

Lessons from Political Instability: What the United States can Learn from Germany

*Comment by Olivia Hunt**

PART I

I. INTRODUCTION

The United States has long championed democracy, both domestically and internationally. As a founding member of the Organization of American States (OAS), the U.S. initiated the International Conference of American States in the late 19th century to promote democratic values and peaceful dispute resolution among American nations.¹

This commitment culminated in 1948 when the U.S. and twenty other North and South American countries established the OAS Democratic Charter, which outlined key elements of representative democracy including human rights, free elections, pluralistic politics, separation of powers, and constitutional subordination of state institutions to civilian authority.²

However, today the United States faces its own democratic challenges. This comment analyzes how Germany's historical experiences with political instability can offer insights for addressing current tensions in American democracy. By examining Germany's responses to political turbulence, we can identify relevant lessons for addressing the increasing polarization in the U.S. political system. This analysis will highlight both the urgency of mitigating political polarization and practical solutions to

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¹ *Our History*, ORG. OF AM. STATES, https://www.oas.org/en/about/our_history.asp (last visited Dec. 2, 2024).

² ORG. OF AM. STATES, *Charter of the Org. of Amer. States*, Apr. 30, 1948, 119 U.N.T.S. 3, https://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp.

protect democratic processes, ensuring the long-term stability of a nation that has historically been a global leader in democratic governance.

II. POLARIZATION IN GERMANY & THE UNITED STATES

In post-World War I Germany, polarization negatively impacted its democracy, leading to disastrous results such as the rise of the Nazi Party and eventually, World War II. Following WWI, changes to the government created heavy political and economic burdens with political and economic problems in the country.³ As a result of the first World War, Germany was put into a position where they either had to sign a treaty with the Allied powers or face a continuation of the war.⁴ Germany ultimately signed the treaty agreeing to pay reparation payments, placing a heavy burden on its economy.⁵ The economic crisis during this period caused a divide between the political views of the Germans.⁶

In 1919, after the fall of Germany's monarchy, the country transitioned to its first democratic system, the Weimar Republic.⁷ The country's goal was to maintain stability through the transition process, "old civil servants and military leaders stayed in similar positions of power,

³ *The Weimar Republic*, THE HOLOCAUST EXPLAINED, <https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-weimar-republic/> (last visited Dec. 2, 2024).

⁴ *Id.*

⁵ *The Paris Peace Conference and the Treaty of Versailles*, MILESTONES: 1914-1920, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1914-1920/paris-peace> (last visited Dec. 2, 2024).

⁶ *The Weimar Republic*, THE HOLOCAUST EXPLAINED, <https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-weimar-republic/> (last visited Dec. 2, 2024).

⁷ *November 9th – Day of Remembrance in Germany*, (Apr. 11, 2024), <https://www.deutschland.de/en/topic/politics/german-history-november-9th-night-of-pogroms-and-the-fall-of-the-wall#:~:text=November%209th%20is%20not%20a,the%20way%20for%20German%20reunification.>

and therefore still had enormous influence.”⁸ The Weimar Republic was designed under a federal system of government and elected officials through proportional representation.⁹ This ultimately led to there being no governing majority party as several parties held a smaller number of seats in the Parliament.¹⁰ The absence of a ruling majority party encouraged those from different minority parties to form collaborative coalitions to accomplish goals.¹¹ Inevitably, coalitions governed by parties that never agreed resulted in disagreements on virtually all policies and an absolute stall of the government.¹² Ultimately, the polarization the Weimar Republic faced was one of the reasons why the government failed, and the Nazi Party rose to power, leading to World War II and the suffering and deaths of millions.¹³

There are similarities to the Weimar Republic that mirror the United States government today. While in the Weimar Republic, collaborative coalitions led to challenges with opposing views, the United States House struggles with productive legislation because there is a failure to work with the opposing party.¹⁴ For example, in the year 2023, Congress only passed 27 bills (as of December 19,

⁸ *The Weimar Republic*, THE HOLOCAUST EXPLAINED, <https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-weimar-republic/> (last visited Oct. 6, 2023, 1:06 PM).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ The Rise of the Nazi Party in the Weimar Republic, NUREMBERG MUN. MUSEUMS <https://museums.nuernberg.de/documentation-center/topics/national-socialism/the-beginnings-of-the-nazi-dictatorship/the-rise-of-the-nazi-party-in-the-weimar-republic> (last visited Jan. 9, 2025).

¹⁴ Drew DeSilver, *The Polarization in Today's Congress Has Roots That Go Back Decades*, PEW RSCH CTR (Mar. 10, 2022), <https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/>.

2023), none of which became law.¹⁵ This is record breaking low when compared to past sessions of congress.¹⁶ Further evidence of a polarized system can be seen as recent as October of 2023, the United States House voted out Representative and Speaker, Kevin McCarthy. McCarthy was voted out by Democrats and elements of his own party.¹⁷ This unprecedented move left the House without a speaker for three weeks, preventing the passage of bills and productivity of the institution overall.¹⁸ Republicans voted against McCarthy as a consequence of working with Democrats to prevent a government shutdown.¹⁹ “[McCarthy] relied on Democratic votes to push through two bills they opposed – one to prevent the nation from defaulting on its debt for the first time in history and another....to avert a government shutdown.”²⁰ The most recent and longest shutdown was in 2019, lasting 35 days because of disputes over funding for a border wall.²¹ As an

¹⁵ *118th Congress (2023-2024)*, PUBLIC LAWS

<https://www.congress.gov/public-laws/118th-congress>; See also, Annie Karni, *House Dysfunction by the Numbers: 724 Votes, Only 27 Laws Enacted*, N.Y. TIMES (Dec. 19, 2023), <https://www.nytimes.com/2023/12/19/us/politics/house-republicans-laws-year.html>.

¹⁶ See *Statistics and Historical Comparison*, GOVTRACK, <https://www.govtrack.us/congress/bills/statistics> (last visited Jan. 9, 2025).

¹⁷ See Catie Edmondson, *McCarthy Is Ousted as Speaker, Leaving the House in Chaos*, N.Y. TIMES (Oct. 3, 2023), <https://www.nytimes.com/2023/10/03/us/politics/kevin-mccarthy-speaker.html>.

¹⁸ Alexandra Hutzler, et. al., *New Speaker Mike Johnson Projects Unity, Expects 'Aggressive' Schedule*, ABC NEWS, <https://abcnews.go.com/Politics/live-updates/House-speaker-vote-live-updates/?id=104039543> (last updated Oct. 25, 2023, 5:40 PM); see also EDMONDSON, *supra* note 17.

¹⁹ EDMONDSON, *supra* note 17.

²⁰ *Id.*

²¹ *A Brief History of U.S. Government Shutdowns And Why Other Countries Do Not Have Them*, PETER G. PETERSON FOUNDATION, <https://www.pgpf.org/blog/2024/09/a-brief-history-of-us-government-shutdowns-and-why-other-countries-do-not-have-them> (last updated Sep. 10, 2024); See also Andrew Restuccia, et al., *Longest Shutdown in History Ends After Trump Relents on Wall*, POLITICO, (Jan. 25, 2019), <https://www.politico.com/story/2019/01/25/trump-shutdown-announcement-1125529>.

impact of that shutdown, the Congressional Budget Office found that the shutdown delayed \$18 billion in federal spending. It further found that as a result of the reduced economic activity, the gross domestic product was \$8 billion dollars lower than it would've been absent a shutdown.²² In the U.S., disagreement on policies and the stalling of government are on the rise, as it seems every news cycle, U.S. citizens are told the United States is headed for a government shutdown over disagreements for the budget.²³ This is just one example demonstrating the recent political instability in the U.S. resulting from political polarization.

A second issue in the Weimar Republic was that “the old conservative elite who had held key positions of power under the monarchy had continued in similar roles in the Weimar Republic...” which allowed these individuals to have “enormous influence and power.”²⁴ The power and influence of the conservative elite would later be crucial through the 1940s and into WWII. Similarly, in the U.S. there are several individuals in its legislature that are strong representatives of their political party and have remained in office for decades.²⁵ These individuals have the influence and financial means to keep their position by running powerful and influential reelection campaigns while other, less established candidates either struggle with the funds to run a successful campaign or fail

²² *The Effects of The Partial Shutdown Ending in January 2019*, CONG. BUDGET OFF. (Jan. 2019); See also PETER G. PETERSON FOUNDATION, *supra* note 21.

²³ See generally, Stephen Groves, *A Gov't Shutdown is Averted for Now With A Temp. Funding Bill. What Happens in a Shutdown?* AP NEWS (Sept. 30, 2023, 11:48 PM), <https://apnews.com/article/government-shutdown-congress-biden-trump-mccarthy-f1b06964cf549b09977677e5f70bf9ff>; Caitlin Emma et al., *Senate Approves One-Week Funding Bill to Avert Midnight Shutdown*, POLITICO (Dec. 11, 2020, 2:51 PM), <https://www.politico.com/news/2020/12/11/senate-government-shutdown-444545>.

²⁴ *The Weimar Republic*, THE HOLOCAUST EXPLAINED <https://www.theholocaustexplained.org/the-nazi-rise-to-power/the-weimar-republic/> (last visited Dec. 2, 2024).

²⁵ *Longest Serving Senators*, U.S. SENATE https://www.senate.gov/senators/longest_serving_senators.htm (last visited Dec. 2, 2024).

accomplish meaningful legislation during their first term before having to run for reelection.²⁶

Most recently, it does not appear that Congress will urge the DNC to hold primary debates. Some believe President Biden's other current two primary candidates "are neither qualified nor running in good faith."²⁷ Others find that it is essential to the Nation's democracy that it represents free speech and the ability to be transparent on different ideas to voters.²⁸ Interestingly, Jim Kessler, a Democratic operative and executive vice President of Policy and the Centrist Think Tank Third Way, believes that primary opponents must earn their way to the debate stage.²⁹

Polarization in the U.S. is not a recent phenomenon as it dates back to the late 18th century between Federalists and Democratic-Republicans.³⁰ At its core, self-governance refers to the ability of society to govern itself through collective decision-making and representation. James Madison's view of self-governance was proportional democracy.³¹ By the mid-19th century, the United States became polarized over the morality of slavery resulting in

²⁶ See Suzanne Robbins, *Money in Elections Doesn't Mean What You Think It Does*, UNIV. OF FL. NEWS ARCHIVE (Oct. 29, 2018)

<https://news.ufl.edu/articles/2018/10/money-in-elections-doesnt-mean-what-you-think-it-does.html> (last visited Dec. 2, 2024); see also, Lynn Vavreck, *A Campaign Dollar's Power Is More Valuable to a Challenger*, N.Y. TIMES (Oct. 7, 2014).

<https://www.nytimes.com/2014/10/08/upshot/a-campaign-dollars-power-is-more-valuable-to-a-challenger.html>.

²⁷ Hannah Trudo, *Biden Allies Brush of Calls for Primary Debates*, THE HILL: CAMPAIGN (June 24, 2023) <https://thehill.com/homenews/campaign/4064961-biden-allies-brush-off-calls-for-primary-debates/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *About Parties and Leadership: Hist. Overview*, U.S. SENATE <https://www.senate.gov/about/origins-foundations/parties-leadership/overview.htm> (last visited Dec. 2, 2024).

³¹ Lee Drutman, *Symposium: Elections, Political Parties, and Multiracial, Multiethnic Democracy: How the United States Gets It Wrong*, 96 N.Y.U. L. REV. 985, 986-87 (2021).

the Civil War.³² In the twentieth century, particularly post-World War II, the democratic values of the nation faced significant challenges. An increased pressure to confront the discriminatory treatment of minorities, led to a public divide that garnered attention at both federal and judicial levels.³³ Overall, the United States overcame intense political polarization in the 1860s and has more recently overcome the challenges of the Civil-Rights Era in the 1960s. Whether the United States can overcome the modern political gridlock that is grinding our nation to a halt is unknown.

III. IMPACT OF POLARIZATION IN THE U.S.

Polarization has reached unprecedented levels in the United States, presenting a critical challenge to democratic stability. A study from Carnegie Endowment for International Peace suggests a correlation between severe polarization and serious democratic decline.³⁴ The study analyzed countries where democracy reached “pernicious levels of polarization” for a maximum of two years since 1950 comparing trajectories of democratic ratings with levels of political polarization.³⁵ Notably, no established country has experienced prolonged periods of polarization comparable to that of the United States.³⁶

Several factors contribute to why the United States is one of the only established Western countries facing such intense polarization.³⁷ The United States democratic

³² *About Parties and Leadership*, U.S. SENATE, <https://www.senate.gov/about/origins-foundations/parties-leadership/overview.htm> (last visited Dec. 3, 2024).

³³ *The Civil Rights Act of 1964: A Long Struggle for Freedom*, LIBR. OF CONG., <https://www.loc.gov/exhibits/civil-rights-act/world-war-ii-and-post-war.html> (last visited Dec. 3, 2024).

³⁴ Jennifer McCoy & Benjamin Press, *What Happens When Democracies Become Perniciously Polarized?* CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 18, 2022),

<https://carnegieendowment.org/research/2022/01/what-happens-when-democracies-become-perniciously-polarized?lang=en>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

system, designed for self-governance, faces significant structural challenges including, gerrymandering, voter suppression tactics, Electoral College, Super PACS and media biases all of which can limit competitive elections. Recent studies underscore this unprecedented situation, noting that, “at least since 1950, no other established democracy has become this polarized for this long...” highlighting the necessity for the United States to reverse the trajectory of polarization.³⁸

A. Electoral System

The United States stands out because of its rigid two-party political system.³⁹ Its disproportionate representation grants two senators per state notwithstanding the state's population.⁴⁰ In addition, individual senators are given power to debate legislation or hold up presidential nominations while the minority party has the power to block legislation proposals that would otherwise have the majority vote in favor of passing.⁴¹ This creates an unproductive government that often results in public disapproval of Congress.⁴²

Fareed Zakaria characterizes the United States system as an “illiberal democracy,” contending that it “routinely ignor[es] constitutional limits on their power and depriv[es] their citizens of basic rights.”⁴³ The U.S. electoral system exudes elements of a majoritarian democracy seemingly giving one party ruling power through a majority vote.⁴⁴ Federal and state elections in the U.S. operate under a “winner-takes-all” system. This design leads voters to elect candidates based on whether they want to allow or prevent a political party from forming

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF., (Nov. - Dec. 1997) at 22.

⁴⁴ Drutman, *supra* note 31, at 990-91.

a government.⁴⁵ In many cases, voters choose the lesser of two evils.⁴⁶ Over the years this framework has contributed to detrimental polarization in the United States, threatening the future of its democracy.

During the 2004 U.S. Presidential Election, less than 200 out of over 3,000 counties were super landslides, indicating those areas had less competitive elections. Eight years later, in 2012, that number increased to 300 counties. In the 2016 election, only four years later, that number doubled to more than 670 super landslide counties. Most recently, in 2020, the super landslide counties approached 700, representing 22% of counties in the United States.⁴⁷ This data reveals an increase in super landslide counties, signifying that these areas lack competitive elections because of the decisive vote for one party. From 2012 to 2020, the amount of super landslide counties increased from 274 to 653 for Republicans and 24 to 32 for Democrats....⁴⁸ (See illustrations below).⁴⁹

Election	Candidates	2-party popular vote margin	Rep.	Dem.	TOTAL	% of all counties
2004	G.W. BUSH (R)* - Kerry (D)	R 2.4%	184	13	197	6.3%
2008	OBAMA (D) - McCain (R)	D 7.4%	141	24	165	5.3%
2012	OBAMA (D)* - Romney (R)	D 4.0%	274	24	298	9.6%
2016	TRUMP (R) - H. Clinton (D)	D 2.2%	641	31	672	21.6%
2020	BIDEN (D) - Trump (R)*	D 4.5%	653	32	685	22.0%

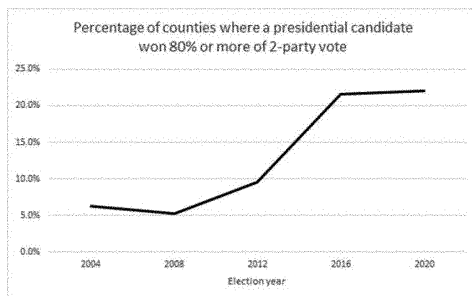
⁴⁵ *Id.*

⁴⁶ Bridget Bowman, *The 'Lesser of Two Evils' Voters Who Could Decide 2024* (June 28, 2023), NBC NEWS, <https://www.nbcnews.com/politics/2024-election/lesser-two-evils-voters-decide-2024-rcna91077>.

⁴⁷ Rhodes Cook, *The "Big Sort" Continues, with Trump as a Driving Force*, CTR FOR POL.: CRYSTAL BALL (Feb. 17, 2022), <https://centerforpolitics.org/crystalball/articles/the-big-sort-continues-with-trump-as-a-driving-force/>.

⁴⁸ *Id.*

⁴⁹ Cook, *supra* note 47.



Rhodes Cook suggests an increase in super landslide counties in 2016 and 2020 were because of Donald Trump.⁵⁰ According to Cook, there are two primary results of the rise of super landslide counties impacted by Trump.⁵¹ One result favors Republicans, and the other favors Democrats.⁵² Data from the Center for Politics reveal 20% of counties in the U.S. gave 80% more of the vote (also known as “super landslides”) to Trump or Biden during the 2020 election.⁵³ As a result, close to 700 counties in the U.S. were super landslides, suggesting there was no competition in those counties.⁵⁴ Only 13 states did not have a super landslide county and in 18 states, over 20% of their counties were super landslides.⁵⁵ The increase in super landslide counties has strengthened the dominant political party in those states.⁵⁶ These statistics support the notion that America is increasingly becoming polarized without an end to the gridlock in sight.

⁵⁰ *Id.*

⁵¹ Cook, *supra* note 47.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See generally id.* (Showing the number of super landslide counties in Arizona, Connecticut, Delaware, Hawaii, Maine, Michigan, Minnesota, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, and Washington).

⁵⁶ *Id.*

B. Gerrymandering & Voter Suppression

Gerrymandering in the United States is the practice of drawing districts to manipulate elections by giving one party unfair advantage over its' competitor or by diluting the vote of people in particular areas.⁵⁷ Because of this, gerrymandering leads to uncompetitive elections and undermines the democratic principle of fair representation.⁵⁸ "Compounding" this issue is the recent Supreme Court ruling that federal courts lack the authority to review allegations of partisan gerrymandering, deeming them non-justiciable political questions.⁵⁹

In the case of *Rucho v. Common Cause*, Republicans drafted a redistricting plan that favored their party in 9 out of 12 states.⁶⁰ Despite glaring anomalies, such as an efficiency gap of 19% present and computer-generated maps failing to produce 9-3 splits under non-partisan standards, the Supreme Court did not find these redistricting efforts in violation of the Equal Protection Clause. The presence of districts with disproportionately high concentrations of Democratic voters and low numbers of Republican voters, coupled with evidence of blatant partisanship, including statements such as "it is better that Republicans lead the country," should have been sufficient grounds to recognize partisan gerrymandering.⁶¹

The decision in *Rucho* overturned the Supreme Court's previous decision in *Karcher v. Daggett* (1983).⁶² In *Karcher*, Justice Stevens emphasized the Equal Protection Clauses' mandate for impartial governance. The Court in

⁵⁷ Brian Duignan, *Gerrymandering*, BRITANNICA, <https://www.britannica.com/topic/gerrymandering> (last visited Jan. 9, 2025).

⁵⁸ Christy DeSmith, *Biggest Problem With Gerrymandering*, HARV. GAZETTE (Jul. 5, 2023) <https://news.harvard.edu/gazette/story/2023/07/biggest-problem-with-gerrymandering/>.

⁵⁹ *Rucho v. Common Cause*, 588 U.S. 684, 710 (2019).

⁶⁰ *Id.* at 691.

⁶¹ *Rucho*, 588 U.S. at 691.

⁶² *Karcher v. Daggett*, 462 U.S. 725 (1983).

Rucho held that claims of partisan gerrymandering did not constitute a violation of the Equal Protection Clause, justiciable by federal courts. Chief Justice John Roberts writing for the Majority that while partisan gerrymandering might have discriminatory effects on certain groups of voters, it did not target a protected class or a fundamental right, prerequisites for invoking heightened scrutiny under the Equal Protection Clause. Consequently, the Court concluded that claims of partisan gerrymandering based on the Equal Protection Clause were beyond the purview of judicial review. The ruling raises concerns about the erosion of democratic norms and the potential for entrenched partisan manipulation of electoral processes. By side stepping the issue of partisan gerrymandering, the Court has effectively sanctioned the subversion of democratic principles, allowing political parties to entrench their power through undemocratic means. As such the struggle against gerrymandering remains a critical battleground in the fight for fair and representative democracy in the United States.

C. Polarizing Political Identities

Political identity plays a significant role in polarized politics. Cook states that “the United States is perhaps alone in experiencing a democratic shift that poses a threat to the white population that has historically been the dominant group in all arenas of power, allowing political leaders to exploit insecurities surrounding this loss of status.”⁶³ Issues surrounding political identity play a significant role in U.S. politics creating zero-sum logic.⁶⁴ Ethnic and racial divides are at the forefront of its elections.⁶⁵ According to Lee Drutman, the current political climate in the United States has become “zero-sum contests over the identity of the nation and/or the relative social status of different groups...”⁶⁶ Drutman elaborates

⁶³ *Id.*

⁶⁴ Drutman, *supra* note 31, at 989.

⁶⁵ *Id.*

⁶⁶ Drutman, *supra* note 31, at 994.

that “[f]ew people identify themselves primarily by the money in their bank account, but many people identify themselves by their race, their ethnicity, their religion, and the relative status in their groups in society...”⁶⁷

This entire premise is supported by author and journalist Bill Bishop, who wrote the book *The Big Sort*, which highlights America’s political polarization and how it is dividing the country. Bishop’s thesis is further supported by updated statistics from the 2012, 2016, and 2020 elections demonstrating that the polarization trends mentioned by Bishop are continuing and worsening compared to 2009, when *The Big Sort* was published.⁶⁸ In sum, as time goes on and elections take place, the country’s electorate has become more divided and entrenched in their views.

Evidence further suggests a correlation between party affiliation and race.⁶⁹ Data from the 2016 Presidential Election show that Hilary Clinton received 88% of votes from black voters while only 8% voted in favor of Donald Trump.⁷⁰ Likewise, Clinton received 65% of votes from Asians and Latinos while Trump received 29% of votes from those groups.⁷¹ Additionally, a study from the Center for Politics noted that in the 2020 election, the areas in which Trump had super landslides were mainly in white rural counties.⁷² This is not surprising when compared with other U.S. elections; more white individuals are elected on behalf of the Republican Party, and those elected on behalf of the Democratic represent a more diverse pool of people.⁷³ Overall, as the United States continues to divide itself along political and racial lines, the

⁶⁷ *Id.* at 990.

⁶⁸ Cook, *supra*, note 47.

⁶⁹ *Id.*

⁷⁰ Jon Huang et al., *Election 2016: Exit Polls*, N.Y. TIMES (Nov. 16, 2016), <https://www.nytimes.com/interactive/2016/11/08/us/politics/election-exit-polls.html>.

⁷¹ *Id.*, see also, Anthony J. Gaughan, *Illiberal Democracy: The Toxic Mix of Fake News, Hyperpolarization, and Partisan Election Administration*, 12 DUKE J. CONST. LAW & PUB. POL’Y, 2017 at 17.

⁷² Cook, *supra* note 47.

⁷³ Gaughan, *supra* note 71, at 17.

ability to work together and make societal progress is in jeopardy.

D. Super PACS & the Media

One of the biggest issues in American politics today is that the Congressional Party's ultimate goal is to remain in power. Specifically, those elected to the House of Representatives are only in office for two years before their term is up. Thus, there tends to be more of a focus on elections rather than completing objectives. Money raised by the Democratic and Republican campaign committees is primarily spent on televised political ads.⁷⁴ Political advertisements on television or on the Internet have become increasingly more difficult to monitor for misinformation.⁷⁵ This decreases the chance that a candidate who supports issues impacting minorities or less financially powerful groups will be able to obtain power.

A significant case that impacts U.S. politics and polarization levels is *Citizens United v. Federal Election Commission*.⁷⁶ The Supreme Court held that corporations and labor unions could spend unlimited money on advertisements and other political tools, as long as it is not a direct donation to a candidate's campaign.⁷⁷ Here, a conservative nonprofit group ("Citizens United") challenged campaign finance laws after the FEC ("Federal Elections Commission") prevented Citizens United from promoting and airing a film that attacked presidential candidate, Hilary Clinton before the 2008 election.⁷⁸ The Court ruled in favor of Citizens United in a 5-4 majority.⁷⁹

⁷⁴ *The Impact of Citizens United on Congressional Elections*, THE GOV'T AFFAIRS INST. <https://gai.georgetown.edu/the-impact-of-citizens-united-on-congressional-elections/> (last visited Dec. 2, 2024).

⁷⁵ Mike Lucas, *How Media – Namely News, Ads and Social Posts – Can Shape an Election*, RUTGERS NEWS (Oct. 1, 2024), <https://www.rutgers.edu/news/how-media-namely-news-ads-and-social-posts-can-shape-election>.

⁷⁶ *Citizens United v. FEC*, 558 U.S. 310 (2010).

⁷⁷ *Id.* at 446-47.

⁷⁸ *Id.* at 319-21.

⁷⁹ *Id.* at 317.

Justice Kennedy opined that limiting “independent political spending” from corporations and other organizations violated free speech under the First Amendment.⁸⁰ The Court reasoned that independent spending would be transparent.⁸¹ This overruled hundreds of years of election spending laws.⁸² The Court did not believe that there was a substantive threat of corruption because it was not directly coordinated with the campaign of the candidate.⁸³ Following this decision, corporations may spend unlimited money on campaign advertising so long as they avoid “coordinating” with a party or candidate.⁸⁴

This decision was the catalyst for super PACS. Per the FEC website, “Super PACs are independent expenditure-only political committees that may receive unlimited contributions from individuals, corporations, labor unions and other political action committees for the purpose of financing independent expenditures and other independent political activity.”⁸⁵ This decision enables corporations or organizations with much financial power to output political ads in favor of certain candidates who benefit the corporation’s ideals giving more leverage to those candidates to win over votes.⁸⁶ The influence powerful corporations have in the U.S. political system seemingly contradict the Nation’s basic principles of a representative democracy because when corporations spend nearly limitless amounts of

⁸⁰ *Id.* at 365-66.

⁸¹ *Id.*

⁸² *Id.* at 312.

⁸³ *Id.* at 357-58.

⁸⁴ *Id.* at 345.

⁸⁵ *Registering as a Super PAC*, FED. ELECTION COMM’N, <https://www.fec.gov/help-candidates-and-committees/filing-pac-reports/registering-super-pac/#:~:text=Super%20PACs%20are%20independent%20expenditure.and%20other%20independent%20political%20activity> (last visited Nov. 22, 2024).

⁸⁶ *The Impact of Citizens United on Congressional Elections*, THE GOV’T AFFAIRS INST: REVISE AND EXTEND, <https://gai.georgetown.edu/the-impact-of-citizens-united-on-congressional-elections/> (last visited Nov. 22, 2024).

money to support or change public policy, the voices of citizens are drowned out.

The expanding media landscape intensifies concerns about unlimited campaign contributions, as evidenced by its pivotal role in the 2016 U.S. election. Subsequent investigations revealed that the Russian security state systematically exploited racial tensions to diminish American voters' trust in the electoral process and democratic institutions.⁸⁷ This has been made possible by the United States' long lived institutionalized racism.⁸⁸ Utilizing this weakness, the Russian Security State hired individuals to create fake bot accounts on social media to intently cause chaos in the U.S. using deep race issues to impact the election.⁸⁹ The investigation further revealed that Russia's President, Vladimir Putin, ordered the election interference with a goal of "undermining public faith in the U.S. democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency."⁹⁰ Additionally, fake bots were used to spread "fake news" and cause chaos on social media platforms reaching over "140 million users."⁹¹ The Russians charged with this act bought advertisements and created false aliases to distract Americans online.⁹² These individuals working on Russia's behalf understood the importance of the minority voter turnout during this election.⁹³ Hired individuals were trained on social issues in the U.S.⁹⁴ A staffer from this group admitted the goal was not to turn the United States onto Russia, but rather to turn "Americans against their own government: to provoke unrest and discontent....[to create] distrust toward the candidates and the political system in general."⁹⁵ During

⁸⁷ Darren E.W. Johnson, *Article: Russian Election Interference and Race-Baiting*, 9 COLUM. J. RACE & L. 191, 193 (2019).

⁸⁸ *Id.* at 195.

⁸⁹ *Id.* at 209.

⁹⁰ *Id.* at 198.

⁹¹ *Id.* at 199.

⁹² *Id.* at 195-96.

⁹³ *Id.* at 201.

⁹⁴ *Id.* at 200.

⁹⁵ *Id.* at 202.

the 2018 election, Russia similarly interfered by creating political advertisements on social media platforms to address divisive social issues.⁹⁶ Racial oppression in the United States has negatively impacted its reputation on the world stage to the benefit of foreign enemies.⁹⁷ The deep-rooted institutionalized racism is apparent in the United States and plays a role in its politics that expose vulnerabilities in its system.

Political ads are no longer limited to television or paper advertisements; there is a new focus on social media platforms that quickly can spread a message to a large audience. Influential leaders, such as the President of the United States, are able to quickly spread a message to their large social media following, allowing it to be reposted and spread to millions of social media users.⁹⁸ Anything posted online, ultimately stays online forever.⁹⁹ In 2016, anti-Muslim remarks made by candidate Donald Trump grew online.¹⁰⁰ As a result, there was an increase in anti-Muslim tweets that gained attention from news outlets.¹⁰¹ In the following days, crimes against Muslims increased 32%. According to Daniel Byman, “specific tweets led to an increase in hate crimes with the level rising and falling depending on the prevalence of the social media activity.”¹⁰² This demonstrates the divisiveness in the United States when it comes to its own citizens.

In the last two decades, ‘democratic backsliding’ has become widely popular in global politics.¹⁰³ The concept of

⁹⁶ *Id.* at 10.

⁹⁷ *Id.* at 3.

⁹⁸ Daniel L. Byman, *How Hateful Rhetoric Connects to Real-World Violence*, BROOKINGS: COMMENTARY (Apr. 9, 2021), <https://www.brookings.edu/articles/how-hateful-rhetoric-connects-to-real-world-violence/>.

⁹⁹ *Id.*

¹⁰⁰ Byman, *supra* note 98.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Thomas Carothers & Benjamin Press, *Understanding and Responding to Global Democratic Backsliding*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Oct. 20, 2022), <https://carnegieendowment.org/2022/10/20/understanding-and-responding-to-global-democratic-backsliding-pub-88173>.

'backsliding' focuses on the centralized role of anti-democratic political norms driven by leaders.¹⁰⁴ Opportunistic authoritarianism is a type of backsliding practice.¹⁰⁵ Opportunistic authoritarianism is when power is obtained through the traditional election process and by "playing by the rules of the democratic game."¹⁰⁶ The high risk of being voted out of power results in the leader "clos[ing] off pathways of democratic accountability by undermining the courts, politicizing state administration, raising barriers to opposition, and reducing civic space."¹⁰⁷ Thomas Carothers refers to this form of authoritarianism as "*illiberalism without a cause*" because, other than the interest of the leader, there is no reasoning behind their actions.¹⁰⁸ Often, opportunistic authoritarian leaders develop corrupt networks that are central to their political methodology.¹⁰⁹ Carothers argues that polarization as a "global-driver" faces two limitations: the first being that, often, polarization is an effect of authoritarianism rather than being the cause, and the second being that polarization has not been a significant element in some back sliding cases.¹¹⁰ Nevertheless, it remains imperative for the United States to exert all efforts in steering clear of opportunistic authoritarianism. This necessitates to remaining vigilant against tactics employed to suppress voters and undermine democracy.

PART II

IV. HOW THE UNITED STATES CAN OVERCOME POLITICAL POLARIZATION

In this section, we will focus on the legal solutions that the United States can use to mitigate polarization and safeguard the integrity of its elections. As this previously

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

highlighted, escalating polarization has posed challenges to increased political stability in the U.S. Drawing a parallel, Germany faced a similar period with polarization, culminating to the rise of the Nazi Party and World War II. To avert any similar scenario, the U.S. must proactively address the dysfunction in its voting system and campaigning laws.

A. Ranked Choice Voting

One strategy for the U.S. to address the polarization affecting its political stability is the adoption of a Ranked Choice Voting (RCV) system. This voting method has voters rank candidates in order of preference.¹¹¹ A candidate with more than half of the first-choice vote wins.¹¹² If no majority winner emerges, the candidate with the least number of votes is eliminated, and voters' second choice votes are calculated.¹¹³ This process continues until a majority winner is determined.¹¹⁴ This system would make elections fairer by ensuring that voters are being heard.¹¹⁵

RCV enables voters to express their genuine preferences for candidates rather than settling for perceived front-runners.¹¹⁶ This would likely increase the competitiveness of elections because voters are given opportunity to meaningfully cast a vote for a candidate and avoid the fear of wasting a vote on a candidate that is more likely to win.¹¹⁷ Evidence suggests that this would increase of voter participation.¹¹⁸ This is more representative of what voters prefer and signifies what democracy means.

¹¹¹ *Ranked Choice Voting*, CAMPAIGN LEGAL, (last visited Jan. 14, 2024) <https://campaignlegal.org/democracyu/accountability/ranked-choice-voting>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Ranked Choice Voting Information*, FAIR VOTE, (last visited Jan. 14, 2024), <https://fairvote.org/our-reforms/ranked-choice-voting-information/#rcv-in-presidential-primaries>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

In addition to meaningful votes, this form of voting incentivizes politicians to win over voters to become their second and third choice candidate. This helps decrease negative campaign behavior and creates more “equitable representation.”¹¹⁹ When a candidate must win over a larger pool of voters, it will prevent negative campaigning because they want to be liked by your adversary’s pool of support. Candidates who win these elections have genuine support and better represent their voters which overall results in better options of candidates during election season.

RCV is adopted in at least 50 U.S. jurisdictions, reaching approximately 13 million voters.¹²⁰ Should more or all states adopt RCV policies, elections should result in the election of candidates more representative of the actual electorate.

B. Improve Redistricting Procedures

The United States’ Constitution leads map drawing up to the states. Improving redistricting procedures is pivotal in mitigating voter suppression. The Supreme Court’s decision in *Rucho*, criticized by Justice Kagan, highlights the need for judicial oversight to ensure equitable representation.¹²¹ Assigning nonpartisan committees, devoid of political agendas to redistricting tasks minimizes the risk of partisan interference and promotes fairness.¹²² Given that district is redrawn every ten years based on population shifts, impartiality in this process is paramount. Justice Kagan’s dissent emphasizes

¹¹⁹ *Ranked Choice Voting*, *supra* note 111.

¹²⁰ Ranked Choice Voting Information, FAIR VOTE, <https://fairvote.org/our-reforms/ranked-choice-voting-information/#where-is-ranked-choice-voting-used>.

¹²¹ Poonam Kumar, *Ratification of Reapportionment Plans Drawn by Redistricting Commissions*, 40 U. MICH. J. L. REFORM 664 (2007).

¹²² Paige Moskowitz, *Here Are Three Other Ways to Redistrict*, DEMOCRACY DOCKET (Nov. 22, 2021), <https://www.democracydocket.com/analysis/three-alternatives-to-traditional-redistricting/#:~:text=One%20way%20to%20combat%20partisan,are%20appointed%20by%20a%20party>.

the severity of gerrymandering's threat to democracy, and the need for procedures to safeguard the electoral process.¹²³ All three dissents ever given by Justice Kagan from the bench involve threats to democracy.¹²⁴ Justice Kagan asserted that "...gerrymanders like these may irreparably damage our system of government." All the subtle gerrymandering – doesn't matter if people vote, if there are gerrymandering practices that prevent an individual's vote from counting. Justice Kagan advocated for harnessing advanced technology to improve the redistricting process. Justice Kagan suggested using "big data and modern technology" to change how district is redrawn.

It would be illogical to rely on outdated and unreliable sources concerning our population and where people reside when there is access to more accurate data on party preferences and voting behavior. This would enable mapmakers to create districts that better reflect fair representation and uphold democratic principles.¹²⁵

Even outside of technology, some states have organized committees to redraw the districts every ten years. For example, in New Jersey, non-partisan individuals are appointed to the redistricting committee.¹²⁶ This framework would prevent problematic redistricting practices such as in North Carolina and Maryland from occurring.

C. Reversal of Citizens United

Another approach to tackle political instability in the U.S. involves the Supreme Court to reverse its decision in *Citizens United*. The current ruling imposes no limits on campaign donations, leading to a problematic

¹²³ Mark Joseph Stern, *You Can Now Hear Elena Kagan Read Her Searing Dissent in the Partisan Gerrymandering Case*, SLATE (Oct. 25, 2019), <https://slate.com/news-and-politics/2019/10/elena-kagan-audio-partisan-gerrymandering-dissent.html>.

¹²⁴ *Id.*

¹²⁵ Rucho, 588 U.S. (Kagan, E., dissenting).

¹²⁶ *N.J. Redistricting and Apportionment*, N.J. GOV'T, <https://nj.gov/redistricting/> (last visited Jan. 9, 2025).

entanglement of interests between candidates and donors.¹²⁷ Political parties rely on substantial contributions, such as those from Super PACS for their campaigns. This creates a system where candidates are supported by limitless donations to maintain party control.

A shift toward publicly funded elections would even the playing field for candidates.¹²⁸ Daniel I. Weiner argues that the Court's decision in *Citizens United* "helped reinforce the growing sense that our democracy primarily serves the interests of the wealthy few, and that democratic participation for the vast majority of citizens is of relatively little value."¹²⁹ Public elections could bring transparency to voters by revealing the financial backers of specific candidates, empowering voters to make informed decisions.¹³⁰

Moreover, this approach would provide an opportunity for candidates without the financial support of wealthy corporations to run successful campaigns. Candidates with a focus on the needs of less financial privileged groups would stand a better chance in a system where financial support is not the sole determinant of campaign success. Ultimately, the removal or limits on corporate money in elections should allow for elections to become more competitive, and for polarization to decrease in the United States.

VIII. CONCLUSION

Escalating polarization within the United States' political landscape poses a threat to its democracy. The existing Electoral College system fosters an undemocratic environment that fails to accurately represent the preferences of voters. Emerging evidence indicates a surge

¹²⁷ Tim Lau, *Citizens United Explained*, BRENNAN CTR FOR JUST., (Dec. 12, 2019), <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>.

¹²⁸ *Id.*

¹²⁹ Daniel I. Weiner, *Citizens United Five Years Later*, BRENNAN CTR FOR JUST., (Jan. 15, 2015), <https://www.brennancenter.org/our-work/research-reports/citizens-united-five-years-later>.

¹³⁰ *Id.*

in super landslide countries, indicating a lack of uncompetitive elections nationwide, posing a systemic threat to our democratic principles. Moreover, gerrymandering exacerbates political polarization by allowing political parties to manipulate electoral districts and preventing voters from effectively choosing their representatives.

The current U.S. political system not only fails to alleviate polarization, but it exacerbates it through an unreliable and unrepresentative structure. Implementing independent redistricting commissions and using accurate data, could mitigate the harmful effects of gerrymandering by creating more competitive and representative districts, preserving the overall integrity of our voting system.

Additionally, the influence of powerful campaign committees further skews the democratic process by swaying voters and drowning out their voices. Addressing these issues could involve implementing a RCV to cultivate a more representative pool of candidates and ensure voters' preferences are accurately reflected. Furthermore, measures to curb the unrestricted financial influence of political parties would help strip excessive power from these entities, fostering a more equitable electoral landscape.

Ultimately, addressing the intense political polarization that is plaguing the United States of America through comprehensive electoral reforms, including redistricting procedures, voter methods and campaign finance regulations, could help sustain a flourishing democracy and return the country to the beacon of democracy it can be.

