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# Electoral Reform in the United States: Looking Abroad to Strengthen our Democracy

Matthew Patrick Jordan

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## **Electoral Reform in the United States: Looking Abroad to Strengthen our Democracy**

### **INTRODUCTION**

In most modern democracies around the globe, independent commissions draw legislative boundaries.<sup>1</sup> In the United States – in all but a few states – legislators draw legislative boundaries.<sup>2</sup> This means legislative maps drawn for purely political purposes with a disregard for demographics and voting blocs. Control of the United States House of Representatives isn't determined at the ballot box; it is through the annual ten-year redistricting process.<sup>3</sup> In 2008, candidates, political parties, and interest groups spent a record \$5.3 billion on the congressional and presidential races.<sup>4</sup> In the 2010 midterm congressional races, \$4 billion was spent – surpassing the 2006 total by approximately \$1 billion.<sup>5</sup> Following the 2010 decision in *Citizens United v. FEC*, the Court held that corporations and unions could advocate for the election or defeat of a candidate using treasury funds.<sup>6</sup> The *Citizens United* decision paved the way for a massive new stream of undisclosed dollars being spent on elections in the United States.<sup>7</sup> In 2012, Super PACs<sup>8</sup> and social welfare groups<sup>9</sup> alone spent an estimated \$5.8 billion on the election cycle.<sup>10</sup>

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<sup>1</sup> Editor, *How to Rig an Election*, The Economist (Apr. 25, 2002), <http://www.economist.com/node/1099030>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Jeanne Cummings, *2008 campaign costliest in U.S. history*, Politico (Nov. 5, 2008, 5:28 AM), <http://www.politico.com/news/stories/1108/15283.html>.

<sup>5</sup> Dave Levinthal, *Election 2010 to Shatter Spending Records as Republicans Benefit from Late Cash Surge*, Open Secrets Blog: Investigating Money in Politics (Oct. 27, 2010, 4:00 PM), <http://www.opensecrets.org/news>.

<sup>6</sup> *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

<sup>7</sup> Press Release, Campaign Legal Center, THE CAMPAIGN LEGAL CENTER GUIDE TO THE CURRENT RULES FOR FEDERAL ELECTIONS (Oct. 25, 2012) (on file with author).

<sup>8</sup> *Id.* Officially known as “independent-expenditure only committees,” Super PACs cannot donate directly to candidates or political parties, but may engage in unlimited political spending independently of campaigns and can raise unlimited sums from corporations, unions, and other groups.

<sup>9</sup> *Id.* “Social welfare groups” are vehicles under the United States Internal Revenue Code used to influence elections following the *Citizens United* decision.

Finally, voter participation in the United States is one of the lowest in the world.<sup>11</sup> Making matters worse, stringent voter identification laws passed in twenty-five states could disenfranchise as many as five million additional eligible voters – driving down participation ever further.<sup>12</sup> These are not the characteristics of a healthy and functioning democracy.

By looking abroad, the United States can adopt new electoral reforms empowering individuals, creating a fairer playing field, and increasing participation in choosing the leaders of our country. This paper will explore practices in three specific areas from democracies around the globe: legislative apportionment, campaign finance, and voting regulations. Specifically, this paper will give an overview of the jurisprudence and policies in place on redistricting, campaign finance, and voting. Next, it will set forth policies of democracies in Europe and Australia providing alternative approaches to elections. Finally, a comprehensive analysis of reforms that can be folded into our political system to strengthen our democracy – both from policies abroad – and policies in place on the local level in the United States. In exploring practices used around the globe, this paper will offer a new path forward for the United States that can make our democracy fairer, reduce the influence of large campaign contributors and special interest groups, and expand the participation levels of the voting age population.

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<sup>10</sup> John Avlon & Michael Keller, *The Super-PAC Economy*, The Daily Beast (Sept. 18, 2012 4:45 AM), <http://www.thedailybeast.com/articles/2012/09/18/the-super-pac-economy.html>.

<sup>11</sup> Elizabeth Flock, *Five Charts That Show How Our Democracy Isn't Working*, U.S. News & World Report (June 18, 2012), <http://www.usnews.com/news/blogs/washington-whispers/2012/06/18/five-charts-that-show-how-our-democracy-isnt-working-how-americas-democracy-isnt-working>.

<sup>12</sup> Wendy Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Social Justice, (2012), [http://www.brennancenter.org/content/resource/voting\\_law\\_changes\\_election\\_update/](http://www.brennancenter.org/content/resource/voting_law_changes_election_update/).

## I. United States: The Political Process & Policies

### a. *The Principles of Redistricting*

In the United States, every state in the union is required to undergo redistricting, although no bright line rule exists driving the process.<sup>13</sup> In thirty seven states, legislatures draw the districts.<sup>14</sup> In every other, either a board of commission draws the legislative boundaries.<sup>15</sup> The United States redistricting process is driven by one absolute maxim: “one person, one vote.”<sup>16</sup> In *Baker*, the Court held that the only way to adhere by the “one person, one vote” doctrine, legislative districts must be apportioned in roughly equal populations.<sup>17</sup> In *Baker*, residents of Tennessee filed suit alleging deprivation of federal constitutional rights because new district boundaries had not been drawn since 1901.<sup>18</sup> The holding that reapportionment of legislative districts was in fact a justiciable claim now ensured that each individual had to be weighed equally.<sup>19</sup>

The principle set forth in *Baker* was reaffirmed in *Reynolds v. Sims*, a case involving a map with population disparities up to 14 to 1 existed from one senate district to the next in Alabama.<sup>20</sup> Districts failing to adhere to the “one person, one vote” directive violated the Equal Protection Clause.<sup>21</sup> As Chief Justice Warren stated writing for the majority: “And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise

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<sup>13</sup> Morgan Cullen & Michelle Davis, *5 Trends Shaping Redistricting: October/November 2012*, National Conference of State Legislatures (Nov. 2012), <http://www.ncsl.org/legislatures-elections/redist/5-trends-shaping-redistricting.aspx#4>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Baker v. Carr*, 369 U.S. 186 (1962).

<sup>17</sup> *Id.* at 29.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 377 U.S. 533 (1964).

<sup>21</sup> *Id.*

of the franchise.”<sup>22</sup> Drawing legislative districts was no longer an unchecked rule to maintain power for certain interests or political blocs. State Legislatures were forced by the *Baker* and *Reynolds* holdings to draw legislative boundaries in a matter that did not dilute a person’s vote.

The post-*Baker* jurisprudence yielded three specific constraints on legislative districting.<sup>23</sup> First, as stated previously, state legislative and congressional district plans must adhere to the one person, one vote principle.<sup>24</sup> Additionally, this “equipopulation” requirement is more stringent in federal districts than nonfederal districts.<sup>25</sup> Federal districts must be drawn with more numerical precision based off the ten-year census data.<sup>26</sup> Second, the Court mandated that districts be drawn “periodically in order to comply with the equipopulation requirement.”<sup>27</sup> Third, the Court empowered federal courts to redraw map in cases where states did not redraw the legislative districts in a timely period following the census.<sup>28</sup> These reforms were major steps toward making elections fairer and more representative of the populace.

However, the doctrines set forth in *Baker* and subsequent case law did not fully resolve issues with redistricting. Political parties and politicians were still the driving actors behind redistricting, and since the founding of our Republic, sought ways to exploit this system for partisan gain. In 1812, the Governor of Massachusetts signed a legislative map into law that included a “long, squiggly district wrapped around other

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<sup>22</sup> *Id.* at 523.

<sup>23</sup> Adam Cox, *Partisan Fairness and Redistricting Politics*, 79 N.Y.U.L. Rev. 751, 802 (2004).

<sup>24</sup> The Court interpreted this principle to require districts to contain approximately the same population, without huge disparities from one district to the next. *Id.*

<sup>25</sup> *White v. Regester*, 412 U.S. 755, 763 (1973).

<sup>26</sup> *Id.*

<sup>27</sup> See *Reynolds*, 377 U.S. at 583.

<sup>28</sup> *Scott v. Germano*, 381 U.S. 407 (1965)

districts like a salamander.”<sup>29</sup> Governor Elridge Gerry was seeking to weaken the influence of the opposition Federalist Party, with lines favoring the Democratic-Republicans.<sup>30</sup> A famous political cartoon immortalized the “gerry-mander,” and “gerrymandering” became the choice term for all attempts to draw legislative districts benefitting a political party or politician.<sup>31</sup> Since the founding of the United States, politicians used redistricting to gain a partisan advantage in State Legislatures and Congress. It is a practice still very much used by modern politicians and one of the reasons members of Congress are reelected at a rate well over 90 percent.<sup>32</sup>

While *Baker* was a major milestone and reform in creating more representative districts, it did not directly prohibit gerrymandering favoring one political party over another.<sup>33</sup> Those gerrymandering districts for partisan gain use two main methods: cracking<sup>34</sup> and packing<sup>35</sup> voters. These methods “increase the efficiency of votes for one party and decrease the efficiency of voters for the other.”<sup>36</sup> Because most states redistrict through the legislative process, a party controlling all three branches of government can use these methods for partisan gain.<sup>37</sup> Redistricting accomplished under a unitary

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<sup>29</sup> Olga Pierce, Jeff Larson & Lois Beckett, *Redistricting, A Devil's Dictionary*, ProPublica (Nov. 2, 2011, 9:08 AM), <http://www.propublica.org/article/redistricting-a-devils-dictionary>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Malbin, Michael J., Anne H. Bedlington, Robert G. Boatright et al. 2003. *Life After Reform: When the Bipartisan Campaign Reform Act Meets Politics*. Lanham, Md: Rowland & Littlefield.

<sup>33</sup> Andrew Gelman & Gary Kind, *Enhancing Democracy Through Legislative Districting*, 88 Am. Pol. Sci. Rev. 541, 553 (1994).

<sup>34</sup> This technique splits a community into multiple districts to ensure that it cannot form a majority in anyone district or vote as a bloc to sway an election. Cracking was generally used to disenfranchise minorities, and has been largely alleviated by the Voting Rights Act. Olga Pierce, Jeff Larson & Lois Beckett, *Redistricting, A Devil's Dictionary*, ProPublica (Nov. 2, 2012, 9:08 AM), <http://www.propublica.org/article/redistricting-a-devils-dictionary>.

<sup>35</sup> This technique limits the damage of a strong voting bloc by pushing as many members of the voting bloc into one district, so to limit their effect on surrounding districts. No matter how many of this one voting bloc is in a district, they are still on able to influence one set of legislators. *Id.*

<sup>36</sup> 79 N.Y.U.L. Rev. at 767.

<sup>37</sup> *Id.* at 777.

government tends to be more biased, gerrymandered, and skewed to maximize the partisan gain for those in control.<sup>38</sup> While the Court ruled in 1986 that partisan gerrymandering was unconstitutional and could be challenged, such a high burden of proof was enacted that it is extremely difficult to be successful.<sup>39</sup>

Redistricting is a high stakes proposition for elected officials, with Democrats and Republicans alike using a wide array of tools to determine the outcomes.<sup>40</sup> Republicans used their control of a majority of the statehouses in 2010 to tilt the odds in key battleground states and ensure control of the House of Representatives.<sup>41</sup> Congressmen are now hiring lobbyists, high-priced lawyers, union officials, and party operatives to influence the outcome of redistricting and preserve their districts.<sup>42</sup> Members of Congress aren't the only ones trying to influence this process: corporations and other powerful interests are now quietly bankrolling efforts to reshape maps for legislators friendly to their business.<sup>43</sup> Most alarming, money funneled into redistricting efforts by corporations and other special interests are unlimited and exempt from campaign disclosure laws.<sup>44</sup> The Federal Election Commission (FEC) determined that redistricting fights are not considered "primary political activity," allowing members of Congress to solicit unlimited, undisclosed contributions.<sup>45</sup> An environment now exists where redistricting

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<sup>38</sup> Gary W. Cox & Jonathan N. Katz, *The Reapportionment Revolution and Bias in U.S. Congressional Elections*, 43 Am. J. Pol. Sci. 812-13 (1999).

<sup>39</sup> Lois Beckett, *Is Partisan Gerrymandering Unconstitutional?*, ProPublica (Nov. 7, 2011, 2:10 PM), <http://www.propublica.org/article/is-partisan-gerrymandering-unconstitutional>.

<sup>40</sup> Eric Lichtblau and Raymond Hernandez, *Redistrictin Battle Underway, With Lobbyists and Lawyers*, The New York Times (Apr. 7, 2011).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Olga Pierce, Jeff Larson & Lois Becket, *The Hidden Hands in Redistricting: Corporations and Other Powerful Interests*, ProPublica (Sept. 23, 2012, 9:03 AM), <http://www.propublica.org/article/hidden-hands-in-redistricting-corporations-and-other-powerful-interests>.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> *Id.*

can be influenced by those with the deepest pockets – more interested in personal business interests – than a fair and functional democratic system.

b. *Campaign Finance*

The modern framework for regulation of money in politics began approximately forty years ago with the passage of the Federal Election Campaign Act (FECA) of 1974.<sup>46</sup> FECA accomplished two main goals. First, it regulated the expenditure of campaign funds by parties, candidates, and individuals; specifically, imposing a cap on campaign contributions.<sup>47</sup> Second, it set forth disclosure requirements for those making contributions to parties, candidates, and individuals.<sup>48</sup> FECA did not last long. Shortly thereafter, the Supreme Court decided *Buckley v. Valeo*.<sup>49</sup> In *Buckley*, the Court upheld the FECA's limits on contribution limits, disclosure requirements, and the public financing scheme for presidential elections.<sup>50</sup> However, it struck down FECA's restrictions on independent expenditures.<sup>51</sup> From that point forward, Congress crafted campaign finance regulations under these two tenets: campaign contribution limits and disclosure requirements.<sup>52</sup>

In 2002, Congress attempted to address to pervasive aspects of political campaigns, soft money contributions and a “meaningless distinction between candidate advertisements and “issue” advertisements.”<sup>53</sup> The Bipartisan Campaign Reform Act

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<sup>46</sup> 98 Va. L. Rev. 1

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 424 U.S. 1 (1976).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 98 Va. L. Rev. at 2.

<sup>53</sup> Jeffrey Toobin, *Money Unlimited: How Chief Justice John Roberts orchestrated the Citizens United decision*, The New Yorker (May 21, 2012), [http://www.newyorker.com/reporting/2012/05/21/120521fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin).



(BCRA)<sup>54</sup> was passed to accomplish this goal. Since the FECA contained loopholes for “issue” advertisements, individuals, corporations, and labor unions spent millions on ads clearly denouncing candidates for political office while avoiding specific language turning it into a “campaign” ad.<sup>55</sup> The BCRA closed this loophole by prohibiting corporations and unions from funding broadcast ads within thirty days of a primary or caucus, and sixty days of a general election.<sup>56</sup> It came under attack from First Amendment advocates almost immediately.

Initially, the BCRA was able to withstand a constitutional challenge. In *McConnell v. FEC*<sup>57</sup>, the Court upheld the major provisions of the BCRA, including its ban of soft money contributions, the thirty and sixty-day limit on broadcast advertisements prior to an election, and restrictions on coordinated expenditures.<sup>58</sup> As Justice O’Connor aptly stated, “Money, like water, will always find an outlet.”<sup>59</sup> Because of this, the Court upheld the restrictions as a proper step by Congress to regulate campaign finance. However, the holding did not last long. As Jeffrey Toobin stated in *The New Yorker*, an important event occurred that changed the dynamics of the Court. Samuel A. Alito, Jr succeeded Justice O’Connor –the deciding vote for the majority – making the Court markedly more conservative.<sup>60</sup> This was the beginning of the end for the BCRA. Shortly

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<sup>54</sup> The BCRA is often referred to as the “McCain-Feingold law” after its original sponsors in the United States Senate, Arizona Senator John McCain and Wisconsin Senator Russ Feingold.

<sup>55</sup> Jeffrey Toobin, *Money Unlimited: How Chief Justice John Roberts orchestrated the Citizens United decision*, *The New Yorker* (May 21, 2012), [http://www.newyorker.com/reporting/2012/05/21/120521fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin).

<sup>56</sup> *Id.*

<sup>57</sup> 540 U.S. 93

<sup>58</sup> *Id.* at 122.

<sup>59</sup> *Id.* at 223.

<sup>60</sup> Jeffrey Toobin, *Money Unlimited: How Chief Justice John Roberts orchestrated the Citizens United decision*, *The New Yorker* (May 21, 2012), [http://www.newyorker.com/reporting/2012/05/21/120521fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin).

thereafter in *FEC v. Wisconsin Right to Life, Inc.*,<sup>61</sup> the Court set the groundwork for overruling the BCRA by ruling unconstitutional the “blackout” period of running ads prior to elections.<sup>62</sup> The table was now set for a wholesale reshaping of campaign finance regulations in the United States.

What happened next was a decision from the Court that President Barack Obama called “a major victory for big oil, Wall Street banks, health insurance companies and powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.”<sup>63</sup> That decision was *Citizens United v. Federal Election Commission*.<sup>64</sup> This major decision reached several groundbreaking conclusions. First, it overruled *Austin v. Michigan Chamber of Commerce*,<sup>65</sup> which had previously held that corporations could not draw directly from treasury funds to pay for independent expenditures on behalf of political candidates or parties. Next, the definition of corruption in respect to campaign finance was restricted.<sup>66</sup> Prior to *Citizens United*, the definition of corruption (in regards to campaign finance reform) had been expanded under the Rehnquist Court permitting a wide range of activity to be regulated because of what was considered at the time a compelling governmental interest.<sup>67</sup> This resulted in an almost complete deregulation of independent expenditure activity.<sup>68</sup> *Citizens United* turned campaign finance reform on its head. Now, the only way to regulate campaign finance

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<sup>61</sup> 551 U.S. 449, 470 (2007).

<sup>62</sup> *Id.*

<sup>63</sup> Adam Liptak, *Justices, 5-4, Reject Corporate Campaign Spending Limit*, The New York Times (Jan. 22, 2010), [http://www.nytimes.com/2010/01/22/us/politics/22scotus.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/01/22/us/politics/22scotus.html?pagewanted=all&_r=0).

<sup>64</sup> 130 S. Ct. 876 (2010).

<sup>65</sup> 494 U.S. 652 (1990).

<sup>66</sup> 98 Va. L. Rev. 1, 4.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 5.

occurred only when the government could demonstrate that the regulation was tailored to prevent corruption.<sup>69</sup> Not just the perception of corruption, but actual quid pro quo acts.

*Citizens United* also allowed for the creation of “Super PACs” – political action committees that can raise and spend unlimited amounts of money in elections.<sup>70</sup> Although prior to *Citizens United*, unlimited sums could be spent on independent advertisements, it had to be spent by those individuals directly. It could not be given to a political action committee which had a contribution cap of \$5,000.<sup>71</sup> *Citizens United* changed all of that. Specifically, in *SpeechNow.org v. FEC*<sup>72</sup> the gate once preventing Super PACs were burst open:

In light of the Court's holding [in *Citizens United*] as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting “quid” for which a candidate might in exchange offer a corrupt “quo.”<sup>73</sup>

The effect on our political system was profound. In 2010, campaign related spending topped \$300 million, a more than fourfold increase from the midterm congressional elections in 2006<sup>74</sup>. Moreover, the growth of “candidate specific” Super PACs with missions to elect a specific candidate. Both President Obama and Governor Mitt Romney had associated Super PACs in 2012.<sup>75</sup> Super PACs also exploited our tax code to avoid

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<sup>69</sup> *Id.* at 12.

<sup>70</sup> Richard L. Hasen, *The Numbers Don't Lie*, Slate (Mar. 9, 2012, 2:56 PM), [http://www.slate.com/articles/news\\_and\\_politics/politics/2012/03/the\\_supreme\\_court\\_s\\_citizens\\_united\\_decision\\_has\\_led\\_to\\_an\\_explosion\\_of\\_campaign\\_spending\\_.html](http://www.slate.com/articles/news_and_politics/politics/2012/03/the_supreme_court_s_citizens_united_decision_has_led_to_an_explosion_of_campaign_spending_.html).

<sup>71</sup> *Id.*

<sup>72</sup> 599 F.3d 686, 692-93 (D.C. Cir. 2010).

<sup>73</sup> *Id.*

<sup>74</sup> Press Release, Campaign Legal Center, THE CAMPAIGN LEGAL CENTER GUIDE TO THE CURRENT RULES FOR FEDERAL ELECTIONS (Oct. 25, 2012) (on file with author).

<sup>75</sup> *Id.*

disclosure laws, using 501(c) and 527 tax organizations to hide donor's identities.<sup>76</sup> The line between the campaign and the Super PAC is often blurry. Governor Romney's presidential campaign and his Super PAC – Restore our Future – shared a direct mail consultant.<sup>77</sup> As documented in *The New York Times*, “Super PACs have become a way for candidates to bypass the limits by steering rich donors to these ostensibly independent groups, which function almost as adjuncts of the campaigns.”<sup>78</sup> President Obama's Super PAC – Priorities USA Action – is run by two former White House aides.<sup>79</sup> Even though political candidates are barred by federal law from coordinating with independent groups, “the overlapping roles and relationships of the consultants....offer a case study in the fluidity and ineffectual enforcement of rules intended to prevent candidates from coordinating their activities with outside groups.”<sup>80</sup> Essentially, political candidates can bypass campaign contribution limits – one of the few remaining regulations in the post-*Citizens United* world of campaign finance regulation – and allow affiliated Super PACs run by shared consultants and staffers to run political ads, conduct polling, and run field operations. The United States has effectively slid back into the early twentieth century, where vast campaign contributions from special interest groups and millionaires are the main source of funding for political campaigns.

c. *Voter Participation in the United States*

Participation in the United States consistently lags behind established democracies throughout the world. A number of factors contribute to a lack of civic

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<sup>76</sup> *Id.*

<sup>77</sup> Mike McIntire and Michael Luo, *Fine Line Between 'Super PACs' and Campaigns*, *The New York Times* (Feb. 25, 2012), <http://www.nytimes.com/2012/02/26/us/politics/loose-border-of-super-pac-and-romney-campaign.html?pagewanted=all>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

engagement in electing representatives to local, county, state, and federal offices. Just 74% of eligible citizens are registered to vote.<sup>81</sup> That means approximately fifty million Americans are not registered to vote and are not participating in our democracy.<sup>82</sup> Most alarming, the United States ranks 139<sup>th</sup> in participation among the 172 democracies in the world.<sup>83</sup> Recent developments will continue to drive down participation levels, especially among vulnerable socioeconomic groups and minorities. Twenty five new laws and two executive actions were adopted in nineteen states adopted laws making it harder to vote – disenfranchising up to five million eligible voters.<sup>84</sup>

Restrictive voting laws are taking many forms. The most common is “Voter ID Laws” requiring voters to produce government issued IDs before a ballot could be cast.<sup>85</sup> Usually, a driver’s license is the most often required form of identification – something twenty one million eligible voters do not have.<sup>86</sup> Seniors, African-Americans, the poor, students, and the disabled are the most likely to not have the photo ID required.<sup>87</sup> Other state laws making it harder to vote include states requiring proof of citizenship, restricting third party groups from organizing voter registration drives, and reducing or eliminating early voting.<sup>88</sup> Attorney General Eric Holder “compared the laws to a poll tax, in which Southern state during the Jim Crow era imposed voting fees, which discouraged blacks,

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<sup>81</sup> *Voter Registration: Assessing Current Problems*, The Senate Rules Committee, 111th Cong. (2009) (statement of Curtis Gans, Director of American University’s Center for the Study of the American Electorate).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Wendy Weiser & Diana Kasdan, *Voting Law Changes: Election Update*, Brennan Center for Social Justice, (2012), [http://www.brennancenter.org/content/resource/voting\\_law\\_changes\\_election\\_update/](http://www.brennancenter.org/content/resource/voting_law_changes_election_update/).

<sup>85</sup> *Id.* at 2.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 3.

and even some poor whites – until the passage of grandfather clauses – from voting.”<sup>89</sup> These new laws are creating a new finance barrier to voting unseen since before the Civil Rights movement of the 1960s.<sup>90</sup>

## II. The European Approach: Proportional Representation

European democracies offer a different electoral system – one that avoids the pitfalls of gerrymandering altogether. Proportional representation (PR) contains certain basic characteristics. First, legislators are elected from multi-member districts, as opposed to single member districts.<sup>91</sup> Second, seats are divided in these multi-member districts according to the proportion of the vote received by the parties or groups running candidates.<sup>92</sup> Therefore, if candidates of a certain party receive forty percent of the vote in a ten-member district, they receive four seats.<sup>93</sup> The goal of PR is to ensure voting blocs, ethnic groups, and people of various demographics in a country are all represented fairly, although various democracies accomplish this goal in different ways.<sup>94</sup>

Two basis forms of proportional representation exist: “List Systems” and “Choice Voting/Single Transferable Vote.”<sup>95</sup> The list system is straightforward, “a voter simply selects one party and its slate of candidates.”<sup>96</sup> Subsequently, seats are allocated based on the share of the party’s vote.<sup>97</sup> Typically, a minimum number of the vote is required

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<sup>89</sup> Suevon Lee, *Everything You’ve Ever Wanted to Know About Voter ID Laws*, ProPublica (Oct. 10, 2012, 12:54 PM), <http://www.propublica.org/article/everything-youve-ever-wanted-to-know-about-voter-id-laws>.

<sup>90</sup> *Id.* at 2.

<sup>91</sup> Douglas J. Amy, *How Proportional Representation Elections Work*, PR Library (Apr. 2005), <https://www.mtholyoke.edu/acad/polit/damy/BeginningReading/howprwor.htm>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> 12 Kan. J.L. & Pub. Pol’y 191.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

before a political party qualifies for a seat.<sup>98</sup> In “Choice Voting,” a voter ranks candidates in order of preference, selecting candidates instead of parties.<sup>99</sup> Once a voter’s first choice is elected or eliminated, “the voters ‘excess votes’ are transferable to subsequent preferred candidates until all the seats are filled.”<sup>100</sup> Proportional representation can be tailored to preserve cultural and geographic ties in a state, while simultaneously expanding electoral opportunities for women and minorities.

Following its defeat in World War II, Germany adopted an electoral system combining proportional representation with single member districts.<sup>101</sup> Legislative power is vested in a parliament consisting of the *Bundestag* and *Bundestrat*.<sup>102</sup> The *Bundestag* is elected through direct elections via proportional representation and the *Bundestrat* represents the sixteen states in winner-take-all elections.<sup>103</sup> Like the United States, the districts are roughly equal in population.<sup>104</sup> Additionally, a “five percent clause” requires a party to garner at least five percent of the vote to win a seat in the *Bundestag*.<sup>105</sup> This modified system has “protected the rights of parliamentarians and promoted equality of opportunity among competing political parties while guarding the integrity of elections.”<sup>106</sup> Germany’s combination of the winner-take-all system and proportional representation has resulted in a legislative body more representative of the electorate.

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> 603 Annals 111.

<sup>102</sup> U.S. Department of State, U.S. Relations with Germany (2012) (see at <http://www.state.gov/r/pa/ei/bgn/3997.htm>).

<sup>103</sup> *Id.*

<sup>104</sup> 603 Annals 111.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 126.

Women hold approximately thirty two percent of the seats in the Parliament.<sup>107</sup> Comparatively, women representation in the United States Congress is at seventeen percent.<sup>108</sup> The hybrid proportional representation system lifts the pervasiveness of gerrymandering out of the equation in German politics and allows a Parliament more comparable to the electorate to serve.

In Europe, proportional representation yields higher participation rates in elections and more competition for seats.<sup>109</sup> Seats are not guaranteed because of gerrymandered lines.<sup>110</sup> Proportional representation reduces balkanization and polarization, while increasing consensus through coalition building among political parties.<sup>111</sup> The European model offers an option to end the backroom political deals of politicians drawing their own legislative districts and creates a more effective and representative legislative body.

### III. Campaign Finance Policies in France

The French campaign finance regulation framework is extensive, elaborate, and strict. It is the polar opposite of its American counterpart. Official campaigns for the French presidency are brief – only lasting a total of three weeks.<sup>112</sup> Any form of political advertisement is forbidden in the three months prior to the beginning of the campaign.<sup>113</sup> Political advertisements are aired free of charge for all candidates on national television

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<sup>107</sup> Steven Hill, *Consensus Building Through Dynamic Democracy: A Comparison of Political Democracy in Europe and America*, University of California Press (2012).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Law Library of Congress, *Campaign Finance: France* (Apr. 2009), <http://www.loc.gov/law/help/campaign-finance/france.php>.

<sup>113</sup> *Id.*



and radio stations.<sup>114</sup> Campaign donations and expenditures are strictly regulated. To that end, a special commission audits campaign accounts.<sup>115</sup> Certified campaign accounts are eligible for reimbursement of expenses up to fifty percent of what was spent on the campaign.<sup>116</sup> Contributions are authorized only during the year preceding the election and campaigns made to candidates and political parties are eligible for a tax deduction up to approximately sixty-six percent of the amount given.<sup>117</sup>

Candidates are restricted in the amount of money they are allowed to spend. In 2007, the cap was approximately €22,000,000.<sup>118</sup> Likewise, third party groups are highly regulated in the types of political activities they can undertake in the run up to an election. Corporations, unions, and other advocacy groups cannot – either directly or indirectly – participate in a political campaign.<sup>119</sup> In passing these stringent regulations, the French Parliament was trying to sever all ties between the economic and political worlds.<sup>120</sup> Their goal was to avoid the appearance of corruption and try making the elections as fair as possible, so any person in the country could realistically mount a credible campaign for the French Presidency.

To ensure resources are available to candidates, a robust public financing system was created. Presidential candidates and their contributors are entitled to reimbursements from the state for expenditures by the campaign.<sup>121</sup> Following certification of a candidate,

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> CODE ELECTORAL art. L. 52-8.

<sup>118</sup> Decree 2007-140 of February 1, 2007, on Increasing the Ceilings on Campaign Expenditures, J.O. Feb. 3, 2007, p.2097.

<sup>119</sup> Law Library of Congress, *Campaign Finance: France* (Apr. 2009), <http://www.loc.gov/law/help/campaign-finance/france.php>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

the state pays in advance a lump sum for campaign operations and expenses.<sup>122</sup> Unlike in the United States, the roles of outside groups are highly regulated – and as previously stated – banned. To allow candidates to communicate to the electorate, the state provides free access to public radio and television.<sup>123</sup> The High Council on Audiovisual (CSA) – an independent administrative authority – works with the candidates and their campaigns and ensures each receives equal time on radio and television broadcasts.<sup>124</sup> The CSA regulates all aspects of communication, from the length of time of the advertisements, to the amount of times it runs.<sup>125</sup>

As Sophie Meunier of the *Huffington Post* recently opined: *The French Presidency is a Bargain*.<sup>126</sup> More money does not give a candidate any advantages. Unlike a campaign in the United States, it just can't be legally spent on much. As Meunier states:

Money is a good thing to have in a French electoral campaign, to be sure, but there is not much that money can buy: a good web team; campaign posters; computers; t-shirts and gadgets; airfares; tolls and fuels for the cars of the party operatives who crisscross the country; and the organization of campaign rallies – some small, some massive – such as Sarkozy's recent meeting on the Place de la Concorde and Hollande's big rally in Vincennes. That's about it.<sup>127</sup>

Even the ads are starkly different. Not commercials, but “statements” meant to inform, not persuade or distort.<sup>128</sup> As the United States spent billions of dollars on our campaigns

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<sup>122</sup> CODE ELECTORAL art. L.52 – 11-1.

<sup>123</sup> Law Library of Congress, *Campaign Finance: France* (Apr. 2009), <http://www.loc.gov/law/help/campaign-finance/france.php>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Sophie Meunier, *The French Presidency is a Bargain*, The Huffington Post (Apr. 19, 2012), [http://www.huffingtonpost.com/sophie-meunier/france-election-laws\\_b\\_1438456.html](http://www.huffingtonpost.com/sophie-meunier/france-election-laws_b_1438456.html).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

in 2012, the French spent around \$49 million.<sup>129</sup> The French are not concerned with Super PACs funded by huge contributions from special interests, unions, and millionaires – because they are illegal.<sup>130</sup> The French system offers its citizens everything the American system does not: a level playing field with outside interests banned from influencing the campaigns of any candidate involved.

#### IV. Compulsory Voting Around the Globe

In democracies around the world, voting is compulsory; meaning, participation isn't an option, it is a requirement. Better described as “compulsory attendance,”<sup>131</sup> democracies around the world use varying incentives and penalties to promote participation in elections.<sup>132</sup> Currently, thirty countries around the world operate some form of compulsory voting on the national or regional level.<sup>133</sup> Four identified democracies – Australia, Belgium, Luxembourg, and Cyprus – are considered the best examples of countries administering and enforcing compulsory voting regulations.<sup>134</sup> In a report from *The Electoral Commission*, an independent body set up by the United Kingdom Parliament, several reasons were set forth for adopting compulsory voting. Specifically that: voting is a duty and simply not a right; the legitimacy of the government's mandate is weakened by low turnout; unequal turnout among different socioeconomic groups risks unequal political influence; political parties and candidates

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<sup>129</sup> Bruce Crumley, *France's Stringent Election Laws: Lessons for the America's Free-for-All Campaigns*, *Time* (Apr. 20, 2012).

<sup>130</sup> *Id.*

<sup>131</sup> In most democracies with compulsory voting, a voter doesn't have to actually vote for the candidates running in the contest, just prove they went to the polls.

<sup>132</sup> Chairman Sam Younger, *Compulsory Voting Around the World*, *The Electoral Commission* (June 2006).

<sup>133</sup> International IDEA, *Voter Turnout in Western Europe Since 1945: A Regional Report* (2004).

<sup>134</sup> J. Louth and L. Hill, *Compulsory Voting in Australia: Turnout With and Without It*, *Australian Review of Public Affairs*, Volume 6, Number 1: November 2005, 25-37.

can shift time and resources from mobilizing turnout to promoting policies; compulsion can increase political awareness and facilitate more informed debate; and increased voting can promote participation in other political activities.<sup>135</sup> Historically, compulsory voting has been introduced alongside other major political reforms. In Chile, it accompanied universal suffrage; likewise in Belgium and Luxembourg. The Netherlands adopted compulsory voting in conjunction with a transition to a proportional representation system.<sup>136</sup>

Generally, compulsory voting is enacted to combat low voter participation. Introduced for this reason in Australia in 1924, participation increased dramatically. Turnout was 59% in the 1922 federal elections and 91% in 1925 – the first held under a compulsory system.<sup>137</sup> Effectiveness of a compulsory voting system generally depends on the enforcement techniques.

Sanctions range from penalty fines in Australia, Cyprus and Chile, to prohibition from making banking or other public administrative transactions for three months, allied to financial penalties, in Peru. In Brazil, the might be barred from taking professional examinations, receiving wages, or renewing enrollment in official schools or universities, while in Cyprus they could potentially serve jail sentences.<sup>138</sup>

Additionally, most countries with compulsory voting automatically register their citizens to vote – as opposed to the opt-in system in place in the United States.<sup>139</sup> Democracies using compulsory voting systems are generally able to increase participation and conduct elections truly representative of the issues facing that nation. It is contrary to the system

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<sup>135</sup> The Electoral Commission, Compulsory voting (factsheet, 2003) available to download at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

<sup>136</sup> Chairman Sam Younger, *Compulsory Voting Around the World*, The Electoral Commission (June 2006).

<sup>137</sup> *Id.* at 15.

<sup>138</sup> *Id.* at 17.

<sup>139</sup> *Id.* at 18.

in place in the United States where electoral success hinges on a candidate's ability to get his favorable voting blocs to the polls in higher numbers than his opponents.

Australia is the leading democracy in the world operating an effective compulsory voting system.<sup>140</sup> With a compulsory system in place since 1924, voters are only allowed to miss an election with a valid explanation. Excuses for non-voting include traveling overseas, trying – but failing to vote, or religious reasons.<sup>141</sup> Compulsory voting is seen as a normal part of Australian culture with wide support among the population.<sup>142</sup> Professor Lisa Hill of the University of Adelaide, believes that most Australians comply with the compulsory voting requirements not out of fear of sanctions, but because they feel it is a reasonable request from the government for its citizens to participate in elections.<sup>143</sup> To that point, voting in Australia is convenient, without the obstacles seen in the United States.<sup>144</sup> Election Day is Saturday, early voting is available, a voter can vote for federal candidates at any polling site in the country, and mobile polling stations are put into place for those living in remote areas.<sup>145</sup> Australian voters turned out on average 94-96% between 1983 and 1998.<sup>146</sup> Most importantly, the Australian system ensures that often marginalized groups like the young or poor participate at the same levels as other demographic groups.<sup>147</sup> Therefore, Australia does not suffer from a “crises of [electoral] participation” like most other voluntary voting democracies.<sup>148</sup>

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<sup>140</sup> Australia Electoral Commission: [www.aec.gov.au/\\_content/What/voting/compulsory\\_voting.htm](http://www.aec.gov.au/_content/What/voting/compulsory_voting.htm)

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Lisa Hill, *Compulsory Voting As a Democratic Innovation*, Australia Review of Public Affairs (2002).

<sup>144</sup> *Id.*

<sup>145</sup> Chairman Sam Younger, *Compulsory Voting Around the World*, The Electoral Commission (June 2006).

<sup>146</sup> *Id.* at 28.

<sup>147</sup> *Id.* at 29.

<sup>148</sup> J. Louth and L. Hill, *Compulsory Voting in Australia: Turnout With and Without It*, Australian Review of Public Affairs, Volume 6, Number 1: November 2005, 25-37.

## V. Analysis: Building a Stronger Democracy in the United States

The United States electoral system is in need of reforms on every level. Our system is antiquated, corrupt, and skewed to favor the few, instead of the many. Key reforms modeled after western democracies can make our system fairer and create a more vibrant democracy. By looking abroad, the United States can use systems proven successful and mold them to fit into the traditions and culture our citizens are accustomed. By looking at these three key parts of our electoral system – how our officials are elected, how their campaigns are funded, and the participation levels of our citizenry – new paradigms can be put into place to quell the influence of special interests and allow sound policies to be enacted. Policies in the public good; not set by lobbyists and insiders concerned first and foremost about profits.

### a. *Electing a More Representative Congress*

It doesn't take extensive research to reach the conclusion that lawmakers' drawing their own legislative boundaries isn't a good idea. Politics will always be the first consideration – not drawing lines most representative of the people. Even states with independent commissions tasked with drawing legislative boundaries fall prey to the pervasiveness of political influence. In California, voters recently passed a referendum putting redistricting in the hands of ordinary citizens – driven by public testimony and open debate – not political calculations.<sup>149</sup> This was not the case. Democrats enlisted local voters, elected officials, labor unions, and community groups to mount a campaign that aligned with the party's interest.<sup>150</sup> Based on demographic shifts and party

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<sup>149</sup> Olga Pierce and Jeff Larson, *How Democrats Fooled California's Redistricting Commission*, ProPublica (Dec. 11, 2011, 3:38 PM), <http://www.propublica.org/article/how-democrats-fooled-californias-redistricting-commission>.

<sup>150</sup> *Id.*

registration, California Democrats expected to pick up one or two seats.<sup>151</sup> In the end, seven seats were picked up.<sup>152</sup> A new approach is needed in the United States to take this power out of the hands of politicians. All across the United States people are misrepresented. Too often, people are used as pawns in a Washington D.C. parlor game to control the levers of power. The 2012 elections saw Democrats running for Congress gained over a million more votes than their Republican counterparts.<sup>153</sup> Republicans still won thirty one more seats. This is not a fair and representative democracy in our House of Representatives.

A new approach is needed. That approach should incorporate a hybrid proportional representation system for electing members of Congress. The United States is dominated by a system made up of single member districts using “first-past-the-post” (FPTP) elections to choose members of Congress.<sup>154</sup> The results often disenfranchise minorities – and as previously demonstrated – allowing for groups of voters to be “packed” and “cracked” to serve political interests. The electorate in winner-take-all systems is often represented by people they never voted for in the election.<sup>155</sup> For example, in 1994 Democratic candidates for Iowa’s five seats in the House of Representatives received 42% of the votes cast, but won none of the five seats.<sup>156</sup> This problem is not isolated just to Iowa. North Carolina voters in 1992 cast 48% of their ballots for Republicans.<sup>157</sup> Yet Republicans only won four of the twelve seats that year.<sup>158</sup>

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Sam Wang, *The House – new, with less democracy!*, Princeton Election Consortium (Nov. 9, 2012, 2:00 PM), <http://election.princeton.edu/2012/11/09/the-new-house-with-less-democracy/>.

<sup>154</sup> 20 S. Cal. Interdis. L.J. 655, 673.

<sup>155</sup> 12 Kan. J.L. & Pub. Pol’y 191.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

The FPTP system disenfranchises voters, suppresses minorities, and the incentive to vote is diminished because campaigns are not competitive.<sup>159</sup> In a proportional representation system, votes are evenly distributed allowing people to send representatives to Congress based on their percentage of the vote. This enhances opportunities for minorities, who by their status as a minority bloc often cannot muster majorities to win elections. If Iowa had had five seats on the ballot, with one side winning 40% and the other 60%, one side should get three seats and the other two. The partisan gerrymander is totally eliminated from the equation. Germany's hybrid proportional representation system offers a more democratic approach. The United States Senate could act as the "single member" districts and the House of Representatives could be assembled via proportional representation, with each party receiving seats in proportion with their share of the total popular vote.

The problem is especially acute in New Jersey. In 2011, an independent commission drew new congressional lines. Because New Jersey was losing a seat based on population shifts to other parts of the country, the process was especially contentious. One sitting member of Congress would be drawn into a district with another sitting member of Congress setting off a bruising battle for reelection. What resulted was a congressional map with no competitive races and an electorate in New Jersey not properly represented in Washington. The congressional results<sup>160</sup> in the past election were as follows:

- District 1
  - Robert Andrews (D) – 194,303 (68%)
  - Greg Horton (R) – 86,820 (30%)
- District 2
  - Frank LoBiondo (R) – 156,799 (58%)

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<sup>159</sup> *Id.*

<sup>160</sup> Mike Schneider, *NJ Decides 2012: Election Results*, NJTV (Nov. 6, 2012), <http://www.njtvonline.org/njtoday/2012/11/06/nj-decides-2012-election-results/>.



- Cassandra Shober (D) – 108,288 (40%)
- District 3
  - Jon Runyan (R) – 161,452 (54%)
  - Shelley Adler (D) – 134,599 (45%)
- District 4
  - Chris Smith (R) – 189,548 (68%)
  - Brian Froelich (D) – 86,380 (31%)
- District 5
  - Scott Garrett (R) – 154,359 (55%)
  - Adam Gussen (D) – 117,973 (42%)
- District 6
  - Frank Pallone (D) – 141,852 (62%)
  - Anna Little (R) – 79,120
- District 7
  - Leonard Lance (R) – 167,736 (57%)
  - Upendra Chivikula (D) – 116,445 (40%)
- District 8
  - Albio Sires (D) – 118,904 (78%)
  - Maria Karczerski (R) – 28,810 (19%)
- District 9
  - Bill Pascrell, Jr. (D) – 146,939 (74%)
  - Shmuley Boteach (R) – 50,772 (25%)
- District 10
  - Donald Payne, Jr. (D) – 154,365 (97%)
  - Joanne Miller (R) – 4,090 (3%)
- District 11
  - Rodney Frelinghuysen (R) – 167,368 (59%)
  - John Arvinates (D) – 113,554 (40%)
- District 12
  - Rush Holt (D) – 177,238 (69%)
  - Eric Beck (R) – 76,824 (30%)

Out of twelve races, only one was within 10%. Democrat Shelley Adler in a “competitive” district ran only nine points behind Congressman Jon Runyan. This is democracy in action in New Jersey. African American voters were packed into the 10<sup>th</sup> District, giving Congressman Payne a whopping 97% super-majority. Most alarming, with Democrats receiving over 300,000 more votes than the Republicans, both parties will be sending an even number of representatives to the House of Representatives in

2013. Ten of the twelve members are white men. None are women.<sup>161</sup> This congressional delegation does not represent the diversity of New Jersey. And that is no small part a result of partisan gerrymandering. By adopting a German system to elect New Jersey's twelve members of Congress, voters will be empowered, races will be competitive, and our democracy will be more representative of the diversity we see in New Jersey.

A hybrid PR system would yield a fairer vote for the New Jersey electorate. It would also drive up participation, as races would be competitive and decrease regional balkanization. Members of congress wouldn't be thinking about what was in the best interest of their district, but what was in the best interest of New Jersey. This has played out in Germany, with more focus on regional responses and less balkanization among regions.<sup>162</sup> A hypothetical voter would see a ballot with brackets of candidates – twelve Democrats, twelve Republicans, twelve Libertarians, twelve members of the Green Party, etc. Each voter could apportion his or her votes to one of the parties. With twelve seats up for grabs, a party would receive the number of seats in proportion to their share of the vote. Minority candidates would be courted onto tickets because they could drive up numbers in key communities. Tickets would by default be diverse, as political parties would want to court various political blocs. In a hypothetical election where Democrats received 60% of the vote, Republicans 40% of the vote, and Libertarians 10% of the vote, each would get to send a proportional amount to the House of Representatives.<sup>163</sup> Participation would soar, as the parties would be invested in driving up turnout and running up their percentage of the vote – allowing them to capture more seats. Third

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<sup>161</sup> Sadly, New Jersey has not had a female member of their Congressional delegation since Marge Roukema retired in 2002.

<sup>162</sup> Steven Hill, *Consensus Building Through Dynamic Democracy: A Comparison of Political Democracy in Europe and America*, University of California Press (2012).

<sup>163</sup> In this hypothetical, Democrats would send six members, Republicans four, and Libertarians, one.

parties would become more relevant and politicians would be more vulnerable and less entrenched. A PR system would empower voters, unleash the chains of partisan gerrymandering, and result in a Congress more representative of the electorate. Elections would matter, instead of the foregone conclusions voters in New Jersey are currently saddled.

b. *Campaign Finance Reform*

The influence on special interest money in the United States' political process is unquestioned. Often, the American voting public has no idea who is giving them a message about a candidate, why they are receiving the message, and whether that message is even true. The system is broken. France offers an example of a highly regulated campaign finance system. It may not be necessary to take such extreme measures to fix the US system, but policies can be pulled to quell the influence of outside interests and make the system more accessible to normal people. Reforms must focus on three areas. First, disclosure is paramount. The electorate must understand who is giving money to political candidates and parties and who is funding issue advertisements. Second, public financing for campaigns must be expanded. This is a twofold solution: matching funds should be available to candidates collecting a required number of small dollar donations, triggering a lump sum of cash to run a campaign and radio and television time should be set aside for free (in equal proportions) for candidates to communicate with voters on an equal playing field. Third, Super PACs run by unions, corporations, and special interests should be banned from political activity via a Constitutional amendment.

Rhode Island Senator Sheldon Whitehouse has already been advocating for more stringent disclosure requirements in our post-*Citizens United* world with the Democracy Is Strengthened by Casting Light On Spending in Elections (DISCLOSE) Act.<sup>164</sup> The bill banned U.S. corporations controlled by foreign governments from influencing election outcomes, prevented Troubled Asset Relief Program (TARP) recipients from making political contributions, and would give shareholders, organization members, and the general public access to information regarding corporate and interest group campaign expenditure, and create transparency mechanisms for organizations with more than 500,000 members to stand by political advertisements.<sup>165</sup> Shedding light on who is spending money – while informing the public why that group would be spending the money for against a certain candidate – is important as people give credibility to political advertisements. Disclosure should also be in line with 21<sup>st</sup> century standards. It shouldn't just be available at a government office, but online in searchable format.<sup>166</sup> Campaign expenditure reports, donors, and all political activity involving donations or expenses should be just a click away for any citizen interested. The French offer a system that regulates money and outside influence on their democracy.

The public financing of campaigns is another important reform that can loosen the grip the well-connected and special interests currently hold over our political system. Many state and local governments already use public financing systems to curb the influence of special interest groups and level the playing field for challengers.<sup>167</sup> Two

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<sup>164</sup> Democracy Is Strengthened By Casting Light On Spending In Elections, S.3369, 112<sup>th</sup> Congress 2d Session (2011).

<sup>165</sup> *Id.*

<sup>166</sup> Ciara Torres-Spelliscy and Ari Wesihard, *What Albany Could Learn From NYC* Brennan Center for Justice (2008).

<sup>167</sup> *Id.* at 225.

such systems are widely used: a “matching” fund system and “full” financing system.<sup>168</sup> In New York City, small private contributions and portions of larger contributions are matched by the city government.<sup>169</sup> Candidates accepting matching funds are forced to participate in debates and are featured in a voter guide.<sup>170</sup> A matching system forces a candidate to collect a certain number of small dollar donations which triggers a lump sum for the primary and general elections.<sup>171</sup> Both of these systems incentivize candidates to focus on small dollar donors, expand the range of candidates running for office, and tamp down the influence of the wealthy political donors.<sup>172</sup> Additionally, by following the lead of the French government and giving candidates access to free radio and television broadcast time, challengers running for Congress could communicate more effectively with voters on their positions. Moreover, by making campaign contributions tax deductible – like they are in France – people will be incentivized to donate to politicians. This would drive up small dollar donations and decrease the influence of the wealthy. Another worthy French initiative that would make United States Congressional election more competitive would be to offer a lump sum to qualifying candidates. For example, every candidate for Congress would be eligible for a \$250,000 grant of seed money upon certification of a candidate with ten thousand signatures of support on a petition. This would force candidates to work to get supporters, as opposed to calling wealthy donors to fund their operations.

Finally, a constitutional amendment to overturn the *Citizens United* decision is crucial. President Obama has already endorsed this type of constitutional amendment to

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 226.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 227.

<sup>172</sup> *Id.*

curb the influence of the wealthiest on our political discourse.<sup>173</sup> By inserting into our Constitution language stating clearly that corporations are not people entitled to First Amendment protections, that the regulation of money in politics is constitutional, and a compelling government interest exists in preventing special interests and millionaires from spending unlimited amounts of money for or against a political candidate – either directly or through an issue advocacy organization. These reforms to the United States’ system – pulling from both domestic and international policies – would greatly enhance the effectiveness of our democracy. Participation would spike, more would become involved, and campaigns would not be won or lost based off which Super PAC spent more money. Democracy would be put back into the hands of ordinary Americans who could work together to forge consensus and solve problems, instead of the gridlock coming out of Congress today. The French model does not need to be adopted wholesale, as it is out of line with our long tradition of free speech protection, but it does offer individual policy proposals that would strengthen our democracy.

c. *Enhancing Voter Participation*

Democracies around the globe offer the United States a blueprint to drive up participation in our elections. A bridge can be drawn to bring our participation rates more in line with countries like Belgium and Australia – with their compulsory systems – to craft laws making participation easier. The laws to vote in the United States are too burdensome and outdated.<sup>174</sup> A federal law mandating each resident to register to vote upon eligibility would be an obvious first step to bring into the system the large group of

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<sup>173</sup> Byron Tau, *Obama Calls for Constitutional Amendment to Overturn Citizens United*, Politico (Aug. 29, 2012, 5:35 PM), <http://www.politico.com/politico44/2012/08/obama-calls-for-constitutional-amendment-to-overturn-133724.html>.

<sup>174</sup> Jason P.W. Halperin, *A winner at the polls: a proposal for mandatory voter registration*, New York University School of Law (1999).

unregistered voters. By nationalizing voter registration, an important barrier to voting would be brought down and more people would be inclined to participate in elections. This new policy could be brought under the auspice of the Federal Election Commission (FEC) which is already charged with a number of important policy initiatives regarding our federal elections.<sup>175</sup> Other less contentious measures could be taken to drive up participation numbers. Election Day could be moved to the weekend of declared a national holiday – like in Australia and other European democracies with higher participation rates. Freeing up the citizenry from school and professional obligations takes down one impediment to voting – especially among the poor and middle class who would be the most reluctant to miss time at work in order to vote. Early voting should be expanded without justification. Currently, thirty two states and Washington D.C. allow early voting prior to Election Day.<sup>176</sup> In Oregon and Washington elections are conducted entirely by mail.<sup>177</sup>

Adopting a compulsory voting system is not the only way to drive up participation numbers. The federal government should be taking steps to nationalize our electoral system, breaking down institutional barriers that prevented a person from voting in the past, and developing new policies and reforms that streamline the voting process. Outside of mandatory registration, something as simple as same day registration can bring more people into the process. Ten states presently allow voters to register on

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<sup>175</sup> *Id.* at 113.

<sup>176</sup> National Conference of State Legislatures, *Absentee and Early Voting* (Sept. 4, 2012) <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>.

<sup>177</sup> Ruth Marcus, *Early Voting Turns Election Day into Election Month*, *The Oregonian* (Nov. 2, 2012, 3:00 AM), [http://www.oregonlive.com/opinion/index.ssf/2012/11/early\\_voting\\_turns\\_election\\_da.html](http://www.oregonlive.com/opinion/index.ssf/2012/11/early_voting_turns_election_da.html).

Election Day to vote in that election.<sup>178</sup> Our national policies should be moved towards the philosophies a compulsory system espouses. Voting should be easy and engrained as a civic duty; a vital part of living in a democracy. Australia offers a model to drive up our participation numbers by making voting more convenient. Election Day is on Saturday, a simple step that could increase turnout, a voter can vote for federal candidates at any polling site in the country, and mobile polling stations are put into place for those living in remote areas. These simple reforms will drive up voter participation just because of the increased convenience. Low participation rates dictate policy and undermine the mandate of our elected officials. It is no coincidence that major social legislation like Medicare and Social Security primarily benefit senior citizens. They vote in the largest numbers. If underperforming groups were registered and voted in proportion with their share of our population the policies goals of Congress would change to reflect the needs of these communities. By adopting Australian policies that drive up voter participation rates, our democracy is more legitimate and the mandate of our elected officials is stronger. Australia offers common sense solutions that can help bring up the United States' participation rates and create a more legitimate democratic structure.

## CONCLUSION

Borrowing from democracies around the globe offers advantages to the United States. Our democracy is flawed. It serves certain interests – generally of the well connected – at the expense of fairness and the interests of the general population. The German, French, or Australian systems don't make sense for the United States in full. But taking certain policies and fitting them into our current system can create a voting system

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<sup>178</sup> David Siders, *Jerry Brown signs bill allowing same-day voter registration*, *The Sacramento Bee* (Sept. 24, 2012), <http://blogs.sacbee.com/capitolalertlatest/2012/09/jerry-brown-signs-bill-allowing-same-day-voter-registration.html>.



more reflective of our society, allow candidates to run legitimate campaigns against incumbents, and incentivize participation. Until the United States government begins to take steps towards a more universal suffrage on fair terms, our democracy will continue to be only a shell of *true* democratic representation. By marginalizing the wealthy and creating an atmosphere where all voices are equal, where all of our citizens are participating, and money is not the dominant force in public affairs, our system can move truly reflect the values of our nation. Our representatives would look more like the people they are representing.

Politics in the United States is a series of corrupt (but often legal!) practices. Legislators draw their own districts, benefit from special interest groups running advertisements outside of our regulatory system, and excel within a system of minimal participation. By looking to democracies abroad, the United States can truly establish a model democracy. Moreover, the government needs to take steps to fix our broken system – by drawing on the successful systems implemented abroad – and develop a model that truly fosters real democracy. Unfortunately, too many decisions are made in backrooms – not because a policy would benefit the public at-large, but because a special interest can exploit the flaws inherent in our democracy. Democracies in Europe and Australia offer roadmaps to healthier democracies. It is still to be seen whether our body politic can move our democracy towards a constitutional system where every citizen has an equal voice, but the policies are in practice around the world. The United States would benefit from borrowing certain policies in place in Germany, France, and Australia to strengthen our electoral system.