 May 2010 <http://www.brennancenter.org/analysis/testimony-disclose-act-house-admin-committee#_ftn1>

In the 1976 case of Buckley v. Valeo, the Court again embraced robust disclosure—this time, by validating the extensive reporting requirements imposed by FECA. The Buckley Court recognized that FECA’s disclosure provisions could burden individual rights and might even deter some individuals from engaging in political activity. Despite the possibility that disclosure might curb some political activity, the Court concluded that disclosure is generally “the least restrictive means of curbing the evils of campaign ignorance and corruption....” The Buckley Court also found that disclosure serves three key governmental interests, which typically justify any burden imposed on political rights:   
(1) “disclosure provides the electorate with information as to where political campaign money comes from and how it is spent”;  
(2) “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity;” and  
(3) “disclosure requirements are an essential means of gathering the data necessary to detect violations” of other campaign finance regulations.

“NAACP v. Alabama proves disclosure violates civil rights” – Response: That 1950s Alabama case has nothing to do with modern campaign disclosure scenarios

Adam Skaggs 2012. (J.D. from Brooklyn Law School; senior counsel for the Brennan Center’s Democracy program; formerly an attorney at Paul, Weiss, Rifkind, Wharton & Garrison LLP ) 13 July 2012 Letter to Senate Urging Support for the DISCLOSE Act of 2012 <http://www.brennancenter.org/analysis/letter-senate-urging-support-disclose-act-2012> (brackets and ellipses in original)

Senator McConnell has improperly tried to justify his opposition to disclosure by citing a case from the civil rights era, NAACP v. Alabama—suggesting that those spending millions of secret dollars to sway the 2012 election are similar to members of the NAACP in 1950s Alabama, who feared severe discrimination, violence, and even death. The comparison could not be further from the truth: “The NAACP case was decided in a time of extraordinary racial violence and discrimination . . . [and] [t]he Supreme Court recognized that if disclosure were applied to this dissident, historically unpopular group, it would cease, entirely, to engage in political speech.” The Supreme Court reasoned that an exemption from disclosure was needed for the NAACP as a “shield from the tyranny of the majority.” Those resisting disclosure today, like the U.S. Chamber of Commerce—which has vowed to spend $100 million on political ads this year —are well within the political mainstream, and could not be more different from the dissident, civil-rights era NAACP. The comparison is inapt and wholly inconsistent with Supreme Court precedent.

Disclosure requirement is constitutional – Supreme Court said so

Liz Kennedy 2012 (attorney for Demos working on money in politics, voting rights, and corporate accountability; formerly an Attorney in the Democracy Program at the Brennan Center for Justice at NYU School of Law; worked as a litigation associate at Cravath, Swaine & Moore LLP; J.D. from NYU School of Law) “TESTIMONY IN SUPPORT OF THE DISCLOSE ACT, UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION,” 29 Mar 2012, <http://www.demos.org/publication/testimony-support-disclose-act-united-states-senate-committee-rules-and-administration>

The Supreme Court has repeatedly upheld as constitutional broad disclosure requirements, affirming that citizens have a right to know who spends money to influence elections. Indeed, in Citizens United, Justice Kennedy relied on the proposition that voters would know who was funding campaign advertisements and thus would be able to judge the message accordingly.

“Unconstitutional / Violates civil rights” – Response: Supreme Court has ruled disclosure is justified and constitutional

Ciara Torres-Spelliscy 2011. (JD from Columbia Law School; attorney, Counsel for the Democracy Program at the Brennan Center; testified before Congress about responses to Citizens United. Before joining the Brennan Center, she worked as an associate at the law firm of Arnold & Porter LLP and was a staff member of Senator Richard Durbin) Transparent Elections after Citizens United (brackets in original) <http://www.brennancenter.org/sites/default/files/legacy/Disclosure%20in%20the%20States.pdf>

The good news for reform-minded legislators (as well as state attorneys general defending disclosure laws) is that, in a range of cases, the Supreme Court has endorsed disclosure of political spending. As early as the middle of the twentieth century, the Supreme Court permitted mandatory lobbyist disclosure of “direct communications with members of Congress on pending or proposed federal legislation.” The Supreme Court held that there was a state interest in allowing legislators to evaluate lobbying pressures by providing “information from those who for hire attempt to influence legislation.” The Supreme Court has made clear that the state has constitutionally important and compelling interests in requiring those who fund political ads to reveal their true identity to the voting public. In the campaign finance context specifically, since Buckley, the Court has consistently recognized that disclosure of political spending serves three distinct state interests: It (1) “provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office;” (2) “deter[s] actual corruption and avoid[s] the appearance of corruption by exposing large contributions and expenditures to the light of publicity;” and (3) “[is] an essential means of gathering the data necessary to detect violations of the contribution limitations.”

“Founders Intent / Freedom of Speech” – Response: Founders never intended any constitutional guarantees for corporate speech

Supreme Court Justice John Paul Stevens 2010. (opinion dissenting in part and concurring in part in Citizens United v. Federal Election Commission) 21 Jan 2010 <http://supreme.justia.com/cases/federal/us/558/08-205/cdinpart.html>

(“The framers of the First Amendment could scarcely have anticipated its application to the corporation form. That, of course, ought not to be dispositive. What is compelling, however, is an understanding of who was supposed to be the beneficiary of the free speech guaranty—the individual”). In light of these background practices and understandings, it seems to me implausible that the Framers believed “the freedom of speech” would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

“Founders intent” – Response: The Founders mistrusted corporations

Prof. Joseph F. Morrisey 2013. (Professor of Law, Stetson University College of Law with J.D. from Columbia Univ School of Law) A CONTRACTARIAN CRITIQUE OF CITIZENS UNITED, Univ. of Pennsylvania JOURNAL OF CONSTITUTIONAL LAW, Jan 2013 <https://www.law.upenn.edu/live/files/1769-morrissey15upajconstl7652013> (brackets in original)

Justice Stevens went on to explain that, in fact, corporations were feared in the early days of our nation. Justice Stevens cited scholars from the era of our Constitution’s founding, writing repeatedly that corporations were “soulless” and could “concentrate the worst urges of whole groups of men.” In an early case from 1819, then Chief Justice Marshall (ironically cited by the majority for his Marbury opinion) wrote that, “[a] corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it.”

SUMMARY OF THE DISCLOSE 2013 ACT

Rep. Chris Van Hollen 2013. (D-Md., author of the DISCLOSE Act) <http://vanhollen.house.gov/uploadedfiles/disclose_act_summary.pdf>

The “DISCLOSE 2013 Act”  
SUMMARY  
THIS BILL HAS 4 MAJOR REQUIREMENTS TO IMPROVE THE DISCLOSURE OF CAMPAIGN-RELATED SPENDING BY CORPORATIONS AND OUTSIDE GROUPS. IT WILL:  
1. ENHANCE PUBLIC REPORTING, BY CORPORATIONS AND OTHER OUTSIDE GROUPS, OF CAMPAIGN-RELATED ACTIVITY:  
All corporations, unions, other outside groups, and Super PACs will have to report, to the FEC, within 24 hours of making a $10,000 campaign expenditure or financial transfer to other groups which can then be used for campaign-related activity.   
2. REQUIRE CORPORATIONS AND OTHER OUTSIDE GROUPS TO STAND BY THEIR ADS:  
All leaders of corporations, unions, other outside groups, and Super PACs that make campaign-related ads, will have to stand by their ads and say that he/she “approves this message.” In addition, this bill will require the top financial contributors to be disclosed in the television and radio advertisements.  
3. REQUIRE CORPORATIONS AND OTHER OUTSIDE GROUPS TO DISCLOSE CAMPAIGN-RELATED SPENDING TO SHAREHOLDERS AND ORGANIZATION MEMBERS:  
Corporations, unions, and other outside groups will have to disclose their campaign-related expenditures to their shareholders and members in their periodic and annual financial reports. This would also require these groups to make their political spending available to the public, through a hyper-link to the FEC, on their websites.  
4. REQUIRE LOBBYISTS TO DISCLOSE CAMPAIGN-RELATED EXPENDITURES IN CONJUNCTION WITH THEIR LOBBYING ACTIVITIES:  
All Federally registered lobbyists will have to disclose their political expenditures in their Lobbying Disclosure Reportsin conjunction with the report of their lobbying activities.

2A EVIDENCE: D.C. REPRESENTATION

BACKGROUND

Original purpose of establishing the District

Tom Davis 2009. (former Republican member of the House of Representatives from Virginia) 27 Jan 2009 Opening Statement of Former Rep. Tom Davis Subcommittee on the Constitution, Civil Rights, and Civil Liberties Hearing on H.R. 157, the “District of Columbia House Voting Rights Act of 2009” <http://judiciary.house.gov/hearings/pdf/Davis090127.pdf>

The idea for a federal district arose out of an incident that took place in 1783 while the Continental Congress was in session in Philadelphia. When a crowd of Revolutionary War soldiers, who had not been paid, gathered in protest outside the building, the Congress requested help from the Pennsylvania militia. The state refused, and the Congress was forced to adjourn and reconvene in New Jersey. After that incident, the Framers concluded there was a need for a Federal District, under solely federal control, for the protection of the Congress and the territorial integrity of the capital. So the Framers gave Congress broad authority to create and govern such a District. That is the limit of what the Framers had to say about a Federal District in the Constitution – that there should be one and that it should be under congressional authority.

Lack of DC representation in Congress was an historical accident, not an intentional design of the Founders

Tom Davis 2009. (former Republican member of the House of Representatives from Virginia) 27 Jan 2009 Opening Statement of Former Rep. Tom Davis Subcommittee on the Constitution, Civil Rights, and Civil Liberties Hearing on H.R. 157, the “District of Columbia House Voting Rights Act of 2009” <http://judiciary.house.gov/hearings/pdf/Davis090127.pdf>

In 1790, Congress passed the Residence Act, giving those residing in the new District the right to vote. But while the capital was being established, those living here were permitted to continue voting where they had before, in Virginia or Maryland. That continued until the seat of government officially moved to Washington in 1800. Since no records survived, we may never know why Congress then passed a stripped down version of a bill authored by Virginia Congressman “Light Horse” Harry Lee, which simply stated the laws of Virginia and Maryland then in effect, having been superseded in the District, would still apply. But there is absolutely no evidence the Founding Fathers – who had just put their lives on the line to forge a representative government – then decided the only way to secure that government was to deny representation to some of their fellow citizens. One historian aptly described the process as a “rushed and improvised accommodation to political reality, necessitated by the desperate logic of lame duck political maneuvering.” But the inelegant compromise ultimately adopted left a decidedly undemocratic accident in its wake. District residents had no vote in Congress.

TOPICALITY

DC representation would be an exercise of Congress’ power to regulate national elections

Senator Diane Feinstein 2007. (D-Calif.) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

The Constitution vests in Congress broad power to regulate national elections and plenary authority over DC under the District clause, article I, section 8, clause 17. This clause permits Congress wide discretion to grant rights to the District of Columbia, including for the purposes of congressional representation.

HARMS / SIGNIFICANCE

Taxation without representation justifies DC representation

Senator Diane Feinstein 2007. (D-Calif.) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

``No taxation without representation,'' the colonists told King George in the late 1700s. We cannot allow this lack of representation to continue during the 21st century. Today, the District of Columbia has a nonvoting representative in Congress--Representative Eleanor Holmes Norton. She has been vocal in representing the interests of the residents of DC, but she is unable to cast a vote on the House floor to ensure that voice is heard. This makes little sense.

Lack of voice in the issues that affect them justifies DC representation

Senator Diane Feinstein 2007. (D-Calif.) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

DC is affected, perhaps more directly than any other U.S. jurisdiction, by the actions of Congress. Citizens of the District, rich and poor, work in this town and work in the industries of law, policy, business, tourism, academia and medicine. They pay high taxes; they face the challenges of living in one of the major cities in the United States. This legislation would provide DC with permanent voting rights for the first time in over 200 years. From the Boston Tea Party and ``no taxation without representation'' to the suffragettes and struggles over voting rights in the 1960s, the goal of American society has been to bring a voice to citizens who were voiceless. Voting is the voice of democracy.

INHERENCY

Public supports DC voting rights, but forces of inertia are strong against it

Prof. Richard L. Hasen 2009. ( professor of law and political science at the U.C. Irvine School of Law) 28 Jan 2009 SLATE, Let Them Into the House <http://www.slate.com/articles/news_and_politics/jurisprudence/2009/01/let_them_into_the_house.single.html>

But constitutional amendments are extremely difficult to pass, requiring a vote of two-thirds of Congress and three-fourths of the states. With a country preoccupied by the most serious economic troubles of our lifetimes and two wars, voting rights for D.C. is not at the top of the list. Despite broad public support for some form of voting rights for D.C., the forces of inertia are strong.

ADVOCACY

DC representation would uphold the values of the Civil Rights struggles of the 1950s-60s

Sen. Edward Kennedy 2007. (D-Massachusetts) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

The Senate Judiciary Committee recently held a hearing to celebrate the 50th anniversary of the Civil Rights Act of 1957. We heard moving testimony in favor of this bill from Congressman John Lewis, our distinguished colleague in the House of Representatives and a leader in the continuing struggle for equal voting rights. At the age of only 23, Congressman Lewis headed the Student Nonviolent Coordinating Committee and helped organize a march on Washington. He and others were brutally assaulted during the fateful voting rights march at the Edmund Pettis Bridge, but their sacrifices helped inspire the progress that was to come. Congressman Lewis reminded us of the sacrifices of those who gave their lives for equal voting rights in this country, and called on us to pass the DC Voting Rights Act. He reminded us of our obligation to give the District a vote in Congress.

Congress stripped DC’s voting rights away, and Congress should give them back

Sen. Hillary Clinton 2007. 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

There is no principled basis for the disenfranchisement of the District's residents. After the Nation's Capital was founded, citizens who lived in the District were represented by congressmen from Maryland or Virginia. They were able to make themselves heard in Congress. It was only in 1801 that Congress chose to strip the District of voting rights. As a result of this decision, for more than 200 years, the District's residents have been taxed like other Americans but have been denied a vote in the Nation's legislature. It is Congress that took away the District's representation. After two centuries, it is time for us to fix that mistake. The District's residents deserve a voice in how the Nation is governed.

ADVOCACY: 16 members of the House of Representatives co-sponsored HR363. See the bill text at the end. They are all advocating the plan.

DISADVANTAGE RESPONSES

“DC should be a separate district” – Response: Doesn’t outweigh loss of voting rights

Senator Chris Dodd 2007. (D-Connecticut) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

I know that some opponents argue that the reasons the Founders made the Nation's Capital a separate district, rather than locate it within a State, remain sound, and therefore we should not tinker with their work, even at the cost of continued disenfranchisement of DC's citizens. That argument ignores the fundamental commitment we all must have to extending the franchise to all Americans. And it ignores the fact that article I of the Constitution explicitly gives Congress legislative authority over the District ``in all cases whatsoever.''

“Founding Fathers wouldn’t approve” – Response: Nothing suggests they would deny the right to vote to capital citizens

Kenneth Starr and Patricia Wald 2006. (Starr - dean of Pepperdine Law School, is a former independent counsel and U.S. solicitor general. Wald - a retired chief judge of the U.S. Court of Appeals for the D.C. Circuit.) 17 Sept 2006 WASHINGTON POST “Congress Has the Authority to Do Right By DC” <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500935.html>

First, interpretation of Congress's Article I legislative authority should always be guided by the fundamental principles upon which the nation and the Constitution were founded. Those principles include a commitment to a republican form of government and to the proposition that the laws enacted by the legislature should be based on the consent of the governed. There is nothing in our Constitution's history or its fundamental principles suggesting that the Framers intended to deny the precious right to vote to those who live in the capital of the great democracy they founded.

“Founders Intent” – Response: Founders allowed DC residents to vote between 1790-1800

Senator Diane Feinstein 2007. (D-Calif.) 18 Sept 2007 CONGRESSIONAL RECORD – SENATE, Vol 153 Pt 18 <http://www.gpo.gov/fdsys/pkg/CREC-2007-09-18/html/CREC-2007-09-18-pt1-PgS11626.htm>

From 1790 to 1800, Congress allowed District residents to vote in congressional elections in Virginia and Maryland. This was allowed not because they were residents of those States but because Congress acted within its District clause authority.

“Violates Founders’ intent” – Response: The Founders did not intend for District residents to lose their federal voting rights

Kenneth Starr and Patricia Wald 2006. (Starr - dean of Pepperdine Law School, is a former independent counsel and U.S. solicitor general. Wald - a retired chief judge of the U.S. Court of Appeals for the D.C. Circuit.) 17 Sept 2006 WASHINGTON POST “Congress Has the Authority to Do Right By DC” <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500935.html>

It is not a surprise that our Constitution, ratified in 1789, contemplated that the right to vote would be enjoyed only by "the people of the several states." After all, in 1789, all U.S. citizens lived in a state. It was not until 1801, when the process Congress authorized by statute in 1791 to create the District out of lands ceded by Virginia and Maryland was completed, that District residents lost their federal voting rights. There is no reason to believe the Framers intended for this to happen. And in any case they gave Congress power to address the problem

“Unconstitutional” – Response: *Tidewater* case set a precedent that would now allow DC representation

Kenneth Starr and Patricia Wald 2006. (Starr - dean of Pepperdine Law School, is a former independent counsel and U.S. solicitor general. Wald - a retired chief judge of the U.S. Court of Appeals for the D.C. Circuit.) 17 Sept 2006 WASHINGTON POST “Congress Has the Authority to Do Right By DC” <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500935.html>

Finally, and equally important, the most analogous legal precedent addressing Congress's authority over the District confirms that Congress can act now to give the vote to D.C. residents. That precedent concerned the fact that Article III of the Constitution confers on federal courts jurisdiction to hear suits brought by citizens of different states against each other. But the Constitution did not give any such express jurisdiction over suits brought by or against citizens of the District of Columbia. As a result, Congress, relying on its broad Article I power over the District of Columbia, remedied that unfairness through legislation that extended the right to District residents. In a 1949 case called National Mutual Insurance Co. v. Tidewater , the Supreme Court upheld that extension and also said that Congress was entitled to great deference in its determination that it had power to address this inequity. The logic of this case applies here, and supports Congress's determination to give the right to vote for a representative to citizens of the District of Columbia, even though the Constitution itself gives that right only to citizens of states.

“It’s unconstitutional” – Response: Congress has the power to do anything with the District, including giving it representation

Kenneth Starr and Patricia Wald 2006. (Starr - dean of Pepperdine Law School, is a former independent counsel and U.S. solicitor general. Wald - a retired chief judge of the U.S. Court of Appeals for the D.C. Circuit.) 17 Sept 2006 WASHINGTON POST “Congress Has the Authority to Do Right By DC” <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500935.html>

In a 1984 case decided by the U.S. Court of Appeals for the D.C. Circuit, on which we both sat, Judge Abner Mikva noted that through this constitutional provision, the Framers gave Congress "a unique and sovereign power" over the District. In that same case, Judge (now Justice) Antonin Scalia wrote that the broad language of the power gave Congress "extraordinary and plenary" power over our nation's capital. And in another case, that same court held that this broad power gave Congress authority to "provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end." It is hard to imagine a broader, more comprehensive congressional power than this; and it is also hard to imagine that the power could not be used to advance a fundamental principle of our Constitution -- that the right to vote should be extended to all citizens.

“It’s unconstitutional” – Response: Even some conservative heavy-hitters say it’s not unconstitutional, because Congress has plenary power over the District of Columbia

Prof. Richard L. Hasen 2009. ( professor of law and political science at the U.C. Irvine School of Law) 28 Jan 2009 SLATE, Let Them Into the House <http://www.slate.com/articles/news_and_politics/jurisprudence/2009/01/let_them_into_the_house.single.html> (ellipses and brackets in original)

Perhaps surprisingly, some conservative heavy hitters (who tend to favor textualist and originalist interpretations of the Constitution) nonetheless have come out in favor of the constitutionality of the measure. Ken Starr has argued that Article I elsewhere, in what's called the District Clause, authorizes House representation for the district by providing that "[t]he Congress shall have power … to exercise exclusive legislation in all cases whatsoever" over the District of Columbia. Professor Viet Dinh, who worked as an assistant attorney general in the Bush administration, has made similar arguments that Congress' power under this Clause is plenary, and he backs it up with his own analysis of the Framers' intent.

“It’s unconstitutional” – Response: Even conservative legal experts agree it’s OK, because Congress has plenary power over the District of Columbia

Kenneth Starr and Patricia Wald 2006. (Starr - dean of Pepperdine Law School, is a former independent counsel and U.S. solicitor general. Wald - a retired chief judge of the U.S. Court of Appeals for the D.C. Circuit.) 17 Sept 2006 WASHINGTON POST “Congress Has the Authority to Do Right By DC” <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/15/AR2006091500935.html>

Specifically, the House Government Reform Committee has approved, and the House Judiciary Committee is considering, a bill that would give D.C. residents the right to full voting representation in the House. While conferring this right is surely the right thing to do, a legitimate question has been raised concerning Congress's authority to confer the right by simple legislation, rather than through constitutional amendment. We have carefully considered this question and believe for three reasons the bill is within Congress's authority: It is consistent with fundamental constitutional principles; it is consistent with the language of Congress's constitutional power; and it is consistent with the governing legal precedents.

“It’s unconstitutional” – Response: Even if it is, Congress should pass it anyway

Prof. Richard L. Hasen 2009. ( professor of law and political science at the U.C. Irvine School of Law) 28 Jan 2009 SLATE, Let Them Into the House <http://www.slate.com/articles/news_and_politics/jurisprudence/2009/01/let_them_into_the_house.single.html>

If the measure passes, there's a good chance the Supreme Court will strike it down as unconstitutional. But Congress should still pass and President Obama should still sign the District of Columbia House Voting Rights Act of 2009 as a major step toward ending the "taxation without representation" of D.C. residents.

FULL TEXT OF THE BILL

H.R. 363, 113th Congress, 1st Session, January 23, 2013. <http://www.gpo.gov/fdsys/pkg/BILLS-113hr363ih/pdf/BILLS-113hr363ih.pdf>

113th CONGRESS

1st Session

H. R. 363

To provide for the treatment of the District of Columbia as a State for purposes of representation in the House of Representatives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

**January 23, 2013**

Ms. NORTON (for herself, Mr. HONDA, Mr. FARR, Mr. RANGEL, Mrs. NAPOLITANO, Mrs. CHRISTENSEN, Mr. RUSH, Mr. FALEOMAVAEGA, Mr. CLAY, Mr. ELLISON, Mr. CONYERS, Ms. BORDALLO, Mr. COHEN, Mr. BLUMENAUER, Ms. CHU, and Mr. PIERLUISI) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the treatment of the District of Columbia as a State for purposes of representation in the House of Representatives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ‘District of Columbia House Voting Rights Act of 2013’.

**SEC. 2. REPRESENTATION IN HOUSE OF REPRESENTATIVES FOR DISTRICT OF COLUMBIA.**

(a) Representation in House- Notwithstanding any other provision of law, effective with respect to the One Hundred Thirteenth Congress and each succeeding Congress, the District of Columbia shall be treated as a State for purposes of representation in the House of Representatives.

(b) Conforming Amendments Relating to Apportionment of Members of House of Representatives-

(1) INCLUSION OF DISTRICT OF COLUMBIA IN REAPPORTIONMENT OF MEMBERS AMONG STATES- Section 22 of the Act entitled ‘An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress’, approved June 28, 1929 (2 U.S.C. 2a), is amended by adding at the end the following new subsection:

‘(d) This section shall apply with respect to the District of Columbia in the same manner as this section applies to a State.’.

(2) CLARIFICATION OF DETERMINATION OF NUMBER OF PRESIDENTIAL ELECTORS ON BASIS OF 23RD AMENDMENT- Section 3 of title 3, United States Code, is amended by striking ‘come into office;’ and inserting the following: ‘come into office (subject to the twenty-third article of amendment to the Constitution of the United States in the case of the District of Columbia);’.

(c) Conforming Amendments Regarding Appointments to Service Academies-

(1) UNITED STATES MILITARY ACADEMY- Section 4342 of title 10, United States Code, is amended--

(A) in subsection (a), by striking paragraph (5); and

(B) in subsection (f), by striking ‘the District of Columbia,’.

(2) UNITED STATES NAVAL ACADEMY- Such title is amended--

(A) in section 6954(a), by striking paragraph (5); and

(B) in section 6958(b), by striking ‘the District of Columbia,’.

(3) UNITED STATES AIR FORCE ACADEMY- Section 9342 of title 10, United States Code, is amended--

(A) in subsection (a), by striking paragraph (5); and

(B) in subsection (f), by striking ‘the District of Columbia,’.

(4) EFFECTIVE DATE- This subsection and the amendments made by this subsection shall take effect on the date on which a Representative from the District of Columbia takes office for the One Hundred Thirteenth Congress.

**SEC. 3. INCREASE IN MEMBERSHIP OF HOUSE OF REPRESENTATIVES.**

(a) Permanent Increase in Number of Members- Effective with respect to the One Hundred Thirteenth Congress and each succeeding Congress, the House of Representatives shall be composed of 436 Members, including any Members representing the District of Columbia pursuant to section 2(a).

(b) Reapportionment of Members Resulting From Increase-

(1) IN GENERAL- Section 22(a) of the Act entitled ‘An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress’, approved June 28, 1929 (2 U.S.C. 2a(a)), is amended by striking ‘the then existing number of Representatives’ and inserting ‘the number of Representatives established with respect to the One Hundred Thirteenth Congress’.

(2) EFFECTIVE DATE- The amendment made by paragraph (1) shall apply with respect to the regular decennial census conducted for 2020 and each subsequent regular decennial census.

**SEC. 4. REPEAL OF OFFICE OF DISTRICT OF COLUMBIA DELEGATE.**

(a) Repeal of Office- Sections 202 and 204 of the District of Columbia Delegate Act (Public Law 91-405; sections 1-401 and 1-402, D.C. Official Code) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

(b) Effective Date- The amendments made by this subsection shall take effect on the date on which a Representative from the District of Columbia takes office for the One Hundred Thirteenth Congress.

**SEC. 5. PROVIDING FOR ELECTIONS FOR HOUSE MEMBERS FROM DISTRICT OF COLUMBIA.**

(a) Application of District of Columbia Elections Code of 1955- The District of Columbia Elections Code of 1955 is amended as follows:

(1) In section 1 (sec. 1-1001.01, D.C. Official Code), by striking ‘the Delegate to the House of Representatives,’ and inserting ‘the Representative in the Congress,’.

(2) In section 2 (sec. 1-1001.02, D.C. Official Code)--

(A) by striking paragraph (6); and

(B) in paragraph (13), by striking ‘the Delegate to Congress for the District of Columbia,’ and inserting ‘the Representative in the Congress,’.

(3) In section 8 (sec. 1-1001.08, D.C. Official Code)--

(A) in the heading, by striking ‘Delegate’ and inserting ‘Representative’; and

(B) by striking ‘Delegate,’ each place it appears in subsections (h)(1)(A), (i)(1), and (j)(1) and inserting ‘Representative in the Congress,’.

(4) In section 10 (sec. 1-1001.10, D.C. Official Code)--

(A) in subsection (a)(3)(A)--

(i) by striking ‘or section 206(d) of the District of Columbia Delegate Act’, and

(ii) by striking ‘the office of Delegate to the House of Representatives’ and inserting ‘the office of Representative in the Congress’;

(B) in subsection (d)(1), by striking ‘Delegate,’ each place it appears; and

(C) in subsection (d)(2)--

(i) by striking ‘(A) In the event’ and all that follows through ‘term of office,’ and inserting ‘In the event that a vacancy occurs in the office of Representative in the Congress before May 1 of the last year of the Representative’s term of office,’ and

(ii) by striking subparagraph (B).

(5) In section 11(a)(2) (sec. 1-1001.11(a)(2), D.C. Official Code), by striking ‘Delegate to the House of Representatives,’ and inserting ‘Representative in the Congress,’.

(6) In section 15(b) (sec. 1-1001.15(b), D.C. Official Code), by striking ‘Delegate,’ and inserting ‘Representative in the Congress,’.

(7) In section 17(a) (sec. 1-1001.17(a), D.C. Official Code), by striking ‘the Delegate to the Congress from the District of Columbia’ and inserting ‘the Representative in the Congress’.

(b) Effective Date- The amendments made by this section shall apply with respect to the election of the first Representative from the District of Columbia pursuant to this Act and each subsequent election of Representatives from the District of Columbia pursuant to this Act.

**SEC. 6. REPEAL OF OFFICE OF STATEHOOD REPRESENTATIVE.**

(a) In General- Section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979 (sec. 1-123, D.C. Official Code) is amended as follows:

(1) By striking ‘offices of Senator and Representative’ each place it appears in subsection (d) and inserting ‘office of Senator’.

(2) In subsection (d)(2)--

(A) by striking ‘a Representative or’;

(B) by striking ‘the Representative or’; and

(C) by striking ‘Representative shall be elected for a 2-year term and each’.

(3) In subsection (d)(3)(A), by striking ‘and 1 United States Representative’.

(4) By striking ‘Representative or’ each place it appears in subsections (e), (f), (g), and (h).

(5) By striking ‘Representative’s or’ each place it appears in subsections (g) and (h).

(b) Conforming Amendments-

(1) STATEHOOD COMMISSION- Section 6 of such Initiative (sec. 1-125, D.C. Official Code) is amended--

(A) in subsection (a)--

(i) by striking ‘27 voting members’ and inserting ‘26 voting members’;

(ii) by adding ‘and’ at the end of paragraph (5); and

(iii) by striking paragraph (6) and redesignating paragraph (7) as paragraph (6); and

(B) in subsection (a-1)(1), by striking subparagraph (H).

(2) AUTHORIZATION OF APPROPRIATIONS- Section 8 of such Initiative (sec. 1-127, D.C. Official Code) is amended by striking ‘and House’.

(3) APPLICATION OF HONORARIA LIMITATIONS- Section 4 of D.C. Law 8-135 (sec. 1-131, D.C. Official Code) is amended by striking ‘or Representative’ each place it appears.

(4) APPLICATION OF CAMPAIGN FINANCE LAWS- Section 3 of the Statehood Convention Procedural Amendments Act of 1982 (sec. 1-135, D.C. Official Code) is amended by striking ‘and United States Representative’.

(5) DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955- The District of Columbia Elections Code of 1955 is amended--

(A) in section 2(13) (sec. 1-1001.02(13), D.C. Official Code), by striking ‘United States Senator and Representative,’ and inserting ‘United States Senator,’; and

(B) in section 10(d) (sec. 1-1001.10(d)(3), D.C. Official Code), by striking ‘United States Representative or’.

(c) Effective Date- The amendments made by this section shall take effect on the date on which a Representative from the District of Columbia takes office for the One Hundred Thirteenth Congress.

**SEC. 7. EXPEDITED JUDICIAL REVIEW.**

If any action is brought to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

**SEC. 8. NONSEVERABILITY OF PROVISIONS.**

If any provision of section 2(a), 2(b)(1), or 3, or any amendment made by any such section, is declared or held invalid or unenforceable, the remaining provisions of this Act and any amendment made by this Act shall be treated and deemed invalid and shall have no force or effect of law.

2A EVIDENCE: ABOLISHING THE ELECTORAL COLLEGE

BACKGROUND

How the Electoral College is defined in the Constitution

Dr. John R. Koza, Barry Fadem, Mark Grueskin, Michael S. Mandell, Robert Richie, and Joseph F. Zimmerman 2013. (Koza -Ph.D. in computer science from the University of Michigan . Fadem - partner in the law firm of Fadem & Associates in Lafayette, California; specializes in campaign and election law . Grueskin – attorney with Isaacson Rosenbaum P.C. in Denver, practices federal, state, and local election law. Mandell – former associate with the law firm of Perkins Coie Brown & Bain in Phoenix, currently the general counsel to the Arizona State Senate. Richie - executive director of FairVote—The Center for Voting and Democracy, a non-profit organization dedicated to advancing fair elections . Zimmerman - Professor of Political Science at the State University of New York at Albany ) EVERY VOTE EQUAL:A State-Based Plan For Electing  
The President By National Popular Vote <http://www.every-vote-equal.com/pdf/4/EVE-4th-Ed-Ch1-web-v1.pdf>

The politically most important aspects of the system for electing the President of the United States are not established by the U.S. Constitution. Instead, the Constitution delegates the power to make those decisions to the states. The Constitution specifies that the President and Vice President are to be chosen every four years by a small group of people (currently 538) who are individually referred to as “presidential electors.” The presidential electors are collectively referred to as the “Electoral College” (although this term does not appear in the Constitution). The U.S. Constitution delegates the power to choose the method of appointing presidential electors to the states. Section 1 of Article II states: “The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”

HARMS / SIGNIFICANCE

Racist origins. James Madison admitted that the popular vote would be the best policy, before proposing the Electoral College in order to help boost the power of slave states

Dr. Paul Finkelman 2000. (Professor of Law at The University of Tulsa College of Law; Ph.D. in U.S. history from the University of Chicago) The Murky Proslavery Origins of the Electoral College <http://www.jurist.law.pitt.edu/election/electionfink.htm>

At this point James Madison, a slaveholder from Virginia, weighed in. The most influential delegate, Madison argued that "the people at large" were "the fittest" to choose the president. But "one difficulty...of a serious nature" made election by the people impossible. Madison noted that the "right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes." In order to guarantee that the nonvoting slaves could nevertheless influence the presidential election, Madison favored the creation of the electoral college. Hugh Williamson of North Carolina was more open about the reasons for southern opposition to election by popular vote. He noted that under a direct election of the president, Virginia would not be able to elect her leaders president because "her slaves will have no suffrage." The same of course would be true for the rest of the South.

Citizens disenfranchised. For 79% of voters – those who don’t live in “battleground” states that could swing either way in the election – their votes don’t matter. This happens because most people live in states where a large majority favor one party or the other, so their state’s electoral college votes are already locked up. The number of individual votes on each side are irrelevant because they have no impact on the national totals, because the national total doesn’t matter.

Prof. Danny Oppenheimer and Mike Edwards 2012. (Oppenheimer - associate professor at UCLA Anderson School of Management. P Ph.D. from Stanford University, B.A. from Rice University. Edwards - master’s degree in political science from UC San Diego) “Eliminate the Electoral College” November 27 2012 accessed June 26, 2013, <http://www.huffingtonpost.com/mike-edwards/electoral-college-votes_b_1917826.html>

“The Electoral College is one of the most dangerous institutions in American politics today. The primary impact of the Electoral College is to give the citizens of some states more influence over the presidential election than citizens of other states. If you live in a Battleground State you are showered with attention. Your issues gain traction at the national level. You have political power. But if you happen to live in a Red State or a Blue State -- as do roughly 79% of Americans according to Nate Silver's electoral map -- then you are pretty much out of luck. Your vote doesn't matter. And when we say "your vote doesn't matter," we can actually quantify this. According to the Princeton Election Consortium a vote in Nevada this year (a small battleground state) is over one million times more likely to have an impact on this election than a vote in New Jersey (a large Blue state). This is horribly unjust. It makes a mockery of the principal of "one man, one vote"; it doesn't matter if we all get one vote when some votes are worth more than others.”

Disenfranchisement – not merely hypothetical or proverbial: US citizens are literally disenfranchised. There is no constitutional right to vote for President. The method of assigning electors is decided by the State legislatures, who can let you vote or not, and can even overrule your vote

Prof. Victor Williams 2012. (assistant professor of law at Catholic University of America Columbus School of Law) A Dangerous Intersection: The Electoral College and the Fiscal Cliff <http://jurist.org/forum/2012/11/victor-williams-electoral-college.php>

Any state legislature could preemptively cancel or void the results of a November general election and directly appoint the state's electors. (As for the District of Columbia, Congress controls the appointment method of its three electors.) Justice Joseph Story described, in his Commentaries on the Constitution, how "in some States the legislature[s] have directly chosen the electors by themselves." Story defended such direct appointments as "firmly established by practice, ever since the adoption of the Constitution." In 2000, the Supreme Court simply restated, in Bush v. Gore, the Electoral College truth:  
The individual citizen has no federal constitutional right to vote for electors for the President of the US unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College.

Electoral College violates democracy

Dr. Jack Rakove 2012. (PhD; Professor of History and American Studies, Stanford Univ.) “Why do we still let the Electoral College pick our president? “ STANFORD NEWS 20 Aug 2012 <http://news.stanford.edu/news/2012/august/rakove-electoral-college-082012.html>

I believe the existing system has two fundamental – I wish I could say fatal – flaws. One is that it violates the one person, one vote rule, which should be the proper rule of a modern democracy, because the addition of two electors to each state for its senators produces significant distortions in how much our individual vote is worth from state to state.

Electoral College depresses voter participation – they know their votes don’t matter

Dr. Pietro Nivola 2005. (PhD, Harvard; former VP and director of Governance Studies, Brookings Institute; former Lecturer and Visiting Professor at Harvard) Thinking About Political Polarization Jan 2005 <http://www.brookings.edu/research/papers/2005/01/01politics-nivola>

Further, the electoral college can depress voter participation in much of the nation. Overall, the percentage of voters who participated in last fall's election was almost 5 percent higher than the turnout in 2000. Yet, most of the increase was limited to the battleground states. Because the electoral college has effectively narrowed elections like the last one to a quadrennial contest for the votes of a relatively small number of states, people elsewhere are likely to feel that their votes don't matter.

Explanation of “Why” the Electoral College depresses voter turnout. Old but still true, because the system hasn’t changed:

Sen. Birch Bayh 1977. (Senator from Indiana) The Electoral College: An Enigma in a Democratic Society, Spring 1977, VALPARAISO UNIVERSITY LAW REVIEW <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1672&context=vulr>

The most dangerous of the defects of the electoral college is the winner-take-all or unit rule. A consequence of the unit rule is that it discourages the minority in a one-party state. Where there is no hope of carrying a state, there is little reason for the members of the losing party to turn out. The majority party on the other hand also has little incentive to increase its turnout. This certainly accounts in part for the poor voter participation in the United States.

“Battleground State” mentality depresses voter turnout

Dr. John R. Koza, Barry Fadem, Mark Grueskin, Michael S. Mandell, Robert Richie, and Joseph F. Zimmerman 2013. (Koza -Ph.D. in computer science from the University of Michigan . Fadem - partner in the law firm of Fadem & Associates in Lafayette, California; specializes in campaign and election law . Grueskin – attorney with Isaacson Rosenbaum P.C. in Denver, practices federal, state, and local election law. Mandell – former associate with the law firm of Perkins Coie Brown & Bain in Phoenix, currently the general counsel to the Arizona State Senate. Richie - executive director of FairVote—The Center for Voting and Democracy, a non-profit organization dedicated to advancing fair elections . Zimmerman - Professor of Political Science at the State University of New York at Albany ) EVERY VOTE EQUAL:A State-Based Plan For Electing )  
The President By National Popular Vote <http://www.every-vote-equal.com/pdf/4/EVE-4th-Ed-Ch1-web-v1.pdf>

The average voter turnout in the nine battleground states was 67.0%—11% higher than the 59.4% rate for the nation as a whole). The absence of a meaningful presidential campaign in most states diminishes voter turnout in the ignored states.

Electoral College creation of “battleground states” diverts federal funding to them away from other states

Dr. John R. Koza, Barry Fadem, Mark Grueskin, Michael S. Mandell, Robert Richie, and Joseph F. Zimmerman 2013. (Koza -Ph.D. in computer science from the University of Michigan . Fadem - partner in the law firm of Fadem & Associates in Lafayette, California; specializes in campaign and election law . Grueskin – attorney with Isaacson Rosenbaum P.C. in Denver, practices federal, state, and local election law. Mandell – former associate with the law firm of Perkins Coie Brown & Bain in Phoenix, currently the general counsel to the Arizona State Senate. Richie - executive director of FairVote—The Center for Voting and Democracy, a non-profit organization dedicated to advancing fair elections . Zimmerman - Professor of Political Science at the State University of New York at Albany ) EVERY VOTE EQUAL:A State-Based Plan For Electing (brackets and ellipses in original)  
The President By National Popular Vote <http://www.every-vote-equal.com/pdf/4/EVE-4th-Ed-Ch1-web-v1.pdf>

In the same vein, Professor Kevin Stack of Vanderbilt University and Dr. John Hudak presented a tentative study in August 2012 revealing a similar relationship between the location of Superfund enforcement actions and a state’s battleground status. In September 2011, a bill was introduced in the Pennsylvania state legislature to award Pennsylvania’s electoral votes by congressional district (as Maine and Nebraska currently do). The approach proposed in the bill would replace Pennsylvania’s current state statute allocating all 20 of its electoral votes to the candidate who receives the most votes statewide. The effect of the proposed bill would be to divide Pennsylvania’s electoral votes between the parties. State Senator Daylin Leach (a leading Democratic opponent of the bill) said on the PBS News Hour on September 28, 2011: “Pennsylvania is a battleground state, it gets a ton of attention, a ton of resources. The day this bill passes we become irrelevant to electoral campaigns. . . . We become Utah on the day this bill passes.” [Emphasis added] In a September 27, 2011, article entitled “Specter Bluntly Says Electoral Change Will Cut Fed Funding for PA,” former U.S. Senator Arlen Specter (who was a Republican until 2009) said: “I think it’d be very bad for Pennsylvania because we wouldn’t attract attention from Washington on important funding projects for the state.”

INHERENCY

NPV Interstate Compact won’t work

Dr. Jack Rakove 2012. (PhD; Professor of History and American Studies, Stanford Univ.) “Why do we still let the Electoral College pick our president? “ STANFORD NEWS 20 Aug 2012 (brackets added) <http://news.stanford.edu/news/2012/august/rakove-electoral-college-082012.html>

**[question asked by Corrie Goldman] What do you think about the National Popular Vote proposal to get states with the requisite 270 electoral vote majority to pledge their electors to whichever candidate commands a national plurality or majority?  
[response by Dr. Rakove]** I think it is a clever attempt to get around the onerous requirements for constitutional amendment, and I support the end result. But I really doubt that it would work in practice. The Constitution includes a clause requiring interstate compacts to have congressional approval, and I just don’t see how this one would escape congressional scrutiny, and thus bring us back to the whole question of getting an Article V amendment.

ADVOCACY

Founding Fathers would advocate changing the Electoral College if they were around today

Dr. Jack Rakove 2012. (PhD; Professor of History and American Studies, Stanford Univ.) “Why do we still let the Electoral College pick our president? “ STANFORD NEWS 20 Aug 2012 (brackets added) <http://news.stanford.edu/news/2012/august/rakove-electoral-college-082012.html>

**[question asked by Corrie Goldman] In viewing today's political landscape, do you think the creators of the Electoral College would say it should be modified?**[response by Dr. Rakove] Actually, I do think that, for two reasons. First, the framers were experimental politicians, and they were open to the evidence of how things were operating. Second, they really had no good idea how the system would work. Many of them, like George Mason of Virginia, thought that 19 times out of 20, the electors would only work to identify leading candidates, and the House of Representatives, voting by states, would have to make the final choice. They also had no sense of who the electors would be, whether they would be men, as Mason observed, of the second or even the third rank of qualified voters. As soon as you have the contested election in 1796, you discover that there actually were two identifiable candidates, representing two effective parties that would allow voters to make a decisive choice. Experience quickly demonstrated, in other words, that a popular vote would work, and the strange contrivance of appointing electors by rules that could shift from state to state and election to election was now superfluous.

DISADVANTAGE RESPONSES

“Helps small states” – Response: It helps only “battleground” states, of all sizes

Dr. John R. Koza, Barry Fadem, Mark Grueskin, Michael S. Mandell, Robert Richie, and Joseph F. Zimmerman 2013. (Koza -Ph.D. in computer science from the University of Michigan . Fadem - partner in the law firm of Fadem & Associates in Lafayette, California; specializes in campaign and election law . Grueskin – attorney with Isaacson Rosenbaum P.C. in Denver, practices federal, state, and local election law. Mandell – former associate with the law firm of Perkins Coie Brown & Bain in Phoenix, currently the general counsel to the Arizona State Senate. Richie - executive director of FairVote—The Center for Voting and Democracy, a non-profit organization dedicated to advancing fair elections . Zimmerman - Professor of Political Science at the State University of New York at Albany ) <http://www.nationalpopularvote.com/pages/answers/section.php?s=2>

These 14 closely divided battleground states accounted for 97.7% of the 300 post-convention campaign events in the 2008 general election campaign for President (that is, 293 of the 300 events). Half of the 300 post-convention campaign events (148 of 300) were in just three states—Ohio (62 events), Florida (46 events), and Pennsylvania (40 events). Ninety-eight percent of the 300 post-convention campaign events occurred in just 15 states. That is, under the current system, two-thirds of the states were irrelevant spectators in the 2008 presidential election. The size of a state is not the determining factor for political relevance in presidential elections. There are small, medium, and large battleground states. The spectator states include small, medium, and large states. Although some people mistakenly think that the current system of electing the President benefits small states, the reality is that campaign events were held in only seven of the 25 least populous states.

“Designed to help small states” – Response: Not according to the Founders. They never even made that claim – in fact, they intended just the opposite

Dr. Paul Finkelman 2000. (Professor of Law at The University of Tulsa College of Law; Ph.D. in U.S. history from the University of Chicago) The Murky Proslavery Origins of the Electoral College <http://www.jurist.law.pitt.edu/election/electionfink.htm>

The second (partially) wrong explanation: the electoral college was designed to protect the small states from dominance by the large. This is the explanation the respected commentator, Daniel Schorr, gave recently on National Public Radio. In all the debates over the executive at the Constitutional Convention, this issue never came up. Indeed, the opposite argument was more important. At one point the Convention considered allowing the state governors to choose the president but backed away from this in part because it would allow the small states to chose one of their own.

“Designed to help small states” – Response: Exactly the opposite – it was intended to help the largest state elect the President

Dr. Paul Finkelman 2000. (Professor of Law at The University of Tulsa College of Law; Ph.D. in U.S. history from the University of Chicago) The Murky Proslavery Origins of the Electoral College <http://www.jurist.law.pitt.edu/election/electionfink.htm>

In order to determine whether it is still a useful part of our electoral process, it is necessary to learn the origin and history of the electoral college. Textbooks offer us two common explanations for the creation of the electoral college. Both are wrong, and both miss the real purpose of the electoral college which was to insure that the largest state, Virginia, would be able to elect the national president.

“E.College reduces fraud risk” –Response: E. College increases fraud risk. Historical Example: New York State, 1976, where a few fraudulent votes in 1 key state could have a bigger impact than a million fraudulent votes under direct election

Sen. Birch Bayh 1977. (Senator from Indiana) The Electoral College: An Enigma in a Democratic Society, Spring 1977, VALPARAISO UNIVERSITY LAW REVIEW <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1672&context=vulr>

In reality, the incentive to steal votes "now" as described above is a fair argument for why the electoral college system itself encourages fraud. A relatively few irregular votes can reap a healthy reward in the form of a bloc of electoral votes, because of the unit rule. In short, under the present system, fraudulent popular votes are likely to have a greater impact than a like number of fraudulent popular votes under direct election. This is especially true in the larger states. In New York, cries of voting irregularities arose on election night, 1976. At stake were 41 electoral votes-more than enough to elect Ford over Carter in the electoral college. Carter's popular margin was 290,000. The calls for recount were eventually dropped, but if fraud had been present in New York, Carter's plurality of 290,000 would have been enough to determine the outcome of the election. Under direct election, at least 1.7 million votes, Carter's national margin, would have had to be irregular to affect the outcome.

“E.C. creates clarity and certainty to election results” – Response: It opens the door to lawsuits, inefficiency, challenges and full electoral meltdown

Prof. Victor Williams 2012. (assistant professor of law at Catholic University of America Columbus School of Law) A Dangerous Intersection: The Electoral College and the Fiscal Cliff <http://jurist.org/forum/2012/11/victor-williams-electoral-college.php>

A dozen years after dimpled chads, non-votes and recounts throughout Florida, our state-run elections are still dependent on the kindness and efficiencies of local election officers. We have yet to adequately reform election administration. The voting processes are clearly not "beyond the margin of litigation." In close local results, the opportunity for mistake, mischief and full electoral meltdown remains high. Election lawyers are lining up in Ohio and many other swing states. Final formal objections regarding irregularities may be lodged when the electors' votes are presented to the joint session of Congress on January 6, 2012. The chambers, voting separately, must agree to reject contested electoral votes. A congressional challenge was last lodged in January 2005 against Ohio's slate of Bush electors.

“Violates spirit/principles of the original Constitution” – Response: So what? It’s irrational to waste time debating what the Founders would have done. And those guys weren’t infallible anyway

Prof. Louis Michael Seidman 2012. (professor of constitutional law at Georgetown University ) Let’s Give Up on the Constitution 30 Dec 2012 NEW YORK TIMES <http://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html?pagewanted=all&_r=0>

Instead of arguing about what is to be done, we argue about what James Madison might have wanted done 225 years ago. As someone who has taught constitutional law for almost 40 years, I am ashamed it took me so long to see how bizarre all this is. Imagine that after careful study a government official — say, the president or one of the party leaders in Congress — reaches a considered judgment that a particular course of action is best for the country. Suddenly, someone bursts into the room with new information: a group of white propertied men who have been dead for two centuries, knew nothing of our present situation, acted illegally under existing law and thought it was fine to own slaves might have disagreed with this course of action. Is it even remotely rational that the official should change his or her mind because of this divination?

Written text of the Constitution is not what binds us together

Prof. Louis Michael Seidman 2012. (professor of constitutional law at Georgetown University ) Let’s Give Up on the Constitution 30 Dec 2012 NEW YORK TIMES <http://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html?pagewanted=all&_r=0>

Countries like Britain and New Zealand have systems of parliamentary supremacy and no written constitution, but are held together by longstanding traditions, accepted modes of procedure and engaged citizens. We, too, could draw on these resources. What has preserved our political stability is not a poetic piece of parchment, but entrenched institutions and habits of thought and, most important, the sense that we are one nation and must work out our differences.

2A EVIDENCE: FAIR AND ACCURATE REPRESENTATION ACT (FARA)

ADVOCACY

We should allocate representatives only on the basis of citizen populations – this would ensure equality

Richard Greener and George Kenney 2010. (Greener - former broadcast industry executive . Kenney - diplomat during the George H.W. Bush (senior) administration) 29 May 2010 "Census nonsense" LOS ANGELES TIMES, <http://articles.latimes.com/2010/may/29/opinion/la-oe-adv-kenney-census-20100529>

Official political innumeracy, enshrined in the census, steals our democracy. We count illegal immigrants the same as citizens and assign states congressional seats accordingly. This awards some states more representatives than they deserve. The census should, instead, count citizens separately, and Congress should reapportion representatives only on the basis of citizen populations. That would ensure that the votes of citizens in all parts of the country are as nearly equal as possible.

Illegal immigrants should not be counted for apportionment and 14th Amendment should not be interpreted to require it

Paul J. Orfanedes and James F. Peterson 2012. (attorneys representing Judicial Watch and Allied Educational Foundation, non-profit organizations) Brief filed as amici curiae in the Supreme Court case of Louisiana v. Bryson, Groves & Hass, 13 Jan 2012 <http://www.scribd.com/fullscreen/78561271?access_key=key-f27lxzyuwzsl1dp9mpb>

Section 2 of the Fourteenth Amendment directs that the “whole number of persons” be counted for apportionment. This directive, however, has never been interpreted to encompass every single individual physically present in the United States. Section 2 itself excludes “Indians not taxed” from apportionment, as they were distinct communities, if not nations, separate from our political community. Similarly, while unlawfully present aliens may be “persons,” they are not part of our “political community” and, therefore, not properly included in apportionment.

Not counting aliens for apportionment would be consistent with past Supreme Court decisions

Paul J. Orfanedes and James F. Peterson 2012. (attorneys representing Judicial Watch and Allied Educational Foundation, non-profit organizations) Brief filed as amici curiae in the Supreme Court case of Louisiana v. Bryson, Groves & Hass, 13 Jan 2012 <http://www.scribd.com/fullscreen/78561271?access_key=key-f27lxzyuwzsl1dp9mpb>

And in upholding a ban on aliens serving as police officers, the Court stated that, “although we extend to aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.” Foley , 435 U.S. at 297. See also Blumanv. FEC , No. 11-275 (Jan. 9, 2012) (affirming that aliens living in the United States have no constitutional right to try to influence U.S. elections for any government office).The Court thus has recognized numerous distinctions as to aliens under the Constitution and confirmed that they stand outside of our “political community.” The Constitution does not recognize aliens, and in particular, unlawfully present aliens, as members of the political community. Apportionment should not be based on their presence.

INHERENCY

2010 Census made an express effort to count “undocumented residents”

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

In conducting the 2010 Census apportionment count, the Census Bureau made no attempt to identify respondents’ citizenship or immigration status or to exclude any individuals on the basis of those statuses. Instead, all individuals claiming “usual residence” within a State were counted. Indeed, counting “undocumented residents” for apportionment purposes is the Census Bureau’s express policy. U.S. Census Bureau, Frequently Asked Questions, http://www.census.gov/population/apportionment/about/faq.html#Q16. As a result of this policy, the 2010 Census apportionment figures include millions of individuals who are, under federal law, unlawfully present in the United States.

**85-90% of illegal immigrants are counted in the Census**

Stephen Ohlemacher 2007. (journalist), 17 Aug 2007, Associated Press, "Official: No immigration raids for ‘10 census" <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/16/AR2007081601281_pf.html>

Illegal immigrants are notoriously hard to count, although outside experts estimate that census workers count 85% to 90% of them. Census workers ask immigrants if they are citizens; they do not ask if they are in the country legally.

Some Congressmen are representing significantly more voters than others, because of immigration issues

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

The reapportionment of House seats from States with few non-immigrant foreign nationals to those with many causes significant disparities in the number of voters per district. Because non-immigrant foreign nationals are prohibited from voting in federal elections, the eligible voting population in States containing large numbers of such individuals is proportionally smaller than in States containing few. Accordingly, the average congressional district in a State containing few non-immigrant foreign nationals contains a greater population of eligible voters than in a State containing many.

Average House district in Louisiana has over 90,000 more citizens in it than the average district in California

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

Because relatively few non-immigrant foreign nationals reside in Louisiana, its voters suffer such a disparity. Under Defendants’ apportionment of House seats, the average U.S. House district in Louisiana will contain 748,160 citizens or lawful permanent residents, versus an average of 656,452 citizens or lawful permanent residents for districts in California, a State which has gained House seats due to its large population of non-immigrant foreign nationals.

Average Montana congressional district contains 50% more voters than average California district

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

This transfer of seats among States creates large disparities in the weight of votes cast in the affected seats. For example, under the 2010 Census apportionment, the average House district in California contains 656,453 lawful residents (that is, resident citizens plus lawful permanent residents). Ex. 3. The average Louisiana district contains 748,160 – nearly 14 percent more individuals than in the average California district – and the average Montana district contains 984,416, or 50 percent more. Id. These disparities significantly dilute the strength of votes cast in States containing few non-immigrant foreign nationals.

“At Least” 8 House seats are improperly allocated by counting illegal immigrants in the Census

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

Because the population of non-immigrant foreign nationals is not distributed uniformly among the States, the inclusion of these individuals in apportionment figures alters the apportionment of seats in the House of Representatives among the States. States containing large populations of such individuals are apportioned House seats at the expense of States containing relatively few. Defendants’ decision to count non-immigrant foreign nationals for apportionment purposes will cause at least five States to lose House seats to which they are entitled, and at least three States to gain seats to which they are not entitled.

Illegal immigration has substantial impact on state representation in Congress and on presidential elections

Prof. Dudley L. Poston, Jr., Steven Camarota, and Amanda K. Baumle 2003. (Poston - Professor of Sociology at Texas A&M University and teaches classes in demography and statistics. Camarota - Director of Research at the Center for Immigration Studies. Baumle - doctoral student in Sociology at Texas A&M Univ and J.D. from the Univ of Texas.) Oct 2003, "Remaking the Political Landscape - The Impact of Illegal and Legal Immigration on Congressional Apportionment," CENTER FOR IMMIGRATION STUDIES, <http://www.cis.org/ImmigrationEffectCongressionalApportionment>

For the specific states involved, the impact of illegal immigration is substantial. Had Montana received another seat it would have doubled its representation in the House. The one seat lost by Mississippi represented one-fifth of its congressional delegation, and for Indiana the one seat lost was one-tenth of its representation. Although Michigan had 16 seats, the reduction of its delegation to 15 seats is certainly not trivial. Political influence in Washington is partly dependent on the size of the state’s delegation in the House. Thus, there is no question that the presence of illegal aliens in other states significantly reduced the political influence of these four states. Illegal immigration also has a significant effect on presidential elections because the Electoral College is based on the size of congressional delegations.

JUSTICE VIOLATIONS

The principle of "one man one vote" is violated

Prof. James G. Gimpel and James R. Edwards Jr 2005 (Gimpel - associate professor of government at the Univ. of Maryland. Edwards - adjunct fellow of the Hudson Institute), Winter 2005-2006, "Immigration Dilutes the Voting Rights of Citizens," SOCIAL CONTRACT JOURNAL, [www.thesocialcontract.com/artman2/publish/tsc1602/article\_1366.shtml](http://www.thesocialcontract.com/artman2/publish/tsc1602/article_1366.shtml)

With immigration-induced reapportionment, some congressional districts wind up encompassing a large noncitizen population, which is not enfranchised. In Southern California, several of these districts exist today. Such districts contain less than half of the citizens and less than half of the eligible voters - that one finds in typical districts in interior states. This means the citizens in the high-immigration districts share their representative with relatively few other citizens compared with those in interior states. Plain and simple, this is an issue of vote dilution and raises questions of voting rights. Take two citizens, George and Susan, who live in different districts of equal population size. George lives in a high-immigrant area and shares his congressman with 25 other citizens. Susan lives in a low-immigrant area and shares her congressman with 50 other citizens. This scheme of including noncitizens in the apportionment count effectively dilutes Susan's vote, or exaggerates George's. The math is simple: George's vote is worth twice as much. The districts are not equal, period. Whatever happened to the principle of one man, one vote?

Including illegal residents violates the principles of the 14th Amendment: one person one vote

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

Section 1 of the Fourteenth Amendment guarantees the individual citizens of the United States “equal protection of the laws,” a guarantee which this Court has held applies to the laws and actions of the Federal government through the Fifth Amendment. This clause embodies the principle of “one person, one vote,” under which “the weight of a citizen’s vote cannot be made to depend on where he lives.” Reynolds v. Sims, 377 U.S. 533, 567 (1964). 22. The reapportionment of House seats from States with few non-immigrant foreign nationals to those with many affects the relative weight of votes cast in both types of States. Because the average congressional district in a State containing few nonimmigrant foreign nationals contains a greater population of eligible voters than in a State containing many, the average vote cast in the former State is worth less, in terms of electoral power, than the average vote cast in the latter. The votes cast by Louisiana citizens are diluted in this very manner. Ex. 4. Due to the difference in eligible voters per district, the average Louisianan’s vote for a U.S. Representative is worth nearly 14 percent less than the average Californian’s.

Voting power of US citizens in high-immigration districts is increased at the expense of other US citizens

Prof. Dudley L. Poston, Jr., Steven Camarota, and Amanda K. Baumle 2003. (Poston - Prof of Sociology at Texas A&M Univ; teaches classes in demography and statistics. Camarota - Director of Research at Center for Immigration Studies. Baumle - doctoral student in Sociology at Texas A&M Univ and J.D. from Univ of Texas.) Oct 2003, "Remaking the Political Landscape - The Impact of Illegal and Legal Immigration on Congressional Apportionment," CENTER FOR IMMIGRATION STUDIES <http://www.cis.org/ImmigrationEffectCongressionalApportionment>

While it’s clear that American citizens in low-immigration states lose from mass immigration, the winners are not necessarily the non-citizens who cause the reapportionment, since they cannot vote or otherwise fully take part in the political process. Instead, it is citizens who live in the same districts with non-citizens whose political power is enhanced. Put simply, in a district in which a large share of the population cannot vote, those who do vote count more than citizens in districts where almost everyone is an American citizen. Large non-citizen populations take voting power from Americans and give it to other American citizens in high-immigration districts.

Illegal aliens distort the political power of US citizens

Orlando Rodriguez 2011. (Senior Policy Fellow atConnecticut Voices for Children; former manager of the Connecticut State Data Center, at the University of Connecticut; B.S. in Geology from Louisiana State University and an M.A. in Geography from Ohio State University) <http://www.votethieves.com/files/VT_excerpt.pdf>

The real concern is that illegal aliens distort the political power of citizens who do vote. Former Chief Justice Earl Warren of the U.S. Supreme Court stated in 1964 “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” This occurs with the current method of apportionment, which dates to the 1787 Constitutional Convention in Philadelphia. Congressional districts with large populations of nonvoters, including illegal aliens, overweigh the voting power of voters in that district.

Large illegal immigration states get disproportionate number of Representatives - allows illegals to affect public policies

Rep. Candice Miller 2007 (R-Michigan), 11 Sept 2007, "More Illegal Immigrants, More Seats in Congress?" WASHINGTON POST, <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/10/AR2007091002107.html>

States with large populations of illegal immigrants receive a disproportionate number of seats in the House of Representatives because noncitizens are included with citizens. For example, Montana has one representative for a population of about 895,000 citizens. The 34th District of California has one representative but fewer than 420,000 citizens. Policies emerging from the debate on illegal immigration must reflect the will of U.S. citizens and should not be affected by those here unlawfully.

SOLVENCY

Many illegals would be afraid to participate in the Census if they asked about immigration status

Eunice Moscoso 2007. (journalist), 22 Oct 2007, Cox News Service, "Should the Census Bureau count illegal immigrants?" <http://www.alipac.us/f9/should-census-bureau-count-illegal-immigrants-81848/>

William H. Frey, a demographer with the Brookings Institution, said that many illegal immigrants would be afraid to participate in the Census if it included a question on legal status because they would assume the information would be sent to an enforcement agency.

Ask immigrants their legal status on the Census form

Eunice Moscoso 2007. (journalist), 22 Oct 2007, Cox News Service, "Should the Census Bureau count illegal immigrants?" <http://www.alipac.us/f9/should-census-bureau-count-illegal-immigrants-81848/>

"It is unfair for some states to lose representation to other states because they have more people living there illegally," said Ira Mehlman, a spokesman for the Federation for American Immigration Reform (FAIR), a group that advocates lower levels of immigration. FAIR challenged the practice of counting illegal immigrants in the 1980 and 1990 Census but the cases were dismissed, Mehlman said. FAIR believes that the Census should ask immigrants their legal status. Those who are in the United States illegally should be subtracted from the total when it comes to determining congressional districts, Mehlman said.

No Constitutional obstacle: Constitution does not specify the method for apportionment nor how the population should be composed

Prof. Dudley L. Poston, Jr., Steven Camarota, and Amanda K. Baumle 2003. (Poston - Prof of Sociology at Texas A&M Univ; teaches classes in demography and statistics. Camarota - Director of Research at Center for Immigration Studies. Baumle - doctoral student in Sociology at Texas A&M Univ and J.D. from Univ of Texas.) Oct 2003, "Remaking the Political Landscape - The Impact of Illegal and Legal Immigration on Congressional Apportionment," CENTER FOR IMMIGRATION STUDIES <http://www.cis.org/ImmigrationEffectCongressionalApportionment>

Article 1 Section 2 of the U.S. Constitution mandates that a census be taken every 10 years expressly for the purpose of apportioning seats in the House of Representatives. However, the Constitution does not specify the method for apportionment, or how the population to be apportioned should be composed.

Not-counting illegals for apportionment purposes would solve  
Constitutional Amendment would not be necessary  
Not-counting non-citizens would be consistent with the Founders' original intent

Prof. James G. Gimpel and James R. Edwards Jr 2005 (Gimpel - associate professor of government at the Univ. of Maryland. Edwards - adjunct fellow of the Hudson Institute), Winter 2005-2006, "Immigration Dilutes the Voting Rights of Citizens," SOCIAL CONTRACT JOURNAL, [www.thesocialcontract.com/artman2/publish/tsc1602/article\_1366.shtml](http://www.thesocialcontract.com/artman2/publish/tsc1602/article_1366.shtml)

The prospect that Traficant's district could disappear because his constituents happen to have been born in this country is simply outrageous. That it would happen and further dilute U.S. citizens' votes because of the presence of noncitizens including illegal aliens is appalling. Solving this inequity is a difficult challenge, but several possibilities come to mind. First, we could simply stop counting noncitizens for purposes of apportionment. Both Article I, Section 2 of the Constitution and the 14th Amendment explicitly exclude Indians not taxed from apportionment. Further, the 14th Amendment, Section 2 recognizes that the right to vote may legitimately be denied to some. The Supreme Court has favored counting both citizens and noncitizens in reapportionment cases, but such an interpretation of the Constitution seems to go against the Founders' intent. Moving to count only citizens for purposes of apportioning representation should not require a constitutional amendment. However, in light of judicial activism and the lack of political will to stand up to liberal jurists and highly motivated interest groups, perhaps the constitutional amendment route will ultimately be required to effect this change.

No Constitutional obstacle: Constitutionality of excluding illegals from apportionment has never been decided in court

Prof. Dudley L. Poston, Jr., Steven Camarota, and Amanda K. Baumle 2003. (Poston - Prof of Sociology at Texas A&M Univ; teaches classes in demography and statistics. Camarota - Director of Research at Center for Immigration Studies. Baumle - doctoral student in Sociology at Texas A&M Univ and J.D. from Univ of Texas.) Oct 2003, "Remaking the Political Landscape - The Impact of Illegal and Legal Immigration on Congressional Apportionment," CENTER FOR IMMIGRATION STUDIES <http://www.cis.org/ImmigrationEffectCongressionalApportionment>

In 1979, the Federation for American Immigration Reform (FAIR) sued to enjoin the Census Bureau from counting illegals in the decennial census of 1980 (FAIR v. Klutznick, 486 F. Supp. 564, D.D.C. 1980). The case was ultimately dismissed by the Supreme Court on the grounds of lack of standing. In 1988, a similar suit filed by FAIR, 40 members of Congress, and the Commonwealth of Pennsylvania was also dismissed. As a result, the constitutionality of excluding illegal immigrants from the apportionment has yet to be decided by a court of law. All persons residing in the United States who are counted in the 2000 Census, including those here illegally, were used to calculate the apportionment of seats in the House. Congress may have the authority to change this, but has so far not done so.

Congress has the constitutional right to determine who is a "person" for the purpose of allocating representatives

Prof. Nathan Schlueter 2003 (Assistant Professor of Political Science and Director of Pre-Law Studies at St. Ambrose Univ., Davenport, Iowa Winter 2003, HUMAN LIFE REVIEW, "Constitutional persons: An exchange on abortion" <http://www.freerepublic.com/focus/news/850234/posts>

The means for determining numbers of persons in each state is regulated by the second section of the first Article of the Constitution. According to this passage, "actual enumeration" shall be made by Congress every ten years "in such manner as they shall by law direct." In other words, Congress can determine by statute those who should be counted in the census for purposes of allocating representatives.

Founders’ original intent was not to include all “persons” but all legal inhabitants

State of Louisiana and its Attorney General James D. Caldwell 2011. Brief filed with the US Supreme Court in the case of State of Louisiana and James D. Caldwell v. John Bryson, Robert Groves and Karen Lehman Haas, <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/11/Louisiana_v_Bryson.pdf>

The terms “numbers” and “whole persons,” as used in Article I, Section 2, Clause 3, as modified by Section 2 of the Fourteenth Amendment, refer to individuals with a permanent legal residence within a State, or “inhabitants,” and were intended to encompass a political community or polity. This is reflected in, inter alia, the text of the act authorizing the first Census in 1790, which directed officials to count “the number of the inhabitants within their respective districts.” An Act Providing for the Enumeration of the Inhabitants of the United States, ch. 2, § 1, 1 Stat. 101 (1790). In no Census have the constitutional terms “numbers” and “whole persons” been construed so liberally as to reach all “persons,” including tourists and corporate persons, physically present within a State at the time the data is gathered.

Illegal aliens have no valid claim to representation in Congress

Prof. Dudley L. Poston, Jr., Steven Camarota, and Amanda K. Baumle 2003. (Poston - Prof of Sociology at Texas A&M Univ; teaches classes in demography and statistics. Camarota - Director of Research at Center for Immigration Studies. Baumle - doctoral student in Sociology at Texas A&M Univ and J.D. from Univ of Texas.) Oct 2003, "Remaking the Political Landscape - The Impact of Illegal and Legal Immigration on Congressional Apportionment," CENTER FOR IMMIGRATION STUDIES <http://www.cis.org/ImmigrationEffectCongressionalApportionment>

While there is a consensus that naturalized citizens should be represented in Congress just like any other American, awarding congressional seats to states on the basis of their non-citizen populations raises important questions about political representation. This is especially true when one considers that these districts are created by taking representation away from states comprised of American citizens. Non-citizens cannot vote, make campaign contributions, serve on juries, work for the federal government in most cases, or otherwise take part in the normal political life of the country. Thus, it may seem odd that they are "represented" in Congress. This issue becomes even more controversial when one considers that a large share of the non-citizen population, roughly one-third, are illegal aliens, and another one million are temporary visitors such as foreign students and guest workers. While one can at least argue that legal immigrants who have not naturalized are still entitled to representation in Congress because they are future Americans, illegal aliens and temporary visitors can make no such claim.

FULL TEXT OF THE BILL

S. 619: Justice Safety Valve Act of 2013, 113th Congress, 2013–2015. Text as of Mar 20, 2013 (Introduced). <http://www.gpo.gov/fdsys/pkg/BILLS-113s619is/pdf/BILLS-113s619is.pdf>

110th CONGRESS

1st Session

S. 619

To prevent congressional reapportionment distortions.

IN THE SENATE OF THE UNITED STATES

**February 15, 2007**

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prevent congressional reapportionment distortions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Fair and Accurate Representation Act of 2007'.

SEC. 2. FINDINGS.

Congress finds that--

(1) in recent years, millions of aliens have entered the United States in violation of immigration laws and are now residing illegally in the United States and are subject to deportation;

(2) the established policy of the Bureau of the Census is to make a concerted effort to count the foreign-born population within the United States without making a separate computation for illegal aliens; and

(3) by including the millions of illegal aliens in the reapportionment base for the House of Representatives, many States will lose congressional representation which such States would not have otherwise lost, thereby violating the constitutional principle of `one man, one vote'.

**SEC. 3. PREVENTION OF CONGRESSIONAL REAPPORTIONMENT DISTORTIONS.**

(a) Adjustments To Prevent Distortions- Section 141 of title 13, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

`(g) The Secretary shall make such adjustments in total population figures as may be necessary, using such methods and procedures as the Secretary determines feasible and appropriate, in order that aliens who are in the United States in violation of the immigration laws of the United States are not counted in tabulating population under subsection (b) for the purposes of apportionment of Representatives in Congress among the several States. Nothing in this subsection shall be construed to supersede section 195 of this title.'.

(b) Conforming Amendment- Section 22(a) of the Act entitled `An Act To provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress', of June 18, 1929 (2 U.S.C. 2a(a)), is amended by striking `as ascertained under the seventeenth and each subsequent decennial census of the population' and inserting `as ascertained and reported under section 141 of title 13, United States Code, for each decennial census of population'.

2A EVIDENCE: FELON RE-ENFRANCHISEMENT

ADVOCACY

DRA upholds crucial rights

Myrna Pérez, Lee Rowland 2012. (Perez – attorney with Brennan Center for Justice at NYU School of Law; former Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington; masters degree in public policy from Harvard University's Kennedy School of Government. Rowland – attorney; counsel for the Brennan Center for Justice’s Democracy Program ) Democracy Restoration Act Would Restore Voting Rights to Millions 25 Apr 2012 <http://www.brennancenter.org/analysis/democracy-restoration-act-would-restore-voting-rights-millions>

Despite two centuries of a national history extending the right to vote to ever more Americans, state legislatures have recently passed a flurry of laws that make voting more difficult. Some require government-issued photo identification cards; others are obstructing early voting or restricting voter registration drives. It's time for Congress to protect the rights citizens of a democracy hold most dear and create the opportunity for greater citizen participation. Members can begin by opening up the voter rolls to the four million Americans covered by the Democracy Restoration Act.

Congress should end disenfranchisement: It would aid reintegration into the community for ex-offenders

Marc Mauer 2010. (Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal and juvenile justice policy issues; co-author of a 1998 study that provided the first state-based estimates of the impact of disenfranchisement; Master of Social Work from the University of Michigan ) Statement of Marc Mauer Executive Director The Sentencing Project, Prepared for the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, Hearing on H.R. 3335 “The Democracy Restoration Act of 2009” 16 Mar 2010 <http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf>

I hope Congress can join the growing movement for reform of disenfranchisement policies. When people leave prison and seek to participate in their community, they deserve a second chance to work, raise families, participate in community life, and vote. The current patchwork of voting laws across the country means that a person's right to vote in federal elections is determined simply by where he or she chooses to call home. Congress must take action to fix this problem. Such a change would aid persons returning to the community from incarceration, as well provide public safety benefits for all citizens.

“Disenfranchisement is a reasonable punishment for crime” – Response: It serves no valid purpose, and lots of law enforcement officials advocate ending it

Carl Wicklund 2010. (executive director of the American Probation and Parole Association. He has over 37 years of experience in justice and human service fields that includes corrections program development and management) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 (ellipses in original) <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

There are four generally accepted purposes of criminal penalties: prevention against committing new crimes, deterrence, retribution and rehabilitation. Losing the right to vote does not address any of those. And we're not alone in our support for restoring the voting rights. Other national criminal justice and law enforcement agencies, including the National Black Police Association and the Association of Paroling Authorities International, have passed resolutions in favor of voting rights restoration. Even the current director of the Office of National Drug Control Policy wrote, when he was chief of police in Seattle, "voting is an important way to connect people to their communities. ... We want those who leave prison to become productive and law-abiding citizens. Voting puts them on that path."

Law enforcement officials agree: Voting rights should be restored – it helps steer former offenders away from future crime

17 law enforcement and criminal justice leaders, letter to Congress in support of DRA, 2009. LETTER IN SUPPORT OF THE DEMOCRACY RESTORATION ACT (H.R. 3335 / S. 1516) FROM LAW ENFORCEMENT AND CRIMINAL JUSTICE LEADERS, 10 Dec 2009 (authors of the letter were: Theodis Beck, President, Association of State Correctional Administrators Secretary, NC Dept of Corrections. Jane Browning Executive Director, International Community Corrections Association . Col. Douglas DeLeaver Former National President, National Organization of Black Law Enforcement Executives. Col. Dean Esserman Chief of Police, Providence Police Department. James Gondles, Jr. Executive Director, American Correctional Association. Ron Hampton Executive Director, National Black Police Association . Lisa Holley, Chair of Rhode Island Parole Board. Charles J. Hynes District Attorney, Kings County, New York. Doug Jones, Former U.S. Attorney, Northern District of Alabama. Justin Jones, Director, Oklahoma Dept of Corrections. Peg Lautenschlager Former Wisconsin Attorney General. Tom Miller, Iowa Attorney General. Jorge Montes , Chariman, Illinois Prisoner Review Board . John F. Timoney , Miami Chief of Police. Ashbel T. Wall , Director, Rhode Island Dept of Corrections . Carl Wicklund , Executive Director, American Probation and Parole Association. Hubert Williams President, Police Foundation Former Chief of Police, Newark Police Department ) 10 Dec 2009 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/DRA%20-%20Law%20Enforcement%20CJ%20Sign%20on%20Letter%20FINAL.pdf>

We support the restoration of voting rights because continuing to disenfranchise individuals after release from prison is ineffective law enforcement policy and violates core principles of democracy and equality. There is no credible evidence that denying voting rights to people after release from prison does anything to reduce crime. In our judgment, just the opposite is true. Every year over 600,000 people leave prison. We must find new and effective ways to foster reintegration back into the community and prevent recidivism. We believe that bringing people into the political process makes them stakeholders in the community and helps steer former offenders away from future crimes.

TOPICALITY

“Significantly Reform” – 48 out of 50 states would have their rules changed – a 96% reform! Rep. James Sensenbrenner, who opposes the plan, said in 2010 that part of his reason for opposing it was because it is such a big change:

Rep. F. James Sensenbrenner Jr. 2010. (R-Wisc.) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

A core provision of this bill provides the states can only deny felons currently serving their sentences the right to vote, and that ex-felons, along with all people who are subject to parole or probation, must be allowed to vote, the laws of their states to the contrary notwithstanding. This legislation would thereby void the laws in 48 out of 50 states, as well as the District of Columbia, that forbids felons from voting in varying degrees. Those states include my own state of Wisconsin, where people lose their voting rights if they're incarcerated, or on parole, or on probation.

INHERENCY

4 million are disenfranchised even after being released from prison

Brennan Center for Justice at New York University School of Law 2011. “Democracy Restoration Act” 20 Dec 2011 <http://www.brennancenter.org/legislation/democracy-restoration-act>

The Democracy Restoration Act (DRA) is federal legislation that seeks to restore voting rights in federal elections to the nearly 4 million disenfranchised Americans who have been released from prison and are living in the community, but are still denied the right to vote. The bill has been introduced in the 112th Congress by Representative John Conyers, Jr. (D-MI) and Sen. Ben Cardin (D-MD).

“Let the States do it” – Response: State action not enough, we need Congress to act

Myrna Pérez, Lee Rowland 2012. (Perez – attorney with Brennan Center for Justice at NYU School of Law; former Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington; masters degree in public policy from Harvard University's Kennedy School of Government. Rowland – attorney; counsel for the Brennan Center for Justice’s Democracy Program ) Democracy Restoration Act Would Restore Voting Rights to Millions 25 Apr 2012 <http://www.brennancenter.org/analysis/democracy-restoration-act-would-restore-voting-rights-millions>

Up until this past year, states have been the engines behind reducing voting restrictions on persons with criminal convictions. Yet, for the millions of Americans who remain disenfranchised, the nation remains a patchwork of regulation and the recent wave of restrictive voting laws passed by state legislatures offers little hope that further liberalization will happen in the states any time soon. Congressional action is our best hope to redress these inequities in the short run.

“States are already re-enfranchising felons” – Response: Lots of states still have voting restrictions

Rep. John Conyers 2011. (D-Mich.) 16 June 2011 text of HR2212, the Democracy Restoration Act <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2212ih/pdf/BILLS-112hr2212ih.pdf>

Disenfranchisement results from varying State laws that restrict voting while under some form of criminal justice supervision or after the completion of a felony sentence in some States. Two States do not disenfranchise felons at all (Maine and Vermont). Forty-eight States and the District of Columbia have disenfranchisement laws that deprive convicted offenders of the right to vote while they are in prison. In 35 States, convicted offenders may not vote while they are on parole and 30 of these States disenfranchise felony probationers as well. In 10 States, a conviction can result in lifetime disenfranchisement.

HARMS

Felon disenfranchisement is bad for democracy

Myrna Pérez, Lee Rowland 2012. (Perez – attorney with Brennan Center for Justice at NYU School of Law; former Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington; masters degree in public policy from Harvard University's Kennedy School of Government. Rowland – attorney; counsel for the Brennan Center for Justice’s Democracy Program ) Democracy Restoration Act Would Restore Voting Rights to Millions 25 Apr 2012 <http://www.brennancenter.org/analysis/democracy-restoration-act-would-restore-voting-rights-millions>

There was a time in our country's history when the right to vote was limited to propertied white men, but the United States has since followed an arc tilted firmly toward suffrage. By the end of the 1800s, most states had abolished property qualifications for voting and the Fifteenth Amendment enfranchised African-American men. By the end of the 1900s, grandfather clauses, literacy tests, poll taxes and prohibitions against voting by women and Native Americans had ended. The present-day disenfranchisement of citizens with criminal histories, rooted in our country's Jim Crow laws, does violence to our country's trajectory towards a more inclusive democracy.

30% of next generation African-American men will lose the right to vote

Myrna Pérez, Lee Rowland 2012. (Perez – attorney with Brennan Center for Justice at NYU School of Law; former Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington; masters degree in public policy from Harvard University's Kennedy School of Government. Rowland – attorney; counsel for the Brennan Center for Justice’s Democracy Program ) Democracy Restoration Act Would Restore Voting Rights to Millions 25 Apr 2012 <http://www.brennancenter.org/analysis/democracy-restoration-act-would-restore-voting-rights-millions>

State disenfranchisement laws have a profound impact on minorities. Nationwide, an estimated 13 percent of African-American men have lost the right to vote because of spending time in prison, a rate that is seven times the national average. Given current rates of incarceration, three in ten of the next generation of African-American men can expect to lose the right to vote at some point in their lifetimes.

“Felon voting rules aren’t racist – they existed before the Civil War when blacks couldn’t vote” – Response: But they were modified after the Civil War as a deliberate tool against black voters

Prof. Burt Neuborne 2010. (professor of civil liberties at New York University School of Law; has served as the legal director of the Brennan Center for Justice at NYU since its founding; served on the New York City Human Rights Commission) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

The period before the Civil War, there were literacy tests. There were felon disenfranchisement statutes. There were property qualifications. They probably didn't have much of a racial impact, because most blacks couldn't vote, especially after Dred Scott. There simply was not a serious racial problem with voting. But once the Fourteenth and Fifteenth Amendments got passed, all of a sudden, these old standards -- which of course date back to Greece and Rome -- were recycled by racists. They were recycled by racists all over the country as convenient rocks to throw at newly enfranchised blacks. And they threw them everywhere. They threw them in New York. They threw them in Florida. To say that you only want to look at the period from 1890, when five states tweaked their laws -- obviously to target blacks -- overlooks entirely the period from 1868 to 1890, when state after state adopted these rules, or made them harsher, or made them harder to administer.

“Restrictions are a justified part of punishment for crime” – Response: Not all restrictions make sense. Voting can’t hurt anyone

Carl Wicklund 2010. (executive director of the American Probation and Parole Association. He has over 37 years of experience in justice and human service fields that includes corrections program development and management) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

There are many collateral consequences that go with felony convictions, and some make sense. For instance, there are some restrictions. You don't want a pedophile driving a school bus. But at the same time, you know, should a burglar never get to be a barber? And there's also collateral consequences, such as your criminal history never goes away. I mean, just ask any of these mining and harvesting of information companies that are buying criminal justice information and selling it to employers and apartment renters, et cetera. However, even the ones that make sense are there because the felon, the past felon, creates some sort of risk to the community. There is no risk in having someone vote. How does that hurt anybody?

Felon disenfranchisement discriminates against blacks

Prof. Burt Neuborne 2010. (professor of civil liberties at New York University School of Law; has served as the legal director of the Brennan Center for Justice at NYU since its founding; served on the New York City Human Rights Commission) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

Felony disenfranchisement, or disenfranchisement for conviction, did indeed predate the Civil War. They had it in Greece. But once the Civil War was fought, and once the Fourteenth and Fifteenth Amendments were put on the books, this was an extraordinarily convenient device for racists in both the North and the South to seize upon as a way to make sure that the newly freed slaves and the newly freed black Americans would be unable to vote. And it's true that five states in 1890 began to tweak it, but the southern states and many of the northern states in the period from 1868 to 1890 used felony disenfranchisement laws outrageously and discriminatorily in a way to discriminate against blacks.

Racial disparities: Disenfranchisement of communities of color

Marc Mauer 2010. (Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal and juvenile justice policy issues; co-author of a 1998 study that provided the first state-based estimates of the impact of disenfranchisement; Master of Social Work from the University of Michigan ) Statement of Marc Mauer Executive Director The Sentencing Project, Prepared for the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, Hearing on H.R. 3335 “The Democracy Restoration Act of 2009” 16 Mar 2010 <http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf>

During the Jim Crow era, disenfranchisement laws in southern states were revised to silence the political voice of newly emancipated slaves. Today, the racial disparities in the criminal justice system translate into higher rates of disenfranchisement in communities of color, resulting in one of every eight adult black males being ineligible to vote. Disproportionate disenfranchisement in communities of color means the concerns of those communities are not fairly represented at the polls.

Irrational discrimination with different rules in each state: 14th Amendment justifies uniform national standards

Prof. Burt Neuborne 2010. (professor of civil liberties at New York University School of Law; has served as the legal director of the Brennan Center for Justice at NYU since its founding; served on the New York City Human Rights Commission) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

It's astonishing to me that somebody -- that a felon, or somebody who has been convicted of passing a bad check in Florida can't vote, but somebody who is convicted of passing a bad check in Georgia can vote. Now, that's the kind of irrational discrimination on the ability to vote that should trigger the Fourteenth Amendment's power under Section 5 of the Fourteenth Amendment. The passage of uniform criteria that would sand down irrational differences state to state on whether you can vote for president of the United States, seems to me clearly within this committee's power without the necessity of going to the Fifteenth Amendment. It's a Fourteenth Amendment argument.

SOLVENCY

What does DRA do exactly?

Text of HR2212, the Democracy Restoration Act, written by Rep. John Conyers 2011. (D-Mich.) 16 June 2011 text of HR2212, the Democracy Restoration Act <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2212ih/pdf/BILLS-112hr2212ih.pdf>

The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.

“Would felons want to vote if it were given back to them?” – Rhode Island example: 6000 out of 15,000 (40%) registered to vote within 2 years after being re-enfranchised

Hilary Shelton 2010. (director of the NAACP's Washington bureau, senior vice president for advocacy and policy; holds degrees in political science, communications and legal studies at Howard University, University of Missouri at St. Louis and Northeastern Univ) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

One question that is frequently asked is, how many of these men and women would vote if they had an opportunity? It is, frankly, difficult to say. However, in 2006, voters in Rhode Island changed the law so that once a felon was released from prison, he or she was able to register to vote. Since probation or parole terms can run a decade or more, an estimated 15,000 people in that state were prevented from voting. After passage of the amendment, about 6,000 of these people registered to vote in the 2008 election.

Constitutionality: Congress can use 15th Amendment Section 2 to stop states from using voting laws that have racial discrimination effects. In the context, Prof. Neuborne is advocating for the Democracy Restoration Act by comparing it with the Voting Rights Act of 1965.

Prof. Burt Neuborne 2010. (professor of civil liberties at New York University School of Law; has served as the legal director of the Brennan Center for Justice at NYU since its founding; served on the New York City Human Rights Commission) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf> (“prophylactically” means “prevention before something happens”)

I testified in 1965 on the Voting Rights Act of 1965. And my topic, the task I had that day, was to talk to Congress about its power to abolish literacy tests -- nationwide, in every state in the union, whether or not those states were currently engaged in racial discrimination. And I argued to the committee then -- and I argue now, because it's the same argument -- that under Section 2 of the Fifteenth Amendment, Congress possesses power to act when three things come together: one, an impediment to voting that has been historically used to discriminate against members of racial minority; two, a showing that that impediment continues today to have the effect of discriminating against racial minorities; and three, the possibility and potential that the current effect is intended, because, as we all know, proof of intent is very, very difficult. And the most important power this committee possesses under Section 2 of the Fifteenth Amendment is the power to act prophylactically to stop techniques that have been historically used in a racially discriminatory way, that are still having racial impact, and where it is impossible to prove on a case-by-case basis that the intent exists. The purpose of Section 2 of the Fifteenth Amendment is to give you the power to act prophylactically on a wholesale basis, where litigation on a retail basis would be inappropriate and impossible to prove.

ADVANTAGES

Stamp out the last vestiges of racism in the voting process

Hilary Shelton 2010. (director of the NAACP's Washington bureau, senior vice president for advocacy and policy; holds degrees in political science, communications and legal studies at Howard University, University of Missouri at St. Louis and Northeastern Univ) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

People who have served their time and been released from prison are the last Americans to be denied their highly cherished, basic right to vote. Furthermore, the fact that the states which disenfranchise the most African Americans tend to be in the South, makes these laws all the more suspect. In fact, in some states with more restrictive ex-felony disenfranchisement laws, we have had African Americans report that their personal history -- and, therefore, their voting eligibility -- is questioned, simply because of the color of their skin. Because the right to vote is such an important element of the democratic process, it is simply wrong to predicate it upon a system rife with racial disparities. And with the voting such an integral part of becoming a productive member of American society, the way forward for our nation should be a new paradigm in which we encourage ex-felons to vote, not prohibit them.

Civic participation reduces recidivism, the return to a life of crime that often occurs when felons leave prison.

Carl Wicklund 2010. (executive director of the American Probation and Parole Association. He has over 37 years of experience in justice and human service fields that includes corrections program development and management) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

The combination of the sheer number of people being released from prison every day and the revolving door created by staggering recidivism rates have forced those who work in community supervision to look carefully at the process of reentry and find innovative ways to ease this reintegration, with the ultimate goal of preventing future crime and protecting public safety. Civic participation and successful rehabilitation are intuitively linked. One of the greatest challenges facing those who are coming out of prison or jail is the transition from focus on one's self as an individual that is central to the incarceration experience, to a focus on one's self as a member of community that is the reality of life in our democratic society. Civic participation has also been linked to reducing recidivism. One study tracking the relationship between voting and recidivism found that former offenders who voted were half as likely to be arrested than those who did not.

Re-enfranchisement leads to better integration into the community

Marc Mauer 2010. (Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal and juvenile justice policy issues; co-author of a 1998 study that provided the first state-based estimates of the impact of disenfranchisement; Master of Social Work from the University of Michigan ) Statement of Marc Mauer Executive Director The Sentencing Project, Prepared for the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, Hearing on H.R. 3335 “The Democracy Restoration Act of 2009” 16 Mar 2010 <http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf>

Persons living in the community under probation or parole supervision have been determined by judges or corrections officials to not require incarceration for the safety of the community. Further, these persons are presumed to have the same rights and responsibilities as other citizens, except for supervision and reporting requirements imposed by corrections agencies. Persons on probation, for example, can get married or divorced, write a letter to the editor, or participate in their child’s PTA organization. It is in the community’s interest to encourage these activities, because to the degree that persons under supervision maintain positive connections with the community they will be more likely to engage in pro-social behavior. Rather than sending a message of second-class citizenship through denial of voting rights, it would be far better to provide incentives for first-class citizenship, with all the rights and obligations that it entails.

Law enforcement experts advocate re-enfranchisement because it’s associated with better behavior in the years following release from prison

Marc Mauer 2010. (Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal and juvenile justice policy issues; co-author of a 1998 study that provided the first state-based estimates of the impact of disenfranchisement; Master of Social Work from the University of Michigan ) Statement of Marc Mauer Executive Director The Sentencing Project, Prepared for the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, Hearing on H.R. 3335 “The Democracy Restoration Act of 2009” 16 Mar 2010 <http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf>

A study by sociologists Christopher Uggen and Jeff Manza found “consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior.” For persons with a prior arrest, 27% of nonvoters were re-arrested over a three-year period, compared with only 12% of voters. Indeed, in recent years a growing chorus of law enforcement officials and organizations, including police chiefs, corrections officials, and prosecutors, have called for the restoration of voting rights to people released from prison because it aids efforts for successful reintegration.

DRA eliminates confusion about which individuals can or cannot vote based on criminal histories

Myrna Pérez, Lee Rowland 2012. (Perez – attorney with Brennan Center for Justice at NYU School of Law; former Civil Rights Fellow at Relman & Dane, a civil rights law firm in Washington; masters degree in public policy from Harvard University's Kennedy School of Government. Rowland – attorney; counsel for the Brennan Center for Justice’s Democracy Program ) Democracy Restoration Act Would Restore Voting Rights to Millions 25 Apr 2012 <http://www.brennancenter.org/analysis/democracy-restoration-act-would-restore-voting-rights-millions>

Finally, the Democracy Restoration Act would ease administrative confusion over voter eligibility and eliminate the inconsistencies that result from the states' myriad of disenfranchisement laws. Every individual with a past conviction is allowed to vote in Maine and Vermont, while one in Kentucky or Virginia faces permanent disenfranchisement unless he or she is granted discretionary clemency. The vast majority of states fall somewhere in between these two extremes, leading to complex eligibility requirements that often bewilder local election officials and create misconceptions among people with prior criminal records about their own eligibility. It is an inequity to which we cannot subject citizens any longer.

DISADVANTAGE RESPONSES

“Felons influencing political process is bad” – Response: Maine and Vermont have it, with no bad impacts  
[Note: Maine and Vermont are even more generous to felons than the AFF plan is. They never disenfranchise felons at all. The AFF plan agrees that states can disenfranchise them when convicted, but then restores their right to vote immediately after they finish their sentence.]

Rep. Sheila Jackson Lee 2010. (D-Texas) Hearings of the HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES 16 Mar 2010 <http://www.brennancenter.org/sites/default/files/legacy/Democracy/3%2016%2010%20Transcript%20Democracy%20Restoration%20Act%20House%20Hearing%20transcript.pdf>

For example, in the state of Maine and Vermont, we have members of Congress who are here. The State of Maine has no disenfranchisement for people with criminal convictions. Except for their philosophy and the representation of their state, I see no difference in the members of Congress from the states of Maine and Vermont. They don't act erratically. They don't seem to espouse unconstitutional or unpatriotic statements. They don't seem to be perpetrating criminal acts or supporting freeing all criminals across America. But yet, felons, apparently, in Maine and Vermont can vote.

“Infringes on states’ rights” – Response: DRA only regulates federal elections. States can still regulate state elections

Marc Mauer 2010. (Executive Director of The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal and juvenile justice policy issues; co-author of a 1998 study that provided the first state-based estimates of the impact of disenfranchisement; Master of Social Work from the University of Michigan ) Statement of Marc Mauer Executive Director The Sentencing Project, Prepared for the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, Hearing on H.R. 3335 “The Democracy Restoration Act of 2009” 16 Mar 2010 <http://www.sentencingproject.org/doc/publications/fd_DRATestimonyMarch2010.pdf>

Standardizing Federal Voter Qualifications will Create a Fairer Election Process  
Voting policies vary widely across the country. The current patchwork of disenfranchisement laws means that a person’s right to vote in federal elections is determined by where he or she resides. For example, in West Virginia a person who has completed his or her sentence for a felony conviction can vote for President, but in Virginia someone convicted of the same offense is barred for life from voting. State laws range between never losing the right to vote because of a felony conviction to permanently ending voting rights upon conviction. The Democracy Restoration Act would standardize the federal electoral system, but not apply to state elections; therefore, it would not infringe on a state’s right to regulate state elections.

TEXT OF D.R.A. 2011

You can look it up here and print it out before running this case:

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr2212ih/pdf/BILLS-112hr2212ih.pdf>

2A EVIDENCE: PRESIDENTIAL PRIMARY REFORM

NEGATIVE PHILOSOPHY / OPENING QUOTE

Status quo is good if you like a system where candidates are picked by voters in 2 states  
[Note: the 2 states he’s referring to are Iowa and New Hampshire]

Prof. William G. Mayer 2004. (assoc. professor of political science, Northeastern Univ.) 14 Jan 2004 FRONT-LOADING THE PRIMARIES: THE WRONG APPROACH TO PRESIDENTIAL POLITICS? <http://www.brookings.edu/~/media/events/2004/1/14elections/20040114.pdf>

If you’re comfortable with a system where the presidential candidates are picked, to a large extent, by voters in two states, then you've got what you like here.

DEFINITIONS

“Frontloading”

Prof. William G. Mayer 2004. (assoc. professor of political science, Northeastern Univ.) 14 Jan 2004 FRONT-LOADING THE PRIMARIES: THE WRONG APPROACH TO PRESIDENTIAL POLITICS? <http://www.brookings.edu/~/media/events/2004/1/14elections/20040114.pdf>

So what is front-loading? Well, if you like a formal definition, the one that we provide in the book goes something like this. Front-loading is the trend in which beginning in about 1980, more and more states scheduled their primaries and caucuses near the beginning of the delegate selection season.

TOPICALITY

T: National primary would be a dramatic change from the status quo  
Advocacy: American people overwhelmingly support it.   
Solvency: It would give voters in all states a meaningful vote for presidential nominations

David Redlawsk, Caroline Tolbert and Todd Donovan 2011. (Redlawsk – professor of political science at Rutgers Univ. Tolbert – professor of political science at Univ. of Iowa-Iowa City. Donovan – professor of political science at Western Washington Univ) WHY IOWA? <http://books.google.fr/books?id=ZC2mB4e_TCIC&pg=PA221&lpg=PA221&dq=Altschuler+%22national+primary%22&source=bl&ots=LfTdArWe9a&sig=4RsmT-BA5TY1N8d6_BQMpmpIg0E&hl=en&sa=X&ei=iicBUsD0DIub0AWZuoGABg&redir_esc=y#v=onepage&q=Altschuler%20%22national%20primary%22&f=false>

“While representing a dramatic change from the current system, a national primary has long been popular with Ameriacns, as voters from all states would cast a meaningful vote for the presidential nominees. As early as 1912, Theodore Roosevelt offered to use a national primary in the Republican nomination contest, but the incumbent, President William Howard Taft, declined (Altschuler 2008). Despite many years of polls indicating overwhelming support for a national primary, it has never been seriously considered by the parties.

INHERENCY

Minor Repairs won’t work: We can’t fix the current system by patching it

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

One thing is certain: we cannot fix the current system by patching it. State legislatures, secretaries of state, and state party leaders have a vested interest in holding their states’ nominating events early in the process to receive attention from the candidates and mass media and to boost their state economies. Michigan and Florida acted rationally by breaking party rules in 2008. Left to their own self-interest, states will continue to move their primaries and caucuses closer to the beginning of the delegate selection calendar, exacerbating the front-loading problem.

Minor Repair / Counterplan “Let the states do it” – Response: Congress can do it better

Prof. Richard Hasen 2008. (Professor of Law at Loyola Law School, Los Angeles ) "Too Plain for Argument?" The Uncertain Congressional Power to Require Parties to Choose Presidential Nominees Through Direct and Equal Primaries NORTHWESTERN UNVIERSITY LAW REVIEW <http://www.law.northwestern.edu/lawreview/colloquy/2008/10/>

Congress may be better situated to make changes than the states, as it can assess the nomination process nationally and impose a solution that avoids interstate competition issues. One Senate committee has already considered legislation to create a rotating regional primary system to end the frontloading problem.[20] But I also expect there will be more far-reaching proposals, such as those requiring that the parties choose their presidential nominees through primaries, perhaps conducted under a one person, one vote standard. Under such a proposal, parties would still be able to allocate delegates however they see fit for other party purposes, such as approving the party platform. But the presidential selection choice would have to reflect the results of party primaries, weighing each state's primary voters' votes equally.

Minor Repair/Counterplan “Sequential regional primaries” – Response: Has some benefits, but not completely solvent, because all that matters is timing

Prof. Travis N. Ridout and Prof. Brandon Rottinghaus 2008. ( Ridout - assistant professor of political science at Washington State University. Rottinghaus – assistant professor of political science at the University of Houston.) “The Importance of Being Early: Presidential Primary Front Loading and the Impact of the Proposed Western Regional Primary” Jan 2008 <http://www.apsanet.org/imgtest/PSJan08RidoutRottinghaus.pdf>

Perhaps somewhat surprising was our finding that the number of contiguous states holding simultaneous nomination events—our admittedly crude indicator of a regional primary—was in no way related to the amount of candidate attention that a state received. We had expected that the geographic proximity of other nomination events would help draw candidates to campaign in a state, but our data did not support such a conclusion. One possible explanation for this somewhat counterintuitive finding is that there were no true “mega-primaries” in 2000 or 2004 of the type that would attract considerable candidate attention. The largest regional event was a New England primary on March 7, 2000, when five states—Maine, Massachusetts, Rhode Island, New York, and Vermont— held primaries on the same day. Of course, it also may be the case that this counterintuitive finding was a true finding: that regional primaries attract no more candidate attention than the individual states in a region would attract if they held their primaries on separate dates. This does not, however, discount the other potential benefits of holding a regional primary (such as getting candidates to talk about regional issues or a boost to the regional economy). In addition, despite low numbers of delegates and smaller populations, the regional accumulation of Latino voters (traditionally trending Democratic) and conservative voters (traditionally trending Republican) in the western states may engender additional candidate attention to a western regional primary—especially if a candidate’s home state is involved (see Norrander 1993). But our findings do suggest that when it comes to candidate decision-making about where to campaign, timing trumps all else.

“Regional Primaries” – Response: Won’t solve the problems of frontloading; might make it worse

Prof. William G. Mayer and Prof. Andrew E. Busch 2004. (Mayer - assoc. professor of political science, Northeastern Univ. Busch - *Professor of Government at Claremont McKenna College*) THE FRONT-LOADING PROBLEM IN PRESIDENTIAL NOMINATIONS <http://books.google.co.vi/books?id=hUB_BV90wLAC&printsec=frontcover&hl=fr&source=gbs_atb#v=onepage&q&f=false>

Front-runners would still have enormous advantages, the entry fee would be little altered, and campaign quality probably would not improve much. Nor would a regional primary system prevent a large number of states from being effectively disenfranchised. If anything, it might make things worse. Though it is impossible to say for certain what campaigns would look like under a regional primary plan, given the dynamics of primary competition it seems highly likely that most races would be settled by the end of the second or, at the latest, the third regional primary. In assessing the “small-states-first” plan, which also divides the states into four groups, California secretary of state Bill Jones has noted, “Based on the last 20 years of presidential primaries as well as the 2000 primary season, the states at the end of the primary calendar will never have a chance to matter in the process.” His criticism applies with equal forced to a regional primary system.

“New rules in 2012 solved front-loading” – Response: Frontloading had a dramatic effect on candidates’ tactics in the 2012 primaries

Prof. Steffen Schmidt, Mack Shelley, Barbara Bardes and Lynne Ford 2013. (Schmidt – PhD; prof. of political science Iowa State Univ. Shelley – PhD; prof. of political science and statistics at Iowa State Univ. Bardes – PhD; professor emeriti of political science and former dean of Raymond Walters College at Univ. of Cincinnatti. Ford – PhD; prof. of political science at College of Charleston, SC. ) AMERICAN GOVERNMENT AND POLITICS TODAY <http://books.google.fr/books?id=QccWAAAAQBAJ&pg=PA329&lpg=PA329&dq=states+presidential+primary+front+load+2013&source=bl&ots=cUUHDSS900&sig=76M1lBOaPi5HPkX8v4J62VfAcTo&hl=en&sa=X&ei=-Of_Ua2cGcWL0AWGpIGYBQ&redir_esc=y#v=onepage&q=states%20presidential%20primary%20front%20load%202013&f=false>

Front-Loading the Primaries. As soon as politicians and potential presidential candidates realized that winning as many primary elections as possible guaranteed them the party’s nomination for president, their tactics changed dramatically. For example, candidates running in the 2012 primaries, such as Governor Mitt Romney, concentrated on building organizations in states that held early, important primary elections. Candidates realized that winning early contests, such as the Iowa caucuses or the New Hampshire primary election (both in January), meant that the media instantly would label the winner as the front-runner, thus increasing the candidate’s media exposure and escalating the pace of contributions to his or her campaign fund.

New rules in 2012 didn’t solve front-loading, and it is expected to get worse in the future

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was available online in August 2013, that is obviously not the correct date. It contains references to events that took place in 2012 and none in 2013, so it was written no earlier than 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

In 2012 Florida again defied the parties, moving the state’s primary up to January 31. New Hampshire and South Carolina responded by pushing their primaries earlier. All three states had their delegates cut in half by the Republican Party, but going early mattered more to the states than getting their full allotment of delegates. The front-loading in 2012 was lessened somewhat because of some unusual events. Wrangling over redistricting forced Texas to push its primary back to the end of May, and a state budget crisis led California to move its primary back to June. But there is no reason to expect that the front-loading problem will lessen in future elections. We can expect instead that states will continue to push their nominating contests earlier and earlier, because voting earlier is in their interests.

Race to the front: More states are trying to move to the front with their presidential primaries earlier in the calendar

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

Our findings bring into sharp focus the tension between reformers goals to increase participation and state level goals to have a disproportionate influence over nomination outcomes. States select nomination dates through balancing the costs of holding an election early against the benefits they anticipate from attracting campaign attention early in the process. More and more states find that the benefits outweigh the costs and move their events forward. But, the increased compression leads to faster delegate accumulation, quicker winnowing, and earlier endings all of which reduce turnout for most other states. States have incentives to move forward in the process, but in doing so create a system that is less meaningful to voters and harmful to reformer goals. This suggests that parties cannot simultaneously optimize participation in nomination contests and state autonomy in selecting primary election dates.

States are increasingly motivated to “frontload” their presidential primaries

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

The increased number of primaries enhanced participation among the party rank-and-file because the costs of participating in a primary election are much lower than for the more time-intensive caucuses. In addition, it quickly became apparent to state leaders and potential candidates that the timing of their state’s nominating event mattered both politically and economically. Politically, early states have greater influence over who wins the nomination by sending signals to later voters about the viability and electability of the contenders and by helping to winnow candidates. In addition, because of the increase in candidate activity and media attention early states see increased candidate spending and thus greater economic advantages (Bartels 1988; Mayer and Busch 2004). Southern states were the first to express concern over their “late” position. An earlier spot, they argued, brought more attention to their region and increased their ability to encourage the nomination of a more conservative presidential candidate (Norrander 1992). This resulted in the first-ever regional Super Tuesday primary event in 1988 whose purpose was “to encourage greater participation by Southern voters,” (Norrander 1992:108). Turnout increased 5%, suggesting that sequence position matters to voters (Norrander 1992:193). Leaders in other states quickly jumped on the frontloading bandwagon, thereby further changing the race dynamics each successive election year.

More and more states are “frontloading” – moving up the date of their primaries to gain more influence

Zeynep B. Irfanoglu, Dr. Shakun D. Mago, and Dr. Roman M. Sheremeta 2010. (Irfanoglu – PhD candidate, agricultural economics, Purdue Univ. Mago – PhD economics from Purdue Univ. Sheremeta - PhD economics; Associate Professor of Economics at Chapman University) Sequential versus Simultaneous Election Contests:An Experimental Study 27 Aug 2010 <http://www.krannert.purdue.edu/centers/vseel/papers/Sequential_Simultaneous.pdf>

The perception that New Hampshire plays a pivotal and perhaps a disproportionately large role in the presidential election, and in addition derives a wide array of political and economic benefits from that position, led many states to move up the date of their primaries. “Frontloading‟ is the name given to a recent trend in the presidential nomination process, in which more and more states schedule their primaries near the beginning of the delegate selection process. Clustering of primaries took a huge leap forward in 1988 with the formation of “Super Tuesday‟ when 16 states held their primaries on a single day in March.

States are all trying to be first, and current nomination system is fixed in place without significant reform

David Redlawsk, Caroline Tolbert and Todd Donovan 2011. (Redlawsk – professor of political science at Rutgers Univ. Tolbert – professor of political science at Univ. of Iowa-Iowa City. Donovan – professor of political science at Western Washington Univ) WHY IOWA? <http://books.google.com/books?id=ZC2mB4e_TCIC&pg=PA12&lpg=PA12&dq=Battaglini+Morton+Palfrey+primary&source=bl&ots=LfTdvsPb6i&sig=XYw9mx8ShwBISzIVAthFPiJRMCQ&hl=en&sa=X&ei=4JD5UYGGLaasyAHtkIDAAg&ved=0CHUQ6AEwCQ#v=onepage&q=Battaglini%20Morton%20Palfrey%20primary&f=false>

Crazy or not, the current presidential nomination system has been more or less in place for nearly forty years. Although there has been some tinkering around the margins, and states have fallen over one another trying to get to the head of the line for the benefits of being early participants in the nominating process, for the most part the system has been relatively stable despite the constant criticism it receives. This stability is more a result of the political parties’ and the states’ inability to agree on anything better than satisfaction with the system.

Presidential primaries are unregulated, wild and wooly

Prof. Caroline J. Tolbert, Prof. David P. Redlawsk, Daniel C. Bowen 2009. (Tolbert - Professor of Political Science at the University of *Iowa. Redlawsk – prof. of polit. Sci., Univ of Iowa. Bowen – PhD candidate, Univ of Iowa Dept of Political Sci.*) Reforming Presidential Nominations: Rotating State Primaries or a National Primary? Jan 2009 <http://ir.uiowa.edu/cgi/viewcontent.cgi?article=1085&context=polisci_pubs>

Without constitutional guidance or the wisdom of the founding fathers the presidential nominating has evolved over nearly 200 years expanding participation through national party conventions, direct primary elections, and Super Tuesday, while simultaneously enhancing the inﬂuence of a few key states with the earliest nominating events. It is a process increasingly distorted by a massive frontloading eﬀect and a condensed timeline where nearly three-quarters of the state delegates are selected in just two months (January 3–March 5, 2008). It is a hybrid process that combines elements of a national primary (Super Tuesday) with sequential state primaries and caucuses. This largely unregulated, if not wild and wooly, nomination process is the result of unintended consequences from reforms layered upon one another over time.

Choices eliminated: Frontloading removes candidates more quickly from the race, discourages long-shot candidates, and decides the nominee much earlier

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

Prior to frontloading, candidates stayed in the race longer and often more than one viable candidate continued running up to the time of the convention. With the advent of frontloading, however, candidates withdrew more quickly when their campaigns failed to meet expectations or when they could not raise funds to continue a vigorous campaign (Mayer and Hagen 2000; Mayer and Busch 2004). Thus, early contests like Iowa and New Hampshire play an increasingly important role, often eliminating candidates that perform poorly while providing others with momentum. In addition, the frontloaded system allows less time for long shot candidates to capitalize on the momentum from earlier races to boost fundraising and mobilize voters in advance of the next set of primaries, further exacerbating the winnowing process. As a result, in a frontloaded system the nominee is determined much earlier, due to both candidate attrition and delegate accumulation (Mayer and Busch 2004).

FAILURES

Millions of voters left out: the decision is made before their state’s primary

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

In 2012, the presidential nomination race was over before citizens of twenty states—containing about half of the American population—could cast a vote. Those left out included the roughly 38 million people in California, 26 million in Texas, 20 million in New York State, 13 million in Pennsylvania, and 10 million in North Carolina. By way of contrast, Iowa and New Hampshire combined have fewer than 4.5 million people.

Voters in later primaries have no reason to show up

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

Sixth, earlier primaries lead to earlier effective endings. In part, this is due to the strategic activities of candidates, the winnowing of candidates and the accumulation of delegates. Once media and voters recognize that one candidate has an insurmountable lead, incentives for participation decrease greatly. Voters do not see value in casting a vote and candidates see little value in continued mobilization efforts.

Value of later votes depends on results in the earlier elections

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

In sequential elections the individual-level decision to vote or abstain depends on the expected utility of her vote at the time at which the vote is cast. The expected value of a vote depends heavily on whether the vote is likely to be pivotal. In a sequential election, that likelihood differs for voters in different positions in the electoral sequence because the probability that a candidate will win changes as the election sequence unfolds. Therefore, the value of votes cast later in the sequence depends on the outcomes earlier in the sequence.

Later primary voters get less campaign attention and less incentive to participate

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

The importance of competition and mobilization efforts in stimulating turnout, the first feature, is well understood by scholars and political actors (Rosenstone and Hansen 1993). But, because frontloading quickens the winnowing process, the scope of candidate mobilization efforts across the nomination phase is reduced, which leads to concentrated mobilization efforts in a few early states, but a decline in or even absence of efforts in middle and late nomination states (Bartels 1988; Mayer and Busch 2004). As fewer candidates actively campaign and the winner becomes clearer, the stimulus to voters decreases increasing their participation costs. While for some voters, fewer candidates may help clarify the choices, the lack of active campaigns reduces the overall mobilization efforts resulting in greater costs for the voter to obtain information about the election and candidates.

Many states have no meaningful role in selecting the nominee

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

In Table 1, the difference between pre and post frontloading contexts is most clearly seen by the earlier ending of the nominating process. Before1988, an average of 83% of primaries took place prior to the effective end of the campaign. Once frontloading became common, this dropped to 50%, leaving many more states without a meaningful role in selecting the party nominee. Prior to frontloading, primaries held before the effective end of the nomination contest were scheduled much later in the process. This allowed underdog candidates more time to reap the benefits from earlier successes and voters more time to learn about and deliberate their choices. For example, the number of days between the Iowa Caucuses and the average primary was 88 before frontloading, compared to 30 days after it. Likewise, prior to frontloading, the average primary after the effective end was held 119 days after Iowa, compared to only 92 days.

Early states reduce the field – later states have no meaningful choice

Prof. Caroline J. Tolbert, Prof. David P. Redlawsk, Daniel C. Bowen 2009. (Tolbert - Professor of Political Science at the University of *Iowa. Redlawsk – prof. of polit. Sci., Univ of Iowa. Bowen – PhD candidate, Univ of Iowa Dept of Political Sci.*) Reforming Presidential Nominations: Rotating State Primaries or a National Primary? Jan 2009 <http://ir.uiowa.edu/cgi/viewcontent.cgi?article=1085&context=polisci_pubs>

A major criticism of the current presidential nomination schedule is that it gives undue weight to the few states with early primaries or caucuses, as those states often build momentum for leading candidates while ruling out trailing candidates long before the rest of the country has a chance to vote (Winebrenner 1998). Iowa, South Dakota, and Montana are three small relatively homogeneous states and yet the choices faced by voters in nominating elections are vastly diﬀerent. In 2008 the ﬁeld of presidential candidates (both Republican and Democrat) was reduced from 16 with active campaigns at the beginning of the Iowa caucuses battle to just two viable Democratic candidates by the South Dakota and Montana primaries (June 3). The Republican nomination was decided soon after Super Tuesday, leaving Republicans voting in later states no meaningful choice, while Democrats were limited to either Obama or Clinton.

SOLVENCY / ADVOCACY

National primary would increase voter awareness and participation

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

A national primary would do more than any other reform to increase participation in the nominating process. Holding an election on the same day across the entire country would create intense media interest and focus voters’ attention on the election. With many viable candidates contesting, candidates would have an incentive to mobilize potential voters in all fifty states. As Lonna Atkeson and Cherie Maestas argue: “A national primary would focus broad voter attention on the race as candidates compete nationally instead of locally. Because everyone’s primary would be ‘coming up,’ all interested voters would tune in to candidate debates to assist them in making their choice.”

National primary increases participation, benefits underdog candidates, all voters’ votes would matter

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

One alternative to the lengthy and meaningless process for many would be an actual national party primary. Although this type of a system would likely reduce or eliminate the momentum experienced in a sequential process, it may be preferable for meeting an array of party, candidate and voter goals. These include promoting broader participation, a different set of benefits to underdog candidates, party building and expansion of its base, a test of a candidate’s appeal and the quick and decisive determination of the party nominee. A national primary for each party in the late spring of a presidential year would create a different context for candidates and for voters as the national media followed the campaign. While voters in some states would no doubt still get a different local campaign than voters in other states, as candidates strategically deploy resources as they do in a general election context, all voters would reap the benefits of learning about the campaign from the national media and hold the belief that their vote might in some way make a difference. As it is now, voters in Iowa and New Hampshire face campaign saturation, while most voters in other states tune in to the election only when and if the local election environment heats up. In a national primary, however, voters would tune in to national debates held in different states and media coverage would be more evenhanded, allowing voters the time to contemplate their choices.

Simple and Fair: National primary gives everyone a meaningful choice

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

It is not fair to exclude so many citizens in so many states from having a voice in picking the candidates for president of the United States. A national primary will give every state a meaningful, competitive contest, increase voter turnout, and eliminate the everchanging, crazy-quilt system of primaries and caucuses. A national primary, in short, will give the nation, at long last, a nomination process that promotes popular participation and is both simple and fair.

National primary: Gives weak candidates a larger audience, increases participation, and heals party division

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

A national primary, of course, would have some downsides, but overall even weak candidates would get to make their case to a larger audience than they do in the current environment. Moreover, party building efforts would be strengthened as activists across the nation join campaigns during the excitement of the campaign and knowing that their efforts can make a difference on the outcome. After the election and the party nominee is known, party division would begin to heal as the race turns to the general election campaign and the real contest between the two parties begins (Atkeson 1993). Thus, this alternative scenario may offer many advantages to the eventual nominee, also-rans, the party and, especially, to voters.

Supreme Court Justice Antonin Scalia says: Congress has the constitutional power to set presidential primary dates

Prof. Richard Hasen 2008. (Professor of Law at Loyola Law School, Los Angeles ) "Too Plain for Argument?" The Uncertain Congressional Power to Require Parties to Choose Presidential Nominees Through Direct and Equal Primaries NORTHWESTERN UNVIERSITY LAW REVIEW (brackets and ellipses in original) <http://www.law.northwestern.edu/lawreview/colloquy/2008/10/>

Justice Scalia, relying on the Necessary and Proper Clause, concluded that Congress had the power at least to set the time for primaries in a 1981 article written before he joined the bench: "Since . . . Congress has explicit authority under Article II . . . to [determine the time for choosing electors], Congress must have at least the authority to specify the dates of primaries and even of state and national nominating conventions."[45] Justice Scalia also relied upon the Supreme Court precedent of United States v. Classic,[46] which used similar reasoning under Article I to hold that Congress could regulate Congressional primaries as well as general elections for Congress.[47] Other Supreme Court caselaw bolsters the conclusion that Congress has the power to set the time for presidential primaries and perhaps to do much more. In Burroughs v. United States,[48] the Court "squarely rejected"[49] the narrow textualist reading of Article II. The Court held that Congress had the power under Article II to regulate corrupt practices that could affect presidential elections. In Buckley v. Valeo,[50] the Court upheld Congress's power to regulate campaign financing in both congressional and presidential elections. And in Oregon v. Mitchell,[51] the Court upheld Congress's power to change the voting age for President to 18. Justice Black cast the decisive vote on the issue, concluding that "[i]t cannot be seriously contended that Congress has less power over the conduct of presidential elections than it has over congressional elections."[52]

Congress can set a uniform national date for nomination of presidential candidates

Prof. Richard Hasen 2008. (Professor of Law at Loyola Law School, Los Angeles ) "Too Plain for Argument?" The Uncertain Congressional Power to Require Parties to Choose Presidential Nominees Through Direct and Equal Primaries NORTHWESTERN UNVIERSITY LAW REVIEW (brackets and ellipses in original) <http://www.law.northwestern.edu/lawreview/colloquy/2008/10/>

The textual argument may not carry the day. No doubt, Congress's power to regulate presidential elections is not coextensive with its power to regulate Congressional elections. For example, Congress could not pass a law barring states from using a "winner-take-all" system for choosing presidential electors.[43] But Article II of the Constitution does grant Congress the power to set a uniform national date for the general election for president, and that power to set the time for the general election should extend (under the Necessary and Proper Clause) to the power to set the time for the nomination of presidential candidates as well.[44] It is a harder question whether it extends to the power to set the form of the presidential primaries over the objections of the states.

Is it constitutional for Congress to mandate a national primary? Fairness and “equal protection” principles could justify it  
Analysis: No one knows how the Supreme Court would rule, since it’s never been tried, but Prof. Hasen is arguing that the Court could consider it and could find it OK.

Prof. Richard Hasen 2008. (Professor of Law at Loyola Law School, Los Angeles ) "Too Plain for Argument?" The Uncertain Congressional Power to Require Parties to Choose Presidential Nominees Through Direct and Equal Primaries NORTHWESTERN UNVIERSITY LAW REVIEW <http://www.law.northwestern.edu/lawreview/colloquy/2008/10/>

Nonetheless, a law establishing mandatory, equal, and direct primaries for President would go much closer to setting the rules for choosing presidential electors than these other laws do, and might infringe upon the rights expressly granted to the states in Article II. Such a law would pose a difficult question for the courts: whether Congress, in order to insure fairness and uniformity in the presidential nominating process, could go so far as to impose such a system over the objections of states interested in maintaining their current levels of control over party primaries or caucuses. How might the Supreme Court resolve this conflict? Consistent with the Lopez Torres fairness dicta,[54] it could hold that Congress has the power to make certain changes to the presidential nomination system under its power to enforce the Fourteenth Amendment's equal protection clause,[55] and that this congressional power supersedes Article II when states act in ways that undermine political equality.[56] The one person, one vote cases are grounded in the Equal Protection Clause,[57] and a congressional determination that equality in presidential elections requires imposition of the same rule in presidential party nominating contests would merit serious consideration by the Court.

DISADVANTAGE RESPONSES

“We lose the grass roots campaigns in Iowa and New Hampshire” – Response: Insignificant compared to the benefits of a national primary, and internet solves for grass-roots campaigning

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

Defenders of the Iowa caucuses and the New Hampshire primary highlight the grassroots or face-to-face politics that are made possible by the small populations of these two states. As I have argued above, however, the Internet allows candidates to participate in grassroots politics without Iowa and New Hampshire always voting first. Even if we concede that a national primary would involve making some sacrifices, those sacrifices may be worth making to achieve a fairer process that gives all citizens, not just a few favored ones, an equal say in which candidates will represent their parties in the contest for the nation’s highest and most powerful office.

“National primary is massive frontloading, makes things worse” – Response: True in the ‘80s or ‘90s, but not today, thanks to the internet – the playing field is level

Prof. Caroline J. Tolbert 2012. (professor of political science at Univ. of Iowa-Iowa City ) RESOLVED, Political Parties Should Nominate Candidates for President in a National Primary (ethical disclosure about the date: The article bears a copyright date of 2014, but since it was online in August 2013, that is obviously not the correct date. It references internally events being current as of 2012 and we used that date for this citation.) <http://www.cqpress.com/docs/college/Ellis%20Debating%20Reform%202e.pdf>

Critics of the national primary suggest that it offers an extreme form of front-loading, and a national primary will only make things worse. They argue that a national primary would restrict the presidential nomination to candidates who are already well-known or well financed and could increase the influence of money, which is needed to purchase television ads. This may have been a valid criticism in the 1980s and 1990s, but the rise of the new media means that candidates no longer need huge financial resources or elite endorsements to compete effectively in a national primary. Campaigning online may level the playing field. Dark-horse candidates can reach voters by using social media such as Facebook, Twitter, Tumblr, and YouTube video. They can also use candidate Web sites, blogs, and e-mail. The diversity of online media makes candidate campaigns more cost-effective and able to reach wider audiences because of the relatively low cost and twenty-four-hour availability of the Internet.

“Only big-money candidates could compete in a national primary” – Response: Non-unique – that’s the way it is now with sequential primaries

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The sequential nomination process was originally designed so that a wide field of candidates could compete in early nominating events, followed by a winnowing process. Those candidates who exceeded expectations in early contests were able to raise campaign dollars to compete in later contests. Those who did worse than expected dropped out of the race. However, events over the past decade have undermined the logic of the sequential nomination process. Early money continues to increase in importance, regardless of the ever-changing schedule of state nominating contests. Conventional wisdom holds that retail or face-to-face politics in Iowa and New Hampshire was supposed to level the playing field among candidates, but new research finds that only candidates with sufficient financial resources are competitive, even in early nominating events such as the Iowa caucuses, which require extensive and expensive grassroots campaigning.

“Party unity lost – frontloading gets the nomination over quickly and the party heals” – Response: 1) No evidence divisive nomination race has any impact. 2) Divisions are revealed by the campaign, not caused by it

Prof. William G. Mayer and Prof. Andrew E. Busch 2004. (Mayer - assoc. professor of political science, Northeastern Univ. Busch - *Professor of Government at Claremont McKenna College*) THE FRONT-LOADING PROBLEM IN PRESIDENTIAL NOMINATIONS <http://books.google.co.vi/books?id=hUB_BV90wLAC&printsec=frontcover&hl=fr&source=gbs_atb#v=onepage&q&f=false>

By significantly shortening the nomination contest, then, front-loading may help promote party unity for the fall campaign. Two points should be made in response to this argument. In the first place, as we have argued in considerable detail elsewhere, there is little good evidence to show that having a divisive nomination race really does harm a party or candidate in the general election. More precisely, what evidence has been cited in defense of the theory comes from a misspecified model. According to the divisive primary hypothesis, divisions within the party are created by a contested nomination race. Rival candidates for the nomination essentially manufacture differences and disagreements that have little or no basis in anything real but that, once excited, linger on to haunt the party in the general election. In our view, it makes considerably more sense to assume (or at least to allow for the possibility) that divisive nomination races are more effect than cause: that bitter, hard-fought nomination races simply reflect and reveal the problems and divisions that already exist within a party. Divisive primaries may thus be correlated with a weak performance in the general election, but the relationship is spurious. Analyzed from this perspective, most of the evidenced offered in support of the divisive primary hypothesis evaporates.

“We need a slow deliberative process” – Response: That’s not what we have now – it’s a compressed, targeted process that disadvantages later voters

Prof. Lonna Rae Atkeson and Prof. Cherie D. Maestas 2008. (Atkeson – Professor, Univ of New Mexico Dept of Political Science. Maestas - Associate Professor, Florida State Univ, Dept of Political Science) Racing To the Front: The Effect of Frontloading on Presidential Primary Turnout <http://myweb.uiowa.edu/bhlai/caucus/atkeson.pdf>

Both the multivariate results and our predictions of turnout by sequence show that the features of nomination campaigns associated with frontloading reduce participation. The sequential nomination process that was intended to provide an extended, deliberative opportunity for citizens to evaluate candidates has shifted to a compressed and targeted nomination process that disadvantages voters who cast ballots midway and late in the nomination season. These results are troubling given the intentions of reformers to enhance internal party democracy and increase meaningful participation.

“Early primaries give valuable information to later voters” – Response: Sometimes it’s the wrong information

George Deltas, Helios Herrera, Mattias K Polborn 2010. (Deltas – PhD Economics, Yale University. Herrera – PhD economics, New York University. Polborn PhD economics, University of Munich.) The Theory of Learning and Coordination in the Presidential Primary Systerm 13 May 2010 <https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=NASM2011&paper_id=317>

In this paper, we have presented a model of voting in sequential primaries based on the ideas of coordination and learning about candidate quality. We show that, from an ex-ante perspective, the coordination afforded by sequential elections may be beneficial or detrimental. While sequential elections have the advantage of allowing voters to coordinate (and thus avoid that a candidate wins just because his ideological opponents split the votes of their supporters among each other), the disadvantage of sequential elections is that, once coordination has occurred, there is no possibility to correct an error made in early elections. Moreover, our empirical results show that the probability of the wrong candidate dropping out after the ﬁrst few primaries is substantial.

2A EVIDENCE: PROPORTIONAL REPRESENTATION

DEFINITIONS

Gerrymandering

Dr. Michael D. McDonald 2005. (PhD Fla. State Univ.; professor of Political Science, Binghamton University—SUNY) A Standard for Detecting and Remedying Gerrymanders, Aug 2005 <http://cdp.binghamton.edu/papers/Gerrymandering.pdf>

Gerrymandering is the manipulation of electoral boundaries for partisan advantage.

SMP / Single Member Plurality elections

Dr. Douglas J. Amy 2002. (PhD; Professor of Politics at *Mount* Holyoke College) REAL CHOICES NEW VOICES, second edition, http://www.amazon.com/Real-Choices-New-Voices-Douglas/dp/0231125496

“Unfortunately, however, most Americans have yet to turn the same skeptical eye toward the predominant electoral system in the United States – single-member plurality elections (SMP). This voting system is commonly used to elect officials to our local, state, and federal legislatures. In SMP, officials are elected one at a time in single-member districts, with the winner being the candidate with the most votes – the plurality.”

Proportional Representation

Brian O'Neal 1993. (with the Political and Social Affairs Division of the Canadian Library of Parliament) May 1993 ELECTORAL SYSTEMS, <http://www.parl.gc.ca/Content/LOP/researchpublications/bp334-e.htm#1>

The second major category of electoral system is known as proportional representation or PR. PR systems are specifically designed to allocate seats in proportion to votes, in the hope that assemblies and governments will accurately reflect the preferences of the electorate. PR systems are now the most frequently used electoral systems in western democracies.(8) Under PR, political parties are assigned a number of seats in parliament corresponding to the degree of support they have received in a given electoral district; of necessity, this arrangement dictates that all PR systems rely on multi-member districts.

Proportional Representation with Party List (PR/PL) - how it works

Dr. Kathleen L. Barber 2000. (PhD from Case Western Reserve Univ.; former professor at John Carroll University, chair of the political science department) A RIGHT TO REPRESENTATION, p.71-72 <http://books.google.fr/books?id=bDCwpD1RiocC&pg=PA185&lpg=PA185&dq=%22law+review%22+%2B+%22proportional+representation%22&source=bl&ots=krI_gU-4Nk&sig=ZEwWaYOSzRSdaub_JVF1xdIRDrU&hl=en&sa=X&ei=-s7qUcTID6Gh0QXmy4CIDg&redir_esc=y#v=onepage&q=%22law%20review%22%20%2B%20%22proportional%20representation%22&f=false>

The party list system is the most common application of PR, found in presidential as well as parliamentary systems around the world in national, state, or provincial elections for legislative assemblies. By aggregating voters’ interests, preferences, and ideologies into meaningful collective action, the political party system provides a base for democratic representation in governance. On the PR/PL ballot, candidates are listed by party or, in a few places, such as Israel, only the parties are listed. Voters choose their preferred party or party list of candidates. The percentage of total votes won by each party is then translated into the share of seats earned, determining the representation of that party in the legislature. The parties decide which candidates will be on their lists (therefore no primary is necessary), and if the entire list is not elected (a likely event, since the winner does not take all), the parties decide which of the listed candidates will actually serve to make up the party’s voter-determined share of the seats.

“Open Party List”

Dr. Daniel W. Gingerich 2009. (Assistant Professor of Politics, Harvard Univ.) “Ballot Structure, Political Corruption and the Performance of Proportional Representation » <http://www.princeton.edu/csdp/events/Gingerich110906/Gingerich110906.pdf>

Brazil and Chile, on the other hand, have open list versions of PR which date back to the 1940s and 1930s, respectively. In Brazil, candidates for the oﬃce of federal deputy, state-level deputy and municipal councilman are elected on open party lists which give voters the option of casting a vote for a particular party or coalition as well as a vote for a single individual within the list of their choice.

“Largest Remainder” formula

Dr. Michael Gallagher 1992. (PhD; professor of political science, Trinity College, Dublin) Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities, BRITISH JOURNAL OF POLITICAL SCIENCE, Vol 22 <http://www.tcd.ie/Political_Science/staff/michael_gallagher/BJPS1992.pdf>

The operation of the largest remainders (LR) method entails the calculation of a quota based on the number of seats at stake and the number of votes cast. Each party is awarded as many seats as it has full quotas. If this leaves some seats unallocated, each party’s ‘remainder’ is calculated by deducting from its vote total the number of votes it has already used up by winning seats. The unallocated seats are then awarded to the parties that present the largest remainders.

INHERENCY

How single-member district voting works for House elections

Dr Sam Wang 2013. (Ph.D. in neuroscience at Stanford University; Associate Professor of Molecular Biology and Neuroscience at Princeton Univ; co-founder of Princeton Election Consortium blog, which analyzes U.S. national election polling) 2 Jan 2013 “Gerrymanders, Part 2: How many voters were disenfranchised?” <http://election.princeton.edu/2013/01/02/gerrymanders-part-2-how-many-voters-were-disenfranchised/>

In the US system, the House of Representatives is elected on the basis of districts. State boundaries are fixed, and the number of Representatives in each state is determined after the Census, which occurs every 10 years. It is left to each state how to elect its Representatives. The current standard practice is that somebody draws up districts, each of which then elects one Representative.

House elections are single member district, winner take all

Rob Richie and Devin McCarthy 2012. (Richie - expert on international and domestic elections and electoral reform, director of FairVote, a non-profit non-partisan election research and reform advocacy organization; McCarthy - Research Fellow at FairVote, former research assistant at the Woodrow Wilson International Center for Scholars) 16 Dec 2012 “It’s Not Just Gerrymandering: Fixing House Elections Demands End of Winner-Take-All Rules” http://www.fairvote.org/it-s-not-just-gerrymandering-fixing-house-elections-demands-end-of-winner-take-all-rules#.UepSTTQvm8D

The lack of fairness and accountability in Congressional elections is drawing welcome attention. Democrats in the 2012 elections won only 46% of House seats despite winning more votes than Republicans .More than three out of five races were won by landslide margins of at least 20%, women remain deeply under-represented and the number of centrist and independent legislators declined again. But most analysts overlook the real problem: the 1967 law mandating that states elect U.S. House Members in single-member district, winner-take-all elections.

Districting reform won’t work: Districting IS gerrymandering

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems (ellipses in original) <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

This is not to say that apolitical districting with its unintentional gerrymanders may not be better than the flagrant intentional gerrymandering that occurs now. But it does mean that we should not delude ourselves into thinking that this approach will eliminate the problem of gerrymandering. Indeed it cannot, for it does not address the underlying cause of the problem: the single-member plurality system itself. Gerrymandering is a necessary, built-in characteristic of any plurality voting system that uses single-member districts. As long as we draw district lines where only one candidate wins and where large numbers of wasted are unavoidable, some gerrymandering is inevitable, if only unintentionally. As Robert Dixon, a longtime student of redistricting in the United States, concluded: "To be brutally frank, whether or not there is a gerrymander in design, there normally will be some gerrymandering in result as a concomitant of all district systems of legislative elections…In a functional sense it thus may be said that districting is gerrymandering."

All Minor Repairs Fail: There is no solution using single member districts. Non-partisan district map-making is a myth. Already tried and failed in Britain.

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

In short, even when mapmakers use apolitical criteria to guide their work, they are bound to produce political effects. This is exactly what has happened in Britain, where independent redistricting commissions have sometimes been offered as models for what we need here in the United States. A number of studies have shown that although these commissions have used neutral criteria to draw district boundary lines, they often created unintentional gerrymanders that biased the results of national elections. One of Britain's leading political geographers, R. J. Johnston, found that the "review of recent redistricting in Britain, undertaken by independent commissioners within the constraints of apparently neutral rules, cast doubt as to the likelihood that fair redistricting would be achieved in the U.S.A. or indeed anywhere that the plurality single-member constituency electoral system is used." He concluded that "the concept of non-partisan cartography is a myth."

“Just reform the redistricting process with independent commissions” – Response: Commissions don’t solve

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

Reformers have had some success in transferring the redistricting process out of the hands of state legislatures and into bi-partisan commissions. Hawaii, Idaho, New Jersey, and Washington have given the task of redistricting to commissions comprised of equal numbers of Democrats and Republicans, with an additional member approved by both parties. But this approach has proved far from ideal. Members of these commissions have often proved do be as rabid partisans as the legislators themselves. And some critics have pointed out that, unlike legislators, these political mapmakers are not directly answerable to the public if they draw questionable district lines. Tim Storey, a redistricting expert for the National Conference of State Legislatures, has observed that the redistricting commissions "concentrate a fair amount of power in small unaccountable groups, rather then in the legislatures, where members have to stand for elections." But the most serious problem with bi-partisan commissions is the possibility of sweetheart gerrymanders. With equal numbers of Democrats and Republicans, there is a good possibility of deals being struck that serve to protect the incumbents of both parties. The result would inevitably be the kinds of uncompetitive districts that were discussed earlier.

Single-member districts ensure 2-party control of everything

Dr. Thomas F. Schaller 2013. (PhD; professor of political science at the Univ of Maryland, Baltimore County21 Mar 2013 Multi-Member Districts: Just a Thing of the Past? <http://www.centerforpolitics.org/crystalball/articles/multi-member-legislative-districts-just-a-thing-of-the-past/>

Regardless of other ways the major parties reinforce their electoral duopoly, their real baked-in advantage is purely structural; namely, the near-universal use on the national level and widespread use on the state level of single-member districts with plurality rule. With the exception of Georgia and Louisiana, which use run-off elections for U.S. House and Senate seats, and Maine and Nebraska, which use the congressional district rule for allocation of all but two of their presidential electors, general elections for Congress and the presidency are winner-take-all, plurality-rule contests. As Maurice Duverger predicted long ago, systems dominated by single-member districts, plurality-rule elections should naturally gravitate into two-party systems.

HARMS

The root cause of our problems with American democracy is the single-member district election system

Dr. Douglas J. Amy 2000. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) BEHIND THE BALLOT BOX: A CITIZEN’S GUIDE TO VOTING SYSTEMS <http://books.google.fr/books?id=-G46rVRXkY0C&pg=PA71&lpg=PA71&dq=%22political+parties%22+%2B+%22proportional+representation%22+%2B+proliferate&source=bl&ots=_KGJZkp2cA&sig=2NACRbqmHmDpyx9VEzfECLYazbg&hl=en&sa=X&ei=KUrsUcWaDMaeO7SVgbAC&redir_esc=y#v=onepage&q=%22political%20parties%22%20%2B%20%22proportional%20representation%22%20%2B%20proliferate&f=false>

Traditionally we have placed the blame for much of this election malaise on individual politicians or particular parties. But the source of many of our election problems may be much deeper. These may be systemic problems --- located in the very system we use to vote for and elect candidates to office. One political commentator, Hendrik Hertzberg of The New Yorker magazine, has made this very point:   
A lot of the political pathologies we worry about in this country – things like low voter turnout, popular alienation from politics, hatred of politicians and politics per se, the undue influence of special interests, the prevalence of negative campaigning and so on – are not caused by the usual suspects. They are not caused by the low moral character of our politicians. They are not caused by the selfishness of the electorate. They are not caused by the peculiarities of the American national character and the American political culture. They are not caused by television. They are not caused by money (although money certainly makes them worse). Instead, they are artifacts of a particular political technology. They are caused by our single-member district, geographically-based, plurality winner-take-all system of representation.

Democracy itself is at risk if citizens do not perceive the system as fair

Brian O'Neal 1993. (with the Political and Social Affairs Division of the Canadian Library of Parliament) May 1993 ELECTORAL SYSTEMS, <http://www.parl.gc.ca/Content/LOP/researchpublications/bp334-e.htm#1>

More importantly, the way in which an electoral system translates votes into seats in elected assemblies may influence the degree of public support for the democratic system itself. If, for example, citizens do not perceive that their preferences are adequately reflected in the legislature following an election, their support for the system in general is likely to decline. Turnout during elections will drop off, respect for politicians and elected representatives will fall, and laws enacted by government will not be seen as fully legitimate. Democracy is an ideal, an abstraction which often assumes concrete dimensions for the vast majority of people through the electoral system. For many, an election marks the only occasion of any form of political participation --- it is the only tangible evidence of what it means to be a citizen in a democratic society. It is therefore of utmost importance that electoral systems be seen as fair and as fulfilling public expectations; if not, democracy itself is put at risk.

Wishes of the voters not reflected in electoral outcomes: The system is discredited and democracy is at risk

Brian O'Neal 1993. (with the Political and Social Affairs Division of the Canadian Library of Parliament) May 1993 ELECTORAL SYSTEMS, <http://www.parl.gc.ca/Content/LOP/researchpublications/bp334-e.htm#1>

The most prevalent argument is that representation is not well served by this kind of electoral system. Because majoritarian systems tend to distort outcomes by favouring strong parties and under-representing weaker ones, the wishes of most voters are often not reflected in electoral outcomes. Critics point out that this discredits the entire political system in the eyes of those it is meant to serve. At the least, citizens become uninterested in political involvement, evidenced by declining turnout at elections; at worst, they use less passive means to show dissatisfaction, so that democracy is placed at serious risk.

Politicians who draw district lines decide the outcome of elections, not voters

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

As these examples illustrate, partisan gerrymandering can be a very powerful political tool. Which party wins the most seats may not determined by how many votes that party gets, but instead by how the district lines are drawn. A real life example of this can be found in the results of districting in New York State. As shown by presidential votes, about 60 percent of the voters in New Yorker State consistently vote Democratic. This is reflected in the State Assembly where Democrats routinely win about 64 percent of the seats. But the election results are dramatically different in the State Senate, where the Republicans consistently dominate with a large majority of about 57 percent of the seats. Same voters, but very different results. The obvious suspect is the districting process. The districts for the Senate races are different from those for the Assembly races and they are largely drawn by the Republican dominated Senate, which makes every effort to favor GOP candidates. This seems to be a clear example of where districting, not the voters, decides who wins control of legislative bodies.

Uncontested seats: In some congressional districts, voters have no choice at all

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

In safe districts, candidates of the minority party are often little more than sacrificial lambs being led to the slaughter. But it gets worse. These safe districts are often so one-sided that the disadvantaged party does not even bother to put up a candidate. There is no contest at all. The number of uncontested U.S. House seats varies considerably from state to state. Florida and Texas are two of the worst. In the 2000 U.S. House elections in Florida, 43 percent of the races were uncontested. That year in Texas, 30 percent of their House races were uncontested. The existence of some many uncontested races is a political disgrace, but it is also a perfectly understandable result in a winner-take-all system. Why should the smaller party bother to compete in districts dominated by the larger party? It would be a waste of valuable political resources.

Gerrymandering removes voter choice – makes some US elections look like North Korea

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

Focusing on these bi-partisan arrangements, defenders of single-member plurality elections sometimes argue that the problem of gerrymandering has been exaggerated. They maintain that it is not really a serious political problem because often it does not result in gross distortions in representation. But this sanguine view mistakenly assumes that incumbent protection gerrymanders are politically innocuous and it overlooks the serious political damage produced by this approach to redistricting. The main problem is that these gerrymanders create districts that are uncompetitive – districts in which voters are denied any meaningful choice. When legislators manipulate the district lines to create safe seats for Republican and Democratic incumbents, any real competition in these elections disappears. Commenting on the latest redistricting effort in California that protected incumbents of both parties, one Republican consultant concluded: "This new plan basically does away with the need for elections. These seats shouldn’t change (parties) over the decade." While such arrangements clearly benefit incumbents, they mean that voters are faced with uninspiring, no-contest elections. Instead of a healthy competition between two parties, we end up with a series of one-party fiefdoms in which a single party rules and voters feel helpless to change it. The New York Times once editorialized that as a result of gerrymandering, New Yorkers had "no more voting options than North Koreans have."

Safe uncontested districts created by gerrymandering create problems, like voter apathy, when voters realize their votes don’t matter

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

These safe districts created by gerrymandering not only deny voters a meaningful choice, they contribute to other political problems as well. For one thing, safe districts clearly encourage political apathy and low voter participation. Why bother to participate if the outcome has been predetermined by how the district lines have been drawn. As one San Francisco resident complained: "Vote? Why vote? I know who’s going to win, everybody knows who’s going to win. Pelosi always wins, with 80 percent of the vote. Nobody else has a chance." Those who support the party that always loses are not the only ones discouraged from voting in safe districts. Even those who support the dominant party have little reason to vote because they know that their candidate will win anyway.

SOLVENCY / ADVOCACY

Congress can legislate how Representatives will be chosen and can pre-empt State laws

Supreme Court Justice Antonin Scalia 2013. Majority opinion of the court in ARIZONA, ET AL., PETITIONERS v. THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL., 17 June 2013 (brackets added) <http://www.supremecourt.gov/opinions/12pdf/12-71_7l48.pdf>

The Elections Clause, Art. I, §[section]4, cl[ause]. 1, provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.” The Clause empowers Congress to pre-empt state regulations governing the “Times, Places and Manner” of holding congressional elections.

Federal legislation is all we need, there are no constitutional obstacles to using PR for House elections

Alex Carmichael 2012. (practicing attorney in the Metro New York area, specializing in civil litigation and constitutional issues) 20 Jan 2012 What Is Proportional Representation? http://theamericanfreedomparty.us/?p=5400

Although there are no constitutional obstacles to using PR for U.S. House elections, there is congressional legislation that mandates single-member districts. You could join the effort to repeal this legislation and allow states to use PR. The Center for Voting and Democracy in Washington, D.C. developed plans for Georgia and North Carolina that demonstrate how easy it would be to create multi-member PR districts for U.S. House elections. Importantly, such plans would not require a constitutional amendment. All that would be needed is to repeal a 1967 federal law requiring single-member district elections for the House, and several bills have been introduced in Congress that would do just that.

Even opponents agree: PR is the only way to eliminate gerrymandering

Dr. Douglas J. Amy 2002. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems <https://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>

That gerrymandering and unfair representation can be truly eliminated only under PR arrangements is so indisputable that even political scientists who continue to support our single-member plurality system are forced to acknowledge it. Nelson Polsby of the University of California at Berkeley is no supporter of proportional representation. Yet he testified in a court case on gerrymandering that "proportionality cannot be guaranteed in a system of voting in which the winner of the most votes wins the election regardless of how many candidates run in each race. To ensure proportionality it is necessary to have a proportional representation system of elections.''

ADVANTAGES

More countries are adopting PR: it increases voter turnout and reduces apathy compared to the US model

Alex Carmichael 2012. (practicing attorney in the Metro New York area, specializing in civil litigation and constitutional issues) 20 Jan 2012 What Is Proportional Representation? <http://theamericanfreedomparty.us/?p=5400>

Given the many advantages of PR, it is not surprising that the general worldwide trend during the last 100 years has been away from winner-take-all voting systems and toward various forms of PR. That trend continues even today. The vast majority of newer democracies in Eastern Europe ended up rejecting American-style plurality voting in favor of various forms of proportional or semi-proportional voting systems. Comparative studies of European countries have shown much higher voter turnout, and less apathy towards the process, when PR is used to elect officials at the highest levels of government.

Proportional representation removes much of the “punch” of gerrymandering

Dr. Howard Steven Friedman 2013. (statistician and health economist with UN Population Fund and adjunct associate professor at Columbia University; Ph.D. in Biomedical Engineering from Johns Hopkins Univ) Simple Steps to Eliminate Gerrymandering” 24 Jan 2013 <http://www.huffingtonpost.com/howard-steven-friedman/simple-steps-to-eliminate_b_2546929.html>

One more point about gerrymandering: If proportional representation were to be implemented, the gerrymandering problem would lose much of its punch. For example, if the number of representatives from each political party for each state were to reflect the overall distribution of the votes, then how you draw the districts within the state would no longer be such an important consideration.

PR ensures fairer representation for racial minorities

Dr. Douglas J. Amy 2000. (PhD from Univ of Massachusetts; professor of politics, Mt Holyoke College) BEHIND THE BALLOT BOX: A CITIZEN’S GUIDE TO VOTING SYSTEMS <http://books.google.fr/books?id=-G46rVRXkY0C&pg=PA71&lpg=PA71&dq=%22political+parties%22+%2B+%22proportional+representation%22+%2B+proliferate&source=bl&ots=_KGJZkp2cA&sig=2NACRbqmHmDpyx9VEzfECLYazbg&hl=en&sa=X&ei=KUrsUcWaDMaeO7SVgbAC&redir_esc=y#v=onepage&q=%22political%20parties%22%20%2B%20%22proportional%20representation%22%20%2B%20proliferate&f=false>

Proponents of proportional representation argue that one of its main advantages is that it could finally resolve the problem of how to give racial and ethnic minorities a fair chance to elect their own representatives. They maintain that this problem is very difficult to solve if we keep single-member districts. Whites dominate most single-member districts, and it is very rare for a minority to win office in them. It is possible to create special districts in which minorities are in the majority. But these require that minorities be segregated in certain geographical areas. More importantly, the Supreme Court has ruled that some of these “majority-minority” districts are unconstitutional, thus throwing into question their legal viability. The advantage of using multimember PR districts is that they allow all racial groups – both whites and minorities – to win their fair share of representation. Assume, for instance, that we had a five-member district in which African Americans made up 22% of the voters. If all of them supported an African-American candidate, that person could win one of the five seats. In this way, PR voting allows for the fair representation of minorities without the creation of special districts.

DISADVANTAGE RESPONSES

“Small parties get big power by negotiating coalitions” – Response: Maybe in a parliamentary system, but that’s not how the US system works.

Dr. Jon R. Bond and Dr. Kevin B. Smith 2013. (Bond – PhD from Univ of Illinois; professor of political science, Texas A&M University. Smith – PhD Univ of Wisconsin-Milwaukee; professor of political science, Univ. of Nebraska) ANALYZING AMERICAN DEMOCRACY: POLITICS AND POLITICAL SCIENCE p. 240 <http://books.google.fr/books?id=STCZJpcVvVIC&pg=PR2&lpg=PR2&dq=bond+smith+%22analyzing+american%22&source=bl&ots=gSsvEBgx42&sig=pCGdDdOE4BN6oq75NdLMpZff-DE&hl=en&sa=X&ei=nJLqUc60EcvM0AWtr4GwDg&redir_esc=y>

The parliamentary system, typical of other representative democracies encourages multiple parties. In a parliamentary system, the party that controls the majority of legislative seats chooses the chief executive, who is usually called the prime minister or premier. The prime minister then forms a government by appointing individuals to run the various government departments or ministries – a secretary of defense, a foreign secretary, a secretary of education, and so on. Since minor parties often win seats in parliament, sometimes no party controls a majority of the seats. When no party has a majority of the seats, the leader of one of the parties will try to form a coalition government by offering cabinet seats to other parties in return for their support. As partners in majority coalitions, minor party representatives can end up in posts of central importance in running the government. In contrast, the United States uses a presidential system, in which the chief executive and the legislature are elected independently.

“Splinter/Extremist parties” – Response: Better to have those guys voting in the system than resorting to non-democratic means to advance their cause

Brian O'Neal 1993. (with the Political and Social Affairs Division of the Canadian Library of Parliament) May 1993 ELECTORAL SYSTEMS, <http://www.parl.gc.ca/Content/LOP/researchpublications/bp334-e.htm#1>

The propensity toward single party, majoritarian governments, may have an unexpected effect. Discouraged from electoral participation, small groups holding extreme positions may be prompted to resort to other than democratic means to advance their cause. If, on the other hand, the electoral system allows such groups an opportunity for parliamentary representation, a measure of conformity with established rules is imposed upon them.

“Extremism” – Response: PR contains incentives that work against extremism – policy outcomes tend to be centrist

Indridi H. Indridason 2009. (PhD in political science; associate professor of political science, Univ of Calif. Riverside) 2 Aug 2009 Proportional Representation, Majoritarian Legislatures & Coalitional Voting [www.academia.edu/2988502/Proportional\_Representation\_Majoritarian\_Legislatures\_and\_Coalitional\_Voting](http://www.academia.edu/2988502/Proportional_Representation_Majoritarian_Legislatures_and_Coalitional_Voting)

It is not surprising that the results obtained in the coalition formation game provide a sharper contrast with pure model of vote-weighted policy outcomes. The voters’ incentives to vote for extreme parties are tempered by the ability of the parties to form majority coalitions that monopolize policy making. While coalitions of extremist parties are not ruled out, coalitions of moderate parties are more robust to changes in the model’s parameters. Again, in comparison with vote-weighted model, policy outcomes tend to be more centrist and more in line with the conventional wisdom about proportional representation systems.

“Hurts 2-party system” – Response: Americans are dissatisfied with 2-party system, they want alternatives

Dr. Jon R. Bond and Dr. Kevin B. Smith 2013. (Bond – PhD from Univ of Illinois; professor of political science, Texas A&M University. Smith – PhD Univ of Wisconsin-Milwaukee; professor of political science, Univ. of Nebraska) ANALYZING AMERICAN DEMOCRACY: POLITICS AND POLITICAL SCIENCE p. 240 <http://books.google.fr/books?id=STCZJpcVvVIC&pg=PR2&lpg=PR2&dq=bond+smith+%22analyzing+american%22&source=bl&ots=gSsvEBgx42&sig=pCGdDdOE4BN6oq75NdLMpZff-DE&hl=en&sa=X&ei=nJLqUc60EcvM0AWtr4GwDg&redir_esc=y>

Despite never capturing a significant number of national offices, third parties have occasionally had a considerable effect on American politics. As political scientists John Bibby and L. Sandy Maisel point out, two-party politics is not mandated by the Constitution, and public opinion polls consistently find that “voters express a distaste for the major parties” and want an alternative (1998, 3-4).

“PR doesn’t provide good service to individual voters, since representatives aren’t representing a small district” – Response: No evidence that any electoral system makes any difference

Dr. Pippa Norris 1997. (PhD, London School of Economics; McGuire Lecturer in Comparative Politics at the Kennedy School of Government, Harvard University) Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems <http://www.hks.harvard.edu/fs/pnorris/Acrobat/Choosing%20Electoral%20Systems.pdf>

A further claim of single-member majoritarian systems is that these promote casework, since MPs are elected from a specific district. Members should also have incentives for such service where they compete with others within their party in multi-member systems like STV and the Single Non-Transferable Vote. In contrast closed party list systems should provide limited incentives for members to engage in such activities, and limited opportunities for citizens to contact 'their' representatives. Unfortunately there are few systematic cross-national studies of casework to confirm these propositions, and previous studies, which do exist, have proved skeptical about any simple and direct relationship between the type of electoral system and the degree of casework (Bogdanor 1985; Gallagher, Laver and Mair 1995).

“Instability in Italy caused by PR” – Response: Italy wasn’t that unstable, and they had PR in Germany during the same time with no instability.

Dr. Nawaf Salam 2004. (visiting professor of political science at American University of Beirut) “Reforming the Electoral system – A comparative perspective” April 2004 (ethical disclosure about Dr Salam: he generally advocates for PR, except he does not believe it would work well in the US or Britain. Here, we’re only using him to quote his views on Italy.) <http://books.google.fr/books?id=7PKdjHUjKQIC&pg=PA15&lpg=PA15&dq=%22political+parties%22+%2B+%22proportional+representation%22+%2B+proliferate&source=bl&ots=tLkD1hC998&sig=qEOLPrw7ZAYyPWPxdkII7_GwAuo&hl=en&sa=X&ei=yQnsUZnFHcy2PZa4gdAN&redir_esc=y#v=onepage&q=%22political%20parties%22%20%2B%20%22proportional%20representation%22%20%2B%20proliferate&f=false>

As for the lack of governmental stability experienced by Italy after the Second World War, this must not conceal the fact that it was accompanied by a high degree of political stability in the country, for its successive governments were all formed from members of the same parties, mostly from the politicians themselves. Meanwhile, the Federal Republic of Germany has experienced unparalleled political stability since 1945, despite having adopted a two-tier system that combines both the proportional and the majoritarian systems.

2A EVIDENCE: PUBLIC FINANCING OF CONGRESSIONAL CAMPAIGNS

OPENING QUOTE / AFF PHILOSOPHY

Gridlock and special interests prevent Congress from solving serious problems

Adam Skaggs and Fred Wertheimer 2012. (Skaggs – Attorney; Senior Counsel in the Brennan Center’s Democracy program; former litigator at Paul, Weiss, Rifkind, Wharton & Garrison. Wertheimer – attorney; Founder and President of Democracy 21; served as a Fellow at Harvard University’s Shorenstein Center on the Press, Politics and Public Policy, as the J. Skelly Wright Fellow and Visiting Lecturer at Yale Law School) EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS <http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf>

Our government is broken. Partisan gridlock and armies of special interest lobbyists prevent Congress from acting to solve the serious problems facing the nation. On the issues that matter most to Americans, Congress often does nothing. And when Congress does act, it is all too often on issues that favor narrow interest groups that funnel millions of dollars to elect our representatives.

HARMS

Corrosive role. Private campaign money plays a corrosive role in the legislative process and undermines democracy

SHERWOOD BOEHLERT AND SCOTT MURPHY 2012. (Boehlert – Republican, represented 23rd district of NY; Murphy – Democrat, represented 20th district of NY in Congress) , Commentary 24 Jan 2012 Public funding only way to fix N.Y. politics <http://www.timesunion.com/opinion/article/Public-funding-only-way-to-fix-N-Y-politics-2684290.php>

As former members of Congress who represented upstate New York, it is our view that campaign finance reform is the most effective avenue to (1) invigorate the voice of the individual in our democracy, and (2) restore a relationship of trust between citizens and their government. Our personal experiences in Washington with the present campaign finance system have left us deeply concerned about the corrosive role that private money plays in political campaigns and the legislative process, both in our nation's capital and in Albany. While we represent different political parties, our concerns about the undermining effects of our current campaign finance system to the healthy functioning of our democracy are shared, as is our commitment to its improvement.

Private financing of congressional races carries significant risk of corruption  
[Note: quid pro quo means an action intended to receive a direct benefit in response; a direct exchange]

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Our system of private financing for congressional races carries a significant risk of corruption. Members who receive significant donations from particular special interests may feel compelled to support their biggest donors’ interests, creating a quid pro quo where legislative decisions are implicitly exchanged for campaign funds. As Senator John McCain (R-Arizona) once put it, “it would be hard to find much legislation enacted by any Congress that did not contain one or more obscure provision that served no legitimate national or even local interest, but which was intended only as a reward for a generous campaign supporter.” In addition to generating favors for special interests, large donations can lead to inaction on legislation that would benefit the public good. As Senator McCain has explained, “There's a terrible appearance when the Generic Drug Bill, which passes by 78 votes through the Senate, is not allowed to be brought up in the House shortly after a huge fundraiser with multimillion dollar contributions from the pharmaceutical drug companies who are opposed to the legislation.” Former Senator Russ Feingold (D-Wisconsin) has similarly warned of the appearance of quid pro quocorruption that emerges when “a $200,000 contribution [was] given 2 days after the House marked up a bankruptcy bill by MBNA.” Indeed, business leaders readily acknowledge that corporate political spending is intended as a quid pro quoto win influence and favorable treatment, rather than to merely express an opinion on political issues. This is why corporations routinely spend money supporting both major parties, and why corporate political spending generally flows to the party in power and tracks changes in the partisan make-up of legislatures.

Legitimacy at stake. The influence of money puts the American election process’ legitimacy at stake

Russ Feingold 2012. (former US Senator from Wisconsin ) 14 June 2012 The Money Crisis <http://www.stanfordlawreview.org/online/money-crisis>

As we draw closer to the November election, it becomes clearer that this year’s contest, thanks to the Supreme Court’s 2010 Citizens United decision, will be financially dominated by big money, including, whether directly or indirectly, big money from the treasuries of corporations of all kinds. Without a significant change in how our campaign finance system regulates the influence of corporations, the American election process, and even the Supreme Court itself, face a more durable, long-term crisis of legitimacy.

INHERENCY

Record spending: Senate campaigns now average over $10 million. House campaigns average over $1.6 million

NEW YORK DAILY NEWS 2013. (journalist David Knowles) 11 Mar 2013 “U.S. Senate seat now costs $10.5 million to win, on average, while US House seat costs, $1.7 million, new analysis of FEC data shows” <http://www.nydailynews.com/news/politics/cost-u-s-senate-seat-10-5-million-article-1.1285491#ixzz2aXD4vfSJ>

The cost of winning a seat in Congress rose to a new all time high in the 2012 election cycle, according to a new analysis by MapLight.org of data from the Federal Elections Commission. The average price of winning or holding on to a six-year term in the U.S. Senate averaged $10,476,451 in the 2012 election cycle, MapLight said. Slightly less pricey, obtaining or being re-elected to the U.S. House of Representatives cost an average of $1,689,580.

Most political contributions come from the wealthiest Americans

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

The vast majority of political contributions currently come from a small segment of the wealthiest Americans, particularly in federal congressional campaigns. In 2008, U.S. Senate candidates received only 14% of their funding from donors who gave an aggregate of $200 or less, while U.S. House of Representative candidates received only 8% of their funding from this pool of small donors. Moreover, Senate candidates received only 23% of their funding from donors who gave less than $1000, while House candidates received only 17% of their funding from donors who gave less than $1000. For incumbents, the reliance on small donors is even lower.

Citizens United opened the floodgates of corporate campaign spending

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Political Spending by Corporations and Wealthy Special Interests has Increased Exponentially Since *Citizens United.* As noted above, corporate cash swamped federal, state and local elections in 2010, relegating voters to a position at the margins of political power. According to the Campaign Finance Institute, independent spending and electioneering in Congressional elections grew to $280.2 million in 2010. This was more than double the $119.9 million spent by outside groups on Congressional elections in 2008, and more than five times the $53.9 million spent by outside groups in 2006. The U.S. Chamber of Commerce alone spent more than $32 million on federal electioneering communications during the 2010 election cycle, more than any other outside organization. This nearly doubled the amount the Chamber spent in the 2008 cycle. This was not solely due to *Citizens United*, since even prior to *Citizens United,*a series of deregulatory decisions had opened up loopholes in federal campaign finance regulation. *Citizens United*, however, put the stamp of Supreme Court approval on corporate campaigning, so that the effect of the decision extended far beyond its narrow holding. Campaign finance lawyers have described *Citizens United* as a “psychological green light,” granting corporations a greater comfort level with inserting themselves into the heart of political campaigns.

Incumbents win nearly 100% of the time

Prof. Kenneth R. Mayer, Dr. Timothy Werner, and Amanda Williams 2006. (Mayer – prof. of political science, Univ of Wisconsin. Werner - PhD in political science; lecturer at Univ. of Wisconsin. Williams – political science dept., Univ of Wisconsin ) “Do Public Funding Programs Enhance Electoral Competition?” <http://users.polisci.wisc.edu/kmayer/Professional/Public%20Funding%20and%20Competition.pdf>

Incumbent legislators win reelection nearly 100 percent of the time, and many face no opposition at all. In 2004 the House incumbent reelection rate was 99 percent, and only a handful of districts were even remotely competitive. In the states, 93 percent of all state legislators who ran for reelection won, and the major parties have given up on over a third of the legislative seats, contesting only 65 percent of races. In California, every incumbent legislator—in the State Assembly, State Senate, U.S. Congress, and U.S. Senate—won in 2004. Stephen Ansolabehere and James Snyder ﬁnd that the incumbency advantage has grown for every ofﬁce in the past half-century.Whether the cause is campaign ﬁnance disparities, polarization of the electorate, redistricting, pork, the franking privilege, or a reluctance of potential challengers to subject themselves to the sharp elbows of the campaign environment, incumbents have a virtual lock on their seats.

SOLVENCY / ADVOCACY

Full text of Senate “Fair Elections Now Act”

<http://www.gpo.gov/fdsys/pkg/BILLS-111s752is/pdf/BILLS-111s752is.pdf>

Full text of House “Fair Elections Now Act”

<http://www.gpo.gov/fdsys/pkg/BILLS-113hr269ih/pdf/BILLS-113hr269ih.pdf>

New York City should be a model for reform: more competition, more citizen participation

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets and ellipses in original)

The success of the New York City small-donor matching program serves as a model for public campaign finance reform. The New York City program has resulted in “more competition, more small donors, [greater] impact from small contributions, more grass roots [sic] campaigning, and more citizen participation in campaigns.”[163] Ultimately, New York City’s program “has reduced the influence of big money in general and corporate money in particular.”[164] As states investigate implementing small-donor matching programs, they should focus on a program that utilizes two successful components of New York City’s program. First, any program should make a small portion of funds available to qualifying candidates early on in the election cycle. This portion should “provide enough public money to give an underdog candidate a reasonable foundation for competing against a frontrunner, but should not make the race less competitive by giving a frontrunner a publicly funded financial advantage over the rest of the field.”[165] Second, the bulk of the public funds distributed to the candidate should be in direct response to the candidate’s own small-donor fundraising efforts. Tying public funds to a candidate’s own fundraising efforts creates incentives for candidates to directly engage with the local population, “enhances the value of a small donation, and offers candidates an opportunity to raise substantial sums from small contributors.”

Small-donor matching programs, like NY City, are constitutional and work well

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise>

As Michael Waldman, Director of the Brennan Center for Justice, declared, public financing “can exist and thrive without the kinds of triggers in the Arizona law.” Not only can public financing exist and thrive without the kinds of triggers in the Arizona law, it does exist in the form of small-donor matching programs, such as the one in New York City. A small-donor matching program is a voluntary public financing system that provides matching funds for small contributions from local donors rather than matching funds to an opponent’s high spending. Since the New York City Council passed the New York City Campaign Finance Act in February 1988 establishing a small-donor matching program, it has been met with surprising success. This Part suggests that a small-donor matching program, such as the one in New York City, that provides matching funds for small donations from local donors, replaces spending limits with contribution limits, and provides incentives for small donors to engage in the political system provides a viable—and likely constitutional—alternative to traditional public financing. Small-donor matching programs may even be a more effective form of public financing “because the Internet makes low-dollar fund-raising [sic] so simple.”

Fair Elections brings new voters into the electoral process: We should use the NY City system as a model for reform nationwide

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Notably, the goal of Fair Elections is not to “get money out of politics,” or any such unrealistic objective. Instead, by using small donor matching funds to incentivize grassroots fundraising, Fair Elections can broaden and deepen the donor pool and allow new voters to have a stake in the electoral process. As the former New York City Campaign Finance Board Chair (and current Brennan Center Chief Counsel) Frederick A.O. (“Fritz”) Schwarz, Jr. has put it:   
In their understandable disgust with large contributions, many reformers missed a big point—and a big oppor­tunity. Political contributions are notinherently tainted. Political contributions do not always raise the specter of corruption. Large ones may. But small financial contributions are a natural part of a healthy participatory democracy. New York’s system should be a model for reform nationwide.

NY City experience shows Fair Election matching donations bring more individual donors into the system

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

In Connecticut, most state legislative candidates who participated in the public financing program received money from a larger number of individual donors in 2008 than the predecessor candidate of the same party and district in 2006, the last year without the program. Similarly, under New York’s system, which features a multiple match like the one included in Fair Elections: The number of overall contributors and the number of small donors has increased. In particular, the number of contributors has risen dramatically—by an average of 35%—since the enactment of the multiple match. In 1997, the last year before the enactment of the multiple match, 72,082 donors gave to participating candidates. In 2001, the first year of the multiple match, the number of donors skyrocketed to 146,949 donors.

Public Financing brings in more diverse candidate pool

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Just as it creates new contributors, public financing can also lead to a more diverse candidate pool. When extensive private fundraising is no longer a barrier to entry, running for office becomes accessible to community leaders with popular support, but who may lack big-money backers. Thanks to Maine’s system of public financing, for example, challengers have run “who never thought they’d have the chance to represent the people who are their friends and neighbors—young people, people from minority communities, people who thought they would never be able to afford the cost of running for public office.” Indeed, once they remove the nearly prohibitive costs of candidacy, states with public financing inevitably see a rise in non-traditional candidates.

Nationwide small-donor matching program would increase small donations

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets in original)

Studies have also examined the effect of implementing small-donor matching programs across the country. In 2008, the Campaign Finance Institute predicted the impact of small-donor matching public financing programs in six midwestern states.[160] The study showed that with a small donor matching program, the percentage of small donors ($0–$100) contributing to campaigns would likely greatly increase, while the percentage of high-spending donors ($1,000+) would decrease.[161] Although most of the money would still come from large donors, the “multiple matching fund increases the importance of [small donors] who already participate as well as creat[es] an incentive for candidates to recruit more [small donors] to join in.”[162]

How the NY City small-donor matching program works

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets in original)

Under the New York City small-donor matching program, participating candidates receive a six-to-one match in public financing for the first $175 they raise from each New York City voter, turning a $175 donation into a $1,225 donation.[136] To encourage candidates to engage local voters, only donations from New York City residents are matched.[137] These two provisions encourage participants to solicit support from a large donor base of New York City residents instead of focusing on obtaining larger contributions from a smaller group of wealthy donors, political parties, political action committees, and the like.[138] Thus, unlike Arizona’s statute, which tied additional public funds to the high spending of privately financed opponents, New York City’s statute ties public funds to the success of the candidate’s own small-donor fundraising. And this, in turn, “avoids the constitutional problems raised in the [Arizona Free Enterprise] case, by ensuring that a candidate’s public financing rises or falls based on her own success at campaigning.”

NY City “bonus” funding triggered by opponents’ spending: if it’s unconstitutional, no problem – the program does not depend on it

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets in original)

The New York City small-donor matching program does contain a “bonus” matching component which may be deemed unconstitutional in light of Arizona Free Enterprise. Under the bonus match provision of the statute, “[a] non-participant triggers additional public funding for participating opponents by spending or raising one-half of the established spending cap for that election.” However, statistics have shown that the bonus matching funds are not crucial to the success of the program for two reasons. First, from 1997 to 2005, only four percent of all public funding has come from the bonus payments. Second, the bonus matching program was triggered in less than ten percent of New York City elections from 1989 to 2006. Thus, even if Arizona Free Enterprise results in this provision being unconstitutional, it does not signal the end of the small-donor matching program as a whole.

“Public funded candidates get outspent by rich opponents” – Response: Still better than not getting public funding

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets in original)

The New York City Program has not been immune from criticism, however. One common question relating to all public financing programs is: How can candidates who voluntarily subject themselves to fundraising and spending limits successfully compete with privately financed candidates? In response, proponents of New York City’s program argue that the system still provides participating candidates with more money to compete than they would otherwise have. As Mark Green, Michael Bloomberg’s opponent in the 2001 election for New York City Mayor, remarked, “It is irrational to argue against a system that enables a diverse group of people to run competitive campaigns because a wealthy candidate can occasionally outspend a participating candidate. The program benefits are not undermined by the rare occurrence of a Bloomberg candidate.”

Public finance works: It has kept the Presidential elections free of campaign finance scandals since Watergate

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Multiple states and jurisdictions have had great success with their public financing systems. Indeed, a shining example has operated on the national level for more than 35 years: the presidential public financing system. It was adopted after the Watergate scandal as an effort to address the corruption of the Nixon administration and the abuses of the 1972 presidential election. And it has succeeded in combating corruption—presidential elections since Watergate have been free of large-scale corruption scandals.

Three examples of success for small-donor matching model: New York City, Los Angeles, San Francisco

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

In New York City in 2009, 66% of the general election candidates and 93% of primary candidates financed their elections through the City’s program. “These rates have been consistent for over a decade. Indeed, nearly every credible candidate participates: in 2009’s contest, the Public Advocate, the Comptroller, all five Borough Presidents, and all but two of the 51 City Council candidates who were elected to office participated.” In San Francisco, 45% of candidates in 2008 and 48% of candidates in 2010 participated in the public financing program. Of the candidates who won their elections, 71% were publicly financed in 2008, and 60% were publicly financed in 2010. In Los Angeles, between 1993 and 2005, more than 75% of all citywide candidates have chosen to participate in the City’s public matching funds program, and 83% of all Council candidates have participated. “A sizable majority, or 71 percent, of those elected to City office between 1993 and 2005 have had the advantage of public funding in their campaigns.” In sum, there is little doubt that the small donor matching fund model can succeed in providing sufficient funds to viable candidates so that candidates who wish to participate can compete vigorously and win.

“Privately funded candidates will outspend” – Response: Even with big spending opponents, publicly financed candidates can be competitive

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Even in the post-Citizens United world of increased, often corporate-backed, independent spending, public financing continues to be a viable option. Questions have been raised about the efficacy of public financing program in an environment of unlimited corporate independent expenditures. But the experiences of jurisdictions with public financing demonstrates that, as long as such systems offer candidates sufficient funds to run viable campaigns, publicly financed candidates can run competitive and successful races even in the face of high levels of hostile independent spending.

“How much does the plan cost?” – Less than $2 billion

Laura MacCleery and Matthew Welch 2008. (MacCleery – J.D. from Stanford Univ. Law School; Deputy Director of the Campaign Finance program at Brennan Center for Justice at NY Univ. Law School. Welch - Policy and Communications Coordinator for the Brennan Center for Justice ) “The Candy Store Congress” 24 Oct 2008 <http://www.brennancenter.org/blog/candy-store-congress>

The Fair Elections Now Act would establish a voluntary system of comprehensive public financing for Congressional elections and would reduce the threat of special interest cash by establishing strict spending limits; plus it would encourage small donors and greatly increase the power of ordinary voters to hold Congress accountable. The program would cost only a quarter of one percent of the President's 2008 budget proposal, under $2 billion. Compare that number to $70 to $100 billion—the amount of taxes dodged by American corporations that use off-shore tax schemes—and it looks like the bargain for taxpayers that it is.

Cut Head Start = $8 billion/year with no benefit

Lindsey Burke and Dr. David B. Muhlhausen 2013. (Burke - Will Skillman fellow in education policy at The Heritage Foundation; bachelor's degree in politics from Hollins University in Roanoke, Va., and a master of teaching degree in foreign language education from the University of Va. Muhlhausen – PhD in public policy from the University of Maryland-Baltimore County ; served on the staff for the Senate Judiciary Committee) Head Start Impact Evaluation Report Finally Released 10 Jan 2013 <http://www.heritage.org/research/reports/2013/01/head-start-impact-evaluation-report-finally-released>

Since 1965, taxpayers have spent more than $180 billion on Head Start.[1] Yet, over the decades, this Great Society relic has failed to improve academic outcomes for the children it was designed to help. The third-grade follow-up evaluation is the latest in a growing body of evidence that should urge policymakers to seriously consider Head Start’s future.  
Head Start and PerformanceThe timing of the release raises questions about whether HHS was trying to bury the findings in the report, which shows, among other outcomes, that by third grade, the $8 billion Head Start program had little to no impact on cognitive, social-emotional, health, or parenting practices of participants. On a few measures, access to Head Start had harmful effects on children.

ADVANTAGES

NY City program very successful: More competition, more citizen participation, reduced influence of big money

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets and ellipses in original)

Since its initiation, the New York City program has been very successful. The program has led to “more competition, more small donors, more impact from small contributions, more grass roots [sic] campaigning, and more citizen participation in campaigns . . . [,][a]nd it has reduced the influence of big money in general and corporate money in particular.”[143] For example, in 2009, ninety-three percent of primary candidates financed their campaigns through the public finance program and sixty-six percent of general election candidates participated in the program.[144] Not only does the system attract participation, it also produces results: in 2009, “the Public Advocate, the Comptroller, all five Borough Presidents, and all but two of the [fifty-one] City Council candidates who were elected” participated in the small-donor matching program.[145] Finally, the “system promotes voter choice by enabling a diverse pool of candidates with substantial grassroots support but little access to large donors to run competitive campaigns.”[146]

Fair Elections / Public Financing reduces the big money corruption threat

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Public financing generally, and Fair Elections in particular, can help restore our democracy, even in the face of the torrent of special interest money post-Citizens United. Most importantly, by allowing candidates to run viable campaigns through reliance on small donations and public funds alone, public funding programs restore integrity and accountability to the electoral process. By doing so, public financing reduces the threat that big money will have a corrupting influence on the political process. Moreover, public financing programs—particularly small-donor matching systems like that proposed by Fair Elections and currently active in New York City—incentivize political participation by candidates and by voters, thus promoting electoral debate and competition and allowing more of the electorate to have a stake in our campaigns.

“Fair Elections Now” fights corruption and restores voters to their central role in democracy

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

The Brennan Center for Justice thanks the Subcommittee on the Constitution, Civil Rights and Human Rights for the opportunity to offer testimony in support of the Fair Elections Now Act, S. 750. Providing public financing for federal elections is a necessary, effective, and constitutional response to last year’s game-changing Supreme Court decision in Citizens United v. FEC. The Fair Elections Now Act fights corruption and the appearance of corruption by reducing elected officials’ dependence on large donors. It encourages constituent-focused campaigns, and increases the power and participation of small donors in elections. Ultimately, public financing restores voters to their central role in our democracy.

Public finance reduces corruption and restores democracy

Adam Skaggs and Fred Wertheimer 2012. (Skaggs – Attorney; Senior Counsel in the Brennan Center’s Democracy program; former litigator at Paul, Weiss, Rifkind, Wharton & Garrison. Wertheimer – attorney; Founder and President of Democracy 21; served as a Fellow at Harvard University’s Shorenstein Center on the Press, Politics and Public Policy, as the J. Skelly Wright Fellow and Visiting Lecturer at Yale Law School) EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS <http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf>

Empowered citizens are the answer to successfully challenging this corrupt system. If the importance of their small contributions is magnified with multiple public matching funds, millions of citizens can serve as a counterforce to our current influence-money system. Breakthroughs in Internet and social media fundraising will make a small-donor based matching funds system even more powerful as an alternative way to finance our elections. An effective new public matching funds system in which citizens direct the distribution of public funds to candidates would fundamentally change the way our campaigns are financed. The system would decrease the opportunities for corruption of federal officeholders and government decisions, and provide candidates with an alternative means for financing their elections without being obligated to special interest funders. Most importantly, the system would restore citizens to their rightful pre-eminent place in our democracy.

Small donor matching system would benefit democracy several ways

Adam Skaggs and Fred Wertheimer 2012. (Skaggs – Attorney; Senior Counsel in the Brennan Center’s Democracy program; former litigator at Paul, Weiss, Rifkind, Wharton & Garrison. Wertheimer – attorney; Founder and President of Democracy 21; served as a Fellow at Harvard University’s Shorenstein Center on the Press, Politics and Public Policy, as the J. Skelly Wright Fellow and Visiting Lecturer at Yale Law School) EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS <http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf>

Our democracy would benefit in numerous ways if Congress adopted a small donor matching system. This section explains in detail the key elements of the proposed system for congressional races. 1. A 5-to-1 Match for Small In-State Contributions The foundation for effectively empowering small donors is a multiple matching program for small donations. Candidates who opt to participate in this voluntary program would agree to lower contribution limits in exchange for being eligible for public matching funds. After these candidates had qualified by collecting the specified number and amount of qualifying in-state contributions from individuals, the federal government would match the qualifying contributors and the first $250 of additional in-state contributions from individuals at a 5-to-1 ratio. A multiple match program structured in this manner would provide strong incentives for candidates to spend more time talking to their own constituents.

Fair Elections Now restores accountability

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

By providing voluntary public financing for federal congressional candidates, the Fair Elections Now Act (“Fair Elections”) is key to restoring accountability to American democracy. Fair Elections boosts the voices of small donors by providing public matching funds for small contributions. The innovative multiple match of small donations, which was modeled on New York City’s groundbreaking program, makes it possible for candidates to run competitive campaigns, while rewarding the grassroots outreach that spurs greater citizen participation. In short, political candidates can run competitive campaigns relying only on small individual donations, not large infusions of special interest cash.

Public financing restores voter faith

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united> (brackets in original)

A Rasmussen national survey in August 2010 found that 70% of voters believe that “most members of Congress [are] willing to sell their vote for either cash or a campaign contribution.” A shift to a system of public financing could help restore this lost faith in government. Already, participants in state public financing systems have seen a change in public opinion. “Overall people are excited about [public financing] because they feel that their particular legislator will not be tied to special interest dollars and that means a lot to them,” said Leah Landrum Taylor, an Arizona state representative who participated in her state’s public financing program. Even candidates who chose not to participate in the state’s program have noticed the shift. In a recent GAO survey, an anonymous nonparticipating Arizona candidate wrote, “I believe the program has helped restore the public’s faith in the integrity of candidates. Hopefully, many other states, and eventually Congress, will adopt public funding of elections.”

Better time management: Public financing improves connection to the voters – less time spent fund-raising

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united> (brackets and ellipses in original)

And, candidates around the country report that public financing improves their ability to connect with voters. For example, Albuquerque, New Mexico Councilor M. Debbie O’Malley, an incumbent who ran as a publicly funded candidate in 2007, stated that with public funding, “you do a lot more outreach and the voters have a lot more ownership of the election process, because many of them have given $5 to help get a candidate qualified.” Running for Governor of Arizona, Janet Napolitano had a similar experience. “[Public financing is] the difference between being able to go out and spend your time talking with voters, meeting with groups,….traveling to communities that have been underrepresented in the past, as opposed to being on the phone selling tickets to a $250 a plate fundraiser.”

DISADVANTAGE RESPONSES

“Unconstitutional” – Response: Fair Election public financing is on solid constitutional footing

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united>

Fair Elections, like other voluntary public financing system, is on solid constitutional footing. Voluntary public financing programs have been consistently upheld—and praised—by the U.S. Supreme Court and federal courts of appeals. In upholding the constitutionality of the presidential public financing system, the Buckley Court explained that a public funding system aims, “not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”

“Unconstitutional” – Response: Fair Election financing promotes and upholds the First Amendment

Monica Youn 2011. (J.D. from Yale Law School; Brennan Center Constitutional Fellow at NYU School of Law; former director of the Brennan Center’s Money in Politics program; former law clerk to Judge John T. Noonan, Jr. in the US 9th Circuit Court of Appeals) 12 Apr 2011 testimony before the **United States Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights "The Fair Elections Now Act: A Comprehensive Response to Citizens United"** <http://www.brennancenter.org/analysis/fair-elections-now-act-comprehensive-response-citizens-united> (brackets in original)

Fair Elections, like the presidential public financing program and those in several states, furthers First Amendment values by directly enlarging public discussion, preventing corruption and its appearance, providing candidates an alternative to special interest money, and encouraging candidates to reach out to a broader grassroots network of constituents. Fair Elections, in other words, clearly constitutes a congressional effort “not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.” Fair Elections will encourage more people to get involved in the political process, foster grassroots political activity among small donors, and ensure a robust political dialogue between candidates and voters. In these and many other ways, it will further the core values of the First Amendment—more political participation and more speech. As the Supreme Court most recently declared in Citizens United, these values are at the heart of our constitutional democracy: “[I]t is our law and our tradition that more speech, not less, is the governing rule.”

“Unconstitutional” – Response: NY City program will survive judicial review – it doesn’t have the problems of the Arizona plan, and even if the matching ratio were eliminated it would likely still be successful

Glen Hudson 2012. (JD candidate, Wake Forest Univ. Law School ) Think Small: The Future of Public Financing After Arizona Free Enterprise, WAKE FOREST LAW REVIEW Volume 47 <http://wakeforestlawreview.com/think-small-the-future-of-public-financing-after-arizona-free-enterprise> (brackets and ellipses in original)

The question now is whether New York City’s program will stand up under judicial scrutiny. The short answer: most likely. As discussed above, the Court’s decision in Arizona Free Enterprise is limited to trigger-funding provisions; it does not affect public financing as a whole. New York City’s small-donor matching program “doesn’t directly violate the rule in . . . [Arizona Free Enterprise], because the amount received is not triggered by opponent spending.” Instead, the success of the program is based on the ability of the candidate to raise her own funds from small donors. The only components of New York City’s program likely open to attack are the provisions that increase the matching ratio and expenditure limits for candidates in races against opponents who spend above-threshold—but even without this provision, the small-donor matching program would likely still be successful.

2A EVIDENCE: VOTER ID

(Simon Sefzik researched some of the evidence in this brief.)

HARMS / SIGNIFICANCE

Known cases of fraud occurred in 2004 in Washington state, Wisconsin, and Florida

Commission on Federal Election Reform 2005. (co-chaired by former President Jimmy Carter and James A. Baker III, former Secretary of the Treasury and former Secretary of State) Building Confidence in U.S. Elections - Report of the Commission on Federal Election Reform, September 2005 <http://www1.american.edu/ia/cfer/report/report.html>

The November 2004 elections also showed that irregularities and fraud still occur. In Washington, for example, where Christine Gregoire was elected governor by a 129-vote margin, the elections superintendent of King County testified during a subsequent unsuccessful election challenge that ineligible ex-felons had voted and that votes had been cast in the names of the dead. However, the judge accepted Gregoire’s victory because with the exception of four ex-felons who admitted to voting for Dino Rossi, the authorities could not determine for whom the other illegal votes were cast. In Milwaukee, Wisconsin, investigators said they found clear evidence of fraud, including more than 200 cases of felons voting illegally and more than 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person. Moreover, there were 4,500 more votes cast than voters listed. One potential source of election fraud arises from inactive or ineligible voters left on voter registration lists. By one estimate, for example, there were over 181,000 dead people listed on the voter rolls in six swing states in the November 2004 elections, including almost 65,000 dead people listed on the voter rolls in Florida.

Big voter fraud case in New York could have been stopped if ID had been required

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

However, as I pointed out in a paper published by The Heritage Foundation,[5] as well as a book published in 2012 on voter fraud and election reform,[6] a grand jury in New York released a report in the mid-1980s detailing a widespread voter fraud conspiracy involving impersonation fraud at the polls that operated successfully for 14 years in Brooklyn without detection. That fraud resulted in thousands of fraudulent votes being cast in state and congressional elections and involved not only impersonation of legitimate voters at the polls, but voting under fictitious names that had been successfully registered without detection by local election officials. This fraud could have been easily stopped and detected if New York had required voters to authenticate their identity at the polls.

“Fraud is uncommon” – Response: How do you know? Without ID, most fraud goes undetected. It’s “Prosecutions for fraud” that are uncommon, not necessarily the fraud itself

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

The relative rarity of voter fraud prosecutions for impersonation fraud at the polls, as the Seventh Circuit Court of Appeals pointed out in the Indiana case, can be “explained by the endemic underenforcement” of voter fraud cases and “the extreme difficulty of apprehending a voter impersonator” without the tools—a voter ID—needed to detect it.

Iowa investigation found 8 cases of fraud in only 4 months

Matt Schultz 2012. (Iowa Secretary of State ; note: in Iowa, the secretary of state is responsible for managing the state’s elections) Testimony to the Senate Judiciary Committee, 19 Dec 2012 <http://www.judiciary.senate.gov/pdf/12-12-19SchultzTestimony.pdf>

Iowa is nationally known for having a model election system. However, as with any system, there is room for improvement and I have been advocating for those improvements for the past two years. One of my significant initiatives in this area involves an agreement with the Iowa Department of Public Safety to have a Special Agent from the Iowa Division of Criminal Investigation (DCI) assigned to investigate election misconduct. The DCI Agent is conducting multiple investigations into absentee ballot fraud, voting by individuals who are ineligible, and double voting. Since August of 2012, charges have been filed in eight election misconduct cases based on information received from my staff, our local election officials, and members of the public. Anyone who says that voter fraud does not exist should look at the numbers that have been produced in a few short months.

“Not many prosecutions, so not much fraud” – Response: Lack of prosecution doesn’t prove there isn’t much fraud

Peter Nelson & Harry Niska 2012. (Nelson – attorney; *director of public policy and associate general counsel at Center of the American Experiment; law degree from the University of Minnesota Law School. Niska – attorney with Ross & Orenstein LLC in Minneapolis, law degree fro Univ of Minnesota Law School* ) Debating Voter ID: A Means to Increase Confidence in Elections 14 Aug 2012 BENCH & BAR OF MINNESOTA (brackets and ellipses in original) <http://mnbenchbar.com/2012/08/debating-voter-id-a-means-to-increase-confidence-in-elections/>

Opponents minimize the evidence of voter fraud. But by its very nature, evidence of fraud is anecdotal and difficult to quantify with precision. As Judge Posner explained in Crawford v. Marion County Election Board, “the absence of [voter fraud] prosecutions is explained by the endemic underenforcement of minor criminal laws … and by the extreme difficulty of apprehending a voter impersonator.”

Iowa investigation found 1000 illegal ballots cast

Matt Schultz 2012. (Iowa Secretary of State ; note: in Iowa, the secretary of state is responsible for managing the state’s elections) Testimony to the Senate Judiciary Committee, 19 Dec 2012 <http://www.judiciary.senate.gov/pdf/12-12-19SchultzTestimony.pdf>

Second, Iowa matched voter registration records with death records from the Social Security Administration. More than 3,000 individuals were identified who were deceased and registered to vote. Finally, my office compared a list of non-citizens with a driver’s license to Iowa’s voter registration database. This comparison resulted in the unfortunate discovery that Iowa potentially had thousands of non-citizens who were registered to vote, and over a thousand that may have cast illegal ballots.

Supreme Court Justice: America has a history of voter fraud

John Fund 2012. (California State University - Journalism and Economics. Political Journalist. He wrote two books on fraud in US elections.) National Review Online. “The Reality of Voter Fraud” May 2 2012 <http://www.nationalreview.com/articles/297461/reality-voter-fraud-john-fund>

“Unfortunately, the United States has a long history of voter fraud that has been documented by historians and journalists,” Supreme Court Justice John Paul Stevens wrote in 2008, upholding a strict Indiana voter-ID law designed to combat fraud. Justice Stevens, who personally encountered voter fraud while serving on various reform commissions in his native Chicago, spoke for a six-member majority. In a decision two years earlier clearing the way for an Arizona ID law, the Court had declared in a unanimous opinion that “confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.”

The Justice department is turning a blind eye towards voter fraud, placing politics over integrity.

Horace Cooper 2012. (adjunct fellow with the National Center for Public Policy Research, Co-Chairman of the Project 21 National Advisory Board and a legal commentator. Taught constitutional law at George Mason University in Virginia and was general counsel to U.S. House Majority Leader Dick Armey.) “Voter Fraud is Real: Why the Voting Rights Act Should Be Used to Fight Election Fraud” August 2012 <http://www.nationalcenter.org/NPA636.html>

It is tragic that Attorney General Holder and the Obama Administration's Justice Department apparently continue to place party politics ahead of the integrity of the country's elections by turning a blind eye to voter fraud in states such as Illinois, Wisconsin, and Pennsylvania, while persistently obstructing state and local efforts to combat corruption in places such as Georgia, South Carolina, and Texas. Election fraud is another name for disenfranchisement – and it's a felony, not a punch line. Regrettably, the Justice Department seems to be in on the joke.

IMPACT: Voter fraud violates Americans right to vote – corrupting the entire system.

John Fund 2012. (California State University - Journalism and Economics. Political Journalist. He wrote two books on fraud in US elections.) National Review Online. “The Reality of Voter Fraud” May 2 2012 <http://www.nationalreview.com/articles/297461/reality-voter-fraud-john-fund>

It’s a pity that so much of the discussion about voting this fall will be drenched in race. Americans have two important rights when it comes to voting. The first is the right to vote without fear and intimidation, for which this country fought an epic civil-rights struggle in the 1960s. Those gains in voter access must be preserved. But Americans also have a right to vote without their ballots’ being canceled out by people who are voting twice, are voting for the dead or nonexistent, or are non-citizens. We can and should accomplish two goals in the 2012 election — making sure it is easy to vote, and making sure it is hard to cheat. Groups such as True the Vote will be essential to make sure both sides of that imperative are fulfilled.

INHERENCY

“Lots of states require ID to vote already” – Response: But they aren’t requiring “photo” ID

National Conference of State Legislatures 2013. (non-profit, bipartisan national association of staff and members of state legislatures in the US ) “Voter Identification Requirements” <http://www.ncsl.org/legislatures-elections/elections/voter-id.aspx>

The 33 voter ID laws that have been enacted vary in their details. Two key distinctions are whether a law is strict or not, and whether or not the ID must include a photo. **Strict vs. Non-Strict:** In the "strict" states, a voter cannot cast a valid ballot without first presenting ID. Voters who are unable to show ID at the polls are given a provisional ballot. Those provisional ballots are kept separate from the regular ballots. If the voter returns to election officials within a short period of time after the election (generally a few days) and presents acceptable ID, the provisional ballot is counted. If the voter does not come back to show ID, that provisional ballot is never counted. **Photo vs. Non-Photo:** Some states require that the ID presented at the polls must show a photo of the voter. Some of these are "strict" voter ID laws, in that voters who fail to show photo ID are given a provisional ballot and must eventually show photo ID in order to get that provisional ballot counted. Others are "non-strict," and voters without ID have other options for casting a regular ballot. They may be permitted to sign an affidavit of identity, or poll workers may be able to vouch for them if they know them personally. In these "non-strict" states, voters who fail to bring ID on Election Day aren't required to return to election officials and show ID in order to have their ballot counted. In the other voter ID states, there is a wide array of IDs that are acceptable for voting purposes, some of which do not include a photo of the voter. Again, some of these states are "strict" in the sense that a voter who fails to bring ID on Election Day will be required to vote a provisional ballot, and that provisional ballot will be counted only if the voter returns to election officials within a few days to show acceptable ID.

ADVOCACY

We need ID verification to prevent election fraud

Hans von Spakovsky 2009. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation ) Democracy in Danger: What States Can Do to Safeguard America's Election System <http://www.heritage.org/research/lecture/democracy-in-danger-what-states-can-do-to-safeguard-americas-election-system>

In order to have an election process in which we can be confident that everyone who is eligible gets to vote, the vote is counted, and the vote is not diluted by fraudulent votes, we have to have security and integrity throughout the entire process, from voter registration to the casting of the actual votes and the counting of ballots. Unfortunately, because of various problems with election laws and procedures in many states, we cannot currently ensure that such security is in place. This is particularly true because of the general lack of verification by some states of the authenticity of both basic voter eligibility at registration, including citizenship, and the identity of voters who show up at the polls to vote.

ID requirement is reasonable and easily met – it should apply to in-person voting as well as absentee

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Requiring voters to authenticate their identity is a perfectly reasonable and easily met requirement. It is supported by the vast majority of voters of all races and ethnic backgrounds. As the U.S. Supreme Court has said, voter ID protects the integrity and reliability of the electoral process. It should be applied to in-person voting as well as to absentee ballot voting, which is all too often the “tool of choice” of vote thieves.

Federal government needs to create greater uniformity in registration and ID standards

Commission on Federal Election Reform 2005. (co-chaired by former President Jimmy Carter and James A. Baker III, former Secretary of the Treasury and former Secretary of State) Building Confidence in U.S. Elections - Report of the Commission on Federal Election Reform, September 2005 <http://www1.american.edu/ia/cfer/report/report.html>

In addition to statewide registration systems and provisional ballots, HAVA requires that states insist on voter identification only when a person has registered by mail for the first time in a federal election. This provision, like the others, was implemented very differently across the country, with ome areas not even applying the minimum requirement. Since HAVA, an increasing number of states have insisted on stringent, though very different, ID requirements for all voters. This, in turn, has caused concern that such requirements could erect a new barrier to voting for people who do not have the requisite identification card. Georgia, for example, introduced a new law in July 2005 that requires all voters to show a government-issued photo ID at the polls. Although there are 159 counties, only 56 locations in the entire state issue such IDs, and citizens must either pay a fee for the ID or declare indigence. While states will retain principal responsibility for the conduct of elections, greater uniformity in procedures for voter registration and identification is essential to guarantee the free exercise of the vote by all U.S. citizens. The EAC should facilitate greater uniformity in voter registration and identification procedures and should be empowered to do so by granting and withholding federal funds to the states. If Congress does not appropriate the funds, then we recommend that it amend the law to require uniformity of standards.

SOLVENCY

“How much does the plan cost?” - $5 million

Text of the proposed Federal Election Integrity Act of 2012, Bill Text 112th Congress (2011-2012) H.R.6408.IH <http://www.gpo.gov/fdsys/pkg/BILLS-112hr6408ih/html/BILLS-112hr6408ih.htm>

SEC. 297A. AUTHORIZATION OF APPROPRIATIONS. `There are authorized to be appropriated for payments under this part an aggregate amount of $5,000,000 for fiscal year 2014 and each of the 4 succeeding fiscal years.'.

Cut Head Start = $8 billion/year with no benefit

Lindsey Burke and Dr. David B. Muhlhausen 2013. (Burke - Will Skillman fellow in education policy at The Heritage Foundation; bachelor's degree in politics from Hollins University in Roanoke, Va., and a master of teaching degree in foreign language education from the University of Va. Muhlhausen – PhD in public policy from the University of Maryland-Baltimore County ; served on the staff for the Senate Judiciary Committee) Head Start Impact Evaluation Report Finally Released 10 Jan 2013 <http://www.heritage.org/research/reports/2013/01/head-start-impact-evaluation-report-finally-released>

Since 1965, taxpayers have spent more than $180 billion on Head Start.[1] Yet, over the decades, this Great Society relic has failed to improve academic outcomes for the children it was designed to help. The third-grade follow-up evaluation is the latest in a growing body of evidence that should urge policymakers to seriously consider Head Start’s future.  
Head Start and PerformanceThe timing of the release raises questions about whether HHS was trying to bury the findings in the report, which shows, among other outcomes, that by third grade, the $8 billion Head Start program had little to no impact on cognitive, social-emotional, health, or parenting practices of participants. On a few measures, access to Head Start had harmful effects on children.

Voter ID works fine in other democratic nations, including Mexico, where it reduced fraud

Hans von Spakovsky 2011. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) Voter Photo Identification: Protecting the Security of Elections 13 July 2011 <http://www.heritage.org/research/reports/2011/07/voter-photo-identification-protecting-the-security-of-elections>

America is one of the only democracies in the world that does not uniformly require voters to present photo ID when they vote. Across the globe, democracies administer such a requirement without any problems and without any reports that their citizens are in any way burdened when voting. In fact, America’s southern neighbor Mexico, which has a much larger rate of poverty than the United States, requires both a photo ID and a thumbprint to vote—and turnout has increased in Mexican elections since this requirement went into effect in the 1990s. Mexico’s voter ID laws are also credited with reducing the fraud that had prevailed in many Mexican elections and “allowing the 2000 election of Vicente Fox, the first opposition party candidate to be elected president of Mexico in seventy years.”

“People can’t get IDs” – Response: Everyone has, or can easily get, an ID

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Despite many false claims to the contrary, there is no evidence that voter ID decreases the turnout of voters or has a disparate impact on minority, poor, or elderly voters: The overwhelming majority of Americans have photo ID or can easily obtain one.

League of Women Voters used a lady in Indiana where the ID requirement was an example of someone blocked from voting: But it turned out she was trying to vote illegally!

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

The problem of possible double voting by someone who is registered in two states is illustrated by one of the Indiana voters highlighted by the League of Women Voters in their amicus brief before the U.S. Supreme Court in the Indiana case. This voter was used by the LWV as an example of someone who had difficulty voting because of the voter ID requirement. However, after an Indiana newspaper interviewed her, it turned out that the problems she encountered voting in Indiana stemmed from her trying to use a Florida driver’s license to vote in Indiana. Not only did she have a Florida driver’s license, but she was also registered to vote in Florida where she owned a second home. In fact, she had claimed residency in Florida by filing for a homestead exemption on her property taxes, which is normally only available to individuals who claim residency in a state. So the Indiana law worked perfectly as intended to prevent someone who could have illegally voted twice without detection (and who was asserting residency in a different state) if the voter ID law had not been in effect.

Voter ID protects the integrity and reliability of the electoral process

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

America is one of the few democracies in the world that do not uniformly require voters to present photo identification when they vote. All of the other 100 countries administer such a requirement without any problems and without any reports that their citizens are in any way unable to vote. Requiring voters to authenticate their identity is a perfectly reasonable and easily met requirement. It is supported by the vast majority of voters of all races and ethnic backgrounds. As the U.S. Supreme Court has said, voter ID protects the integrity and reliability of the electoral process. It should be applied to in-person voting as well as to absentee ballot voting, which is all too often the “tool of choice” of vote thieves.

DISADVANTAGE RESPONSES

“People don’t have IDs and States can’t afford to give them” – Response: FEIA gives States money to provide free IDs to indigent (poor) individuals who can’t afford them

Text of the proposed Federal Election Integrity Act of 2012, Bill Text 112th Congress (2011-2012) H.R.6408.IH <http://www.gpo.gov/fdsys/pkg/BILLS-112hr6408ih/html/BILLS-112hr6408ih.htm>

`SEC. 297. PAYMENTS TO COVER COSTS TO STATES OF PROVIDING PHOTO IDENTIFICATIONS FOR VOTING TO INDIGENT INDIVIDUALS. `(a) Payments to States- The Commission shall make payments to States to cover the costs incurred in providing photo identifications under the program established under section 303(b)(4) to individuals who are unable to afford the fee that would otherwise be charged under the program.

“Costs a lot to get IDs for everyone” – Response: Costs exaggerated, and benefits easily outweigh

Peter Nelson & Harry Niska 2012. (Nelson – attorney; *director of public policy and associate general counsel at Center of the American Experiment; law degree from the University of Minnesota Law School. Niska – attorney with Ross & Orenstein LLC in Minneapolis, law degree fro Univ of Minnesota Law School* ) Debating Voter ID: A Means to Increase Confidence in Elections 14 Aug 2012 BENCH & BAR OF MINNESOTA (brackets and ellipses in original) <http://mnbenchbar.com/2012/08/debating-voter-id-a-means-to-increase-confidence-in-elections/>

Opponents argue that photo ID is too costly and it disenfranchises poor and minority voters who will have difficulty acquiring a photo ID. Both objections are exaggerated. Requiring a photo ID to vote will certainly impose some upfront costs but the substantial benefits from photo ID that we’ve already outlined more than outweigh its limited cost. Indeed, voters’ confidence in election results and our representative system of government easily justify the expected cost.

“Violates Federalism/States’ Rights” – Response: Not a problem - the Constitution specifically authorizes the federal government to pre-empt State rules for congressional elections

Supreme Court Justice Antonin Scalia 2013. Majority opinion of the court in ARIZONA, ET AL., PETITIONERS v. THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL., 17 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-71_7l48.pdf>

When Congress legislates with respect to the “Times, Places and Manner” of holding congressional elections, it necessarily displaces some element of a pre-existing legal regime erected by the States.6 Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s pre-emptive intent. Moreover, the federalism concerns underlying the presumption in the Supremacy Clause context are somewhat weaker here. Unlike the States’ “historic police powers,” Rice, supra, at 230, the States’ role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it “terminates according to federal law.” Buckman Co. v. Plaintiffs’ Legal Comm., 531 U. S. 341, 347 (2001). In sum, there is no compelling reason not to read Elections Clause legislation simply to mean what it says.

“Thousands blocked from voting with ID requirement” – Response: ID opponents can’t even name 1

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 (brackets and ellipses in original) <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Just as in North Carolina, however, organizations in Georgia like the ACLU and the NAACP made specious claims when Georgia’s law was first passed that there were hundreds of thousands of Georgians without photo ID. Yet when the federal district court dismissed all of their claims, the court pointed out that after two years of litigation, none of the plaintiff organizations like the NAACP had been able to produce a single individual or member who did not have a photo ID or could not easily obtain one. The district court judge concluded that:  
[T]his failure to identify those individuals “is particularly acute” in light of the Plaintiffs’ contention that a large number of Georgia voters lack acceptable Photo ID…. [T]he fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone “who can attest to the fact that he/she will be prevented from voting” provides significant support for a conclusion that the photo ID requirement does not unduly burden the right to vote.

“Hurts minorities” – Response: Minority voter turnout went up in Georgia and Indiana after ID laws were passed

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Election results in Georgia and Indiana confirm that claims that voter ID will hurt minority turnout are incorrect. Turnout in both states went up dramatically in 2008 in both the presidential preference primary and the general election after their voter ID laws went into effect.

“Reduced voter turnout” – Response: Univ. of Missouri study shows voter ID increased turnout

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Despite many false claims to the contrary, there is no evidence that voter ID decreases the turnout of voters or has a disparate impact on minority, poor, or elderly voters: The overwhelming majority of Americans have photo ID or can easily obtain one. Numerous studies have borne this out. A report by the University of Missouri on turnout in Indiana showed that turnout actually increased by about two percentage points overall in local elections in Indiana in 2006 after the voter ID law went into effect. There was no evidence that counties with higher percentages of minority, poor, elderly, or less-educated populations suffered any reduction in voter turnout. In fact, “the only consistent and statistically significant impact of photo ID in Indiana is to increase voter turnout in counties with a greater percentage of Democrats relative to other counties.”

“Reduced voter turnout” – Response: Heritage study + Delaware/Nebraska study both found no effect on turnout

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

The Heritage Foundation released a study in September of 2007 that analyzed 2004 election turnout data for all states. It found that voter ID laws do not reduce the turnout of voters, including African Americans and Hispanics: Such voters were just as likely to vote in states with ID as in states where just their names were asked at the polling place.[12] A study by the Universities of Delaware and Nebraska–Lincoln examined data from the 2000, 2002, 2004, and 2006 elections. At both the aggregate and individual levels, the study found that voter ID laws do not affect turnout, including across racial/ethnic/socioeconomic lines. The study concluded that “concerns about voter identification laws affecting turnout are much ado about nothing.”

“Selective reduction in voter turnout” – Response: Voter ID would have little or no impact on who actually votes and in extreme cases, Section 2 [of the Voting Rights Act] can deal with it

E. Mark Braden 2013. (attorney with Baker & Hostetler LLP) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

And I would also suggest to you that the little piece that you might say, oh, voter ID -- well, of course, "voter ID" has a lot of different meanings, some of which I think are indisputably, nobody has a problem with, some of which people do have problems with. My view -- which, of course, makes it very unhappy on both sides of the aisle on this, is that no matter how you look at voter ID's, except in some extreme cases, has little or no impact actually on who votes. You might come up with a statistical analysis where you can figure out some way where it might vote, and cloistered nuns might have a problem voting on occasion, but an actual effect on the election process, except in some extreme cases, the answer to that is no. And, in extreme cases, we have Section 2 that would deal with those.

“ID rule disenfranchises minorities” – Response: Black voting went up in Georgia after ID law enacted

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

There was record turnout in Georgia in the 2008 presidential primary election: over 2 million voters, more than twice as many as in 2004 when the voter photo ID law was not in effect. The number of African Americans voting in the 2008 primary also doubled from 2004. In fact, there were 100,000 more votes in the Democratic primary than in the Republican primary, and the number of individuals who had to vote with a provisional ballot because they had not obtained the free photo ID available from the state was less that 0.01 percent.

“Burdensome ID requirement disenfranchises voters” – Response: ID requirement in Indiana was challenged for this reason, but they couldn’t name even 1 voter who was unable to vote

Supreme Court Justice John Paul Stevens 2008. Opinion of the Court in the consolidated cases of: WILLIAM CRAWFORD, *et al.*, PETITIONERS *v.* MARION COUNTY ELECTION BOARD *et al. and* INDIANA DEMOCRATIC PARTY, *et al.*, PETITIONERS *v.* TODD ROKITA, INDIANA SECRETARY OF STATE, *et al. 28 Apr 2008* <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=07-21>

The complaints in the consolidated cases allege that the new law substantially burdens the right to vote in violation of the Fourteenth Amendment; that it is neither a necessary nor appropriate method of avoiding election fraud; and that it will arbitrarily disfranchise qualified voters who do not possess the required identification and will place an unjustified burden on those who cannot readily obtain such identification. Second Amended Complaint in No. 1: 05-CV-0634-SEB-VSS (SD Ind.), pp. 6-9 (hereinafter Second Amended Complaint). After discovery, District Judge Barker prepared a comprehensive 70-page opinion explaining her decision to grant defendants' motion for summary judgment. 458 F. Supp. 2d 775 (SD Ind. 2006). She found that petitioners had "not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of SEA 483 or who will have his or her right to vote unduly burdened by its requirements." Id., at 783.

“Voter ID is bad because it’s the same a poll tax” – Response: Courts have already analyzed it – it’s a dramatic overstatement

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 (brackets in original) <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

One final point on the claims that requiring an ID, even when it is free, is a “poll tax” because of the incidental costs like possible travel to a registrar’s office or obtaining a birth certificate that may be involved. That claim was also raised in Georgia. The federal court dismissed this claim, agreeing with the Indiana federal court that concluded that:  
[S]uch an argument represents a dramatic overstatement of what fairly constitutes a “poll tax”. Thus, the imposition of tangential burdens does not transform a regulation into a poll tax. Moreover, the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because those same “costs” also result from voter registration and in-person voting requirements, which one would not reasonably construe as a poll tax.

“Poll tax” – Kritik: Calling ID a “poll tax” trivializes the suffering of those who had to struggle for voting rights

Sen. Chuck Grassley 2012. (R-Iowa) Voter ID in 2012, Statement before the Senate Judiciary Committee, 19 Dec 2012 <http://www.grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=43669>

The history of voting in this country was expanded with great effort and sometimes with bloodshed. Those who opposed expanding the franchise to our fellow citizens sometimes used force and trickery. Comparing common-sense voter ID requirements, which enjoy the support of ¾ of the electorate and a majority of Democrats, to poll taxes or worse, trivializes the sufferings of millions of Americans who were denied the right to vote.

“Will help/hurt one party or another” – Response: Doesn’t matter. Partisan impact should not be a consideration in electoral reform

Commission on Federal Election Reform 2005. (co-chaired by former President Jimmy Carter and James A. Baker III, former Secretary of the Treasury and former Secretary of State) Building Confidence in U.S. Elections - Report of the Commission on Federal Election Reform, September 2005 <http://www1.american.edu/ia/cfer/report/report.html>

Congress has been reluctant to undertake reform, in part because members fear it could affect their chances of re-election and, when finally pressed by the public, Democrats and Republicans have addressed each reform by first asking whether it would help or harm each party’s political prospects. This has proven to be not only a shortsighted but also a mistaken approach. Despite widespread belief that two recent reforms — the National Voter Registration Act of 1993 and the Bipartisan Campaign Finance Reform of 2002 — would advantage Democrats at the expense of Republicans, evidence suggests such beliefs were wrong. Having a fair electoral process in which all eligible citizens have an opportunity to participate freely is a goal that transcends any individual partisan interest. This assures the winning candidates the authority to legitimately assume office. For the losing candidate it assures that the decision can be accepted as the will of the voters.

SOURCE INDICTMENTS

Brennan Center

Horace Cooper 2012. (adjunct fellow with the National Center for Public Policy Research, Co-Chairman of the Project 21 National Advisory Board; taught constitutional law at George Mason University and was general counsel to U.S. House Majority Leader Dick Armey) Nov 2012 “The Brennan Center is Wrong: Voter Fraud is a Real Threat to Every Citizen's Constitutional Rights” <http://www.nationalcenter.org/NPA642.html>

The essence of the Brennan Center's argument against voter ID is that that voter fraud isn't a real problem, as it happens so infrequently that it isn't a serious matter. In its report, The Truth About Voter Fraud, the Brannan Center explains, "Allegations of widespread voter fraud… often prove greatly exaggerated. It is easy to grab headlines with a lurid claim (‘Tens of thousands may be voting illegally!'); the follow-up — when any exists — is not usually deemed newsworthy. Yet on closer examination, many of the claims of voter fraud amount to a great deal of smoke without much fire. The allegations simply do not pan out." The Brennan Center's claim is flatly untrue. In contrast to the repeated claims of the Brennan Center, the Pew Center on the States released a study this year on voter registration and found across the nation that 1.8 million dead people are still on the voter rolls, 2.75 million people are registered in more than one state, and 24 million registrations are inaccurate or invalid. There is a voter fraud problem in the U.S., and it undermines voter confidence in election outcomes and threatens the fundamental notion of self-government – the hallmark of American democracy. The Brennan Center pretends to be an objective and neutral source about voter fraud. However, its consistent failure to present all the facts to the American people belies this claim.

The North Carolina State Board of Elections Study

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina>

Similar claims have been made in North Carolina based on a flawed and incomplete January 7, 2013, “study” done by the North Carolina State Board of Elections, the “2013 SBOE-DMV ID Analysis.” In this analysis, the board compared its list of 6.6 million registered voters to the Department of Motor Vehicles’ list of 12.2 million North Carolinians with driver’s licenses. The board reported that there are 612,955 voters without a DMV ID match, and that figure has been widely (and erroneously) reported as the number of voters who have no ID who would supposedly be unable to vote.[26] There are numerous problems with this analysis. To begin with, the comparison included 106,192 inactive voters. The board says that “inactive voters” are those voters “for whom a county board of elections has been unable to subsequently verify their mailing address after their address was initially verified.” That means that the county board sent the registered voter notice by nonforwardable, first class mail and the notice was returned because the U.S. Postal Service records show that individual no longer lives there. Such mail is returned when an individual has moved or died. In fact, following guidelines under the National Voter Registration Act of 1993, such notices are often sent out after an individual has not voted in two federal elections, which is another sign that they may have become ineligible because they have moved out of state, died, or been convicted of a felony and are serving time in prison.

Indiana DMV analysis

Hans von Spakovsky 2013. (law degree from Vanderbilt Univ.; formerly served on the Board of Advisors of the U.S. Election Assistance Commission and on the Fulton County (Ga.) Board of Registrations and Elections; Senior Legal Fellow / Manager, Civil Justice Reform Initiative Edwin Meese III Center for Legal and Judicial Studies, Heritage Foundation) “Requiring Photographic Identification by Voters in North Carolina” 18 July 2013 <http://www.heritage.org/research/lecture/2013/07/requiring-photographic-identification-by-voters-in-north-carolina> [brackets added]

The fact that dead voters were listed as inactive and thus included in the [North Carolina] board’s comparison with the DMV list is indefensible from a data analysis standpoint. Including such inactive voters in a DMV comparison was one of the reasons that a federal district court determined that a similar analysis in Indiana was “utterly incredible and unreliable” and refused to allow it to be admitted as evidence in the case. Including “inactive voters” as well as refusing to account for voter roll inflation by removing duplicate records “revealed a conscious effort” to “report the largest possible number of individuals impacted by” the voter ID law “regardless of the reliability of that number.

TEXT OF THE PROPOSED FEDERAL ELECTION INTEGRITY ACT OF 2012

H.R. 6408 (112th): Federal Election Integrity Act of 2012. 112th Congress, 2011–2013. Text as of Sep 13, 2012 (Introduced). <http://www.gpo.gov/fdsys/pkg/BILLS-112hr6408ih/pdf/BILLS-112hr6408ih.pdf>

**H. R. 6408**

To amend the Help America Vote Act of 2002 to require each individual who desires to vote in an election for Federal office to provide the appropriate election official with a government-issued photo identification, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 13, 2012

Mr. WALSH of Illinois introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Help America Vote Act of 2002 to require each individual who desires to vote in an election for Federal office to provide the appropriate election official with a government-issued photo identification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Federal Election Integrity Act of 2012'.

**SEC. 2. REQUIRING VOTERS TO PROVIDE PHOTO IDENTIFICATION.**

(a) Requirement To Provide Photo Identification as Condition of Receiving Ballot- Section 303(b) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)) is amended--

(1) in the heading, by striking `for Voters Who Register by Mail' and inserting `for Providing Photo Identification'; and

(2) by striking paragraphs (1) through (3) and inserting the following:

`(1) INDIVIDUALS VOTING IN PERSON-

`(A) REQUIREMENT TO PROVIDE IDENTIFICATION- Notwithstanding any other provision of law and except as provided in subparagraph (B), the appropriate State or local election official shall not provide a ballot for an election for Federal office to an individual who desires to vote in person unless--

`(i) the individual presents to the official a government-issued, current, and valid photo identification of the individual; and

`(ii) the election official verifies that the photo identification presented is of the individual who requests the ballot.

`(B) AVAILABILITY OF PROVISIONAL BALLOT- If an individual does not present the identification required under subparagraph (A), the individual shall be permitted to cast a provisional ballot with respect to the election under section 302(a), except that the appropriate State or local election official shall not make a determination under section 302(a)(4) that the individual is eligible under State law to vote in the election unless, not later than 48 hours after casting the provisional ballot--

`(i) the individual presents the identification required under subparagraph (A) to the official; and

`(ii) the election official verifies that the photo identification presented is of the individual who cast the provisional ballot.

`(2) INDIVIDUALS VOTING OTHER THAN IN PERSON-

`(A) IN GENERAL- Notwithstanding any other provision of law and except as provided in subparagraph (B), the appropriate State or local election official shall not accept any ballot for an election for Federal office provided by an individual who votes other than in person unless--

`(i) the individual submits with the ballot a copy of a government-issued, current, and valid photo identification of the individual; and

`(ii) the election official verifies that the photo identification presented is of the individual who provides the ballot.

`(B) IN PERSON REQUESTS FOR BALLOTS TO VOTE OTHER THAN IN PERSON- Notwithstanding any other provision of law and except as provided in subparagraph (B), the appropriate State or local election official shall not provide a ballot for voting other than in person to an individual who makes a request for such a ballot in person unless--

`(i) the individual presents to the official a government-issued, current, and valid photo identification of the individual; and

`(ii) the election official verifies that the photo identification presented is of the individual who requests the ballot.

`(C) EXCEPTION FOR OVERSEAS MILITARY VOTERS- Subparagraphs (A) and (B) do not apply with respect to an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved. In this subparagraph, the term `absent uniformed services voter' has the meaning given such term in section 107(1) of the Uniformed and Overseas Citizens Absentee VotingAct (42 U.S.C. 1973ff-6(1)), other than an individual described in section 107(1)(C) of such Act .

`(3) SPECIFIC REQUIREMENTS FOR IDENTIFICATIONS- For purposes of paragraphs (1) and (2), an identification is `government-issued' with respect to an individual if it is issued by the Federal Government or by the government of the State in which the individual seeks to cast a ballot. Nothing in this subsection shall be construed to prohibit the Federal Government or a State from requiring an individual who requests a photo identification to present such information as may be necessary to ensure that the individual is the individual for whom the identification is sought, or from imposing any other requirements deemed necessary to ensure the integrity or accuracy of any such photo identifications.'.

(b) Conforming Amendments- Section 303 of such Act (42 U.S.C. 15483) is amended--

(1) in the heading, by striking `for voters who register by mail' and inserting `for providing photo identification'; and

(2) in subsection (c), by striking `subsections (a)(5)(A)(I)(II) and (b)(3)(B)(I)(II)' and inserting `subsection (a)(5)(A)(I)(II)'.

(c) Clerical Amendment- The table of contents of such Act is amended by amending the item relating to section 303 to read as follows:

`Sec. 303. Computerized statewide voter registration list requirements and requirements for providing photo identification.'.

(d) Effective Date-

(1) IN GENERAL- This section and the amendments made by this section shall apply with respect to elections for Federal office held on or after January 1, 2014.

(2) CONFORMING AMENDMENT- Section 303(d)(2) of such Act (42 U.S.C. 15483(d)(2)) is amended to read as follows:

`(2) REQUIREMENT TO PROVIDE PHOTO IDENTIFICATION- Paragraphs (1) and (2) of subsection (b) shall apply with respect to elections for Federal office held on or after January 1, 2014.'.

**SEC. 3. MAKING PHOTO IDENTIFICATIONS AVAILABLE.**

(a) Requiring States To Make Identification Available- Section 303(b) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)), as amended by section 2(a)(2), is amended--

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6); and

(2) by inserting after paragraph (3) the following new paragraph:

`(4) MAKING PHOTO IDENTIFICATIONS AVAILABLE-

`(A) IN GENERAL- During fiscal year 2014 and each succeeding fiscal year, each State shall establish a program to provide photo identifications which may be used to meet the requirements of paragraphs (1) and (2) by individuals who desire to vote in elections held in the State but who do not otherwise possess a government-issued photo identification.

`(B) IDENTIFICATIONS PROVIDED AT NO COST TO INDIGENT INDIVIDUALS- If a State charges an individual a fee for providing a photo identification under the program established under subparagraph (A)--

`(i) the fee charged may not exceed the reasonable cost to the State of providing the identification to the individual; and

`(ii) the State may not charge a fee to any individual who provides an attestation that the individual is unable to afford the fee.

`(C) IDENTIFICATIONS NOT TO BE USED AS MOTOR VEHICLE LICENSES- Any photo identification provided under the program established under subparagraph (A) may not serve as a government-issued photo identification for purposes of operating a motor vehicle or any related purpose.'.

(b) Payments to States To Cover Costs- Subtitle D of title II of such Act (42 U.S.C. 15321 et seq.) is amended by adding at the end the following new part:

**`PART 7--PAYMENTS TO COVER COSTS OF PROVIDING PHOTO IDENTIFICATIONS TO INDIGENT INDIVIDUALS**

**`SEC. 297. PAYMENTS TO COVER COSTS TO STATES OF PROVIDING PHOTO IDENTIFICATIONS FOR VOTING TO INDIGENT INDIVIDUALS.**

`(a) Payments to States- The Commission shall make payments to States to cover the costs incurred in providing photo identifications under the program established under section 303(b)(4) to individuals who are unable to afford the fee that would otherwise be charged under the program.

`(b) Amount of Payment- The amount of the payment made to a State under this part for any year shall be equal to the amount of fees which would have been collected by the State during the year under the program established under section 303(b)(4) but for the application of section 303(b)(4)(B)(ii), as determined on the basis of information furnished to the Commission by the State at such time and in such form as the Commission may require.

`(c) Ensuring Budget Neutrality by Corresponding Reduction in Requirements Payment- The amount of any requirements payment made to a State under part 1 of subtitle D for a fiscal year shall be reduced by the amount of any payment made to a State under this part for the fiscal year.

**`SEC. 297A. AUTHORIZATION OF APPROPRIATIONS.**

`There are authorized to be appropriated for payments under this part an aggregate amount of $5,000,000 for fiscal year 2014 and each of the 4 succeeding fiscal years.'.

(c) Clerical Amendment- The table of contents of such Act is amended by adding at the end of the item relating to subtitle D of title II the following:

**`Part 7--Payments To Cover Costs of Providing Photo Identifications to Indigent Individuals**

`Sec. 297. Payments to cover costs to States of providing photo identifications for voting to indigent individuals.

`Sec. 297A. Authorization of appropriations.'.

2A EVIDENCE: LOWERING THE VOTER AGE

BURDEN OF PROOF / CRITERION

Those who want to exclude people from voting have the burden of proof

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Presumptive inclusion is a broadly accepted normative commitment flowing from basic principles of democratic theory. While the presumption does not foreclose the possibility of legitimate exclusions, it does shift to the state the burden of justifying electoral exclusion.

Because it excludes people from voting, those who think 18 is the right age have the burden to justify it

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” (brackets and ellipses in original) <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Presumably, eighteen is a proxy for voters’ attainment of desirable characteristics—e.g., maturity of judgment, knowledge of civics, and understanding of political processes. Yet there has been no sustained scholarly effort to examine whether age eighteen is a good, or even good-enough, indicator of the attainment of those or other relevant characteristics. Academic inattention persists despite widespread acceptance that the franchise is the core of modern representative democracy; its “free and unimpaired [exercise] preserv[es] . . . other basic civil and political rights.” I argue that presumptive electoral inclusion places on the state the burden of justifying the exclusion of a category of persons.

Criteria for exclusion from voting should be: 1) no community connection; or 2) lacking competence for decision-making

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” (“the demos” is “the people”, or the body of people rightly included in the political process) <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Those theorists and activists who have sought to identify basic voting criteria have reached near consensus, even across the centuries. Most have designated criteria that exclude from the demos individuals who lack (1) a significant and ongoing connection to the community and (2) vote decision making competence.

States have failed to meet the burden of proof to keep mid-adolescents from voting

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

While scientific research cannot dictate policy, it can inform policy. Armed with more nuanced understandings of both voter decision making and the development of adolescent cognitive processing and decision making, I conclude that voting is the sort of decision-making context in which midadolescents will reliably demonstrate competence. In light of midadolescent electoral competence, states fail to meet their justificatory burden in the absence of other reasons for continued midadolescent electoral exclusion.

It doesn’t matter if “some” 16 year olds lack the capability (so do some 18 year olds) – the question is: how many is sufficient?

Christopher Gribbin 2004. (Policy Officer with Victorian Electoral Commission, a state government agency in the state of Victoria, Australia) 20 August 2004 “Lowering the Voting Age “ <https://www.vec.vic.gov.au/files/RP-LoweringtheVotingAge.pdf>

Of course, there will be some 16/17 year olds lacking the ability to make appropriate decisions and some with that ability. Similarly, however, there are some 18 year olds (and even older people) with the ability and some lacking it. With each of these four criteria, what is important is whether a sufficient proportion has the ability, not whether all have it. It becomes a question for society to answer what proportion is sufficient.

INHERENCY

States could lower the voting age below 18, but they’re not doing it

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

In the United States, the individual states retain broad power to establish electoral qualifications, subject to certain constitutional and other federal law constraints. The Twenty-Sixth Amendment, for example, prohibits states from setting the age of electoral majority above eighteen. No constitutional or other federal law provision, however, prohibits states from lowering the age of electoral majority; each state retains that power. Yet other than a few states that allow seventeen-year-olds to vote in a primary election so long as they will turn eighteen in time for the general election, no state has exercised—nor seriously considered exercising—its power to lower the voting age.

Status Quo voting age 18 is unlikely to change

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

The voting age everywhere in the United States is eighteen, although nineteen states permit seventeen-year-olds to vote in primaries if they will turn eighteen in time for the general election. Nothing suggests imminent change. A number of state legislatures in recent years have considered— and rejected—occasional bills or proposed constitutional amendments that would lower state or local voting ages.

ADVOCACY

Voting age should be lowered to 16: they will be competent voters at that age

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Research demonstrates that young people reliably attain electoral competence by the age of fifteen or sixteen. Thus, labeling them incompetent is error and can no longer justify their continued exclusion. States should thus lower the age of electoral majority to sixteen, by which age it is safe to say that adolescent citizens will be competent voters.

16 is the right age: Research shows that cognitive processes and maturity exist at that age

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Part III argues for a conception of electoral competence informed by political- and behavioral-decision theorists’ understanding of voter decision making, and psychologists’ understanding of the cognitive processes required to competently make decisions in the electoral context. It then demonstrates that the converging research of developmental scientists in several disciplines provides new evidence of the age-related attainment of relevant cognitive processes. This article concludes that there is strong empirical evidence that the cognitive processes required for competent voting reliably mature by age sixteen. A reexamination of the voting age is necessary to account for the evolution of our understanding of electoral competence and its achievement.

16 is exactly the right age: Same level of political knowledge as 18-year olds, but much more knowledge than 15-year olds

Dr. Daniel Hart 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ) 24 Feb 2011 Daniel Hart: Time for American Teens Under 18 to Hit the Polls <http://www.aapss.org/news/2011/02/24/interview-with-daniel-hart-time-for-american-teens-under-18-to-hit-the-polls>

So if you look, for example, at how much the average sixteen-year-old knows or the average seventeen-year-old knows about the political system, it is about the same level as the average eighteen- or nineteen-year-old. So if our justification for excluding someone from voting is that they lack the knowledge necessary to make an informed decision, then setting the barrier at age eighteen is not particularly legitimate. Now, our analyses seem to suggest that once you get below age sixteen, adolescents in fact do know less. So we are advocating the extension of the vote to sixteen- and seventeen-year-olds but not to fourteen- and fifteen-year-olds. On average we see fifteen-year-olds knowing much less about the political system than older adolescents. And so we think there is a justification for lowering the voting age by two years but not going below that.

16 is exactly the right age – because little additional development of citizenship skills occurs after 16, but a lot occurs before

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

Finally, Figure 7 depicts the ratio of an age group’s mean score in adolescence to the mean for adults between the ages of 19 and 30. For example, the average score for 16-year-olds for political efficacy is .99 of the average political efficacy score of adults between the ages of 19 and 30. In contrast, the average for tolerance for 14-year-olds is only .44 of the mean for adults ages 19 to 30. The benefit of Figure 7 is that it indicates that for most of the indices of citizenship discussed in the preceding pages, 16-year-olds are at or near adult levels. There is little development after age 16 on these variables and considerable development before that age.

16-year olds can vote responsibly: They have similar political abilities as adults, and little additional development occurs after age 16

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf> (brackets added)

The evidence from the NHES:96 [National Household Educational Survey of 1996] suggests that 16-year-olds are prepared to vote responsibly. On measures of civic knowledge, political skills, political efficacy, and tolerance, the 16-year-olds, on average, are obtaining scores similar to those of adults. Moreover, while there appears to be substantial evidence for rapid development in some of these constructs through age 16, development after it seems relatively slow. Based on the developmental trajectories traced in Figures 1 through 7, there is little empirical reason to award the vote to 18-year-olds but to deny it to 16-year-olds.

SOLVENCY

“Young people won’t vote” – Response: When Austria lowered the age to 16, they voted in the same percentage as the rest of the population

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Austria lowered its national voting age to sixteen by constitutional amendment in 2007, becoming the first European Union nation to do so. In large part, the change sought to counterbalance the increasing percentage of voters aged sixty-five and older, whose numbers have been growing due to declining birth rates. Because individuals under eighteen could not vote at all, and because older citizens vote at rates higher than do younger citizens, the growing demographic imbalance prompted concerns that government would become less responsive to the interests of the nation’s young people. Sixteen- and seventeen-year-olds voted for the first time in the 2008 national elections.115 Although the Austrian government does not track voter participation by age, one government-funded study found that sixteen- to eighteenyear-olds voted in the 2008 national elections at the same rate as the rest of electorate—approximately 73 percent.

Voting age 16 works well in countries that have tried it (Example: Austria)

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In recent years, other countries have enfranchised 16- and 17-year-olds, and many others are considering doing so. Austria permitted 16- and 17-year-olds to vote (Associated Press 2008), and preliminary analyses of the consequences of this decision are positive. Austrian researchers polled a representative sample of Austrian teenagers between the ages of 16 and 18, following the first national election for which 16- and 17-year-olds were eligible to vote, and found that the newly enfranchised voters reported voting at approximately the rate of the general population (Institute for Social Research and Analysis 2008). Moreover, the researchers found little evidence to indicate that 16- and 17-year-olds made voting decisions that reflected immaturity.

CIVIC KNOWLEDGE RESPONSES

Civic knowledge & political skills: Not enough distinction between 16-year olds and adults to justify excluding them from voting.

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

In the analyses that follow, we examine the developmental trajectories for tolerance, civic knowledge, political skills, political efficacy, political interest, and volunteering. Each of these qualities, except for volunteering, are, as discussed above, reflections or facets of citizenship. Volunteering is considered here as one form of civic participation. For each of these qualities, we use data from a national survey to trace the developmental course from early adolescence into adulthood. This analysis suggests that there are few indications that 16-year-olds are sufficiently distinct from adults to warrant exclusion from voting.

16-year olds score higher in civic knowledge than 19, 21 and 23-year olds

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

Despite the error in the estimates, several trends are evident. The first of these is that civic knowledge increases between ages 14 and 16 and then changes relatively little thereafter, although, 18-year-olds might be slightly higher in civic knowledge than are 16-year-olds. Most important for the argument in this article, 16-year-olds apparently know as much about the American political system as do many young adults; indeed, the average score for 16-year-olds is higher than the averages for civic knowledge for 19-, 21-, and 23-year-olds, all of whom are entitled to vote.

“Inadequate civic knowledge” – Response: Applying a civics test would disqualify many voters over 18

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

Studies find that public ignorance extends to knowledge of basic civics and government. Widespread voter ignorance alone arguably renders infeasible the adoption of specific factual knowledge as a component of voting competence. Incorporating even basic levels of civics or political knowledge into a conception of electoral competence theoretically justifies voter qualification rules that would operate to disfranchise a significant proportion of the current (aged eighteen and over) electorate.

MATURITY / REASONING SKILLS RESPONSES

Studies find 16-year-olds have the same thinking processes as adults

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs> (brackets in original)

Cognitive capacity, including learning and reasoning from facts and information processing, improves more or less linearly throughout childhood, reaching adultlike levels by midadolescence.260 Researchers have consistently found “[t]he logical reasoning and basic information-processing abilities of 16-year-olds” to be “comparable to [or essentially indistinguishable from] those of adults.” By midadolescence, thinking processes are adultlike. According to developmental psychologist David Moshman, “[n]o theorist or researcher has ever identified a form or level of thinking routine among adults that is rarely seen in adolescents.”

Teens have advanced reasoning skills

Erin Morgan and Angela Huebner 2009. (Morgan - Research Associate, Human Development, Virginia Tech. Huebner - Assistant Professor and Extension Specialist, Human Development, Virginia Tech Univ.) 1 May 2009 “Adolescent Growth and Development” <http://pubs.ext.vt.edu/350/350-850/350-850.html>

Most adults recognize that teens have better thinking skills than younger youth. These advances in thinking can be divided into several areas: *Developing advanced reasoning skills.* Advanced reasoning skills include the ability to think about multiple options and possibilities. It includes a more logical thought process and the ability to think about things hypothetically. It involves asking and answering the question, "what if...?".

“Not enough life experience” – Responses: 1) how much is enough? 2) not much different from 18 year olds; 3) substantial experience isn’t necessary to understand voting

Christopher Gribbin 2004. (Policy Officer with Victorian Electoral Commission, a state government agency in the state of Victoria, Australia) 20 August 2004 “Lowering the Voting Age “ <https://www.vec.vic.gov.au/files/RP-LoweringtheVotingAge.pdf>

Not enough life experience   
Certainly, 16/17 year olds have less life experience than older people. But this is also true of 18 year olds, 25 year olds, 30 year olds etc. The question then becomes – what is a sufficient level of life experience to vote? Whatever life experience people have at 16 or 17, they are unlikely to undergo substantial additional life-experience between 16/17 and 18, suggesting that this is not a major factor on which we exclude people 16/17 year olds anyway. At any rate, substantial life experience does not seem necessary in order to “understand the nature and significance of enrolment and voting”. Moreover, 16/17 year olds do have experience of aspects of life related to politics (see above) – which may be judged a sufficient level – and, moreover, the experience they have had will be different to that of older people, giving them a valuable insight, the inclusion of which should enhance the level of democracy.

“Teens make impulsive decisions” – Response: In some contexts in life, but not where it would matter for voting

Dr. Daniel Hart 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ) 24 Feb 2011 Daniel Hart: Time for American Teens Under 18 to Hit the Polls <http://www.aapss.org/news/2011/02/24/interview-with-daniel-hart-time-for-american-teens-under-18-to-hit-the-polls>

Second, people argue that adolescents are impulsive, too susceptible to peer influences, and for these reasons are not, say, fully adult, at least when it comes to issues, say, of criminal responsibility. And we tend to agree with those findings, but we do not think that they are particularly germane to the issue of who votes and who does not. That is, that you can be impulsive and prone to making bad decisions in situations that are high in stress, that are high in emotionality and, consequently, may have diminished criminal responsibility in situations that lead to criminal acts, but that is not the context in which adolescents would be voting. Okay, there is some emotion involved with that, but you have plenty of time to reflect about who you would want to vote for as a candidate and to deliberate on that.

“Impulsive behavior” – Response: No neurological evidence that 16-17 year olds lack the capability for responsible voting. Impulsive decisions are not happening

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

While it is likely true that adolescents’ capacities to restrain impulsive, emotional behavior may be reduced relative to that of adults, and their life experiences are relatively circumscribed, these capacities do not figure prominently in citizenship and particularly in voting. Neither the sense of membership, the concern with rights, nor the ability to participate in the community rests heavily upon the ability to resist emotional, impulsive actions. Citizenship and voting in the electoral process require, for the most part, decisions made over long periods of time, which allows for deliberation and discussion with others. To date, there is no neurological evidence that indicates that 16- and 17-year-olds lack the requisite neurological maturation necessary for citizenship or for responsible voting; nor is there evidence to indicate that a breadth of life experience is necessary for effective citizenship

“Teens make impulsive decisions” – Response: Yes, but in the context of certain situations in life that involve heat of passion or are emotionally charged

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs> (brackets and ellipses in original)

Behavioral scientists examined more closely the real world contexts in which adolescents make decisions, and have gained valuable insights into adolescent decision-making processes. Their findings confirmed adolescents’ competence to make rational decisions—at least when making decisions in the artificially ideal conditions of the research laboratories in which they complete tasks involving minor, symbolic risks. The real-world contexts in which adolescents usually make decisions, however, can drastically affect the quality of their decision making. Studies found that contexts that predictably compromise adolescent decision making include those requiring them to make decisions “[i]n the heat of passion, on the spur of the moment, in unfamiliar situations, . . . and when behavioral inhibition is required for good outcomes . . . .” In other words, adolescents tend to make bad decisions in emotionally charged or pressured situations, and they struggle to control impulses that lead to undesirable behavior.

Elections are not a high pressure/emotionally charged situation – teens can handle it

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Elections, on the other hand, are a decision-making domain in which midadolescents’ adultlike cognitive-processing abilities should remain uncompromised. Elections unfold over a period of time, giving voters the opportunity to deliberate and evaluate options without undue pressure.

OTHER RESPONSES

“The young aren’t really members of the political community” – Response: The young have the same, or even greater, interest in public policy because they are greatly affected by it

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

One might alternatively argue that the young lack the requisite interest in, and connection to, the governance of the political community and are thus legitimately excluded. That argument, too, fails. As community residents (and the generally more vulnerable among them), the young have the same, if not greater, interests as their elders in issues of public concern—including public health, safety, and education. And as young people, they are more likely to bear the long-term consequences of public policy. The young are, therefore, members of the political community, with significant interest in that community and ongoing connections to it.

JUSTIFICATIONS

Lowering voting age to 16 would add to the moral legitimacy of our democracy

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

Adolescents in this age range are developmentally ready to vote. This pattern is in accord with research on adolescents’ reasoning and cognitive abilities, which suggests that development in these areas plateaus at age 16. Finally, providing 16- and 17-year-olds with the right to vote will likely deepen their civic knowledge and strengthen their civic habits. By removing an arbitrary barrier to their full participation in society, enfranchising 16- and 17-year-olds adds to the moral legitimacy of our democracy

16 and 17-year olds have the same capacity for citizenship as 18-year olds, and should therefore have the same voting rights.

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

American 16- and 17-year-olds ought to be allowed to vote in state and national elections. This claim rests upon a line of argument that begins with an exegesis of legal and philosophical notions of citizenship that identify core qualities of citizenship: membership, concern for rights, and participation in society. Each of these qualities is present in rudimentary form in childhood and adolescence. Analyses of national survey data demonstrate that by 16 years of age—but not before—American adolescents manifest levels of development in each quality of citizenship that are approximately the same as those apparent in young American adults who are allowed to vote. The lack of relevant differences in capacities for citizenship between 16- and 17-year-olds and those legally enfranchised makes current laws arbitrary, denying those younger than age 18 the right to vote.

Voting at 16: Increased voter turnout, reduced apathy, and less incentive for government to ignore important issues

Keith Mandell 1999. (attorney, member of the Board of Directors of the National Youth Rights Association) “Proposal to Lower the Voting Age” (ethical disclosure about the date: the article is undated, but contains internal references to an event that occurred in 1999 and future events that would occur in 2000 and 2002; thus, we concluded it was written in ’99) <http://www.youthrights.org/issues/voting-age/proposal-to-lower-the-voting-age/>

A Voting age of sixteen would increase voter turnout and interest in politics. A. Teenage voters will discuss politics with their parents and encourage them to turn out and vote. Apathy among voters today is a major problem in American democracy. In the 1998 elections, only 36.1% of the voting age population turned out to vote, the lowest percentage since 1942, when America was at war. Even in a presidential election year, 1996, turnout was only 49%.2 This level of turnout makes building a thriving democracy difficult. Many nonvoters express a lack of confidence in our democratic system. They hold strong positions on issues, but do not believe government cares about them or their problems. Ironically, low voter turnout sends government a message that nonvoters do not care about politics, leading to important issues being ignored.

Youth voting would encourage lifelong electoral participation and increase knowledge of the world around them. Keith Mandell in 1999 discusses this advantage in the context of a program called “Kids Voting,” where kids went with parents on election day and participated in their own imitation or “mock” election:

Keith Mandell 1999. (attorney, member of the Board of Directors of the National Youth Rights Association) “Proposal to Lower the Voting Age” (ethical disclosure about the date: the article is undated, but contains internal references to an event that occurred in 1999 and future events that would occur in 2000 and 2002; thus, we concluded it was written in ’99) <http://www.youthrights.org/issues/voting-age/proposal-to-lower-the-voting-age/>

Young people would greatly benefit from a lower voting age by becoming more politically active and knowledgeable. In the United States, the Kids Voting program has brought millions of young people to the polls, increased their enthusiasm for voting, and knowledge of the world around them. This impact was most strongly felt among young people from lower socio-economic backgrounds. Young people would become even more active if they are able to cast real, binding votes for candidates. Teen voting would lead to lifelong electoral participation.

Considerable benefit to youth voting: Deeper commitment to civic life and community participation

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

Because 16- and 17-year-olds have not been allowed to vote in the United States, we know little about the long-term consequences for their own political development if they were permitted to do so. However, there is converging evidence of a variety of sorts to indicate that there likely would be considerable benefits to allowing 16- and 17-year-olds to vote. Most of this evidence points to the importance of participation in deepening commitment to civic life. For example, Hart et al. (2007) used longitudinal data gathered from adolescents who were followed from high school into early adulthood. They found that those who were involved in community service in high school—even those who participated as a result of a school requirement—were more likely than those with no volunteer experience to vote and to volunteer in early adulthood.

Demographic imbalance: Youth need to vote now more than in the past because there are relatively fewer of them, compared to the growth of the elderly population, and the youth are not doing well economically.

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf> (brackets in original)

Given that the relative size of the young age group has declined sharply over the past 40 years, and the relative size of the older age groups is increasing substantially, it may be more important now than ever before to extend the vote to 16- and 17-year-olds in the United States. As Johnson and Lichter (2010, 169) note, over the past 40 years “the social and economic realities of children [have] deteriorated while the circumstances of the elderly [have] improved.” This has happened, we suggest, because the fraction of voters who are elderly has increased, and this group has used its right to vote to advance its interests. One way to improve the circumstances of children and adolescents is to allow their members who are capable of voting responsibly—16- and 17-year olds—the opportunity to use the electoral process to improve the lots of youths.

Denial of the vote is denial of basic human rights

Dr. Sonja C. Grover 2011. (PhD, professor at Lakehead University, Ontario Canada) Young People’s Human Rights and the Politics of Voting Age <http://books.google.fr/books?id=QIMjF8oGaW4C&pg=PA114&lpg=PA114&dq=voting+age+federal+elections+%22united+states%22&source=bl&ots=Ql5UR0xDwq&sig=Dj6B2NXhJsvVZS0iukgDoVIThcA&hl=en&sa=X&ei=fnQPUr-7PMWM7QaZ-IBA&redir_esc=y#v=onepage&q=voting%20age%20federal%20elections%20%22united%20states%22&f=false>

Voting then is a prime manifestation of the basic human rights of free association and free expression. The denial of the vote consequently is the denial of a basic human right. That denial is, furthermore, a vehicle for marginalizing and identifiable group and potentially rendering it relatively powerless. Such marginalization, in turn, is likely to contribute to the group’s psychological disengagement from the society.

DISADVANTAGE RESPONSES

More than a dozen countries have lowered the voting age to 16  
Analysis: Whatever the DA is, can Neg prove it has happened in any of these countries?

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

More than a dozen countries have lowered local, state, or national voting ages to sixteen, driven primarily by efforts to increase youths’ political engagement and counter the disproportionate political influence of older citizens (who vote at higher rates than the young, and whose numbers have grown as a result of demographic factors). Other nations have begun to consider doing the same. In the United States, a handful of state legislatures have considered proposals to lower statewide voting ages, but the issue has not generated widespread attention.

SOURCE INDICTMENTS

Chan & Clayton Study in Britain: inconsistent survey questions, and results still showed 15-16 year olds had more civic knowledge than 19-20 year olds

Dr. Daniel Hart and Dr. Robert Atkins 2011. (EdD. from Harvard; Professor of Childhood Studies and Psychology, and Director of the Institute for Effective Education, at Rutgers Univ. Atkins - PhD, RN Associate Professor of Childhood Studies and Nursing ) American Sixteen- and Seventeen-Year-Olds Are Ready to Vote, The ANNALS of the American Academy of Political and Social Science 2011 633: 201, <http://www.youthrights.org/newnyrasite/wp-content/uploads/downloads/2011/04/16-and-Year-Olds-Are-Ready-to-Vote.pdf>

Dejaeghere and Hooghe (2009) have reported similar findings. These authors found that Belgian 16-year-olds had differentiated conceptions of citizenship that reflected, in many respects, the distinctions that adults made. However, Chan and Clayton (2006) reviewed survey findings concerning civic knowledge among youths and adults in the United Kingdom and found that adolescents knew less than did adults. They used this finding to argue against extending the vote to 16-year-olds. These findings and the conclusion are complicated by the measures and age trends. First, the questions tapping into civic knowledge were presented to adolescents in the context of a survey that was very different from the survey used to measure civic knowledge in adults. Second, the age trends within adolescence for correct responses for four questions assessing civic knowledge suggest that 15- and 16-year-olds knew more than did 19- and 20-year-olds for three of the questions. While 15- and 16-year-olds in the United Kingdom may have less civic knowledge than do adults in their thirties and forties (a conclusion complicated by the measurement of civic knowledge in two different surveys), they apparently have more civic knowledge than 19- and 20-year-olds who are allowed to vote.

UK Electoral Commission: failed to meet the burden of proof

Prof. Vivian Hamilton 2012. (Associate Professor of Law, William & Mary School of Law. J.D. Harvard Law School) “Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2505&context=facpubs>

The report of the U.K. Electoral Commission described above is a recent and explicit example of official failure to assimilate the principle of presumptive inclusion. The commission’s report almost certainly represents the most comprehensive and balanced examination of the voting age to be conducted by any public entity to date. Yet, the commission presumed the legitimacy of youth exclusion. Observing that most countries currently retain a voting age of eighteen, the report explicitly shifted the burden of persuasion to those seeking to change the status quo by lowering the voting age to sixteen. In other words, the commission has imposed on proponents of the enfranchisement of sixteen- and seventeen-year-olds the burden of demonstrating their entitlement to political inclusion. In so doing, it relieved the state of the obligation of justifying its exclusion. Presumptive inclusion requires the reverse: the burden rests firmly with the state to justify voter qualifications that operate to exclude any category of persons subject to its authority.

2A EVIDENCE: REINSTATING THE VOTING RIGHTS ACT

HARMS / SIGNIFICANCE

All voting discrimination has not been eliminated yet

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets in original)

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. City of Rome v. United States, 446 U. S. 156, 181 (1980). Congress also found that as “registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength.”

New threats emerging in Texas & Arizona: Latino populations are growing

THOMAS SAENZ 2013. ( President and General Counsel, Mexican American Legal Defense and Educational Fund) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

Texas is obviously the largest jurisdiction that was covered by Section 5 until this decision. It has a number of sub-jurisdictions. We are constantly, constantly trying to keep apprised of the changes that may be being put in place in those sub-jurisdictions, and that's certainly one of the significant concerns coming out of Shelby's aftermath. Arizona is another State of great concern to the Latino community. And I should say why I think, in this day and age, these are of particular concern. These are both States with significant and growing Latino populations, including significant growth in the voter-eligible population in both cases. In both cases, those numbers are growing to an extent that they begin to threaten very well entrenched political interests because, by and large, with the growth of the Latino vote, it has not been a vote in support of the continued policies that have prevailed in those two States. And this is the kind of situation where I think efforts to suppress the vote, efforts to deter participation, are particularly likely, and particularly dangerous -- where you have large jurisdictions with growing minority populations. And those growing minority populations and their participation present some threat to well, well established and entrenched political interests. That's where we ought to be particularly concerned about what might occur in the realm of deterring voter participation.

Vote dilution and other subtle tricks still exist that diminish minority voting

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets in original)

Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. Shaw, 509 U. S., at 640–641; Allen v. State Bd. of Elections, 393 U. S. 544, 569 (1969); Reynolds v. Sims, 377 U. S. 533, 555 (1964). See also H. R. Rep. No. 109–478, p. 6 (2006) (although “[d]iscrimination today is more subtle than the visible methods used in 1965,” “the effect and results are the same, namely a diminishing of the minority community’s ability to fully participate in the electoral process and to elect their preferred candidates”).

VRA decision is a blow to democracy: Minorities will have to file expensive lawsuits to get their voting rights

Jon Greenbaum quoted by The Lawyers' Committee for Civil Rights Under Law 2013. (Greenbaum – attorney, chief counsel for Lawyers’ Committee, a nonpartisan, nonprofit organization providing legal services to address racial discrimination)25 June 2013 Supreme Court Stops the Clock on Voting Rights Act – 50 Years of Progress Unraveled! <http://www.lawyerscommittee.org/newsroom/press_releases?id=0322>

"The Supreme Court has effectively gutted one of the nation's most important and effective civil rights laws," said Lawyers' Committee Chief Counsel Jon Greenbaum.  "Minority voters in places with a record of discrimination are now at greater risk of being disenfranchised than they have been in decades. Today's decision is a blow to democracy. Jurisdictions will be able to enact policies which prevent minorities from voting, and the only recourse these citizens will have will be expensive and time-consuming litigation."

Based on history, we know lifting VRA protections will open the door to voter discrimination

Prof. Gilda Daniels 2013. (Associate Professor , University of Baltimore School of Law) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

Since we're talking about Texas, we can look at Texas to see that it has not just historically had, you know, white primaries, but in the last year had two court decisions where courts said that they intentionally discriminated, not only in redistricting, but also in voter ID cases. And I think in this impact, when we have -- so, when we're looking at history, I think we also know that we've seen this before. We've seen, before, when the Court has removed protective measures from minority voters, and what the impact has certainly been. Certainly, we can go all the way to Reconstruction, and civil rights cases, and the Hayes Amendment, and see that once those protections are removed, what happens. And I think that we can see the potential for a drastic thrashing of the democratic process. And the fact that the Court admits that voting discrimination continues to exist, and admits that there certainly is a record of voter discrimination, not only in Shelby County but in these covered jurisdictions, it's very troubling that they are ignoring the impact of what Section 5 does and certainly can do.

Shelby County v. Holder decision about VRA: consequences have significant impact on 1) individuals not being able to bring litigation when they have a problem; 2) burdens on voter participation

Prof. Daniel Tokaji 2013. (Professor of Law, Moritz College of Law, The Ohio State University) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701\_voting\_rights\_transcript\_pt1.pdf

One might disagree, as I do, with the application of this standard, or these standards, to the facts of this case, but I think supporters of the Voting Rights Act should be grateful that the Court didn't go further, and at least purports to apply the McCulloch test here. In terms of the impact on the real world, this is, to my mind, at least, the far more important conversation for present purposes. And here, I think the impact is significant -- maybe not as earth-shattering as some of the immediate commentary might tend to indicate, but significant, in two respects. First, with respect to local jurisdictions -- as has already been mentioned -- where otherwise not many people are going to pay attention, and it's going to be awfully expensive, and it's probably not going to happen that litigation will be brought. The other is with respect to burdens on participation -- not just voter identification, but also things like early and absentee voting, and registration practices. And it's simply not the case that Section 2 will be an adequate substitute, in my view. This is largely because of the burden where, you know, with many of these practices, the empirics are going to be unclear. It's not going to be certain at the time that these practices are adopted what impact they will have. What was significant about Section 5 is that it placed the burden on the State or local jurisdiction to obtain pre-clearance.

“It’s only redistricting that’s the problem today” – Response: Multiple recent VRA cases that weren’t about redistricting

JON M. GREENBAUM 2013. (Chief Counsel and Senior Deputy Director, Lawyers’ Committee for Civil Rights Under Law) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

I disagree with Mark's view about Section 5, that not having Section 5 in place is going to have modest effects. Certainly, redistricting has been a place where Section 5 has been used a lot. But a majority of the objections are, in fact, not redistricting objections. We did see the examples, in fact, from last year, of the four major declaratory judgment actions, where the District Court -- not the Department of Justice, but the District Court -- found that voting changes were either enacted with a discriminatory purpose, or had a retrogressive effect. And three of those four cases did not involve redistricting.

Significant difference in election rules without VRA. Example: Mississippi tried to bring back an 1892 law designed to disenfranchise black voters, but was stopped by VRA preclearance in 1995

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets in original)

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which §5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:   
 In 1995, Mississippi sought to reenact a dual voter registration system, “which was initially enacted in 1892 to disenfranchise Black voters,” and for that reason, was struck down by a federal court in 1987. H. R. Rep. No. 109–478, at 39.   
 Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be “designed with the purpose to limit and retrogress the increased black voting strength . . . in the city as a whole.” Id., at 37 (internal quotation marks omitted).

Significant number of discrimination cases managed by VRA: Actually MORE preclearance cases between 1982 and 2006 than there were between ’65 and ’82. Dept of Justice blocked over 700 discriminatory voting changes between ’82 and ‘06

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf>

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See City of Rome, 446 U. S., at 181 (identifying “information on the number and types of submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General” as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were more DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need). All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory.

Since 1982, over 800 discriminatory voting proposals were withdrawn or modified after Dept of Justice investigated   
Analysis: This is in addition to the 700 that were blocked. It shows that just asking or investigating under VRA deters misbehavior hundreds of times before it gets to the point of reversing a change that’s been made

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets in original)

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H. R. Rep. No. 109–478, at 40–41.4 Congress also received empirical studies finding that DOJ’s requests for more information had a significant effect on the degree to which covered jurisdictions “compl[ied] with their obligatio[n]” to protect minority voting rights.

“Insignificant number of discrimination cases filed under VRA” – Response: Every case is important

Sherrilyn Ifill 2013. ( President and Director-Counsel of NAACP Legal Defense and Education Fund) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

So I just think we have to be really careful when we try and attach an empirical value to understanding, whether it's redistricting or other things, and we recognize that, particularly when we're talking about voting, that fundamental right -- and we're talking about the ability to participate in the political process, and to exercise what is your irreducible right as a citizen -- we don't get to aggregate numbers and say some are important, and some are not. They are all important. And, as it relates to the day-to-day lives of people living on the ground, my own view, and from my experience as a voting rights lawyer, is that those small jurisdictional levels actually have a powerful impact on the lives of people living in those communities. And therefore we can't discount those objections. In fact, I would weight them.

“Insignificant number of cases filed under VRA” – Response: 240 cases in Alabama alone between ’82 and ‘06

Sherrilyn Ifill 2013. ( President and Director-Counsel of NAACP Legal Defense and Education Fund) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

I mean, if we think about, you know, what Congress did in 2006, there were 240 changes in the State of Alabama between 1982 and 2006 that were struck down: 46 were by objection letter, 192 were by Section 2 litigation. And, of course, when we look at the .6 number, you know, we don't include those instances where jurisdictions had actually refused to submit a change for pre-clearance, as well.

“Insignificant number of cases filed under VRA” – Response: It’s because people’s behavior changes because they know VRA is out there. Could be different without VRA

Sam Hirsch 2013. (Deputy Associate Attorney General , U.S. Department of Justice) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

On the one hand you have a strong regulatory structure, one that looks pretty much unlike anything else that we have in any area of enforcement of policy of the states. It would be shocking if that kind of regulatory overlay does not affect behavior in some fashion, and thus to argue that there are very few objections is correct, and it's a point that I have made on many occasions. At the same time, you have to recognize that conduct may be different without the regulatory environment under which it operates. That has to be. People respond to incentives based on regulation.

“Unfair to single out states / jurisdictions – times have changed and they have reformed” – Response: If they have truly reformed, they can file a motion with the Dept of Justice to “bail out” of VRA and they will be exempted. Nearly 200 jurisdictions have done so.

Rep. Sheila Jackson Lee 2013. (D-Texas ) 17 July 2013 “Op-Ed What Should Be DONE? Reviving the Voting Rights Act After Shelby County v. Holder » <http://forwardtimesonline.com/2013/index.php/editorial/item/248-op-ed-what-should-be-done>

The Voting Rights Act, as amended, is a balanced and measured response to the racial and language discrimination in the voting problem that still plagues our country. Measured, because only those jurisdictions in which the problems are greatest are covered. Balanced, because the Act includes reasonable provisions through which covered jurisdictions can render inapplicable the Act’s pre-clearance requirements. **In fact, as Justice Ginsburg noted in her dissent, “Nearly 200 jurisdictions have successfully bailed out of the pre-clearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984.”**

INHERENCY

Exact details of what the Supreme Court struck down: The “coverage formula” of the “preclearance” requirements. Bottom line: the preclearance can no longer be applied to any states

Prof. **A.E. Dick Howard** 2013. (*Professor of Law and Public Affairs at the University of Virginia expert on constitutional law and the Supreme Court) “*Voting Rights Act Decision Effectively Ends 'Preclearance,' UVA Law Professor Says” 25 June 2013 <http://www.law.virginia.edu/html/news/2013_sum/scotus_voting_rights.htm>

"The court leaves Section 5 (the preclearance section) standing. It strikes down Section 4 (the coverage formula). Lest one suppose that this is a way of giving something to both sides, one should note that, without Section 4, Section 5 has no practical effect. The court might have gone all the way (as many critics of the Voting Rights Act would like it to do) and hold that Congress lacks the power under the Constitution to require a state or locality to get federal permission before it enacts changes in voting laws and procedures. The court did not go that far in today's opinion. But, until there is a valid coverage formula, preclearance under section 5 can't be required of states or localities.”

Supreme Court overturned the criteria by which jurisdictions were put onto the VRA preclearance list  
Analysis: The Court did not say that VRA was unconstitutional, nor that preclearance was unconstitutional. They decided that the criteria (dating from the 1970s) for determining which jurisdictions preclearance applied to was too old and therefore could not constitutionally be used, but if new valid criteria were developed, they could be used

Prof. Nathaniel Persily and Thomas Mann 2013. (Persily - Professor of Law at Stanford Law School. Mann - Senior Fellow and W. Averell Harriman Chair in Governance Studies at the Brookings Institution) Aug 2013 Shelby County v. Holder and the Future of the Voting Rights Act <http://www.brookings.edu/~/media/research/files/papers/2013/08/09%20shelby%20v%20holder%20policy%20mann/persily_mann_shelby%20county%20v%20holder%20policy%20brief_v9.pdf>

For the majority, the critical vacuum in the record justifying the law was its disconnect to the coverage formula itself. In other words, regardless of whether Congress may have found in 2006 that the covered jurisdictions happened to pose greater threats to minority voting rights (something the majority and plaintiffs doubted), nevertheless, there was no connection between such findings and the trigger for coverage (e.g., literacy tests and low voter turnout in 1964, 1968 or 1972). As one of Shelby County’s lawyers colorfully put it at the conference, if Congress had picked jurisdictions out of a hat, the fact that they may have gotten the “right” jurisdictions by luck would not immunize the process by which those states were chosen. For the Court’s majority, maintenance of the age-old coverage formula posed the same constitutional problems.

Summary of *Shelby County v. Holder*: Supreme Court overturned Section 4 of VRA because it violated “equal sovereignty of the States”. Section 4 is the “coverage formula” – the criteria that determine which states or parts-of-states have to get pre-clearance for election rule changes under VRA

Prof. Nathaniel Persily 2013. (Professor of Law , Stanford Law School) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

The District Court and the Court of Appeals upheld the VRA, finding that the coverage formula was adequately supported by the record that Congress had developed, and the Supreme Court reversed in a five-four decision. The five-Justice majority struck down Section 4 as exceeding Congressional power to enforce the 15th Amendment. I should make clear that Section 4 is the part of the Voting Rights Act that is the coverage formula, what jurisdictions are covered, and what are not. Section 5 is the pre-clearance regime, setting for the criteria by which the covered jurisdictions need to get permission from the Federal government. So it was struck down last week, by a five-Justice majority. They found that the coverage formula was not supported by adequate evidence in the record. They found the selective treatment of certain States by the coverage formulate to violate what they called the "equal sovereignty of States."

What is the VRA Section 4 “coverage formula”? It’s a list of criteria that define which states or parts of states have to get preclearance for election law changes. Note: it’s not a list of states, but a list of criteria  
Note: We’re citing this only for the definition of VRA Section 4. Roberts does not agree with the AFF plan, and we’re not claiming he does.

Chief Justice John Roberts 2013. Majority opinion of the court in Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf>

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in §4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 CFR pt. 51, App. Congress also extended the ban in §4(a) on tests and devices nationwide. §6, 84 Stat. 315. In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Voting Rights Act Amendments of 1975, §§101, 202, 89 Stat. 400, 401. Congress also amended the definition of “test or device” to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. §203, id., at 401–402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions.

Details of how VRA works: Section 5 says the federal government can require States to get permission before changing voting laws. Section 4 applies the requirement to certain states. Chief Justice John Roberts, who wrote the opinion that our Plan is reversing, explains how VRA works in 2013.  
Analysis: This means that the federal government can review and block state election laws that discriminate, but now with Section 4 reversed by the Supreme Court, that requirement doesn’t apply to any specific states

Chief Justice John Roberts 2013. Majority opinion of the court in Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf>

The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And §4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” South Carolina v. Katzenbach, 383 U. S. 301, 309 (1966).

“Use Section 2 of VRA to solve problems, since it wasn’t struck down” – Response: Section 2 isn’t enough

Prof. Gilda Daniels 2013. (Associate Professor , University of Baltimore School of Law) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

And when I hear people say that -- and as the Court says -- well, you still have Section 2, it disturbs me. And that is because Section 2 is not Section 5 -- right? Section 5 provides notice, and it is a deterrent. It's preemptive. And it's certainly protective. And Section 2 is very expensive, very time-consuming, and there are different burdens. They are completely different burdens. You can have a voting practice or procedure that could be retrogressive, but not discriminatory under -- it could be retrogressive under Section 5, but not discriminatory under Section 2. So I think when we talk about, oh, the fact that we have Section 2, Section 2 is not enough. Because many of these practices and procedures that occur, they're not just -- particularly, discriminatory practices and procedures -- are not just redistrictings. That’s, unfortunately -- I'm trying to kindly say -- that's a misinformed myth.

VRA Section 2 lawsuits are not an adequate substitute for Section 5 preclearance

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets added)

Congress also received evidence that litigation under §[section]2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a §2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters.

ADVOCACY

VRA must be restored to guarantee the sacred right to vote

Rep. John Lewis 2013. (D-Ga.; last living speaker from the day of the Martin Luther King march on Washington in 1963 (“I Have A Dream”), was beaten unconscious by police during a non-violent civil rights march in Selma, Alabama in 1965) 17 July 2013 Testimony of Congressman John Lewis for the US Senate Judiciary Committee Hearing on FROM SELMA TO SHELBY COUNT: WORKING TOGETHER TO RESTORE THE PROTECTIONS OF THE VOTING RIGHTS ACT <http://www.judiciary.senate.gov/pdf/7-17-13LewisTestimony.pdf>

In a democracy such as ours, the vote is precious; it is almost sacred. It is the most powerful nonviolent tool we have. Those, who sacrificed everything – their blood and their lives – and generations yet unborn, are all hoping and praying that Congress will rise to the challenge and get it done again. It is my belief that the Voting Rights Act is needed now more than ever before. The burden cannot be on those citizens whose rights were, or will be, violated; it is the duty of Congress to restore the life and soul to the Voting Rights Act. And we must do it on our watch, at this time.

VRA preclearance is the best remedy for voting discrimination

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets in original)

“[V]oting discrimination still exists; no one doubts that.” Ante, at 2. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA’s requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

Congress should put back into VRA the states that were covered before the Supreme Court removed them

Prof. Christopher S. Elmendorf and Prof. Douglas M. Spencer 2013. (Elmendorf - professor of law at the University of California–Davis. Spencer - associate professor of law at the University of Connecticut. ) 17 July 2013 “How to Save the Voting Rights Act” <http://www.slate.com/articles/news_and_politics/jurisprudence/2013/07/voting_rights_act_how_congress_can_save_it.html>

But it turns out that the South is different, even if it’s uncomfortable to say so out loud. The proportion of nonblack residents who subscribe to negative stereotypes of blacks varies a lot from state to state. The states that rank worst for anti-black stereotyping are mostly former Jim Crow states. These are also states with large black populations and exceptionally polarized voting patterns. So whichever criteria you pick—racial stereotyping, racially polarized voting, or minority population size—the answer to the question of which states should be covered by Section 5 is unchanging: the same states that were covered under the “outdated” formula that the Supreme Court just invalidated.

SOLVENCY

Congress could vote to re-establish Section 4 of VRA with the same jurisdictions, just use a different criterion, and the Court would have to review it again

Prof. Nathaniel Persily and Thomas Mann 2013. (Persily - Professor of Law at Stanford Law School. Mann - Senior Fellow and W. Averell Harriman Chair in Governance Studies at the Brookings Institution) Aug 2013 Shelby County v. Holder and the Future of the Voting Rights Act <http://www.brookings.edu/~/media/research/files/papers/2013/08/09%20shelby%20v%20holder%20policy%20mann/persily_mann_shelby%20county%20v%20holder%20policy%20brief_v9.pdf>

These sharp differences between the majority and the dissent notwithstanding, William Consovoy, the lawyer for Shelby County at the conference, argued that the decision was actually modest, not revolutionary. First, although the precise standard of the review the majority applied may be unclear, it purports to be closer to McCulloch-style review than the more-restrictive City of Boerne standard, which would have required that the law be “congruent and proportional” to the constitutional evils it was trying to prevent or remedy. Second, it did not decide the constitutionality of the preclearance regime in Section 5. Third, according to Consovoy, the Court ruled against the coverage formula on grounds that it was not rational in theory—that it did not make sense to base the trigger on data from the 1960s and 1970s. The Court did not decide that the geographic scope of Section 4 was irrational in practice – meaning that it left for another day the question of whether congressional findings of discrimination could lead the exact same set of jurisdictions to be covered under an alternative formula. And fourth, by doing so, it gave Congress the opportunity to revisit the VRA.

How “preclearance” works under VRA

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (brackets and ellipses in original)

Patently, a new approach was needed. Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation’s history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions—those States and localities where opposition to the Constitution’s commands were most virulent—the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by §5 of the VRA, covered jurisdictions must submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U. S. C. §1973c(a). A change will be approved unless DOJ finds it has “the purpose [or] . . . the effect of denying or abridging the right to vote on account of race or color.” Ibid. In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

DISADVANTAGE RESPONSES

“High cost for states to comply with VRA” – Response: Cost is about $200

Prof. Kareem Crayton 2013. (associate professor of law, Univ. of N. Carolina law school) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

In part because I actually wrote about this shortly after Nuwhitno because Justice Kennedy raised the question in the course of that conversation that I think Will just brought up, that didn't it cost billions of dollars over the course of -- I guess it was the last decade at the time he asked the question -- to comply with the voting rights scheme in Section 5. And the answer is, absolutely it did not. And I'll tell you two reasons why that's true. I've written about it in the SCOTUS blog, just in a short column; feel free to look at that. But let me just say, as a matter of common sense, the entire election's budget of the Section 5 covered states doesn't get to a billion dollars, that is to run the election. The average cost of a Section 5 submission is around 200 bucks, as I think that was the case for Nuwhitno in the lawsuit in question. But to believe that more than a billion dollars is necessary to deal with one particular provision, when the entire election's budget of these states don't get close to a billion dollars, is stretching credulity.

“High cost to comply with Section 5 preclearance” – Response: But Status Quo shifts everything to Section 2 litigation, which could be even more expensive  
Analysis: Sec. 2 is where individuals who are discriminated against file their own lawsuits one by one. Section 5 is where the US Dept of Justice regulates or negotiates directly with the state and solves the problem at a high level, before any individual lawsuits are filed. Sec. 5 is no longer working since the Supreme Court’s decision, so Sec. 2 would pick up all the cases from now on.

Prof. Heather Gerken 2013. ( professor of law, Yale Univ. Law School) 1 July 2013 VOTING RIGHTS AFTER SHELBY COUNTY v. HOLDER A DISCUSSION & WEBCAST ON THE SUPREME COURT’S VOTING RIGHTS ACT DECISION <http://www.brookings.edu/~/media/events/2013/7/1%20voting%20rights%20act/20130701_voting_rights_transcript_pt1.pdf>

I just want to reframe the cost question briefly. It is always as opposed to what? So, the question isn't how much Section 5 costs per piece. It's what is it going to cost when it's all done by Section 2? And you're going to have Tom and Sherrilyn and Glenn and Dale in litigation mode, all of these local jurisdictions. It's going to be a hostile process, I hope, because you guys are going to litigating. It's not going to be cooperative. It's not going to be done with bureaucrats who know what they're doing. Not repeat players that have worked with the states over a long time and built good relations both with the community and with -- DOJ is very cheap because they know what they're doing, unlike most courts. They are expert in this area, unlike most courts. They're not in litigation mode. They're in cooperation mode with these localities, and so resolving these problems through Section 5 can be cheap, as long as you don't cover too much. Just remember, litigation mode will be really costly too.

“Unconstitutional abuse of states’ rights” – Response: Congress can regulate voting rights under 14th and 15th Amendments

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf>

It is well established that Congress’ judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is “preservative of all rights.” Yick Wo v. Hopkins, 118 U. S. 356, 370 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress’ power to act is at its height.

VRA is entirely consistent with the 15th Amendment and the entire Constitution

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf> (parentheses in original)

The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, “Congress shall have power to enforce this article by appropriate legislation.” In choosing this language, the Amendment’s framers invoked Chief Justice Marshall’s formulation of the scope of Congress’ powers under the Necessary and Proper Clause: “Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.” McCulloch v. Maryland, 4 Wheat. 316, 421 (1819) (emphasis added). It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments.

Constitutionality: Congress has broad power to combat racial discrimination in voting

Supreme Court Justice Ruth Bader Ginsberg 2013. Dissenting opinion in the case of Shelby County v. Holder, 25 June 2013 <http://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf>

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress’ prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute’s challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, to be working to advance the legislature’s legitimate objective.

WHAT JURISDICTIONS WERE/WOULD BE COVERED UNDER VRA PRECLEARANCE?

<http://www.justice.gov/crt/about/vot/sec_5/covered.php>