

The Crisis of Minority Rule in American Democracy

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INTRODUCTION

America was principally designed to operate under a majoritarian government, administered by the will of the majority of its citizens with safeguards erected to protect the rights of minority populations. This ideal is encapsulated in a quote from the Constitution's author, James Madison, emphasizing that "no other rule exists . . . but the will of the majority; but it is also true that the majority may trespass on the rights of the minority."¹ It is strikingly clear that contemporary America has deviated from its intended system of majority rule with checks upon the power of an overweening majority in favor of another form of governance predicated not on the will of the majority but on a mere plurality or minority. This trend naturally results in undemocratic outcomes, as "any departure from strict majority rule gives disproportionate power to the minority."² The American presidential electoral system is far too vulnerable to minoritarian rule, with two of the last six presidential elections having been decided with the ultimate victor losing the popular vote. Further examples of minoritarian rule in America include: states with small populations possessing equal, inordinate representation in the Senate; gerrymandering and partisan voter obstructionism manipulating electoral outcomes nationwide; the wealthy holding an outsized voice in electoral outcomes; and individual senators or small minority coalitions halting action on the Senate floor. Minority rule has become a growing trend in American governance, an unintended consequence of the Founders' desire to reign in "mob rule."³ This trend toward minority rule has been widely derided because it leads to undemocratic outcomes through which the will of the majority is disregarded because of the manipulation of some of America's antiquated political institutions.

David Mayhew argued in *Partisan Balance: Why Political Parties Don't Kill the U.S. Constitutional System* that the American system has largely delivered majoritarian outcomes.⁴ In contrast, Norman Ornstein and Thomas Mann "doubt" that modern American politics are on course to consistently deliver majoritarian outcomes, particularly considering "[t]hese perilous times and the political responses to them are qualitatively different from what we have seen before."⁵

1. JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785), reprinted in 2 THE WRITINGS OF JAMES MADISON 183-85 (Gaillard Hunt ed., 1901).

2. *Gordon v. Lance*, 403 U.S. 1, 6 (1971).

3. THE FEDERALIST NO. 10 (James Madison). Many of America's Founding Fathers feared what might become of the nation if the majority were to rule impetuously over the minority groups, so safeguards were erected to ensure that the minority retained a public voice.

4. See DAVID R. MAYHEW, *PARTISAN BALANCE: WHY POLITICAL PARTIES DON'T KILL THE U.S. CONSTITUTIONAL SYSTEM* (2011). Mayhew finds that, generally, the American political system does a sound job at articulating the best interest of the majority of the American people. However, his book was written in 2011, and minoritarian rule has been a steadily growing force in American politics in the decade following the publication of this work—as exemplified by the election of President Donald Trump with a mere 46.1% of the popular vote and the stranglehold of Congressional authority attained by the Republican Party.

5. THOMAS E. MANN & NORMAN J. ORNSTEIN, *IT'S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM* (2016).

Ultimately, America is on the precipice of a liminal moment, in desperate need of substantive changes to its democracy but unable to form a consensus about the proper course of action. This paper seeks to shine a light on the core of the nationwide discontent with America's institutions that has enabled minoritarian seizure of authority, while offering recommendations to reestablish majority rule as America's pervasive governing force.

I. MINORITY RULE IN MODERN AMERICA

Minoritarian rule represents a genuine threat to democracy, which always ought to be predicated upon rule by the majority of a nation's citizenry. Individuals vote to ensure their voices are heard in determining elections that will impact their lives.⁶ Generally, humans are inherently rational and selfish beings, constantly seeking avenues through which they can better their own station in life.⁷ This notion is evident in Mayhew's conception of the incessant will of congressmen to win reelection. Therefore, voting in elections guarantees an outlet for citizens to influence their government, while also presenting a means through which voters can collectively hold their elected officials accountable. Ultimately, politicians will act in a responsible manner to "maximize votes" in attaining reelection.⁸ Mayhew applies this rational choice theory to American congressmen, positing that members of Congress act with the singular purpose of seeking reelection, focusing on the behaviors, actions, and activities that are most likely to further their reelection efforts.⁹ Mayhew's logic that congressmen are naturally self-interested beings likewise applies to all elected officials, including the president, state and local officials, and political parties as a whole. Therefore, it is typically imperative for politicians and parties to behave responsibly or face harrowing reelection prospects. However, if a politician or party can capture the political market through manipulation of the electoral system, such as winning the Electoral College vote while losing the popular vote or consistently winning a greater share of congressional seats than the popular vote might indicate is plausible, the people can no longer provide the necessary oversight of their government. Democratic safeguards that ensure citizens possess influence over the government deteriorate as a lesser share of the population's votes continue to have a greater impact on government than the majority's ballots.

A. *The Republican Party's Shift in Response to Minority Rule*

Recently, the Republican Party has exploited features of the American system to seize power with minority voter support. For example, the last two Republican presidents have lost the popular vote but won the presidency, while congressional Democrats must win the nationwide popular vote with approximately 55% of the

6. ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 107 (1957).

7. THOMAS HOBBS, *THE LEVIATHAN*, PT. I (OF MAN) CH. 13.

8. DOWNS, *supra* note 6, at 109.

9. DAVID R. MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (2d ed., 1974).

vote to gain a simple majority in either the House or the Senate.¹⁰ Modern minority rule offers insight into the importance of the citizenry maintaining its role as a supervisor of government, for the American people's trust in the government has reached record lows¹¹ and American voter turnout continues to lag far behind most other developed nations.¹²

The Republican Party, which has succeeded in this modern era of minority political rule, has become accustomed to its favored position, which has reduced its inclination to respond to the will of the people. As discussed above, political competition ensures that government actors act in the best interest of their constituency. However, if a political party consistently finds electoral success without earning a majority of the vote, the party can quickly become unresponsive to the whims of the people. The Republican National Convention (RNC) affirmed such a message after its landslide loss in the 2012 general election, offering an autopsy that self-diagnosed the contemporary issues facing the Party. With respect to the Party's public messaging, the report declared that "[t]he Republican Party needs to stop talking to itself. We have become expert in how to provide ideological reinforcement to like-minded people, but devastatingly we have lost the ability to be persuasive with, or welcoming to, those who do not agree with us on every issue."¹³ In essence, the Republican Party was experiencing the detrimental effects of its reliance on minority rule, for the RNC believed that broadening its base was imperative to the party's ultimate success. The Republican Party, however, has developed into a more radical version of itself because "pragmatic institutional figures who . . . focused on solving problems, are unimaginable in the present context,"¹⁴ and the Party has found itself enveloped by groupthink that has stifled the development of new ideas.¹⁵ According to Bill Bishop, James Madison believed that "isolated groups were seedbeds of extremism."¹⁶ This theory has led the Republican Party to develop into an isolated version of its prior self, widely unguided by the hand of the public. Thus, the contemporary iteration

10. David Wasserman, *The Congressional Map Has A Record-Setting Bias Against Democrats*, FIVETHIRTYEIGHT (Aug. 7, 2017), <https://fivethirtyeight.com/features/the-congressional-map-is-historically-biased-toward-the-gop/> [https://perma.cc/23QV-DBA7].

11. *Public Trust in Government: 1958-2023*, PEW RSCH. CTR., 3 (Sept. 19, 2023), <https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023/> [https://perma.cc/7HWW-Q7H4] (reporting that a mere 16% of respondents believe that the government will do what is right "just about always" or "most of the time").

12. Drew DeSilver, *Turnout in U.S. has soared in recent elections but by some measures still trails that of many other countries*, PEW RSCH. CTR. (Nov. 1, 2022), <https://www.pewresearch.org/short-reads/2022/11/01/turnout-in-u-s-has-soared-in-recent-elections-but-by-some-measures-still-trails-that-of-many-other-countries/> [https://perma.cc/Y6J7-C8U6] (finding that the U.S. ranked 31st in turnout rate among voting-age population).

13. *The Growth and Opportunity Project Report*, THE REPUBLICAN NATIONAL COMMITTEE, at 5 (Mar. 18, 2013), <http://online.wsj.com/public/resources/documents/RNCreport03182013.pdf> [https://perma.cc/U9AG-9HD7].

14. Mann & Ornstein, *supra* note 5, at 53.

15. *The Growth and Opportunity Project Report*, *supra* note 13, at 54.

16. BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* (2009).

of the Republican Party serves as a prime example of the innate dangers of minority rule: an unresponsive, polarized, and divisive party solely fixated upon obtaining electoral success through minoritarian means.

B. The Electoral College

The Electoral College, which lacks safeguards to ensure majority rule, has contributed to the spread of minority rule in American politics and a general lack of accountability between politicians and their constituencies. The Electoral College was originally enacted as a compromise between two coalitions during the Constitutional Convention, one side seeking direct election of the executive by the citizens and the other pursuing election by Congress. The opponents of direct election feared the general public was inadequately informed to make such a critical decision. Meanwhile, the opponents of congressional election feared the president would be a puppet for the legislative branch.¹⁷ The solution involved voters or legislators choosing electors in each state, who would then independently cast their ballots for president. The Electoral College, however, has devolved into an institution that fosters minoritarian rule.

There are two primary concerns about the Electoral College and its potential for minority rule: the potential for a winner of the popular vote to lose the electoral vote, and the possibility of an election defaulting to the House of Representatives because no candidate garnered the requisite 270 electoral votes. The former—that the winner of the popular vote, which is the collective tally of the votes of the entire nation, could lose the election—has occurred five times in this nation’s history, in 1824, 1876, 1888, 2000, and 2016.¹⁸ In these elections, the winner of the election was decided by a minority of the voters. The 2016 Presidential Election is a prime example. Donald Trump received 46 percent of the popular vote, while Hillary Clinton garnered 48.1 percent.¹⁹ Nevertheless, Trump defeated Clinton by a hefty seventy-four Electoral College votes.²⁰

The latter concern—that an election might default to the House of Representatives—presents an even blunter potential for minority rule. Under these circumstances, a candidate could win the presidency without winning either the popular vote or the electoral tally, as John Quincy Adams did in the 1824 election.²¹ If an election were to default to the House, each state, regardless of its population, would receive a single vote for the president. In such a scenario, the most populous state in the nation would possess the same amount of influence

17. Roberta A. Yard, *American Democracy and Minority Rule: How the United States Can Reform Its Electoral Process to Ensure One Person, One Vote*, 42 SANTA CLARA L. REV. 185, 191-92 (2001).

18. Encyclopedia Britannica, *United States Presidential Election Results* (2023), <https://www.britannica.com/topic/United-States-Presidential-Election-Results-1788863> [<https://perma.cc/REJ4-KYC5>].

19. *Id.*

20. 2016 Presidential Election Results, N.Y. Times (Aug. 9, 2017) <https://www.nytimes.com/elections/2016/results/president> [<https://perma.cc/956H-UFA5>].

21. Encyclopedia Britannica, *supra* note 18.

over the presidential election as the least populous state; a voter in Wyoming in the 2020 election would hold 68.27 times the influence over the outcome of the election than a voter in California.²² Therefore, the 26 least populous states, with a sharp minority of the United States' population could, in theory, elect the president. Curiously, "[t]he founders actually believed that most elections would default to the House of Representatives,"²³ supposing that electors would vote for candidates either from their state or nearby regions. If this were the case, most presidential elections would result in the winner of the Electoral College failing to receive the constitutionally mandated majority of the Electoral College votes to win the presidency, sending the vote to Congress with each state delegation possessing one vote.

The Electoral College was intended to protect the office of the executive, but it has instead increased the potential for minoritarian rule in a nation with majority rule as its foci. The presidential electoral system stands in stark contrast to the principles of American elections, given that "for all other elected offices, the winner is determined by the candidate who receives the most votes."²⁴ Thus, it seems counterintuitive that America's highest elected office relies upon different electoral standards than all others.

In addition to these two central concerns about the Electoral College, this system presents various other avenues for minority rule. Smaller states have a louder electoral voice than the common American saying 'one person, one vote' might indicate. Because the distribution of electoral votes depends upon the total number of Representatives and Senators of each state, a resident of Wyoming receives nearly four times the electoral influence of a resident of California.²⁵

Additionally, David Stromberg notes that "the Electoral College creates very sharp incentives to target a selected group of states" when campaigning,²⁶ and in each election the number of battleground states that are in play for either party declines, because Americans are surrounding themselves with like-minded others, and Democrats have become such a dominant, fixed majority in large cities that states with expansive urban centers are no longer electorally competitive.²⁷ All citizens deserve to feel as if their vote counts, receiving equal political attention regardless of their home state. But a narrow group of states receives an unjustifiable amount of attention from presidential campaigns. Similarly, these same states are afforded disproportionate sway over a presidential election's results. The impact of the vote of an individual from an electorally pre-determined state,

22. *US States by Population*, WORLDATLAS, <https://www.worldatlas.com/articles/us-states-by-population.html> [https://perma.cc/5QHX-BC4J].

23. Yard, *supra* note 17, at 192.

24. Benjamin Bolinger, *Point: Abolishing the Electoral College*, 82 INT'L SOC. SCI. REV. 180, 180 (2007).

25. *Id.*

26. David Stromberg, *How the Electoral College Influences Campaigns and Policy: the Probability of Being Florida*, 98 AM. ECON. REV. 769, 769–70 (2008).

27. THOMAS E. MANN & NORMAN J. ORNSTEIN, *THE BROKEN BRANCH: HOW CONGRESS IS FAILING AMERICA AND HOW TO GET IT BACK ON TRACK* 224 (2006).

such as California or Oklahoma, pales in comparison to that of a voter from a swing-state Florida in 2000, when Bush won the state and thus the general election, by a mere 537 votes.²⁸ America must ensure that the votes of all citizens remain equal in their impact otherwise a narrow minority of the American population is accorded outsized control in determining the presidency.

C. The Election of Senators

With its foundations in the Great Compromise in 1787, the United States Senate is an innately unequal governing body, as a state's population is disregarded in apportioning representation. Similar to the default of a presidential election, a Wyoming resident receives 68.27 times the Senate representation of an individual from California. This system seems antithetical to American ideals, which extoll the equality of all citizens. The Senate's apportionment also seemingly violates equity: "the United States Senate is among the most malapportioned legislatures in the world."²⁹ This malapportionment will only continue to intensify. According to David Birdsell, by 2040, 70% of the American population is expected to reside in just 15 states, meaning that a mere 30% of the American population would be represented by 70% of sitting Senators.³⁰ Enhancing this malapportionment of Senate representation is the fact that ideological liberals and racial minorities have clumped themselves in the most populated states because of their expansive urban centers and the allure of living in communities with like-minded others. Residents of states with reduced Senate representation are generally more ideologically liberal.³¹ Racial minorities also tend to reside in states with low Senatorial representation, and their Senators have been found to champion the interests of minority populations, exacerbating ideological malapportionment in the Senate.³² The Senate wields considerable authority over the nation's legislative agenda, and the diminished representation of certain states enables a sizeable minority of the American citizenry to receive a far greater share of representation in the Senate than their population would indicate they should receive.

28. Ron Elving, *The Florida Recount Of 2000: A Nightmare That Goes On Haunting*, NPR (Nov. 12, 2018), <https://www.npr.org/2018/11/12/666812854/the-florida-recount-of-2000-a-nightmare-that-goes-on-haunting> [<https://perma.cc/JYH3-LFBL>].

29. See John D. Griffin, *Senate Apportionment as a Source of Political Inequality*, 31 LEGIS. STUD. Q. 406, 407 (2006). Griffin continues, articulating that political scientists have understood for quite some time that the Senate's apportionment allows for inequities to arise if populations are uneven in states and different groups (racial groups, ideological groups, etc.) are spread unevenly. These phenomena occur naturally, as it is logical that populations would differ by state and, with the Big Sort, different groups have clumped themselves together.

30. Ian Millhiser, *The Senate is so rigged that Democrats may never control it ever again*, THINKPRESS (Nov. 7, 2018), <https://archive.thinkprogress.org/the-senate-is-so-rigged-that-democrats-may-never-control-it-ever-again-14ede9ac5f01/> [<https://perma.cc/WJ7W-7XXR>].

31. Griffin, *supra* note 29, at 418.

32. *Id.* at 425.

*D. Minority Rule through the Electoral College and the Senate
Impact the Judiciary*

Minority rule ultimately touches not only the executive and legislative branches, but also the judicial branch. The president nominates candidates for all federal courts, including the Supreme Court, and the Senate must examine and confirm all presidential nominees for Article III judges. Therefore, if a president wins election with a minority of the popular vote, a federal court judge or Supreme Court justice could be appointed by a minority-elected president and confirmed by a Senate that represents a minority of the American people. This scenario occurred in 2018 with the appointment and confirmation of Justice Brett Kavanaugh. President Trump, who lost the popular vote, nominated Kavanaugh, who was confirmed by fifty senators that represented only 44% of the U.S. population.³³ It seems contrary to democratic principles that a minority of the population could hold so much authority over the entirety of the government. And yet, it seems that minority rule has pervaded every aspect of America's governing structure.

E. Gerrymandering

A significant portion of the growth in minoritarian rule in America's democracy stems from partisan gerrymandering of legislative districts and the development of impediments to voting that have limited the prospective voter pool. Harkening back to Mayhew's declaration that congressmen selfishly seek their own reelection, partisan gerrymandering is similarly motivated "by narrow, self-interested ends, [and it] offends the ideal of a public-regarding politics toward which our polity should strive."³⁴

To exert authority over the redistricting process, a political party must first gain a majority in the state legislature or win the governorship. Once that influence has been attained, a party can sustain its own electoral success and propel itself to an inequitable and lengthy period of political power. Control over congressional districting has become far simpler due to the "geographical clustering of like-minded citizens,"³⁵ which has enabled the Republican Party to enclose large cities into single districts through the manipulation of congressional district lines. This problem is especially alarming for the Democratic Party because of

33. GovTrack.us, *With Kavanaugh vote, the Senate reaches a historic low in democratic metric*, GOVTRACK (Oct. 7, 2018), <https://govtrackinsider.com/with-kavanaugh-vote-the-senate-reaches-a-historic-low-in-democratic-metric-dfb0f5fa7fa> [<https://perma.cc/D2VC-9WDN>].

34. See Peter H. Schuck, *The Thickest Thicket: Partisan Gerrymandering and Judicial Regulation of Politics*, 7 COLUM. L. REV. 1325, 1330 (1987). During this discussion, Schuck is proposing that partisan gerrymandering, though it is antithetical to America's democratic principles, is understandable since congressmen act in their own interests. Schuck also articulates that partisan gerrymandering is seemingly constitutional, though out of alignment with America's most important ideals, foreshadowing his belief that partisan gerrymandering should be stemmed by a constitutional amendment.

35. See Mann & Ornstein, *supra* note 5, at 145. This idea seems strikingly similar to the thesis of Bishop's *The Big Sort*, as Mann and Ornstein reference that geographical sorting of people resulting from their political ideology has furthered gerrymandering and, thus, political polarization.

the wasted vote problem. If a large city is constrained to a single district, urban Democratic voters' voices will be muffled because any "votes cast for a winning candidate in excess of the number needed to win" are "considered wasted."³⁶

Another of the chief concerns about gerrymandering is that a party which continues to gain electoral victories without a majority of the popular vote can quickly become unresponsive to the desires of their constituency. In an enclosed environment, politicians and parties find their own beliefs echoed back to them by their supporters, though such a message might be drastically unrepresentative of their rightful, non-gerrymandered constituency.³⁷ A report conducted by the Brennan Center discovered that the Republican Party gained 25–36 extra congressional seats in 2012, 4–20 extra seats in 2014, and 16–29 extra seats in 2016, caused by partisan gerrymandering.³⁸ Partisan gerrymandering is not unique to the Republican Party, as the Democrats have relied upon a long-standing gerrymander in Maryland. Furthermore, in the 2020 general election, a mere 14% of House seats were competitive and up for grabs, suggesting partisan gerrymandering's extraordinary impact.³⁹ Ultimately, partisan gerrymandering exposes how detrimental prolonged minority rule can be to a republic, as politicians whose views and actions widely differ from the collective will of their constituency continue to gain reelection.

F. Voting Restrictions

The pool of potential voters has been gradually winnowed by the swell of laws and practices that impede voting. These restrictive procedures include weekday voting, restrictive voter registration, and voter ID laws, all of which could swiftly be eliminated to protect voting, which "is the bedrock of democracy."⁴⁰ Voter ID laws serve as substantial suffrage barriers for large portions of the American populace because many Americans do not possess proper identification. Furthermore, Voter ID laws are largely unnecessary, as there is little evidence of voter fraud in America.⁴¹ Additionally, the purging of voter rolls requires voters removed from the rolls to take affirmative steps to be reinstated, preventing felons from voting

36. Eric Petry, *How the Efficiency Gap Works*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf [<https://perma.cc/9QPL-48EY>].

37. See MANN & ORNSTEIN, *supra* note 27, at 230. Ornstein and Mann write that "[l]awmakers have become more insular and more attentive to their ideological bases as their districts have become more partisan and homogeneous. Districts have become more like echo chambers, reinforcing members' ideological predispositions with fewer dissenting voices back home or fewer disparate groups of constituents to consider in representation."

38. Laura Royden & Michael Li, *Extreme Maps*, BRENNAN CTR. FOR JUST. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps> [<https://perma.cc/328L-8CZF>].

39. Michael Li & Chris Leaverton, *Gerrymandering Competitive Districts to Near Extinction*, BRENNAN CTR. FOR JUST. (Aug. 11, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/gerrymandering-competitive-districts-near-extinction> [<https://perma.cc/VKY6-LRUH>].

40. Zoltan Hajnal, Nazita Lajevardi, & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. OF POLS. 363, 363 (2017).

41. *Id.* at 364.

silences the voices of millions of Americans, and the shuttering of polling places in minority and college neighborhoods restricts the ability of these populations to vote. One study reveals that “a voter in a predominantly minority precinct experiences a line that is twice as long, on average, than a voter in a predominantly white precinct.”⁴² It is intuitive that there would be an inverse relationship between a voters’ presumptive wait time and their likelihood of voting. Again, the Republican Party benefits from these policies, which plainly target minorities and youth, key Democratic constituencies. As Professor David Blight has observed, “[t]here is no Republican majority in America, except on election days.”⁴³ And the Republican Party’s so-called election-day ‘majority’ comes from its electoral maneuvers designed to ensure its continued political dominance.

G. Campaign Finance

As the average American steadily becomes more civically disengaged, money and special interest groups have filled the void.⁴⁴ *Citizens United v. Federal Election Commission* prohibited the government from limiting the amounts that individuals and corporations can spend on political communication.⁴⁵ Though there are limits on the amount of hard money an individual or Political Action Committee (PAC) can donate to a candidate or PAC, wealthy citizens can donate vast sums to Super PACs, which campaign independently from individual candidates, campaigns, or parties. Therefore, a wealthy individual can funnel limitless quantities of her fortune into Super PACs, which campaign on behalf of a special interest or specific candidate. Ornstein and Mann articulate the difficulties of campaign finance: “Reconciling the tension between economic inequality and political equality, while preserving the constitutional guarantee of free speech, is no easy task.”⁴⁶

The extent to which individuals should be afforded individual license to impact political campaigns presents a quandary. An average, middle-class American cannot spent the immense amounts of wealthy individuals and corporations. Hence, wealthy Americans and corporations, who represent a clear minority of the American populace, are accorded a vastly superior impact over an election’s outcome. Evidence for this impact is found in the fact that political candidates no longer “have the same type of broad-based community financial support that they once had. The costs and benefits of fund-raising have made it more efficient for

42. Stephen Pettigrew, *The Racial Gap in Wait Times: Why Minority Precincts are Underserved by Local Election Officials*, 3 POL. SCI. Q. 527, 527 (2017).

43. David Blight, *Trump Reveals the Truth About Voter Suppression*, N.Y. TIMES (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/opinion/sunday/republicans-voter-suppression.html> [<https://perma.cc/QYY8-JDN4>].

44. PETER KOBRAK, COZY POLITICS: POLITICAL PARTIES, CAMPAIGN FINANCE, AND COMPROMISED GOVERNANCE (2002).

45. See 558 U.S. 310 (2010).

46. Mann & Ornstein, *supra* note 5, at 69.

most candidates to concentrate on wealthier individuals who can give them large checks rather than on rank-and-file voters who will give them smaller sums at a higher cost of raising the money in the first place.”⁴⁷ Contemporary candidates do not rely on the donations of average citizens to win elections, they now concentrate almost entirely on the wealthy, altering their political agendas to suit the desires of their largest financial supporters. Fundamentally, with the majority of Americans unable to donate considerable amounts of money to campaigns as income inequality mounts,⁴⁸ the wealthy minority has seen their political influence exponentially rise in relation to that of all average Americans.

H. The Senate Filibuster

In the Senate, a minority ranging from a single senator to a group of forty-one senators can halt all legislative activity, except for federal nominations and budget reconciliation, using a filibuster. Due to the use of the filibuster, a supermajority of at least three-fifths of the senators is ultimately required to conduct most business of the Senate. Emmet Bondurant emphasizes that a filibuster is not utilized to “inform or persuade, but rather to obstruct the proceedings of the Senate by preventing the majority from taking action opposed by a minority.”⁴⁹ In practice, a coalition of a few senators in the minority party can kill a piece of legislation as long as the majority party cannot coalesce a supermajority of sixty votes to invoke cloture and proceed. In Federalist 22, Alexander Hamilton denounced potential minoritarian rule asserting that it disallows the majority from controlling the political agenda. Hamilton declared that “[t]o give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is in its tendency to subject the sense of the greater number to that of the lesser number.”⁵⁰ “The modern filibuster is simply a minority veto, and a powerful one at that. It is not part of a long Senate tradition, and history alone cannot justify it,”⁵¹ particularly considering it fosters anti-majoritarianism in one of America’s highest institutions.

II. REINSTITUTING MAJORITY RULE IN MODERN AMERICA

A. Reforming Presidential Elections

There are numerous ways for the American government to become more responsive to the hopes of the majority, chief of which is an alteration of the presidential electoral system. The executive of the nation should be elected with the support of most voters, a practice that has not occurred twice in the previous five

47. NORMAN ORNSTEIN & JEREMY POPE, *CAMPAIGN FINANCE: AN ILLUSTRATED GUIDE* 18 (1997).

48. Thomas Piketty, Emmanuel Saez, & Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States*, 2 Q. J. OF ECON. 553, 557 (2018).

49. Emmet J. Bondurant, *The Senate Filibuster: The Politics of Obstruction*, 48 HARV. J. ON LEGIS. 1, 4 (2011).

50. THE FEDERALIST NO. 22 (Alexander Hamilton).

51. Catherine Fisk & Erwin Chemerinsky, *The Filibuster*, 49 STAN. L. REV. 181, 184 (1997).

elections. There are three primary methods through which to either alter the Electoral College, disband it altogether, or circumvent its determinative authority.

The first potential adjustment would entail devising a system that allocates an electoral vote from each congressional district to a candidate with a state's other two electoral votes awarded to the winner of that state's popular vote. Due to the geographic ideological sorting that has occurred in the previous few decades, more electoral votes would be in play, especially in landslide states like Massachusetts, where a congressional district might slightly favor one party, but whose votes are generally insignificant in a statewide race. Thus, millions of votes nationwide would likely feel enfranchised under such a system, believing that their vote could have *some* impact on the election's outcome, and politicians would campaign nationwide without focusing solely on the few battleground states. However, such a system would require rooting out partisan gerrymandering, as instituting voting by district could incentivize a greater amount of political manipulation of districts' borders. This system is already in use in Maine and Nebraska, showing it is an entirely feasible change.⁵²

Another potential remedy would be the institution of proportional voting akin to Democratic primaries. Under such a system, a candidate would receive votes in proportion to the percentage of votes she received in each state, making each vote more impactful. For example, if a candidate won 40% of the popular vote in a state with ten electoral votes, she would earn four electoral votes. A common critique of this system is that it might lead to the rise of third parties and split elections, causing elections to default to the House of Representatives. Nevertheless, a survey of American voters revealed that 63 percent would either 'strongly support' or 'somewhat support' a transition to proportional voting.⁵³

A third solution is to disband the Electoral College and shift to the use of direct popular voting to elect the president, which 58% of Americans would endorse.⁵⁴ Moving to a system predicated upon the popular vote would provide the votes of all Americans equal weight, regardless of their state of residence, congressional district, or political party alignment. Furthermore, there would be no possibility for an election to default to the House. Though it is a radical shift from America's

52. FAIR VOTE, *Maine & Nebraska*, https://fairvote.org/archives/the_electoral_college-maine_nebraska/ [<https://perma.cc/LRQ4-JZYE>].

53. John Aldrich, Jason Reifler, & Michael C. Munger, *Sophisticated and Myopic? Citizen Preferences for Electoral College Reform*, 158 PUB. CHOICE 541, 548 (2014).

54. See Andrew Daniller, *A majority of Americans continue to favor replacing Electoral College with a nationwide popular vote*, PEW RSCH. CTR. (Mar. 13, 2020), <https://www.pewresearch.org/short-reads/2020/03/13/a-majority-of-americans-continue-to-favor-replacing-electoral-college-with-a-nationwide-popular-vote/> [<https://perma.cc/SX28-NZ7J>]. Interestingly, Democrats are far more likely to support amending the Constitution to eliminate the Electoral College, which might stem from the fact that the Republican Party has found success under the current model. Furthermore, younger demographics were far likelier to support removal of the Electoral College, potentially because these groups are less institutionalized and have witnessed two instances in the past 20 years of a president having gained election without having won the popular vote.

current electoral system, amending the Constitution to elect the president by a direct popular vote could empower more Americans to vote and ensure candidates are held accountable across the nation, guaranteeing that the majority of the American people retains control over the executive branch. However, a Constitutional amendment might not be necessary, as enacting the National Popular Vote (NPV) interstate-compact plan would avoid the need for such an alteration. Under this plan, signatory states would pledge to elect electors who would vote for the winner of the national popular vote.⁵⁵ States can decide to enact change and reintroduce majoritarian rule as the determining factor in the election of the nation's executive.

B. Unlikely Changes to Senate Representation

The only method through which to solve the quandary of the Senate's population inequity is to either alter the apportionment of senators or split larger states into smaller states. It is exceedingly unlikely that America would change the system under which two senators represent each state. While it is slightly more feasible for large states like California and Texas to divide into smaller states, thereby affording their residents representation that is commensurate with that of the rest of the nation, both methods are extremely unlikely. On the other hand, if the Electoral College system were amended or replaced to assure majority rule, the federal courts would be more majoritarian regardless of whether Senate apportionment was changed, as a majoritarian-elected president would appoint nominees to the federal courts.

C. Hampering Gerrymandering

Partisan gerrymandering has silenced the voices of millions across the nation, preventing them from influencing the outcome of federal elections. There are a few avenues for reducing or eliminating partisan gerrymandering altogether: non-partisan commissions, split party control, and judicial intervention. A Brennan Center report articulates that all three of these options have "exhibited much lower levels of partisan bias."⁵⁶ Nonpartisan commissions would diminish any potential for partisan bias in the redistricting process, split party control over the process would guarantee that neither party was silenced, and judicial intervention could serve as a neutral arbiter. Thus, each of these systems could reduce or remove political manipulation over the redistricting process and represent substantial progress from the redistricting processes currently in effect.

55. Vikram Amar, *How to—Carefully—Surmount the Electoral College*, THE ATLANTIC (Jan. 14, 2020), [https://www.theatlantic.com/ideas/archive/2020/01/national-popular-vote/604861/\[https://perma.cc/2SG7-S3GB\]](https://www.theatlantic.com/ideas/archive/2020/01/national-popular-vote/604861/[https://perma.cc/2SG7-S3GB]).

56. Royden & Li, *supra* note 38, at 2.

D. Increasing Access to Citizens' Right to Vote

Changes to federal and state laws could guarantee that a far greater share of the American population could vote in federal elections. Primarily, election day should be moved to a weekend, enabling millions of Americans who work on weekdays to exercise their right to vote. Similarly, citizens should be able to mail in ballots, as the government should attempt to remove as many voting impediments as possible. While mail in ballots are susceptible to fraud and abuse, states should take every measure possible to ensure the validity of mail in ballots. Additionally, the onus ought to be on the government, not citizens, to register Americans to vote, and the government should encourage voting by allowing same-day voter registration at local polling stations. Furthermore, any government-issued license should be permitted as a permissible form of identification to enable citizens to register to vote. Finally, more polling places should be opened with an emphasis on lowering voting waiting times, as no citizens should be forced to stand in line for over an hour to cast a ballot. Numerous impediments to majoritarian rule exist in America, but the ones that suppress or restrict the voices of citizens as it pertains to their constitutionally guaranteed right to vote must be wholly eliminated.

E. Campaign Finance Reform

Americans are limited in the amount of money they can spend in hard money donations to parties and individual candidates; however, the wealthy can spend limitless amounts of money supporting their interests or preferred candidate through Super PACs. The Republican Party acknowledged the detrimental effects of Super PAC spending, arguing that “the current campaign finance environment in turn limits free speech, with the result that voters are denied the ability to hear more from parties and candidates themselves relative to third-party groups.”⁵⁷ Parties and individual candidates have restrictions upon hard money donations, which limits their ability to directly convey their message to voters. The wealthy that donate vast amounts of money to Super PACs are provided with a far more resounding and clear voice than the parties and candidates that represent millions of Americans. Ultimately, either there should be no limits on the amount of hard money that can be spent or there ought to be a cap on how much hard and soft money can be spent. It is quite perplexing why direct contributions to candidates ought to be limited but donations to Super PACs know no bounds.

F. Modifying the Filibuster

Finally, there is the Senate filibuster, a practice that deliberately manipulates the use of infinite and unrestricted debate to freeze the Senate's proceedings. Ornstein and Mann suggest that “[e]liminating or reducing the scope of Senate

57. *The Growth and Opportunity Project Report*, *supra* note 13, at 64.

actions subject to filibuster-related obstruction would allow the majority to resolve highly contested issues and to conduct Senate business in a timely and electorally responsive fashion.”⁵⁸ However, such a drastic change would likely be met with mutual disdain from both sides of the aisle that welcome the constant presence of the filibuster in their political arsenal. However, under the current system, the burden is upon the majority to put an end to a filibuster with a cloture vote, requiring three-fifths of all sitting senators. A change that would force the filibustering minority to maintain between forty and forty-nine senators in the Senate Chamber during the span of the filibuster would enable the continued existence of the filibuster, but the minority opposed to a legislative action would bear the responsibility for continuing such an action, and it would often remain unused. Therefore, the practice of filibustering, which is anti-majoritarian, should be restricted, as the Senate should not be controlled by minute minorities.

CONCLUSION

The Republican Party has successfully utilized the minoritarian tools available to help sustain its control. However, developing a reliance on minoritarian precepts has handcuffed the Republican Party, limiting its ability to serve as a uniting power through which people can make themselves heard. Specifically, the Republican Party has damaged its appeal to both minority voters and young voters, demographics that will play essential roles in the reshaping of America in the impending decades. By capitalizing upon strategies to exploit minority rule, not only did the Republican Party limit its responsiveness to the American public but also damage its future electoral prospects. As the Democratic Party continues to swing leftward, the Republican Party ought to capitalize upon this shift to become the center-right party of moderation, true conservatism, consensus, compromise, and majoritarianism. A reliance upon majoritarianism ultimately presents an avenue through which a political party might discover long term electoral success and legislative influence.

If America were to return to a majoritarian nation, such an adjustment would enhance voter efficacy and encourage people to believe in their government, for average citizens would once again feel relevant, the general citizenry could serve its intended supervisory role of the government, and this nation would more closely align with its intended, foundational precepts. The modern iteration of America is dysfunctional, and ensuring that America is ruled by the will of the majority is the surest avenue to stanch this dysfunction. Many Americans do not vote because they consider their vote inconsequential, many citizens are not civically engaged because they believe the contemporary political climate is out of touch, many people do not trust their elected officials because they believe their government does not represent the everyday American. The institution of rule by

58. Mann & Ornstein, *supra* note 5, at 165.

the majority of Americans would enfranchise Americans to vote, become involved in political affairs, and believe in the virtue of the government. America is presently treading water, but now is the time to toss the nation a life vest in the form of majority rule to combat America's ever-increasing affliction of minority rule.