



# American Political System & Theory

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LESSON 25-31: LAW & DEMOCRACY

(b)(6)



# Today

- Voting Rights – Vote Denial

# Next Lesson

- Voting Rights – Vote Dilution

# Reminders

# The Centrality of the Vote

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Elections in general—and voting in particular—serve four functions in a democracy

- Elects public officials
- Ensures accountability of lawmakers in office
- Give voters influence in direction of public policy
- Provide legitimacy to government

*Yick Wo v. Hopkins* (1886):

- The vote is a ‘fundamental right’ because its “preservative off all other rights”

# Voting in Constitution

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There is no affirmative right to vote in the Constitution

- *Bush v. Gore* (2000) “[t]he individual citizen has no federal constitutional right to vote for electors for the President of the United States.”

The *original* Constitution says very little about who can vote.

- “electors of members of the House of Representatives have the qualification requisite for electors of the most numerous branch of the state legislature” – Article 1, Section 2.
- “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations” – Article 1 Section 4.

# Constitutional Amendments

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- 15<sup>th</sup> Amendment – Prohibits withholding the franchise on the basis of race
- 19<sup>th</sup> Amendment – Prohibits withholding the franchise on the basis of sex
- 23<sup>rd</sup> Amendment - Gives residents of Washington D.C. the right to vote in presidential elections
- 24<sup>th</sup> Amendment – Bans the use of poll taxes
- 26<sup>th</sup> Amendment – Prohibits withholding the franchise on the basis of age for people over age of 18

# Voting and the Property Restriction

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- Attitudes about the franchise were divided between Federalists and Anti-Federalists
- In practice, states adopted voting rules following the old British colonial model
- Limited eligible voters to ‘freeholders’—i.e. white male property owners over 21 years of age
- Some states included religious restrictions as well

# The Property Requirement Removed

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- By early 19<sup>th</sup> century, the idea of universal white male suffrage took hold
- Some non-property owners began to gain voting rights through the payment of an alternative 'poll tax'
- Other non-property holders gained the vote through military service

# Black Inclusion and then Exclusion

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- By the start of the Civil War, five Northern states allowed African American suffrage
- After the war, the Republican Congress passed the Reconstruction Act of 1866, which made the enfranchisement of Blacks a condition for re-entry into the Union
- The Fifteenth Amendment later removed race as a barrier to voting in the North and the South

# Black Inclusion and then Exclusion

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- Throughout the 1870s, African Americans in the South exercised the vote and even held elected office
- In 1872, there were 300 Black legislators from states of the former confederacy
- Election of 1877 led to the end of Reconstruction, and the tides shifted on the African American enfranchisement

# Black Inclusion and then Exclusion

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- After Reconstruction, the South systematically limited black voting rights, first through violence in 1870s-1880s, then through legal restrictions beginning around 1890
- Nearly all blacks in the South kept from voting by 1900
- Tools of white oppression of black voters
  - Voter registration
  - Literacy tests
  - Poll taxes
  - White Primary

# Voter Registration

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- The state of Alabama passed a new state constitution in 1901 designed specifically to disenfranchise African Americans
- *Giles v. Harris* (1903):
  - Giles filed suit on behalf of himself and 5,000 others in Alabama as a violation of 15<sup>th</sup> Amendment, claiming that the entire electoral system in Alabama was illegal
- Oliver Wendell Holmes' opinion refused to grant relief:
  - "If the conspiracy exists, a name on a piece of paper will not defeat them... Unless we are prepared to supervise the voting in that state by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form."

# Literacy Tests

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- Between 1890 and 1908, Southern states passed as part of disenfranchisement movement
- Whites excluded from test through ‘grandfather clause’
  - Declared unconstitutional in *Guinn v. United States* (1915)
- *Lassiter v. Northampton County Board of Elections* (1959)
  - Held that the use of literacy tests are not, on their face, unconstitutional, so long as they are applied in a race-neutral fashion
- Literacy tests were banned under the Voting Rights Act (1965)

# The Poll Tax

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- By 1904, all southern states had adopted a poll tax.
- *Harper v. Virginia Board of Elections* (1966)
  - Overturned a poll tax using the Equal Protection Clause of the 14<sup>th</sup> Amendment
  - “Wealth, like race, creed or color, is not germane to one’s ability to participate intelligently in the political process”
- Poll taxes later made constitutionally impermissible by the passage of the 24<sup>th</sup> Amendment

# The White Primary

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- In the one-party South, exclusion from primaries was tantamount to exclusion from the whole electoral process due to one-party rule
- Parties considered private associations and primaries are private affairs. See *Newberry v. United States* (1921).
- *Smith v. Allwright* (1944):
  - Overturned white primary restrictions in Texas
  - White primary unconstitutional because party primaries constituted ‘state functions;’ therefore, the fourteenth and fifteenth Amendments applied.

# Black Re-enfranchisement

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- Black participation in World War II re-opened the national discussion on civil rights in the South
  
- The Voting Rights Act of 1965
  - Section 2 – Restated 15<sup>th</sup> Amendment prohibition on racial discrimination
  - Section 4 – Banned literacy tests in South—extended to whole nation in later Amendments—and provided coverage formula for who was covered under Section 5
  - Section 5 – Federal Preclearance Requirement
  
- *Shelby County v. Holder* (2013) struck down section 5 due to the ‘outdated’ coverage formula

# Expansion of Women's Suffrage

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*Minor v. Happersett* (1875):

- The passage of the 14<sup>th</sup> and 15<sup>th</sup> Amendment does not provide a legal basis for female suffrage.
- Based on narrow reading of the Privileges and Immunities clause

Women's suffrage became a political issue after the ruling in *Minor*

In 1890, Wyoming became first state to offer women's suffrage, followed by Colorado, Idaho, Utah, and other western states

# Pro-Suffrage Posters



# Anti-Suffrage Posters

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# Election Administration Reforms

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## National Voter Registration Act (1993)

- Voters can register at state motor vehicle offices
- Imposes restrictions on the way states can purge voter rolls
- Standardized by-mail registration

## Help America Vote Act (2002)

- Voting equipment upgrades
- Provisional ballots
- Statewide voter database
- Voter Identification for by-mail registrants

# Election Integrity and Voting Rights

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- Since the 2020 Elections, Republican lawmakers in 33 states have proposed over 165 new laws limited access to the ballot
  - Limit mail voting access
  - Imposes stricter voter ID requirements
  - Slash voter registration opportunities → ending same day registration/eliminate automatic voter registration
  - Enable more aggressive voter roll purges
  - Exact signature matching requirements

# Election Integrity and Voting Rights

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## House Resolution 1: For the People Act

- Automatic Voter registration
- No-excuse mail in balloting
- 15 days window for early voting
- Restoration of voting rights to felons who served their sentences
- Requires states to set up independent commissions for federal congressional redistricting
- Tighter campaign finance rules
- Ethics reforms
- Disclosure of Presidential Tax Returns

# Prisoners and Felons

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- According to Manza and Uggen, why is the question of felon disenfranchisement so important for democratic theory?
- How do racial politics correspond to the rise of the carceral state—and felon disenfranchisement? Also, how does it exacerbate racial inequality?
- What have been the practical consequence of non-incarcerated felon disenfranchisement?
- Why might re-enfranchisement help facilitate ex-felon reintegration into American society?

# Equal Representation in House?

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- Are voters represented equally across all Congressional districts?
- There is state-by-state variation in the number of people in each district
- Until the 1960s, there was wide variation within each state as well!

# One-Person, One-Vote Doctrine

- Prior to 1960s, Court ruled malapportionment cases were non-justiciable under political question doctrine
- The Court reversed positions in *Baker v. Carr* (1962)
- Precedent set in *Baker* initiated a line of cases requiring redistricting plans to follow an equal population rule

# Redistricting and Gerrymandering

- Fair districting practices speak to one’s ability to cast a meaningful vote in choosing their representation
- Central to the political and legal debate over redistricting is concern over ‘vote dilution.’
- In other words, do institutional rules give some people more political voice than others?



# Gerrymandering

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- A form of redistricting where congressional boundaries are purposely manipulated to benefit of one group over the other
- The practice named after Elbridge Gerry, who created a state Senate district in Massachusetts that looked like a salamander.
- Gerrymandering techniques:
  - Cracking
  - Packing
  - Stacking

# Types of Gerrymandering

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- Bi-partisan Gerrymandering
- Partisan Gerrymandering
- Racial Gerrymandering

# Partisan Gerrymandering

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The Court's position on partisan gerrymandering is mostly sound and  
fury that represents nothing

## *Davis v. Bandemer* (1986)

- Challenge to the districting of Indiana's state legislature
- Court ruled that gerrymandering claims are justiciable.
- No majority on the equal protection claim
- Plurality opinion upheld plan, but laid out standard for the adjudication of future cases—that standard never garnered majority support on Court

# Partisan Gerrymandering

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By 2000s, this confusion has led some constitutional scholars to conclude:

- “Far from leading to a requirement of proportional representation, the courts almost without exception have rejected partisan gerrymandering claims, setting a legal standard that extends an invitation to litigation without much prospect of redress.” –Issacharoff and Karlan (2002)

*Vieth v. Jubelirer* (2004) considered a Pennsylvania districting plan

- The court refused to strike down the plan
- Justice Kennedy suggested that a reasonable standard for resolving such disputed was still possible

## *Gill v. Whitford (2018)*

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This case dealt with a Republican districting plan in Wisconsin following redistricting in 2010

- Republicans won 48.6% of the statewide vote, but won 60% of the state legislative seats
- In 2014, the GOP won 52% of the vote, giving them 63 seats

Plaintiffs argued they had a test for determining an unconstitutional gerrymander known as the Efficiency Gap

- Any vote for a losing candidate or any vote beyond the bare minimum needed for a plurality victory is considered wasted
- $EG = (\text{Dem Wasted Votes} - \text{Republican Wasted Votes}) / \text{Total Votes Cast}$
- Anything over 6% considered an unconstitutional gerrymander

## *Gill v. Whitford (2018)*

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The Court ultimately punted on this case by denying William Whitford standing to sue in Court

The majority found that the plaintiffs alleged but did not prove individual harms, providing evidence instead only of statewide harms of alleged partisan gerrymandering.

In a concurring opinion, Justice Kagan suggested that future claims ought to demonstrate injury via the first Amendment's right to association



# *Rucho v. Common Cause (2019)*

Two additional partisan gerrymandering cases were brought to the court → Consolidated into a single case

- In NC, Democrats won 47% of the statewide vote, but only won 3 of the state's 13 House seats
- In MD, Republicans won 36% of statewide vote, but only won 1 of the state's 8 House seats



## *Rucho v. Common Cause (2019)*

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In a 5-4 decision, the Court dismissed the case and declared that partisan gerrymandering claims were non-justiciable → Constituted a political question

Justice Roberts wrote:

- *We have never struck down a partisan gerrymander as unconstitutional — despite various requests over the past 45 years. The expansion of judicial authority would not be into just any area of controversy, but into one of the most intensely partisan aspects of American political life. That intervention would be unlimited in scope and duration — it would recur over and over again around the country with each new round of districting, for state as well as federal representatives.... What the appellees and dissent seek is an unprecedented expansion of judicial power.”*

# Racial Gerrymandering

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The Court's position on racial gerrymandering is incredibly convoluted

Tension exists between the Court's interpretation of the Voting Rights Act (1965) and the line of cases stemming from Court's decision in *Shaw v. Reno* (1993)

Recent questions also exist around whether majority-minority districts actually undermine minority voting power

# Voting Rights Act (1965)

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After the first wave of VRA enforcement successfully put an end to racially motivated ‘vote denial,’ a second wave of judicial cases focused on efforts to dilute minority voting strength

The centerpiece of the VRA was Section 5’s federal preclearance provision

Section 4’s preclearance coverage formula:

- 1) If as state used test or device for voting or
- 2) Fewer than 50% of state’s VAP registered to vote or voted in 1964 election.

# Districting Rules and Preclearance

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Do districting rules require preclearance?

*Allen v. State Board of Elections* (1969)

- State of Mississippi wanted to move from districted elections to multi-member at-large elections
- Mississippi officials argued that preclearance was only required for voting rules
- The court disagreed, arguing that the right to vote is affected by dilution as well as outright denial

# Federal Preclearance Standard

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The preclearance standard in the VRA used by the DOJ is whether new electoral rules have a retrogressive effect on minority representation

In other words, do the new electoral rules leave racial and ethnic minorities worse off than current law?

If answer is 'no,' preclearance is granted

# The Rise of Majority-Minority Districts

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New redistricting disputes over minority vote dilution after 1980 census opened the door to a new line of cases

*City of Mobile v. Bolden* (1980):

- Court ruled that a *constitutional* challenge to redistricting plans leading to racial vote dilution had to prove not just a discriminatory effect, but also the intention to discriminate
- In other words, reliance on the 14<sup>th</sup> and 15<sup>th</sup> Amendment required a higher evidentiary standard than VRA's Section 5

# The Rise of Majority-Minority Districts

Congress passed Amendments to Section 2 of the VRA in 1982 that overruled the *Mobile* decision and required a practice of maximizing minority representation

*Thornburg v. Gingles* (1986):

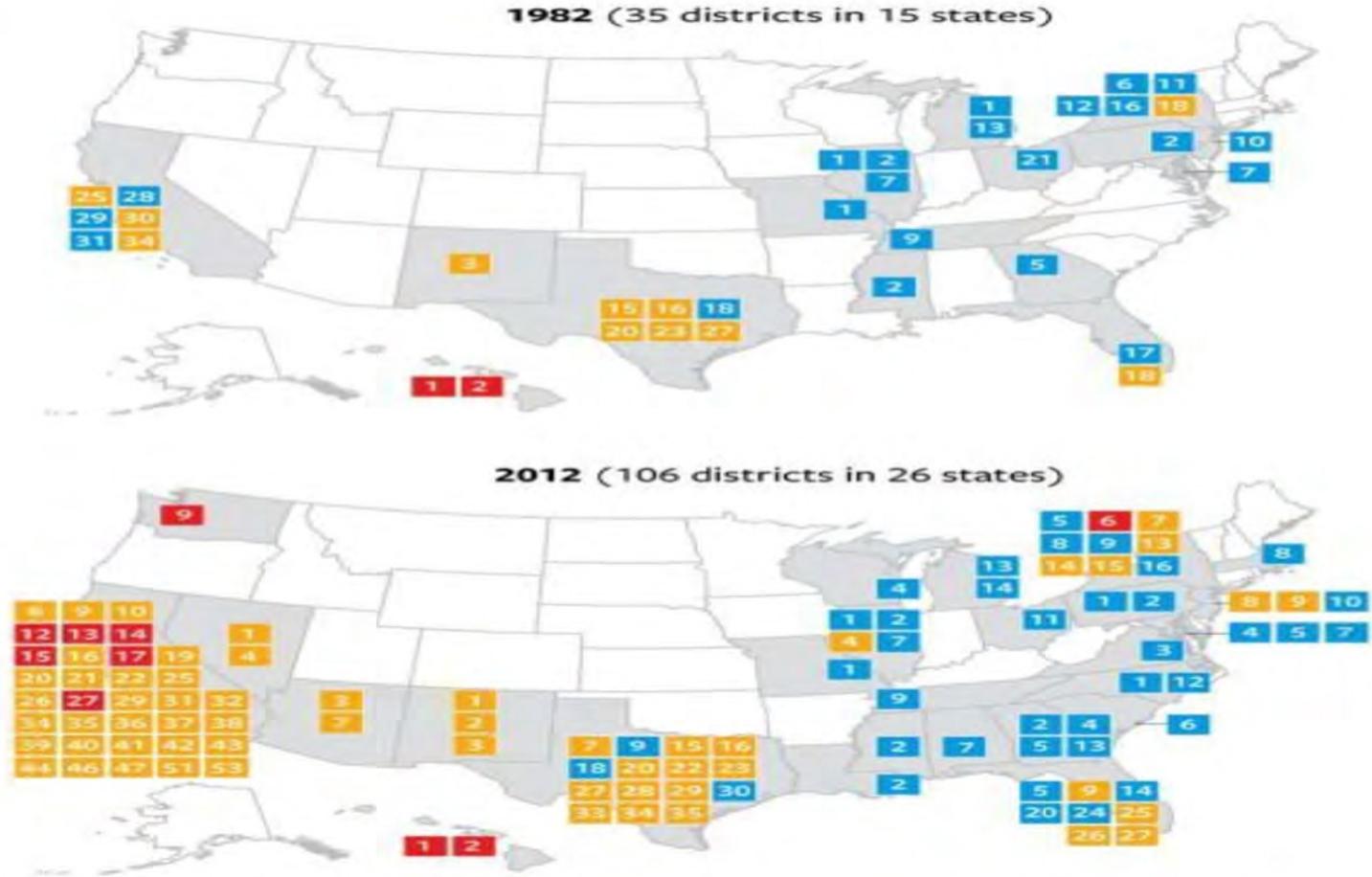
- Legislative district lines cannot dilute minority representation
  
- Developed a three-pronged test for assessing vote dilution cases
  - 1) The minority group had to be sufficiently large to constitute a majority in a single-member district
  - 2) The group has to prove that its politically cohesive
  - 3) White block voting against preferred minority candidates

# Minority Districts Multiply

Since 1982, the number of congressional districts in which a majority of residents are nonwhite has tripled. In 2012, for the first time, a majority of states hold at least one minority-majority congressional district.

## Congressional districts with a nonwhite majority, by leading race or ethnicity

■ African-American ■ Asian ■ Latino



Graphic by PETER BELL and DAVID WASSERMAN

Sources: *The Cook Political Report*; Census Bureau

# Challenges to Minority-Majority Districts

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## *Shaw v. Reno* (1993)

- The case dealt with the redistricting in North Carolina, which was required to create two majority-minority districts by the DOJ
- Plaintiffs argued that it strict reliance on race violated the Equal Protection Clause
- The Court agreed:
  - “[North Carolina’s 12<sup>th</sup> District] is so extremely irregular on its face that it can only be viewed as an effort to segregate the races for purposed of voting, without regard for traditional district principles and without sufficiently compelling justification. . . . The district bears an uncomfortable resemblance to political apartheid.”

# Racial Gerrymandering Post-*Shaw*

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- Is second 2's results test unconstitutional? → *Brnovich v. Democratic Central Committee* (2021)
- How does one prove racial gerrymandering now that partisan gerrymandering is non-justiciable?
- Do majority-minority districts actually dilute the substantive representation of minorities?

# Redistricting with Independent Commissions

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What are the authors trying to accomplish with this paper? In other words, what is their research question (frame it as a why question with only the DV)?

What are the authors key findings? What are some of the implications of these findings for electoral politics?

Is there a difference between partisan gerrymandering and bi-partisan incumbency protection? Does this difference matter?

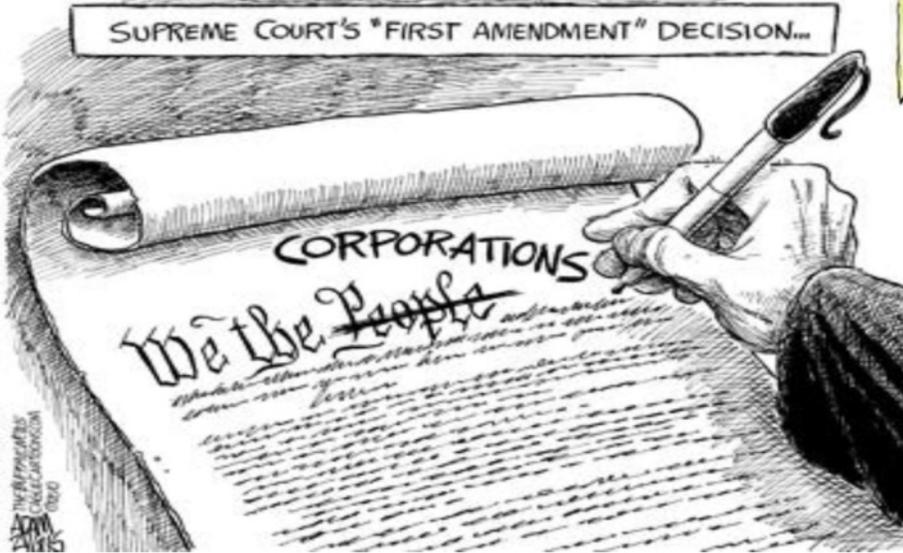
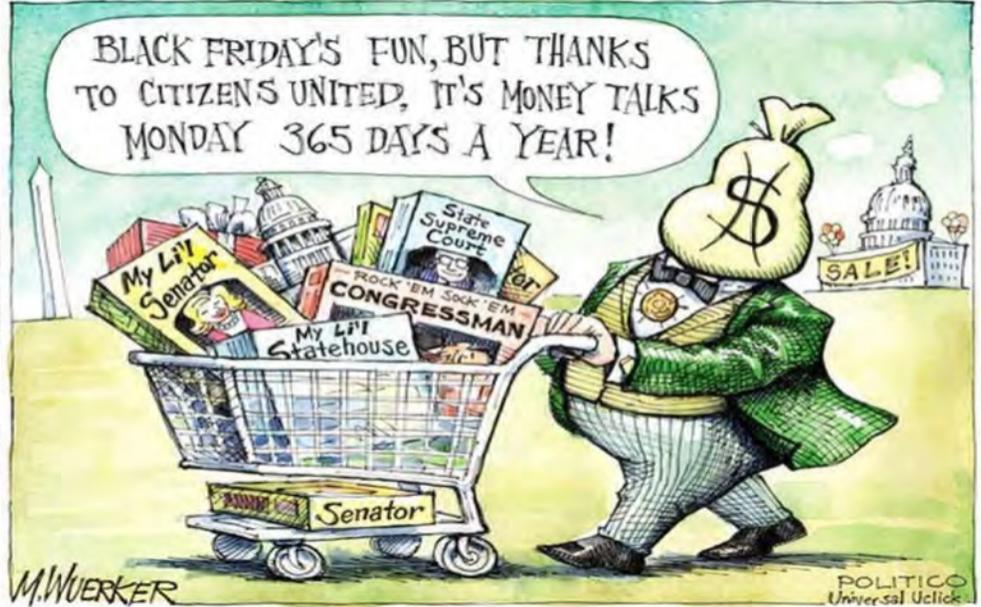
# Why Do We Care About the Influence of Money in Politics?

Conflict over campaign finance is fundamentally a conflict between political equality and political liberty.

Supporters of political equality often tie their criticism to the perception of corruption in politics



“MO’ MONEY, MO’ PROBLEMS” – NOTORIOUS B.I.G.



# Origins of Campaign Finance

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- Initial attempts at regulating the flow of money into elections go back to the Progressive Era
- The Tillman Act (1907) – A complete ban on all corporate contributions. Later amendments required disclosure requirements and set spending limits on congressional campaigns
- Taft-Hartley Act (1947) - Placed permanent ban on all labor union contributions

## Federal Election Campaign Act (1971/1974)

- Placed aggregate limits on all candidate expenditure and restricted contributions by candidates to their own campaigns
- Limited independent, third-party expenditures
- Set contribution limits for citizens
- Disclosure requirements on fundraising and expenditures
- Federal Election Commission to monitor new financing system

## *Buckley v. Valeo (1976)*

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- Every major component of FECA was challenged in Court, namely as a violation of the 1<sup>st</sup> Amendment's right to free speech
- The Court rejected argument that campaign finance was merely regulating conduct. Instead, it ruled that money is equivalent to speech in political campaigns
- Limits on campaign finance has implications for political speech rights and associational rights. The regulation of those rights face strict legal scrutiny
- Justice Department argued that the compelling state interest was to 'prevent corruption or the appearance thereof'

## *Buckley v. Valeo (1976)*

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- Limits on direct contributions are constitutional because they present the potential for bribery or undue influence—i.e. quid pro quo
- Limits on the following all unconstitutional:
  - Candidate spending (Expenditures)
  - Self-Financing
  - Independent Expenditures
- Disclosure requirements constitutional
- Public financing constitutional as long as it is voluntary

## *Buckley v. Valeo (1976)*

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The Court rejected the argument that the promotion of political equality justified limiting campaign money.

- “the concept that government may restrict the speech of some elements of society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”

Supporters of reform are henceforth forced to rely on mitigation of corruption argument to justify future regulation

# Consequences of FECA and *Buckley*

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## Explosion in Political Action Committees

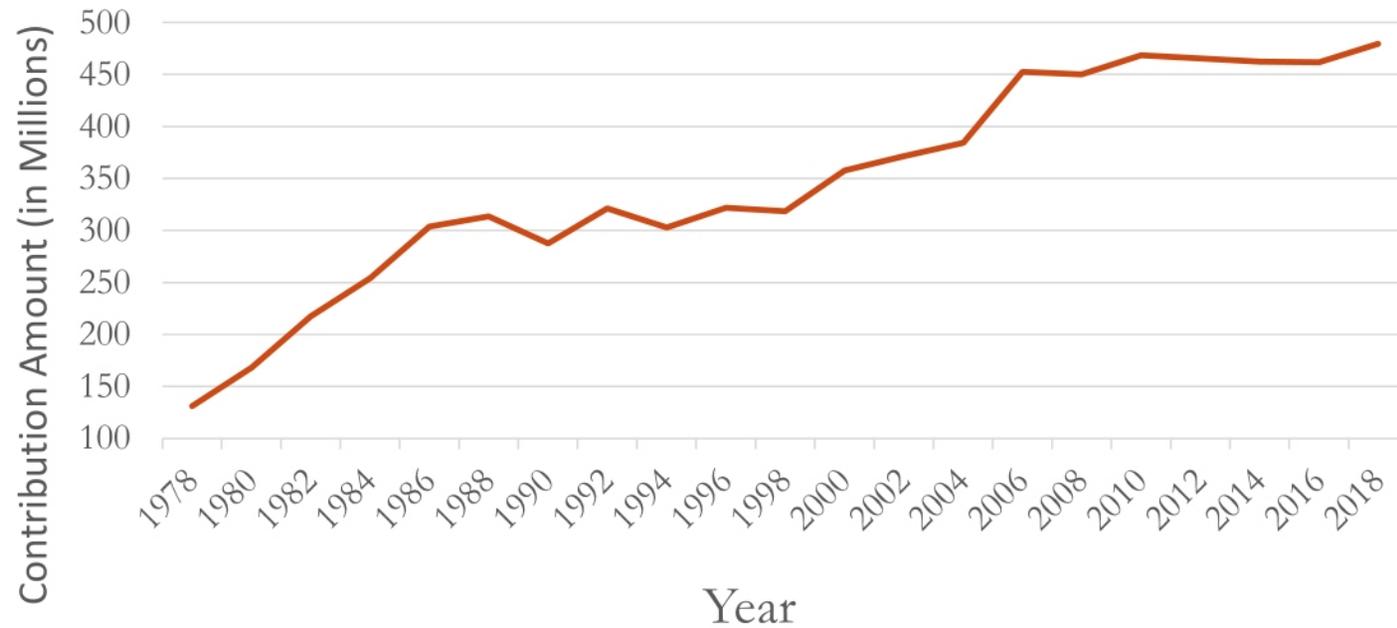
### Rise of ‘Soft Money’

- Political parties can raise money outside federal limits for non-federal party activity and party building efforts
- By 1990s, parties figured out how to spent soft money funds on advertising in the form of ‘issue ads,’ so long as those ads avoided certain ‘magic words’

### Role of Political Parties

Obtained via FOIA by Judicial Watch, Inc.

## PAC Contributions to Congressional Candidates, 1978-2018



# Bipartisan Campaign Reform Act (2002)

Eliminated soft money contributions to parties

Increased contribution limit on hard money donations to candidates—raised to \$2,600—and indexed to inflation

Restricted independent expenditure ads that specifically mentioned a candidate within 30 days of primary election and 60 days of general election

Required “I approve this message” on advertisements

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# *Citizens' United v. FEC (2010)*

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Court ruled that limits on *independent expenditures* by interest groups and corporations violate First Amendment

Federal government may not prohibit corporations from funding independent expenditures from their central treasuries—i.e. they no longer must set up separate PACs.



# Corporate Personhood & the Constitution



# Campaign Finance after *Citizens' United*

Following *Citizens' United*, the Court extended its logic to apply to wealthy individuals in *Speechnow.org v. FEC (2010)*

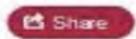
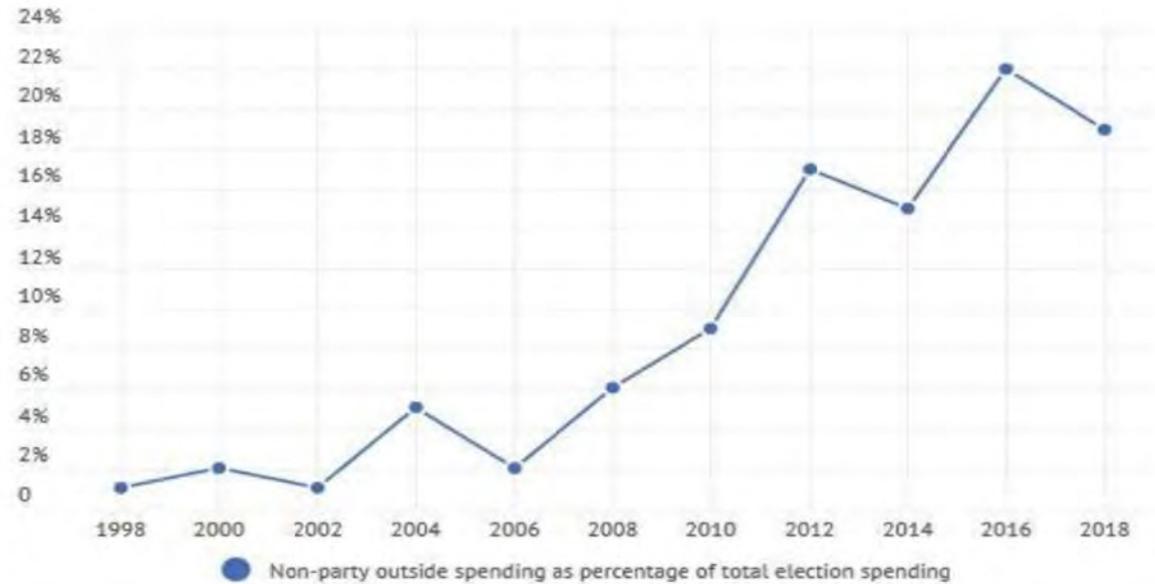
*Speechnow.org* is a non-profit organization that sought to accept contributions from individuals in excess of the \$5,000 contribution limit

The Court ruled that contributions to independent organizations did not create actual or apparent quid pro quo corruption, thus contribution limits violated the 1<sup>st</sup> Amendment

## Proportion of Non-Party Outside Spending (1998-2018)



Following the Citizens United decision in January 2010, outside spending exploded, becoming a larger proportion of total election-related spending with each midterm and presidential election.

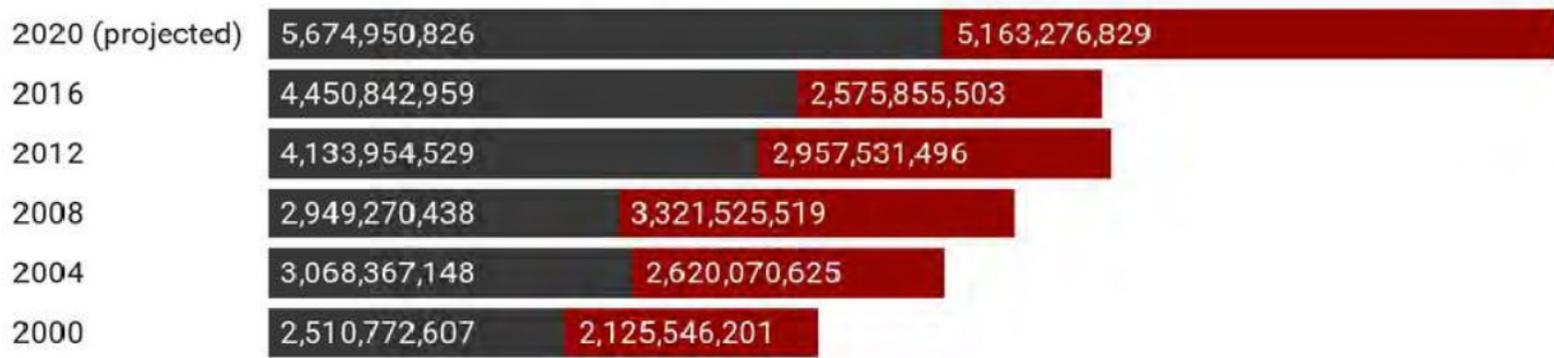


# Overall Spending in National Elections

## Total cost of US elections

\$US, adjusted for inflation

■ Congressional Races ■ Presidential Race

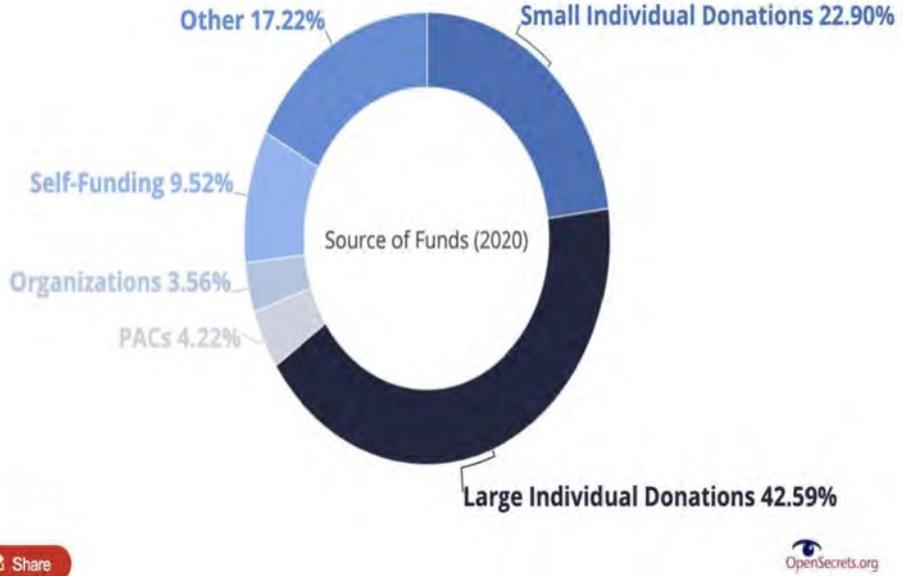
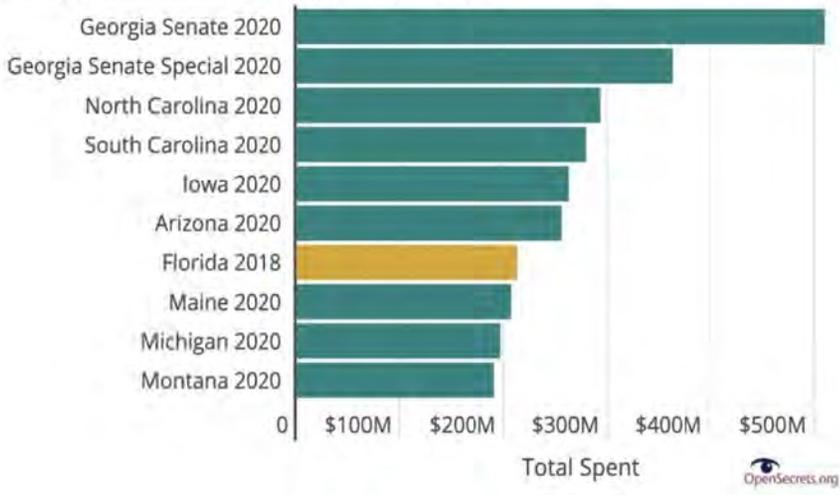


Source: Center for Responsive Politics, via Open Secrets

# Money Spent in 2020 Elections

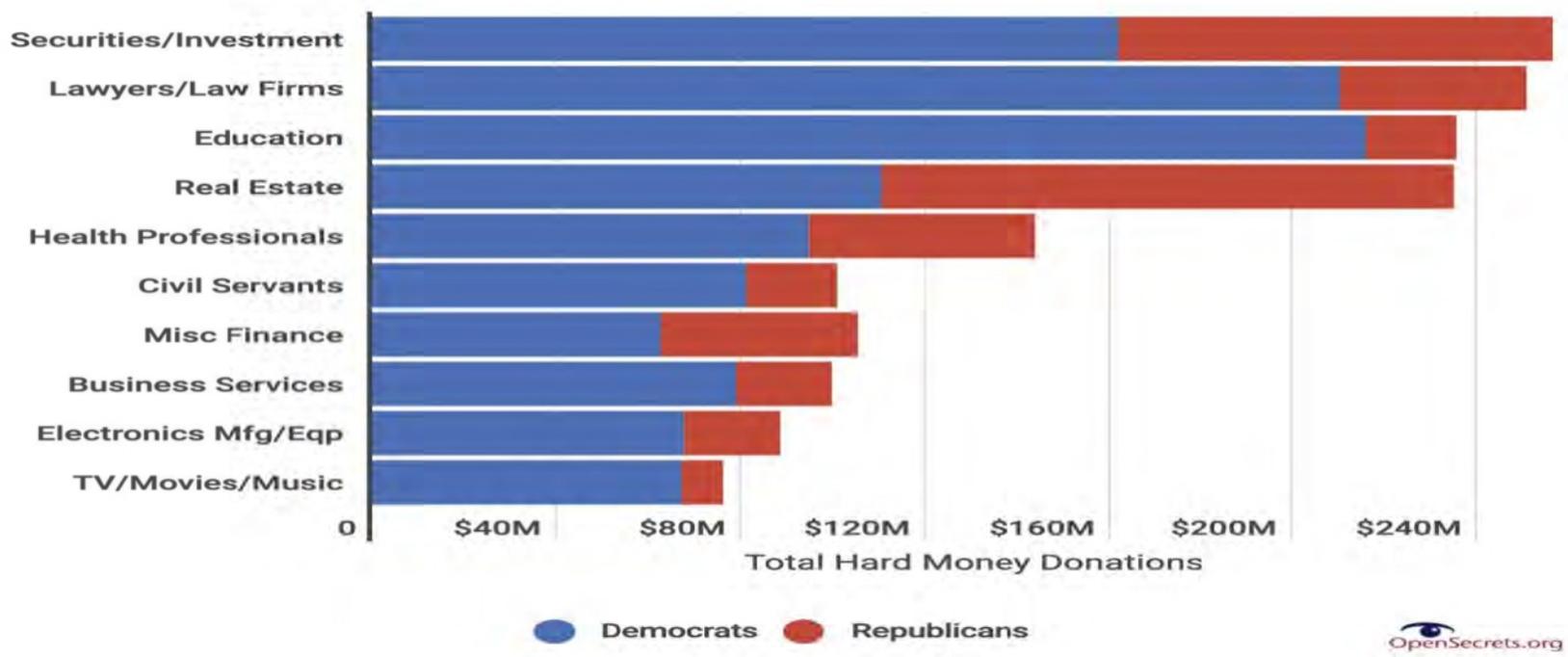
## Most Expensive Senate Races Ever

The 2020 elections saw nine of the 10 most expensive Senate races ever, with the Georgia Senate contests taking the top two spots.



Obtained via FOIA by Judicial Watch, Inc.

# Independent Group Donations in 2020



# Current Problems in Campaign Finance

Dysfunction of the Federal Election Commission

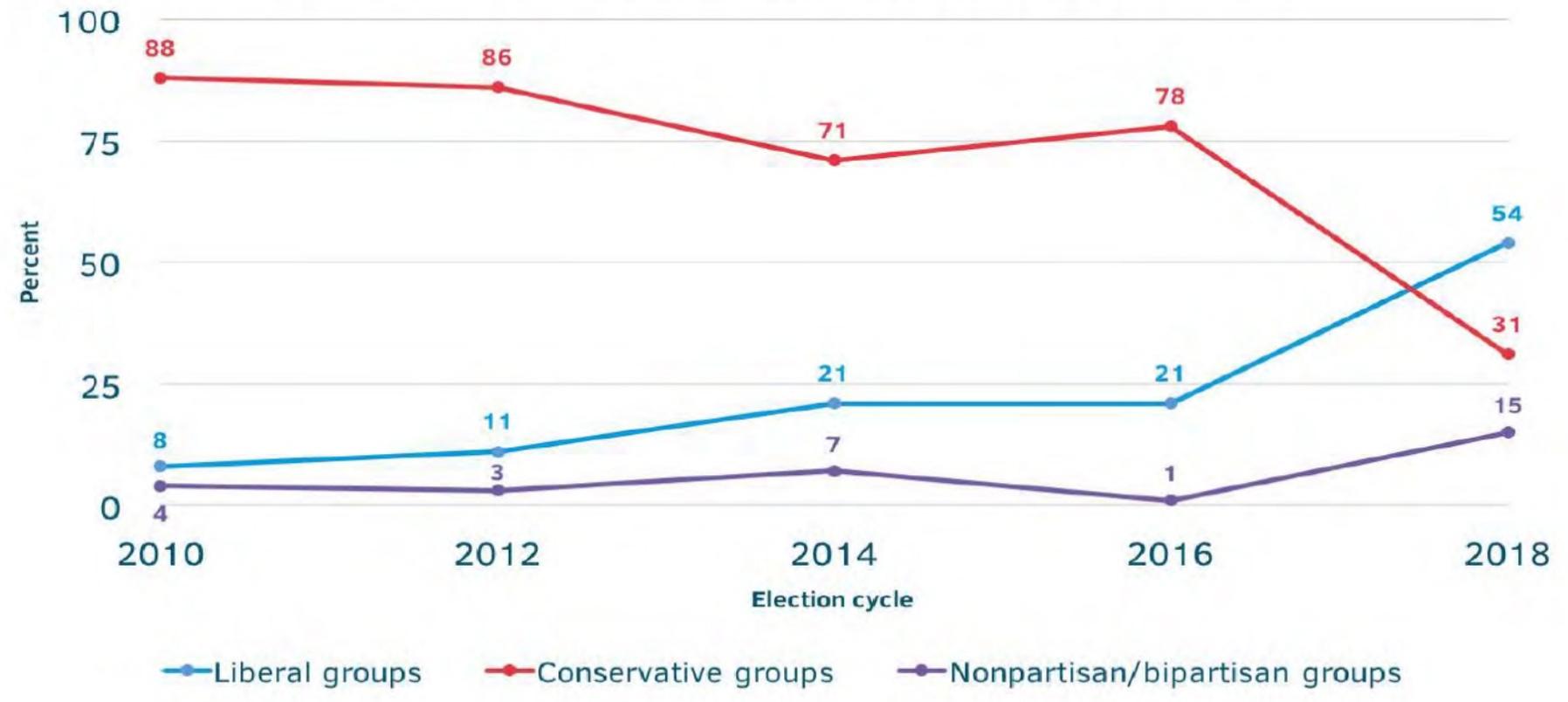
The rise of Super PACs

Concern over influence of interest groups relative to political parties

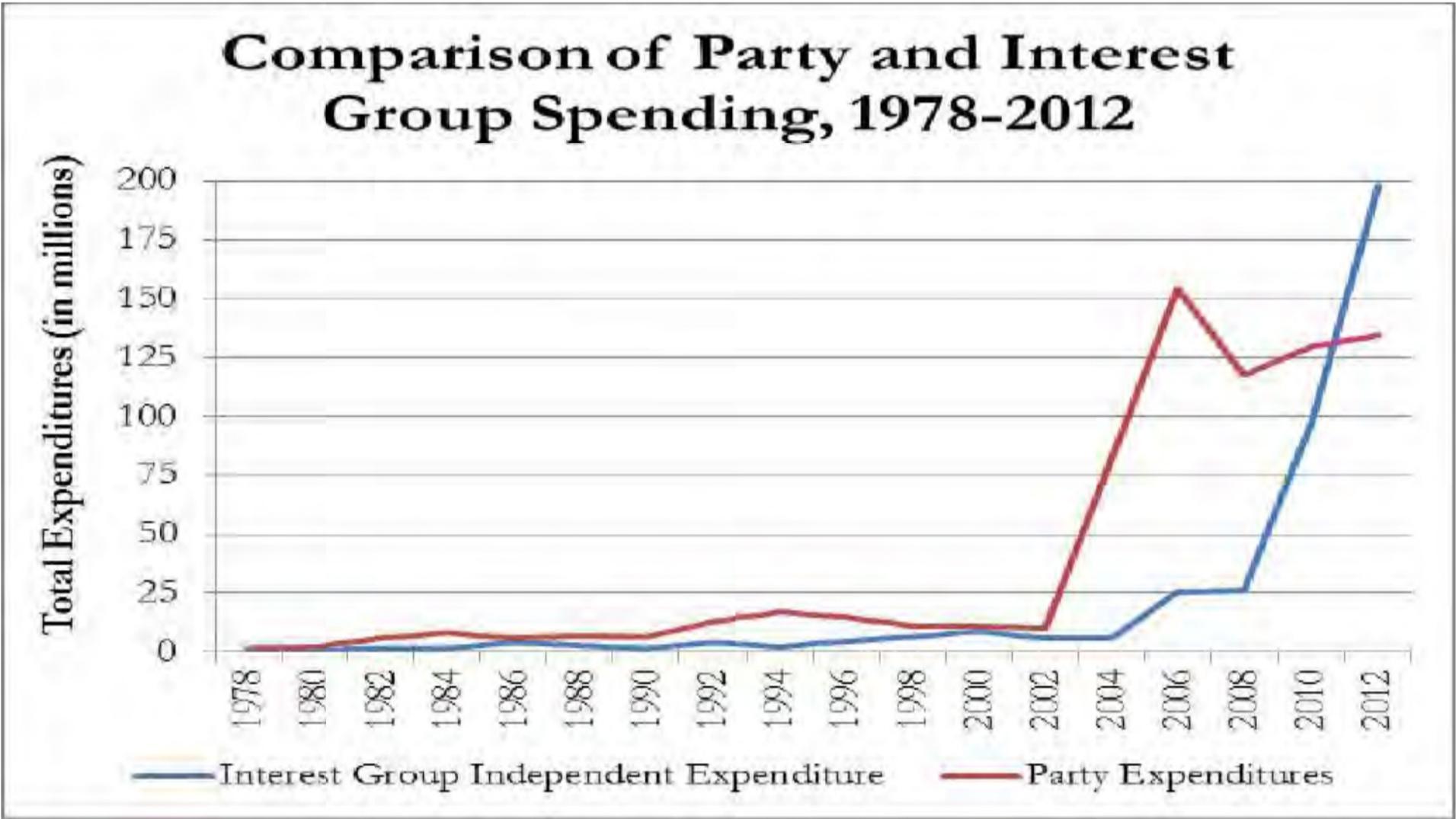
Is public financing dead?

The need for new disclosure rules

# Who is spending dark money?



Obtained via FOIA by Judicial Watch, Inc.



# Why So Little Money In Politics?

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What is the conventional wisdom about the purpose that money serves in politics, according to the authors?

What is Tullock's puzzle? How do the authors resolve the puzzle?

What do the authors conclude is the role of money in politics? What purpose does it serve?

# Small Donor Campaign Finance Reform

What explains the small donor revolution in political campaigns that we have seen over the last 10 years? Why is it viewed by reformers as a generally good thing?

Why is Pildes worried about the influence of small donors?

What provisions of H.R.1 is Pildes most skeptical of? Why? What proposed fixes does he offer?

# The Empirical Literature on Money in Politics

What are the three assumptions that people hold about the influence of money in politics?  
What are the three conclusions that the empirical literature tends to draw?

Why is non-incumbent spending more important than incumbent spending? What is the relationship between incumbent spending and electoral victory?

What is the “simultaneity problem” with capturing the true effect of money in elections?

What are some of the normative implications for the empirical findings on money in politics?  
Does it change the way we ought to think about reform?

# Elections and Money in Politics

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## Conventional Wisdom

- The more money candidates spend, the more votes they receive—i.e. money buys votes
- The candidate who spends the most is most likely to win
- Money not only helps people win, but it helps to keep them in office

Does Social Science support this view?

# Key Findings in the Literature

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## Incumbent v. Challenger Spending

- In open seats, the more a candidate spends, the more they increase their vote share
- Challenger spending is highly predictive of candidate strength and more spending equates to higher likelihood of winning
- Incumbent spending is only modestly linked to increased vote share; sometimes, they are even negatively linked.

## Why is this the case?

- Threshold effects and diminishing returns

# Final Thoughts on Campaign Finance

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Does having more political voice distort electoral outcomes?

Has an unprecedented amount of money in politics fundamentally changed the way elections operate?

Post-Citizens' United gives interest groups more voice at the expense of political parties

More limitations on campaign spending could hurt challengers more than incumbents!

# Significance of Political Parties

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“Political Parties created democracy, and democracy is unthinkable save in terms of parties” – E.E. Schattschneider (1942)

“The only way collective responsibility has ever existed, and can, exist, given our institutions, is through the agency of the political party.” – Morris Fiorina (1980)

# Significance of Parties

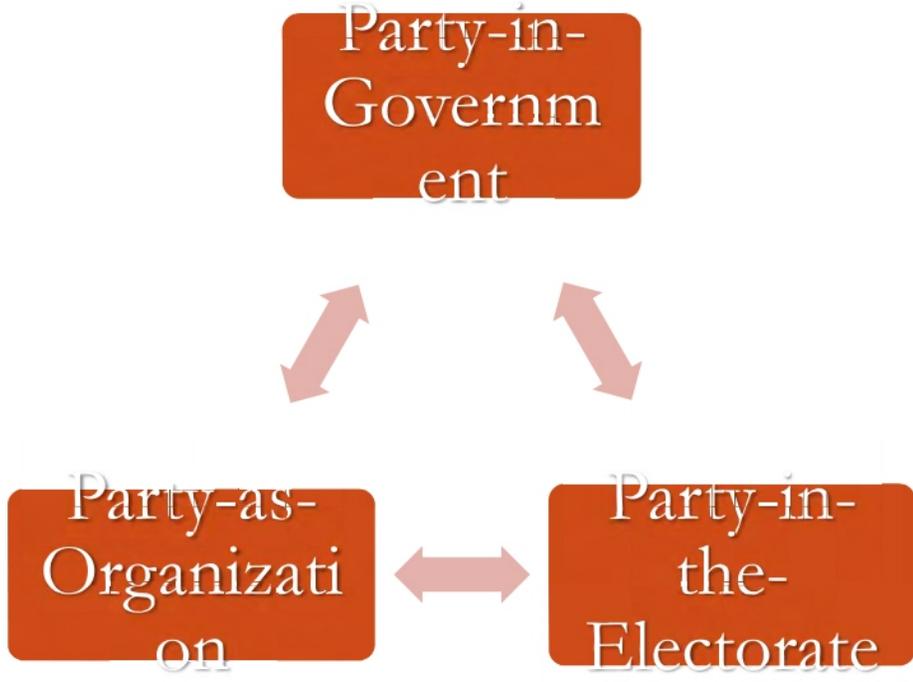
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Political parties play essential role in democracy because they provide means by which citizens organize themselves and select leaders who will represent them

In other words, parties serve to as a vital linkage institution where individual interests are aggregated together and represented in government



# Key's "Tripartite View" of Political Parties



# The Different Functions of Parties

Party-in-the-Electorate	Parties-as-organizations	Parties-in-government
Conceptualized as one's partisan identification	Recruit, train, and fund political candidates	Provide stable rules and procedures for handling conflict in Congress
Provides a short-hand cue for voting	Run party primaries and caucuses	Craft party platforms that help guide decision-making
Mobilizes voter turnout	Winnows down the list of potential candidates	Provide common ground and regulate/coordinate interactions among different branches and different levels of government

# The Five 'Party Eras'

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A Party Era is defined as a time when two-party competition in American history is stable

## The Five Eras:

- 1796-1816: Democratic-Republicans and Federalists
- 1840-1856: Democrats and Whigs
- 1860-1896: Republicans and Democrats
- 1896-1932: Republicans and Democrats
- 1932-Present: Democrats and Republicans



# Realignment Theory

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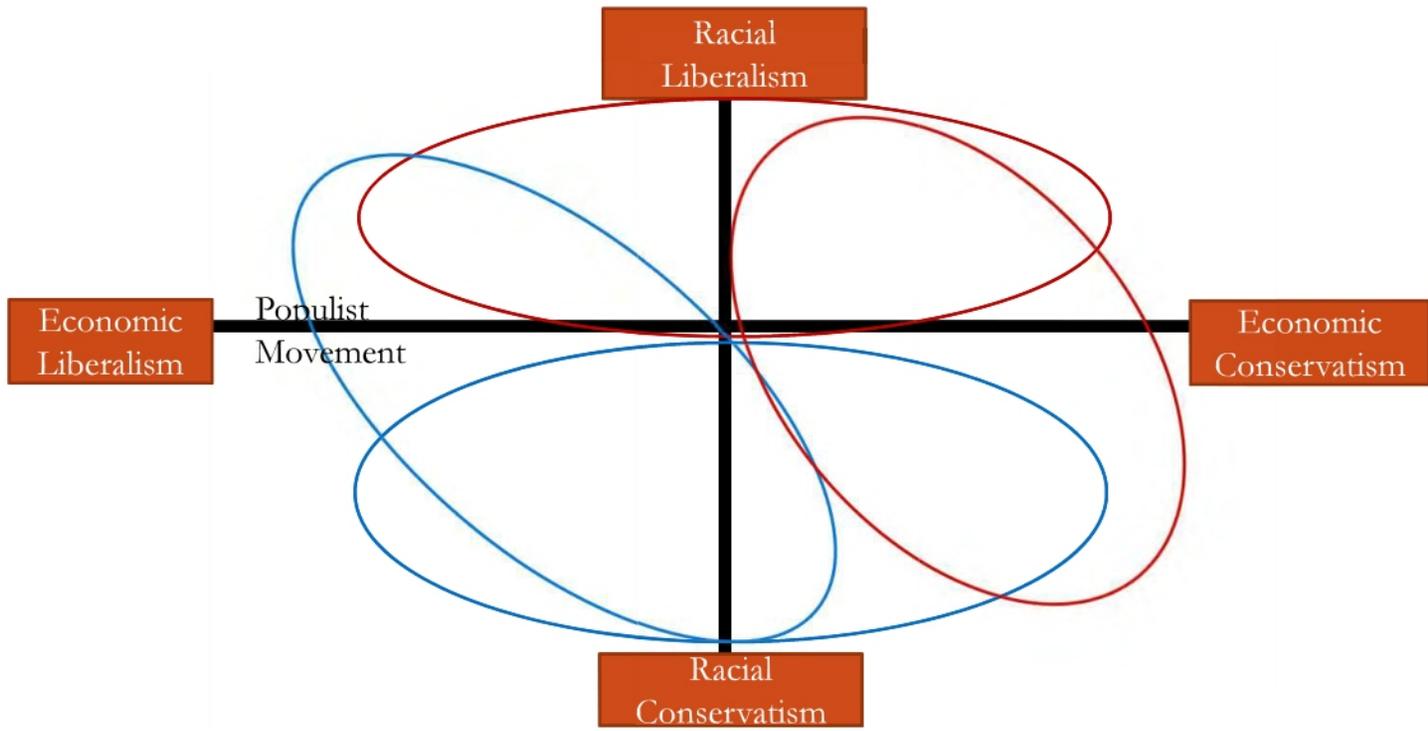
**Proposition 1:** American political ideology and elite discourse can be conceptualized in a two-dimensional space—with an economic and racial dimension (later reconceived as more broadly social and cultural)

**Proposition 2:** At any given time, political discourse is dominated by a single axis

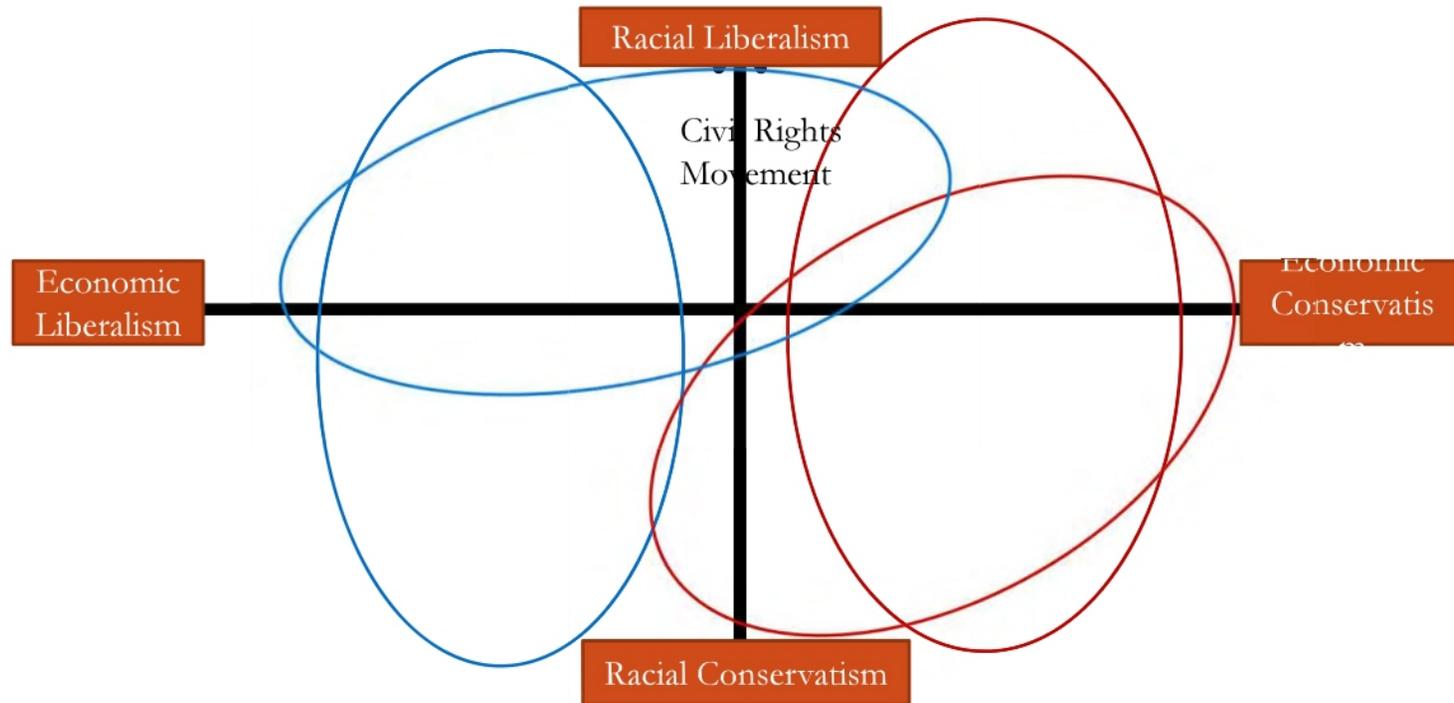
**Proposition 3:** Catalyzing events produce disaffected constituencies that dominant discourse cannot address

**Proposition 4:** Elites from the two parties attempt to co-opt these constituencies for electoral advantage

# Partisan Realignment: 1865-1896



# Partisan Realignment: 1932-2016



# Are Parties Public or Private Institutions?

The laws regulating political parties attempt to strike a balance between their constitutional obligations as serving state functions and their rights at private associations

Regulation of parties stems back to late 19<sup>th</sup> century with the adoption of the Australian ballot

- “The official ballot recognition of parties provided the legal arguments for future regulation. Official ballot recognition required that a party’s nominations be certified by party officers to government officials.” – Lee Epstein (1986)

# Parties' Constitutional Obligations

## *Newberry v. United States* (1921)

- Question was whether a federal statute limiting campaign contributions and expenditures applied to U.S. Senate primaries.
- Court ruled that the statute did not apply because regulation of primaries fell outside the scope of federal power and primaries are private affairs
- “primaries are in no sense elections for an office but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors.”

# Parties' Constitutional Obligations

White Primary cases, which dealt with all-white primaries in Texas, overturned the precedent set by *Newberry*.

## *Smith v. Allwright* (1944)

- All white primaries are unconstitutional under the Fifteenth Amendment
- Parties function as state actors in its conduct of primary elections
- State regulation of and involvement in primaries effectively made them state functions.

Important caveat: the exclusion of blacks in primaries were unconstitutional because it involved the state passing discriminatory laws

# Parties' Associational Rights

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Three lines of cases lay out the boundaries of parties associational rights

- Cases dealing with presidential nominations
- Cases concerning state laws that regulate primary elections
- Regulation of political parties internal processes

# Presidential Nominations

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*Democratic Party of the United States v. Wisconsin ex rel. La Follette* (1981)

- National Party rules clearly stated that delegate selection was limited to only party members—i.e. closed primaries
- Wisconsin law required an open primary system, however, and the DNC refused to seat the Wisconsin delegation at the convention
- Wisconsin officials sued, but court ruled in favor of the national party and stated that parties are not required to seat delegates chosen in compliance with state law but in violation with party rules

# State Primary Laws

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## *Tashjian v. Republican Party of Connecticut (1986)*

- Connecticut had a closed primary law, but the Republican Party adopted a party rule allowing independent voters to vote in primary elections
- Democrats in legislature refused to modify law
- Court struck down the state law as a violation of 1<sup>st</sup> Amendment using strict scrutiny

# State Primary Laws

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## *California Democratic Party v. Jones* (2000)

- California amended the state's constitution to abolish the state's closed primary system and replace it with a 'blanket primary.'
- Many of the state party organizations challenged the new primary system by arguing that it forced them to associate with non-party members against their wishes
- Using strict scrutiny, the Court struck down the blanket primary

# State Primary Laws

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## *Washington State Grange v. Washington State Republican Party* (2008)

- After the Jones decision, Washington passes a modified ‘top-two’ non-partisan blanket primary.
- The State GOP challenged the law arguing that candidates’ declared partisanship gives appearance of party endorsement
- Court upheld primary and got around the *Jones* decision on the ground that Washington’s system didn’t select party nominees; rather, top two candidates proceed to general election regardless of party affiliation

# The Internal Operation of Parties

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*Eu v. San Francisco County Democratic Central Committee* (1989) & *New York State Board of Elections v. Lopez Torres* (2008)

- The court struck down various California and New York laws regulating parties, including a ban on their endorsing candidates in primaries
- There is no constitutional right to a candidate having a ‘fair-shot’ of winning the party’s nomination

# A Group Theory of Political Parties

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What is the elite view of political parties? What is the alternative view that the authors here offer? Who is at the center of their theory?

Who are policy demanders? Why are parties primaries so important for the group theory of parties?

What two issues caused changes in the modern party coalitions? Who forced this change in party coalition position taking?

How do the authors explain the polarization of MCs over the last 40 years? What role does the average voter play? What is an electoral blindspot?

What are the implications of adopting a group centered theory of parties for politics?

# Partisanship in the Trump Era

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According to Larry Bartels, what does the current partisan landscape look like?  
What are the animating issues driving the two parties?

What does Bartels' analysis tell us about how each party thinks about politics?

How does Bartels challenge conventional wisdom about the two parties since 2016?

What does Bartels tell us about the prospect of partisan change moving forward?

# Asymmetrical Politics

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What does Grossman and Hopkins mean by asymmetrical politics? What puzzle are they trying to solve in articulating their theory?

What is their basic theory of partisan asymmetry? What can their theory help explain about party politics in a pre-Trump era? Name at least two.

How well does G & H's theory hold up given the last five years of the Trump era?

# American Inequality

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What are the areas where the task force is most concerned when it comes to growing inequality?

How does economic inequality exacerbate racial inequalities? How does economic inequality get translated into political inequality?

What do you see as the role of political science in addressing societal problems?

# Asymmetrical Politics – Part II

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What is the puzzle that Cayton and Dawkins are trying to solve?

What is the operational-symbolic disconnect in American public opinion? How does it structure the way Dems and Reps construct their party coalitions?

What is C&D's theory of asymmetrical representation?

C&D highlight three sets of actors: lawmakers, party elites, and rank-and-file voters. What role do each play in the construction and maintenance of partisan coalitions?

How does the theory C&D articulate differ from G&H's? What theory can better explain the two parties in the 2020s?

# Interest Groups – Population Ecology

According to Lowery and Gray (1995) what explains the density of interest group networks? How is their explanation different from the economic explanations offered by past research?

Why do the authors adopt a biological explanation of interest group density? What are the assumptions of population ecology?

What is the ESA model? How do the authors apply it to interest groups? How do they measure the assumptions of the ESA model?

# Interest Groups – Buying Time

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What is the "Rational PAC" explanation of interest group influence in Congress? What puzzles arise with this explanation when compared against empirical evidence?

What is Hall and Wayman's revised explanation of interest group influence? What are the principle assumptions that underwrite their theory? What advantages does their theory have?

What are the key findings of this paper? What influence do interest groups have compared to average citizens?

What parallels, if any, do you see between the theory and findings of this paper, and the role interest groups play in the literature and 'extended-party networks'?

# Interest Groups and Representation

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What are the four theories of American democracy that Page and Gilens deal with? Explain each. Who are the major thinkers in each of the four theories?

What are the key findings for this paper? What are the implications of these findings? How can we apply them to our current politics?

What papers have we read that support these findings? What have we read that challenge them?

**Table 4**  
**The separate policy impact of business-oriented and mass-based interest groups**

Average citizens' preferences	.05 (.08)
Economic elites' preferences	.78 (.08)***
Mass-based interest groups	.24 (.07)***
Business interest groups	.43 (.08)***
R-sq	.07

\*\*\*p<.001

Note: All predictors are scaled to range from 0 to 1. The dependent variable is the policy outcome, coded 1 if the proposed policy change took place within four years of the survey date and 0 if it did not. Predictors are the logits of the imputed percent of respondents at the fiftieth ("average citizens") or ninetieth ("economic elites") income percentile that favor the proposed policy change, and the Net Interest-Group Alignment Indices described in the text. Standard errors are asymptotically distribution-free, and all analyses reflect estimated measurement error in the predictors, as described in Appendix 2. N=1,779.



BREAK IT DOWN  
**THINGS TO KNOW**

- **Critical Race Theory** studies racism as a social construct
- Impact on **education, housing, justice system**
- Proponents say learning the history of racism is **crucial to addressing inequities**
- Critics say theory teaches that the **U.S. is fundamentally racist**

*How to identify*  
**CRITICAL RACE THEORY**  
**IN THE CLASSROOM**

1. CRT - critical race theory or culturally responsive teaching	12. Power structures or racial hierarchies
2. Equity, diversity, and inclusion	13. Normative
3. Cultural/ multi-cultural competence	14. Disparate outcomes or inequity
4. Implicit/ unconscious/ internalized bias	15. Identity
5. Social justice or restorative justice	16. Ally or ally-ship
6. Systemic/ structural/ institutional racism or oppression	17. Afrocentric/ Eurocentric
7. Micro-aggressions	18. Social constructs
8. Anti-racism	19. Black lives matter
9. White privilege/ fragility/ supremacy/ culture/ prejudice	20. Reparation/ liberation
10. CQ - like IQ but cultural intelligence	21. Ethnocentricity
11. Colonialism/ neo-colonialism/ colonizer/ decolonialism	