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The University of Southern California Journal of Law and Society is a student-run, interdisciplinary Journal that promotes outstanding undergraduate scholarship. The Journal provides a print and online forum to publish exceptional undergraduate papers by students at the University of Southern California and around the world. The Journal seeks to publish papers from a wide range of disciplines that reflect diverse viewpoints. Guided by top faculty members at the University of Southern California, papers selected for publication undergo a rigorous editing process by undergraduate students at USC to ensure that each paper is of the highest quality. The USC Journal of Law and Society strives to promote greater awareness and understanding of the legal field, and aims to become the preeminent journal of its kind.
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INTRODUCTION

Alexander Fullman
Editor-in-Chief

The British Prime Minister Winston Churchill once quipped, “The best argument against democracy is a five-minute conversation with the average voter.” National politics of the last several years has provided less humorous reasons for citizens to feel disenchanted with our political process. The United States faces unprecedented levels of partisanship and gridlock in Washington, D.C., an increasingly negative national discourse, and a lackluster economy. The Congress's approval rating is at a record low, while the national debt is at a record high. To cap it off, the 2012 presidential election was one of the most polarizing and expensive in the country's history.

Given the political and economic state of the country, one cannot entirely blame those who have lost faith in our democratic institutions or the political process. It is my hope, however, that this issue of the USC Journal of Law and Society will provide some optimism for the future. The papers that appear in these pages tackle important electoral and political issues, ranging from public financing of political campaigns to Congressional redistricting procedure, and each paper offers sophisticated commentary, thoughtful analysis, and innovative solutions.

This publication would not exist without the hard work and dedication of the talented students and faculty members who come together to make the Journal a success. I appreciate the enthusiasm and commitment of our undergraduate editors and faculty advisors.

We received many excellent submissions to the Journal thanks to the extraordinary efforts of Oriah Amit and Kelley Chittenden. This is the first issue where we have invited students from other universities to submit papers to the Journal, and Oriah in particular led the effort to spread our call for papers beyond the University of Southern California. Reviewing and selecting the papers for publication was no easy task owing to the number and high quality of the papers we received. I want to thank Grace Chediak for ably leading the staff in this process.

I also want to thank our other Executive Editors and Lead Editors. Bryan Oberle and Jennie Lee worked diligently with our four superb lead editors, Sarah Beshir, Tyler Cundiff, Mallorie Maranda, and Sarah Nadel, to ensure a smooth and rigorous editing process. Our lead editors oversaw
groups of four associate editors who worked together to review and polish the papers after their selection. At the end of the process, Rosalie Murphy and her team worked hard to produce and assemble this publication.

Throughout this process, our Managing Editor and Chief of Staff, Andrew Lockridge, has been absolutely integral in ensuring that our student staff continued to move forward in the publishing process. Andrew has been indispensable to the Journal, helping anyone in need of assistance and frequently covering for other members of the Executive Board. Stephen-Béla Cooper has done a stellar job overseeing the Journal’s finances, from securing funding from the Journal to working with our publishing company. Leslie Chang has been invaluable in helping us to update our website, and Shannon Zhang introduced and expanded our social media presence.

Any success we enjoy is due to the stalwart support of the extraordinary faculty members who advise the Journal. I want to thank Professors C. Kerry Fields, Lyn Boyd-Judson, Ann Crigler, Nancy Lutkehaus, Erin Moore, Nancy Staudt, and Karen Sternheimer for their dedication, advice and encouragement. We are deeply fortunate to work so closely with them and we benefit greatly from their advice and expertise. Special thanks in particular is due to Professor Alison Dundes Renteln, the Chair of the Faculty Advisory Board and our principal advisor, for going above and beyond in her unwavering dedication to and support for the Journal. Matthew Lahana, the Editor-in-Chief of the Southern California Review of Law and Social Justice, provided invaluable training and support for our editors, and we are grateful for all the time he contributed to advising our publication. Sydney Allen’s work with our faculty advisors and support for their efforts deserves special thanks as well.

Finally, I want to thank Professor Steven Lamy, Vice Dean for Academic Programs in the USC Dana and David Dornsife College of Letters, Arts and Sciences, and his office for providing generous financial support for this issue.

I am very proud of the progress that we have made since reviving the Journal last year, and I know that exciting things are in store for this publication. Because of our success thus far, I believe the time is ripe to pass the baton to a new leader. It has been a fantastic and very rewarding experience to work closely with such exceptional students and faculty, and I am grateful for all the support we have received from the university. I am delighted that my friend Andrew Lockridge has agreed to take the helm of the Journal and serve as our next Editor-in-Chief. Andrew is a bright, talented, energetic, and inspiring leader, and I have no doubt that he will do
a superb job and continue the Journal's ascent to a place among the country's top undergraduate journals.
SALVAGING PUBLIC FINANCING: AN EXAMINATION OF COMPETITION AND EQUALITY

Marissa Roy*

In recent years, campaign finance has reemerged as a major political issue, largely in response to judicial decisions impacting the campaign finance landscape. In the new regulatory and jurisprudential environment, the importance of effective public financing systems cannot be overstated. Public financing is a transparent and fair campaign finance alternative, as it empowers those with less and ensures that money does not hinder a candidate’s ability to run an effective campaign. Though a promising tool for election reform, public financing suffered an immense blow in the Supreme Court’s decision in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett (2011). This paper analyzes the case in light of the competing ideals of competition and equality, and considers the future of public financing of political campaigns in light of the Court’s ruling.

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INTRODUCTION

The Supreme Court’s decision in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett1 marks a reversal in the judicial attitude toward public financing. Once a relatively uncontroversial method of campaign finance reform, public financing systems now face a more exacting level of scrutiny. In Arizona Free Enterprise, the Supreme Court introduced a new system for analyzing public financing that involves isolating elements rather than regarding the system as a whole, and most significantly, scrutinizes each element for the presence of an equalizing influence, regardless of its role in the anti-corruption goals of the system as a whole. The Court raised the issue of whether the facilitation of response by injecting money in the system is an issue of promoting equality or combating corruption. The Court’s consideration of Arizona’s Clean Elections scheme will change the way courts evaluate public financing systems, calling into question the survivability of a number of existing and future public financing laws. This paper will consider the new precedents offered by this case and how they are different from historic and opposing interpretations as well as which public financing systems could survive the Court’s higher standard of scrutiny.

The defining case for campaign finance reform, Buckley v. Valeo,2 has left a legacy of contradictory and divided judicial opinions regarding the scope of quid pro quo corruption. Buckley equated campaign and political spending to First Amendment speech—thereby necessitating the use of the strict scrutiny standard.3 With this standard in place, the court only allowed the government to restrict campaign contributions to deter the appearance or presence of quid pro quo corruption, ruling that the egalitarian interest “that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly for-

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2 This is the 1976 Supreme Court challenging the Federal Election Campaign Act (FECA), which imposed contribution and expenditure limits on campaigns and established a presidential public financing system. The Supreme Court struck down expenditure limits as unconstitutional while upholding contribution limits, arguing that the former was a severe restriction on speech that was an equalizing effort rather than an effort to combat corruption while the latter was a less severe restriction on speech that served an allowable government interest in combating quid pro quo corruption.
3 The strict scrutiny standard is the highest level of judicial scrutiny and is applied to cases involving the First Amendment. The strict scrutiny standard only allows for restrictions on speech if and only if the government can prove a “compelling government interest” and has written the legislation to be “narrowly tailored” to serve this interest.
eign to the First Amendment.”4 Since the deterrence of quid pro quo corruption has been the only permissible government interest justifying campaign finance regulations, subsequent courts have been left to uphold or nullify campaign finance laws solely on the definition and scope of quid pro quo corruption, which has led to varying interpretations, expansions, and contractions of the term’s definition in subsequent Supreme Court decisions. For example, in Austin v. Michigan Chamber of Commerce,5 the Court upheld a prohibition on direct corporate contributions to candidates from their general treasury funds because the “distorting effects of immense aggregations of wealth”6 could lead to the appearance of quid pro quo corruption to the public; however, this standard was rejected in Citizens United v. Federal Election Commission,7 which interpreted the definition of quid pro quo corruption as excluding the distorting effects of corporate money because such contributions, at most, give rise rather than traditional bargaining between legislators and corporate interests. These two cases alone depict the shift in the Court’s scope of interest from a wider focus in Austin—in which the court considered wealth in the larger context of First Amendment goals—to a narrower focus in Citizens United—in which the court scrutinized the regulation mechanism itself to determine whether it impinged on the right to free speech. The currently narrowing judicial scope has incurred a similar transition in the method of scrutinizing public financing cases.

In the aftermath of Buckley, one method of campaign finance reform consistently received a resounding endorsement: public financing, a system where candidates can choose to receive government subsidies for their campaigns and in return abide by certain expenditure limits. The novelty of public financing was that it increased the flow of political money provided by taxpayers and small donors rather than curtailing spending power. Therefore, it was not a restriction on speech. The Buckley Court found that public financing was “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.”8 This distinction allowed public financing to escape the judicial dialogue and conflicting decisions regarding the definition and scope of quid pro quo corruption; by enhancing the speech of all without placing legal restrictions on unwilling parties, public

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8 Buckley, 424 U.S. at 93.
financing seemed one of the more feasible constitutional paths forward for campaign finance reform.

The Court’s endorsement of public financing inspired the creativity of state legislators and legal scholars alike. The necessary “centerpiece for any serious program of campaign finance reform” according to scholar Richard Briffault, public financing systems burgeoned in fifteen states, where various approaches were explored. States produced systems that ranged from traditional lump sum public funding systems to systems that gave candidates extra money for every dollar raised to systems that directly gave voters rebates on contributions. The variety of public financing schemes has given qualified potential candidates a chance to compete for political office—regardless of personal assets—expanding the opportunities to get involved with politics.

One of the more popular models for public financing systems has been the Clean Elections model, which arose in seven states since Buckley. Clean Elections systems diverge from the traditional lump sum system in one very significant way: in an attempt to encourage participation and assuage candidates’ fears that expenditure limits will make them uncompetitive against wealthy self-financed candidates, Clean Election laws introduced a trigger mechanism for matching funds. If a privately financed candidate outspends the publicly financed candidate’s expenditure limit, then that publicly financed candidate receives “matching funds” or “rescue funds,” a dollar for every dollar spent by a privately financed candidate, up to a certain limit. This trigger mechanism was intended to encourage participation in the public financing system by remedying a weakness of the traditional lump sum public financing systems.

Special interest groups and privately financed candidates in the state of Arizona challenged the state on the constitutionality of its Clean Elections trigger matching funds provision in Arizona Free Enterprise v. Bennett. Though the first Supreme Court case to assess a public financing system since Buckley, the Court rarely mentioned Buckley as a precedent, invoking instead Davis v. Federal Election Commission. In Davis, the court had struck down the “Millionaires Amendment” of the Bipartisan Cam-

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10 The public financing system that Buckley upheld was the Presidential public financing system. This system gave a lump sum of tax payer money to candidates who qualified. Qualification depended on party affiliation; parties that garnered a significant portion of voter support in the previous election would be granted more public money available for their candidate. By accepting this lump sum, the candidate also accepted expenditure limits for his or her campaign.
11 This is a reference to Minnesota’s public financing system, which is no longer in place.
campaign Finance Reform Act, a provision that lifted contribution limits for candidates if a self-financed opponent had expended over $350,000 in personal funds on a campaign. Davis contended that the Millionaire’s Amendment punished the expenditure of self-financed wealthy candidates and encouraged these candidates to de facto curtail their speech at the expenditure of $350,000. With Davis as a precedent rather than Buckley, the focus of Arizona Free Enterprise was not the context of the trigger mechanism within Arizona’s public financing system as a whole, but rather the ramifications of the isolated trigger element.13 Not surprisingly, the Court found that Arizona’s trigger mechanism restricted speech because the provision acted in response to privately financed candidate’s speech, in effect penalizing it. Focusing on the drafters’ intent and detaching the trigger mechanism from its role within the public financing as a whole, the Court saw the trigger mechanism as an equalizing measure rather than an anti-corruption tool, leading to its decision to deem the trigger unconstitutional.

In this respect, the majority in Arizona Free Enterprise is correct: the trigger mechanism—arguably Arizona’s entire public financing scheme—served not only a quid pro quo corruption interest, but also an underlying interest in promoting political equality. Yet, when viewed in the context of the entire public financing system and its overarching purpose to further First Amendment goals, the trigger mechanism’s equalizing interests are arguably diluted by an overarching anti-corruption interest, as the dissent notes. The two interests cannot necessarily be disconnected in any successful public financing scheme. In order to achieve the goals of campaign finance reform—to combat the appearance and presence of quid pro quo corruption without overzealously curtailing speech—public financing systems inject money into campaigns to lift candidates to a more equal playing field; this prevents the buying of elections and allows for money to have a less corrupting influence, serving simultaneously an equalizing and a corruption interest without curtailing speech. The court’s narrower scrutiny of public financing, however, could call into question a number of public financing schemes throughout the United States.

This paper assumes that public financing systems are an asset to campaign finance reform: an effective and creative way to reform campaigns, actively promoting with First Amendment ideals of allowing for lively political discussion and protecting the First Amendment rights of those without wealth. In light of Arizona Free Enterprise’s new scrutiny, a number of public financing schemes could be called into question for

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13 If Buckley had been the chosen precedent—with the contention that adding more money (and more speech) to campaigns does not constitute a restriction on speech—as the dissent in Arizona Free Enterprise argued, Arizona’s law may have been upheld.
equalizing elements within the system, despite the systems’ ability to further First Amendment goals in their entirety. Part I of this paper will analyze the recent ruling in *Arizona Free Enterprise* and examine the Court’s changing framework for considering public financing schemes, a transition from examining public financing schemes as a whole to an examination of each isolated part. Part II will show how this ruling and the current Court’s conception of competition in a democracy, displayed by five campaign finance cases that the Roberts court has considered, could in theory affect other public funding systems because public funding systems intrinsically alter the natural competition of a campaign with government involvement, which the current court has actively sought to remove. Part III will argue that there is an undeniable presence of equalizing interests in public funding systems, but that this, in fact, is within the scope and purpose of the First Amendment, contrary to the current jurisprudential framework. This paper concludes with a call for a re-evaluation of methods for analyzing public financing cases—a call for courts and leaders to question whether public financing schemes in their entirety further First Amendment goals and an anti-corruption interest, allowing parts to further an equalizing interest, which cannot be entirely separated from larger anti-corruption goals. States seek both to combat quid pro quo corruption and promote equality, but if they cannot be open about their objectives, they will not be able to do either. Only a new Supreme Court judicial standard or a constitutional amendment could change the precedent and pattern of analysis of *Arizona Free Enterprise*; both solutions are slow processes and difficult to put into action. However, before either of those options is a possibility, what must change is the attitude and attention given to public financing systems by leaders. If political leaders become committed to using both an equality and corruption interest to increase speech by public financing, they will be able to ensure its survival: by continuing to find innovative approaches to public financing, by engaging the public in support of equal opportunity to speak in campaigns, and by actively searching for judicial candidates who will apply the First Amendment to give an equal opportunity for all to speak rather than to deregulate.

**Part I**

While constitutional challenges to public financing systems have been raised in lower courts, *Arizona Free Enterprise* was the first case to challenge public financing in the Supreme Court since *Buckley*. By focusing most of his majority opinion on Arizona’s triggered matching funds provision, Chief Justice John Roberts tried to make it clear that *Arizona Free Enterprise* was not a consideration of public financing: “Evaluating the wisdom of public financing as a means of funding political candidacy is
not the Court's business. But determining whether laws governing campaign finance violate the First Amendment is. This choice of focal points allowed the court to avoid judgments of either public financing or Buckley. In his opinion, Roberts isolates the issue of Arizona's trigger mechanism from its parent Clean Elections Law, regarding it under the precedents of Davis.

The court found Davis to be the closest precedent to Arizona Free Enterprise v. Bennett because in Davis a substantial burden was introduced in response to a candidate's speech, similar to that raised by the petitioners in Arizona Free Enterprise. In Davis, the "Millionaire's Amendment," which raised contribution limits for candidates facing a wealthy opponent, was ruled unconstitutional because, although it prevented no speech, it "forced a [privately-funded] candidate 'to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations." Likening Arizona's type of triggered matching funds to the Millionaire's Amendment, the court found that matching funds presented privately financed candidates with a similar choice: spend money to speak and risk giving opponents extra money or simply refrain from additional speech entirely.

In addition to presenting candidates with such a choice, the court found that the manner in which funding was given—in direct response to the actions of privately financed candidates—seemed to be actively discouraging speech. The court likened the trigger element of the matching funds provision to a sort of punishment for privately financed speech. As in Davis, this law did not have to cap speech to be unconstitutional; because the additional funding responded to increased levels of spending by opponents—and therefore increased amounts of political speech—the provision was viewed by the Court as a way to punish candidates for that increased speech. However, in comparing Arizona's Clean Election act to the Millionaire's Amendment, the court did not focus on the difference that the Millionaire's Amendment created an asymmetrical fundraising scheme (by allowing some candidates to accept larger donations than others) while the matching funds provision gives candidates an equal sum of money up to three times the initial public financing lump sum.

In fact, the court found that the differences between the two laws made Arizona's matching funds even more burdensome on speech than the Millionaire's Amendment under Davis. In his opinion, Roberts also raised the concerns of independent expenditure groups, contending that they were more severely burdened than candidates by Arizona's trigger

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14 Arizona Free Enterprise, 131 S. Ct. at 2812.
15 Id. at 2818.
mechanism because they lacked the ability to avoid it. Independent expenditure groups had no input about whether or not their chosen candidate would opt into Arizona’s system; if their candidate chose to privately finance his campaign, the independent expenditure groups would be forced into accepting the limits of matching funds. Even groups supporting publicly financed candidates would have to abide by expenditure limits or the other publicly funded candidates would benefit. Roberts concluded that, “In some ways, the burden the Arizona law imposes on independent expenditure groups is worse than the burden it imposes on privately financed candidates, and thus substantially worse than the burden we found constitutionally impermissible in Davis.”¹⁶ The activities of all expenditure groups, not just ones supporting privately financed candidates, were burdened.

Additionally, the court contended that a substantial burden is “inherent in the choice that confronts privately financed candidates.”¹⁷ This choice is arguably different than the variety of difficult choices that may burden their speech: they may not want contributions from a controversial source because it will be publicly disclosed. Such choices are difficult, but not substantial burdens on speech. The choice in Arizona Free Enterprise is another strategic choice: for instance, if a candidate believes strongly in his or her message he or she has the choice whether or not to produce an extra commercial that is sure to get an opposing response. However, the arguably punitive aspect of this choice—that money is giving to an opposing candidate in response to speech—makes it a substantial burden on speech.

Because the choice of whether or not to spend constituted a substantial burden on speech, Arizona had to prove a quid pro quo corruption interest strong enough to justify the burden. The Court did not find a corruption interest in this provision. The only government interest that it did identify in this provision was an interest in leveling the playing field, which it extracted from the name of the matching funds provision: the “Equal Funding of Candidates” provision. The majority sensed that the matching funds provision was an attempt to lessen the speech of some to enhance the speech of others. Roberts pointed out that, “‘leveling the playing field’ can sound like a good thing. But in a democracy, campaigning for office is not a game. It is a critically important form of speech. The First Amendment embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the ‘unfettered interchange of ideas’—not whatever the State may view as fair.”¹⁸ This sense that the trigger was

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¹⁶ Id. at 2819.
¹⁷ Id. at 2823.
¹⁸ Id. at 2826.
intended to equalize, to elevate the voices of some by restricting the voices of others, made the trigger mechanism unconstitutional.

The court’s decision to find the burden of matching funds more substantial than the possibility of quid pro quo corruption deterrence and to allege that such funds serve only an equalizing interest marks a shift in the Court’s method of analyzing public financing. Despite the amicus curiae briefs of the United States and the State of Arizona, which insisted that matching funds were necessary to uphold their public financing scheme, the majority viewed the mechanism separately from the system as a whole, stating, “In the face of such ascetic contribution limits, strict disclosure requirements and the general availability of public funding, it is hard to imagine what marginal corruption deterrence could be generated by the matching funds provision.” The trigger mechanism was analyzed as a “marginal corruption deterrence” rather than a necessary part of the overarching Clean Elections system. The court went on to say that even if matching funds were vital to Arizona’s public financing scheme, it could not “permit the State to sacrifice speech for efficiency.”

More wary of government presence in the political arena than the Buckley Court, the current Supreme Court narrowed its scrutiny of public financing systems, ensuring that each individual part adequately furthers an anti-corruption interest rather than an equalizing interest.

The Arizona Free Enterprise opinion is a break from the precedent of Buckley. The Buckley Court viewed public financing systems in their entirety without separating elements of the system to undergo scrutiny. It upheld the presidential public financing system against constitutional challenges from minor party candidates—which claimed that the system minimized their voices and enhanced those of major party candidates—because it believed that these effects, which it acknowledged as valid, were outweighed by public financing’s overarching benefits in the context of larger First Amendment goals. The majority in Arizona Free Enterprise viewed public financing within a much narrower scope, arguing that the state cannot “sacrifice speech for efficiency.” Arizona Free Enterprise itself does not serve as a criticism of Buckley, but it does signify that the Roberts court has chosen to emphasize different values than the Buckley court—while the Buckley court believed that public financing added more speech to the political competition, outweighing certain constitutional uncertainties, the Arizona Free Enterprise court showed great caution approaching public financing and concern about the equalizing effects of each individual part of the system, in particular the trigger mechanism. The Arizona

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19 Id. at 2827.
20 Id. at 2824.
Free Enterprise court introduced a stricter precedent for analysis of public financing systems.

It is important to examine the dissent’s arguments in Arizona Free Enterprise because they shed light on a different interpretation of the case, one that maintains a broader scope of analysis, considering the trigger mechanism within the whole public financing scheme and, similarly to Buckley, allowing some diminishments on speech to be weighed against larger anti-corruption goals. Justice Elena Kagan’s dissent paints quite a different picture of matching funds: a two state hypothetical, where both states try out slightly different public financing systems and only the one with matching funds truly combats quid pro quo corruption. She explains that, “public financing can achieve its goals only if a meaningful number of candidates receive the state subsidy…and candidates will choose to sign up only if the subsidy provided enables them to run competitive races.”

In her analysis, the matching funds provision becomes a necessary part of a whole; if the part is before the court, it really means the whole is before the court.

In the dissent’s argument, matching funds allows public financing system to be effective in reaching its constitutionally permissible goals. It solves the difficulty of setting a public funding rate at the correct amount. Kagan notes, “The difficulty [of public financing], then, is in finding the Goldilocks solution—not too large, not too small, but just right.”

Matching funds allows states to set a limit for public funding and expenditure, yet not let this limit hinder publicly funded candidates if faced with a wealthy privately funded candidate. This way, candidates will have confidence in the system and voters will have confidence that their candidates are not pandering to special interests. While this could be seen as a sacrifice of speech for efficiency, as Roberts contended, Kagan shows that the trigger plausibly works toward an overall goal of combatting quid pro quo corruption and preventing the appearance of such quid pro quo corruption because it ensures robust candidate participation without curtailing speech and simply adding.

The dissent questions whether speech is burden if no speech has been actively curtailed and only the speech of opponents has been equalized. The alleged burden is not that privately candidates have been stopped from speaking, only that the choice that they face according to Roberts is whether or not to trigger response. Kagan points out, “Has the majority shown that the burden resulting from the Arizona statute is ‘substantial’? I will not quarrel with the majority’s assertion that responsive speech by one

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21 Id. at 2831.
22 Id. at 2832.
candidate may make another candidate’s speech less effective; that, after all, is the whole idea of the First Amendment.”23 Privately financed candidates are presented with the option of accepting public financing. One could then regard their argument as Justice Kagan does: “[the petitioners] are making a novel argument: that Arizona violated their First Amendment rights by disbursing funds to other speakers even though they could have received (but chose to spurn) the same financial assistance. Some people might call that chutzpah.”24 In much the same way that publicly financed candidates must accept certain burdens on their speech when they decide to opt in to the system, it can be argued that privately financed candidates must accept the possibility of response and increase competition if they decide to opt out.

From the majority’s standpoint, the constitutionality of public financing itself was never the issue before it. However, the constitutional analysis of public financing was very much affected: the narrower scope of analysis requires that every element of public financing systems present a demonstrable anti-corruption interest without the presence of an equalizing interest; the resulting removal parts of a system can then adversely affect the system as a whole. The Arizona system, for example, lost its competitive mechanism to encourage participation, which will discourage candidates from using it. The narrower scope and higher scrutiny standards that Arizona Free Enterprise introduced will inevitably guide future judicial analysis of public funding systems and could make it more difficult to create feasible models.

PART II

Now states are faced with a new challenge according to Justice Roberts: “creating a viable public financing scheme...in a manner consistent with the First Amendment,”25 or at least, in a manner consistent Arizona Free Enterprise’s application of the First Amendment. The precedent of Arizona Free Enterprise has the potential to be applied beyond a state system that includes a trigger mechanism to call into question a number of parts of other public financing laws. Arizona Free Enterprise is one of a chain of recent campaign finance cases—Wisconsin Right to Life v. FEC, Randall v. Sorrell, Davis v. FEC, and Citizens United v. FEC—to show the Court’s consistent belief that the government should not alter the “natural” competition of elections—in other words, the existing background of economic advan-

23 Id. at 2837.
24 Id. at 2835.
25 Id. at 2828.
tages that defines competition—or change the distribution of advantages among candidates, for this constitutes an equalizing interest. This belief could prove detrimental for public financing as a whole because all public financing systems are constructed to add government money into elections, arguably shifting the competitive nature of each election.

Regarding campaign finance reform, the jurisprudential view of the Robert's Court has been consistent with libertarian views: it has struck down regulation in all five of the campaign finance cases it has considered, instead favoring the idea that the government should not attempt to alter each person's “natural” advantages in a political competition. In both Davis and Arizona Free Enterprise in particular, the Roberts Court has shown considerable concern about the amount of government interference in elections. In Davis, Justice Alito wrote, “different candidates have different strengths. Some are wealthy; others have wealthy supporters who are willing to make large contributions. Some are celebrities…leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election.”

In Arizona Free Enterprise, Alito’s concern that the government was choosing which strengths would influence an election was echoed by Roberts, who suggested that the trigger mechanism punished the monetary advantages of wealthy candidates who wished to spend their own money in their campaign. However, public financing systems in their very nature target the strength of money and alter its potency by giving substantial sums of money to those who would otherwise not have it, reducing the advantage of a candidate who already had it.

A new concern for proponents of public financing is how strongly the Roberts court will adhere to its libertarian vision of competition in regards to public financing. In Arizona Free Enterprise, the Court did not deny that the government had the power to regulate elections in the interest of fighting quid pro quo corruption, and it stated that the constitutionality of public financing as a whole was not the Court's concern. Yet, it remained wary of measures that seemed to level the playing field, stating that “laws like Arizona’s matching funds provision that inhibit robust and wide-open political debate without sufficient justification cannot stand.” So what state laws will be judged “like Arizona’s”?

Within a week of the Arizona Free Enterprise decision, Florida’s matching funds provision, which featured a trigger mechanism, was struck

26 Davis, 554 U.S. at 740 (2008)
27 Arizona Free Enterprise, 131 S.Ct. at 2829.
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down.\textsuperscript{28} Citing \textit{Davis} as Chief Justice Roberts did in Arizona Free Enterprise, Judge William Pryor of the United States Court of Appeals in the 11\textsuperscript{th} Circuit concluded that Florida’s triggered mechanism place a substantial burden on the speech of privately financed candidates and that Florida’s trigger mechanism “levels the electoral playing field, and that purpose is constitutionally problematic.”\textsuperscript{29} Though Florida’s public financing system as a whole is very different from Arizona’s, Judge Pryor, like Justice Roberts, emphasized the unconstitutionality of the trigger mechanism regardless of the parent public funding system.

For the six other states with identical Clean Elections systems like Arizona’s and therefore identical trigger mechanisms, it seems to follow that at least this provision will be struck down under the precedent of \textit{Arizona Free Enterprise}. If trigger mechanism provisions are eliminated from those six states, they will be left with systems that are basic replications of the presidential public financing system: the Clean Election systems will simply consist of a lump sum of money and expenditure limits. As Justice Kagan described in her two state hypothetical, the state without the matching funds provision to encourage participation—in other words, a system like the presidential public financing system—did not solve the problems of corruption in elections. The past two presidents have, in some manner, opted out of the presidential public financing system in order to win their elections because the lump sum and expenditure limits scheme was not practical; without the support of the trigger mechanism, the Clean Election systems may not be practical, either.

The absence of the trigger mechanism from public financing schemes does not guarantee safety from challenges under \textit{Arizona Free Enterprise}. New York City’s public financing scheme, for instance, features a different sort of matching fund, where publicly financed candidates are matched 6:1 for contributions under $175. While defenders of the system could claim that New York’s matching funds are not triggered by opponents’ speech and are not burdensome in the same way as Arizona’s trigger mechanism, a court might still find this system to be an attempt to “level the playing field.” The government is adding money to the political system, diluting the advantages that a wealthy self-financed candidate brings into the election. In this sense, the state is deciding which strengths should be influential in elections, as Alito mentioned in \textit{Davis}, by choosing that money should not be an advantage.


\textsuperscript{29} \textit{Scott v. Roberts}, 612 F.3d 1279 (2011).
If the Roberts’ Court continues to protect the natural advantages of money, many different public financing systems or, by extension, the entire idea of public financing as protected by *Buckley* could potentially be brought into question. Law professors such as Rick Hasen believe that even the identification of an interest in “leveling the playing field” may be enough to spell doom for a public financing scheme: “Under the Roberts Court’s view of the First Amendment, such an interest remains verboten, even if, as Justice Kagan points out, the law also is justified on anti-corruption grounds.”

Public funding systems that have equalizing interests inherent within certain parts of the system could be eliminated regardless of the presence of a trigger.

One system that may still pass constitutional scrutiny even under the recent rulings would be a rebate system. In *Voting with Dollars*, Bruce Ackerman and Ian Ayres proposed a scheme where voters would get “patriot dollars” from the government that would act as a rebate for campaign donations. Those who wanted to donate more could do so, albeit anonymously, and the scheme would cap no one’s speech. The rebates would be given to every voter and could be given to every candidate, though candidates would not be able to expend their personal funds. Minnesota adopted a similar idea—though it is no longer in effect—where voters would receive rebates up to $50 for political contributions; unlike the proposal in *Voting with Dollars*, personal expenditures of one’s own funds in an election would not be restricted. While the rebate system was in effect, the Campaign Finance Institute reported that small donations accounted for 57% of candidate’s funds; of the six Midwestern states that the Campaign Finance Institute examined, Minnesota was the only state where small donor funds accounted for the majority of a candidate’s funds.

Under *Arizona Free Enterprise*, a pure rebate scheme that simply gives money to voters without capping expenditures would not force any candidate to choose not to speak; it does not discriminate as to who gets the donations or alter competition.

With the exception of a rebate system, public financing as a whole might come into constitutional question in the future. The Supreme Court’s wariness of government interference with the natural state of competition could give rise to more challenges of different forms of public financing schemes. Many proponents of public financing would argue that public financing fosters competition by allowing for more vigorous politi-

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32 Ibid.
cal debate and for more candidates who can run competitive campaigns. Outlining two types of liberty, “liberty of the ancients” and “liberty of the moderns”—the former a more active liberty and the latter a liberty that protects from an abundance of government interference—Justice Stephen Breyer explains that proponents of campaign finance “seek to democratize the influence that money can bring to bear upon the electoral process,” furthering the goals of active liberty.33 However, it would seem that the majority of Arizona Free Enterprise would advocate a “liberty of the moderns,” rejecting the idea that government interference fosters competition and asserting instead that it unjustifiably alters competition’s natural course. In this way, the most public financing systems, which facilitate response, however minimal, will lessen advantages of privately financed candidates. The courts might not find a quid pro quo corruption interest to be valid in this instance because as Roberts asserts in Arizona Free Enterprise, “burdening a candidate’s expenditure of his own funds on his own campaign does not further the State’s anti-corruption interest.”34 The differing ideal of competition held by the Arizona Free Enterprise majority and the proponents of public financing could continue to hinder the progress of public financing.

PART III

Whether the creators of public financing laws acknowledge it or not, egalitarian interests are central to public funding: reformers wish to counteract the influence of wealth in the political system and allow anyone to have a voice in the political system. The title of Arizona’s provision, “equal funding of candidates,” and the multiple references to equality throughout the Arizona Clean Election act, the ballot measure description, and supporting websites should not be ignored. The drafters who presented the ballot measure to Arizona voters chose to invoke the notion of equality. Even if the words were simply meant to rally political support to pass the initiative, as multiple amicus curiae for Arizona suggest, the words still hold significance; at the very least, they represent what the people view as an important goal of public financing.

Arizona is not alone in its equality concern. Defending New York City’s public financing system after the announcement of the Arizona Free Enterprise decision, Campaign Finance Board Executive, Amy Loprest stated, “New York City’s public matching funds program provides small donors with a voice to counterbalance the impact of special interest spend-

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34 Arizona Free Enterprise, 131 S.Ct at 2826.
ing.”

While the interest behind counterbalancing special interest spending could be seen as an anti-corruption interest—if special interest spending has too much of an impact on the decisions of legislators, that is quid pro quo corruption—it could also be seen as an egalitarian interest. Small donors arguably deserve the same voice as special interest groups, regardless of their economic standing.

It should not be denied that public funding systems further egalitarian interests. While it is true that such systems support anti-corruption interests—which lawyers have argued on several occasions—the most accurate argument seems to be, as Justice Kagan suggests, that public funding systems further a dual interest of not only combating corruption, but also leveling the playing field. Consider the nature of public funding: it makes available the same sum of money to anyone who should want it, allowing the wealthy businessman or the poor high school math teacher to run competitively for office if they can qualify. Public funding attempts to equalize the relative monetary differences of these individuals, promoting a core value to the American brand of democracy, participation, and arguably promoting First Amendment ideals, though it changes the competitive nature of elections. Writing in *Active Liberty*, Justice Breyer—who joined the dissent of *Arizona Free Enterprise*—described participatory democracy as reflecting the “understanding that each individual belongs to the political community with the right to participate should he or she choose to.”

Public financing allows anyone, regardless of wealth, to participate in the political system and arguably expands the access of candidates to their First Amendment right to political speech.

Just as participation does not end with candidacy, the interest in leveling the playing field does not end with candidacy. Voters play a vital role in the democratic process. Though voters are each guaranteed the same vote, money does affect the power of their vote. If all voters were created equal, why would candidates work so hard to court the wealthy voters or special interests? Candidates depend on large donations and therefore the large donors. Insisting that equality is a valid government interest in campaign finance reform, legal theorist David Strauss states, “People who are willing and able to spend more money, it is said, should not have more influence over who is elected to office.” Public financing levels the playing field by removing the dependence on large donors and, in theory, allowing every voters opinion to be equally important—also

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36 Breyer, 16.
preventing wealthy self-interested voters from dominating and corrupting political debate. That power to “provide small donors with a voice,” as mentioned in regards to New York City’s public financing scheme, is central to the idea of public financing and the ideals of the First Amendment.

To the proponents of public funding, the presence of large aggregations of money in the political system is harmful to the integrity of elections. Justice Kagan notes in her dissent that one of the difficulties facing campaign reformers is “how to prevent massive pools of private money from corrupting our political system.”38 While the presence of massive pools of money can lead to quid pro quo corruption—where large donations may buy access to legislators—massive pools of money can also drown out the voice of the average citizen. Money has the power to dictate who speaks and who is listened to. Combating the power of large amounts of money with public financing systems can concurrently combat corruption while empowering non-wealthy citizens by leveling the playing field. Both interests are present in public financing, and both interests help each other.

To those who are wary of money in the political system, leveling the playing field enhances competition, allowing more individuals to run elections. The restriction of some speech to enhance the speech of others can be seen to foster competition: more people are engaging in the political process with no one individual dominating its discourses. Which election is more competitive: the election with one wealthy incumbent or the election between that wealthy incumbent and two viable publicly funded challengers?

With balanced support of equality and anti-corruption interests, public financing embodies a different conception of political competition than the one advocated by the Roberts’ Court in Arizona Free Enterprise. Whereas the Roberts court holds that “natural” competition is ideal, proponents of public funding see the ideal level of competition to be participatory—in which any citizen can become a candidate, regardless of advantages. The attempt to level out monetary advantages promotes equality, participation, and a fiercer competition in the sense that more citizens are able to run viable campaigns. However, this view that equality is a good part of competition entirely conflicts with the philosophy of the Roberts court. These two conceptions of competition are difficult, and perhaps impossible, to reconcile, as they could both arguably be justified by the First Amendment. In one conception, equality is absolutely necessary to increase competition; in the other, equality, does nothing but taint competition. Until one of the two philosophies shift or a compromise is reached,

38 Arizona Free Enterprise, 564 U.131 US. Ct at 2830
proponents of public funding and those concurring with the current U.S. Supreme Court will continue to disagree.

CONCLUSION

Promoting equality ought to be a permissible goal of public financing systems. In regards to campaign finance reform, such a goal may be even more consistent with the First Amendment than the goal of combatting quid pro quo corruption. Justice Breyer points out, “when the Founders referred to ‘public liberty,’ they had in mind more than freedom from a despotic government. They had invoked an idea of freedom as old as antiquity, the freedom of the individual citizen to participate in the government and thereby to share with others the right to make or to control the nation’s public acts.”39 The Constitution can be more than a barrier to government intervention; it stands as a testament to the ideals of democracy. The First Amendment, therefore, can be seen as a means to empower as well as protect its citizens. Providing an equal opportunity to speak, as facilitated by equal opportunities to pay for such speech, not only can be consistent with the First Amendment, it may well be mandated in the amendment.

The Arizona Free Enterprise verdict will be the last word on public financing. The opinion of Arizona Free Enterprise may have focused primarily on the trigger nature of the matching funds provision, but it revealed a great deal about how the court could potentially respond to future public financing cases. If the Court continues to rule like the majority of Arizona Free Enterprise—with an adherence to an ideal of natural competition—then it is hard to imagine how campaign finance reformers will be able to create viable public financing systems, which inherently embody equalizing interests alongside anti-corruption interests.

The potential good that public financing systems can bring to elections will not be able to materialize fully if the campaign finance reformers cannot be honest about the goals of public financing systems, a dual goal of combating corruption and promoting equality. In the words of David Strauss, public financing “may be a worthy or even an imperative task. But if it proceeds without a good sense of its objectives, there is no reason to expect it to succeed.”40 The court’s ruling in Arizona Free Enterprise does not allow public financing to proceed with a good sense of its objectives and thereby significantly reduces its chance to be successful with its goals.

39 Breyer, 3.
40 Strauss, 1389.
There is no quick remedy for the divergence between the Supreme Court and proponents of public financing systems; in order to directly confront *Arizona Free Enterprise*, reformers would need to promote a constitutional amendment or obtain a different ruling in a subsequent case, neither of which are likely in the near future. At this moment, public financing proponents must take the opportunity to continue to search for innovative public funding systems that solely promote anti-corruption interests, possibly along the lines of a rebate system; yet, they also must promote their case to legislators and the public and promote the dual language of equality and anti-corruption within the campaign finance reform dialogue. If equality becomes an acceptable element of public financing systems within the next generation of citizens, leaders, and the judges they appoint, the jurisprudential framework for public financing may allow such systems to once again flourish and promote the First Amendment ideals of participation and active democracy.
BIBLIOGRAPHY


Scott v. Roberts, 612 F.3d 1279 31 (11th Cir. 2011).


SOCIAL MEDIA: THE NEXT REVOLUTION IN PRESIDENTIAL COMMUNICATION

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Political leaders have long been able to harness new types of media to communicate their views and ideas and to win political debates. This paper explores the relationship between the president and the rapidly expanding world of social media. While we have witnessed the immense power blogs and networking websites can wield in mobilizing voters during elections, I argue that we have yet to see a president use social media effectively off the campaign trail despite its enormous potential to help push agendas and foster a dialogue with the public.

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INTRODUCTION

Many of the most memorable moments in presidential history are instances of great communication. When we think of Lincoln, the Gettysburg Address and the Emancipation Proclamation come to mind. The sound and image of Reagan insisting, “Mr. Gorbachev, tear down this wall” is not one easily forgotten. Effective communication and use of media have been important parts of the presidency since the beginning of its existence. All modern presidents seek to use media to exert their influence, push their agendas, and improve their public image. Some of the most successful presidents—in the eyes of their contemporaries and historians—have been those with the most innovative, creative, and effective communications strategies. Franklin Roosevelt’s use of the radio for fireside chats to calm and reassure the nation in a time of crisis helped him become one of the most popular presidents ever. Although very little polling data exists from his time, he was elected an unprecedented four times, each time with over 300 electoral votes.\(^1\) Kennedy’s use of television to interact on a more personal level with the American people—and in a way in which he could showcase his youth, energy, and looks—boosted his effectiveness on the campaign trail and in office. His large number of television appearances and television-oriented changes to the format of presidential press conferences allowed him to be portrayed to the American public in the most flattering light.\(^2\)

Now, with the fairly recent rise of social media in the United States, presidents are faced with a great opportunity. Social media is a fairly new, Internet-based type of news media that allows users to interact with the news originators and with each other, sharing information and opinions along the way. Social media offers the president a new, unique way to communicate and interact with citizens. Blogs, social websites such as Facebook and Twitter, and sharing sites such as YouTube and Digg allow the president to communicate and interact with his constituents in a more intimate, personal manner than any other form of media existing today. Americans have seen the immense impact that social media had in the 2008 presidential election, as well as in subsequent national and state elections. Both Barack Obama and John McCain raised large sums of money online and created networks of volunteers and supporters through sites like Facebook, Twitter, and their own campaign websites. This paper


will argue that social media is the next frontier of political communications, has enormous potential, and will bring enormous benefits to its early adopters. Additionally, I will argue that while social media has been effectively harnessed and used in campaigns, we have yet to see a president truly exercise its full potential to push agendas, mobilize support for policy and generate political enthusiasm while in office.

This paper will first lay a historical foundation for the discussion of social media and presidential communications. I will briefly describe the other main types of media currently and historically used by the president, discussing their origins and impact on presidential power and strategy. Next, I will demonstrate how social media is different from other traditional media, and why this matters to the president. I will discuss the how social media has (and has not) been used so far in campaigns and otherwise by politicians at all levels of government. The paper will conclude with a discussion of the potential for social media to revolutionize the way presidents communicate with the public as well as the shortcomings and limitations of the new technology.

**PART I. HISTORICAL CONTEXT**

Throughout American history, media, and the harnessing of new types of media has been crucial to presidential success. Presidential power has always revolved around the ability to persuade other branches of government and the public—a fact accepted by presidents and presidential scholars alike. Theodore Roosevelt famously referred to the presidency as the “bully pulpit,” a way to spread his ideas and opinions across the nation. Samuel Kernell, one of the most influential scholars of presidential communication writes that “modern presidents rely upon public opinion for their leadership”\(^3\) and use the media to exploit it. Print news and in-person speeches and events dominated how the president communicated with Americans until the 1920’s. The advent of the radio changed this, suddenly allowing citizens to listen to their news and hear the president speak despite being miles away from Washington. The popularization of television broadcasting again changed the communications landscape in the 1950’s and 60’s, and most recently the Internet revolutionized how the president relates to the electorate. By 1940, eighty percent of American households had radios, compared to forty percent in 1930. Similarly, ninety percent of households had televisions by 1960, compared to about ten percent in 1950.\(^4\) For each new type of media the United States has

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\(^3\) Kernell, 105.

\(^4\) *Id.* at 98-100.
seen, there have been one or a few presidents that seized the opportunity to convey their ideas to the public differently, and all of them saw great political gains from their efforts.

The first, and probably best known, of this group is Franklin Roosevelt. Although he was not the first president to be broadcast over the radio, he was the first to exploit the medium to its fullest extent, most notably through his fireside chats. Roosevelt was president during the meteoric rise of the radio. As mentioned above, the percentage of households with radios drastically increased during his presidency, and because many presidential addresses and press conferences were broadcast, he had a far greater reach over radio than previous presidents. Before the radio, Americans got their news from newspapers and magazines—sources through which it was rare to get words directly from the president’s mouth. Although early in the country’s history, most presidents had “presidential newspapers,” or newspapers that were “regarded as at least the semiofficial voice of his administration,” these certainly did not constitute direct communication between the president and his people. Reporters and journalists that wrote the newspaper articles, whether intentionally or not, would modify the exact message the president wished to convey. Additionally, because presidential newspapers were highly partisan (often created and funded by political parties of elected officials), they reached only a small subset of the U.S. population: those who agreed with or belonged to the newspaper’s political party affiliate.

By contrast, the radio provided the first way for many Americans to hear their president speak. Over the airwaves, the president could give his message to the public unfiltered and exactly how he wanted them to hear it, down to the tone of voice. Roosevelt’s most famous use of the radio to communicate with the people of the country was through his fireside chats, a series of thirty addresses throughout his presidency. He often used the chats to push policies he wanted to get through Congress, to defend and advocate for political positions he took, and even—as was the case in his first address—to reassure the public about the economy and the banking system. These chats helped Roosevelt connect on a deeper level with many people, giving them a greater sense that he cared about them and imbuing in them an allegiance to him and to the country. Owing partly to this, Roosevelt became one of the most popular presidents in the nation’s history, winning four terms as president in landslide victories, a fact that gave him incredible political clout.

5 Mel Laracey, Presidents and the People: The Partisan Story of Going Public (College Station, TX: Texas A&M University Press, 2002), 47.
6 Id. at 47.
The radio not only fueled Roosevelt’s general popularity, but it also gave him extra legislative power through the public response to his chats. After each of his addresses, letters would pour into congressional offices pressuring legislators to support the plans Roosevelt had presented the night before. Congressmen were faced with little choice because of the popularity of the president, and their own limited ability to connect with constituents, and many found it easier to acquiesce and support the president’s policies. All this was despite the fact that Roosevelt resorted to directly asking the public to contact their representatives only once over the entire span of his radio addresses.7

The next type of media to change the political communications landscape was the television. While the device was invented in the 1920’s, it was not widely available and used until the 50’s and 60’s. Like the radio, television offered presidents “direct communication with the voters which no newspaper could alter by interpretation or omission.”8 However, television added a new level of depth to the connection presidents could form with the public. Suddenly, kindly expressions, good looks or reassuring gestures that obviously could not be transmitted via radio were available to be used in the television era.

John F. Kennedy saw this exact opportunity during his campaign, and continued to use the television to his advantage once elected. The public was able to see him on a regular basis, rather than just hearing or reading about him. Undoubtedly, this gave Kennedy much political advantage, as this more personal relationship would make him better able to pitch his agenda to the American people.

PART II. THE SOCIAL DIFFERENCE

Radio and television forever changed the way presidents interact with the public and gave large amounts of extra political clout to the first presidents to use them. I see similar potential for social media to do the same. Both of the aforementioned technologies allowed presidents to form deeper connections with their constituents by changing the mode of communication between the president and the public. Social media not only changes the mode of communication, but it also changes the manner and directness of communication.

7 Kernell, 20-21.
8 Ted Sorenson quoted in Kernell, 70.
Mode of Communication

The mode of communication between the president and the public through social media is actually quite varied. Because social media is entirely Internet-based, it can take a wide variety of forms. Blogs (online news and opinion journals) are mostly text-based, while other sites such as Facebook or YouTube often or exclusively contain video content. The flexibility of social media in types of content provided gives it several advantages over traditional media (print, radio, television). First, when using social media to access news, people can readily choose and switch between content types with a single click or often by simply scrolling to a different part of a website. Additionally, due to assumed time and attention-span limitations of Internet users, packets of news presented via social media are often much shorter than those presented through traditional media. This fact can be taken to be an advantage or a disadvantage for presidents. A shorter message could prevent a president from conveying the full extent of his argument or position. However, a shorter message could also more easily pique a reader, viewer, or listener’s attention and get him or her quickly interested in an issue. Also, while most bits of news found in social media are shorter than those found in traditional media, they are by no means limited in their length. Unlike television and radio broadcasts or newspaper articles, there are no standard length ranges. Blog entries may be as long as the poster wishes them to be, and video clips may be seconds or hours in length.

Social media’s mode of transmission is also different in that it is more flexible than traditional media and can be used from many types of devices. As mentioned above, social media is entirely Internet-based, and can therefore be accessed and used through any device that can connect to the Internet. In American society today, people can use social media via their phones, via tablet computers, and via laptop and desktop computers. With a growing number of Americans owning these devices, social media can be present in a personalized form with many people wherever they go. While there may be televisions showing news broadcast in restaurants, bars, offices and coffee shops, they may not, and probably do not, show exactly what each person in that space wants to be watching at all times. By contrast, a person using their smartphone to read the news can instantly choose content they want to watch, making social media not only ever-present, but also relevant to its users.
Manner of Communication

The second major characteristic that sets social media apart from traditional media is the manner in which it imparts information to the public. Radio, television, and print media all involve one or a few announcers, writers, or hosts giving an account or opinion to their audience. Social media blurs the line between the giver and receiver of news. Any person who reads an article on a blog or watches a video on YouTube can publicly comment and respond to what they experienced. While this is a seemingly minor change in the way in which people experience the news, it is actually a major shift, and opens up a huge opportunity for presidents and other elected officials to reach out to their constituents in new ways. This shift stems directly from the ability of the news-giver and news-receiver to enter into conversation. When someone uses social media, they become an active participant in the transmission of news. They are able to share their comments on what they have just learned with every other person that also learned what they just did—including the originator of the story (the president in our case). This allows for the originator of the news story to see the reaction of the public to his or her story, and for him or her to respond to criticisms and comments.

Not only does social media offer the opportunity for dialogue, but it also allows for greater sharing—publicly and privately. A person who has just seen what they deem to be an important presidential address on YouTube can immediately post that video on Facebook, making it available to some or all of his or her friends. This type of easy sharing is possible with traditional media, but is much more costly and less practical. One could cut out and photocopy an article for friends or direct them to seek out a recording of a radio or television program, but the type of instant and easy sharing made possible by social media is unprecedented.

Directness of Communication

Both television and radio offer the president more methods to communicate with Americans directly, without a reporter, announcer, or writer filtering the message. However, while it is true that those two media offer that opportunity to presidents, it is not one that is taken often. A president can only give so many addresses on the radio and television. However, because social media is an Internet phenomenon and often less formal than radio or television, it gives the president the ability to communicate with the public on a more regular basis. To communicate with Americans through social media, the president need not prepare a dramatic, hour-long speech or address. In fact, some communications through social media can be as short as a sentence or two. Because of this, social
media allow the president to communicate more directly with the public, possibly enhancing his political power, as evidenced by the success of Roosevelt’s fireside chats.

Related to the increased directness of communication allowed by social media is the increased personalization possible. Social media offers personalization in two ways: First, there is the obvious step of the user deciding which specific source to use to obtain information from. This is a level of personalization that social media shares with other traditional forms of media. However, social media often offers much greater choice in this area. While only a few (dozens in a more expansive view) major political news networks exist on the radio and on television, hundreds, if not thousands of well-maintained social media outlets exist on the Internet. A second level of personalization—one that exists exclusively in social media—is the increasing ability of websites to recognize users’ tastes and recommend articles and videos that are relevant to a user’s interests. Websites such as StumbleUpon use advanced algorithms based on stated user preferences to recommend content. Even Google has started to use similar technology to determine the order in which it returns search results to certain users. This type of personalization may seem disconcerting to many, but it could certainly be a very effective tool in helping presidents and other politicians shape and tailor their message and releases to individuals.

The last level of personalization that exists in social media comes from the simple fact that it is digital and computerized. Because of this, news content available on social media sites is very searchable. Social media users do not have to sit through entire broadcasts or sift through pages of newspapers to find the content they are interested in. By simply typing in the subject that they are interested in, users can find exactly the content they want. This, along with the other types of personalization described above, could have great implications for presidential use of the media. Because of personalization, a president can put out a massive amount of information through social media without having to worry about overloading individuals with information. As long as the President and his or her staff pay enough attention to personalizing his blogs and other sites, each individual would only receive the information relevant to him or her. This would allow for every member of the public to feel more connected to the president and thus be more likely to give him their support.

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PART III. THE USE OF SOCIAL MEDIA IN CAMPAIGNS

Before I examine the use of social media by the president while in office, I will briefly describe the role it has played in recent political campaigns, as there are lessons we can draw from those anecdotes. The most notable use of social media in a campaign was by Barack Obama in his successful 2008 bid for the presidency. In the 2008 election, Obama ran a grassroots campaign, focused on mobilizing voters and activists to elicit small contributions of time and money from a large number of voters. This effort was made possible in a large part by Obama’s use of social media. Social networking websites like Facebook and Twitter let him connect with activists—especially young ones—to spread his message. These sites also helped enormously in the organization of events and the campaign in general. The ability for people to form groups on many social networking sites helped facilitate the quick dissemination of messages and directions from the campaign.

Obama is widely regarded as having dominated the social media battle in the 2008 campaign. He was able to attract 2.4 million supporters on Facebook, compared to John McCain’s 624,000.\(^\text{10}\) His website was specifically designed to be user friendly and the “donate” buttons were always prominent and easy to find. Not only did he send constant updates to social media sites about his campaign activities and positions, but he also used social media in the same way that a private individual might use it—to share pictures of his family and non-political activities. This usage allowed voters to view him not just as a candidate they agreed with, but also as someone with whom they could be friends and someone they could relate to—someone who understood the lives of regular Americans.

During his campaign, Obama was very adept at using his social media tools to do the exact types of personalization mentioned in the previous section. The Obama campaign was able “to segment out its supporters and to provide targeted messages to unique and narrow constituencies and slices of their activist base.”\(^\text{11}\) Mealy finds that this segmentation was very effective for Obama in reaching out to groups of constituents, especially certain ethnic and racial groups.


Obama’s ability to reach out to individual groups with personalized messages, coupled with the enthusiasm of his supporters in sharing his message with their friends and contacts helped fuel immense support of the Obama campaign and unprecedented numbers of donations, both large and small. However, the next important question to ask is about how well Obama was able to transfer his use of social media tools from the campaign to pushing his agenda once elected.

**PART IV. SOCIAL MEDIA’S POTENTIAL IN GOVERNING**

So far, this paper has discussed the uses and characteristics of the use of social media as a political tool for the president, but has not fully addressed the question of what potential it has to change the president’s power, positively or negatively. In this section, I will address that very question.

*Potential Benefits*

Many of the potential benefits a president could see from the effective use of social media during his tenure in office are similar to those that were seen in Obama’s successful 2008 campaign for the presidency. First, there is the audience-broadening effect caused by the social, sharing nature of social media. Rather than relying on television, radio, or print news to spread a message to citizens, through social media, a president can use people themselves to spread it. With traditional media, one can think of the average person primarily as a receiver of news: an endpoint for a political message. A person might discuss a piece of news they heard with their family, or a small group of close friends, but certainly not with a large network. However, the average person accessing a message through social media is not an endpoint in communication, and might even be thought of as a springboard for a message, or a secondary hub. When a person receives a piece of news through a well-managed presidential Twitter account or blog, they have several options that can magnify the audience that the message reaches or more deeply engage the audience that the original message reached. In the case of a tweet or a post on Facebook or YouTube, users can, and often do retweet or share the original content with their friends and followers. This not only widens the message’s audience, but also diversifies that audience. It is plausible that, because of the selective nature of social media, the original message may only reach a group of people that were already aware of, or in agreement with the message. But if some of the users that received the original message pass it on to their
acquaintances, the audience is expanded to many others who did not explicitly choose to see or seek out that message.

Besides widening the audience for political messages, effective presidential use of social media could deepen the connection between president and public, as well as foster a greater sense of efficacy—a greater feeling that personal actions matter to national politics and a greater likelihood of engaging in politics—among the public. Evidence shows that the use of social media websites to access political news led to an increase in political activism.\(^\text{12}\) This is consistent with what we observe when examining the use of social media in elections. Social media played a huge part in mobilizing voters to support Obama in the 2008 election not just by voting for him but also by getting involved in the campaign financially, physically, or both.

This finding bodes well for the use of social media by presidents while in office. If they can effectively harness social media to their advantage, they can increase activism among the average citizen, increasing their political influence and their popularity. Additionally, there is some evidence that the act of using social media to access political news and information can increase one’s political efficacy. This research is not fully developed, and has not reached conclusive results as of today. Hopefully, empirical research will soon address the question of whether social media users have greater feelings of political efficacy and confirm the findings that social media users are more politically active. However, there are certainly strong theoretical reasons why political social media use might be linked to increased political efficacy.

**Potential Limitations**

While the use of social media has many potential benefits for presidents during their tenure in office, it also has its fair share of limitations and problems. Primarily, these limitations stem from its selectivity and its audience.

Social media’s selectivity issues, as previously mentioned, may limit its ability to reach a diverse audience. One of its advantages—that the medium is searchable and users can easily find exactly what they want—can be limiting as far as who receives the president’s message. Rita Kirk presents this argument:

\(^{12}\) Bichard, et al. 82, 85.
The Internet can increase civic engagement and participation; however it is likely to do so for those already engaged, because the Internet requires users to take an active role in finding political information and posting responses. In short those who are already engaged will become more engaged using the Internet, whereas for those already disengaged, the Internet will likely continue that pattern.\(^\text{13}\)

There is no doubt that this is true to some extent with social media, and it is likely that those citizens who are less politically engaged will be less likely to be the primary recipients of a president’s message. However, because of how easy it is to share content through social media sites, I doubt that presidential use of social media to communicate his message would have no effect on the more politically disengaged members of society.

Another related concern is that because of social media’s selective nature, it will not help the President reach out to members of the opposing party or citizens that don’t agree with his agenda. Again, this argument has merit, but I argue that social media would not be totally ineffective in bridging the gap between opposing viewpoints. Because of its ability to engender dialogue between multiple people and groups, it might actually be more likely to change peoples’ viewpoints in some cases because active and personalized persuasion could happen in place of the generalized arguments often made in the traditional media.

The final criticism leveled against the effectiveness of social media as a political tool is that only a small part of the American public uses the medium. Detractors argue that social media users are disproportionately young and make up a fairly small segment of the population.\(^\text{14}\) While this is true to some extent, the similar arguments could have been made during the early years of radio and television. While young people may dominate social media now, the young become older and take their habits with them. As time goes on, the use of social media will spread throughout the United States’ population, cutting across age, race and socioeconomic lines, just as television and radio did before it.


\(^\text{14}\) Bichard, et al.
PART V. USE OF SOCIAL MEDIA IN GOVERNING

How is it Currently Being Used?

While Obama used social media to its fullest potential while campaigning for office in 2008, we have yet to see him harness its true capacity in his first four years as president. This is not to say that he has not used social media to his benefit, or that he has been outdone by his political opponents, but he has failed to take advantage of social media’s biggest strength—its ability to stimulate dialogue between the president and the public.

So what exactly has President Obama done with social media while in office? First, to clarify, he has not actually actively shut down any of the efforts he used during his campaign: He still has Twitter, Facebook, and YouTube accounts, and his blog is still updated daily. The striking difference between his campaign and his tenure in office is the lack of idea exchange and dialogue. I suspect that this is partly due to a drop in enthusiasm of his supporters. A campaign is often exciting and invigorating, as there is a clear end goal in sight, and candidates simply make promises and defend ideas rather than having to deal with the real inevitable failures and roadblocks in the implementation of some of their policies and reforms. Given this inevitable drop-off in enthusiasm of the electorate after his election, Obama would have to push his agenda harder through social media once in office in order for it to be effective. With fewer of his supporters creating dialogue, he would need to foster that dialogue himself.

Interestingly, President Obama has not fully been able to do that. Certain advantages of social media have continued to benefit him since his election—such as increased public ability to find information, and increased intimacy of communication, but these are just extensions of the advances made by television and radio in the past. Social media’s true strength as a news source lies in its ability to allow for a two-way dialogue between candidate and supporters, and if anything, it seems that Obama has attempted to prevent this from happening.

For example, the White House Blog does not even allow readers to comment on the content posted. While this may be due to an attempt to limit the visibility of negative comments shown on an official government web page, it shuts down an integral part of what blogs are—social tools. By not allowing comments, the Obama administration has essentially

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turned social media into traditional media, denying itself the possible benefits unique to social media.

A similar pattern can be observed in President Obama’s tweets. Almost every one of his tweets is a short announcement or headline followed by a link to a news article from his blog.16 As is the case on the White House Blog, the president makes no attempt here to engage the public in a dialogue that could potentially help his power and image. To be completely fair, the White House Twitter account does very occasionally ask for responses from its followers, but more often than not, the tweets ask for questions about policies, not usually about people’s opinions on bills or presidential actions.17

Many prominent people, whether they are musicians, actors, businesses or businesspeople, devote a significant number of their tweets to responding to tweets from fans.18 These responses range from specific answers to tweets from individual fans to general statements answering common questions raised by many followers. This type of interaction is exactly the innovation that social media brings to the communications sphere. Such exchanges help individuals in the general public feel like they actually have a relationship with the prominent figures they pay attention to. They help fans feel more engaged, and may help throw public figures that respond to followers’ tweets in a more positive light. Will Grant19 finds that Australian politicians gain from actively using their Twitter accounts, and that the process of hearing from and responding to supporters’ tweets helps them greatly. It is not an unreasonable extrapolation to assume that a president could reap similar benefits were he or she to use social media similarly to the Australian politicians from the above study or other public figures in the United States. For instance, it was found that when politicians engage in “conversational tweeting,” or tweeting that was either intentionally phrased to elicit responses or was in response to a con-

stituent’s tweet, they are much more likely to be “retweeted,” and are able to reach out to more of the public.

*How Should it be Used?*

Now that we have determined that President Obama has not yet used social media to its fullest potential in pushing agendas and policy in office, what should be done differently? Obviously, as was alluded to above, Obama and future presidents should further exploit the interactivity of social media if they want to reap its full benefits. Presidential administrations need to figure out how to allow the public to comment on their blogs without presenting overly offensive material to the general public. They need to reach out to constituents more through Twitter by asking for opinions and responding to questions. But more specifically, let me describe how such a strategy might be executed.

Without a doubt, to fully and properly implement a social media strategy, an expanded communications department would need to exist in the White House. If the president reached out to citizens on a regular basis to ask for opinions, and needed to (through his staff) respond to questions and concerns, new positions would have to be created to deal with handling these tasks. However, I do not envision that such a restructuring would be prohibitively expensive economically, politically, or administratively. Because the White House and the president are at the head of an immense federal bureaucracy, I think that there could be a fairly small set of people at the crux of a new social media team that processed (or came up with an algorithm for processing) each constituent response to the president’s tweets, blog posts, or shares on other social media sites. This small central group would then farm out groups of responses to the various cabinet departments according to the policy area that the question concerned. Because most comments would undoubtedly fall within a limited range of topics, it would be fairly simple to post general responses to common questions and concerns through the president’s social media accounts on a regular basis. While such a plan would certainly be somewhat costly, I would hazard a prediction that the gains and savings it would have in other areas would far outweigh the costs. A detailed economic analysis needs to be done to estimate what the true costs and benefits would be, but such a strategy could reduce the number of direct mailings for which a president would have to pay for the purposes of providing general information or responding to constituents, as more people could learn this from social media. The costs of these mailings could be enough to offset the costs of an electronic social media organization.
CONCLUSION

During the history of the United States, generations have experienced a few major shifts in political communication. Each time a new type of media arises, a president is there to ride its wave of influence to political victories. Looking back, we see this phenomenon with Roosevelt and the radio and, to a lesser extent, with Kennedy and the television. Recently, however, social media emerged and has been the biggest innovation in communication in decades, greater even than the advent of television. This is because social media does not just deepen and strengthen the relationships people can form through the news, but changes the process of getting news from a passive to an active process. Suddenly, people can engage in a discussion with public figures they could barely hope to ever meet in person. They can instantly respond to political actions and express their views directly to their elected representatives.

This communications revolution gained steam with Barack Obama’s 2008 campaign, and the world saw the massive force that interactive media could have on politics, but we have yet to see Obama fully harness the might of social media in office. Although there may be some political and administrative challenges in the implementation of a successful social media strategy for the president, the challenge will pay off many times over for the first president to utilize the might of this new type of media. The question we should be asking ourselves is not if social media can have an impact on politics, but when it will forever change the way the White House communicates with the public.
BIBLIOGRAPHY


Congressional Redistricting and the Modern Political Climate

Zach Drennen*

Although the media often blames grotesque congressional districts created through the process known as 'Gerrymandering' for the hyperpartisan atmosphere in Washington today, these concerns appear overblown. Partisan redistricting does not seem to have the same impact on partisanship as other factors, although it goes a long way toward reducing competitiveness of House elections. This lack of competition creates a perverse incentive where incumbents often have more to fear from a primary challenge than the general election, and there is little incentive to reach across the aisle. Commissions do little to reduce this effect, as they are often appointed by a partisan legislature. The author hypothesizes that other solutions such as judicial conditions, term limits and multi-member districts might increase competitiveness in the House of Representatives.

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INTRODUCTION

In 1788, before the election of the first United States Congress, Patrick Henry and his Anti-Federalist allies, who controlled the Virginia House of Delegates, drew the lines of the state's fifth congressional district in an attempt to prevent James Madison from winning election to the US House of Representatives.1 Although their scheme failed, it marked the beginning of a long tradition of manipulating the boundaries of Congressional districts for partisan gain. Ever since, legislators have tried to draw the electoral map in a way that would maximize their party's strength.

In the hyper-charged political climate of today, political analysts, political scientists, and American voters all speculate about the causes of partisanship, factions so entrenched that political parties no longer seem capable of compromising on the most simple of legislative priorities. In the “good old days,” supposedly, things were not like this; politicians could set aside petty rivalries and talking points and move forward for the good of the country. If this were indeed the case, what development in American politics is to blame for the end of compromise? While a lot of attention is focused on the large amount of money in campaigns, the power of lobbyists, or the 24-hour news cycle, another factor has contributed to the ossification of political parties. The partisan redistricting of Congressional districts—called “Gerrymandering” after a plan signed by Massachusetts Governor Gerry in 1812—protects incumbents by allowing them to pick their constituents instead of the other way around, giving rise to extreme candidates on each side, and leading to the disappearance of moderates and of moderation.2 Incumbents often have more to fear from a primary challenge than the general election, and there is little incentive to reach across the aisle. For the United States Government to have hope of solving the national challenges of the modern era, this problem is one that demands examination and reform.

Redistricting and primary challenges do not receive adequate attention considering their importance. A comparison of the reelection rates in the House of Representatives with that of the Senate helps to illustrate the problem; in the House, “gerrymandering” has been used to reduce competition. The Senate, however, has no such measures. For many incumbents, the greatest career risk is not the general election, but a primary challenge from within their own party, barring an embarrassing personal...

revelation. According to roll call votes, the partisanship of individual representatives has also followed an upward trend over the last fifty years.³

The examples of several specific states and districts, especially that of the New York 29th Congressional district—now a “holding pen” for Republican voters in Western New York—show some of the ridiculous forms that gerrymandering takes, and the way gerrymandering undermines the functioning of a democracy. Some states have taken measures to try and alleviate the temptation of the party in power to skew the political process. These and other, more radical reforms such as term limits or an end to single-member districts, could go a long way in fixing the broken process of election to the House of Representatives.

This paper uses a qualitative analysis of competitiveness as well as a quantitative model that explains changes in partisanship throughout the last century. It is clear that redistricting has an effect on both, and while other factors appear to have a larger role in causing the gulf between the modern parties of today, the redistricting is still a fact and is important to understand.

PART I. POLITICAL CONTEXT

The effects of gerrymandering on partisanship has received quite a bit of study, although different authors have come to strikingly different conclusions on this subject, with more consensus on the issue of competition. Frank outlined some of the potential problems with a lack of competitive elections and proposed some fairly radical solutions⁴. Echoing a paper by Carson, Crespin, Finocchiaro, and Rohde,⁵ as well as Theriault showed that members elected to represent either newly created or significantly reworked districts vote more party-line than those representing largely unchanged districts.⁶ He also found the use of commissions to increase rather than decrease polarization. McCarty, Poole, and Rosenthal contend that this is largely because new districts tend to be centered in the more partisan South and Southwestern United States.⁷

⁶ Sean Theriault, Party Polarization in Congress, April 26, 2006, University of Texas.
Poole and Rosenthal found that time in Congress does not increase polarization—that members arrive biased, and stay that way.\textsuperscript{8} A large number of experts found that the redistricting process produces districts that become more and more homogenous in terms of partisanship and the ideology of its voters, including Carson et al.,\textsuperscript{9} Fiorina et al.,\textsuperscript{10} Macedo et al.,\textsuperscript{11} Issacharoff,\textsuperscript{12} and Toobin.\textsuperscript{13} McCarty, Poole, and Rosenthal,\textsuperscript{14} however, disagreed with conventional wisdom, finding no strong causal link between partisan conflict and partisan redistricting.

\textbf{PART II. UNDERSTANDING THE REDISTRICTING PROCESS}

In 33 out of 50 states, the power to define Congressional districts rests solely with the state legislature, subject to the approval of the state’s respective governor. Seven other states—Arizona, California, Hawaii, Idaho, Minnesota, New Jersey, and Washington—use a bipartisan or independent commission to determine the divisions of the districts. In three additional states—Florida, Iowa, and Maine—an independent body has the authority to propose a plan, but the legislature still has to approve or reject it. The seven least populated states—Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming—do not have to go through the redistricting process because they have only a single representative in the House of Representatives.\textsuperscript{15}

The requirements for the creation of Congressional districts vary from state to state. Many require that districts are compact and contiguous, and forbid the practice of drawing them in a manner that creates a partisan advantage or protects the incumbents.\textsuperscript{16} In practice, however, these guidelines are often ignored.\textsuperscript{17} This high-stakes process often be-

\textsuperscript{8} Poole and Rosenthal. \textit{Ideology}, 2007.
\textsuperscript{9} Carson, Crespin, Finocchiaro, and Rohde, “Linking Congressional Districts Across Time.”
\textsuperscript{14} McCarty, Poole, and Rosenthal, “Cause Polarization.”
comes the subject of much contention, especially in states where multiple legislative houses or the governor’s office are controlled by separate political parties. Often, state and federal courts are asked to intervene to preserve some semblance of fairness in the process. To make matters even more complicated, Justice Department approval or pre-clearance is required by Section 5 of the 1965 Voting Rights Act in states that have a history of racial barriers to voting. This restriction—often criticized within the state political process—applies to Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and some parts of Virginia. Many of these states are home to political movements that resent the federal government’s interference in the sovereignty of their state.

Pre-clearance most recently made headlines in Texas, where the Justice Department ruled in September that the congressional redistricting map agreed upon by both the state legislature and onetime Republican Presidential front-runner Rick Perry had the intended purpose “of diminishing the ability of citizens of the United States, on account of race, color, or membership in a language minority group, to elect their preferred candidates” to Congress. The Civil Rights Division of the Department of Justice specifically charged that changes to Texas Districts 23 and 27—one a large district along the Mexican border, and the other a narrow coastal district to the south of Corpus Christi—would prevent Hispanic voters from having the ability to elect candidates that represented their views. This case draws attention to some of the problems with Congressional Redistricting.

Unfortunately, improved technology that allows for the division of voters and demographic groups on a street-to-street basis makes the process of filling a district with specific voters all too simple. Software makes it possible to pack political opponents into as few districts as possible while providing more districts that the majority party can easily win. Many states from Pennsylvania to Texas have succeeded in either diminishing or entirely eliminating the competition for House seats between parties. Old-fashioned deal-making joined with technology play a role in other states, including New York and California, where coalitions make deals to protect incumbents in both districts, again reducing the number of competitive general election races.

New York has a Democrat-dominated State Assembly and Republican-dominated Senate; in order to come to an agreement they create a number of safe districts for both Democratic and Republican incumbents, allowing a political process where only a handful of Congressional races have outcomes that are true surprises in November. The Supreme Court in 2004 protected this practice in all states by ruling that gerrymandering in Pennsylvania was both constitutional and ‘nonjusticiable,’ meaning that the court was unable to rule on these claims, because there was no discernible or manageable standard for “adjudicating political gerrymandering claims.”

PART III. COMPETITIVENESS

In some years, election rates in both the House and Senate are shockingly high, especially when historical records show relatively low approval ratings. Despite poll numbers that show that year after year—with the exception of 2002—more voters disapprove than approve of the job performance of Congress, and members of Congress are far more likely to keep their jobs than lose them. In 2010, when Congressional approval ratings had dropped to a shockingly low 13 percent, more than 80 percent of Congressmen were sent back for another term.

![Figure 1: Congressional Approval Rating, 1975 to 2010 (Gallup)](image)

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Even in so-called “wave” years like 2010, this lack of competitiveness seems to be the rule rather than the exception. Despite the idea that the House of Representatives was created in order to be more responsive to populist drives—hence the shorter terms—the reelection rates for Senators were significantly lower. This points to external factors that reduce competitiveness. Senators generally have greater visibility than their more numerous counterparts. With that comes curses and blessings; Senators have more trouble distancing themselves from national factors and are less ability to cater to the individual demands of their constituents. At the same time, they receive advantages from their visibility: greater name recognition and more access to fundraising. Senators spend more time in office before facing an election, so it is possible for them to earn more public admiration or to wear out their welcome by the time they come up for reelection.

A look at the difference in the reelection rates in the House versus the Senate for the last half-century suggests a fundamental difference in the election dynamics between the two houses. More than 85 percent of House members have been elected in every single cycle; in most years this number was far greater than 90 percent. Only twice—1982 and 1994—did the Senate reelection rate exceed that of the House, and only by a slight margin. Redistricting, then, appears to be one of the factors that help protect House members from defeat.
While it does not appear that congressmen become more partisan over time, there are several dynamic problems that a lack of competition to incumbents creates. Incumbents hold large advantages over would-be challengers, and these advantages grow with time. For example, incumbents gain name recognition, the ability to raise money and build up a formidable war chest for a tougher competition, greater media access, and other benefits within Congress due to seniority. These advantages accumulate so that when voter composition in a district shifts away from certain parties, the incumbent Congressman can hold on to power, making the overall composition of the House of Representatives harder to change with the prevailing opinions of the population. A lack of competition that preserves senior members also allows party loyalty to grow; this has been shown to be one of the major causal factors in the gap between Democrats and Republicans.

PART IV. DATA PREPARATION

The quantitative analysis in this paper uses a data set that ranks each member from of both the House and Senate from -.5 to .5 on two separate dimensions since the beginning of the Republic. The first dimen-
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sion measures support for economic intervention while the second measures support for civil rights issues. I only analyze the Democratic and Republican Party from 1900 to the present because of shifting party positions and base my models on the first dimension partisanship ranking of economic intervention, not support for civil rights. Civil rights support has shifted more and in less predictable ways. My model converts the partisanship scores to a number between -50 and 50 to aid interpretation. A score of -50 would represent complete support for government intervention in the economy, or the economic centralization typical of communism. A score of 50 represents total commitment to principles of free markets. The variables “mdem” and “mrep” represent the respective mean for the Democrats and Republicans currently serving in Congress. The dependent variable for the regression models, “mdiff,” averages the difference between these two parties in a given Congress. As you can see from Table 1, the average “mdem” score was -30, with a minimum of -40.8968; the average “mrep” score was 35.9, with a minimum of 25.95 and a max of 45.85. This indicates that Republicans are usually about five points further from the center than Democrats. The minimum difference between the two parties is 51, while the maximum is 84. Today’s gap between the two parties is almost two standard deviations away from mean difference of 66.

Table 1: Summary Statistics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Obs</th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difference between parties</td>
<td>29158</td>
<td>66.03148</td>
<td>10.64959</td>
<td>51.28787</td>
<td>84.23851</td>
</tr>
<tr>
<td>Mean Democrat</td>
<td>15874</td>
<td>-30.4942</td>
<td>5.123362</td>
<td>-40.8968</td>
<td>-21.7105</td>
</tr>
<tr>
<td>Mean Republican</td>
<td>13284</td>
<td>35.92076</td>
<td>6.437547</td>
<td>25.95422</td>
<td>45.8502</td>
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<tr>
<td>State has partisan redistricting</td>
<td>29158</td>
<td>0.814151</td>
<td>0.388992</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>State uses ind commission</td>
<td>29158</td>
<td>0.143803</td>
<td>0.350896</td>
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<td>1</td>
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<tr>
<td>State has single district</td>
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<td>0.042047</td>
<td>0.200699</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Presidential election year</td>
<td>29158</td>
<td>0.50926</td>
<td>0.499923</td>
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<td>1</td>
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<tr>
<td>Years since redistrict year</td>
<td>29158</td>
<td>5.004596</td>
<td>2.824176</td>
<td>1</td>
<td>9</td>
</tr>
</tbody>
</table>

A number of binary dummies exist in the model: first, whether a state uses partisan redistricting, independent commissions, or has a single congressman. 81.4 percent of congressmen are from states that use partisan redistricting, 14.4 percent have independent commissions in some form, and 4.2 percent are the sole representative of their state. In theory, the use of partisan redistricting should have a positive effect on partisan differences, but since it is the reference category it is excluded from the model. If independent commissions have the effect of increasing competition and, therefore, reducing partisanship, the sign on its coefficient should be negative, while if redistricting does increase partisanship, states that have a sin-
ingle member of the House of Representatives should have less extreme representation.

More binary variables indicate if the session immediately follows a Presidential election, since the shifts in partisan posturing that inevitably occur throughout a campaign could explain some of the variation in the data. Accounting for this possible effect helps isolate the effect of redistricting. The model also controls for the years that have elapsed since the last redistricting—on the theory that this should be associated with a relative decrease in the partisan gap as the precision of the district’s partisan lines fades with time and natural population shift—whether a given member is in the House or the Senate, based on the commonly-held image of the House as a hotbed of partisan rancor and populism in comparison to the more moderate Senate, and variables to increase the fit of the regression model based on the year and year-squared in case a quadratic model fits better. I originally created a series of regional dummies, but all of them were statistically insignificant since the end of World War II so none found their way into the final models.  

**PART V. RESULTS**

Figure 3 plots the mean House Democrat (blue), mean Senate Democrat (green), mean House Republican (red), and mean Senate Republican (yellow) on the first-dimension partisanship ranking. As this graph shows, the difference between the two parties was just as great in 1900 as it is today and dipped throughout the century before rising again around the middle of the century.

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25 This clashes with McCarty, Poole, and Rosenthal (2006) who stated that the apparent rise in partisanship due to redistricting is because new districts tend to be centered in the South or Midwest, which they claimed to be more partisan.
Figure 3: Average Partisanship Ranking, House and Senate, by party
While Senate Democrats and Republicans appear to be slightly less separated than their House counterparts, this assumption does not live up to statistical scrutiny. The idea that the Senate is less vulnerable to the issues of populism and more prone to compromise than the House is a legend left over from a time when the Senate was unelected. Based on the data, the level of cooperation around the middle of the century appears to be more of a historic anomaly than a normal baseline—a sort of post-war bipartisan dividend. Following World War II, there was broad political agreement about the direction of the prosperous superpower, newly crowned at the top of the international order.

The above models incorporate data on the voting records of the members of the House of Representatives from 1945 onward. Model 1 does not include a variable for “years” so the amount of the variation in

$^{26}$ 95% confidence interval: (-0.3766547, 0.244255), $P<0.676$. 

<table>
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<tr>
<th>Variable</th>
<th>Model 1 (Linear)</th>
<th>Model 2 (Linear)</th>
<th>Model 3 (Quadratic)</th>
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<td>1.740575</td>
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<td>0.0120469</td>
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<tr>
<td></td>
<td>(0.233)**</td>
<td>(0.071)</td>
<td>(0.038)</td>
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<tr>
<td>Single District</td>
<td>-1.415942</td>
<td>-0.2492648</td>
<td>-0.0785067</td>
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<tr>
<td></td>
<td>(0.659)*</td>
<td>(0.199)</td>
<td>(0.106)</td>
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<td>Years Since Redistrict</td>
<td>-0.1893372</td>
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<td>-0.1066422</td>
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<tr>
<td></td>
<td>(0.033)**</td>
<td>(0.010)**</td>
<td>(0.005)**</td>
</tr>
<tr>
<td>Presidential Election</td>
<td>1.216583</td>
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<tr>
<td></td>
<td>(0.180)**</td>
<td>(0.055)</td>
<td>(0.029)**</td>
</tr>
<tr>
<td>Year</td>
<td>-</td>
<td>0.5517893</td>
<td>-34.92632</td>
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<tr>
<td></td>
<td>(0.001)**</td>
<td>(0.188)**</td>
<td>(0.000)**</td>
</tr>
<tr>
<td>Year-Squared</td>
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<td>-</td>
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<td></td>
<td></td>
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<td>(0.000)**</td>
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<tr>
<td>R-Squared</td>
<td>0.01</td>
<td>0.9092</td>
<td>0.9743</td>
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Number of Obs: 14033

(Standard Errors in Parentheses)

** Significant at 1%  * Significant at 5%
the differences between the parties explained by this model amounts to about 1 percent, suggesting that the total potential effect of gerrymandering is actually fairly small. In this model, the use of independent commissions, whether a state has a single Representative, the years that have elapsed since a redistrict, and whether the year follows a Presidential election are all statistically significant. Oddly, states that have independent commissions have a slightly bigger difference between Democratic and Republican Representatives in both the first and third models, which implies either that independent commissions are failures or that since these are a relatively new innovations, the states that enact them are more partisan to begin with. States with a single member of Congress—and therefore no redistricting, partisan or otherwise—have a corresponding decrease between the two parties, suggesting that in the absence of redistricting, members of Congress are less partisan. In Model 1, this is significant at a ten percent level. Neither of these two variables, however, have statistical significance at a 90 or 95 percent level in the models where “year” is included as an explanatory variable; their effect is dwarfed by the other changes over the years.

The two other models both include a control for “years.” In one model, the control is linear, and in the other, it is quadratic. Both of these have high R-squared values, suggesting that the model is able to closely fit the variations in the data. The quadratic model, indeed, explains 97.5 percent of the variation in the difference between the two parties in the post-war era. From the linear model, there is an approximately .55 point increase in the difference between the two parties for each year that goes by, meaning if they started at 0, within a ten year period the difference between the two would be 11 points on the converted partisanship measure. Obviously, the years elapsed since 1945 are an unsatisfactory explanation for the rise of hyper partisanship in the modern era. Changes of this nature do not happen simply because of time passing. Clearly, the “years” variable serves as a stand-in for some other exogenous variable that’s highly correlated with time.27

With the addition of “years” as a variable, the effect of independent commissions becomes statistically insignificant. This could reflect the fact that independent commissions are a fairly new innovation or, more likely, that independent commissions are not really independent—often their plans must be approved by the governor and/or the legislature, and commission members are generally selected by the partisan legislature it-

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27 A change in media coverage might explain part of it, as newspapers at the start of the twentieth century were even more partisan than the news is today. Only around the middle of the century and in the years immediately after did the number of news sources dwindle to a highly centralized few. That is a question for another paper, however.
self. The p-value of the effect of single-member states is much higher than that of states with independent commissions, although it is not significant at any meaningful level. States that do not have redistricting have less partisan House members, but that the effect is so small that it is barely noticeable.

Two of the explanatory variables retained their significance across every model: whether it was a Presidential election year and the years since the last cycle of redistricting. A Presidential election is associated with a small but noticeable increase in the difference between the two parties, which is reasonable given the heightened media attention and the different political dynamics of an election year. Additionally, every year that follows redistricting is associated with a .11 point decrease in the distance between the parties. This seems small, but it suggests that by the end of a cycle between apportionments, the two parties have moved about a point closer together or more than 1 percent of the current difference between the two. The effect implies that even if it was not picked up by the differing redistricting practice, gerrymandering does, in fact, have an effect. It is not a terribly large effect, but it does exist: on average, and after controlling for the other factors, the parties have their greatest divide immediately following the drawing of new district lines. Something must be going on to explain that, and an intentional effort to protect incumbents seems like the most likely reason for this effect.

PART VI. MOVING FORWARD

Most of the current proposed solutions to the perceived problems of partisan gerrymandering are, not surprisingly, fairly moderate in their scope. The most common solution is to allow for independent commissions to determine the borders of the districts. In some states, this means that a panel of judges draws the district borders. This happened in New York State this year, although not as a result of legislative action to create such a panel. Instead, legislative inaction forced the appointment of a judge who ended up drawing and enacting a map—with surprisingly uniform-looking districts, at least upstate—in two weeks after the legislature had failed to agree in a year of bickering.

The map managed to avoid too much controversy, eliminating the district of one retiring Congressman from the Hudson Valley region and the Queens district recently won by Bob Turner, the Republican who picked up the seat held by Anthony Weiner prior to his resignation. This plan was quickly approved by the three-judge panel that was asked to intervene by a community group after the failure of legislative action.

While judicial involvement may create the fairest outcomes, judges are hardly free of political slant or pressure. In some states, judges are elected to commissions; in others, they are appointed by presumably, partisan governors. However, in many of the states that rely on external commissions to determine new congressional boundaries, the system is even less fair. Often those appointed to such a commission are chosen by elected officials and ultimately report to said elected officials. It is not a far stretch to imagine the effect that this would have: additional layers of bureaucracy often serve to solidify the status quo rather than to shake things up. Without a need to defend their own electoral chances, judges or independent commissions would presumably be more impartial than legislatures.

These measures may ultimately be a solution in name only. The data shows that independent commissions do not have a significant effect on partisanship overall. In some cases, they are correlated with an increase

in partisanship. But correlation does not imply causation—the states that have enacted independent commissions might do so because they are more partisan to begin with and voters demanded a solution. These commissions can also provide a convenient way for legislatures to avoid criticism or responsibility by placing the blame in another body that they ultimately control.

Cincinnatus is remembered for returning to his farm because he was an exception to the rule that many politicians see elected office not as a temporary service but as a career. Members of Congress—and the state legislatures—have a powerful incentive to protect their own jobs by supporting gerrymandering that reduces the number of competitive elections, improving their own job security. Without placing the process solely in the hands of the judicial system, it is unlikely that competitiveness will ever increase precisely because this incentive will not fade. Suggestions like Rick Perry’s opportunistic plan to eliminate benefits to Congressmen and lower the amount of days they spend in session—thereby eliminating national elected office as a career—will not work, pushing many of the most qualified officials away and making it possible only for the independently wealthy to serve in this fashion.

Two other propositions would likely increase competitiveness in congressional elections. The first would be to limit the returns to incumbents by making it impossible to serve twenty terms in Congress. Laws suggesting term limits are quite popular within American society, and they would likely lead to seats changing parties more often. Even if they do not change parties, they would at least change hands within parties. Seniority would no longer hold the same power; members of Congress would have to gain standing within the body by other metrics, including how much support they receive from their colleagues, how hard they work, or their expertise. This would create greater incentives for cross-party cooperation.

Other observers have proposed a more radical solution to the problem of reduced competitiveness; one proposal suggests that the larger states replace some of their district-elected representatives with at-large members who would represent the whole state. These representatives would presumably be less partisan, although the finding that the Senate and House are not statistically different in partisanship makes it seem like this might not be the case. Still, such a plan might have a valuable effect on the incentives within a state by forcing members to cater to the interests of the majority in that given state. This would therefore increase the power of the majority in the state and might create more volatility in the control of Congress.

31 Frank, “Making Our Congressional Elections More Competitive.”
A proposal that goes even further would be the creation of multi-member districts or the replacement of the current system with at-large members either nationally or by state. This would shift the entire dynamics of the electoral system. If the system were changed so that it were not “winner-take-all,” we might see the emergence of numerous parties. Such a change would help create a Congress that better represents the interests of its constituents and would bring America closer to a parliamentary system. Winner-take-all districts tend to solidify a two-party system, which then devolves into the type of competition that we see today. This should be expected, as when there is only one major adversary, there is no incentive to compromise—only to defeat this opponent. With multiple parties, coalitions and alliances would become necessary, increasing cross-party competition and creating an incentive to compromise that is currently severely lacking from the modern Congress.

CONCLUSION

While it seems important to increase competitiveness in order to increase the accountability of elected representatives, redistricting does not have as big an effect on partisanship as one might initially think. The inclusion of that value in the regression model explains less than one percent of the variation in the difference between Democrats and Republicans over the last century. That does not mean the effect is not real or that it might not have other pernicious effects. Unfortunately, the data shows that the use of independent commissions does little, if anything, to reduce overall partisanship. There are limits to quantified conclusions like this, however: the current model looks at the effect of independent commissions within the status quo. It is possible that if all states—or a larger group—did their redistricting more fairly, there would be a more robust effect. Partisanship is often driven by peer effects; legislators face pressure from their colleagues and party leaders to hew to the party line, so it is not a big stretch to imagine that if all elections were more competitive, these party figures would have less of an impact and there would be more of a positive return to cross-party voting.

When the variable of a recent Presidential election is included in the model, partisanship does rise, suggesting a broader conclusion within this data: the effect of party expectations. This variable captures the pressure on members of Congress to pass the new President’s agenda, or make sure he fails in the case of the opposition—and the effect of increased political coverage in the general media. Both variables seem likely to have a wider effect on the rise of hyper-partisan stratification in Congress, and neither is fully present in the current model. This is certainly an area for future research, although quantifying changes in the media environment...
might prove a near-insurmountable challenge: how does one quantify the shift from the “big three” networks to a world run by the blogosphere? It may be heartening that gerrymandering does not appear to have a huge effect on partisanship, but it does clearly go a long way toward reducing the competitiveness of House seats, with a negative impact on the dynamics of the chamber. Term limits and other proposals to weaken the benefits of incumbency might go further to fix that than independent commissions ever will, though.

Does gerrymandering explain our current political problems? While it may make a convenient scapegoat, the answer appears to be a qualified no. It is, however, a component of these problems, and probably one of the most fixable parts in a system that the average American would not hesitate to label “broken.” The first steps would be to put the drawing of the maps in the hands of judges and experts and take it away from the politicians and parties who stand to benefit. Later steps might include term limits, multi-member districts, and at-large representatives. Gerrymandering might not have a significant effect on the overall level of partisanship, but these changes would go a long way toward fixing some of the other ills that a lack of competitiveness imposes on the government of the United States of America.
BIBLIOGRAPHY


Favors v. Cuomo, No. 11-5632, (U.S. District Court, Eastern District of New York, 2012)


Theriault, Sean, Party Polarization in Congress. (Austin TX: University of Texas, 2006).


Megan Covington*

The increased use of executive legislation in recent years in the absence of challenges from Congress or the Supreme Court has prompted concerns about presidential authority. Executive orders and other presidential directives have expanded the power of the president beyond constitutional bounds and pose a serious threat to our democracy. The paper concludes that fears of the president becoming a dictator are exaggerated and have little historical basis. The fact remains, however, that modern presidents do tend to use executive legislation to expand the scope of their power. This is especially dangerous because neither the Supreme Court nor Congress has proven likely to challenge an executive order, rendering the most important check on future presidential legislation virtually nonexistent.

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INTRODUCTION

The frequent use of executive legislation in recent years has attracted criticism from those worried about the increasing ability of the president to act unilaterally. One significant type of executive legislation is the executive order. Executive orders are not an explicit power of the President in the Constitution but are generally presumed to be an implied executive power derived from Article II, Section 3, which says that the president "shall take Care that the Laws be faithfully executed."\(^1\) No hearings or consultation with Congress or the Supreme Court are required prior to signing an executive order, and the president does not have to notify them about executive legislation in advance.\(^2\) Many executive orders are used merely for symbolic purposes, such as establishing federal holidays or organizing and managing the large federal bureaucracy, however, they become problematic when presidents rely on them to bypass Congress, creating and affecting policy while violating constitutional principles.

Executive orders were responsible for the Louisiana Purchase, the annexation of Texas, the creation of the Peace Corps, and the desegregation of the military.\(^3\) But presidents have frequently abused these powers, especially during wartime. Abraham Lincoln used the emergency of the civil war to justify activating federal troops, expanding the size of the military, purchasing warships, suspending the writ of habeas corpus, and advancing federal funds—all without Congressional approval.\(^4\) During World War II, Franklin D. Roosevelt used an executive order to intern Japanese Americans. More recently, after Sept. 11, 2001, President Bush signed executive legislation establishing secret military tribunals to try suspected terrorists. While these examples of executive orders could be justified for national security, the increased tendency of recent presidents to use executive legislation in the absence of national emergencies is alarming.

Modern presidents are inclined to use executive legislation to expand the scope of their power beyond what is explicit in the Constitution, which poses a problem, since neither the Supreme Court nor Congress has

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\(^3\) Id. at 194.
\(^4\) Id.
been willing to challenge executive orders.\textsuperscript{5} This inaction from the legislative and judicial branches renders the only existing checks on presidential legislative power nonexistent. Using executive orders to circumvent Congress, undercut federal agencies, or escape accountability violates the principle of checks and balances that the Founding Fathers deemed crucial to democracy; these activities expand the scope of presidential powers by infringing on those reserved for the legislative branch.\textsuperscript{6} While no president has seriously abused executive legislation, allowing the president to continue to use executive orders and other presidential directives without challenge sets a dangerous precedent, one that could result in a future president suspending civil liberties or ignoring the will of Congress. An increased and unchecked use of executive legislation has expanded the power of the president and poses a threat to our democracy. After discussing this increase by recent presidents and examining different types of executive legislation, further analysis will illustrate the ineffectiveness of the checks on presidential power and the potential threats posed by the continued unimpeded expansion of the presidency.

\textbf{PART I. RECENT USE OF EXECUTIVE LEGISLATION}

Executive Orders have been the prevalent form of executive legislation used by American presidents. Franklin D. Roosevelt holds the record for most executive orders, but the increased attention to and criticism of executive orders have encouraged recent presidents to rely more on alternate forms of executive legislation.\textsuperscript{7} Recent presidents have creatively and manipulatively employed these alternative forms of executive legislation to work around Congress and accomplish their policy goals. In order to issue an executive order, Presidents must justify their authority using existing law or part of the Constitution, and executive orders must be submitted to the Federal Register for publication—unless the subject matter involves classified material.\textsuperscript{8} Some other forms of executive legislation, however, do not require citing existing statutes or public access, making it easier for presidents to avoid accountability and affect policy. One such alternative to executive orders is the signing statement: “proclamations,

\textsuperscript{5} Crenson and Ginsberg, 349-351.
\textsuperscript{6} Cooper, “Power tools...” 529.
\textsuperscript{7} Crenson and Ginsberg, 25-27.
memoranda, [and] executive agreements [...] to unilaterally establish law”. 9

Signing statements are essentially statements affixed to legislation when the president signs it into law, and have attracted criticism in recent years. They are controversial because recent presidents have used them to justify not enforcing certain parts of a bill, stating that the provisions to be ignored are unconstitutional. 10 The president’s use of signing statements to enforce his opinions on the constitutionality of a bill’s provisions would seem to violate presidency’s constitutionally outlined powers. In Article I Section 7, the president is given only three options when presented with legislation: sign it into law, issue a veto and return the bill to Congress, or do nothing (called a “pocket veto” if Congress is not in session). 11 Signing statements are a way for a president to oppose certain portions of legislation without giving Congress the opportunity to overturn a veto, removing a key check on presidential power. 12 Only 75 signing statements had been used when Ronald Reagan became president; collectively, however, Reagan, George H.W. Bush, Clinton, and George W. Bush issued over 400 signing statements. Some signing statements are merely rhetorical or ceremonial, but the increased use of constitutional signing statements—those dealing with the executive branch’s opinion on the constitutionality of a bill—gives the presidency the power to modify laws and their enforcement without having to go through Congress, a power the executive was not intended to wield.

Recent presidents have also made use of other types of executive legislation that are similar to executive orders, such as proclamations, memoranda, and executive agreements. Proclamations, while lacking any legal distinction from executive orders, are generally directed at agencies or officials outside the government. 13 They have the strength of law behind them and usually permit the president to define a law or fact, the most famous of which is Lincoln’s Emancipation Proclamation. 14 Increased use of memoranda—documents containing announcements or statements from the president to executive officials that are legally equivalent to executive orders—is particularly alarming because memoranda do not have to be

12 Crenson and Ginsberg, 199.
13 Cooper, “Power Tools,” 529.
recorded in the Federal Register, meaning that the president can use them to hide executive actions from the public. Executive agreements are a specific type of executive order that acts as an unofficial treaty between the president and a foreign head of state, lasting only as long as both leaders are in office. While executive agreements are useful for dealing with minor issues that arise without adding strain to Congress’s busy schedule, they have essentially replaced treaties as the vehicle of securing international agreements, limiting the extent to which the Senate can check the power of the president. The clever usage of these alternative forms of executive legislation further expands the power of the president and complicates keeping the president in check.

**PART II. MODERN PRESIDENTS AND EXECUTIVE LEGISLATION**

Most of the current trends in the use of unilateral executive actions can be traced back to the presidency of Ronald Reagan. Previous presidents had used such power, but none of them used the ability to act unilaterally to make major changes to policy; Reagan’s administration was adept at using executive power to accomplish his agenda. His attorney general—with the help of future Supreme Court Justice Samuel Alito, then working for the Justice Department—transformed the signing statement into a potent part of executive legislation and facilitated their being published in law textbooks. Reagan used a signing statement to construe the 1986 Safe Drinking Water Amendments’ requirement of mandatory enforcement to mean discretionary enforcement, completely changing the spirit of the law. He often used executive orders to defy Congress, notably using an executive order to bring weak sanctions against South Africa just before legislation calling for strong ones would have passed. Reagan issued 1,118 proclamations over the course of his presidency, the most of any president in history. This repurposing of executive tools like signing statements and proclamations would set a precedent for his successors.

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15 Cooper, 126-41.
16 Crenson and Ginsberg, 195.
18 Crenson and Ginsberg, 198.
President Bill Clinton’s administration built on the unilateral actions employed by Reagan to further enhance the power of the president. Clinton used executive legislation extensively, both before and after the 1994 defeat of the Democrats in the midterm Congressional elections.\(^{22}\) Clinton used an executive order to lend $43 billion to Mexico after Congress refused to approve the loan.\(^{23}\) President Reagan may have been the first to use signing statements and proclamations to accomplish major policy changes, but President Clinton made extensive use of presidential memoranda. He used a memorandum to the secretary of health and human services to reverse the “gag rule” on abortion counseling by instructing the department to make new rules designed to change its implementation.\(^{24}\) In one of the key executive actions of his presidency, President Clinton used both an executive order and a memorandum to enforce environmental justice in minority communities. This executive order merely stated that agencies were to consider environmental implications in their decisions and created an inter-agency committee to streamline communication between the executive and various agencies.\(^{25}\) The memorandum contained the real policy change, mandating that “each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not […] discriminate on the basis of race, color, or national origin.”\(^{26}\) Relying on the use of the memorandum is a trend that has continued in subsequent administrations. Along with the Reagan administration’s precedents toward signing statements and proclamations, President Clinton’s use of memoranda illustrated the ways a president could use previously insignificant internal tools to bring about sweeping policy change, techniques that would play a crucial role in the presidency of George W. Bush.

The most controversial of President Bush’s executive legislation are the directives concerning the War on Terror. While he did not suspend *habeas corpus* or send Arab and Muslim Americans to internment camps, President Bush did use executive orders to freeze foreign assets and to set up the system of trying suspected terrorists before secret military tribunals, both without consulting or relying on Congress at all.\(^{27}\) His administration justified these executive actions by insisting that the country was in a state of national emergency, but with the War on Terror’s fundamental nature as a never-ending conflict, this reasoning would give the president emer-

\(^{22}\) Freie, 102.
\(^{23}\) Crenson and Ginsberg, 217.
\(^{24}\) Cooper, “Power Tools,” 529.
\(^{26}\) *Id.* 126-41.
\(^{27}\) Crenson and Ginsberg, 201.
ergency power indefinitely.\textsuperscript{28} This justification certainly makes executive action "an attractive alternative to the constitutional presidency [but] does not make the unitary executive constitutional."\textsuperscript{29} Bush’s Executive Order No. 12233 was designed to limit presidential accountability, making it more difficult to obtain records released from past presidents.\textsuperscript{30} This obfuscation and hiding of presidential actions was a theme of President Bush’s executive legislation, in which the president often asserted his actions were not subject to review by either of the other branches, a statement which has no legal basis in the Constitution.\textsuperscript{31} \textsuperscript{32} President Bush was extremely active in dealing with executive legislation; he modified the largest number of past executive orders, passed the largest number of symbolic executive orders on average of any president since 1936, and changed the most executive orders dealing with key policy concerns per year of any president since Jimmy Carter.\textsuperscript{33}

President Barack Obama continues the trend of presidents relying heavily on alternative forms of executive legislation to accomplish a broad range of policy objectives. As a presidential candidate, he was a vocal critic of the Bush administration’s use of unilateral actions and pledged to use a different approach as president, but while he may not consider the executive branch quite as untouchable as his predecessor, he has been more than willing to rely on executive power to achieve his legislative goals.\textsuperscript{34} In his first 100 days, he reversed the Bush administration’s ban on stem-cell research, banned torture and other coercive techniques, put strict restrictions on lobbying in the White House, and established guidelines for greater transparency in government, all accomplished without Congressional involvement, but with the largest number of executive orders, memoranda, and proclamations used by any president during their first days in office.\textsuperscript{35} His Executive Order No. 13535—which prevents federal funding of abortions—was integral to securing the passage of health care reform.\textsuperscript{36} He has continued the Bush administration’s policy of hiding i-

\textsuperscript{28} Scott M. Matheson Jr., Presidential Constitutionalism in Perilous Times (Cambridge, MA: Harvard University Press, 2009).
\textsuperscript{29} Genovese, 129.
\textsuperscript{30} Peter M. Shane, Madison’s Nightmare: How Executive Power Threatens American Democracy (Chicago, IL: The University of Chicago Press, 2009).
\textsuperscript{32} Genovese, 132-140.
\textsuperscript{33} Warber, 125.
\textsuperscript{34} Genovese, 159-161.
\textsuperscript{35} Id. 159-161.
formation about extraordinary rendition and has yet to close down Guantánamo Bay.\(^{37}\) He said during the campaign that he would not use signing statements unless they were absolutely necessary to correct unconstitutional actions by Congress, but he has issued eighteen signing statements since, eight of which mention provisions of legislation that the executive has problems with.\(^{38}\) Among his most recent executive orders are those dealing with sanctions against Syria and Iran and an executive order outlining periodic review for those held at Guantánamo Bay.\(^{39}\) President Obama has also threatened to use executive orders to pass provisions of the American Jobs Act that never made it through Congress. Although his administration has taken great steps to be more transparent than that of his predecessor, President Obama has in no way forfeited his power to act unilaterally to accomplish his agenda and seems likely to continue using executive orders and signing statements at will.

The past few presidents have made extensive use of executive legislation, specifically constitutional signing statements and proclamations. Table 1 shows the number of each type of executive legislation issued by recent presidents, starting with President Gerald Ford and continuing through 2011 of President Obama’s term.

<table>
<thead>
<tr>
<th></th>
<th>Executive Orders</th>
<th>Signing Statements</th>
<th>Percent Constitutional</th>
<th>Proclamations</th>
<th>Memoranda</th>
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<td>137</td>
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<td>178</td>
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<tr>
<td>Carter</td>
<td>320</td>
<td>228</td>
<td>-</td>
<td>335</td>
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<td>18</td>
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While the number of executive orders has stayed approximately the same, the number of presidential proclamations has increased sharply since the Carter administration, with President Reagan issuing 1118 of them while in office. The number of memoranda used by the last three presidents has been significantly higher than that of their predecessors, showing the rela-

\(^{37}\) Genovese, 160.
\(^{38}\) Peters and Woolley, "American Presidency Project"
tively new trend of relying on presidential memoranda to effect policy change. The percentage of signing statements dealing with the constitutionality of legislation passed by Congress peaked under George W. Bush, but is still high for President Obama, evidence that recent presidents are more frequently using executive power to classify certain parts of legislation as unconstitutional and thus avoid or modify its enforcement. Although presidents have not been issuing more executive orders on average, they have been issuing more of the alternate types of executive legislation—like proclamations and memoranda—to accomplish their policy agendas. This use of lesser-known forms of executive legislation makes it harder for Congress, the media, and the American public to understand the president’s actions and is a dangerous trend to allow to continue.

PART III. CHALLENGES TO EXECUTIVE LEGISLATION

Theoretically, the president’s use of executive orders and other forms of presidential directives would be restrained by the system of checks and balances between the three branches of government. Congress could overturn or nullify the effects of an executive order by passing new legislation or refusing to approve any necessary funds. In the event the president vetoes legislation, Congress can override that veto with a 2/3rd vote in both houses. Congress could even pass a bill specifically designed to curb executive power, perhaps by banning constitutional signing statements. If the president were to ever seriously overstep his constitutional bounds, Congress could always draw up articles of impeachment. If Congress is unwilling or unable to challenge executive legislation, the Supreme Court can overturn it through judicial review. All executive orders must be reported to the Federal Register to be published unless they contain confidential information, preventing presidents from using executive orders in secret. This requirement also allows for the media to play watchdog and monitor the president’s actions. Finally, any executive order can be nullified by a future president’s executive order, meaning there is no guarantee that any single executive order is permanent. These constraints on the presidency are designed to prevent abuse of executive power and preserve the individual authority of the other two branches of government.

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41 Cooper, 126-41.
42 Warber, 46.
In actuality, however, Congress is generally unwilling or unable to respond to the president's use of executive legislation. Congress can override a presidential veto, but does not do it very often; of 2,564 presidential vetoes in our nation’s history, only 110 have ever been overridden. 43 The two-thirds vote of both houses needed to override a veto implies that unless the president's executive order is grossly unconstitutional—and thus capable of earning bipartisan opposition—one party needs to have a supermajority of both houses. Even passing legislation to nullify an executive order can be difficult to accomplish, especially with Congress as polarized and bitterly divided along party lines as it is today. Congress theoretically could pass legislation designed to limit the power of the president, but partisanship would make it unlikely that Congressmembers would strongly support legislation that a President of the same party would oppose. In addition, if such legislation was passed over a veto, there is no guarantee that the bill would successfully limit the president's actions; for example, the War Powers Act does little to restrain the president's ability to wage war. 44 Impeachment is always an option, but the gravity of such a charge might prevent many from supporting it unless the president was very unpopular or blatantly abused his power. 45 Congress's best weapon is its power to appropriate—or refusal to appropriate—money needed to enact executive legislation, but this only gives it power over orders that require funding. 46 Members of Congress may even support a president's use of executive legislation to establish policy when gridlock occurs on the floor. Congressmen can include policy changes made through executive legislation as part of their party's recent accomplishments for the next election cycle, giving them more incentive to support executive legislation. 47 The combination of these factors explains why Congress has modified or challenged only 3.8 percent of the over 13,000 executive orders, leaving it an ineffective check on the president's legislative power. 48 If a future president seriously and obviously abused his power, hopefully it would be met by opposition from both parties in Congress, but the president's party could prevent any such action in the legislature. It thus seems unlikely that Congress would or could restrain a future excess of executive power.

The Supreme Court constitutes the other major check on presidential power. Executive legislation—specifically executive orders and signing statements—is considered law, so the Supreme Court has the jurisdiction to

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43 Peters and Woolley, “American Presidency Project.”
44 Warber, 19.
46 U.S. Const. art. I, § 9, cl. 7.
47 Warber, 15.
48 Id. at 15.
deem an executive order unconstitutional by judicial review.\textsuperscript{49} If a case challenging a president’s legislation comes before the court, the judges can choose to hear the case and overturn the legislation if they think it represents a severe violation of the Constitution.\textsuperscript{50} Unfortunately, the Supreme Court is generally unwilling to intervene in the president’s use of executive legislation, even when the directives used are “of—at best dubious constitutional authority [or] issued without specific statutory authority.”\textsuperscript{51}

Federal courts did overturn one of Clinton’s executive orders, striking down an order that prevented government contractors from replacing striking workers in the 1995 case \textit{Chamber of Commerce v. Reich}.\textsuperscript{52} The courts also challenged executive legislation in two cases during the Bush administration, upholding the constitutional rights of American citizens classified as “‘enemy combatants’…to be heard before a neutral decision-maker”\textsuperscript{53} in \textit{Hamdi v. Rumsfeld} in 2004, and ruling in \textit{Hamdan v. Rumsfeld} in 2006 that the president did not have the authority to set up military commissions that conflicted with congressionally-established provisions.\textsuperscript{54} These rare cases of the judiciary opposing the president’s agenda illustrate that the president’s power has certainly increased but not grown to be beyond enforcement by the Supreme Court. Out of all the executive orders passed in our nation’s history, however, only 14 have actually been challenged by federal courts and only 2 were completely overturned, showing that the court actually challenging a piece of executive legislation is still extremely unlikely and cannot be counted on to reliably oppose the expansion of presidential power.\textsuperscript{55}

Public outcry over a future president’s misuse of executive legislation is another theoretical check on presidential power, but public knowledge of executive orders and other forms of executive legislation is extremely low, in part because presidential directives are not common components of the basic discussion of the government. Since so many executive orders, signing statements, and memoranda are used for routine, symbolic, or house-keeping purposes, their use does not garner media attention. Citizens generally are “‘disconnected from politics, dislike political conflict, distrust political leaders, [and] possess low levels of information about specific policies,”\textsuperscript{56} so there is no reason to believe the average

\textsuperscript{49} Id. 15.
\textsuperscript{50} Id. 15.
\textsuperscript{51} Mayer, 448.
\textsuperscript{52} Id. 448.
\textsuperscript{53} Scott M. Matheson Jr., 88.
\textsuperscript{54} Id. 88.
\textsuperscript{55} Crenson and Ginsberg, 350.
\textsuperscript{56} Freie, 132.
American understands the complex use and nature of executive legislation. “The idea that the president could [...] govern in no small part by decree,” insists Phillip J. Cooper, “is a concept of which most Americans are blissfully unaware. If they were alert [...], many would most likely be aghast that the president could, in effect, write law.”

This ignorance of the masses ensures that the president does not have to be concerned with the people’s opinion when he uses executive legislation, removing the final major limit on his unilateral power.

**PART IV. THE THREAT OF EXECUTIVE ORDERS**

Presidential power is not inherently a threat, for the presence of a strong executive is essential to a functioning democracy. Freie points out that “Congress itself is prone to inaction” and that, without a president, the “government will be unable to act decisively to address significant national issues.”

With the expansion of the bureaucracy in the past few decades, the president and his administration need to be able to organize the executive branch and act coherently in response to policy changes, a valid use for executive legislation.

Presidential power becomes a problem, however, when it expands at the expense of the other branches of government. Extensive abuse of executive legislation poses the biggest risk to Congress, whose legislative powers can be effectively circumvented by the president. Using executive orders to create or change existing policy without going through Congress ignores the constitutional principle of having the laws made by democratically-elected representatives of the people. The president is not directly elected, nor is he subject to the rules of debate and compromise that bind individual legislators. The Founding Fathers drafted the Constitution intending for Congress to make the laws, not the president.

Executive orders also reduce the incentive for compromise in the legislature. If the president can enact controversial policy on his own, there is no reason for him to rely on Congress, especially when legislation takes months to pass. While it has never happened and would likely provoke controversy, the president could theoretically choose to pass an executive order that is effectively the same as the legislation in question, eliminating any need for the members of Congress to work things out on their own.

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57 Phillip J. Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action* (Lawrence, KA: University Press of Kansas, 2002), 15.
58 Freie, 8-9.
59 U.S. Const. art. I, § 1
60 Crenson and Ginsberg, *Presidential Power: Unchecked and Unbalanced.*
Members of the minority party may find it easier just to wait until they have a president in office to try and enact controversial policies rather than deal with a probable loss in both chambers.\textsuperscript{61} Compromise is the intended goal of Congress; instead of eliminating any need for it, the president should function as legislative liaison, appealing to the public or inviting Congressmen to the White House to discuss legislation.\textsuperscript{62} Executive legislation thus not only reduces the need for Congress but also prevents it from functioning properly. With the decline of political party strength in the past half-century and the dramatic polarization in the legislature, Congress is not nearly powerful enough to stop executive expansion.\textsuperscript{63}

But just because presidents can bypass Congress so efficiently does not mean they always rely on executive legislation. A president who only issued executive orders and did not work with Congress at all would certainly earn sharp criticism from both parties and the media. A president’s bill that has been passed by Congress is a much bigger accomplishment and is more permanent than a policy enacted by executive order, so presidents will always have some incentive to work with Congress to achieve their goals. Crenson and Ginsberg argue that one of the reasons for this reliance on executive legislation is that presidents have lost traditional avenues of accomplishing their policy goals.\textsuperscript{64} Before C-SPAN continuously broadcasted Congress, the president had the advantage in using the media to appeal to the people, and with the recent decrease in party strength, the president can no longer rely on fellow party members and party loyalty as he once did. No president can rule entirely by executive legislation and expect the other two branches to stand docile while he makes major policy change; presidents still have to take Congress into account when passing executive legislation.\textsuperscript{65} For example, President Clinton could have easily passed an executive order repealing the military’s ban on gays serving openly, but he never issued any such directive, largely because he did not want to risk Congress passing legislation making the ban permanent.\textsuperscript{66} Congress is not in danger of losing its functionality entirely, but Congress has not historically demonstrated a capacity to keep presidential power in check, meaning future expansion of executive authority are likely to meet little resistance from the legislative branch.

Perhaps the most worrying aspect of executive legislation is how difficult it is to challenge. With most average Americans unaware of the

\textsuperscript{61} Id.
\textsuperscript{62} Freie, 7-11.
\textsuperscript{63} Crenson and Ginsberg, 354.
\textsuperscript{64} Id. 354.
\textsuperscript{65} Mayer, 445-466.
\textsuperscript{66} Id. 445-466.
existence of executive orders—not to mention the several alternate forms of executive legislations and the nuances distinguishing them—and the two other branches of government frequently unable or unwilling to overturn the president’s actions, there is no effective and reliable way to limit the president’s power. Unless a future president makes an extremely serious and controversial violation of the Constitution, something that both parties and the average American would find obviously wrong, it seems likely that the president will continue to possess the ability to use executive legislation to bypass Congress in the domestic arena and determine foreign policy. In summary, “direct presidential policymaking—once reserved for times of war or national emergency—has now become a routine affair.”

While no president has yet to abuse this expanded executive power and act unilaterally, the possibility still exists that a president could misuse executive legislation and be unopposed by the theoretical checks on his power. The president has a variety of executive tools as his disposal, but Congress and the Supreme Court have few ways to prevent the continued increase of presidential power through executive legislation, making it the most dangerous instrument of executive authority.

CONCLUSION

Presidents in recent years have had more opportunities to expand their power and authority, largely through the use of executive legislation. By allowing the president to act decisively and without consulting Congress, executive orders and other presidential directives provide the president with a variety of options to enact in order to accomplish his policy agenda, especially in the event of gridlock or divided government. This expansion of presidential power comes at a time when the decline of party strength and increase in polarization has made Congress less able and less willing to respond to executive legislation. With the Supreme Court generally unwilling to overturn executive orders and the public largely ignorant of their existence—not to mention the existence of proclamations, signing statements, memoranda, or executive agreements—there is no viable way to challenge the president’s increased ability to act unilaterally. Although it does not enable the president to rule as a dictator, executive legislation is dangerous in that it remains unimpeded and has been used to violate the constitutional principles of separation of powers and checks and balances. These principles were set forth by the Founding Fathers to keep any one of the three branches of government from becoming more powerful than the others and thus from threatening the stability of the nation. The president’s

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67 Crenson and Ginsberg, 195.
ability to act unilaterally to accomplish his goals, both domestically and in terms of foreign policy, has sharply increased since the presidency of Ronald Reagan and seems likely to continue to increase, providing the potential for future abuses of executive authority.

There are several ways to decrease the risk of executive legislation being misused, specifically through empowering the intended checks on the power of the presidency. Foremost is to work to further educate the American people as to the true nature of executive legislation and how the current president is using executive orders, proclamations, memoranda, and signing statements on a daily basis. If the media focused more on executive legislation, not only could the press monitor the government’s actions, but the general public would also be more informed and better able to express their opinions on the president’s actions, giving him another factor to consider when debating whether or not to use a piece of executive legislation. The Supreme Court has so far proven unwilling to step in to limit the president’s power, but if more court cases arose dealing with citizens harmed by executive legislation, there is a greater likelihood that the court would hear the cases and take action to strike down or limit presidential authority. As modern presidents make increased use of executive legislation, the potential for such cases does increase. Finally, the potential for the misuse of executive legislation would decrease if stricter and more streamlined ways to keep up with the executive legislation used by presidents were established, including a requirement that memoranda would be published in the Federal Register.

The real problem with executive legislation is not that it has become increasingly popular with modern presidents, but it is that there are at present no reliable checks to monitor how the presidency uses this implied right, making the future ability of the government to prevent or oppose executive legislation uncertain. While the executive’s power has increased, no previous president has grossly misused executive orders outside of a national emergency. If a future president did try to misuse presidential directives in an obvious way, by suspending civil liberties without a national emergency or by completely bypassing the legislative branch to get a major law put in place, the president’s actions would very likely lead to public outcry or the threat of impeachment from Congress. The real threat of executive legislation comes not from flagrant abuses of executive authority, but from more subtle actions that executive legislation makes possible: ignoring portions of laws passed by Congress, hiding executive actions from the public through memoranda, or making secret treaties with foreign heads of state. If a president in the future tries to use executive legislation to accomplish goals like these, he or she would be unlikely to meet a challenge from the American people, the Supreme Court, or Congress.
BIBLIOGRAPHY


MEDIA: AN ADVERSARY OF VOTER TURNOUT

_**Dylan Kornbluth**_

With the 2012 Presidential election in full swing at the time of this writing, it is hard to listen to the news, watch a television show, or read a newspaper headline without being confronted with political messages. Over time, these messages have increased in number, but rather than covering politics they have digressed toward scandals, key talking points, and other superfluous inflammatory messages. This shift has possibly resulted in a growth in media outlets that demand new stories for the twenty-four hour news cycle and fewer ethical standards practiced by these outlets, ultimately leading to a decrease in voter turnout over the past half century. This possible inverse correlation with the expansion of technology presents a growing issue within our political system as the rhetoric of these campaigns shift more toward shock and fluff, than toward substantive issues that truly effect the way the electorate votes. The desensitization of the electorate, through this onslaught of political messages, is traced in time and through demographics to present potential explanations and future trends in what we can expect to see in future campaigns if this media coverage continues.

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With news at its most accessible level in history, it would not be unreasonable to expect that voters would be better informed and engaged in the political process, resulting in an increase in voter turnout. Sadly, this is not the case. Over the past half-century, voter turnout has continued to average a mere 48.3 percent in general elections over the past half-century. Based on statistics gathered by the International Institute for Democracy and Electoral Assistance in Stockholm, America is ranked 139th out of 172 countries in voter turnout. Many theories ranging from voter fatigue, to lack of information have been suggested for low voter turnout. However, though it has been a topic of regular contention, it has not been addressed as a veritable cause of decreased voter turnout to the degree that calls for immediate reform. In fact, media coverage has ballooned into a circus sideshow, becoming a key component of the political machine through fueling inflammatory voice clips to ensure media coverage. Unfortunately, intelligent information seekers are amused and entertained by their continuous media blunders, whereas less intelligent media followers tend to empathize with candidates based on issues that are irrelevant to the larger scheme of political leadership. Debates have become a specific example of this behavior, where decisions among independents are based on mannerisms or an exchanging of jibes over past mistakes. There is little, if any substance, relayed throughout the debates; only rehearsed talking points, spun to fit the moderator’s questions, are relayed to the public. Thus, over the long haul of the ever-increasing length of the campaign season, the same reports that entertained or evoked some kind of emotion or passion either become the battle-cry for unwavering supporters or an annoyance to constituents who would prefer to hear plans to address the real issues facing the country. Seen most recently during the presidency of Barack Obama, what was once an intriguing story that spawned mass media coverage, even billboard advertisements questioning the President’s birthplace, has now become a nuisance. The President presented his long-form living birth certificate in April of 2011 along with birth notifications printed in Honolulu newspapers from the year he was born in 1961. In 2009, a Pew Research survey found that 80% of Americans had heard of the issue. An opinion poll by Research 2000 showed that 11% of American’s believed the president was not born in the US with 12% unsure. In May 2011, after the disclosure, Gallup found that 5% believe the President was born outside the US and another 8% believe that it is likely he was born outside.

2 Lymari Morales, "Obama's Birth Certificate Convinces Some, but Not All, Skeptics."
Many politicians and public figures weighed in on the issue when it first was brought to people’s attention back in 2008, but even as of October 2012, Donald Trump, a well-known business executive and television star, made an offer of five million dollars to the President in return for releasing his passport application and college records, furthering a story that few American’s even believe to be true most being extremely partisan. Overall, the negativity and expanded news coverage of politics in society today has created a greater sense of disaffection leading to a lower amount of voter turnout in presidential elections.

With the evolution and invention of new technologies, the media continues to increase its coverage of political campaigns as politicians seek to enhance their web of external communication with the voting public. Thus, the competition between these media outlets has become relentless. The bigger the story, the higher the ratings. The higher the ratings, the bigger the ad revenue. The bigger the ad revenue, the worse the coverage of the truth is, as shock and fluff sell. The media has become an indisputable case of stimulation overload of information that is not always reliable.

The delineation defining the shift in voter participation was drawn after the 1960 presidential election as voter turnout remained lower than average except for the election of 1992 and 2008. While 1960 is the starting point in the discussion of voter participation, in examining how media has had a role in influencing turnout, looking further back is necessary to explain current trends. Essentially, the media is expected to report the news and stories that help promote an altruistic democracy by inspiring knowledgeable participation in society. The creation of print media helped to increase voter turnout by increasing public awareness of political issues, which is evident through a large spike in voter participation in presidential elections beginning in 1840. At that time, voter participation was still limited to a select portion of the populace, but turnout was consistently


4 On June 28th, 2012, the Affordable Care Act, the cornerstone achievement of President Barack Obama’s first term in office, was misreported as being “gutted” and made ineffective by the repeal of the individual mandate requirement, according to both Fox and CNN. The desire to be the first to report the ruling to the public caused inaccurate information to be relayed. However, the true ruling of the court held that the individual mandate was constitutional as a tax, enabling the ACA to remain largely intact, contrary to what was initially reported.

around 75% for over 50 years. Once the twentieth century dawned, participation began its descent toward current-day percentages. At that time, decreasing participation in elections could be attributed to the drastic increase in the eligible voter population, as both women and African-Americans were given the right to vote. However, societal pressures continued to hold these groups back from participating, resulting in nearly a ten-percent decrease in overall turnout in the presidential elections to 1960 among all groups except the elderly. Looking at voter participation in the early years of America, it is evident that the expansion of information through newspapers and other media outlets helped promote a rise in voter turnout. However, by the time radio and other enhanced paper publications were available, the number of eligible voters ballooned, outpacing increases in voter participation that resulted from the influence of the media. Additionally, the propaganda machine, while ever existent, had not evolved to the levels of our current sensationalized media.

In 1960, the American political system would change as a result of the promulgation of television, which brought politics from discussions at the dinner table and at the workplace to the comforts of the living room. The entry of politics and media into the home, while potentially beneficial in expanding an individual's knowledge of current events, had developed enough to inject cynicism in potential voters, resulting in growing distrust of politicians and public servants. The ability of information to travel faster than in the past requires campaigns to not only shape their story but anticipate what is and will become newsworthy.

However, the twenty-four hour news cycle, made possible by present technology, ensures that not all can be foreseen and leads to doubt cast toward candidates for perceived and actual missteps. With progres-

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11 In the 2012 Presidential campaign, Governor Romney was the most recent candidate to fall victim to technology advances when he was unintentionally caught on camera before a fundraiser stating that his job is not to worry about the 47% that do not pay income tax and are
sion of technology in the 1990s and 2000s, the media—from the Internet and social media to the expansion of television from three major networks to countless regional and national cable networks—has made political over-saturation an understatement. News was once left to icons like Walter Cronkite and a few others; however, it is now a broad spectrum, including blogs like the Huffington Post and Politico, television stations devoted to politics and news like MSNBC, CNN, and CSPAN, and programs like the O’Reilly Factor, the Daily Show, the Colbert Report, and Nancy Grace. The increase in affordability and availability of technology makes each individual with a smartphone a source of news and overloads channels with unreliable, unverified items that shape the electorate's opinions and contribute to desensitization.

As a result of this over-abundance of information mediums, competition becomes increasingly relentless and desperate. Every scrap of political fodder becomes fair game, creating a regression in the level of news being presented to readers and viewing audiences as news media has their own political proclivities. In the 1960’s, very little, if any attention was given to a president's fidelity, as exemplified by John F. Kennedy’s extramarital affairs, which were not made public. This is not to say that the media does not cover substantive information coming out of political campaigns; however, now substantive information is continually overshadowed by the superficial that makes becoming a public figure less desirable. In 2000, 71 percent of all election news coverage was on the “horse race angle”—the constant fluctuation in the polls, events and campaign strategies—with little, if any, discussion of policy and the actual issues. More bothersome are local campaigns that receive far less attention: only 5 percent in the 2004 election cycle news coverage with less than a third of the 5 percent concerning policy issues.\textsuperscript{12}

However, this very same evolution of media coverage that draws viewers, readers, and listeners is the very same coverage that, over the course of a political season, repels the same audiences, souring them from all the candidates. Debates, for example, present questions that can be well-presented, yet the candidates use the debates to preach their weary platforms redundantly, avoiding the real issues and sticking to their predetermined talking points rather than talking about the issues brought up by the moderator's questions. As a result, the viewers of debates seldom change their opinions, as those who watch tend to have decided who they will support. However, those who watch debates to make their decision

tend to make them based on looks or the candidates’ perceived performances, which are spun by different media outlets into either a win or loss.13

By analyzing the drop in voter turnout in terms of demographics and comparing those demographic categories with the type of news audiences tend to watch, a correlation is formed between those less likely to vote and those who still do. The correlation presented is that the more a certain demographic is exposed to news, the more likely that demographic is to not vote. According to the US Census Bureau, for youth voters aged 18-20, turnout has dropped 12 percent from the election of 1964 to the election of 1988. Furthermore, men aged 18-44 have seen a decline from 50 percent turnout in 1966 to 35 percent in 1990, and women in the same age range have decreased 11 percent over the same time span.14 A study by Pew Research Center found that of those who watch the news, men consisted of more than 60 percent of the audience that actively followed the news relating to international affairs and the economy.15 With men more prone to viewing the segments that are politically relevant, a correlation can be inferred from their lack of turnout at the polls in accordance with the Census Bureau's findings. These two sources, when looked at together, provide evidence that can support the hypothesis that there is an issue with the media when those most interested in politics are less likely to vote in comparison to those less interested in politics.

In furthering the argument that the media has dissuaded people who watch the news from voting, viewer and reader confidence in news outlets continues to sink. In another PEW Research Center Study, while television continues to be the main resource for campaign news, there has been a large jump, averaging 25 percent, in the distrust of news sources from newspapers to shows on cable television.16 Additionally, since 1985,

13 Thomas A. Hollihan. Uncivil Wars: Political Campaigns in a Media Age (Boston: St. Martin’s, 2009). In the first presidential debate of the 2012 election between incumbent Barack Obama and Governor Mitt Romney, the post debate media spin caused one of the largest poll bumps in debate history. The perceived loss of Obama as a result of Romney’s appearance and assertive tone, defueled the momentum and energy among the Obama campaign and revitalized the Romney campaign essentially turning the election into a tie from what was starting to look like a decisive reelection victory for Obama. Independent news sources, such as the Associated Press, reported that both candidates performances were filled with half-truths, inaccuracies, and retreatments of past statements. Thus, voters seeking accurate information were once again mislead which has become a trend causing large amounts of independents to ignore debates.


15 Pew Research Center, “Where Men and Women Differ”

the belief that media has protected or hurt democracy has gone from 54 percent who believe in protection versus 23 percent who believe media hurts democracy, to now where it is equally likely to protect as it is to hurt: 42 percent argue protection, and the same number, harm.\textsuperscript{17} The trend is that with more media sources clamoring to gain loyal viewers, the shows have become more biased to claim their niche in the ever-expanding information market. A lack of honesty and a fair evaluation of the issues discourage those who may otherwise be interested, from voting.

Some may find that this digression is a result of the repeal of the Fairness Doctrine that required the media, in control of scarce media, to report both sides of an issue fairly. However, with the expansion of technology and the increase in number of news outlets, Congress believed that the Fairness Doctrine was no longer necessary to ensure that all views were fairly disclosed. As a result, media has become polarizing, without requirements to provide opposing views with equal airtime. The polarization leads to a more polarized electorate, as individuals tend to listen to news outlets with more similar beliefs and views\textsuperscript{18}. Thus, without this requirement, news providers tend to have a political bias toward one party or another to gain a consistent and loyal following. For example, Fox News and MSNBC have become notorious for their respectively conservative and liberal biases. Those who watch these stations tend to have a political bias that is aligned with that of the network. Further, the Huffington Post and Drudge Report also have an inherent political bias. This news bias continues to span across all forms of media. The fair and less-biased news of the past has been degraded to the point where people are subjected to watching or reading news that is skewed to more closely resemble their personal beliefs. In order to gain an unbiased perspective, viewers are forced to view numerous outlets, rather than consuming news in a more convenient and unbiased single source.

The practice of unequal and biased news reporting is not new to the political campaign sphere, but with enhanced abilities to reach one's audience over longer periods of time, it has caused a greater impact on voting. On January 2, 1960, John F. Kennedy announced his candidacy for the presidency of the United States, which he won eleven months later. In the 2008 election, the length of a campaign for the presidency was expanded to twenty-three months, when, in February 2007, then-US Senator Barack Obama announced his candidacy. The length of presidential campaigns has more than doubled in the past half-century, doubling the length of time that the American public is bombarded with campaign news. In a

\textsuperscript{17} Pew Research Center, "Press Widely Criticized".
\textsuperscript{18} Hollihan, Uncivil Wars: Political Campaigns in a Media Age.
Washington Times article, numerous people were quoted as saying that they are tired of the negativity of campaigning and that they look forward to election day, if nothing more than to gain some peace and quiet.¹⁹ In the election of our next leader, this is not how the electorate should feel. Michael Brown, Professor at UC Santa Cruz stated, "The electorate has a serious case of election fatigue," and with fatigue comes decreased turnout.²⁰ While the 2008 election spurred some hope in a climb in the turnout of voters, the mere 57 percent of the eligible voters that turned out are still below the norm prior to 1960, when the average voter turnout was 67.3 percent. With a lengthening of presidential campaigns, the media is faced with having to provide coverage of the same issue for nearly two years, leaving the voters disliking the candidates and the practice of politics.

Campaigns become increasingly negative due to the vitriolic fodder that is constantly being flung throughout the duration of a campaign. In large part, this is simply because there is a lack of information candidates can provide that will not become hackneyed in the course of two years. Additionally, it is a lot easier to tear down an opponent than to explain difficult and sometimes controversial policy plans. Furthermore, negative advertising tends to be the most effective means of getting to voters, in order to gain support or to, at least, scare individuals from voting for one's opponent. However, candidates running negative campaigns toward their opponents for extended periods of time are viewed more negatively in the eyes of constituents. The PEW study on public opinion of media shows that political disaffection is increasing as a result of the "sound-bite driven campaign coverage" and political advertising that is focused on "personal attacks and half-truths."²¹²² This trend continues to lower the confidence and satisfaction of everyday Americans with government, as congressional approval has dropped from nearly 40 percent in the 1970's to now where it is under 20 percent.²³

With the continuing trend of lower voter turnout and increased negative campaigning over the state of the current political atmosphere, it can be expected that the upcoming presidential election in 2012 will show lower voter turnout results across the board, especially in comparison to the 2008 election. The media continues to paint a dismal picture of Presi-

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²⁰ Id.
²² "Press Widely Criticized."
²³ Saad, "Congress Approval Rating."
dent Obama, our economic future, and Governor Romney. If ever there was a time of voter disaffection, it is now, more so than before. Gallup Research Poll expects there to be a drop in voter turnout among all demographics except Caucasians in 2012 from that in the 2008 election. While the media and media sources continue to play a key role in the disaffection of voters, there are other theories that should be considered.

Voters must ask themselves whether the benefit of fulfilling one's civic duty by having a say in who is elected outweighs the cost of time and effort to vote. In the history of the United States, there has never been a presidential election that has come down to a single vote, so, to many people, voting seems pointless. With the media having an impact on disaffection of voters, the benefit of fulfilling one's civic duty and voting for the candidate that person believes in, is lowered, resulting in lower voter turnout. As for disconnected campaigning, an increasing number of candidates have turned to new media sources that decrease the amount of individual contact they have with the electorate. President Obama has spent nearly $26.9 million on Internet advertisements since Spring 2011, according to ClickZ Politics analysis. Their time is now spent on virtual town hall meetings or videos that do not link the people with the candidate. In the past, campaigns were about the ground game where people knocked on neighbor's doors and created excitement and belief in the candidates, as well as giving them a perceived credibility. This shift in campaign strategy can be attributed to technological advances allowing for more people to be reached, increasing participation but at the sacrifice of more personal contact.

There are many means by which the government could go about increasing voter turnout; however, fixing the issues in regards to the media and the role it plays, may require more than a simple fix. Because disaffection is an impairment the media imposes on the voters, both parties have seriously discussed campaign time limits over the past thirty years. This shortening of the campaign schedule would involve reforms that move "conventions closer to election time and scheduling primaries later in the year." In doing so, there would not be a race to be the "first in the nation" primary, where states are continuously moving their primaries further ahead in the schedule so they will have greater impact in selecting the presidential nominee of each party. While this might be a possible solution, this does not prevent primary candidates from entering the race prior

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to a specific date. By assigning a specific date of entering the campaign, the media blitz will be diminished. As a result, the public will have somewhat of a reprieve from the endless onslaught of campaign media, and it will shorten the amount of time the candidates have to turn to negativity. This will keep more eligible voters engaged in politics, as they will be less likely to have been burnt out by excesses half-truths and negative ads to gain the upper hand.

In furthering the argument for shortening the campaign election cycle, duck periods, in which Congress and the president are ineffective prior to an upcoming election, can be shortened. In decreasing the amount of time our government is ineffective, more time can be spent on initiatives that will better serve the country. This of course has not been the case, as the public and politicians alike have been detracted from the main issues due to the relentless direction of media coverage from over a year out. Little newsworthy legislation has been making progress due to adamant politicians standing by their party lines. Since the Republicans took over the House of Representatives in 2010, media coverage soon became speculative about the 2012 presidential election. Sites were created like 2012 election news and news stations including Fox and CNN began discussing candidates and poll numbers for likely challengers two days after the midterm election concluded. This played into the Republicans' pledged statement to make President Obama a one-term president. While having made some successes abroad, President Obama's domestic agenda has faced endless partisan roadblocks. The current domestic stalemate is not the first of its kind. In the 1996 reelection of Bill Clinton, Republicans held a majority in Congress and forced a lame duck period where little was accomplished before the election. This tactic backfired as Clinton won reelection, forcing the two parties to pass bipartisan legislation. Whether this will be the case again remains to be seen. What is known is that there is nearly 8 percent unemployment and the media continues to focus extreme amounts of time on the sexual harassment claims against Herman Cain, former Massachusetts Governor, Mitt Romney's Mormonism, and Texas Governor Rick Perry's fall from the top, and nearly no time on the American Jobs Act introduced to Congress in September of 2011, of which parts have been implemented and other components continue to be discussed.

28 "The White House Blog," Watch Live: The President's Jobs Address Enhanced with
Given the proposed reform, the campaign for the 2012 election would have begun November 1, 2011. Instead, the general public has been hearing the roller coaster of a campaign since November of 2010.

With the advancement in technology, the media has grown into a constantly hungry organism that preys on any sound bite or bit of information they can sensationalize to gain an audience. Unfortunately, the snowball effect precludes them from taking a ‘Wag the Dog’ approach (when an object of secondary importance assumes the role of primary importance) and turning the process around to leading by example and going back to reporting the news as it was meant to be reported (the honest, unbiased, and relevant news to create an informed electorate).\textsuperscript{29} Without the media, America would not be a true democracy comprised of differing views and values, as the sharing of differing insights is necessary to create an informed electorate. However, the media needs to prioritize what it brings to its audience. A possible approach to reversing the opinions of an unaffectionate public could be to focus more media coverage on the positive achievements of those in office, versus over-emphasizing the bad. The media needs to cover all sides equally with journalistic integrity. If, however, there are no attempts to rectify the current trend, more Americans will refrain from voting and will adopt a more cynical view of politics and the media. If they refrain from voting, the election will be dominated by those who have a specific motive in the outcome of the election, which may not reflect the true wishes of the majority of the people, i.e., the passage of Proposition 8 in the state of California that made same-sex marriage illegal. With opinion polls prior to the election consistently showing support to turn the proposition down, it eventually won favor by nearly 5 percent.\textsuperscript{30} The last-minute push by proponents of Prop 8 as it neared Election Day was heavily financed by a few special interests, largely the Mormon, Catholic and Christian Churches and their followers.\textsuperscript{31} In total, the initiative broke a national record for state initiative fundraising amounting to over $83 million combined, opponents slightly out fundraising the proponents.\textsuperscript{32}

The media is a powerful resource and vehicle for information, yet in these ever-changing times, efforts need to be made to restrict the banal reporting and misguided message of our political media coverage. With the 2012 election pending, it is evident that media has a role in shaping the mindset of the voting public. The 47 percent comment by Governor Romney, referring to supporters of the President who do not pay income tax and see themselves as victims, and the poor first debate showing by President Obama in Colorado have played influential roles in the way the public view these candidates and has dissuaded some from voting for either candidate. Some have gone so far as the say they will not vote as it is an election between the “lesser of two evils.” To ensure that this mindset not be continued, reimplementation of the Fairness Doctrine to ensure that both sides be presented fairly could present a solution. Otherwise, a means to regulate the amount of negative and superfluous information presented to the public will become necessary. Overall, the disaffection toward current-day politics can and should be related to type of news presented.

BIBLIOGRAPHY


Hemmelgarn, Seth. "The Bay Area Reporter Online." Bay Area Reporter. August 21, 2008..


http://www.jour.unr.edu/j705/RP.JOBE.POLITICS.HTML.


http://www.aei.org/issue/20492.


DIVIDED WE FALL: 
THE EFFECT OF DIVISIVE PRIMARY CAMPAIGNS ON GENERAL ELECTION SUCCESS 
IN U.S. PRESIDENTIAL ELECTIONS

Michael Brandon* 

This paper advances the divisive primary theory, which argues that a highly competitive primary campaign damages the electoral prospects of the eventual nominee in the general election. This study is designed to show that in United States presidential elections, the candidate who emerges from the more divisive primary campaign is less likely to win a plurality of the total votes cast in the general election. Examining the ten presidential elections that have occurred under the modern primary system as well as fourteen strategically selected gubernatorial elections, which serve as experimental proxies, this paper finds that in 70.8 percent of such elections, the candidate who emerges from the more divisive primary campaign does in fact receive fewer votes than his/her opponent in the general election.

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INTRODUCTION

The nature of presidential primary seasons has varied greatly for different parties in different years since the first election held under the modern primary system in 1972. Some primary campaigns are largely symbolic with the presumptive winner identified from the outset. Others may begin as competitive contests, but fizzle out as a frontrunner emerges early on, forcing opponents to drop out. Still others remain competitive deep into the process with two or more candidates vying for the nomination for much of the primary season. This paper will focus on this third type of primary, and consider the implications of such a process for the eventual nominee’s electoral prospects in the general election. It will argue that divisive primaries weaken the eventual nominee’s chances of succeeding in the general election.

Commentators have weighed in on both sides of this issue. Some argue that divisive primaries actually improve the eventual nominee’s electoral prospects. They might contend, for example, that such a primary inoculates the eventual nominee against the type of attacks he or she will eventually face in the general election. Or, they might argue that being forced to campaign hard, state-by-state, effectively develops that candidate’s “ground game” in areas of the country that might otherwise be ignored.1 The counter to these arguments—and the argument advanced by this paper—is that such primaries damage the eventual nominee by, among other things, exposing his/her weaknesses and forcing him/her to spend valuable campaign resources in perpetual competition.2 Perhaps even more valuable is the political capital that is spent during contentious elections that make the candidates appear more petty than presidential.3

Identifying which of these schools of thought is the more accurate model is an incredibly important endeavor with obvious relevance today. It affects voters who may weigh the benefits of voting for the candidate of their choice against the benefits of voting for the frontrunner in an effort to end the contest quickly, thereby preserving the strength of the party’s nominee. It affects candidates who must carefully consider when and how they spend their aforementioned resources. And it affects political parties

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who may wish to amend their primary systems in order to prevent prolonged contests and encourage their base of supporters to coalesce around one candidate as early as possible.

Informed by literature on the “divisive primary theory”, this paper will seek to show that divisive primaries have historically damaged the eventual nominee’s general election performance. It will do so by examining every presidential election since the establishment of the modern primary system in 1972, and it will draw additional evidence from gubernatorial elections in swing states. Because the governorship is a chief executive position comparable to the presidency and because swing states serve as a microcosm of an ideologically split national electorate, these gubernatorial elections serve as apt indicators.

By demonstrating an apparent historical trend, this paper will support the notion that divisive primaries weaken the electoral prospects for the eventual nominee in presidential general elections.

**PART I. REVIEW OF LITERATURE**

*Overview*

The most recent presidential election in 2008 was notable for the contentious Democratic primary campaign between Barack Obama and Hillary Clinton. The election garnered widespread scrutiny from journalists and pundits alike, but it also sparked an influx of academic literature that sought to evaluate the effect of divisive primaries on general election outcomes in the context of a prominent recent example. This literature was valuable not only for its own findings, but for its revival of the rich scholarship that preceded it. Examining this extensive literature—not only to build upon its findings but also to critique its methods and update them to better apply to a modern context—is a necessary endeavor.

Literature that considers these issues is diverse in both its scope and focus. This is largely due to the interdisciplinary nature of the topic. Some studies have sought to understand how such primaries affect media attention (Gurian 1993), the actions of party activists (Johnson and Gibson 1974), or incumbents, specifically. Other literature has merely focused on general election results. However, the fact that such a large variety of offices have been studied adds additional complexity to this exploration; presidential, senatorial, congressional, gubernatorial, and state legislative elections have all been examined. Considering studies on each of these

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4 Steen and Koppel, 1-29.
offices—and determining which can best be applied to the examination of presidential elections—is essential.

Even with all these studies, the existing collection of scholarship has not yet been effectively reconciled as part of an up-to-date, coherent academic narrative. This enterprise is complicated by the diversity of methods that have been applied to characterize and measure divisiveness. This paper will synthesize the most apt techniques and pursue the most logical model.

**Divisive Primary Theory: Background**

The “divisive primary theory” argues that the more divisive a primary campaign is, the less likely it is that the eventual nominee will be successful in the general election.\(^5\) As Atkeson recounts, this theory has been tested from various angles over an extended period of time.\(^6\) Pierson and Smith looked at gubernatorial elections and found “little” evidence of an effect.\(^7\) Similarly, Hacker tested the theory on both gubernatorial and senatorial elections with marginal validation at best.\(^8\) Bernstein and Kenney, however, found slightly more substantial evidence of a relationship between divisive primaries and general election difficulties in their examinations of gubernatorial and senatorial elections.\(^9\)\(^10\)

Notably, studies on congressional elections have been largely inconclusive. Born found negligible effects while Lazarus actually identified a correlation between divisive primaries and general election advantages.\(^11\)\(^12\) Not coincidentally, these results were comparable to Hogan’s examination of divisive primaries in state legislative elections.\(^13\)

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\(^6\) Id.
\(^12\) Lazarus, 435-62.
tive districts, which are rarely representative of entire state electorates—let alone the national electorate. One party dominates certain districts, and in those districts victory in the primary election is tantamount to victory in the general election. Thus the enormous variation in district composition makes it foolish to apply congressional and legislative results to other offices in this context. This, however, does not preclude the adoption of certain methods utilized in congressional and legislative analyses.

The results of presidential elections have been fairly consistent, but not very decisive; that is, the aggregate results have predominantly found the theory to hold water, but more recent studies have qualified their findings by claiming that the effect is “modest” and not substantial enough to sway an election. This paper will seek to build off of these findings and augment their conclusiveness.

**Divisive Primary Theory: Qualified**

In order to understand the divisive primary theory and the scholarship that tests it, one must consider how previous scholars have qualified a primary as “divisive.” As Atkeson summarizes, Hacker considered a primary divisive if the winner received less than 65 percent of the total votes cast in the primary season. Pierson and Smith focused more on direct competition, viewing a primary as divisive if the difference between the winner and the runner-up was less than 30 percentage points. Bernstein and Lengle thereafter made this consideration more specific by labeling a primary divisive if the winner bested the nearest opponent by less than 20 percent. Henderson, et al., examining only one election (2008), chose to consider it divisive on account of the unprecedented sheer number of votes (approximately 18 million) cast for the losing candidate.

But as Kenney and Rice noticed, such strategies test the divisive

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15 Atkeson, 256.
17 Pierson and Smith, 555-62.
18 Bernstein, 540-45.
19 Lengle, 261-77.
20 Henderson, Hillygus, and Tompson, 499-529.
primary theory too narrowly.\textsuperscript{21} Instead of truncating the divisive measure at an "arbitrary level and into a divisive/non-divisive dichotomous variable," they apply a “relative divisiveness measure” that subtracts the eventual Republican Party nominee’s share of the state primary vote from the eventual Democratic Party nominee’s share.\textsuperscript{22} Subsequently, one can determine if the nominee who emerged from the more divisive primary had a statistically smaller chance of winning in the general election. Atkeson applied this standard to the three elections that had occurred since Kenney and Rice published in 1987.\textsuperscript{23} Yet Atkeson conceded a major point:

\begin{quote}
It may be inappropriate to think of the presidential elections as a state-by-state campaign [and] instead [it] may be more appropriate to think of them as national campaigns. The presidency is, after all, the only national office. The issues that frame presidential campaigns are national in scope, often focusing on the national economy and the nature of the times. Although states contribute individually to the outcomes of presidential elections via the Electoral College, the election context is national.\textsuperscript{24}
\end{quote}

\textbf{PART II. THEORY}

\textit{Divisive Primary Theory: Explained}

Previous studies have failed to prove conclusively the divisive primary theory, but this can be attributed to flawed methodology rather than to the theory’s lack of legitimacy. The arguments advanced in literature supportive of the theory are sound and intuitive; there are logical and identifiable reasons to suggest that divisive primary campaigns are detrimental to the electoral prospects of the eventual nominee. As Lazarus explains, “divisive primary elections hurt the candidates who emerge from these elections by preventing them from running at full strength in the general election.”\textsuperscript{25} There are numerous factors that contribute to this weakening.

As Kenney and Rice point out, supporters of losing primary candidates may be so disillusioned that they abstain from voting for their

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{21} Kenney and Rice, “The Relationship Between Divisive Primaries And General Election Outcomes,” \textit{American Journal Of Political Science} 31(1) (1987): 31-44.
\item\textsuperscript{22} Atkeson, 256.
\item\textsuperscript{23} Id. 256.
\item\textsuperscript{24} Id.
\item\textsuperscript{25} Lazarus, 435-62.
\end{itemize}
\end{footnotesize}
party’s nominee in the fall election. This phenomenon of psychological disaffection, coined “sour grapes” by Henderson, et al., takes away a potentially massive base of voters. In a similar fashion, candidates can be hurt by the abstinence of the very operatives trained to run successful campaigns, as those who worked for a primary loser’s campaign “might not work (or work as hard) for the party nominee during the general election.”

Such problems could potentially be mitigated if adequate resources were available, but divisive primary campaigns often force candidates to expend these resources prior to the general election. Defeating opponents in such a primary often causes candidates to deplete their so-called ‘war chests’ in order to finance additional advertisements and travel, among other campaign expenditures. As Steen and Koppell explain, such “primary election campaigns…consume resources other than money,” including “the energy of candidates, staff, and supporters required to fuel an effective bid for office” in addition to the political capital often spent attacking opponents. Moreover, these primaries often provide more time for existing weaknesses to be exposed, to commit new political gaffes, to alienate general election voters by running toward the party’s base, and less time to focus efforts on the general election opponent; all of this serves to weaken the nominee.

**Directives for Research**

These problems form the basis of the divisive primary theory. The following section lays out the mechanism by which this theory’s legitimacy will be demonstrated. It draws out a specific hypothesis and articulates how, if this theory is indeed true, it would manifest itself in the relevant statistics and the subsequent analysis thereof.

**PART III. RESEARCH DESIGN**

**Definition of Variables**

This examination of the divisive primary theory logically lends it-
self to two variables: the divisiveness of a given primary campaign and the outcome of the general election. The methods that past researchers used to test the divisive primary theory requires operationalization of these variables in the following way in order to account for the arbitrary definition of “divisive,” and to measure the subsequent general election disadvantage most precisely.

Independent Variable: Following the example of Kenney and Rice, this design will adopt the relative divisiveness measure (RDM).31 There is no clear-cut rule for qualifying a primary as divisive—doing so arbitrarily detracts considerable credibility from any eventual findings. Instead of creating some sort of divisive/non-divisive dichotomous variable, the RDM quantifies the divisiveness of each primary campaign on a standardized scale that lends itself to comparison. Pursuing this method, this paper will simultaneously examine the primary campaigns of the two major-party candidates in each general election. It will do so by first calculating each candidate’s primary vote percentage (PVP). PVP will be defined as the percentage of the total votes cast in the candidate’s primary campaign that were cast for the eventual nominee. The more divisive the primary campaign, the smaller the PVP. Next, the Democratic candidate’s PVP will be subtracted from the Republican candidate’s PVP to produce the given election’s RDM. Thus, a positive RDM will indicate that the Democratic candidate emerged from the more divisive primary while a negative RDM will indicate that the Republican candidate emerged from the more divisive primary.

Dependent Variable: In order to appropriately account for the impact of divisive primaries, the best strategy is to adopt Henderson, et al.’s notion of total votes cast.32 But in applying this method to multiple campaigns rather than just one, it will be adjusted to measure popular vote percentage. This will make the statistics standardized and comparable. The popular vote is more indicative than the Electoral College vote; the work of previous scholars was largely inconclusive, in part, because it looked at general election wins and loses based solely on Electoral College totals. The Electoral College is a flawed indicator in this regard. Indeed, in some instances, the winner of the Electoral College vote—and thus the presidency—did not actually win the popular vote. Perhaps it is hard to correlate divisive primaries with Electoral College losses, but this may mask the fact that the divisive primary weakened the candidate’s chances of winning. The popular vote is the statistic that can best expose this weakening and its

31 Kenney and Rice, “The Relationship Between Divisive Primaries and General Election Outcomes,” 31-44.
32 Henderson, Hillygus, and Tompson, 499-529.
magnitude, as it has the potential to reveal an actual negative drag on real vote accruement. This accounts for the phenomenon that Pierson and Smith offered as a limitation of their own work, when they noted that “the impacts of divisive primaries are unnoticed unless they are sufficient to alter the actual outcome of the general election,” while it is “probably often the case that divisiveness has impacts upon candidates’ shares of the vote.”  

This paper, therefore, will not focus on which candidate actually won the general election, but rather on each candidate’s general election vote percentage (GVP). A candidate’s GVP will be defined as the percentage of the popular vote he or she received in the general election. Next, the Democratic candidate’s GVP will be subtracted from the Republican candidate’s GVP to produce what will be called a given election’s relative vote measure (RVM). Thus, a positive RVM will indicate that the Republican candidate received a greater percentage of the votes while a negative RVM will indicate that the Democratic candidate received a greater percentage of the votes.

Hypothesis

This paper seeks to legitimize the divisive primary theory, which contends that the more divisive a primary campaign is, the less likely it is that the eventual nominee will be successful in the general election. It will focus on major-party candidates in presidential elections and more effectively operationalize the divisive primary theory by:

- Noting that “it is not the divisive primary of one party, but the relative divisiveness across parties that creates an advantage for one party or the other,” and by
- Pointing out that the effect on general election success is best measured by the popular vote as the Electoral College may distort the will of the voters.

Therefore, I submit:

\[ |H| = \text{In United States presidential general elections, the candidate who experienced the more divisive primary campaign is less likely to win a plurality of the total votes cast.} \]

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33 Pierson and Smith, 555-62.
34 Atkeson, 256.
Measurement

This paper calls for a quantitative analysis of the divisive primary theory as operationalized above. Specifically, it will compare the calculations that quantify relative primary divisiveness (the RDM) and relative general election success (the RVM) in order to demonstrate the predicted relationship between the variables. Recall that a positive RDM indicates that the Democratic candidate emerged from the more divisive primary and that a positive RVM indicates that the Republican candidate received a greater percentage of the votes in the general election. If the hypothesis offered by this paper is correct, the majority of elections that produce a positive RDM will also produce a positive RVM. A simple majority in this one indicator, however, will not be considered sufficient. It must also be demonstrated that a majority of elections that produce a negative RDM also produce a negative RVM. This double-check is designed to yield evidence that is substantially robust enough to support the hypothesis. Only such evidence will be considered sufficient. That is:

Given—
\[ A = \text{More than 50 percent of elections with a positive RDM have a positive RVM.} \]
\[ B = \text{More than 50 percent of elections with a negative RDM have a negative RVM.} \]

Then—
\[ H \leftrightarrow A \land B \]

This 50 percent threshold is designed to demonstrate that more often than not, the candidate who emerges from the more divisive primary loses the popular vote in the general election. But as this study seeks to improve upon previous studies, which have only barely broken this threshold, the Results section will consider how substantially the hypothesis is supported, if it is indeed supported. Thus, breaking this 50 percent threshold will support the hypothesis, but greatly surpassing this threshold will contribute significantly to the scholarship on the divisive primary theory.

Case Selection

Sample size is an obstacle for this analysis of presidential elections; since the modern presidential primary system (which this paper considers) was adopted in 1972, there have only been ten presidential elections. As Kenney and Rice point out, a “disturbingly small” number of
cases make “firm conclusions dangerous.” Ten elections cannot produce sufficient evidence to justify support for the hypothesis. Thus, in addition to these ten elections, comparable cases must be identified and evaluated to justify any conclusive claims.

Gubernatorial elections are the perfect experimental proxy for this endeavor. As Bardwell suggests, findings for gubernatorial elections can be reasonably applied to elections for other offices. For example, voters are quite likely—much more likely than in senatorial elections—to have an opinion of their state’s chief executive and are even more apt to know and vote for a gubernatorial challenger. From a knowledge and information-awareness standpoint, voters’ engagement and investment in presidential elections is most comparable to gubernatorial elections. Moreover, as a chief executive position, the governorship is the elective office most comparable to the presidency and it is likely that candidates for the two offices are evaluated similarily in the minds of voters.

Kenney and Rice and Pierson and Smith, however, identified a unique quality inherent in scholarly evaluations of gubernatorial elections. In certain states, due to demographic composition, victory in the primary is tantamount to the election for governor. These two studies accounted for this by controlling for the eleven southern states of the former Confederacy, which were essentially automatically Democratic during the time period examined in these papers. This strategy is effective, but must be taken further. In order to present gubernatorial elections as reasonable indicators of presidential election trends, all states in which the victorious party is easily predictable (based on recent historical trends) will not be included in the data. Only so-called “swing-states” are to be examined as they serve roughly as a microcosm for the ideologically split national electorate in presidential elections. In this study, swing-states are defined as states which award their Electoral College votes to a presidential candidate who wins the state by less than 5 percent of the popular vote. But it is necessary to examine off-cycle gubernatorial elections in order to avoid the potential for the nature of the presidential election to contaminate the results of the gubernatorial election. Thus, data will be drawn from states that held gubernatorial elections two years after they most recently qualified as swing-states. A state that meets this description will hereafter be

labeled a gubernatorial swing-state (GSS).39

In order to utilize the most useful and predicative data, this paper will examine GSS’s that qualified in the most recent and thus relevant election years: 2000, 2004 and 2008. In 2000, ten states qualified as GSS’s: Florida, Iowa, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Tennessee, and Wisconsin. Data will be drawn from gubernatorial elections in these states in 2002. In 2004, ten states qualified as GSS’s: Colorado, Iowa, Michigan, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, and Wisconsin. Data will be drawn from gubernatorial elections in these states in 2006. In 2008, two states qualified as GSS’s: Florida and Ohio. Data will be drawn from gubernatorial elections in these states in 2010.

Not all of these twenty-two GSS’s will be of use for this study. In certain GSS’s in certain years, both gubernatorial candidates received the nomination of their respective parties without a primary challenge. In instances in which both gubernatorial candidates received a PVP of 100, the elections will be removed from the sample. As these elections yield an RDM of 0, the effect of relative divisiveness cannot be tested. Thus, the following GSS’s will be removed from the sample: Ohio in 2002, Colorado, Michigan, New Mexico, Pennsylvania, and Wisconsin in 2006, and Ohio in 2010. In addition, Minnesota in 2002 will be removed from the sample; with the candidates’ PVP’s at 88.79 and 88.64 respectively, the absolute value of the RDM from this election is too small to be significant and it will not adequately test the hypothesis.

As such, the complete set of cases will include data from the ten presidential elections that occurred under the modern primary system as well as data from gubernatorial elections in the fourteen most recently qualified GSS’s that remain testable. The total sample is, then, twenty-four cases.

Data Collection

Data collection for this study is quite straightforward. The only necessary statistics are vote percentage totals. The information for all of the presidential elections being examined in this study is available in a comprehensive, electronic database operated by Randy Parker called “Our Campaigns,” and information for gubernatorial elections can be variously found on websites specific to the particular state in which they occurred. For every state being examined in this study, the information is available on the website of the Secretary of State, the website of the greater Depart-

39 The plural of GSS will herein be written as “GSS’s.”
ment of State, or, in one instance, the website of the state’s Government Accountability Board.

PART IV. RESULTS

Presentation of Data

The independent variable for this study was the relative divisiveness of opposing candidates’ primary campaigns. Relative divisiveness was operationalized by identifying each candidate’s PVP and calculating the given election’s RDM. Table I-1 depicts this data on the independent variable for the fourteen gubernatorial elections that were examined.

**Table I-1:**

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>(R) Candidate / PVP</th>
<th>(D) Candidate / PVP</th>
<th>RDM</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Florida</td>
<td>Jeb Bush 100</td>
<td>Bill McBride 44.4</td>
<td>55.6</td>
</tr>
<tr>
<td>2002</td>
<td>Iowa</td>
<td>Doug Gross 35.9</td>
<td>Tom Vilsack 100</td>
<td>-64.1</td>
</tr>
<tr>
<td>2002</td>
<td>Nevada</td>
<td>Kenny Guinn 82.9</td>
<td>Joe Neal 35.8</td>
<td>47.1</td>
</tr>
<tr>
<td>2002</td>
<td>New Mexico</td>
<td>John Sanchez 58.5</td>
<td>Bill Richardson 99.8</td>
<td>-41.3</td>
</tr>
<tr>
<td>2002</td>
<td>Oregon</td>
<td>Kevin Mannix 35.2</td>
<td>Ted Kulongoski 49.0</td>
<td>-13.8</td>
</tr>
<tr>
<td>2002</td>
<td>Pennsylvania</td>
<td>Mike Fisher 100</td>
<td>Ed Rendell 56.5</td>
<td>43.5</td>
</tr>
<tr>
<td>2002</td>
<td>Tennessee</td>
<td>Van Hilleary 64.0</td>
<td>Phil Bresden 83.4</td>
<td>-19.4</td>
</tr>
<tr>
<td>2002</td>
<td>Wisconsin</td>
<td>Scott McCallum 86.2</td>
<td>Jim Doyle 38.3</td>
<td>47.9</td>
</tr>
<tr>
<td>2006</td>
<td>Iowa</td>
<td>Jim Nussle 100</td>
<td>Chet Culver 39.1</td>
<td>60.9</td>
</tr>
<tr>
<td>2006</td>
<td>Minnesota</td>
<td>Tim Pawlenty 100</td>
<td>Mike Hatch 73.0</td>
<td>27</td>
</tr>
<tr>
<td>2006</td>
<td>Nevada</td>
<td>Jim Gibbons 48.2</td>
<td>Dina Titus 53.8</td>
<td>-5.6</td>
</tr>
<tr>
<td>2006</td>
<td>Ohio</td>
<td>Ken Blackwell 56.0</td>
<td>Ted Strickland 79.0</td>
<td>-23</td>
</tr>
<tr>
<td>2006</td>
<td>Oregon</td>
<td>Ron Saxton 42.2</td>
<td>Ted Kulongoski 54.4</td>
<td>-12.2</td>
</tr>
<tr>
<td>2010</td>
<td>Florida</td>
<td>Rick Scott 46.4</td>
<td>Alex Sink 76.9</td>
<td>-30.5</td>
</tr>
</tbody>
</table>
Table I-2 depicts this data on the independent variable for the ten presidential elections that were examined.

<table>
<thead>
<tr>
<th>Year</th>
<th>(R) Candidate</th>
<th>(R) PVP</th>
<th>(D) Candidate</th>
<th>(D) PVP</th>
<th>RDM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Richard Nixon</td>
<td>86.9</td>
<td>George McGovern</td>
<td>25.3</td>
<td>61.6</td>
</tr>
<tr>
<td>1976</td>
<td>Gerald Ford</td>
<td>53.3</td>
<td>Jimmy Carter</td>
<td>40.2</td>
<td>13.1</td>
</tr>
<tr>
<td>1980</td>
<td>Ronald Reagan</td>
<td>59.8</td>
<td>Jimmy Carter</td>
<td>51.1</td>
<td>8.7</td>
</tr>
<tr>
<td>1984</td>
<td>Ronald Reagan</td>
<td>98.8</td>
<td>Walter Mondale</td>
<td>38.3</td>
<td>60.5</td>
</tr>
<tr>
<td>1988</td>
<td>George H.W. Bush</td>
<td>67.9</td>
<td>Michael Dukakis</td>
<td>42.5</td>
<td>25.4</td>
</tr>
<tr>
<td>1992</td>
<td>George H.W. Bush</td>
<td>72.8</td>
<td>Bill Clinton</td>
<td>52</td>
<td>20.8</td>
</tr>
<tr>
<td>1996</td>
<td>Bob Dole</td>
<td>58.8</td>
<td>Bill Clinton</td>
<td>89</td>
<td>-30.2</td>
</tr>
<tr>
<td>2000</td>
<td>George W. Bush</td>
<td>62</td>
<td>Al Gore</td>
<td>75.8</td>
<td>-13.8</td>
</tr>
<tr>
<td>2004</td>
<td>George W. Bush</td>
<td>100</td>
<td>John Kerry</td>
<td>61</td>
<td>39</td>
</tr>
<tr>
<td>2008</td>
<td>John McCain</td>
<td>46.5</td>
<td>Barack Obama</td>
<td>47.3</td>
<td>-.8</td>
</tr>
</tbody>
</table>

The dependent variable for this study was the relative vote accruement of opposing candidates in the general election. Identifying each candidate's GVP and calculating the given election's RVM operationalized relative vote accruement. Table D-1 depicts this data on the dependent variable for the fourteen gubernatorial elections that were examined.

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>(R) Candidate / GVP</th>
<th>(D) Candidate / GVP</th>
<th>RVM</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Florida</td>
<td>Jeb Bush</td>
<td>Bill McBride</td>
<td>43.2</td>
</tr>
<tr>
<td>2002</td>
<td>Iowa</td>
<td>Doug Gross</td>
<td>Tom Vilsack</td>
<td>52.7</td>
</tr>
<tr>
<td>2002</td>
<td>Nevada</td>
<td>Kenny Guinn</td>
<td>Joe Neal</td>
<td>22.0</td>
</tr>
<tr>
<td>2002</td>
<td>New Mexico</td>
<td>John Sanchez</td>
<td>Bill Richardson</td>
<td>55.5</td>
</tr>
<tr>
<td>2002</td>
<td>Oregon</td>
<td>Kevin Mannix</td>
<td>Ted Kulongoski</td>
<td>49.0</td>
</tr>
<tr>
<td>2002</td>
<td>Pennsylvania</td>
<td>Mike Fisher</td>
<td>Ed Rendell</td>
<td>53.4</td>
</tr>
<tr>
<td>2002</td>
<td>Tennessee</td>
<td>Van Hilleary</td>
<td>Phil Bresden</td>
<td>50.7</td>
</tr>
<tr>
<td>2002</td>
<td>Wisconsin</td>
<td>Scott McCallum</td>
<td>Jim Doyle</td>
<td>45.1</td>
</tr>
<tr>
<td>2006</td>
<td>Iowa</td>
<td>Jim Nussle</td>
<td>Chet Culver</td>
<td>54.0</td>
</tr>
<tr>
<td>2006</td>
<td>Minnesota</td>
<td>Tim Pawlenty</td>
<td>Mike Hatch</td>
<td>45.7</td>
</tr>
<tr>
<td>2006</td>
<td>Nevada</td>
<td>Jim Gibbons</td>
<td>Dina Titus</td>
<td>43.9</td>
</tr>
<tr>
<td>2006</td>
<td>Ohio</td>
<td>Ken Blackwell</td>
<td>Ted Strickland</td>
<td>60.4</td>
</tr>
<tr>
<td>2006</td>
<td>Oregon</td>
<td>Ron Saxton</td>
<td>Ted Kulongoski</td>
<td>50.8</td>
</tr>
<tr>
<td>2010</td>
<td>Florida</td>
<td>Rick Scott</td>
<td>Alex Sink</td>
<td>47.7</td>
</tr>
</tbody>
</table>
Table D-2 depicts this data on the dependent variable for the ten presidential elections that were examined.

**Table D-2:**

<table>
<thead>
<tr>
<th>Year</th>
<th>(R) Candidate</th>
<th>(R) GVP</th>
<th>(D) Candidate</th>
<th>(D) GVP</th>
<th>RVM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Richard Nixon</td>
<td>60.7</td>
<td>George McGovern</td>
<td>37.5</td>
<td>23.2</td>
</tr>
<tr>
<td>1976</td>
<td>Gerald Ford</td>
<td>48</td>
<td>Jimmy Carter</td>
<td>50.1</td>
<td>-2.1</td>
</tr>
<tr>
<td>1984</td>
<td>Ronald Reagan</td>
<td>58.8</td>
<td>Walter Mondale</td>
<td>40.6</td>
<td>18.2</td>
</tr>
<tr>
<td>1988</td>
<td>George H.W. Bush</td>
<td>53.4</td>
<td>Michael Dukakis</td>
<td>45.7</td>
<td>7.7</td>
</tr>
<tr>
<td>1992</td>
<td>George H.W. Bush</td>
<td>37.5</td>
<td>Bill Clinton</td>
<td>43</td>
<td>-5.5</td>
</tr>
<tr>
<td>1996</td>
<td>Bob Dole</td>
<td>40.7</td>
<td>Bill Clinton</td>
<td>49.2</td>
<td>-8.5</td>
</tr>
<tr>
<td>2000</td>
<td>George W. Bush</td>
<td>47.9</td>
<td>Al Gore</td>
<td>48.4</td>
<td>-0.5</td>
</tr>
<tr>
<td>2004</td>
<td>George W. Bush</td>
<td>50.7</td>
<td>John Kerry</td>
<td>48.3</td>
<td>2.4</td>
</tr>
<tr>
<td>2008</td>
<td>John McCain</td>
<td>45.7</td>
<td>Barack Obama</td>
<td>52.9</td>
<td>-7.2</td>
</tr>
</tbody>
</table>

**Assessment of Hypothesis**

This study was designed to show that the candidate who emerges from the more divisive primary campaign is less likely to win the general election. The hypothesis was operationalized to consider the relationship between each election’s RDM and its RVM. The first component of the hypothesis argued that more than 50 percent of elections with a positive RDM would have a positive RVM. In Table H-1, each of the thirteen elections in the sample that were shown to have a positive RDM in Table I-1 and Table I-2 are presented along with their resulting RVM. In addition, the final column in Table H-1 notes whether or not the given election supports the hypothesis.
Table H-1:

<table>
<thead>
<tr>
<th>Year</th>
<th>Election Type</th>
<th>(R) Candidate / (D) Candidate</th>
<th>RDM (+)</th>
<th>RVM</th>
<th>Hypothesis</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>J. Bush / McBride</td>
<td>55.6</td>
<td>12.8</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Guinn / Neal</td>
<td>47.1</td>
<td>46.2</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Fisher / Rendell</td>
<td>43.5</td>
<td>-9</td>
<td>X</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>McCallum / Doyle</td>
<td>47.9</td>
<td>-3.7</td>
<td>X</td>
</tr>
<tr>
<td>2006</td>
<td>Gubernatorial</td>
<td>Nussle / Culver</td>
<td>60.9</td>
<td>-9.6</td>
<td>X</td>
</tr>
<tr>
<td>2006</td>
<td>Gubernatorial</td>
<td>Pawlenty / Hatch</td>
<td>27</td>
<td>1</td>
<td>✔</td>
</tr>
<tr>
<td>1972</td>
<td>Presidential</td>
<td>Nixon / McGovern</td>
<td>61.6</td>
<td>23.2</td>
<td>✔</td>
</tr>
<tr>
<td>1980</td>
<td>Presidential</td>
<td>Reagan / Carter</td>
<td>8.7</td>
<td>9.7</td>
<td>✔</td>
</tr>
<tr>
<td>1984</td>
<td>Presidential</td>
<td>Reagan / Mondale</td>
<td>60.5</td>
<td>18.2</td>
<td>✔</td>
</tr>
<tr>
<td>1992</td>
<td>Presidential</td>
<td>G.H.W. Bush / Clinton</td>
<td>20.8</td>
<td>-5.5</td>
<td>X</td>
</tr>
<tr>
<td>2004</td>
<td>Presidential</td>
<td>G.W. Bush / Kerry</td>
<td>39</td>
<td>2.4</td>
<td>✔</td>
</tr>
</tbody>
</table>

As Table H-1 shows, in eight out of the thirteen elections in which there was a positive RDM, there was also a positive RVM at 61.5 percent, which easily surpasses the 50 percent threshold required to support the first component of the hypothesis.

The second component of the hypothesis argued that more than 50 percent of elections with a negative RDM would have a negative RVM. In Table H-2, each of the eleven elections in the sample that were shown to have a negative RDM in Table I-1 and Table I-2 are presented along with their resulting RVM. In addition, the final column in Table H-2 notes whether or not the given election supports the hypothesis.
Table H-2:

<table>
<thead>
<tr>
<th>Year</th>
<th>Election Type</th>
<th>(R) Candidate / (D) Candidate</th>
<th>RDM (%)</th>
<th>RVM</th>
<th>Hypothesis</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Gross / Vilsack</td>
<td>-64.1</td>
<td>-8.2</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Sanchez / Richardson</td>
<td>-41.3</td>
<td>-16.4</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Mannix / Kulongoski</td>
<td>-13.8</td>
<td>-2.8</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Hilleary / Bresden</td>
<td>-19.4</td>
<td>-3.1</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Gibbons / Titus</td>
<td>-5.6</td>
<td>4</td>
<td>X</td>
</tr>
<tr>
<td>2002</td>
<td>Gubernatorial</td>
<td>Blackwell / Strickland</td>
<td>-23</td>
<td>-23.6</td>
<td>✔</td>
</tr>
<tr>
<td>2006</td>
<td>Gubernatorial</td>
<td>Saxton / Kulongoski</td>
<td>-12.2</td>
<td>-8.1</td>
<td>✔</td>
</tr>
<tr>
<td>2010</td>
<td>Gubernatorial</td>
<td>Scott / Sink</td>
<td>-30.5</td>
<td>1.2</td>
<td>X</td>
</tr>
<tr>
<td>1996</td>
<td>Presidential</td>
<td>Dole / Clinton</td>
<td>-30.2</td>
<td>-8.5</td>
<td>✔</td>
</tr>
<tr>
<td>2000</td>
<td>Presidential</td>
<td>G.W. Bush / Gore</td>
<td>-13.8</td>
<td>-0.5</td>
<td>✔</td>
</tr>
<tr>
<td>2008</td>
<td>Presidential</td>
<td>McCain / Obama</td>
<td>-0.8</td>
<td>-7.2</td>
<td>✔</td>
</tr>
</tbody>
</table>

As Table H-2 shows, in nine out of the eleven elections in which there was a negative RDM, there was also a negative RVM. At 81.8 percent, this easily surpasses the 50 percent threshold required to support the second component of the hypothesis.

Tables H-1 and H-2 illustrate that the hypothesis, as operationalized in this study, has been supported by the data. The hypothesis called for more than 50 percent of elections with positive RDM’s to have positive RVM’s and for more than 50 percent of elections with negative RDM’s to have negative RVM’s. Graph A, below, depicts the degree to which this threshold was achieved.

Graph A:
With a 61.5 percent and 81.8 percent rate of verification, this study has achieved its goal of augmenting the findings of previous researchers who have only found the divisive primary theory to be marginally true by demonstrating the theory to be substantially true. These are strong findings that provide compelling support for the greater theory.

**Analysis of Theory**

Different methods of grouping the data reinforce the legitimacy of the divisive primary theory. The theory argues that divisive primary campaigns—and the negative effects they have on a candidate’s support base, resources, and reputation—hurt the eventual nominee’s chances of winning the general election. *Table T-1* presents the ten presidential elections examined in this study, and notes whether or not they were consistent with the theory’s argument that as a result of emerging from a more divisive primary campaign, a candidate should receive fewer votes in the general election.

**Table T-1:**

<table>
<thead>
<tr>
<th>Year</th>
<th>(R) Candidate / (D) Candidate</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Nixon / McGovern</td>
<td>✔</td>
</tr>
<tr>
<td>1976</td>
<td>Ford / Carter</td>
<td>X</td>
</tr>
<tr>
<td>1980</td>
<td>Reagan / Carter</td>
<td>✔</td>
</tr>
<tr>
<td>1984</td>
<td>Reagan / Mondale</td>
<td>✔</td>
</tr>
<tr>
<td>1988</td>
<td>G.H.W. Bush / Dukakis</td>
<td>✔</td>
</tr>
<tr>
<td>1992</td>
<td>G.H.W. Bush / Clinton</td>
<td>X</td>
</tr>
<tr>
<td>1996</td>
<td>Dole / Clinton</td>
<td>✔</td>
</tr>
<tr>
<td>2000</td>
<td>G.W. Bush / Gore</td>
<td>✔</td>
</tr>
<tr>
<td>2004</td>
<td>G.W. Bush / Kerry</td>
<td>✔</td>
</tr>
<tr>
<td>2008</td>
<td>McCain / Obama</td>
<td>✔</td>
</tr>
</tbody>
</table>

*Table T-1* shows that the divisive primary theory accurately characterizes eight of the ten presidential elections examined in this study. Thus, 80 percent of presidential elections supported the theoretical argument advanced in this paper.

But as conclusive as this result appears to be, it can be criticized for the size of its sample. That is why the sample tested in this study was expanded to include an additional fourteen strategically selected gubernatorial elections. *Table T-2* presents the fourteen gubernatorial elections ex-
Table T-2: 

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Florida</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Iowa</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Nevada</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>New Mexico</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Oregon</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Pennsylvania</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Tennessee</td>
<td>✔</td>
</tr>
<tr>
<td>2002</td>
<td>Wisconsin</td>
<td>X</td>
</tr>
<tr>
<td>2006</td>
<td>Iowa</td>
<td>X</td>
</tr>
<tr>
<td>2006</td>
<td>Minnesota</td>
<td>✔</td>
</tr>
<tr>
<td>2006</td>
<td>Nevada</td>
<td>X</td>
</tr>
<tr>
<td>2006</td>
<td>Ohio</td>
<td>✔</td>
</tr>
<tr>
<td>2006</td>
<td>Oregon</td>
<td>✔</td>
</tr>
<tr>
<td>2010</td>
<td>Florida</td>
<td>X</td>
</tr>
</tbody>
</table>

Table T-2 shows that the divisive primary theory accurately characterizes nine out of the fourteen gubernatorial elections examined in this study. Thus, 64.3 percent of gubernatorial elections supported the veracity of the theoretical argument advanced in this paper.

While the significance of the results from the presidential election sample can be questioned for its sample size, this study’s complete sample – twenty-four elections – is robust enough to produce sound conclusions. A decisive 70.8 percent of the twenty-four cases examined in this study are consistent with the divisive primary theory. It then appears that the detrimental effects of a divisive primary campaign—the basis of the divisive primary theory—are in fact substantial enough to decrease the chances that a candidate will succeed in a United States presidential general election.

Limitations

This study has produced conclusive findings, but it did have some limitations that must be considered. First, this study looked exclusively at divisiveness; it did not take into account any of the other factors that might influence an election such as the quality of the candidates or the funda-
mental conditions of a particular election year including the economy and warfare. It also did not control for the power of incumbency or consider the approval rating of incumbents. Such considerations were beyond the scope of this study.

Second, the method by which the independent variable was operationalized may have prevented this study from capturing the true essence of the divisive primary theory. By solely considering vote totals in assessing a primary campaign’s divisiveness, it is possible that this study more specifically measured the effect of competitive primary campaigns. Indeed, competitiveness is a major component of the divisive primary theory. However, the theory implies an association between competitiveness and several other maladies including a high level of bitterness and a prolonged duration. This study did not examine any of these other factors.

As a result, there were some anomalous findings. For example, the 1976 presidential election is famous, in part, for the divisive Republican primary campaign waged between incumbent and eventual nominee, Gerald Ford and challenger, Ronald Reagan. Conventional wisdom has often regarded this election as the paradigm of the negative effects of divisive primary campaigns. Yet by the metric used to calculate primary divisiveness in this study, Democrat Jimmy Carter’s primary campaign was considered the more divisive of the two. Similarly, the Democratic presidential primary campaign waged between Barack Obama and Hillary Clinton in 2008 is widely regarded as the most divisive in recent memory; it was characterized by personal attacks and resulted in the largest number of votes ever cast for an eventual loser in a presidential primary campaign. In addition, considering the conclusion of a primary campaign to be the day the last remaining significant challenger concedes, it lasted a full three months longer than the Republican primary campaign won by John McCain. However, by the metric used to calculate primary divisiveness in this study, McCain’s primary campaign was actually considered to be more divisive.

These issues likely could have been addressed through a comprehensive content analysis of campaign speeches, advertisements, and newspaper articles and perhaps by the inclusion of a statistical control for primary campaign duration. However, such considerations were beyond the scope of this research.

In addition, the small sample of available presidential elections must be considered for its limiting factors. To emphasize, conclusions drawn regarding presidential elections in general are based solely on the ten elections that have occurred under the modern primary system. While the preponderance of such elections supported the hypothesis, the reliability of the conclusions drawn can be criticized for their extrapolation. For this reason, i.e. for the purpose of expanding the sample, gubernatorial
elections were included in the study. And while, for aforementioned rea-
sons, gubernatorial elections—and those elections selected for examination
specifically—offer the closest available parallel to presidential elections,
they cannot be viewed as a straight substitute. Thus their true value lies in
their support for the conclusions; they do not, instead, verify the conclu-
sions directly.

**Implications**

Limitations notwithstanding, this study produced significant find-
ings that have meaningful, practical implications as well as important im-
lications for scholarship on the divisive primary theory.

For political actors, these findings suggest the need to recognize
the detrimental effects of divisive primary campaigns. Political parties
wishing to avoid the pitfalls of such a process should consider strategic
reforms to their nominating systems. Primary voters should consider coa-
lescing around a single candidate in order to avoid advantaging the oppos-
ing party. Candidates should consider dropping out the moment the nomi-
nation appears to be out of reach for the good of their own party. And na-
tional party organizations should consider reorganizing the schedule of
their primary seasons to ensure that one candidate clinches the nomination
as early on as possible. Perhaps those who have argued for the benefits of
divisive primaries by claiming that they ultimately produce stronger candi-
dates should reconsider their viewpoint.

With regards to scholastic context, this study effectively joins and
advances the academic consideration of the divisive primary theory. It
suggests that, indeed, the divisiveness of a primary campaign can in fact
detract from the number of votes a candidate receives in the general ele-
c tion. Thus, previous comparable studies were correct in their theory but
perhaps flawed in their methodology. Relative divisiveness has the hy-
pothesized effect, and popular vote totals from the primary and general
elections reveal it.

**Directives for Future Research**

Future researchers may wish to explore the reason why the data in
this study suggested that the divisive primary theory holds true for Repub-
lican candidates more often than it does for Democratic candidates. That
is, 81.8 percent of the Republican candidates who emerged from the more
divisive primary campaign lost in the general election whereas only 61.5
percent of the Democratic candidates who emerged from the more divisive
primary campaign lost in the general election.
Future researchers may also wish to expand the sample to include more gubernatorial elections, or perhaps even elections for other offices if their relevance can be effectively demonstrated. Most importantly, though, future researchers should seek to augment these findings by controlling for the factors that were beyond the scope of this study.
BIBLIOGRAPHY


Johnson, Donald and Gibson, James, ”The Divisive Primary Revisited,” American Political Science Review 68 (1974): 67-77.


STATISTICAL SOURCES

"Florida Department of State - Election Results." Florida Department of State. 15 Apr. 2012. <http://ealign.dos.state.fl.us/>.
America’s Readiness to Vote Female: From Post-1950s Attitudes to 2008 Democratic Primary Results

Rachel Landry

Are the American people ready and willing to “break the glass ceiling?” While the United States is often referred to as the world’s model of democracy, the fact that we have yet to elect a female president raises justified concerns regarding the health of our democracy and the strength of the political culture in which we live. This paper seeks to analyze America’s “readiness” to elect a female president using a broad historical analysis and a specific case study. First, I discuss the historical transformation in both men and women’s attitudes toward women in public office in the United States. Second, I examine the role of candidate and voter gender in voter choice through the unique case study of the 2008 Democratic Primary race between Hillary Clinton and Barack Obama. The use of single variable analysis and the cross-categorization model (using the variables of race and gender) leads to the results that a shared gender amongst the candidate and voter was not the driving force behind voter choice, but rather, race played a more crucial role. The combination of the historical perspective and contemporary example serve as proof of the ever-strengthening culture of equality in the United States, where the biggest barrier to a female president is not America’s willingness to break the glass ceiling, but instead finding the right candidate for the job.

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INTRODUCTION

Historically, being elected President in the United States has unofficially necessitated that one not be a woman. The United States currently lags behind the majority of other democratic nations (and even some semi-democratic nations) as one of the few that has yet to break down the gender barrier to the presidency. Paradoxically, as is argued in Gabriel Almond and Sidney Verba’s *The Civic Culture: Political attitudes and Democracy in Five Nations* published in 1963, the U.S. governing system has often been viewed as one of the superior democracies in the world.\(^1\) The superiority of the American democracy, in the case of Almond and Verba, is attributed in large part to the strength of the civic culture or the “highly developed” and “widespread” role of the participants.\(^2\) By extension, Robert Inglehart and Pippa Norris argue that there is a relation between political culture and the election of women into office. In their work, *Rising Tide: Gender Equality and Cultural Change around the World*, they explain: “Culture continues to prove a significant influence on the proportion of women in elected office; even controlling for social structural and political institutions.”\(^3\) The fact that the most powerful individual in the United States has never been female—the gender that makes up the majority of the US population—may lead one to question the strength of the political culture, and by extension, the health of the democracy in which American citizens live and participate.

The fact that the American people have yet to elect a female president is equally illustrative of the nation’s predisposition to elect male presidents, and more importantly, white male presidents. Since the time of the Founding Fathers, the United States as a nation has become comfortable, and possibly even complacent, electing traditional white male candidates who “look presidential.” As Anthony Asadullah Samad, a Los Angeles columnist, described the candidates in the 2000 elections: “No blacks, no Latinos, no Asians, no ‘serious’ women candidates.”\(^4\) While Samad is referring specifically to the 2000 elections, his statement, depicting the lack of diversity, and the racial and gender homogeneity of political candidates, is also applicable to nearly every election prior to 2000. In the

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3 Ronald Inglehart and Pippa Norris, *Rising Tide: Gender Equality and Cultural Change around the world*, (United Kingdom: Cambridge University Press, 2003), 137.
history of the United States, twenty-one women have run for presidency, yet it was not until 2008, with Hilary Clinton, that a female candidate turned women’s campaigns from a symbolic dream into a near reality. Similarly, despite Shirley Chisholm’s efforts in 1972, Jesse Jackson’s solid campaigns in 1984 and 1988, and Al Sharpton’s attempt in 2004, among others, it was not until 2008 that a Black candidate received the nomination of a major political party and was elected to the presidency that America broke the classic image of a white male president. From both a gender and racial perspective, the 2008 Democratic Primary race represents a stepping-stone in regards to the political culture of U.S. Society. In light of this primary, it is necessary to examine the evolution of the barriers that must be broken down—barriers that are arguably diminishing—for the American people not only to willingly elect, but also to demand, heterogeneous political candidates who fall outside of the typical white male image of the presidency. The results of the 2008 general elections undoubtedly validate the American people’s willingness to move away from the traditional white male presidential figure, through the election of a black male president, but is President Obama simply an exception? Moreover, are the American people ready to elect a female president?

I first consider these questions in the historical framework of an evolving political culture during the post-industrialization period and in the context of Americans’ changing attitudes toward women and African Americans in public office. With a historical context of the evolution of attitudes toward electing a female or a black president and their implications on the strength of the political culture, I then investigate the doubly unique and recent case of the 2008 Democratic primaries, seeking to understand the impact of both the candidate’s and the voter’s gender and race on voter choice. In examining the racial and gender group memberships of voters with the candidates, it is necessary to acknowledge that in accordance with the ceteris paribus assumption, “voting is a complex (and indefinite) decision process,” and thus the gender and race components are presumably among the multitude of variables that impact voter choice.

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8 Robert Bohm, Frederich Funke and Nicole S. Harth, “Same-Race and Same-Gender Voting
PART I

The progression in gender equality during the twentieth century, which largely coincides with the move toward racial equality, can be analyzed through the lens of Ronald Inglehart and Pippa Norris’s “Revised Modernization Theory” and can be applied to U.S. culture in the twentieth century. They hypothesize: “human development brings changed cultural attitudes toward gender equality in virtually any society that experiences the various forms of modernization linked with economic development.”

According to Inglehart and Norris, modernization occurs in two phases: industrialization and post-industrialization. The economic transformations implicit in the move from agrarian (pre-modern) to industrial (modern) society also have cultural implications. Specifically, industrialization is correlated with the influx of women into the workforce and the decrease of the importance of the traditional family. Inglehart and Norris explain, however, that despite these advancements in the industrial phase, “women still have far less power than men.” Post-industrialization (post-modernization), on the other hand, in turn is associated with the rise of women in managerial positions and in public office, theoretically leading to greater gender equality in the workforce. While the transition to a post-industrial society began as early as the 1920s, Inglehart and Norris suggest that changes in attitudes toward equality and tangible indicators of a more equal society evolve gradually.

Beginning in the 1960s, women entered the workforce at higher rates than ever before (rates increased from 33.9 percent in 1950 to 51.5 percent in 1980), and consequently, the dominance of the traditional nuclear family (and, by extension, the expected role of women in the family) slowly began to diminish.

While Inglehart and Norris examine the relationship between gender equality and cultural change in the context of the United States’ transition to a post-modern society, it is necessary to consider not only the evolution of gender equality, but also racial equality. John Judis and Ruy Teixeira explain in The Emerging Democratic Majority that it was during, “the tumultuous sixties—a period that really stretches from 1957 to 1974—which saw the rise of the Civil Rights Movement [and] the revival of the


9 Id., 10.
10 Id., 11.
11 Id., 4-8.
women’s movement” where there is evidence of a move toward greater equality. With the influx of women into the workforce, the 1960s also witnessed the rise of the women’s movement NOW, and by the late sixties, hundreds of local women’s groups emerged. As women were seeking greater rights and equality in the post-industrial society, so too were African Americans through the Civil Rights Movement. During this time “African-Americans disproportionately occupied the lower rungs of the occupational ladder,” and thus they fought for increased minimum wage and the growth of the welfare program. Due to the work of the Civil Rights Movement, the passage of the Civil Rights Act of 1965 “guaranteeing blacks the right to vote” led to a dramatic increase in voter registration. In 1960, less than 30 percent of Southern Blacks were registered voters, compared to 63 percent in 1976. The increase in voter registration is unquestionably illustrative of a growing civic culture where the voting population is more representative of the population itself. From 1950 onwards, a strong culture emerged, among both Blacks and women, of fighting for and slowly achieving equality, in correlation with the transition to a post-modern society.

Evolving Attitudes Toward Gender of Candidates for Public Office

In light of this transition to a post-modern society in the mid to late twentieth century, one can examine whether the economic changes, as Inglehart and Norris would suggest, truly did bring cultural, attitudinal changes toward gender and racial equality. In first focusing on gender, four opinion polls and surveys conducted by the Gallup Organization, American National Election Studies, the National Opinion Research Center, and CBS illustrate the transformed attitudes of the American society during this period of post-modernization toward a greater culture of gender equality. In 1936, well before the influx of women into the workforce and the rise of women’s movements, the American Institute for Public Opinion, the Gallup Organization, asked Americans: “Would you vote for a woman for president if she were qualified in every other respect?” The very wording of this question is just as important as the results, if not more so. The

13 Id., 38.
14 Id., 57.
15 Id., 57.
16 Id., 51.
phrase “in every other respect” implies that when this poll was formulated, being a woman was understood to be a disqualifying feature for the presidency. Sixty-five percent of respondents answered negatively, saying that they would not vote for a woman. In 1939, with the elimination of this implicitly biased phrase, affirmative responses improved, and by 1955, a majority of respondents replied “yes.” The affirmative response continued to increase through the twentieth century, reaching 77 percent by 1977 and 91 percent in 1996 (by 1997 the wording of the question changed slightly to include “if the party whose candidate you most often support nominated her”). The transformed formulation of the question as well as a social desirability bias (by which voters do not want to appear sexist) undoubtedly impacted polling results. The large change of 56 percent over this fifty-year period (from 1936 to 1996) in the positive direction, however, also indicates that attitudes toward gender roles might have also been changing during this period.

Evidence of a culture of greater gender equality is not only demonstrated through America’s overall attitudes toward women, but also through the diffuseness of attitudes across gender. As Inglehart and Norris elaborate, “the critical importance of culture is that women as well as men adopt the predominant attitudes; values; and beliefs about the appropriate division of sex roles within the society.” After all, both women and men were involved in women’s movements and affected by the rise of women in the workforce. A second survey, conducted by the National Election Studies’ from 1972 to 2004, tests the attitudes of men and women toward women’s capacity for politics (Table 1). The data suggest that the transformation to a post-modern society affected both men and women similarly and in a positive direction. The percentage of men and women that believe women have the same capacity as men for politics has increased significantly: 28 percent from 1974 to 2004. And, as the “Gap” column (displaying the gap between men and women’s attitudes) suggests, the difference among men and women (ranging from two to four percent in the positive direction for men) is most likely within the margin of error and therefore not significant. With this poll, one must also keep in mind the sociability bias previously mentioned.

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18 Id., 96.
20 Id., 58.
21 Inglehart and Norris, 8.
Table 1: Attitudes about Women’s Capacity for Politics (in general): Percent in agreement with equal role for men and women in public office\textsuperscript{22}

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
<th>Gap</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>49%</td>
<td>53%</td>
<td>-4%</td>
<td>50%</td>
</tr>
<tr>
<td>1984</td>
<td>52%</td>
<td>56%</td>
<td>-4%</td>
<td>53%</td>
</tr>
<tr>
<td>1994</td>
<td>64%</td>
<td>67%</td>
<td>-3%</td>
<td>65%</td>
</tr>
<tr>
<td>2004</td>
<td>79%</td>
<td>77%</td>
<td>2%</td>
<td>78%</td>
</tr>
</tbody>
</table>

A third study, the General Social Survey conducted by the National Opinion Research Center from 1974-2002, focuses solely on the most unattainable position for women in the United States: the presidency. Compared to the results of the previously analyzed surveys, the results in Table 2 suggest that both in general and over time, more men and more women would vote for a qualified woman president, with no seemingly significant gap between the two genders. It is important to note that, while the National Election Studies’ survey examined the public’s opinion of women’s qualifications and their suitability for political office compared to men, the General Social Survey assumes that women are qualified for the presidency. The instinct to respond affirmatively to this question due to a social bias may thus be stronger than in the other two surveys, as a negative response suggests that women are not qualified on the basis of their gender.

Table 2: Willingness to Vote for a Qualified Woman President

<table>
<thead>
<tr>
<th>Year</th>
<th>Women</th>
<th>Men</th>
<th>Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>80%</td>
<td>81%</td>
<td>1%</td>
</tr>
<tr>
<td>1984</td>
<td>80%</td>
<td>85%</td>
<td>-5%</td>
</tr>
<tr>
<td>1994</td>
<td>92%</td>
<td>92%</td>
<td>0%</td>
</tr>
<tr>
<td>2004</td>
<td>93%</td>
<td>95%</td>
<td>-2%</td>
</tr>
</tbody>
</table>

Finally, the results of a CBS poll conducted in 2006—just two years before the 2008 Democratic Primaries—found that 92 percent of those polled would vote for a female candidate, all other factors being equal. Even though men and women express their willingness to vote for a woman president on a personal or individual level, questions about America’s “readiness” for a female president show starkly different results. In the same CBS poll, when asked the question “Is America ready for a woman president?,” only 55 percent replied affirmatively. Overall, when comparing the responses to these two CBS poll questions, there was a significant 37 percent difference in those who were willing to vote for a female president and those who believed that the country was ready for one. If individually the overwhelming majority of Americans are ready to vote a female president into office, why do Americans perceive society as a whole to be unready? The contrast in these two responses seems to expose a lack of confidence or faith of Americans in their fellow citizens.

Evolving Attitudes Toward Race of Candidates for Public Office

Following the Civil Rights Act of 1965, the Gallup Organization conducted several polls testing whether Americans were willing to vote for a Black candidate. Just two years after the enactment of the Civil Rights Act of 1965, a 1967 Gallup poll found that of those randomly surveyed, 53 percent were willing to vote for a Black candidate. This figure is similar to the 57 percent of respondents who said they were willing to vote for a female candidate. In 1987, the same survey concluded that 19.7 percent of whites would not vote for a Black presidential candidate. Looking at this survey from a more optimistic perspective, by 1987 almost 80 percent of whites

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24 Id., 97.
whites were willing to vote for the Black presidential candidate, a figure that is also comparable to the willingness to vote for a female candidate at the time.26 Furthermore, by 2007, the same poll determined that 94 percent of citizens surveyed, regardless of race, were willing to vote for a black president, a percentage slightly higher than the 88 percent were willing to vote for a female president.27

A Newsweek poll published in July 2008 found that while participants responded as being individually willing to vote for a black candidate, more candidates were pessimistic about America’s “readiness” to vote black. In 2008, 92 percent of those who responded to the Newsweek poll said they would vote for a black presidential candidate. This response increased nearly ten percentage points from the same poll conducted 1991, indicating that 83 percent of respondents would vote for a black candidate. Similar to the poll results for women presidential candidates, citizens as a whole were more cynical about the country’s capacity to elect a black president. In the same 2008 poll, 59 percent of respondents said that they “[believed] the country is actually ready for an African-American president.” While this measure of “readiness” is much improved from a CBS News poll in 2000 that found that 37 percent of respondents thought the U.S. was ready, it is still a much lower figure in comparison to individual willingness.28

While the transition to a post-modern society is also correlated with a strong culture, the “readiness” surveys concerning both black candidate and female candidates” seem to suggest that the post-modern American people as a nation may be lacking in societal confidence. Robert Putnam’s Bowling Alone, published in 2000, provides a logical explanation for this pessimism toward the capacity of society to surpass the gender and racial barriers to the presidency. Putnam observes that the 1960s were marked by a decline in social capital, which he defines as “features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit.”29 He remarks that due to the decline in social capital, evidenced by the decline in participation in all types of associations, people lost “social trust.” And, for a successful and strong civic culture, values of equality, solidarity and public confi-

26 Id., 249.
27 Id., 249.
This loss in social trust is a possible explanation for the pessimistic response to America’s readiness as a country compared to people’s more optimistic individual and personal sentiment of equality.

Overall, the surveys provide evidence in support of Inglehart and Norris’s revised Modernization Theory. With the transition from a modern to post-modern society, the culture of United States society has evolved such that both women and men are overall more culturally liberal toward gender equality. At the same time, the society as a whole has become more culturally liberal toward African Americans. Yet, the confidence of the American people in their society has also been put into question. After all, it is not only individual attitudes that are important in determining the strength of the political culture, but also the sentiment of the culture itself amongst the people. If the vast majority of people, however, have been willing and continue to be willing to vote for a qualified woman candidate and a qualified black candidate, what do the 2008 Democratic Primary results tell us about the validity of these attitudes—both the individual attitudes of voters and their confidence in society? When faced with the choice between a white female and a black male, what do the 2008 primaries indicate about who votes based on race and who votes based on gender?

**PART II**

Traditionally, the US primaries and general elections have represented a face-off between white males. With the 2008 primaries, however, voters were faced with an unfamiliar choice: a white woman or a black man. The doubly unique situation of the 2008 Democratic primaries alone is a testament to America’s progress in the post-modern world. The simultaneous race and gender questions complicate the ability to determine when gender was the factor that played the most significant role in decision-making and when that factor was race, or if it was other factors entirely. In order to determine how race and gender played a role in this election, it is necessary to examine the voter exit poll results based upon gender and race, and all possible cross-sections (white male, white female, black male, black female):

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30 *Id.*
Table 3: Vote by Gender

<table>
<thead>
<tr>
<th></th>
<th>Clinton</th>
<th>Obama</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>52%</td>
<td>43%</td>
</tr>
<tr>
<td>Men</td>
<td>43%</td>
<td>50%</td>
</tr>
<tr>
<td>Gender Gap (% points)</td>
<td>9</td>
<td>-7</td>
</tr>
</tbody>
</table>

As the opinion polls discussed above indicate, there is not a substantial gap between men and women’s attitudes toward a female in public office or in the position of chief executive. Given that from 1974 to 2004 women and men’s attitudes toward a female executive have moved in the same, positive direction with no significant gap, we could infer that all else being equal, a similar result could precipitate in the 2008 primaries. The exit polls displayed in Table 3 from Vital Statistics on American Politics, edited by H. W. Stanley R. G. Niemi, show that the gap is certainly larger than those anticipated from attitudinal surveys. Nine percent more women voted for Hillary Clinton than men and seven percent more men voted for Obama over Clinton. Compared to other primary elections, the gender gap among voters is significant. As Susan Carroll explains in her article “Voting Choices: The Politics of the Gender Gap,” “the fact that Hillary Clinton attracted stronger support from women than from men in a primary election was thus an exception to the rule.” She elaborates, “gender gaps are seldom seen in primary elections where candidates of the same party face off against each other and policy differences are generally small.” As Carroll points out, the gender gap is relatively large in comparison to other elections where candidates were the same sex. But, due to the double uniqueness of the election, such a gap, if not a larger gap could be expected based on attraction to candidates with shared member groups.

Looking at the women’s vote itself, it was relatively closely divided between Clinton and Obama, with a nine percent gap in favor of Hillary. While nine percent is certainly a significant difference, the split is close enough to demonstrate that a unified women’s vote around Clinton

33 Carroll, 118.
did not materialize as strongly as one might expect. Similarly, there was only a seven percent gap within the male vote, in favor of Obama. One might expect a larger divide with men favoring the male candidate, yet this is not the case. From this data one can make two observations: 1) The gender gap for both Clinton and Obama was relatively minimal, yet still meaningful, 2) Both men and women were closely divided on candidate choice. Furthermore, one can conclude that voter choice of both men and women was more complex than a vote based upon gender. The fact that the gender gap was not larger and a women’s vote around Clinton did not unify can perhaps be viewed as a testament to the strong political culture among the American people. Within the context of a culture of equality, a vote based simply on gender would suggest, “men and women in the society did not adopt the same “predominant attitudes; values; and beliefs about the appropriate division of sex roles in the society.” The fairly close divide within each gender and the fairly small gap among genders is thus evidence in support of the strength of the political culture. Overall, the factors influencing male and female voting choice were, as we would expect, more complex than vote based on gender and thereby necessitate the examination of the racial component.

Table 5: Vote by Race

<table>
<thead>
<tr>
<th></th>
<th>Clinton</th>
<th>Obama</th>
</tr>
</thead>
<tbody>
<tr>
<td>White (65% of voters)</td>
<td>55%</td>
<td>39%</td>
</tr>
<tr>
<td>Black (19% of voters)</td>
<td>15%</td>
<td>82%</td>
</tr>
<tr>
<td>Gap (percentage points)</td>
<td>40%</td>
<td>43%</td>
</tr>
</tbody>
</table>

While a greater percentage of women voted for Clinton than men by a significant, yet not substantial gap, the differences between the voting choice of white and African American voters are much more striking. As Table 5 displays, white voters, making up 65 percent of the voters, voted 40 percent more for the white (and female) candidate, Clinton. Similarly, black voters, making up 19 percent of voters, voted 43 percent more for the black (male) candidate, Obama. Furthermore, while the gap among white voters was a 16 percent difference, the gap among black voters was 67 per-

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34 Inglehart and Norris., 8.
cent different. Thus, one might conclude that while race was influential for both groups of voters, the race of the candidate was a far more determinant factor in voter choice for blacks than for whites.

It is also important to mention that Clinton received not only the majority of white votes but also Hispanic votes. Sixty one percent of Hispanics voted for Clinton and 35 percent for Obama, representing a 26 percent gap. Was the racial component more significant than that of gender? In order to examine the relation between these two factors, it is necessary to examine the two components simultaneously.

Cross-Categorization Model: Vote by Gender and Race

Because the 2008 primaries presented an African-American male against a white female, the two dimensions—race and gender—were “simultaneously salient.” Based on these two dimensions, voters can be placed into four categories: 1) white male 2) white female 3) black male 4) black female. Certain voters thus shared both group memberships (gender and race), while other voters shared only one group membership (race or gender). Robert Bohm, Frederich Funke and Nicole Harth analyze the application of this model of cross-categorization to the 2008 Democratic primaries in their article, “Same-Race and Same-Gender Voting Preferences and the Role of Perceived Realistic Threat in the Democratic Primaries and Caucuses 2008.” As they explain, and according to the cross-categorization model, one can logically expect that those voters sharing both social categories (double in-group) with a candidate would “show a stronger preference for this candidate compared to sharing only one group membership with the candidate,” (one in-group and one out-group). Additionally, the authors logically hypothesize that the double-out group vote will be least likely to vote for the candidate in question. The two one-membership groups are predicted to fall somewhere in between.

Figure 6 shows the results of the cross-categorization of race and gender. The two groups of voters with double social categories—white females and black males—voted the strongest for the candidate with the same two characteristics. The exit polls thus seem to support the assumption that voters will vote for the candidate that most resembles them. As we would also expect, the vote was the weakest for candidates with whom voters shared neither social characteristic. For instance, only 36.6 percent of white women voted for Barack Obama. While this is certainly substantial, the white women’s vote represents the weakest of the four groups for

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36 Bohm, Funke and Harth, Id., p. 251.
37 Id., p. 251.
Obama. There is an even starker contrast for Clinton’s weakest group membership in terms of race and gender, as only 11.9 percent of black men voted for her.

**Figure 6: Vote by gender and race**

<table>
<thead>
<tr>
<th></th>
<th>Obama</th>
<th>Clinton</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Male</td>
<td>47.3%</td>
<td>52.7%</td>
</tr>
<tr>
<td>Black Male</td>
<td>88.1%</td>
<td>11.9%</td>
</tr>
<tr>
<td>White Female</td>
<td>36.6%</td>
<td>63.7%</td>
</tr>
<tr>
<td>Black Female</td>
<td>84.4%</td>
<td>15.6%</td>
</tr>
</tbody>
</table>

Is race more influential than gender? This data further illustrate (as Figures 4 and 5 also demonstrated) that among the two voter groups with only one common social group (e.g., black females and white males), race is more influential than gender. If one isolates the impact of gender by looking at the black female vote for Clinton (only one shared in-group, gender), only 15.6 percent of black females voted for Clinton. This is in contrast to 84.4 percent of black female voters who voted for Obama (only one shared in-group, race). Likewise, one can also isolate the impact of gender by looking at the white male vote for Obama (only one shared in-group, gender). 47.3 percent of white men voted for Obama compared to 52.7 percent who voted for Clinton (only one shared in-group, race). While race still played an important role among whites, the gap of only 5.4 percent of white male voters in favor of Clinton over Obama is minimal in comparison to the gap of 68.8 percent more black female votes for Obama over Clinton. From this cross-categorical analysis, one can conclude that overall race trumps gender for both whites and for blacks, but that the racial element is significantly more influential among blacks than whites. This may lead one to conclude that, overall, blacks were more attached to racial identity than gender identity when determining candidate choice. Whites also demonstrated an affinity toward racial group membership over gender membership, albeit to a lesser extent.

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38 Data extracted from Bohm, Robert, Frederich Funke et Nicole S. Harth, Id., p. 251
CONCLUSION

The fact that a unified women’s vote did not form around Hillary Clinton—and that racial identity may have somehow out-influenced gender—has often been interpreted as a disappointment. Women, and in particular female opinion leaders, have been described as disloyal for voting for Obama rather than Hillary Clinton. As James Ceaser describes in “What a Long, Strange Race it Has Been,” published online through the Claremont Institute for the Study of Statesmanship and Philosophy, “Many will wonder in the years to come why so many professional women and female students so readily deserted her [Clinton].” By contrast, Eric Fassin argues in Political Identities: The Interplay of Gender and Race in the U.S. Democratic Primaries in 2008, that the notion that a female voter, specifically a black female voter, is deserting the female candidate is paradoxical. Fassin uses the example of the opinion leader Oprah Winfrey to illustrate this point: “It is paradoxical that the famous talk-show host Oprah Winfrey, black icon to housewives of all races for almost twenty years, was criticized for having ‘betrayed’ women’s solidarity through her commitment to Barack Obama—without even thinking that another solidarity, racial, could just as be legitimately claimed.” For the first time in United States history, two viable minorities competed against each other, and as Eric Fassin describes, this reduced voting choice to a zero-sum game. It was impossible, given the unique circumstances of the 2008 Democratic primaries, that both the gender and the racial minority could come out on top: “the victory of one is unavoidably the defeat of the other.” The fact that all women did not feel compelled to vote for Hillary Clinton just because of a shared gender identity is indicative of an advanced culture of equality, a culture in which women are confident that a man could represent their rights just as well as a woman. In the same vein, that a large portion of the male electorate voted for Clinton regardless of the fact that she was female, demonstrates that the norm of gender equality is diffuse across both men and women.

The transition to a post-modern society over the twentieth and beginning of the twenty-first century fostered the conditions by which the

40 Eric Fassin, “Des identités politiques: Jeux et enjeux du genre et de la race dans le primaires democrats aux Etats-Unis,” Raisons Politiques, no. 31 (2008), 66. Note: this text is only published in French. All translations from this text (with the exception of the title) are my own.
41 Id., 66.
American people are ready and willing to elect the most qualified candidate for president—regardless of his or her gender or race. With the 2008 Democratic primaries, the American people proved that the image of the traditional white, male president is transforming: the racial obstacle has been overcome and the gender barrier no longer seems insurmountable. While the female candidate did not win her party’s nomination, the success of both candidates to garner male and female voter support is a testament to the strength of American political culture toward gender equality. And, as the results of the general election proved, a black individual can and does represent the face of America. Irrespective of the winning candidate, the 2008 Democratic primaries represent a victory for the American people.
BIBLIOGRAPHY


THE DEATH OF THE HUNCH: DECISION 2012 AND BARACK OBAMA’S NEW MEDIA CAMPAIGN

Sara Worth

This paper seeks to determine the factors that made Barack Obama’s 2008 social media campaign such a colossal success, and what he will have to do this fall to ensure a similar victory. Using an analysis of the 2008 election, scholarly work on the nature of social media networks, and individual case studies, it analyzes the unique ways in which Obama’s team used social media to unify disillusioned voters and engage unlikely voters in the democratic system. Given the advent of more networking sites as well as novel “microtargeting” techniques since 2008, Obama’s team is now employing social media networks to harvest personal information from those engaged voters in order to precisely target their points of view. Rather than using social media to improve messaging and expand voter involvement, the campaign is now focused on creating individual feedback loops: first, define and locate specific voter groups, next, glean their positions on specific policies, and finally, send directed campaign messages back to them based on that information. This microtargeting may prove a necessary practice for the incumbent; President Obama cannot simply act as a symbol, but must now appeal to voters based on his policy record and future intentions. Still, this paper eventually makes the case that Obama’s de-unified, voter-specific campaign of 2012 undermines the message of unity that made him successful four years ago.

1B.A., Narrative Studies, Political Science, University of Southern California, expected 2015.
In December of 1999, Democratic Primary candidate Al Gore dropped in to Washington DC’s CyberSTOP Café to have a word with his opponent, then-Senator Bill Bradley. Except Bradley was not there. Gore actually recorded a video of himself reading a letter to Bradley—a trifle, really, on a Medicare issue—and sent it to Bradley and a handful of journalists in about thirty minutes, at the cost of a rented camcorder and a twenty-dollar tip. The video would soon circulate on the Internet and be picked up by the mainstream media.\(^1\) Since that time the Internet has dominated our lives in more ways than the most prescient analysts could have imagined. The advent of social networking sites like Facebook, YouTube, and Twitter fundamentally changed the way we gather and broadcast information.\(^2\) The Internet established a “Second Life” for its users, a world complementary to our own that has been commandeered by political candidates—at least by those who understand its potential.\(^3\)

As a former community organizer, in 2008 Barack Obama recognized the “netroots” movement as the new grassroots, a burgeoning form of Internet-based, DIY democracy. He understood what so many progressive Democratic candidates missed: that voters must connect emotionally with a candidate; that reasoning does not take place in a vacuum, nor is it the same for every person; and that, in turn, real-world activity is a vital way of reinforcing Second Life ideals. Al Gore had used the Internet for shock value and Howard Dean had used it to raise formidable campaign funds, but Obama engaged the Everyman in his Presidential campaign by bridging the gaps between politicians and citizens and between the online and offline worlds.\(^4\) ‘We’ could never have done anything in 2008 without the organizational power of the Internet. In 2012, incumbent Obama—like his electorate—has expanded his social media presence to new sites like Pinterest and Tumblr, but much more significant change has occurred in Silicon Valley and in the White House. The netroots, once a way to disseminate information effectively and economically to a wide voter base, now provides an informational database that media consultants can use to “microtarget” voters, and ensure they send the right messages to the right people. The art of persuasion is rapidly becoming a science. In Washington, policy changes regarding campaign fundraising have welcomed Super PACs and corporate donors, leaving Obama in the fundraising dust for the

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1. Gore went on to win the Democratic Presidential nomination but eventually lost to Republican candidate George W. Bush in the general election.
first time in five years.\textsuperscript{5} While in 2008 he could use cutting edge media platforms, in 2012 he \textit{must}. Moreover, Barack Obama’s position as the incumbent with a somewhat disillusioned base requires him to take this “retail” approach to campaigning; he must overcome perceived shortcomings of his record by precisely targeting the narrowest of voter sub-groups with specific messages. Instead of using social media outlets to rally the widest possible swath of voters as in 2008, the Obama team is now implementing microtargeting techniques to persuade individualized segments of the online electorate.

Barack Obama’s revolutionary media campaign of 2008 signified a formidable understanding of campaign politics and voter psychology, which so many of his Democratic predecessors lacked. That year, \textit{Slate} published an article relating running a Presidential campaign to building a church community. It recalls 2004 when the W. Bush reelection campaign recruited local residents to “witness” their support for the incumbent, while John Kerry simply hired paid canvassers.\textsuperscript{6} In 2008 Barack Obama involved regular voters by engaging them online with small “asks” that yielded big results. Journalist Eric Boehlert writes in \textit{Bloggers On The Bus}, “The key to the Obama campaign’s embrace of the internet was that his team urged supporters to actually \textit{do} something, besides donate money.”\textsuperscript{7} In \textit{Yes We Did}, Rahaf Harfoush writes that Obama’s website featured “an official blog, a campaign schedule, a video channel called BarackTV, and a social network called my.barackobama.com.”\textsuperscript{8} “MyBO,” as the social network was affectionately called by campaign organizers, gave volunteers the tools to self-organize, creating a mass of engaged voters who did for free what canvassers were once paid to do. Stressing “people not dollars,” Obama’s website translated his “Yes, we can” message into real results. The site collected more than 10 million email addresses, the owners of which helped register 1.9 million new voters; one thousand localized groups were created using the site’s organizing tools just one day after he announced his candidacy; and the Facebook group Students For Barack Obama had already generated around 60,000 members since 2006, but thanks to the Obama site it could track its events, phone calls, and fundraising tallies—a whopping 1.7 million dollars.\textsuperscript{9} Online organizing proved its worth: on Super Tuesday Obama won by wide margins in states greatly impacted by online organizing.\textsuperscript{10} By reaching voters at their desks, Obama

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\item[8] Rahaf Harfoush, \textit{Yes We Did: An Inside Look at How Social Media Built the Obama Brand}, 163.
\item[9] Id. 209.
\item[10] Id. 502.
\end{itemize}
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kept his supporters engaged by keeping them busy with outreach, and they did it all for free.

Obama perfected Kerry's small-donor fundraising methods, but also learned from the 2004 candidate's dry, asocial, disjointed campaign.\textsuperscript{11} The Obama team knew how to direct funding, understanding that "undeclared voters would be more receptive to information when it came from a friend or a family member rather than from a... television ad."\textsuperscript{12} Voters do not simply feel pressure to vote like their friends; human brains actually witness others' actions and often respond in kind. Cognitive scientist and UC Berkeley professor George Lakoff writes in \textit{The Political Mind}: "The very idea of 'changing brains'... sounds Machiavellian to liberals, like what the Republicans do. But 'changing minds' in any deep way always requires changing brains."\textsuperscript{13} Mirror neurons, he explains, are the parts of the brain that allow us to understand others and to imitate action. These are the neurons that allow us to relate to presidential candidates and to their surrogates, and to participate in actions directly tied to their success. In short, "We understand events in the world in terms of what our bodies can do."\textsuperscript{14} When a candidate properly puts this all together, the result is a populace that participates actively in a campaign in order to feel something. Obama, who defined empathy as his candidacy's core value, pointed voters to simple courses of action that rewarded them with a role in a collective cultural narrative. He made politics easy and fun; Obama's site even encouraged voters to host "Countdown to Change" parties—who would not hope to be invited? Who would not want to host? By merging voters' social and political lives, "the Obama campaign felt all-encompassing, like a lifestyle," mostly thanks to the Internet.\textsuperscript{15} As \textit{New York Times} writer David Carr wrote in 2008, "by bolting together social networking applications under the banner of a movement, they created an unforeseen force to raise money, organize locally, fight smear campaigns and get out the vote."\textsuperscript{16} Obama knew that in order to get voters to rethink politics, he needed them to \textit{feel} politics.

This method of campaigning seemed to reveal Obama's character as a potential president. His pathos-centric strategy demonstrated Obama's hopes to put the \textit{demos} back in democracy. For example, in 2007 Yahoo

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\textsuperscript{12} Boehlert, 246.
\textsuperscript{13} Lakoff 12.
\textsuperscript{14} Id. 27.
\textsuperscript{15} Boehlert 247.
\end{flushright}
created a forum where the three main Presidential candidates could ask a question of the online community and select their favorite video responses.\(^{17}\) Staying closely on message, Hillary Clinton asked a question about health care and John McCain about wasteful spending. In stark contrast, Obama asked, “How can we engage more people in the democratic process?” His question itself was meta; by demonstrating such concern for the topic and delivering his concern via a free service that most voters can access, he implicitly made clear that his ‘democracy’ was superior to that of his opponents. His democracy was also more accessible, because it was not about facts or authority; rather, it was about you and us. Even his website was reportedly a team effort, as New Media Director Joe Rospars blogged: “This site will always be a work in progress, but everyone here is excited to see what we can do together.”\(^{18}\) Even when using the same social platforms as his opponents (i.e. Yahoo news, campaign websites), Obama’s outreach efforts prevailed. He changed the way voters interacted with politicians by using the Internet as a democratic forum to promote his ideas of democracy.

Those ideas of democracy gained some fluidity in the online world, for both better and worse. By engaging young voices on new technological platforms, Obama could often sit back and let others do the talking. Yet with such great emphasis on voter agency came a lack of central control. During the primary campaign, Obama’s netroots dominance among the “overeducated progressives,” known as the “creative class,” yielded constant, often vitriolic, blog posts deriding Hillary Clinton.\(^ {19}\) The appealing snarkiness and self-righteousness that distinguished blogging from other media forms reached its apotheosis in late 2007, leaving many wondering where the ‘Hope’ was. Of course, the Obama camp could not help what was written about the candidate on the blogs; in fact, Obama himself constantly downplayed their importance, claiming he never even read them.\(^ {20}\) He didn’t need to attack his opponent; his blogger surrogates did it for him. Despite his distance, the online civil war reinforced the idea that choosing a candidate was like joining a team, or becoming part of a movement. And Obama could spin that positively, leveraging the energy of his surrogates without a smear on his record of civility.

The war reached far beyond the blogosphere. In November 2008, New Yorker writer John Seabrook reported on an ongoing MOCA film project, “Political Advertisement.” He noted that the scope of campaign me-

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\(^{17}\) Harfoush 286.

\(^{18}\) Id. 164.

\(^{19}\) Id. Boehlert 124.

\(^{20}\) Id. 132.
dia had greatly expanded, with the addition of ads by Super PACs and special interest groups, as well as straight-to-YouTube videos like “Vote Different” (in which Clinton was likened to George Orwell’s Big Brother figure). One of the film’s producers said: “The campaign can no longer control its messaging….But Obama does well in that environment. He’s an empty screen, on which people project what they want him to be.”

Over a period of five days in 2008, a team of filmmakers created a viral video that would play a key role in framing Obama as a breath of fresh air after eight years of defeatism on the Left.

Deeply moved by Obama’s graceful conduct upon defeat in New Hampshire, Director Jesse Dylan and Executive Producer Priscilla Cohen decided to team up with musician will.i.am to create a music video that could do his speech justice. The completed “Yes We Can” video was posted on YouTube, went viral, and was quickly picked up by the mainstream media. “People were looking for change,” Cohen recalled in a personal interview. “It started to go viral because it was emotional, powerful, the music was so beautiful…people felt like they saw themselves in that video,” said Cohen. She was soon surprised when she received a routine campaign email from Michelle Obama that had “Yes We Can” attached. The message had gone full circle—from a team of artists to the campaign and back to the same artists, this time as voters. Cohen explained, “We did not make a political video; it became a political video.” She did not intend for the video to become a part of the official campaign, but it did. Why? Cohen suggests that in navigating the din of the online world you need “trusted brands” to curate reliable information. Her team expertly harnessed Obama’s idealistic campaign essence and packaged it with some of our culture’s most trusted brands—celebrities. But Cohen emphasizes that the celebrities were not present for their status; familiar faces are really about “connection” with the viewers. And those emotional connections assist in the neurological processes outlined by Lakoff; if you see yourself in a candidate’s surrogate, you’re more likely to vote for that candidate. Some of the faces in the video were even unknowns, attaching Obama’s message to the most trusted brand of all: ourselves.

“Yes We Can” was not just revolutionary because it circulated over the Internet, but also because it embodied the paradox of modern campaigning: first, it solidified the assumption that voters often do vote for

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22 Priscilla Cohen, Interviewed by Sara Worth.
23 Id.
24 Id.
25 Id.
26 Id.
themselves—for their emotional benefit and security; second, it presented the modern phenomenon that the hunch is antiquated. A message expressed by ordinary citizens for ordinary citizens via social media is often more relatable and organic than what media consultants can come up with in an office building. And yet by carefully studying those everyday people, a campaign manager’s flawed intuition can come pretty close. “Trust but verify,” Rory O’Connor advises Internet users in Friends, Followers, and the Future (O’Connor 27). This approach has become the mantra of Obama’s 2012 reelection campaign.

Although Obama supporters’ voices were heard en masse during the 2008 campaign, this year Obama’s campaign headquarters is actively listening at the door. Beyond signing people up to donate and getting them involved with the campaign, the Obama headquarters is using social networks to harvest information about their members in order to perfect its message. Whereas in the twentieth century you would watch the same television advertisement as your neighbor, now you may not even watch the same spot as your sibling in the next room. As Tanzina Vega writes in the New York Times piece “Online Data Helping Campaigns Customize Ads,” media strategists can now aim messages “based on where [voters] live, the Web sites they visit, and their voting records.” This practice is known to media strategists as “microtargeting.” Microtargeting allows “campaigns [to] spend their money more efficiently by finding a particular audience and paying $5 to $9 per thousand displays of an ad.” By “narrowcasting” ads that cater to specific demographics, the campaign achieves a large yield despite small-scale outreach.

The seeds were planted for microtargeting five years ago when Obama was starting to build a donor base and needed a cutting edge media strategy to close the fundraising gap. Back in December of 2007, his media team used a computer program called Optimizely to test several different versions of his website, which twenty-four random combinations of banner photos/videos and sign-up buttons. After evaluating the results, his strategists were shocked at how off their instincts had been. A staffer blogged: “Before we ran the experiment, the campaign staff heavily favored ‘Sam’s Video’ [for the banner]….Had we not run this experiment, we would have very likely used that video on the splash page. That would have been a huge mistake since it turns out that all of the videos did worse than all of

27 O’Connor, 27.
28 Id. 27.
29 Tanzina Vega, “Online Data Helping Campaigns Customize Ads.”
30 Id.
They also concluded that a “Learn More” button yielded the most online sign-ups. And that was just the beginning. Imagine that staffers could track, say, that within a certain area women favor “Sign Up,” dog lovers click “Sign Up Now,” and wealthier voters choose “Join Us Now.” This specificity has been made possible in the 2012 campaign by the microtargeting innovations of media strategist Jim Messina.

*Bloomberg* reported that when Obama asked Messina to run his reelection media campaign, the latter replied, “You have to understand, this will be nothing like the last campaign.” “Obama’s CEO” did his homework. Messina sat down with Steve Jobs (in addition to other media powerhouses, such as Steven Spielberg) who urged him to “program content to a much wider variety of channels—Facebook, Tumblr, Twitter, YouTube, Google—because people are segmented in a very different way than they were four years ago.” Voters have not simply expanded to such sites; the way they interact with those sites has significantly changed. Facebook, for example, now analyzes its users’ “Interests” in order to better target advertisements. Obama’s campaign has emulated that model: “Messina is convinced that modern presidential campaigns are more like fast-growing technology companies than anything found in a history book and his own job like that of the executives who run them.” One such executive is Eric Schmidt, the creator of Google and mentor to Messina, who distills Messina’s strategy this way:

> What I like about Jim is that he starts the day thinking, ‘What are the analytical measurements that I should make decisions on?’ Many people in politics have no concept of what I just said. They’re intuitive thinkers, and they’re often right. But the difference is that to run a large operation in today’s world, *the best way to do it is analytically*. And you have the tools now.

Messina is using those analytical tools to hone Obama’s campaign in seven key states and to specific segments of the electorate therein. *Bloomberg* reported that “it isn’t hard to imagine the campaign having a direct line to 50 percent or 70 percent—or maybe more—of the voters it will need to win” in 2012, versus about 20 percent in 2008. For those 50 to 70 percent, “a ‘cookie,’ or digital marker, is dropped on a user’s computer after

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32 Joshua Green, “Messina Consults Jobs To Spielberg In Crafting Obama’s Campaign.”
33 Id.
34 Id.
35 Id.
the user visits a Web site or makes a purchase, and that profile is matched with offline data like what charities a person supports, what type of credit card a person has and what type of car he or she drives." This information allows the campaign to pick up voter trends and then test messages in small-scale, town-by-town media campaigns. With limited investments, these mini-campaigns are low risk but high reward. Why take a chance on a message when Messina can eliminate chance from the equation?

Messina describes the reelection scenario as a “return to the mean,” which is a statistical term that essentially means that a player scoring high in a game of chance the first time will necessarily yield average results the second time. The player would then do better to switch to a different game—a skill-based game—and not count on any hidden aces. Messina realizes that Obama’s campaign needs a new strategy in order to prevent a return to the mean: “[In 2008 Obama] conducted a national campaign, expanded the electorate, and won a broad swath of voters. This election...[he] aims to persuade a sliver of the electorate, not expand it.”

The Obama of 2012 is not playing under 2008 conditions. His empirical, ‘retail’ approach to campaigning is certainly facilitated by the new micro-targeting technologies, but those techniques are necessitated by Obama’s status as an incumbent. Obama now has his record to sell to the people; he is not just a brand or ‘blank screen’. That is both good and bad for his campaign. Obama, who once ran on unity and change, now has a polarized appeal. As Chief Executive he could not please everyone at every moment. How can Obama convince tepid voters that he still represents a hopeful alternative to the status quo—the mean—when he himself has been the head of that state for almost four years?

The short answer is ‘retail’ campaigning—in this case, micro-targeting Internet users to reach narrowly defined, influential voter groups. This is an essential practice for a candidate being rapidly outspent for the first time in five years. The Citizens United v. Federal Election Commission Supreme Court decision of 2010 opened the door for corporations, unions, and other special interest groups to donate to political causes. While Obama benefits from his own set of Super PAC donations, his opponent Mitt Romney’s extremely wealthy base and corporate connections have

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36 Tanzina Vega, “Online Data Helping Campaigns Customize Ads.”
37 Joshua Green, “Messina Consults Jobs To Spielberg In Crafting Obama’s Campaign.”
38 Id.
39 The Citizens United Political Victory Fund is a Republican fundraising group whose mission is "to support conservative candidates running for federal office who share Citizens United's vision of reducing the size and scope of government, lowering taxes, cutting spending, promoting traditional family values, and winning the war on terror." The Supreme Court ruled in 2010 that corporations and unions could sponsor partisan political communications, effectively ruling that corporations are people.
widened the gap.\textsuperscript{40} Obama needs to appeal even more specifically in terms of policy achievements and campaign promises to gain the monetary support and endorsements of special interest groups. Obama still may not outspend Romney, but he can outsmart him. He needs to spend his money with specificity to fit local preferences; so far this year he has given fifty-eight local news interviews and only eight for the national media, according to the \textit{Huffington Post}.\textsuperscript{41} Obama’s 2008 campaign manager David Plouffe drives home the importance of thinking locally:

> When people say “How’s the Bain thing playing?” it doesn’t matter what the set of [MSNBC’s] Morning Joe has to say about it. But if you’re a 45-year-old swing voter in Toledo, Ohio, what are you seeing? What’s in your local newspaper? What ads are running? And what’s going on in the local field operation? That’s what really matters.\textsuperscript{42}

Localization of a campaign goes beyond geography; Obama must reach dispersed, similar voters with issues that are \textit{emotionally} close to home. Reelecton bumper stickers read, “Women for Obama,” “LGBT for Obama,” and even “Nurses for Obama.” Several of these sub-groups even have their own Twitter accounts; “Latinos for Obama” tweets alongside “Obama for America MA [Massachusetts].” Delineation by interest engages voters through individual causes, and also makes it easy for the campaign to hone its messages at little cost. By observing what targeted information gains traction, Obama’s team can deduce what you think about universal healthcare, drone warfare, and education reform. After having carefully engineered your response, he can then pose the question: “Are you in?”

Obama’s YouTube channel has also become more personalized. Since 2008 the number of hours of footage uploaded to the video sharing site per minute has rapidly increased, from 10 to 48.\textsuperscript{43} To help users sift through the noise, the site developed the “Personal YouTube Digest:” by volunteering your likes and interests, YouTube sends you recent videos you might like in a personalized newsletter, or a link to a channel (e.g., BarackObama). Obama’s use of the site has become more targeted as well. His videos are narrow in scope, focusing on individuals tied to the campaign or to voter sub-groups. For example, one short video tells the story

\textsuperscript{40} Joshua Green, “Messina Consults Jobs To Spielberg In Crafting Obama’s Campaign.”
\textsuperscript{41} Michael Calderone, “Obama Turns To Local Media To Promote Reelection Message.” \textit{The Huffington Post}.
\textsuperscript{42} Joshua Green, “Messina Consults Jobs To Spielberg In Crafting Obama’s Campaign.”
\textsuperscript{43} O’Connor., 102.
of “Fired Up, Ready To Go,” a reelection campaign mantra created by one local organizer from South Carolina. Since Obama lost that state to McCain in '08, it seems likely that this ad is geographically targeted. In contrast, “Forward” is targeted to voter interests, as it boasts policy achievements benefiting several national voter subgroups—Latinos, veterans, gays and lesbians, women, and small business owners—all under the rubric of forward momentum.

It is not that such voter identification did not exist in 2008, but the “We” of the campaign was broader and more important then. In 64 BC, Quintus Cicero famously advised his brother Marcus to promise everything to everyone in his campaign for consul.\footnote{Quintus T. Cicero, \textit{How To Win An Election: An Ancient Guide for Modern Politicians}.} This bit of political wisdom may be clichéd now, but promising everything to everyone is not the same as promising specific things to individuals. This is the clear difference between 2008 and 2012. Because promising to “Change” the ways of Washington would make little sense this time, Obama has chosen the theme “Forward,” a vague message which serves as an umbrella term for every aspect of governing interest to his target voters: forward with women’s rights, forward with healthcare reform, forward with every promise made and every policy enacted thus far. The slogan’s unifying idea is a request for more time to carry these goals to a second term. “Forward” also carries a negative message by implicitly asserting that a vote for his opponent would drag our country backwards.

Consequently, a lack of unifying idealism may prove problematic as Obama’s supporters relinquish the large roles they held in 2008 and become, once again, average voters. To counter this, the campaign recently launched a new mobile canvassing application for smartphone users to download voter addresses and log their volunteer efforts.\footnote{Michael D. Shearer, ”Obama Campaign Releases iPhone App for Canvassing.” \textit{The New York Times: Politics}. 31 July 2012.} This demonstrates a distinct effort on the part of his campaign to regroup and regain the momentum Obama rode in 2008. It is also an important way to stretch a dollar, since a single paid staffer, or “snowflake,” oversees the canvassing efforts of 500 volunteers.\footnote{Green, “Messina Consults Jobs To Spielberg In Crafting Obama’s Campaign.”} Yet the team effort is not at the fore of Obama’s new \textit{narrative}. While Obama once shouted, “Yes, we can,” he now seems mainly focused on answering the time-old question, “What have you done for me lately?”\footnote{Christopher Matthews, \textit{Hardball: How Politics Is Played Told By One Who Knows The Game}, 85.} Rather than treating voters as ‘people not dollars,’ as in 2008, Obama’s campaign seems to now view voters as problems wanting to be solved, or at least smoothed over. In 2008, Clinton and
McCain were the candidates who talked policy questions while Obama
focused on voter engagement. Now it is Obama who is getting specific—
specific about what he has done and specific about what each voter’s on-
line activities can tell him, whether the voter likes it or not. In 2008 Obama
figuratively fought the McCain camp by carpet-bombing; in 2012, the race
better resembles drone warfare.

Deploying metaphoric drones in the campaign may prove just as
controversial for his supporters as have Obama’s metallic drones in the
Middle East. A new study at the University of Pennsylvania showed that
“86 percent of respondents did not want political campaigns to tailor ads
to their interests.” It seems ironic that a candidate whose
message was once advanced by a viral video aligning his opponent with Big Brother
should now himself watch specific voters’ online habits so closely. It cer-
tainly marks a departure from the democratic ideals he once expounded.
Daniel Kreiss, a journalism professor at the University of North Carolina,
commented to the New York Times: “These [technological] practices, as
they get more sophisticated, leave entire segments of the population out of
the political communication of the campaign…Campaigns aren’t going to
spend resources on people who aren’t seen as being important.”

By dividing voters based on ‘interests,’ Obama undermines the underlying message
of his previous campaign: that we are all of a common interest. Obama
once seemed like a break from politics as usual, but now he is regressing to
the mean. At the risk of romanticizing the past (when voters certainly had
less access to information and were likely more victimized by propa-
ganda), perhaps democracy was better played as a game of chance.

It would be a gross exaggeration to frame Obama’s intensive use
of social media marketing as manipulation akin to that of Richard Nixon,
but a recent Slate piece remembering Nixon’s great rival Hunter S. Thomp-
son has particular poignancy in light of the 2012 general election: “It’s
probably worse now than it was in Hunter’s day, but the American presi-
dential campaign is the last place in the world a sane man would go in
search of anything like honesty. It may be the most fake place on earth.”
This lack of honesty may just be a permanent part of the landscape. But

49 It may be that those who find microtargeting invasive are also highly engaged, informed voters. While 86 percent of respondents in the Penn study did not want political campaigns to
target their personal interests, 86 percent of Americans may not recognize microtargeting
when they see it. If this is the case, then the invasiveness of campaign practices may not yet
affect voters’ attitude towards a candidate; down the line, though, as drone warfare and mi-
icrotargeting both become norms, voters may wish they could turn back the clock.
50 Vega, “Online Data Helping Campaigns Customize Ads.”
51 Matt Taibbi, “Fear and Loathing 40 Years Later.”
the responsibility to change that lies in nobody's hands but those of the elected politicians and their constituents. The rules of politics may soon change for the worse as we revise our understanding of what it means to be a private person in a globalized, public online world. In an essay on the 2010 film *The Social Network*, Zadie Smith writes: “There is no perfect computer analogue for what we call a ‘person’….Different software embeds different philosophies, and these philosophies, as they become ubiquitous, become invisible…. [They] become ‘locked in,’ and…impossible to…change.” Political campaigns, like software programs, have different philosophies. In 2008 Obama changed the way people thought about democracy by changing the way we engaged with it. Potentially, by changing the way he implements the social media tools that elected him, he may be undoing some of the egalitarian strides he made. Run like a technology company, and relying on algorithms more than idealism, Obama’s campaign now capitulates to voter fragmentation. By treating people differently based on empirically tested arguments about their ‘interests’ and ‘impact,’ he neglects the emotional power and socially unifying movement he inspired just four years ago. As we slouch slowly towards November, Obama can only hope that voters' ‘Hope' will not die with the hunch.

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52 Zadie Smith, “Generation Why?”
Bibliography


Cohen, Priscilla. Interviewed by Sara Worth. “Yes We Can” - Viral Video Personal Interview, 10 July 2012.


