

A New Kind of Voter Suppression in Modern Elections

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I. INTRODUCTION

Democracy’s essential feature is the equal participation of all citizens in the electoral process to ensure that elected representatives respond to the will of the people. The Federalist Papers are clear that the Framers intended political power to reside in “the great body of [white male] people,” and not solely in the elites.¹ Even though the Framers’ intent has been an ideal, throughout the history of the United

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1. See, e.g., THE FEDERALIST No. 59 (Alexander Hamilton).

States, it has been less than the reality. Alexis de Tocqueville, who wrote enthusiastically about government policies in America that were unusually responsive to the will of the majority, was aware that women, slaves, and Native Americans could not participate as citizens.²

Much has changed since the 1830s, but voter suppression tactics have been a feature of U.S. elections for decades. When people think of voter suppression, they think of voter identification (“voter ID”) laws, onerous registration requirements, voter roll purges, or historic examples of minority-voter intimidation, for example, poll taxes and unfairly administered literacy requirements.³ The effectiveness of the suppression was due to the electoral authorities’ ability to exercise unrestrained choices about who could and could not vote.⁴ This led to blatant diminution of the vote of mostly African American citizens.⁵

2. See generally 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 394, 526–27 (Eduardo Nolla ed., James T. Schleifer trans. 2010) (1835) (“In the United States, except for slaves, servants, and the poor provided for by the towns, there is no one who is not a voter and who, as such, does not indirectly contribute to the law.”).

3. Andrew Gumbel, *America’s Shameful History of Voter Suppression*, THE GUARDIAN (Sept. 13, 2017, 5:00 AM), <https://www.theguardian.com/us-news/2017/sep/13/america-history-voter-suppression-donald-trump-election-fraud> (documenting historical voter suppression tactics, such as the Jim Crow era, felon disenfranchisement, and voter identification laws).

4. See *id.* (“[E]very jurisdiction was free to play fast and loose with the rules on everything from voter eligibility to whether or not to conduct recounts.”).

5. See Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, THE ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>; John Schwartz, *Judge in Landmark Case Disavows Support for Voter ID*, N.Y. TIMES (Oct. 15, 2013), <https://www.nytimes.com/2013/10/16/us/politics/judge-in-landmark-case-disavows-support-for-voter-id.html> (“Opponents . . . [to voter ID laws] assert that . . . the burdens of the laws are enough to suppress voting, especially among poor and minority Americans.”); see also RICHARD A. POSNER, *REFLECTIONS ON JUDGING* 84–85 (2013) (discussing the majority opinion Judge Posner authored in *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff’d* 553 U.S. 181 (2008), and stating, “I plead guilty to having written the majority opinion . . . [The law in that case is] a type of law now widely regarded as a means of voter suppression rather than of fraud suppression”); *Race and Voting in the Segregated South*, CONST. RTS. FOUND., <http://www.crf-usa.org/bill-of-rights-in-action/bria-12-2-b-race-and-voting-in-the-segregated-south> (discussing the role that segregation had on voting in the South).

Modern-day forms of these direct voter suppression tactics still exist. The Brennan Center for Justice, discussing new voting restrictions in America, describes these suppression activities: “After the 2010 election, state lawmakers nationwide started introducing hundreds of harsh measures making it harder to vote. The new laws range from strict photo ID requirements [which were enabled due to the 2008 Supreme Court ruling in *Crawford v. Marion County*] to early voting cutbacks to registration restrictions.”⁶ It notes that such restrictions are in place in twenty-five states.⁷ The Brennan Center has also reported that last year, thirty-one state legislatures introduced ninety-nine bills designed to diminish voter access.⁸

But it is not these voter suppression laws and tactics alone that prevent people from exercising their right to vote. The United States had one of the lowest turnouts in the 2016 presidential election of developed, democratic countries in the world.⁹ The blame for the lack of participation is often placed on the individual voter, with the claim that people are too lazy to vote, or they don’t take the time to research candidates or inform themselves of the issues because they have no interest in voting. But this suggestion that the individual voter is to blame for failing to vote covers up the real-life issues that have caused people to lose faith in the integrity of the voting process itself, which essentially encourages people to not participate in the electoral process. Placing the blame on the individual may be a strategic decision by those who:

[A]ren’t convinced it’s a problem that the voting population doesn’t resemble the American population. Some groups just aren’t that interested, they say. Trying to coax them to participate—tailoring our laws to the “political couch potatoes,” as Mitch McConnell, the Senate majority leader, once put it—would lead only to bloated

6. *New Voting Restrictions in America*, BRENNAN CTR. FOR JUST., <http://www.brennancenter.org/new-voting-restrictions-america> (last visited Mar. 31, 2019).

7. *Id.*

8. *Voting Laws Roundup 2017*, BRENNAN CTR. FOR JUST. (May 10, 2017), <https://www.brennancenter.org/analysis/voting-laws-roundup-2017>.

9. See Drew DeSilver, *U.S. Trails Most Developed Countries in Voter Turnout*, PEW RES. CTR. (May 21, 2018), <http://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/>.

voter rolls, likelier voter fraud and a more uninformed government, they warn.¹⁰

Such views obfuscate the role that direct and indirect voter suppression plays in people's voting decisions. And blaming the lazy voter makes the effort to equalize voter turnout across populations an unsolvable problem, which diminishes the political will to address it. But the reality is that social science, public polling, and federal court decisions indicate that there are underlying, pernicious factors that suppress people's vote, particularly for the young, minorities, and lower income citizens. These factors should be considered to be "indirect" forms of voter suppression.

This new kind of voter suppression, while not as overt, has the same impact and purpose as historic direct voter suppression methods: to affect the voter's desire and the ability to cast a ballot for the purpose of suppressing participation in the democratic electoral process. Any attempt to suppress a citizen's right to vote—direct or indirect—is inconsistent with the ideals of our country. The one person one vote principle, which refers to the principle that one person's voting power should be roughly equivalent to another person's, is the basis for this belief.¹¹ And the Supreme Court, in *Terry v. Adams*, struck down a primary system that excluded African Americans, criticizing the state's effort to deny citizens "an effective voice in the governmental affairs of their country, state, or community."¹²

Stanford University Political Science Professor Adam Bonica explained why citizen participation is vital: "Equalizing turnout across the population would be the single best thing we could do for our democracy, and probably for our country in the near term."¹³ This Essay evaluates some of the recent efforts to purposely dissuade voters from voting. To remedy the problem, it is necessary to address all forms of voter suppression in the discussion of why people do not vote.

The campaign finance system has engendered a lack of trust in governmental institutions and political campaigns' fairness, resulting

10. Emily Badger, *What If Everyone Voted*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/2018/10/29/upshot/what-if-everyone-voted.html>.

11. See *Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

12. 345 U.S. 461, 466 (1953).

13. See Badger, *supra* note 10 (quoting Adam Bonica, a political scientist at Stanford).

in lower participation in the electoral process. Many people say that campaign finance laws and the campaign finance system have caused them to believe that their representatives are “bought and paid for by the wealthy” long before the elections. They think that special interests have captured the vote, and that “dark money,” non-profit “social welfare” organizations, which don’t disclose their donors, and Super PACs are manipulating the system.

Consequently, constituents have limited interaction with elected officials who prioritize fundraising and pandering to big donors, most of whom are not constituents.¹⁴ This adds to constituents believing that their voices are not being heard as much as those of the donors. Demonstrating constituents’ frustration and anger were federal lawmakers who attempted to eliminate the Affordable Care Act and considered tax code revisions yet were unwilling to engage and discuss with their constituents in Town Hall meetings or other public events.¹⁵

Distrust in the voting process has been exacerbated by local election official’s decisions making it more difficult to vote. Examples include the closing down of early voting locations without informing voters of the change and requiring voters to wait in long lines or travel long distances to get to the polls.¹⁶ Some polling places have been located far from a bus line, making it impossible for low-income voters to get to them.¹⁷ These actions cause distrust in the voting process it-

14. Norah O’Donnell, *Are Members of Congress Becoming Telemarketers?*, CBS NEWS (Apr. 24, 2016), <https://www.cbsnews.com/news/60-minutes-are-members-of-congress-becoming-telemarketers/>; Stacey Selleck, *Congress Spends More Time Dialing for Dollars than on Legislative Work*, U.S. TERM LIMITS (Apr. 26, 2016), <https://www.termlimits.com/congress-fundraising-priority/>.

15. Heather Caygle, *Lawmakers Ditch Town Halls: ‘They Want to Avoid Those Gotcha Moments,’* POLITICO (Aug. 1, 2018, 4:48 PM), <https://www.politico.com/story/2018/08/21/congress-town-halls-gotcha-public-meetings-789430>.

16. See Rebecca Ayala, *Voting Problems 2018*, BRENNAN CTR. FOR JUST. (Nov. 5, 2018), <https://www.brennancenter.org/blog/voting-problems-2018>.

17. See *id.* See generally Zachary Roth & Wendy R. Weiser, *This Is the Worst Voter Suppression We’ve Seen in the Modern Era*, BRENNAN CTR. FOR JUST. (Nov. 2, 2018), <https://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era>; Vanessa Williamson, *Voter Suppression, Not Fraud, Looms Large in U.S. Elections*, BROOKINGS: FIXGOV (Nov. 8, 2018), <https://www.brookings.edu/blog/fixgov/2016/11/08/voter-suppression-in-u-s-elections/>, for a discussion on suppressing minorities at the polls.

self. Additionally, the failure of some state and federal election authorities to disclose hacking incidents¹⁸ or to respond without taking affirmative steps to assure security of the voting machines¹⁹ has led to distrust in the systems themselves.

Recent United States Supreme Court decisions have played a significant role in causing distrust in the voting process.²⁰ And recent cases supporting state election policies that work to the detriment of turnout have led to increased voter suppression in the 2018 election.²¹ Because of these judicial decisions' impact, minority, young, and economically disadvantaged voters recognize that the federal government will offer little protection of their right to vote if they are confronted with direct voter suppression.

Additionally, of consequence to the lack of voter confidence are U.S. Supreme Court decisions striking down campaign finance protections that specifically do not acknowledge, as a constitutional basis of campaign finance contribution limitations, every citizen's right to participate equally in civic life.

The deluge of targeted misinformation and false political propaganda online in the 2016 and 2018 elections, which came from not only foreign but also American sources, affected the way people voted and acted on political and highly charged social issues.²² These online communications were intended to sow dissention and anger, exploit partisan and racial divides among voters, and indirectly and directly work to suppress the vote for political reasons.

18. See, e.g., Michael Riley & Jordan Robertson, *Russian Hacks on U.S. Voting System Wider than Previously Known*, BLOOMBERG (June 13, 2017, 4:00 AM), <https://www.bloomberg.com/news/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections>.

19. See, e.g., Johnny Kauffman, *Georgia Says No Thanks to In-Depth Election Security Help from Feds*, WABE (Feb. 14, 2018), <https://www.wabe.org/georgia-says-no-thanks-election-security-help-feds/>.

20. See *infra* Section III.A.

21. See Danielle Root & Adam Barclay, *Voter Suppression During the 2018 Midterm Elections*, CTR. FOR AM. PROGRESS (Nov. 20, 2018, 9:03 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/>.

22. See Riley & Robertson, *supra* note 18; Katie Rogers & Jonah Engel Bromwich, *The Hoaxes, Fake News and Misinformation We Saw on Election Day*, N.Y. TIMES (Nov. 8, 2016), <https://www.nytimes.com/2016/11/09/us/politics/debunk-fake-news-election-day.html>.

Political gerrymandering is seen as a form of voter manipulation but should also be understood as voter suppression. Voters in gerrymandered districts may be dissuaded from voting as they recognize that they have little to no influence on the election at all because they are of a different party than the majority in the district.²³

These examples of the modern political process have caused voters to lose faith in the fairness and integrity of the electoral process. The United States has one of the lowest voter turnout rates in elections of developed, democratic countries in the world.²⁴ It should be the goal of our government and our elected officials to foster trust, to engage voters, and to increase the equality of the vote.

II. POLITICAL TRUST

Political trust is defined as “trust in government and confidence in political institutions.”²⁵ Democracy requires trust in government, but also “presupposes an active and vigilant citizenry with a healthy skepticism of government and a willingness, should the need arise, to suspend trust and assert control over government—at a minimum by replacing the government of the day.”²⁶

It is widely recognized that political trust is necessary and relevant to a democracy. Trust in government represents how strongly people believe that the government works in their best interest; that they believe political and legal procedures and institutions will treat them fairly and comport with due process; and that they do not fear the actions or the future behavior of the government.

23. Vann R. Newkirk II, *Voter Suppression Is the New Old Normal*, THE ATLANTIC: POL. (Oct. 24, 2018), <https://www.theatlantic.com/politics/archive/2018/10/2018-midterms-and-specter-voter-suppression/573826/> (“Gerrymanders dilute black and Latino votes.”); Tobias Stone, *Five Acts of Voter Suppression that Will Sway the Next Election*, MEDIUM: POL. (July 30, 2018), <https://medium.com/s/story/five-acts-of-voter-suppression-that-will-sway-the-next-election-b6979e9ff94c>.

24. See DeSilver, *supra* note 9.

25. See Russell J. Dalton, *Political Trust in North America*, in HANDBOOK ON POLITICAL TRUST 375, 375 (2017).

26. William Mishler & Richard Rose, *Trust, Distrust and Skepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies*, 59 J. POL. 418, 419 (1997).

The United States has experienced a sharp decline in trust in the federal government since the early 1950s when the American National Election Study asked, “[Do you] trust the government to do what’s right[?]”²⁷ In 1958, 73% of Americans said that they did trust the government to do what’s right.²⁸ Even after Watergate, one of the biggest scandals in that era, 34% of Americans still trusted the government.²⁹ In 2017, the percentage of Americans saying that they trust government to do what’s right hovered around 18%.³⁰

A 2017 Gallup Poll revealed that confidence of Americans in most major institutions is low, but slightly better than previous years, for all institutions except small business and the military.³¹ Of little surprise, much of this increase in confidence appears to be partisan.³² Nonetheless, the report states, despite this increased confidence, Americans are still skeptical of most of the major institutions that make up U.S. society.³³ “Major institutions have an average 35% ‘great deal/quite a lot’ confidence rating overall, and only three institutions garner a confidence rating above 50%.”³⁴ Lack of confidence extends to the United States Supreme Court, the presidency, organized religion,

27. JOSEPH GERSHTENSON & DENNIS L. PLANE, TRUST IN GOVERNMENT: 2006 AMERICAN NATIONAL ELECTION STUDIES PILOT REPORT 1 (Apr. 10, 2007), <https://www.electionstudies.org/wp-content/uploads/2018/04/nes011890.pdf> (“Most measures of trust have been derived . . . from the original battery of five questions included in the National Election Studies (NES) in 1958: trust in the government to do what’s right . . .”).

28. *Public Trust in Government: 1958–2017*, PEW RES. CTR. (Dec. 14, 2017), <http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017>.

29. *Id.* (noting the moving average for public trust in government in March 1976).

30. *Id.* (noting the moving average for public trust in government in December 2017).

31. Frank Newport, *Americans’ Confidence in Institutions Edges Up*, GALLUP (June 26, 2017), <https://news.gallup.com/poll/212840/americans-confidence-institutions-edges.aspx>.

32. *Id.* (“The overall uptick in confidence this year is primarily the result of increased confidence among Republicans, paralleling the increased GOP optimism noted in economic confidence and satisfaction with the way things are going in the nation.”).

33. *Id.*

34. *Id.*

and Congress.³⁵ Pew Research Center concluded, based on this abysmal lack of confidence, that it “speaks to the broader dissatisfaction Americans have with the state of the nation more generally.”³⁶

A recent survey conducted by *The Atlantic* and the Public Religion Research Institute described that “86 percent of [B]lack respondents and 74 percent of Hispanic respondents believe the country is headed in the wrong direction.”³⁷ Another poll, mentioned in the same article, found that African Americans in the United States are facing levels of anxiety and fear that are unprecedented.³⁸

It is often said that the reason for the American people’s dissatisfaction and lack of trust is because people believe that the government is corrupt. The major reason for the lack of trust in government is not corruption, per se, according to Transparency International in its 2013 Global Corruption Barometer, but a problem of access and lack of accountability—the idea that our institutions are no longer beholden to the people but instead are solely responsive to special interest groups who are only looking out for themselves.³⁹ Thus, in the United States today, citizens overwhelmingly believe that our government and institutions are no longer beholden to the people.

An oft-cited reason for the decline in trust and participation in voting is most Americans’ view that the government is run for special

35. See *id.*; *Confidence in Institutions*, GALLUP, <https://news.gallup.com/poll/1597/confidence-institutions.aspx> (last visited Apr. 7, 2019); see also PEW RES. CTR., *THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY* (2018) [hereinafter PEW RES. CTR., *THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY*], <http://www.people-press.org/2018/04/26/the-public-the-political-system-and-american-democracy>.

36. Jeffrey M. Jones, *Confidence in U.S. Institutions Still Below Historical Norms*, GALLUP (June 15, 2015), <https://news.gallup.com/poll/183593/confidence-institutions-below-historical-norms.aspx>; see also Kenneth T. Walsh, *Americans Have Lost Confidence . . . in Everything*, U.S. NEWS (June 17, 2015), <https://www.usnews.com/news/blogs/ken-walshs-washington/2015/06/17/americans-have-lost-confidence-in-everything>.

37. Newkirk, *Voter Suppression Is Warping Democracy*, *supra* note 5.

38. *Id.*

39. See generally TRANSPARENCY INT’L., *GLOBAL CORRUPTION BAROMETER 2013: REPORT* (2013), <https://www.transparency.org/gcb2013/report>.

interests groups.⁴⁰ Only 2 in 10 Americans believe that the government runs for the benefit of all Americans.⁴¹ Trust in the government is “dangerously low,” caused in large part by “the enormous and ever-growing role of money in our political campaigns—with corruption now outpacing even that of the Nixon era.”⁴² An Associated Press and NORC Center for Public Affairs Research poll taken in July 2017 showed that 75% of Americans feel voiceless and powerless in the United States, and agree that they “have too little influence in Washington, rare unanimity across political, economic, racial and geographical lines and including both those who approve and disapprove of President Donald Trump.”⁴³ Eighty-two percent of the respondents said that the “wealthy people” have “too much . . . influence.”⁴⁴

The reason that government favors the wealthy is a consequence of our campaign finance system that enables vast sums of money to be contributed to campaigns by the few, as will be explained in the next part of this Essay.

III. CAMPAIGN FINANCE POLICY CAUSES PEOPLE TO STAY AWAY FROM THE POLLS

Most Americans want reform of the campaign finance system.⁴⁵ Americans support campaign finance reform because of their concerns about money’s influence in politics.⁴⁶ An indication of this concern’s resonance with voters is the degree to which money in politics became

40. PEW RES. CTR., *THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY*, *supra* note 35, at 72 (“A large majority of Americans (76%) say the government is run by a few big interests looking out for themselves . . .”).

41. *Id.*

42. ELIZABETH DREW, *THE CORRUPTION OF AMERICAN POLITICS: WHAT WENT WRONG AND WHY* viii (2000).

43. Laurie Kellman & Emily Swanson, *AP-NORC Poll: Three-quarters in US Say They Lack Influence*, ASSOCIATED PRESS (July 12, 2017) <http://www.ap-norc.org/news-media/Pages/AP-NORC-Poll-Three-quarters-in-US-say-they-lack-influence.aspx>.

44. *Id.*

45. PEW RES. CTR., *THE PUBLIC, THE POLITICAL SYSTEM AND AMERICAN DEMOCRACY*, *supra* note 35, at 73 (“A wide majority of Americans continue to believe that there should be limits on the amount of money political candidates can spend on campaigns . . .”).

46. *See id.*

a major political issue and narrative in the 2016 Presidential campaign.⁴⁷ Every major presidential contender argued in favor of reform. Bernie Sanders and Donald Trump went further in a refrain that animated many voters, emphasizing that the system was “rigged” because money in politics has an outsized influence on public policy.⁴⁸ In a September 2018 poll for NBC News and *The Wall Street Journal*, 77% of registered voters cited “[r]educing the influence of special interests and corruption in Washington” as either the single most or very important “issue facing the country.”⁴⁹ Voters want to change the campaign finance system we have.⁵⁰ A *New York Times* and CBS News poll in 2015 revealed that 85% of respondents, including majorities of Democrats, Republicans, and Independents, want to see our campaign finance system fundamentally changed or completely overhauled.⁵¹ A Pew Research poll from May 2018 found that 77% of Americans favor “limits on the amount of money individuals and [organizations] can spend on campaigns.”⁵² This included 71% of Republicans and Republican-leaning Independents.⁵³

47. See Daniel Hensel, *New Poll Shows Money in Politics Is a Top Voting Concern*, ISSUE ONE (June 29, 2016), <https://www.issueone.org/new-poll-shows-money-in-politics-is-a-top-voting-concern/> (“Americans believe reducing the influence of money in politics is one of the top five most important issues facing the country ahead of the November [2016] elections . . .”).

48. See Ron Fournier, *How Not to Disrupt Politics*, THE ATLANTIC: POL. (Apr. 20, 2016), <https://www.theatlantic.com/politics/archive/2016/04/the-business-of-disrupting-politics/479172/>.

49. Andrew Duehren, *Corruption in Washington Is a Top Concern for Voters, WSJ/NBC News Poll Shows*, WALL ST. J. (Sept. 24, 2018, 1:30 PM) <https://www.wsj.com/livecoverage/campaign-wire-2018-mid-terms/card/1537810213>.

50. See Nicholas Confessore & Megan Thee-Brenan, *Poll Shows Americans Favor an Overhaul of Campaign Financing*, N.Y. TIMES (June 2, 2015) <https://www.nytimes.com/2015/06/03/us/politics/poll-shows-americans-favor-overhaul-of-campaign-financing.html>.

51. See *id.*

52. Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, PEW RES. CTR. (May 8, 2018), <http://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>.

53. *Id.*

Yet younger, less educated voters were skeptical about the practicality of voting as a mechanism to influence government policy. Another survey by Pew, in 2016, determined that “[h]alf of this group thinks that their vote doesn’t really affect how the government runs things.”⁵⁴ In addition, poor Americans are less likely to even register to vote because they mistrust the government.⁵⁵ They believe the government is not concerned with their interests and “[m]ost importantly, they think their vote doesn’t really count.”⁵⁶

The unfortunate reality is that this suspicion is valid. In their book, *Democracy in America*, Professors Benjamin Page and Martin Gilens conclude that since most citizens are ill-informed about detailed political facts, they are vulnerable to false information that distorts voting decisions.⁵⁷ This gives unequal power in politics to the wealthy, corporations, and interest groups that have millions of dollars at stake in policy decisions.⁵⁸ Based on an extensive review of federal laws, regulations, and policies, Page and Gilens determined that business corporations and wealthy individuals affect the making of federal government policy while the average American voter has little or no influence.⁵⁹

Nobel Prize winning economist Joseph Stiglitz reiterates this truth, correlating the influence of money in politics with severe economic inequality. He writes:

Political scientists have documented the ways in which money influences politics in certain political systems,

54. Elisa Shearer & Jeffrey Gottfried, *Half of Those Who Aren't Learning About the Election Feel Their Vote Doesn't Matter*, PEW RES. CTR. (Mar. 4, 2016), <http://www.pewresearch.org/fact-tank/2016/03/04/half-of-those-who-arent-learning-about-the-election-feel-their-vote-doesnt-matter/>.

55. Jana Kasperkevic, *Poor Americans Are Less Likely to Vote and More Likely to Distrust Government, Study Shows*, THE GUARDIAN (Jan. 9, 2015, 8:00 AM), <https://www.theguardian.com/money/us-money-blog/2015/jan/09/poor-americans-are-less-likely-to-vote-and-more-likely-to-distrust-government-study-shows>; see *supra* Part II.

56. Kasperkevic, *supra* note 55.

57. See generally BENJAMIN I. PAGE & MARTIN GILENS, *DEMOCRACY IN AMERICA? WHAT HAS GONE WRONG AND WHAT WE CAN DO ABOUT IT* (2017).

58. See *id.* at 90–149.

59. *Id.* at 63–89.

converting higher economic equality into greater political inequality. Political inequality, in its turn, gives rise to more economic inequality as the rich use their political power to shape the rules of the game in ways that favor them—for instance, by softening antitrust laws and weakening unions. Using mathematical models, economists such as myself have shown that this two-way feedback loop between money and regulations leads to at least two stable points. If an economy starts out with lower inequality, the political system generates rules that sustain it, leading to one equilibrium situation. The American system is the other equilibrium—and will continue to be unless there is a democratic political awakening.

...

There is no magic bullet to remedy a problem as deep-rooted as America's inequality. Its origins are largely political, so it is hard to imagine meaningful change without a concerted effort to take money out of politics—through, for instance, campaign finance reform.⁶⁰

It is widely agreed that higher trust in government is associated with higher voter turnout.⁶¹ Low trust in government is a challenge to the effectiveness of a representative democracy because our democracy assumes that citizens will take an active role in political life. As Justice Brandeis said, “the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.”⁶² Yet the policies and laws of the campaign finance system itself have permitted and even encouraged inequality in our political system and the resulting impact

60. Joseph E. Stiglitz, *The American Economy Is Rigged*, SCI. AM. (Nov. 1, 2018), <https://www.scientificamerican.com/article/the-american-economy-is-rigged/>.

61. See generally Ronald Inglehart, *Trust, Well-Being and Democracy*, in DEMOCRACY AND TRUST 88 (Mark E. Warren ed., 1999).

62. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), *overruled in part by Brandenburg v. Ohio*, 395 U.S. 444 (1969).

on the suppression of the vote. Spencer Overton explains the importance of democratic participation and describes the four primary functions that widespread participation serves:

First, it exposes decision makers to a variety of ideas and viewpoints, which ensure fully informed decisions. Second, it enhances the legitimacy of government decisions, which increases the likelihood that citizens will voluntarily comply with such decisions. Third, widespread participation allows government resources to be redistributed and priorities altered to reflect evolving problems and needs. Fourth, participation furthers the self-fulfillment and self-definition of individual citizens who play a role in shaping the decisions that affect their lives.⁶³

A. Pivotal Supreme Court Decisions

The laws that regulate the financing of political campaigns are intended to minimize the influence of money and to provide full disclosure of contributions and expenditures. The rationale is to promote the consideration of citizens' views in policymaking; provide information to voters about candidates and issues so that they can make informed decisions; and enable the public to root out corruption.⁶⁴ Campaign finance laws, regulations, and the Federal Election Commission ("FEC")—the administrative, regulatory, and enforcement agency—were intended to assure a fair playing field in elections and the integrity of the electoral process.⁶⁵ Yet because of the decision by the United States Supreme Court in *Buckley v. Valeo*, which allowed unlimited amounts of money to be spent through independent expenditures in

63. Spencer Overton, *The Donor Class: Campaign Finance, Democracy, and Participation*, 153 U. PA. L. REV. 73, 101–02 (2004).

64. *See id.* at 81–85.

65. *Mission and History*, FED. ELECTION COMMISSION, <https://www.fec.gov/about/mission-and-history/> (last visited Apr. 7, 2019); *see also* Daniel I. Weiner & Benjamin T. Brickner, *Electoral Integrity in Campaign Finance Law*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 101 (2017) ("Drawing upon existing case law and our broader constitutional tradition, this Article highlights four criteria for judging whether elections have integrity with particular relevance to money in politics: representation, participation, competition, and information.").

election campaigns,⁶⁶ the ability and desire of the very wealthy to contribute large amounts of money in political campaigns increased.

Buckley struck down parts of the Federal Election Campaign Act (as amended in 1974)⁶⁷ that had imposed limits on various kinds of expenditures by or on behalf of candidates for federal office.⁶⁸ *Buckley* was the seminal campaign finance case that set the basic framework for constitutionally permissible regulation of political campaigns in the United States, until today. The Court in *Buckley* incorporated the concept of electoral integrity into its view that “corruption and appearance of corruption” is the rationale for government limitations of campaign finance contributions.⁶⁹ The Court said, regarding the appearance of corruption as a justification for campaign finance laws, that it would cause the public to have more confidence in government, which will have a benefit of increasing voting.⁷⁰ The Court wrote, “[o]f almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.”⁷¹ But devastatingly, the Court held that the Federal Election Campaign Act’s goal of greater and equal participation sought to “restrict[] the voices of people and interest groups who have money to spend” and “mute the voices of affluent persons” and is consequently unconstitutional.⁷² Because the Court saw either equal speech or an even electoral playing field as a basis for campaign fi-

66. *Buckley v. Valeo*, 424 U.S. 1, 143 (1976).

67. In 1971, Congress passed the Federal Election Campaign Act. See FED. ELECTION COMM’N, LEGISLATIVE HISTORY OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, at 56 (1981), https://transition.fec.gov/pdf/legislative_hist/legislative_history_1971.pdf. Then, after the Watergate scandal, Congress amended the Act to place limits on different money in politics: contributions, the amount that can be contributed directly to a candidate or campaign; expenditures, to limit the amounts that can be spent in campaigns. See FED. ELECTION COMM’N, LEGISLATIVE HISTORY OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1974, at 201 (1977), https://transition.fec.gov/pdf/legislative_hist/legislative_history_1974.pdf.

68. FED. ELECTION COMM’N, LEGISLATIVE HISTORY OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1974, *supra* note 67, at 204.

69. *Buckley*, 424 U.S. at 25.

70. *Id.* at 33.

71. *Id.* at 27.

72. *Id.* at 17, 25, 35.

nance laws, it set the stage for unlimited campaign expenditures, enabling the wealthy to have greater freedom of “speech” and an unprecedented ability to influence public debate.

The Supreme Court’s decision in *Citizens United v. Federal Election Commission* expanded the *Buckley* decision to find, despite the lack of any evidence provided to the Court to support the conclusion, that corporate and union independent expenditures could not be the cause of corruption.⁷³ The *Buckley* Court concluded that any restriction on such expenditures was unconstitutional.⁷⁴ In the absence of evidence, the Court determined that independent expenditures of money in political campaigns could not, by their very nature, corrupt.⁷⁵ The rationale for this was that since campaign contributions would not be given directly to the candidate, but instead would be expended by an independent committee without coordinating with the candidate, the political expenditures could not corrupt the candidate.⁷⁶

Immediately after the *Citizens United* decision, in March 2010, the U.S. Court of Appeals for the D.C. Circuit decided *SpeechNOW.org v. Federal Election Commission*.⁷⁷ The court struck down the federal contribution limits to “independent expenditure groups,” finding that the Supreme Court’s analysis in *Citizens United* required it to “conclude that the government has no anti-corruption interest in limiting contributions to an independent expenditure group.”⁷⁸ This opened the avenue for individuals, corporations, and unions to give unlimited amounts of money to independent expenditure only committees, which are today commonly known as Super PACs. Super PACs account for more expenditures in campaigns than those spent by the individual candidates.⁷⁹

73. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 372 (2010).

74. *Buckley*, 424 U.S. at 51.

75. *Id.* at 46–47.

76. *Id.* at 47.

77. *SpeechNow.org v. Fed. Election Comm’n*, 599 F.3d 686 (D.C. Cir. 2010).

78. *Id.* at 695.

79. See Matea Gold, *It’s Bold, but Legal: How Campaigns and Their Super PAC Backers Work Together*, WASH. POST (July 6, 2015), <https://www.washingtonpost.com/politics/here-are-the-secret-ways-super-pacs-and-campaigns-can-work-together/2015/07/06/bda78210-1539-11e5-89f3->

The Court's view of corruption as a basis for campaign finance limits, though, did not extend to the case of *American Tradition Partnership, Inc. v. Bullock*, which summarily reversed without oral argument a Montana Supreme Court decision that had upheld a state campaign finance law relating to corporate contributions.⁸⁰ Even though Montana provided extensive evidence of historical corruption in the state due to corporate control of politics and argued that Montana's campaign finance law was enacted in the early 1900s to combat this corruption, the Supreme Court nevertheless reversed the Montana court.⁸¹ If the Court had considered *American Tradition Partnership*, it would have needed to revisit the *Citizens United* decision, because Montana prohibited corporate contributions and expenditures.⁸² The Court affirmed that *Citizens United* was applicable to states and local governments.⁸³ Though *Citizens United* was based on the premise that such expenditures could not be corrupting, the historical experience in Montana gave reason to doubt that conclusion. Justices Ginsburg and Breyer released a statement urging the Court to reconsider the decision, and “to consider whether, in light of the huge sums currently deployed to buy a candidate's allegiance, *Citizens United* should continue to hold sway.”⁸⁴ The Justices asked the Court to pay attention to the empirical evidence of corruption caused by the new, unlimited spending, an issue

61410da94eb1_story.html?utm_term=.11edc6ec1571 (“[N]early every top presidential hopeful has a personalized super PAC that can raise unlimited sums and is run by close associates or former aides.”).

80. *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516, 516–17 (2012).

81. *Id.* at 516–17; see *W. Tradition P'ship, Inc. v. Att'y Gen. of Mont.*, 271 P.3d 1, 8–11 (Mont. 2011).

82. *W. Tradition P'ship, Inc.*, 271 P.3d at 3 (discussing the Montana law that prohibited corporate contributions).

83. *Am. Tradition P'ship, Inc.*, 567 U.S. at 516.

84. Robert Barnes, *Two Justices Suggest Citizens United Ruling Should Be Reconsidered in Montana Case*, WASH. POST (Feb. 17, 2012), https://www.washingtonpost.com/politics/two-justices-suggest-citizens-united-ruling-should-be-reconsidered-in-montana-case/2012/02/17/gIQAJ07kKR_story.html?noredirect=on&utm_term=.baf22e138ad.

that was never considered, but downplayed, by the Justices in *Citizens United*.⁸⁵ But none of this was sufficient to sway the Court's decision.

These cases were followed a few years later by another Supreme Court decision in *McCutcheon v. Federal Election Commission*, which further expanded the ability of the very wealthy to have influence in elections.⁸⁶ Shaun McCutcheon, a businessman from Alabama, wanted to give unlimited amounts of money to candidates, but the law required that individuals could only donate a certain total amount in a certain period of time (in 2013–14 that total was \$123,200 to candidates, national party committees, and some other political committees).⁸⁷ The rationale for the law was that not having such aggregate limits would increase the size of joint fundraising committees,⁸⁸ which bring various political committees together to support a candidate.⁸⁹ The Supreme Court ruled in favor of McCutcheon, saying that there was no evidence to support the fear that such joint fundraising committees would be corrupting.⁹⁰ The plurality dismissed the District Court's hypothetical about a donor giving a big check to a fundraising committee whose members could then transfer their legally limited contributions to the same individual candidate.⁹¹ The plurality believed that this would not only be illegal but unlikely to occur.⁹² A wealthy donor may now contribute an unlimited amount to PACs, candidates, and party committees combined.⁹³ In recent elections, the proliferation of the use of joint

85. See Tom Goldstein, *The Supreme Court, Citizens United II, and the November Election*, SCOTUSBLOG (Feb. 18, 2012, 8:49 PM), <https://www.scotusblog.com/2012/02/the-supreme-court-citizens-united-ii-and-the-november-election/>.

86. *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185 (2014).

87. *Id.* at 194–95.

88. *See id.* at 214–15.

89. See generally *Joint Fundraising Committees*, OPENSECRETS.ORG, <https://www.opensecrets.org/jfc/> (last visited Apr. 7, 2019), for information about joint fundraising committees.

90. *McCutcheon*, 572 U.S. at 218.

91. *Id.* at 214–17.

92. *Id.* at 215–16.

93. *2020 Campaign Contribution Limits*, OPENSECRETS.ORG, <https://www.opensecrets.org/overview/limits.php?cycle=2020> (last visited Apr. 10, 2019).

fundraising committees has permitted a great deal of money to be spent by a few individuals on behalf of candidates.⁹⁴

Since *Buckley v. Valeo*, the Supreme Court, when evaluating limits on money in politics, has indicated that the only justification for such campaign finance contribution limitation laws, not including disclosure, is whether the regulation is necessary to combat corruption or the appearance of corruption.⁹⁵ The Court in *Buckley* specifically referred to confidence in government and the impact of unlimited contributions on representative government: “Congress could legitimately conclude that the avoidance of the appearance of improper influence ‘is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.’”⁹⁶ So, the appearance of corruption as a basis for limitations of contributions to candidates and others was clearly the law until it was narrowed in *Citizens United*.

In *McCutcheon*, Chief Justice Roberts defined corruption to only mean “quid pro quo” exchanges of money for official action.⁹⁷ The appearance of corruption was eliminated as a basis for campaign finance limitation, with Chief Justice Roberts writing that other government interests are not legitimate reasons for limiting the use of contributions of large sums of money.⁹⁸ In response, Justice Breyer wrote in dissent that “[t]aken together with *Citizens United* . . . today’s decision eviscerates our Nation’s campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve.”⁹⁹ The one person, one vote cases in the 1960s understood and affirmed the concept that political equality is a fundamental right.¹⁰⁰ The Supreme Court has ushered in

94. *See id.*

95. *See McCutcheon*, 572 U.S. 185; *Am. Tradition P’ship, Inc. v. Bullock*, 567 U.S. 516 (2012); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010); *Buckley v. Valeo*, 424 U.S. 1 (1976).

96. *Buckley*, 424 U.S. at 27 (citation omitted).

97. *McCutcheon*, 572 U.S. at 192.

98. *See id.* at 206–07.

99. *Id.* at 233 (Breyer, J., dissenting).

100. *See Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966) (discussing poll taxes and making clear that equality is an important constitutional value which could not be contingent on financial resources); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962); *see also Adam Lioz, Breaking the Vicious Cycle:*

the rise of inequality in our electoral process through the campaign finance system.

Thus, the Supreme Court only recognizes the governmental interest in combating quid pro quo corruption as the justification to place limitations on the freedom of “speech” right to give money to campaigns.¹⁰¹ *Buckley* had previously rejected a compelling interest in promoting political equality by attempting to level the playing field in campaigns between wealthy donors and regular Americans.¹⁰² The *Buckley* Court’s view that “the concept that government may restrict the speech of some . . . to enhance the relative voice of others is wholly foreign to the First Amendment,” is the view of the Court to this day.¹⁰³ This concept has been carried to great lengths, best exemplified by the case of *Arizona Free Enterprise Club’s Freedom Club v. Bennett*.¹⁰⁴ The Supreme Court decided that there was no compelling interest to justify the process in the public campaign finance matching program in Arizona.¹⁰⁵ The matching program provided additional funds to publicly funded candidates when the opposing candidate’s campaign money, which was funded by private contributions or independent expenditures, exceeded the money that was allocated to the publicly funded candidate.¹⁰⁶ The holding was that wealthy candidates’ free speech right to raise more money is constitutionally protected, while the publicly funded candidate’s interest in a fair playing field is not.¹⁰⁷

These cases taken together have had an immense impact on the amount and means of spending money in political campaigns. In the 2018 midterm elections, over \$5 billion was spent in the campaigns for Congress.¹⁰⁸ Much of the money that is spent is by supposedly inde-

How the Supreme Court Helped Create the Inequality Era and Why a New Jurisprudence Must Lead Us Out, 43 SETON HALL L. REV. 1227 (2013).

101. *McCutcheon*, 572 U.S. at 192.

102. *Buckley v. Valeo*, 424 U.S. 1, 59 (1976).

103. *Id.* at 48–49.

104. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011).

105. *Id.* at 753.

106. *Id.* at 727–28.

107. *Id.* at 753.

108. See Christine Mai-Duc & Jazmine Ulloa, *Election Spending Has Surpassed \$5.2 Billion, Making It the Most Expensive Midterm in U.S. History*, L.A. TIMES (Nov.

pendent 501(c)(4) social welfare organizations, (c)(6) business organizations, or even limited liability companies and Super PACs that are actually closely aligned with the candidates.¹⁰⁹ So the Court's premise for the "independence" and "impossibility of corruption" of such arrangements is at the very least questionable.¹¹⁰ This apparent stretching of campaign finance laws' purposes has created much concern in the public about the fairness of the process.

What has become the norm in elections is that only a small percentage of the voting population actually contributes to the candidates, which has had an impact on the willingness of the public to vote. "More than three-fourths of the \$1 billion raised from high-dollar donors in [the 2016] election [came] from very wealthy individuals."¹¹¹ This includes 90 billionaires with Super PAC contributions totaling \$562 million.¹¹²

Robert E. Mutch, a campaign finance historian, responding to the fact that candidates and parties are now dependent on billionaires to support their efforts, said, "[t]he big donor is not just a donor who gives to politicians and parties. The big donor has become a political actor in his own right."¹¹³ The problem, though, is not the amount of

6, 2018, 8:01 AM), <https://www.latimes.com/politics/la-na-pol-midterm-election-day-updates-election-spending-has-surpassed-5-2-1541519946-htmstory.html>.

109. See Paul Blumenthal, *Super PAC Mega-Donors Expand Election Influence with Record \$1 Billion in Contributions*, HUFFINGTON POST (Nov. 1, 2016), https://www.huffingtonpost.com/entry/super-pac-donors_us_5817b30be4b0390e69d21648.

110. See Paul Blumenthal, *How Super PACs and Campaigns Are Coordinating in 2016*, HUFFINGTON POST (Nov. 14, 2015, 9:01 AM), https://www.huffingtonpost.com/entry/super-pac-coordination_us_56463f85e4b045bf3def0273; Andrew Gripp, *How Super PACs and Candidates Legally (and Illegally) Coordinate Their Efforts*, INDEPENDENT VOTER NETWORK (Oct. 26, 2016), <https://ivn.us/2016/10/26/super-pacs-evaded-rules-coordinating-campaigns/>.

111. Blumenthal, *Super PAC Mega-Donors Expand Election Influence with Record \$1 Billion in Contributions*, *supra* note 109; see also *Donor Demographics*, OPENSECRETS.ORG, <https://www.opensecrets.org/overview/donor-demographics.php?cycle=2016&filter=A> (last visited Apr. 7, 2019).

112. Blumenthal, *Super PAC Mega-Donors Expand Election Influence with Record \$1 Billion in Contributions*, *supra* note 109.

113. Michelle Ye Hee Lee, *Eleven Donors Have Plowed \$1 Billion Into Super PACs Since They Were Created*, WASH. POST (Oct. 26, 2018), <https://www.washingtonpost.com/politics/eleven-donors-plowed-1-billion-into-super-pacs-since->

money spent in campaigns, but instead the fact that only a few individuals have economic power in an election. This impacts the less wealthy's desire to vote or to participate in political activity at all.¹¹⁴

B. Dark Money

Aside from depressing the vote due to the copious amounts of money spent or contributed to organizations, which comes from only a small slice of the American public, the lack of transparency of the contributions' amounts or source also impacts the desire of people to vote. Wealthy donors pay for political communications. Many want to be influential political actors, but do not want to be identified. They know that if they contribute to certain types of organizations or committees that don't disclose their donors, they can hide their identities from the public. This money is called "Dark Money."¹¹⁵ It has been said that the only ones in the dark are the American public, that the candidates all know who is providing the large campaign contributions to the committees.¹¹⁶ Or in the latest gambit to avoid disclosing a donor's identity, the contributors promise the money, but Super PACs don't accept it until late in the campaign.¹¹⁷ Due to FEC reporting requirements, they then do not have to file their disclosures prior to the election. This end run on the disclosure laws is another loophole that allows dark money donors to deprive the public of information about who is trying to influence the vote. When donors are anonymous, there is no one accountable for spreading deliberately false and inflammatory assertions. The tenor and falsity of such campaign advertisements disgusts

2010/2018/10/26/31a07510-d70a-11e8-aeb7-ddcad4a0a54e_story.html?utm_term=.5aafc62a20ce.

114. See BRENNAN CTR. FOR JUSTICE, NATIONAL SURVEY: SUPER PACS, CORRUPTION, AND DEMOCRACY 1, 3 (2012), https://www.brennancenter.org/sites/default/files/legacy/Democracy/CFR/SuperPACs_Corruption_Democracy.pdf.

115. See Will Kenton, *Dark Money*, INVESTOPEDIA (Aug. 19, 2016), <https://www.investopedia.com/terms/d/dark-money.asp>.

116. See Emily Stewart, *The Government Is Making it Easier for "Dark Money" Donors to Go Unnamed*, VOX (July 17, 2018, 1:00 PM), <https://www.vox.com/policy-and-politics/2018/7/17/17581384/irs-dark-money-nra-maria-butina-donors>.

117. See Maggie Severns, *'Oh, That's Cool – Do That!': Super PACs Use New Tricks to Hide Donors*, POLITICO (Aug. 17, 2018, 5:06 AM), <https://www.politico.com/story/2018/08/17/super-pacs-hidden-donors-disclosures-741795>.

many people.¹¹⁸ Their anger at the plethora of such advertisements that contain no information about who actually paid for the advertisements impacts the decision of many to vote.¹¹⁹

Another ramification of “Dark Money” was that foreign donors to political ads in the 2016 and the 2018 elections illegally made campaign contributions, attempting to influence the election; yet because of the lack of disclosure, it was impossible for the public to be informed of those sources.¹²⁰ Clearly illegal contributions influencing the election leads to further distrust in the process. Disclosure in campaign finance law is inextricably related to civic engagement and voting. In *Buckley*, the Court said that “the ability of the citizenry to make informed choices among candidates for office is essential,” because “the identities of those who are elected will inevitably shape the course we follow as a nation.”¹²¹ Even in *Citizens United*, the majority upheld disclosure as it enables the public “to make informed decisions and give proper weight to different speakers and messages.”¹²² However, when dark money is funneled through groups who do not have to disclose their donors, or when the public understands that big donors are using loopholes to deprive them of their right to know, it is inevitable that many people will feel that their voices are crowded out, resulting in lower voter turnout.

118. See, e.g., Andy Reid, *Don't Surrender Your Vote to Negative Campaign Ads*, S. FLA. SUN SENTINEL (Aug. 24, 2018, 1:10 PM), <https://www.sun-sentinel.com/opinion/todays-buzz/fl-op-buzz-negative-campaigning-20180824-story.html>.

119. See, e.g., Jim Debrosse, *Civics Essential: How Dark Money, Negative Ads & Campaign Finance Impact Ohioans at the Ballot Box*, SOAPBOX CINCINNATI (Oct. 16, 2018), <http://www.soapboxmedia.com/features/ohio-civics-essential-campaign-finance.aspx>.

120. See Joseph Biden & Michael Carpenter, *Foreign Dark Money Is Threatening American Democracy*, POLITICO MAG. (Nov. 27, 2018), <https://www.politico.com/magazine/story/2018/11/27/foreign-dark-money-joe-biden-222690>.

121. *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976).

122. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 371 (2010).

C. FEC Deadlock

Adding to the distrust that citizens have in the integrity of the electoral process, the FEC fails to perform its mission of providing disclosure in campaigns and penalizing major violations of the law.¹²³ Enacted by Congress after the Watergate scandal, with the significant role of enforcing campaign finance law and promulgating regulations to assure those laws are followed, the FEC is notoriously deadlocked.¹²⁴ Due to overt partisanship, the FEC has failed in the last five years to investigate significant complaints, many of which involve requiring disclosure in campaigns.¹²⁵ Because the major campaigns and political actors know that the FEC will not enforce the law, there is a resulting willingness to blatantly flout the law or stretch the law to keep the donors secret. The political committees understand that any violation will at most result in a minor administrative fine, which is acceptable as the cost of doing business.¹²⁶ Because the law is more often enforced for routine reporting violations against small, local committees participating in federal elections, the major violations, such as not disclosing contributions' sources, not disclosing expenditures by groups expending large amounts of money in campaigns, or purposefully setting up LLCs to hide campaign contributions, are not penalized. Naturally, this results in a lack of trust in the process and fairness of the government agency charged with enforcement.

In February 2017, prior to my departure from the FEC, my office produced a report entitled *Dysfunction and Deadlock: The Enforcement Crisis at the Federal Election Commission Reveals the Unlikelihood of Draining the Swamp*.¹²⁷ Analyzing all the enforcement

123. *Mission and History*, FED. ELECTION COMMISSION, *supra* note 65.

124. *See* Craig Holman, *Roiled in Partisan Deadlock, FEC Is Failing*, HUFFINGTON POST (May 20, 2016), https://www.huffingtonpost.com/craig-holman/roiled-in-partisan-deadlo_b_7334888.html.

125. *See generally* OFFICE OF COMM'R ANN M. RAVEL, FED. ELECTION COMMISSION, *DYSFUNCTION AND DEADLOCK: THE ENFORCEMENT CRISIS AT THE FEDERAL ELECTION COMMISSION REVEALS THE UNLIKELIHOOD OF DRAINING THE SWAMP* (2017), https://classic.fec.gov/members/ravel/ravelreport_feb2017.pdf [hereinafter *DYSFUNCTION AND DEADLOCK*] (discussing the deteriorated effectiveness of the FEC).

126. *See* Eric Lichtblau, *F.E.C. Can't Curb 2016 Election Abuse, Commission Chief Says*, N.Y. TIMES (May 2, 2015), <https://www.nytimes.com/2015/05/03/us/politics/fec-cant-curb-2016-election-abuse-commission-chief-says.html>.

127. *DYSFUNCTION AND DEADLOCK*, *supra* note 125.

actions from 2006 through 2016, the report determined that in that time period there was a dramatic increase in dismissals of flagrant violations, significantly lower penalties were imposed, and major cases languished for many years without any resolution.¹²⁸ Because the FEC has six Commissioners, no more than three of any political party, and four votes are required to take most actions,¹²⁹ if all three Commissioners of one party always vote as a bloc, they can ensure that nothing can be done.¹³⁰ Cases that deadlock 3-3 are dismissed and no action will be taken.¹³¹

This investigation found that in 2006, the Commission deadlocked in 2.9% of substantive votes.¹³² Examples of substantive votes would be a decision to find a “Reason to Believe” (also known as RTB) that a complaint states a basis for a violation of the law; or to authorize an investigation, accept a settlement agreement negotiated by the Office of General Counsel (“conciliation agreement”); or to take no further action, and dismiss a case.¹³³ Non-substantive votes would be to close the file, send letters to the parties regarding the file closing, and voting to approve the minutes.¹³⁴ In contrast to 2006, in 2016, the Commission deadlocked in 30% of the substantive votes.¹³⁵ Additionally, fines imposed fell dramatically from 2006 until 2016.¹³⁶ In 2006, \$5.5 million was imposed in fines, while in 2016, only \$595,425 was imposed.¹³⁷ This is despite the fact that campaigns and outside groups

128. *Id.* at 1–2.

129. *Leadership and Structure*, FED. ELECTION COMMISSION, <https://www.fec.gov/about/leadership-and-structure/> (last visited Apr. 7, 2019).

130. DYSFUNCTION AND DEADLOCK, *supra* note 125, at 1.

131. *See* Statement of Vice Chair Ann M. Ravel and Commissioner Ellen L. Weintraub on Judicial Review of Deadlocked Commission Votes, Fed. Election Comm’n (June 17, 2014), <https://eqs.fec.gov/eqsdocsMUR/14044354045.pdf>.

132. DYSFUNCTION AND DEADLOCK, *supra* note 125, at 1.

133. *Id.* at 6.

134. *See id.* at 8–9.

135. *Id.* at 1, 8.

136. *Id.* at 2.

137. *Id.*

were spending increasingly large sums of money and receiving significantly greater contributions.¹³⁸ From 2010 until 2017, over \$800 million in federal campaign spending came from undisclosed sources.¹³⁹

The FEC was so deadlocked that there was, and continues to be, an inability to enact regulations that reflect the current state of the law and would address serious issues affecting our democracy. Despite *Citizens United* and its strong upholding of disclosure requirements, the bloc has failed to even write any regulations that require and enforce such disclosures. There have also been no regulations written to address the statutorily illegal use of foreign money in campaigns, even though my former colleague, Ellen Weintraub, has consistently introduced potential regulations to address the issue.¹⁴⁰ And the FEC's inability to even agree on regulations requiring disclaimers on social media political advertisements has enabled interested parties, like Russia, to purchase such advertisements on various internet platforms, seriously undermining the 2016 and 2018 elections.¹⁴¹ Such regulations would be consistent with existing campaign finance laws and regulations and would clarify their applicability. Even that basic role of the FEC as a regulatory agency has not been fulfilled.

Consequently, voters overwhelmingly fear that there is corruption in our government. In a poll and report conducted by the Center for American Progress, 61% of voters believe that increased transpar-

138. See Lichtblau, *supra* note 126.

139. DYSFUNCTION AND DEADLOCK, *supra* note 125, at 2.

140. See Statement of Vice Chair Ellen L. Weintraub on the Latest Failure of the Federal Election Commission to Protect American Elections from Foreign Interference, Fed. Election Comm'n (May 24, 2018), https://www.fec.gov/resources/cms-content/documents/ELW_Statement_on_FEC_Failure_to_Protect_American_Elections_from_Foreign_Influence.pdf; see also Jordan Muller, *FEC Rejects Proposal to Consider New Rules on Foreign Spending in US Elections*, OPENSECRETS.ORG (May 25, 2018), <https://www.opensecrets.org/news/2018/05/fec-rejects-proposal-to-consider-new-rules-on-foreign-spending-in-us-elections/>.

141. See John Halpin et al., *Trust in Government in the Trump Era*, CTR. FOR AM. PROGRESS (May 24, 2018, 12:01 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/05/24/451262/trust-government-trump-era/>; see also Natasha Korecki, *Poll: Corruption Message Gaining Traction Against GOP*, POLITICO (July 18, 2018, 12:39 PM), <https://www.politico.com/story/2018/07/17/corruption-republicans-democrats-poll-728977>.

ency and campaign finance reforms would reduce corruption and improve government.¹⁴² Because of a lack of transparency and the concern that corruption is now prevalent in this country, the impact of the government agency not enforcing the laws designed to protect the public's confidence in the electoral process contributes to this lack of trust. This is particularly so because the agency's purpose is to protect the integrity of elections by ensuring disclosure so that corruption can be detected. The American Progress report concluded that a concrete step such as increasing transparency was high on the list as being extremely effective in reforming campaign finance laws and encouraging greater trust.¹⁴³

IV. ELECTED OFFICIAL VOTER ENGAGEMENT

Many citizens and members of Congress complain that the need to constantly fundraise from a small group of wealthy Americans necessarily leaves out the concerns of most people. Former New York Congressman Steve Israel said that one of the reasons he left his seat was because “fundraising is just a relentless regimen,” and that “many people in his district do not feel that government is working for them.”¹⁴⁴ He added that there is a need to “reform campaign finance that in so many respects . . . stacks the deck against those everyday Americans.”¹⁴⁵ When the donors you are talking to and dependent on are interested in issues regarding the financial markets, while the constituents are concerned about health care or just getting by, it is more difficult to appreciate the constituents' concerns because you have little contact with them.

There are other reasons, other than the constant pressure to fundraise, for elected representatives' failure to consider the interests of

142. Halpin et al., *supra* note 141. This poll also states that “[f]ifty-nine percent of voters are concerned a great deal that ‘there is too much corruption and [that] many politicians are corrupt.’” *Id.*

143. *See id.*

144. *See* Peter Sullivan, *Rep. Israel: I'm Leaving Congress Because of Fundraising*, THE HILL (Jan. 17, 2016, 6:00 AM), <https://thehill.com/blogs/blog-briefing-room/news/266177-rep-israel-fundraising-is-why-im-leaving-congress>.

145. *Id.*; *see also* Steve Israel, *Steve Israel: Confessions of a Congressman*, N.Y. TIMES (Jan. 8, 2016), <https://www.nytimes.com/2016/01/09/opinion/steve-israel-confessions-of-a-congressman.html>.

everyday Americans. Time pressures and a simple lack of interest exacerbate a lack of contact with people in the district, particularly when elected officials refuse to have town hall meetings with constituents.¹⁴⁶ The failure of certain members of Congress to hold town hall meetings left many constituents frustrated that they could not discuss important legislation facing Congress with their representatives.

And the trend in campaigns has been, for some time, to micro target voters into segments so that the campaign will only make contact with; send campaign materials to; or aim cable television ads at likely voters or those who have contributed to a candidate's campaign.¹⁴⁷ Micro targeting was famously used in the Obama campaign in 2012 and enabled the campaign to fundraise successfully, from large and small donors.¹⁴⁸ Micro targeting segments the voting population into groups based on past voting behavior gleaned from the voting rolls, past contributions, other demographic information, and data obtained from companies that keep track of purchasing and other consumer behavior.¹⁴⁹ This segmenting of voters in campaigns leaves out a large swath of the population who never receive political communications at all—primarily lower income people or minorities.¹⁵⁰ Because these groups have lower voting rates, the campaigns do not wish to expend the money to convince them to vote, and as a result, they are kept out of the political conversation.

Of course, parties don't have an incentive to turn out all voters. Instead, for economic and strategic reasons, they focus on reliable votes. While micro targeting may be a pragmatic use of the campaign

146. See Zach Wamp, *Being in Congress Is Still All About Fundraising, and Voters Are Tired of It*, WASH. EXAMINER (March 14, 2017, 7:00 PM), <https://www.washingtonexaminer.com/being-in-congress-is-still-all-about-fundraising-and-voters-are-tired-of-it>.

147. See Gregg R. Murray & Anthony Scime, *Micro-Targeting and Electorate Segmentation: Data Mining the American National Election Study*, 9 J. POL. MARKETING 143, 144 (2010).

148. Bruce Bimber, *Digital Media in the Obama Campaigns of 2008 and 2012: Adaptation to the Personalized Political Communication Environment*, 11 J. INFO. TECH. & POL. 130, 134–35 (2014).

149. Murray & Scime, *supra* note 147.

150. See generally Simon Jackman & Bradley Spahn, *Politically Invisible in America* (June 28, 2018) (working paper), <http://stanford.edu/~bspahn/politically-invisible-america.pdf> (discussing the “politically invisible” in America or those “that are unreachable using these voter and marketing lists”).

treasury, it is essentially undemocratic, undermining the public interest and is a form of voter suppression.

Political campaigns are supposed to be an opportunity for people to debate, learn, and consider the candidates' various positions. As Justice Breyer has said, electors are meant to hear various opinions and proposed policies to make informed decisions while voting.¹⁵¹ The purpose of the First Amendment is to promote political engagement and to assure the right to receive many ideas so that voters can engage in democratic deliberation.¹⁵² The early Republican conception of political participation included deliberative dialogue and debate and was not limited to the act of voting.¹⁵³ If only select people are receiving information about political issues, the "marketplace of ideas" is not a reality.

Many scholars have discussed the importance of participatory democracy. The constitutional value of all citizens being able to hear and participate in the political debate has been clearly enunciated.¹⁵⁴ The lack of information provided equally to all people is exacerbated by the lack of debate forums in most states and localities, including in

151. Stephen Breyer, *Our Democratic Constitution*, 77 N.Y.U. L. Rev. 245, 253 (2002).

152. *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 238–39 (2014) (Breyer, J., dissenting).

153. Cass R. Sunstein, *Interest Groups in American Public Law*, 38 STAN. L. REV. 29, 31 (1985).

154. See, e.g., David Cole, *First Amendment Antitrust: The End of Laissez-Faire in Campaign Finance*, 9 YALE L. & POL'Y REV. 236, 243 (1991) ("[T]he First Amendment creates a kind of equal protection guarantee for speakers and ideas."). See generally JOHN STUART MILL, *ON LIBERTY* (1859) (arguing that public discourse is vital for the search for public truth).

large cities and states.¹⁵⁵ California, for example, does not have a formal gubernatorial debate that is televised.¹⁵⁶ This is especially concerning because California has the world's fifth largest economy.¹⁵⁷ Many state-level issues are of enormous economic and political importance to the country as well as the state. The decimation of local newspapers also makes it difficult to provide information to all the voters in a community.¹⁵⁸ As a result, many people receive virtually no information about candidates or their views and are eliminated from discussions about political issues. This outcome is not the "fault" of individuals; rather, campaigns should be engaging the public to be part of the political community. When campaigns write off large groups of people, it only increases the likelihood that those people will be disassociated from the community.

When people do not think that they are important enough to even receive information about the campaigns, they will be less inclined to vote.¹⁵⁹ Black Americans turned out to vote in lower numbers in the 2016 election than in 2012: about 765,000 Black voters stayed home.¹⁶⁰ All combined, 42% of Black, Hispanic, and Asian voters did not vote in the election.¹⁶¹ Younger voter turnout increased for some

155. See, e.g., Bill Whalen, *Goodbye, Columbus? No. But Goodbye to California Debates*, HOOVER INST. (Oct. 11, 2018), <https://www.hoover.org/research/goodbye-columbus-no-goodbye-california-debates> (discussing the lack of debates in California).

156. *Id.*

157. Jonathan J. Cooper, *California Now World's 5th Largest Economy, Surpassing UK*, USA TODAY (May 5, 2018, 11:05 AM), <https://www.usatoday.com/story/news/nation-now/2018/05/05/california-now-worlds-5th-largest-economy-beating-out-uk/583508002/>.

158. See Seth Masket, *The Decline of Local News Is Bad for Democracy*, PAC. STANDARD (Apr. 2, 2018), <https://psmag.com/news/the-decline-of-local-news-is-bad-for-democracy>.

159. See, e.g., Shearer & Gottfried, *supra* note 54 (highlighting the correlation between non-voters and people who do not learn about the election).

160. Jens Manuel Krogstad & Mark Hugo Lopez, *Black Voter Turnout Fell in 2016, Even as a Record Number of Americans Cast Ballots*, PEW RES. CTR. (May 12, 2017), <http://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/>.

161. See Harry Enten, *Registered Voters Who Stayed Home Probably Cost Clinton the Election*, FIVETHIRTYEIGHT (Jan. 5, 2017, 6:30 AM), <https://fivethirtyeight.com/features/registered-voters-who-stayed-home-probably-cost-clinton-the-election/>.

minority voters but decreased for Black Millennials, while “the voter turnout rate among older generations was flat.”¹⁶² While this Essay will later discuss other methods of voter suppression, micro targeting worsens the lack of interest of many Americans in voting. Therefore, elected officials must bear some of the responsibility for low voter turnout.

V. SOCIAL MEDIA AND ITS ROLE IN VOTER SUPPRESSION

The disinformation, sometimes inappropriately referred to as “fake news,” that spread virally on the Internet during the 2016 election cycle was actually paid political propaganda.¹⁶³ These political advertisements and electioneering communications were made viral by bots and humans who spread them in the guise of grassroots press or social and political groups.¹⁶⁴ Much of this propaganda came from Russia, but there were other homegrown and foreign sources as well.¹⁶⁵

The advertisements originating from Russian government agencies were intended to influence the election either by supporting Trump, maligning Clinton, or by suppressing the vote.¹⁶⁶ The suppression efforts, directly or indirectly, attempted to convince various groups, such as Black voters and Bernie Sanders supporters, even after Sanders endorsed Clinton, to not vote at all or to vote for a different candidate.¹⁶⁷

162. Krogstad & Lopez, *supra* note 160.

163. See Craig Timberg, *Russian Propaganda Effort Helped Spread ‘Fake News’ During Election, Experts Say*, WASH. POST (Nov. 24, 2016), https://www.washingtonpost.com/business/economy/russian-propaganda-effort-helped-spread-fake-news-during-election-experts-say/2016/11/24/793903b6-8a40-4ca9-b712-716af66098fe_story.html?noredirect=on&utm_term=.9e38c6129e0c.

164. See Brendan Nyhan and Yusaku Horiuchi, *Homegrown ‘Fake News’ Is a Bigger Problem than Russian Propaganda. Here’s a Way to Make Falsehoods More Costly for Politicians.*, WASH. POST (Oct. 23, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/10/23/homegrown-fake-news-is-a-bigger-problem-than-russian-propaganda-heres-a-way-to-make-falsehoods-more-costly-for-politicians/?utm_term=.d82b6ecee7b7.

165. See *id.*

166. See Jane Mayer, *How Russia Helped Swing the Election for Trump*, NEW YORKER (Sept. 24, 2018), <https://www.newyorker.com/magazine/2018/10/01/how-russia-helped-to-swing-the-election-for-trump>.

167. See *id.*

The United States Senate Select Committee on Intelligence (“SSCI”) Research Summary augments the description of the Russian efforts to affect the outcome of the U.S. Presidential election already provided in the Mueller indictment.¹⁶⁸ The Summary describes the activities of the Russians working for the Internet Research Agency (“IRA”) to intervene in the 2016 election.¹⁶⁹ The Research Summary provides extensive information and documentation of several variants of suppression narratives, which were spread both on Twitter and Facebook.¹⁷⁰ The Summary describes tweets designed to create confusion about voting rules and “malicious misdirection.”¹⁷¹ This included a scam telling people that they could vote by text, and other similar efforts to create confusion among voters about voting rules that were intended to suppress the vote.¹⁷² Many of the communications were also to redirect the vote; that is, to vote for a third party. Most often this was a plea to not vote at all, but if you want to vote, vote for Jill Stein.¹⁷³ This effort to redirect voters to a candidate with little prospect of success is one mechanism to minimize the efficacy of the vote.

But many of the tweets and Facebook pages were more clearly intended to create turnout suppression.¹⁷⁴ This continued right up to the election. In September and October 2016, Twitter removed 10,000

168. *See generally* RENEE DiRESTA ET AL., NEW KNOWLEDGE, THE TACTICS AND TROPES OF THE INTERNET RESEARCH AGENCY 4–6 (2018), <https://disinformation-report.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper.pdf>.

169. *Id.* at 7–10.

170. *Id.* at 8.

171. *See id.*

172. *See id.*; *see also* Kira Lerner, *The Powerful Role Confusion Plays in American Elections*, TALKING POINTS MEMO (Dec. 28, 2018), <https://talkingpointsmemo.com/feature/the-powerful-role-confusion-plays-in-american-elections> (quoting Cliff Albright, co-founder of Black Voters Matter, that “[a]nything that causes confusion is a form of voter suppression, whether it’s intentional”).

173. DiRESTA ET AL., *supra* note 168, at 17.

174. *See* Joe Davidson, *Russia and Republicans Attempt to Suppress Black Vote, but Russians are Slicker*, WASH. POST (Dec. 19, 2019), https://www.washingtonpost.com/politics/2018/12/19/russia-republicans-attempt-suppress-black-vote-russians-are-slicker/?utm_term=.da07f525ee5a (“Stay home on Election Day, your vote doesn’t matter.”).

automated accounts posing as Democrats to convince key demographics to stay home and not vote.¹⁷⁵ A Russian troll farm in 2016 sought to disenfranchise Latinos, African Americans, youths, and the LGBTQ community from voting, with “special emphasis on provoking the anger of [B]lack Americans.”¹⁷⁶ Postings on an IRA fake account “Blacktivist” on Facebook, which had more followers than the actual Black Lives Matter account, showed mistreatment of African Americans,¹⁷⁷ and these posts “pushed a message that the best way to advance the cause of the African American community [is] to boycott the election.”¹⁷⁸

The Mueller indictment painstakingly describes the scope of the IRA project.¹⁷⁹ The Russians working for the IRA created fake online personas from stolen American identities and facilitated payments for social media ads.¹⁸⁰ In September 2016, this group of Russians, who operated like a faux news organization, had a \$1.25 million budget.¹⁸¹

175. See April Glaser, *Twitter Removed 10,000 Bots Pretending to Be Democrats Telling Other Democrats Not to Vote*, SLATE (Nov. 2, 2018, 6:28 PM), <https://slate.com/technology/2018/11/twitter-removed-bots-pretending-democrats-discourage-voter-turnout.html>.

176. See *Russian Troll Farm Aimed to Discourage Black US Voters: Study*, PHYS. ORG. (Dec. 17, 2018), <https://phys.org/news/2018-12-russian-troll-farm-aimed-discourage.html>; Scott Shane & Sheera Frenkel, *Russian 2016 Influence Operation Targeted African-Americans on Social Media*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html>; Jon Swaine, *Russian Propagandists Targeted African Americans to Influence 2016 US Election*, THE GUARDIAN (Dec. 17, 2018, 1:54 PM), <https://www.theguardian.com/us-news/2018/dec/17/russian-propagandists-targeted-african-americans-2016-election>.

177. See P.R. Lockhart, *The Mueller Indictment Offers New Details on How Russian Trolls Stoked Racial Tensions*, VOX (Feb. 16, 2018, 7:10 PM), <https://www.vox.com/2018/2/16/17021420/russia-indictments-mueller-elections-race-voter-fraud-police-violence>; Donnie O’Sullivan & Dylan Byers, *Exclusive: Fake Black Activist Accounts Linked to Russian Government*, CNN: BUS. (Sept. 28, 2017, 11:40 PM), <https://money.cnn.com/2017/09/28/media/blacktivist-russia-facebook-twitter/index.html>.

178. *Russian Troll Farm Aimed to Discourage Black US Voters: Study*, *supra* note 176.

179. See Indictment, *United States v. Internet Research Agency LLC* (D.D.C. Feb. 16, 2018) (No. 1:18-cr-0032-DLF).

180. *Id.* at 3, 19.

181. *Id.* at 7.

The effort was to pose as Americans to suppress voters with false and misleading information. They also paid Americans to aid in their efforts and to provide virility to the communications.¹⁸² The fake online communities that were created by the IRA included such names as “Army of Jesus,” “United Muslims of America,” “Secured Borders,” and the “Blacktivist” accounts.¹⁸³ The project was told “to ‘use any opportunity to criticize Hillary.’”¹⁸⁴ In 2016, they posted on a “Woke Blacks” site: “[A] particular hype and hatred for Trump is misleading the people and forcing Blacks to vote for Killary. We cannot resort to the lesser of two devils. Then we’d surely be better off without voting AT ALL.”¹⁸⁵ According to the indictment, this IRA Russian influence operation began in 2014 and was also able to organize Americans, sometimes on both sides of a polarized issue, to attend rallies.¹⁸⁶ There were attempts to stage rallies in New York, Florida, Pennsylvania, and North Carolina.¹⁸⁷

The IRA had 2,700 fake Twitter accounts and 80,000 Facebook posts.¹⁸⁸ It had an audience of 126 million Americans on Facebook alone.¹⁸⁹ This number of Americans reached is particularly large when compared to the number of people, 137 million, voting in the 2016 election.¹⁹⁰ Other platforms also harbored Russian accounts. Insta-

182. *Id.* at 22–23.

183. *Id.* at 14.

184. *Id.* at 17.

185. *Id.* at 18.

186. *Id.* at 2–3, 20–23.

187. *Id.* at 22–23; *see also* Natasha Bertrand, *Russia Organized 2 Sides of a Texas Protest and Encouraged ‘Both Sides to Battle in the Streets,’* BUS. INSIDER (Nov. 1, 2017, 1:25 PM), <https://www.businessinsider.com/russia-trolls-senate-intelligence-committee-hearing-2017-11>.

188. *Facebook Plays Whack-a-Mole with Russia Interference*, CBS NEWS (Aug. 2, 2018, 7:59 AM), <https://www.cbsnews.com/news/facebook-plays-whack-a-mole-with-russia-interference/>.

189. Craig Timberg & Tony Romm, *New Report on Russian Disinformation, Prepared for the Senate, Shows the Operation’s Scale and Sweep*, WASH. POST (Dec. 17, 2018), <https://www.washingtonpost.com/technology/2018/12/16/new-report-russian-disinformation-prepared-senate-shows-operations-scale-sweep/>.

190. Krogstad & Lopez, *supra* note 160; *see generally* PHILIP N. HOWARD ET AL., COMPUTATIONAL PROPAGANDA RES. PROJECT, THE IRA, SOCIAL MEDIA AND

gram had 133 fake Russian accounts, which reached 20 million people.¹⁹¹ Twitter had some 3,841 IRA accounts, which reached 1.4 million people but were also spread to over 50,000 bots.¹⁹² This excludes YouTube videos, podcasts, and Tumblr—all of which continued the same efforts at micro targeting advertisements to particular groups that would be susceptible to the communications.¹⁹³ The effectiveness and precision of the micro targeting techniques previously used in political campaigns became even more sophisticated in the 2016 election, causing more pervasively undemocratic consequences.

In addition to the IRA, other foreign and domestic actors refined micro targeting to influence the U.S. election and the Brexit referendum in the United Kingdom.¹⁹⁴ Both foreign and domestic actors used information operations that obtained troves of personal data obtained from voter rolls and Facebook, including data, photos, videos, friends' information, and any data contained on any app that included a Facebook "button."¹⁹⁵ The campaigns also purchased commercial data through data brokers and others.¹⁹⁶ It has been said that Facebook has more detailed data about each and every American than even the federal government.¹⁹⁷ The micro targeting techniques utilized by Cambridge Analytica in the Brexit campaign are particularly instructive in

POLITICAL POLARIZATION IN THE UNITED STATES, 2012–2018 (2018), <https://comp-op.ox.ac.uk/wp-content/uploads/sites/93/2018/12/The-IRA-Social-Media-and-Political-Polarization.pdf>.

191. Timberg & Romm, *supra* note 189.

192. DiRESTA ET AL., *supra* note 168, at 6; HOWARD ET AL., *supra* note 190, at 25.

193. DiRESTA ET AL., *supra* note 168, at 5–6, 43; HOWARD ET AL., *supra* note 190, at 3, 8.

194. Brexit is a polarized election in which similar techniques were used to increase the impact of the political outcome as was used in the United States in 2016.

195. See Timberg & Romm, *supra* note 189.

196. See, e.g., Carole Cadwalladr & Emma Graham-Harrison, *How Cambridge Analytica Turned Facebook 'Likes' into a Lucrative Political Tool*, THE GUARDIAN (Mar. 17, 2018), <https://www.theguardian.com/technology/2018/mar/17/facebook-cambridge-analytica-kogan-data-algorithm>.

197. See James Rogers, *The US Government Is Asking Facebook for More and More Data on Its Users*, FOX NEWS (Dec. 20, 2017), <https://www.foxnews.com/tech/the-us-government-is-asking-facebook-for-more-and-more-data-on-its-users> (detailing the number of data requests from government entities).

the U.S. context as well because Cambridge Analytica worked in the 2016 election for the Trump campaign.¹⁹⁸

Cambridge Analytica gathered the data and employed psychologists and social scientists to review the data to segment the individuals into groups; Cambridge Analytica crafted communications with pitches that would be most effective to convince each group based on their emotional weaknesses or proclivities and their susceptibility to inflammatory or extreme advertisements.¹⁹⁹ Cambridge Analytica then sent ads to the selected individuals to enable the refinement of the pitch based on their responses.²⁰⁰ These ads were then sent to a larger group of people with similar profiles.²⁰¹

In the 2016 U.S. presidential election, these ads primarily targeted individuals based on race but also based on concerns about immigration and guns. Young Mie Kim, a researcher at the University of Wisconsin-Madison, conducted a scientific analysis of the influence campaign on Facebook.²⁰² She found that racially charged, anti-immigrant advertisements were shown in particular parts of the country to certain individuals who could sway the vote.²⁰³ Kim said, “we know the Russians targeted extremes and then came back with different negative messages that might not be aimed at converting voters, but suppressing turnout and undermining the democratic process.”²⁰⁴ And Kim also concluded the IRA’s paid Facebook ads in 2016 were specifically to suppress the turnout of non-white voters, especially African

198. See Matthew Rosenberg et al., *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

199. See *Cambridge Analytica Boasts of Dirty Tricks to Swing Elections*, POLITICO (Mar. 19, 2018, 9:31 PM), www.politico.eu/article/cambridge-analytica-boasts-of-dirty-tricks-to-swing-elections.

200. See Cadwalladr & Graham-Harrison, *supra* note 196; Rosenberg et al., *supra* note 198.

201. See Cadwalladr & Graham-Harrison, *supra* note 196; Rosenberg et al., *supra* note 198.

202. Young Mie Kim et al., *The Stealth Media? Groups and Targets Behind Divisive Issue Campaigns on Facebook*, 35 POL. COMM. 515 (2018).

203. See *id.*

204. Nick Penzenstadler et al., *We Read Every One of the 3,517 Facebook Ads Bought by Russians. Here’s What We Found*, USA TODAY (May 11, 2018, 7:47 PM), <https://www.usatoday.com/story/news/2018/05/11/what-we-found-facebook-ads-russians-accused-election-meddling/602319002/>.

Americans.²⁰⁵ The night before Election Day she found ads appeared urging people to “boycott the election” because neither of the presidential candidates would serve Black voters.²⁰⁶ She also found that voter suppression ads targeting non-whites residing in minority counties²⁰⁷ in battleground states were seen eight times more often than that of their counterparts.²⁰⁸

As a result of this suppression and political propaganda, an Ohio State University study has found that “fake news” depressed the support for Clinton in 2016.²⁰⁹ Four percent of Obama supporters were deterred from voting for Clinton in 2016 because they believed the disinformation on the Internet.²¹⁰ Obama supporters believed the following false information was true, reflecting the percentage of supporters who believed the stories:

1. Clinton was in “very poor health due to a serious illness” (12 percent)
2. Pope Francis endorsed Trump (8 percent)
3. Clinton approved weapons sales to Islamic Jihadists, “including ISIS” (20 percent).²¹¹

According to the study, about 25% of Obama voters believed these stories, and 45% of them voted for Clinton.²¹² In contrast, of those who did not believe the stories, 89% voted for Clinton.²¹³ The conclusion is that exposure to “fake news” had a significant impact on voting decisions. The precise micro targeting of groups with fictitious photos, videos, and communications had the intended result.

205. See Kim et al., *supra* note 202.

206. See *id.*

207. See *id.* This Essay defines “minority counties” as counties in which the proportion of non-whites is more than 50% of the population.

208. See *id.*

209. Aaron Blake, *A New Study Suggests Fake News Might Have Won Donald Trump the 2016 Election*, WASH. POST (Apr. 3, 2018), https://www.washingtonpost.com/news/the-fix/wp/2018/04/03/a-new-study-suggests-fake-news-might-have-won-donald-trump-the-2016-election/?noredirect=on&utm_term=.66863c6a85a0.

210. See *id.*

211. *Id.*

212. *Id.*

213. *Id.*

This micro targeting of potential voters was not constrained to the 2016 election.²¹⁴ Kim has also found anecdotal evidence that there were “noticeable voter suppression campaigns online, especially on Twitter” in the 2018 midterm election.²¹⁵ She found that incorrect information regarding the date of the election was common.²¹⁶ A #votenovember7th hashtag “with incorrect election date information, was often paired with other hashtags designed for partisan mobilization such as #bluewave or #redwave.”²¹⁷ Tweets encouraged voting by text.²¹⁸ Some “messages clearly targeted Latino and African American voters” to suppress the vote.²¹⁹ And after the October 25 National Rifle Association’s spokesperson’s statement “that gun supporters would need to bring guns to the polls to protect themselves from left wing mobs, tweets suggesting that NRA members or Republicans need to bring guns to the polls started trending.”²²⁰ Merely having these statements in the public domain is intimidating and likely to lead to the suppression of the vote. Online political communications are clearly very impactful on elections.

VI. ELECTION MANAGEMENT

While this Essay is not specifically about direct voter suppression, it is important to recognize that there have been recent Supreme Court cases that reinforce, to certain communities, that the right to vote in America is not respected. Condonation of direct voter suppression has led to state laws that suppress voters’ rights.²²¹ And actions by private individuals aimed at intimidating mostly minority voters create an environment that suppresses the vote by indirect means, as well.²²²

214. See Young Mie Kim, *Voter Suppression Has Gone Digital*, BRENNAN CTR. FOR JUST. (Nov. 20, 2018), <https://www.brennancenter.org/blog/voter-suppression-has-gone-digital>.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. See Newkirk, *Voter Suppression Is the New Old Normal*, *supra* note 23.

222. *See id.*

The trend to increased direct voter suppression in the last five years began with the U.S. Supreme Court decision in *Shelby County v. Holder*, which weakened the Voting Rights Act of 1965, making it easier for those states with a prior history of discrimination at the polls to make electoral changes without clearing them with the Department of Justice.²²³ Section 4 of the Voting Rights Act required those voting districts with a history of voting tests and low turnout to prove to the Attorney General, or to a three judge panel of the U.S. District Court in D.C., that “the change had neither ‘the purpose [nor] the effect’” of negatively impacting any individual’s right to vote based on race or minority status.²²⁴ The Supreme Court held that § 4 imposed burdens that were no longer responsive to the voting districts involved.²²⁵

More recently, in *Husted v. A. Philip Randolph Institute*, in another 5-4 decision, the Supreme Court gave Secretaries of State the right to purge qualified voters from the voter rolls if the voter had failed to vote in one election.²²⁶ A consequence of this decision, according to Congressman Mark Pocan, a Democrat from Wisconsin, is “that more voters—especially those that are young, minority and low-income—will be turned away from the polls and not have their voices heard.”²²⁷ And, in October 2018, the Supreme Court refused without explanation to intervene in a challenge to a North Dakota voter ID law, which required North Dakota residents to provide identification that includes a residential street address to vote.²²⁸ But thousands of Native Americans in North Dakota do not have standard addresses²²⁹ and if not allowed to register to vote because of that requirement, this practice would disenfranchise them. The 2018 midterm election demonstrated

223. See *Shelby County v. Holder*, 570 U.S. 529, 556–57 (2013).

224. *Id.* at 537 (citations omitted).

225. See *id.* at 556–57.

226. See *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1831, 1838, 1848 (2018).

227. John Nichols, *How Did the Supreme Court Give a Green Light to Massive Voter Suppression*, THE NATION (June 11, 2018), <https://www.thenation.com/article/supreme-court-give-green-light-massive-voter-suppression/>.

228. See *Brakebill v. Jaeger*, 139 S. Ct. 10 (2018) (mem.).

229. Amy Howe, *Court Stays Out of North Dakota Voting Dispute*, SCOTUSBLOG (Oct. 9, 2018, 4:57 PM), <https://www.scotusblog.com/2018/10/court-stays-out-of-north-dakota-voting-dispute/>.

that the consequence of disenfranchisement came to pass: there are many examples of purges throughout the country.²³⁰

According to the Brennan Center for Justice, up to 2 million more people than expected have lost their voting status because of purges after *Shelby County*.²³¹ Twenty-one states made their voting laws more restrictive, including 7 of the 10 states with the highest proportion of African American voters.²³² The impact of *Shelby County* and *Husted* has been notable across the country. The states have been empowered to enact voting restrictive laws knowing that the U.S. Supreme Court will uphold their efforts, having cleared the way for greater voter disenfranchisement.²³³

Another factor is at play in voter suppression in addition to voting ID laws, purging and rolls, and requiring an exact match of signatures: An environment that permits such laws, which result in voter suppression, has led to increased voter intimidation and harassment, dissuading minority voters from the polls.²³⁴ For example, immediately before the midterm election President Trump tweeted, “All levels of government and Law Enforcement are watching carefully for

230. See, e.g., Newkirk, *Voter Suppression Is the New Old Normal*, *supra* note 23 (noting that Brian Kemp, then the Secretary of State of Georgia, used a program called Crosscheck to match voter records to personal identification, and in 2017 purged 500,000 people from the rolls, including 100,000 who had not voted in the prior election, and in 2018, Georgia purged another 700,000 voters from the rolls).

231. See JONATHAN BRATER ET AL., BRENNAN CTR. FOR JUSTICE, PURGES: A GROWING THREAT TO THE RIGHT TO VOTE 4 (2018), <https://www.brennancenter.org/publication/purges-growing-threat-right-vote>.

232. Wendy R. Weiser & Erik Opsal, *The State of Voting in 2014*, BRENNAN CTR. FOR JUST. (June 17, 2014), https://www.brennancenter.org/analysis/state-voting-2014#_ftnref7. This statistic excludes Texas, which has engaged in voter suppression tactics affecting its large Hispanic population. *Id.*

233. See, e.g., *New Voting Restrictions in America*, *supra* note 6 (detailing the national trend toward more restrictive voting laws).

234. See Emma Green, *The Disturbing Details of Trump’s Alleged Voter-Intimidation Efforts*, THE ATLANTIC (Nov. 1, 2016), <https://www.theatlantic.com/politics/archive/2016/11/poll-monitoring-voter-intimidation-lawsuits/506078/>; Ed Kilgore, *Trump Tries to Intimidate Voters With ‘Law Enforcement is Watching’ Tweet*, N.Y. MAG.: INTELLIGENCER (Nov. 5, 2018), <http://nymag.com/intelligencer/2018/11/trump-tweet-intimidate-voters.html>; Paul Leighton, *Salem Latino Voters Talk of Harassment at Polls*, SALEM NEWS (Feb 22, 2016), https://www.salemnews.com/news/local_news/salem-latino-voters-talk-of-harassment-at-polls/article_e7595a6a-0039-5600-947f-2687bc072e52.html.

VOTER FRAUD, including during EARLY VOTING. Cheat at your own peril.”²³⁵ This statement on its face could be viewed as solely a statement of the law; however, for minorities and others intimidated and harassed at the polls for no reason,²³⁶ it likely appeared to be an attempt by the country’s highest-ranking elected official to dissuade those voters from going to the polls. A survey conducted by *The Atlantic* and the Public Religion Research Institute reported that 68% of Black respondents stated that disenfranchisement is a major problem in the U.S., compared to only 27% of whites.²³⁷ A history of discrimination and the effects of voter suppression, as well as fear of going to the polls even when an individual is legally entitled to vote, is intimidating and results in decisions to not vote.

Gerrymandering²³⁸ should also be considered as contributing to indirect suppression. Because of gerrymandering’s effect, many voters understand that their vote doesn’t matter.²³⁹ In extreme gerrymandered

235. Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 20, 2018, 5:36 PM), <https://twitter.com/realdonaldtrump/status/1053807130120200192?lang=en>.

236. See Ayala, *supra* note 16 (discussing threats and intimidation of Blacks at polling places, such as a North Carolina poll worker repeatedly asking Black voters to spell their names, and whites angrily confronting a Black poll worker; preventing access to the poll; flyers in Wisconsin stating falsely that Immigrations and Customs Enforcement agents will be at polling places; harassment outside of polling places in Texas; and voters being challenged outside of polling places in Colorado); Roth & Weiser, *supra* note 17 (discussing Trump “consistently and falsely stoking fear about illegal voters for over two years”). While these are only some examples of direct and indirect voter suppression that took place in the 2018 election, is it any wonder that minority and young voters would not want to risk enduring such vitriol in order to vote? “[O]ne in 10 Hispanics said that the last time they or someone in their household tried to vote, they were bothered at the polls.” Newkirk, *Voter Suppression Is Warping Democracy*, *supra* note 5 (quoting Dan Cox, the Public Religion Research Institute research director).

237. Newkirk, *Voter Suppression Is Warping Democracy*, *supra* note 5.

238. Gerrymandering establishes congressional districts dominated by one party and where there is little competitiveness outside of that party. See Christopher Ingraham, *This Is the Best Explanation of Gerrymandering You Will Ever See*, WASH. POST (Mar. 1, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/03/01/this-is-the-best-explanation-of-gerrymandering-you-will-ever-see/?utm_term=.c398a49798eb.

239. Sam Kean, *The Flaw in America’s ‘Holy Grail’ Against Gerrymandering*, THE ATLANTIC (Jan. 26, 2018) (discussing “wasted votes”).

districts, it is only the primary that determines the election, as the general election is a foregone conclusion.²⁴⁰ Primary structure is increasingly controlled by the respective state legislatures, while the results of the primary and the delegates awarded to a specific candidate are organized by the parties, not by the government.²⁴¹ Consequently, they often have rules that prevent many people from being able to participate—such as party registration requirements and different dates for the primary, which are barriers to voting.²⁴² Wisconsin exemplifies this practice. When the Republican party took control of the state government in 2010, the legislative maps were redrawn.²⁴³ The results have been called by some as the most extreme gerrymandering in U.S. history.²⁴⁴ At the same time, Wisconsin has passed laws making it harder to vote.²⁴⁵ And, to Lisa Graves, a senior fellow at the Center for Media and Democracy in Madison, “the state has become the ‘Wild West of

240. Cf. Ingraham, *supra* note 238 (discussing how gerrymandering is meant to minimize competitiveness in electoral districts).

241. See Bruce E. Cain & Cody Gray, *Parties By Design: Pluralist Party Reform in a Polarized Era*, 93 N.Y.U. L. REV. 621, 632–33 (2018) (discussing that states control the “time, place, and manner of elections” but other issues, such as delegate pledging and allocation is decided by party insiders); Jonathan Stahl, *Who Controls Primary Elections, and Who Gets to Vote?*, CONST. DAILY (Sept. 15, 2015), <https://constitutioncenter.org/blog/who-controls-primary-elections-and-who-gets-to-vote>. Yet caucuses, different from primaries, are almost wholly run and organized by the respective state political parties. See Joanna Klonsky, *The Caucus System in the U.S. Presidential Nominating Process*, COUNCIL ON FOREIGN REL. (Feb. 29, 2008), <https://www.cfr.org/background/caucus-system-us-presidential-nominating-process>.

242. See John C. Fortier, *46 Million Voted in Primaries this Year. That’s Not Enough*, ROLL CALL (Oct. 1, 2018, 5:02 AM), <https://www.rollcall.com/news/opinion/46-million-voted-in-primaries-this-year-thats-not-enough>.

243. See generally Joel McNally, *Wisconsin’s Corrupt Gerrymandering Wins, For Now*, SHEPHERD EXPRESS (June 26, 2016, 4:23 PM), <https://shepherdexpress.com/news/taking-liberties/wisconsins-corrupt-gerrymandering-wins/#/questions/> (describing the gerrymandering as “one of the most distorted partisan state voting maps in U.S. history”).

244. *Id.*

245. See Ari Berman, *Rigged: How Voter Suppression Threw Wisconsin to Trump*, MOTHER JONES (Nov. 2017), <https://www.motherjones.com/politics/2017/10/voter-suppression-wisconsin-election-2016/> (referring to a voter ID law passed in 2011).

[D]ark Money.”²⁴⁶ Former Attorney General Eric Holder commented that “[a]ll three of these things have to be seen as part of a whole. Unregulated dark money combined with these voter ID laws combined with gerrymandering is inconsistent with how our nation’s system is supposed to be set up.”²⁴⁷ Meanwhile, the U.S. Supreme Court has not found a state’s redistricting map based on political gerrymandering to be a violation of the Constitution.²⁴⁸ The Supreme Court has, however, granted certiorari for two gerrymandering cases.²⁴⁹

VII. WHAT CAN BE DONE?

Reforms that have already been advanced throughout the country pave the way for states to make changes that can remedy direct and indirect voter suppression. In the 2018 election, Florida voters overwhelmingly passed Amendment 4, which restores voting rights to over 1.4 million former felons.²⁵⁰ Despite attempts to thwart the implementation, the law has gone into effect.²⁵¹ Michigan created an independent redistricting commission,²⁵² similar to the one created in California in 2008, which was extended to U.S. Congressional boundaries in

246. Ari Berman, *How the GOP Rigs Elections*, ROLLING STONE (Jan. 24, 2018, 2:44 PM), <https://www.rollingstone.com/politics/politics-news/how-the-gop-rigs-elections-121907/>.

247. *Id.*

248. *Id.*

249. *Gerrymandering at the Supreme Court*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/gerrymandering-scotus> (last visited Apr. 10, 2019) (discussing one arising in Maryland, where the districts were drawn by Democrats, and the other in North Carolina, where they were drawn by Republicans).

250. Miles Rapoport & Cecily Hines, *A New Playing Field for Democracy Reform*, AM. PROSPECT (Dec. 24, 2018), <https://prospect.org/article/good-news-voting-wars>.

251. See Grace Panetta & Shayanne Gal, *Floridians with Felony Convictions Are Now Beginning to Register to Vote After the State Restored Voting Rights to 1.5 Million Felons*, BUS. INSIDER (Jan. 8, 2019), <https://www.businessinsider.com/felony-disenfranchisement-states-florida-amendment-4-voting-rights-2018-11>.

252. See Rapoport & Hines, *supra* note 250.

2010.²⁵³ Missouri, Colorado, Utah, and Ohio passed redistricting reform.²⁵⁴ Michigan voters also approved an initiative enacting same-day voter registration, automatic registration, a required post-election audit, and greater voting rights for overseas voters and the military.²⁵⁵ Automatic voter registration also passed in Nevada, and same-day registration passed in Maryland.²⁵⁶ Automatic voter registration is promoted as augmenting rather than diminishing voter participation. These reforms would remedy the political gerrymandering that excludes many voters from having a say in the political process.

States and local entities are now enacting legislation to address digital political intervention in elections, including Maryland²⁵⁷ and California,²⁵⁸ and several states continue to approve small donor match programs for campaigns.²⁵⁹ While “democracy” reforms to remedy the campaign finance system, gerrymandering and election security are much more difficult to pass on the federal level. Nonetheless, on the first day that Congress convened in 2019, the Majority Leader of the

253. See Adam Nagourney, *California Set to Send Many New Faces to Washington*, N.Y. TIMES (Feb. 14, 2012), <https://www.nytimes.com/2012/02/14/us/california-congressional-delegation-braces-for-change.html>.

254. See Rapoport & Hines, *supra* note 250.

255. *Id.*

256. *Id.*

257. See Karen Wilkinson, *Maryland Social Media Campaign Rules Take Effect*, GOV'T TECH. (Aug. 3, 2010), <http://www.govtech.com/e-government/Maryland-Social-Media-Campaign-Rules-Take.html>; see also Brian Witte, *Maryland Bill Seeks Transparency in Online Political Ads*, ASSOCIATED PRESS (Apr. 19, 2018), <https://www.apnews.com/b8d4602d9fb84753808f4b2132e3bbec>.

258. See generally Dave Gershgor, *A California Law Now Means Chatbots Have to Disclose They're Not Human*, QUARTZ (Oct. 3, 2018), <https://qz.com/1409350/a-new-law-means-californias-bots-have-to-disclose-theyre-not-human/>.

259. JUHEM NAVARRO-RIVERA & EMMANUEL CAICEDO, DEMOS, PUBLIC FUNDING FOR ELECTORAL CAMPAIGNS: HOW 27 STATES, COUNTIES, AND MUNICIPALITIES EMPOWER SMALL DONORS AND CURB THE POWER OF BIG MONEY IN POLITICS (2017), https://www.demos.org/sites/default/files/publications/Public_Financing_Factsheet_FA%5B5%5D.pdf.

House, Nancy Pelosi, introduced HR1 to accomplish just those reforms.²⁶⁰ HR1 addresses dark money, foreign interference in the elections, the stalemate at the FEC, gerrymandering, and more.²⁶¹ These proposals are a comprehensive response to the policies that have had the effect of discouraging public participation in the electoral process. Even if HR1 does not pass in the Senate, this bill is a marker for similar legislation to be enacted across the country at the state and local levels.

VIII. CONCLUSION

We should not consider our country's low voter turnout rate to be a problem of voter apathy. Instead, non-voters are making decisions not to vote because of distrust in our electoral process, our government, and many governmental institutions. This lack of trust emanates from our political and judicial systems' choices that have resulted in many people believing that their vote does not matter. Understanding that election integrity, access to the vote, campaign finance laws, and politics are intertwined creates an opportunity for our country to remedy these problems and to put us on the path to rebuilding trust and accountability for our citizens.

260. For the People Act of 2019, H.R. 1, 116th Cong. (2019); *see also* Government By the People Act of 2017, H.R. 20, 115th Cong. (2017); *see generally* Thomas B. Edsall, *The Lobbyists Blocking Nancy Pelosi and Her New Majority*, N.Y. TIMES (Jan. 10, 2019), <https://www.nytimes.com/2019/01/10/opinion/pelosi-trump-lobbying-democrats.html>.

261. For the People Act of 2019, H.R. 1, 116th Cong. (2019).