The Fellows Review

2023 - 2024

CSPC

The Fellows Review

Selected Papers of the
2023-2024 Presidential Fellows Program

Center for the Study of the Presidency & Congress

Editor

Sydney Johnson

with Daphne Nwobike and Saakshi Philip

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The papers in this anthology represent the Fellows' thoughts and research and neither CSPC nor their home institutions endorse their conclusions or positions.

The Fellows Review: 2023-2024

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Table of Contents

Forward i
Glenn C. Nye III, President and CEO

Recognition of Fellowship Sponsors iii

Part One: The Presidency & Congress
Lincoln Anniballi, Hofstra University
The Speaker of The House as a Counterweight to Presidential Power; Evaluating the Public Speakerships of Newt Gingrich and Kevin McCarthy 2

Christian Dionisio, United States Military Academy
Stalled Executive & Active States: Explaining President Biden's Inaction on Bail Reform 21

Aleena Fayaz, George Washington University
The Rhetorical Waltz Between the Presidency and Terrorism: Identifying and Explaining the Trends of Post-9/11 Presidential Communications Surrounding Terrorism 42

Salvador Gómez-Colón, Yale University
The Moral Equivalent of War: Nixon, Ford, Carter, and the Original Doctrine of American Energy Independence 54

Morgan McPeak, United States Naval Academy
Skin In the Game: The Impact of U.S. Involvement in NATO Military Operations on Presidential Political Capital 71

Yo Nonoyama, Kyoto University
Diverse Voices, Divided Votes: How Witness Engagement Shapes Partisan Bill Voting 85

Marshall Vandenoever, University of North Georgia
The Presidency and Labor: A Policy of Pragmatism 110

Part Two: Foreign Policy & National Security
Aakriti Dasgupta, ESADE
Democratic Peace Theory and Its Application: An Analysis of U.S. Foreign Policy in the Middle East 129

Isobel Dernlan, United States Air Force Academy
Dismantling Dayton: Presidential Priorities and Policy Recommendations 147

Nizarindani Pineda García, Universidad De Las Américas Puebla
Evaluating the Central American Minors Program: Evolution and Opportunities for Cooperation with Mexico 163

Artem Ilyanok, Columbia University
Beyond Objective Control: Civil-Military Relations for a New Era 180

Alex Rosado, Gettysburg College
"Phase One" Or Game Over? An Economic Overview of the U.S.-China Trade Relationship 194

Part Three: Domestic Policy
Neil Kapoor, University of Pennsylvania
The Effect of 2018 Dodd-Frank Rollback on the Banking System 213

Sophia Lu, Georgetown University
Re-Envisioning Voice of America's Role in the Digital Age 233

Silas McClung, Sewanee: The University of the South
A New Civil Rights Act: How to Advance American Founding Principles and Diversity, Equity, Inclusion and Accessibility 253

Paulina Morales, Bowdoin College
Dehumanizing Migrants: Development of U.S. Immigration Legislation and the Creation of the 'Illegal' Immigrant 280

Astha Pandey, University at Buffalo
Rust to Riches: A Comprehensive Analysis of Challenges, Federal Policies, and Strategies for Economic Resurgences in the Rust Belt 295

Zeeniya Waseem, University of Toronto
Care or Harm? Comparing the Legal Regulation of Children's Health in 'Gender-Affirming Care' Bans and 'Religious Healing' Exemptions 309

Part Four: Campaigns & Elections
JJ Briscoe, New York University
Racial Voter Dilution: Congressional Redistricting Post Pre-Clearance 329

Jennifer Hughes, Harvard College
The Rise of Digital Scandal: Character Attacks Against Young Congressional Candidates 345

Timothy Jander, Colorado State University Pueblo
The Effect of Disinformation on United States National Elections: A Comparative Case Study of Disinformation in Elections Abroad 366

Nivea Krishnan, University of Southern California
Exploring the Feasibility of Federal Ranked Choice Voting (RCV) Implementation 380

Foreword

For over half a century, the Center for the Study of the Presidency and Congress has aimed to inspire and provide college students with the skills to become civic-minded leaders. The program was established in a time of political turmoil with the goal of bridging the divide between students and the government. Although the format of the program has changed over the past decades, the core mission remains the same and is as relevant as ever as we continue to navigate the current political climate in our nation. We hope our Fellows will continue to contribute to a more resilient democracy and a brighter collective future with a commitment to civil dialogue and public service.

During their year-long Fellowship journey, students gain an in-depth understanding of the U.S. government and forge connections with like-minded peers, experts, and public officials through virtual meetings and a week-long leadership conference in Washington, D.C. This year, Fellows met with former Fellows alum, Tarun Chhabra, the Senior Director for Technology and National Security at the NSC; discussed the president's role in shaping immigration policy with "Mack" McLarty, Chairman of McLarty Associates and former chief-of-staff to President Bill Clinton, and Joshua Bolten, CEO of Business Roundtable and former chief-of-staff to President George W. Bush; and engaged in conversations about U.S. foreign policy with Tyson Barker, the Deputy Special Representative for Ukraine's Economic Recovery, and experts from RAND and the American Enterprise Institute.

We are very proud of our Fellows for their engagement with each other and speakers at our conference along with the effort they put into their research papers, we are confident they will uphold the mission of the program. This year, twenty-two outstanding research papers were selected for publication. Of that group, I am thrilled to note five Fellows who were honored during the conference for their outstanding achievement:

> Yo Nonoyama (Kyoto University) was awarded the David M. Abshire Award for Most Outstanding Paper by an International Fellow for his paper, "Diverse Voices, Divided Votes: How Witness Engagement Shapes Partisan Bill Voting."
>
> Marshall VandenOever (University of North Georgia) was awarded the Donald B. Marron Award for Best Historical Analysis for his paper, "The Presidency and Labor: A Policy of Pragmatism."
>
> Nizarindani Pineda García (Universidad de las Américas Puebla) was awarded the Richard H. Solomon Award for the Most Original Paper on Foreign Policy or Diplomacy for her paper, "Evaluating the Central American Minors Program: Evolution and Opportunities for Cooperation with Mexico."
>
> Christian Dionisio (United States Military Academy, West Point) was awarded the James R. Moffett Award for Most Original Paper on the Modern Presidency or Congress for his paper, "Stalled Executive & Active States: Explaining President Biden's Inaction on Bail Reform."
>
> Artem Ilyanok (Columbia University) was awarded the Robert A. Kilmarx Award for Best Military, Intelligence, or National Security Strategic Analysis for his paper, "Beyond Objective Control: Civil-Military Relations for a New Era."

We congratulate the class of 2023-2024 on their successful completion of the Presidential Fellows Program which would not have been possible without the support of our sponsors and partner colleges and universities.

We are indebted to Daphne Nwobike and Saakshi Philip, CSPC's summer interns, for their editorial work on this year's Fellows Review under the guidance of Sydney Johnson, Program Coordinator of the Presidential Fellows Program.

I hope as you read through this collection of papers, you'll be inspired by the thoughtfulness and courage of these future leaders to engage in meaningful conversations about our country.

Glenn C. Nye III
President & CEO
Center for the Study of the Presidency and Congress

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Part One

The Presidency & Congress

THE SPEAKER OF THE HOUSE AS A COUNTERWEIGHT TO PRESIDENTIAL POWER; EVALUATING THE PUBLIC SPEAKERSHIPS OF NEWT GINGRICH AND KEVIN MCCARTHY

LINCOLN ANNIBALLI
Hofstra University

The public speakership represents the increasingly public nature of the Speaker of the House in the post-reform era. As presidents have utilized the strategy of "going public" to further their goals, Congress has followed. As seen through the speakership of Newt Gingrich from 1995 to 1998, and the unprecedented ousting of Speaker Kevin McCarthy in 2023 and the subsequent effort to elect a new speaker, the office has become highly public. Through the public speakership, speakers can better represent Congress and organize members to contrast the public power of the Executive Branch. Speakers must maximize their ability to represent the House as a whole, over their party in balancing Congress with the presidency, consistent with their constitutional responsibilities.

With the strike of the gavel and the announcement, "The Office of Speaker of the House of the United States House of Representatives is hereby declared vacant," Representative Kevin McCarthy was ousted, becoming the first speaker in U.S. history to be removed. The Speaker of the House is a unique position established in the Constitution. Serving as a representative of their home district's constituents, an elected officer of the House, a symbol of Congress and their party, Speakers are tasked with balancing a variety of unique stakeholders and constituencies. The office has evolved throughout history, with the representatives that have held the position exhibiting different styles of leadership. The historic removal of Speaker McCarthy in October 2023, and the subsequent battle to fill his seat, was a product of and demonstrates the unique dynamics of the speakership and the increasing domination of what scholars have referred to as the "public speakership," which has largely defined the office in the post-reform era, dating back to the 1970s.

Popularized by political scientist Barbara Sinclair, the public speakership represents the increasingly public nature of the Speaker of the House and its consequences on the internal functioning of Congress.[1] Through the increased visibility of the office, the speaker has become

[1] Barbara Sinclair, *Legislators, Leaders, and Lawmaking: The U.S. House of Representatives in the Postreform Era* (Baltimore: Johns Hopkins University Press, 1995).

a symbol of Congress and, with that, a symbol of their party. As the media landscape continuously evolves, it is essential to the co-equal function of the U.S. government that Congress have the ability to harness the advantages of "going public," which has been used to increase the influence of the presidency since the early 20th century. As political scientist Ben Harris writes in his article on the evolution of the public speakership, "Just as presidents had perceived and exploited an opportunity to use mass media to build coalitions in Congress, congressional party leaders, most notably Speakers of the House, were 'going public' too."[2]

The public speakership, representing Congress and serves the American people as a whole rather than focus on interpersonal or party motivation, can result in a better public understanding of Congress and a reclamation of power from the executive. Despite this positive ideal, the public speakership and the public era of politics is not free from drawbacks. Increased polarization has coincided with the post-reform era, resulting in increased difficulty building internal legislative coalitions leading to decreased legislative productivity.

While the public era may not be the most efficient strategy of governance, it is the framework in which political leaders exist. For decades, the executive had the public edge over Congress, though congressional leaders harnessed media strategy to reassert their influence as a co-equal branch. Successful leaders do not rely solely on a public or internally focused strategy. Rather, a strategy that utilizes both public and internal tools will result in the most effective leadership and success. As the media landscape has undergone a revolution in the 21st century, with the internet and social media becoming primary drivers of news, the congressional approach to leveraging media against the president is more necessary.

In this paper I will first demonstrate the constitutional foundations of the office and the development of the different speakership styles, culminating in the public speakership today. Then I will build upon the strategy of "going public" for presidential leadership and examine its relevance for the public speakership. I will apply both concepts to case studies of the speakership of Newt Gingrich and the election and removal of Speaker Kevin McCarthy, demonstrating valuable uses of the public speakership as well as the problem of failure with strategic mismanagement.

[2] Douglas B. Harris, "The Rise of the Public Speakership," *Political Science Quarterly* 113, no. 2 (June 1, 1998): 194, https://doi.org/10.2307/2657853.

CONSTITUTIONAL ROOTS AND THE EVOLUTION OF THE SPEAKERSHIP

Article I, Section 3 of the Constitution says, "The House of Representatives shall choose their Speaker and other Officers..." This brief clause established one of the most influential offices in American politics. The Constitution provides essentially no guidelines or regulations for a speaker. Every speaker in American history has been a member of Congress, though it is not required. In fact, compared to the other officers of the House, it is only held by an elected member. The others, including the Chaplain, the Chief Administrative Officer, the Clerk of the House, and the Sergeant at Arms, are non-elected members. While the lack of details about the office included in the Constitution lead some to believe its writers had a narrow vision and purely parliamentary purpose for the office, its antecedents and the political context of the time suggest otherwise. The concept of an active, politically engaged public speakership would not have been antithetical to the intentions of the framers.

The term "speaker" likely originates from the British House of Commons, but the position in the United States was created in the image of speakers within the legislatures of the 13 colonies.[3] The Constitution's language in Article I, Section 3 establishing the office mirrors that of state constitutions establishing their speakers.[4] Contrasting the apolitical, purely procedural Speaker of the House of Commons in Great Britain, the speakers of 18th century America were partisan and deeply engaged in the political happenings of their legislatures and states.[5] Speakers were often framed as the legislative equivalent to the governor and acted authoritatively in the management of colonial legislatures. As early 20th century political scientist Asher Hinds notes in his defense of a robust speaker, "This, then, is the old colonial speaker, whom Washington, Franklin, Hamilton and their confreres, imported into the Constitution of 1787, the prototype of the great speakers of the national house of representatives."[6]

While speakers in colonial and post-1776 state legislatures were often political elites with immense power and influence over state institutions, speakers for the first decade of the U.S. House were generally inexperienced, younger members. From 1789 to 1899, the average length

[3] Asher C Hinds, "The Speaker of the House of Representatives," *The American Political Science Review* 3, no. 2 (May, 1909): 155–66.
[4] "The Constitution of Virginia (1776)," Encyclopedia Virginia, accessed January 8, 2024, https://encyclopediavirginia.org/entries/the-constitution-of-virginia-1776/.
[5] Alison G. Olson, "Eighteenth-Century Colonial Legislatures and Their Constituents," *The Journal of American History* 79, no. 2 (1992): 543–67, https://doi.org/10.2307/2080046.
[6] Hinds, "The Speaker of the House of Representatives," 157

of service in the House before being elected speaker was 7.1 years.[7] Henry Clay, who was elected speaker as a freshman in 1811, was deeply engaged in the House's affairs. Clay, who would serve five non-consecutive terms, frequently participated in committees, establishing the role as an active partisan position.

Throughout history, the greatest influence on the office has been the individual officers themselves. From Clay on, the speakership's influence and responsibilities evolved over time, through the different styles of speakers and their different political contexts. The modern speakership from the late 19th century on can be divided into three distinct eras: the speaker as a party actor, as an internal factor, and as a public actor. First, from the 1890s to the 1930s, the era of the speaker as a party actor. Second, from the 1930s to the 1970s, the era of the speaker as an internal actor. And third, from the 1970s to today, is the era of the speaker as a public actor.[8] In the era of the party actor speakership, powerful speakers like Thomas Brackett Reed (1895-1899) and Joseph Gurney Cannon (1903-1911) were used by party machines and bosses to further their interests and pass legislation. During the period of the speaker as an internal actor, speakers like Sam Rayburn (1940-1947, 1949-1953, 1955-1961), relied on their interpersonal relationships with members to pass legislation and build coalitions. From the speakership of Tip O'Neill (1977-1978) and articulated most prominently in the speakership of Newt Gingrich (1995-1998), the public speakership relies on public influence and pressure to further political goals, both internally and externally.

DEVELOPMENT OF THE PUBLIC SPEAKERSHIP

The public speakership and the era of the "public Congress" broadly came in conjunction with and in reaction to the rise of the public presidency. In 1974, following years of a costly and unpopular war in Vietnam spearheaded by the presidency and Watergate, the presidency was marred by scandal. The imbalance of power between Congress and the presidency contributed to the abuses of powers that led to the public's disrespect for the office, giving Congress the opportunity to reassert its dominance.

[7] Valerie Heitshusen, "The Speaker of the House: House Officer, Party Leader, and Representative," Congressional Research Service, May 16, 2017, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://crsreports.congress.gov/product/pdf/RL/97-780/17.
[8] Harris, "The Rise of the Public Speakership," 193-212.

In the years following Watergate, Congress enacted reforms to hold the executive more accountable, adapt its own internal functions, and bring more transparency to government overall. While Congress ceded power to the presidency for several decades, leading to a governing imbalance, the changing media landscape from the early 20th century on had underscored all other changes. The rise of progressive journalism in the late 19th century, paired with media-savvy presidents like Theodore Roosevelt and Woodrow Wilson, empowered the presidency to flex a power Congress could not: "the bully pulpit," as Roosevelt termed it.

With the introduction and expansion of radio, presidents could speak directly into the homes of Americans across the country. President Franklin Roosevelt used his "fireside chats" during the Great Depression and World War II to inspire his listeners, all while asserting the president as the primary leader of America. While Congress remained active, there was no ability for the legislature of hundreds of individual members to capture the attention of the American people in the same broad way the president could. With the rise and permeation of television in the 1950s and 1960s, presidents' public persona and the power that came with it continued to increase. In 1970, Senator William Fullbright said, "Television has done as much to expand the powers of the president as would a constitutional amendment formally abolishing the co-equality of the three branches of government."[9] Through the changes in media focusing on and empowering the president, Congress was desperate for a way to channel the public, thus came the rise of the public speakership.

Political scientist Douglas B. Harris notes in "The Rise of the Public Speakership" that following Watergate and during the term of Speaker Tip O'Neill, the appearance of speakers on nightly news programs rapidly increased. From 1969 to 1974, the speakership averaged 4.3 mentions per year. From 1975 to 1980, the speakership was mentioned an average of 13.6 times a year. In the decade that followed from 1981 to 1991, the speakership was mentioned an average of 59.8 times. The speakership had gone from a mostly internal-facing office to one that got the public's attention.

With this rise, the office adapted, expanding its press capacity. Until 1972, speakers did not have press secretaries. As the speakership became more public, press secretaries expanded into press offices, which is today standard for most congressional majority and minority leaders.

[9] Harris, "The Rise of the Public Speakership," 207.

Harris also attributes the public-facing nature of the position to significant changes to the speaker's daily press conferences during this period. Harris writes:

> In Rayburn's press briefings, the topic was always the upcoming schedule, and discussion centered on arcane legislative procedure…O'Neill's press conferences, however, represented a marked contrast to those of his predecessors. One reporter described the 'vaudevillian overtones' of an O'Neill press conference: 'O'Neill responds to questions with a mixture of routine business, political analysis, humor, partisan sniping and social commentary.'[10]

Speakers, beginning with O'Neill, used their press conferences to coordinate their party's messaging, respond to the president's statements and actions, and establish the office as a symbol of Congress for the people, rather than a solely internal figure as it had been under Rayburn.

Following the 1970s and through the unprecedented term of Newt Gingrich in 1992, the Speaker of the House, along with other formerly internal leadership positions, became firmly established as public symbols of Congress. With this new public persona, Congress could better rival the presidency, reestablishing its power. The speakership is not unique in its public nature in the post-reform era. Congress as a whole has invested in broadening their public reach through media, especially in the 21st century, by leveraging new audiences through the internet.[11]

The public speakership came about as a reaction to the presidential strategy of going public to further initiatives. Speakers, beginning with Tip O'Neill in the 1970s, began to harness media strategy, primarily through press conferences and public appearances to bring the speakership into America's view, as seen through the increased mentions of the office on nightly news programs. These trends established the Speaker of the House as a public position.

THE PUBLIC SPEAKERSHIP AS A LEADERSHIP STRATEGY

Speakers have numerous complex motivations and goals. In his analysis of the office, political scientist Matthew Green establishes a framework for analyzing the leadership of House speakers. Green identifies the three main goals of a speaker as securing reelection, enacting policy, and fulfilling speaker-related roles.[12] These factors have been demonstrated consistently

[10] Harris, "The Rise of the Public Speakership," 201.
[11] Gary Lee Malecha and Daniel J. Reagan, *The Public Congress: Congressional Deliberation in a New Media Age* (Routledge, 2012).
[12] Matthew N. Green, *The Speaker of the House: A Study of Leadership* (New Haven: Yale University Press, 2010), 9, https://www.degruyter.com/doi/book/10.12987/9780300153194.

throughout modern history through today and have been exhibited variously in the different eras. The public speakership has affected each of these motivating goals with a particular impact on the goal of securing reflection. As the 2023 speaker race demonstrates, speakership elections extend beyond the walls of the Capitol. Speakers must be attentive to how their actions could be perceived not only by their fellow members and their home constituents, but also by the entire nation.

The primary influence on American politics, especially Congressional actions, stems from political parties. With increased polarization, parties use the media to coordinate messaging and attack their opponents. Because of this, the traditional understanding of a government ruled by two branches fending for power is today underscored by the conflict between the Democratic and Republican parties. This is demonstrated in the speakership as well, though unlike other congressional leaders, the speaker is not a party officer. Speakers are first, officers of the House, while other leaders are the "majority" or "minority" leaders representing their party. For this reason, the speaker has a unique potential to represent Congress in opposition to the executive. Due to the prominence of parties, speakers have appeared to also be chiefly partisan officers, aligning their goals with those of the majority party. When the White House is occupied by the same party, the speaker is seen as subservient to the goals of the president, the de facto leader of the majority party.

When the president and speaker represent opposing parties, the speaker is the primary symbol of Congress and their party, contrasting the two institutions and maximizing their public influence. When the two offices are held by the same party, a speaker has an intra-party obligation to serve the president, minimizing their public influence. This is to say the speaker has the most independent influence when their party is opposite of the president. However, recent examples, like Democratic Speaker Nancy Pelosi's 2022 trip to Taiwan, in which she defied the president of her own party on a foreign policy issue, demonstrates how a public strategy can provide speakers with more independence beyond their parties.

Parties often inhibit the responsibility of the speaker to represent Congress as a whole, especially in opposition to the executive. Other factors can significantly impact the influence of a speaker, including their ability to control their majority, their ability to stay in power, and their ability to build and maintain coalitions. Their weakness internally, can contribute to an inability to leverage the public visibility of the office.

The public speakership and the public Congress have been effective in balancing the public influence of the presidency. The imbalance of power between the president and Congress exacerbated by the media, has injured the foundations of our constitutional system and democracy. Through the use of a single office representing the House and the majority party, voters can have a better understanding of what is happening in Congress.

For as long as America is as diverse and varied as it has been since its founding, Congress will never have an equal ability to counter the media efficiency of the executive when portraying themselves to the American people. Unlike the presidency, Congress is not one cohesive institution. Rather, it is a body that represents 535 unique perspectives from 50 states, representing hundreds of millions of voters. Party differences get in the way of congressional unity. When regional, political, and constituent differences are considered, no two members have identical views. Regardless of policy or party disagreement, all 535 members are bound together in their responsibility to uphold the power of the Congress in opposition to the executive. Members often do not uphold this ideal, ceding power to the president for a variety of reasons when politically expedient. The party most opposed to the imbalance of power between the branches is the party opposing the president. The public speakership can extend beyond the party by allowing Congress to rebut the president.

The speaker, in the most basic description of the public speakership, is the human embodiment of Congress, and therefore has a responsibility, beyond party, to uphold their role and defend the power of the first branch. This is not to say speakers should not represent their party. In fact, it is good that speakers align with parties. As discussed, the antecedents that shaped the modern speakership were partisan political officers. If popular legislation fails, voters can better understand which party is responsible by seeing the representation of that party in a leadership position. When speakers succeed, their party can be rewarded. Tying the speakership to the Congress poses the risk of projecting scandalous actions of a speaker onto the Congress as a whole. When a speaker is marred by scandal or controversy, voters may view Congress in a negative light, similar to what happens with the presidency.

Compared to presidents, speakers, and other congressional leaders are generally unpopular according to polling.[13] Newt Gingrich's national favorability never reached higher

[13] Megan Brenan, "U.S. Congressional Leaders Unpopular on Balance," Gallup, January 3, 2019, https://news.gallup.com/poll/245747/congressional-leaders-unpopular-balance.aspx.

than 50 percent in his terms as speaker. Gingrich's approval ratings were especially dismal when compared to President Clinton's.[14] Throughout his speakership, congressional approval ratings were consistently negative. There does not appear to be a correlation between the approval of Congress and the approval of a particular speaker, suggesting Americans do not connect their judgment of the speaker to their judgment of Congress as a whole.

The "public speakership" does not only refer to the office's ability to be a single symbol of Congress in the media. It also represents the tools and strategies speakers use to organize members and their parties' messaging, maximizing the public reach of Congress as a whole. Through the rise of the public speakership came strategically planned daily press conferences by the speaker, allowing messaging to be better coordinated. In 1994, Speaker Gingrich began organizing his members' talking points daily so that his party had a consistent and clear message and drove his points repeatedly.[15]

While the public speakership has enabled Congress to better counter the public influence of the presidency, it has not come without consequence. The rise of the public Congress has coincided with increased polarization. Polling shows Americans are starkly divided, and with Congress motivated by capturing the public's attention, members have leaned into divisive tendencies. Through social media, members have posted offensive memes, floated conspiracies, and launched entire media apparatuses to target their opponents. While speakers are not directly elected to the office by voters, the public speakership has led to speakership races being more affected by public pressure. As seen through the McCarthy debacle in 2023, Freedom Caucus Republicans galvanized public attention to oust the speaker and bring the House to a stand still.

In prior eras, Congress shaped legislation from the feedback of voters and compromises could be brokered between representatives. Today, Congress uses the media to convince voters to support legislation rather than receive feedback.[16] In the public era, both congressional leaders and the president market legislation through specialized branding. President Lyndon Johnson's "War on Poverty," Speaker Gingrich's "Contract with America," and President Biden's "Build Back Better" are all examples of these legislative programs marketed for the public. This strategy can result in leaders better organizing messaging and more effectively utilizing public

[14] Frank Newport, "Gingrich An Unpopular Figure During His Tenure As Speaker," Gallup, accessed January 18, 2024, https://news.gallup.com/poll/4141/gingrich-unpopular-figure-during-tenure-speaker.aspx#.
[15] Harris, "The Rise of the Public Speakership," 201.
[16] Harris, "The Rise of the Public Speakership," 205.

sentiment to pass desired legislation. It can also result in an increased risk of failure. As political scientist Jeffrey K. Tulis notes in his examination of the public presidency, when these legislative packages are marketed solely for public consumption without an internal strategy to support them, they are destined to fail.[17] Just as supporters can better organize around broad initiatives, opponents can just as easily use them to attack the other side and take down entire agendas with less effort.

The public speakership is not entirely good or bad, and speakers who rely solely on the public to further their goals will not be successful. Speakers are most successful when they adequately balance the strategies of the speakership and understand their goals and motivations. A speaker cannot be a successful rival to the president if they count on the public alone to drive their agenda. Despite the prevalence of the public nature of our politics, internal operations must still be conducted.

DEMONSTRATING THE PUBLIC SPEAKERSHIP THROUGH NEWT GINGRICH

The speakership of Newt Gingrich best represented the public nature of the office in the post-reform era. Before being elected speaker in 1984, then Representative Gingrich became known for his frequent floor speeches, broadcast to millions of Americans on the new cable network, CSPAN. Gingrich pounced on the opportunity to be broadcast on CSPAN, and used his floor speeches to tear into Democrats, utilizing a new tool for the increasingly public Congress. The broadcast floor speeches, usually given to a near empty chamber (unknown to audiences at home), were useful in posing Gingrich as a fighter, taking on his entrenched members to their faces. After a floor speech offending Speaker Tip O'Neil in May 1984, the speaker attempted to embarrass Gingrich and his fellow members by ordering CSPAN to pull back the camera from a solo shot of Gingrich to one of the entire empty chamber. After being informed the cameras were showing the empty chamber where Gingrich was attacking his fellow members who were not there to defend themselves, he further attacked Democratic leadership for trying to embarrass him. Days later, on May 15, when the House was called to order, Gingrich moved for a point of

[17] Jeffrey K. Tulis, *The Rhetorical Presidency: New Edition*, NED-New edition, vol. 31 (Princeton University Press, 1987), https://doi.org/10.2307/j.ctvc77bq6.

personal privilege. Speaker O'Neill granted the representative's request and moved to the floor to participate in what would become a historic spat between a sitting member and a speaker.

While going back and forth with Gingrich over his speech the previous week, the speaker said, "You deliberately stood in that well before an empty House and challenged these people when you knew they would not be there…It is the lowest thing that I have ever seen in my thirty-two years in Congress."[18] The very public debate between the experienced speaker and the three-term member made national headlines. The public nature of Congress and the speakership was coaxed into view by the feud. Reflecting on the debacle and Gingrich's tactics in his biography, Tip O'Neil said, "As far as [Gingrich] was concerned, the House was no more than a pulpit, a sound stage from which to reach the people at home."[19]

Gingrich used his captivating tactics to lead Republicans to a historic majority in 1994, ending decades of unbroken Democratic rule since 1955. The Republican campaign of 1994 pounced on Democratic President Bill Clinton, promising to uphold a "Contract with America" pledging to cut taxes and restore conservative values in Congress. Gingrich, being the face of the so-called "Republican Revolution" in 1994 was essentially running for the speakership as he was tasked with securing the majority for Republicans. The "Contract with America" strikes a similar chord to presidential legislative packages like Franklin Roosevelt's "New Deal," Lyndon Johnson's "War on Poverty," and Joe Biden's "Build Back Better." While Congress was just as important in the implementation of these presidential "contracts," Gingrich packaged and marketed legislation in a way that previously only presidents had done. The Contract with America allowed Republicans to brand their ideology in a focused, cohesive, and public way. Gingrich organized members across the nation to deploy a comprehensive media strategy. In memos, the leading Republican emphasized the strategic importance of using the media to win back the majority and to acquire public recognition for members after the election. One memo strategizing how the new members could use the media directly connects Gingrich's strategy of the public Congress to the public presidency, saying, "Give individual Republican Members a media bully pulpit which, properly used, can be far more powerful than that of a no longer

[18] Steve Kornacki, *The Red and the Blue: The 1990s and the Birth of Political Tribalism* (New York, NY: Ecco, 2018).
[19] Tip O'Neill and William Novak, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*, 1st ed (New York: Random House, 1987), 354

credible president."[20] Gingrich was easily elected speaker of the new Republican majority. In a statement following his election, Gingrich explained his view of the speakership: "The most accurate statement of how I see the speakership [is] somebody who could somehow combine grassroots organizations, mass media and legislative detail into one synergistic pattern."[21]

With majority opposition control to counter the president, following a very public campaign, Newt Gingrich had the highest public influence, representing both the majority party in Congress and the House as a whole. On April 7, 1995, Speaker Gingrich made an unprecedented "Address to the Nation," reporting to the American people the accomplishments of his "new Congress" and how they have upheld their "Contact with America." The speaker's 25 minute speech was akin to a presidential prime time address.[22] Later, in 1995, Gingrich and President Clinton participated in a public town hall-style debate in Claremont, New Hampshire. At the beginning of his remarks, Gingrich addressed the unprecedented nature of the program, saying, "I believe in all of American history there has never been a town hall meeting where a president and a speaker have been there at the same time."[23] 1995 ended with Gingrich being named the *Times* "Person of the Year," the only speaker ever to receive the honor.

In the proceeding years of his term, Speaker Gingrich frequently negotiated with President Clinton. During the government shutdown, an attempt to reform Medicare and Social Security, and several budget disagreements, the leaders' negotiations often resulted in compromise. Regarding their efforts to reform Social Security, Gingrich and Clinton both understood that neither party would be satisfied with their agreements. The President and Speaker worked together, both representing chiefly their institutions, to hammer out a deal. In this situation, Gingrich represented a speaker, albeit one of the most partisan in history, putting the national interest before that of his party. Gingrich said in a 2016 interview, "It wasn't that we were friends, but we both understood that you had to find a way to work for America even if as political rivals, you were fighting over what was going on."[24]

[20] Major Garrett, *The Enduring Revolution: How the Contract with America Continues to Shape the Nation* (Forum Books, 2005).
[21] Harris, "The Rise of the Public Speakership," 195.
[22] Newt Gingrich, "House Speaker Address," *C-SPAN*, April 7, 1995, https://www.c-span.org/video/?64434-1/house-speaker-address.
[23] "Pres. Clinton's And Newt Gingrich's Remarks (1995)," clintonlibrary42, YouTube Video, 1:03:55, June 11, 1995, https://www.youtube.com/watch?v=1x_eyDddlYE.
[24] "Newt Gingrich: Negotiating With Clinton," *CNN*, YouTube Video, 0:43, July 21, 2016, https://www.youtube.com/watch?v=pCsW4iSfOnU.

The speakership of Newt Gingrich offers examples of the utility and risks of the public speakership in balancing the president. Gingrich used his style and tactics to shift the way Americans thought about Congress. Although the controversial and public nature of Gingrich's term may have been unprecedented when compared to other speakers of the 20th century, it was not unlike the descendants of the speakership at the time of framing of the Constitution. In the end, Gingrich's tactics reset American politics and moved President Clinton's policies rightward through his well-strategized use of the public speakership.

DEMONSTRATING THE PUBLIC SPEAKERSHIP THROUGH KEVIN MCCARTHY

The speakership of Kevin McCarthy began with a rocky and public display, just as it ended. McCarthy's 2023 election took fifteen ballots over a span of five days, becoming the longest speaker election in modern history, paralyzing the first session of the 118th Congress.[25] McCarthy's drawn-out election and his eventual removal was spearheaded by a group of loud and very public representatives in the right-flank of the Republican Party, comprising the House Freedom Caucus. To secure his seat, McCarthy was forced into making a series of compromises that seceded power to the Freedom Caucus to affirm his commitment to fight for conservative priorities. McCarthy agreed to endorse a rule change that would allow any one member to call for the removal of the speaker—the device used later in the year when he was ousted.

The display and bargaining dominated headlines, thrusting the usually internal and procedural vote into the public light. McCarthy's troublemakers galvanized the attention. Representative Matthew Gaetz, who led the charge to delay McCarthy's speakership and made the motion to remove him, used the opportunity to fundraise. Gaetz raised a record number of donations in the five days he kept the speakership vacant.[26] Throughout the first two weeks of January, Gaetz sent several emails to his base, agitating them over the issue and associating the internal procedure with campaign rhetoric. He brought his internal battle against McCarthy to the public and argued it was for the benefit of the people. Gaetz's fundraising spiked with each email he sent, even after McCarthy was elected, showing just how captured the public was with the

[25] Allison McCartney et al., "Vote Count: McCarthy Elected House Speaker After 15 Ballots," *The New York Times*, January 4, 2023, https://www.nytimes.com/interactive/2023/01/04/us/politics/house-speaker-vote-tally.html.
[26] Erin Mansfield, "Matt Gaetz Brought in Record Political Donations as He Opposed Kevin McCarthy for Speaker," *USA TODAY*, April 17, 2023, https://www.usatoday.com/story/news/politics/2023/04/17/gaetz-political-donations-mccarthy-speaker/11673919002/

debacle happening within Congress.

In late September 2023, McCarthy brokered a deal with Democrats, temporarily avoiding a shutdown to keep the government open. Gaetz and other Freedom Caucus members cited McCarthy's public deal with the White House as a final straw. On October 1, Gaetz, during an interview on CNN, announced his intention to introduce a motion to remove McCarthy. In response to Gaetz's announcement, then Speaker McCarthy said the representative was "more interested in securing TV interviews than doing something."[27] A call back to the statement of Speaker O'Neill during his public battle with Gingrich in 1984. Representatives respond to the debacle public's view, writing on social media and appearing on cable news shows. Gaetz posted dozens of times on X, formerly known as Twitter, calling for McCarthy's ouster and bragging about his role in it. When the voting ended on the motion to remove McCarthy, news stations broke into regular programming, continuing to grip the public's attention. In the three weeks following McCarthy's removal, a public campaign for the historically internal office got under way. When McCarthy's prospect for re-election faded, other high-ranking G.O.P officials jumped in. Steve Scalise, the House Majority Leader, announced his intention to run, but after failing to get enough votes, he withdrew. Representative Jim Jordan launched an unprecedented public campaign for the seat, normally secured through internal haggling and negotiations. Jordan turned to right-wing platforms to call out moderate representatives in hopes of activating his far-right base to put public pressure on his fellow members for his election. Jordan ally and Republican Representative Tim Burchett said his fellow colleagues should "listen to their constituents, and make a decision," adding that Jordan's strategy was unsuccessful and was ultimately counterproductive, isolating his fellow members.[28] Rejecting the public approach, Republicans coalesced around little-known Representative Michael Johnson who obtained the office through a more traditional, internal approach. Though, since being elected, Johnson has inhibited the traits of the public speakership.

McCarthy's election, removal, and the election of Speaker Johnson all received front-page treatment from the *New York Times* for several weeks. The entire event demonstrates how

[27] Karoun Demirjian, "McCarthy Faces Test as Gaetz Moves to Oust Him for Working With Democrats," *The New York Times*, October 1, 2023, https://www.nytimes.com/2023/10/01/us/politics/mccarthy-speaker-gaetz.html.
[28] Karoun Demirjian, "Jordan Activates Right-Wing Pressure Campaign in Push to Win Speakership," *The New York Times*, October 14, 2023, https://www.nytimes.com/2023/10/14/us/house-speaker-republicans-jordan.html.

public-facing the speakership has become. The Speaker of the House is more public and increasingly beholden to a base outside Washington, even for their election.

The public speakership continues to rely on the institutional motivations that Matthew Green uses to define the goals and strategies of the speakership. The inability to understand the importance of these motivations in the public era and their strategic purpose, as McCarthy did, will result in failure.

CONCLUSION

The nearly month-long battle for the speakership ended with Louisiana Republican Representative Michael Johnson being elected speaker on the first ballot. With a name most politicos were not familiar with, how Johnson would approach the upended office was uncertain. In the early months of his speakership, Johnson exhibited qualities and traits familiar with the public speakership. Making a public display by traveling to the border and engaging with the press to advocate for a change in the Biden administration's approach to illegal immigration has defined his term so far.

Whatever legacy the McCarthy situation has left over the office is unclear, though the public speakership will continue to dominate the office. Speakers play important roles as public symbols of Congress. Speakers must use this role to balance the public powers of the presidency. Placing too much emphasis on a public strategy, as opposed to using the internal levers to operate, will lead speakers to failure.

While no speaker will ever have the prestige and constitutional significance of the presidency, speakers today are noted as significant leaders, regardless of their electoral strength. A more assertive public speaker would aid in reasserting the power of Congress through public means in a way consistent with the intentions of the framers. Just as presidents who may have a weak electoral base still yield significant power, even if just symbolic, speakers are increasingly doing the same. Future research and discussion of the speakerships of Nancy Pelosi, particularly her 2022 visit to Taiwan, and Dennis Hastert and his interaction with President George W. Bush following 9/11, will provide further demonstrations and lessons of the public speakership.

As a result of their more profound public notoriety and increased institutional power, speakers have come to yield more political influence beyond their internal authority. When done

well, Congress can maximize its public reach, represent the American people, and balance the power of the presidency.

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STALLED EXECUTIVE & ACTIVE STATES: EXPLAINING PRESIDENT BIDEN'S INACTION ON BAIL REFORM

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In 2020, then-presidential candidate Joe Biden promised to eliminate cash bail nationwide, likening its continued use to a "modern-day debtors' prison." Despite his ambition, Biden's administration efforts have stalled on this issue and show little hope of success as the president nears the end of his first term. While the Biden administration has failed, ten states, the District of Columbia, and the most populous county in Texas have enacted either eliminations or limits on cash bail since 2014. This paper will examine the question: Why has President Biden stalled on his promise to eliminate cash bail even though several states have succeeded in doing the same? This paper uses policy diffusion concepts to analyze the cases of bail reform adoption in New Mexico and New York and highlights the conditions enabling policy adoption on this issue. These findings then explain the Biden administration's restraint.

INTRODUCTION

On the presidential campaign trail in 2020, then-Democratic Party nominee Joe Biden promised to end the institution of cash bail nationwide. While campaigning for the General Election, the Biden team published "The Biden Plan Strengthening America's Commitment to Justice," which outlined policy priorities for then-candidate Biden to win a so-called "Battle for the Soul of Nation" against then-President Donald Trump. In this plan, Biden specifically focused on the "criminalization of poverty" via discriminatory pretrial cash bail systems used by the states. He analogized cash bail to a "modern-day debtor's prison" and vowed to use federal incentives to lead a nationwide effort that would bring an end to cash bail.[1] However, by October of 2021, President Biden's attention to the bail issue seemed to subside. In the National Strategy on Gender Equity and Equality, the Biden administration enumerated its efforts to tackle gender discrimination and other sources of social inequality through progress on economic opportunity and criminal justice. The bail reform topic was only mentioned once in a brief sentence about the

[1] Biden for President, "The Biden Plan for Strengthening America's Commitment to Justice" (Biden for President, 2020): 2.

disproportionate impact cash bail has on Black women and families.[2] Despite momentary reaffirmations of the White House's characterization of cash bail and significant progress made on the rest of the President's criminal justice reform agenda, the White House has not pursued its bail reform promise.

While President Biden has failed to deliver on nationwide bail reform, ten states, the District of Columbia, and the most populous county in Texas (Harris County) have already adopted varying versions of the cash bail reform since 2014. The list includes New Jersey, New York, California, Kentucky, Alaska, New Mexico, Virginia, Maryland, Nebraska, and Illinois—a heterogeneous and dissimilar group of states that do not have much in common to explain their consensus on a progressive criminal justice reform policy. In light of this tension between active states and an inactive executive, I will answer the question: *Why has President Biden stalled on his promise to eliminate cash bail nationwide even though several states have already succeeded in doing the same?*

To answer this question, I conduct two case studies on states that have already adopted similar, although slightly different, versions of bail reform legislation—New Mexico and New York. The events that led to bail reform adoption in both states offer an opportunity to examine the role of policy learning and diffusion. Both states passed their versions of reform years after New Jersey did so first in 2014. These cases exhibit varied legislation, geography, partisan composition of government institutions, time periods, and levels of controversy in their adoption narratives. From the stories of policy adoption in these two states, I identify the presence of an elected policy entrepreneur as the primary condition impacting the likelihood of a government successfully pursuing bail reform initiatives. Finally, I use these conclusions alongside John Kingdon's theoretical framework to explain why President Biden has not placed his leadership of a nationwide effort to abolish cash bail on his decision-making agenda.

I find that although he promised to deliver on nationwide bail reform on the campaign trail in 2020, President Biden now wields limited authority and political capital to act on the issue. I contend that a policy window *does not* exist for President Biden to use the powers of the presidency in pursuit of bail reform because conditions that enable bail reform adoption at the state level—primarily, the presence of a strong policy entrepreneur—are not present nationwide.

[2] The White House, "National Strategy on Gender Equity and Equality," October 2021, https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf.

I argue that President Biden has adopted a strategy of presidential restraint, a response that instead creates space for ongoing horizontal policy diffusion to continue amongst the states.

DESCRIBING POLICY DIFFUSION

In 1932, Supreme Court Justice Louis Brandeis penned a dissent to the majority opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932), in which he made a historic statement about the power of a state to adopt brazen policies in the face of emerging problems. Justice Brandeis writes, "a state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[3] Since then, political scientists and legal experts have popularized the idea of states acting as laboratories for democracy, as the federal system allows states and localities to trial-run innovative policy ideas, the results from which the federal government and other states can learn. Political scientists call this process by which policies spread across different jurisdictions *policy diffusion*. The broad field of policy diffusion seeks to answer the question: "Why do policy innovations spread from one government to another?"[4]

According to Charles Shipan and Craig Volden, two different types of diffusion exist—vertical and horizontal.[5] While horizontal policy diffusion explains how governments of the same level in the federal system adopt policies from one another (i.e., from state to state), vertical policy diffusion explains how lower levels of government can drive policy adoption at higher levels and vice-versa (i.e., state innovations copied by the federal government or the federal government innovating at its level and then coercing states to follow suit). The majority of existing policy diffusion literature focuses on horizontal diffusion, examining how regional proximity, policy attributes, internal determinants, and policy entrepreneurs impact state-to-state spread. From this literature, we can draw multiple lessons that inform our approach to answering questions about the realities of bail reform adoption.

[3] *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932)
[4] Lucie Cerna, "The Nature of Policy Change and Implementation: A Review of Different Theoretical Approaches," *Organisation for Economic Co-Operation and Development*, (2013): 6.
[5] Charles R. Shipan and Craig Volden, "The Mechanisms of Policy Diffusion," *American Journal of Political Science* 52, no. 4 (2008): 825.

Frances Stokes Berry and William D. Berry presented the first unified theory on policy diffusion that explains how internal determinants like the existing social, economic, and political characteristics of a state interact with regional forces to drive policy adoption. The internal determinants of a state or country alone cannot explain why states choose to implement certain policies.[6] Instead, these varying conditions serve as prerequisites for adoption rather than causal factors themselves.[7] When the internal prerequisites are ripe for policy innovation, states become more likely to respond to the pressures felt when neighboring states adopt innovative policies that provide clear benefits to their residents.[8] However, the magnitude of said prerequisites diminishes as the concentration of governments adopting a given policy increases and reaches a critical mass.[9]

A separate community of policy diffusion scholars emphasizes the importance of interest groups, policy advocates, and policy entrepreneurs in the success of horizontal and vertical policy diffusion. Michael Mintrom is the first author to argue that policy entrepreneurs have an overwhelmingly positive effect on policy adoption limited by internal prerequisites of their government.[10] At the very least, policy entrepreneurs have consistent success bringing their chosen policy of interest into legislative consideration, even if it is not always adopted.[11] Mintrom complements his work when he and Vergari find that policy entrepreneurs contribute to vertical diffusion as well. Using internal policy networks and connections to influence legislative action and consensus-building within their target government, policy entrepreneurs also reach toward external policy networks to raise the salience of their issue and stir debate.[12] In this way, these policy advocates build on the success of policy on lower levels of government, whether it be state or local, and gain momentum to increase the likelihood of upward policy diffusion on the state or federal level.[13]

[6] Frances Stokes Berry and William D. Berry, "State Lottery Adoptions as Policy Innovations: An Event History Analysis," 396; Harvey Starr, "Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System," *The Journal of Conflict Resolution* 35, no. 2 (1991): 356–81.
[7] Berry and Berry, "State Lottery Adoptions as Policy Innovations: An Event History Analysis," 396.
[8] Ibid, 410.
[9] David Collier and Richard E. Messick, "Prerequisites Versus Diffusion: Testing Alternative Explanations of Social Security Adoption," *The American Political Science Review* 69, no. 4 (1975): 1301.
[10] Michael Mintrom, "Policy Entrepreneurs and the Diffusion of Innovation," *American Journal of Political Science* 41, no. 3 (1997): 765.
[11] Mintrom, "Policy Entrepreneurs and the Diffusion of Innovation," 765.
[12] Michael Mintrom and Sandra Vergari, "Policy Networks and Innovation Diffusion: The Case of State Education Reforms," *The Journal of Politics* 60, no. 1 (1998): 145.
[13] Mintrom and Vergari, "Policy Networks and Innovation Diffusion," 145.

CASE 1: BAIL REFORM IN NEW MEXICO

Unable to afford his bond and facing a significant court backlog in 2011, the state of New Mexico held Walter Brown in jail for over two years without a trial. He petitioned the district court to reconsider the terms for his pretrial release, his defense team arguing that he was unable to afford the original bond set for him. After a series of appeals, the New Mexico Supreme Court decided that Walter Brown's legal team had presented "uncontroverted evidence" that nonmonetary release conditions were sufficient to protect public safety and ensure Brown's later appearance in court.[14]

In his decision, Justice Charles W. Daniels of the New Mexico Supreme Court criticized lower court judges for their improper and irresponsible use of bail in criminal court proceedings. Specifically, Daniels writes:

> [standard court procedure] requires the judge to make an informed, individualized decision about each defendant and does not permit the judge to put a price tag on a person's pretrial liberty based solely on the charged offense…Intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether.[15]

In the years following the *Brown* decision, Justice Daniels emerged as the most vocal advocate for legislative and constitutional reforms to the New Mexico bail system. Elected for his second (non-consecutive) term as the Chief Justice of the New Mexico Supreme Court in 2016, Daniels' prominent role in state politics and the judiciary bolstered his ability to act as a policy entrepreneur.

The *Brown* ruling also sparked political discourse across New Mexico on the moral and practical legitimacy of the existing bail laws. Nowhere was the debate more impassioned than inside the halls of the state legislature. On December 16, 2015, one year after the *Brown* decision, Sen. Peter Wirth (D-25) introduced Senate Joint Resolution 1 (SJR1) in the New Mexico Senate. The resolution proposed an amendment to the Constitution of New Mexico giving courts the authority to deny bail to dangerous defendants facing felony charges while granting pretrial release for non-dangerous defendants.[16] After gaining momentum with the help

[14] *State of New Mexico v. Walter Ernest Brown*, 34531 (NM.2014): 1-45.
[15] *State of New Mexico v. Walter Ernest Brown*, 34531 (NM.2014): 42-44.
[16] Peter Wirth, "Senate Joint Resolution 1," Pub. L. No. 1 (2015).

of strong advocacy from Justice Charles W. Daniels and a bi-partisan group of legislative co-sponsors, SJR1 drew bipartisan support in a mixed state government. Despite a 24-18 split in the state Senate in favor of Democrats, SJR1 gained the support of five Republicans to pass by a 29-9 vote in February of 2016. Two weeks later, legislators built a strong consensus in the House to pass SJR1 by a 69-0 vote despite a four-seat Republican majority.[17]

In following the state's constitutional amendment process, the legislature placed the language of the amendment on the ballot in November 2016 to await public approval. On November 8, 2016, 87.23% of New Mexico voters supported the proposed amendment, officially ratifying the language into the New Mexico Constitution. Since its implementation, limited calls for change have gained traction and, thus, have allowed the reform to prove itself durable.

A lack of organized opposition is the result of Justice Daniels' successful influence. In the weeks before the public vote, Justice Daniels made several public appearances to support the measure. In multiple interviews with state newspapers and media outlets, Daniels made clear that the bail reform amendment was a priority of his career on the bench, stating, "There is nothing I've done or will do on the court that is going to be a more important improvement of justice than getting this amendment passed."[18] In an interview with *Reveal News* and *New Mexico In Depth*, the President of the Bail Bond Association of New Mexico, Gerald A. Madrid, explains his lack of action against the initiative, "But I did give Chief Justice Daniels my word that I'm not going to fight him on this."[19] This promise to remain uninvolved came only one year after Madrid published an op-ed in the *Alamogordo Daily News*, a *USA Today* subsidiary in New Mexico, defending the bail bond industry's right to earn large profits by providing "the security and guarantee that no one else does."[20]

In additional public comments to the press, Chief Justice Daniels specifically cited examples of bail reform success in Washington, D.C., in 1992 to counter criticisms from bail

[17] New Mexico Legislature, "SJR1," New Mexico Legislature, February 2016, https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=JR&LegNo=1&year=16.
[18] Dave Tomlin, "NM Chief Justice Daniels Backs Bail Reform Amendment," *Ruidoso News*, accessed January 14, 2024, https://www.ruidosonews.com/story/news/local/courts/2016/07/19/nm-chief-justice-daniels-backs-bail-reform-amendment/87256082/.
[19] Andrew Becker & Jeff Proctor, "New Mexico Vote: Should People Be Stuck in Jail Because They're Poor?," *Reveal News*, October 29, 2016, http://revealnews.org/article/new-mexico-vote-should-people-be-stuck-in-jail-because-theyre-poor-2/.
[20] Gerald A. Madrid, "Gerald A. Madrid: Bail Bond Agent Is Entitled to Make a Profit," *Alamogordo Daily News*, accessed January 14, 2024, https://www.alamogordonews.com/story/opinion/2015/09/19/gerald-madrid-bail-bond-agent-is-entitled-make/72525700/.

bond associations, such as the Professional Bail Agents of the United States, that have made it their mission to defeat progressive bail reform laws everywhere.[21] Justice Daniels, however, identified the potential of states like New Mexico to catalyze a national movement for bail reform that threatens the bail bond industry, stating "any reform in any of the states is a threat to them nationally."[22]

CASE 2: BAIL REFORM IN NEW YORK

In January 2018, New York Governor Andrew Cuomo announced a plan in his State of the State address to introduce new legislation that would overhaul the state's bail system. Motivated by the death of Kalief Browder, a man held in pretrial confinement on Riker's Island for three years due to his inability to post a $3,000 bond and who committed suicide upon his release, Governor Cuomo promised that "Kalief Browder did not die in vain."[23]

Governor Cuomo's proposal mandated the release of all defendants facing misdemeanor or nonviolent felony charges, using bail conditions only for those defendants charged with the most serious crimes. Governor Cuomo's plan also allowed judges to order pretrial detention for those defendants deemed to pose a risk to public safety. As New York law historically only used bail conditions to ensure the appearance of a defendant in court, this provision was a notable change to the status quo. This change, however, never made it in the final bail reform initiative passed in the spring of 2018. A Republican-controlled Senate blocked the measure.

In 2019, a unified Democrat-controlled state government pushed ahead with its bail reform agenda. However, with California raising the bar for reform by passing Senate Bill 10 to fully eliminate cash bail, Governor Cuomo decided to propose the same. Still, debate continued over the kinds of cases that required release versus those eligible for detention and whether to include a public safety provision into the calculus of judges.[24] On April 1, 2019, Governor Cuomo signed a bill passed by both houses of the legislature that effectively abolished the use of cash bail for 90% of charges in New York, mandating the release of all detainees awaiting trial

[21] Tomlin, "NM Chief Justice Daniels Backs Bail Reform Amendment," *Ruidoso News*.
[22] Tomlin, "NM Chief Justice Daniels Backs Bail Reform Amendment," *Ruidoso News*.
[23] Insha Rahman, "New York, New York: Highlights of the 2019 Bail Reform Law" (Vera Institute of Justice, July 2019), 6
[24] Rahman, "New York, New York: Highlights of the 2019 Bail Reform Law," 7.

for crimes not including violent felonies, sex crimes, and some domestic violence charges.[25] The new system was set to take effect on January 1, 2020.

The signing of the bill prompted immediate backlash from bail reform detractors across the state. A group of Republicans in the New York state legislature stood alongside county sheriffs and district attorneys across the state in calling for a one-year moratorium on the implementation of the bail reform law. Members of the law enforcement community, including Saratoga County Sheriff Mike Zurlo, stated that they were frustrated by their lack of inclusion in the advisory and decision-making process in Albany. In a public statement, Zurlo specifically remarked that "this [the bail reform initiative] was kind of pushed down our throats."[26]

Angered by more than just their exclusion from the legislative process, the Republican lawmakers and law enforcement officials voiced their concerns over the administrative pressures the new laws placed on police departments, courts, and prosecutors. First amongst their fears was the ability of police officers and sheriff deputies to effectively keep track of the locations of detainees released pretrial, especially those who Republican lawmakers say are too dangerous to deserve release anyway.[27] While Governor Cuomo dismissed these claims as "politicians taking cues from Trump's cheap fearmongering," the criticism was not divided purely along party lines.[28] Many Democrats also voiced their support for a one-year moratorium on the bill, like Schenectady County DA Robert Carney, who stated:

> These sweeping criminal justice reforms were enacted in the budget without any input from the professionals who work in the criminal justice system…I question our ability to meet these new mandates with the resources and limited time left before they take effect.[29]

Responding to the backlash, Governor Cuomo and other leaders of the bail reform bill stood behind their efforts, citing examples of success set by neighboring New Jersey and its

[25] Ibid, 8.
[26] Erika Leigh, "Lawmakers, Law Enforcement Call for Bail Reform Moratorium," *Spectrum Local News*, November 12, 2019, https://spectrumlocalnews.com/nys/hudson-valley/news/2019/11/12/tedisco-walsh-press-conference-bail-reform.
[27] Leigh, "Lawmakers, Law Enforcement Call for Bail Reform Moratorium."
[28] Ibid.
[29] "Tedisco, Walsh: 'Hit the Pause Button on Bail Reform and Get Out-of-Jail-Free Cards' for Criminals," Mary Beth Walsh - Assembly District 112, November 12, 2019, https://nyassembly.gov/mem/Mary-Beth-Walsh/story/89789.

similar bail reform laws spearheaded by Republican Governor Chris Christie.[30] Proponents of the New York reforms often failed to mention that a key difference between the two bills was that New Jersey included a public safety provision in their decision-making framework to determine pretrial release while New York did not.

Despite standing strong behind the bail reform initiative, supporters in the state government relented and made a series of revisions to roll back the bail reform laws between 2020 and 2023. Most notably and most recently, Governor Kathy Hochul, a Democrat and former lieutenant governor under Governor Cuomo, engaged in a budget battle with members of her party in the state legislature to make more changes to the still controversial bail reform. After the bail issue became a primary point of debate on the campaign trail for the 2022 New York Gubernatorial Election, Governor Hochul seized an opportunity to quell criticism from those like Republican gubernatorial candidate Lee Zeldin. The changes in 2023 included stripping the law of language requiring judges to pursue the "least restrictive" conditions for release or pretrial detention, granting them more authority to take action to protect public safety.[31] Still, the law enforcement community and several district attorneys throughout the state continue to voice their displeasure with the new system that has failed to display the same durability shown by bail reform programs in New Mexico and New Jersey.

LESSONS LEARNED FROM THE CASES OF NEW MEXICO AND NEW YORK

From the examination of bail reform adoption in New Mexico and New York, we draw two primary conclusions that explain why President Biden has not gotten involved in the bail issue: policy entrepreneurs are critical in bail reform and bail reform diffusion takes place horizontally through policy learning.

First, we see that policy entrepreneurs are critical in jumpstarting and sustaining a coalition supporting bail reform legislation.[32] In New Mexico, state Supreme Court Justice Charles W. Daniels used the *New Mexico v. Brown* decision to begin his effort to overhaul the

[30] Corina Cappabianca, "Senate Republicans Pushing Back against Bail Reform Law Set to Take Effect in January," *ABC News10*, November 7, 2019, https://www.news10.com/news/ny-capitol-news/senate-republicans-pushing-back-against-bail-reform-law-set-to-take-effect-in-january/.
[31] Marcia Kramer, "Gov. Hochul, Reluctant Lawmakers Agree on New State Budget with Bail Reform Changes," *CBS News,* April 28, 2023, https://www.cbsnews.com/newyork/news/gov-hochul-reluctant-lawmakers-agree-on-new-state-budget-with-bail-reform-changes/.
[32] Mintrom, "Policy Entrepreneurs and the Diffusion of Innovation," 765.

state's bail system, rally public support, and correct a perceived injustice he claimed was the most important work of his career.[33] In New York, Governor Andrew Cuomo worked in the years following the death of Kalief Browder to ensure he did not die in vain. Governor Cuomo not only introduced plans to pursue reform in the legislature on two separate occasions but also steadfastly defended the program despite criticism from a bipartisan group of lawmakers and law enforcement practitioners until he left office in 2021.[34] Together, these case features confirm Mintrom's findings on the positive impact of policy entrepreneurs on issue saliency, agenda consideration, and policy adoption.

Second, public comments made by bail reform advocates in both New Mexico and New York reveal how reformists see the bail issue as one that is diffusing across the country as states continue to innovate in the policy space. In New Mexico, Justice Daniels framed the fight for bail reform as having the potential for a ripple effect that threatens the profits of the bail bond industry nationwide. This, Daniels suggests, is the underlying motive behind the industry's staunch opposition to and substantial political spending against bail reform efforts everywhere.[35] Further, supporters of the many iterations of bail reform in New York specifically mentioned their engaging in policy learning to develop their legislation. In response to criticism from the law enforcement community and Republican lawmakers in Albany, Governor Cuomo's office released the following statement:

> Republican Governor Chris Christie passed essentially the same bail reform laws years ago in New Jersey and their state reports have shown that overall crime has decreased with no statistically significant changes regarding re-offenses or court appearances. Politicians taking cues from Trump's cheap fearmongering should knock it off and focus on the facts.[36]

This statement highlights how New York based its policies on those enacted in New Jersey just two years earlier in 2017. Further, Governor Cuomo's reference to President Trump's "fearmongering" rhetoric serves as an example of state leaders nationalizing an issue. In doing so, Governor Cuomo recognized that his pursuit of bail reform is part of a larger movement impacted by federal leadership. Finally, after initially introducing a modest version of a bail reform initiative in 2018, New York Democrats chose to imitate the more progressive legislation

[33] Tomlin, "NM Chief Justice Daniels Backs Bail Reform Amendment."
[34] Rahman, "New York, New York: Highlights of the 2019 Bail Reform Law."
[35] Tomlin, "NM Chief Justice Daniels Backs Bail Reform Amendment."
[36] Cappabianca, "Senate Republicans Pushing Back against Bail Reform Law Set to Take Effect in January."

seen in California's controversial Senate Bill 10 (which later lost a veto referendum vote after fierce opposition).[37] This is yet another instance of policy learning amongst the states that, according to Starr, characterizes the "domino effect" defining horizontal policy diffusion.[38] This trend signals the potential for further policy diffusion to occur in the absence of federal involvement.

EXPLAINING PRESIDENT BIDEN'S RESTRAINT

Considering the lessons learned from the cases of bail reform adoption and durability in New Mexico and New York, John Kingdon's theory on agenda-setting is critical to understanding President Biden's available options, political capital, and decision-making process. Kingdon argues that for a "window of opportunity" to exist, three different streams of conditions must converge at a single moment: the problem stream, the policy stream, and the politics stream.[39] There must exist a commonly defined problem, a potentially successful policy solution, and a realistic set of political means and conditions to pass said policy.[40] If one or more of these streams are not present at a given time, there will exist no window of opportunity, making it less likely that the issue will be placed on a decision-making agenda.[41] All three streams must converge for the respective issue to gain priority on a political agenda.

Kingdon's policy stream describes the idea that political actors must accurately define abstract problems before they are placed on an agenda.[42] President Biden's comments comparing cash bail to a "modern-day debtor's prison," as well as its inclusion in the President's larger criminal justice platform, demonstrate the administration's ability to identify the bail issue with clarity.[43]

Further, the policy stream states that once a problem is properly defined, legitimate policy innovations and ideas addressing said problem must exist before placing the issue on a decision-

[37] Rahman, "New York, New York: Highlights of the 2019 Bail Reform Law."
[38] Starr, "Democratic Dominoes: Diffusion Approaches to the Spread of Democracy in the International System," 378.
[39] John W. Kingdon, *Agendas, Alternatives and Public Policies*, 2nd ed.: Addison-Wesley Educational, 2003.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Biden for President, "The Biden Plan for Strengthening America's Commitment to Justice," 2.

making agenda.[44] There have been three courses of action available to President Biden that he did *not* pursue in his first term:

First, the Biden administration could have leveraged federal grant funds to states and localities as a coercive tool to incentivize states still using cash bail systems to adopt reforms. Specifically, the federal government could have suspended the provision of funds to cash bail states that they would have otherwise received through the Edward Byrne Memorial Justice Assistance Grant (JAG) program. This program, which provided $253 million to states and localities in FY2020, is the Justice Department's primary means of reimbursing states and local communities for law enforcement and judicial initiatives.[45] Although this decision to withhold funds from its recipients would have been controversial, substantial precedent exists to legitimize such action.[46]

The Biden administration's second option was to throw the weight of the presidency behind legislative proposals that seek to eliminate the use of cash bail in federal criminal cases. The last time Congress took action to make changes to pretrial and bail statutes was with the Bail Reform Act of 1984, which made it legal for judges and judicial officers to consider the potential safety risk posed by defendants to the public in their pretrial detention determination, alongside their likelihood of appearing in court and personal history (drug abuse, criminal record, etc.). Since 1984, members of Congress have introduced a series of bills in the House and Senate to either eliminate cash bail for federal criminal cases or incentivize states to eliminate cash bail on their own. However, most have not reached a vote. Most notably, now-vice president and then-Senator Kamala Harris co-sponsored the bi-partisan Pretrial Integrity and Safety Act in 2017 alongside Senator Rand Paul (R-KY) that would have provided grant money to states that eliminate cash bail systems. Although uniquely bipartisan, the bill never made it out of the Senate Judiciary Committee.[47] There is little history of legislative success in Congress on bail reform, but supporting legislation remains a potential course of action for the Biden administration.

[44] Kingdon, *Agendas, Alternatives and Public Policies*.
[45] Sarah N. Lynch, "U.S. Justice Department Ends Trump-Era Limits on Grants to 'Sanctuary Cities,'" *Reuters*, April 28, 2021, sec. United States, https://www.reuters.com/world/us/exclusive-us-justice-department-ends-trump-era-limits-grants-sanctuary-cities-2021-04-28/.
[46] Ibid.
[47] Congress.gov. "S. 1593 – 115th Congress (2017-2018): Pretrial Integrity and Safety Act of 2017," July 20, 2017, https://www.congress.gov/bill/115th-congress/senate-bill/1593.

Third, and most realistically, President Biden could have used the bully pulpit to increase the salience of the bail issue across the country and expose the public to the argument in favor of reform. In speeches, statements, and press conferences, the President and his staff could have amplified the message of bail reform advocates and policy entrepreneurs, highlighted the work done by several successful states since 2014, and called for further action. President Biden could have appealed to liberals and conservatives alike by relying on the rhetoric used by Vice President Harris and Senator Rand Paul in their op-ed published in *The New York Times* in 2017 promoting their own Senate resolution. While the article appeals to liberals with calls to end mass incarceration and eliminate racial or socioeconomic bias in criminal proceedings, it also appeals to conservatives with promises of reducing wasteful spending on an unnecessarily crowded and over-populated prison system that still fails to maintain public safety.[48] By raising the profile of the bail reform debate, President Biden could have played the role of primary policy entrepreneur on the federal level that was so critical for policy action in New Mexico and New York with Chief Justice Charles W. Daniels and Governor Andrew Cuomo. Overall, the Biden administration had legitimate policy options within reach, meaning the conditions for the policy stream were present.

Despite the convergence of the problem and policy stream, President Biden has *not* prioritized his promise to end cash bail nationwide because he lacks the political conditions necessary to do so. From the study of the cases in New York and New Mexico, it was clear that bail reform initiatives needed significant leadership from respected and credible policy entrepreneurs to overcome resistance from opponents. No person or organization has risen to take the mantle of a nationwide persuasive voice on bail reform. This, thereby, weakens the reach of pro-bail reform rhetoric and dramatically hinders the initiative's chances for success. Thus, a "policy window" does not exist for bail reform to gain priority on President Biden's current agenda. However, this does not mean that the Biden administration failed to create conditions for horizontal state-to-state diffusion to continue at the natural pace of policy learning.

Historically, policymakers have been most effective achieving their policy goals with iterative approaches to problems that focus on what small steps can build consensus

[48] Kamala D. Harris and Rand Paul, "Kamala Harris and Rand Paul: To Shrink Jails, Let's Reform Bail," *The New York Times*, July 20, 2017, sec. Opinion, https://www.nytimes.com/2017/07/20/opinion/kamala-harris-and-rand-paul-lets-reform-bail.html.

immediately.[49] When political actors aim to realize their goal or final vision in a single piece of legislation, they often fall short of gaining adequate support for passage.[50] Considering the high level of activity on the bail reform issue since 2014, with twelve jurisdictions enacting some form of reform in nine years, President Biden may be taking an incremental approach to change. By leaving room for the states to act and keeping the issue off the federal agenda, President Biden and his staff may believe they are lowering the temperature of the debate and increasing the chances individual states can continue to build consensus and support for reform.

Presidents historically step back and allow situations to unfold before them without getting directly involved if the future is uncertain.[51] It is no surprise that President Biden has chosen to remain uninvolved. Instead, President Biden and his administration have adopted a strategy of presidential restraint to create space for state-to-state horizontal policy diffusion to continue incrementally while unfettered by the complications of federal involvement. By refusing to overtly nationalize the bail reform debate, President Biden leaves open the possibility for further progress in states where internal conditions, policy entrepreneurship, and policy learning are sufficient to overcome opposition from bail reform opponents.

CONCLUSION

I contend that instead of attempting to lead a nationwide effort to eliminate cash bail and failing, President Biden and his staff have exercised executive restraint and created room for ongoing policy diffusion to continue. Since 2014, ten states, the District of Columbia, and Harris County, Texas have each implemented some policy or law significantly limiting the use of (or eliminating) cash bail in their jurisdictions. An examination of the stories of bail reform in New Mexico and New York highlights two generalizable lessons.

First, policy entrepreneurs play a central role in and have a positive impact on bail reform adoption at the state level. These advocates, oftentimes holding elected office, amplify the voices of bail reform proponents, rally public and political support, and create enough momentum to

[49] Charles E. Lindblom, "The Science of 'Muddling Through,'" *Public Administration Review* 19, no. 2 (1959): 88.
[50] Lindblom, "The Science of 'Muddling Through," 88.
[51] Jeffrey S. Selinger, "Making Sense of Presidential Restraint: Foundational Arrangements and Executive Decision Making before the Civil War," *Presidential Studies Quarterly* 44, no. 1 (2014): 29.

overcome the obstacles created by the bail bond industry and local and state-level law enforcement who oppose the measure.

Second, public comments made by policy entrepreneurs and activists in New Mexico and New York confirm that bail reform is diffusing horizontally amongst the states through policy learning. Political leaders like Governor Andrew Cuomo of New York specifically cite New Jersey as a source of policy learning, while Chief Justice Daniels alludes to the domino effect of adoption sweeping across the bail reform states.

Applying these findings to the political calculus of President Biden in his first term, it is evident that the administration clearly defined the cash bail issue and had policy options available to pursue their campaign promise. However, the Biden administration lacked the political conditions necessary to warrant prioritizing the issue on the President's agenda. Without a clear policy entrepreneur to catalyze a nationwide movement capable of overcoming growing resistance and skepticism of cashless bail systems, President Biden took a path of presidential restraint. In doing so, President Biden prevented the nationalization of the bail reform debate and made room for states to continue engaging in policy learning and horizontal diffusion. With this strategy, President Biden allows states with the proper internal conditions and policy entrepreneurs to pursue bail reform at their own pace without the complication of federal involvement. Although President Biden cannot claim credit for states that adopted bail reforms during his tenure or subsequently thereafter, he potentially will have played a significant role in creating the conditions necessary for continued horizontal bail reform diffusion in the future.

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THE RHETORICAL WALTZ BETWEEN THE PRESIDENCY AND TERRORISM: IDENTIFYING AND EXPLAINING THE TRENDS OF POST-9/11 PRESIDENTIAL COMMUNICATIONS SURROUNDING TERRORISM

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Among the important duties of a serving U.S. president is providing comfort and reassurance to the nation during times of crisis. Following the terrorist attack of 9/11, addressing terrorism and its vast implications became the primary focus of every presidency, beginning with President George W. Bush. Despite the differences in partisan values and contextual time periods, each president has addressed 9/11 with common trends. These trends and themes are particularly noticeable in annual State of the Union addresses, which provide presidents with an opportunity to address Congress and the nation each year. Decades after 9/11, terrorism remains a central focus in the conversation surrounding American liberty and justice. A rhetorical analysis of presidential responses to terrorism provides insights into the common trends and themes employed by presidents in times of crisis, as well as teaches us the broader story that Americans tell themselves about terrorism.

INTRODUCTION

On September 11, 2001, nineteen terrorists from al-Qaeda hijacked four commercial airplanes, deliberately crashing two planes into the North and South Towers of the World Trade Center, a third plane into the Pentagon in Arlington, Virginia, and a fourth plane, United Airlines Flight 93, which crashed in the Pennsylvania countryside outside of Shanksville, PA. The event was catastrophic and marked the deadliest terror attack on U.S. soil to date. Many Americans lived through 9/11 and can recall the government's immediate response and call to action. According to a study from Pew Research Center, 93% of those thirty and older say they remember exactly where they were on September 11, 2001.[1] For other Americans, including the researcher, their knowledge of the terrorist attack is confined to academic spaces, media platforms, and stories from their parents. What remains consistent among all generations is the ever-present narrative of terrorism in our government since 9/11. What are the stories we choose

[1] Hannah Hartig, "Two Decades Later, the Enduring Legacy of 9/11," Pew Research Center, September 2, 2021, https://www.pewresearch.org/politics/2021/09/02/two-decades-later-the-enduring-legacy-of-9-11/.

to tell ourselves? How do we position America during times of catastrophe and conflict? Speechwriting is a medium of identifying such, as it is a powerful etching tool of American democracy because of the nation's love for rhetorical moments.[2] The manner in which terrorism was and is discussed serves as a distinct frame by which presidents position their values. This phenomenon is not new, particularly in moments of addressing the nation. *The Washington Post* writer Carlos Lozada details the shortcomings of America's response to 9/11, specifically regarding ideological failures of the terrorist attack and how the presidencies have responded to it in his piece "9/11 was a test. The books of the last two decades show how America failed."[3] Built on foundations of liberty and justice, America's freedom and fight to maintain these values serves as components of its central American character. When it comes to external threats to the very sanctity of American freedom, presidential communications tend to position America as the exceptional, strong, and triumphant victim and celebrate the trends of resilience, unity, civil liberty, and democracy.

Presidential addresses, such as the State of the Union, comment on the state of the nation and prioritize each domestic and international interest of America. Though terrorism has taken different shapes over the various presidencies, there is a continuity of addressing terrorism in presidential addresses. Previous studies about 9/11 rhetoric and American ideology surrounding terrorism have failed to acknowledge the continuity and changes with other modern post-9/11 presidents such as Trump and Biden. This paper addresses the gap in analysis surrounding presidential rhetoric after the 9/11 attacks and the themes invoked in response to terrorism from modern presidents. In pursuit of this suspected pattern, this paper will dive into the rhetorical trends and characteristics that presidents employ in relation to terrorism. Additionally, in the context of annual, unifying addresses, we should explore the ways in which terrorism is discussed and how it contributes to the narrative we tell ourselves, specifically as it transcends political parties and partisan differences. Analyzing the invocation of certain themes may help us understand the fervor of American identity and America's relationship to terrorism since 9/11.

[2] Diana Owen, review of *The Sound of Leadership: Presidential Communication in the Modern Age*, by Roderick P. Hart, *Political Science Quarterly* 103, no. 4 (1988): 739–40.
[3] Carlos Lozada, "9/11 was a test. The books of the last two decades show how overreacting to the attacks unmade America's values." *The Washington Post*, September 3, 2021, www.washingtonpost.com/outlook/interactive/2021/911-books-american-values/.

THE RHETORICAL PRESIDENCY

The language deployed in a crisis can be especially telling of public response. In 1981, James Cesar, Glenn Thurow, Jeffrey Tulis, and Joseph M. Bessette published *The Rhetorical Presidency,* in which they argued how presidential communication transformed the presidency and the political system in which it exists. The increased dominance of the executive branch as a result of the rhetorical presidency speaks to its power in practice, more specifically through national definitions that carry symbolic performance of their office.[4] Our understanding of presidential rhetoric should not be limited to just one of these perspectives, as rhetoric is not only an alleged cause of shifts in audience attitude but also a greater reflection of a president's values and worldview. Through this lens, rhetoric can be understood as a vehicle for open-ended characterization of broad political concepts, such as terrorism, which can be manipulated as a cue.[5]

In times of crisis, elite responses to terrorism craft different sentiments. After 9/11, data shows that members of Congress were four times as likely to focus on the emotional strengths of the citizenry with a sense of optimism.[6] Their behavior evoked certain hymns of resilience and solidarity in the American people. In many ways, the banality and trite nature of such rhetoric proves to be significant in America, where the people are too limited and diverse to hold these truths to be self-evident. In doing so, leaders may have the authority to signal the auto-reflexive goodness and resilience of America. Great leaders use this blueprint and build from there by articulating the real and imagined with equal conviction. Presidents use performance imagery to honor this ideology's wisdom and assert their political realities.[7] A rhetorically staged performance may create or mystify world views in order to influence the public's definition of reality. A number of studies conclude that modern presidents, beginning with Franklin Roosevelt's administration, regularly use the power of the pulpit as a strategically important

[4] Mary E. Stuckey, "Rethinking the Rhetorical Presidency and Presidential Rhetoric," *Review of Communication* 10, no. 1 (January 2010): 38–52.
[5] David Zarefsky, "Presidential Rhetoric and the Power of Definition," *Presidential Studies Quarterly* 34, no. 3 (2004): 607-619
[6] Roderick P. Hart et al., "The American People in Crisis: A Content Analysis," *Political Psychology* 23, no. 3 (September 2002): 417–37.
[7] Keith V. Erickson, "Presidential Rhetoric's Visual Turn: Performance Fragments and the Politics of Illusionism," *Communication Monographs* 67, no. 2 (June 2000): 138–57.

political and governing instrument.[8] Given the importance of rhetoric in garnering public support, speeches to the nation are the most prominent tool in a president's arsenal during times of conflict.

THE STATE OF THE UNION ADDRESS

Rhetorical analysis shows that State of the Union speeches use messages that identify problems and justify the policies the president deems best suited to their solution. In general, the State of the Union address is characterized by three processes: (1) public meditations on values, (2) assessments of information and issues, and (3) policy recommendations. Each address contains specific characteristics designed to create and celebrate national identity, as well as mediate a collective response.[9] Meditations on values relate to issues that have persisted over time. Using the symbolism of the congressional address, the president uses State of the Union addresses to interweave common national history, character, and identity. The affirmation of a collective American identity over partisan differences establishes a national spirit that proves steadfast in times of uncertainty and fear. In 2003, Bush celebrated basic national values as a means of ensuring success in the "war on terror." State of the Union speeches also offer opportunities to reflect on past trials and tribulations in order to extend national power and boast the great lengths America will go to in pursuit of freedom and justice. Some State of the Union speeches, such as Bush's 2002 address, are followed by specific promotion campaigns. In his opening paragraph, Bush stated, "As we gather tonight, our nation is at war, our economy is in recession, and the civilized world faces unprecedented dangers. Yet the state of our Union has never been stronger." In this case, Bush took the messaging outline from the address and applied it to three national goals for the year: winning the war on terrorism, protecting the homeland, and defeating the recession.[10] These goals are introduced as consistent actionable policy initiatives to the public.

[8] Todd M. Schaefer, "Persuading the Persuaders: Presidential Speeches and Editorial Opinion." *Political Communication* 14, no. 1 (January 1997): 97–111.
[9] Karlyn Kohrs Campbell and Kathleen Hall Jamieson, "Presidents Creating the Presidency: Deeds Done in Words," *Choice Reviews Online* 46, no. 04 (December 1, 2008).
[10] Martha Joynt Kumar, *Managing the president's message: the White House communications operation* (Baltimore: Johns Hopkins University Press, 2007).

The addresses, however, do not come without their critiques. Scholars like Colin Flint characterize the address as an annual act of political theater that demands a president claim that the United States is "strong" and "healthy" regardless of the organic state of the nation. The State of the Union is an act of geopolitics used to prove the enduring success of America in matters of foreign policy and self-defense.[11] Certain paradigms are employed in the annual address in relation to foreign policy actions, such as the identification of current and potential allies and enemies, defining emerging conflicts, and representing policy action to a domestic audience. The issues featured in State of the Union addresses over time reflect the development of the country and its institutions, but there are tangible differences in their language and delivery. Ryan Teten's study of political rhetoric concludes that modern speechwriting is shorter and employs more inclusive language, such as "we" and "our," in greater frequency. In Bush's 2003 State of the Union address, he does just this: "We seek peace. We strive for peace." Similarly, Trump used the same rhetorical strategy in his 2017 State of the Union address, stating, "We want harmony and stability, not war and conflict. We want peace, wherever peace can be found." The emphasis on "we" shows a degree of inclusivity and unity despite contextual time differences. Their messaging also aligns with a call for collective peace within the nation. Teten also takes point to address the distinct periods by which the State of the Union address has evolved: a founding period, a traditional period, and a modern period—which we are presumably in today and under which Bush and Trump's speeches fall.[12] By taking the State of the Union addresses as an example, Murphy points out flaws in Teten and others' sampling because of the speech's constitutionally mandated audience, crediting, however, the change from the traditional to the modern era to the advent of radio and mass media rather than the personality or style of a particular president.[13]

[11] Colin Flint et al., "Mapping the Dynamism of the United States' Geopolitical Code: The Geography of the State of the Union Speeches, 1988–2008," *Geopolitics* 14, no. 4 (November 11, 2009): 604–29.
[12] Ryan L. Teten, "Evolution of the Modern Rhetorical Presidency: Presidential Presentation and Development of the State of the Union Address," *Presidential Studies Quarterly* 33, no. 2 (June 1, 2003): 333–46.
[13] Chad Murphy, "The Evolution of the Modern Rhetorical Presidency: A Critical Response," *Presidential Studies Quarterly* 38, no. 2 (May 2008): 300–307.

AMERICAN IDEOLOGY

When it comes to dominant conceptual metaphors and framings within rhetorical conflict, extensive research has been conducted on President George W. Bush's post-9/11 speeches to identify the relationship between conflict mitigation and polarization. Maria Neüff connects the following frames: terrorism is a crime, terrorism is a war, the terrorist attack is a test (from God/history/manifest destiny), the war against terrorism is a mythical battle (of good vs. evil), the othering frame of blame, and that terrorists are inhuman/animalistic/ uncivilized beings.[14] The most relevant frame to the socio-political impact is the resulting battle between ideologies, citizens, and other nations within the context of terror. In his early speeches, Bush frames the attacks as a crime against humanity and largely America. By employing the rhetoric of othering and testing, Bush fosters a polarizing worldview of "good" vs. "evil" and "us" vs. "them" in order to legitimize war policies. Bush's strategy is interesting because of its unique balance of compromise and partition. In a polarized nation, the cooperation values of the rhetoric stifle disputes among Americans and alleviate political tensions. Rhetoric fulfills a compromising function that Americans have long required during past strains and tensions.

The public mood following the 9/11 attacks shifted from panic to patriotism. All commercial air traffic was grounded for two days, and aircraft carriers armed with surface-to-air missiles were stationed in the coastal regions of the East and West coasts. In Washington, D.C., initial school closure sparked public concern, leading to traffic jams as people fled the city in search of safety. Following that initial panic, however, was a surge of patriotism.[15] American flags appeared across Washington, D.C., and around the country, with several people flocking to blood banks and donation centers to aid their fellow neighbors in the time of crisis. Signage with "God bless America," "Pray for America," and "United we stand" spread across public buildings in an effort to present resiliency.

The 9/11 attacks were a particularly memorable moment for examining people's commitment to democratic norms. Simultaneously, democratic and personal freedoms previously threatened by terrorist attacks forced Americans to restrict their freedoms, not only through the

[14] Marta Neüff, *Words of Crisis as Words of Power: the jeremiad in American presidential speeches* (Philadelphia: John Benjamins Publishing Company, 2018).
[15] Christopher Hewitt, *Understanding Terrorism in America: From the Klan to al Qaeda* (London: Routledge, 2003).

relinquishing of personal privacy but even public affairs.[16] Americans were more than willing to accept encroachments on established liberties in order to prevent another terrorist attack on their homeland.[17] A shocked nation searched for answers to how this happened—notably explaining the event as an attack that "took advantage of the vulnerability of an open society." Such a frame paints America as the victim and perpetuates American ideology that unites citizens under a just cause.

AMERICAN CHARACTER IN STATE OF THE UNION ADDRESSES

The presence of American Character is persistent among all presidencies from President Bush to President Biden. Rooted in American power is an intense entanglement of polarization and exceptionalism. Polarization is evident in domestic debates that center partisan stances on various socio-political issues such as foreign policy, national security, and social welfare. In theory, the concept of exceptionalism should be a point of consensus among Americans to alleviate these tensions.[18] Exceptionalism can be employed in two frames: the exceptional nature of America as a nation and the exceptional nature of each terrorist attack. Politicians made the argument that the 9/11 attacks marked an exceptional time that required exceptional measures.[19] In using this discourse, exceptional measures cue public opinion and soften reaction to the administration's responses. We can observe this trend in Bush's 2005 State of the Union address.

> We have known times of sorrow and hours of uncertainty and days of victory. In all this history, even when we have disagreed, we have seen threads of purpose that unite us. The attack on freedom in our world has reaffirmed our confidence in freedom's power to change the world. We are all part of a great venture: To extend the promise of freedom in our country, to renew the values that sustain our liberty, and to spread the peace that freedom brings.[20]

Bush is telling Americans that American character separates his nation, our nation, from other countries and places it as a targeted victim in this fight. The exceptional nature of this attack was

[16] Darren W. Davis and Brian D. Silver, "Civil Liberties vs. Security: Public Opinion in the Context of the Terrorist Attacks on America," *American Journal of Political Science* 48, no. 1 (January 2004): 28.
[17] Greg Anrig and Richard C. Leon, "The War on Our Freedoms: Civil Liberties in an Age of Terrorism," *Choice Reviews Online* 41, no. 05 (January 1, 2004).
[18] Dana H. Allin and Erik Jones, "Chapter Three: Politics, Polarisation and American Exceptionalism," *Adelphi Series* 52, no. 430–431 (May 2012): 111–36.
[19] Andrew W. Neal, *Exceptionalism and the politics of Counter-Terrorism* (Routledge, 2009).
[20] George W. Bush, "State of the Union Address," February 2, 2005.

special to Americans because of its pillars of democracy, which are inherently connected to its national character. The other angle of exceptionalism, under American ideology, centers America as the resilient fighter in the narrative. A kinder, gentler American exceptionalism is the logic that best fits current American national interest, where citizens are "all in this together." Perhaps in the American superiority that Obama and Bush wielded so powerfully in their rhetoric, the constituency operates under a frame that mitigates rather than perpetuates demographic marginalization.[21] An example of this can be observed in Obama's 2014 State of the Union address.

> My fellow Americans, no other country in the world does what we do. On every issue, the world turns to us, not simply because of the size of our economy or our military might – but because of the ideals we stand for, and the burdens we bear to advance them.[22]

In this quote, President Obama underscores the resilience and perseverance of America and its citizenry. By stating that no other country in the world compares to their actions, the rhetoric paints America in an extraordinary light. Despite partisan differences, both Bush and Obama represent the very frame of American exceptionalism. A distinct class of system-justifying motives contribute to asymmetric forms of polarization. Where conservative ideology is often associated with valuing tradition, social order, and the maintenance of the status quo, liberal-leftist ideology is associated with a push for egalitarian social change.[23] Despite the partisan distinctions in our broader analysis, the concept of American exception goes beyond conservative ideology to a broader framework of unity and patriotism.

THE ENDURING STRENGTH OF THE AMERICAN MILITARY

The imagery of the American military persists firmly across the presidencies following 9/11. When reflecting on American ideology during and after 9/11, the nation is "on the offensive" against the terrorists who provoked the war, with those very words even stated in Bush's 2004 State of the Union address. The terrorist attack was done to the United States,

[21] Dana H. Allin and Erik Jones, "Chapter Three: Politics, Polarisation and American Exceptionalism." *Adelphi Series 52*, no. 430–431 (May 2012): 111–36.
[22] Barack Obama, "State of the Union Address," January 28, 2014.
[23] John T. Jost et al., "Cognitive–Motivational Mechanisms of Political Polarization in Social-Communicative Contexts," *Nature Reviews Psychology* 1, no. 10 (August 1, 2022): 560–76.

therefore allowing and encouraging a civilized duty to fight a country in retaliation to that terrorist attack. We can observe this trend in Bush's 2005 State of the Union address.

> There are still governments that sponsor and harbor terrorists, but their number has declined. There are still regimes seeking weapons of mass destruction but no longer without attention and without consequence. Our country is still the target of terrorists who want to kill many and intimidate us all, and we will stay on the offensive against them until the fight is won.[24]

The purposeful focus on remaining on the offensive positions America as an aggressive fighting fleet, willing and able to respond forcibly to any threats. It is worth noting the phrase "until the fight is won" because it places special emphasis on the dogged nature of the military. Comparatively, American-style success came from mental and physical toughness and strength as they persevered over the frontier. With the tale of America as a nation forming freedom amid violence, there are persisting justifications for using brute military force to gain success and to boast it as the best military force in the world. An example of this can be observed in Biden's 2021 State of the Union address.

> We have—(applause)—we have, without hyperbole, the greatest fighting force in the history of the world. I'm the first President in 40 years who knows what it means to have a son serving in a warzone.[25]

By positioning the American military with the extremity of "greatest," Biden sends a signal not only to the American people but to the world that America's military force is not to be provoked without grave consequences. The stakes of America's self-serving national myth contribute to a continuity of falsehoods within a global community that strives to replace the enduring myths of power with one of alternative hegemony and justice.[26] The enduring faith in the American military system and insistence on the offensive positions the US fighting force as one that is intimidating and lethal by any means necessary. Yet another example of a consistent partisan agreement, the presidential commitment to uplifting service members and prioritizing a fighting force displays the nationwide reverence for fighting and war.

[24] George W. Bush, "State of the Union Address," February 2, 2005.
[25] Joe Biden, State of the Union Adress," April 28, 2021.
[26] Walter L. Hixson, *The Myth of American Diplomacy: National Identity and U.S. Foreign Policy* (New Haven: Yale University Press, 2008).

CONCLUSION

Looking at the patterns and themes of presidential rhetoric surrounding terrorism allows a democratic society to be more engaged, better prepared, and more capable of understanding past responses to terror. This analysis also shows us how America interacts with terrorism as a concept, including the physical and ideological responses to terrorist attacks. We begin to understand wars and military actions, as well as the mythologizing that follows a terrorist/external conflict in America. Themes of "American Character" and "Offensive Militarism" help position the nation in a distinct light that may overlook the shortcomings of the country and appease preexisting ideologies. This analysis can help us better understand the trends of presidential communications, including the continuity of themes over administrations. As we look to the future, we must look back at the way we handle conflict and the narratives we tell ourselves in order to uphold our democracy and stay an informed citizenry. This analysis largely defines terrorism through the specific example of 9/11, however, the conclusions of this analysis can be applied to a broad range of interpretations of domestic and international conflict.

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THE MORAL EQUIVALENT OF WAR: NIXON, FORD, CARTER, AND THE NATURE OF AMERICAN "ENERGY INDEPENDENCE"

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This paper describes the origins of the American "energy independence" doctrine and renewable energy policies promulgated by Richard Nixon, Gerald Ford, and Jimmy Carter after the 1970s oil crises. The author found these three presidents incorporated non-fossil fuel energy technology as critical sources for American energy independence. This paper traces how their investments in alternative energy sources like nuclear and solar accompanied and overshadowed support for shale gas programs that have made the United States a net energy exporter. Half a century after the 1973 OPEC embargo, this paper urges policymakers pursuing energy independence to support investments in clean energy technologies.

INTRODUCTION

On November 7, 1973, President Richard Nixon sat before cameras at the White House with a dire warning for Americans tuning in. "We are heading toward the most acute shortages of energy since World War II," Nixon warned. "We, as a nation, must now set upon a new course." Prompted by Egypt and Syria's surprise attack on Israel in 1973, the Yom Kippur War precipitated the unprecedented energy shock that threatened the West. Arab members of OPEC placed embargoes on oil to the United States and other Israeli allies, thereby exacerbating energy costs and threatening the livelihoods of Americans. The ensuing crises illustrated that the United States was too dependent on foreign sources for its energy, granting enemies a stranglehold over the ability to power American cars, illuminate American cities, and warm American homes. The energy crisis following the Yom Kippur War continued in the 1970s through the presidencies of Gerald Ford, who continued most of Nixon's energy policies, and Jimmy Carter, who was at the helm during the continuing energy shocks after the 1979 Iranian Revolution. Faced with steering the ship of state around a sea of icebergs, Nixon, Ford, and Carter laid out the first roadmaps for energy independence. For the three presidents—two Republicans and one Democrat—weaning off foreign energy required more than expanding domestic coal, oil, and gas operations. They directed the American executive and legislative branches to facilitate and incentivize explosive growth in alternative and renewable energy sources, including nuclear and solar technology.

Many Americans point to fracking as the silver bullet that delivered net-exporter status for the United States.[1] Fifty years after the global energy supply shocks, the United States produces more energy than it imports, shelling out more than thirteen million barrels of oil daily. Four of these thirteen million barrels go abroad, yielding an output surpassing all OPEC members except Saudi Arabia. Asia and Europe receive most of the exported gas and oil from the United States; Russia's invasion of Ukraine and Moscow's limits on Europe's ability to import Russian energy have accelerated this trend, making American energy exports increasingly critical for Washington's partners across the pond.[2] That fracking has contributed to American energy security is undeniable. However, framing nonrenewable sources as the sole means conceived to deliver "energy independence" is more than unsustainable: it's historically inaccurate.

The men who occupied the Oval Office as the energy crises rocked the nation set forth ambitious programs for energy independence that sought to develop alternative energy sources that accompanied—and often dwarfed—government investment in shale gas exploration. Fulfilling the vision of American energy independence as forged in the crises Nixon, Ford, and Carter faced requires getting off the beaten path and turbocharging the deployment of clean energy technologies that are now half a century behind schedule. The public record indicates that they saw renewables as major components—and sometimes primary guarantors—of their visions of energy independence in the century ahead. Five decades have elapsed since the Yom Kippur War, and Americans in the fifty states head to the polls in 2024 as heated debate about American energy independence and security proliferates.

The presumed nominees of both major political parties—President Biden and former President Trump—wrangle over who has done more to advance energy independence. Trump has called out Biden for "clos[ing] up the oil" and ending the "energy independence" that existed during his term, despite oil production during the Biden presidency exceeding records set during the Trump administration.[3] President Biden's signing of the Inflation Reduction Act (IRA)

[1] Rick Newman, "America is more energy independent than ever," *Yahoo Finance*, March 8, 2023, https://finance.yahoo.com/news/america-is-more-energy-independent-than-ever-160020814.html?.
[2] Clifford Krauss, "Surging U.S. Oil Production Brings Down Prices and Raises Climate Fears*," The New York Times*, December 1, 2023, https://www.nytimes.com/2023/12/01/business/energy-environment/us-oil-production-record-climate.html.
[3] Scott Waldman, "What Does Energy Independence Really Mean," *Scientific American*, April 29, 2024, https://www.scientificamerican.com/article/energy-independence-is-a-big-election-talking-point-but-what-does-it-mean/.

designated nearly $400 billion to stimulate renewable energy innovation and implementation, a plan the administration touted as advancing American energy security.[4] The funding from the IRA built on $70 billion from the Bipartisan Infrastructure Law of 2021 and included $216 billion in corporate tax credits to reduce reliance on fossil fuels.[5] As both candidates claim the mantle of upholding American energy independence, confusion about the concept abounds. This paper illustrates that Nixon, Carter, and Ford—who forged the doctrine of energy independence in the scorching fires of the 1970s oil crises—believed that investing in clean energy was integral to reducing American dependence on fossil fuels and making the United States energy independent.

LITERATURE REVIEW

Authored by former director of the U.S. Energy Information Administration Jay Hakes, *Energy Crises: Nixon, Ford, Carter, and Hard Choices in the 1970s* is the seminal work tracing presidential energy politics in the seventies. The book places these policy shifts in the context of domestic politics, the global energy upheavals, and American efforts to secure peace in the Middle East. It illustrates that presidential efforts to shore up domestic energy production were wide-reaching and touched upon conventional solutions such as more fossil fuel extraction or solar power and experimental ones like synfuels, which never caught steam. This work leaned into primary source material from the U.S. State Department and the three presidents, including unpublished diary entries to which Carter granted Hakes access. As some reviewers have pointed out, *Energy Crises* lacks an overarching argument or historiographical analysis.[6] However, Hakes highlights how energy policy through the three presidents was fairly continuous and points out policy areas that defy conventional wisdom, including Nixon and Ford's underappreciated support for renewables and Carter's emphasis on short-term coal production. In this work, shale gas production remains just one of the many solutions touted.

[4] "Investing in American Energy: Significant Impacts of the Inflation Reduction Act and Bipartisan Infrastructure Law on the U.S. Energy Economy and Emissions Reductions," Department of Energy, August 16, 2023, https://energy.gov/policy/articles/investing-american-energy-significant-impacts-inflation-reduction-act-and.
[5] Adi Kumar et al., "The Inflation Reduction Act: Here's what's in it," McKinsey & Company, October 24, 2022, https://www.mckinsey.com/industries/public-sector/our-insights/the-inflation-reduction-act-heres-whats-in-it.
[6] Daniel Macfarlane, review of *Energy Crises: Nixon, Ford, Carter, and Hard Choices in the 1970* by Jay Hakes, H-Net Reviews, May 2024.

The work most closely tracing fracking policy and shale gas operations' development through the 2000s is "A Retrospective Review of Shale Gas Development in the United States," a discussion paper published by Resources for the Future in 2013. The paper's authors, Zhongmin Wang and Alan Krupnick, cover the policy programs enacted in the executive and legislative branches that allowed for the development of shale programs in the United States, with a particular focus on Mitchell Energy. While Wang and Krupnick narrate the progress of federal government investment in fracking, related energy independence programs and rhetoric from Nixon, Carter, and Ford do not fall within its scope. Unlike Hakes's book or Wang and Krupnick's work, this paper emphasizes how federal renewable energy investments exceeded those in shale gas exploration and production during the period when American presidents faced unprecedented threats to American energy security.

NIXON FACES THE HEAT

The contemporary American energy landscape began in earnest after the Yom Kippur War, which erupted after Egypt and Syria launched a surprise attack against the State of Israel on October 6, 1973. Arab members of OPEC seeking to retaliate against Washington for its support of Golda Meir's government placed an embargo on selling oil to Israel's allies on October 17.[7] The new state of war in the Middle East had profound domestic repercussions, requiring a rapid response at home. Oil became five times more expensive, and price increases rippled across goods.[8] The cartel's decision disrobed the proverbial emperor and slammed Americans. Within three weeks, President Nixon outlined his solution to America's unprecedented security threat: Project Independence.

The shock of 1973 exposed that the United States was susceptible to coercion and instability because of its dependence on Middle Eastern oil. Tapping into national pride and natural resources, Nixon sought to accelerate domestic production of renewable and nonrenewable resources. The president recognized that a lack of self-sufficiency imperiled the country's ability to "act decisively and independently at home and abroad in the service of peace,

[7] Bruce A. Beaubouef, *The Strategic Petroleum Reserve* (College Station: Texas A&M University Press, 2007), 16.
[8] Jill Lepore, *These Truths* (New York: Norton, 2018), 657.

not only for America but for all nations in the world."[9] Although the United States had discontinued the Vietnam War effort in March, Washington was still acting in the "service of peace" as the Cold War heated up. Nixon stunned the world a year earlier by visiting China, further driving a wedge between Moscow and Beijing. Two months before the attack on Israel, Chilean General Augusto Pinochet overthrew Salvador Allende's government in a Washington-backed coup. The Yom Kippur War was a focal point of American resolve to contain the Soviet Union and its allies. OPEC's decision to slash production and deprive the United States of critical oil imperiled Americans' livelihoods. Nixon's "Project Independence" address presented a solution with two prongs: one for energy conservation and another for energy production. To reduce energy waste, Nixon reduced home and office heating supply, canceled many domestic flights, and imposed a 50-mph speed limit. Accompanying his conservation priorities were several ambitious plans that anchored a framework to hasten domestic energy production.

"In the Spirit of Apollo, with the determination of the Manhattan Project," the president set the national goal of energy security by 1980.[10] These two landmark technological leaps held unrivaled positions in the American collective memory; framing Project Independence as a continuation of America's mighty advancements sought to shore up support for his energy security agenda. Both were periods of tremendous pressure for the United States to meet the moment, and the crisis of 1973 was no exception. For the president and his advisors, energy independence meant that the United States could meet its energy needs from its own energy resources.[11] After the televised address, the gears of the executive branch began turning quickly to expand domestic energy production.

The "Project Independence" plan sought to establish three new federal entities: one to continue the work of the White House Energy Office, a Federal Administration for Federal Energy Research and Development, and a Federal Department of Energy and Natural Resources.[12] In the summer before the Yom Kippur War broke out, the president had combined the responsibilities of the existing Special Energy Committee and the National Energy Office

[9] Richard Nixon, "Address to the Nation About Policies To Deal With the Energy Shortages," speech, November 7, 1973, accessed via https://www.presidency.ucsb.edu/documents/address-the-nation-about-policies-deal-with-the-energy-shortages.
[10] Nixon, "Address to the Nation."
[11] Nixon, "Address to the Nation."
[12] Alice Buck, "A History of the Energy Research and Development Administration," U.S. Department of Energy, March 1982, 2, https://www.energy.gov/management/articles/history-energy-research-and-development-administration.

into a new Energy Policy Office managed by Colorado Governor John Love. Less than a month after his "Project Independence" speech, the Federal Energy Office under the Executive Office of the President came into being, with William Simon—former deputy secretary of the Treasury––at its helm.[13] Simon became Nixon's energy czar, rallying the American government to meet the president's energy goals, which he summarized in one word during a speech on November 25, 1973: "independence."[14]

Nixon's vision of energy security for the United States included expanding the nation's oil and gas extraction capabilities as well as sizeable investments in fossil-free energy sources. The guiding document published on December 1, 1973, and authored by the chairman of the Atomic Energy Commission—Dr. Dixy Ray—indicates that accelerating significant investments in renewable power projects was critical for Nixon's vision of energy security.[15] The president's energy plan allocated $96.3 million for developing hydraulic fracturing, a figure dwarfed by the resources dedicated to alternative energy sources. The administration allocated $200 million to harness solar energy—which was still nascent—and $185 million to harness geothermal power.[16] The federal government expected to allocate more than $1.2 billion through 1979 to bring nuclear energy sources into the mix.[17] Ray identified that nuclear power plants should produce 23 percent of the country's energy needs by 1980, 49 percent by 1990, and 60 percent by 2000.[18] Nixon's goal for these renewable energy projects was ambitious. As the first president to face the energy security dilemma, he demonstrated that developing and proliferating clean energy technologies was at the core of American energy independence in the new century. The Watergate scandal plagued Nixon's White House and brought down his presidency, but Congress preserved his legislative proposals and acted on them once Gerald Ford moved into the Oval Office.

FORD ASSUMES THE MANTLE

[13] Buck, "A History of," 1.
[14] Richard Nixon, "Address on the National Energy Policy," November 25, 1973, accessed via https://www.cvce.eu/content/publication/2003/11/13/96668cad-4e34-4c27-a2f2-4e2b110fc64c/publishable_en.pdf.
[15] Dixy Lee Ray, "The Nation's Energy Future: A Report to Richard M. Nixon President of the United States," Energy Policy Office, December 1, 1973, https://digital.library.unt.edu/ark:/67531/metadc1019478.
[16] Ray, "The Nation's Energy," 118.
[17] Ray, "The Nation's Energy," 109.
[18] Ray, "The Nation's Energy," 107.

After Gerald Ford assumed the presidency in August 1974, he maintained a steady course on Nixon's quest for energy independence. He signed the Energy Reorganization Act of 1974, which Congress passed after Nixon's resignation. The law created two agencies from the former president's plan, leaving out the federal Department of Energy (DOE), which came into being three years later under President Jimmy Carter.[19] The Energy Research and Development Administration (ERDA), a product of the Energy Reorganization Act, was at the forefront of advancing energy independence through researching, developing, and investing in renewable and nonrenewable energy technologies. One year after Congress brought the ERDA into being, the agency and private sector companies partnered to create the first directional shale gas well in the Appalachian basin.[20] When a natural gas shortage resumed in 1976, increasing energy supply became even more urgent. In his 1976 State of the Union address, Ford lauded his proposals to liberate the United States from the grip of the oil cartel. Expanding oil and gas production was part of his agenda. In the same paragraph of the president's speech where he describes how to remedy the natural gas shortage, he urged Congress to "expedite clean and safe nuclear power production…and accelerate development of technology to capture energy from the Sun and the Earth for this and future generations."[21] President Ford believed that oil and gas—and the yet-to-be-anticipated shale revolution—were not the only sources of American energy independence.

Ford's energy agenda placed considerable attention on renewable energy sources. The Atomic Energy Commission planned for one hundred nuclear power plants to be operational by the end of the decade.[22] On the solar front, the ERDA built the largest solar installation in the world—a five-megawatt thermal solar test facility—in 1976 in at a facility in Albuquerque, New Mexico. The project allowed researchers to iterate on the designs and resolve problems associated with large-scale photovoltaic systems before the successful completion of the Barstow Solar One, an experimental solar power plant to test the validity of similar facilities in the 100-megawatt range.[23] The ERDA also dedicated millions of dollars to develop solar heating and photovoltaic technology. President Ford's draft budget for 1976 included $76 million for

[19] Zhongmin Wang and Alan Krupnick, "A Retrospective Review of Shale Gas Development in the United States," Resources for the Future, April 2013, 7, https://media.rff.org/documents/RFF-DP-13-12.pdf.
[20] "Energy Policies of IEA Countries: United States 2019 Review," IEA, Paris, 2019, 118, https://www.iea.org/reports/energy-policies-of-iea-countries-united-states-2019-review.
[21] Gerald Ford, "State of the Union Address," January 19, 1976, https://www.fordlibrarymuseum.gov/library/speeches/760019.asp.
[22] "Nuclear Power is Safe, the A.E.C. finds," *The New York Times*, August 25, 1974, https://nyti.ms/42WK2Mh.
[23] Buck, "A History of," 6.

federally sponsored solar energy demonstration activities. This amount—dedicated only to projects that could support commercialization—was more than five times the $15 million the federal government allotted for the same purpose in 1974.[24]

The day before Governor Jimmy Carter of Georgia succeeded him in the White House, Ford transmitted a letter to Congress where he asserted that America's national security and economic well-being depended on the country's ability to "act decisively on energy." Indeed, the president moved the government in that direction, but most of the work remained ahead. He implored congressional leaders that commercializing "unconventional energy technologies" was "essential."[25] In Ford's view, as had been Nixon's, incorporating renewables into the energy independence doctrine was not a perversion: it was a critical component without which the United States could achieve independence from the petroleum-exporting countries. Although the ensuing natural gas emergency of 1977 prompted robust executive and legislative action to advance gas production, the Carter administration continued emphasizing renewables as a long-term solution to the energy independence conundrum.

CARTER ENTERS THE ARENA

As the natural gas emergency of 1977 raged, its effects still products of the crisis of 1973, President Carter urged Congress to pass the Emergency Natural Gas Act to alleviate the gas shortage that forced northeastern and midwestern communities to endure a freezing winter without heating.[26] Congress heeded Carter's word and approved the legislation on February 2. That same afternoon, the president signed Executive Order 11969, which transferred the new energy authorities granted to the president to the chairman of the Federal Power Commission.

[24] "Solar Energy – Administration Policy and Analysis," Gerald R. Ford Presidential Library, https://www.fordlibrarymuseum.gov/library/document/0039/1515946.pdf.
[25] Gerald Ford, "Letter to the Speaker of the House and the President of the Senate Transmitting Proposed Energy Independence Authority Legislation," January 19, 1977, https://www.presidency.ucsb.edu/documents/letter-the-speaker-the-house-and-the-president-the-senate-transmitting-proposed-energy.
[26] Richard Lyons, "Congress Passes Natural Gas Emergency Bill," *The Washington Post*, February 3, 1977, https://www.washingtonpost.com/archive/politics/1977/02/03/congress-passes-natural-gas-emergency-bill/11b19890-9402-4fba-b43c-03b8f1f51a9d/.

The president reserved for himself one right: the authority to declare and terminate a natural gas emergency.[27]

Carter exercised that power on April 1, when he terminated the natural gas emergency that forced gas transport from the American West to the East and allowed special gas pricing schemes to alleviate the burden on suffering communities.[28] In his proclamation ending the state of emergency, he reminded the public that his actions "in no way signals an end to our energy crisis."[29] In a speech on April 18, 1977, Carter framed the crisis of American dependence on foreign energy as "the moral equivalent of war" that required galvanizing a robust response from all Americans to rescue the country from a fundamental danger.[30] Natural gas supply in the United States was still too low relative to the potential demand. Carter took the subsequent months to advocate for a new natural gas policy, which took the form of the National Gas Policy Act of 1978.

The National Gas Policy Act (NGPA) of 1978 followed ERDA initiatives to stimulate shale gas production. Responding to continued natural gas shortages of preceding years, Senate and House energy subcommittee members worked incessantly to devise new policies that would expand the gas supply in the United States. The existing gas regime made the fuel affordable for existing buyers but too expensive for new consumers.[31] Government price controls prolonged shortages, requiring a prompt remedy from Congress. Research sponsored by the Federal Power Commission, the ERDA, and the DOE found that unconventional natural gas supply could be significant, encouraging subsidies for shale production.[32] Therefore, the NGPA provided pricing incentives to develop new natural gas wells of unconventional oil and gas sources, including shale production. The Act also required the gradual removal of wellhead price controls to stimulate purchasing in the market. Within a year of the NGPA's taking effect, the Iranian Revolution in the summer of 1979 fanned the flames of the energy crisis and pushed the United

[27] Jimmy Carter, "Executive Order 11969—Administration of the Emergency Natural Gas Act of 1977," February 2, 1977, https://www.presidency.ucsb.edu/documents/executive-order-11969-administration-the-emergency-natural-gas-act-1977.
[28] "Carter Proclamation Ends Gas Emergency," *The New York Times*, April 2, 1977, https://www.nytimes.com/1977/04/02/archives/carter-proclamation-ends-gas-emergency.html.
[29] Jimmy Carter, "Proclamation 4495—Termination of Natural Gas Emergency,"April 1, 1977, https://www.presidency.ucsb.edu/documents/proclamation-4495-termination-natural-gas-emergency.
[30] Jimmy Carter, "Address to the Nation on Energy," April 18, 1977, https://www.presidency.ucsb.edu/documents/address-the-nation-energy.
[31] Paul W. MacAvoy, "The Natural Gas Policy Act of 1978," *Natural Resources Journal* 19 *(1979)*: 1.
[32] Wang and Krupnick, "A Retrospective Review," 7.

States deeper into the precipice that opened after the Yom Kippur War. "Our neck is stretched over the fence," an unnamed citizen had told President Carter. "OPEC has the knife."[33]

Four months after the Iranian Revolution toppled Pahlavi, the American president delivered an address on the roof of the White House with thirty-two heavy, tilted rectangles of metal and glass that suddenly stood bolted to the top of the West Wing.[34] Standing alongside the solar panels he commissioned to provide heating for the White House, Carter provided an incisive peek at what could have become a more consequential part of American energy history. According to author Jonathan Alter, Carter's upbringing on his family farm gave him a remarkable intuition about the power of renewable energy sources.[35] In his moment in the sun, Carter conveyed this optimism and confidence in renewables by framing the development of solar energy technology as a critical vehicle to energy independence. He believed solar power would provide benefit Americans as the country did away with its "crippling dependence on foreign oil." [36] The president recognized that domestic energy production was critical to steering the country away from the cudgels of hostile petroleum-exporting countries.

Carter believed that his solar strategy would move the nation toward "true energy security and abundant, readily available energy supplies."[37] Laying a groundwork for an American solar future was of great importance after the Three Mile Island nuclear accident earlier in the year, which prompted fears about expanding nuclear power generation.[38] On the same day of the incident, Carter met in the Cabinet Room with members of the bipartisan Congressional Solar Caucus. Republicans in the group included Representative Jim Jeffords of Vermont and Senators Charles Percy and Pete Domenici. On the Democratic side were then-Representative Al Gore Jr., Representative Richard Gephardt of Missouri, and Senators Gary Hart and Paul Tsongas. The lawmakers implored the president to set ambitious targets for

[33] Jimmy Carter, "Address to the Nation on Energy and National Goals: 'The Malaise Speech,'" transcript of speech delivered at the White House, Washington D.C., July 15, 1979, https://www.presidency.ucsb.edu/node/249458.
[34] John Wihbey, "Jimmy Carter's Solar Panels: A Lost History That Haunts Today," Yale Climate Connections, November 11, 2008, https://yaleclimateconnections.org/2008/11/jimmy-carters-solar-panels/.
[35] Jonathan Alter, *His Very Best: Jimmy Carter, a life* (New York: Simon and Schuster 2020), 46.
[36] "NPC 9M-0466: White House Solar Panel Dedication," Jimmy Carter Presidential Library, YouTube, https://www.youtube.com/watch?v=VgZc2emYJs8.
[37] Jimmy Carter Presidential Library, "NPC 9M-0466: White House Solar Panel Dedication."
[38] "45 years later: Looking back at Three Mile Island, worst nuclear accident in US history," *CBS Austin*, March 29, 2024, https://cbsaustin.com/news/nation-world/45-years-later-looking-back-at-three-mile-island-worst-nuclear-accident-in-us-history-partial-meltdown-central-pennsylvania-power-plant-middletown-nuclear-energy-disaster-generating-station-susquehanna-river.

voluntary solar programs, establish a solar bank, and advocate publicly for solar development and implementation. A landmark windfall profits tax on oil companies—to which Nixon and Ford had also lent support—would fund these programs once Congress approved it. Carter agreed to their suggestions, which became the basis for his famous speech atop the White House in which the president asserted that "no one can ever embargo the Sun or interrupt its delivery to us."[39] His strategy committed the country to source 20 percent of its energy from solar energy and photovoltaic systems by the year 2000.[40] This number was more than double the existent renewable energy production, which provided six percent of the country's energy supply, mostly from hydropower.[41] The president also sought to establish the solar bank with an initial $100 million to support private development projects, thereby underscoring the importance of public financing and private implementation of clean energy systems.[42] In the fifty years that have elapsed since Carter's speech, the United States has not met and has yet to approach his ambitious for how clean energy sources could power the nation. After Ronald Reagan assumed the presidency, U.S. government investments in renewable energy plummeted. As oil and gas gushed out of the ground, government investments in alternative energy technologies dried up.[43] The federal government subsequently became increasingly interested in fracking.

FRACKING INTO THE FUTURE

After Reagan assumed office and undid many of Nixon, Ford, and Carter's signature clean energy programs, the federal government laid the foundation for expanding American oil and gas production via hydraulic fracturing. In the late 1970s, the annual production of unconventional natural gas sourced from fracking was less than 5 percent of total annual gas production.[44] Today, that percentage is close to two-thirds.[45] From 1978 to 1992, the Department

[39] Jay Hakes, *Energy Crises: Nixon, Ford, Carter, and Hard Choices in the 1970s* (Norman: University of Oklahoma Press, 2021).
[40] Alter, *His Very Best*, 668.
[41] Hakes, *Energy Crises.*
[42] Edward Walsh, "Carter Proposes $100 Million Solar Energy Bank," *The Washington Post*, June 20, 1979, https://www.washingtonpost.com/archive/politics/1979/06/21/carter-proposes-100-million-solar-energy-bank/7d7ced0d-56ee-4e30-95c8-4f16e4c038a7/.
[43] Hakes, *Energy Crises.*
[44] Wang and Krupnick, "A Review of," 7.
[45] Tarika Powell, "Is your natural gas actually fracked?" Sightline Institute, October 30, 2017, https://www.sightline.org/2017/10/30/is-your-natural-gas-actually-fracked/.

of Energy invested more than $130 million exclusively for the Eastern Gas Shales program to advance fracking in the Appalachian and Michigan Basins.[46] Still, the industry faced a fundamental tailwind for decades: the economics of fracking didn't make sense to private players. By 2005, the United States still imported more than half of its oil. Renewables only powered 6 percent of the country's energy consumption. [47] Even though the political machinery began churning in the 1970s with a critical end in mind—American energy independence—the United States was still addicted to foreign energy by the turn of the century. Domestic production had not quenched its thirst.

The commercial success of hydraulic fracturing was not a miracle of the market. For decades, the federal government pumped millions of dollars into perfecting the technology and making it a profitable endeavor for private industry. Fracking boomed in the early 2000s due to changes in the regulatory environment and monetary policy that made it profitable.[48] In 2023, the Stockholm Environmental Institute published a vanguard study showing that two federal tax incentives for the fracking industry ballooned the expected value of new oil and gas projects by billions of dollars, up to $20 billion in some years with high oil prices.[49] The Intangible Drilling Costs (IDCs) provision of the tax code allows oil and gas producers to deduct up to 70 percent of their IDCs in the same year they incur the cost, unlike other industries where companies deduct the cost over the asset's life. American taxpayers will foot an $8.5 billion bill between 2024 and 2033 to prop up this provision. The second major fracking subsidy that supported the industry's growth is Excess of Percentage over Cost Depletion, which allows oil and gas producers to deduct amounts that can exceed the total investment on their fracking assets. Unlike the Biden Administration's subsidies for clean energy technology, this provision is a permanent feature of the U.S. tax code and will cost taxpayers $13.9 billion between 2024 and 2033.[50] Fracking's success resulted from government support of the industry, not natural market forces.

[46] International Energy Agency, "Energy Policies," 118.
[47] "Monthly Energy Review, Table 3.1," U.S. Energy Information Administration, September 2023, https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.
[48] Bethany McLean, "How America's 'most reckless' billionaire created the fracking boom," *The Guardian*, August 30, 2018, https://www.theguardian.com/news/2018/aug/30/how-the-us-fracking-boom-almost-fell-apart.
[49] Peter Erickson and Ploy Achakulwisut, "How subsidies aided the US shale oil and gas boom," Stockholm Environmental Institute, 2021.
[50] Sujatha Bergen, Susan Casey-Lefkowitz, and Doug Koplow, "Fossilized Finances: State and Federal Oil and Gas Subsidies in the Permian Basin," National Resources Defense Council and EarthTrack, January 2024.

CONCLUSION

Although fracking has made the United States a net energy exporter, the doctrine of energy independence conceived after the oil crises of the 1970s positioned non-fossil fuel energy technologies as keys to unlocking an energy-independent future. Presidents Nixon, Ford, and Carter laid forth ambitious plans to reduce American oil imports in the future in large part by accelerating clean energy technologies. During their administrations, more funding went into policies and programs furthering this end than those dedicated to shale oil and gas exploration. The crises that rocked the United States in the 1970s encouraged those presidents to look toward a future where renewable energy technologies—researched and developed with federal government support—would help sustain American security. With the 2024 election cycle underway, leading candidates spar over whose agenda prioritizes energy independence. The period of energy crises signal that continued federal investments in clean energy deployment, production, and storage can bring the country closer to fulfilling that hazy, elusive goal.

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SKIN IN THE GAME: THE IMPACT OF U.S. INVOLVEMENT IN NATO MILITARY OPERATIONS ON PRESIDENTIAL POLITICAL CAPITAL

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The United States military has been involved in NATO operations to varying degrees since the end of the Cold War. Each of these operations includes the risk of death for American servicemembers and can thus incur a great cost to the President with regard to his political capital, analyzed via changes in approval ratings. Therefore, the predicted gain or loss of political capital, and thus the expected response in approval ratings, affect a President's decision to participate in these conflicts.

INTRODUCTION

In 1949, the United States was one of twelve founding members of the North Atlantic Treaty Organization. In the years since its foundation, the alliance has been at the forefront of American defense policy. The United States has the largest defense budget out of all NATO member states and always provides the Supreme Allied Commander, Europe—the leader of the combined military forces of the alliance. It has also often contributed to or led NATO military interventions or operations, including its call to the alliance's collective self-defense policy after the attacks of September 11, 2001. Most notably, this includes the NATO Implementation Force in Bosnia and Herzegovina in 1995, the 2011 NATO intervention in Libya, and the invasion of Afghanistan following 9/11 and the subsequent twenty-year conflict.

In each of these conflicts, the President made the decision to send American servicemembers into combat. No matter the conflict, sending American servicemembers into a conflict in which there is a likelihood of casualties will cost the President political capital. Therefore, the degree to which the United States is involved in NATO operations depends on the President's perceived potential capital gain versus the perceived potential loss. This paper will analyze the importance of moral popularity and likelihood of success when making these decisions, and their effects on public opinion of the administration.

NATO MILITARY INTERVENTIONS AND OPERATIONS

Though there have been far more than three NATO military operations in the history of the alliance, this paper will focus on the largest post-Cold War interventions: Bosnia and Herzegovina, Libya, and Afghanistan.

The conflict in Bosnia and Herzegovina was a result of the fall of the former Yugoslavia. In February of 1992, the resolution for independence in Bosnia and Herzegovina passed, with 99.7% of voters voting in support of independence, which was formally recognized in April 1992.[1] Bosnian-Serb leadership did not accept this independence, and the resulting conflict included genocide by the Serbs against Bosnian Muslims. The UN became involved in a peacekeeping capacity in 1993, with NATO enforcing a no-fly zone, but was largely unsuccessful. The most infamous event of this conflict was the massacre at the UN 'safe area' in Srebrenica in July 1995. U.S.-led NATO air forces pledged to defend civilians from further attacks, and in December 1995, put 60,000 troops into the country as an Implementation Force (IFOR) and would stay in the country until 2006.[2] The U.S. leadership of allied forces also led to the U.S. brokered Dayton Accords between the presidents of Croatia, Bosnia, and Serbia in 1995, effectively ending the conflict.

NATO forces in Afghanistan were there for a different reason—the terrorist attacks of 9/11 caused the application of Article V of the Washington Treaty for the first and only time. On September 12, 2001, the United Nations Security Council passed Resolution 1368, condemning the attacks and calling on states to "bring to justice the perpetrators, organizers and sponsors of these terrorist attacks."[3] The United States and its NATO allies would stay in Afghanistan for twenty years under the jurisdiction of this resolution.

Though the man responsible for the attacks of 9/11 was killed in 2011, U.S.-led NATO forces remained in Afghanistan until 2021, when President Biden completed the withdrawal of forces that had been started by President Trump in 2020. The Trump administration had produced the Doha Agreement with Taliban leaders, giving the United States until May of 2021 to withdraw its forces before any Taliban attacks occurred. President Biden took office with this

[1] Arnesa B. Kustura, "Bosnian War- a Brief Overview," Remembering Srebrenica, June 24, 2021, https://srebrenica.org.uk/what-happened/bosnian-war-a-brief-overview.
[2] "Peace Support Operations in Bosnia and Herzegovina," NATO, October 17, 2022, https://www.nato.int/cps/en/natohq/topics52122.htm.
[3] UN Security Council, Resolution 1368, Principles and Purposes of the Charter of the United Nations, S/RES/1368 (12 September 2001), https://ofac.treasury.gov/media/5651/download?inline.

agreement and only 2,500 servicemembers in country—with over 124,000 American citizens, permanent residents, Afghan partners, and allies to evacuate.[4] The withdrawal was completed on August 30, 2021, but not before the loss of thirteen servicemembers to an explosion outside Kabul airport.

The intervention in Libya—Operation Unified Protector—was a result of the Arab Spring uprising against dictator Muammar Qaddafi. Qaddafi's response to the uprising resulted in a UN Security Council Resolution, which would give justification for the NATO-led coalition to oust him. Though the United States participated in the intervention, the Obama administration refused to lead it and instead agreed only to lead the initial stages, in which American air assets disabled Libyan air defenses, before turning control over to the British and French. The coalition killed Qaddafi with an aerial bomb on October 20, 2011, and withdrew from Libya just ten days later. The country has since fought off terror organizations seeking control and struggled to rebuild its infrastructure. In 2012, the American Embassy in Benghazi was attacked, resulting in the death of Ambassador John Christopher and four other Americans. Libya has since been declared a failed state.

The Unites States in Bosnia-Herzegovina

The Clinton administration was initially apprehensive regarding involvement in the conflict in Bosnia-Herzegovina. It had not participated in the UN Protection Force that was meant to serve as humanitarian aid, while many European allies had, and the extent of Clinton's willingness to involve the military was in 1994 when he proposed NATO air strikes to support the UN mission but was turned down. The United States military was only involved in August 1995—after the fall of the Srebrenica safe area. The US-led NATO Operation Deliberate Force lasted only three weeks before the Bosnian Serbs were willing to negotiate peace, leading to the U.S. brokered Dayton Peace Accords. The decision to lead Operation Deliberate Force considered factors of humanitarian necessity, military personnel at risk, and global rhetoric. While the air campaign risked relatively few American lives (the ground troops came in after the

[4] "The U.S. Withdrawal from Afghanistan," White House, official government edition, accessed January 18, 2024, https://www.whitehouse.gov/wp-content/uploads/2023/04/US-Withdrawal-from-Afghanistan.pdf.

majority of the fighting), it changed the purpose of NATO from purely defense-based to a humanitarian organization.

President Clinton's decision to lead this operation was likely due to the perceived capital gained from participating in a humanitarian mission, meaning the operation had a noble cause, put minimal forces at risk, and reinvigorated the NATO alliance post-Cold War. The UN Protection Force gave further moral endorsement, while the relative strength of the United States and the rest of the NATO allies predicted a swift and definite victory.

Post-9/11 Invasion of Afghanistan

On October 4, 2001, Article V of the North Atlantic Treaty was enacted for the only time in history, bringing NATO allies to provide collective defense in response to the terror attacks of September 11. In this instance, the United States was the state responsible for the alliance-wide call to arms and led the resulting Operation Enduring Freedom. President Bush sought to not only eliminate al-Qaeda but to continue the fight until "every terrorist group of global reach has been found, stopped, and defeated."[5] Though he could not know that this conflict would endure the next two decades, this statement demonstrates the large political capital loss he perceived from inaction in the face of a battered nation.

Operation Enduring Freedom was essential to the American spirit – after enduring the worst attack on American soil since Pearl Harbor in 1941, the American identity as an untouchable global superpower was in question. By ensuring a total elimination of the group responsible with the full force of the military, President Bush ensured the maintenance of that identity.

Intervention in Libya

In stark contrast to the leadership of the United States in Operation Enduring Freedom, the United States was not the lead in Operation Unified Protector. The European allies, namely Britain and France, were far more interested in the removal of Qaddafi. Of the 28 NATO members at the time, all voted to support the intervention, yet only half actually sent

[5] "Global War on Terror," George W. Bush Presidential Library, accessed January 18, 2024, https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror.

contributions to the joint force. Eventually, the United States agreed to carry out the initial air attacks to eliminate the Libyan air defense system, as long as leadership turned over to NATO allies for the remainder of the conflict. Though the Obama administration was adamant that it would not lead the intervention, the alliance still relied on the United States to provide many of the resources necessary to carry out Operation Unified Protector.[6]

For the Obama administration, an intervention in Libya held many parallels to the concluding conflict in Iraq. Both conflicts involved the deposition of a dictator in a far-off country, and entering another Iraq-like war would have most likely had devastating impacts on the approval rating of the administration. One of the major points of President Obama's 2008 campaign was the withdrawal from Iraq and the end of the Iraq War.[7] Despite the recent conclusion of combat operations in Iraq, a similar conflict in Libya would most likely have been seen as a fundamental breach of this promise by sending American servicemembers back into conflict with little direct impact on the American people. Therefore, President Obama's refusal to lead the NATO operation was most likely because of a predicted lack of support in the mission by the American public, and the risk of another long-term conflict with no decisive victor.

Conclusion of War in Afghanistan

In January 2021, the conflict in Afghanistan was nearing twenty years, and President Joe Biden had just entered office. His predecessor, President Trump, had reduced the forces in Afghanistan to 2,500—and promised to have the rest "home by Christmas."[8] The Doha agreement put Biden in a rough position—he had until May to withdraw thousands of people from Afghanistan, with little time to plan or prepare. However, the reduced American force had allowed the Taliban to grow in strength, controlling nearly half of the country.[9] Therefore, President Biden's options were limited. A total withdrawal would require the removal of 124,000

[6] Ted Galen Carpenter, "How NATO Pushed the U.S. into the Libya Fiasco," Cato Institute, February 19, 2019, https://www.cato.org/commentary/how-nato-pushed-us-libya-fiasco.
[7] Matt Compton, "President Obama Has Ended the War in Iraq," *What's Happening* (blog), October 11, 2011, https://obamawhitehouse.archives.gov/blog/2011/10/21/president-obama-has-ended-war-iraq#:~:text=In%202008%2C%20in%20the%20height,we%20were%20careless%20getting%20in.%22.
[8] White House, "Afghanistan."
[9] Ibid.

people, including Afghan partners seeking citizenship.[10] Execution of this feat would require the Afghanistan Self-Defense Force (ASDF) to hold the Taliban long enough for large-scale equipment and personnel withdrawal. Though this situation was not the plan of President Biden, the only alternative would have been to bring more American forces into Afghanistan to create a stable enough environment without the ASDF.[11]

President Biden entered office with the military mostly out of Afghanistan and under the promise of ending the "forever war."[12] After the force reduction under President Trump, sending more forces in to create a stable withdrawal would have most likely sacrificed credibility and be seen by the public as the start of another phase of conflict. Withdrawing would save this capital, but put faith in the ASDF to maintain security against the Taliban. President Biden chose the latter, resulting in images akin to that of the withdrawal from Vietnam, with Afghan civilians rushing the Kabul airport to try and make it onto an American plane. Choosing to slow the withdrawal from Afghanistan may have costed some political capital, but the criticisms of the hasty withdrawal indicate that the decision to withdraw quickly came with a cost.

Interventions and Approval Ratings

A president's political capital shows itself in his approval ratings. His ability to make large-scale changes and push through significant policies is indicated by high approval ratings. Therefore, the impact of participation in NATO operations can be measured by analyzing a President's approval ratings before, during, and after these operations.

The intervention in Bosnia and Herzegovina in 1995 was a historical first—it was the first time NATO had executed a major crisis response operation. This was the first glimpse at a new purpose for the alliance, moving from its initial security-based existence to a more humanitarian response-based mission. President Clinton's decision to intervene had risk—a humanitarian mission could have been seen as noble by the American people, and held a positive impact on his capital, or it could have been perceived as an external conflict that was not worth the risk of American lives. Fortunately, American involvement in the conflict was mostly limited to air operations, avoiding most of the risk incurred during large operations with ground forces.

[10] White House, "Afghanistan."
[11] Ibid.
[12] Joe Biden, "Address to a Joint Session of Congress," speech at U.S. Capitol, April 28, 2021.

Though there was no significant change in approval ratings when Americans joined combat operations in the summer of 1995, there was a 6% increase in November of 1995.[13] This was most likely due to the negotiations of the Dayton Accords seeking peace between Bosnia, Croatia, and Serbia that began on November 1 and concluded on November 21.[14] Though this increase appears minor, it occurred despite a five-day government shutdown from November 14-19.[15] This shutdown would have usually led to a drop in approval, yet the negotiations kept approval at a net positive. These ratings likely would have continued to increase with the implementation of the Accords in December and January but instead decreased as President Clinton rejected a Republican budget proposal and sent the government into shutdown.[16]

President Clinton did not gain any large amounts of political capital as a result of the intervention in Bosnia and Herzegovina, but also did not lose any. The use of mainly air capabilities likely helped mitigate any potential negative effects by reducing the risk to servicemembers in theater. By the time ground forces entered the country, air strikes had effectively ended the fighting. American leadership in the conflict had negligible impact on his capital, while the facilitation of peace negotiations demonstrated a net gain in capital, despite a government shutdown. This suggests that while humanitarian responses do not reduce political capital, they also do not cause any significant gain.

Presidential approval ratings tend to increase in response to times of national crisis in a phenomenon known as the "rally 'round the flag effect."[17] It has been evident in the attack on Pearl Harbor in 1941, the entry of the United States in the Gulf War in 1991, and after the attacks of 9/11. According to Gallup polling, President Bush's approval rating was 51% in the week of September 7-10, 2001. By September 21, it rose to an astounding 90%.[18] Though there was a steady decrease in this rating, it stayed above its pre-9/11 level until January of 2004—over a year after the initial crisis. Although the attacks were the most likely cause of the initial spike in

[13] "Presidential Job Approval Center," Gallup, accessed January 18, 2024, https://news.gallup.com/interactives/507569/presidential-job-approval-center.aspx.
[14] "Diplomacy Ends a War: The Dayton Accords," The National Museum of American Diplomacy, accessed January 18, 2024, https://diplomacy.state.gov/online-exhibits/diplomacy-ends-a-war-the-dayton-accords/.
[15] "Past Government Shutdowns: Key Resources," Congressional Research Service, 2023.
[16] Ibid.
[17] Alan J. Lambert, John P. Schott, and Laura Scherer, "Threat, politics, and attitudes: Toward a greater understanding of rally-'round-the-flag effects," *Current Directions in Psychological Science* 20, no. 6 (2011): 343-348.
[18] Gallup, "Presidential Job Approval Center."

approval, the continued trend of higher-than-normal approval suggests that the decision to enter Afghanistan was beneficial to his approval rating. A smaller spike occurred in April 2003 – from 57% to 70%. President Bush had begun to taper the conflict, announcing an end to combat operations and the beginning of a phase of reconstruction and stabilization in May.[19] Another small spike occurred in December 2003, bringing approval ratings up to 63%.[20] In January 2004, Afghan leadership agreed to a Constitution.[21] Though the initial rise in approval may have been in response to the crisis, 88% of Americans supported the conflict in October 2001, suggesting that Bush's decision to enter a conflict had positive impacts on his political capital due to the popular moral and national mission: retribution for those killed on 9/11.[22] The minor spikes in approval support the idea that success in conflict also has a positive effect on a president's capital.

The Bush administration demonstrated a positive response to conflict by the American public. The Obama administration, on the other hand, demonstrated why smaller-scale participation in an armed intervention can be to the benefit of a president's capital. American forces launched air operations with allies in March of 2011—and President Obama's approval rating saw virtually no change, fluctuating a meager two percent in the months of February and March before dropping slightly in the month of April.[23] In May 2011, however, it increased to 51%. This likely had nothing to do with Libya, and was instead in response to Operation Neptune Spear, the special forces operation that resulted in the death of Osama bin Laden, the orchestrator of the 9/11 attacks, on May 2. Towards the end of the conflict, various domestic policies had impacts on the administration's approval. These include a relaxation of immigration policies in August and the failure of a jobs bill to advance through the Senate in October. Both of these events coincide with low approval ratings—38% approval during both events.[24] Obama's approval ratings fluctuated throughout his presidency, as all do, yet it did not experience any

[19] "Timeline: U.S. War in Afghanistan," Council on Foreign Relations, accessed January 19, 2024, https://www.cfr.org/timeline/us-war-afghanistan.
[20] Gallup, "Presidential Job Approval Center."
[21] Council, "Timeline."
[22] "Public Opinion of the War in Afghanistan," Gallup, October 31, 2001, https://news.gallup.com/poll/9994/Public-Opinion-War-Afghanistan.aspx.
[23] Gallup, "Presidential Job Approval Center."
[24] Allan Smith, "How Barack Obama Went From 68% Approval To 38% To 58% To 39% To 44%," *Business Insider*, accessed February 10, 2024, https://www.businessinsider.com/triumphs-and-disasters-peaks-and-valleys-obama-2014-7.

sharp negative or positive changes. Therefore, the decision to take a more minor role in the intervention in Libya seems to have had the desired effect. President Obama avoided entering another long-term nation-building conflict in accordance with his promise to end the war in Iraq. As a result, his approval ratings did not fall, and he instead maintained his level of approval throughout the entry of the United States into the conflict.

Additionally, there was virtually no change in approval in September of 2012, after the fall of the embassy in Benghazi.[25] This suggests that the conflict in Libya was not a large enough focus to the American public to warrant a significant response in approval to the loss of a U.S. Ambassador and Embassy. In a system where large conflict victories contribute to increases in approval ratings and presidential political capital, an inverse negative impact would be expected in response to significant losses in conflict. President Obama avoided this expected impact by keeping the American investment in the Libyan conflict low by keeping the military mostly out of the NATO intervention. The decision to take a minor role in Operation Unified Protector prevented a predicted loss in capital due to a conflict with minimal personal connection to the American people, one that also happened to be unsuccessful.

The previous three cases have all been regarding entering a conflict, while President Biden's challenge was withdrawing from one. The Trump administration had already completed the majority of the withdrawal, but the deadline of the Doha Agreement, in addition to the miniscule forces left in-country, left Biden with few feasible options for a successful withdrawal. Finally, the last American servicemember in Afghanistan departed on August 30, 2021, ending a twenty-year conflict and ceding control of the country to the Taliban. The hasty withdrawal resulted in shocking pictures and videos, including crowds storming the Kabul airport to try and get on a departing flight, an explosion killing thirteen American servicemembers, and cargo planes carrying hundreds more people than what would normally be deemed full.[26] These images led to a vastly critical response to the withdrawal by the American public, with President Biden's approval falling 13% throughout the final stages of the withdrawal (June through September).[27]

President Biden's decision to complete the withdrawal prevented a likely fall in capital, as public opinion toward the conflict had fallen drastically. In January 2020, just after the Doha

[25] Gallup, "Presidential Job Approval Center."
[26] "In Pictures: When the U.S. Left Afghanistan, Two Years Ago," *Reuters*, August 20, 2023, https://www.reuters.com/pictures/pictures-when-us-left-afghanistan-two-years-ago-2023-08-18/.
[27] Gallup, "Presidential Job Approval Center."

Agreement was made, 65% of Americans said that the war was not worth it.[28] While the same poll showed significant support for maintaining permanent military bases in Afghanistan, President Biden was unlikely to execute this idea due to the lack of forces remaining at the time of his inauguration and the pre-existing agreement with the Taliban. Therefore, the decision that risked the least political capital was to evacuate American citizens and Afghan partners before completing a total withdrawal.

After the withdrawal, 54% of Americans said that they supported the decision to leave Afghanistan. However, large portions of both parties (82% of Republicans and 20% of Democrats) said that the Biden administration handled the situation poorly.[29] These numbers explain the reduction in overall approval during and immediately after the withdrawal. The main challenge to this situation was not, however, the conditions left by the Trump administration, but rather the nature of the withdrawal. Twenty years after entering the country, the United States was leaving it after a conflict resulting in the loss over 2,300 servicemembers and 1,100 allied troops, costing the United States $2.3 trillion.[30] It had not left behind a stable government, infrastructure, or long-lasting peace. Instead, the sacrifices resulted in total Taliban control of the country. President Biden's challenge was that this was not a victory, and the American public knew it. Over 60% of adults from both parties polled in 2023 said the conflict was not worth the sacrifice.[31]

While President Biden's withdrawal costed him political capital, sentiments regarding the conflict suggest that the decision to send in more personnel to stabilize the region would have also had a negative impact on capital. The situation left to him by the previous administration, as well as diminishing public support for the conflict, put him in a no-win situation. The negative impact of the decision to end a conflict with no decisive victory suggests that the American public will be less supportive when an operation is less successful. While this sounds intuitive,

[28] Eliza Posner, "Despite Unfavorable Views of the War in Afghanistan, Americans Split on Complete Withdrawal," *Running Numbers* (blog), March 20, 2020, https://globalaffairs.org/commentary-and-analysis/blogs/despite-unfavorable-views-war-afghanistan-americans-split-complete.
[29] Katherine Schaeffer, "A Year Later, a Look Back at Public Opinion about the U.S. Military Exit from Afghanistan," Pew Research Center, August 17, 2022, https://www.pewresearch.org/short-reads/2022/08/17/a-year-later-a-look-back-at-public-opinion-about-the-u-s-military-exit-from-afghanistan/.
[30] "In Afghanistan, Was a Loss Better than Peace?" United States Institute of Peace, November 3, 2022, https://www.usip.org/publications/2022/11/afghanistan-was-loss-better-peace.
[31] Matt White, "Two-Thirds of Americans Think the Afghanistan War Wasn't Worth Fighting," Task & Purpose, October 20, 2023, https://taskandpurpose.com/news/poll-afghanistan-war-not-worth-fighting/.

President Biden's completion of the withdrawal should have had a minor impact on his approval due to positive opinions regarding the end of the conflict and negative opinions regarding the method. However, a largely negative impact suggests that the lack of victory and chaos of the withdrawal were more significant than the end of the twenty-year war.

Future Implications

It is no surprise that a president's decision to enter or leave a conflict will affect his political capital. The significant conclusions of this study are the factors most likely to affect the degree and direction of this affect. Based on these cases, conflict will positively impact a president's capital when it is linked to national identity or when it is overwhelmingly successful. In cases where these factors are present, a president will be more likely to involve the United States military at greater capacities and bring the conflict into the public eye. Cases that have a predicted negative impact are those that involve few links to national identity and are likely to have complex or unfavorable results. In these cases, a president will be likely to refrain from entering conflict or enter with a minor role and little public focus. The success aspect of this theory also applies to the withdrawal from conflict. When a conflict resulted in a loss or unfavorable result, the withdrawal will likely be criticized, despite often low levels of support for its continuance.

These conclusions can not only predict the decisions of presidents regarding conflict, but also provide a model of how to make them. Humanitarian conflicts can help gain support on a specific platform, but their lack of political capital gain indicates they should not be committed to with large numbers of ground troops or when significant risks could be incurred. The NATO alliance allows the United States to participate in many operations that would otherwise have negative impacts, or no impacts, on political capital and on a small scale, thus giving the potential to incur some positive capital. Even in situations where the United States military must provide a significant amount of resources for a NATO operation, its lack of public leadership negates negative impacts of conflicts that are not linked to American identity.

Conflicts linked to American identity—that is directly connected to American security or in response to attacks on American property—are more likely to result in gain of political capital. Success as an indicator of capital gain has a similar impact—largely positive. Therefore,

presidents should seek to lead NATO forces in conflicts with high likelihoods of success and when links can be made directly to American security or attacks against the United States.

When considering the American identity, however, one must consider the rise of isolationism and the idea of "America First" that rose in popularity under former President Trump. The phrase "America First" was used in Trump's inauguration address and served as a promise to reduce foreign military intervention and bring exported economic resources back to the United States. In other words, this phrase symbolized Trump's isolationist economic and security policies. Despite his failed reelection campaign, Trump's policies held support publicly and politically, and isolationist ideas have started to emerge within the Democratic party as well, especially in regard to financial aid to Ukraine, Israel, and Taiwan.[32] As these policies grow in popularity, a shift will likely be seen in public sentiments towards involvement in NATO interventions. As the American government and public take hold of this rise in isolationism, it will likely take more political capital to initiate military involvement in NATO operations, both within the government and with the public. A loss in capital within the government could result in a loss in cooperation and inability to enact policies aligning with campaign platforms, while a loss in capital with the public could risk reelection. Rising isolationist policies challenge existing patterns of military involvement in NATO operations—a change that could drastically change U.S. defense policies in the near future.

Conflict and capital are linked, and an understanding of these links could help presidents shape the involvement of the United States military in order to gain the most—or lose the least—political capital possible. This can help build a president's credibility as an effective commander-in-chief with a deep care for the lives of all Americans, including those of the servicemembers sent to conflict.

[32] Michael Hirsh, "U.S. History Shows Washington Has Always Been Isolationist," *Foreign Policy*, November 3, 2023, https://foreignpolicy.com/2023/11/03/us-foreign-policy-isolationism-ukraine-russia-israel-hamas-china-republicans-democrats/.

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DIVERSE VOICES, DIVIDED VOTES: HOW WITNESS ENGAGEMENT SHAPES PARTISAN BILL VOTING

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This study explores how witness participation in committee hearings influences final passage votes of bills in the U.S. Congress. While prior research often views hearings as avenues for information warfare or position-taking by legislators, this paper underscores their substantive role in strategically disseminating bill information from majority party leaders to rank-and-file members. Analysis of bill passage data from 1975 to 2016 supports the hypothesis that greater witness diversity enhances the likelihood of partisan voting, especially in the House of Representatives. These findings provide nuanced understanding of legislative decision-making, addressing gaps in literature on hearings within the framework of party politics.

INTRODUCTION

Committee hearings play a crucial role in the U.S. Congress, involving various witnesses such as members of Congress, bureaucrats, academics, think tanks, and interest groups.[1] These hearings serve purposes ranging from legislative to investigative, and from executive oversight to the Senate's review of presidential appointments. As Congress deals with increasingly complex issues like pandemics, climate change, and AI, the participation of experts in hearings has become common. This paper aims to examine the interplay between party politics and witness involvement in congressional hearings, a dynamic often overlooked

[1] Witnesses are vetted by committee staff to assess their qualifications, and then are invited by the committee chair's authority. The committee chair also has subpoena power to compel testimony if necessary. Additionally, minority party members are allowed to designate witnesses for at least one hearing day. For further details, see Christopher M. Davis, "House Committee Hearings: Arranging Witnesses," Report, UNT Digital Library (Library of Congress. Congressional Research Service., August 25, 2015), 1–2, https://digital.library.unt.edu/ark:/67531/metadc743390/; Valerie Heitshusen, "Senate Committee Hearings: Arranging Witnesses," Report, UNT Digital Library (Library of Congress. Congressional Research Service, December 6, 2017), 1–2, United States, https://crsreports.congress.gov/product/pdf/RS/98-392; Walter J. Oleszek et al., *Congressional Procedures and the Policy Process*, Tenth edition (Thousand Oaks, California: CQ Press, 2016), 121–24.

in traditional models of representative democracy.

Prior research has examined the political utilization of bill information and the legislators' position-taking opportunities in committee hearings, but gaps exist regarding the impact of witness testimony on final passage votes. This study aims to fill this void, proposing that witness input can sway votes, especially when the majority party faces internal opposition. By presenting diverse perspectives, witnesses can enhance bill legitimacy, aiding partisan approval. This study investigates how majority leadership strategically deploys witnesses to promote partisan goals, supported by analysis of House and Senate hearings between 1975 and 2016.[2]

LITERATURE REVIEW

Congressional hearings have attracted attention from various angles, with research shedding light on three key perspectives. Initially, previous studies focused on the informational role of hearings, highlighting Congress' ability for independent investigation.[3] Secondly, however, growing scholarship challenged the assumption of the informativeness of non-extreme committees (i.e., committees whose members' policy preferences or ideologies do not deviate significantly from the floor median), revealing legislators' strategic use of information to reinforce their positions.[4] Against a backdrop of increasing political polarization, committees witnessed shifts in focus, some prioritizing problem-/implementation-focus and others focusing on one side of the debate, advocating for a certain

[2] In this paper, "majority leadership" refers to collective actors, including the House Speaker, majority leaders and whips of both the Senate and the House, and it may also include committee chairs depending on the context.
[3] Keith Krehbiel, *Information and Legislative Organization* (Ann Arbor, MI: University of Michigan Press, 1991), 66–73; Thomas W. Gilligan and Keith Krehbiel, "Organization of Informative Committees by a Rational Legislature," *American Journal of Political Science* 34, no. 2 (1990): 546–55.
[4] William T. Bianco, "Reliable Source or Usual Suspects? Cue-Taking, Information Transmission, and Legislative Committees," *The Journal of Politics* 59, no. 3 (1997): 920–22; Daniel Diermeier and Timothy J. Feddersen, "Information and Congressional Hearings," *American Journal of Political Science* 44, no. 1 (2000): 53–59; Christine DeGregorio, "Leadership Approaches in Congressional Committee Hearings," *The Western Political Quarterly* 45, no. 4 (1992): 975–80; David Whiteman, "The Fate of Policy Analysis in Congressional Decision Making: Three Types of Use in Committees," *The Western Political Quarterly* 38, no. 2 (1985): 304–8.

position taken by legislators.[5] In oversight studies, divided government and ideological gaps between committees and the president intensified oversight efforts, altering witness attributes.[6] The latest study aims to scrutinize these aspects by examining legislators' information sources.[7] Thirdly, recent research also underscored the growing importance of hearings as platforms for legislators to communicate with constituents, particularly through televised question-and-answer sessions, serving reelection goals.[8] Furthermore, research explores how House representatives, notably minority party members, utilize hearings for grandstanding (i.e., sending political messages by taking positions on policy issues or framing the image of a party or the administration), employing formal models, survey experiments, and machine learning techniques.[9]

While prior studies have overlooked the impact of hearings on lawmaking, my novel approach examines how hearings, particularly with witness involvement, influence bill voting patterns.[10] Unlike other legislative processes, hearings offer a unique setting for analysis. I emphasize the importance of studying bipartisan versus partisan voting patterns, especially given the confrontational behavior of political parties. By exploring the role of witness engagement in shaping legislative outcomes, my research opens avenues for broader studies

[5] Frances E. Lee, "How Party Polarization Affects Governance," *Annual Review of Political Science* 18, no. 1 (2015): 268–71; Jonathan Lewallen, Sean M. Theriault, and Bryan D. Jones, "Congressional Dysfunction: An Information Processing Perspective," *Regulation & Governance* 10, no. 2 (2016): 183–85.
[6] Robert J. McGrath, "Congressional Oversight Hearings and Policy Control," *Legislative Studies Quarterly* 38, no. 3 (2013): 362–68; Pamela Ban, Ju Yeon Park, and Hye Young You, "How Are Politicians Informed? Witnesses and Information Provision in Congress," *American Political Science Review* 117, no. 1 (February 2023): 133–34.
[7] Ban, Park, and You, "How Are Politicians Informed?," 124–36.
[8] DeGregorio, "Leadership Approaches in Congressional Committee Hearings," 971–73; Kevin M. Esterling, *The Political Economy of Expertise: Information and Efficiency in American National Politics* (Ann Arbor: University of Michigan Press, 2004), 36.
[9] Ju Yeon Park, "A Lab Experiment on Committee Hearings: Preferences, Power, and a Quest for Information," *Legislative Studies Quarterly* 42, no. 1 (2017): 16–23; Ju Yeon Park, "When Do Politicians Grandstand? Measuring Message Politics in Committee Hearings," *The Journal of Politics* 83, no. 1 (January 1, 2021): 217–26.
[10] Holly Brasher, "Listening to Hearings: Legislative Hearings and Legislative Outcomes," *American Politics Research* 34, no. 5 (September 1, 2006): 595–601. As an exception, Brasher examines how bill characteristics, such as timing of introduction, sponsor ideology, and partisan composition of cosponsors, influence various stages of the legislative process, from holding hearings to enactment. However, the study does not analyze how hearings themselves affect the bill's voting pattern.

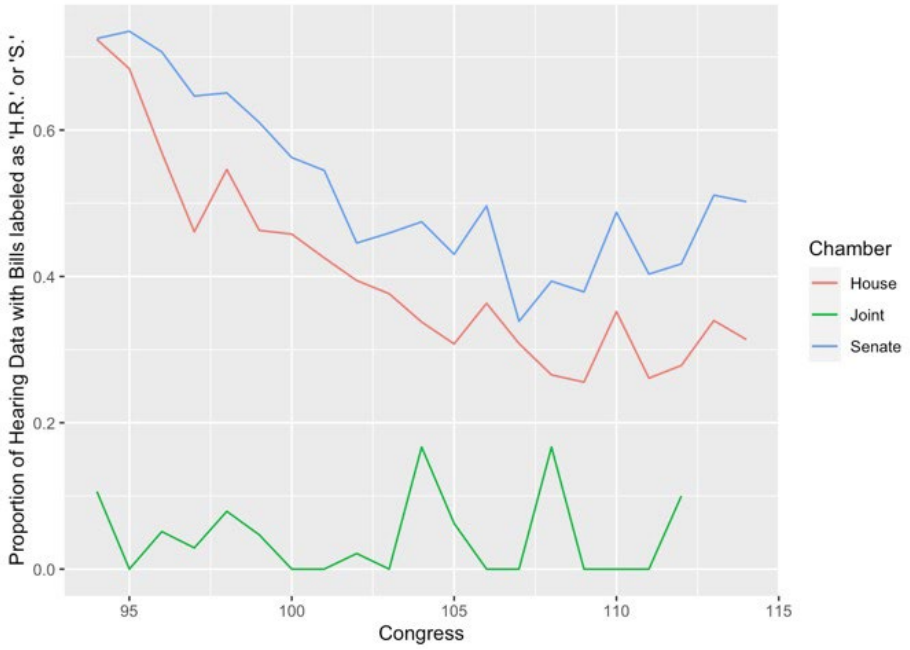
on Congress, including the dynamics of the Responsible Party Government Model, reconceptualization of party influence, rethinking centralization in Congress, as described below, and the implications of legislative gridlock amidst polarization.[11]

POLITCS OF WITNESS TESTIMONY: LEGISLATIVE INTENTION

Hearings Related to Bill Deliberations

Recent studies have highlighted legislators' use of witness hearings for information warfare and position-taking. However, what is the actual role of public hearings in deliberating on bills? Using replication data from Ban et al., I analyzed the percentage of hearings linked to bill deliberations.[12] Focusing solely on bills requiring presidential signature, represented by "H.R." or "S." series, FIGURE 1 illustrates that both the House and Senate address bills in roughly 40 percent of hearings, with a gradual decline. This gradual

FIGURE 1: Trend of Hearings Related to Bill Deliberation



[11] James M. Curry and Frances E. Lee, *The Limits of Party: Congress and Lawmaking in a Polarized Era* (Chicago, IL: University of Chicago Press, 2020), 181–90; Austin Ranney, *The Doctrine of Responsible Party Government, Its Origin and Present State* (University of Illinois Press, 1954), 12.

[12] Pamela Ban, Ju Yeon Park, and Hye Young You, "Replication Data for: How Are Politicians Informed? Witnesses and Information Provision in Congress" (Harvard Dataverse, May 16, 2022). All the data analysis for this paper was conducted using R software (version 4.3.0).

decrease is believed to reflect the transformation of the bill deliberative process in the recent U.S. Congress.

Recent observations indicate a departure from traditional legislative procedures in the U.S. Congress, often labeled "unorthodox lawmaking."[13] This deviation from the Textbook Congress model involves bypassing traditional standard procedures such as committee markups; referring bills to multiple committees to limit the power of a single committee chair; bypassing committee deliberations or markup; suspending rules temporarily with the condition of a supermajority vote; and considering multiple bills simultaneously (omnibus bills).[14] This adaptive response aims to centralize the deliberation process, enhancing efficiency amidst heightened party polarization.[15] Despite this trend, the fact that about 40% of inefficient hearings are dedicated to bill deliberation presents a puzzle. I contend that witness testimony empowers majority party leaders to sway rank-and-file members, facilitating party-line votes even in challenging circumstances.

Majority Party Leadership and Rank-and-Files Members

American political parties differ from those in parliamentary systems like Japan due to their weak party discipline and significant member autonomy. This decentralization arises from institutional factors such as the federal and presidential system, as well as the electoral system's focus on intraparty competition, which reduces incentives for party-line voting in Congress.[16] Party leaders and rank-and-file members often have conflicting objectives, with leaders prioritizing the party's collective interests while members focus on individual

[13] Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, Fifth edition (Thousand Oaks, California: Sage CQ Press, 2016), xiii.
[14] William Bendix, "Bypassing Congressional Committees: Parties, Panel Rosters, and Deliberative Processes," *Legislative Studies Quarterly* 41, no. 3 (2016): 690–92; Sinclair, *Unorthodox Lawmaking*, 5–6.
[15] James M. Curry and Frances E. Lee, "What Is Regular Order Worth? Partisan Lawmaking and Congressional Processes," *The Journal of Politics* 82, no. 2 (April 2020): 629–35.
[16] John M. Carey, "Competing Principals, Political Institutions, and Party Unity in Legislative Voting," *American Journal of Political Science* 51, no. 1 (2007): 93–95; John M. Carey, *Legislative Voting and Accountability* (Cambridge: Cambridge University Press, 2009), 141–44.

reelection, advancement, and policy goals.[17] Despite potential conflicts, leaders occasionally exert party influence over rank-and-file members, a dynamic primarily addressed in this discussion concerning the majority party.

When setting the floor agenda, majority party leadership considers three primary factors: the impact on party members' reelection chances, legislative success, and the party's brand.[18] They aim to balance individual legislators' reelection prospects with collective party goals, minimizing electoral losses while achieving legislative victories. For instance, although the Democratic Party prioritizes renewable energy over industries like oil, coal, and steel, members from coal-/steel-dependent states may resist due to reelection concerns.[19] Facing challenges in compromising with the Republican Party on energy policy, Democratic leadership may advocate for party-line votes to advance their agenda, despite lacking majority unity.[20] Party influence extends beyond direct methods like pork barrel distribution and committee appointments to indirect control over the legislative agenda.[21] By determining which issues to address (and not to) and how to proceed with deliberations, the majority party shapes the entire legislative process, including witness selection for hearings.[22]

[17] John W. Kingdon, *Congressmen's Voting Decisions*, 3rd ed (Ann Arbor: University of Michigan Press, 1989), 117–18.
[18] Laurel Harbridge, *Is Bipartisanship Dead? Policy Agreement and Agenda-Setting in the House of Representatives* (New York, NY: Cambridge University Press, 2015), 58–61.
[19] John M. Broder, "Geography Is Dividing Democrats Over Energy," *The New York Times*, January 27, 2009, sec. Science, https://www.nytimes.com/2009/01/27/science/earth/27coal.html; James M. Curry, *Legislating in the Dark: Information and Power in the House of Representatives*, Chicago Studies in American Politics (Chicago, IL: University of Chicago Press, 2015), 141.
[20] Curry and Lee, *The Limits of Party*, 66–69, 76–79. Curry and Lee point to several examples where the policy agendas of majority parties failed under unified government due to intraparty dissent. These include the comprehensive healthcare reform in the 103rd Congress (Clinton administration); tax cuts in the 108th Congress (Bush administration); comprehensive Social Security reform in the 109th Congress (Bush administration); climate change policy in the 109th Congress (Obama administration); supplemental appropriation bill for the Iraq and Afghanistan wars in the 111th Congress (Obama administration); and the repeal of Obamacare in the 115th Congress (Trump administration). They argue that the failure of majority party agendas is primarily attributed to intraparty dissent (e.g., no formal action after bill introduction; committee action only) as well as opposition from minority parties (e.g., Senate 60-vote threshold; presidential veto), and this trend has remained consistent over time.
[21] Royce Carroll and Henry A. Kim, "Party Government and the 'Cohesive Power of Public Plunder,'" *American Journal of Political Science* 54, no. 1 (2010): 37–38; Gary W. Cox and Mathew D. McCubbins, *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives* (Cambridge: Cambridge University Press, 2005), 37–49.
[22] In the selection of witnesses, as noted in footnote 1, committee chairs wield significant authority. Despite

Party Influence through Information Sharing

Majority party and committee leaders utilize information regarding individual bills, including policy details and the political ramifications of their adoption or rejection, to sway rank-and-file lawmakers.[23] Due to disparities in information gathering and processing capabilities between leaders, committee chairs, and rank-and-file members, the latter may rely on their party colleagues and leadership for guidance; newly elected members are often occupied with constituency duties, limiting their time to review bills and engage with supporters, thus relying on fellow party legislators and leadership for information is practical and trustworthy.[24] Leveraging their superior resources, party leaders and committee chairs share bill information with rank-and-file members, aiming to garner majority support for favored policies.[25] This tactic is closely linked to the aforementioned "unorthodox lawmaking." In essence, bypassing regular procedures such as markups and amendments accelerates deliberations and prevents stagnation. Consequently, congressional leadership engages in behind-the-scenes negotiations, providing limited information to rank-and-file members to secure their votes.[26]

While "unorthodox lawmaking" may enhance efficiency, it poses challenges to

debates over the interests between party leadership, such as the Speaker, here, following Cox and McCubbins, both are perceived to influence the legislative agenda, akin to senior partners in a firm. For further discussion, including the study for the impact of members' party loyalty on committee appointments decided by the party leadership in the House, see Cox and McCubbins, *Setting the Agenda*, 23–24; Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan: Party Government in the House*, 2nd ed (Cambridge: Cambridge University Press, 2007), 170. Indeed, as suggested by the anecdotal case below, party leadership and committee chairs especially align on key legislation for the party.

[23] Curry, *Legislating in the Dark*, 30–33.

[24] Ibid., 26–28; James M. Curry, "Knowledge, Expertise, and Committee Power in the Contemporary Congress," *Legislative Studies Quarterly* 44, no. 2 (2019): 208–16; Richard F. Fenno, *Home Style: House Members in Their Districts* (New York: Longman, 1978), 34; Kingdon, *Congressmen's Voting Decisions*, 78–80.

[25] Curry, *Legislating in the Dark*, 52–76; Curry, "Knowledge, Expertise, and Committee Power in the Contemporary Congress," 214–16; Janet Box-Steffensmeier, Josh M. Ryan, and Anand Edward Sokhey, "Examining Legislative Cue-Taking in the US Senate," *Legislative Studies Quarterly* 40, no. 1 (2015): 16–20.

[26] Curry, *Legislating in the Dark*, 81.

democratic legitimacy and public trust in leaders.[27] Unlike traditional bill deliberation, secretive decision-making by a select group of leaders before sudden floor votes undermines established democratic principles. Hence, it's crucial to assess the necessity of hearings and witness involvement in this process, and to scrutinize the potential party influence.

Two implications of witness hearings can be pointed out. Firstly, advocacy serves to reinforce legislators' existing positions, as noted in previous studies.[28] Secondly, witness testimony functions as a trial balloon, a practice identified by Curry through participant observation.[29] During committee sessions, interactions between witnesses and committee members allow party leaders and committee chairs to anticipate members' voting behaviors and identify potential opposition. This insight enables leadership to strategically persuade members to support proposed bills, as illustrated in the following case.

Incentives for Partisan Voting

This section explores recent voting patterns among members of the Democratic and Republican parties. Congress' legislative process features numerous veto points, incentivizing bipartisan consensus to navigate obstacles like the need for a substantial majority to avoid Senate filibusters or secure presidential approval.[30] Despite the apparent partisan divide discussed later, actual voting patterns often reveal significant minority party support for bills.[31] However, it's worth noting that in recent years, both parties have adopted increasingly partisan and confrontational stances; they have fiercely competed for the majority party

[27] Ibid., 172–80; Barry R. Weingast, "The Political Foundations of Democracy and the Rule of Law," *The American Political Science Review* 91, no. 2 (1997): 251–52.
[28] Curry, *Legislating in the Dark*, 68; DeGregorio, "Leadership Approaches in Congressional Committee Hearings," 975–80; Whiteman, "The Fate of Policy Analysis in Congressional Decision Making," 304–8.
[29] Curry, *Legislating in the Dark*, 58.
[30] Keith Krehbiel, *Pivotal Politics: A Theory of U.S. Lawmaking* (Chicago: University of Chicago Press, 1998), 23–24.
[31] James M. Curry and Frances E. Lee, "Non-Party Government: Bipartisan Lawmaking and Party Power in Congress," *Perspectives on Politics* 17, no. 1 (March 2019): 51–55.

position amid frequent changes in power.[32] This has led to a recognition of the effectiveness of party messaging for clarifying the difference between the parties and the delegation of authority to party leadership to achieve legislative success.[33] While primarily driven by electoral strategy, the impact of this trend on the legislative landscape should not be underestimated. In fact, based on the dataset analyzed in this study, 48 percent of final passage votes in the House and 17 percent in the Senate were along party lines (using the broadest definition, as explained below). Moreover, the president's influence is undeniable. Though unable to introduce bills, the president, symbolizing their political party, significantly influences agenda setting and shapes policy agendas through congressional allies by frequently communicating their stance on bills, crucial for analyzing the legislative process due to legislators' tendency to align with the president's position.[34]

In summary, there exists a potential conflict within each party between the electoral and policy objectives of leaders and members, necessitating party influence over members to achieve legislative outcomes and maintain majority status. Therefore, committee hearings, despite their inefficiency, play a vital role in ensuring legitimacy, especially through witness participation, which provides insights into legislators' preferences and is significant for securing partisan support—a hypothesis to be further explored in the subsequent case study.

Anecdotal Case

Curry's research provides an overview of the drafting and deliberative process behind

[32] Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago, IL: University of Chicago Press, 2016), 4.
[33] Cox and McCubbins, *Setting the Agenda*, 23–24; John H. Aldrich and David W. Rohde, "The Consequences of Party Organization in the House: The Role of the Majority and Minority Parties in Conditional Party Government," in *Polarized Politics: Congress and the President in a Partisan Era* (2000), 34; Lee, *Insecure Majorities*, 143–45.
[34] Frances E. Lee, "Dividers, Not Uniters: Presidential Leadership and Senate Partisanship, 1981-2004," *The Journal of Politics* 70, no. 4 (October 2008): 915–24; George C. Edwards III and Andrew Barrett, "Presidential Agenda Setting in Congress," in *Polarized Politics: Congress and the President in a Partisan Era* (Washington, DC: CQ Press Washington, 2000), 112–13.

the American Clean Energy and Security Act of 2009 (ACES) (H.R. 2454).[35] This legislation aimed to address energy policy goals set by the Obama administration and congressional Democrats, with a push for domestic legislative outcomes preceding COP15 that year.[36] Despite opposition from Democratic House members representing coal and steel industry regions, Committee Chair Rep. Henry Waxman (D-CA) and Subcommittee Chair Rep. Edward Markey (D-MA) collaborated with Rep. Rich Boucher (D-VA), a key opposition figure, in drafting the bill.[37] During a four-day hearing held by the Energy and Commerce Committee, sixty-seven witnesses spanning various interests, including bureaucrats, energy industry, scientific community, environmental groups, and a former Republican congressman, provided testimony.[38] The committee markup highlighted broad industry support for the bill, particularly its cap-and-trade policy on greenhouse gas emissions; the hearing stage allowed Waxman and Markey to gain a sense of potential trouble areas that may have provoked division within the majority party during the hearing.[39] Ultimately, the bill passed both the committee (by a vote of 33-25; four Democrats voting in opposition and one Republican voting in favor) and the floor (by a vote of 219-212; forty-four Democrats voting in opposition and eight Republicans voting in favor) along party lines.[40]

While employing some "unorthodox lawmaking" tactics to limit amendments from committee members and rank-and-files, the extensive participation of witnesses during the hearing stage underscores the bill's success.[41] Essentially, this case reflects majority party members' agreement with the bill, even those from regions affected by its policies, due to the

[35] Curry, *Legislating in the Dark*, 141–57; "H.R.2454 - 111th Congress (2009-2010): American Clean Energy and Security Act of 2009," legislation, Congress.gov, July 7, 2009, 2009-05-15, https://www.congress.gov/bill/111th-congress/house-bill/2454
[36] Curry, *Legislating in the Dark*, 44, 141.
[37] Ibid., 55, 142–43.
[38] Ibid., 143–44.
[39] Ibid., 58, 144–46.
[40] Ibid., 156; U. S. CAPITOL Room H154 Washington and DC 20515-6601 p:225-7000, "Roll Call 477 Roll Call 477, Bill Number: H. R. 2454, 111th Congress, 1st Session," Office of the Clerk, U.S. House of Representatives, June 26, 2009, https://clerk.house.gov/Votes/2009477.
[41] Curry, *Legislating in the Dark*, 147–56.

perceived legitimacy and broad support garnered during the hearing. To assess the external validity, I test the hypothesis: *diverse witnesses testifying at hearings increase the likelihood of partisan bill voting by persuading majority party members with varied preferences*.

DATA AND METHOD

To empirically test the hypotheses with an original dataset, I compiled replication data from Ban et al. and restructured witness hearing data related to bills for analysis, focusing on

TABLE 1: Types of Witness Affiliation from Ban et al.'s Study

id	Type	Example
1	Agriculture	American Farm Bureau
2	Corporation	Ford Motor Co.
3	Trade association	Chamber of Commerce
4	Bureaucrat	Department of Defense
5	Congressional	Congressional Budget Office
6	State and local government	Mayor
7	(K–12) educational	Superintendent
8	Think tank and university	MIT
9	Membership association	Veterans of Foreign Wars
10	Nonprofit	Environmental Defense Fund
11	Labor union	AFL-CIO
12	Judicial	District Court
13	Lawyers and lobbyists	American Bar Association
14	Health care	American Hospital Association
15	Native American	National Congress of American Indians
16	Religious	US Catholic Conference
17	Citizen	Resident
18	International	World Bank

bills with held hearings, witness participation, and roll call data for final passage votes.[42] This dataset spans hearings and final passage patterns of bills in both the House and Senate from 1975 to 2016.[43] The dependent variable is a binary indicator denoting *50% partisan*

[42] Ban, Park, and You, "Replication Data for: How Are Politicians Informed? Witnesses and Information Provision in Congress."

[43] I understand the critique of focusing solely on final passage votes: while partisan confrontations and lawmakers' position-taking are more evident in amendment votes and procedure votes, bills reaching final passage often involve compromises and bipartisan agreements. As the basis for the argument, see Jason M. Roberts and Steven S. Smith, "Procedural Contexts, Party Strategy, and Conditional Party Voting in the U.S. House of Representatives, 1971–2000," *American Journal of Political Science* 47, no. 2 (2003): 309. However, I believe this does not introduce a significant bias since my hypothesis primarily concerns situations *where*

votes, signifying cases where over half of one major party's members vote differently from over half of the other party's members.[44] Given the rarity of complete party-line voting and to account for exceptional cases, I adopt the broadest definition of partisan voting. Logistic regressions are then conducted with the following variables.

The primary independent variable is *witness diversity*, capturing the variety of attributes among witnesses summoned to hearings. While an indicator reflecting individual witnesses' preferences and ideologies is ideal, data constraints necessitate using the eighteen types outlined in Ban et al.'s replication data (see TABLE 1).[45] Witness diversity is assessed using three indices listed below, with results primarily presented using the Simpson Index

The Formulas for Three Diversity Indices:

- $Simpson\ Index: D = 1 - \sum_{i=1}^{S} p_i^2$
- $Inverse\ Simpson\ Index: D = \frac{1}{\sum_{i=1}^{S} p_i^2}$
- $Shannon\ Index: D = -\ \sum_{i=1}^{S} p_i \ln p_i$

(S: Total number of species in the sample; p_i: Percentage of species i)

(mathematically the probability of *not* selecting the same species twice in a row), though findings remain consistent across other indices. These indices offer reliable insights into potential biases across witness types, with established applications in social science research.[46]

Next, I introduce some *party politics* variables: firstly, incorporating standard

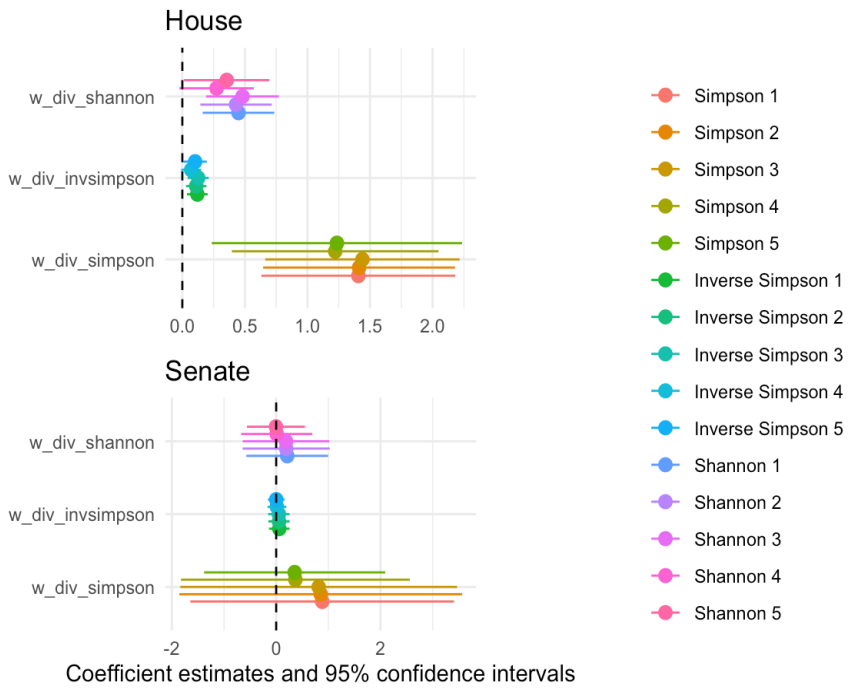
compromise is inherently challenging between the two parties, and when there is a lack of cohesion among majority party members. Furthermore, final passage votes, seen as transparent to citizens and likely to pass, provide a strong incentive for lawmakers to grandstand, dissenting party alignment; cf. Justin H. Kirkland and Jonathan B. Slapin, *Roll Call Rebels: Strategic Dissent in the United States and United Kingdom* (Cambridge University Press, 2018), 40–43. Consequently, partisan voting on final passage including these hard-case scenarios would bolster the validity of my hypothesis.

[44] Crespin Michael H and David Rohde, "Roll Call Data," Political Institutions and Public Choice Roll-Call Database, accessed February 8, 2024, https://ou.edu/carlalbertcenter/research/pipc-votes/.

[45] Ban, Park, and You, "Replication Data for: How Are Politicians Informed? Witnesses and Information Provision in Congress"; Ban, Park, and You, "How Are Politicians Informed?," 124–25.

[46] Carole Maignan et al., "Bio-Ecological Diversity vs. Socio-Economic Diversity: A Comparison of Existing Measures," Fondazione Eni Enrico Mattei (FEEM), 2003: 19–25, https://www.econstor.eu/handle/10419/118040; Benjamin H. Barton and Emily Moran, "Measuring Diversity on the Supreme Court with Biodiversity Statistics," *Journal of Empirical Legal Studies* 10, no. 1 (2013): 4–6.

FIGURE 2: Effect of Witness Diversity on Partisan Final Passage Vote



deviations of DW-NOMINATE scores to depict variations in majority party members' preferences and ideologies; secondly, including median differences in DW-NOMINATE scores between parties and differences in chamber seats to address inter-party dynamics.[47] Additionally, a dummy variable indicating presidential support for the bill is included to account for the president's influence.[48] Interaction terms between witness diversity and party politics variables are added to anticipate variations in the marginal effect of witness diversity based on majority party members' preferences and inter-party differences. Major categories from the Policy Agenda Project are included as fixed effects to assess witness diversity effects within specific policy domains.[49] Other control variables addressing endogeneity are detailed in the APPENDIX.

[47] Lewis Jeffrey B et al., "Voteview: Congressional Roll-Call Votes Database," 2024, https://voteview.com/.
[48] Michael H and Rohde, "Roll Call Data."
[49] Harbridge, *Is Bipartisanship Dead?*, 115–39; E. Scott Adler and John Wilkerson, "Congressional Bills Project: (93rd-114th Congresses)," NSF 00880066 and 00880061, accessed January 13, 2024, http://www.congressionalbills.org/download.html; Bryan D. Jones et al., "Policy Agendas Project: Codebook," 2023.

RESULTS

FIGURE 2 plots the *witness diversity* coefficients with 95% confidence intervals in non-interaction term models (the odd-numbered models in TABLE A3.1 and A3.2, APPENDIX), with each of the three diversity indices as independent variables. Statistically significant effects of witness diversity on partisan voting are confirmed if the 95% confidence interval does not cross the zero line.

For the House of Representatives, the findings generally support the hypothesis: increased witness diversity correlates with a higher likelihood of partisan voting, regardless of the diversity index used. Specifically, the odds ratio of the Simpson 1 model (Model (1) in TABLE A3.1, APPENDIX) is calculated at about 4.08, indicating a fourfold increase in the probability of partisan voting with each unit increase in the witness diversity index. While interaction terms with party politics variables were not statistically significant, suggesting no variation in the effect of witness diversity based on party politics status, witness diversity remains significantly associated with partisan voting even after controlling for other factors including policy area. Conversely, the Senate results paint a different picture: witness diversity alone does not exhibit as significant an impact as observed in the House. Despite some statistically significant effects of interaction terms with party politics variables (see the even-numbered models in TABLE A 3.2, APPENDIX), marginal effects plotting reveals no noteworthy impact of witness diversity on partisan voting. These results hint at varying effects of witness diversity variables across the House and Senate.

While this study does not delve deeply into the disparities between the House and Senate, some observations are pertinent. Primarily, there exists a discrepancy in the sway of party leadership between the two chambers.[50] Given the House of Representatives' greater

[50] Steven S. Smith, *Party Influence in Congress* (Cambridge: Cambridge University Press, 2007), 177–203; Sinclair, *Unorthodox Lawmaking*, 89–113.

susceptibility to party influence, particularly in agenda setting, witness diversity—indicative of varied support for a bill among witnesses—appears to wield a more pronounced effect on voting outcomes.

CONCLUSION

In the U.S. Congress, committee hearings represent just one facet of the legislative process, yet literature underscores their significance not only as information gathering and processing channels but as platforms for legislators to assert their positions. This study sheds light on the legislative role of hearings, particularly their impact on bill voting patterns. By examining how witness diversity in hearings influences bill passage, I investigate how majority party leadership shapes information dissemination to its members. Specifically, I test the hypothesis that witness diversity reflects diverse preferences within the majority party, influencing partisan voting. Results support this in the House of Representatives but not the Senate, though certain interaction terms are intriguing. Balancing member reelection prospects with party agenda pursuit, party leaders wield considerable influence.[51] My study, building on previous research, underscores the pivotal role of witness engagement, especially the diversity of affiliation types related to the representation of diverse interests, in achieving this balance.

Looking ahead, several research avenues merit attention. Firstly, a nuanced understanding of hearings' implications in the legislative process, vis-à-vis bill characteristics, warrants further exploration. While exemplified by ACES, the study suggests that partisan approval may be necessary, contingent upon majority party member opposition. Continual investigation into such scenarios and alternative mechanisms, like witness involvement to sway minority party members, is essential. Secondly, a detailed analysis of

[51] Harbridge, *Is Bipartisanship Dead?*, 58–61.

House-Senate disparities is imperative. Given the House-centric focus of existing literature, future studies should revisit hypotheses considering Senate dynamics and party influence.

APPENDIX

Variables

The variables used in the analysis and their explanations are in TABLE A1 followed by descriptive statistics in TABLE A2.1 and A2.2 for the data from the House and Senate, respectively.

TABLE A1: Variables

id	Variable	Description	Supplement
1	v_50	50% Partisan Votes (Dummy)	More than 50% of the members of one party vote differently from more than 50% of the members of the opposing party.
2	w_div_simpson	Witness Diversity (Simpson Index)	
3	w_div_invsimpson	Witness Diversity (Inverse-Simpsone Index)	
4	w_div_shannon	Witness Diversity (Shannon Index)	
5	maj_dw1_sd	Standard Deviaiton of Majority Party Members' DW NOMINATE Score (1st Dimension)	Indicating the variation in preferences among majority party members on economic issues, etc.
6	maj_dw2_sd	Standard Deviaiton of Majority Party Members' DW NOMINATE Score (2nd Dimension)	Indicating the variation in preferences among majority party members on cultural issues, etc.
7	dim1_median_distance	Difference between 2 Parties' Medians of DW NOMINATE Score (1st Dimension)	
8	seat_margin	Seat Margin of 2 Parties	
9	pres_position	President's Support for Bills (Dummy)	Input 0 to NA.
10	divided_house	House-President Divided Government (Dummy)	
11	divided_senate	Senate-President Divided Government (Dummy)	
12	sponsr_maj	Bill Sponsored by Majority Party Member (Dummy)	
13	Cosponsr	Number of Co-sponsors	
14	sponsr_ComC	Bill Sponsored by Committee Chair (Dummy)	
15	sponsr_ComR	Bill Sponsored by Committee Ranking Member (Dummy)	
16	publicLaw	Public Bill (Dummy)	
17	appropriation	Appropriation Bill (Dummy)	
18	pap_majortopic	Policy Topic of Bills (Category)	Classification is based on Policy Agenda Project.

TABLE A2.1: Descriptive Statistics (House, 1975-2016)

Variable	Unique (#)	Missing (%)	Mean	SD	Min	Median	Max
v_50	2	0	0.48	0.5	0	0	1
hearing	2	0	0.27	0.45	0	0	1
w_div_simpson	374	73	0.69	0.2	0	0.75	0.9
w_div_invsimpson	374	73	4.19	1.92	1	4	9.61
w_div_shannon	435	73	1.45	0.54	0	1.53	2.4
maj_dw1_sd	21	0	0.16	0.02	0.1	0.15	0.19
maj_dw2_sd	21	0	0.37	0.08	0.3	0.34	0.48
dim1_median_distance	20	0	0.72	0.1	0.6	0.77	0.89
seat_margin	19	0	72.01	45	12	61	147
pres_position	3	19	0.16	0.36	0	0	1
divided_house	2	0	0.67	0.47	0	1	1
divided_senate	2	0	0.5	0.5	0	1	1
sponsr_maj	2	0	0.98	0.14	0	1	1
Cosponsr	219	0	25.96	49.1	0	4	380
sponsr_ComC	2	0	0.37	0.48	0	0	1
sponsr_ComR	2	0	0	0.07	0	0	1
publicLaw	2	0	0.38	0.49	0	0	1
appropriation	2	0	0.18	0.39	0	0	1
pap_majortopic	21	0	12.88	6.68	1	15	23

TABLE A2.2: Descriptive Statistics (Senate, 1975-2016)

Variable	Unique (#)	Missing (%)	Mean	SD	Min	Median	Max
v_50	2	0	0.17	0.37	0	0	1
hearing	2	0	0.33	0.47	0	0	1
w_div_simpson	288	67	0.64	0.27	0	0.76	0.91
w_div_invsimpson	288	67	4.15	2.21	1	4.16	11.1
w_div_shannon	319	67	1.4	0.68	0	1.61	2.5
maj_dw1_sd	21	0	0.16	0.02	0.1	0.17	0.19
maj_dw2_sd	21	0	0.4	0.07	0.3	0.43	0.48
dim1_median_distance	21	0	0.64	0.05	0.6	0.62	0.78
seat_margin	15	0	12.96	7.74	0	10	27
pres_position	3	2	0.22	0.41	0	0	1
divided_house	2	0	0.64	0.48	0	1	1
divided_senate	2	0	0.48	0.5	0	0	1
sponsr_maj	3	0	0.95	0.22	0	1	1
Cosponsr	142	0	18.4	42.6	0	1	314
sponsr_ComC	3	0	0.45	0.5	0	0	1
sponsr_ComR	3	0	0.02	0.15	0	0	1
publicLaw	3	0	0.65	0.48	0	1	1
appropriation	2	0	0.12	0.32	0	0	1
pap_majortopic	21	3	12.67	6.57	1	15	21

Results of Logistic Regression

The results of logistic regression analysis for both the House and Senate are presented in TABLE A3.1 and A3.2. It is worth noting that the diversity index includes only the results of the Simpson Index, but similar outcomes were obtained using the other two indices. The coefficient bars in FIGURE 2 in the text represent the coefficients of witness diversity for models that do not include the interaction terms listed in the table below (i.e., odd-numbered models).

TABLE A3.1: Regression Result (House)

	DV: Partisan Vote									
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Witness Diversity (Simpson Index)	1.41 (0.37)**	5.27 (5.81)	1.41 (0.37)**	3.83 (2.94)	1.44 (0.37)**	-2.38 (4.24)	1.22 (0.39)**	1.77 (1.17)	1.24 (0.48)*	1.52 (0.48)**
Maj_DW1_SD	-47.81 (9.51)***	-31.75 (26.42)								
Witness*Maj_DW1_SD		-23.71 (35.63)								
Maj_DW2_SD			-9.82 (2.22)***	-5.62 (5.75)						
Witness*Maj_DW2_SD				-6.30 (7.46)						
Diff_Med_DW1					9.13 (1.78)***	5.49 (4.67)				
Witness*Diff_Med_DW1						5.43 (6.03)				
Seat Margin							-0.01 (0.00)**	-0.01 (0.01)		
Witness*Seat Margin								-0.01 (0.01)		
President Approval									0.35 (0.30)	1.29 (0.52)*
Witness*President Approval										-1.33 (0.70)+
Divided Gov(House)	-0.01 (0.21)	-0.01 (0.21)	-0.18 (0.20)	-0.19 (0.21)	-0.37 (0.20)+	-0.37 (0.21)+	-0.45 (0.20)*	-0.46 (0.20)*	-0.58 (0.24)*	-0.58 (0.24)*
Divided Gov(Senate)	-0.66 (0.35)+	-0.68 (0.35)+	-0.28 (0.32)	-0.29 (0.32)	-0.19 (0.31)	-0.20 (0.30)	-0.10 (0.29)	-0.11 (0.29)	0.40 (0.26)	0.40 (0.26)
Maj_Member_Sponsor	0.85 (0.81)	0.83 (0.79)	0.87 (0.88)	0.85 (0.87)	0.82 (0.83)	0.81 (0.82)	1.09 (0.97)	1.09 (0.98)	0.95 (0.92)	0.96 (0.93)
Cosponsers	0.00 (0.00)*	0.00 (0.00)*	0.00 (0.00)*	0.00 (0.00)*	0.00 (0.00)*	0.00 (0.00)*	0.01 (0.00)**	0.00 (0.00)**	0.01 (0.00)***	0.01 (0.00)***
Com_Chair_Sponsor	-0.31 (0.15)+	-0.30 (0.15)+	-0.29 (0.15)+	-0.29 (0.15)+	-0.32 (0.15)*	-0.32 (0.15)*	-0.29 (0.15)+	-0.29 (0.15)+	-0.30 (0.18)	-0.30 (0.18)
Com_Rank_Sponsor	-14.04 (0.83)***	-14.01 (0.85)***	-14.18 (0.89)***	-14.15 (0.90)***	-14.13 (0.85)***	-14.10 (0.86)***	-14.41 (0.95)***	-14.43 (0.94)***	-14.09 (0.91)***	-14.10 (0.91)***
Public Law	-1.02 (0.25)***	-1.02 (0.26)***	-1.00 (0.25)***	-0.99 (0.26)**	-0.97 (0.25)**	-0.97 (0.26)**	-1.11 (0.26)***	-1.10 (0.26)***	-1.01 (0.26)**	-1.02 (0.27)**
Num.Obs.	727	727	727	727	727	727	727	727	639	639
R2	0.232	0.233	0.225	0.226	0.245	0.246	0.191	0.192	0.165	0.167
R2 Adj.	0.177	0.176	0.169	0.168	0.189	0.188	0.136	0.134	0.101	0.1
Fixed Effect: Major Topic of Bills	X	X	X	X	X	X	X	X	X	X

Note: Coefficients are estimated using logistic regresion; standard errors are in parenthesis; clustered by Major Topic of Bills
+p<0.10; *p<0.05; **p<0.01; ***p<0.001

TABLE A3.2: Regression Result (Senate)

	DV: Partisan Vote									
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Witness Diversity (Simpson Index)	0.88 (1.19)	16.83 (5.85)*	0.85 (1.28)	11.61 (3.45)**	0.81 (1.25)	-34.56 (13.50)*	0.37 (1.03)	0.56 (1.36)	0.35 (0.82)	1.84 (1.06)
Maj_DW1_SD	-38.16 (11.78)**	19.12 (23.15)								
Witness*Maj_DW1_SD		-95.46 (35.28)*								
Maj_DW2_SD			-8.23 (4.21)+	7.60 (7.58)						
Witness*Maj_DW2_SD				-26.12 (9.44)*						
Diff_Med_DW1					14.35 (5.93)*	-19.78 (14.42)				
Witness*Diff_Med_DW1						56.08 (20.90)*				
Seat Margin							-0.01 (0.03)	-0.00 (0.05)		
Witness*Seat Margin								-0.01 (0.07)		
President Approval									0.78 (0.38)+	3.04 (0.83)**
Witness*President Approval										-3.43 (0.87)**
Divided Gov(House)	-0.26 (0.52)	-0.38 (0.52)	-0.29 (0.51)	-0.42 (0.51)	-0.11 (0.50)	-0.22 (0.51)	-0.50 (0.53)	-0.52 (0.58)	-0.37 (0.50)	-0.47 (0.49)
Divided Gov(Senate)	0.07 (0.57)	0.12 (0.57)	0.32 (0.59)	0.40 (0.57)	0.29 (0.59)	0.41 (0.54)	0.66 (0.57)	0.68 (0.62)	0.77 (0.56)	0.86 (0.53)
Maj_Member_Sponsor	1.43 (0.99)	1.31 (1.10)	1.51 (0.94)	1.34 (1.09)	1.48 (1.00)	1.29 (1.24)	1.29 (0.97)	1.29 (0.97)	1.27 (0.95)	1.70 (0.91)+
Cosponsers	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.01 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)	-0.00 (0.01)
Com_Chair_Sponsor	-0.11 (0.51)	-0.12 (0.54)	-0.13 (0.52)	-0.18 (0.54)	-0.17 (0.51)	-0.20 (0.54)	-0.16 (0.52)	-0.16 (0.52)	-0.22 (0.52)	-0.24 (0.51)
Com_Rank_Sponsor	-12.56 (0.92)***	-12.73 (1.03)***	-12.46 (0.88)***	-12.69 (1.05)***	-12.56 (0.95)***	-12.82 (1.21)***	-12.83 (0.88)***	-12.84 (0.88)***	-12.71 (0.86)***	-12.52 (0.82)***
Public Law	-1.64 (0.55)**	-1.65 (0.56)**	-1.64 (0.54)**	-1.66 (0.53)**	-1.64 (0.54)**	-1.65 (0.55)**	-1.70 (0.56)**	-1.70 (0.56)**	-1.68 (0.58)*	-1.65 (0.58)*
Num.Obs.	405	405	405	405	405	405	405	405	405	405
R2	0.172	0.187	0.168	0.187	0.172	0.2	0.148	0.148	0.16	0.18
R2 Adj.	0.016	0.026	0.012	0.025	0.016	0.038	-0.007	-0.014	0.005	0.018
Fixed Effect: Major Topic of Bills	X	X	X	X	X	X	X	X	X	X

Note: Coefficients are estimated using logistic regresion; standard errors are in parenthesis; clustered by Major Topic of Bills
+p<0.10; *p<0.05; **p<0.01; ***p<0.001

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THE PRESIDENCY AND LABOR: A POLICY OF PRAGMATISM

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Investigating the call to action of President Biden's Executive Order 14025, this research examines the legacy of labor law, particularly the National Labor Relations Act (NLRA). A study of the NLRA's creation under Franklin D. Roosevelt and its implementation under subsequent presidents identifies discrepancies in the 'policy of support for workers' that E.O. 14025 prescribes the act. I argue that in place of this policy of support, presidents frequently leverage labor and unions to satisfy the unique objectives of their administrations and to maintain broader stability for the United States as a whole. President Reagan's hardline stance on federal workers' unions and actions during the 1981 PATCO strike can be understood through the unique security concerns of the Cold War and a strict legalist application of labor law. President Obama's role in the UAW contract renegotiations reveals concerns about economic stability during the 2008 recession and an opportunity to advance 'green policies.' And finally, President Biden's call to action and attempt to return to the status quo goals of the NLRA highlight his post-COVID-19 pandemic recovery plan and the difficulty of balancing a policy of support for workers with the well-being of the whole country. Together, these case studies reveal a trend in presidential policy and intervention in labor that tends to prioritize stability, security, and status quo over a true policy of support for workers.

INTRODUCTION

Labor unrest has once again taken a central focus in American discourse; from the longstanding union powerhouse that is the United Auto Workers gaining special attention through presidential visits, to the famous faces of the Screen Actors Guild-American Federation of Television and Radio Artists, unions are a hot topic. Burgeoning unions are also routinely making waves throughout America's media cycle as service industry workers, like those at many Starbucks locations, have mobilized to unionize themselves. Labor unrest is far from uncommon in the United States and was the focus of an executive order issued by President Joe Biden early in his administration. In Executive Order 14025, President Biden created the Task Force on Worker Organizing and Empowerment (TFWOE) to help address what he views as a failing of the federal government in the past few decades to use its full authority to implement the policy of support for workers as directed by the National Labor Relations Act (NLRA, or Wagner Act) and

other federal labor laws.[1] If the NLRA was intended to engender a 'policy of support for workers' in the federal government and has failed to do so, what then is the true legacy of the NLRA? An examination of both the context for the NLRA's creation and initial application, and a comparison of subsequent administrations' application of labor laws reveals how presidents prioritize a relatively stable status quo over workers. To accomplish the latter half of this goal, I have examined the presidencies of Ronald Reagan, Barack Obama, and Joseph Biden. Reagan was selected because of his role in accelerating the decline of unionization in America, and because he is explicitly cited as an example of the federal government failing to uphold a policy of support in the TFWOE's report to the president.[2] Obama because of his actions during the Great Recession, a time when many labor scholars and economists speculated would bring reforms akin to the New Deal era, and also because of his intervening role in restructuring auto manufacturers and UAW contracts that were the focus of recent strikes in late 2023. And finally, Biden, because of his vocal support of unions and workers, particularly through E.O. 14025, and to investigate whether his own administration has aligned its actions with its rhetoric.

Often, it is merely the greater good that outweighs a policy of support for workers. Some scenarios present themselves in such a way that achieving the greatest good for all Americans means leveraging or even siding against labor. Often these scenarios are the primary factor contributing to a president's interest in labor—they view labor as an opportunity to make gains for a broader audience. This was certainly the case in President Theodore Roosevelt's intervention in the anthracite coal strike of 1902. Without overindulging in historical exposition, Theodore Roosevelt broke from long standing precedent by intervening in the coal miners' strike by recruiting JP Morgan and other powerful industry tycoons to help broker a deal that would get the miners back to work in time for the incoming winter.[3] Theodore Roosevelt's primary motivation here was not to help shorten the workweek and work hours for miners, but to ensure that Americans everywhere had enough coal to warm themselves during the freezing winter months, and that industry could power its factories, ensuring a functioning economy and society.

[1] Joe Biden, "Executive Order 14025: Executive Order on Worker Organizing and Empowerment," April 26, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/26/executive-order-on-worker-organizing-and-empowerment/.
[2] Kamala Harris and Martin Walsh, "White House Task Force on Worker Organizing and Empowerment: Report to the President," The White House, 2022, 3.
[3] Susan Berfield, *The Hour of Fate: Theodore Roosevelt and J.P. Morgan, and the Battle to Transform American Capitalism* (New York: Bloomsbury Publishing, 2020), 180-182.

This same rationale dictates much of the labor policy in the United States; it is rare to find an instance where purely altruistic concern for workers propels their rights. For each advantage negotiated for workers, there is generally a greater justification for doing so than just a policy of support. In other words, the expansion of individual and collective workers' rights and protections generally has a greater purpose or affects more than just the immediate realm of labor.

Since the creation of the NLRA, labor scholars have debated what the future of labor relations in the United States will look like, arguing whether it is new legislation, new union structures, or a new economic system that will provide the best solution to contemporary issues. Whatever the case, the current system seemingly creates an inherent discord, making a policy of support for workers difficult to maintain. Over fifty years ago, noted labor historian and economist Neil W. Chamberlain highlighted some major issues of the current U.S. labor model by identifying what are, in his mind, the three major causes of labor instability. The first factor of labor instability is the strike, which Chamberlain argues is anachronistic and stands in the way of progress for collective bargaining and more stable forms of dispute remediation. The second is the current wage-price system that creates artificial inflation that negatively impacts the broader economy—essentially the need to standardize wages and prices. And third, the self-interested nature of unions themselves who, having achieved a satisfactory standard of living, fight to maintain the status quo for themselves at the expense of others.[4] Of particular interest to this work is Chamberlain's analysis of the strike's waning efficacy due to intolerance for disruption—especially interruptions to vital areas like healthcare, education, transportation, and the public sector.[5] Similarly, Cynthia Estlund critiques the framework of labor law in the United States by examining its stagnation. Estlund argues the "ossification of American labor law" has its origins in both longstanding congressional impasse and the intentionally rigid nature of the NLRA that was constructed to ensure its long-term survival.[6] However, Estlund also identifies ossification as the potential impetus for a reformed U.S. labor movement, one motivated by the lackluster status quo that innovates labor law by acting outside the framework of legality.[7]

[4] Neil W. Chamberlain, "Stabilization of Labor Relations?" *The Annals of the American Academy of Political and Social Science* 396 (1971): 79.
[5] Chamberlain, "Stabilization of Labor Relations?" 80-81.
[6] Cynthia L. Estlund, "The Ossification of American Labor Law," *Columbia Law Review* 102, no. 6 (October 1, 2002): 1531-32, https://doi.org/10.2307/1123792.
[7] Estlund, "The Ossification of American Labor Law," 1532.

Both scholars successfully identify an outdated labor system in need of reform while also highlighting the difficulty in achieving sufficient reform due to the now deeply ingrained system that has numerous beneficiaries. Using this framework to understand labor relations and legislation helps explain why a policy of support has historically been difficult to uphold. Despite language indicating that legislation like the NLRA is for the worker and to support workers, its actual use is in maintaining stability for the benefit of all Americans. This is not to say that workers do not benefit from labor legislation—they do, but the primary objective of labor legislation is the creation and maintenance of the status quo. This is why the issues plaguing labor that Chamberlain and Estlund identify have not yet been resolved—the legislation has achieved its main goal, and changing or interpreting the law to explicitly aid and support workers might jeopardize the larger status quo. To fully understand the somewhat paradoxical nature of labor's stable-instability, we must examine the unique context for the creation of the largest and arguably most important piece of labor legislation.

FRANKLIN DELANO ROOSEVELT & THE NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act is inseparable from FDR's New Deal omnibus and efforts to combat the Great Depression. At its core, the New Deal was a series of administrative decisions and policies combined with impactful and still relevant legislation designed to restore and conserve what was 'lost' due to the Great Depression by providing everyday Americans with a sense of security.[8] David Kennedy writes how all the various acts that make up the New Deal "had a common cardinal purpose: not simply to end the immediate crisis of the Depression, but to make life less risky and more predictable."[9] From stabilizing our banking system through agencies like the FDIC, to creating our social security system to both provide for the elderly and standardize the retirement age to free up the job market, the New Deal created a new status quo for America.[10] The primary elements of this new status quo were stability and security—together they aimed to provide a default model and framework for the cogs of American industry and enterprise to sift through so that in standardization and bureaucracy there might be

[8] David M. Kennedy, "What the New Deal Did," *Political Science Quarterly* 124, no. 2 (July 1, 2009): 253-254.
[9] Kennedy, "What the New Deal Did," 254.
[10] Kennedy, "What the New Deal Did," 254-258.

predictability.[11] The Wagner Act contributed to this grand goal by establishing a uniform framework for labor relations.

Status quo is untenable without some form of stability, and labor unrest was widespread during Roosevelt's era. Unrest in labor meant work stoppages and strikes that interrupted the normal flow of business and commerce, slowing the economy. Workers had very few protections in this era—save for the 1932 Norris La Guardia Act and a few antitrust laws that were enacted to protect the broader economy over workers—and were more likely to be fired and replaced in the event of a strike or collective protest.[12] This cycle inevitably led to further interruptions to industrial productivity as new employees must be trained. Like the Norris La Guardia Act and the ill-fated National Industrial Recovery Act, the Wagner Act sought to minimize the chances of strikes and work stoppages by protecting workers' rights to form unions and bargain collectively. To enforce this new policy, the NLRA established the National Labor Relations Board (NLRB), tasked with conducting investigations into unfair labor practices and decision making in cases brought before the board. The policy of support for workers created by the NLRA and NLRB had the ultimate goal of maintaining uninterrupted and continuously productive industry that contributes to the American economy for everyone's benefit, not just for the workers. This goal was achieved by expanding worker rights and providing resources and support for the establishment of unions. It is romantic to conceptualize the NLRA as being born of pure altruism for the worker. No doubt there was some concern for the wellbeing of the worker, but the objectives of the NLRA were far broader than just the positive gains for labor. These aimed also at stabilizing and normalizing some areas of economic activity in the United States during and after the Great Depression. It is these core tenants of the NLRA that have made this legislation so long lasting while also undermining its 'policy of support' by disincentivizing deviation—and progress—from the status quo.

RONALD WILSON REAGAN, FEDERAL EMPLOYEES, & THE PATCO STRIKE

There is perhaps no greater example of the NLRA undermining its own 'policy of support' than its exclusion of federal employees, exemplified by the infamous 1981 Professional

[11] Ibid, 264.
[12] Estlund, "The Ossification of American Labor Law," 1527–28.

Air Traffic Controller Organization's (PATCO) strike. The PATCO strike helps highlight some of the limitations of NLRA, and the lack of support for federal employees under the act. The NLRA does not apply to federal employees, meaning that the largest employer in the United States, the federal government, does not have to adhere to the act. Instead, federal employees are subject to the Civil Service Reform Act of 1978 (CSRA).[13] President Jimmy Carter signed the act which sought to reform the civil service system by creating a version of the NLRA that was adapted to the unique conditions of public sector employment.[14] This act spawned several necessary agencies including the Federal Labor Relations Authority (FLRA), similar to the NLRB, and the U.S. Office of Personnel Management (OPM)—the OPM is a particularly notable agency given its application under the Biden administration discussed later in this research.

The creation of the CSRA helped extend the policy of support to federal workers, but just like the NLRA, there were limitations built into this act. The CSRA is relatively diminished in scope compared to the NLRA, with a more restrictive process for unionization and collective bargaining, and the notably detrimental prohibition of striking and other disruptive tactics.[15] The PATCO was originally recognized as a union by the Civil Service Commission (CSC), the OPM's predecessor, but lacked the right to strike under both agencies. The policy of support for workers is not equal for all workers. The exclusion of federal workers from the NLRA was not an administrative oversight but an intentional one. The PATCO and Reagan case helps highlight the rationale behind this intentional exclusion and striking prohibition as part of status quo protectionism.

President Ronald Reagan and FDR have an unlikely connection through their shared interpretation of labor law regarding federal workers. In a correspondence between FDR and Luther Steward—the president of the National Federation of Federal Employees—FDR expresses his belief that public sector employees hold a special place within labor, and that the structure of private sector unions and collective bargaining cannot be directly transferred into the public sector.[16] FDR contends that unions in the public sector cannot function in the same

[13] Civil Service Reform Act of 1978, S. 2640, 95th Cong. (1978), https://www.congress.gov/bill/95th-congress/senate-bill/2640/text.
[14] Charles J. Coleman, "The Civil Service Reform Act of 1978: Its Meaning and Its Roots," *Labor Law Journal* 31, no. 4 (April 1980): 200–203.
[15] Coleman, "The Civil Service Reform Act of 1978: Its Meaning and Its Roots," 202–205.
[16] Franklin Roosevelt to Luther Steward, August 16, 1937, in The American Presidency Project, https://www.presidency.ucsb.edu/documents/letter-the-resolution-federation-federal-employees-against-strikes-federal-service.

manner as those in the private since "the employer is the whole people," making it impossible to make a binding employer-employee agreement.[17] FDR specifically highlights the invalidity of strikes by federal employees because of the oath of office public sector employees must swear; the oath prohibits acting against the interests of the United States, and more recent revisions to the oath have explicitly prohibited striking. While the original oath of office for civil servants dates back to the Oath Act of 1789, the first bill passed by the U.S. Senate after the ratification of the Constitution, federal employees in 2024 sign a succinct affidavit that states in section two: "I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof."[18] A version of this affidavit has existed for civil servants since the Oath Act. This makes two pieces of legislation that directly prohibit federal employees from striking and helps explain why the NLRA did not extend to federal workers. Within this legal framework, Reagan appears not only justified, but obligated to act as he did. But in so doing, Reagan chose to ignore the policy of support, instead opting for a strictly legalist interpretation that prioritizes stability and status quo for a greater number of Americans.

President Reagan chose status quo over a policy of support for workers when he took his infamously hardline stance against the striking PATCO workers in 1981 by firing nearly 12,000 striking federal workers, creating a new precedent for other sectors of labor to follow in the process.[19] Reagan inaugurated this precedent by replacing the striking workers with non-union members, formalizing the then already weakening status of strikes as an effective tool for workers and expediting the decline of unions in the United States.[20] Though union strength had been waning for several years by this time, this new precedent crippled unions and labor movements by restricting their primary bargaining tool: disruption through striking. This again highlights the conflict within the NLRA. The Wagner Act enshrines workers right to strike—within defined parameters—but its ultimate intention is the continuation of status quo stability, ideas in near direct conflict with the intentionally disruptive nature of strikes.[21] And though the

[17] Franklin D. Roosevelt to Luther Steward, August 16, 1937.
[18] *Oath of Office, U.S. Code 5* (2022), § 3331, https://www.govinfo.gov/app/details/USCODE-2022-title5/USCODE-2022-title5-partIII-subpartB-chap33-subchapII-sec3331&collectionCode=USCODE.
[19] Joseph McCartin, "A Historian's Perspective on the PATCO Strike, Its Legacy, and Lessons," *Employee Responsibilities & Rights Journal* 18, no. 3 (September 2006): 215–17, https://doi.org/10.1007/s10672-006-9019-6.
[20] McCartin, "Historian's Perspective on the PATCO Strike," 216-17.
[21] Chamberlain, "Stabilization of Labor Relations?" 80-82.

PATCO workers were not included in the NLRA nor permitted to legally strike under the CSRA, the policy of support for workers was still disregarded in favor of a particularly harsh legalist position. How does one balance a policy of support for workers with goals of stability, security, and status quo—is it even possible? President Reagan's intervention in 1981 helps highlight this difficulty and provides insight to the rationale used to justify anti-labor action.

Legislative pathways and precedent made the termination of PATCO workers a relatively easy and logical process, and in fact much of the public initially supported President Reagan in his decision.[22] However, personal administrative objectives and special interests cannot be ignored either. Heightened security concerns resulting from the Cold War undoubtedly compelled Reagan to use a heavy hand when dealing with insubordination, as any sign of discord could be viewed as weakness.[23] This ties back to the oath of office for civil servants, an oath that Reagan quoted from when addressing the striking workers to remind them of their obligation to the United States.[24] Reagan also utilized his rhetorical skills to frame the PATCO strike as a moral dichotomy, as an anti-American attack by a greedy and overpowered union out to rob the American people by demanding bigger paychecks funded by taxpayer dollars.[25] National security concerns, especially as an anti-communist measure, and anti-"big government" policies championed throughout Reagan's administration combined during the PATCO strike, taking priority over the policy of support.[26] In addition to these concerns, there were worries about the viability of a continued strike by vital public sector employees responsible for ensuring safe air travel and transportation. In Reagan's case with the PATCO, broader concerns for stability and consistency in America intended by the NLRA took precedence over the policy of support for workers.

BARACK HUSSEIN OBAMA, THE AUTO INDUSTRY, & THE GREAT RECESSION

[22] McCartin, "Historian's Perspective on the PATCO Strike," 220.
[23] McCartin, "Historian's Perspective on the PATCO Strike," 219-220.
[24] Ronald Reagan, "Remarks and a Question-and-Answer Session With Reporters on the Air Traffic Controllers Strike," speech, August 3, 1981, National Archives, https://www.reaganlibrary.gov/archives/speech/remarks-and-question-and-answer-session-reporters-air-traffic-controllers-strike.
[25] Michael Round, *Grounded: Reagan and the PATCO Crash* (New York: Routledge, 2013), 88-89.
[26] Round, *Grounded,* 88-89.

Unlike Reagan and the PATCO, President Barack Obama's labor case study did involve workers protected by the NLRA. Obama entered his first presidential term as the greatest economic crisis since the Great Depression was beginning to reveal its worst effects. While campaigning for president, Obama earned favor with many unions for his pro-labor sentiments, who later urged the new president to capitalize on the unique circumstances of the Great Recession by pushing for new protective and supportive legislation for workers.[27] And while Obama routinely used executive orders and oriented policy around support for workers, he ultimately fell short of some lofty expectations that the Great Recession would yield another Renaissance for long lasting labor laws as in the 1930s.

Part of workers' perceived letdown comes from the Federal Government's intervention in America's auto industry during President Obama's administration. During the Great Recession, the U.S. auto industry was hit particularly hard. To help prevent the potentially catastrophic bankruptcy of major manufacturers GM and Chrysler, President Obama created the Presidential Task Force on the Auto Industry (Auto Task Force). The Auto Task Force helped evaluate restructuring plans for GM and Chrysler and administer bailout money.[28] The goal was to help keep these companies afloat during the bankruptcy process to save the U.S. auto industry—a major economic force in America. Federal intervention also sought to preserve thousands of jobs in these companies and indirectly save potential millions more connected peripherally to the American auto industry.[29] This policy was not a new one in America and resonated with the New Deal era Keynesian model of government deficit spending to drive economic progress to build and maintain stability. Precedented or not, unions and workers were also being squeezed to make concessions and sacrifices—especially the UAW, who had already made significant contract concessions to preserve their jobs before Obama took office.[30] These contract concessions were not repaid during Obama's administration even after the economy began to recover and were the focus of the recent 2023 UAW strikes. An outpouring of federal aid and assistance for car

[27] Ruth Milkman, "The World We Have Lost: U.S. Labor in the Obama Years," in *Looking Back on President Barack Obama's Legacy*, ed. Wilbur C. Rich (New York: Palgrave MacMillan, 2019), 116.
[28] Barack Obama, "Remarks by the President on the American Automotive Industry," The White House, March 30, 2009, https://obamawhitehouse.archives.gov/the-press-office/remarks-president-american-automotive-industry-33009.
[29] Barack Obama, "Remarks by the President on the Auto Industry," The White House, April 30, 2009, https://obamawhitehouse.archives.gov/video/On-Chrysler-and-the-Autos#transcript.
[30] Obama, "Remarks on the American Automotive Industry,"; Bill Vlasic, "U.A.W. Makes Concessions to Help Automakers," *The New York Times,* December 8, 2008, https://www.nytimes.com/2008/12/04/business/04auto.html.

corporations during the economic hardships of 2008, with no tangible concern for the eventual remediation of these union concessions, is where the policy of support for workers falls short. Once again, the NLRA's broader objectives of stability and status quo take precedence over the policy of support for workers.

Despite some shortcomings with the UAW contracts, Obama still managed to position himself as an overall ally to workers and unions.[31] In particular, Obama's job saving rescue of the auto industry positioned his administration well to achieve some of its goals related to 'green policies.' Obama promoted a range of 'green policies,' focusing on renewable energy and, significant to the auto industry, more fuel-efficient cars that emit fewer greenhouse gases like CO2. These goals were explicitly outlined in President Obama's "Climate Action Plan," wherein he dedicates the entire second section to "building a 21st-century transportation sector."[32] Conscious of these intersecting interests, the Autoworker Caravan (AWC), a lobby group for U.S. autoworkers, sought to encourage this investment into auto industry. The AWC wrote a letter to President Obama voicing their support of his green policy objectives, imploring him to invest in the auto industry for the purposes of achieving these environmental goals like reduced carbon emissions through increasing electric vehicle production and use.[33] The autoworkers boldly called for support for major overhauls and industrial reorientation towards more fuel and energy efficient cars and factories, citing the retooling of factories during WWII as proof of its feasibility, and noting the impact on job creation and preservation this effort would produce.[34] Many of these shared goals would be fulfilled by President Obama's Climate Action Plan, though not on quite the scale envisioned by the Autoworkers Caravan. Obama implemented standards on fuel efficiency and emissions for new model cars recommended by the EPA and DOT with the goal of reducing carbon emissions by 1 billion metric tons and oil consumption by 1.8 billion barrels.[35] These standards, among other policies and solutions involving the restructuring of GM and Chrysler, grew the auto industry after the Great Recession and created

[31] Milkman, "The World We Have Lost," 127-129.
[32] Barack Obama, "The President's Climate Action Plan," The White House, June 2013, https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf.
[33] Autoworker Caravan, "Autoworkers Write to the President*," NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy* 19, no. 4 (2010): 511-512, https://journals.sagepub.com/doi/abs/10.2190/NS.19.4.j.
[34] Autoworker Caravan, "Autoworkers Write to the President," 512.
[35] "President Obama's Climate Action Plan: 2nd Anniversary Progress Report," The White House, June 2015, 6-7, https://obamawhitehouse.archives.gov/sites/default/files/docs/cap_progress_report_final_w_cover.pdf.

new jobs in manufacturing 'green' cars.[36] In this case, both the president and workers were playing off each other's interests and attempting to make gains. This created a rare instance where the policy of support for workers aligned with the personal administrative goals of the president, incentivizing presidential action on labor's behalf not necessarily through status quo protection, but through an opportunity to fulfill administrative objectives. Fundamentally though, no disruption to the status quo took place during Obama's presidency—and no real lasting progress for unions occurred, quite the opposite given the fifteen years it took to finally begin renegotiating the UAW contract concessions.

President Obama's labor legacy is perhaps more complex than a surface-level analysis might suggest, as labor is more complex than a zero-sum game. Obama extended a policy of support for workers not to increase unionization or collective rights, but to maintain industrial jobs during a particularly turbulent economic crisis and to prevent further degradation of the American auto-industry. Obama's own administrative goals relating to green policies also benefited many workers partially as a side effect, and partially as the careful positioning of both the president and labor into a mutually beneficial arrangement. In many ways, Obama's labor policy closely aligned with the original intentions of the NLRA as a tool to combat economic crises—the Great Depression for FDR, the Great Recession for Obama.

JOSEPH ROBINETTE BIDEN, TASK FORCE SOLUTIONS, & RAILWAY STRIKERS

If Obama's proving ground was the Great Recession, then President Joe Biden's was the COVID-19 pandemic. Throughout his campaign and presidency, Biden has been highly vocal in his support of labor unions and workers, claiming the title of "most pro-worker and pro-union president in American history" for himself.[37] To be sure, strong words of support for unions and joining the picket lines of the UAW are not insignificant actions when coming from the U.S.

[36] Daniel J. Weiss and Jackie Weidman, "5 Ways the Obama Administration Revived the Auto Industry by Reducing Oil Use," Center for American Progress, August 27, 2012, https://www.americanprogress.org/article/5-ways-the-obama-administration-revived-the-auto-industry-by-reducing-oil-use/.

[37] "FACT SHEET: Ahead of Labor Day, Biden-Harris Administration Announces New Actions to Empower Workers— Building on the President's Historic Support for Workers and Unions," The White House, September 1, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/01/fact-sheet-ahead-of-labor-day-biden-harris-administration-announces-new-actions-to-empower-workers-building-on-the-presidents-historic-support-for-workers-and-unions/.

president.[38] But it is legislation and policy impact that ultimately matter. Biden's EO 14025 identified the failing of past presidents and the federal government to implement the full policy of support for workers prescribed by the NLRA, and while his actions mostly reflected this support, there were still instances where status quo protection outweighed all else.

The Task Force on Worker Organizing and Empowerment (Task Force) compiled a list of recommendations that fell within the power of the executive and especially recognized the need to reform the labor relations of federal employees. As mentioned earlier, both FDR and Reagan held federal and private workers separate, claiming that the typical union structure and practices like striking violate the oath of office taken by civil servants. Biden, however, appears to depart from Reagan and FDR on the subject of federal workers.

In the Task Force's report to President Biden, one of the primary recommendations was that the federal government should first implement a policy of support for federal workers and civil service unions, acting as a "model employer."[39] The goal here is that by supporting its own workers and modeling a policy of support, the private sector will endeavor to replicate the same systems. The report even explicitly references Reagan and PATCO, noting it as a significant instance of government failure to uphold the policy of support for worker organizing and collective bargaining, and as an example of 'what not to do' as a model employer.[40] The next recommendation the Task Force makes is an educational and awareness program for employees. This recommendation instructs entities like the Department of Labor to disseminate information about workers' rights to all employees in an attempt to demystify some of the often-confusing legislation and ensure all employees are fully aware of their rights, including the process and advantages of unionization.[41] The final recommendation is on ensuring existing pro-worker and pro-union laws are enforced—part of this effort includes a policy suggestion stipulating the federal government take better precautions about hiring outside contractors that are anti-union or providing grants to businesses or industries that fund anti-union campaigns.[42] These were the overarching categories for the Task Force's policy recommendations, but the Task Force made a total of 76 recommendations, all of which were approved by President Biden for implementation

[38] Erica L. Green and Katie Rogers, "Biden Joins Autoworkers on Picket Line in Michigan," *The New York Times,* September 26, 2023. https://www.nytimes.com/2023/09/26/us/politics/biden-uaw-strike-picket-michigan.html.
[39] Harris and Walsh, *Report to the President*, 1, 16.
[40] Harris and Walsh, *Report to the President*, 3.
[41] Ibid, 4-5, 23.
[42] Ibid, 5, 27.

in February 2022.[43] In their report on the status and efficacy of these policies, the Task Force noted major increases in union membership within the Federal Government, the number of federal employees in unions increased by 20%, or 80,000 new federal union members, in just one year.[44] Meanwhile in the private sector "overall union membership grew by 273,000 in 2022," clearly showing the efficacy of the Task Force's policies and "Know Your Rights" campaigns.[45]

This progress from past attitudes of the Federal Government regarding labor is a welcome change, but might there also be other administrative goals or objectives that are being achieved through the realm of labor and the expansion of workers' rights? Part of President Biden's early administrative objectives was finding ways to combat job loss suffered during the COVID-19 pandemic, and one of the ways the Biden administration devised to help create more, and better, jobs was to encourage union membership.[46] Biden's "American Jobs Plan" highlights the unique opportunity presented by the pandemic not merely to return to the way things were pre-pandemic, but to greatly improve multiple areas in the United States that were quickly falling behind compared to other nations.[47] Areas like infrastructure require massive investment and improvement to bring them up to par, and the American Jobs Plan helped create millions of jobs to achieve these goals.[48] Biden also sees value in unions as instruments of democracy, ideas outlined in his "Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally" in which he committed to a global policy of support for workers in all nations where the United States has sufficient diplomatic ties.[49] This idea of unions as democracy inspiring institutions is especially interesting from a hegemonic perspective, and in the context of the January 6, 2021, insurrection at the U.S. Capitol—in this light, Biden would be motivated to restore faith in democratic institutions to avoid a reprisal of the insurrection that attempted to block his confirmation as president.

[43] "The White House Task Force on Worker Organizing and Empowerment: Update on Implementation of Approved Actions," The White House, March 17, 2023, https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/17/the-white-house-task-force-on-worker-organizing-and-empowermentupdate-on-implementation-of-approved-actions/.
[44] The White House, "Update on Implementation of Approved Actions."
[45] Ibid.
[46] "FACT SHEET: The American Jobs Plan," The White House, March 31, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/.
[47] The White House, "The American Jobs Plan."
[48] Ibid.
[49] "Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally," The White House, November 16, 2023, https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/16/memorandum-on-advancing-worker-empowerment-rights-and-high-labor-standards-globally/.

However, despite strong language of support for unions and notably successful efforts to increase unionization, Biden's policy of support can only extend so far before encountering the reality of "the greater good," as evidenced by his controversial curtailing of the rail workers strike in November 2022. The railway workers were planning to strike after bargains failed to produce paid sick leave for the workers. In a statement to Congress, Biden reaffirmed his commitment to workers, but recognized the greater potential for harm if a strike of railway workers were to occur.[50] Biden stated:

> But at this critical moment for our economy, in the holiday season, we cannot let our strongly held conviction for better outcomes for workers deny workers the benefits of the bargain they reached, and hurl this nation into a devastating rail freight shutdown. Congress has the power to adopt the agreement and prevent a shutdown. It should set aside politics and partisan division and deliver for the American people. Congress should get this bill to my desk well in advance of December 9th so we can avoid disruption.[51]

Here, Biden very clearly highlights the tension within the NLRA and federal labor law, the commitment to supporting workers often conflicts with the greater good. In this instance, permitting the rail workers to strike and fight for their sick days would have resulted in catastrophic economic losses, even the potential loss of up to 765,000 jobs within the first two weeks of such a gridlocking strike.[52] Even in President Biden's administration, the most "pro-worker president in American history," there are 'discrepancies' in the policy of support for workers.[53]

CONCLUSION

The Wagner Act has ensured its longevity by providing the framework necessary to maintain a stable and secure status quo in America through the expansion and protection of specific workers' rights to maintain uninterrupted and productive industry and business. Though the policy of support for workers is not upheld with consistency, this is an intentional function of the act. It was the intent of the act to strike a well-tempered balance between a policy of support

[50] Joe Biden, "Statement from President Joe Biden on Averting a Rail Shutdown," The White House, November 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/28/statement-from-president-joe-biden-on-averting-a-rail-shutdown/.
[51] Biden, "Averting a Rail Shutdown."
[52] Ibid.
[53] The White House, "Building on the President's Historic Support for Workers and Unions."

for workers and the maintenance of a stable status quo that benefits the broader United States. Unique circumstances create the discrepancies explored here, as unique situations might require a different approach or level of support for workers to achieve stability—from outright anti-worker action to heightened empowerment of workers. In addition to status quo protection, unions provide opportunities to meet unique administrative goals or address the concerns of presidents, potentially incentivizing a stronger policy of support from presidents when they foresee a specific advantage in doing so.

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Part Two

Foreign Policy & National Security

DEMOCRATIC PEACE THEORY AND ITS APPLICATION: AN ANALYSIS OF U.S. FOREIGN POLICY IN THE MIDDLE EAST

AAKRITI DASGUPTA
ESADE

The triumph of the United States over the Cold War led to the establishment of Pax Americana, a global order anchored by American might and ideals. The objective is to decipher the underlying logic of the Democratic Peace Theory and evaluate how it validates certain foreign policy maneuvers. The case study of Iraq 2003 showcases the translation of DPT notions into tangible foreign policy decisions. While the classical philosophical foundation of liberal democracy could be seen as stabilizing, peaceful, and altruistic, its proliferation to the political realm, often employing the use of force or imposition, leads to unintended repercussions that are not inherently peaceful. This essay offers a critical approach to the notion of Democratic Peace Theory by analyzing its implementation in the Middle East.

INTRODUCTION

The focus of this paper is the application of Democratic Peace Theory (DPT) in understanding the intricacies of U.S. foreign policy in the Middle East (ME). The main argument centers on the relevance of DPT in comprehending the evolving political landscapes in the region and its potential impact on global peace and security. The chosen DPT offers a renowned theoretical lens to study international relations (IR) as it links the state type to foreign policy decision-making (FPDM).[1] Against the backdrop of a dynamic and changing global political arena—characterized by the rise of new economic powerhouses and influential market actors—this paper aims to reassess a prominent I.R. theory to better understand contemporary geopolitical dynamics. Also, from a socio-cultural perspective, many new rising powers are non-Western and carry varied institutional backgrounds. Hence, taking into account past foreign policy decisions allows us to examine the complex interplay of institutional, cultural, and economic factors that shape diplomatic strategies among states.

Given the dynamic nature of international relations and the shifting paradigms across various global regions, this research is particularly timely. Furthermore, the surge in potential conflicts across multiple regions in the past decade demands a deeper examination of the interplay between institutional frameworks, particularly democratic systems, and the expectation of maintaining peace. This heightened risk underscores the importance of

[1] Laura Neack, *Studying Foreign Policy Comparatively: Cases and Analysis,* 4th ed. (Lanham, Maryland: Rowman & Littlefield, 2019), 77-95.

understanding how different political structures influence the likelihood of peaceful outcomes in international relations.

The decision to narrow the focus to the Middle East stems from its historical institutional complexity, cultural differences, and strategic and economic importance in relation to the United States. These three facets directly relate to the core causal links posited by Doyle, one of the main proponents of DPT, enabling the link between democracies to peace, stating: "Republican representation, an ideological commitment to fundamental human rights, and transnational interdependence are the three causal mechanisms of the explanation."[2] Thus, the complexities of ME regarding a different yet interesting political, cultural and economic background, makes it a fitting focal region to explore DPT.

Moreover, characterized by both cooperation and conflict, U.S.-ME relations are characterized by duality, thus there is much to glean from observing maneuvers that shape regional stability and security in the ME. This relationship is pivotal for evaluating broader global trends, including democratization, energy security, and the balance of power in international politics. This study offers scholars and policymakers valuable insight into the intricacies of U.S. foreign policy in one of the world's most volatile regions.

METHODS

The chosen methodology is a rigorous qualitative one that analyzes the U.S. government's historical approach to foreign policy in the ME, integrating DPT through the analysis of the case study of the 2003 invasion of Iraq.[3] Considering the extensive research on the topic, the ensuing literature review will concisely spotlight DPT arguments relevant to the analysis of U.S. foreign policy in the ME. Firstly, a literature review highlighting the conceptual understanding of democracy and peace will be taken into account. This includes the causal methods relating both notions explained using the main proponents of DPT. Furthermore, the critical approach to this theoretical analysis will be showcased through the analysis of key events of the 2003 invasion of Iraq.

This way, the process tracing of key questions to be addressed includes: (1) the rationale behind the decision to launch the invasion, (2) the tactics employed during the intervention, and (3) the anticipated and realized goals and outcomes. Examining these

[2] Michael W. Doyle, "Three Pillars of the Liberal Peace," *The American Political Science Review* 99, no. 3 (September 2005): 463, http://www.jstor.org/stable/30038953.
[3] John Gerring, "What Is a Case Study and What Is It Good For?" *The American Political Science Review* 98, no. 2 (May 2004): 341–54, http://www.jstor.org/stable/4145316.

sequential stages enables connecting the main critiques surrounding the application of DPT with the stages before, during, and after belligerence. By understanding the mechanisms behind the application of DPT in this case study, the aim is to draw conclusions on foreign policy decision-making processes rather than identifying the causal effects of this theory.

Within these points, the main qualitative research choices include analyzing presidential rhetoric, using rhetoric frequency analysis, and examining congressional decisions, such as defense strategies and policy priorities, as applied to the case study of interest. Utilizing frequency analysis to examine specific diplomatic actions or policy initiatives aligned with democratic peace principles also enables a quantitative evaluation in social science research. This systematic approach contributes to the empirical foundation of this research, providing a more rigorous and objective basis for the analysis of U.S. foreign policy in the region.[4]

The Iraqi case study also contributes to a larger community, representing a significant portion of the ME. The analytical methods displayed in this paper show how Iraq constructed a tangible target of the "enemy" of the United States, serving its stark political and cultural contrasts to create a generalized threat which allowed multiple states to be categorized similarly. Consequently, an expected finding is the formation of an imposed stereotypical collective identity condensed into the figure of the "Other," facilitating the application of U.S. foreign policy uniformly across the expansive ME region.

This paper seeks to provide comprehensive answers to these questions by applying DPT arguments and critiques, augmented by theoretical tools from foreign policy analysis. This research aims to contribute to a deeper understanding of the role of democratic principles in shaping US foreign policy decisions in the ME and their broader implications for global peace and security.

CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW

The origins of DPT can be attributed to Immanuel Kant's Perpetual Peace, which establishes the philosophical groundwork for the theory. Kant invokes the key term "universal hospitality," which applies to all states despite their political organization. Signifying "the right of strangers not to be treated with hostility," this notion is theoretically

[4] Ido Oren and Ty Solomon, "WMD, WMD, WMD: Securitisation through Ritualised Incantation of Ambiguous Phrases," *Review of International Studies* 41, no. 2 (April 2015): 313–36, http://www.jstor.org/stable/24564264.

qualified for attaining the objective of "continual progress towards perpetual peace."[5] In practice, traditional IR has predominantly been viewed through a realist lens, which emphasizes the inherent enmity among states.

While the differences between classical and modern forms of liberalism are ever present, both advocate for autonomy despite it being interpreted differently. The distortion of the concept of "autonomy" and its appropriation to rationalize the enhancement of the United States as a solitary actor on the global stage, especially post-Cold War, has diverted U.S. policy priorities from the ultimate objective of global peace. Instead, it has shifted the focus towards a self-constructed notion of U.S. peace and security as the Western hegemon. Although Kant does not explicitly reference democracies, he promotes three primary causal mechanisms linking liberal institutional organization with peace. Given the disputed interpretations of liberalism and democracy, considering the realm of DPT scholarship and for the purpose of this assessment, it is essential within a democracy to prioritize three fundamental components: representativeness, accountability, and respect for individual rights. These aspects match the causal mechanisms aforementioned by Doyle. However, it is noteworthy that the aspect of economic interdependence, even though it is not explicit as a democratic principle, naturally follows as a result of the credibility and accountability of these states. Partners trust and are able to predict stable trade relations with liberal systems.[6]

Over the years, several scholars refined the notion of perpetual peace, ultimately culminating the theory in simple terms: democracies are less inclined to engage in conflicts due to their inherent political nature. This anticipation stems from the cultural and domestic institutional frameworks within democratic nations. By analyzing normative and institutional setups, one can further explore this concept. Consequently, if democracies do indeed demonstrate a decreased likelihood of conflict, an increase in the global number of democratic states would theoretically contribute to enhanced international peace.[7] This dangerous association has prompted the most influential democracies, notably Western states, to assert an almost moral obligation to impose democratic political and economic systems abroad under the pretext of advancing peace. Utilizing frequency analysis of certain diplomatic actions or policy initiatives aligned with democratic peace principles can provide

[5] Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in *Kant: Political Writings*, ed. H. Reiss, trans. H. B. Nisbet, (New York, NY: Cambridge University Press, 1991): 82-85, https://libinst.cz/wp-content/uploads/2022/06/kant_towardperpetualpeacebook.pdf.
[6] Doyle, "Three Pillars of the Liberal Peace."
[7] Bruce Russett et al., *Grasping the Democratic Peace: Principles for a Post-Cold War World* (Princeton University Press, 1993), https://doi.org/10.2307/j.ctt7rqf6.

a quantitative assessment in social science research, contributing to a more nuanced understanding of these complex dynamics. Analyzing various perspectives on the evolution of DPT is crucial. By transforming democratic values and expectations from political actors, drawing from Kant's perpetual peace theory, scholars create DPT, thereby linking these values to global peace.

One perspective of DPT, known as the monadic theory, suggests that "democracies are more peaceful in their international relations," indicating that democracies exhibit greater peacefulness compared to other regime types, not just in their interactions with other democracies but within their culture of acting within the international community.[8] Research on the "democratic peace within" phenomenon sheds light on the complex dynamics between domestic politics, governance structures, and the propensity for civil strife within democratic societies. To enrich the discourse on the subject, the first section of this paper will analyze the role of democratic norms, institutions, and processes in averting conflict escalation and facilitating diplomatic resolutions.[9]

On the other hand, the dyadic perspective of DPT focuses on democratic states' relations with other states, asserting that democracies refrain from engaging in conflicts with each other. Pioneers of DPT, including Michael Doyle and Bruce Russett, conducted quantitative studies to illustrate a statistical correlation between democracy and peace. Their research indicated that democracies are less inclined to participate in interstate conflicts or initiate wars with each other compared to non-democratic regimes. These empirical findings lent support to Kant's hypothesis and enhanced the credibility of DPT within the academic community.

Democratic Peace's (DP) moral end goal revolves around enhancing human autonomy, thereby fostering greater peace. By promoting democratic governance, DP aims to empower individuals to participate in decision-making processes that affect their lives, ensuring their voices are heard and individual rights are protected. There are mechanisms for citizens to express dissent peacefully, hold leaders accountable, and contribute to shaping policies that enable this end goal. This emphasis on autonomy and individual agency within democratic societies not only enhances personal freedoms but also promotes societal stability and reduces the likelihood of conflicts. To evaluate whether these foundational principles are

[8] Christopher Hobson, "Towards a Critical Theory of Democratic Peace," *Review of International Studies* 37, no. 4 (October 2011): 1903–22, http://www.jstor.org/stable/23025581.
[9] Russett et al., *Grasping the Democratic Peace.*

realized in foreign policy decisions through the lens of DPT, we must remain cautious of the predominant risk associated with exporting this theory: liberal imperialism.[10] Liberal imperialism involves dominant powers imposing democratic ideals and values onto other nations, often through force or coercion, under the pretext of promoting peace and democracy. This multifaceted phenomenon requires thorough examination and exploration across its various dimensions in the ensuing critiques, given its significant ethical, political, and social implications on a global scale.

While the theory has its limitations and critics, its enduring relevance underscores its significance as a framework for understanding and promoting peace in an ever-changing world. Looking ahead, the ongoing evolution of DPT will likely involve interdisciplinary collaboration and engagement with real-world developments in global politics. Further evolution may continue to explore new avenues for research, including the impact of emerging technologies, climate change, and globalization on the prospects for peace among democracies and non-democracies alike.

THE NORMS AND INSTITUTIONAL STRUCTURES OF DEMOCRACIES REDUCING THE PROBABILITY OF CONFLICT

DPT displays a causal theory linking the institutional political system of a state to determine war or peace using normative and institutional logic as predominant causal mechanisms which mitigate conflict escalation and facilitate diplomatic resolution.[11]

Firstly, the normative logic suggests democracies cultivate elites to adhere to set democratic norms and culture, fostering an expectation of peace rooted in mutual trust and respect among like-minded regimes. This facilitates the resolution of conflicts in a peaceful manner, reinforcing the belief in the justness of democratic values. Saddam Hussein's regime, typified by fear, opacity, and defiance in the face of sanctions, positioned him as a natural enemy and a specific target: a non-democratic force endangering global peace. In this context, relations between democracies and non-democracies are characterized by mistrust and hostility, thereby viewing non-democratic states as unpredictable and unjust. In such scenarios, war is often perceived as a means of liberation and defense against perceived threats, highlighting the contrasting dynamics between democratic and non-democratic

[10] Christopher Layne, "Kant or Cant: The Myth of the Democratic Peace," *International Security* 19, no. 2 (1994): 6, https://doi.org/10.2307/2539195.
[11] Sebastian Rosato, "The Flawed Logic of Democratic Peace Theory," *The American Political Science Review* 97, no. 4 (November 2003): 585–602, http://www.jstor.org/stable/3593025.

interactions. The normalization of engaging in conflict under the pretext of national security, as Andrew Bacevich argues, has rendered the American military "overextended" and in a state of "perpetual war," rendering the core goal of peace and, therefore, a pacifist approach to IR completely out of the question in the United States.[12]

Furthermore, taking into account the institutional constraints of DPT, accountability mechanisms within democracies often act as a deterrent to war, as the social and economic costs of war make it unpopular. This diffusion of responsibility in foreign policy decision-making among the populace and different political structures supposedly slows down decision-making processes involving multiple parties. However, accountability mechanisms may prove ineffective in dealing with non-democratic actors, as peaceful concessions often fail to yield tangible results due to the inability to negotiate effectively. As Russet puts forward, nondemocratic states "take[s] advantage of the inherent moderation of democracies."[13] In contrast, war, as a measurable last resort, allows for clearer outcomes and public assurance of democratic objectives, such as the elimination of specific threats.

The evidence of decision-making leading to the invasion of Iraq, despite the absence of nuclear WMD, can be linked to the institutional argument that despite public opposition and the lack of clear evidence, the decision unit proceeded with the invasion due to various factors, including the context of 9/11 and the invasion of Afghanistan. The role of cognitive biases, wishful rhetoric of "freeing/liberating" Iraqi citizens, and groupthink syndrome contributed to the decision-making process.[14] Additionally, the information asymmetry and lack of trust further complicated the situation. The notion of preemptive self-defense invoked by Bush justified the invasion. Therefore, while accountability within democracies may deter war to some extent, it may not always be effective in preventing military interventions in cases involving non-democratic actors.

Examining the causal logic leading to the decision to invade Iraq, certain scholars find this not to be the case when applying these norms in the realm of foreign policy. Faced with uncertainty, the decision maker, in this case, the Bush administration, identified and constructed a foreign policy based on selective information that confirmed what they wanted to believe, despite contrary evidence from UNSC resolutions and inspection reports regarding

[12] Andrew Bacevich, "Untangling truth and fiction in an age of perpetual war," *Harper's Magazine*, May 2016, .https://harpers.org/archive/2016/05/american-imperium/.

[13] Bruce Russett, Christopher Layne, David E. Spiro, and Michael W. Doyle, "The Democratic Peace," *International Security* 19, no. 4 (1995): 164–84, https://doi.org/10.2307/2539124.

[14] Alex Mintz and Karl DeRouen, *Understanding Foreign Policy Decision Making* (Cambridge University Press, 2010): 41-42.

Iraq's possession of nuclear weapons of mass destruction (WMD). The Bush Administration drew generalizations and analogies between the situation in Afghanistan (tackling Al Qaeda) and Iraq, satisfying the need to project U.S. power by attacking a precise target. These events highlight how the application of DPT as an "empirical law" can overlook crucial objective factors in foreign policy decision-making.[15] While DPT offers valuable insights into the correlation between democracy and peace, its rigid application disregards the nuanced complexities of cultural differences, contextual variations, and threat calculations in IR. Treating DPT as an absolute law risks oversimplifying the essential factors shaping diplomatic interactions between states. Therefore, a more holistic approach is necessary, one that acknowledges the multifaceted nature of global politics.

In challenging the traditional logic, Rosato proposes that democratic norms alone, such as non-violence and negotiation, may not be the primary drivers of peace. Instead, he emphasizes factors such as shared similarities between democratic countries and fostering "trust and respect based on shared values," which contribute to the expectation of peace. Additionally, Rosato highlights the disregard for the varying stages of democratization that states may find themselves in. This section aims to bridge the foreign policy decision-making process to DPT, examining the role of democratic norms and institutional constraints.

As a state perceives itself to be increasingly threatened, it tends to gravitate towards more centralized domestic frameworks. The aftermath of 9/11, fueled by threat rhetoric from Bush and amplified by the media, compelled both the public and policymakers in the United States to transition towards a "national security state." While still maintaining democratic principles, this shift empowered the state significantly in defense and foreign policy matters, solidifying the dominance of the executive branch. Layne questions the democratic nature of the decision-making process and further contends that despite shared norms and institutional constraints within democracies, understanding the true motivations of decision-makers is challenging. This complexity arises from the influence of power and other strategic interests, which are central in realist decision-making processes. From the realist perspective, regardless of governmental structure, the nature of human fallibility is ever-present. Thus, while democratic institutions and norms may work to mitigate conflicts, the extent to which they align with the monadic argument of DPT remains subject to scrutiny.[16]

[15] Paola Conconi, Nicolas Sahuguet, and Maurizio Zanardi, "Democratic Peace and Electoral Accountability," *Journal of the European Economic Association* 12, no. 4 (August 2014): 997, https://www.jstor.org/stable/90023404.

[16] Russett et al., G*rasping Democratic Peace*; Christopher Layne, "Kant or Cant: The Myth of the Democratic Peace," *International Security* 19, no. 2 (1994): 6.

DYADIC VISION ON DPT: THE MEANS-ENDS DILEMMA, GLOBAL PEACE THROUGH INCREASED DEMOCRACIES

Having seen the decision-making process on whether to intervene or not in other states' affairs in order to promote democracy, the consequent step is to examine how the goal of global peace is supposedly achieved and what are the factors in play. The dyadic vision of DPT entails the means-ends dilemma inherent in the pursuit of "the growth of liberal democracy, a more peaceful and progressive international order."[17] Additionally, this perspective scrutinizes the potential implications of democratization efforts on non-democratic states and the broader geopolitical landscape. Ultimately, the dyadic vision offers insights into the intricacies of achieving global peace through the spread of democracy, highlighting the need for nuanced approaches that consider both the means and ends of democratic peacebuilding efforts.

Beginning by analyzing the State of the Union serves to inform, influence, and shape the administration's policy objectives, thereby creating specific expectations among its audience, particularly the citizens of the democratic United States. By examining *Figure 1,* it is evident that the national narrative fosters competition, crucial for promoting a collective identity.[18] In this context, competition with non-democratic entities, labeled as the "enemy" of the United States, reinforces public support for the state's decisions, ensuring stability and, to some extent, diminishing accountability for monitoring or evaluating such foreign policy decisions. The results of this analysis show the reinforcement of a bipolar notion in which we can see how the most frequented terms relating to the United States include "people, security, nation, freedom, government" against the opposing semantic field referencing "terrorists, Iraqi, terror, weapons" with regards to the ME.

Taking into account the National Defense Strategy 2002, democracy was simply pitted against "enemies of freedom, of civilization," simplifying the implementation of FP by impairing any founded contestation to such notions due to the limited information

[17] Christopher Hobson, "Towards a Critical Theory of Democratic Peace," *Review of International Studies* 37, no. 4 (October 2011): 1903–22, http://www.jstor.org/stable/23025581; Mintz, *Understanding Foreign Policy Decision Making,* 138.

[18] See Appendix: Figure 1; Eric Jackson, "The Influence of U.S. Foreign Policy Rhetoric on the Limitation and Proliferation of Domestic Terrorism," *The Fellows Review* (2023): 144, https://static1.squarespace.com/static/5cb0a1b1d86cc932778ab82b/t/64c8285798072038da6654a/1690839140391/2022-2023+Fellows+Review.pdf.

presented.[19] By portraying the government's actions as a moral imperative, such rhetoric plays on millenarism, tribalism, and hatred to achieve through any means, even if these are misleading or disregard main principles of liberal peace such as "universal hospitality." While intervention in Iraq seemingly targeted the nuclear advances and Saddam as a rogue leader, such generic terms contribute to a misleading and easily exportable and derogatory image of the ME and, again, encourage a state of perpetual war.[20] Additionally, we find justifications that blatantly contradict and bend international law to align with the U.S. hegemonic perspective. The justification of the use of force against a "rogue state," with explicit reference to Iraq in this case, despite acknowledging that force should not be used indiscriminately to preempt emerging threats, emphasizes the constructed imperative of military action instead of resorting to negotiations or other peaceful dispute resolution methods.[21]

The main novelty of information technology allowed the War on Terror, in comparison to prior belligerent engagements, to be aimed at individuals, not only states. In the words of President Bush, it was an "international manhunt" rather than the military capture of territory.[22] The nature of conflict is more precise and rapid due to the heightened use of intelligence agencies, surveillance capacity, and cyber capabilities. The opaque automated systems, such as drones to capture HVTs, not only portray the assertion of hard power but also limit accountability mechanisms and show disregard for individual rights, which are fundamental in democratic culture.[23] These means also portray the growing importance of quantitative methods in determining the course of warfare trampling upon the traditional methods based on cultural, social, and personal knowledge. In this sense, the contextual analysis of warfare disappears, causing a decontextualization of the whole purpose of the violence and distancing us even further from the supposed peaceful target. These methods also highlight the increasing significance of quantitative approaches in shaping the direction of warfare, overshadowing traditional methods rooted in cultural, social, and

[19] "The National Security Strategy of the United States of America," U.S. Department of State, September 2002, https://2009-2017.state.gov/documents/organization/63562.pdf.
[20] Andrew Bacevich, "Untangling truth and fiction in an age of perpetual war," *Harper's Magazine*, May 2016, https://harpers.org/archive/2016/05/american-imperium/.
[21] U.S. Department of State, "The National Security Strategy of the United States of America."
[22] Mary Kaldor, *Global Security Cultures,* (Cambridge, UK: Polity Press, 2018): 132-133.
[23] Kaldor, *Global Security Cultures*, 140; Doyle, "Three Pillars of the Liberal Peace," 463-66.

individual insights.[24] Consequently, the contextual understanding of warfare diminishes, leading to a decontextualization of the violence.[25]

By grouping all differing systems from the Western hegemonic establishment in need of urgent democratic reform, the implementation of the DPT treating states as identical unitary actors creates an expectation of similar objectives and outcomes. By analyzing the portrayal of the ME, the oversimplified view strips the region of its history, culture, nuances, and identities, leaving no room for a critical analysis of each nation. Instead, these factors are disregarded and replaced by the creation of an imposed stereotypical collective identity reduced to the figure of the "Other."[26] By using the ME as a simple camp for the experimentation of the democratic recipe, the United States simply chose to ignore the historical and nuanced reasons for resentment toward the establishment of an Occidental Model.

In other words, instead of questioning U.S. foreign policy, the burden of the information asymmetries is skewed onto the external state. The disregard of differing institutional structures, the unwillingness to informedly foster a shared value system instead of imposing a set democratic one, and the hierarchical sense of self of the West show how the foundations of U.S. foreign policy aiming to impart liberal democracy directly contradict the notions of political freedom, freedom of development, and individual freedoms. This inconsistency prompts the following hypothesis: an inquiry into the complex dynamics between democratic ideals and the real-world practices of applying DPT. Does the utilization of DPT through perceived illiberal means inadvertently contradict and undermine the fundamental principles of democracy? This question underscores the necessity of a more nuanced understanding of DPT's application in contemporary geopolitics.

ANTICIPATING AND ASSESSING DPT APPLICATION: NAVIGATING EXPECTATIONS, OUTCOMES, AND THE TRANSITION OF NON-DEMOCRACIES FOR GLOBAL PEACE

[24] Kaldor, *Global Security Cultures*, 132-133.
[25] Gabriel Garroum, "Israel i Gaza: les claus per entendre la guerra," interview by Els Matins, *3CAT*, October 9, 2023, audio, 13:20, https://www.ccma.cat/3cat/israel-i-gaza-les-claus-per-entendre-la-guerra/video/6244034/.
[26] Bichara Khader, *El mundo árabe explicado a Europa: historia, imaginario, cultura, política, economía, geopolítica,* (Icaria, 2010): 164.

Finally, this section moves on to analyze the efficiency of a top-down approach to spread democracy in the ME.[27] Assessing the transition from non-democracies to democracies under the influence of DPT and its impact on global peace raises significant considerations, particularly regarding the approach to peacebuilding.

Roland Paris introduces the distinction between exported and organic peacebuilding strategies, as it is important to consider the dynamics of transitioning to democracy within the framework of DPT. The first involves external actors, often democratic states, actively promoting and imposing democratic values and institutions onto non-democratic societies in an effort to foster peace. Conversely, organic peacebuilding entails the internal development and evolution of democratic institutions and norms within a society, driven primarily by domestic actors. Paris highlights the potential drawbacks of exported peacebuilding, including the risk of resistance and backlash from the target society, as well as the challenge of sustaining peace in the absence of genuine local buy-in. Namely, this author condemns "market democracy as a remedy for civil conflict without adequately anticipating, or taking action to limit, the inherently destabilizing side effects of this remedy."[28] On the other hand, organic peacebuilding is argued to be more sustainable and effective in fostering long-term peace, as it emerges from within the society itself, rooted in its unique socio-political context and driven by indigenous actors.

Regarding the Iraq invasion of 2003, firstly, the proliferation of sectarianism and polarization, coupled with regional instability, underscores the challenges inherent in exporting democracy to societies with deep-seated social and political divisions, as seen in post-invasion Iraq, where sectarian violence escalated following the removal of Saddam Hussein's regime. These divisions exacerbated tensions and hindered the establishment of a stable democratic system, undermining long-term peacebuilding efforts in the region. Secondly, the pursuit of short-term strategies, such as military intervention and regime change, often leads to initial successes, as was perceived in the United States as "dazzling,"[29] but can result in long-term failures. The rapid victory of coalition forces in toppling Saddam's regime gave way to a protracted insurgency and civil unrest, highlighting the failure to adequately plan for the complexities of post-conflict reconstruction. Drawing back

[27] Saikal Amin and Albrecht Schnabel, *Democratization in the Middle East: Experiences Struggles Challenges,* (Tokyo: United Nations University Press. 2003), https://collections.unu.edu/eserv/UNU:2433/nLib9280810855.pdf.
[28] Roland Paris, "Peacebuilding and the Limits of Liberal Internationalism," *International Security* 22, no. 2 (1997): 56-57, https://doi.org/10.2307/2539367.
[29] Max Boot, "The New American Way of War," *Foreign Affairs* 82, no. 4 (2003): 42, https://doi.org/10.2307/20033648.

to the initial theoretical framework, the disregard for "the fragile political environment of a war-shattered state," in this case in Iraq, contributed to the creation of a security vacuum that allowed extremism to flourish, leading to further destabilization and violence.[30] In this case, it was caused by miscalculations in policy decisions, such as the consequences of de-Baathification and the disbandment of the Iraqi army.

Finally, attempts to install a new democratic system based on sectarianism and ethnic divides further highlight the cognitive limitations of exporting democracy, as witnessed in the ethno-sectarian power struggles that plagued post-invasion Iraq. Such approaches failed to account for the diverse socio-political dynamics within Iraqi society, exacerbating divisions and hindering efforts towards sustainable peace and democracy. Overall, the Iraq invasion serves as a cautionary tale, emphasizing the importance of adopting nuanced and context-specific approaches to democratic transition and peacebuilding in order to avoid exacerbating conflict and instability.

As certain scholars warned in the foundation DPT, we mustn't disregard the hegemonic interventionist perspective that marks the history of most Western democracies.[31] Hobson argues the abundant empirical support for DPT has led decision-makers to "operationalize democracy," leading to coercive democratization as a normalized response to threats which doesn't allow us to "properly engage in normative and purposive questions."[32] This involves viewing distant territories as subjects whose fate could be decided by distant administrators, leading to the construction of history from the dominant power's point of view. Despite this, the United States maintains a significant presence in the Arab and Muslim world, primarily to secure oil supplies and support Israel. This American perspective on the Arab world, highlighting prejudices and stereotypes perpetuated by the policymakers, is derived from the dismissal of Arab leaders who do not align with U.S. interests and the ongoing denial of Arab self-determination based on Orientalist views. The continued turmoil in the ME, alongside the advancing intervention of U.S. policy decisions, alliances, and presence in perpetuating what Kant and Doyle coined as 'liberal imperialism,' requires a change in perspective to fulfill the objectives of DPT.[33]

[30] Roland Paris, "Peacebuilding and the Limits of Liberal Internationalism," *International Security* 22, no. 2 (1997): 56-57, https://doi.org/10.2307/2539367.
[31] Doyle, "Three Pillars of the Liberal Peace," 463-66.
[32] Christopher Hobson, "Towards a Critical Theory of Democratic Peace," *Review of International Studies* 37, no. 4 (2011): 1921, http://www.jstor.org/stable/23025581.
[33] Edward Said, "The Imperial Gaze," *Los Angeles Times*, July 20, 2003, . https://www.latimes.com/archives/la-xpm-2003-jul-20-oe-said20-story.html.

CONCLUSION

In conclusion, the dynamics explored underscore the imperative to redefine common values to encompass non-democratic regimes and foster inclusive and united globalization, thus reducing potential conflicts. This thought-provoking question warrants further exploration to foster understanding and facilitate constructive engagement on a global scale.

Moreover, a critical inquiry into the DPT framework itself is essential, particularly regarding the role of state institutions in shaping foreign policy decision-making processes. By examining the pre-belligerent phase in light of the monadic facet of DPT, we can conclude that causal and institutional mechanisms were certainly present but did not apply in the field of foreign policy, as this field of politics is rather reactive and decision-making processes do not allow for the same level of public contestation, mainly given the information biases and other relevant factors. Furthermore, opposing government structures are not the only reason to engage in conflict. Instead, pacific democratic norms and culture can be undermined by complementary factors such as rhetoric, biases, and others, which seem to be the generic case for engagements in the ME. Considering the material tactics used in Iraq and how it reshaped contemporary warfare and even current migration trends. Normalizing pinpointing individuals soon spread to collectives, thereby ingraining several undesired prejudices that undermine individual rights and actively working against democratic peace.

Considering the context of this case study, in which the U.S. foreign policy decisions responded to seemingly unpredictable political actors and therefore an unmeasurable threat, the DPT notion that democracies tend to go to war with non-democracies holds true. Notwithstanding, the focus of this paper is not to verify the causal relation—it is rather to examine whether the FPDM is done through the lens of DPT or a different one. Ultimately, through its foreign policy decisions, the United States seeks to respond to exclusively national interests, in this case, the deterrence of any threat to the nation. For this reason, solidarity among nations and cooperation stemming from the notion of "universal hospitality" take a second stance. Therefore, even though the rhetoric used to justify the 2003 invasion invoked "liberation," the development of this conflict is clearly realist in the nature it was adopted, developed and concluded.

Further research on this topic can vary depending on the desired outcome. From a political and institutional standpoint in relation to the Middle East, the ongoing conflict in Gaza offers a rich subject for examination, particularly in analyzing the United States' unwavering support for Israel, despite conflicts with international law and instances of

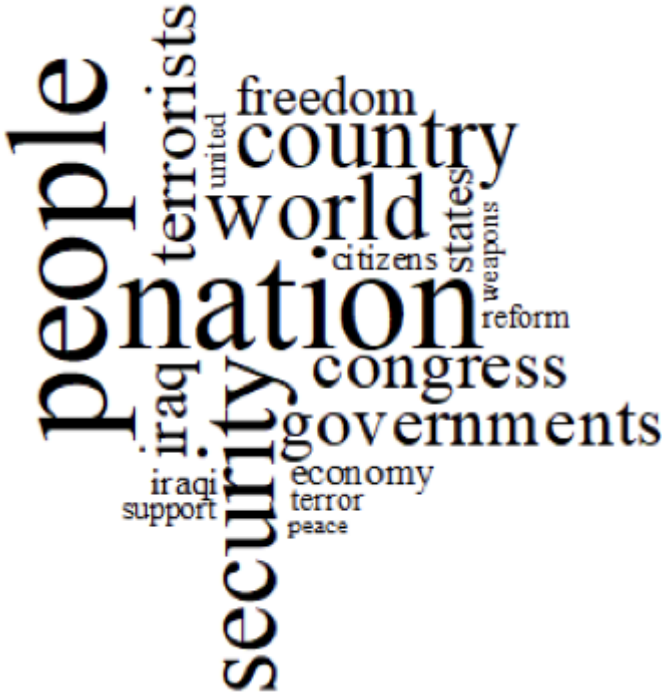
democratic backtracking, such as overriding UNSC resolutions and controversial judiciary reforms under Netanyahu. From a geo-economic and strategic perspective, closer ties with Morocco and Saudi Arabia, and the participation in the conflict in Yemen may also be subjects worthy of examination as they could be linked to proxy wars as normalized forms of conflictual engagement in current times. Interestingly, the United States maintains alliances and support for both non-democratic regimes and illiberal democracies, prompting a reexamination of democratic states' motivations in foreign policy. This inquiry aims to discern whether these states prioritize fostering relationships with fellow democracies or if economic interests hold greater sway in their decisions. By conciliating the inclination towards alliances with states perceived as inherently more desirable allies (regardless of strategic imperatives and regime type), alongside the prevailing skepticism towards non-democratic regimes as unpredictable and untrustworthy actors, could illuminate evolving paradigms in diplomatic relations.

Another comparative research question, in line with analyzing the potential for peace through economic integration, could be the growing role of commercial pacifism being advocated among non-democracies focusing on emerging economies. This research could explore how non-democracies contribute to peace, with a specific focus on BRICS nations. Examining the inclusion of Saudi Arabia and Iran in BRICS and China's role in mediating their relations could reveal insights into global peacebuilding efforts regardless of the institutional nature of these states.

Ultimately, as market forces, lobbying groups, and non-state actors increasingly influence decision-making processes, we could reassess the current relevance and potential limitations of DPT within the multifaceted landscape of IR by delving into these complexities through the study of extra-constitutional actors and their role in shaping foreign policy.

APPENDIX

Figure 1: Foreign policy-related word frequency of President George Bush, 2001-2008[34]



[34] Eric Jackson, "The Influence of U.S. Foreign Policy Rhetoric on the Limitation and Proliferation of Domestic Terrorism." *The Fellows Review* (2023): 144. https://static1.squarespace.com/static/5cb0a1b1d86cc932778ab82b/t/64c82857980727038da6654a/1690839140391/2022-2023+Fellows+Review.pdf.

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DISMANTLING DAYTON: PRESIDENTIAL PRIORITIES AND POLICY RECOMMENDATIONS

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On December 14, 1995, Alija Izetbegović, Franjo Tuđman, and Slobodan Milošević signed the U.S.-arbitrated Dayton Agreement, putting an end to the interethnic violence in Bosnia and establishing a new system of government. As a result, the presidency of Bosnia and Herzegovina is comprised of three members, each representing one of the major in-country ethnic groups—Bosniaks, Serbs, and Croats—and is overseen by the Office of the High Representative (OHR). The OHR, which is led by a non-local European official assisted by a U.S. deputy, and the presidential system have trapped the country in a cycle of poverty, unrest, and corruption. Informed by past and present presidential priorities, this paper recommends putting an end to the current mandate and will identify several foreign policy recommendations, considering analyses of potential repercussions, to best facilitate the stability and independence of Bosnia and Herzegovina. Ultimately, the Dayton Accords successfully paused the war in Bosnia at the expense of democratic consolidation. However, democratic consolidation is just what is needed to preserve U.S. interests in the region now, which will require an immediate adaptation of U.S. policy.

INTRODUCTION

This paper assesses the current-day relevancy of the strategic decision-making process behind the creation of the Dayton Accords, which put an end to the war in Bosnia in 1995 and are still in effect. Specifically, I evaluate whether or not those strategic priorities have been met through the examination of President Clinton's presidential papers. Furthermore, based on the results of this analysis, the paper will recommend new, more relevant policy guidelines regarding the Balkans in line with recent presidential administrations' national security priorities. The goal is to understand how U.S. foreign policy, as influenced by the presidential administration, can adapt to the changing geopolitical landscape within the specific context of stability in the Balkans and Eastern Europe. Ultimately, the Dayton Accords successfully paused the war in Bosnia at the expense of democratic consolidation. However, democratic consolidation is just what is needed to preserve U.S. interests in the region now, which will require an immediate adaptation of U.S. policy.

On December 14, 1995, Alija Izetbegović, Franjo Tuđman, and Slobodan Milošević signed the U.S.-arbitrated Dayton Agreement, putting an end to the interethnic violence in

Bosnia and establishing a new system of government. As a result, the current presidency of Bosnia and Herzegovina is comprised of three members, each representing one of the major in-country ethnic groups—Bosniaks, Serbs, and Croats—and is overseen by the Office of the High Representative (OHR). The OHR, which is led by a non-local European official assisted by a U.S. deputy, and the presidential system have trapped the country in a cycle of poverty, unrest, and corruption. The majority of scholars and reporters agree that the Dayton Agreement was only ever meant to be a temporary bandage to staunch the extreme interethnic bloodshed in Bosnia that began in 1992 and dragged on until 1995. Yet, almost three decades later, it is still in place despite the fact that violence has largely ceased. In 2003, Bosnia and Herzegovina (BiH) was identified as a potential European Union candidate. Thirteen years later, BiH formally requested to be considered for candidacy, but due to concerns about internal conflict and economic instability, the European Council did not grant this status until December 2022.[1] EU membership could facilitate BiH's independence from reliance on aid from the United States and other nations, but struggles to meet membership compliance criteria due to the aggression of the separatist government, Republika Srpska (RS), make it unlikely that this will happen any time soon.[2]

When Dayton was crafted, the United States' primary goal was to stop violence in the region, which it successfully managed to do via the reforms mentioned above. However, the understanding was that the Dayton Accords would only tide the government over until it could stand on its own two feet, but after twenty years without a permanent government, it is time to consider the possibility that the temporary solution has become a part of the permanent problem, preventing the development of any true stability. It is time for the United States to adapt its foreign policy regarding BiH, starting by working to gradually dismantle Dayton, including the OHR and the tri-presidential system, and replacing it with an entirely new constitution. This will come with major risks both for the United States (as I will demonstrate later) and BiH, with the Balkans being as volatile a region as it is. The United States can invest in and support this transition by banding together with EU allies to provide security forces to assuage tendencies to violence that may come from RS and also by improving Western relations with Belgrade at this

[1] "EU leaders grant Bosnia EU candidate status," *Reuters*, December 15, 2022, https://www.reuters.com/world/europe/eu-leaders-grant-bosnia-eu-candidate-status-2022-12-15/.
[2] "Bosnia and Herzegovina," European Council, January 4, 2024, https://www.consilium.europa.eu/en/policies/enlargement/bosnia-herzegovina/.

critical moment in time when primary Serbian ally, Russia, is distracted by its military campaign in Ukraine. The United States must not abandon BiH completely but rather implement new policies in conjunction with the European Commission that will help jumpstart BiH's path to independence. These efforts must be tempered by the lessons of failed United States nation-building efforts elsewhere.

The importance of this adaptation cannot be understated. Current instability in the region, particularly the renewed separatist efforts of the Republika Srpska, which recently and unconstitutionally celebrated the anniversary of its "national day" on January 9—the day that sparked the war in the 90s— threatens a renewal of bloody conflict.[3] The ongoing war in Ukraine exemplifies how ignoring longstanding ethnonationalist grievances can lead to unprecedented levels of violence and economic burdens on surrounding countries and allies. If there is a better system to promote stability—specified as a primary security goal by both President Clinton and President Biden—within the region, it must be considered.[4] In his 1994 NSS, President Clinton stated, "It is best to act early to prevent conflicts that we may later not be able to control."[5] Adapting will be less of a challenge than containing another war on the scale of that which is occurring in Ukraine.

Furthermore, as the primary arbitrator of the Dayton Accords, the United States has a responsibility to Bosnia-Herzegovina. In 1995, the goal was to see peace and stability emerge under the Dayton system, but this has not been achieved. The onus is not on the United States alone, however. Cooperation, described as "harness[ing] the positive effects of competition" by the Biden administration, is the best way forward to solve these issues.[6] If it is the current administration's policy to see a Europe that is united and peaceful, then Dayton is fundamentally at odds with stated objectives and should be reevaluated. While it is risky for the United States to become overinvolved, it is the opinion of this author that the United States must see its involvements through to the end. Abandonment of such issues could not only send a negative

[3] "Bosnian Serbs Mark 'National Day,' Defying Warnings From Sarajevo And The West," *Radio Free Europe Radio Liberty*, January 9, 2024, https://www.rferl.org/a/bosnia-herzegovina-republika-srpska-national-day/32767684.html.
[4] Bill Clinton, *National Security Strategy* (Washington, DC: White House, 1994): 2; Joseph Biden, *National Security Strategy* (Washington, DC: White House, 2022): 12.
[5] Clinton, *National Security Strategy*, 21.
[6] Biden, *National Security Strategy*, 27.

message to allies but could also signal to adversaries, such as the Bosnian Serbs, that the United States will no longer intervene.

In this paper, I will first provide the historical background leading to the war and the decision to create the Dayton Accords. I will then analyze primary source documents that explain the presidential priorities in the 1990s, comparing them to recent and current national security objectives. Following this, I will draw on previous research examining the success, or lack thereof, of the Dayton Accords. Lastly, I will extend these arguments to suggest a way forward for the United States via a policy recommendation at this crucial point of time in the region—namely, facilitating the transition to a new constitutional system. While Dayton achieved its goal of halting violence in the region, it has since outlived its purpose and is now working contradictory to U.S. security interests as identified by recent presidential administrations.

BACKGROUND

On October 18, 1990, the Central Intelligence Agency issued National Intelligence Estimate (NIE) 15-90: Yugoslavia Transformed.[7] NIE 15-90 warned that the Socialist Federal Republic of Yugoslavia would inevitably dissolve within two years.[8] Neither economic reform nor Western intervention could "stave off the breakup," which would occur via "intractable and bitter" violence.[9] Many of this document's predictions came true: Slovenia formally separated in June of 1991 without bloodshed, and Croatia declared independence on the same day.[10] Croatian independence was not achieved until 1995, however, after four years of intense ethnic cleansing on both sides.[11] Bosnia-Herzegovina, whose ethnic mix of Muslim Bosniaks, Catholic Croats, and Orthodox Christian Serbs was always "potentially dangerous," was correctly identified as the "greatest threat."[12] Several aspects of the report still ring true today. In fact, the report even predicted that U.S. intervention would be perceived as "contradictory to advocacy of democracy

[7] "Milestones: 1989–1992 - Office of the Historian," Department of State, accessed January 17, 2024, https://history.state.gov/milestones/1989-1992/breakup-yugoslavia.
[8] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, (Washington, DC: Central Intelligence Agency, October 18, 1990): iii, document is now declassified, https://www.cia.gov/readingroom/docs/1990-10-01.pdf.
[9] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, iii.
[10] "The Conflicts," International Criminal Tribunal for the Former Yugoslavia, accessed January 17, 2024, https://www.icty.org/en/about/what-former-yugoslavia/conflicts.
[11] International Criminal Tribunal, "The Conflicts."
[12] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, 3.

and self-determination."[13] While eventual U.S. intervention—the Dayton Accords—saved countless lives by putting an end to the genocide occurring within Bosnian borders, it did also take away the capability of self-determination from the Bosnians by appointing a non-citizen to the Office of the High Representative. NIE 15-90, at the time, was unsure whether intense nationalism or Western democratic influence would win out in Serbia, but today, it is clear that the country followed the former path.[14] Where this report falls short is that in all republics besides Kosovo, the CIA predicted that "organized warfare arising out of chronic conflict [was] unlikely."[15] Serbians' desire to incorporate their minority communities into a greater Serbia was not restrained, and, as a result, 100,000 men, women, and children were massacred in Bosnia.[16]

Lack of autonomy has been a defining characteristic of the Bosnian experience since before the dissolution of Yugoslavia. Despite Bosniaks (Muslim Bosnians) comprising the majority of the population, the Serbs and Croats hoped to divvy up the land for themselves, meeting secretly in 1991.[17] When 60 percent of Bosnians voted for independence in March 1992, the Serb population rebelled nearly instantaneously with the support of the Yugoslav People's Army.[18] The resulting conflict saw the worst horrors on European soil since World War II. Gender-based violence through the systematic rape of tens of thousands of women was used as a tool for ethnic cleansing.[19] The Siege of Sarajevo—the Bosnian capital—lasted for four years, wiping out not only thousands of people but also countless landmarks of Bosnian cultural heritage.[20] Worst of all, in Srebrenica, which was a small border town that had been identified as a UN-declared safe area, over 8000 Bosniaks were murdered over the course of just a few days in early July of 1995.[21] Every possible effort was made to erase Bosnia, and particularly Muslim Bosnians, from collective historical memory; however, U.S. intervention in 1995 delayed this reality.

At Wright-Patterson Air Force Base, U.S. representatives managed to broker a peace agreement between the three warring factions in Bosnia in November 1995, and these Dayton

[13] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, iii.
[14] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, 7.
[15] Central Intelligence Agency, *National Intelligence Estimate Number 15-90*, 8.
[16] "The Bosnian War," Holocaust Memorial Day Trust, accessed January 17, 2024, https://www.hmd.org.uk/learn-about-the-holocaust-and-genocides/bosnia/the-bosnian-war/.
[17] International Criminal Tribunal, "The Conflicts."
[18] International Criminal Tribunal, "The Conflicts."
[19] Holocaust, "The Bosnian War."
[20] Holocaust, "The Bosnian War."
[21] International Criminal Tribunal, "The Conflicts."

Peace Accords were officially signed in Paris the next month. Unlike most peace deals, the General Framework Agreement for Peace in Bosnia and Herzegovina, which was written in no more than three weeks, included an entire constitution in Annex 4. The document claims that "Bosnia[k]s, Croats, and Serbs…(along with Others)" determined the constitution.[22] Although assuredly well-meaning, the "Others" managed to fashion a constitution that simultaneously engrained into the governmental system the ethnic divisions they were seeking to mend by establishing a separate Serbian Entity as well as forced vague, Western ideals of "democracy" onto BiH with little heed to cultural considerations. Three primary issues for democratic longevity arose, as a result, from the author's perspective. First, the parliamentary quotas, which ensure equal representation of Bosniaks, Croats, and Serbs, assume that the population is evenly split between the three even though Croats have long been a minority, disproportionately exacerbating their political power.[23] Additionally, Annex 4, Article V established a three-member presidency, which also failed to incorporate proportionality to population, which is key to the democratic success of consociational governments.[24] Finally, the establishment in Annex 10 of the High Representative, an external civilian who is responsible for the coordination of the three Parties' efforts, stole any hope of autonomy.[25] Although risky, trust is a vital aspect of nation-building that the United States has typically failed to allow; a new state will never learn how to govern itself and resolve internal conflicts if its hand is held by a third-party arbitrator through every mishap. The Accords mention in passing that the High Representative ought to "respect [the] autonomy" of the Parties, but just a few lines later, the Parties are required to "fully cooperate with the High Representative."[26] This three-week agreement became a three-decade government. As regional tensions are spiking again, the United States must reflect on its intentions in the 1990s with the construction of these Accords and reconcile them with its current security goals in the Balkans.

PRESIDENTIAL PRIORITIES

[22] "The General Framework Agreement for Peace in Bosnia and Herzegovina," United Nations, 1995, Annex IV, Preamble, https://www.osce.org/files/f/documents/e/0/126173.pdf.
[23] "The General Framework Agreement," Annex IV, Article IV.
[24] "The General Framework Agreement," Annex IV, Article V; Arend Ljiphart, "Consociational Democracy," in *Democracy in Plural Societies: A Comparative Exploration* (Yale University Press, 1977), 25, http://www.jstor.org/stable/j.ctt1dszvhq.5.
[25] "The General Framework Agreement," Annex 10, Article II.
[26] "The General Framework Agreement," Annex 10, Article II; Article IV.

In 1994, the Clinton administration set its foreign policy expectations out in the title of that year's National Security Strategy: Engagement and Enlargement. President Clinton felt the obligation to lead the world order, especially to fill the power vacuum left by the Soviet Union after its collapse, claiming, "Never has American leadership been more essential…. We can and must make the difference through our engagement."[27] One of the administration's central goals was "to promote democracy abroad," arguing that U.S. security is enhanced by bolstering a liberal world order.[28] The path of isolationism and protectionism, in Clinton's view, would risk not only American security interests but would be a shirking of U.S. responsibilities to the global community.[29]

President Clinton's worldview was strongly influenced by the trends of the early to mid-1990s. This decade saw a rapid acceleration of globalization processes, which forced world powers to stay involved to remain economically relevant. In particular, Clinton hoped to harness the benefits of globalization "to advance…objectives of democracy, shared prosperity and peace."[30] The Clinton administration emphasized the importance of prioritizing the maintenance of alliances while not sacrificing standards. To keep up with a rapidly globalizing world system, *adaptation of alliances* was seen as a vital method to address novel challenges.[31] Additionally, the administration believed there was great value in *paying attention to local conflicts* and addressing them via peacemaking before they "harm [U.S.] vital interests."[32] In the administration's opinion, addressing these conflicts should take the form of establishing freedom via democracy in the places that would "help [the United States most]."[33] In the 1994 National Security Strategy, Clinton admits that the solutions to addressing problems of democracy are "as varied as the nations involved," which suggests that, ideally, democratic systems should not just be cut and pasted haphazardly but rather ought to be *tailored* in order to achieve the greatest success.[34] He also admits that "supporting the global movement toward democracy requires a

[27] Clinton, *National Security Strategy*, i.
[28] Clinton, *National Security Strategy*, i.
[29] Clinton, *National Security Strategy*, ii.
[30] "The Clinton Presidency: A Foreign Policy for the Global Age," White House, accessed January 17, 2024, https://clintonwhitehouse5.archives.gov/WH/Accomplishments/eightyears-10.html.
[31] White House, "The Clinton Presidency."
[32] White House, "The Clinton Presidency."
[33] Clinton, *National Security Strategy*, 19.
[34] Clinton, *National Security Strategy*, 19.

pragmatic and long-term effort focused on both values and institutions."[35] Having a *long-term perspective* means not just taking a best guess at what the future might look like and then leaving an institution to develop on its own; rather, these systems ought to be revisited and adapted regularly. Clinton said this implementation of democracy would be the "work of generations," that there would be "wrong turns" and "reversals," but that the United States would support their journey "with a steady patience."[36] President Clinton's foreign policy priorities in the 1990s included adaptability, a focus on regional conflicts, context-specific democratic solutions, and a long-term commitment to investments abroad.

Applying these priorities to the case of Bosnia and examining Clinton's statements made at the time sheds light on the reasons behind U.S. intervention via the Dayton Peace Agreements. President Clinton enumerated four goals with regard to the breakup of Yugoslavia: preventing the spread of conflict across Europe, responding to the refugee crisis, putting an end to the massacre of innocent civilians, and confirming NATO's role in Europe.[37] He reaffirmed the need to stem conflicts before they become uncontrollable, which requires changing "security institutions so they can better and advance Europe's integration."[38] The Dayton Accords arose out of President Clinton's perceived obligation to engage with regional conflicts in the interest of U.S. security. The primary goal of the Agreement was not to create a long-lasting government but to "end the terrible suffering of the people" immediately and, in doing so, "help to build a free and stable Europe."[39] There is also evidence of tailoring, however misguided, to the Bosnian context with the consideration of the representation of the three main ethnic groups, although this was not done as carefully as it ought to have been. However, considering his prioritization of long-term perspectives and his emphasis on the "limited" scope of the United States' mission in Bosnia, it is clear that Clinton's assumption was likely that Dayton would be revisited over the long term and adapted.[40] In his speech about Dayton on November 27, 1995, President Clinton explicitly stated that the U.S. mission was to "help the people of Bosnia to secure their *own* [emphasis added] peace agreement."[41] This never happened, though, and the system has

[35] Clinton, *National Security Strategy*, 20.
[36] Clinton, *National Security Strategy*, 22.
[37] Clinton, *National Security Strategy*, 21.
[38] Clinton, *National Security Strategy*, 21; 22.
[39] Clinton, *National Security Strategy*, 22.
[40] "Transcript of President Clinton's speech on Bosnia," *CNN*, November 27, 1995, http://edition.cnn.com/US/9511/bosnia_speech/speech.html.
[41] CNN, "Transcript of President Clinton's speech on Bosnia."

remained the same for almost thirty years. President Clinton promised in Paris on December 14, 1995, that the "international community will work with [the Balkan leaders] to change the face of Bosnia."[42] In the years since, however, the international community and the United States have largely abandoned this commitment. The Dayton Accords in today's context no longer satisfy its original goals, enduring beyond the limits of its usefulness. Long-term commitment and adaptability were discarded, but perhaps it is time to revisit these priorities as local tensions that threaten greater near-term risks start to boil over again.

Recent presidential administrations, namely Trump's and Biden's, have departed from Clinton's in their own ways. Primarily, the pressing issue is no longer stopping bloodshed but rather ensuring European freedom by barring Russian and Chinese influence on the continent. Today, geopolitical tensions have returned to the Cold War era, while President Clinton's foreign policy was determined to move forward in a more optimistic, cooperative, liberal direction. In his 2017 National Security Strategy, President Trump took the complete opposite stance of President Clinton, introducing his "America First" policy, which advocated restraint over engagement.[43] However, the motivation behind this policy stance was the same: to maintain the U.S. position, "leading…on the world stage." Trump also noted the need to "tailor [U.S.] approaches to different regions of the world,"[44] specifically prioritizing the deepening of European alliances to combat external threats.[45] Compared to Clinton, Trump was less concerned with the issue of local conflicts; however, a recommitment to European alliances does provide precedence for revisiting U.S.-BiH relations, especially when Russian and Chinese economic influence in the Balkans is a concern. The Serb population has close cultural ties with Russia and also gladly accepts Chinese economic support through the Belt and Road Initiative, as I observed while driving around the country. Trump's goal of maintaining superiority in the world order via offshore-balancing with European allies was far more realist in nature than Clinton's hope for a cooperative global community, yet different motivations can still come to the same conclusion that revisiting Bosnian security is in U.S. interests.

[42] "Remarks by President Clinton at the Signing of the General Agreement on the Framework for Peace in Bosnia-Herzegovina," White House, accessed January 17, 2024, https://clintonwhitehouse6.archives.gov/1995/12/1995-12-14-president-remarks-at-bosnia-peace-signing-ceremony.html.
[43] Donald Trump, *National Security Strategy* (Washington, DC: White House, 2017): 21.
[44] Trump, *National Security Strategy*, 45.
[45] Trump, *National Security Strategy*, 45; 48.

President Biden's 2022 National Security Strategy is less certain about America's position in the world order, acknowledging the post-pandemic age as an "inflection point."[46] Biden's priorities seem to land somewhere between Clinton's and Trump's, lacking the post-Cold War optimism of the mid-90s but also with more confidence in allies than his predecessor. He prioritizes both investing at home in the U.S. economy and investing abroad in alliances, thereby reinvigorating and expanding commitments abroad such as NATO.[47] Biden affirmed an American commitment to the "pursuit of a Europe that is whole, free, and at peace" and promised to help strengthen "democratic institutions, the rule of law, and economic development in the Western Balkans" along with the assistance of European partners.[48] The presidential precedence still exists to help BiH in pursuit of U.S. security interests, but recent administrations have emphasized the need to share the burden of promoting democracies with U.S. allies. These contemporary trends suggest that, in accordance with President Clinton's priorities—but not necessarily in line with his goals—the United States ought to recommit to BiH by altering the Dayton system, which seems to be allowing ethnic tensions to fester and grow to the detriment of U.S. security interests. This recommitment should not be borne by the United States alone but by ideologically local partners as well.

CRITICISMS

There are many criticisms of how the Dayton Accords have perpetuated instability in the Balkans, which has made it difficult for regional partners, especially the European Union, to invest in Bosnia. While few of these critics offer solutions to the problem, their identifications of weaknesses can inform future policy actions. The existing literature has identified three main points of contention with the Dayton Accords. First, the ethnic divisions that caused the war not only persist to this day but are constitutionally established through the tri-presidential system and throughout the government at lower levels. Those involved in the decision-making processes at the time admit that, while it would have been ideal to create a governmental system based on individual, rather than group, rights, it was simply not possible.[49] They admitted to hoping that

[46] Biden, *National Security Strategy*, 2.
[47] Biden, *National Security Strategy*, 2.
[48] Biden, *National Security Strategy*, 39.
[49] Carl Bildt, "Dayton Revisited: Bosnia's Peace Deal 20 Years On," *European Council on Foreign Relations* (November 1, 2015): 3, https://www.jstor.org/stable/resrep21503.

one day, the Bosnian constitution would move beyond these national lines; however, the very system they created prevented this evolution.[50] While there was a hope that BiH would draw closer to Europe, which would, in turn, strengthen institutions, this has not been the case.[51] It is easy to blame Bosnian politicians for not taking the responsibility of developing this relationship, but having been trapped in an "ethnic trench warfare" created by the system, they have had little power or autonomy to progress.[52]

Secondly, Dayton was only meant to be temporary, but no safeguards were built into the system to allow a transition to a new system. Because Dayton has endured, corruption, as a result of institutionalized fragmentation and decentralization, has become endemic.[53] Potential solutions to this conundrum require a strong U.S. commitment, accession to the EU facilitated by exposing corruption to undermine popular support of nationalist leaders, support from Croatia and Serbia, and a maintenance of international security forces.[54] While support from Croatia and Serbia is almost completely unrealistic, the rest could potentially be achievable, but not while Dayton persists.

Finally, as Serb separatism revamps, it has become increasingly evident that Dayton effectively paused the war but did not put an end to it. The Dayton Accords made some miraculous achievements considering the brutality it managed to extinguish; however, as early as three years after the Agreement was signed, its weaknesses were evident. The politicians used their allotted powers to continue the war via nonviolent means, hoarding territorial gains for their respective ethnic groups.[55] They are working not only in their own interests—as is expected and, for the most part, tolerable to those ascribed to liberal democratic systems—but they are also determined to undermine the other two groups. There is no "Bosnian" identity. There is Bosnian Muslim (Bosniak), Bosnian Croat, and Bosnian Serb. There is little hope for cooperation toward a greater good of the country. The Republika Srpska has merely been biding its time until the moment is right to press the start button on the war again.

[50] Bildt, "Dayton."
[51] Bildt, "Dayton."
[52] Bildt, "Dayton."
[53] Patrice C. McMahon and Jon Western, "The Death of Dayton: How to Stop Bosnia From Falling Apart," *Foreign Affairs* 88, no. 5 (October 2009): 70, https://www.jstor.org/stable/20699644.
[54] McMahon and Western, "Death," 80-82.
[55] Charles Crawford, "The Balkan Chill: The Intrinsic Weakness of the Dayton Accords," *Harvard International Review* 21, no. 1 (1998): 84, https://www.jstor.org/stable/42762506.

Division, corruption, and continuing tensions, which can all be attributed at least in part to Dayton, are threats to U.S. presidential priorities of maintaining stability in the region. Policymakers can and must learn from these limitations, however. It is time to remember President Clinton's words and adapt before it is too late.

RECOMMENDATIONS

Failure to adapt risks the onset of a wide-scale war, drawing, at a minimum, Serbia, Turkey, Russia, and European powers into its fold.[56] One cannot hope that the memory of the horrors in the 90s is enough to keep conflict at bay. The current atrocities in Ukraine and between Palestine and Israel are evidence that modern states are still more than willing to risk everything if they feel as though the situation calls for it.

There is no assured path to peace and stability, and it is likely that any changes made, even for the positive, will create at least temporary insecurity. Furthermore, any path forward must return power to the people—especially women and other underrepresented communities—who are currently being silenced by the kleptocratic elites.[57] From my conversation in-country with local residents, I know hope and ideas for change exist, but they must be facilitated by the United States and its European allies who have the resources and responsibility to actualize the citizens' wishes. My recommendations will be a combination of personal opinions and existing suggestions.

While most of the literature advocates for reform, I recommend the United States advocate for the creation of an entirely *new constitution* by Bosnian citizens and assisted by Western powers where requested. Mere reform would have limited benefits; Dayton is dysfunctional at its very roots. A complete overhaul of the system should return autonomy to the citizens of Bosnia most effectively, but it admittedly poses many risks as well. U.S. endorsement is key to this process; BiH does not have the resources or state capacity to make such a change without additional support.

[56] Emir Hadzikadunic, "Dayton Peace (Dis)Agreement, 25 Years on," *Al Jazeera*, December 14, 2020, https://www.aljazeera.com/opinions/2020/12/14/dayton-peace-disagreement-25-years-on.
[57] Daniel S. Hamilton, "Fixing Dayton: A New Deal for Bosnia and Herzegovina," *Next Europe*, no. 1 (November 2020), https://www.wilsoncenter.org/publication/fixing-dayton-new-deal-bosnia-and-herzegovina.

To reduce the threat of current corrupt officials taking control of the process, the West must be ready to severely *sanction* them.[58] Additionally, the Republika Srpska will almost certainly be strongly, and likely violently, opposed to the creation of a new constitution, especially if it means a loss of power in any regard for them, including the formal dissolution of their territory. Thus, *EUFOR* (and potentially NATO) should build up its presence in key locations within Bosnia as a deterrent to obstructionist efforts. The sooner these changes take place, the better, as Russia is currently occupied and weakened by its efforts in Ukraine, so it will not be able to support the Serbs as well as they might hope. The United States should bolster its relationship with Belgrade prior to the start of this process in order to *ameliorate* the government to the idea; the same should be done in Zagreb with marginally less urgency. Furthermore, without sacrificing accession standards, the EU should do what it can to create *opportunities for cooperation* and economic development. For example, a Bosnia-Kosovo partnership could be mutually beneficial for EU accession since Kosovo is already making admirable efforts, such as using the euro, but this will also likely aggravate the Bosnian Serb population. Others have suggested the creation of a Western Balkan regional market.[59] All of this, plus additional efforts, should be facilitated by the West to guarantee security as much as possible.

While there is no certainty that a plan such as this would be a complete success, the benefits of trying to outweigh the risks, including the political backlash of such a dramatic policy position. The region is already likely to erupt in conflict again soon. By catalyzing this process, the United States could potentially get ahead of this conflict, which it so desperately wishes to avoid. Called "Dayton's midwife," the United States has certain obligations to see the creation of a Bosnian state through.[60] However, the United States must carefully balance not becoming overinvolved, especially in a post-Afghanistan context. This is why I give no suggestions as to *what* the new constitution should be like. The onus of creating the new constitution will be on representatives of the Bosnian people. The United States and EU must do their best to protect the sanctity of this process. And, in the future, Western involvement in Bosnia can shift in nature to partnership rather than ownership. For example, the United States can bolster human rights in the region through the Women, Peace, and Security cooperation. Economic investments can increase

[58] Hamilton, "Fixing."
[59] Hamilton, "Fixing."
[60] Hamilton, "Fixing."

once systemic corruption has been eliminated. Security cooperation could even take the form of NATO partnership in the future. The alliance already includes three Balkan states: Albania, Montenegro, and North Macedonia. The process of arriving at a post-Dayton world is scary, but is it as scary as the future if no changes are made?

CONCLUSION

The primary challenge for the United States is holding true to its commitments through adaptability without an overcommitment of its resources to achieve regional stability in line with presidential priorities. It is not in U.S. interests to completely disengage, nor is it realistic. The inherent risks of change must be accepted because paralysis in all likelihood would be an even greater risk. A complete overhaul of the Bosnian government via the writing of a new constitution provides the best hope for a future where U.S. interests are indeed met. The expertise of a plethora of fields must be consulted to guarantee the highest chances of success.

Future researchers on this subject should investigate the following questions. What is the true feasibility of these suggestions and what are the greatest risks accompanying such actions? Where else does U.S. foreign policy and strategy need to adapt to align with presidential priorities? Beyond just presidential priorities, what are the congressional influences on such strategy decisions? How engaged should the United States be abroad, and is there actually a moral responsibility for the United States to see through its previous policies if they no longer seem to serve U.S. purposes?

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EVALUATING THE CENTRAL AMERICAN MINORS PROGRAM: EVOLUTION AND OPPORTUNITIES FOR COOPERATION WITH MEXICO

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The increase in the number of children and adolescents arriving at the U.S.-Mexico border has become one of the most important migratory phenomena due to the exacerbated situation of vulnerability that surrounds it. Therefore, it is relevant that transit and destination countries have policies that avoid revictimization and deportations to contexts of high insecurity. This paper reviews the specialized literature on the evolution and operation of the Central American Minors Program (CAM), the main government policy to address the migration of minors. To do this, a review of the changes presented during the presidential terms of Barack Obama (2013-2017), Donald Trump (2017-2021) and Joe Biden (2021-) is carried out. Although this initiative has stood out for its approach to secure and regulate income, it has also received a series of criticisms and recommendations. Therefore, this research not only carries out a historical review of the program but also addresses a proposal for bilateral cooperation between Mexico and the United States, with a humanitarian vision of migration of minors.

INTRODUCTION

In 2014, the United States became the stage for a pivotal migratory crisis. However, this crisis differed in every aspect from those experienced previously. Unlike the characteristic migration flows of the early twenty-first century, the core element of this crisis was not composed of the traditional migration profile. Instead, the migrant groups consisted of more than 100,000 unaccompanied minors, mostly from the Northern Triangle region of Central America, which includes the countries of Guatemala, Honduras and El Salvador.[1] The evolution of this phenomenon posed a series of challenges of humanitarian, political, and social nature, underscoring the complexity of the new migratory dynamics on the continent.

As a responsive measure, then-President Barack Obama prioritized the establishment of the Central American Minors (CAM) program as an alternative designed to afford conditions of order, legality, and security for minors facing imminent danger, who required urgent entry into

[1] "Growing Numbers of Children Try To Enter the U.S.," TRAC, June 28, 2022, https://trac.syr.edu/immigration/reports/687/.

the country.[2] Through the application of relatives already legally residing in the United States, the program aimed to facilitate access for minors with the explicit goal of family reunification. However, following the change in administration and the commencement of Donald Trump's presidency in 2017, the program was terminated based on arguments positing that, given the probability of reunification, the program merely operated as an incentive for an increased desire among minors to migrate.[3]

Four years later, in 2021, current President Joe Biden announced the relaunch of the program in response to the increase of approximately 110,000 apprehensions of unaccompanied minors at the southern border of the country.[4] With the objective of enhancing the effectiveness of this migratory policy, several guidelines were expanded, such as the listing of legal residency status of applicant relatives and the number of accepted beneficiaries. However, even with the program modifications, it continued to face various criticisms, primarily concerning the speed and insufficiency of the implemented processes.

In parallel to the analyzed time periods of the CAM, the U.S. government promoted bilateral initiatives with Mexico to reduce the arrival of migrants at the border between the two countries. Cooperation evolved into the "Southern Border Program" under Enrique Peña Nieto and the "Remain in Mexico" agreement under current President Andrés Manuel López Obrador. However, both pacts sparked significant media discomfort both in Mexico and internationally. Instead of offering humanitarian solutions, as theoretically proposed, the initiatives led to increased detentions and deportations of Central American minors, the creation of more insecure transit routes, and the return of migrants to dangerous and unfamiliar environments. As a result, regarding the migration of minors, critiques made by organizations such as the Inter-American Commission on Human Rights (IACHR) labeled the shared responsibility agreements between Mexico and the United States as ineffective and violent.[5]

[2] Mark Greenberg et al., "Relaunching the Central American Minors Program: Opportunities to Enhance Child Safety and Family Reunification," Migration Policy Institute, December 2021, https://www.migrationpolicy.org/sites/default/files/publications/cam-program-2021-english_final.pdf.
[3] Jessica Bolter, Emma Israel, and Sarah Pierce, "Four Years of Profound Change: Immigration Policy during the Trump Presidency," Migration Policy Institute, February 2022, https://www.migrationpolicy.org/sites/default/files/publications/mpi-trump-at-4-report-final.pdf.
[4] TRAC, "Growing Numbers of Children Try To Enter the U.S."
[5] Alicia Moncada and Eduardo Rojas, "Bajo la bota: Militarización de la política migratoria en México," Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD), May 2022, https://sinfronteras.org.mx/wp-content/uploads/2020/02/Informe-Bajo-la-Bota_240522.pdf.

The issue remains pertinent to this day. According to data from the U.S. Border Patrol, in 2021, the number of encounters with unaccompanied minors at the southern border with Mexico was 146,925; however, by 2022, this figure increased to 152,057.[6] While the difference between these two years may not seem significant, it acquires significance when contrasted with the peak of approximately 70,000 detentions in 2014, the initial year of the unaccompanied minors migratory crisis.[7] Therefore, it is currently of paramount importance to persist in the conduct of such investigations, from which institutional capacities and international agreements necessitated by the ongoing migratory scenario can be strengthened.

For the reasons stated, this paper follows the following structure. First, it provides a historical review of the evolution of the Central American Minors Program (CAM), with emphasis on the comparative analysis of presidential terms: its inception in 2014 with President Barack Obama, its cancellation in 2017 with Donald Trump, and its relaunch in 2021 with the current President Joe Biden. Second, the document provides a brief analysis crafted from the literature review of the main criticisms directed at the program. Third, it addresses the significance and role of Mexico as a neighboring country with shared responsibility in the solution to target the increase in the migration of minors. Fourth, presentation of a proposal for a Mexico-U.S. bilateral cooperation that may prove viable within the CAM framework. Finally, the document ends with a brief conclusion.

THE PRESIDENTIAL EVOLUTION OF THE CENTRAL AMERICAN MINORS PROGRAM

During the 2014 minors' migration crisis, the U.S. government initially proposed a strategy involving mass expulsion and repatriation, the expansion of detention centers, and the acceleration of deportation processes for minors.[8] The government justified these measures based on the idea that taking stringent actions could dissuade the population in the countries of origin from migrating, as deportation would likely be the only outcome. However, this approach

[6] "Southwest Land Border Encounters," U.S. Customers and Border Protection, April 12, 2024, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.
[7] "Unaccompanied Alien Children: An Overview," Congressional Research Service, September 1, 2021, https://crsreports.congress.gov/product/pdf/R/R43599.
[8] Andrew Craycroft, "The Central American Minors (CAM) Program," Immigrant Legal Resource Center, June 2023, https://www.ilrc.org/sites/default/files/2023-06/06-23%20CAM%20program.pdf.

did not yield the expected results, and the number of minors at the southern border continued to increase. Part of the result stemmed from the government primarily linking the migration decision with economic and reunification reasons, while sidelining the structural violence situation experienced in the main countries of origin.[9]

Consequently, in the absence of urgent results for crisis management, President Barack Obama authorized the implementation of an alternative migration approach that promoted a secure, legal, and orderly pathway for minors facing danger and seeking entry into the United States for family reunification.[10] The government named the initiative the "Central American Minors (CAM) Program" and determined its geographical focus based on the main nationalities of the detained minors. The initiative was designed to specifically address the cases of minors residing in El Salvador, Guatemala, and Honduras, who, in turn, had a family member legally residing in the United States.[11] While the program was limited to specific profiles of both applicants and beneficiaries, it pledged to facilitate the migration process without exposing the minors to a perilous journey.

The original operation of the CAM functioned as follows. Initially, the parent residing in the United States had to meet a legal status that fell within the program's specified list, namely, lawful permanent resident status, Temporary Protected Status (TPS), parole, Deferred Action for Childhood Arrivals (DACA), deferred action (non-DACA), Deferred Enforced Departure (DED), or withholding of removal.[12] With the requirement completed, the parent had to appeal to the Department of State and request a refugee resettlement interview for unmarried children under twenty-one in El Salvador, Guatemala, or Honduras. Also, the application process could only be carried out with the support of a Department of State-funded resettlement agency.

Once parents received approval for their requests, with the assistance of the International Organization for Migration (IOM) on behalf of the U.S. Resettlement Support Center (RSC) in Latin America, the second phase of the process commenced in the minor's country of origin. Initially, the minor had to attend a pre-screening interview, aimed at preparing them for a

[9] "Migrantes invisibles, violencia tangible," Red de Documentación de las Organizaciones Defensoras de Migrantes (REDODEM), 2014, https://imumi.org/attachments/2015/Migrantes-invisibles-violencia-intangible.pdf.
[10] Greenberg et al., "Relaunching the Central American Minors Program…," 1.
[11] "Central American Minors (CAM) Program," U.S. Citizenship and Immigration Services, July 3, 2023, https://www.uscis.gov/CAM.
[12] "In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States," Bureau of Population, Refugees and Migration, November 14, 2014, https://2009-2017.state.gov/j/prm/releases/factsheets/2014/234067.htm.

subsequent refugee interview with the Department of Homeland Security (DHS), as well as verifying the biological relationship with the sponsoring resident through a DNA test. Subsequently, in the second interview, the authorities determined whether the minor met the necessary requirements to be accepted as a refugee. In the event of not being accepted under that status, if the minor was still in a precarious situation, they could be considered for parole.

Minors accepted as refugees receive a range of benefits, such as a loan for the cost of relocation, assistance from the Department of State's Reception and Placement Program, and even the potential for eventual access to permanent residency or citizenship. However, in the case of beneficiaries with temporary status, they are not eligible for a loan to cover their relocation expenses, are not candidates for integration benefits, and have only a limited period of time (typically two years) to reside in the country. While this period may be extended, it does not contribute to fulfilling the requirements for a permanent residency application.

Finally, another crucial aspect of the program involved the possibility of adding a second family member to the minor's petition. For this to occur, the potential second beneficiary had to meet one of the following criteria: unmarried children of the qualifying child or in-country parent who are under the age of twenty-one, a parent of the qualifying child that is part of the same household and economic unit, or is legally married to the qualifying parent.[13]

In 2017, almost two and a half years after its inception, the program had reported receiving 12,100 applications from qualified parents. Out of these, 6,300 processes had already received an official verdict: 70% had been granted humanitarian parole, 29% had been accepted as refugees, and only 1% had been rejected.[14] Although there is a substantial gap in the percentage of beneficiaries for each legal status, the contrast is linked to the fact that to be considered a refugee, the minor must not only be exposed to situations of violence but also be able to demonstrate persecution. Nevertheless, for the operation of the CAM, the designation as parole considers elements such as the minor's risk situation in the country, as well as the vulnerability that comes with being under the care of a single parent.[15]

[13] U.S. Citizenship and Immigration Services, "Central American Minors (CAM) Program."
[14] "Actions Needed by State Department and DHS to Further Strengthen Applicant Screening Process and Assess Fraud Risks," United States Government Accountability Office, July 2017, https://www.gao.gov/assets/690/686899.pdf.
[15] United States Government Accountability Office, "Actions Needed," 70.

However, with the onset of Donald Trump's presidency, the program underwent gradual modifications ultimately aimed at its termination. According to a report by the Migration Policy Institute, the changes were justified through the presidential decision to follow up on the fulfillment of promises from the migration-centered platform during the presidential campaign, which advocated for a reduction in humanitarian protection strategies, an increase in law enforcement application, and hindrance of legal immigration.[16]

As a result, in August 2017, the government announced the termination of the parole component of the program, and in November, it completely halted the acceptance of applications from qualified parents. This decision generated significant public outcry; despite over 50% of the applications for the program having been resolved, a high percentage of beneficiaries had not yet entered the United States.[17] Such was the case of those accepted as parolees, of whom only 33% had resolved the relocation payment at the time of the CAM cancellation.[18] In response to this governmental action, program participants filed a class-action lawsuit in June 2018 against the decision to halt the process for 2,700 minors who had previously been approved in the program.[19]

Throughout a process spanning over a year, the authorities deemed the termination of the parole component illegal. Consequently, the court ordered the government to resume processing approved cases and to provide quarterly reports on the progress made.[20] Although, since the program's cancellation, the arrival of unaccompanied minors at the border maintained a relatively low and gradual growth compared to the figures reported in 2014, the United States recorded a new record of 76,136 apprehensions in 2019, representing an increase of over 16,000 minors compared to the previous year.[21]

[16] Bolter, Israel and Pierce, "Four Years of Profound…," 1.
[17] U.S. Citizenship and Immigration Services, "Central American Minors (CAM) Program."
[18] Greenberg et al., "Relaunching the Central American Minors Program," 13.
[19] Alexander Walling et al., "S.A. et al v. Trump 3:18-cv-03539 (N.D. Cal.)," Civil Rights Litigation Clearinghouse, June 2018, https://clearinghouse.net/case/16651/.
[20] Walling et al., "S.A. et al v. Trump."
[21] "Total Unaccompanied Children (0-17 Years Old) Apprehensions By Month," U.S Border Patrol, 2019, https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Monthly%20UC%20Encounters%20by%20Sector%20%28FY%202010%20-%20FY%202020%29%20%28508%29a_0.pdf.

The number of apprehensions of minors decreased in 2020, largely impacted by the onset of the COVID-19 pandemic and the mobility restrictions promoted by Title 42.[22] However, in January 2021, with the beginning of President Joe Biden's term, a federal circuit court judge ordered the suspension of the application of Title 42 for unaccompanied minors, leading to a renewed peak of 112,192 apprehensions of minors, with over 40,000 of them originating from Guatemala.[23] In this context, the new administration had to explore new approaches to deal with the surge in migration without contradicting the campaign criticisms directed at the previous president, Donald Trump. As a result of a swift decision-making process, that same year, the current administration announced the relaunch of the CAM under an extended format and divided into two phases.

The first stage commenced in March and focused on reaching out to parents through resettlement agencies who, despite having submitted their application to the Department of State, had been unable to proceed with the process either due to personal reasons or associated with the program's cancellation.[24] The goal was to inquire whether they wished to reopen their case. If qualified parents had submitted their application before November 9, 2017, and during the cancellation process, the child in the home country had turned twenty-one, they could continue their process during this phase. Additionally, for beneficiaries residing in the United States under parole status, they could also apply for a status renewal based on the new program guidelines.[25]

The second phase of the relaunch commenced on June 15, 2021, and introduced a series of gradual and significant advancements for the admission of minor migrants. From this juncture, the program exhibited increased flexibility in its participation requirements. These changes allowed the submission of applications not only by parents but also by legal guardians. The eligible applicant statuses were expanded to include residents with a pending asylum application or petition for U or T nonimmigrant status filed on or before April 11, 2023.[26] Additionally, the list was extended to specify that eligible family members could be included in the qualified minor's application. This extension encompasses an in-country parent not legally married to the qualifying parent but with a biological connection or sharing the same household and economic

[22] "Retornados a México bajo Título 42," Organización Internacional para las Migraciones, June 4, 2021, https://dtm.iom.int/reports/retornados-mexico-bajo-titulo-42-mayo-junio-2021.
[23] Congressional Research Service, "Unaccompanied Alien Children: An Overview," 2.
[24] U.S. Citizenship and Immigration Services, "Central American Minors (CAM) Program."
[25] Greenberg et al., "Relaunching the Central American Minors Program…," 26.
[26] Craycroft, "The Central American Minors (CAM) Program," 3.

unit as the qualifying child; and a primary caregiver related biologically or by legal marriage to the qualifying parent or to the qualifying child via a biological, step, or adoptive relationship.[27]

While the relaunch and expansion of the program generated high expectations among sectors of society advocating for a humanitarian immigration policy, over a year and a half after its resumption, the CAM had reported the admission of only 130 refugees and sixty parolees.[28] In this regard, despite initially offering benefits to thousands of migrants, it was now only achieving it for hundreds—a measure deemed insufficient given the gravity of the figures of unaccompanied minors arriving at the southern border.[29] The significant discrepancy between the initial expectations and the outcomes obtained prompted a series of observations about the possible areas in which the program could and should improve. However, for the purposes of this work, this paper will focus exclusively on two of them.

CAM OBSERVATIONS AND RECOMMENDATIONS

Firstly, the operation of the program initially received various criticisms related to the extended waiting periods participants endured while their applications were being processed. For instance, in the case of minors accepted as refugees up to 2016, an average temporal span of 410 days from the submission of the application to the arrival of the minor in the United States was reported; in contrast, the duration for parolees was 402 days.[30] While external factors such as the payment for DNA testing or the relocation of the minor also influenced the process delay, waiting for over a year brought about a series of consequences inherent to the minor's vulnerable situation when accepted under either of the two possible statuses.

Simultaneously, the issue of security became even more sensitive when it concerned refugee minors, as authorities, by accepting their classification within that status, confirmed the

[27] U.S. Citizenship and Immigration Services, "Central American Minors (CAM) Program."
[28] "Refugee Admissions Program," U.S. Department of State, June 10, 2022, https://www.state.gov/u-s-refugee-admissions-program/.
[29] Lacy Broemel and Hannah Flamm, "More than Words: Making Good on the Promise of the Central American Minors Refugee and Parole Program," International Refugee Assistance Project, September 21, 2022, https://refugeerights.org/wp-content/uploads/2022/09/CAM-Report-FINAL-v3.pdf.
[30] "Recommendation on the Central American Minors (CAM)," Citizenship and Immigration Services Ombudsman, December 21, 2016, https://www.dhs.gov/sites/default/files/publications/CIS%20Ombudsman%20Recommendation%20on%20the%20CAM%20Refugee-Parole%20Program.pdf.

presence of elements of persecution or fear of persecution.[31] Therefore, within the recommendations made, there was an emphasis on the need for a protocol allowing early identification of the levels of vulnerability at the time of the initial interview. This way, a more informed decision could be made on whether minors could proceed with their process through a relocation procedure within their home country or if they needed to be transferred to a different country to safeguard their well-being.[32]

Secondly, the evaluation reports highlight a minimal impetus for agreements that promote the vision of shared responsibility in humanitarian initiatives linked to the migration of minors. While the U.S. government has modules of care that monitor applications in the home country of minors, the process is mostly controlled by representatives of the same country, with few exceptions of collaboration with the governments of Honduras, El Salvador, and Guatemala for the verification of participants' personal data. However, this creates an individualistic perception among other countries involved in the issue. While the U.S. government emphasizes the urgency of implementing national measures, there is rarely a proposal for an initiative involving collaborative work on issues with perspectives different from national security.

In this regard, it is important to revisit the case of the Protection Transfer Arrangement (PTA) established in 2016 to address the increase in migration from individuals in El Salvador, Honduras, and Guatemala. This initiative aimed to achieve three main objectives: 1) provide a pathway for international protection to individuals in situations of high risk, 2) prevent migration routes to the United States, and 3) promote shared responsibility in the migratory domain at the regional level.[33] To formalize the agreement, a Memorandum of Understanding (MoU) was signed between the United Nations High Commissioner for Refugees, the International Organization for Migration, and the government of Costa Rica. Through this MoU, the international ally committed to accepting up to 600 migrants per year (not exceeding 200 at the same time) for a maximum duration of six months while awaiting their final resettlement verdict.[34]

[31] Broemel and Flamm, "More than Words," 16.
[32] Greenberg et al., "Relaunching the Central American Minors Program," 21.
[33] Emmanuelle Diehl, "Evaluation of effectiveness of the Protection Transfer Arrangement in Central America," United Nations High Commissioner for Refugees, December2018, https://www.unhcr.org/us/media/evaluation-effectiveness-protection-transfer-arrangement-central-america.
[34] Citizenship and Immigration Services Ombudsman, "Recommendation on the Central American Minors (CAM)," 15.

Thus, migrants with complex vulnerability situations could await the resolution of their applications in conditions of enhanced security. While the program did not demonstrate a differentiated approach between adults and minors, it did have certain limitations for the acceptance of the latter in cases where they presented issues related to gang affiliation, custody conflicts, being viewed as property by virtue of their position within a domestic relationship, among others.[35] However, in the literature there appears to be a lack of consensus regarding guidelines related to the acceptance of minors, which is further reinforced by the absence of information establishing potential collaboration to promote the security advocated by the CAM.

As a result, among the recommendations made to the CAM, the possibility of modifying or extending the guidelines of the PTA is also identified. Through this modification or extension, minors with urgent refuge needs would be allowed to depart from their home country while their process is completed.[36] Additionally, this initiative underscores the necessity of establishing broader and more effective international agreements with the countries involved in the migratory transit to the United States. By expanding cooperation to a greater number of countries in the region, the potential beneficiaries waiting for their process to conclude and exit from a situation of evident insecurity would also increase.

MEXICO'S ROLE IN SHARED RESPONSIBILITY

Mexico represents the primary and sometimes the sole transit country for migrants originating from the Central American Northern Triangle; although discussing the mandatory crossing of a single country may seem straightforward, in this case, it is not. In 2023, the Mexico-U.S. migration corridor was classified by the United Nations as the "most dangerous land migration route in the world."[37] In 2022, the Mexican government reported the deaths of around 686 individuals at the northern border of the country, with reasons attributed to drowning, lack of food, and dangerous transportation, among others.[38]

[35] Diehl, "Evaluation of effectiveness," 16.
[36] Greenberg et al., "Relaunching the Central American Minors Program," 23.
[37] "La frontera entre Estados Unidos y México es la ruta migratoria terrestre más peligrosa del mundo," Naciones Unidas, September 12, 2023, https://news.un.org/es/story/2023/09/1524012.
[38] Edwin Viales, Andrea García Borja, and Julia Black, "Resumen regional anual: Las Américas," Organización Internacional para las Migraciones, December 2022, https://missingmigrants.iom.int/sites/g/files/tmzbdl601/files/publication/file/MMP%20Americas%20briefing%202022%20-%20ES_3.pdf.

The vulnerability situation during transit in Mexico significantly increases when migrants passing through the country are children or adolescents. According to Elisa Ortega, unaccompanied minors experience heightened vulnerability resulting from various intersecting factors that increase the likelihood of experiencing violence and/or discrimination, such as their irregular migratory status, age, and lack of family accompaniment.[39] Consequently, the main threats identified within the territory are related to constant risk scenarios that impact their physical integrity, lack of access to basic food or shelter services, increased exposure to sexual violence towards girls, and the escalation of threats resulting from government actions.[40]

During the peak of the 2014 child migration crisis, President Barack Obama reached out to then-Mexican President Enrique Peña Nieto with the aim of discussing actions to provide urgent attention to the humanitarian situation. As a result, the Mexican government, with the support of U.S. funds, announced in July of the same year the launching of the Southern Border Program.[41] This initiative aimed primarily to control the flow of Central American migrants through various lines of action that included measures to protect migrants' human rights. However, this did not occur in practice, as a national security perspective characterized by aggressive "rescue operations" led security forces to achieve a record figure of 604,000 migrants returned to their home country, 18.6% of whom were unaccompanied minors.[42]

Regarding the program's outcomes, while they yielded historic percentages in migrant detention, they also led to a series of alternative problems. Initially, as the National Institute of Migration (INM) increased operations on highways and railway tracks, migrants had to move through new routes, which involved greater exposure and vulnerability to situations such as labor

[39] Elisa Ortega, *Cuando los niños se vuelven migrantes: derechos humanos y excepciones violentas en México*, (México: Universidad Nacional Autónoma de México, 2023), https://archivos.juridicas.unam.mx/www/bjv/libros/15/7193/11.pdf.

[40] Pablo Pérez and Aidé Mendoza, "La migración infantil sin acompañamiento en territorio mexicano: los riesgos, las respuestas oficiales y la Responsabilidad Social frente al fenómeno," *Huellas de la Migración* 6, no. 11 (2001): 151-189, https://huellasdelamigracion.uaemex.mx/article/view/16401.

[41] Omar Araiza et al., *La implementación y el legado del Programa Frontera Sur de México* (Texas: The University of Texas at Austin, 2019), https://www.strausscenter.org/wp-content/uploads/prp_208-LA-IMPLEMENTACIO%CC%81N-Y-EL-LEGADO-DEL-PROGRAMA-FRONTERA-SUR-DE-ME%CC%81XICO.pdf.

[42] Melissa Galván, "El gobierno de Peña Nieto rompió récord como expulsor de migrantes," *Expansión Política*, February 27, 2019, https://politica.expansion.mx/mexico/2019/02/27/el-gobierno-de-pena-nieto-rompio-record-como-expulsor-de-migrantes.

exploitation, kidnapping, extortion, assault, and rape.[43] In addition, there was more frequent use of guides to evade immigration inspection points and an increase in the cost of the service, which went from an average of 2,448 U.S. dollars in 2014 to about 4,241 dollars in 2017.[44]

One year into the current presidency of Andrés Manuel López Obrador, the government announced the launch of a bilateral cooperation program called "Remain in Mexico." Through this policy, U.S. authorities could return asylum-seeking migrants to Mexico with the justification that it was the place where they should wait during the resolution of their process. Despite the fact that in theory, this initiative had mechanisms to prevent the return to environments with imminent dangers and the exception of vulnerable groups, such as unaccompanied minors, in practice, these restrictions were constantly ignored.[45] The application of the agreement led to a series of criticisms that resulted in its termination in 2021 with the beginning of Joe Biden's presidency; however, at the end of that year, the government announced its relaunch in response to a federal court order.[46]

As part of the program's monitoring, in 2019, the Ministry of the Interior of the country reported the deportation to Mexico of 53,507 unaccompanied migrant children and adolescents. This figure peaked in 2021 with 75,592 returns and slightly decreased in the final year of the agreement to 71,206 returns in 2022.[47] While in 2018 the percentage of adolescent migrants was higher than that of children, from 2019 (except for 2020) and with a wide margin in the figures, infants between zero and eleven years old became the primary deportees.[48] Despite the program's humanitarian intention, the implementation of its agreements involved a set of violent experiences ranging from arbitrary detention by U.S. authorities to a prolonged stay in an

[43] Adam Isacson, Maureen Meyer, and Hannah Smith, "El control aumentado en la frontera sur de México," Washington Office on Latin America, November 2015, https://imumi.org/attachments/2016/AGT/El-control-aumentado-en-la-frontera-sur-de-Mexico.pdf.
[44] Araiza et al., *La implementación y el legado del Programa Frontera Sur de México*, 48.
[45] "Como si me estuviera ahogando," Human Rights Watch, January 2021, . https://www.hrw.org/sites/default/files/media_2021/04/mexico0121_summary_recs_sp.pdf.
[46] "'Quédate en México': Información general y recursos," Human Rights Watch, February 7, 2022, https://www.hrw.org/es/news/2022/02/07/quedate-en-mexico-informacion-general-y-recursos.
[47] "Niñas, niños y adolescentes migrantes en situación irregular, desde y en tránsito por México," Unidad de Política Migratoria, Registro e Identidad de Personas, Secretaría de Gobernación, September2023, https://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadistica/NNA/NNYA_S%C3%ADntesis_ene-dic_2022.pdf.
[48] Unidad de Política Migratoria, Registro e Identidad de Personas, Secretaría de Gobernación, "Niñas, niños y adolescentes," 4.

unfamiliar territory void of governmental mechanisms capable of meeting the needs of thousands of deported minors.[49]

From the previously presented cooperation initiatives, the following points can be concluded. Since the 2014 migrant minors' crisis, actions employed by the United States to address the issue have always involved bilateral work strategies with Mexico aimed at tackling migration from a perspective of shared responsibility in the region. However, the problem appears when cooperation actions revolve around the understanding of migration as a security issue that can only be addressed through the criminalization and return of migrants to dangerous environments. Therefore, for Mexico to be able to serve as a humanitarian partner in addressing the migration of minors, better defined mechanisms and resources are required so that the protection proposal offered can be truly effective.

COOPERATION PROPOSAL: U.S.-MEXICO PROTECTION TRANSFER ARRANGEMENT

Based on the background and information provided, this section presents a brief proposal for bilateral cooperation between Mexico and the United States, through which the issue of minors' migration can be addressed using previously existing channels and, in turn, be renewed through the implementation of new protection mechanisms. Therefore, the basis of the proposal lies in the integration of a section of international partners within the CAM program, which through the signing of a Protection Transfer Arrangement (PTA) (such as the one presented with Costa Rica), can serve and contribute as temporary homes for Central American minors who, for reasons of refuge, urgently need to leave their countries of origin.

While agreements like "Remain in Mexico" constantly denounced the return of minorities to unsafe environments in the northern border states, through this initiative, cooperation links could be established with various Mexican states capable of providing places with greater security for migrants. However, in forming these new alliances, it is of utmost importance that interested states conduct feasibility analyses to determine the capacity and maximum length of stay they can operate with. It is important to remember that one of the main criticisms of the

[49] Brandon García Cordero, "Análisis del Programa migratorio Migrant Protection Protocols (MPP) - Quédate en México," (Tesis de Licenciatura, Universidad Autónoma Metropolitana, 2023), https://repositorio.xoc.uam.mx/jspui/retrieve/db67d13b-455d-4cc6-941c-c7eb54f2fc29/51195.pdf.

CAM is linked to an average waiting period of over 400 days for refugee applicants. Consequently, although Mexico could open to migrant reception, the United States would also need to make changes to streamline the bureaucratic and legal processes of the program.

Finally, it is also important to consider the recommendation regarding creating a protocol for early identification of vulnerability levels presented by applicants. This document would aim to ensure that Mexico's temporary home alternative could provide spaces to minors who face the highest levels of danger in their home territories, thus enabling them to continue their processes in positions of lesser vulnerability. Likewise, the development of the protocol could be assigned as a responsibility of Mexico's National Institute of Migration (INM), in cooperation with the Department of State in the United States and key international actors such as the International Organization for Migration and the United Nations High Commissioner for Refugees (UNHCR). In this manner, the document could be developed comprehensively, considering both the needs of migrant minorities and the capacities available in both the Mexican and U.S. governments.

CONCLUSION

In conclusion, it is identified that the migration of minors has been and continues to be an issue of great relevance on the regional agenda of the continent. Not only in relation to the increase in the number of unaccompanied minors who decide to undertake their journey to the United States, but also due to the growing number of dangers and situations of vulnerability to which they are exposed in their transit through different countries, especially through Mexico. In this sense, the CAM program stands out as an innovative initiative, but in different areas, it is inefficient in the face of the challenges currently presented. Therefore, it is vitally important to consider each of the recommendations made to the program. Likewise, the bilateral cooperation proposal presented with the objective of expanding the support and protection mechanisms for Central American minors who currently suffer from situations of extreme vulnerability in their countries of origin.

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BEYOND OBJECTIVE CONTROL: CIVIL-MILITARY RELATIONS FOR A NEW ERA

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Since its founding, America has had a uniquely durable structure of civil-military relations: there have been no military coups in American history. Scholars like Samuel Huntington explained this fact with reference to America's success at adopting a model of objective civilian control of the military in which the professionalization of military forces cemented civilian preeminence over them. Huntington's model contains valuable insights, particularly with regard to the desirability of an apolitical military loyal to civilian leadership. Yet, this model also has significant shortcomings. Objective civilian control is not only difficult to establish, but it also risks goal displacement among the military and fails to prevent the "Man on Horseback" problem. In an increasingly polarized era where the military is struggling to remain outside the political fray, these shortcomings are in need of addressing. This paper seeks to identify several shortcomings in Huntington's model of objective control and provide a path forward that addresses them.

Healthy civil-military relations are like oxygen. If they prevail, they are hardly noted; if they are absent, their absence is crippling. Indeed, civil-military relations are key to governmental stability, the binding of military operations to strategy, and military effectiveness. Countries that suffer from poor civil-military relations will be prone to coups, struggle to connect military means and political ends, and be relatively less effective in combat. The importance of civil-military relations explains why, at the time of the American founding, civil-military relations were one of the Founders' primary concerns. James Madison, for example, argued that "a standing military force with an overgrown Executive will not long be safe companions to liberty… the means of defense against foreign danger have been always the instruments of tyranny at home."[1] As George Mason noted, a standing army may always "turn its arm against the government that employs" it.[2] Evidently, the founders were deeply concerned by the fact that, by its very nature, a standing army has the power to overthrow the civilians who ostensibly govern it. Yet, 236 years after Madison's and Mason's warnings, their fears have not been realized. Despite the growth of the U.S. military and its supporting bureaucracies to proportions

[1] James Madison in *Words of the Founding Fathers: Selected Quotations of Franklin, Washington, Adams, Jefferson, Madison and Hamilton, with Sources*, ed. Steven Coffman, electronic resource (Jefferson, N.C: McFarland & Co, 2012), http://www.columbia.edu/cgi-bin/cul/resolve?clio17261199, 163.
[2] George Mason in *Words of the Founding Fathers*, ed. Steven Coffman, 80.

Madison would have been astounded by, there has never been a military-backed coup attempt in U.S. history. Yet, today, civil-military relations in the United States are under strain, and "the very civil-military norms thought essential for developing effective strategy are eroding."[3] At the moment, the risk in U.S. civil-military relations is not that the military mounts a coup, but rather that hostility between civil and military leaders leads to a decline in military effectiveness. This paper will consider recent trends in U.S. civil-military relations in light of Samuel Huntington's traditional model of objective control. In doing so, it will help draw the contours of an effective model of civil-military cooperation that addresses ongoing challenges to U.S. civil-military relations and leaves the country better prepared to face the security challenges of the present.

In 1957, in his seminal *The Soldier and the State*, Huntington argued that "for Americans, the problem of balancing the functional and societal imperatives [of military institutions] has only recently acquired a new significance."[4] To Huntington, the military's functional imperative was to defend the country against its Cold War adversaries; this functional imperative had to be balanced against the social imperative of ensuring that the American military was compatible with liberal democracy. In Huntington's view, there were two possible models of civil-military relations that balanced these imperatives. The first model was subjective control, which "achieves its end [the balancing of functional and societal imperatives] by civilianizing the military, making [it] the mirror of the state."[5] Specifically, a government wishing to exercise subjective control over its military could appoint military leaders who identify with the political leadership. By blurring the distinction between civilian leadership and military leadership, subjective control seeks to ensure that the latter is not a threat to the former. This model of civil-military relations was characteristic of the early American republic, where political figures often served in the military during their time in office and vice versa. Most notably, George Washington, the quintessential "soldier-statesman," noted that when he "assumed the soldier," "he did not lay aside the citizen."[6] Similarly, Thomas Jefferson criticized distinctions "between the civil and the military, which it is for the happiness of both to obliterate."[7] Yet, while reducing

[3] Carrie Lee and Margulies Max, "Rethinking Civil-Military Relations for Modern Strategy," Modern War Institute, August 14, 2023, https://mwi.westpoint.edu/rethinking-civil-military-relations-for-modern-strategy/.
[4] Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap Press of Harvard University Press, 1957), 2.
[5] Huntington, *The Soldier and the State*, 83.
[6] George Washington in Samuel P. Huntington, "Civilian Control and the Constitution," *The American Political Science Review* 50, no. 3 (1956): 676–99, https://doi.org/10.2307/1951551.
[7] Thomas Jefferson in Huntington, "Civilian Control and the Constitution," 679.

the risk that a military hostile to the political ends of civilian leadership seeks to undermine those ends or challenge civilian control, subjective control comes at the expense of military competence. For example, Caitlin Talmadge has documented how in states with "deeply conflictual" civil-military relations, "coup fears tend to dominate regimes' threat calculations," and regimes go as far as to sacrifice military capability in order to reduce their risk of being overthrown.[8] Specifically, in order to ensure that their militaries are incapable of toppling them, such regimes create military institutions where promotions are based on political loyalty rather than merit, training does not prepare participants for real combat, command arrangements are centralized so as to allow politically-minded commanders to exercise direct control, and information-sharing among the military is limited so as to reduce the chance that it coordinates among itself.[9] Thus, models of subjective control balance the societal and functional imperatives of military institutions by subordinating the latter to the former.

In its purest form, objective control does the opposite. The "essence of objective civilian control is the recognition of autonomous military professionalism," the demarcation of a military sphere of influence that civilians cede control over.[10] The means of creating objective control is the cultivation of a professional spirit among the military. The modern American military, Huntington argues, differs from its predecessors in that it is a body of professionals—soldiers and their officers have a professional character in the same way that American lawyers and doctors do. Specifically, military professionals distinguish themselves from the rest of American society through their "expertise, responsibility, and corporateness."[11] The military's expertise lies in its unique responsibility for "the management of violence."[12] At a fundamental level, the military's function is to win any engagement it is committed to. Yet, modern combat is exceedingly complicated and requires "a tightly interrelated complex of cover, concealment, dispersion, suppression, small-unit independent maneuver, and combined arms at the tactical level, and depth, reserves, and differential concentration at the operational level of war."[13] The

[8] Caitlin Talmadge, "Different Threats, Different Militaries: Explaining Organizational Practices in Authoritarian Armies," *Security Studies* 25, no. 1 (January 2, 2016): 111–41, https://doi.org/10.1080/09636412.2016.1134192, 112.
[9] Talmadge, "Different Threats, Different Militaries: Explaining Organizational Practices in Authoritarian Armies," 116-117.
[10] Huntington, *The Soldier and the State*, 83.
[11] Huntington, *The Soldier and the State*, 8.
[12] Huntington, *The Soldier and the State*, 11.
[13] Stephen D. Biddle, *Military Power: Explaining Victory and Defeat in Modern Battle* (Princeton, N.J: Princeton University Press, 2004), 3.

management of this complex requires expertise; this expertise uniquely resides in the military, which alone devotes the time and organizational attention needed to address the challenges of modern war. Thus, by taking responsibility for the management of violence, the American military takes on the expertise characteristic of a professional body.

This expertise "imposes upon [the military] a special social responsibility."[14] The military is responsible for not only protecting society against threats, but also ensuring that it uses its power to manage violence only for ends that civilian society approves of. Ensuring that the military uses its power only for socially-approved ends is a challenging endeavor; it is what the American founders struggled to do and what praetorian states have failed to accomplish. In American society, Huntington wrote, this task had been completed through an ethic of responsibility. Rather than being motivated by pecuniary or other concerns, American military officers see themselves as being responsible for the state. This ethic, which is rooted in "custom, tradition, and the continuing spirit of the [military] profession," ensures that much as doctors see themselves as responsible for the wellbeing of their patients, American military professionals view themselves as responsible for the military needs of the civilian government. Put simply, under objective control, the military is loyal to the government and sees itself as an instrument for the government to use.

The military's unique responsibility for the management of violence and its sense of loyalty to the civilian government combine to create a sense of corporateness—a distinctive sense of identity. Because the military is meaningfully different from the rest of American society, it develops a form of guild-consciousness. This makes it both more and less of a threat to civilian government. On one hand, the military's feeling of distinctiveness can be alienating, undermining the sense of loyalty the military feels to civilian government. Indeed, the primary purpose of politicizing the military through subjective control is to ensure that the military identifies with civilian government; subjective control theorists worry that if it does not do so, its alienation may pose a threat.

Yet, Huntington argues that the military's very distinctiveness can be the basis for stable civil-military relations. His model of objective control seeks a civil-military relations equilibrium where the military concedes policy decisions entirely to the purview of civilian leadership. In contrast, tactical decisions are left to the province of military experts. This model of civil-

[14] Huntington, *The Soldier and the State*, 14.

military relations maximizes the functional imperative of military institutions by professionalizing the military: a professional military characterized by high levels of expertise is effectively able to manage violence. The military's professionalism also protects the social imperatives of military institutions. Specifically, by cultivating a sense of loyalty to the state amongst military professionals, professionalism makes the military politically neutral; the military's loyalty lies not with any political faction but with the state writ large. By remaining politically neutral, the military also perpetuates this model of objective control. Safe in the knowledge that military officers are minimally political, presidential administrations can ignore considerations of political loyalty and appoint the most qualified military officers. Thus, in a virtuous cycle, the military's apolitical nature disincentivizes efforts to establish subjective control.

Even this idealized model of civil-military relations has its critics. In particular, critics of Huntington's model of objective control argue that while professionalism may depoliticize the military, it can only do so at a high cost. For example, scholars have documented how "professional guilds… have built-in tendencies to resist direction from political leaders."[15] Furthermore, organizational theories of decision-making have demonstrated how goal-displacement, the substitution of an intended organizational goal with an unintended one, is endemic to professional organizations, which tend to "become oriented not to the larger political aims they are enlisted to pursue, but to their own stability."[16] Thus, professionalism can lead to goal displacement. In the military, this goal displacement can take exceedingly dangerous forms. For example, prior to World War I, goal displacement within the German military led to an offensive orientation in military doctrine that aggravated the security dilemma and had damaging strategic consequences. German strategy went awry "because a penchant for offence helped the military organization to preserve its autonomy, prestige, and traditions, to simplify its institutional routines, or to resolve a dispute within the organization."[17] Clearly, military professionalism is not an unalloyed good.

Furthermore, to overcome the risk of goal displacement and, more broadly, to mitigate the costs of professionalism and keep military means tied to political ends, scholars like Elliot

[15] Richard K. Betts, "Is Strategy an Illusion?," *International Security* 25, no. 2 (2000), 32.
[16] Betts, "Is Strategy an Illusion?," 32.
[17] Jack Snyder, "Civil-Military Relations and the Cult of the Offensive, 1914 and 1984," *International Security* 9, no. 1 (1984): 108–46, https://doi.org/10.2307/2538637, 109.

Cohen argue that civilians need to be intimately involved in military decision-making across levels of analysis. In Huntington's model of objective control, the respective purviews of the military and civilian leaders are sharply defined: leaders should set policy goals while leaving operational planning and the conduct of war to military professionals. In other words, civilians determine political or strategic ends, while the military selects military means.

The fallout from the Vietnam War made this division of labor orthodoxy. The military widely blamed civilian interference in its operations for the debacle the war resulted in. Conventional wisdom inside today's military culture is dominated by the lesson that the Johnson administration micro-managed the war and should have left the professionals to deal with it without constraint."[18] In essence, the military was left to pursue ambitious objectives with highly limited means. To Elliot Cohen, this critique of civil-military relations in Vietnam is misguided. Instead, as H. R. McMaster shows, military leaders' "loyalty to the chain of command, and to a conception of professionalism that defines roles and duties narrowly" precluded them from effectively challenging flawed civilian strategy or making suitable recommendations.[19] Thus, the idea that a professionalism that confines military professionals to operational concerns is desirable is misguided. Instead, Cohen argues that statesmen should do far more than set the goals for military action. Rather, they should "immerse themselves in the conduct of their wars no less than in their great projects of domestic legislation" and engage the military in a "running conversation in which although civilian opinion will not usually dictate, it must dominate." Notably, this conversation should "cover not only ends and policies, but ways and means."[20] Ultimately, in arguing against Huntington's separation of the role of the military from the role of its civilian supervisors, Cohen challenges the model of objective control that Huntington presents as ideal.

An increased risk of goal displacement is not the only cost that military professionalism imposes. In Huntington's model of military professionalism, the military's loyalty lies with the state rather than with a specific political faction within it. Yet, in practice, this ideal has

[18] Frank Hoffman, review of *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime*, by Eliot A. Cohen, and *Armed Servants: Agency, Oversight, and Civil-Military Relations*, by Peter D. Feaver, *Journal of Policy Analysis and Management* 23, no. 3 (2004), 643.
[19] Hoffman, review of *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime*, by Eliot A. Cohen, and *Armed Servants: Agency, Oversight, and Civil-Military Relations*, by Peter D. Feaver, 643.
[20] Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime*, 1st Archor Books ed. (New York: Anchor Books, 2003), 206.

sometimes led the military to believe that its loyalty is more to a transcendent American state than with a specific American government; when the latter is seen to be undermining the former, military professionalism can undermine civilian control of the military. As Samuel Finer has argued, "the military's consciousness of themselves as a profession may lead them to see themselves as the servants of the state rather than of the government in power. They may contrast the national community as a continuing corporation with the temporary incumbents in office."[21] A notable example of this issue arose during the Korean War when General Douglas MacArthur, chafing at the political restrictions the Truman administration had imposed on his military campaigns, repeatedly undermined the administration. After MacArthur insulted China in a public statement and dashed the Truman administration's diplomatic efforts in the country, Truman fumed that MacArthur had "disregard[ed] all directives to abstain from any declaration on foreign policy. It was in open defiance of my orders as President and Commander in Chief…"[22] While per Truman, and indeed the objective control model of civil-military relations, MacArthur had overstepped his purview, MacArthur saw himself as an American patriot doing what was necessary to win the Korean War. In 1952, MacArthur criticized the "dangerous concept that the members of our armed forces owe primary allegiance or loyalty to those who temporarily exercise the authority of the Executive Branch of Government rather than to the country and its constitution which they are sworn to defend."[23] Many Americans, especially on the political right, agreed with this view: when MacArthur toured the United States after his firing, he was met by cheering crowds, with 7.5 million people attending his parade in New York City.[24] MacArthur's actions clearly undermined civilian control of the military and implicitly showed that his loyalty lay not with Truman, his commander in chief, but with what he saw as American interests. The fact that his conduct did not result in public opprobrium shows the limited power that military professionalism has to truly restrain officers from venturing into politics.

[21] Samuel Edward Finer, *The Man on Horseback: The Role of the Military in Politics* (New Brunswick, N.J.: Transaction Publishers, 2002), 25.
[22] Harry Truman in D. Clayton James, *The Years of MacArthur* (Boston: Houghton Mifflin, 1970), 587-88, http://archive.org/details/yearsofmacarthur0000jame.
[23] Finer, *The Man on Horseback*, 26.
[24] Pauline Toole, "New York City Receptions," NYC Department of Records & Information Services, July 7, 2023, https://www.archives.nyc/blog/2023/7/5/dnbh65uwd3fx6br445c90udmpwixrz.

Today, MacArthur's actions are widely seen as unjustified; those who backed him in 1954 are dismissed as right-wing Cold War hardliners. By challenging the Truman administration, MacArthur invented his "own private notion of the national interest" and sought to substitute "this view for that of the civilian government."[25] In doing so, he undermined civilian control of the military, bringing the United States a step closer to realizing the fears of her founders. Yet, critiques of MacArthur rest uneasy in an era where General Mark Milley's actions to protect the Constitution from the ravages of an unhinged Trump Presidency have drawn widespread acclaim. Towards the end of the Trump Presidency, Miley worked to "defend the constitutional order, to prevent the military from being deployed against the American people…[and deflect] Trump's exhortations to have the U.S. military ignore, and even on occasion commit, war crimes."[26] Miley's efforts were essential to mitigating the damage the Trump administration's erratic and illegal behavior caused in late 2020. Yet, their underlying justification was not dissimilar from MacArthur's sixty-six years earlier: Miley saw himself as loyal not to the Trump administration or its whims' but to the transcendent American constitutional order. It is unsatisfying to argue that the merits of each case distinguish MacArthur's insubordination from Milley's. Instead, a consistent standard for when, if ever, military rejection of presidential orders is justified and whether or not the military's loyalty lies with its commander-in-chief needs to be found. Because Huntington's model of objective control provides no such standard, it is flawed, even in its ideal form.

In practice, this model of objective control is even more challenging to realize. First, it relies on the existence of a strong sense of professionalism among the military. If this sense of professionalism wavers, objective control collapses. Second, as Huntington notes, this model of civil-military relations is undermined by civilians "unwilling simply to accept a politically neutral officer corps."[27] The inherent tendency of some political actors to try to co-opt the military for their own ends is worsened by the structural features of American government, specifically the separation of powers. Even under the model of objective control, the military may be torn between "three conflicting…loyalties: to the commander in chief, to professional

[25] Finer, *The Man on Horseback*, 26.
[26] Jeffrey Goldberg, "The Patriot," *The Atlantic*, September 21, 2023, https://www.theatlantic.com/magazine/archive/2023/11/general-mark-milley-trump-coup/675375/.
[27] Huntington, *The Soldier and the State*, 85.

standards, and to Congress acting in its oversight capacity."[28] In effect, the military may sometimes have to choose between acting in a way that benefits the president, advancing its own institutional interests, and acting in a way that serves Congress. When dilemmas such as these arise, any choice the military makes comes at a cost. For example, during the Truman administration, the Joint Chiefs of Staff took on a political advocacy role and indeed carried the burden of explanation of administration war policy."[29] For example, in a 1952 speech before the Pasadena Chamber of Commerce, General Omar Bradley criticized Herbert Hoover and Senator Robert Taft's "Gibraltar theory" of defense and labeled it "selfish" and "defensive."[30] In other cases, the Chiefs "pleaded for foreign aid appropriations, urged the ratification of treaties, defended the dismissal of General MacArthur…and explained the [Truman] administration's decisions on force levels and budgets."[31] In response, Senator Robert Taft lambasted the Chiefs for being "absolutely under the control of the administration" and for making their recommendations "what the administration demands they make."[32] By placing their weight behind the Truman administration, the Chiefs opened themselves to congressional criticism. Yet, this is just one side of the dilemma:

> If the military chief accepts and defends the President's policies, he is subordinating his own professional judgment, denying to Congress the advice to which it may constitutionally claim to be entitled, and becoming the political spokesman of an Administration policy. If the military chief expresses his professional opinions to Congress, he is publicly criticizing in Chief and furnishing ammunition to the latter's political enemies.[33]

Thus, regardless of whether the Chiefs choose to support Congress or the president, they risk politicizing themselves. In Huntington's view, there is no clear path out of this dilemma. The best solution is for the military to follow its "professional duty to speak frankly to both President and Congress." Yet, this is far from sufficient; American history is laden with examples of Joint Chiefs engaging in political combat on the side of either the president or Congress. "The

[28] Richard K. Betts, *Soldiers, Statesmen, and Cold War Crises* (Cambridge: Harvard University Press, 1977), 54.
[29] Betts, *Soldiers, Statesmen, and Cold War Crises*, 54.
[30] Samuel P. Huntington, "The Political Roles of the Joint Chiefs," in *The Military and American Society: Essays & Readings,* ed. Stephen E. Ambrose and James Alden Barber (New York: Free Press, 1972), 39.
[31] Huntington, "The Political Roles of the Joint Chiefs," 39.
[32] Betts, *Soldiers, Statesmen, and Cold War Crises*, 54.
[33] Huntington, "Civilian Control and the Constitution," 693.

separation of powers makes it impossible for American officers ever to be at ease in their professionalism," undermining the foundations of the ideal model of objective control.[34]

In other instances, Huntington's model of objective control has been difficult to realize. Although no Joint Chiefs of Staff in the post-World War II era have resigned, there have been several key occasions in which military professionals have resisted objective control by civilians.[35] For example, after Secretary of Defense Robert McNamara brought in a youthful generation of systems analysts to make the Pentagon more efficient, military professionals resented the influence of McNamara's so-called "whiz kids." General Thomas D. White expressed the prevailing view when he stated that he was "profoundly apprehensive of the pipe-smoking, trees-full-of-owls type of so-called defense intellectuals who have been brought into this nation's capital."[36] Similarly, Secretary of the Army Elvis J. Stahr bemoaned McNamara's "tendency to overreact in exercising control and intrude in small details of administration" as well as his "neglect [of] the accumulated wisdom and responsible toughness of the career officers."[37] Stahr and White were frustrated by McNamara's impediments to their organizations and interactions where the "whiz kids" trampled over military prerogatives. For example, Alain Enthoven, McNamara's head of Systems Analysis at the Pentagon, responded to a senior Air Force general's briefing by saying, "I didn't come for a briefing, I came to tell you what we have decided."[38] In another instance, Enthoven and his systems analysts were criticized for their proposed changes to American nuclear weapons doctrine. In response to a general's criticism that they did not have the relevant expertise to make such changes, Enthoven retorted, "General, I have fought just as many nuclear wars as you have."[39]

History has been kind to the "whiz kids"; their reforms to the military establishment are largely seen as successful.[40] It is easy, then, to see their opponents as victims of goal-displacement, curmudgeonly officers who resisted changing the military's time-worn methods out of a sense of institutional interest. Other cases of military resistance to civilian directives,

[34] Huntington, "Civilian Control and the Constitution," 693.
[35] Betts, *Soldiers, Statesmen, and Cold War Crises*, 7.
[36] Jack Raymond, "The McNamara Monarchy," in *The Military and American Society: Essays & Readings*, ed. Stephen E. Ambrose and James Alden Barber (New York: Free Press, 1972), 29.
[37] Jack Raymond, "The McNamara Monarchy," in *The Military and American Society: Essays & Readings*, 29.
[38] Fred M. Kaplan, *The Wizards of Armageddon*, 1st Touchstone ed. (New York: Simon and Schuster, 1984), 254.
[39] Kaplan, *The Wizards of Armageddon*, 254.
[40] Richard J. Stillman, "The Pentagon's Whiz Kids-First Honorable Mention Prize Essay 1966," U.S. Naval Institute, April 1, 1966, https://www.usni.org/magazines/proceedings/1966/april/pentagons-whiz-kids-first-honorable-mention-prize-essay-1966.

however, are more difficult to dismiss. Vietnam is a particularly compelling case. As early as the partition of Vietnam in 1954, the Joint Chiefs of Staff were "reticent to become more heavily involved in South Vietnam" and agreed to do so "as reluctant but obedient soldiers."[41] As Vice-Admiral A.C. Davis, director of the office of foreign military affairs in the Office of the Secretary of Defense, wrote:

> Involvement of United States forces in the Indochina war should be avoided at all costs. If, the, National Policy determines no other alternative, the United States should not be self-duped into believing the possibility of partial involvement…one cannot go over Niagara Falls in a barrel only slightly.[42]

As American involvement in Vietnam gradually escalated, the Chiefs found themselves at odds with civilians limiting the American commitment. While civilians favored a limited approach, the military favored rapidly using overwhelming force. The Joint Chiefs repeatedly warned civilians like President Lyndon Johnson that the means they possessed in Vietnam were insufficient to achieve the president's stated ends.[43] Yet, the Chiefs never publicly aired their concerns, likely out of a commitment to professionalism: telling the public that they saw forces in Vietnam as insufficient would have been seen as a political challenge to President Johnson. Yet, had the Chiefs chosen to air their criticism of Johnson's incremental escalation strategy, perhaps the Vietnam War would have ended earlier. In the case of the Vietnam War, the military's commitment to professionalism may have come at a high cost.

In his conclusion to *The Soldier and the State*, Huntington warned that "the tension between the demands of military security and the values of American liberalism can, in the long run, be relieved only by the weakening of the security threat or the weakening of liberalism."[44] This prognostication proved overly pessimistic as, over the decades that followed, the United States navigated Cold War crises from the war in Vietnam to the Cuban Missile Crisis without a breakdown in either civil-military relations or democratic government. Perhaps the model of objective control proved more resilient than Huntington himself expected: professionalism led the military to largely acquiesce to civilian wishes and created a stable, if sometimes conflictual, civil-military relationship. Yet, as critics ranging from Elliot Cohen to Jack Snyder have shown, the model of objective control fails to address key issues, not least goal displacement by inward-

[41] Betts, *Soldiers, Statesmen, and Cold War Crises*, 22.
[42] Betts, *Soldiers, Statesmen, and Cold War Crises*, 20-21.
[43] Betts, *Soldiers, Statesmen, and Cold War Crises*, 27.
[44] Huntington, *The Soldier and the State*, 546.

looking military bureaucracies and the "Man on Horseback" problem that arises when military leaders are torn between loyalty to the current government and loyalty to what they see as the transcendent American state.

Today, when there is a historically high risk that future presidents will either seek to politicize the military or, in extreme cases, give illegal orders, the Man on Horseback problem is especially pronounced. There is no satisfying solution to this problem: if a future president gives illegal orders, American citizens should hope that military leaders defy those orders, even at the expense of undermining objective control. At the same time, Americans of all political persuasions should recommit themselves to the political neutrality of the military and ensure that it is never used as a tool of domestic politics.

The model of objective control helped America win the Cold War while preserving its liberal democracy. Today, we must both recommit ourselves to the ideals of objective control while working to address its shortcomings. If we do so successfully, we will not only inaugurate another era of constructive civil-military relations, but we will be better prepared to tackle the insistent national security challenges of the 21st century.

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"PHASE ONE" OR GAME OVER? AN ECONOMIC OVERVIEW OF THE U.S.-CHINA TRADE RELATIONSHIP

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For decades, China's economic developments complicated its relationship with the United States, with the 2018-2019 trade war substantially rupturing both countries. Through the turbulence, a bilateral trade agreement colloquially called "Phase One" emerged in January 2020, reforming the nations' approaches to agriculture, technology transfer, intellectual property, and other trade structures. However, the arrangement's success, with America and China's outlined responsibilities, depends on market access conditions, regulatory barriers, and the SARS-CoV-2 pandemic. Both countries are hesitant for future cooperation post-signage, with a "Phase Two" deal on the horizon, but in doubt. This paper abridges literature on the U.S.-China trade war centered around the "Phase One" agreement, its history, implications, and subsequent activities.

INTRODUCTION

Economic environments are malleable, influenced by bilateral agreements and organizations. Particularly, country figureheads command their nation's wealth arsenal, are entrusted to negotiate effectively, and hopefully garner the best results for their homeland. Foreign economic affairs are fundamental if leading actors understand the field and its indirect sacrifices from globalization.[1] On this balance, Hebrew University of Jerusalem Professor Ephraim Kleiman regarded international trade as a taste competition to find the most palatable option for involved countries.[2] Even after understanding the predatory practices that triggered the 2007-2008 global financial crisis, some countries continued aggressive economic policies that consequently upset Chinese and American consumers' wallets.

During a 2016 campaign rally for the United States (U.S.) presidency, business magnate and Republican Party nominee Donald Trump slammed the preexisting U.S.-China trade relationship as "job theft."[3] Trump offered to remedy the disputes by levying tariffs on

[1] Brian R. Copeland and Matoo Aaditya, *A Handbook of International Trade in Services* (England: Oxford University Press, 2007), 116.
[2] Ephraim Kleiman, "Tastes, Trade, and the Comparison of Structural Interdependence," *The Quarterly Journal of Economics* 84, no. 2 (May 1970): 279.
[3] "Full Transcript: Donald Trump's Jobs Plan Speech," *Politico*, June 28, 2016, https://www.politico.com/story/2016/06/full-transcript-trump-job-plan-speech-224891.

China aligned with Sections 201 and 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962.[4] Sections 201 and 301 of the Trade Act of 1974 would allow Trump to impose trade tariffs and suspend trade agreement concessions if imports seriously injure any American industry. In line with those policies, Section 232 of the Trade Expansion Act of 1962 would let Trump adjust import quantities that impair American national security.

As president of the world's largest gross domestic product (GDP) country in January 2018, Trump imposed tariffs on U.S. imports of steel-centric goods, such as washing machines and solar panels, from all countries importing those products into America. In July 2018, Trump narrowed his tariff focus on China, applying taxes solely against the country at high levels. Accordingly, China responded by slapping reciprocal tariffs against most imports from America, driving U.S. tariffs on Chinese imports to 21% and Chinese tariffs on American imports to 21.1% in September 2019.[5] Hoping to secure trade barrier concessions from the Chinese, both countries attempted to alter their trade relationship's trajectory and profit margins rather than respecting mutually beneficial policies already in practice. Subsequently, "optimal" tariffs triggered poor outcomes for both countries and spurred a geoeconomic trade war.

A temporary solution and ease to the economic uncertainty came with the "Phase One" agreement on January 15, 2020, later implemented in February 2020. The plan forbade additional tariff increases from either country, with tariffs from December 2019 remaining active. "Phase One" further detailed a Chinese commitment to purchase $200 billion in U.S. goods and services subsets divided over 2020 and 2021.[6] Although informally agreed upon, the United States and China intended to slice the last round of bilateral tariffs, imposed on September 1, 2019, in half, allowing for freer trade and recovery.[7] Originally touted as a solution to the economic hardship, retrospective analyses examine "Phase One" and how objectively transformative it was in ailing the trade war.

Academic scholars fervently tackled the 2018-2019 trade war as a relevant indictment of the twenty-first century global economy.[8] Still, some post-2019 works failed to consider significant financial disruptors such as the SARS-CoV-2 pandemic that transpired after the

[4] Imad A. Moosa, "The Thucydides Trap as an Alternative Explanation for the US-China Trade War," *Global Journal of Emerging Market Economies* 12, no. 1 (2020): 42.
[5] Robert C. Feenstra and Alan M. Taylor, *International Economics* (London: Worth Publishers, 2021).
[6] Chad P. Bown, "The US-China Trade War and Phase One Agreement," *Journal of Policy Modeling* 43, no. 4 (2021): 830.
[7] Eddy Bekkers and Sofia Schroeter, "An Economic Analysis of the US-China Trade Conflict," WTO Working Papers, 2020, 5, https://www.econstor.eu/bitstream/10419/215536/1/1693479710.pdf.
[8] Olaniyi Evans, "The Effects of the US-China Trade War and Trumponomics," *Forum Scientiae Oeconomia* 7, no. 1 (February 2019).

signage of "Phase One." The Sino-American economic conflict should not be game-framed with the countries and tariffs positioned as "winners" or "losers." Instead, the relationship is an opportunity to unearth deeper meaning about the relevant economic dynamics and strategies of "Phase One" and its fruitfulness as a bilateral trade agreement.

This paper abridges literature concerning the U.S.-China trade war, focusing on the 2020 "Phase One" agreement. While their relationship is highly competitive, the United States and China are interdependent on market structure, goods and service transfers, and currency growth.[9]

This original thesis opens by compiling the history of Sino-American trade developments and their degrees of friendliness leading up to "Phase One." Next, an in-depth breakdown of the "Phase One" deal will feature implications for America, China, and the trade balance, supplemented with appropriate economic data and statistics. The benefits of "Phase One" are then evaluated, and to what degree its intentions were satisfied, followed by the current state and complications of Sino-American trade relations. A deduction will be made on the provided "Phase One" information, alongside future research suggestions related to the phenomenon and beyond.

U.S.-CHINA TRADE HISTORY AND "PHASE ONE" ORIGINS

Modern rhetoric surrounding Sino-American trade relations suggests the recent struggle is symptomatic of a longstanding rivalry. While an escalation of protectionism preceded the "Phase One" deal, this was not always the reality. Such a narrative glosses over the nonlinear patterns and nuances of the historical relationship between both countries. In developing a working historical lens to view "Phase One," it is imperative first to recognize the Chinese economy's evolution through recent decades.

Before the mid-1800s, the Chinese economy was largely agrarian and closed to international trade. A shift toward liberalization began following mounting pressure from Britain, resulting in the ratification of the Treaty of Nanjing in 1842.[10] The treaty introduced China to international trade by opening five ports contingent on a 5% tariff for all imports and exports. This advancement persisted through the nineteenth century with the ratification of the Treaty of Shimonoseki in 1895, establishing a precedent for an eventual openness to

[9] Simon Lester and Huan Zhu, "US-China Phase-Two Trade Deals Will be Issue Specific," *Emerald Expert Briefings* 1, no. 1 (February 2021).
[10] Wolfgang Keller and Carol H. Shiue, "China's Foreign Trade and Investment, 1800-1950," National Bureau of Economic Research Working Paper, July 1, 2020, 13, https://www.nber.org/papers/w27558.

foreign investment in China.[11] By the start of the twentieth century, the Chinese economy gradually transitioned to an open economy, evidenced by the sustained growth in international trade.[12] The widespread disruptions caused by World War I bolstered China's standing as an international player when European countries like Germany buckled under economic sanctions. Before the war, the United States accounted for only 6% of Chinese exports. Into the post-war period, this figure more than quadrupled with the United States, consisting of 27% of China's export demand.[13]

The pattern continued to the late twentieth century when China faced a near-continuous rise in its ability to be a major international economic actor. Despite global trade tendencies and a severed period of American diplomatic relations until 1979, Chinese political power clamored for an illiberal approach to economic management. China sharply pivoted towards economic liberalization in the 1990s as national leadership embraced tariff-cutting and openness to foreign direct investment into the country.[14] The newfound receptivity culminated in China's admittance into the World Trade Organization (WTO) in 2001. China did not adhere to a strictly linear path; instead, it displayed liberal tendencies post-WTO entry in 2013. Since 2013, China quickly diverted from economic liberalism as President Xi Jinping's election ushered in an unforeseen expansion of state involvement in the economy.[15] China's new direction held consistently until the "Phase One" agreement's synthesis in January 2020.

China's entry into the WTO and succeeding changes are critical to its perspective on bilateral trade relations with the United States. Even as American tariff rates on Chinese goods were locked at around 10% following the 2001 WTO entry, the United States treated "China very differently…through a variety of WTO-sanctioned policies."[16] Little time passed before the term "China Shock" materialized in the United States, referring to 1999 through 2011 when increased Chinese imports sizably reduced American jobs.[17] Alongside mass

[11] Ibid, 28.
[12] Kris James Mitchener and Se Yan, "Globalization, Trade, and Wages: What Does History Tell Us About China?" *International Economic Review* 55, no. 1 (February 2014): 135.
[13] Ibid, 136.
[14] Bown, "The US-China Trade War," 808.
[15] Nicholas R. Lardy, *The State Strikes Back: The End of Economic Reform in China?* (Washington: Peterson Institute for International Economics, 2019).
[16] Bown, "The US-China Trade War," 808.
[17] Scott Lincicome, "U.S. Trade Policy Toward China: Learning the Right Lessons," Cato Institute, 2021, https://www.cato.org/sites/cato.org/files/2021-01/cj-v41n1-3.pdf

unemployment claims, many American complaints accused China of currency undervaluation and anti-competitiveness under WTO dumping terms.[18]

The United States used a combination of domestic laws and WTO protocols to treat China as a "nonmarket economy" and justify levying additional tariffs. Following the expiration of the five-year grace period, when new member nations could align their actions with WTO commitments without penalty, the United States demanded that China agree to this orientation. From 2006 to 2017, the United States brought twenty formal WTO disputes against the Chinese government. In the same period, the United States filed only twelve disputes against all other WTO members.[19] Notably, in February 2007, America and Mexico challenged China's system of subsidizing domestic industries.[20] The United States initiated two more complimentary complaints that April, condemning China's treatment of imported movies, books, and music and an alleged failure to enforce intellectual property (IP) laws and similar regulatory hurdles.[21] China responded with their own complaints, yet these efforts were often futile given the power the United States and its allies possessed in the Trans-Pacific Partnership.[22]

China acquiesced and bided its time until 2017 in the broader macroeconomic environment. During the early 2010s, U.S. action arose primarily from diplomatic channels, mainly through direct treaty negotiations and indirect pressure from allies and governmental bodies, such as the U.S. Department of the Treasury claiming China allegedly undervalued their currency, the yuan.[23] Escalation was sustained with the 2016 U.S. presidential election and the presidency of Donald Trump, which saw political decision-making concerning trade relations shift dramatically toward the executive branch.

The nationalistic turn in U.S. trade policy came with an additional complication caused by the WTO's classification of China. The implications of granting "market economy" status to China muddled America's ability to bypass WTO terms with its protectionist policies.[24] Around this time, the United States moved to impose tariffs, often 100% or more, on more than 7% of Chinese imports, an increase of coverage of 4.5% over

[18] Imad A. Moosa, et al., "The Origin of the US-China Trade War," *Applied Economics* 52, no. 35 (January 2020): 3854.
[19] Bown, "The US-China Trade War," 808.
[20] Chad P. Bown, "US-China Trade Conflicts and the Future of the WTO," *The Fletcher Forum of World Affairs* 33, no. 1 (2009): 28.
[21] Ibid.
[22] Bown, "The US-China Trade War," 809.
[23] Moosa, "The Thucydides Trap," 47.
[24] Larisa Kapustina, et al., "US-China Trade War: Causes and Outcomes," *SHS Web of Conferences* 73, no. 1 (January 2020): 3.

nine years beginning in 2007.[25] The modification signaled the start of America taking more direct efforts against China, often in ways justified in domestic legal precedents.

In early 2017, the United States National Security Strategy announced a significant proliferation of restrictions imposed on Chinese investments in American technology.[26] One measure included introducing the "Entity List," a register of businesses and organizations subject to specific licensing requirements for exporting, re-exporting, and transferring specified goods, often for national security purposes.[27] The exercise of power persisted with the decision to move Chinese chipmaker Huawei to the Entity List in 2019, which restricted the company's access to U.S. technology while placing additional scrutiny on the company's imports and exports across national borders.[28]

WHAT "PHASE ONE" ENTAILED

Twenty years of tariffs and tensions between the two nations converged on January 15, 2020, in Washington, D.C. President Trump and China's Vice Premier Liu formally endorsed and signed the "Economic and Trade Agreement Between the United States of America and the People's Republic of China," which is colloquially known as the "Phase One" agreement. At ninety-six pages, the written geoeconomic consensus detailed specific provisions and structural reformation of China's economic and trade regime. Extending Trumponomics with hopes of rebalancing the U.S.-China trade relationship, "Phase One" specialized in strengthening Chinese IP rights and security, limiting technology transfer, and agricultural commitments.[29] The trade concord elaborated on expanding financial service access, restricting currency manipulation, future trade negotiations, and dispute resolutions. Hailed as "a momentous step...toward a future of fair and reciprocal trade with China" by President Trump, the deal sought to resolve outstanding business concerns held by both parties.[30] "Phase One" anticipated to ensure a more fair trade environment ongoing from its effective date of February 14, 2020.

[25] Bown, "The US-China Trade War," 808.
[26] Kapustina, et al., "The US-China Trade War," 3.
[27] Bureau of Industry and Security, *Supplement No. 4 to Part 774 – Entity List* (2017).
[28] Daniel J. Ikenson and Huan Zhu, "Beware the Costs of a Technology Trade War," Cato Institute, May 2020, https://www.cato.org/blog/beware-costs-technology-trade-war.
[29] Cliff White, "United States and China Reach Agreement to Deescalate Trade War," *SeafoodSource*, December 13, 2019, https://www.seafoodsource.com/news/supply-trade/united-states-and-china-reach-agreement-to-deescalate-trade-war.
[30] Bonnie S. Glaser and Kelly Flaherty, "US-China Relations in Free Fall," *Journal of Bilateral Relations in the Indo-Pacific* 22, no. 2 (September 2020): 24.

Intellectual property cemented itself as a staple of creative protection and a sacred category of human intuition with the development of the American legal system. Previous American sentiment around intellectual property rights (IPR) galvanized other nations to adopt their policies, influencing spheres of entertainment, governmental cooperation, and trade. With the "Phase One" agreement, China initiated a defensive strategy that met U.S. demands by meticulously integrating American legal principles into their trade outlook.[31] China implemented damages for willful infringement, altered burden proof, and phrased confidential business dealings as "trade secrets," a definition affiliated with U.S. legal constructs. China utilized American IP values to promote accountability, widening the scope of misappropriation to include unauthorized disclosures and digital snooping committed by government actors or third-party helpers.[32] By offering more IP protections, Chinese trade-dominant cities like Beijing could liberalize financial markets through accelerated goods and services exchanges. In turn, safeguarding domestic Chinese IP dissolved counterfeit pharmaceuticals and related product circulation, therefore mandating a patent for legitimacy.

Transferring technology is highly encouraged to intertwine global efforts and development in research areas of interest. "Phase One" abolished forced technology transfer from American to Chinese firms. According to a report from United States Trade Representative (USTR) Robert Lighthizer, the People's Republic of China pressured and occasionally forced non-Chinese companies to outsource and transfer their technology to Chinese companies.[33] The coercive exercise allowed foreign actors to obtain administrative benefits, market access, and demographic exposure, creating biased market advantages. "Phase One" sought to remedy that barrier by ceasing the predatory practice, favoring voluntary and mutual-term technological licensing between countries. To amplify their commitment, China vowed to refrain from supporting outbound investments to acquire foreign technology vital in disruptive industrial plans.[34] Whether absolute or comparative, pursuing a competitive advantage in any industry requires harnessing cheaply produced,

[31] Carrie Shu Shang and Wei Shen, "Reevaluating Intellectual Property Bilateralism In the U.S.-China Context," *Journal of International Economic Law,* no. 1 (March 2021): 10.
[32] Kevin J. Hickey, et al., "Intellectual Property Violations and China: Legal Remedies," Congressional Research Service (2020): 19.
[33] Robert Lighthizer, "Investigation: Technology Transfer, Intellectual Property, and Innovation," Office of the United States Trade Representative, March 22, 2018, https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF.
[34] Robert Lighthizer, "2020 Report to Congress on China's WTO Compliance," Office of the United States Trade Representative, 2021, https://ustr.gov/sites/default/files/files/reports/2020/2020USTRReportCongressChinaWTOCompliance.pdf.

readily available, and widespread technology. "Phase One" marked a monumental change from China to share those resources with global competitors rather than isolating them for domestic self-interest.

Chapter Six of "Phase One" contained several paragraphs on proceeding investments that, from an American perspective, epitomized the deal's inherent success. China was to purchase an additional $200 billion of U.S. goods and services exports over 2020 and 2021, compared to 2017 imports.[35] Designed to reduce the annual bilateral trade deficit by $100 billion and bolster trade opportunities, the move came alongside the endurance of previously instated tariffs on two-thirds of bilateral imports.[36] With the two provisions, U.S. import growth from China would plateau or plummet, further slashing the deficit. Categorically, the obligation directly invested $32 billion into U.S. agriculture, $52.4 billion into energy, $77.7 billion into manufactured goods, and $37.9 billion into miscellaneous services.[37]

The most prominent strides entailed agriculture, which established China as the first customer for selling American crops, thereby promoting farmer, fishery, labor, and occupation growth. China pledged to expand access to pork, rice, dairy, animal feed, and poultry, among other products, continuing its strategic diversification and utilizing those imports as vehicles of economic diplomacy.[38] Despite agricultural goods and services comprising 22% of products covered by the purchase commitments, the 2018-2019 trade war diminished agricultural goods, mainly soybean imports and exports.[39] Even if the Chinese government granted exemptions to domestic companies to purchase soybeans, Chapter Six corrected an industry's uncertain trajectory and steadily supplied money to the American economy.

"Phase One" had additional chapters dedicated to dismantling preexisting financial service barriers and establishing mutual currency-related agreements. Based on Vice Premier Li's 2019 comments to halt foreign investor ownership, Chapter Four's measures intend to lower entry barriers to Chinese markets.[40] China decreased foreign equity limits, licensed

[35] Robert Lighthizer, "Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China," Office of the United States Trade Representative, 2020, https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf.
[36] Bown, "The US-China Trade War," 830.
[37] Karen M. Sutter, "U.S.-China Phase One Trade Deal," Congressional Research Service, (2022): 2.
[38] Lester Zhu, "US-China Phase-Two."
[39] Minghao Li, et al., "The U.S.-China Trade War: Tarriff Data and General Equilibrium Analysis," *Journal of Asian Economics* 69, no. 3 (June 2020): 6.
[40] Matthew P. Goodman, et al., "What's Inside the U.S.-China Phase One Deal?" Center for Strategic and International Studies, January 2020, https://www.csis.org/analysis/whats-inside-us-china-phase-one-deal.

specific American firms, and curbed outstanding discriminatory or predatory regulatory requirements.[41] Most significantly, China would involve itself in the application review process for American-based credit card companies, such as Mastercard and Visa. Still, China remained unwavering by not permitting licenses to those companies while requiring joint ventures in a monopolized market dominated by China UnionPay.[42] With most imposed obstacles removed, the financial services chapters of "Phase One" granted the United States the ability to compete on a more level field with Chinese goods and services of a similar caliber, with America recognizing pending applications.

Stabilizing currency amid uncertain trade patterns is essential in navigating economic turbulence and mitigating consumer shocks. As investors were bearish on diversifying into Bitcoin out of fears of a currency war, "Phase One" looked to Chapter 33 of the U.S.-Mexico-Canada Agreement for inspiration and precedent.[43] Continued U.S. dollar strength became central in devolving more autonomy and power to the markets rather than judgments made by business conglomerates. Under "Phase One," markets could determine exchange rates and stop "currency poaching" practices designed to weaken a foreign power's legal tender. Accountability and enforcement mechanisms were also employed to enforce currency stabilization and promote better dialogue between the involved nations. Per Article 5.4, either the U.S. Secretary of the Treasury or the Governor of the People's Bank of China can bring transparency disagreements to the Bilateral Evaluation and Dispute Resolution Arrangement, a process found in Chapter Seven of "Phase One."[44] The implications indicate a tonal shift for the United States in designating China's exchange rate operations. In August 2019, the U.S. Treasury lambasted China as a "currency manipulator" for actively undertaking measures to rival the dollar with the yuan.[45] "Phase One" dissolved that claim for compromise purposes and eradicated previous unfair competition against the United States.

Future negotiations and instating disagreement prevention measures for seamless trade going forth were the final headlines in the "Phase One" agreement. Both inclusions were necessary and proportional in satisfying American and Chinese demands to ensure a second trade war would not arise. Although not in the legal agreement, the United States and China hinted they would cut the last round of bilateral tariffs, imposed on September 1, 2019,

[41] Lighthizer, *Economic and Trade Agreement*, 4-4.
[42] Sutter, *U.S.-China Phase* One, 2.
[43] Evans, "The Effects of," 51.
[44] Lighthizer, *Economic and Trade Agreement*, 7-1.
[45] Stephanie Segal, "Nothing to See Here: China No Longer 'A Currency Manipulator,'" Center for Strategic and International Studies, January 2020, https://www.csis.org/analysis/nothing-see-here-china-no-longer-currency-manipulator.

in half and prevent the potential execution of economically weaponized tariffs.[46] These revisions would be discussed, analyzed, and approved at a Trade Framework Group, a newly established summit attended by a PRC Vice Premier and the USTR every six months.[47] Phase One" also debuts a dispute resolution system, in which both sides have ninety days to settle discord, with either nation possibly taking proportional action. The Trade Framework Group would produce procedural and bilateral consultations that expedite fair trade processes at the working and principal levels. Setting the groundwork for healing Sino-American trade relations, "Phase One" outlined, addressed, and proposed reciprocal solutions to the multifaceted errors made during the trade war.

THE EFFECTIVENESS OF "PHASE ONE"

While the "Phase One" agreement made progress in resolving many withstanding economic conflicts like market access issues, neither side was willing to fully compromise.[48] Thus, many of the more ambitious objectives never emerged. Concerning China's remaining discriminatory policies, review or dissolution was delayed for an improbable "Phase Two" agreement—a summit that has not occurred as of this paper's synthesis. Recall that China vowed to purchase an extra $200 billion of U.S. goods and services during 2020 and 2021 per one of "Phase One's" tenets. Strikingly, the U.S. trade shortfall rose to $378 billion in [49] Thus, China's commitment to importing $200 billion in U.S. goods was to fix America's enduring trade deficit.

However, currency fluctuations, market conditions, and regulatory barriers hindered China's ability to meet such high purchase expectations. According to a July 2022 study by the Peterson Institute for International Economics (PIIE), China only reached 57% of its purchase commitment, $13.6 billion short of its baseline goal.[50] Coupled with the unrealistic goal of increasing U.S. exports by 40% per year, this was America's attempt at managing

[46] Jian Zheng, et al., "Effects of Eliminating the US-China Trade Dispute Tariffs," *World Trade Review* 22, no. 2 (June 2022): 214.
[47] Lighthizer, *Economic and Trade Agreement*, 7-1.
[48] Anna Ashton, et al., "Reflections on the Phase One Agreement," *China Business Review*, January 20, 2022, https://chinabusinessreview.com/reflections-on-the-phase-one-agreement/#:~:text=Overall%2C%20the%20Phase%20One%20deal.
[49] Andrew Mullen, "US-China Trade War: Was the Phase-One Trade Deal a 'Historic Failure,' and What's Next?" *South China Morning Post*, February 27, 2022, https://www.scmp.com/economy/global-economy/article/3168399/us-china-trade-war-was-phase-one-trade-deal-historic-failure.
[50] Chad P. Bown, "China Bought None of the Extra $200 Billion of US Exports in Trump's Trade Deal," Peterson Institute of Economics, July 2022, https://www.piie.com/blogs/realtime-economics/china-bought-none-extra-200-billion-us-exports-trumps-trade-deal.

trade rather than opening the Chinese economy. As described by David Dollar, a senior fellow at Brookings's John L. Thornton China Center, managing trade is often ineffective due to the unexpected nature of product demand.[51]

"Phase One's" inadequacies can also be attributed to the SARS-CoV-2 pandemic, as the economic slowdown and temporary collapse of global trade impeded both actors from fulfilling their promises. While agricultural purchases were most successful, reaching 83% of their objective, purchases of covered manufactured goods only reached 59%. Yet, the success of agricultural purchases was not necessarily because of the deal, as China increased its pork imports from the United States in 2019 due to an epidemic of African swine disease. Corn and wheat imports rose primarily due to China's obligation to a 2019 WTO ruling on tariff rate quotas.[52] The United States Department of Commerce confirmed that the trade imbalance between the United States and China increased by 14.5% to $355.3 billion in 2021, breaking the previous record of $418.2 billion in 2018.[53] If any successes emerged post-agreement signage, they may have originated independently of the "Phase One" provisions.

Official Chinese sentiment surrounding "Phase One" soured with time, diagnosing the agreement as too idealistic to function. When China failed to meet the United States' expectations, Huo Jianguo, a former Chinese Ministry of Commerce think tank leader, expressed that China did all it could to import U.S. goods given circumstances surrounding the SARS-CoV-2 pandemic.[54] Other Beijing think tank representatives believed the criticism from the United States was unjustified due to the unrealistic expectations the deal had set. Considering these comments, China did meet expectations to respect IP, open its financial services sector, and remove technical barriers to U.S. farm exports. However, these advances were a fraction of what they were supposed to achieve from February 2020 onwards.

Notably, there were plans to reduce tariff rates to avoid unnecessary costs to both U.S. and Chinese companies. Under "Phase One," there was a momentary decrease in some tariff rates, and pending tariffs were stalled to lessen the financial burden of China's sizable purchase commitment to U.S. goods. In January 2022, however, most tariffs persisted, and most exclusions expired. Bilateral tariffs stayed at an all-time high.[55] Four years after its

[51] David Dollar, "U.S.-China Trade Relations in an Era of Great Power Competition," *China Economic Journal* 15, no. 3 (September 2022): 278.
[52] World Trade Organization, "China – Tariff Rate Quotas for Certain Agricultural Products," (2019): 57.
[53] Mullen, "US-China Trade War."
[54] Phelim Kine, "From 'Momentous' to 'Meh' – Trump's China Trade Deal Letdown," *Politico*, January 13, 2022, https://www.politico.com/newsletters/politico-china-watcher/2022/01/13/from-momentous-to-meh-the-phase-one-trade-deal-letdown-495705.
[55] Ashton, et al., "Reflections on."

signage, American importers face hefty costs associated with U.S. tariffs on Chinese goods, amounting to more than $110 billion. Undeterred by the tax, the United States continues to import a high quantity of Chinese apparel, furniture, travel goods, and footwear, demonstrating the considerable demand for Chinese products.

Consequently, American homes negatively reap the higher costs and prices by the Section 301 tariffs in place since 2018, occasionally at rates of 25%. The hardest-hit American demographics consist of households in the "lowest 20% of income groups, minority-headed households, and households headed by individuals without a college education."[56] Unsurprisingly, Chinese exporters have bypassed these costs through transshipment, product reclassification, and falsifying goods invoices. Companies circumventing "Phase One" standards acknowledge their faults, but it is an economic tactic not to incur financial charges that worsen domestic life.

CURRENT STATUS OF THE U.S.-CHINA TRADE RELATIONSHIP

The United States remains in a challenging trade position with China. There continue to be uncertainties for American and Chinese producers, and a lack of trust between the two nations exacerbates the hesitancy for future cooperation. As of January 2024, the United States has not complied with China's demands to remove tariffs. The Biden administration has committed to enforcing the "Phase One" agreement until its promises are kept, suggesting either an increase in tariff rates or a new tariff to compensate for China's purchase shortfalls.[57] In March 2022, the new USTR, Katherine Tai, acknowledged China's failure to uphold the "purchase commitments detailed in the 'Phase One Agreement,' and non-market practices not addressed in the deal," but still "[kept] the door open to conversations with China."[58] U.S. governmental trade rhetoric remains steadfast in holding China accountable, a sentiment constant with the Trump and Biden administrations.

Interestingly, the day after the PIIE study was published, Gavekal Dragonomics stated that "gradual ratcheting-up of penalties and maybe tariffs, but no real large-scale action" is on the horizon for Sino-American trade relations.[59] As of November 2023, 66.4% of U.S.

[56] Danielle Inman, "Joint Industry Study Flags Negative Impacts of Section 301 Tariffs on American Consumers and U.S. Businesses," National Retail Federation, January 17, 2023, https://nrf.com/media-center/press-releases/joint-industry-study-flags-negative-impacts-section-301-tariffs.
[57] Ashton, et al., "Reflections on."
[58] *Trade Policy Agenda Hearing, Before the Senate Finance Committee,* 116th Cong. (2022) (testimony of Katherine Tai, Trade Representative Ambassador of the United States).
[59] Mullen, "US-China Trade War."

imports from China are under tariff, with an average U.S. tariff on Chinese exports set at 19.3%—a figure six times higher than before the trade war commenced.[60] Conversely, there are Chinese tariffs on 58.3% of U.S. exports, averaging 21.1%. Thus, the Biden administration must proceed with either more force or leniency, although recent history favors real progress with China stemming from a toughened stance.

Learning from previous errors, a more scrutinous approach to China and bilateral trade is manifesting in Washington, D.C. The United States Chamber of Commerce insinuated that the White House was exploring alternative measures, such as calling upon U.S. allies, should Beijing continue to fail to adhere to the terms of the agreement. Moreover, the Biden administration identified seven additional unresolved concerns revising Chinese technology. Accordingly, in August 2023, President Biden signed an Executive Order reducing China's capacity to leverage U.S. investments in its technology firms for military advancements.[61] While a "Phase Two" agreement was deemed improbable, there are tentative plans to settle the more fundamental unresolved concerns of "Phase One," such as "subsidies, excess capacity, state-owned enterprises, cybersecurity, and regulatory transparency.[62] However, "Phase Two" can only occur once signs of acquiescence or compromise from both sides warrant another bilateral deal.

Overall, the United States imported more Chinese goods in 2022 than in any other year. $418 billion in goods were imported in the first nine months of the year, $23.7 billion more during the same period in 2018. Amid rumblings of moving supply chains out of China, Chinese goods have become even more of a necessity to America as globalization intensifies. Despite the large sum of Chinese imports, the United States added 379,000 manufacturing jobs in 2022. At the same time, the United States has reached a historic level of exports to China, as the United States exported $3.2 billion more worth of goods in 2022 than in 2018. Considering the uncertainty looming large since July 2018, America's largest trade relationship remains with China.

CONCLUSION

[60] Lori Ann LaRocco, "As Biden and Xi Meet, Asian Manufacturing Slowdown Returns to a 2020 Low, Led by a Softer China," *CNBC*, November 15, 2023, https://www.cnbc.com/2023/11/15/asia-manufacturing-slowdown-returns-to-2020-low-led-by-softer-china.html.
[61] Josh Boak, "Biden Issues an Executive Order Restricting US Investments in Chinese Technology," *AP News*, August 10, 2023, https://apnews.com/article/biden-china-investment-ai-national-security-dd6a5b138e6c7cba31468dc89f776e8d.
[62] Mullen, "US-China Trade War."

While much literature focuses on specific elements related to bilateral trade relations between the United States and China, this research tends to be exclusive and not holistic. This scholarship intends to synthesize the nuances of existing literature while providing a straightforward narrative of events and outcomes. Ultimately, the historic "Phase One" trade agreement between the United States and China is the product of a variable and infrequently erratic relationship between the two nations. This agreement addressed many trade policy objectives for each country, including intellectual property regulations, trade balance, purchase requirements, exchange rates, and tariff rates.

Initially hailed as an accomplishment, the data, reactions, and economic landscape post-signage signify that not much general growth transpired. "Phase One" and the continuing hostile trade relations between the United States and China can be an indictment of nationalistic trade policy and the disutility of protectionism. However, the agreement alleviated mutual areas of trade concern and signified a transcontinental effort to restore socio-economic harmony. Regardless of the takeaway, "Phase One" could be the kick-off that America and China need for economic restoration, with many decisions at play for future interactions.

With the contributions of this paper, there are still knowledge gaps on "Phase One's" sectorial influence, primarily with the agriculture industry. Lee et al. investigate how the agreement raised expected net returns for crops analyzed in their approach, leading to an increase in soybean acreage and land being reutilized for crop production.[63] Future studies can assess American and Chinese farmers' perspectives on how "Phase One" modified local and national crop supply chains and if the agreement is environmentally sustainable. In addition, other elements of foreign policy can be intertwined with "Phase One's" long-term success. Chiefly, the rising political tensions between the United States and China over Taiwan are intriguing to uncover how emerging political dilemmas affect the bilateral trade balance. Upcoming research can focus on whether China's actions regarding Taiwan restrict compliance monitoring laid out in "Phase One" or complicate its status in satisfying any outstanding agreement duties.

[63] Meongsu Lee, et al., "The United States-China Trade War and Impact on the Post-Conservation Reserve Program Land Allocation," *Journal of Agricultural and Applied Economics* 55, no. 2 (May 2023): 233.

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Part Three

Domestic Policy

THE EFFECT OF 2018 DODD-FRANK ROLLBACK ON THE BANKING SYSTEM

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Recent turmoil in the banking system prompted questions on whether 2018 changes to Dodd-Frank stress test rules increased risks to financial stability. I empirically analyze whether 2018 changes to supervisory stress testing rules created significant changes in idiosyncratic risk and significant new market information around stress test results disclosure dates. I create three sets of banks depending on their status as a stress tested bank pre- and post-change in regulation: banks tested both before and after the regulation change (ten banks), banks not tested in either year (three banks), and banks tested before the regulation change but not after (nine banks). I find the idiosyncratic risk of bank stock returns is significantly different for the first and third sets of banks, and, critically, market reactions to stress test results disclosures may not reflect this change in idiosyncratic risk. This suggests current stress tests are not fully reflective of banking system risks.

INTRODUCTION

> For example, the agencies are considering whether to apply the proposed new rule to banks with assets over $100 billion. This consideration has certainly been influenced by the recent experience with three bank failures of institutions with assets between $100 billion and $250 billion. If we had any doubt that the failure of banks in this size category can have financial stability consequences, that has been answered by recent experience.
>
> FDIC Chairman Martin J. Gruenberg on the Basel III Endgame, June 2023[1]

In the last year, financial markets and the banking system experienced turbulence not seen since the 2008 crisis. Given that stress tests emerged as the Federal Reserve's primary assessment for examining the health of the banking system after the 2008 crisis, a natural question is whether the 2018 weakening of the Fed's stress test practices increased the risk of financial instability. That three financial institutions failed with assets in the $100 billion to $250 billion range suggests there are real risks to financial stability for banks of this size. I

[1] Martin J. Gruenberg, "Remarks by Chairman Martin J. Gruenberg on the Basel III Endgame at the Peterson Institute for International Economics," Federal Deposit Insurance Corporation (FDIC), June 22, 2023, https://www.fdic.gov/news/speeches/2023/spjun2223.html.

hypothesize that less burdensome stress-testing regulation for banks post-2018, which freed up cash previously allocated for reserve capital for stress tests, would lead to heterogeneity in the kinds of investment decisions banks make. Assuming markets price that heterogeneity efficiently, it would appear as idiosyncratic risk, measured by the error term of a regression of those banks' stock returns on the S&P 500 and a bank index, and new market information, measured by the absolute value of cumulative abnormal return. I test this hypothesis on three sets of banks using 2018 data and 2019 data: those stress tested both before and after the regulation change (ten banks), those not stress tested in either year (three banks), and those stress tested before the regulation change but not after (nine banks). 2018 was the last year before the change in stress test disclosure rules, but February 5, 2019, was when the Fed announced the new regulation's frequency of stress testing for Category IV banks. 2019 was the first year the new rules were implemented. For a given set of banks, I compare the regression coefficients (including the error term) from the regression that uses pre-February 5, 2019, data and the regression that uses post-February 5, 2019, data by performing a t-test for significance. I also compare the 2018 and 2019 CAR values using a t-test for significance.

Table 1: Sets of Banks

Stress Tested Before and After Regulation Changed	Not Stress Tested Before Or After Regulation Change	Stress Tested Before But Not After Regulation Change
1. Bank of America 2. Citigroup 3. Goldman Sachs 4. JPMorgan Chase 5. Morgan Stanley 6. Wells Fargo 7. BNY Mellon 8. Capital One 9. PNC Financial Services Group 10. US Bancorp	1. Charles Schwab 2. Comerica 3. Truist Financial	1. Ally Financial 2. American Express 3. Citizens Financial Group 4. Discover Financial Services 5. Fifth Third Bancorp 6. Huntington Bancshares 7. KeyCorp 8. M&T Bank 9. Regions Financial

Thus, in this paper, I consider if supervisory stress test results disclosures created significant idiosyncratic risk in a two-factor model of bank stock returns and significant new market information after Congress changed the supervision requirements in 2018. First, I find the idiosyncratic risk of bank stock returns is significantly different for the first and third sets of banks. Second, I find the 2018 stress test changes did not create significant new market information around test results disclosure dates. This suggests current stress tests are not fully reflective of banking system risks.

In May 2018, Congress passed the bipartisan Economic Growth, Regulatory Relief, and Consumer Protection Act. The law weakened company-run and supervisory stress testing rules as prescribed in the 2010 Dodd-Frank Act for small and midsize banks, those with assets between $100 billion and $250 billion, by subjecting them to supervisory stress tests every two years instead of annually. The "year off" from stress testing permits small and midsize banks to make investment decisions, such as lending, with the capital they would have previously allocated as a buffer for the stress tests. The law also lowered the number of required supervisory stress test scenarios from three to two. Thus, the law modified the eligibility, frequency, and scenarios of supervisory stress tests.

In March 2023, the U.S. banking system underwent a real stress test. SVB's collapse motivates a fundamental question for the banking system at large: did the 2018 rollback of stress testing rules for small and midsize banks increase risk in the banking system?

The structure of the paper is as follows. Section 2 is a brief history and literature review. Section 3 explains the methodology. Section 4 provides the results and analysis. Section 5 summarizes the implications for the Presidency and Congress. Section 6 concludes the paper. The appendix contains various figures.

BACKGROUND

A. Historical Overview

Following the Global Financial Crisis, Congress passed the Dodd-Frank Act of 2010. Among other reforms, Dodd-Frank prescribed stress tests for financial institutions with over $10 billion in assets. The Dodd-Frank Act Stress Tests (DFAST) assessed the impact of forward-looking economic shocks on capital ratios and banks' ability to absorb losses. Three main

scenarios were used: baseline, adverse, and severely adverse. For example, the scenarios have included unemployment spiking to 10 percent and commercial real estate prices plummeting 40 percent. The stress tests proved to be effective. In prepared remarks at a financial stability conference in 2013, then-Chair of the Federal Reserve Ben Bernanke said,

> The resilience of the U.S. banking system has greatly improved since then [2009], and the more intensive use and greater sophistication of supervisory stress testing, as well as supervisors' increased emphasis on the effectiveness of banks' own capital planning processes, deserve some credit for that improvement.[2]

Dodd-Frank defined two categories of "covered" institutions: those with $10 - $50 billion in assets, and those above $50 billion in assets. The law required banks with over $50 billion in assets to undergo annual supervisory stress testing and all banks with over $10 billion in assets to submit the results of annual company-run stress tests to the Fed.[3] As described on the Fed website, "In conducting the supervisory stress tests, the Federal Reserve projects balance sheets, RWAs, net income, and resulting post-stress capital levels and regulatory capital ratios over a nine-quarter 'planning horizon,' generally using a set of capital action assumptions prescribed in the Dodd-Frank Act stress test rules."[4] Similarly, the company-run stress tests "use the same planning horizon, capital action assumptions, and scenarios as those used in the supervisory stress test."

The 2018 law, among other reforms, amended the classification of "covered" institutions, the frequency of supervisory and company-run stress tests, and the number of scenarios. The law revised the classification of covered institutions into four categories based primarily on asset size and risk to the financial system. Generally speaking, the classifications are as follows: Category I is U.S. globally systemically important banks (G-SIBs); Category II is banks with more than $700 billion in assets; Category III is banks with more than $250 billion in assets; Category IV is

[2] Pedro Nicolaci Da Costa, "Bernanke Says Stress Tests Make Banks More Stable," *Reuters*, April 9, 2013, https://www.reuters.com/article/uk-usa-fed-bernanke/bernanke-says-stress-tests-make-banks-more-stable-idUKBRE93716220130408/.

[3] Doreen R. Eberley, "Final Rule: Company-Run Stress Testing Requirements for FDIC Supervised State Nonmember Banks and State Savings Associations," Federal Deposit Insurance Corporation (FDIC), October 15, 2019, https://www.fdic.gov/news/board-matters/2019/2019-10-15-notice-sum-b-mem.pdf.

[4] "Dodd-Frank Act Stress Test 2016: Supervisory Stress Test Methodology and Results," Federal Reserve, August 9, 2016, https://www.federalreserve.gov/bankinforeg/stress-tests/2016-background-on-dodd-frank-act-stress-testing.htm.

banks with $100 billion to $250 billion in assets. In 2019, the Fed and federal banking agencies finalized rules for supervision standards for the four categories.[5]

This paper focuses on the rules changes for Category IV banks. Whereas previously all banks over $50 billion in assets underwent annual supervisory stress tests, now only those above $250 billion in assets continue undergoing annual supervisory stress tests. Those between $100 to $250 billion in assets are subject to "periodic" supervisory stress tests, but the 2018 law did not define the precise frequency of "periodic." Instead, the Fed announced on February 5, 2019, that it determined "periodic" to mean every two years. This effectively exempted small and midsize banks, those between $100 to $250 billion, from annual stress tests—roughly one-third less participated than the 2017 stress tests.[6] Banks below $250 billion in assets were also exempt from company-run stress tests, raised from the $10 billion threshold. Finally, the law reduced the number of required stress test scenarios from three to two, eliminating the "adverse" scenario and maintaining the "baseline" and "severely adverse" scenarios.

Proponents of the law argued it alleviated burdensome red tape. House Speaker Paul Ryan hailed it as "freeing our economy from overregulation."[7] But the law garnered detractors as well: House Minority Leader Nancy Pelosi panned it as "tak[ing] us back to the days when unchecked recklessness on Wall Street ignited an historic financial meltdown."

Some loosening of the rules may have been sensible. Rep. Barney Frank, the retired author of Dodd-Frank, opined that he would have exempted small lenders, those under $10 billion in assets, from the Volcker Rule. He would also raise the threshold for subjecting banks to a set of stricter rules from $50 billion or more in assets to $100 billion—far less than the bill's $250 billion, which is high enough such that a few bank failures could pose systemic risks, he claims. Given the recent failure of three institutions with assets in the $100 billion to $250 billion range that posed risks to financial stability, he appears to be right. Ultimately, he said he would have voted against the rollback.

B. Brief Summary of Prior Work

[5] "Federal Banking Agencies Issue Basel III Endgame Package of Reforms," Gibson Dunn, August 3, 2023, https://www.gibsondunn.com/federal-banking-agencies-issue-basel-iii-endgame-package-of-reforms/.
[6] Noah Berman, "What Is the Dodd-Frank Act?" Council on Foreign Relations, May 8, 2023, https://www.cfr.org/backgrounder/what-dodd-frank-act.
[7] Alan Rappeport and Emily Flitter, "Congress Approves First Big Dodd-Frank Rollback," *The New York Times*, May 22, 2018, https://www.nytimes.com/2018/05/22/business/congress-passes-dodd-frank-rollback-for-smaller-banks.html.

Previous literature shows stress tests are a critical tool in conducting oversight of the banking sector.[8] These results show stress tests improved public confidence in the banking system during the Global Financial Crisis and helped prevent a banking crisis during the pandemic. Some have called for strengthening stress testing rules to cover a wider range of risks, include feedback effects between banks and the real economy, be expanded to more institutions, and be streamlined globally (such as the Basel III capital framework).[9] Study has also been done on the effect of public disclosure of stress test results on market information generation.

In particular, this paper relies on the methodology in Flannery, which shows that stress test results disclosures as an event study are associated with significantly higher absolute abnormal returns.[10] They use several measures of market response to stress test announcements, such as cumulative abnormal returns. The finding in Flannery that market information generation, on net, is not limited by stress test results disclosures is fundamental as well.

METHODOLOGY

There are two components to this study. First, I determine whether 2018 changes to the supervisory stress testing rules created significant idiosyncratic risk. Recall I separate banks into one of three sets of banks: those stress tested both before and after the regulation change (ten banks), those not stress tested in either year (three banks), and those stress tested before the regulation change but not after (nine banks). There is no overlap between any of the three sets (they are all pairwise disjoint). The Fed's announcement date of the new frequency for Category IV banks was February 5, 2019. In order to capture sufficient data but not so much that other monthly Fed announcements could affect bank stock market returns, I use an event window of one month prior to the announcement date to one month after: January 5, 2019, to February 4, 201,9 and February 5, 2019, to March 5, 2019.

[8] Richard J. Herring and Til Schuermann, "Objectives and Challenges for Stress Testing," in *Handbook of Financial Stress Testing,* ed. J. Doyne Farmer et.al., (Cambridge University Press, 2022), https://www.cambridge.org/core/books/abs/handbook-of-financial-stress-testing/objectives-and-challenges-of-stress-testing/B05C17965F0ACF63205FAEE56B7588C2.
[9] Richard J. Herring, "Can Stress Tests Be Effective Crisis-fighting Tools for Banks?" Wharton Knowledge, April 15, 2020, https://knowledge.wharton.upenn.edu/article/can-stress-tests-be-effective-crisis-fighting-tools-for-banks/.
[10] Mark Jeffrey Flannery, Beverly Hirtle, and Anna Kovner, "Evaluating the Information in the Federal Reserve Stress Tests," *FRB of NY Staff Report* no. 744 (October 1, 2015), https://ssrn.com/abstract=2669837.

I construct a two-factor ordinary least-squares (OLS) regression model that aims to track a bank's stock returns as closely as possible. The first factor is the S&P 500 daily market returns. I access them using the yfinance package in Python, which pulls data from *Yahoo Finance*. The second factor is a custom bank index I create as follows: for a given bank on a given day, compute the average of the daily returns of all other banks in that set of banks. Thus, each bank each day has its own custom bank index value, against which its own daily returns (dependent variable) can be regressed as one factor in the two-factor model. For each bank, we run two regressions: one for the one-month window before the announcement date and a second regression for the one month window after the announcement date.

The two-factor OLS regression model is the following for bank stock i:

$$y_{i,t} = \beta_i * marketReturn_t + bankIndexCoeff_i * bankIndexReturn_{i,t} + \epsilon_i$$

Where $y_{i,t}$ is bank i's true daily return on day t, $marketReturn_t$ is the daily S&P 500 market return on day t, $bankIndexReturn_{i,t}$ is the custom bank index value for bank i on day t, and the OLS function determines the three optimal coefficient values i.e. for β_i, $bankIndexCoeff_i$, and ϵ_i.

Thus, for each $y_{i,t}$, there is an error: the difference between the true daily return and the estimated return derived from the regression above. Figure 1 plots these errors for the three sets of banks. For each bank stock in a set of banks, that stock's idiosyncratic risk is the standard deviation of the errors over the time window. Thus, we want the idiosyncratic risk $\sigma_{\epsilon_i,N}$ for bank stock i for a period of N days. $\bar{\epsilon}_{i,N}$ is the mean error for stock i over the N days. In this case, we compute the idiosyncratic risk for a period of one month (say N_1 days) before the announcement date and another idiosyncratic risk for a period of one month (say N_2 days) after the announcement date. Suppose $\epsilon_{i,n}$ is the error for stock i on day n of the month, $n \in \{1, 2, \ldots, N_j\}$, $j \in \{1, 2\}$. Then:

$$\sigma_{\epsilon_i,N_1} = \sqrt{\frac{1}{N_1}\sum_{n=1}^{N_1}(\epsilon_{i,n} - \bar{\epsilon}_{i,N_1})^2},$$

$$\sigma_{\epsilon_i,N_2} = \sqrt{\frac{1}{N_2}\sum_{n=1}^{N_2}(\epsilon_{i,n} - \bar{\epsilon}_{i,N_2})^2}$$

In a slight abuse of language, I consider the idiosyncratic risk for a stock to be a regression coefficient. So, there are four regression coefficients. To determine if there was a significant change in the regression coefficients before and after the Fed's announcement date, I performed a t-test on the four regression coefficients using the OLS output coefficient values. Figure 2 contains the results of the t-test for three sets of banks. to be a regression coefficient. There are four regression coefficients. To determine if there was a significant change in the regression coefficients before and after the Fed's announcement date, I performed a t-test on the four regression coefficients using the OLS output coefficient values. Figure 2 contains the results of the t-test for three sets of banks.

The second component of this study is to quantify unexpected changes in stock prices at the date of the stress test results disclosure. I rely on a similar methodology used in Flannery. I measure the market reaction to DFAST results disclosures for each date, June 21, 2018 (before the regulatory change) and June 21, 2019 (after the regulatory change). For each date, I use the absolute value of cumulative abnormal returns, denoted as |CAR|, as the primary measure for market information generated over an event window around the results disclosure date. I exclude banks subject to mergers and acquisitions or banks that are subsidiaries of foreign firms. For each disclosure date, I calculate the average of the |CAR| values from each bank tested.

I measure the normal return using the true daily stock returns. The abnormal return is the normal return minus the expected return as if the event never happened. I measure the expected return using the two-factor regression model constructed above. The event day t is the first trading day after the stress test result disclosure. For a given date and firm, the abnormal return is summed over the event window [t - 1, t + 1] to get the cumulative abnormal returns (CAR). I use the absolute value of the CAR for a given firm because it is a direction-neutral measure: it considers positive or negative information as a market reaction. Finally, I take the average of each firm's |CAR|, denoted $|CAR|_i$ for a total of J firms: 's |CAR|, denoted $|CAR|_i$ HYPERLINK "https://www.codecogs.com/eqnedit.php?latex=%7CCAR%7C_i#0" for a total of J HYPERLINK "https://www.codecogs.com/eqnedit.php?latex=J#0" firms:

$$|CAR| = \frac{1}{J}\sum_{i=1}^{J}|CAR_i|$$

Finally, for each set of banks, I perform a t-test between the June 2018 and June 2019 CAR values for banks in that set. Figure 3 shows the result of the t-tests.

RESULTS AND DISCUSSION

Figures 1.1 and 1.3 are the most important: they show significance at the 0.01 and 0.1 levels, respectively, that the idiosyncratic risk of bank stock returns is significantly different before vs. after the Fed's February 5, 2019, announcement of the two-year stress testing cycle for Category IV banks. The result for Figure 1.3 is the most revealing. It is also consistent with my hypothesis: that lifting stress-testing regulation requiring higher capital requirements for banks to undergo stress testing means banks can use the capital to make a variety of investment decisions with a range of risks, known as heterogeneity. Assuming markets price that heterogeneity efficiently, it would appear as idiosyncratic risk, measured by the error term of a regression of those banks' stock returns on the S&P 500 and a bank index, and new market information, measured by the absolute value of cumulative abnormal return. The main finding is the Figure 1.3 result supports the view that the 2018 reforms would significantly change the level of risk posed by banks that otherwise underwent annual stress testing rather than biennial stress testing. Because the CAR t-test for this set of banks is non-significant, it suggests the market viewed the easing of regulation as a potential source of a change in idiosyncratic risk around the announcement date (February 2019) but did not believe this significant change in idiosyncratic risk was reflected in market reactions to stress tests results disclosures from June 2018 to June 2019. This is significant because one of the primary objectives of the stress testing framework is to assess the risks that banks pose to the financial system as a result of their investment decisions. But since that risk is not fully reflected in the market reactions to stress tests results disclosures—as the result here suggests—then Congress and the Fed cannot rely so heavily on current stress tests to assess the health of the banking system; they need to find another way to unearth that risk potential (new stress tests scenarios, regulatory reforms, etc). The potentially

large downside of missing a significant change in banking system risk levels could very well exceed the cost of supervisory oversight. I also consider why the stress tests results disclosure dates may not create new market information below for the CAR results.

The result for Figure 1.1 is surprising because the 2018 reforms left regulatory requirements for the largest banks largely intact, all the more so at a low significance level of 0.01. A possible explanation is markets reacted positively (i.e. less uncertainty) to the Fed's not attempting to make a change in regulation for the largest banks (and the most systemically important) in their February 2019 announcement. While markets may respond with less uncertainty to less bank regulation, due to the systemic importance of these largest banks, the reverse dynamic may be occurring here. The graph of errors in Figure 1 appears to have less volatility in the error rates post-February 5, 2019, announcement, which would support this explanation.

The result for Figure 1.2 makes sense: banks not involved with the stress testing framework before and after the 2018 rules change shouldn't see significant changes in their idiosyncratic risk, at least not due to the rules change.

The |CAR| is the regression output variable indicating market information. Figure 3 below shows the t-tests for each set of banks' |CAR| values. There is no p-value less than the 0.01, 0.05, or 0.1 levels. Therefore, I fail to reject the null hypothesis that the 2018 stress test rules change did not create significant new market information for DFAST tests. I consider three reasons why no significant market information was created: Generally, the event window did not capture it, there was no real information effect due to stress tests functioning as health indicators for the banking industry, there was no real information effect due to stress tests being less meaningful, and the regression model (used to find the expected return) was unable to discern a market reaction.

First, the rules change created real information, but market reaction to the stress test results during the event window may have been dampened by prior public knowledge of the Fed's implementation of the rules change. The Fed followed a multi-year process of publicly revealing and finalizing their approach to implementing the 2018 rules change well in advance of the stress test results disclosure dates. Thus, any information that could have been revealed by changes in market information levels during the event window was already known to investors.

Second, there was no real information effect. Investors might have assumed non-stress tested banks with similar businesses as larger, stress tested banks would have similar stress test results anyway. Research shows stress test results produce information about the state of the banking industry more broadly, including for non-stress tested banks.[11] That suggests investors did not believe the 2018 rules change significantly curtailed their ability to assess the health of the banking system, so no significant market information was created.

Third, there was no real information effect because stress test results are simply not as meaningful when smaller banks are excluded. Suppose investors believe that big banks are generally better-capitalized, stronger, and better-managed than small and midsize banks. Then they might believe that big banks can withstand stress test scenarios better than smaller lenders that may be more vulnerable to market shocks. Thus, how meaningful is a stress test if you do not test the most vulnerable banks? Investors may shrug at the change in rules since there is limited information value in unsurprising annual announcements of all big banks passing the stress tests.

Finally, the regression model may not have uncovered a real information effect. The sample size of the data is limited, and a two-factor model cannot perfectly capture bank returns.

IMPLICATIONS FOR PRESIDENCY AND CONGRESS, FUTURE RESEARCH

The March 2023 banking crisis underscored the need for sound policy to address weaknesses in the banking system. The crisis required an immediate response from the President, Treasury, and FDIC, as well as and close monitoring from Congress to ensure it did not trigger a financial contagion. By taking the extraordinary step of protecting the 89 percent of deposits uninsured by the FDIC—over $150 billion—regulators sought to reduce the risk of contagion and stabilize the banking system.

Two future research questions stem from this kind of heavy-handed government response: how should we think about the moral hazard relating to the response to the March 2023 crisis? One might suppose such interference reduces the incentive of banks to manage risks well. Furthermore, if the FDIC effectively insures all or much more than the $250,000 limit in deposits, it opens the door to asking what a deposit insurance limit even means. Practically, one

[11] Flannery, "Evaluating the Information."

is asking what the optimal level of deposit insurance is, a tricky economics question. Perhaps a phenomenon of "too small to fail" has taken root since the government fears even a small bank failing could trigger depositors in small banks across the country to panic and increase the risk of contagion, inciting a crisis in the banking system. We are reminded of the fragility of the financial system and the real risks that banks and regulators must manage responsibly.

As a consequence, it is very much in the President's and Congress' interest to enact guardrails to prevent such (potentially catastrophic) crises from happening, from higher capital requirements to stronger lending and liquidity guidelines. The main finding of this paper—that the 2018 reforms would significantly change the idiosyncratic risk posed by banks that switched from an annual to a two-year testing cycle—suggests Congress should take stock of the potential unintended consequences of new reforms before enacting them. The 2018 Dodd-Frank rollback was strongly bipartisan in a polarized time and supported by the banking industry, yet that may not be a sufficient bar to justify the reform.

In contrast, as alluded to in the last section, if there is a limited or nonexistent real information effect, the Fed may believe they implemented the 2018 stress test changes smoothly—i.e. without suddenly affecting production of market information at result disclosure dates. The results may provide the Fed with more room to make changes to the stress testing framework without shocking the markets. That could mean the Fed has some additional leeway to manage the banking system. However, that would not diminish the role of Congress; instead, it bolsters the importance of close cooperation between lawmakers and central bankers. For example, the Fed can add interest rate risk, such as short-term interest rate spikes, to the stress tests scenarios.[12] More broadly, as the Fed seeks to finalize proposed Basel III endgame reforms, such as requiring more capital to be held against unrealized losses for banks with over $100 billion in assets, policymakers have less reason to fear significant market reactions. Note that if the regression model is simply unable to identify changes in market information, then these consequences cannot be supported.

CONCLUSION

[12] Mackenzie Hawkins, "Fed's Bank Tests Overlooked Risk of Rapid Rise in Interest Rates," *Bloomberg*, March 15, 2023, https://www.bloomberg.com/news/articles/2023-03-15/fed-s-key-bank-test-overlooked-interest-rate-risk-for-a-decade?embedded-checkout=true.

In this paper, I empirically analyze whether 2018 changes to DFAST supervisory stress testing rules created significant idiosyncratic risk and new market information around stress test results disclosure dates. I run a two-factor OLS regression design on the February 5, 2019, announcement as prescribed by the 2018 rules change. Remarkably, I find evidence that the 2018 reforms would change the level of risk posed by banks that otherwise underwent annual stress testing rather than biennial stress testing. Combined with the insignificant changes in CAR values from June 2018 to June 2019, this result suggests that the market viewed the new two-year stress test cycle as a potential source of a change in idiosyncratic risk but did not believe this significant change in idiosyncratic risk was reflected in market reactions to stress tests results disclosures from June 2018 to June 2019. Policymakers ought to consider these nuances before major regulatory changes to our banking system.

APPENDIX: FIGURES

Figure 1: Residual Errors for OLS Regression one month before the Fed's announcement of the two-year stress testing cycle (blue vertical dashed line) on February 5, 2019, to one month after the announcement.

Figure 1.1: For each bank (key indicates stock ticker), a two-sided t-test of standard deviation of these residual errors before and after the announcement showed significance, a surprising result since the announcement did not change the annual stress testing frequency for this group.

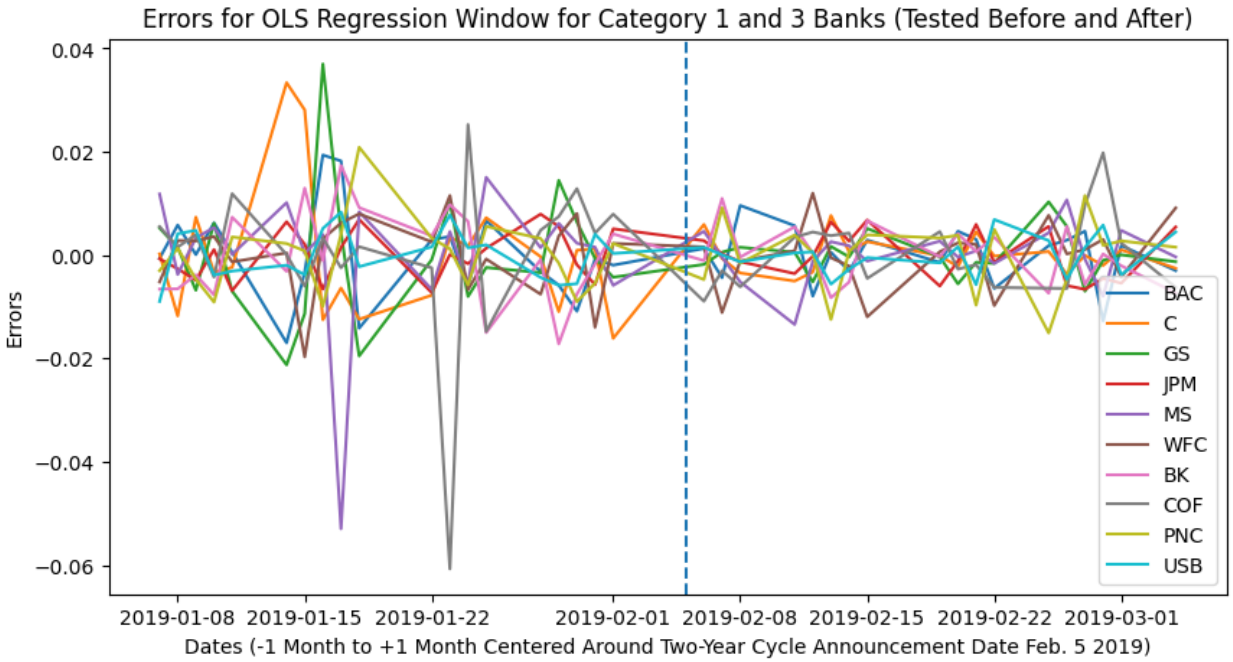

Figure 1.2: For each bank (key indicates stock ticker), a two-sided t-test of standard deviation of these residual errors before and after the announcement showed no significance, as expected since the announcement was not targeted at banks not participating in annual stress testing.

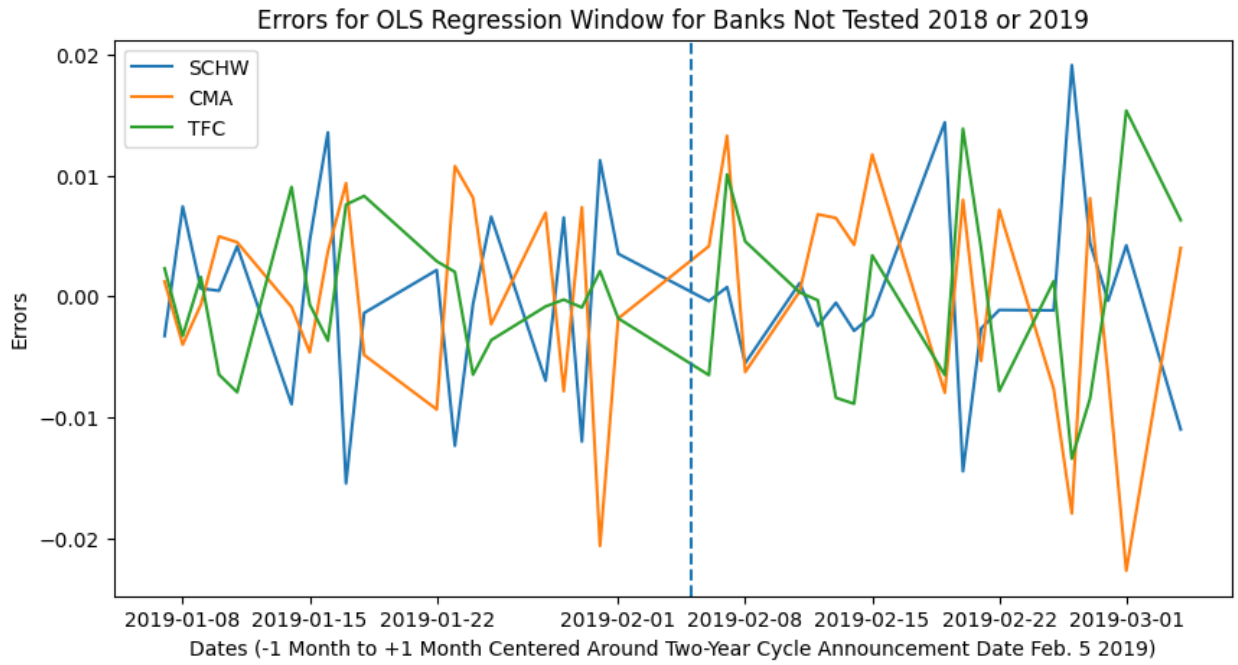

Figure 1.3: For each bank (key indicates stock ticker), a two-sided t-test of standard deviation of these residual errors before and after the announcement showed significance as expected since the announcement was targeted at this group of mid-size banks undergoing annual testing.

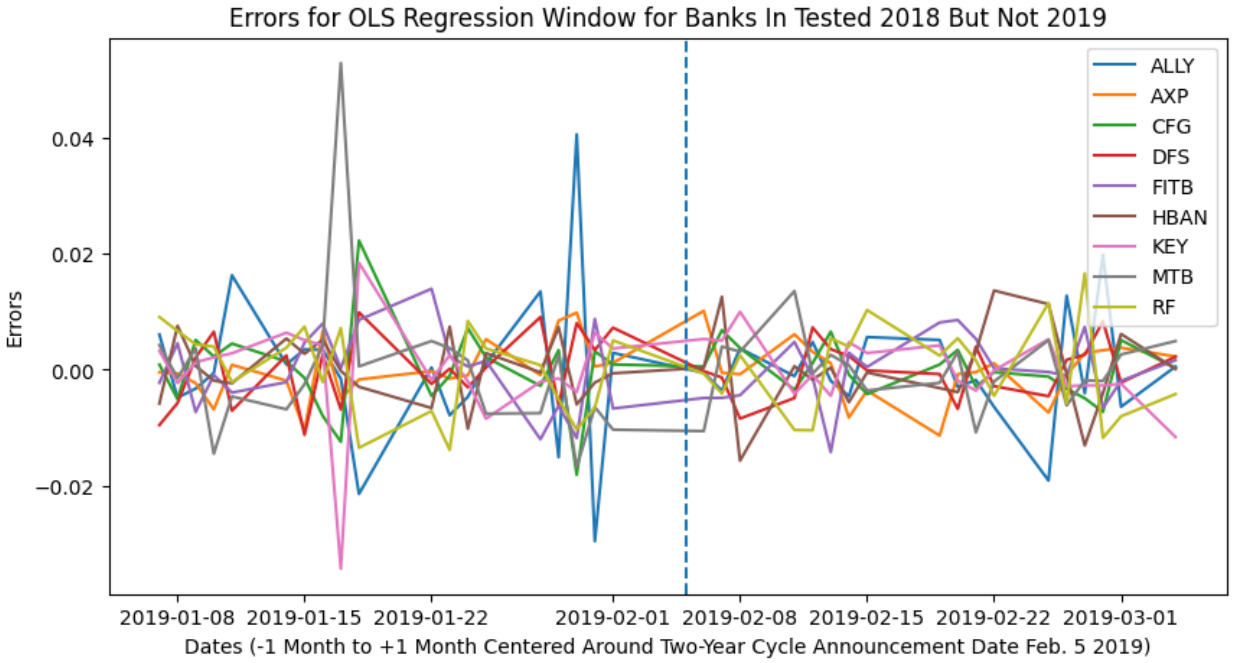

Figure 2: T-test P-Values For Regression.

Figure 2.1:

Coefficient	P-Value	Significant?
Error	0.773	No
Beta	0.713	No
Bank Index	0.976	No
Idiosyncratic Risk	0.00514	Yes at 0.01 level

Figure 2.2:

Coefficient	P-Value	Significant?
Error	0.766	No
Beta	0.877	No
Bank Index	0.924	No
Idiosyncratic Risk	0.267	No

Figure 2.3:

Coefficient	P-Value	Significant?
Error	0.684	No
Beta	0.921	No
Bank Index	0.578	No
Idiosyncratic Risk	0.059	Yes at 0.1 level

Figure 3: T-test P-Values For CAR Measure. All three sets of banks show no significant new market information created around test results disclosure dates for any group.

Bank Set Number	P-Value	Significant?
1	0.632	No
2	0.330	No
3	0.715	No

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RE-ENVISIONING VOICE OF AMERICA'S ROLE IN THE DIGITAL AGE

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Voice of America is a key instrument of U.S. public diplomacy. It attracts, influences, and persuades, leveraging soft power to promote democratic ideals around the world. Yet the media environment in which the international broadcaster made its name has dramatically changed since the beginning of the Digital Age. New information and communication technologies have dismantled the spatial and temporal limitations that once restricted the dissemination of information. However, these same technologies have also enabled autocratic regimes to enlarge their discursive power through exploiting new innovations for mass censorship, repression, and surveillance. Though the forces it seeks to combat are—at present—more technologically advanced, the international broadcaster cannot afford to let this gap widen any further. This paper will examine Voice of America's response to the evolving global media landscape through dissecting the case of China. Its challenges and successes in one of the most restrictive media environments in the world illuminate the strategic reforms Voice of America should consider to maintain informational influence on the international stage.

INTRODUCTION

Founded in 1942, Voice of America (VOA) prides itself on "providing comprehensive coverage of the news and telling audiences the truth."[1] Indeed, this commitment was essential amidst malignant misinformation intended to drive hatred, incite genocide, and reap destruction during World War II. Under President Franklin D. Roosevelt, VOA laid the groundwork for it to become what it is today: the largest U.S. international broadcaster, circulating news in forty-eight languages to over 326 million people around the world.[2] Bridging information gaps around the world, its reporting is impactful and indispensable. For audiences, VOA has often served as a beacon of hope. Programming past the Iron Curtain inspired many to defect from the USSR.[3]

[1] "Mission and Values," Voice of America, accessed November 22, 2023, https://www.insidevoa.com/p/5831.html.
[2] Vivian s. Walker et. al., ed., "2023 Comprehensive Annual Report on Public Diplomacy & International Broadcasting," United States Advisory Commission, 169, https://www.state.gov/wp-content/uploads/2024/01/2023_ACPD_Annual_Report_508C_v2-1.pdf.
[3] Foy Kohler, "The Effectiveness of the Voice of America," *The Quarterly of Film Radio and Television* 6, no. 1 (1951): 29, https://doi.org/10.2307/1209931.

Highlighting women's rights in the Middle East has sparked campaigns for their civil liberties.[4] On-the-ground coverage of the 2019 Hong Kong protests gave demonstrators who fought for their fundamental freedoms a sense of vindication.[5] At its founding, VOA officials oriented the agency towards promoting the cause of democracy worldwide, protecting human rights, and realizing a more peaceful world order. This remains VOA's ethos, even as the surrounding media landscape has completely transformed in the eight decades since its inception.

When President Gerald R. Ford signed VOA's charter into law on July 12, 1976, VCRs hadn't yet made their debut. The *crème de la crème* of the median home's furnishings was a Zenith Chromacolor II with a 19" display and grainy resolution. Even so, this represented a huge upgrade over the home radios of the early 20th century. Outside home entertainment, technological advancements in other realms also took hold. In 1951, a group of electrical engineers based in Philadelphia released UNIVAC I, the first-ever commercial computer made in the United States. Not long after, the first home computer made its debut, fiber optics enabled the rapid transmission of sound and image data, and the mobile phone facilitated more convenient communications than ever before. Amidst this flurry of innovation, the World Wide Web's emergence in 1989 cemented the arrival of the Digital Revolution—transforming societies through broadening civic engagement, democratizing decision-making, and opening new opportunities for social mobilization. In turn, the effective management of information became an essential part of global governance.

As the leading instrument of American public diplomacy, VOA serves to tell America's story well on the international stage. Its function is *de jure* informative, but also *de facto* persuasive. On the one hand, the agency brands itself as a "consistently reliable and authoritative source of news."[6] On the other hand, VOA prioritizes "present[ing] the policies of the United States clearly and effectively."[7] Though the agency operated as part of the U.S. propaganda apparatus when it was first founded, the 1994 Broadcasting Act—which ordered VOA to establish a firewall between itself and the government to guarantee journalistic independence—

[4] Sanja Kelly, *Hard-Won Progress and a Long Road Ahead: Women's Rights in the Middle East and North Africa*, Freedom House (Washington: Freedom House, 2010), 25.
[5] Hanmin Kim, "Framing Violence: US and Chinese State-Funded News Outlets during the Hong Kong Protests," *Pacific Forum* 21, no. 9 (June 2021): 7, https://pacforum.org/wp-content/uploads/2021/06/issuesinsights_Vol21WP9.pdf.
[6] Voice of America, "Mission and Values."
[7] Voice of America, "Mission and Values."

redirected VOA towards less political aims.[8] Some critics still accuse VOA of impeding on journalistic independence, but its reporters have by and large been able to decide what to cover and how to cover those topics.[9] However, the agency undoubtedly seeks to promote a vision of the world in which American-led democracy and freedom prevail globally. Even the firewall feeds into this mission of public diplomacy, casting the United States as durably committed to protecting the freedom of the press. Hence, VOA serves as not just another news outlet in the contemporary media landscape but it is also deeply intertwined with the American quest to win the contest for global influence.[10]

The biggest challenge information distributors face in the contemporary media landscape is maximizing their appeal over the countless other information distributors that compete for audiences' attention. As the celebrated Yuval Noah Harari observed, "In a world deluged by irrelevant information, clarity is power." VOA achieves its mission only when it actually reaches its audiences and wins their hearts and minds—yet other countries' efforts to undermine this undertaking, coupled with the decentralized nature of contemporary media consumption and the rapid pace at which new information and communication technologies (ICTs) have evolved, have made this all the more difficult. In particular, China has served as a crucial proving ground. VOA has tested many of its newest strategies to contend with the challenges of the contemporary media landscape in the PRC. Thus, this paper will investigate the scope and efficacy of VOA's existing strategies for adapting to the Digital Age and make recommendations about how to improve them through a case study of its operations in China.

To provide context for its analysis, this paper will first cover the history of VOA in China. Since the PRC was founded in 1949, VOA has made continuous adjustments to maintain its operations in the country amidst censorship and surveillance. The second section details key recent ICT developments affecting VOA. Technology is *sine qua non* to VOA's operations because it enables the dissemination of information. The third section expands on the first two sections by exploring the specific technological successes and challenges VOA experiences in the People's Republic of China. These offer important insights about how to design a more

[8] "Firewall," U.S. Agency for Global Media, accessed February 19, 2024, https://www.usagm.gov/who-we-are/firewall.
[9] Yelena Osipova-Stocker et al., "Assessing impact in global media: methods, innovations, and challenges," *Place Brand and Public Diplomacy* 18, no. 3 (October 2021), 289, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8549424/#CR43.
[10] Joseph S. Nye Jr., "Soft Power," *Foreign Policy* no. 80 (1990), 154, https://doi.org/10.2307/1148580.

effective news network that can advocate for democracy even in the most hostile conditions. The fourth section draws on insights from VOA's experiences in China—where it has deployed its most cutting-edge tools, such as censorship-evading algorithms and secure VPN protocols—to make recommendations for how VOA can accomplish its mission in an even more digitized future. These ideas for reform will expand VOA's reach and resonance with audiences as well as the international brodcaster's ability to serve as an effective instrument of public diplomacy.

A HISTORY OF VOA IN CHINA

Known as 美国之音 (pinyin: *meiguo zhiyin*), VOA began its radio broadcasts to China during World War II.[11] In the post-war years, the United States backed Chiang Kai-shek's Nationalist regime against the Mao Zedong-led Communists as the Chinese Civil War unfolded, sending support in the form of military aid. Amidst the backdrop of the Cold War, this was the linchpin in the U.S.'s' international anti-Communist stance. As such, the KMT's 1949 defeat in the Chinese Civil War at the hands of Mao came as a huge blow to the United States. It made protecting surviving defenses in the region a top priority. Naturally, VOA expanded its programming—which only had English and Mandarin broadcasts before 1949—establishing a Cantonese service as well.[12] Tibetan language programming commenced in 1991 as part of continued efforts to counter PRC influence through disseminating fact-based reporting. The public diplomacy resonated well with Tibetans, who—as the Dalai Lama once said—considered "VOA broadcasts their medicine for depression and exhaustion, and on days that they don't get to hear it, they say they've missed their vital medicine."[13] Of course, this did not sit well with PRC leaders who considered the VOA to be a troublesome threat to the stability of the Chinese Communist Party (CCP). Thus, they commenced a full-court press to block VOA programming from entering PRC airwaves.

[11] "VOA Marks 70th Year of US Broadcasts to China," U.S. Agency for Global Media, December 27, 2011, https://www.usagm.gov/2011/12/27/voa-marks-70th-year-of-us-broadcasts-to-china/.
[12] Jeremy Taylor and Lanjun Xu, *Chineseness and the Cold War: Contested Cultures and Diaspora in Southeast Asia and Hong Kong* (New York: Routledge, 2022), 114.
[13] Kyle King, "VOA Tibetan Service Celebrates 20th Anniversary of First Broadcast," *Voice of America*, March 24, 2011, https://www.insidevoa.com/a/voa-tibetan-service-celebrates-20th-anniversary-of-first-broadcast-118661799/178518.html.

As early as 1955, the CCP started jamming VOA broadcasts.[14] Combined with the lack of accessible radios—there were about 1.3 per 1,000 people then—these technical interferences made it all the more difficult for mainland Chinese to tune in.[15] At the time, there was also little incentive to listen to VOA because their land reform policies and the leftover fervor from their victory in the Chinese Civil War made the CCP popular. However, mainland Chinese experienced two major traumas—the Great Leap Forward and the Cultural Revolution—in the two subsequent decades that changed attitudes towards the legitimacy of the CCP and the necessity of VOA. After President Richard Nixon paid a formal diplomatic visit to China in 1972, the size of the mainland audience further increased.[16] The technological means to access broadcasts also expanded. By 1975, there were approximately forty radio receivers for every 1,000 people.[17] Deng Xiaoping's Reform and Opening Up policies, which transitioned China from a strict command economy to a socialist market economy, followed by the normalization of U.S.-China relations under President Jimmy Carter's administration in 1979, drew even more listeners to VOA. This high tide caused one high-ranking CCP official to approximate in a conversation with visiting American diplomats that over a hundred million mainland Chinese had tuned into VOA.[18] While the estimate may have been artificially high, it nonetheless attested to the massive amount of traction the international broadcaster had gained in the PRC since World War II.

The 1989 Tiananmen Square protests injected new vigor into VOA's commitment to carry out investigative reporting in the PRC. Over the course of the pro-democracy uprising, VOA covered about 180 related major news events —and audiences listened in droves to daily broadcasts. The lack of otherwise credible information about new developments made VOA even more appealing, as did VOA's decision to send television signals into China for the first

[14] He Zhou and Jianhua Zhu, "The 'Voice of America' and China: Zeroing in on Tiananmen Square," *Journalism Monographs*, no. 143 (February 1994): 1, https://www.proquest.com/scholarly-journals/voice-america-china-zeroing-on-tiananmen-square/docview/215676435/se-2.
[15] James W. Markham, *Voices of the Red Giants: Communications in Russia and China* (Ames, Iowa: The Iowa State University Press, 1967), 341-42.
[16] Zhou and Zhu, "The 'Voice of America' and China," 5.
[17] Markham, 342.
[18] Fitzhugh Green, *American Propaganda Abroad* (New York: Hippocrene Books, 1988), 95.

time.[19] A New York Times report in May 1989 found that VOA served a key role in spreading news from city to city throughout the PRC:

> The real news does not travel fast in this Communist country, at least through official channels. So when the streets here swell with protesters, people all over China tune in the Voice of America. During the turmoil of recent weeks, people in offices, factories and schools throughout China have clustered by the radio to listen to the latest episodes in the saga of student protest. At Beijing University, students huddle around posters that report the latest Voice bulletins, and the other day, hundreds of students crowded around a dormitory window listening to a dispatch.[20]

From its inception in China, the service had operated in opposition to the PRC political establishment. It intended to serve as a beacon of hope to the Chinese people inundated with misinformation in an authoritarian regime. Thus, the June 4, 1989, crackdown on Tiananmen Square marked the start of even more hostility between the CCP and VOA.

In the current geopolitical context, winning audiences over in China is VOA's top priority. As an illustrative example, VOA Mandarin provides fifty-six hours of programming per week.[21] Some of VOA's most promising new ideas and technologies are being piloted in China. Recent highlights include Briar, an encrypted messaging system for journalists, and Psiphon, an anti-censorship VPN software for netizens.[22] Yet VOA's entire FY 2023 budget—which is supposed to serve 326 million people in forty-eight languages around the world—came out to less than $270 million.[23] Between its Cantonese, Mandarin, and Tibetan services, VOA employs a total of twelve full-time China experts.[24] On the other hand, in its quest to control the global information ecosystem, the PRC government has invested billions of dollars into "telling China's stories well" at home and abroad.[25] It employs tens of thousands as part of its propaganda apparatus, ranging from engineers to reporters to television anchors. A profound imbalance

[19] The Associated Press, "Voice of America Beams TV Signals to China," *New York Times*, June 9, 1989, https://www.nytimes.com/1989/06/09/world/voice-of-america-beams-tv-signals-to-china.html.
[20] Sheryl Wudunn, "Voice of America Has Won the Ear of China," *New York Times*, May 9, 1989, https://www.nytimes.com/1989/05/09/world/voice-of-america-has-won-the-ear-of-china.html.
[21] "VOA Broadcasting in Mandarin - Quick Fact," Voice of America, accessed June 22, 2023, https://www.insidevoa.com/p/6440.html.
[22] "Future of Distribution," U.S. Agency for Global Media, 2020, 39-41, https://www.usagm.gov/wp-content/uploads/2020/06/USAGM-OPR-Future-of-Distribution.pdf.
[23] U.S. Agency for Global Media, *FY 2023 Congressional Budget Justification*, 22.
[24] "VOA Experts," Voice of America, accessed January, 23, 2024, https://www.insidevoa.com/a/voa-experts/3834958.html#.
[25] "How the People's republic of China Seeks to Reshape the Global Information Environment," U.S. Department of State, September 28, 2023, 45, https://www.state.gov/wp-content/uploads/2023/09 /how-the-peoples-republic-of-china-seeks-to-reshape-the-global-information-environment_Final.pdf.

exists between the investments the U.S. government has made in protecting media freedoms and those that the CCP has made in manipulating and monopolizing the mainland Chinese media environment. In the context of digital technologies making new forms of information control and dissemination possible, VOA has fallen even further behind due to its lack of funding.

DIGITIZATION, DECENTRALIZATION, AND DATAFICATION

There are three major shifts in the contemporary media landscape that VOA must contend with if it is to continue serving as an effective tool of public diplomacy anywhere in the world—especially in China. First, the proliferation of digitization has made contemporary media ubiquitous. The internet affords unlimited access to information at any given point in time, and broadcast, digital, print, films, and social media, not just traditional radio, have allowed creators to reach larger audiences through more creative methods than ever before. These transformations have effectively "weakened the role of legacy media as gatekeepers to information, giving citizens easy and often free access to an unprecedented quantity of news," according to researchers Valentina Vivola and Niccolò Caranti of the human rights NGO DARE Network.[26] For the majority of its existence, VOA has disseminated its programming over radio and television—distribution channels that continue to decline in relevance. VOA must improve its distribution strategy at a rate commensurate with ICT innovation.

Second, decentralization has powered the emergence of new information suppliers and thus given audiences far more choices to choose from for their media consumption. The average American viewer had a mere seven TV channels to choose from in 1970, whereas they have hundreds, often even thousands, of channels to choose from in the modern day.[27] Additional platforms ranging from Facebook to Google News to YouTube have made the current media environment more high-choice than ever before. VOA is no longer one of the very few options available to audiences. The abundance of available information has made constructing one authoritative and coherent narrative difficult for all outlets, especially those that compete for credibility against a large number of other information suppliers. Though authoritarian regimes

[26] Valetina Vivona and Niccolò Caranti, *The Impact of Digitalisation on Media and Journalism (*Berlin: DARE, 2020), 7, https://dttools.eu/pdf/digit-al-io1-media-and-journalism.pdf.
[27] Rebecca Chalif, "How a High Choice Media Environment Leads to Great Selectivity, Fragmentation, and Polarization," *Gnovis Journal* (April 25, 2010): 1, https://gnovisjournal.georgetown.edu/journal/media-fragmentation-and-political-polarization- how-high-choice-media-environment-leads-great/.

have a far tighter control on information than democracies, even they have proven vulnerable to the challenges of decentralized content creation and distribution. For example, the Chinese blog Program Think attracted a sizable domestic following by exposing corruption at the highest levels of CCP leadership for years before the blogger was arrested.[28] For an agency whose mandate includes breaking through authoritarian censorship to disseminate news coverage, decentralization has also been a boon. In fact, many of VOA's latest anti-censorship technologies take advantage of these circumstances to threaten the CCP's control over information.

Datafication is the third major transformation of the contemporary media landscape. Big data now informs most high-level decisions on content, enabling information suppliers to curate programming specifically for their audiences. Similar to decentralization, datafication represents both a blessing and a curse for VOA. The exact utility of datafication lies in its predictive power to help media outlets surmise who their audiences are, what appeals to them, and when and where they access new content, all of which VOA can leverage to expand its reach. However, the same technological advancements that power datafication—such as more powerful computing capabilities and larger data storage capacities—have also enabled authoritarian regimes to carry out their agendas of repression. Through collecting personal data, authoritarian countries have enlarged the "asymmetry of power between the state and the people," according to communications scholars Kenneth Cukier and Viktor Mayer-Schoenberger.[29] Specifically, the proliferation of surveillance over private and public activities has facilitated crackdowns by authoritarian governments on those who challenge their control over their country's information environments. Because of these developments, VOA journalists who cover sensitive topics and VOA audiences who tune into coverage about controversial issues risk their own safety.

CHALLENGES AND SUCCESSES ON THE FRONT LINES

Like most of its peers, VOA's adaptation to this new media landscape has been slow-moving, due in part to internal reluctance but also material constraints. Yet, the service has also endeavored to keep up. VOA launched its website www.voanews.com on January 1, 2000.[30] In

[28] Vivian Wang, "China Took Her Husband. She Was Left to Uncover His Secret Cause," *New York Times*, July 5, 2023, https://www.nytimes.com/2023/07/05/world/asia/china-dissident-blog-program-think.html.
[29] Kenneth Neil Cukier and Viktor Mayer-Schoenberger, "The Rise of Big Data," *Foreign Affairs*, May 1, 2013, https://www.foreignaffairs.com/articles/2013-04-03/rise-big-data.
[30] "VOA History," Voice of America, accessed January 23, 2024, https://www.insidevoa.com/p/5829.html.

September 2008, Voice of America registered Facebook and Twitter accounts, and in September 2012, it made its first Instagram post.[31] Not long after, VOA leadership announced the rollout of a mobile app featuring forty-three languages to audiences around the world.[32] Today, the service's content goes through media including podcasts, satellite television, over-the-top (OTT) streaming services, as well as the more traditional FM radio.[33] Yet these means are insufficient to attract a strong digital audience in China because of the ever-evolving media landscape.

Challenges

> The funding imbalance between American and Chinese public diplomacy sits at the heart of VOA's struggles to digitize in the contemporary media landscape. Adapting to the Digital Age requires large capital investments into boosting social media presence, recruiting new talent, and upgrading existing infrastructure, which VOA has been largely unable to make.[34] A June 2020 USAGM report identified several important emerging technology trends that would help VOA provide stronger support to its reporters and audiences:Some of the trends are platform-specific, such as the evolving nature of social media and their users' behavior patterns, the explosion of messaging apps, the growing potential of podcasts, as well as expansion of Over-The-Top (OTT) services worldwide. Other trends involve capabilities like Peer-to-Peer (P2P) data sharing, virtual and augmented reality that enhances audience experience, artificial intelligence and Natural Language Processing (NLP) that can improve reporting, editing, and content distribution, and the growing use of chatbots, push notifications, and smart devices by media organizations.[35]

While the vision is admirable, the FY2022 federal budget allocated just $27 million for integrating these technologies into VOA services, making it all but a certainty that the gap between PRC and VOA informational influence will continue to widen. The CCP's well-funded Spamouflage campaign serves as a great example. Since 2018, the online influence campaign has

[31] Voice of America, "Page Transparency," Facebook, November 12, 2008, https://www.facebook.com/VOANews/about_profile_transparency; Voice of America, "@VOANews," Twitter, September 2008, https://twitter.com/VOANews; Voice of America, "About this account," Instagram, September 2012, https://www.instagram.com/voanews/.
[32] "VOA Rolls Out Mobile App with News in 43 Languages," U.S. Agency for Global Media, August 9, 2013, https://www.usagm.gov/2013/08/09/voa-rolls-out-mobile-app-with-news-in-43-languages/.
[33] U.S. Agency for Global Media, *FY 2023 Congressional Budget Justification*, 45.
[34] For example, the *New York Times* spent $199.7 million on marketing in FY 2021, see *New York Times*, *2022 Annual Report* (New York, NY: 2023), 88.
[35] U.S. Agency for Global Media, *Future of Distribution*, 2.

weaponized cutting-edge technologies such as generative AI to spread disinformation.[36] In response to the magnitude of Spamouflage, social media companies engaged in widespread content moderation. Meta conducted its "single biggest takedown" in history in August 2023, removing 7,704 Facebook accounts, 954 Facebook pages, fifteen Facebook groups, and fifteen Instagram accounts tied to the campaign.[37] In December 2023, YouTube terminated 1,953 channels and fifty-two blogs as part of its efforts to contain Spamouflage.[38] The CCP is dedicated to shaping the global information ecosystem by investing billions of dollars. VOA's limited budget places the agency at a distinct disadvantage.

An additional challenge for VOA lies in the failure of several already deployed technologies. Despite China having the most internet users in the world, only 1.5 percent of VOA website visitors originate from IP addresses in the PRC.[39] VOA has attempted to remedy this issue by creating www.voachinese.com, a website tailored for audiences in mainland China, resulting in a higher percentage of website visitors originating from the PRC in recent years. However, VOA Chinese's overall website traffic isn't even in the top 100,000 most-visited web pages in China.[40] The international broadcaster has made strides in expanding its presence on other platforms such as Twitter, WeChat, and YouTube but often meets even stronger PRC resistance in those forums. Studies indicate that Beijing has leveraged those same platforms to increase its own favorability ratings by threefold or more.[41] Pervasive digital surveillance from

[36] Elise Thomas, "Pro-CCP network 'Spamoflauge' weaponizes Gaza conflict to spread anti-US sentiment," Institute for Strategic Dialogue, December 15, 2023, https://www.isdglobal.org/digital_dispatches/pro-ccp-network-spamouflage-weaponizes-gaza-conflict-to-spread-anti-us-sentiment/.
[37] Sheera Frankel, "Meta's 'Biggest Single Takedown' Removes Chinese Influence Campaign," *New York Times,* August 29, 2023, https://www.nytimes.com/2023/08/29/technology/meta-china-influence-campaign.html.
[38] Paul Barrett et al., *Digital Risks to the 2024 Elections: Safeguarding Democracy in an Era of Disinformation* (New York: NYU Stern Center for Business and Human, 2024), 15, https://static1.squarespace.com /static/5b6df958f8370af3217d4178/t/65cfdd6c0b2733710e9e96b0/1708121452365/NYU+CBHR+Election+2024_Feb+16+UPDATED.pdf.
[39] Shaojung Sharon Wang and Junhao Hong, "Voice of America in post-Cold War era: Opportunities and challenges to external media services via new information and communication technology," *International Communication Gazette* 74, no. 4 (2011): 350, https://journals.sagepub.com/doi/epdf/10.1177/1748048511398599.
[40] Wang and Hong, "Voice of America in post-Cold War era," 350.
[41] Daniel Mattingly et al., "Chinese Propaganda Persuades a Global Audience That the 'China Model' is Superior: Evidence From A 19-Country Experiment," *American Political Science Review* (January 2024): 37. https://osf.io/preprints/osf/5cafd.

the PRC has also chilled potential audiences, discouraging them from attempting to use circumvention techniques to access VOA content in the first place.[42]

Structural flaws have further constrained VOA's ability to adapt, thus reducing its informational influence in China. For one, the U.S. government's outdated procurement procedures complicate the integration of new digital technologies into VOA's workflow. Antiquated selection criteria and restrictive risk management practices cause a fundamental mismatch between the pace of technological innovation and the adoption rate for emerging technologies.[43] Whereas decision-making is far more streamlined in China due to the PRC government's top-down hierarchy, a proposal must pass through several layers of bureaucracy in the United States before actual implementation. The recently adopted Impact Model, which uses qualitative and quantitative indicators to measure the efficacy of VOA's programming, shows promise, but it needs to be better thought out before it can help accelerate decision-making. Furthermore, VOA's susceptibility to the turmoil of domestic American politics has hindered its ability to invest in digital media. After Trump administration appointee Michael Pack was formally installed as the CEO of USAGM, he attempted to defund the Open Technology Fund (OTF)—the USAGM branch that drives technological innovation for all international broadcasting services, including VOA.[44] Pack also investigated the political affiliations of VOA's reporters and tried to interfere with journalistic independence. In addition to tarnishing the credibility of VOA, his actions hampered VOA's ability to make necessary technical upgrades.

Successes

Despite these challenges, VOA has also experienced its fair share of success. The international broadcaster reported a mainland Chinese audience of 64.9 million in 2022, a

[42] Harriet Moynihan and Champa Patel, "Restrictions on online freedom of expression in China," Chatham House, March 17, 2021, https://www.chathamhouse.org/2021/03/restrictions-online-freedom-expression-china/chinas-domestic-restrictions-online-freedom.
[43] "Striking the Balance Between Public Procurement and Innovation," New America, accessed February 21, 2024, https://www.newamerica.org/digital-impact-governance-initiative/briefs/state-public-procurement-barriers-and-recommendations/.
[44] Pranshu Verma, "Trump Appointee Seeks to Cut Off Funding for Global Internet Access Group, *New York Times*, December 19, 2020, https://www.nytimes.com/2020/12/19/us/politics/trump-appointee-seeks-to-cut-off-funding-for-global- internet-access-group.html.

number that has steadily increased over the past few years.[45] The 2018 name change of its parent organization from the Broadcasting Board of Governors (BBG) to USAGM reflected the agency broadening its focus to multimedia distribution rather than distribution solely through traditional FM radio networks. Programming initiatives such as "China Abroad," which investigates the PRC's economic and political activities around the world, and the "Run Project," which tells the stories of disillusioned Chinese citizens who have left the PRC, distribute coverage through a combination of the internet, social media, and television in addition to radio.[46] These efforts at diversification have been well-received. For example, the "Run Project" has garnered 4 million views and 586,000 reactions on Twitter.[47] Besides target audiences, they have also caught the attention of CCP government officials who observe VOA coverage closely. The state-sponsored media outlet Global Times published over thirty articles criticizing VOA coverage in 2022.[48] VOA also sends millions of emails to PRC Internet users on a daily basis and operates several China-specific podcasts for attracting younger audiences who access content primarily through their mobile phones.[49] New distribution projects on the horizon, including working with partners to set up hotspots for on-demand and live content over digital devices, hold a lot of promise for attracting larger audiences to VOA as well.[50]

Besides diversifying distribution, the international broadcaster has also built a robust toolbox for audiences to combat censorship, disinformation, and surveillance. Over 40 million users engage with the tools every month.[51] VOA has made Lantern, Psiphon, and Wireguard—open-source proxies that protect the identity of netizens and allow them to access blocked websites in their home countries—available around the world. The service's Polygraph fact-checker challenges PRC state media on topics ranging from the Russo-Ukrainian War to human rights issues in Xinjiang.[52] Ouinet and SMS Without Borders help civilians access information

[45] "Audience and Impact Overview for 2021," U.S. Agency for Global Media, 1, https://www.usagm.gov/wp-content/uploads/2021/11/USAGM-Audience-and-Impact-Report-2021-11-18 -21.pdf.
[46] "FY 2024 Congressional Budget Justification," U.S. Agency for Global Media,17, https://www.usagm.gov/wp-content/uploads/2023/03/FY2024_CBJ_Final_3-14-23.pdf.
[47] Ibid., 17.
[48] Ibid., 18.
[49] "Voice of America's China Branch," U.S. Department of State and the Broadcasting Board of Governors Office of Inspector General, July, 2010, 12, https://www.stateoig.gov/sites/default/files/uploads/report/report_pdf_file/isp-ib-10-53_1.pdf; U.S. Agency for Global Media, "Future of Distribution," 8.
[50] U.S. Agency for Global Media, "Future of Distribution," 27.
[51] U.S. Agency for Global Media, "FY 2024 Congressional Budget Justification," 108.
[52] U.S. Agency for Global Media, "FY 2024 Congressional Budget Justification," 20.

when faced with Internet shutdowns.[53] Although the funding imbalance for informational influence between the PRC and the United States persists, these subversive technologies have condensed the gap. Their high levels of accessibility, convenience, and functionality allow users to continue to access VOA coverage regardless of the obstacles their governments put up. VOA's digital agility has become an enormous asset in a country where the Internet is ranked as the least free in the world, disinformation runs rampant, and the government has imposed mass surveillance systems to quell dissent.

VOA possesses strong underlying infrastructure that supports technological innovation and implementation. The arrangement of three subcomponents under USAGM, each responsible for a different aspect of technological advancement, is smartly configured. Broadcasting Capital Improvements (BCI) leads large-scale projects for the improvement and maintenance of digital multimedia infrastructure.[54] In 2022, it acquired artificial intelligence to improve access to VOA library content, installed cybersecurity measures for transmission stations, and upscaled the service's video production facilities in Los Angeles and Washington, D.C. The Technology, Services, and Innovation (TSI) subcomponent manages the scope and long-term direction of content distribution. Recent highlights of TSI's work include developing the VOA+ app, promoting new TV programming in Asia, Africa, and Latin America, and transitioning the majority of content delivery away from fiber-optic networks to secure public internet.[55] Finally, the Open Technology Fund (OTF) functions as the incubator for new Internet freedom technologies such as encrypted messaging app Signal.[56] The Tor Project represents another signature OTF initiative that allows netizens to avoid surveillance when accessing VOA content. VOA has demonstrated a strong track record for combatting media restrictions through technological innovation and integration in recent years but still faces serious challenges.

POLICY RECOMMENDATIONS

[53] "2021 Annual Report," Open Technology Fund, 15, https://www.opentech.fund/wp-content/uploads/2023/10/OTF-Annual-Report-FY-2021-InteractiveAccessible.pdf.
[54] U.S. Agency for Global Media, "FY 2024 Congressional Budget Justification," 115.
[55] Ibid., 49.
[56] "Signal (Open Whisper Systems)," Open Technology Fund, accessed February 19, 2024, https://www.opentech.fund/projects-we-support/supported-projects/signal-open-whisper-systems/.

Though VOA cannot match the rapid pace of technological innovation, it has unique opportunities ahead that—if properly taken advantage of—will allow the service to achieve a more effective brand of public diplomacy.

Strategic Priority #1: Improve resource allocation

To address funding limitations, this paper recommends that VOA maximize the value of its limited resources by directing more funds to developing high-impact, anti-censorship, and anti-surveillance technologies. In well-resourced authoritarian regimes like the PRC, going head-to-head with technological behemoths like the Great Firewall is counterproductive. Instead, deploying subversive tools keeps China's government in the dark about who accesses coverage outside of official state-produced media, diminishing the chilling effects that have discouraged potential audiences from tuning in to VOA in the past. Prioritizing this cost-effective strategy will allow VOA to substantially and sustainably grow audience engagement. The agency should also eliminate overly ambitious distribution plans, such as exploring the integration of augmented reality (AR) and virtual reality (VR) technologies into its programming.[57] The percentage of the world population that has adopted AR/VR technologies is very low and will likely remain so for the foreseeable future.[58] Expanding digital platform distribution should be the priority, not diverting funding to speculative possibilities. This leaner and meaner mentality will help VOA consolidate existing audiences and lower barriers to access for new audiences.

Strategic Priority #2: Streamline performance feedback

VOA should improve existing channels of feedback and open new ones to tackle the failure of several already deployed technologies. First and foremost, the agency needs to update its Impact Model. The current Impact Model incorporates qualitative and quantitative evidence to measure VOA's efficacy, but most of its data collection methods are tailored toward older technologies such as radio and TV.[59] For newer distribution channels, such as messaging apps, podcasts, and video-on-demand, VOA must measure key metrics such as audiences' age,

[57] "Infographic: AR & VR Adoption Is Still in Its Infancy," Statista Daily Data, June 2, 2023, https://www.statista.com/chart/28467/virtual-and-augmented-reality-adoption-forecast.
[58] Statista Daily Data, "Infographic: AR & VR Adoption."
[59] Osipova-Stocker et al., "Assessing Impact in Global Media," 288.

geographical location, and preference breakdowns. To improve its own performance, VOA also needs to increase collaboration with external stakeholders. On-the-ground partnerships with local stakeholders can help VOA adapt to the specific digital environments that are present in different countries. For example, USAGM's partnership with Ghana tech incubator Hub Accra enabled its services—including VOA—to craft digital news coverage that helped promote civic engagement in the West African context.[60] Collaborating with international organizations that have strong reputations for internet freedom advocacy will also improve VOA's ability to be an effective agent of public diplomacy. For instance, the Office of Cuba Broadcasting (OCB), one of VOA's sister broadcasters under USAGM, has partnered with NGOs like Freedom House in the past to provide investigative research support for journalists.[61] Evaluating more feedback will only help VOA make better decisions for its operations.

Strategic Priority #3: Strengthen all-around credibility

This paper also recommends that VOA take concrete steps to strengthen its all-around credibility. VOA can only accomplish its objectives insofar as it maintains credibility among audiences around the world, especially in China. To do so, the agency must fortify its "firewall," which prohibits any U.S. government official from encroaching upon the journalistic independence of the service. Former USAGM CEO Michael Pack's tenure was disastrous, both for degrading VOA's international standing and for threatening continuity in technological advancement. His almost successful effort to eliminate OTF would have deprived VOA of technologies like Psiphon, Signal, and Tor that allow audiences in authoritarian regimes to listen to its coverage. By maintaining its independence from domestic political turmoil, VOA will be able to integrate new technologies for combatting censorship and expanding distribution.

CONCLUSION

[60] "BBG partners with Ghana tech incubator," U.S. Agency for Global Media, December 11, 2014, https://www.usagm.gov/2014/12/11/bbg-partners-with-ghana-tech-incubator/.
[61] "OCB announces partnership with Freedom House to combat human rights abuses in Cuba," U.S. Agency for Global Media, August 14, 2018, https://www.usagm.gov/2018/08/14/ocb-announces-partnership-with-freedom-house-to-combat-human -rights-abuses-in-cuba/.

From shortwave radio in the 1930s to multimedia distribution channels today, the media landscape has evolved to become almost recognizable. The furious pace of technological innovation continues to transform how audiences engage with content, how media is distributed, and how forces that fear the free flow of information attempt to realize their vision of digital authoritarianism. Since its inception, Voice of America has been a critical component of U.S. public diplomacy to share the value of democracy and freedom with people around the world who live under repressive regimes. In today's fast-moving digital landscape, VOA faces serious challenges to its ability to carry out its mission. China illuminates the unique circumstances, failures, and successes VOA has faced in its quest to provide a truthful source of information in authoritarian countries. A lack of funding has undercut its more ambitious plans to expand informational influence on the international stage, and the international broadcaster has experienced a number of unexpected failures and internal issues that need to be expeditiously addressed. However, VOA has also successfully modernized for the digital age in several ways, developing successful anti-censorship and anti-surveillance technologies, experimenting with innovative ideas for multimedia distribution, and supporting the research, development, and implementation of cutting-edge technologies. To secure a promising future, VOA needs to strategically use its limited resources, increase channels of performance feedback, and protect its credibility moving forward. There's no question that VOA remains a major player in public diplomacy on the world stage, but whether or not it can retain and increase its standing will depend on the service's willingness to be agile in the contemporary media landscape.

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A NEW CIVIL RIGHTS ACT: HOW TO ADVANCE AMERICAN FOUNDING PRINCIPLES AND DIVERSITY, EQUITY, INCLUSION AND ACCESSIBILITY

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On the eve of the 2024 U.S. presidential election, the next administration faces the challenge of advancing and balancing the ideology of diversity, equity, inclusion, and accessibility (DEIA) and American founding principles (AFP) in the Federal Government in an increasingly volatile and often hostile social and political environment. This paper analyzes the role of the president in promoting DEIA and AFP, as well as the benefits of doing so. This paper also presents a plan for how the next administration can effectively integrate AFP into DEIA efforts.

INTRODUCTION

President Joseph Biden has made the most significant diversity, equity, inclusion, and accessibility (DEIA) advances of any presidential administration in the past eighty years. On January 20, 2021, day one of his administration, Biden signed Executive Order (EO) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.*[1] This order charged the Federal Government–executive departments and agencies (hereinafter "agencies")–with embedding equity in U.S. public-facing policies, principles, and programs. Five months later, Biden transformed this order with EO 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.*[2] That order launched the first government-wide initiative on DEIA strategic planning for the federal workforce, following a decades-long history of presidential efforts to advance equal opportunity through affirmative action. Biden defines DEIA as strengthening agencies' abilities to recruit, hire, develop, promote, and retain America's talent and remove barriers to equal opportunity.[3] As part of EO 14035, Biden also rescinded his predecessor Donald Trump's actions, specifically EO 13950,

[1] Joesph Biden, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," Federal Register, January 25, 2021, https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government.
[2] Joesph Biden, "Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce," Federal Register, June 25, 2021, https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce.
[3] Ibid.

Combatting Race and Sex Stereotypes.[4] At the same time, Biden revoked President Trump's EO 13958, *Establishing the President's Advisory 1776 Commission.*[5]

In tension with Biden's approach, Trump's EOs established a clear baseline of American founding principles (AFP) in his "1776 Commission" that, in his words, condemned "critical race theory, the 1619 project, and the crusade against American history" embodied by DEIA.[6]

As defined by the 1776 Commission, AFP is universal, applying to everyone, and external, existing for all time in the core documents to "recognize the worth, equality, potential, dignity, and glory of each [human]."[7] More than EOs, the AFP touted by Trump and the governance ideology of DEIA championed by Biden reveal a growing divide in democracy across administrations over race, gender, and education in a battle and the war for America's soul. However, an equally significant but often overlooked aspect is how AFP and DEIA intertwine and mutually benefit the U.S. government and society: AFP can serve as a grounding framework for DEIA efforts that confront America's uglier historical entanglements with injustice and its afterlives to foster a renewed American unity and a confident American future.

This research endeavor unravels the historical and contemporary advancement of DEIA in agencies, the president's involvement in issuing EOs, the ways the U.S. government could benefit by continuing to pursue DEIA, and actions the 2024 U.S. presidential administration can take to incorporate AFP in these efforts to broker a peaceful transition toward a more perfect–and just–union. This paper is divided into four main sections. Section one explores the first such DEIA EOs, starting with President Franklin Roosevelt in 1941; these actions set in motion the policy and enforcement measures against discrimination today. The second section evaluates the research on the effectiveness and efficiency of DEIA within federal agencies and its impact on democratic governance, particularly as the result of the Civil Rights Act of 1964. Additionally, it examines the role of AFP in this context and its importance in promoting DEIA within these agencies in compliance with the U.S. rule of law and merit system principles (MSPs). Section

[4] Donald Trump, "Combating Race and Sex Stereotyping," Federal Register, September 28, 2020, https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping.
[5] Donald Trump, "Establishing the President's Advisory 1776 Commission," Federal Register, October 2, 2020, https://www.federalregister.gov/documents/2020/11/05/2020-24793/establishing-the-presidents-advisory-1776-commission.
[6] Juan Perez, "Trump Blasts 1619 Project as DeVos Praises Alternative Black History Curriculum," *POLITICO*, September 17, 2020, https://www.politico.com/news/2020/09/17/devos-black-history-1776-unites-417186.
[7] "The 1776 Report," The President's Advisory 1776 Commission, January 18, 2021, https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf.

three establishes a plan for the next U.S. presidential administration to enact evidence-based analysis that infuses AFP into DEIA efforts. Section three also offers actionable policy recommendations for funding the plan. Finally, section four is an executive summary.

THE PRESIDENCY'S INVOLVEMENT WITH DEIA

To better understand presidential involvement in DEIA, the formal unilateral power of EOs must first be defined.[8] The Constitution of the United States vests executive power in the president, enabling the president to authorize unilateral action independent of Congress.[9] Scholars in political science, public administration, and legal studies recognize EOs as expansive instruments of presidential power to exercise authority.[10] The presidential expansion of the formal power of EOs grew out of hot and cold wars, starting with the Civil War under the presidency of Abraham Lincoln and catalyzed by Franklin Roosevelt.[11] Roosevelt's groundbreaking EO 8802 during World War II laid the foundation for measures taken by subsequent presidents Kennedy, Johnson, Nixon, Reagan, Bush Sr., Clinton, Bush Jr., Obama, Trump, and Biden, whose EOs have been powerful instruments in prohibiting discrimination and promoting equal opportunity.

The intertwining of the presidency and nondiscrimination workforce provisions began one year and nine months into World War II. On June 25, 1941, Roosevelt issued EO 8802, outlawing federal agencies from committing "discrimination because of race, creed, color, or national origin," to address segregated war production factories that were preventing African Americans from obtaining jobs.[12] In 1943, with EO 9346, Roosevelt expanded this prohibition to

[8] Kenneth R. Mayer, "Executive Orders and Presidential Power," *The Journal of Politics* 61, no. 2 (May 1999): 445–66. doi.org/10.2307/2647511.
[9] Andrew Rudalevige, "Executive Branch Management and Presidential Unilateralism: Centralization and the Issuance of Executive Orders," *Congress & the Presidency* 42, no. 3 (September 2, 2015): 342–65, https://doi.org/10.1080/07343469.2015.1077484.
[10] Mayer, "Executive Orders and Presidential Power."
[11] William D. Neighbors, "Presidential Legislation by Executive Order Comment," *University of Colorado Law Review* 37, no. 1 (1965-1964): 105–18.
[12] Franklin Roosevelt, "Executive Order 8802: Prohibition of Discrimination in the Defense Industry (1941)," National Archives, September 22, 2021, https://www.archives.gov/milestone-documents/executive-order-8802; Laura A. Wackwitz and Lana Rakow, *Women in Mass Communication: Diversity, Equity, and Inclusion,* edited by Pamela J. Creedon, 4th ed. (New York London: Routledge, Taylor & Francis Group, 2022).

all government contractors.[13] By issuing EO 8802, the first presidential directive on race since Reconstruction, Roosevelt largely met the demands of black leaders at the time but also established in EO 9346 an ineffectual agency, the Fair Employment Practice Committee (FEPC), which lacked enforcement mechanisms to prohibit discrimination.[14] Despite this, the more inclusive federal workforce meant a better-functioning U.S. "arsenal for democracy."[15]

In the early years of the Cold War, President Dwight Eisenhower strengthened federal workforce oversight to ensure agencies' "equal employment opportunity" success with EO 10479.[16] Leading up to the Cuban Missile Crisis, President John Kennedy used EO 10925 to create the President's Committee on Equal Employment Opportunity (EEO) in 1961.[17] The EEO studied employment practices that might address discrimination based on "race, creed, color, or national origin...contrary to the Constitutional principles and policies of the United States," and it sought to "encourage by positive measures equal opportunity," including "affirmative action" to "realize more fully the national policy of nondiscrimination within the executive branch."[18] Kennedy became the first president to link racial equality with affirmative action (AA), a term that came to prominence in the 1935 Wagner Act that gave workers the right to form and join unions.[19] Equality soon expanded to other marginalized groups in the federal workforce.

At the height of the Civil Rights Movement, President Lyndon Johnson's EO 11246 advanced his vision of a "Great Society" by elevating enforcement of nondiscrimination to the

[13] Franklin Roosevelt, "Executive Order 9346 Establishing a Committee on Fair Employment Practice," The American Presidency Project, accessed January 14, 2024, https://www.presidency.ucsb.edu/documents/executive-order-9346-establishing-committee-fair-employment-practice.
[14] Ibid.
[15] Neil A. Roosevelt, *The African American Experience during World War II (*Rowman & Littlefield Publishers, 2010).
[16] Dwight Eisenhower, "Executive Order 10479—Establishing the Government Contract Committee," The American Presidency Project, accessed January 14, 2024, https://www.presidency.ucsb.edu/documents/executive-order-10479-establishing-the-government-contract-committee.
[17] John Kennedy, "Executive Order 10925—Establishing the President's Committee on Equal Employment Opportunity," The American Presidency Project, accessed January 14, 2024, https://www.presidency.ucsb.edu/documents/executive-order-10925-establishing-the-presidents-committee-equal-employment-opportunity.
[18] Ibid.
[19] Anemona Hartocollis, "How the Term 'Affirmative Action' Came to Be," *The New York Times*, October 31, 2022, https://www.nytimes.com/2022/10/31/us/politics/affirmative-action-history.html; Jackie Mansky, "The History Behind the Supreme Court's Affirmative Action Decision," *Smithsonian Magazine,* accessed January 15, 2024, https://www.smithsonianmag.com/history/learn-origins-term-affirmative-action-180959531/.

cabinet level under the jurisdiction of the Secretary of Labor.[20] The order prohibited federal contractors from employment discrimination based on "race, color, and national origin," and then was amended in 1967 to add "sex" after pressure from women's rights groups.[21] President Richard Nixon, an unlikely advocate of AA programs, strengthened the commitment to "equal opportunity" during his presidency. In 1969, Nixon's EO 11478 initiated equal employment measures sanctioning target goals, time frames, and quotas to lower barriers for women and minority employment.[22] Nixon's EOs sparked backlash in U.S. courts and contributed to the ascension of President Ronald Reagan to the White House on the platform of "reverse discrimination" that stoked fear and shed light on concerns among White Americans that they would become victims of racial discrimination.[23] In the 1980s, Reagan largely left his predecessor's AA and equal opportunity orders intact while the Reagan Justice Department worked to limit race-conscious AA.[24] While President George H. W. Bush's nomination of Clarence Thomas to the Supreme Court arguably left his most lasting legacy on AA, Bush's EOs between 1989 and 1993 maintained the work of equal opportunity for the federal workforce.[25]

From 1993 to 2001, President Bill Clinton reinvigorated AA. President Clinton signed EO 13087, which amended Nixon's EO 11478 to prohibit discrimination based on sexual orientation.[26] Clinton also signed EO 13078 in 1998 and EO 13163 in 2000 to enhance the employment of Hispanic Americans and adults with disabilities.[27] In 2001, President George W. Bush established an initiative to address the needs of what he termed a "21st century workforce"

[20] Lyndon Johnson, "Executive Order 11246—Equal Employment Opportunity," The American Presidency Project, accessed January 15, 2024, https://www.presidency.ucsb.edu/documents/executive-order-11246-equal-employment-opportunity.
[21] Wackwitz and Rakow, *Women in Mass Communication: Diversity, Equity, and Inclusion*.
[22] Dean J. Kotlowski, "Richard Nixon and the Origins of Affirmative Action," *The Historian* 60, no. 3 (March 1, 1998): 523–41, https://doi.org/10.1111/j.1540-6563.1998.tb01405.x.
[23] Justin Gomer and Christopher Petrella, "How the Reagan Administration Stoked Fears of Anti-White Racism," *Washington Post*, October 28, 2021, https://www.washingtonpost.com/news/made-by-history/wp/2017/10/10/how-the-reagan-administration-stoked-fears-of-anti-white-racism/.
[24] Neal Devins, "Affirmative Action after Reagan Essay," *Texas Law Review* 68, no. 2 (1989): 353–80.
[25] "How Many People Work for the Federal Government?" USAFacts, November 15, 2023, https://usafacts.org/articles/how-many-people-work-for-the-federal-government/.
[26] Bill Clinton, "Executive Order 13087," US EEOC, accessed January 15, 2024, https://www.eeoc.gov/executive-order-13087.
[27] Bill Clinton, "Executive Order 13078—Increasing Employment of Adults with Disabilities," The American Presidency Project, accessed January 15, 2024, https://www.presidency.ucsb.edu/documents/executive-order-13078-increasing-employment-adults-with-disabilities; Bill Clinton, "Increasing the Opportunity for Individuals with Disabilities to Be Employed in the Federal Government," Federal Register, July 28, 2000, https://www.federalregister.gov/documents/2000/07/28/00-19322/increasing-the-opportunity-for-individuals-with-disabilities-to-be-employed-in-the-federal.

by streamlining departmental efficiency in EO 13218.[28] President Barack Obama introduced EO 13583, which directed agencies to be "a model of equal opportunity, diversity, and inclusion."[29] EO 13583 is the first order to address diversity and inclusion specifically and systemically through the Office of Personnel Management (OPM) and other agencies, bringing cultural awareness and demographic data analysis to agencies but lacking critical enforcement. EO 13583 set forth the responsibilities of agencies but did not provide clear mandates or consequences for non-compliance, limiting the effectiveness of the EO in driving real change within agencies. In 2014, Obama advanced equal pay for women through compensation transparency with EO 13665 and prohibited discrimination based on sexual orientation and gender identity by contractors and subcontractors under EO 14672.[30] From Roosevelt to Obama, EOs became powerful tools to prohibit discrimination and promote equal opportunity, in tandem with its cousins, AA, and today, DEIA.

While presidents issued EOs, they also signed various acts of Congress into law, most significantly when Johnson made "employment discrimination based on race, color, religion, sex, and national origin" illegal for employers (with more than 15 employees) under Title VII of the Civil Rights Act of 1964.[31] The Age Discrimination in Employment Act came next in 1968, also under Johnson. Other legislative actions included Title IX of the Education Amendments of 1972 under Nixon, the Pregnancy Discrimination Act in 1978 under Jimmy Carter, and the Americans with Disabilities Act in 1990 under George W. Bush.[32]

[28] George W. Bush, "Executive Order 13218—21st Century Workforce Initiative," The American Presidency Project, accessed February 20, 2024, https://www.presidency.ucsb.edu/documents/executive-order-13218-21st-century-workforce-initiative.

[29] Barack Obama, "Executive Order 13583—Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce," The White House, August 18, 2011, https://obamawhitehouse.archives.gov/the-press-office/2011/08/18/executive-order-13583-establishing-coordinated-government-wide-initiativ.

[30] Barack Obama, "Executive Order 13665—Non-Retaliation for Disclosure of Compensation Information," The American Presidency Project, accessed January 15, 2024, https://www.presidency.ucsb.edu/documents/executive-order-13665-non-retaliation-for-disclosure-compensation-information.

[31] "Title VII of the Civil Rights Act of 1964," US EEOC, accessed January 15, 2024, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964.

[32] "Title IX of the Education Amendments of 1972," Civil Rights Division, August 6, 2015, https://www.justice.gov/crt/title-ix-education-amendments-1972; "The Age Discrimination in Employment Act of 1967," US EEOC, accessed January 15, 2024, https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967; "The Pregnancy Discrimination Act of 1978," US EEOC, accessed January 15, 2024, https://www.eeoc.gov/statutes/pregnancy-discrimination-act-1978; "Timeline of the Americans with Disabilities Act," ADA National Network, accessed January 15, 2024, https://adata.org/ada-timeline.

It is important to note that AA has faced a legacy of court challenges and hostile federal administrations, with the Supreme Court ending race-conscious college admissions in 2023.[33] DEIA's legacy is similar to AA's, but DEIA is not defined by it today. Despite legislative challenges at the state level, DEIA and diversity training, whose roots trace back to EOs, comply with the U.S. rule of law and MSPs. The U.S. rule of law is a principle under which all persons, institutions, and entities are accountable to laws: (1) publicly promulgated, (2) equally enforced, (3) independently adjudicated, and (4) consistent with international human rights principles.[34] MSPs are nine basic standards governing the management of the executive branch workforce as set forth by the Civil Service Reform Act of 1978 and ensured by the Merit System Protection Board.[35] DEIA not only aligns with the standards of U.S. rule of law and MSPs, but also with Title VI of the Civil Rights Act of 1964.[36]

The expansion of EOs in the United States has played a pivotal role in shaping the landscape of DEIA in the federal workforce. The federal workforce tripled in size between January 1939 and January 1944, reaching 3.1 million and growing in 1990 to 3.4 million employees.[37] The U.S. government alone is the nation's largest employer, with 4.3 million federal employees serving the public's interest in over 300 agencies.[38] U.S. federal employees are a third (32.1%) Black, Indigenous, and People of Color and two-thirds (67.9%) white, representing an increasing demographic diversity in the workforce.[39] The Roosevelt, Kennedy, and Johnson administrations laid the groundwork for equal opportunity, nondiscrimination, and AA in agencies and catalyzed moments of great power opportunity. The Reagan and Trump administrations approached equal opportunity and nondiscrimination from the standpoint of AFP at the forefront, touting the country's founding documents and American exceptionalism as a

[33] Nina Totenberg, "Supreme Court Guts Affirmative Action, Effectively Ending Race-Conscious Admissions," *NPR*, June 29, 2023, https://www.npr.org/2023/06/29/1181138066/affirmative-action-supreme-court-decision.
[34] "Rule of Law," United States Court, February 18, 2024, https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law.
[35] "Merit System Principles (5 USC § 2301)," U.S. Merit Systems Protection Board, February 18, 2024, https://www.mspb.gov/.
[36] "Fact Sheet: Diversity & Inclusion Activities Under Title VI," United States Department of Education Office for Civil Rights, 2023, https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tvi-dia-202301.pdf?utm_name=.
[37] USAFacts, "How Many People Work for the Federal Government?"
[38] Stephon Scott, "A Qualitative Study: Exploring Federal Employees' Perceptions of Barriers to Effective Diversity, Equity, Inclusion, and Accessibility Education in Federal Government," ProQuest, August 31, 2023, https://www.proquest.com/docview/2878182399?%20Theses&fromopenview=true&pq-origsite=gscholar&sourcetype=Dissertations%20.
[39] "Federal Workforce: Data Reveal Minor Demographic Changes 2011-2021," United States Government Accountability Office, October 2023, https://www.gao.gov/assets/d24105924.pdf.

"city upon a hill" to justify a reverse course from AA and DEIA in agencies.[40] The Clinton, Obama, and Biden administrations reaffirmed equal opportunity action and built on agencies' AA and nondiscrimination practices through DEIA. See Appendix A for an in-depth comparison between Obama's EO 13583, Trump's EO 13950, and Biden's 14035. Overall, these EOs summarized in Appendix B, along with legislative acts such as Title VII of the Civil Rights Act of 1964 and subsequent anti-discrimination laws, have individually and collectively worked towards fostering a more robust and diverse federal workforce.

1. HOW DEIA AND AFP BENEFIT THE GOVERNMENT AND SOCIETY

The U.S. government has a powerful commitment to DEIA and AFP. In his speech upon signing the Civil Rights Act in 1965, President Johnson said the purpose of the law was to "end divisions," and he challenged communities and states to "eliminate the last vestiges of injustice."[41] Johnson remarked that all men are created equal, have certain unalienable rights, and are entitled to the blessings of liberty.[42] Yet many Americans are denied equal treatment, do not enjoy those rights, and are deprived of those blessings because of the color of their skin.[43] The number of elected black officials in America has increased from 103 before the passage of the Civil Rights Act to over 10,000 five decades later. Similarly, 3% of all lawyers and fewer than 1% of all federal judges were female during the 1960s, but they now account for almost one-third of attorneys and four of the nine Supreme Court justices.[44]

There are several evidence-based reasons that DEIA and AFP will benefit the U.S. government and society. To better understand these reasons, DEIA and AFP must be more comprehensively defined. Trump's EO 13958 defines AFP as the rights to life, liberty, and the pursuit of happiness.[45] AFP advocates those rights through governance that derives its legitimate

[40] Lee Edwards, "A Constitutional President: Ronald Reagan and the Founding," The Heritage Foundation, accessed January 16, 2024, https://www.heritage.org/political-process/report/constitutional-president-ronald-reagan-and-the-founding; Frank J. Thompson, Kenneth K. Wong, and Barry G. Rabe, *Trump, the Administrative Presidency, and Federalism* (Brookings Institution Press, 2020); Abram Engen, "How America Became 'A City Upon a Hill,'" The National Endowment for the Humanities, 2020, https://www.neh.gov/article/how-america-became-city-upon-hill.
[41] Lyndon Johnson, "Remarks upon Signing the Civil Rights Bill," Miller Center, October 20, 2016, https://millercenter.org/the-presidency/presidential-speeches/july-2-1964-remarks-upon-signing-civil-rights-bill.
[42] Ibid.
[43] Ibid.
[44] Stephanie Coontz, "Who Still Can't Sit at America's Table," *CNN*, February 10, 2014, https://www.cnn.com/2014/02/10/opinion/coontz-civil-rights-act/index.html.
[45] Trump, "Establishing the President's Advisory 1776 Commission."

power from the consent of the governed.[46] AFP begins from the local level with "accurate, honest, unifying, inspiring, and ennobling" educational approaches.[47] AFP strives "to form a more perfect Union" by promoting the enjoyment of "the blessings of liberty."[48] EO 13985 reaffirmed, in an impactful and fundamental way, the significance of AFP to the nation, federal workforce, and local-led efforts to revitalize American democracy. DEIA is a contemporary policy tool that can enhance these AFP efforts to build a more just American society.

Biden's EO 14035 defines diversity as "the practice of including the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities."[49] Equity is "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment."[50] Inclusion means "the recognition, appreciation, and use of the talents and skills of employees of all backgrounds."[51] Lastly, accessibility is "the design, construction, development, and maintenance of facilities, information and communication technology, programs, and services so that all people, including people with disabilities, can fully and independently use them."[52] EO 14035 officially recognized people with disabilities for their unique workplace needs, defined each term in DEIA to provide a common language to discuss it in the federal space, and incorporated local agency accountability to be led by the OPM, Office of Management and Budget, and the Equal Employment commission.[53] DEIA is a natural extension of AFP as it works to increase the consent of the governed in democratic governance. AFP provides DEIA with a streamlined nation-building capacity, or an *E Pluribus Unum* framework, "Out of many, one." Out of many DEIA practices, one AFP.

Now that AFP and DEIA are defined, the first evidenced-based reason that the U.S. government should integrate AFP into DEIA is that all federal, state, and local-level government employees stand to gain from an integrated approach with AFP as the end and DEIA as the

[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Biden, "Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce."
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Scott, "A Qualitative Study: Exploring Federal Employees' Perceptions of Barriers to Effective Diversity, Equity, Inclusion, and Accessibility Education in Federal Government."

means. Empirical analysis of the first component of DEIA shows that diversity policies successfully retain and attract minority group employment.[54] The effectiveness of diversity policies is context-specific and dependent on managing and monitoring the existing diversity with substantive equal opportunity practices.[55] Those practices include diversity education, training, and management wherein employees of all types are "(a) allowed and encouraged to participate in organizational processes and (b) recognized and rewarded equitably for their contributions."[56] Diversity matters because it has a positive relationship with workplace performance.[57] One study showed that from a group of 366 companies, those in the top quartile for racial and ethnic diversity in their workforce were 35% more likely to have financial returns above the national industry median. The D in DEIA ensures a more efficient and effective workforce for federal, state, and local employees working toward realizing AFP.

Second, while diversity is crucial, it may still lack equity, inclusion, and accessibility components to empower the nation's diverse workforce to promote public services. Equity asks the question of "efficient, effective, and economical [public service] for whom?" Equity-centered policies advancing administrative ethics respond to the needs of diverse employees.[58] Research shows not promoting equity leads to unrest, instability, and "othering" in the public sector.[59] Equity policies prevent hollow governance through a combination of agencies naming, claiming, and remedying inequities to uphold fairness.[60] Prioritizing fairness and accountability achieves greater progress toward key dimensions of public service agencies' work.[61] One study found that equity, as measured by procedural fairness, increases participation and public service provision of resources to different groups.[62] Equity is a vehicle to AFP's meritocracy.

[54] Sandra Groeneveld and Stijn Verbeek, "Diversity Policies in Public and Private Sector Organizations: An Empirical Comparison of Incidence and Effectiveness," *Review of Public Personnel Administration* 32, no. 4 (December 1, 2012): 353–81, https://doi.org/10.1177/0734371X11421497.
[55] Ibid.
[56] Derek R. Avery and Patrick F. McKay, "Doing Diversity Right: An Empirically Based Approach to Effective Diversity Management," in *International Review of Industrial and Organizational Psychology,* ed. Gerard P. Hodgkinson and J. Kevin Ford (Wiley-Blackwell, 2010), 227–52, https://doi.org/10.1002/9780470661628.ch6.
[57] Sara Prince, Dennis Layton, and Vivian Hunt, "Diversity Matters," McKinsey & Company, February 2, 2014, https://www.mckinsey.com/insights/organization/~/media/2497d4ae4b534ee89d929cc6e3aea485.ashx.
[58] Sean McCandless et al., 2022. "A Long Road: Patterns and Prospects for Social Equity, Diversity, and Inclusion in Public Administration," *Public Administration* 100 (1): 129–48. doi:10.1111/padm.12830.
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Morgen Johansen, "Understanding Social Equity in Public Administration," *Social Equity in the Asia-Pacific Region: Conceptualizations and Realities* (Cham: Springer International Publishing, 2019): 13-23, https://doi.org/10.1007/978-3-030-15919-1_2.

Third, inclusion policies are positively associated with desirable outcomes, organizational commitment, job performance, satisfaction, and engagement.[63] The OPM identified five factors of inclusion: (1) fairness, (2) cooperation, (3) empowerment, (4) support, and (5) openness.[64] A comprehensive study examining the impact of these five factors specified by the OPM showed that inclusion does contribute to a better-perceived work environment and improved employee engagement.[65] Inclusion policies can help psychological health and bolster employee morale, developing a more content and higher capacity workforce to achieve AFP.[66]

Fourth, accessibility policies deliver resources, support, and accommodation to help employees with disabilities, visible or invisible, thrive in a challenging work environment. There are 20 million disabled people of working age, but only 7.6 million (around 38%) are employed.[67] 80% of disabilities are non-apparent, and only 21% of disabled people disclose that information to their employers for fear of discrimination.[68] Accessibility policies address this need and increase engagement, and accessibility accommodation is relatively low cost to implement.[69] A recent study shows the benefits for employees who feel included: they are 50% less likely to quit and 56% more likely to perform well in their jobs.[70] Accessibility, as with inclusion and equity, creates a more comprehensive approach to AFP, improving agencies' mission delivery and constituent services.

Finally, there is significant government employee support for DEIA. Nearly all (91%) of federal employees believe that their agencies consider DEIA in the workplace an important issue.

[63] Christina Matz, Marcie Pitt-Catouphes, and Rene Carapinha, "Putting Age in Context: Relational Age and Inclusion at the Workplace," *Indian Journal of Gerontology* 26, no. 1 (2012): 50–74.
[64] Ashley Settles, "Examining Diversity and Inclusion in the Federal Workforce and the Impact of Inclusion on Employee Engagement," Theses and Dissertations, August 12, 2016, https://scholarsjunction.msstate.edu/td/2104.
[65] Ibid.
[66] "Inclusion in the Workplace: What It Means and Its Strength," National University, accessed January 25, 2024, https://www.nu.edu/blog/inclusion-in-the-workplace/.
[67] Yuritzy Ramos and Andrew McArthur, "The Economics of Disability: Has the Americans with Disabilities Act Failed Disabled Workers?" *Emory Economics Review*, June 28, 2021, https://emoryeconomicsreview.org/articles/2021/6/28/the-economics-of-disability-has-the-americans-with-disabilities-act-failed-disabled-workers.
[68] Amanda Dodge, "Employees Still Feel the Need to Hide Their Disabilities," accessed January 26, 2024, https://www.accessibility.com/blog/employees-still-feel-the-need-to-hide-their-disabilities.
[69] Sarah Roberts, "DEI in Business - Creating a Culture of Diversity and Inclusion," Verbit, accessed January 26, 2024, https://verbit.ai/dei-in-business-creating-a-culture-of-diversity-and-inclusion/; "The 'A' in DEIA: Why Corporate Leaders Must Include Accessibility," Accessibility.com, accessed January 26, 2024, https://www.accessibility.com/blog/the-a-in-deia-why-corporate-leaders-must-include-accessibility.
[70] Adam Robinson, "Study Finds Employees Who Feel Included Are 50 Percent Less Likely to Quit," *Inc*, September 30, 2019, https://www.inc.com/adam-robinson/study-finds-employees-who-feel-included-are-50-percent-less-likely-to-quit.html.

Most (75%) federal employees think it is valuable to have conversations about DEIA, but only close to half (54%) of employees report having conversations about DEIA.[71] Conversations about DEIA are significantly important for women (79%) and men (71%) in the federal workforce, but just 44% report that their supervisor demonstrates the importance of DEIA for human resources representatives (31%), teams they participate in (35%), and among their colleagues (35%).[72]

DEIA policy and implementation at the federal level continues to take a positive trajectory, however it must employ AFP to provide "deeper principles" to create greater buy-in from federal employees and ensure continuity and institutionalization across administrations. As a foundational principle, AFP can order and enrich employees' understanding of DEIA.[73] The DEIA and AFP approach can build bridges across the political and ideological spectrum, rebuilding trust in institutions by promoting the AFP's vision, values, and MSPs.[74] Functionally, integrating AFP's into DEIA means hiring applicants based not on who they know but on their experience; stable institutional strategies, not mass turnover; access to effective AFP and DEIA education and training; fair and equitable pay; and accountability to the U.S. Constitution, laws, and duly elected officials, not to political showmanship.[75] DEIA strategic planning and implementation incorporating AFP's underlying principles will benefit the U.S. government.

AN INTEGRATED DEIA-AFP OPERATIONAL PLAN

The development and execution of DEIA and AFP will influence the federal workforce's success. In the 2022 first annual government-wide report on DEIA, Kiran Ahuja, the OPM Director, wrote that there is more work to do to ensure federal workplaces consistently embody

[71] "Want to Improve the Federal Employee Experience? Tighten the Gap between Intention and Action in Diversity, Equity, Inclusion, and Accessibility," Eagle Hill Consulting, https://www.eaglehillconsulting.com/insights/federal-diversity-deia/
[72] Ibid.
[73] Emery Koenig and Michael Naughton, "Putting First Things First: Ordering DEI (Diversity, Equity, Inclusion) in Light of Subsidiarity," Business and Society Review, accessed January 28, 2024, https://doi.org/10.1111/basr.12312.
[74] Gene A. Brewer, J. Edward Kellough, and Hal G. Rainey, "The Importance of Merit Principles for Civil Service Systems: Evidence from the U.S. Federal Sector," *Review of Public Personnel Administration* 42, no. 4 (December 2022): 686–708, https://doi.org/10.1177/0734371X211026008.
[75] Donald Kettl and Daniel Chenok, "The Federal Workplace Is Changing Rapidly, But Merit Principles Must Remain Untouched," Government Executive, February 27, 2023, https://www.govexec.com/management/2023/02/federal-workplace-changing-rapidly-merit-principles-must-remain-untouched/383339/.

and model all DEIA principles.[76] 71% of federal employees report positive perceptions of agency practices related to DEIA.[77] This statistic is relevant as a baseline for success. Critical objectives, such as a positive perception, sense of belonging, increased efficiency, and effectiveness, guided by AFP's "deeper principles," should be the focus. Otherwise, there will be more examples of failure than success in operationalizing DEIA.[78] If the U.S. government is to hire and retain a more diverse workforce as it has under the Civil Rights Act of 1964, it should observe an all-agency plan like the following in the 2024 U.S. presidential administration:

1. Phase I: Immediate Actions[79]
    - 1.1. Establish a DEIA (IDEA) AFP (1776) Commission ("the 1776 IDEA Commission"), composed of not more than 20 members from agencies, such as in Appendix C, nominated by the President and confirmed by the Senate for a term of two years.
        - 1.1.1. The Office of Personnel Management will designate one member to serve as the Chair, and one member to serve as the Vice Chair.
        - 1.1.2. The Chair shall be responsible for the administrative operations of the 1776 IDEA Commission with the principal office of the Commission in D.C.
    - 1.2. There shall be a Treasury of the United States revolving fund established known as the "Franklin Operational Readiness and Growth for Employees (FORGE) Fund" to pay the cost of the 1776 IDEA Commission's administrative and personnel expenses.
        - 1.2.1. The Office of Personnel Management shall provide any additional funding and administrative support for the 1776 IDEA Commission to the extent permitted by law and subject to the availability of appropriations.

[76] "Government-Wide DEIA: Our Progress and Path Forward to Building a Better Workforce for the American People Annual Report 2022," Office of Personnel Management, 2022, www.opm.gov/policy-data-oversight/diversity-equity-inclusion-and-accessibility/reports/DEIA-Annual-Report-2022.pdf.
[77] "RELEASE: Largest Government Employee Survey in the World Highlights Increasingly Resilient and Engaged Federal Workforce," U.S. Office of Personnel Management, accessed February 4, 2024, https://www.opm.gov/news/releases/2023/11/release-largest-government-employee-survey-in-the-world-highlights-increasingly-resilient-and-engaged-federal-workforce/.
[78] Frank Dobbin and Alexandra Kalev, "Why Diversity Programs Fail," *Harvard Business Review* 94, no. 7 (2016): 52–60.
[79] Emily Morgan, "A New Marshall Plan: How Will the United States Help Rebuild Ukraine?" *The Fellows Review,* 2023, https://static1.squarespace.com/static/5cb0a1b1d86cc932778ab82b/t/64c82857980727038da6654a/1690839140391/2022-2023+Fellows+Review.pdf.

1.3. The 1776 IDEA Commission shall cooperate with local and state agencies, particularly Civil Rights Offices, to promote activities and programming that advances AFP and DEIA advancement in the workforce.

1.3.1. In exercising its power, the 1776 IDEA Commission shall conduct educational implementation targeted to employees of underserved communities and employees on whose behalf the Commission has the authority to enforce the law prohibiting discrimination against all employees.

1.4. The 1776 IDEA Commission shall produce a report to the Congress and President regarding the strategic planning and action it has taken to advise agencies and further reports on equal opportunity and nondiscrimination practices that promote U.S. rule of law and MSPs.

1.4.1. The 1776 IDEA Commission shall reevaluate the U.S. House Office of Diversity and Inclusion, whose mission is to "put the people in the people's house," and consider a more comprehensive U.S. Congressional Office of 1776 IDEA to serve the House and Senate.[80]

1.5. The 1776 IDEA Commission shall prioritize agency-specific AFP and DEIA initiatives tailored to the organizational culture and history. These include projects in the following departments and agencies:

1.5.1. The Department of Education, through American Principles and Civics Education-National DEIA Activities with Employees.[81]

1.5.2. The Department of Defense, through the Pilot Program on American Principles and DEIA with Employees.[82]

1.5.3. The Department of State, through the Bureau of Educational Cultural Affairs, including Fulbright and American Spaces with Employees.[83]

2. Phase II: Four Years and Beyond

2.1. The 1776 IDEA Commission shall serve on the frontier of workforce innovation by integrating AFP into agencies' DEIA employment practices by 2028.

[80] "Mission and Vision," U.S. House Office of Diversity & Inclusion, 2024, https://diversity.house.gov/about-us/mission-and-vision/.
[81] Trump, "Establishing the President's Advisory 1776 Commission."
[82] Ibid.
[83] Ibid.

2.1.1. These employment practices include AFP and DEIA workforce trainings, educational seminars, handbooks, and evaluation of agencies based on DEIA and AFP metrics implemented consistently with applicable law.

2.2. Through AFP, the 1776 IDEA Commission shall shift DEIA efforts from ineffective value-in-DEIA rhetoric, so-called "happy talk," to the more effective contingent-DEIA rhetoric, emphasizing the value of overcoming DEIA challenges.[84]

2.3. The 1776 IDEA Commission shall align DEIA education initiatives squarely with AFP and enlightenment values, dating back to the eighteenth century.

2.3.1. The 1776 IDEA Commission shall include the Federalist Papers, the Declaration of Independence, the Constitution, and other key documents such as the Emancipation Proclamation, and Seneca Falls Declaration, from the founding in employee education programming with DEIA initiatives.[85]

2.4. The 1776 IDEA Commission shall ensure AFP is more than an artificial addition to DEIA. Instead, AFP is crucial for empowering marginalized individuals and newfound allies in the federal workforce.

EXECUTIVE SUMMARY

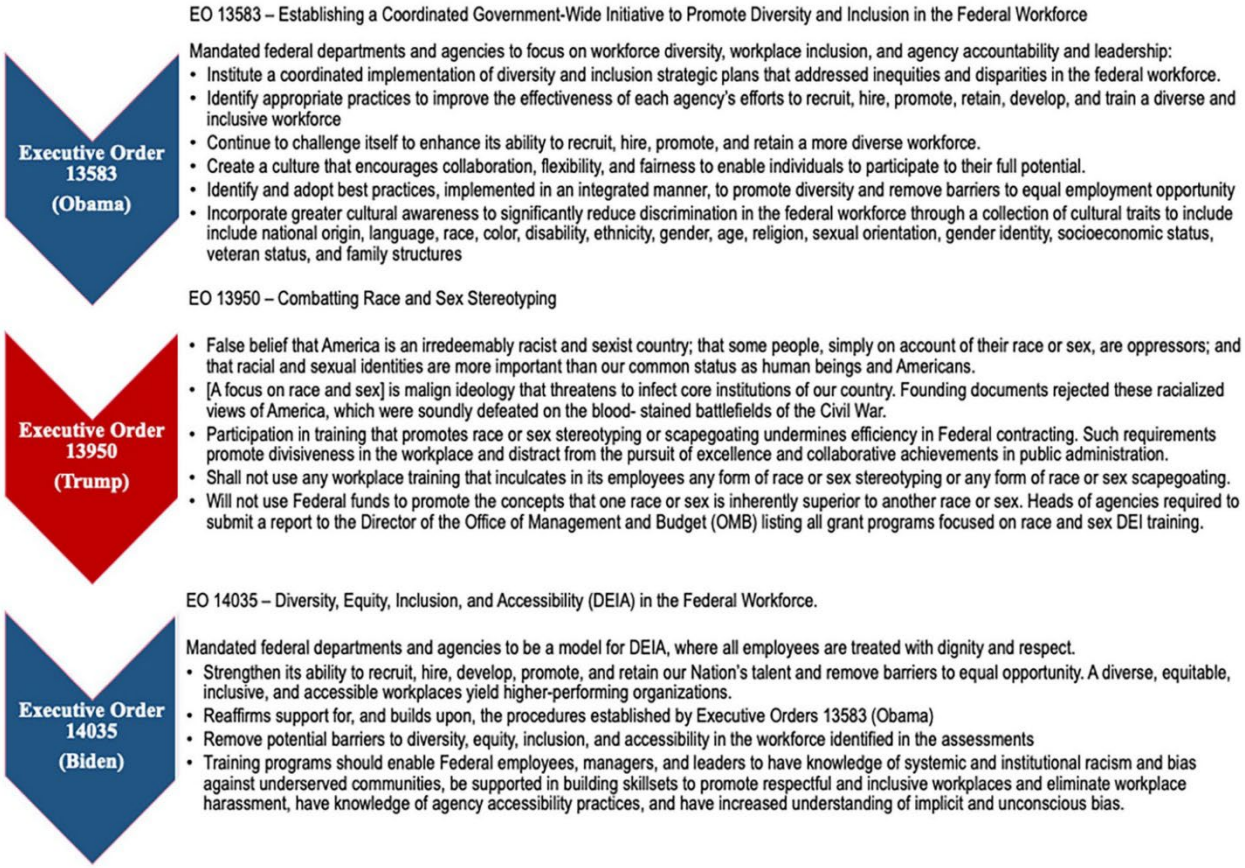
To advance DEIA in the present and the future, the U.S. government must incorporate AFP from the past so that DEIA and AFP can create more informed employees and democratic institutions. Without AFP, there is a likelihood that future presidential administrations will dissolve DEIA despite its benefits. AFP integration into DEIA will create a compromise in federal workforce education that will benefit the U.S. government and people. An AFP and DEIA plan modeled on the Civil Rights Act of 1964 would focus on revitalizing employee education and training, agencies' strategic and programmatic planning, and continued compliance with the U.S. rule of law. Funding provided by the United States Treasury and Office of Personnel Management will ensure lasting implementation.

[84] Lisa M. Leslie, Elinor Flynn, Olivia A. Foster-Gimbel, and Colleen Flaherty Manchester, "Happy Talk: Is Common Diversity Rhetoric Effective Diversity Rhetoric?" *Academy of Management Journal* (November 30, 2023), https://doi.org/10.5465/amj.2021.1402.

[85] Katharine Cornell Gorka, "Why We Need to Reemphasize America's Founding Principles in Civics Education," The Heritage Foundation, accessed February 10, 2024, https://www.heritage.org/american-founders/commentary/why-we-need-reemphasize-americas-founding-principles-civics-education.

APPENDIX A

Figure 1: Summary of EO 14035, 13950, and 13583 Mandates.



Source: EOs by Karen Sweeting.[86]

[86] Karen D. Sweeting, "Executive Orders: Mandating Inclusion in the Federal Workplace: Insights from Federal Executive Departments' Strategic Plans," *Public Personnel Management* 52, no. 4 (December 1, 2023): 590–623, https://doi.org/10.1177/00910260231187542.

APPENDIX B

Table 1. Historical Sample of DEI EOs From 1941 to 2021.

EO	Title	Date signed	President
EO 8802	Reaffirming Policy of Full Participation In The Defense Program By All Persons, Regardless Of Race, Creed, Color, Or National Origin, And Directing Certain Action In Furtherance Of Said Policy	June 1941	Roosevelt
EO 9346	Establishing a Committee on Fair Employment Practice	May 1943	Roosevelt
EO 9981	Establishing the President's Committee on Equality of Treatment and Opportunity in the Armed Services,	July 1948	Truman
EO 10925	Establishing The President's Committee On Equal Employment Opportunity	March 1961	Kennedy
EO 11246	Equal Employment Opportunity	September 1965	Johnson
EO 11478	Equal Employment Opportunity in the Federal Government	September 1969	Nixon
EO 13087	Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government	May 1988	Clinton
EO 13163	Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government	July 2000	Clinton
EO 13171	Hispanic Employment in the Federal Government	October 2000	Clinton
EO 13518	Employment of Veterans in the Federal Government	November 2009	Obama
EO 13548	Increasing Federal Employment of Individuals with Disabilities	July 2010	Obama
EO 13583	Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion	August 2011	Obama
EO 13595	Instituting a National Action Plan on Women, Peace, and Security	December 2011	Obama
EO 13672	Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity	July 2014	Obama
EO 13950	Combating Race and Sex Stereotyping	September 2020	Trump
EO 13958	Establishing the President's Advisory 1776 Commission	November 2020	Trump
EO 13985	Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (also repealed EO 13950 & 13958)	January 2021	Biden
EO 13988	Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation	January 2021	Biden
EO 14003	Protecting the Federal Workforce	January 2021	Biden
EO 14020	Establishing the White House Gender Policy Council	March 2021	Biden

EO	Title	Date signed	President
EO 14035	Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce	June 2021	Biden

Source: Federal Register.[87]

[87] Ibid.

APPENDIX C

Table 2: Data Collection of Strategic Plans.

Federal Executive Departments (FEDs)	Strategic plans
Department of Agriculture (USDA)	2022-2026
Department of Commerce (DOC)	2022-2024[a]
Department of Defense (DoD)	2022-2023[a]
Department of Education (ED)	2022-2026
Department of Energy (DOE)	2022[a]
Department of Health and Human Services (HHS)	2022-2026
Department of Homeland Security (DHS)	2021-2024[a]
Department of Housing and Urban Development (HUD)	2022-2026[a]
Department of Justice (DOJ)	2022-2026
Department of Labor (DOL)	2022-2026
Department of State (DOS)	2022-2026[a]
Department of the Interior (DOI)	2022[a]
Department of the Treasury (Treasury)	2021-2024[a]
Department of Transportation (DOT)	2022-2026[a]
Department of Veteran Affairs (VA)	2022-2028[a]

a Diversity, Equity, Inclusion, and Accessibility Plan.[88]

[88] Ibid.

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DEHUMANIZING MIGRANTS: DEVELOPMENT OF U.S. IMMIGRATION LEGISLATION AND THE CREATION OF THE 'ILLEGAL' IMMIGRANT

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The United States immigration legislation is created upon a foundational framework of xenophobia and colonialism, designed to exclude 'non-assimilable' migrants from entering the country. The creation of initial immigration legislation by the U.S. Congress and the Executive Branch is driven by intents of racial and ethnic exclusion (e.g., the 1924 Johnson-Reed Act), although the Immigration and Nationality Act of 1965 drastically altered the demographics of the United States, setting the stage for an altering of immigration narratives and deservingness. This research examines the immediate impact and long-term consequences of the 1965 Act with a primary focus on the creation of the contemporary "illegal" immigrant.

FOUNDATION: EXCLUSION, DESIRABILITY, AND EUGENICS

The United States' history of immigration legislation can be drawn to the origins of the country as the nation struggled to lay out regulation powers within its developing government. Immigrant populations traveled in massive waves to the United States—some by force, some by choice. Pull factors like economic advancement persuaded people to immigrate to the United States, including the Chinese community in the late 1840s and 1850s. The California Gold Rush of 1848 attracted an estimated amount of 250,000 Chinese between 1850 to 1882 after the creation of Chinese restrictions.[1] Initial Californian political leaders, such as Governor John McDougall, welcomed Chinese immigrants, declaring that they were "one of our most worthy classes of newly adopted citizens," but this was quickly turned upon its head as the white California settlers, who also migrated for the Gold Rush, viewed them "as a race of people whom nature has marked as inferior … differing in language, opinions, color, and physical conformation."[2] Chinese immigrants had a different physical appearance from the white and Mexican-American populations in the California lands, and their language and culture also differed.

[1] Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, New Jersey: Princeton University Press, 2002), 89.
[2] Tichenor, *Dividing Lines*, 89.

Over the decade, the gold mines lost labor demand, so Chinese immigrants transitioned to working on the transcontinental railroad, and the hate toward the group increased as Americans viewed them as economic competition. The transcontinental railroad symbolized America's belief in "manifest destiny," a philosophy that viewed westward expansion as an inevitable and necessary mission to conquer and develop the North American lands without regard to indigenous groups who already lived on the land. The Central Pacific Railroad was the first part of the construction of the transcontinental railroad, and its goal was to connect the East and West coasts of the country. The Central Pacific Railroad wanted to hire cheap labor, and Chinese immigrants became their target. The Company hired fifty Chinese workers in 1865, and by 1867, over "12,000 Chinese workers were employed …, representing over 90 percent of the entire workforce."[3] Economic resentment amongst white workers led to them blaming Chinese workers for the scarcity of jobs. However, Chinese workers were purposefully pitted against white laborers as they were hired by the financiers of the Central Pacific Railroad when they organized strikes for white laborers.[4] White laborers did not realize they played into the trap of the Pacific Railroad as the hiring of Chinese workers further motivated them to express anti-Chinese immigration sentiment, and this spread into an anti-Chinese movement across the United States.

By 1875, Congress passed The Page Act, the country's first federal statute that excluded specific immigrant categories. Section 2 of the Act states, "… any subject of China, Japan, or any Oriental country … for the purpose of holding them to a term of service" shall be prohibited from entering the country.[5] It also states in Section 3, "That the importation into the United States of women for the purposes of prostitution is hereby forbidden."[6] The Act was intentional in its targeting of Asian immigrants, and at this time, Chinese women were stereotyped as prostitutes. Their exclusion from the country came after Chinese men, who at first were temporary workers, attempted to bring their families and settle in the United States.

Congress did not stop there, but nearly seven years later, it passed the Chinese Exclusion Act of 1882. The law, for the first time, barred the entry of immigrants based solely on race and

[3] Adam B. Cox and Cristina M. Rodriguez, *The President and Immigration Law* (New York, New York: Oxford University Press, 2020), 25.
[4] Elmer Clarence Sandmayer, *The Anti-Chinese Movement in California* (USA, University of Illinois Press, 1991), 45.
[5] The Page Act of 1875, Pub. L. No. 43-141, Stat. 477 (1875), https://loveman.sdsu.edu/docs/1875Immigration%20Act.pdf.
[6] The Page Act of 1875.

class. The Act barred the entry of Chinese laborers into the United States for ten years, and some of the only people exempted were diplomats.[7] In this case, Congress made no differentiation between working classes or skills, but instead "Chinese laborers" applied to "both skilled and unskilled laborers and Chinese employed in mining," meaning it prioritized xenophobic sentiments over economic opportunity or development.[8]

China did not take these attempts at restriction lightly and attempted to renegotiate with President Chester A. Arthur by leveraging the presidential immigration powers through treatymaking rather than Congressional legislation. To defend the interests of Congress, President Arthur argued that the flow of Chinese immigration was unmanageable at the rate that it was going, and China conceded that "whereas large numbers of immigrants sailed from China to the United States, the flow in the opposite direction amounted to little more than a trickle."[9] Before the passage of the Chinese Exclusion Act of 1882, China negotiated the Angell treaty with President Arthur that prevented the absolute ban of all Chinese immigrants regardless of class, that current Chinese immigrants living in the United States should register with the federal government, and Chinese immigrants who had departed the country during the signing of the Act should be allowed to return. President Arthur held back on the second request but allowed for the ten-year ban to continue as it was less than the previous proposal of twenty years.[10] However, President Grover Cleveland reversed the work of President Arthur, and Congress passed the Scott Act of 1888, which prohibited the return of Chinese residents who left the United States, further preventing the migration and overall ability to travel of Chinese people.[11]

One more important aspect of the Chinese Exclusion Act of 1882 was that it furthered the undesirability of using citizenship. The Act's Section 14 states, "no State Court or court of the United States shall admit Chinese to citizenship" no matter their place of birth.[12] Congress drew power in this prong from the Naturalization Act of 1790, which established that the "alien" was eligible for citizenship if they were a "white person," and they determined that Chinese people

[7] United States, Congress, *Forty-Seventh Congress, sess. 1,* Library of Congress, https://www.loc.gov/rr/main/images/chinese-exclusion-act.pdf.
[8] United States, Congress, *Forty-Seventh Congress, sess. 1,* Library of Congress, https://www.loc.gov/rr/main/images/chinese-exclusion-act.pdf.
[9] Cox and Rodriguez, *The President and Immigration Law*, 28.
[10] Cox and Rodriguez, *The President and Immigration Law*, 29.
[11] Cox and Rodriguez, *The President and Immigration Law*, 30.
[12] United States, Congress, *Forty-Seventh Congress, sess. 1,* Library of Congress, https://www.loc.gov/rr/main/images/chinese-exclusion-act.pdf.

did not fit the category of white through physical appearance.[13] The Act does not clarify if it views Chinese as a race or nationality as it does not clarify how other Asian identities, like Japanese or South Asians, are classified.

Chinese immigrants, within immigration legislative history, were the first racial group to face immigration bars in the United States, and this was after decades of increasing anti-Chinese sentiment, primarily from the West Coast. They were labeled as "undesirable" by the American public as white laborers viewed them as an economic threat, and the government and public believed that they were not assimilable to American culture and values. Thus, they were categorized as a threat to American tradition, and xenophobic beliefs also fueled the fear of evolving demographics. The United States, in the belief of protecting the public's way of life and interest, vehemently worked to exclude all Chinese immigrants and residents from residing in the country.

Unlike Chinese immigration, much of Western European migration flowed freely the decade before 1924, with a pause in the years of World War I. Ellis Island experienced a drastic increase in European migration between 1905 and 1914; "nearly 10 million immigrants had entered the country," but there was a difference in the demographics of these incoming immigrants.[14] The European immigrant population was no longer composed of the Germans, Scandinavians, British, and Irish, but now there was an increase in the Eastern and Southeastern Europeans of Jewish, Slavic, and Italian descent. These recently arrived immigrant populations needed to prove their deservingness to remain in the United States through assimilation and loyalty.

The establishment of a singular American identity was tested between the 1900s and 1920s as the burden of assimilation was placed upon immigrant communities. For example, the industrialist and carmaker Henry Ford invested in the creation and hosting of English courses for employees where the first phrase learned was, "'I am a good American.'"[15] Immigrants were required to meet the assimilation standards of the country through courses like these, cultural

[13] Marian L. Smith, "Race, Nationality, and Reality: INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898," *National Archives: Prologue Magazine* 34, no. 2 (2002), https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1.
[14] Jian Lynn Yang, *One Mighty and Irresistible Tide: The Epic Struggle Over American Immigration, 1924-1965* (New York, New York: W.W. Norton, 2020), 7.
[15] Yang, *One Mighty and Irresistible Tide, 19.*

integration, and physical appearances; overall, these standards prioritized elite white Protestant culture.

These two decades marked a period in American history of paranoia and racial violence, and this further entrenched relationships among groups, contributing to the development of racial categories in American immigration. Some of the moments that mark this period are the events of racial unrest like the 1921 Tulsa Oklahoma Race Massacre where "white mobs looted and burned over 1,000 homes, businesses, and churches, and murdered dozens of African Americans."[16] Additionally, the Ku Klux Klan (KKK) revitalized membership and public support in reaction to increasing immigration populations of Jewish and Catholic descent who they believed challenged American traditions. The KKK maintained antisemitic beliefs as it spread the idea that Jews challenged the moral temptation of American tradition, such as "encouraging women to wear too much makeup and clothes that were too sexual," through the control of the media, and they accused Catholic immigrants of maintaining an allegiance to the Vatican which, in their eyes, posed a danger to the American government[17] Membership in the KKK was no longer in its founding region of the American South, but it had spread to the rest of the country to the point that the KKK had enough financial and political power to establish a headquarters in Washington D.C. with a boasting membership of over 4 million Americans.[18] Consequently, the KKK was able to exercise a great deal of influence through representation in Congress and lobbying.

The country faced a cultural and racial reckoning fueled by heightened suspicions of the different immigrant populations arriving from Eastern and Southeastern Europe. President Theodore Roosevelt Jr. signed into law the Immigration Act of 1907, "which established an immigrant head tax of four dollars and created a new [bipartisan] investigatory commission," the Dillingham Commission, to research the country's status on immigration.[19] The Commission used racial characteristics to study the newly arrived immigrants, and it published forty-two reports detailing the differences between "traditional" Europeans against Southern and Eastern Europeans by comparing the living standards, socioeconomic statuses, and academic

[16] "Riot and Resilience in Tulsa, Oklahoma," Smithsonian National Museum of African American History & Culture, https://nmaahc.si.edu/explore/stories/riot-and-resilience-tulsa-oklahoma.
[17] Yang, *One Mighty and Irresistible Tide*, 24.
[18] Yang, *One Mighty and Irresistible Tide*, 26.
[19] Tichenor, *Dividing Lines*, 128.

performances of young students. The study is innately unfair research as the Commission is comparing the lives of Southern and Eastern Europeans who recently arrived versus those who have had more years to settle into the country. One of the reports on the immigrant students published a rank of descending order: "'white native-born' immigrants from 'English-speaking races'; Swedish, Dutch, and German immigrants; and at a much lower ranking, 'Hebrew' immigrants, Italians, 'Magyars and Slovaks,' Poles, and Asians; and finally, 'native-born negroes.'"[20] The report's investigations demonstrate an overlying perspective that stresses the intersection of race and science to determine a deserving hierarchy of immigrants in the United States with those nationalities and ethnicities that fit the white category as superior and nonwhite as inferiors.

The Dillingham Commission reports categorized Europeans within the categories of white and nonwhite, and this informed the country's assessment of whether an immigrant population would be assimilable. The ethnicity or nationality that is most assimilable are those that are white and speak English, while nonwhites who are unassimilable pose a threat to American traditions. The research of the Dillingham Commission set the foundation for the Nativist interest in seeing race as a scientific, biological concept capable of weaponization against immigrants; therefore, Congress's Nativists began to use eugenics as a strategy to create restrictive immigration laws.

The Immigration Act of 1924 was influenced by the science of eugenics to create the national origins quota. The quota aims to "align immigration with the composition of the American people," and the Johnson-Reed Act mandated a committee to set quotas by 1927.[21] Dr. Joseph A. Hill, a statistician at the Bureau of Census, was selected to chair the Quota Board, but the United States did not keep consistent track of immigration before 1820, and the borders of states drastically shifted during World War I.[22] The Quota Board first created the categories of "National origin," "native stock," "nationality," and various other units.[23] These categories worked to exclude nonwhite immigrant populations or descendants from the American population. The categories did not explicitly state race at first, but they were politically

[20] Tichenor, *Dividing Lines*, 130.
[21] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, New Jersey: Princeton University Press, 2004), 25.
[22] Mae M. Ngai, "The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924," *The Journal of American History* 86, no. 1 (June 1999): 72.
[23] Ngai, "The Architecture of Race in American Immigration Law," 73.

motivated and influenced by the social values of the time; for example, "native stock" is defined as[24] Nationality does not actually apply to all American citizens, but it purposefully excludes[25] This interpretation of "nationality" excludes many nonwhite groups in the country like Chinese residents or people who lived in recently American conquered territories like Hawai'i and Puerto Rico. By undercounting the presence of immigrant national origins, the Quota Board worked to maintain the white homogeneity of the country to later calculate the quota for each nationality. The quotas are anything but representative of the racial and ethnic makeup of the country's immigration population.

The Quotas Board had to submit numerous national origins quota proposals to Congress due to the determinacy that the cap was still too high for the allocation of visas. For instance, the 1921 quota system used the 1910 census as its basis, and in total it calculated an annual ceiling of 387,803 quota slots with 3% allocation per nationality. Unhappy with this, the Quota Board, with the support of restrictionist groups, recalculated the quotas using the 1890 census, and the annual ceiling decreased to 186,437 quota slots with 2% allocation per nationality.[26] The use of the 1890 census was strategic as it was before the large influx of Southern and Eastern European immigrants, and the change of census significantly cut the number of immigrants allowed, such as "42,000 to 4,000 for Italians and 31,000 to 6,000 Poles."[27]

Additionally, the Immigration Act of 1924 reinforced the legislative exclusion of specific nationalities, and the categorizations paved the path for new categories of race. The U.S. Congress and Supreme Court struggled to define the parameters for citizenship, and by the 1920s, the United States began to create absolutist understandings of race between Black and white. For example, the Naturalization Act of 1790 states that citizenship is only available for "free white persons," thus prohibiting people because of race and wealth.[28] The law is then amended by the Naturalization Act of 1870, following the Civil War, and citizenship is then extended to "'aliens of African nativity' and 'persons of African descent.'"[29] The country struggles to decide on the extension of citizenship to other people who do not fit in the racial

[24] Ngai, "The Architecture of Race in American Immigration Law," 72.
[25] Ngai, *Impossible Subjects*, 26.
[26] Tichenor, *Dividing Lines*, 144.
[27] Yang, *One Mighty and Irresistible Tide*, 42.
[28] Reece Jones, *White Borders: The History of Race and Immigration in the United States from Chinese Exclusion to the Border Wall* (Boston, Massachusetts: Beacon Press, 2021), 50.
[29] Jones, *White Borders*, 50.

categories of Black and white, and this will impact the creation of the "illegal" and "deserving" immigrant—more specifically Mexican migrants.

The Johnson-Reed Act, through the creation of the national-origins quota, began the process of creating categories of race and ethnicity. The categorizations were used to determine the deservingness of a person to immigrate to the United States through eugenics and racial science that also coincided with the judgment of assimilation. If an immigration group, such as Chinese workers, were determined to be racially inferior, unable to assimilate to the standards of white Protestant culture, and altered the racial and ethnic of the country, then they would face more obstacles and bar in their attempts to enter the United States. The Act ultimately made it impossible for nearly all Asian and Middle Eastern people to migrate to the United States.

THE 1965 IMMIGRATION AND NATIONALITY ACT

President Lyndon B. Johnson, pen in hand, is surrounded by a crowd of reporters and politicians, such as Vice President Hubert Humphrey and Senator Edward (Ted) Kennedy, as he speaks to the American people:

> This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives, or really add importantly to either our wealth or our power.
>
> Yet it is still one of the most important acts of this Congress and of this administration.
>
> For it does repair a very deep and painful law in the fabric of American justice. It corrects a cruel and enduring wrong in the conduct of the American Nation.[30]

President Johnson finished his remarks and signed into law the Immigration and Nationality Act of 1965, also known as the Hart-Celler Act, after publicly pressuring Congress to pass the law as he worked to make it part of his Great Society. The Hart-Celler Act is one of the first comprehensive immigration reform acts in decades, as it overturned the Immigration Act of 1924's (the Johnson-Reed Act) national origin quota system. The annual total number of visas allocated increased to 290,000, with a uniform cap of 20,000 per nation. It also created a seven-

[30] *Public Papers of the President of the United States: Lyndon B. Johnson, 1965, v*olume II, entry 546, p. 1037-1040 (Washington, D.C.: Government Printing Office, 1966).

category preference system for immigrants applying, and the top three priorities were family reunification at 75%, employment at 20%, and refugee status at 5%.[31]

Although, according to journalist Jia Lynn Yang, the principle of family reunification was not implemented as a moral principle in immigration, but it was instead used by conservative legislators as a bargaining chip who opposed the Hart-Celler Act. Yang reveals that President Lyndon B. Johnson met with conservative legislators, and one stood out: Ohio's Democratic Congressman Michael Feighan. The Hart-Celler Act would overturn ethnic quotas from the 1924 National Origins Act, and Feighan, wary of this, proposed the addition of family reunification as a priority as he believed that it would control the country's racial demographics "Since most Americans were white, their family members abroad would also be white."[32] Family reunification is prioritized through "immediate relatives," defined by Section 201(b), who are "children, spouses, and parents of a citizen of the United States."[33]

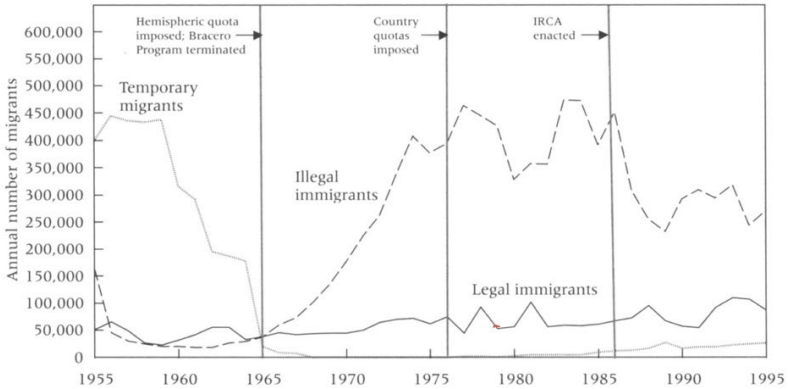
From then on, familial preference, professional skills, and refugee status became primary objectives in immigration legislation. On paper, the Hart-Celler Act overturned the racial and national discriminatory aspects of the Johnson-Reed Act as it specifically excluded immigrants from Asian countries and drastically decreased the admissibility of Eastern and Southern Europeans. The Hart-Celler Act's Sec.2.Section 202(a) states, "No personal shall receive any preference or priority or be discriminated against in the issuance of his race, sex, nationality, place of birth, or place of residence…" Although the principle of familial preference, as revealed by conversations amongst lawmakers, was intended to maintain control over the nation's demographics, it instead had unintended consequences. The family preference categorization contributed to a rise in visa applications from the Middle East, Africa, Asia, and Latin America.

Thus, the Hart-Celler Act, contrary to President Lyndon B. Johnson's expectations, became a revolutionary law that superseded the expectations of the federal government as the law saw an increase of immigrants from all over the world and created a radical shift in the country's demographics through legal and illegal immigration. The signing of the Hart-Celler Act coincided with Congress's decision to end the Bracero Program, a seasonal farmworkers

[31] Immigration and Nationality Act of 1965, Pub. L. No. 89-236, Stat. 911 (1965), https://www.govinfo.gov/content/pkg/STATUTE-79/pdf/STATUTE-79-Pg911.pdf.
[32] Jia Lynn Yang, "The Surprising Origin of Our Modern Nation of Immigrants," *The New York Times*, June 13, 2020, https://www.nytimes.com/2020/06/13/sunday-review/immigration-history-us.html.
[33] Immigration and Nationality Act of 1965.

program for Mexican immigrants, where "an estimated 818,545 workers entered on Bracero contracts between 1942 and 1952."[34] This estimated number of workers is still not representative of the total Mexican immigrants as others still entered the country illegally.

FIGURE 1: Mexican immigration to the United States in three categories, 1955-95[35]



SOURCE: US Department of Homeland Security (2012). See text and Table A1. 36

Thus, the end of a decade-long Bracero program and the passage of the Hart-Celler Act left hundreds of thousands of Mexicans unable to continue their work in a legal manner. Despite this, farms are still willing to illegally hire Mexican farmworkers, and Mexicans will also continue to cross the border to visit relationships or communities they established during the Bracero Program. Many found themselves traveling with their loved ones during the seasons, and many others established families in the United States. Thus, Mexicans will continue to enter the country illegally, but their lack of visas will make them vulnerable to exploitation due to abuse of worker's rights and, at times, human rights. Congress did not replace or amend the program, but instead, it worked to permanently dissolve it as quickly as possible with no possibility of reinstating it. The Hart-Celler Act preferences may have included an allocation of visas for employment purposes, but it specifically states, "Visas should be made of available … specified in section 201(a)(ii), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature."[37] The Act instead prioritized those who were the most respected professionals in the fields of the arts, sciences, or other

[34] Cox and Rodriguez, The *President and Immigration* Law, 96.
[35] Douglas S. Massey and Karen A. Pren, "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America," *Population Council* 38, no.1 (March 2012): 1-29.
[36] Massey and Pren, "Unintended Consequences of US Immigration Policy," 4.
[37] "Immigration and Nationality Act of 1965," Immigration History, 2019, https://immigrationhistory.org/item/hart-celler-act/.

exceptional abilities. This is the final nail in the coffin for the former legal Mexican farmworkers in the Bracero Program.

Finally, the Hart-Celler Act, for the first time, imposed a quota on immigration from the Western Hemisphere, drastically altering the categorization of migration patterns as more people will be classified as "illegal." Anti-immigration legislators, in the negotiations of the 1965 Hart-Celler Act, wanted to maintain a national-origins quota on Asian immigrants, but Democrats allowed the introduction of an "overall quota of 120,000 for the Western Hemisphere, which had not been previously subject to a quota."[38] President Johnson opposed the quota in the Western Hemisphere, but he still signed and passed the law.

THE "ILLEGAL" IMMIGRANT & MISCONCEPTIONS

Mexican farm workers were left with little choice but to continue illegally crossing into the United States, and within the first few years, there was an increase in "illegal" immigration. It is most evident in the rise of apprehensions of illegal migrants at the U.S.-Mexico border. In 1965, the number of apprehensions averaged nearly 40,000, but by 1977, "the number of apprehensions per thousand agents rose to peak at around 460,000 in 1977."[39] Apprehensions continued to average between 330,000 and 460,000 until 1986.[40] Different Congressmen began to describe immigration at the U.S.-Mexico border as an "invasion" or a "crisis," fearing that a population explosion would occur and change the demographics of the country. For example, Congressman Clark MacGregor claimed "that the population of Latin American would reach 600 million people in the following 35 years," and Chairman Michael A. Feighan (one of the main opponents of the 1965 Act) "warned that immigration could rise to 'floodgate proportions.'"[41] The increase in numbers of illegal immigrants and exaggerations from elected officials resulted in a backlash against migrants crossing the U.S.-Mexico border, leading to Congress's decision to fund and militarize the border within the next few decades.

[38] Timothy J. Hatton, "United States Immigration Policy: The 1965 Act and its Consequences," *The Scandinavian Journal of Economics* 117, no. 2 (April 2015): 350.
[39] Massey and Pren, "Unintended Consequences of U.S. Immigration Policy," 5.
[40] Massey and Pren, "Unintended Consequences of U.S. Immigration Policy," 5.
[41] Erika Lee, "Americans Must Rule America: Xenophobia in the United States," *Social Research: An International Quarterly* 88, no. 4 (Winter 2021): 809.

The creation of the system of preferences creates a hierarchy of deservingness amongst migrants wishing to enter the United States, and with Congress's refusal to extend the Bracero Program and implement a quota on the Western Hemisphere, Latin American migration was targeted and scapegoated amongst anti-immigrant advocates. Mexicans became the face of the "illegal" immigrant and the "Latino threat" narrative in the 1960s and 1970s when mainstream news organizations discussed Latin American immigration as a "crisis," "invasion," or "unauthorized," and these words were paired with "Mexico" or "Mexican immigrant."[42] Headlines or stories like these were covered in four leading newspapers: *The New York Times*, *The Washington Post*, *The Wall Street Journal*, and *Los Angeles Times*.[43]

However, it is revealed that the rise in the illegal immigration population in the United States is spurned by multiple factors rather than simply a rise in undocumented immigrants entering the country. Mexican migration to the United States often followed a seasonal pattern in both documented and undocumented immigrants, but with the increasing militarization of the border, it became more expensive to continuously move between the two countries. Smugglers, often known as "coyotes," began to increase their prices, and the journey to the United States became more dangerous due to the ongoing experimentation with deterrence strategies (which would eventually become "Prevention Through Deterrence" in the 1990s). Migrants must then justify the economic cost of border crossings, and the increase in border enforcement, rather than deterring them from crossing, increases the likelihood that the migrant will stay in the United States. [44] The outflow of immigrants decreased by the 1990s, and this contributed to the increase of "illegal" immigrants in the United States.

Additionally, as undocumented immigrants began to settle down in the United States, their children were able to apply for legal entry for their parents through the 1965 Hart-Celler Act's very own prioritization of family chain migration. The Western Hemisphere quota did not apply to family members of American citizens; thus, this contributed to a drastic increase in Latin American populations in the United States.

CONCLUSION

[42] Massey and Pren, "Unintended Consequences of U.S. Immigration Policy," 6.
[43] Massey and Pren, "Unintended Consequences of U.S. Immigration Policy," 7.
[44] Malay Majmundar, Peter Reuter, and Steve Redburn, *Budgeting for Immigration Enforcement: A Path to Better Performance* (Washington DC: National Academies Press, 2012), 27.

The U.S. immigration system is founded upon principles of xenophobia and racism that worked to deliberately exclude migrants who did not fit the white racial category of its time. Racial and ethnic categories were driven by eugenics, and they created a hierarchy of inferiority amongst races that persuaded Congress to pass the 1924 Johnson-Reed Act. The legacy of the Johnson-Reed Act made it extremely difficult for migrants from Eastern European, Asian, and Middle Eastern countries to enter the United States, but this was overturned with the Immigration and Nationality Act of 1965, also known as the Hart-Celler Act. Considered a revolutionarily progressive act, it expanded opportunities for the previously barred regions to migrate to the United States, impacting the demographics of the country in the years to come. However, the passing of the Hart-Celler Act led to the rise and creation of the "illegal" immigrant narrative that primarily targeted Mexican migrants. Mexican and other Latin American migrants became the target for following Congressional legislation aiming to "secure" the border, but rather than deterring them from entering the country, such policies influenced them to permanently stay in the country rather than travel seasonally.

The narrative of the "illegal" Mexican and Latin American immigrant persists today as today's 118th Congress continues to deliberate the funding and future projects of the U.S.-Mexico border. Although the legacy of xenophobia and racism continues in the country's immigration system due to a disproportionate number of rejections of asylum and visas for Latin Americans, stereotypes still persist today about the citizenship or legality status of such migrants. For example, many Southern states in the 21st century have proceeded to pass state legislation that empowers local law enforcement to arrest and imprison undocumented immigrants, and such laws, such as Texas's S.B. 4, are led by racial profiling.

In conclusion, the population of "illegal" immigrants amongst Mexican and other Latin American communities can be traced back to the passing of the 1965 Hart-Celler, as hundreds of thousands of migrants were left without legal entry to a country to benefit from their labor. This cycle continues today as companies and organizations continue to benefit from the exploitation of undocumented labor. Rather than seeking methods to militarize or secure the border, Congress needs to address its complicity in the perpetuation of the "illegal" immigrant population and find alternative methods for people to gain legal status.

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RUST TO RICHES: A COMPREHENSIVE ANALYSIS OF CHALLENGES, FEDERAL POLICIES, AND STRATEGIES FOR ECONOMIC RESURGENCES IN THE RUST BELT

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From the zenith of prosperity to the contemporary struggle against deindustrialization, population decline, and urban decay, Rust Belt cities have grappled with systemic challenges exacerbated by globalization and shifting economic paradigms. By leveraging existing strengths, Rust Belt cities can ensure a vibrant future. This paper delves into the historical narrative, challenges, past policies, and future strategies crucial for the revival of the Rust Belt, once emblematic of American industrial prowess. Through strategic initiatives like the CHIPS Act, the paper proposes a comprehensive approach to revitalizing the Rust Belt, paving the way for sustained prosperity and economic resurgence.

INTRODUCTION

In the annals of American urban history, few events resonate as profoundly as the city of Detroit's declaration of bankruptcy in 2013. Once hailed as the "arsenal of democracy" for its pivotal role in World War II production and later as the epicenter of the automotive industry, Detroit stood as a beacon of American ingenuity and prosperity.[1] However, the city's decline, culminating in bankruptcy, symbolized a harsh reality: the Rust Belt, a region synonymous with the rise and fall of American manufacturing, was in the grips of an economic and social upheaval. Detroit's bankruptcy was not merely a financial crisis; it was a stark manifestation of decades-long systemic challenges—deindustrialization, population decline, racial segregation, and urban decay—that had plagued many cities in the Rust Belt.

The Rust Belt, a region synonymous with America's industrial past and subsequent decline, stands at a crossroads in its quest for revitalization. The filing for bankruptcy by Detroit in 2013 served as a poignant reminder of the challenges faced by post-industrial cities, including the loss of skilled workers and young professionals to other regions.[2] Detroit's issues are not

[1] "Encyclopedia of Detroit," Detroit Historical Society, https://detroithistorical.org/learn/encyclopedia-of-detroit/arsenal-democracy.
[2] Kenneth T. Jackson, "A Nation of Cities: The Federal Government and the Shape of the American Metropolis," *The Annals of the American Academy of Political and Social Science* 626 (2009): 11-20, http://www.jstor.org/stable/40375921.

unfamiliar to the cities that constitute the Rust Belt. Throughout history, cities like Pittsburgh, St. Louis, Cincinnati, Cleveland, and Buffalo stood as beacons of industrial might, fueled by enormous capital investments that propelled their industries to global preeminence.[3] These cities became magnets for immigrants seeking opportunities in the booming blue-collar labor market, further solidifying their dominance.[4]

However, as the twentieth century unfolded, the tides of knowledge and technology shifted, reshaping the global economic landscape. What were once bustling industrial powerhouses have now been cast in a different light, known more for their struggles as Rust Belt cities facing formidable challenges. The exodus of talented individuals over the past few decades has left a wake of obsolete production facilities, crumbling infrastructure, high tax burdens, and a workforce entrenched in unionization.[5] As populations dwindle, the ability to sustain the monumental investments in capital and infrastructure becomes increasingly strained. This population decline not only challenges the provision of public services but also diminishes the cities' voices in national decision-making. While each Rust Belt city has its own unique history and set of challenges, they all share a common goal: to revitalize their economies and communities. Thus, it is vital to examine the redevelopment of federal policymaking in supporting this revitalization effort, focusing on public and private partnerships, and local initiatives to create federal policies that can holistically transform Rust Belt cities.

This research paper embarks on a structured journey through history, challenges, past policies, suggestions, and conclusion to comprehensively address the multifaceted challenges and potential solutions for revitalizing the Rust Belt. The historical narrative begins with an exploration of the Rust Belt's rise to prosperity, examining the factors that fueled its economic boom and established it as a powerhouse of American industry. This section delves into the drivers of growth, shedding light on the economic and social dynamics that propelled Rust Belt cities to the forefront of the nation's industrial landscape. Transitioning from prosperity to decline, the paper navigates the complex terrain of challenges that precipitated the Rust Belt's economic downturn. Globalization emerges as a pivotal force, reshaping the economic landscape

[3] Ibid.
[4] William M. Bowen and Chang-Shik Song, "Reasons for Misgivings about Local Economic Development Initiatives," in *The Road through the Rust Belt: From Preeminence to Decline to Prosperity*, ed. William M. Bowen (W.E. Upjohn Institute, 2014), 245–76, http://www.jstor.org/stable/j.ctvh4zf9p.12.
[5] Ibid.

and challenging the Rust Belt's traditional manufacturing base. The shift from manufacturing to a service-based economy and the associated high cost of labor further compounded the region's challenges, setting the stage for economic decline. Building on this foundation, the paper critically examines past federal policies that aimed to revitalize the Rust Belt but ultimately fell short of expectations. By dissecting these policies and highlighting their shortcomings, the paper seeks to extract valuable lessons that can inform future policy decisions. In proposing a path forward, the paper introduces the CHIPS and Science Act as a potentially transformative policy. This section not only presents the CHIPS and Science Act as a solution but also addresses potential shortcomings and outlines strategies to mitigate them. By offering a concrete policy proposal grounded in empirical evidence and informed analysis, the paper aims to provide policymakers with a roadmap for revitalizing the Rust Belt. In conclusion, by illuminating the past, analyzing the present challenges, and proposing a forward-looking policy framework, this research paper not only aims to revitalize the Rust Belt but also to redefine the trajectory of the American industrial legacy, ensuring a future where prosperity is not just a memory but a vibrant reality for all.

HISTORY

As the Industrial Revolution spread throughout the United States, the Midwest became a key hub for the development of cutting-edge production techniques. Global competitiveness soared dramatically during this period, supported by mass production, fossil fuels, a committed blue-collar labor force, and mechanization.[6] The area's advantageous location near waterways, an abundance of agricultural supplies, lush land, a wealth of natural resources, and the migration of immigrants had fostered prosperous manufacturing sectors by the early 1900s. Not only did these cities become worldwide powerhouses during this time, but a significant number of their citizens also experienced unparalleled riches.[7]

Midwestern industrial cities reached the pinnacle of their economic success after World War II.[8] During this time, trade policies that were hostile and protectionist were becoming less prevalent globally. Seeing the advantages of a more integrated global economy, policymakers

[6] Bowen and Kinahan, "Midwestern Urban and Regional Responses to Global Economic Transition," 13-19.
[7] Ibid.
[8] Ibid.

started pursuing the expansion of international commerce. An age of increased economic cooperation and prosperity was heralded by the founding of organizations like the World Bank, the International Monetary Fund (IMF), and the General Agreement on Tariffs and Trade (GATT) with the goal of stabilizing economies and lowering trade barriers.

However, the 1960s marked the beginning of a collapse, heralding the emergence of the Rust Belt era amid the growth of globalization. The term "globalization," which refers to the spread of economic activity outside national boundaries, became popular in both scholarly and popular discourse.[9] Higher levels of international investment and trade flows, more participation in the global economy, and increased worldwide mobility were all prevalent during this time. Once the market leaders, Midwestern industrial cities suddenly faced increased competition as markets grew more globalized and dependent on trade, indicating a fundamental change in the way the economy was structured.[10]

Buffalo, New York, serves as an excellent case study of this economic shift. Federal contracts drove Buffalo's post-World War II economic boom, but it was unsustainable. Buffalonians, who had prospered throughout the war, became concerned about an economic collapse when the government started to withhold its assistance. Their worries were well-founded since the post-war economy was severely impacted by sudden reductions in military output.[11] The city's inability to adjust to the radically altered circumstances exposed the risk associated with depending solely on federal contracts to maintain its economic stability. This time frame serves as a lesson, highlighting the value of long-term planning and economic diversification in creating robust economies.

CHALLENGES

Midwestern cities had an economic downturn beginning in the 1950s, which was caused by a complex interaction of several socioeconomic causes, each of which had a major impact on the region's development. China's ascent as a global economic force has had far-reaching consequences for American Midwest sectors, particularly those that were once prominent in the

[9] Ibid.
[10] Ibid.
[11] Mark Goldman, *High Hopes: The Rise and Decline of Buffalo*, (Albany: State University of New York Press, 1984), ProQuest Ebook Central, 25-30.

global arena.[12] This change has drastically reduced the options open to Midwesterner companies looking to uphold or establish global leadership. As a result, American businesses have had to increase their production and efficiency in order to compete in the face of escalating international rivalry. However, there are costs associated with this increased competition, such as stagnant wage rates and a loss in manufacturing jobs.[13] These patterns highlight the critical requirement for Midwestern industries to navigate the evolving global economic landscape and ensure their continued relevance and competitiveness.

One pivotal driver of this decline was also the shifting preferences of individuals towards relocating to areas with more temperate climates.[14] As incomes rose and air conditioning technology became more accessible, many people opted to migrate to regions offering milder winters, thereby altering the demographic landscape of the Midwest.[15] This migration trend had profound implications for the region's economy, influencing labor markets, housing demands, and urban development patterns. Additionally, the transformation of the U.S. employment landscape, marked by a gradual shift from manufacturing to service industries, played a crucial role in reshaping the economic dynamics of midwestern cities. Service sectors employed 10% of nonfarm workers at the end of World War II, compared to 38% in manufacturing. In 1996, manufacturing employed 15% of nonfarm workers, whereas service industries employed 29%.[16] The declining prominence of heavy manufacturing sectors, traditionally concentrated in the Midwest, necessitated adaptation to the evolving industrial landscape, posing challenges and opportunities for economic revitalization.

For industrial communities in the Midwest, the shift from an industrial-based to a knowledge-centric economy has brought particular difficulties. The transportation and infrastructure connections that were so important to the growth of the industrial sector in the

[12] Bowen and Kinahan, "Midwestern Urban and Regional Responses to Global Economic Transition," 27.
[13] Robert Z. Lawrence et al., "International Trade and American Wages in the 1980s: Giant Sucking Sound or Small Hiccup?" *Brookings Papers on Economic Activity. Microeconomics* 1993, no. 2 (1993): 161.
[14] Jordan Rappoport, "US Urban Decline and Growth, 1950 to 2000," *Economic Review: Third Quarter* (2003), https://www.kansascityfed.org/Economic Review/documents/1131/2003-U.S. Urban Decline and Growth, 1950 to 2000.pdf.
[15] Ibid.
[16] Joseph R. Meisenheimer, "The Services Industry in the 'good' versus 'Bad' Jobs Debate," *Monthly Labor Review* 121, no. 2 (February 1998), https://go.gale.com/ps/i.do?id=GALE%7CA20574053&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=00981818&p=AONE&sw=w&userGroupName=anon~f5f39a8b&aty=open-web-entry.

early 20th century are no longer as beneficial to knowledge-intensive sectors that primarily depend on human capital.[17] These sectors compete on a global scale, focusing primarily on services and placing a higher value on innovation and human capital than on more conventional production-based advantages. This shift emphasizes how important it is for Midwestern towns to adjust to new economic paradigms and make the most of human capital in order to fuel growth and competitiveness in an increasingly international market.

These economic difficulties that midwestern urban centers faced were further aggravated by differences in labor costs between unionized northern and midwestern cities and their non-unionized equivalents in the South and West. The Midwest's manufacturing base gradually eroded as a result of industries moving to areas with cheaper labor prices in an effort to cut operating costs.[18] This situation led to a decrease in tax revenues and the loss of jobs, but it also caused people to leave the area in search of better job prospects elsewhere. As a result, the economic vibrancy of cities in the Midwest was further undermined, requiring a reassessment of economic policies and tactics to lessen the effects of these structural shifts.

Midwestern cities faced extra challenges as a result of the demographic transformations occurring inside metropolitan areas, which are characterized by the suburbanization of inhabitants and the decentralization of economic activities. The increasing use of cars and the development of highways made it easier to live and commute in the suburbs, which resulted in the growth of suburban developments at the expense of urban centers.[19] In addition to changing land use and consumption patterns, this spatial reorganization of people and economic activity put stress on inner-city infrastructure and resources, escalating socioeconomic inequality and urban degradation.

Looking ahead, the future viability of Midwestern industrial cities will depend on their ability to innovate and compete in an increasingly competitive global market. Rising national and global populations will intensify demand for resources and escalate competition, necessitating strategic responses to remain competitive.[20] Embracing innovation and fostering a culture of entrepreneurship will be crucial for these cities to not only survive but thrive in an ever-evolving

[17] Bowen and Kinahan, "Midwestern Urban and Regional Responses to Global Economic Transition," 29.
[18] Michael J. Greenwood, “Internal Migration in Developed Countries,” in *Handbook of Population and Family Economics,* ed. Mark R. Rosenzweig and Oded Stark (Elsevier, 1997), 13.
[19] Ibid.
[20] Bowen and Song, “Reasons for Misgivings about Local Economic Development Initiatives,” 257.

economic landscape. Failure to adapt to these changing dynamics risks relegation to the sidelines, highlighting the urgency for proactive and forward-thinking strategies to secure their future prosperity.

LESSONS LEARNED FROM PREVIOUS POLICY MAKING DECISIONS

There is a discernible drop in general well-being in the setting of these areas, as well as a widespread sense of nostalgia for former wealth. There is a widespread belief that better days are gone, and efforts are being made to create and execute public policies and initiatives in order to bring back the prior standards of wealth.[21] On the precise steps required to accomplish this goal, however, agreement is still elusive. There is a great deal of variation in the recommendations for public policy proposals, as well as in the suggestions of who should be in charge, accountable, and financially responsible. Navigating through the many inconsistent and occasionally conflicting facts, regulations, standards, and interests that underlie these ideas is difficult.

Reviving prosperity in the context of the Rust Belt cities necessitates a change in leadership paradigm away from previous approaches that prioritized economic domination and short-term economic development plans. The region's larger asset portfolio, which includes enterprises, goods, and human capital, must be enhanced and nurtured in tandem with short-term initiatives like business attraction, retention, and expansion. Many municipal and regional leaders have historically taken this stance, believing that increased globalization is inevitable.[22] This has made it clear that we must compete for mobile sectors that are flexible enough to move to different places or nations in reaction to changing economic conditions.

The important role that investments in the development of human capital play as a foundation for long-term economic success is explained by renowned economist Vijay K. Mathur in his groundbreaking study. Instead of focusing on spending incentives or tax breaks to attract enterprises, Mathur proposes a deliberate shift in policy that would support a strong ecosystem of human capital.[23] An approach that is so revolutionary not only creates a solid

[21] Bowen and Kinahan, "Midwestern Urban and Regional Responses to Global Economic Transition," 30.
[22] Benjamin Y. Clark, "Can Tax Expenditures Stimulate Growth in Rust Belt Cities?" in *The Road through the Rust Belt: From Preeminence to Decline to Prosperity*, ed. William M. Bowen (W.E. Upjohn Institute, 2014), 37–68, http://www.jstor.org/stable/j.ctvh4zf9p.5.
[23] Vijay K. Mathur, "Human Capital-Based Strategy for Regional Economic Development," *Economic Development Quarterly* 13, no. 3 (1999), https://journals.sagepub.com/doi/10.1177/089124249901300301.

foundation for long-term success but also shields localities from the arbitrary whims of temporary company relocations. Politicians can strengthen a region's competitive advantage in the global marketplace by placing a high priority on the development of human capital and research and development (R&D). This deliberate focus on innovation and skill enhancement reduces the likelihood of interregional spillovers while simultaneously making a location more appealing to investors. As Mathur cogently articulates, "public policy geared towards augmenting human capital stock is indispensable for the long-term vitality of a region," underscoring the imperative for policymakers to eschew myopic strategies in favor of holistic initiatives fostering human capital enrichment. [24]

WHAT DOES A GOOD FEDERAL POLICY LOOK LIKE?

There is no one simple answer to the complex problem of restoring prosperity in industrial cities in the Midwest. However, the numerous approaches that have emerged as a result of significant research all accept, in some form or another, that the greatest potential of cities lies in their citizens' skills and desires.[25] The foundation of revitalization initiatives is this human capital, which acts as a stimulant for resilience, growth, and creativity.

Making the most of these communities' current assets is essential to their rebirth. For example, a number of industrial communities in the Midwest are home to prominent academic institutions that function as centers of learning and innovation.[26] A thriving environment that supports economic growth can be created by working with these institutions to implement programs that develop local talent and encourage entrepreneurship. These cities can further benefit from economic regeneration as they frequently have rich cultural histories and architectural legacies that can be revived to draw tourists and investment.

Addressing the issues that have led to these cities' downfall is another essential component. The legacy of environmental destruction left by heavy industries is one such issue. The quality of life for locals can be raised by implementing sustainable practices and remediation

[24] Ibid.
[25] Edward W. (Ned) Hill, "Introduction," in *The Road through the Rust Belt: From Preeminence to Decline to Prosperity*, ed. William M. Bowen (W.E. Upjohn Institute, 2014), 1-6, http://www.jstor.org/stable/j.ctvh4zf9p.3.
[26] Aaron M. Renn, "Brain Drain Reconsidered: Toward a More Sophisticated Approach to Regional Talent," Manhattan Institute, March 3, 2023, https://manhattan.institute/article/brain-drain-reconsidered-toward-a-more-sophisticated-approach-to-regional-talent.

initiatives, which can also draw in environmentally concerned investors and enterprises. Additionally, spending money on infrastructure improvements—like bettering public transit and reviving abandoned neighborhoods—can raise these communities' general appeal and quality of life.

Employers can be drawn to local areas, and economic growth can be promoted by funding workforce development programs that provide citizens with the skills required for contemporary industries. Rust Belt communities have the potential to create a thriving future that is based on the creativity and energy of their citizens by utilizing their innate assets, tackling enduring issues, and fostering a business-friendly climate. Rust Belt communities can ensure that their citizens have the skills required to succeed in contemporary industries by coordinating these investments with workforce development programs.[27] This will help them draw in firms. This integrated approach highlights a complete strategy to promote economic revitalization and create chances for sustainable growth in these communities, especially in light of recent legislative actions such as the CHIPS and Sciences Act.

Understanding the CHIPS and Science Act

The CHIPS and Sciences Act, which President Biden signed into law in August 2022, was a major step in the right direction not only for reviving the US semiconductor industry but also rebirthing the Rust Belt. The Act provides $52 billion in subsidies for the US semiconductor industry, which has led to a surge in new private investments in chip factories around the country.[28] The CHIPS Act, however, aims to promote research, development, and job creation across a variety of developing sophisticated manufacturing businesses, not just semiconductors. Numerous businesses, including sophisticated batteries and electric cars, are vital to the fight against climate change. With American companies setting the standard for technology that mitigate climate change and minimize emissions from fossil fuels, the goal of this program is to establish the United States as a global leader in these industries' production and employment.

[27] Xiahui Hu and Chun Yang, “Building a Role Model for Rust Belt Cities? Fuxin’s Economic Revitalization in Question,” ScienceDirect, September 28, 2017, https://www.sciencedirect.com/science/article/pii/S0264275117307746.
[28] Jim Tankersley, "'Innovation Hubs' Aim to Lift Distressed Areas. Congress Just Has to Fund Them," *The New York Times*, December 5, 2022, https://www.nytimes.com/2022/12/05/us/politics/chips-act-congress-innovation-hubs.html?searchResultPosition=5.

However, there are possible issues with the Act. The CHIPS and Science Act's funding allocation is a crucial component that must be carefully considered in order to prevent inefficiencies and guarantee fair distribution. Although the Act provides a significant amount of financing for innovative businesses such as semiconductor production, legislators must make sure that these funds are used wisely to meet the unique requirements of Rust Belt cities.[29] This means creating precise standards and directives for the distribution of funds and giving top priority to initiatives that will most effectively support the region's overall regeneration objectives.[30] Policymakers also need to resist the urge to just keep throwing money at the issue and instead concentrate on making smart investments that provide long-term benefits.gr

The disparity between the amount of funding companies want and the amount made available by the CHIPS and Science Act is one potential problem. Under such circumstances, authorities need to come up with plans to close this funding gap, like motivating businesses to look for outside funding sources or private investment.[31] To make such initiatives more financially feasible, this may entail offering regulatory advantages to businesses that invest in Rust Belt cities.

Another possible apprehension is the politicization of money distribution, wherein choices are impacted by political factors instead of the factual needs of the area. The creation of innovation hubs—a crucial element of the CHIPS Act—aims to close the gap between academic research and commercially viable industrial applications. In order to stimulate economic growth, especially in areas that could use it, these hubs will make use of research from universities and innovation institutes.[32] Buffalo and Indianapolis, among other cities, are anticipated to become centers of innovation, generating a large number of well-paying employment and promoting sustained economic growth in these regions. Legislators must create open, accountable procedures for allocating funds in order to reduce this risk. This will guarantee that opportunities are given out on the basis of need and merit rather than political preference. To guarantee that funds are distributed fairly and effectively, this may need the establishment of impartial

[29] "A rust-belt revival; Schumpeter," *The Economist*, March 3, 2016, https://link-gale-com.gate.lib.buffalo.edu/apps/doc/A450872340/AONE?u=sunybuff_main&sid=bookmark-AONE&xid=490f9f36.
[30] Hu and Yang, “Building a Role Model for Rust Belt Cities? Fuxin’s Economic Revitalization in Question.”
[31] David R. Elkins, "Lost a Step: The Great Lakes Region and Entrepreneurship," in *The Road through the Rust Belt: From Preeminence to Decline to Prosperity*, ed. William M. Bowen (W.E. Upjohn Institute, 2014), 277–306, http://www.jstor.org/stable/j.ctvh4zf9p.13.
[32] Tankersley, "'Innovation Hubs' Aim to Lift Distressed Areas. Congress Just Has to Fund Them."

oversight bodies or the participation of experts from outside political parties in the decision-making process.

The CHIPS and Science Act does not take a one-size-fits-all approach to reviving the Rust Belt. As highlighted in this research, such a framework can be inefficient and disastrous. The Act is designed to account for potential problems in allocating necessary funding to areas that require it. It accomplishes this by using a thorough selection procedure. A thorough evaluation of each region's potential for innovation and economic growth serves as a guide in choosing the locations for these innovation clusters.[33] Considerations include the industrial makeup, economic complexity, and the existence of patent writers and graduates in science and technology. The investigation also looks at "brain drain" factors, such as the proportion of prime-age persons who are unemployed or jobless, to determine which areas would most benefit from these innovation hubs.[34] By addressing the needs of underserved communities and maximizing their potential for economic regeneration, this method seeks to find a balance.

The CHIPS and Science Act provides a basis for long-term economic viability; therefore, its influence on the Rust Belt's revival goes beyond short-term benefits. The Act establishes the foundation for a sustainable and diversified economy in the area by giving priority to sophisticated sectors, including semiconductor manufacturing. In addition to immediately generating job opportunities, investments in semiconductor production also build an infrastructure and knowledge base that can draw in allied businesses and foster future innovation. This move toward high-tech industries puts the Rust Belt in a leadership position in cutting-edge technologies and is in line with global trends, which will ensure its long-term relevance and competitiveness.[35] Additionally, the Act's focus on funding for research and development (R&D) encourages an innovative culture that can propel ongoing expansion and adaptability in the region.

CONCLUSION

[33] Ibid.
[34] Ibid.
[35] Kenneth T. Jackson, "A Nation of Cities: The Federal Government and the Shape of the American Metropolis," *The Annals of the American Academy of Political and Social Science* 626 (2009): 11-20, http://www.jstor.org/stable/40375921.

The CHIPS and Science Act presents a unique opportunity to capitalize on the Rust Belt's existing strengths for revitalization. One such strength lies in the region's industrial heritage and manufacturing prowess. As mentioned earlier, Rust Belt cities have a deep-rooted history of manufacturing excellence, with skilled workers and established infrastructure that can be repurposed for advanced manufacturing industries like semiconductor production. By targeting subsidies and incentives towards these industries, the Act can help reinvigorate the manufacturing base of Rust Belt cities, creating new job opportunities and economic growth.

Another key strength of the Rust Belt is its strategic location and transportation infrastructure. Many cities in the region are situated along major transportation routes, including highways, railways, and waterways. This infrastructure can be a valuable asset for industries reliant on efficient transportation, such as semiconductor manufacturing. The Act's focus on stimulating job growth and investment in these industries can leverage the Rust Belt's transportation advantages, making it an attractive location for businesses looking to establish or expand their operations.

Furthermore, the Rust Belt boasts a rich pool of skilled labor, particularly in fields relevant to advanced manufacturing and technology. By investing in workforce development programs and education initiatives, the Act can help ensure that the region's workforce remains competitive and adaptable to the needs of modern industries. This, in turn, can attract businesses seeking a skilled workforce and create a sustainable foundation for long-term economic growth in the Rust Belt. Overall, the CHIPS and Science Act has the potential to transform the Rust Belt's economy by leveraging its industrial heritage, transportation infrastructure, and skilled workforce. By strategically targeting these strengths, the Act can help revitalize Rust Belt cities and position them as leaders in the new era of advanced manufacturing and technology.

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CARE OR HARM? COMPARING THE LEGAL REGULATION OF CHILDREN'S HEALTH IN 'GENDER-AFFIRMING CARE' BANS AND 'RELIGIOUS HEALING' EXEMPTIONS

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Legal tensions surrounding the determination of appropriate medical care for children include conflicting interests amongst parents, children, and the State. These tensions are evident in the recent rise of state bans on gender-affirming care for minors in the United States. Constitutional challenges to these state bans relate to the extent of parental control, the meaning of 'care' and 'harm,' and children's rights. Similar contentions have been raised regarding state 'religious healing' exemptions, which exempt parents from child abuse and neglect statutes to permit the use of prayer over medical intervention to treat children's illnesses. This paper compares the legalities of state gender-affirming care bans and religious healing exemptions, exploring how Supreme Court precedent can legitimize these diverging 'care approaches.' This paper argues that the legal precedent which regulates the identities associated with each care approach influences the legitimacy applied to each care approach. Specifically, religious healing can be legitimized by the sincerity-based framework from United States v. Ballard, which protects religious belief, and gender-affirming care bans which follow an immutability-based framework from Frontiero v. Richardson, which has regulated gendered identities.

INTRODUCTION

The United States has experienced a recent rise in state bans on gender-affirming care for minors.[1] Gender-transitioning procedures aim to treat gender dysphoria, which has been defined as the "incongruence that transgender people experience between their birth-assigned sex and gender identity" and that is "associated with clinically significant distress."[2] These procedures include physical medical interventions such as puberty blockers, cross-sex hormones, and gender reassignment surgery.[3] There are ongoing constitutional challenges to gender-affirming care

[1]As of April 2024, there are 24 states with a law or policy banning gender-affirming care according to the Human Rights Campaign. In this paper, I use the terms 'gender-affirming care' and 'gender-transitioning procedures' interchangeably. However, these terms have been deployed in different political and legal contexts, implying varying positionalities: the former in support of the procedure, framing it as 'care', while the latter against the procedure, negating it as 'care.' The purpose of this paper is to not share my personal views on gender-affirming care nor religious healing, but to rather highlight their legal regulations in relation to children's health. Hence, I refer to gender-affirming care and religious healing as 'care approaches' to emphasize their *potentialities* to be interpreted as care, not to suggest that I necessarily view them as 'care.'
[2] *K.C. v. Medical Licensing Board of Indiana* (2023); This definition is recognized by the DSM-5.
[3] *K.C. v. Medical Licensing Board of Indiana* (2023).

bans across states.[4] The main points of contention in these challenges pertain to the medical necessity and safety of gender-transitioning procedures for minors, the due process rights of parents to decide medical care for their children, and the equal protection rights of transgender youth. While states have framed gender-transitioning procedures as harmful to children, calling it 'child abuse,' 'genital mutilation,' and 'chemical castration,' plaintiffs have referred to it as 'life-saving care.'[5] Broadly, these contentions question *what* constitutes care and harm for children, and *who*—amongst children, parents, and the State—has the authority to decide.[6]

Similar questions have been raised on the constitutionality of religious healing practiced in the United States. In religious healing, medical intervention is replaced with prayer to address physical sickness.[7] Under statutory religious exemptions to child abuse and neglect statutes, religious parents have been permitted to perform religious healing on their children, refusing medical treatment on the grounds of parental rights and religious freedoms.[8] These religious exemptions were required by Congress in their 1974 Child Abuse and Prevention Treatment Act for states to receive funding. This federal requirement was repealed in 1983 yet some states nonetheless kept their religious exemptions.[9] According to the Pew Research Center, as of 2016, thirty-four states and D.C. have some sort of religious exemptions to child abuse and neglect statutes for religious healing.[10] These exemptions frame the refusal of medical treatment on the basis of religious belief as a form of *care*, rather than *harm*—explicitly stating that parents are

[4] The states currently undergoing challenges to gender-affirming care bans include Alabama, Arkansas, Georgia, Idaho, Indiana, Kentucky, North Carolina, Tennessee, and Texas according to Human Rights Campaign. In April 2024, the U.S. Supreme Court became involved with the issue of gender-affirming care for minors for the first time, dealing with the Idaho state ban in *Poe v. Labrador*. See Casey Parks and Ann E. Marrimow,.https://www.washingtonpost.com/nation/2024/04/15/supreme-court-idaho-gender-affirming-care/.

[5] As noted in an ongoing Texas case, *Doe v. Abbott* (2024). In this case, a Texas family has sued Governor Greg Abbott for sending a child welfare investigator to their home, who claimed that offering their child gender-affirming care is a form of 'child abuse.' The *Protect Children's Innocence Act* introduced in Congress in 2023, aiming to federally ban gender-affirming care, also refers to the procedure as "mutilation" and "castration."

[6] Indeed, practitioners are also involved in tensions regarding the provision of healthcare, especially when the provision is in conflict with practitioners' religious beliefs; yet this concern is beyond the scope of this paper.

[7] Rita Swan, "Faith-based medical neglect: For providers and policymakers," *Journal of Child & Adolescent Trauma* 13, no. 3 (2020): 345.

[8] Paula Monopoli, "Allocating the Costs of Parental Free Exercise: Striking a New Balance Between Sincere Religious Belief and a Child's Right to Medical Treatment," *Pepp. L. Rev.* 18 (1990): 320.

[9] Swan, "Faith-based medical neglect," 345.

[10] Aleksandra Sandstrom, "Most States Allow Religious Exemptions from Child Abuse and Neglect Laws," Pew Research Center, August 12, 2016, . www.pewresearch.org/short-reads/2016/08/12.

not 'negligent' nor 'abusive' for the sole reason of performing religious healing. Resultantly, many children have died under religious healing exemptions.[11]

There are some evident divergences between the conceptualization of care and harm between gender-affirming care bans and religious healing: while the former considers medical necessity, the latter does not; while the former limits parental control to decide children's treatment, the latter does not; while the former limits medical intervention to protect children *from* physical harm, the latter limits medical intervention *despite* children's physical harm. To my knowledge, there has yet to be a comprehensive analysis on such divergences in the judicial conceptualization and regulation of children's health and, specifically, how tensions between parents, the State, and children in healthcare have been legally addressed in America.[12] This paper serves as a starting point to this analysis through assessing contemporary children healthcare debates. Specifically, this paper questions: How can the conceptions of care and harm in gender-affirming care bans and religious-healing *both* be legally justified using Supreme Court precedent despite their divergences? More broadly, how does Supreme Court precedent have the capacity to legitimize varying notions of children's healthcare?

Notably, both care approaches are associated with particular identities: religious healing is an exercise of religious identity whereas gender-transitioning procedures are affiliated with transgender identities. Accordingly, the parent-state-child triad within children healthcare debates are submerged within particular identity affiliations that influence definitions of care and harm. Building on this observation, I argue that the legal precedent that *regulates* the identities associated with each care approach influences the *legitimacy* applied to each care approach. Specifically, I will show that the meaning of care/harm in religious healing is influenced by the sincerity-based approach from *United States v. Ballard*, which protects religious belief from official scrutiny, and that the conception of care/harm in gender-affirming care bans follows an immutability-based approach from *Frontiero v. Richardson,* which regulates gender identities

[11] Nicole Blanchard, "Idaho Faith Healing Exemption Still Unchanged. Canyon County Counts 8 More Deaths," *Idaho Statesman*, January 13, 2023, https://www.idahostatesman.com/news/politics-government/state-politics/article270467052.html.

[12] There has been an analysis on how the right to medical treatment has been legally regulated in America, yet this paper does not focus on children's health. *See* Jessie. B Hill, "The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines," *Texas Law Review* 86, no. 2 (2007): 277-346.

through emphasizing inherent attributes.[13] In my analysis, I will explain that these two legal identity frameworks based on sincerity and immutability adjudicate identities through emphasizing different components, the former providing weight to subjective religious belief while the latter providing weight to objective innate characteristics. As such, I will discuss how these care approaches, which are grounded in varying identity frameworks, have different *'potentials of falsifiability'* that influence their legitimacy. My argument will uniquely highlight how legal regulations on identity influence children's healthcare, contributing to a gap in the literature as to *how* different conceptions of care/harm are legitimized through the law.[14]

GENDER-AFFIRMING CARE BANS

'Gender-affirming care' aims to address gender dysphoria using medical interventions such as puberty blockers, cross-sex hormones, and gender reassignment surgery.[15] These procedures aim to minimize gender dysphoria through aligning one's physical sexual characteristics to their perceived gender.[16] The following section summarizes the primary legal argumentation in support of and against gender-affirming care for minors. The primary contentions on the constitutionality of gender-affirming care bans pertain to the medical necessity of these procedures for minors, the parental right to decide children's medical care, and the equal treatment of transgender youth under the equal protection clause.[17]

The first point of contention regarding the constitutionality of gender-affirming care for minors includes the medical necessity and safety of these procedures. The legal perspectives on this point are influenced by the perceived level of scientific evidence on gender-transitioning procedures, the understanding of 'gender dysphoria,' and the weight attached to the informed

[13] This is one reading of *Frontiero*'s immutability criterion. There has been legal pushback against this reading. However, this immutability approach still has had a prominent impact in suspect class jurisprudence, as will be discussed below. Hence, this paper will focus on this reading of *Frontiero.*

[14] The legal regulation of gender-affirming care and religious healing are likely influenced by political leanings of Courts and legislatures. However, my paper will solely examine Supreme Court precedent that influences the legitimacy attached to these care approaches. Indeed, the interpretations and applications of such legal precedent may be influenced by particular political leanings, but such analyses is beyond the scope of this paper.

[15] *K.C. v. Medical Licensing Board of Indiana* (2023); *Loe v. Texas* (2023); *Brandt et al. v. Rutledge et. al.* (2023).

[16] *K.C. v. Medical Licensing Board of Indiana* (2023); *Loe v. Texas* (2023); *Brandt et al. v. Rutledge et. al.* (2023).

[17] The arguments below have been gathered from ongoing challenges to gender-affirming care bans, including *Loe v. Texas* (2023) in Texas, *K.C. v. Medical Licensing Board of Indiana* (2023) in Indiana, and *Brandt et al. v. Rutledge et. al.* (2023) in Arkansas. The sources used from these cases include appellee and appellant briefs alongside amicus briefs, which were accessed through the American Civil Liberties Union (ACLU).

consent of minors. The states that have banned gender-transitioning procedures for minors view the procedures as 'abuse' rather than 'care.' These states have argued that gender-affirming care is experimental and lacks high-quality evidence.[18] They claim that such treatments can cause 'irreversible harm,' including infertility and sexual dysfunction.[19] Moreover, there is doubt applied to the root of gender dysphoria and whether children *can* and *do* actually identify as 'transgender.' Their position frames transgender affiliation as a feeling rather than a fundamental or unchanging aspect of a child's identity.[20] In response, those challenging gender-affirming care bans have argued that there is scientific evidence available to support the medical necessity and safety of gender-affirming care procedures; they have also emphasized the urgency of these procedures to help children with gender dysphoria, framing it as 'life-saving care.'[21]

The second point of contention is whether parents have the right to decide the medical treatment of their children in providing gender-affirming care. One of the primary positions against gender-affirming care bans is that it violates parents' due process rights to decide the medical treatments provided to their children. However, those supporting gender-affirming care bans argue that state limitations on parental rights are supported when harm is inflicted on the child, protecting children's well-being.[22] The third point of contention is whether denying access to gender-transitioning procedures violates the equal protection rights of transgender minors. In the equal protection analysis, there is debate on whether gender identity is an immutable trait deserving of heightened scrutiny as a suspect or quasi-suspect class. An immutable trait, according to *Frontiero v. Richardson*, is received at birth, is unchanging, and is not individually chosen.[23] While states that justify gender-affirming care bans claim that transgender identity is not immutable and not protected as a suspect class or quasi-suspect class, those against the bans have argued for the suspect classification of transgender youth.[24]

RELIGIOUS HEALING

[18] *Loe v. Texas* (2023).
[19] *Loe v. Texas* (2023).
[20] *Loe v. Texas* (2023).
[21] *Loe v. Texas* (2023); *K.C. v. Medical Licensing Board of Indiana* (2023).
[22] *K.C. v. Medical Licensing Board of Indiana* (2023).
[23] *K.C. v. Medical Licensing Board of Indiana* (2023).
[24] The primary case used to do so *Bostock*, in which plaintiffs have argued that denying transgender youth gender-affirming care is a form of sex discrimination. This argumentation is beyond the scope of the paper.

Evidently, contentions regarding the gender-affirming care bans address questions of medical necessity, parental rights, and children's identities. Another medical issue regarding children that carries similar contentions is religious healing throughout the United States.[25] In religious healing practices, parents choose to address children's sickness through spiritual methods such as prayer and refusing medical intervention.[26] Groups that are commonly noted in the literature and the law to practice religious healing include Christian Scientists, Followers of Christ, and Jehovah's Witnesses.[27] Consequently, treatments that may be considered medically necessary in non-religious contexts are replaced in religious contexts with spiritual healing; consequently, various children have died from preventable diseases.[28]

In states that permit religious healing, religious parents have been exempted from child abuse and neglect statutes. In 1974, Congress made it a requirement for states to provide religious exemptions to the Child Abuse and Prevention Treatment Act to receive state funding to support child abuse prevention. In 1983, Congress repealed this requirement, yet some states have left their religious exemptions in place.[29] In these religious exemptions, denying medical treatment to children is not seen as a form of 'neglect' or 'abuse' of the child but rather as a form of care based on the parents' religious beliefs. For instance, in the Child Prevention Act of Idaho, it says:

> no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being…[30]

As noted in the language used, religious exemptions to child abuse and neglect statutes consider religious healing as a *replacement* to medical intervention, framing it as another care technique

[25] Jennifer Chen, "Family Conflicts: The Role of Religion in Refusing Medical Treatment for Minors," *Hastings Law Journal* 58, no. 3 (2006-2007): 643.
[26] Swan, "Faith-based medical neglect," 344; Emily Catalano, "Healing or Homicide: When Parents Refuse Medical Treatment for Their Children on Religious Grounds," *Buffalo Journal of Gender, Law and Social Policy* 18, no. 1 (2009-2010): 157.
[27] Swan, "Faith-based medical neglect," 346-347.
[28] Swan, "Faith-based medical neglect," 345.
[29] Swan, "Faith-based medical neglect," 345; Breanna R. Harris, "Veiled in Textual Neutrality: Is That Enough: A Candid Reexamination of the Constitutionality of Section 4454 of the Balanced Budget Act of 1997," *Alabama Law Review* 61, no. 2 (2010): 393.
[30] *Child Prevention Act of Idaho*, Idaho Code § 16-1602 (31) (a).

that does not in of itself make parents 'harmful.'[31] Hence, in such exemptions, care is determined through parents' religious ideologies rather than scientific discourse on medical necessity.

In response, there has been legal pushback against religious healing. The practice of religious healing has been supported by the notion of parental and religious rights to control the religious upbringing and medical intervention of one's children. The legal precedent used to support this point has included *Meyer v. Nebraska*, which establishes "the parental rights to the care, custody, and control of minor children and dependents."[32] However, challenges to religious healing have emphasized other precedents such as *Prince* v. *Massachusetts*, which limits parental control when physical or psychological harm is inflicted upon children.[33] As *Prince* states:

> Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.[34]

There has also been legal pushback on religious healing on the grounds of *Employment Division, Department of Human Resources of Oregon v. Smith*, which decided against exempting religious individuals from generally applicable laws that are "not aimed at the promotion or restriction of religious belief."[35] In doing so, *Smith* elucidated a thought/action divide, denoting that while there may be an absolute right to religious *belief*, there is not an absolute right to religious *conduct*.[36] Therefore, even if conduct is supported by a religious claim, it does not necessarily have to be protected by the State. Despite such pushback, the constitutionality of religious healing has not yet been addressed by the Supreme Court.

DIVERGING CONCEPTIONS OF CARE & HARM

[31] The statute adds that the state can intervene in emergency medical situations. Nonetheless, there are various reports in Idaho of children dying from illnesses deemed as 'preventable' in religious healing contexts. *See* Blanchard, "Idaho Faith Healing Exemption." Other states have used similar statutory language for their religious exemptions.
[32]Sanders, "Religious Healing Exemptions and the Jurisprudential Gap," 638.
[33] Shaakirrah R. Sanders, "Religious Healing Exemptions and the Jurisprudential Gap Between Substantive Due Process and Free Exercise Rights," *UC Irvine L. Rev.* 8 (2018): 656. This line of argumentation from *Prince* was applied in the district court case of *Jehovah's Witnesses in State of Washington v. King County Hospital Unit No. 1* (1968), which addressed forced blood transfusions on children. Jehovah Witness members challenged state intrusion on parental control of child medical care when child health was "grossly and willfully neglected." The Court did not address the topic of religious healing exemptions, yet did invalidate the challenges, stating that "neither the rights of religion nor rights of parenthood are beyond limitation." For further discussion, see Sanders on p. 644-645.
[34] Sanders, "Religious Healing Exemptions and the Jurisprudential Gap," 645.
[35] Sanders, "Religious Healing Exemptions and the Jurisprudential Gap," 669.
[36] Sanders, "Religious Healing Exemptions and the Jurisprudential Gap," 663.

When comparing the way care and harm towards children are conceptualized between religious healing and gender-affirming care bans, some inconsistencies become apparent. First, there are legal contentions surrounding the safety, medical necessity, and evidentiary support of gender-affirming care; the scientific basis for these procedures is considered when determining whether they constitute 'care' or 'harm.' However, in religious healing, the factor of medical necessity itself is *replaced* by parental-religious belief as to what constitutes care. In cases of religious healing, there is often an alternative physical intervention that holds medical consensus regarding its effectiveness in treating the ill child; however, the factor of medical necessity itself is negated, privileging religious belief over scientific doctrine.[37]

Moreover, states banning gender-affirming care emphasize prevention against physical 'irreversible harm' to the child; the body is arguably protected from 'abusive' permanent changes from medical intervention. However, protecting children against 'irreversible' bodily harm that onsets through physical sickness is not similarly prioritized in religious healing contexts. Rather, religious parents are exempted from child abuse and neglect statutes to refuse medical treatment to their children, and, more so, this refusal is framed as care. While the treatment towards *physical* harm of children differs, both care approaches similarly emphasize *not* imposing medical intervention. Lastly, while there seems to be more parental control in regulating religious healing, there is a lack of parental control in gender-affirming care bans.

Interestingly, some states that have banned gender-affirming care, calling it 'child abuse,' *also* have religious exemptions to child abuse statutes to allow for religious healing, a notable example being Idaho.[38] Noting these diverging conceptions of care and harm between gender-transitioning procedures and religious healing, what sort of legal foundations justify these inconsistencies? What legal logics determine whether medical interventions are deemed as 'abuse' or 'care' towards children? Notably, a common factor between gender-affirming care

[37] In cases of children dying due to parental refusal of medical treatment on religious grounds, children had reportedly treatable illnesses, including pneumonia, diabetes, and cancer, making the death "preventable." *See* Dirk Johnson, "Trials for Parents Who Chose Faith Over Medicine," *The New York Times*, January 21, 2009, . However, factors such as the effectiveness and experience of treatment have also been considered to justify religious healing. See *Newmark v. Williams* (a 3-year-old died from cancer; the parents refused chemotherapy on religious grounds, yet also due to its low chances of success and the pain inflicted through the procedure). https://www.nytimes.com/2009/01/21/us/21faith.html. However, factors such as the effectiveness and experience of treatment have also been considered to justify religious healing. See *Newmark v. Williams* (a 3-year-old died from cancer; the parents refused chemotherapy on religious grounds, yet also due to its low chances of success and the pain inflicted through the procedure).

[38] Blanchard, "Idaho Faith Healing Exemption"; See *Poe v. Labrador* for Idaho's gender-affirming care ban.

bans and religious healing for minors is that both carry relations with particular identity affiliations: the former is associated with gender identities while the latter is associated with religious identities. These identity affiliations are submerged in legal architectures that structure their political and conceptual boundaries, influencing their rights, freedoms, and constrictions. Using this observation, I argue that the legal precedent that *regulates* the identities associated with each care approach influences the *legitimacy* applied to each care approach. Specifically, I will show that the meaning of care and harm in religious healing is influenced by the sincerity-based approach from *United States v. Ballard*, which regulates religious belief, and that the conception of care and harm in gender-affirming care bans follow an immutability-based approach from *Frontiero v. Richardson,* which can regulate gendered identities.

BALLARD AND *FRONTIERO*: SINCERITY VS IMMUTABILITY

The rights to religious freedom and equality are protected in the Free Exercise Clause and Establishment Clause of the First Amendment, stating that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[39] The Supreme Court case of *United States v. Ballard* specifies how protections to religious subjects, and their beliefs, should be determined under the First Amendment. *Ballard* denotes that the Court must not adjudicate the veracity of religious belief, but rather the sincerity of religious belief, when determining religious protections.[40] Hence, the empirical accuracy or plausibility of the religious belief is not of concern when assessing whether a belief is worthy of protection.[41]

This being said, the majority position in *Ballard* has been challenged. First, dissenting judges in *Ballard* argued against the legal adjudication of religious sincerity, claiming that it also violates religious freedom and equality as it inevitably involves judgment on religious plausibility.[42] Similar positions echoed by legal scholars who argue that legal judgment on whether a religious belief is 'actually held' can devalue religious beliefs that do not fit state standards of religious sincerity.[43] Nonetheless, what is notable in *Ballard*, and most important to

[39] Nathan S. Chapman, "Adjudicating Religious Sincerity," *Washington Law Review* 92, no. 3 (2017): 1195.
[40] Chapman, "Adjudicating Religious Sincerity," 1225.
[41] Chapman, "Adjudicating Religious Sincerity," 1225.
[42] Chapman, "Adjudicating Religious Sincerity," 1205.
[43] Chapman, "Adjudicating Religious Sincerity," 1242.

my analysis of religious healing of children, is that subjective religious belief associated with religious identities is not *falsifiable* (i.e., its veracity cannot be adjudicated) by the Court.

For gender identity, the constitutional arena where youth can receive identity-based protections is the Equal Protection Clause. To obtain heightened protection under the equal protection clause, one must be considered a suspect class.[44] To be attributed suspect classification, the Court has historically held an 'immutability criterion' that was introduced in the Supreme Court case of *Frontiero v. Richardson.*[45] *Frontiero* defines immutable characteristics as those "determined solely by the accident of birth" — like race, sex, and nationality — as discriminating against such attributes would violate "the basis concept of our system that legal burdens should bear some relationship to individual responsibility."[46] Hence, the individual must "not have the moral responsibility of possessing the trait" in this immutability criterion.[47]

Reading *Frontiero*, one common interpretation of 'immutable' attributes has been innate, inherited characteristics that are not *chosen* and *unchanging*.[48] Following this reading, immutable attributes have often been deemed to hold a biological basis.[49] Hence, there is a scientific core to this concept of immutability, emphasizing *objectivity* within identity affiliations.[50] However, this interpretation has been heavily critiqued: some have proposed 'new' readings of immutability, while others have completely rejected the immutability criterion itself.[51] Despite these critiques, what is important for this analysis is that the immutability criterion has been used to emphasize the *innateness* and *unchangeability* of attributes.

[44] Richard E. Levy, "Political Process and Individual Fairness Rationales in the US Supreme Court's Suspect Classification Jurisprudence," *Washburn LJ* 50 (2010): 35. See this paper for more details on suspect classifications.
[45] Nicholas Serafin, "In Defense of Immutability," *BYU L. Rev.* 275, no. 2 (November 1, 2020): 280.
[46] Serafin, "In Defense of Immutability," 281.
[47] Serafin, "In Defense of Immutability," 275.
[48] Serafin, "In Defense of Immutability," 290; Rosky, "Scrutinizing immutability," 379.
[49] See Tiffany C. Graham, "The Shifting Doctrinal Face of Immutability," *Va. J. Soc. Pol'y & L.* 19 (2011) for more details, including critique against biological conceptions of immutability in the context of gay rights.
[50] Serafin, "In Defense of Immutability," 290; Lisa M. Diamond and Clifford J. Rosky, "Scrutinizing immutability: Research on sexual orientation and US legal advocacy for sexual minorities," *The Journal of Sex Research* 53, no. 4-5 (2016): 373; M. Darmer, "'Immutability"" and Stigma: Towards a More Progressive Equal Protection Rights Discourse," *American University Journal of Gender, Social Policy & the Law* 18, no. 3 (2010): 449.
[51] Darmer, "'Immutability" and Stigma: Towards a More Progressive Equal Protection Rights Discourse"; Graham, "The Shifting Doctrinal Face of Immutability," 169; Serafin, "In Defense of Immutability," 290; John Tehranian, "Changing Race: Fluidity, Immutability, and the Evolution of Equal-Protection Jurisprudence," *U. Pa. J. Const. L.* 22 (2019).

Additionally, this reading of immutability is prominent in litigation of gender-affirming care bans for minors.

ANALYSIS

The sincerity-based approach to regulate religious identity in *Ballard* differs from the immutability-based approach to regulating gender identity in *Frontiero* in a few ways. Particularly, the two frameworks place different weights on the subjective and objective components of identity, shaping differing potentialities of official scrutiny upon identity affiliations. In *Ballard*, religious beliefs are recognized as a core aspect of religious identity, focusing on the subjective components of religious exercise. *Ballard* then limits adjudication upon the veracity of subjective religious belief from the Courts; the subjectivity of belief places it beyond legal scrutiny. Conversely, in the immutability criterion in *Frontiero*, the objective characteristics of identity are emphasized. Specifically, the innateness and rigidity of an attribute—which can be supported biologically—is treated as an objective phenomenon open for Court observance and, in turn, judgment. As such, to some extent, this reading of immutability in *Frontiero* medicalizes identity affiliation, mapping identity recognition upon the determination of scientific truth. In brief, while considerations of empirical accuracy are barred in the sincerity-based approach, they are stressed in the immutability-based approach.

The key implication of this difference is that *Ballard* and *Frontiero,* which comparatively present a subjective/objective dichotomy in their conceptualization of identity, structure varying *'potentials of falsifiability'* of the key components embedded within religious and gender identities. I define 'potentials of falsifiability' as the Court's capacity to determine the falsity or veracity of a particular identity-based characteristic. As *Ballard* and *Frontiero* construct varying boundaries of empirical judgments upon identity-based attributes for the Court, religious and gender identities face different levels of official scrutiny towards the *falsity* of their associated characteristics. Specifically, unlike religious *belief*, the Court can determine the *innateness*, and in turn unchangeability, of a characteristic as false through its empirical analysis.

Consequently, I find that the varying potentials of falsifiability between the sincerity and immutability models of identities map onto the potentials of falsifiability of care approaches associated with such identities, impacting their legitimacies. I note that the care approaches of

gender-affirming care bans and religious healing are shaped by particular identity attributes that can or cannot be falsified. For instance, in religious healing, the care approach is attached to a religious belief. Namely, in sects that practice religious healing, it is often believed that prayer has the capacity to *cure* sickness and that medical intervention itself is a form of *harm* due to its opposition to God's influence.[52] As this care approach is attached to a religious belief, it cannot be falsified as the belief itself cannot be falsified according to *Ballard*, protecting the legitimacy of the care approach.

Conversely, the care approach of gender-affirming care bans is attached to the attribute of transgender identity and the gender dysphoria it is associated with. In the *Frontiero* immutability approach, transgenderism in minors can be deemed as *changeable* and hence not innate. This is a common line of argumentation used in gender-affirming care bans. Specifically, the State regards children's transgenderism as a *belief* that has the potential to change as one matures.[53] Hence, while gender-transitioning procedures aim to affirm gender identity, the innateness or 'actuality' of the gender identity itself can become falsified using the immutability criterion. As a result, this care approach that aims to address gender dysphoria can become delegitimized as, in the eyes of the State, there is no 'innate' identity to affirm using medical intervention.[54]As such, gender identity becomes rooted in scientific, medicalized discourse that aims for objectivity— living in the realm of empirical actuality unlike religious belief— causing its attributes to be more prone to falsifiability.

These differences in the falsifiability of sincere religious belief and innate gendered identities in the two care approaches also explain the different levels of emphasis placed on medical necessity in their conceptions of care and harm. Namely, as sincere religious belief is not falsifiable, its associated care approach of religious healing exists beyond questions of scientific fact, thus completely replacing the question of medical necessity. Consequently, while there is indeed strong legal precedent to suggest that the *conduct* of religious healing must be limited due to its harm on children using *Prince* and *Smith*, the conduct itself is re-conceptualized to not be viewed as harm but as care *through* religious belief. Accordingly, limiting religious healing can be viewed as limiting religious *belief* and, in turn, limiting *care*—

[52] Swan, "Faith-based medical neglect," 346, 349.
[53] *Loe v. Texas* (2023)
[54] Austin H. Johnson, "Rejecting, reframing, and reintroducing: Trans people's strategic engagement with the medicalization of gender dysphoria," *Sociology of Health & Illness* 41, no. 3 (2019): 517.

making it difficult to separate thought and action in religious healing. On the other hand, as protections offered to gender identities in gender-affirming care are regulated through *Frontiero*'s immutability criterion, it is embedded within scientific discourse and, in turn, more prone to debates on medical necessity.

The differences in falsifiability of religious healing and gender-affirming care bans stemming from *Ballard* and *Frontiero* also explain the varying emphases placed on parental control in these care approaches. In religious healing, it is the parents' *own* religious belief that is more evidently represented and carried over to their children. However, in gender-affirming care for minors, parents are representing their children's experience of, and arguably 'belief' towards, their gender identity. As explained, while the actuality of the parents' religious beliefs cannot be assessed under *Ballard*, the actuality of the children's beliefs can be addressed under the immutability criterion. As children's perceived identity affiliations in state bans on gender-affirming care are deemed as mutable, lacking innateness, there is potentially less authority applied to the parents who represent their children and their notion of care in gender-affirming care bans.

Notably, however, both care approaches discourage imposing medical treatments onto children: in religious healing, medical intervention is seen as harmful as it deviates from religious doctrine, allowing for the *continuance* of children's bodily sickness. In gender-affirming care bans, the imposition of medical treatment is also seen as harmful due to the view of it *causing* bodily damage to children. The two care approaches seem to have varying responses to bodily harm of a child — religious healing arguably permitting it, while gender-affirming bans aim to limit it. However, their restrictions on medical intervention both seem to protect the 'natural body.'[55] This shared emphasis on bodily naturalism is representable through the different identity frameworks in the care approaches. Namely, the immutability criterion in *Frontiero* privileges the natural body by emphasizing innate characteristics. The sincerity-based approach can protect religious beliefs that value bodily sanctity. Noting that bodily sanctity is privileged in some religious doctrines, the potential underpinnings of religious ideology in immutability criteria that emphasize 'innateness' could be explored.

[55] Elizabeth Burns Coleman and Kevin White, "The meanings of health and illness: Medicine, Religion and the Body," in *Medicine, Religion, and the Body* (2010), 3.

Overall, this analysis shows that the identity frameworks within the care approaches of religious healing and gender-affirming care bans—the former focusing on sincerity and the latter on immutability—influence the legitimacy applied to the care approaches themselves. These legitimacies stem from the varying potentials of falsifiability of each care approach and its associated identities. This analysis explains how legal precedent regarding identity frameworks can be used to authorize diverging conceptions of care and harm for children.

IMPLICATIONS

What do these findings elucidate about the potentialities of litigating gender and religious identities and their associated care approaches? Is it possible to apply the legal frameworks regulating religious belief onto gender identity or vice versa, bridging the *Ballard*/*Frontiero* divide? I raise the latter question as, notably, gender-affirming care bans treat minors' transgenderism as mutable subjective *beliefs*. While this framing of transgenderism can indeed be disputed, I question the following: If it is accepted that transgenderism is a *gendered* belief, can gender identity in minors be regulated in a similar manner to religious belief? If this is the case, could gender-affirming care potentially be adjudicated differently?

Notably, such bridging is already observable in newer notions of immutability. These newer models of immutability have argued that immutable characteristics are not only physical, unchanging attributes but traits that are *fundamental* to one's identity—those that are too important to be changed; the importance of a trait overweighs its innateness.[56] This emphasis on protecting fundamental attributes of identity is already observable in *Ballard*'s regulation of religious belief. Namely, in the sincerity-based approach, religious belief is considered fundamental to one's religious practice. Despite religious belief having the *capacity* to change, it is treated as 'too important' to change and, hence, too important to face official scrutiny. Thus, religious belief is mutable, yet it still receives heightened protections through the First Amendment and precedents such as *Ballard*. If gendered belief is litigated similarly to religious belief, gender identities could potentially receive further protections, increasing legitimacies attached to their care approaches. However, just as it can be argued that conduct based on

[56] Serafin, "In Defense of Immutability," 275, 278.

religious belief must not be absolutely protected using *Smith* or *Prince*, similar limitations can be applied to gendered beliefs, restricting care approaches like gender-transitioning procedures.

Alternatively, it can be argued that gendered and religious beliefs in gender-affirming care and religious healing are disanalogous; namely, while religious healing is usually based on the religious beliefs of adult parents, gender-affirming care responds to the gendered beliefs of children. Consequently, the age of the belief-holder could warrant varying protections. In this position, characterizing a belief as fundamental is not determined by the *type* of belief held (i.e., gendered versus religious) but rather by the *age* at which the belief is held.[57] Following this, there may be strong interest in not affirming 'gendered belief' using gender-transitioning procedures in minors as children are viewed as lacking 'maturity' and 'informed consent' to accept these interventions.

This being said, children have been legally recognized as religious believers, receiving religious protections.[58] When it comes to religious belief, concerns regarding maturity do not seem to hold as much weight. Several reasons for this apparent religious exception have been proposed.[59] One explanation is based upon a groups' rights theory, which describes that "when children assert free exercise rights, the Courts view them not as independent rights holders…but rather as representatives of a larger religious group."[60] There is arguably a *social significance* to providing religious protections to children. Interestingly, the point of social significance is present in a newer version of the immutability criterion: social immutability. In this approach, the immutability of "social signifiers" is focused upon rather than innate characteristics, which are "any observable property or relation commonly used to sort individuals into different social groups" that "[possess] a low social status that persists throughout various social and political domains."[61] Therefore, the concept of "social significance" could also be a potential area to similarly adjudicate the religious and gender beliefs, influencing the potentialities of gender-affirming care and religious healing. Overall, by noting the legal relationship between identity

[57] The legal capacities to hold belief may vary for *'mature* minors.' *See* Children as Believers: Minors' Free Exercise Rights and the Psychology of Religious Development." *Harvard Law Review* 115, no. 8 (2002).
[58] "Children as Believers," 2209, 2215.
[59] "Children as Believers," 2209-2214.
[60] "Children as Believers," 2211.
[61] Nicholas, "In Defense of Immutability," 278.

and health, this analysis suggests that shifts in legal identity frameworks may impact the legal treatment and conceptualization of care for children in America.[62]

CONCLUSION

In conclusion, I have argued that the legal precedent that *regulates* the identities associated with gender-affirming care bans and religious healing influences the *legitimacy* applied to each care approach. Specifically, religious healing is regulated by a sincerity framework in *Ballard* that regulates religious belief. Conversely, gender-affirming care bans are grounded in an immutability approach in *Frontiero*, regulating gendered attributes. Each of these identity frameworks influence the *potentials of falsifiability* of religious healing and gender-affirming care bans, influencing their perceived legitimacies. This paper shows that there is legal basis that can support diverging conceptions of care, specifically elucidating the associations between identity-based legal protections and children's health. This argument overall highlights how legal precedents on identity could influence the legal trajectories of children's health policy in America.

[62]There have been proposals to develop a 'constitutional right to healthcare' to protect children's health. *See* Jessica Matsuda, "Leave Them Kids Alone: State Constitutional Protections for Gender-Affirming Healthcare," *Washington and Lee Law Review* 79, no. 4 (Fall 2022): 1597. Yet, this analysis shows the difficulty of forging such a right with varying conceptions of 'care'. *See* Jessie B. Hill, "What is the meaning of health? Constitutional implications of defining 'medical necessity' and 'essential' health benefits under the Affordable Care Act," *American Journal of Law & Medicine* 38, no. 2-3 (2012): 445-470 for a similar discussion.

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Part Four

Campaigns & Elections

RACIAL VOTER DILUTION: CONGRESSIONAL REDISTRICTING POST PRE-CLEARANCE

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The 2020-2022 U.S. political redistricting process was the first in sixty years to have gone without the pre-clearance component of the Voting Rights Act due to Shelby County v Holder (2013). After the redistricting cycle and the 2022 midterm election, the Supreme Court found in Allen v Milligan (2023) that the state of Alabama drew illegal congressional maps that had violated the Voting Rights Act and ordered the state to redraw its map. This decision has solidified a legal basis for the conclusions judges have come to in multiple states, previously covered by pre-clearance, of congressional maps violating Section 2 of the Voting Rights Act due to the dilution of communities of color's voting power. This paper will attempt to examine how this new legal era without the pre-clearance component has enabled policymakers to disrupt the redistricting process by undermining legitimate representation and, thus, faith in Congress. It will also recommend solutions to restore trust in a bedrock function of the American democratic system.

INTRODUCTION

In the 2013 Shelby County v. Holder Supreme Court Case, a 5-4 decision declared the most potent component of the Voting Rights Act of 1965 unconstitutional. The component required states with a racist history of suppressing democracy to prove to the federal government that the changes made to their elections had no purpose or effect of negatively impacting an individual's right to vote based on race or minority status before being implemented.[1] The Court's decision to strike down this component was made on the basis that the qualifications from 1975 of which states had a racist history of suppressing democracy were outdated and that "things have changed dramatically" with "blatantly discriminatory evasions of federal decrees" seen as rare from states such as Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Texas.[2] This resulted in the removal of the coverage formula located in Section 4 of the Voting Rights Act that gives the pre-clearance component located within Section 5 the power to require jurisdictions with a history of discrimination to obtain federal approval before changing voting laws. This means that the 2020-2022 political redistricting process is more reminiscent of before

[1] "About Section 5 of the Voting Rights Act," Civil Rights Division, November 17, 2023, https://www.justice.gov/crt/about-section-5-voting-rights-act.
[2] "Shelby County v. Holder, 570 U.S. 529 (2013)," Justia Law, https://supreme.justia.com/cases/federal/us/570/529/.

the Civil Rights Movement, when the federal government was not allowed a chance to review potentially discriminatory maps before they went into effect, along with the burden of proof no longer on states with a history of negatively impacting an individual's right to vote based on race.[3] The ruling assured that by leaving Section 2 of the Voting Rights Act intact, the law can still be used for litigation to protect voting rights after discriminatory electoral procedures have been implemented.

Through Shelby County v Holder, the Supreme Court sent a mandate for Congress to instead pass an updated version of the Voting Rights Act with new criteria to determine which states must obtain pre-approval from the federal government when changing election-related practices and procedures. The conservative justices of the court who concurred with this decision expressed deep confidence in the federal legislature's ability to succeed in such a task. Late Supreme Court Justice Anthony Scalia said during oral arguments, "[members of Congress] are going to lose votes if they do not reenact the Voting Rights Act. Even the name of it is wonderful: The Voting Rights Act. Who is going to vote against that in the future?"[4] This confidence was based on a strong bipartisan history of re-enacting the Voting Rights Act, as it was celebrated by Republican stalwarts from Ronald Reagan to George W. Bush.[5]

Congress has sought to address the void left by Shelby County v. Holder by attempting to establish a new coverage formula for the Voting Rights Act. The most recent and viable effort included proposing the John R. Lewis Voting Rights Advancement Act of 2021 to identify jurisdictions with recent discriminatory voting practices, aiming to reinstate federal oversight. This latest attempt to pass a new coverage formula proved divisive in the 117th Congress as the Senate was originally unable to debate the legislation due to a filibuster brought upon by Senate Republicans. Through creative tactics, the Democratic majority within the Senate brought the legislation to debate. After ten hours of discussion, the bill ultimately was filibustered again by the Senate Republicans, with all fifty Republican senators voting against it.

[3] "Justice Department Files Lawsuit against the State of Texas to Challenge Statewide Redistricting Plans," Office of Public Affairs, United States Department of Justice, December 6, 2021, https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-texas-challenge-statewide-redistricting-plans.
[4] "Transcript of Oral Argument in Shelby County v. Holder, No. 12-96," U.S. Supreme Court, February 27, 2013, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2012/12-96_7648.pdf.
[5] Ronald Reagan, "Statement about Extension of the Voting Rights Act," November 6, 1981, https://www.reaganlibrary.gov/archives/speech/statement-about-extension-voting-rights-act.

With Congress unable to pass legislation updating the jettisoned portion of the Voting Rights Act, the United States went through its first redistricting cycle without the federal government pre-approving maps from states with a history of negatively impacting an individual's right to vote based on race. This lack of oversight has resulted in a 2023 Supreme Court decision, Allen v. Milligan, declaring that Alabama, a state previously covered by Section 4 of the Voting Rights Act and where Shelby County v. Holder originated, has used illegal congressional maps that limited Black voters' influence in the 2022 midterm election cycle. This decision was based on Section 2 of the Voting Rights Act, which forbids practices that would mean racial minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[6] After Allen v. Milligan, thirty-two Section 2 lawsuits across ten states were pending in federal court courts in the same year, with a vast majority challenging maps in states that were previously covered by pre-clearance. So far, Louisiana and Georgia have been added to the list of states that have been ordered by courts to redraw congressional maps created from the most recent redistricting cycle, the first time in over a decade when states were ordered by the courts to redraw previously used congressional maps due to the unconstitutional act of racial voter dilution.

UNIFORM TACTICS

During the 2020 redistricting cycle, absent federal pre-clearance, state legislatures that have been found guilty of racial voter dilution engaged in uniform tactics that took advantage of this new legal environment. Before analyzing these tactics, the distinction between racial vote dilution and racial gerrymandering must be made. While both revolve around redistricting, racial gerrymandering cases are based on the Equal Protection Clause of the 14th Amendment and require an explicit intent of racial discrimination. Racial voter dilution cases, based on Section 2 of the Voting Rights Act, instead focus on inhibiting the collective power for minority voters across a jurisdiction to elect candidates of their choice, regardless of intent.

The uniform tactics used by state legislatures that will be analyzed are Louisiana, Georgia, and Alabama. All three have engaged in cracking and packing communities of color,

[6] "Section 2 of the Voting Rights Act," Civil Rights Division, April 5, 2023, https://www.justice.gov/crt/section-2-voting-rights-act.

pushing challenged maps to be used in an election cycle, and refusing court orders to create remedial maps that do not violate the Voting Rights Act.

Cracking and Packing

Cracking and packing occurs when state legislatures either crack apart or pack together minority communities in a way that disturbs their geographical compactness and political cohesiveness to inhibit the right of the members of the minority group to participate in the democratic process, diluting their opportunity to elect representatives of their choice.

Starting with Alabama, while Black Alabamans make up 27% of the state's population, in the congressional map used in the 2022 election, they only controlled one out of the state's seven congressional districts, or 14%.[7] This was achieved by splitting Alabama's Black Belt, a historic and extremely impoverished community of substantial significance, among multiple districts and then packing the remaining Black voters into one district. This also consisted of subordinating traditional redistricting principles as legislators split the county and city of Montgomery into two districts.[8]

In Louisiana, Black residents account for a third (32%) of its voting-age population.[9] State officials passed and used a congressional map in the 2022 election where Black Louisianans are the majority in only one of the state's six districts (17%). Less than one-third of Louisiana's Black voting-age population resided in the state's sole majority-Black district, while 91% of Louisiana's white voters reside in majority-white districts.[10] This also consisted of subordinating traditional redistricting principles that would resemble the state's natural geographic and community group breakdowns as legislators packed voters from two of the most

[7]America Counts Staff, "Alabama Population Grew 5.1% since 2010, Surpassing 5 Million," United States Census Bureau, July 17, 2023, https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html.
[8] "Allen V. Milligan FAQ - Alabama Supreme Court Redistricting Case," Legal Defense Fund, October 19, 2023, https://www.naacpldf.org/case-issue/merrill-v-milligan-faq/.
[9] Jens Manuel Krogstad, "Key Facts about Black Eligible Voters in 2024," Pew Research Center, January 10, 2024, https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-black-eligible-voters-in-2024/#:~:text=Black%20voters%20made%20up%20nearly,%25)%20and%20Louisiana%20(32%25).
[10] "Brief of NC NAACP Amicus Curiae Supporting Plaintiffs Appellants North Carolina League of Conservation Voters, Inc et al., Common Cause, and Rebecca Harper," Democracy Docket, https://www.democracydocket.com/wp-content/uploads/2021/11/22-01-31-NC-NAACP-Amicus-Brief.pdf.

populous cities of the state, New Orleans and Baton Rouge, together despite them being located over an hour away from each other.[11]

In Georgia, the population growth over the past ten years is entirely attributable to the increase in the state's minority population. The 2020 census results indicate that Georgia's Black population grew by over 15% and now comprises 33% of Georgia's total population. Meanwhile, Georgia's white population decreased by 4% over the past decade.[12] State legislators drew congressional maps that pack Black voters into the Thirteenth Congressional District and crack other Black voters among the more rural and predominately white Third, Eleventh, and Fourteenth Congressional Districts. This fragmentation of the Black population has most notably consisted of subordinating traditional redistricting principles in Cobb County, which has been split four ways.

Delaying Through Courts

Alabama's consistent tactic of using the court system to delay the implementation of remedial maps, as ordered by the Supreme Court and the Allen v. Milligan court case, reveals a calculated strategy to maintain political advantage despite legal rulings against them. Despite federal court rulings indicating that Alabama's congressional map unfairly harmed Black voters and ordering lawmakers to draw a new map compliant with the Voting Rights Act, the state has repeatedly appealed these decisions, effectively delaying any meaningful change. This delay tactic is not unique to Alabama but is part of a broader trend observed in states like Georgia, Louisiana, and Ohio, where judges have found Republican legislators guilty of drawing congressional maps along racial or partisan lines.[13] Despite these findings and the historical precedent of ordering new maps to ensure fair elections, a combination of factors, including a shift in election law philosophy at the Supreme Court and aggressive tactics by Republican map drawers, has allowed rejected maps to be used in upcoming elections.[14] The Supreme Court's embrace of the Purcell principle, which prioritizes the smooth operation of elections over the

[11] Ibid.
[12] "Pendergrass vs Raffensperger Redistricting Lawsuit," DocumentCloud, April 1, 2024, https://www.documentcloud.org/documents/21171854-pendergrass-vs-raffensperger-redistricting-lawsuit.
[13] Michael Wines, "Maps in Four States Were Ruled Illegal Gerrymanders. They're Being Used Anyway," *The New York Times*, August 8, 2022, https://www.nytimes.com/2022/08/08/us/elections/gerrymandering-maps-elections-republicans.html.
[14] Ibid.

rectification of injustice, has further enabled this trend. This principle, which discourages changes to election procedures close to an actual election, has been expanded in recent years through rulings that lack clear explanation or reasoning.[15] As a result, states like Alabama are effectively granted one free illegal election before being compelled to change their electoral rules. The dissenting voices, such as Justice Elena Kagan's in the Alabama case, emphasize the urgency of addressing voting rights violations and reject the notion that election smoothness should trump justice.[16] However, the prevailing trend suggests a prioritization of procedural concerns over the protection of voting rights, allowing states to continue using illegal maps to their advantage.

In Georgia, Governor Brian P. Kemp exemplified this tactic by waiting forty days to sign a congressional map approved by the legislature, leaving a narrow window for potential court challenges.[17] Critics argue that while practical considerations are important in the lead-up to elections, the Supreme Court's emphasis on administrative inconvenience over democratic harms caused by unlawful district maps is misplaced. By prioritizing procedural concerns over the protection of voting rights, the court effectively enables politicians to run out the clock and use invalidated maps to their advantage in upcoming elections. Jeffrey Wice, a senior fellow at the Census and Redistricting Institute at New York Law School, observes that Republicans in Georgia are attempting to prolong the legal process as much as possible to utilize invalidated maps in the 2024 elections.[18]

In Louisiana, this strategy is aimed at prolonging the use of potentially discriminatory maps for political advantage despite legal rulings against them. Initially, efforts by the state's lawyers to delay drafting a replacement map were rejected by the judge, who recognized the cohesive voting bloc of Black Louisianans and the long history of voting-related discrimination in the state. The judge ruled that allowing elections based on an illegal redistricting plan would cause irreparable harm and that a new remedial map could be implemented without excessive difficulty or risk of confusion.[19] However, despite these rulings, Republican officials continuously sought to delay the implementation of fair districts. They requested emergency

[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Michael Wines, "In Three Southern States, a Legal Battle over Political Maps," *The New York Times*, September 21, 2023, https://www.nytimes.com/2023/09/21/us/redistricting-alabama-georgia-louisiana.html.

relief from the Supreme Court, arguing that the situation presented a similar question to the Alabama case. The Supreme Court's subsequent reinstatement of its order prompted the district court to schedule a hearing to address Louisiana's Voting Rights Act violation. In an effort to further delay the implementation of fair districts, Republican state officials requested that the district court cancel its scheduled hearing and instead schedule a full trial on the merits.[20] When the district court denied this request, the state appealed to the Fifth Circuit Court, where two conservative judges granted Louisiana's petition for a writ of mandamus. This extraordinary form of judicial relief compelled the district court to cancel its remedial hearing, effectively stalling the implementation of a new map.[21] This pattern of legal maneuvering and delay tactics highlights the lengths to which Republican officials in Louisiana are willing to go to maintain political advantage, even at the expense of fair representation and voting rights. By exploiting legal loopholes and leveraging conservative judicial appointments, this uniform tactic has successfully prolonged the use of potentially discriminatory maps and undermined efforts to ensure fair elections and equitable representation for all citizens.

Refusal Of Court Orders

Alabama's consistent tactic of refusing court orders to draw remedial maps serves as a deliberate strategy to perpetuate the voter dilution of Black voters and maintain political advantage. Despite federal court orders and even rulings from the U.S. Supreme Court rejecting Alabama's attempts to defy the orders, the state legislature has repeatedly failed to comply with requirements to create fair electoral districts. In July, Alabama lawmakers passed a new map that failed to address the court's directives, maintaining a single majority-Black district and only marginally increasing the percentage of Black voters in another district. This defiance of court orders was highlighted by the judges' ruling, which noted that Alabama's plan did not provide the additional opportunity district mandated by the court.[22] Abha Khanna, an attorney representing plaintiffs in the case, aptly described Alabama's actions as "defiance over compliance,"

[20] "How the 5th Circuit Is Dismantling Democracy," Democracy Docket, February 2, 2024, https://www.democracydocket.com/analysis/how-the-5th-circuit-is-dismantling-democracy/.
[21] Ibid.
[22] "Allen V. Milligan FAQ – Alabama Supreme Court Redistricting Case FAQ," Legal Defense Fund, January 25, 2024, https://www.naacpldf.org/case-issue/merrill-v-milligan-faq/.

emphasizing the state's disregard for the rule of law and the rights of its Black citizens.[23] Instead of creating a Democratic-leaning congressional district as ordered, Alabama Republicans opted to boost the percentage of Black voters in a majority-white district, further entrenching their political power. Despite facing rejection from both federal and Supreme Court rulings, Alabama leaders continue to wager on the possibility of prevailing in further appeals or influencing the court panel's decision. Their persistent attempts to circumvent court orders and delay the redrawing of fair maps demonstrate a commitment to maintaining the status quo of voter dilution and political advantage. The judges' response to Alabama's repeated failure to draw a usable map reflects the frustration and concern over the state's obstructionist tactics.[24] Alabama's refusal to comply with court orders not only undermines the integrity of the electoral process but also perpetuates systemic disenfranchisement and undermines the rights of Black voters.

Georgia has consistently employed a tactic of rejecting the creation of remedial maps that adequately represent Black communities of color and empower their vote. Despite court rulings and legal challenges, the state legislature has maintained control over redistricting, resulting in maps that critics argue continue to dilute the voting strength of Black voters. The court's decision to allow the General Assembly's remedial state legislative maps to be used in the 2024 election cycle disappointed voting rights advocates, who argue that these maps violate Section 2 of the Voting Rights Act and perpetuate the disenfranchisement of Black voters.[25] Critics contend that the redrawn maps do not go far enough to remedy vote dilution, as many Black-majority districts were drawn outside of the specified areas outlined in court orders. Voting rights groups, including the NAACP and the League of Women Voters of Georgia, have condemned the redrawn maps and urged the court to appoint a special master to redraw the districts with public input. Despite these efforts, the state legislature has resisted meaningful reform, prompting accusations that they are following Alabama's playbook by refusing to comply with court orders. Lawyers representing the plaintiffs have indicated plans to appeal the court's decision, potentially escalating the case to the Supreme Court. They argue that the redrawn maps not only fail to

[23] Kim Chandler, "Federal Judges Question Alabama's New Congressional Map, Lack of 2nd Majority-Black District," *AP News*, August 14, 2023, https://apnews.com/article/alabama-redistricting-voting-rights-act-7e7d8ca2fac4063f91311bd363515304.
[24] Wines, "In Three Southern States."
[25] Maya Homan, "Judge Rules against Civil Rights Groups in Georgia Redistricting Appeal," *Savannah Morning News*, December 29, 2023, https://www.savannahnow.com/story/news/politics/state/2023/12/28/federal-judge-approves-georgia-redistricting-maps-for-2024-elections/72001248007/.

address previous violations of the Voting Rights Act but also introduce new violations, further exacerbating the disenfranchisement of Black voters.[26] Overall, Georgia's rejection of remedial maps that adequately represent Black communities and empower their vote reflects a broader pattern of resistance to meaningful electoral reform. Despite legal challenges and public outcry, the state legislature continues to prioritize partisan interests over the rights of its citizens, perpetuating systemic inequalities and undermining the democratic process.

In a similar fashion to Alabama and Georgia, Louisiana has also followed the uniform tactic of refusing to draw remedial maps that adequately represent communities of color and empower their political representation. Despite legal challenges and court rulings, Louisiana's state officials have resisted meaningful redistricting reform, prolonging the disenfranchisement of marginalized communities. Governor John Bel Edwards's veto of H.B. 1 and S.B. 5, citing violations of the Voting Rights Act and fundamental fairness, underscores the critical importance of addressing systemic inequities in redistricting.[27] However, the legislature's override of the veto, coupled with the state's continued resistance to meaningful reform, perpetuates the disenfranchisement of marginalized communities. In conclusion, the uniform tactic employed by states like Alabama, Georgia, and Louisiana to reject the creation of remedial maps highlights a broader pattern of resistance to meaningful electoral reform and the empowerment of marginalized communities. The continued disenfranchisement of people of color underscores the loss of inclusive and participatory redistricting processes that prioritize community input and ensure fair representation for all citizens.

DISENFRANCHISEMENT

Representation is the cornerstone of democracy, ensuring that citizens' voices are heard and their interests are reflected in the political process. At its essence, representation means having elected officials who advocate for the needs and concerns of their constituents. However, the effectiveness of representation hinges on the fairness and integrity of the electoral system,

[26] Maya Homan, "Civil Rights Groups Urge Judge to Throw out 2023 Maps in Redistricting Hearing," *Savannah Morning News*, December 20, 2023, https://www.savannahnow.com/story/news/state/2023/12/20/georgia-redistricting-new-maps-opposed-by-civil-rights-groups/71960969007/.

[27] "Louisiana Legislature Overturns Governor's Veto of Map Lacking a Second Majority-Black Congressional District; Civil Rights Groups File Suit under Voting Rights Act," Legal Defense Fund, March 30, 2022, https://www.naacpldf.org/press-release/louisiana-legislature-overturns-governors-veto-of-map-lacking-a-second-majority-black-congressional-district-civil-rights-groups-file-suit-under-voting-rights-act/.

particularly in the redistricting process.[28] When redistricting has been marred by discriminatory manipulation, it disenfranchises communities of color, effectively denying the opportunity to elect candidates who truly represent their interests. This perpetuates a legacy of political disenfranchisement and undermines the fundamental principles of democracy.

Racial voter dilution perpetuates systemic disenfranchisement and hinders Black voters' ability to have their community's concerns and desires represented in the political arena. This is evident in instances like the redistricting in Georgia, where two predominantly Black suburbs were strategically moved out of a district represented by a Black Democrat, Representative David Scott, and into the district of the hardline Republican Marjorie Taylor Greene.[29] By effectively altering district lines to dilute the voting power of Black communities, opportunities for meaningful representation are diminished. Despite being historically represented by a Black Democrat, the communities of Powder Springs and Austell now find themselves isolated in a predominantly Republican district, limiting their ability to advance their local political leaders' concerns and desires.[30] The lack of responsiveness from newly appointed representatives further exacerbates the disenfranchisement experienced by Black voters. For example, the absence of communication between local political leaders and their representatives in Washington underscores the widening gap between community needs and political representation. Without effective advocacy and support from elected officials, Black voters are left without a voice in government and struggle to address critical issues facing their communities.[31]

RECOMMENDATIONS

Allen v. Milligan is the first court case to come from the Supreme Court within the past decade that has buttressed the Voting Rights Act. After Shelby v. Holder, states previously covered by pre-clearance compared to states that were not, have disproportionately enacted restrictive voting policies, some of which were barred from implementation due to federal pre-

[28] "Why Race Matters in Redistricting: Protecting Black Power & Preserving Democracy," Legal Defense Fund, October 6, 2022, https://www.naacpldf.org/redistricting-racism/.
[29] Emily Cochrane and Rick Rojas, "Georgia's Voting Maps Are Struck Down," *The New York Times*, October 26, 2023, https://www.nytimes.com/2023/10/26/us/politics/georgia-voting-maps.html.
[30] Ibid.
[31] Ibid.

clearance.[32] These policies include, but are not limited to, strict photo ID, purging voter rolls, long line and polling location closures, signature matching, stripping of voting rights for previously incarcerated people, all of which are known to also disproportionately affect Black voters. Due to Brnovich v. Democratic National Committee (2021), it has now become even more difficult to use Section 2 of the Voting Rights Act to challenge discriminatory voting laws with additional factors that have to be considered, such as whether a state provides more opportunities to vote now than most states did when Section 2 was last amended in 1982.[33] The most recent challenge to Section 2 occurred in November of 2023, this time from a federal appeals court for the eighth circuit that ruled private individuals and groups, which largely account for the plaintiffs in such cases, can no longer sue under Section 2 of the Voting Rights Act, meaning only the federal government can pursue voting rights complaints.[34] This ruling has effectively halted the newfound power of Section 2 of the Voting Rights Act, barring redistricting cases from moving forward for federal courts in the eighth circuit, which includes Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. Had the ruling applied to states like Georgia and Louisiana, their redistricting cases that were brought by private individuals from the community would have not been allowed to move forward, ending the possibility for new maps to be drawn until a case was brought by the federal government.[35]

Reforming political districts to ensure proportional representation could serve as a remedy for the limitations imposed by a weakened Voting Rights Act. With fewer legal protections against racial discrimination in the election process, fair districting becomes crucial in safeguarding the representation of people of color and upholding democratic principles. Multi-member districts involve electing multiple representatives in each district, rather than just one candidate with the most votes. This proportional representation system distributes legislative seats based on the votes received by each party, aiming to reflect the diversity of voters' preferences. Advocates argue that multi-member districts can mitigate political extremism, prevent gerrymandering, and promote fair representation, especially for marginalized communities and voters in politically homogeneous areas.

[32] "The Effects of Shelby County v. Holder," Brennan Center for Justice, June 21, 2023, https://www.brennancenter.org/our-work/research-reports/effects-shelby-county-v-holder.
[33] Alice Clapman et al., "Brnovich v. Democratic National Committee," Brennan Center for Justice, January 17, 2024, https://www.brennancenter.org/our-work/court-cases/brnovich-v-democratic-national-committee.
[34] Homan, "Judge Rules against Civil Rights Groups."
[35] Ibid.

Recent movements in the push for reforming the U.S. redistricting system have focused on embracing multi-member districts as a means to address polarization and lack of representation. In 2022, a coalition of political scientists, legal scholars, and historians urged Congress to enact change, emphasizing that the current single-member districting process divides and polarizes communities while stifling competition in elections.[36] They argue that adopting multi-member districts would promote inclusivity, competitiveness, and responsiveness to evolving societal needs. In line with these efforts, Rep. Don Beyer of Virginia and other House Democrats reintroduced the Fair Representation Act in 2021. This proposal advocates for ranked-choice voting in House races and mandates the creation of multi-member districts. States with six or more representatives would be required to establish districts with three to five members each, while states with fewer than six representatives would elect all members at-large within one statewide district.[37] This approach aims to foster fairer representation, enhance electoral competition, and promote a more responsive political system capable of addressing contemporary challenges with legitimacy. The initial pushback against multi-member districts stemmed from concerns about temporary fixes ordered by courts during redistricting lawsuits. Additionally, lawmakers sought to prevent the use of multi-member districts and at-large elections, particularly in southern states, to weaken the voting power of Black voters following the enactment of the Voting Rights Act of 1965.[38] Multi-member districts could empower Black voters by providing a more proportional representation in the House of Representatives, reflecting the increasing diversity of the U.S. population. In theory, this system would allow communities of color to have a greater say in the political process and ensure that their interests and concerns are more accurately represented at the federal level.

CONCLUSION

[36] Hansi Lo Wang, "Many Voters Say Congress Is Broken. Could Proportional Representation Fix It?" *NPR*, November 18, 2023, https://www.npr.org/2023/11/18/1194448925/congress-proportional-representation-explainer#:~:text=The%20Fair%20Representation%20Act%20would,members%20of%20one%20statewide%20district.

[37] Fair Representation Act of 2021, H.R. 3863, 117th Congress (2021-2022), https://www.congress.gov/bill/117th-congress/house-bill/3863.

[38] Wang, "Many Voters Say Congress Is Broken."

The Shelby County v. Holder Supreme Court decision in 2013 marked a pivotal shift in congressional redistricting, removing key protections from the Voting Rights Act of 1965 and allowing states with a history of voter suppression to implement potentially discriminatory electoral practices without federal oversight. This decision, coupled with Congress's inability to pass updated voting rights legislation, has left minority voters vulnerable to racial voter dilution. In the aftermath of Shelby County v. Holder, the Voting Rights Act faced a significant setback as the pre-clearance requirement, which mandated that certain states obtain federal approval before changing voting laws, was effectively neutered. The Court's rationale for this decision hinged on the argument that the coverage formula used to determine which states require pre-clearance was outdated and no longer reflective of current conditions. Despite the Supreme Court's expectation that Congress would step in to address the void left by the Shelby County decision, legislative efforts to pass updated voting rights legislation have been met with obstacles. Voting rights advancement acts proposed in Congress, which aimed to establish a new coverage formula for the Voting Rights Act, have since faced staunch opposition from the Republican party as they have utilized the filibuster to prevent its passage. The repercussions of this legislative impasse were felt during the 2020-2022 redistricting cycle, as states previously covered by pre-clearance were able to redraw congressional maps without federal oversight. The absence of pre-clearance allowed states to implement potentially discriminatory electoral practices, resulting in a resurgence of racial voter dilution. The ramifications of racial voter dilution extend beyond individual states, with similar challenges emerging in Louisiana and Georgia, both of which have been ordered by the courts to redraw congressional maps due to unconstitutional acts of voter dilution. These developments underscore the urgent need for comprehensive reform in the redistricting process to ensure fair representation and protect the voting rights of all citizens, particularly those from marginalized communities. Without meaningful legislative action to address the erosion of voting rights protections, the promise of democracy remains unfulfilled for millions of Americans.

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THE RISE OF DIGITAL SCANDAL: CHARACTER ATTACKS AGAINST YOUNG CONGRESSIONAL CANDIDATES

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With smart devices omnipresent in day-to-day life, prospective candidates for elected office are amassing ever-growing digital footprints. For young candidates, these digital histories have become a growing minefield that campaigns must navigate. It has also led to the emergence of a new phenomenon—digital scandal—which I advance in this paper. Despite the ubiquity of the internet, not every candidate has had to engage with their digital footprint in recent election cycles. This paper aims to answer the question: what explains variation in the emergence of digital scandals amongst young congressional candidates in the United States? Through a content analysis of ads from the 2022 congressional election cycle found in Google's Political Advertising Transparency report, I find that digital footprints are strongly linked to character-based appeals in campaign ads. I further find that digital scandal is strongly associated with race competitiveness and find mixed evidence that slim ideological margins drive scandal.

INTRODUCTION

Today, 95% of teens between thirteen and seventeen report having access to a smartphone.[1] With these devices omnipresent in day-to-day life, Americans are amassing an ever-growing digital footprint. From text messages and emails to unflattering or offensive social media posts, young adults entering the workforce today have an extensive digital history just a few clicks away from prying eyes. For young Americans aspiring to a career in public office, this trend has provided the conditions for a phenomenon I identify as a digital scandal. Digital scandal refers to any attack against a candidate's personal character based on the content of the targeted candidate's digital footprint.

Consider, for example, the case of thirty-four-year-old George Santos. Santos ran as a Republican in the 2022 House race for New York's third congressional district. However, Santos only gained notoriety in the wake of his election when media outlets discovered that aspects of his platform and backstory were misrepresentations or outright fabrications. Voters and pundits alike were left wondering how these lies weren't weeded out during the campaign cycle. Alternatively, consider the case of Karoline Leavitt, the Republican Nominee in New

[1] "Mobile Fact Sheet," Pew Research Center, Washington, D.C., April 7, 2021.

Hampshire's first congressional district. At just twenty-five-years-old, Leavitt became the target of a digital scandal after her primary opponent compiled immature videos from her social media accounts in an attack ad used to discredit Leavitt's character.[2]

This paper explores the question: *what explains variation in the emergence of digital scandals amongst young congressional candidates in the United States?* In answering this question, I advance a novel concept—digital scandal. In this paper, I argue that in races involving young candidates, digital scandals occur where there are competitive races involving ideologically similar candidates. Through content analysis of advertisements mentioning young candidates in Google's Political Advertising Transparency Report, I identify instances of digital scandal in the 2022 congressional midterm elections and test a variety of variables to identify potential causes of digital scandal. I first present the theoretical motivations behind the proposed concept before moving to a discussion of methodology. I then discuss my results and conclude with a conversation regarding the potential implications of my findings.

THEORETICAL MOTIVATIONS

I have defined digital scandal as an appeal that engages in attacks against a candidate's personal character based on the content of the targeted candidate's digital footprint. Traditional political scandal refers to actions or events regarded as morally objectionable—typically accompanied by intense negative media coverage and public backlash. In modern scandals or mediated scandals, this initial action is then amplified by the media and becomes a part of the public discourse shaping and reshaping the narrative as new information is uncovered.[3] As one scholar noted, the grounds for scandalous action contain great variety, from the morally trivial to the morally heinous, but all scandals share "a drama of concealment and exposure."[4] Since traditional scandals most often pertain to matters of sex, money, and power, participants are traditionally aware of their own transgressions and take great efforts to cover them up.[5] Yet, most digital scandals deal with far more trivial moral transgressions.

[2] InsideSources, "Karoline Leavitt 'Hoe Bag' Attack Ad," YouTube, 0:30, September 7, 2022, https://www.youtube.com/watch?v=RHrRfotMHm4&ab_channel=InsideSources.
[3] John B. Thompson, *Political Scandal: Power and Visibility in the Media Age* (Cambridge: Polity Press; Malden, MA: Blackwell, 2000).
[4] Thompson, *Political Scandal,* 18.
[5] Thompson, *Political Scandal.*

Rather than emerging from clearly immoral or even illegal acts, digital scandals often take the form of more minor violations of values. As such, these actions typically lack this concealment effort as candidates may not even consider that their actions could be worthy of scandal. Nevertheless, a digital scandal remains "scandalous" because it retains the "drama of exposure." When old tweets espousing rhetoric contradictory to a candidate's current policy stances gain the attention of the public, or a photo of a politician in blackface resurfaces, the politician has not taken active steps to bury the images or social media posts. Instead, time and distance are concealing forces. Yet, even without deliberate efforts to conceal these records, the media covers their resurgence with controversy. A quick search of media coverage discussing digital scandals involving Justin Trudeau, George Santos, and Alexandria Ocasio Cortez show headlines using language such as "unearthed," "resurfaced," and "leaked," to describe the newly popularized digital relics.[6]

In this way, digital scandals emulate the nature of traditional political scandals. When evidence that has always been publicly available is illuminated and picked apart, it heightens the sense of scandal, even without efforts to conceal this digital evidence. Digital evidence refers to the inclusion of some aspect of a candidate's digital footprint—be it photos, videos, social media posts, audio clips, text messages, or emails—within an advertisement. Much in the way that increased literacy and the growth of news media reshaped the form and nature of scandal in the 19th and 20th centuries, the rise in technology is reshaping scandal anew in the 21st century.[7] The definition of digital scandal advanced in the paper combines aspects of commonly used negative campaigning strategies as well as aspects of traditional political scandal.

In the broadest sense, negative campaigning refers to attacks made by one candidate or their allies against an opposing candidate.[8] These attacks are diverse in nature, encompassing everything from the condescending nicknames leveled by former President Donald Trump

[6] Benjy Sarlin and Sam Petulla, "How Donald Trump's Old Tweets Haunt Him Today," *NBC News*, June 9, 2017, https://www.nbcnews.com/politics/white-house/how-donald-trump-s-old-tweets-haunt-him-today-n766366; Zamira Rahim, "Third Justin Trudeau Blackface Incident Emerges," *The Independent,* September 19, 2019, https://www.independent.co.uk/news/world/americas/justin-trudeau-blackface-video-brownface-canada-racism-a9111901.html; Colby Itkowitz, "A Video of Ocasio-Cortez Dancing in College Leaked to Smear Her. Instead, the Internet Finds It Adorable," *Washington Post*, January 3, 2019, https://www.washingtonpost.com/politics/2019/01/03/video-ocasio-cortez-dancing-college-leaked-internet-finds-it-adorable/.

[7] Thompson, *Political Scandal*.

[8] William L. Benoit, *Communication in Political Campaigns,* Frontiers in Political Communication (New York, NY: Lang, 2010).

toward his opponents to ads attacking President Joe Biden's weak border policy. Virtually all scholars on the subject seem to agree that negative campaigning has a long and storied history within US electoral politics dating back to the earliest disagreements between the Federalists and Anti-federalists.[9] In his foundational study on negative campaigning, Geer defines negativity with regards to campaigning as: "any criticism leveled by one candidate at another candidate during the campaign."[10]

Historical accounts of negative campaigning pre-date the technologies we most commonly associate with modern campaigning such as radio, television, and more recently digital advertising.[11] Nevertheless, studies examining television advertising have come to dominate the literature on this topic due to the wide reach and considerable spending invested on the medium.[12] Content analysis of political TV ads have repeatedly demonstrated that campaigns run ads promoting the positive traits and attributes of their candidate as well as the most favorable policy-stances of their candidate.[13] When campaigns choose to "go negative," they instead run attack ads against opponents, criticizing their character and highlighting their unpopular policy stances. While this broad survey of advertisement appeal type (policy or character) and appeal tone (positive, negative, or contrast) can explain the possibilities campaigns must choose from when focusing their limited resources, it does not provide insight into why campaigns choose to invest in any one of these approaches. However, some scholars have begun to merge the literature on political scandal and negative campaigning to gain insight into this phenomenon.

Existing studies on scandal generation and motivation for character-based negative campaigning, which includes digital scandal, point to several competing explanations. These works identify two main drivers of scandal in elections: race dynamics and information availability. The largest of these groupings is the collection of works examining the impact of

[9] David Mark, *Going Dirty : The Art of Negative Campaigning* (Lanham, MD: Rowman & Littlefield Publishers, 2006), http://archive.org/details/goingdirtyartofn0000mark.
[10] John Gray Geer, *In Defense of Negativity: Attack Ads in Presidential Campaigns*, Studies in Communication, Media, and Public Opinion (Chicago: University of Chicago Press, 2006), pg.13.
[11] Mark, *Going Dirty*.
[12] Simon Dumenco, "U.S. Senate Campaign Ad Spending Surges Past Half a Billion Dollars: Ad Age Campaign Ad Scorecard Analysis Finds That Just Five Battleground States Account for Nearly $400 Million of the Total," *Advertising Age* 93, no. 8 (May 16, 2022): 4.
[13] Richard A. Joslyn, "The Content of Political Spot Ads," *Journalism Quarterly* 57, no. 1 (1980): 92–98, https://doi.org/10.1177/107769908005700114; Geer, *In Defense of Negativity*.

race dynamics such as competitiveness, number of candidates, and polling position in motivating the decision to go negative. Many scholars point to the number of candidates in a race as a characteristic that pushes candidates to "go negative".[14] However, these studies are seemingly contradictory, with some finding that candidates will only "punch up" to attack leading candidates, while others find that trailing candidates are least likely to engage in negative campaigning.[15] These theories interact closely with studies suggesting that challengers are far more likely to engage in negative campaigning than incumbents.[16] However, these theories then trigger questions about the availability of information used in these attacks. Other scholars suggest that the combination of polling position and election proximity explains when candidates engage in negative campaigning.[17]

Further, these studies fail to explain the mechanism of how and why having many candidates in a race leads to greater occurrence of negative campaigning. For the study of digital scandals, I am particularly interested in the subset of negative campaigning literature which focuses on the "personal" or "character" attacks used against candidates. The study of personal attacks is particularly difficult as the personal attributes that voters value are often grouped into a muddy class of "intangibles" that voters care about such as charisma or "it" factor.[18] Nevertheless, scholars have made significant strides to reify this aspect of candidate validation, grouping the intangible characteristics into perceived merit across three traits: leadership effectiveness, integrity, and empathy.[19] These categories have, in turn, enabled scholars to more

[14] Zachary J. Auter and Jeffrey A. Fine, "Negative Campaigning in the Social Media Age: Attack Advertising on Facebook," *Political Behavior* 38, no. 4 (December 2016): 999–1020; Troels Bøggild and Helene Helboe Pedersen, "Campaigning on Behalf of the Party? Party Constraints on Candidate Campaign Personalisation," *European Journal of Political Research* 57, no. 4 (November 2018); Stergios Skaperdas, "Modeling Negative Campaigning," *The American Political Science Review* 89, no. 1 (March 1995): 49.

[15] David A. M. Peterson and Paul A. Djupe, "When Primary Campaigns Go Negative: The Determinants of Campaign Negativity," *Political Research Quarterly* 58, no. 1 (March 2005): 45–54; Skaperdas, "Modeling Negative Campaigning."

[16] Richard R. Lau and Gerald M. Pomper, "Effectiveness of Negative Campaigning in U.S. Senate Elections," *American Journal of Political Science* 46, no. 1 (January 2002): 47, https://doi.org/10.2307/3088414; Alessandro Nai and Jürgen Maier, "Dark Necessities? Candidates' Aversive Personality Traits and Negative Campaigning in the 2018 American Midterms," *Electoral Studies* 68 (December 2020): 102233.

[17] David F. Damore, "Candidate Strategy and the Decision to Go Negative," *Political Research Quarterly* 55, no. 3 (September 2002): 669–85.

[18] Brian T. Parker, "Candidate Brand Equity Valuation: A Comparison of U.S. Presidential Candidates During the 2008 Primary Election Campaign," *Journal of Political Marketing* 11, no. 3 (July 2012): 208–30.

[19] Carolyn L. Funk, "Bringing the Candidate into Models of Candidate Evaluation," *The Journal of Politics* 61, no. 3 (August 1999): 700–720.

concretely examine how negative campaigns have been used to attack the personal aspects of candidate identity.[20]

Still, other theorists center information availability as the driving force behind the emergence of election scandals. Long-standing theories of politics have centered the role of the media as a gatekeeper of information, setting the political agenda and salience of issues through coverage.[21] Yet, with the decentralization of media power, first through the spread and growth of radio and 24/7 cable news programming, and subsequently the rise of social media, this centrality of the media in politics has been increasingly challenged.[22] As such, the role of the media has been recontextualized as an amplifier of scandal rather than as a trigger for scandal.[23] But the democratization of information through the internet has reshaped the role of the traditional news media and brought in new players to shape contemporary election cycles.

A 2018 study of Canada's 2015 federal election provides the only published study specifically focused on the phenomenon I have chosen to call digital scandal.[24] While the study does not concretely define the term, the study broadly examines scandals based on the discovery of past activities through manual exploration of a candidate's digital footprint. Rather than attributing such scandals to partisan research efforts and actors, Trottier introduces the group of "political nobodies" who engage in online scandal mining as a pre-emptive targeting of political hopefuls. Yet this explanation fails to answer the question of why this type of scandal emerges against only some young candidates if we might plausibly assume that all young candidates have extensive digital footprints. Subsequently, scholars have suggested that this phenomenon has led to a resurgence of strong party machines and selection mechanisms to combat the emergence of such scandals.[25] However, this theory too fails to explain why only some young candidates face digital scandals when all have extensive digital histories.

[20] Geer, *In Defense of Negativity*.
[21] Walter Lippmann, *Public Opinion* (Harcourt, Brace and Company, 1922), https://hdl.handle.net/2027/hvd.hl56e8?urlappend=%3Bseq=7; Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (Harper & Brothers, 1942).
[22] Stuart Neil Soroka and Christopher Wlezien, *Degrees of Democracy: Politics, Public Opinion, and Policy*
[23] *American Behavioral Scientist* 47, no. 9 (May 2004): 1153–70.
[24] Daniel Trottier, "Scandal Mining: Political Nobodies and Remediated Visibility," *Media, Culture & Society* 40, no. 6 (September 2018): 893–908.
[25] Alex Marland, "Vetting of Election Candidates by Political Parties: Centralization of Candidate Selection in Canada," *American Review of Canadian Studies* 51, no. 4 (October 2, 2021): 573–91.

THEORY

As a new generation of elected officials comes to power, the burden of an extensive digital footprint is becoming a growing consideration when crafting campaign strategy. However, we see mixed outcomes regarding the containment and weaponization of unflattering media. I argue that in races involving young candidates, digital scandals occur where there are competitive races involving ideologically similar candidates. Generating digital scandal is a costly endeavor. Conducting opposition research and digging through an opponent's digital footprint is both time-intensive and requires considerable manpower. Publicizing these findings and making appeals using an opponent's digital evidence generally requires spending on advertising. Campaigns, particularly at lower levels like congressional races, are constrained by limited resources, including time and money. For this reason, I expect that only candidates running in competitive districts will have sufficient resources to generate digital scandal.

However, I hypothesize that competition alone is not sufficient for driving digital scandal generation. Even campaigns with considerable resources must decide between various appeal tones and appeal types.[26] Existing literature has shown repeatedly that policy-based appeals largely outnumber character-based appeals across elections at every level.[27] Yet, for digital scandal to occur, the attacks must concern a candidate's character rather than an unpopular policy stance. As such, I hypothesize that digital scandal is more likely to occur in races where there are slim ideological differences between candidates. When candidates have nearly identical policy stances, policy-based attacks are essentially removed from a candidate's negative campaigning arsenal. Where ideological distinctions are narrow, candidates are forced to go negative using character-based appeals, increasing the likelihood of digital scandal.

The final aspect of generating a digital scandal is the inclusion of digital evidence. Like any persuasive argument, good campaign ads attempt to support their appeals with evidence. This is particularly important in negative advertisements where there is a chance for retaliation against the sponsor of negative advertising.[28] While policy attacks can be substantiated by

[26] Erika Franklin Fowler et al., "Political Advertising Online and Offline," *American Political Science Review* 115, no. 1 (February 2021): 130–49.
[27] Geer, *In Defense of Negativity*; James N. Druckman, Martin J. Kifer, and Michael Parkin, "Campaign Communications in U.S. Congressional Elections," *American Political Science Review* 103, no. 3 (August 2009): 343–66.
[28] Neal J. Roese and Gerald N. Sande, "Backlash Effects in Attack Politics1," *Journal of Applied Social Psychology* 23, no. 8 (1993): 632–53.

pointing toward voting records, bill sponsorships, and traditional media coverage, sources of evidence to substantiate character attacks are much weaker. However, photos, videos, and social media posts from candidates provide new evidence for these attacks. As such, I expect to see higher incidences of digital evidence use in character-based attacks than in policy-based attacks.

> ***Hypothesis 1:*** *Digital scandals will be more likely amongst young candidates in competitive races.*
> ***Hypothesis 2:*** *Digital scandals will be more likely amongst young candidates in races where there are slim ideological differences between opposing candidates.*
> ***Hypothesis 3:*** *Digital evidence is more likely to be utilized as part of a campaign advertisement involving character-based attacks as opposed to policy-based attacks.*

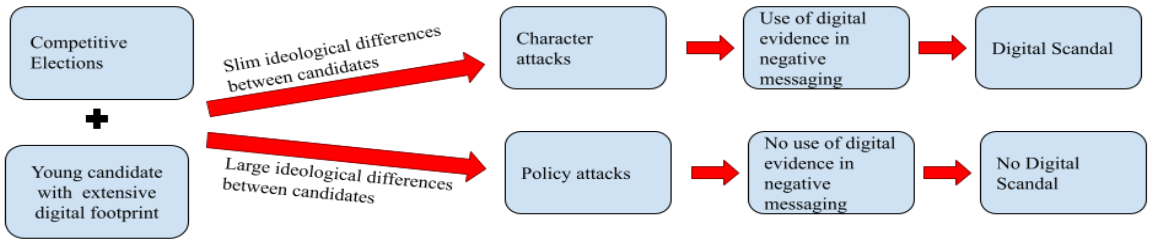

Figure 1. Proposed mechanism for digital scandal generation

METHODS

To survey the use of digital evidence in campaign strategy, I coded all ads in the Google Political Advertising Transparency Report mentioning any candidate under the age of forty-two at the time of the 2022 election.[29] I restricted the search to include only this pool of candidates to keep content analysis at a manageable quantity while still capturing the portion of Congressional candidates most likely to experience digital scandal. Borrowing from the work of earlier studies, every ad was coded by appeal tone and appeal type.[30] Appeal tone refers to the nature of the claims being made in the ad—positive or negative. Appeal type refers to the specific topic of the appeal within a given advertisement — either character or policy.

[29] "Google Political Advertising Transparency Report," Google, https://adstransparency.google.com/political?topic=political&region=US.
[30] Geer, *In Defense of Negativity*.

The outcome of interest in this paper is the occurrence of a digital scandal. As I have defined it, a digital scandal is an attempt by an opposition candidate or third-party to utilize a candidate's digital footprint against them in order to attack their character or fitness for office. A digital scandal has only been generated when a digital footprint is mobilized to attack a candidate's character. For this reason, I have tracked the inclusion of digital evidence and the occurrence of digital scandal separately.

Figure 2. DMFI PAC ad attacking Madison Gilbert, coded as digital evidence but not digital scandal

Figure 3. Defazio For Congress ad attacking Alek Skarlatos, coded as both digital evidence and digital scandal

To further illuminate this distinction, consider how these definitions of digital evidence and digital scandal would be applied to two example attack ads. In a DMFI PAC sponsored attack ad entitled "In Her Own Words," tweets from candidate Madison Gilbert are shown on screen with the purpose of highlighting Gilbert's extreme views on abortion. While this is a clear instance of engaging with a candidate's digital footprint, the appeals are strictly policy-based and do not try to undermine Gilbert's emotional or mental fitness.[31]

Alternatively, consider a 2020 Defazio For Congress ad entitled "Alek Skarlatos: Not fit for Congress." In its closing frame, this ad displays a photo of Skarlatos ripping his shirt open during a performance from his time on the TV show *Dancing with the Stars*. Over the image, the narrator states, "Alek Skarlatos, fine for Dancing with the Stars, Not fit for Congress."[32] In

[31] DMFI PAC, "Her Own Words," YouTube, 0:15, October 21, 2022, https://www.youtube.com/watch?v=IgEfmTh3Zu4&ab_channel=DMFIPAC.
[32] Political Transparency Report, "Alek Skarlatos: Not fit for Congress," YouTube, 0:30, January 9, 2023, https://www.youtube.com/watch?v=JPsS9YP3OgI&ab_channel=PoliticalTransparencyReport.

contrast to the strictly issue-based appeals in the Madison Gilbert attack ad, this ad pairs the incorporation of digital evidence with a character attack and therefore counts as a digital scandal.

FINDINGS AND DISCUSSION

To recap, I created a comprehensive dataset detailing the content of every advertisement mentioning a Gen Z or millennial candidate that aired on one Google's platform from November 2020 to November 2022. Of the 299 Gen Z and Millennial candidates identified, 120 candidates are mentioned in at least one ad within Google's archive. In total, I watched and coded 470 unique advertisements mentioning at least one of these candidates based on their content. In addition to content analysis, I also tracked ad buy data for each advertisement, including the initial air date, ad length, number of impressions, and the ad sponsor.

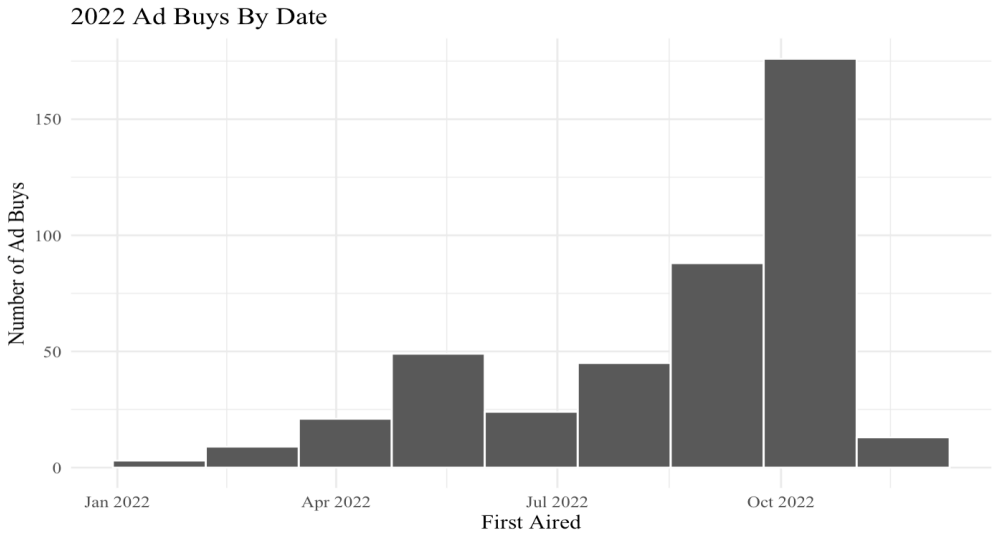

Figure 4. Ad Buys over time, contains all 470 coded advertisements

With consideration given to the entire data set, ad buys over time (Figure 4), are roughly in line with what is expected—increasing through late April, when many states hold their primary elections, dropping during the summer months, and reaching a maximum in the weeks immediately preceding the general election in November. Of the 120 candidates included in the data set, each candidate is mentioned in four unique advertisements on average. The sponsor of each ad was tracked and classified as either Candidate Organization, Party Organization, or Third Party Group. Despite commonplace rhetoric about dark money's domination in electoral politics, candidate organizations were the leading sponsors of advertisements, sponsoring 228 of

the 470 coded ads. Third Party groups followed, sponsoring 185 advertisements, while Official Party Organizations (Democratic Congressional Campaign Committee, National Republican Congressional Committee) sponsored just fifty-six advertisements. Both the timing of ad buys and the makeup of sponsors suggest that the subset of political advertising mentioning young candidates appears to mirror findings from the existing literature.

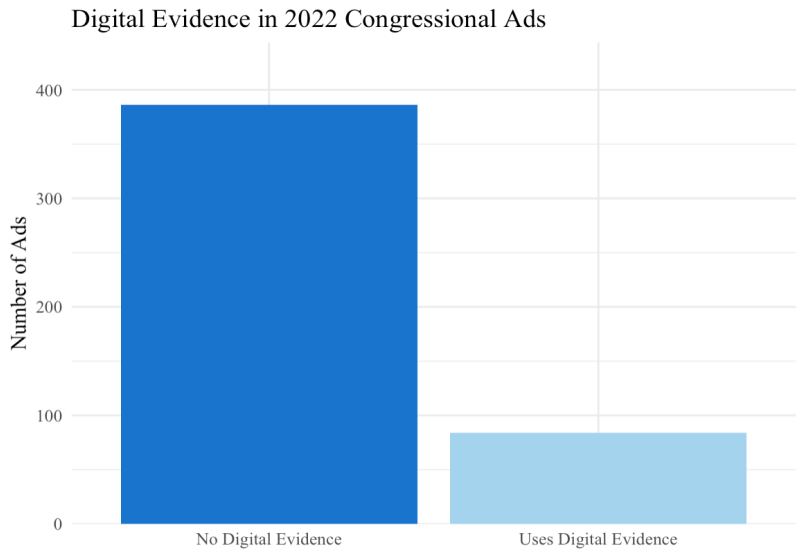

Figure 5. Prevalence of Digital Evidence in Campaign advertising

While digital footprints represent a growing source of information about candidates and elected officials, evidence from digital footprints continues to be found in only a small portion of the campaign advertising space. Of the 470 ads coded for this project, eighty-four (17.9%) of these ads contained evidence of a digital record. Of these eighty-four advertisements, twenty-two—4.7 % of all coded ads—have been identified as instances of digital scandal. Accounting for candidates with more than one digital scandal ad, 11.7% of all young candidates with at least one ad in the database faced some form of digital scandal while fifty-four candidates (45%) were referenced in at least one ad including some aspect of their digital footprint.

While the colloquial idea of a digital footprint has largely come to take on a negative connotation in day-to-day conversation, it is not necessarily the case that digital footprints are only used for negativity in political advertising. In fact, the use of digital evidence across positive, negative, and contrast ads is supported by the data. Figure 6 depicts the four possible[33]

[33] Ads which make both positive and negative appeals are coded as contrast ads in the data set, a term which appears in later parts of this chapter's discussion. However, since this largely describes the fact negative and positive appeals

tone-type classifications and describes how digital evidence is generally used in advertisements falling into each classification. For each of the four possible tone-type classifications, there are at least five ads in the dataset that contain digital evidence.

		Appeal Tone	
		Positive	Negative
Appeal Type	Policy	**Goal:** Highlight legislative achievements or stances **Evidence:** Votes, Bills, Traditional Media, Speeches, Interview Clips	**Goal:** Highlight Unpopular legislative stances **Evidence:** Traditional Media, Birdogging, Votes
	Character	**Goal:** Highlight Qualifications or Outsider Status **Evidence:** Personal Photos, Videos, Traditional Media	**Goal:** Demonstrate that a candidate is unfit for office **Evidence:** Personal Photos, Videos, Social Media Posts, Traditional Media

Figure 6. Digital record use based on appeal tone and type

The percentage of ads containing evidence from a digital record is consistent across the three ad types, with digital records utilized in 17.9% of contrast ads, 17.4 % of positive ads, and 19.8 % of negative ads. I find that there is no statistically significant difference in the prevalence of digital record occurrence within ads when subset by appeal tone (p-value = 0.8811).

Although appeal tone does not seem to predict the frequency with which digital evidence is utilized in campaign advertisements, appeal type does. A Chi-squared test shows that there is a significant difference between the use of digital evidence in character-based advertisements when compared with policy-based advertisements (p-value = 2.623e-06). Of the eighty-four ads identified as containing digital evidence, 76% of the ads engaged in either exclusively character-based appeals or engaged in mixed character and policy-based appeals. Only twenty advertisements, including digital evidence, made exclusively policy-based appeals.

are being made back to back within a single ad, there is no need to distinguish this type of ad within the diagramming exercise of figure X since these individual negative and positive appeals are represented.

While it is clear that digital footprints are more likely to be used as evidence when making character-based appeals, the evidence does not suggest that digital evidence is more likely to be used in either positive or negative advertising. Uses of digital footprints in character-based attack ads are explored at length in the subsequent section focusing on digital scandal. However, before diving into these cases, it is worth briefly discussing how digital footprints are utilized in positive-character advertisements.

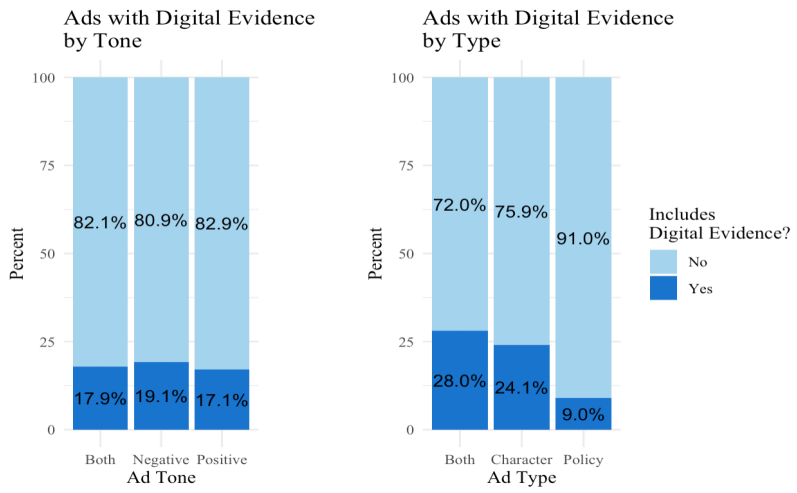

Figure 7. Inclusion of digital evidence by ad tone and type. These graphics control for ad numbers in each category.

One way that candidates use their digital footprints for positive appeals is by emphasizing experience, including military experience.[34] A second way that candidates tap into outsider appeals is by emphasizing their connection to the district they are running in. Figure 9 shows one example of this appeal, showing a childhood photo of FL-01 candidate Rebekah Jones attending the Bedford Circus.[35] In the ad, the photo is accompanied by narration of Jones talking about growing up in a low-income Florida community, substantiating the idea that Jones is an authentic outsider candidate.

[34] Political Transparency Report, "OMF MI 10 John James," YouTube, 0:30, August 18, 2022, https://www.youtube.com/watch?v=W9ngKRgPhc8&ab_channel=PoliticalTransparencyReport.
[35] Political Transparency Report, "Rebekah Jones for Congress - RJ has your back!" YouTube, 1:00, August 26, 2022, https://www.youtube.com/watch?v=mxGVDcWfCRs&ab_channel=PoliticalTransparencyReport.

Figure 8. Example Military Experience Appeal

Figure 9. Example Connection to District Appeal

Negative character attacks involving digital evidence satisfy the criteria for what I have dubbed digital scandal. Digital scandal is an attempt by an opposition candidate to utilize a candidate's digital footprint against them to attack their integrity, honesty, or character. As we will see, this encompasses a wide array of character-based attacks on traits such as dishonesty, political elitism, and extremism, all of which either directly or indirectly imply a candidate is unfit for elected office. In the data, I have identified thirteen instances of digital scandal.[36] The type of evidence levied against these candidates varies with seven explicit references to social media posts, four instances of photos from prior to a candidate's public figure status, and four uses of video from a candidate's pre-public figure history. While extremism attacks were the most common appeal made in advertisements classified as digital scandals, they account for less than half of identified cases (6/13). Other common appeals made in advertisements classified as digital scandal showcase that candidates are unfit for office by focusing on dishonesty, immaturity, or demonstrating that a candidate is part of the "Political Elite."

Across the board, demographic data does not appear to be a good predictor of where digital scandal emerges. Of the thirteen candidates facing digital scandal, eight were men, and five were women—with women only slightly overrepresented in this population when compared to the overall proportions of male and female candidates. Political markers are similarly poor predictors. Three of the attacked candidates were incumbents while ten of the attacked candidates were challengers. There does appear to be a slight partisan skew, with eight

[36] See Appendix A.

Republicans facing digital scandal compared to only five Democrats. However, given the small sample size, it is difficult to understand whether there is a statistically significant partisan divide.

While the theoretical expectations outlined in chapter two suggest that digital scandal should be most likely to arise during the primary phase of the election cycle when ideology is most similar, the data do not support this conclusion. Of the twenty-five digital scandal ads, five occurred during the primary election cycle while twenty occurred after. Two of these primary election ads were against NC-11 incumbent Madison Cawthorn, and in total four candidates face digital scandal during their primary elections (Madison Cawthorn, Karoline Leavitt, Anthony Sabatini, and Summer Lee). Both Cawthorn and Sabatini went on to lose their primary elections, while Leavitt went on to lose in the general election, and Lee went on to win her general election.

While demographics and timing do not seem to explain when and where digital scandal occurs, there is strong evidence that race dynamics can predict where digital scandal occurs. The average number of primary candidates in each district across the entire sample is 2.37 candidates, while the average number of primary candidates in a given race for districts where a digital scandal occurred is 3.97 candidates (p-value = 0.01594). Furthermore, the average general election margin across all districts is 25.3 points, while the average general election margin in districts where a digital scandal occurred is 7.8 points (p-value = 1.015e-11). Both metrics indicate that digital scandal, like negative campaigning more broadly, is more likely to occur in more competitive districts.

CONCLUSION AND IMPLICATIONS

This analysis of 2022 Congressional advertisements demonstrates that digital evidence is playing a significant role in campaign advertising involving young candidates. I find that digital evidence has been utilized to substantiate claims along every tone-type classification. However, I find that the use of digital evidence is more prevalent in character-based advertising than in policy-based advertising. Similarly, I find a statistically significant correlation between race competitiveness and digital scandal occurrence. While I found support for hypotheses one and three, I did not find support for hypothesis two, as most digital scandals occurred during the general phase of the election rather than the primary stage. Digital Scandal timing is an imperfect

measure of candidate ideological difference and further research should consider investigating this aspect of digital scandal emergence.

Identifying and studying digital scandal as an emerging phenomenon begins to grapple with the ways in which digital natives will interact with the political system at the elite level. While this paper attempts to understand why digital scandal emerges against some candidates but not others, digital scandal has the potential to shape Congress in numerous unforeseen ways. In particular, the coming decades will show whether digital scandal impacts candidate recruitment. The idea of digital scandal also invokes considerable concern over the shortfalls of data privacy legislation. As children spend more and more time building a presence on the internet, we must seriously contend with the potential ramifications this could have later in their lives. Digital natives are just beginning to enter adulthood, where many are forced to grapple with their digital pasts. Conceptualizing and identifying digital scandal should serve as a warning sign for anyone interested in childhood education, privacy, congressional diversity, and online safety.

APPENDIX A: LIST OF 2022 DIGITAL SCANDALS

Digital Scandals from the 2022 Congressional Election Cycle					
District	**Name**	**Ad Sponsor**	**Ad Description**	**Attacked Character Trait**	**Digital Evidence**
NC-13	Bo Hines	Candidate	Uses images of Hines wearing “FJB” merchandise and holding a rifle while connecting Hines to Jan 6, “too dangerous for NC”	-Unfit for office - Elements of traditional scandal (mentions past charges)	-Photos -Instagram posts
FL-7	Anthony Sabatini	Third Party	Shows video of Sabatini dancing (presumably at a wedding), while noting his frequent absences form Congress	-Unfit for Office -Dishonest -Incompetent	-Video
ME-2	Jared Golden	Third Party	Uses footage from a campaign ad as evidence that Golden went back on his word	-Dishonest -Unfit for office	-Video *Fringe Case*
MI-3	Hillary Scholten	Third Party	Cites a facebook post as proof that Scholten “supports rioters” in relation to BLM protests	-Extremism -Political Elite	-Facebook Post
MI-7	Tom Barrett	Party	Cites a tweet as proof Barrett opposed a bill championed by big pharma	-Political Elite	-Tweet
NC-11	Madison Cawthorn	Third Party	Includes an image of Cawthorne wearing female lingerie and an image of cawthorn shirtless while caressing another man	-Unfit for Office -Dishonest	-Photos
NH-1	Karoline Leavitt	Third Party	Uses snapchats, instagram posts, and other videos of Leavitt from college to show that she is too immature to serve in Congress	-Unfit for Office -Extremism -Incompetent	-Photos, -Videos, -Various Social Media posts
MN-2	Tyler Kistner	Party	Plays audios of Kistner lying about serving in combat and calls Kistner dishonest	-Dishonest	-Unclear where the incriminating audio is from **Fringe Case**
IL-17	Eric Sorensen	Candidate	Shows a facebook post where Sorenson posted an image containing graffiti reading “Fuck the Police”	-Extremism	-Facebook Post
RI-2	Allan Fung	Candidate	Uses images of Fung wearing pro-Trump merchandise while attacking Fung as “too dangerous”	-Unfit for office -Extremism	-Photos

PA-12	Summer Lee	Third Party	Shows tweet from Summer Lee about disbanding the Democratic party while calling her radical	-Unfit for office -Extremism	-Tweet
TX-15	Michelle Vallejo	Party	Shows Facebook post from vallejo promoting a concert for Butterflies without borders calling vallejo Radical	-Unfit for office -Extremism	-Facebook Post
TX-34	Mayra Flores	Party	Shows a tweet posted by Flores on Jan 6 encouraging capitol rioter while attacking Flores as extreme	-Unfit for Office -Extremism	-Tweet

All Candidates facing scandal identified through Google's Ad Transparency Center

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THE EFFECT OF DISINFORMATION ON UNITED STATES NATIONAL ELECTIONS: A COMPARATIVE CASE STUDY OF DISINFORMATION IN ELECTIONS ABROAD

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With the growth of social media and general access to information comes the growing trend of disinformation. Disinformation can have devastating effects on democracies and society in general. However, as each democracy is unique, the factors that contribute to the ultimate success or failure of disinformation campaigns are also unique. To effectively combat disinformation, we must understand the factors that facilitate its success. This research will serve to fill that gap in current research by a comparative study of randomly selected democracies throughout the world. Determining factors and causal effects will then be analyzed to create a templated solution to the problem of disinformation in the United States. Lastly, an analysis of these factors as they present themselves in American politics and society will be conducted to determine the degree to which American elections are affected by disinformation campaigns. This research is essential to the fundamental understanding of combatting new challenges that will face modern democracies, and most significantly, the United States, for the foreseeable future.

INTRODUCTION

Recent advancements in technologies have allowed hostile actors to disrupt normal political discourse within democracies through the use of disinformation. While disinformation is a growing trend in modern-day democracies, it is unknown exactly to what extent disinformation can influence the electoral process. This paper will use multiple case studies to investigate three randomly selected democracies with recent elections that faced challenges from disinformation campaigns. The hope of this research is to determine causal factors which may contribute to the ultimate success or failure of disinformation campaigns. Furthermore, this paper will address the future predictions and disinformation mitigation strategies specific to the U.S. presidential election process. To successfully combat the negative effects of disinformation campaigns, it is essential to first understand what disinformation is and how it is produced in a particular democracy. Secondly, to study the factors that allow disinformation to flourish and grow effectively. Finally, a solution must be derived to combat the causal factors instead of stifling disinformation directly.

For the purpose of this paper, disinformation will be defined as inaccurate information or false claims that serve to disrupt normal political discourse regardless of the intention of the producer. Disinformation can originate from multiple sources, including hostile actors, both foreign and domestic. Disinformation is purposeful propaganda typically spread throughout a society by means of otherwise unknowledgeable individuals who wish to confirm their partisan beliefs. Inherently, disinformation can originate from any source and will be measured in this study as claims that can be proven false, not claims that may or may not be accurate.

The first type of disinformation that will be investigated in this paper is disinformation conducted by the government to be used to influence its own general population of voters. For the purposes of this paper, we will refer to this as **Governmental Disinformation**. Governmental disinformation has been used since the beginning of politics as a tool to disrupt political discourse and sway voters in a democratic system to vote one way or another. For example, one of the most effective governmental disinformation campaigns in modern history was the propaganda operation conducted by the Nazis in the Weimar Republic. Hitler was an effective propagandist who was able to manipulate a struggling democratic system into a systematic genocidal government with lies about political opponents and the Jewish people alike.[1] The Nazi party were pioneers of fake news, mass media control, and media manipulation. Hitler used his political power to control the narrative and information the public received, and as a result, the Weimar Republic fell into authoritarianism.[2] The idea of governmental disinformation is important to understand when studying disinformation in the United States because there is a growing distrust in the modern American media to tell accurate and complete information and a growing concern among American journalists who fear governmental restrictions will limit the freedom the press currently has.[3] If the government controls the press, then the government controls the message and ultimately can sway the opinions of the general population. The actions of the Nazi Party are extreme examples of the consequences of governmental disinformation but a realistic consequence nonetheless. To accurately determine if

[1] Timothy Snyder, "How Hitler Pioneered 'Fake News,'" *The New York Times*, October 16, 2019, https://www.nytimes.com/2019/10/16/opinion/hitler-speech-1919.html.
[2] Snyder, "How Hitler Pioneered 'Fake News.'"
[3] Megan Brenan, "Americans' Trust in Media Remains Near Record Low," Gallup, June 5, 2023, https://news.gallup.com/poll/403166/americans-trust-media-remains-near-record-low.aspx; Naomi Forman-Katz, "Most U.S. Journalists Are Concerned about Press Freedoms," Pew Research Center, May 2, 2023, https://www.pewresearch.org/short-reads/2023/05/02/most-u-s-journalists-are-concerned-about-press-freedoms/.

American democracy is at risk of disinformation, a comparative analysis of governmental disinformation in modern democracies must be considered.

The second type of disinformation this paper will discuss is disinformation conducted by foreign actors who seek to disrupt political discourse in a particular country. For the purposes of this paper, this type of disinformation will be referred to as **Foreign Involvement Disinformation**. An example of foreign involvement disinformation is Russian and Chinese interference in political issues throughout the world. Some examples of foreign involvement disinformation are the tactics of the Russian Internet Research Agency (R-IRA) and the Communist Party of China (CPC).[4] The R-IRA embeds itself into specific cultures throughout the United States and uses social media to manipulate the narratives within that culture.[5] Mostly advocating for conservative ideologies, the R-IRA has been known to infiltrate groups like Black Lives Matter, LGBTQ, and Muslim and Evangelical religious groups.[6] They will then subsequently post disinformation that seeks to alter public perceptions of them.[7] China, however, uses different tactics to influence voters in key nations. For example, China engaged in disinformation campaigns in Hong Kong. However, instead of pursuing to change the nature of political groups within the country, they attempted to change the public perception of the government by discrediting the political leaders of Hong Kong.[8] They especially targeted those leaders who oppose the CPC.[9] The fact that super powers around the world have shown their capability to manipulate democratic outcomes creates an implicit necessity for us to understand disinformation tactics and determine a solution to the problem of foreign interference.

INTERNATIONAL CASE STUDY

The first case this paper will be investigating is the 2018 election in Brazil. This election is particularly relevant because, at the time, Brazil was undergoing enormous amounts of

[4] David M. Beskow and Kathleen M. Carley, "Characterization and Comparison of Russian and Chinese Disinformation Campaigns," *Lecture Notes in Social Networks* (2020): 63, https://doi.org/10.1007/978-3-030-42699-6_4.
[5] Beskow and Carley, "Characterization and Comparison," 66.
[6] Beskow and Carley, "Characterization and Comparison," 66.
[7] Beskow and Carley, "Characterization and Comparison," 67.
[8] Beskow and Carley, "Characterization and Comparison," 68.
[9] Beskow and Carley, "Characterization and Comparison," 69.

polarization and governmental disinformation campaigns.[10] The disinformation campaign in the 2018 presidential election was targeted towards low-income, undereducated, anti-woke, and conservative populations.[11] The disinformation contributed to record levels of polarization and public distrust in media and governmental institutions through voter security conspiracies and election fraud claims.[12] The disinformation in question was presented to the public through social media websites like Twitter, WhatsApp, and Facebook.[13] It is important to note that following an investigation of the 2018 presidential election, it was determined that President Bolsonaro's party had funded a majority of the disinformation that Brazilian citizens had consumed throughout the election process, making this a confirmed case of governmental disinformation.[14] While there were disinformation campaigns for both political parties in the election, Bolsonaro was responsible for producing almost ten times as much as his political opponent.[15] The election resulted in a win for Bolsonaro, showing that in this case, higher production of governmental disinformation is correlated to the success of the candidate who produced it. In short, it is safe to say that the outcome of the 2018 presidential election in Brazil was affected by disinformation.

The second case this paper will investigate is the 2018 municipal and subsequent 2020 presidential elections in Taiwan. These elections are important to analyze because voting behavior was heavily influenced by foreign involvement disinformation from China. The CPC attempted to spike polarization and discredit anti-Chinese politicians through use of content farms on social media.[16] The disinformation campaign had its most drastic effects on voters

[10] Guilherme Hattori, "The Spread of Fake News: A case study of the Presidential Elections of 2018 in Brazil," (master's thesis, Escola de Administração de Empresas de São Paulo of Fundação Getulio Vargas, 2021), 12, https://repositorio.fgv.br/bitstream/handle/10438/30800/Guilherme%20Hattori.pdf?sequence=5.
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[12] Hattori, "The Spread of Fake News," 46, 60.
[13] Nic Newman et al., "Reuters Institute Digital News Report 2018," Reuters Institute, 2018, 116-117, https://www.digitalnewsreport.org/wp-content/uploads/2018/06/digital-news-report-2018.pdf; Hattori, "The Spread of Fake News," 43.
[14] Patricia Mello, "WhatsApp Admits to Illegal Mass Messaging in Brazil's 2018," *Folha De S.Paulo*, 2019, https://www1.folha.uol.com.br/internacional/en/brazil/2019/10/whatsapp-admits-to- illegal-mass-messaging-in-brazils-2018.shtml; Hattori, "The Spread of Fake News," 43, 48.
[15] Hattori, "The Spread of Fake News," 63.
[16] Tai-Li Wang, "Does Fake News Matter to Election Outcomes?: The Case Study of Taiwan's 2018 Local Elections," *Asian Journal for Public Opinion Research* 8, no. 2 (May 31, 2020): 68 https://doi.org/10.15206/ajpor.2020.8.2.67.

under the age of thirty, voters lacking in education, and voters in lower income brackets.[17] These groups of voters were found to be positively correlated with a greater inability to judge the authenticity of disinformation.[18] A possible explanation is that younger voters may use social media more regularly to acquire election news and material. Moreover, undereducated and low-income groups in a society may not have the resources necessary to decipher reliable news from disinformation provided by hostile actors. A 2020 case study of disinformation in Taiwan concluded that over half of the voters in the 2018 and 2020 elections voted without knowing accurate campaign information.[19] However, despite the efforts of the Chinese government to disrupt the elections and the seemingly devastating effects of the disinformation campaign, the disinformation campaign was ultimately unsuccessful. President Tsai Ing-wen won a second term in a significant victory, securing over eight million votes, a record high in Taiwan.[20]

The third case this paper will investigate is the case of the 2020 presidential election in the United States. This case is especially important to analyze because understanding how elections in the United States have been affected by disinformation in the past may shed light on how they will be affected in future elections. The 2020 presidential election was subjected to disinformation from many actors on many different topics. Governmental disinformation played a huge role in this election as President Trump and the Republican Party contributed greatly to the spread of disinformation.[21] However, the United States was also affected by disinformation of foreign involvement. Russian and Chinese social media bots engaged on social media to expand conspiratorial narratives and contribute to polarization.[22] Disinformation from government officials consisted of conspiratorial claims about mail-in voter fraud, election fraud, and COVID-19, and also sought to discredit political opposition.[23] Disinformation was mostly spread through social media and mainstream media sources.[24] These disinformation campaigns

[17] Wang, "Does Fake News Matter to Election Outcomes?" 67.
[18] Wang, "Does Fake News Matter to Election Outcomes?" 82-85.
[19] Wang, "Does Fake News Matter to Election Outcomes?" 80.
[20] Wang, "Does Fake News Matter to Election Outcomes?" 89.
[21] Yochai Benkler et al., "Mail-in Voter Fraud: Anatomy of a Disinformation Campaign," *SSRN Electronic Journal* (2020): 1-2, https://doi.org/10.2139/ssrn.3703701.
[22] Samantha Bradshaw et al., "Industrialized Disinformation: 2020 Global Inventory of Organized Social Media Manipulation," DemTech, 2021, 434, https://demtech.oii.ox.ac.uk/research/posts/industrialized-disinformation/.
[23] Bradshaw et al., "Industrialized Disinformation," 436, 439.
[24] Benkler et al., "Mail-in Voter Fraud," 3.

mostly targeted conservative ideologies and young social media users.[25] Despite pro-Trump disinformation contributing to over 70 percent of all election disinformation in the 2020 election, he lost.[26] This result shows that in the case of the United States, the most prolific producer of disinformation is not necessarily correlated with the winner of the election. While there are certainly social aspects that are affected by disinformation in the United States, governmental and foreign involvement disinformation has yet to be proven a sufficient condition to sway recent presidential elections in the United States.

COMPARATIVE STUDY

When comparing the three previously mentioned cases, we find that each case of disinformation disproportionately affects people who are below the poverty line of a given nation. The question we must ask ourselves is, do the manufacturers of disinformation make this distinction, and does this mean that countries with higher levels of poverty are more at risk from disinformation? For example, during the 2018 presidential election in Brazil, the country was facing a poverty level of 26.7 percent.[27] This figure is more than double the poverty level of the United States in 2020, which was 11.4 percent, and significantly higher than the poverty level in 2018 Taiwan, which was at 1.3 percent.[28] Considering that the 2018 presidential election in Brazil was the only case that had a concrete effect from disinformation, there is an argument to be made that the overall level of poverty is, at the very least, correlated with the success of a

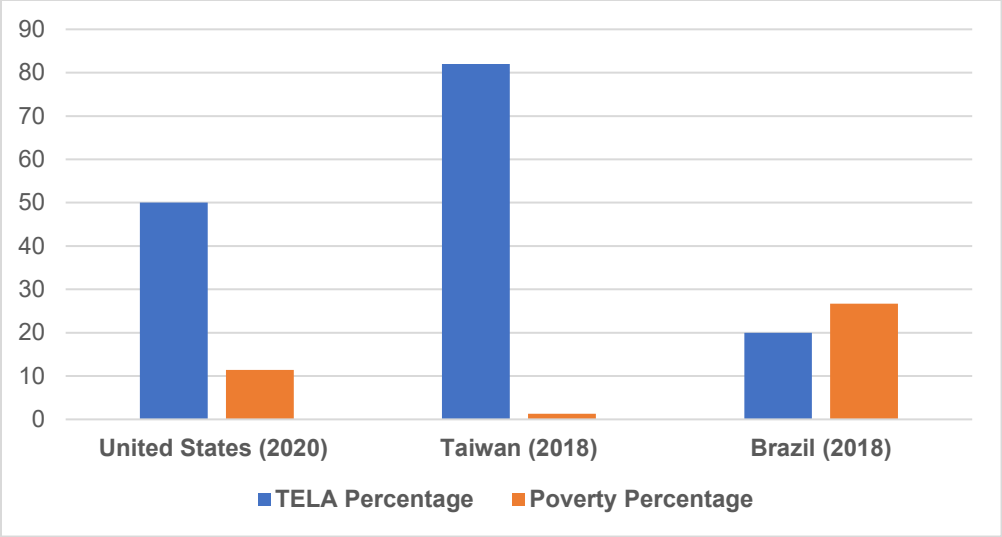
[25] Karishma Sharma, Emilio Ferrara, and Yan Liu, "Characterizing Online Engagement with Disinformation and Conspiracies in the 2020 U.S. Presidential Election," *Proceedings of the International AAAI Conference on Web and Social Media* 16 (2022): 909, https://doi.org/10.1609/icwsm.v16i1.19345.
[26] Samia Benaissa Pedriza, "Sources, Channels and Strategies of Disinformation in the 2020 US Election: Social Networks, Traditional Media and Political Candidates," *Journalism and Media* 2, no. 4 (2021): 612, https://doi.org/10.3390/journalmedia2040036.
[27] "Brazil Poverty Rate 1981-2024," MacroTrends, accessed January 23, 2024, https://www.macrotrends.net/countries/BRA/brazil/poverty-rate#:~:text=Brazil%20poverty%20rate%20for%202018,a%200.4%25%20decline%20from%202017.
[28] "A Profile of the Working Poor, 2020," U.S. Bureau of Labor Statistics, September 1, 2022; Leander von Kameke, "APAC: Proportion of Population below the Poverty Line by Country," Statista, December 16, 2022, https://www.statista.com/statistics/651253/asia-pacific-proportion-of-population-below-the-poverty-line-by-country/. https://www.bls.gov/opub/reports/working-poor/2020/home.htm#:~:text=In%202020%2C%2037.2%20million%20people,to%20the%20U.S.%20Census%20Bureau.

disinformation campaign. Meaning that the more individuals who fall under the poverty line in a particular nation, the more likely their elections will be negatively affected by disinformation campaigns.

Another trend in all three case studies is that these disinformation campaigns affect the undereducated more than the educated population. It is possible that the success of a disinformation campaign relies on simple numbers of undereducated individuals in a given nation. While many factors contribute to the overall education of a nation, we see the most discrepancy when considering the **tertiary education level attainment** (TELA) in a democracy. For the purpose of this paper, TELA refers to any post-high school level education including trade schooling, bachelor's degrees, and other advanced degrees. For example, Brazil's TELA is 20 percent, while the United States has a TELA of 50 percent.[29] Additionally, in Taiwan, 82 percent of Taiwanese between the ages of twenty-five and twenty-nine have attained a bachelor's degree or higher.[30] If the only country whose election was negatively impacted by a disinformation campaign also holds the lowest level of education, then we can assume that low levels of education are indeed correlated with the negative effects of disinformation campaigns. Furthermore, we can also assume that low levels of education are correlated to increased poverty level in a democracy.[31] Democracies facing extreme levels of poverty, low levels of education, and civil unrest are breeding grounds for effective disinformation campaigns.

Figure 1

[29] "Education Attainment - Population with Tertiary Education," OECD Data, accessed January 26, 2024,https://data.oecd.org/eduatt/population-with-tertiary-education.htm.
[30] Ben Levine, "Beyond Degrees: Taiwan's Youth Unemployment Crisis," Global Taiwan Institute January 9, 2024, https://globaltaiwan.org/2024/01/beyond-degrees-taiwans-youth-unemployment-crisis/#:~:text=Taiwan%27s%20intended%20goal%20of%20broadening,at%20least%20a%20bachelor%27s%20degree.
[31] HB Ferguson, S Bovaird, and MP Mueller, "The Impact of Poverty on Educational Outcomes for Children," *Paediatr Child Health* (October 2007): 702, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2528798/.



Note: This table presents a comparative visual aid to Tela Performance and Poverty Levels within each democracy. Lower poverty levels and higher TELA are associated with the defeat of disinformation campaigns.

In the cases of Brazil and the United States mentioned above, both disinformation campaigns were significantly targeted at conservative and anti-woke ideologies. However, in the case of Brazil, the campaign was successful, and in the case of the United States, it was unsuccessful. It should be noted that the targeting of conservative ideologies may have been a result of disinformation campaigns targeting the under-educated. In the United States, individuals with liberal ideologies tend to be more educated than individuals who are conservative.[32] The correlation between disinformation and conservatism may be a secondary effect of disinformation and not necessarily a contributing factor to the success of its campaign. It has yet to be determined if disinformation campaigns target conservatives intentionally to boost the intended message or if conservatives unintentionally assist in the reproduction of disinformation that aligns with their chosen belief systems. Another important theme among our cases is that disinformation in Taiwan seemed to circumvent party lines, targeting only the poor and undereducated. This could be a result of the type of disinformation campaigns that take place in each country. In Brazil and the United States, governmental disinformation likely contributed to the purposeful targeting of political ideologies, whereas Taiwan faced mostly foreign

[32] "A Wider Ideological Gap between More and Less Educated Adults," Pew Research, April 26, 2016, https://www.pewresearch.org/politics/2016/04/26/a-wider-ideological-gap-between-more-and-less-educated-adults/.

involvement disinformation which sought to disrupt society's view of the Taiwanese government as a whole.

ANALYSIS

This leads us to our next question: does disinformation effect party affiliation? In a study conducted by Chris Bail and the Duke University Polarization Lab, it was determined that exposure to rival political viewpoints further polarizes individuals and does not influence people to consider rival viewpoints.[33] The argument of Bail is that affective polarization, confirmation bias, and selective exposure limit one's ability to take opposing viewpoints in at face value.[34] This works with disinformation as well. If disinformation confirms an individual's deeply held beliefs, they will be more likely to view it as truth while disposing of or ignoring information that goes against their beliefs. In some ways, polarization is just an amplification of the ideological thinking of a society. Opposing viewpoints and disinformation on social media can also act as methods to silence and condemn moderate voters.[35] This is to say that disinformation in Brazil, the United States, and Taiwan probably increased polarization, amplified ideological voting behaviors, and restricted individual ability to consider alternative viewpoints. If disinformation cannot directly sway an individual to vote across party lines but can influence polarization levels in a democracy, then it can be theorized that disinformation affects voting behavior and elections through a second and third effect to polarization. This, in turn, could mean that extended exposure to disinformation could cause drastic increases in polarization and thus change the outcome of future elections.

In an analysis of the information above we must determine whether or not American democracy is in danger of the effects of growing disinformation campaigns. The factors contributing to the effectiveness of disinformation campaigns that are most prevalent in our cases above are a) level of education, b) percentage of the population living under the poverty line, and c) political polarization. Firstly, it is apparent that there is a growing divide amongst partisans within the United States. Since 2016, distrust and disdain for the members of the opposing party

[33] Chris Bail, *Breaking the Social Media Prism: How to Make Our Platforms Less Polarizing* (Princeton, New Jersey: Princeton University Press, 2022), 26, 67.
[34] Bail, *Breaking the Social Media Prism,* 38.
[35] Bail, *Breaking the Social Media Prism,* 68-84.

has nearly doubled amongst Republicans and Democrats and is estimated to continue to grow.[36] Secondly, the poverty level in the United States has remained consistent since 2020 and has been known to fluctuate between 10 percent and 22 percent since the 1950s.[37] However, it must also be noted that the inflation rate in 2024 is 3.4 percent, which is more than double the inflation rate of 2020.[38] This may cause the poverty rate to increase in the United States if action is not taken to correct it. Thirdly, the TELA of the United States has grown since 2020, with 2021 yielding the highest education of the population of twenty-five and older in U.S. history.[39] To specify this statistic, it is important to understand that actual metrics for knowledge levels were not considered. This statistic is just a measurement of the growth of tertiary degrees earned, and further research will need to be conducted to accurately determine how useful knowledge levels impact political decision-making in the face of disinformation. The rise of polarization and inflation is certainly cause for alarm. However, in continuing with the theory that poverty mostly contributes to the negative effects of disinformation campaigns through its correlation to a lack of education, it is promising to see a rise in post-secondary degrees throughout the United States. As two of these three factors are trending in the right direction, it should be expected that American democracy will prevail in the face of the disinformation campaigns during the 2024 Presidential election. That being said, it will also be important for policymakers to continue to analyze these factors and ensure they are trending in the right direction when considering the appropriate tactics to combat inevitable disinformation campaigns in the future.

CONCLUSION

Granting that this theory holds true, combatting disinformation and its effects on national elections should remain at the forefront of the minds of policymakers in the United States. Many other democracies have attempted to combat disinformation by instituting policy to regulate the

[36] "As Partisan Hostility Grows, Signs of Frustration with the Two-Party System," Pew Research Center - U.S. Politics & Policy, August 9, 2022, https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/.
[37] "U.S. Poverty Statistics and Facts (Updated for 2024)," Debt.org, December 21, 2023, https://www.debt.org/faqs/americans-in-debt/poverty-united-states/.
[38] "Current US Inflation Rates: 2000-2024," US Inflation Calculator, January 11, 2024, https://www.usinflationcalculator.com/inflation/current-inflation-rates/.
[39] "Census Bureau Releases New Educational Attainment Data," Census.gov, February 24, 2022, https://www.census.gov/newsroom/press-releases/2022/educational-attainment.html.

information the general public receives. However, this is a controversial topic in democracies. For example, members of the Taiwanese public argue that this proposed legislation is likely to damage future freedom of speech and freedom of the press.[40] Instead, this paper proposes that to successfully combat disinformation campaigns, legislation should attack the factors that make disinformation effective. Namely prioritizing higher education and critical thinking skills from a young age. Secondly, legislators should also prioritize economic well-being to reduce inflation and maintain low poverty rates throughout the country. Lastly, political leaders and constituents alike must find ways to reduce polarization between political ideologies.

Of the three cases studied above, it is apparent that there are multiple factors that contribute to the overall success of disinformation campaigns. There does not seem to be any correlation between the types of disinformation presented in this paper when determining its negative effect on democratic elections. It is important to note that each of these democracies holds unique situations that may serve as contributing factors to the ultimate success or failure of disinformation campaigns. We can assume that extended exposure to disinformation can increase polarization in a democracy. Further research is needed to understand the effects of disinformation and polarization and determine the capacity of polarization a democracy can withstand. However, it can be determined that disinformation campaigns are more likely to be successful in nations with high poverty rates, low levels of education and literacy, and high rates of polarization. Based on the factors studied in this research, the immediate future of American elections is likely to remain resilient against disinformation campaigns. However, extended exposure via governmental actors, both foreign and domestic, may result in negative consequences over time. Disinformation is a serious issue that must be addressed by combating the factors that contribute to it rather than stifling it directly.

[40] Wang, "Does Fake News Matter to Election Outcomes?" 89.

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EXPLORING THE FEASIBILITY OF FEDERAL RANKED CHOICE VOTING (RCV) IMPLEMENTATION

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The current climate of partisan division has produced an environment of distrust surrounding national voting systems and, more broadly, institutions of democracy. This research project investigates a purported solution to address polarization and strengthen citizen participation through ranked choice voting (RCV). Specifically, the paper evaluates the merits, drawbacks, and ultimately, the feasibility of transitioning Congressional elections from traditional First-Past-the-Post (FPTP) to RCV systems via federal legislation. Through an analysis of existing scholarly research and case studies of RCV implementation in the United States, this paper seeks to determine if implementing RCV for federal elections is both practical and productive.

INTRODUCTION

The continual rise in political polarization since the 2016 election mounted a substantial challenge to the strength of American democratic systems. Following the 2013 Supreme Court ruling on the Voting Rights Act, state legislatures had the opportunity to pass voting laws that would have previously been blocked by the Department of Justice.[1] These legislatures enacted more than 500 pieces of legislation related to voting between 2016 and 2018 alone. The push for voting reform, whether to restrict or expand access to the ballot, continues in full force today. From Senate Democrats reintroducing the John Lewis Voting Rights Advancement Act to reinstate a check on state voting practices to 881 laws being introduced across the country to restrict voting, voting rights is a policy issue at the forefront of both parties' agendas.[2]

There is also a renewed debate about *how* citizens vote and how votes get counted. Skepticism about the integrity of elections is at an all-time high, prompting advocacy groups and state administrative bodies alike to make election integrity a center point of their 2024 voter turnout strategy. A policy proposal at the forefront of reform conversations and controversial in both major political parties is ranked choice voting (RCV). While the traditional first-past-the-

[1] Kira Lerner, "A timeline of voting restrictions passed by US states since 2013," *The Guardian*, June 25, 2023, https://www.theguardian.com/us-news/2023/jun/25/voting-rights-act-2013-timeline-state-voter-restriction-map-registration-id-absentee-mail.
[2] "H.R.4 - 117th Congress (2021-2022): John R. Lewis Voting Rights Advancement Act of 2021," Congress.gov, 2021, https://www.congress.gov/bill/117th-congress/house-bill/4.

post (FPTP) model asks voters to submit their choice for a given position, RCV asks voters to rank as many or as few candidates for the position in order of preference. RCV is most popular in Australia and the Republic of Ireland, but as of November 2023, it was also used in fifty American jurisdictions, including two states, three counties, and forty-five cities, home to over 13 million voters.[3] RCV became a formal federal policy question with the introduction of HR 4464 in 2019 and again with HR 3863 in 2021. The United States runs a highly decentralized elections system, making these bills significant as steps to attempt to standardize the administration of federal elections.[4]

While RCV advocates purport it to be a useful mechanism to fully capture voter preferences, critics argue that the complexity of its tabulation procedure will only increase voter distrust and disillusionment.[5] This paper seeks to explore the more critical question: can ranked choice voting actually be implemented? It is undoubtedly necessary to discuss the merits and drawbacks of an RCV system to determine if it should be implemented, but researchers must place just as much emphasis on analyzing implementation specifics. Part I of the paper explores the rationale behind RCV and the primary arguments advanced by its supporters and critics. Part II identifies a series of implementation considerations, extrapolating the findings from Part I to assess how federal legislation could impact RCV usage by state and local jurisdictions. The paper's conceptual and practical analysis of RCV aims to clarify the primary questions that stakeholders interested in election reform should address and refocus voting reform discussions on practicality over partisanship.

PART I: RCV IN THEORY

Ranked choice voting, also referred to as instant runoff voting (IRV), proposes an alternative to the general runoff election structure. In states that require both a plurality (the most votes) and a majority (more than 50%) of votes to win, races with multiple candidates could result in no one meeting both these requirements. This is when a separate runoff election takes

[3] "Ranked Choice Voting," FairVote, https://fairvote.org/our-reforms/ranked-choice-voting/.
[4] "Election Administration at State and Local Levels," National Conference of State Legislatures, December 22, 2023, https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels.
[5] John Bonura, "Ranked Choice Voting: Confusing, Exhausting, and Slow," Texas Public Policy Foundation, October 30, 2023, https://www.texaspolicy.com/ranked-choice-voting-confusing-exhausting-and-slow/.

place between the top two candidates.[6] RCV is oriented to satisfy the majority-vote requirement: if no candidate receives a majority of first-rank votes, the candidate with the least number of votes is eliminated, and those votes are redistributed to their voters' second choices. Then, the votes are recounted to see if a majority has now been satisfied. If it has, the candidate with the majority wins; if not, the process of eliminating the candidate in last place and redistributing their votes continues. This process functions as an instant runoff, eliminating the need for a separate runoff election. Only ten states use some form of runoff elections, so while RCV's instant runoff feature is part of the appeal, its supporters point to other benefits.[7]

RCV BENEFITS

A key selling point of RCV is its ability to better reflect voter preferences and adhere to the concept of majority rule. In races with several candidates, such as a mayoral race or the upcoming 2024 California Senate race for the late Senator Feinstein's seat, the current plurality system allows a candidate to win even if the majority of voters did not vote for them. RCV's majority-win requirement is what activates its tabulation procedure if no candidate receives more than 50% of the vote, making it preferable as a representative voting system.[8]

Another voter-oriented benefit of RCV is its disinterest in strategic voting. Strategic or tactical voting occurs when "voters cast an insincere ballot in order to increase their expected value for an election outcome."[9] This behavior is most recognizable with prospective third-party voters who vote for one of the majority-party candidates because they believe their minority party candidate is unlikely to win.[10] The likely 2024 presidential election match-up between President Biden and former President Trump is already generating similar conversations about voting for the "lesser of two evils" or voting for minority party candidates like Cornel West or Jill Stein.[11] RCV minimizes strategic voting by offering voters the option to rank multiple

[6] "Runoff Election: An Explainer," Rock the Vote, December 2, 2022, https://www.rockthevote.org/explainers/runoff-elections-an-explainer/.
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[8] "Ranked Choice Voting Information," FairVote, https://fairvote.org/our-reforms/ranked-choice-voting-information/#the-impacts-of-rcv.
[9] "Tactical Voting Basics," The Center for Election Science, https://electionscience.org/library/tactical-voting-basics/.
[10] The Center for Election Science, "Tactical Voting Basics."
[11] Bridget Bowman, "The 'lesser of two evils' voters who could decide 2024," *NBC News,* June 28, 2023, https://www.nbcnews.com/politics/2024-election/lesser-two-evils-voters-decide-2024-rcna91077.

candidates in order of choice. Voters know that if their first-choice candidate does not win, their votes will automatically be distributed to their second choice.[12] As such, they are likely to be less concerned with how others are voting and can be more sincere in how they choose to vote. In fact, mathematicians analyzing the use of RCV in Alaska's special and general elections in 2022 found strategic voting to be challenging with RCV because precise polling data is needed to anticipate outcomes and instruct voting accordingly.[13] Because RCV results are less predictable, strategic voting runs the risk of being less advantageous to the individual voter.

Voter turnout is another widely discussed metric measured by RCV researchers. While some evidence from state and city jurisdictions where RCV is used shows an increase in turnout, others show little to no effect.[14] Researchers at the University of Missouri - St. Louis point to other factors that play a more significant role in determining turnout, such as how competitive the races are and whether the elections are in even-numbered years.[15] FairVote's analysis of the six largest RCV cities in the United States found stronger turnout in RCV races compared to races in those cities prior to RCV implementation; however, they did not control for potential confounding factors such as the competitiveness of those races.[16] Regardless of specific turnout results for RCV jurisdictions, the decentralized nature of the U.S. election system and varying methods of RCV implementation makes these results virtually non-universalizable. That being said, RCV advocates cite its better representation of voter preferences as a motivating factor for increased turnout, while opponents claim that the cognitively demanding task of ranking multiple candidates increases the burden on voters and may decrease voter turnout.[17]

Researchers have also identified ways in which RCV benefits candidates. One observed impact is candidate-voter interaction. FairVote's 2016 civility report compared candidate outreach strategies in RCV and non-RCV cities and found that "likely voters in non-RCV cities were more likely to report that candidates and campaigns reached out to them by phone. By

[12] "Ranked Choice Voting Information," FairVote, https://fairvote.org/our-reforms/ranked-choice-voting-information/#broader-representation.
[13] James Brooks, "Strategic voting is possible but risky on a ranked choice ballot, mathematicians say," *Alaska Public Media,* November 7, 2022, https://alaskapublic.org/2022/11/07/strategic-voting-is-possible-but-risky-on-a-ranked-choice-ballot-mathematicians-say/.
[14] Rachel Hutchinson, "Ranked Choice Voting and Voter Turnout," FairVote, October 28, 2022, https://fairvote.org/ranked-choice-voting-and-voter-turnout/.
[15] Hutchinson, "Ranked Choice Voting."
[16] Hutchinson, "Ranked Choice Voting."
[17] "Ranked Choice Voting Information," FairVote.; Courtney L. Juelich and Joseph A. Coll, "Ranked Choice Voting and Youth Voter Turnout: The Roles of Campaign Civility and Candidate Contact," *Politics and Governance* 9, no. 2 (June 2021): 319-331, https://doi.org/10.17645/pag.v9i2.3914.

contrast, likely voters in RCV cities were more likely to report that candidates and campaigns reached out to them in person or by e-mail."[18] The higher levels of in-person outreach are important because in-person campaigning requires the greatest amount of investment by candidates compared to other forms of voter contact, and it provides the most direct means of engagement from voters to candidates. Candidates in RCV jurisdictions may engage in more outreach efforts to expand their base since their strategy would likely also include catering to voters who would rank them second.[19] A survey of candidates for local offices who ran in RCV and plurality jurisdictions between 2012 and 2013 corroborated this intuition, with RCV candidates reporting more time spent per week "knocking on doors" than plurality candidates.[20] The survey's preliminary findings suggest that "under preferential [ranked choice] voting there may have been less importance of radio and TV advertising, and a greater importance of paid staff, volunteers, door-to-door contacts, direct mail, and web advertising."[21] Researchers generally agree that outreach strategies differ between candidates in RCV and plurality jurisdictions; however, it is less clear what the broader impact of these differing approaches is on voter turnout and participation.

Another significant benefit of RCV to candidates is the diversification of the candidate pool. FairVote's 2024 update on the impact of RCV on candidates and voters of color found that "candidates of color continue to benefit from the RCV counting process" and that voters of color rank candidates at high rates.[22] RCV can also encourage more people to run for office in the first place because of its minimization of strategic voting, in turn increasing the accessibility of running for historically underrepresented communities.[23] For instance, FairVote's study of two decades of elections in California cities found that the share of female candidates and candidates of color grew from 17% to 26% in RCV jurisdictions, citing that the system's "reduced

[18] Haley Smith, "Ranked Choice Voting and Participation: Impacts on Deliberative Engagement," FairVote, https://fairvote.org/resources/data-on-rcv/.
[19] Juelich, "Ranked Choice Voting Information."
[20] Todd Donovan, "Candidate Perceptions of Campaigns under Preferential and Plurality Voting," *Electoral Studies* 42 (June 2016): 157-163, https://www.sciencedirect.com/science/article/abs/pii/S0261379416000299.
[21] Donovan, "Candidate Perceptions."
[22] Deb Otis and Sabrina Laverty, "Ranked choice voting elections benefit candidates and voters of color," FairVote, https://fairvote.org/report/communities-of-color-2024/.
[23] "How Ranked Choice Voting Can Increase Inclusivity and Voter Participation," Campaign Legal Center, 2021, https://campaignlegal.org/update/how-ranked-choice-voting-can-increase-inclusivity-and-voter-participation.

susceptibility to the spoiler effect and vote splitting" was key.[24] This observed lower barrier to entry does not address the immense financial and other costs that come with campaigning, but it independently provides room for newcomers to enter races where ticket-splitting may have determined results under a plurality system.

RCV COSTS

Critics of RCV argue that the problems that arise from its implementation outweigh its projected benefits. One key concern is how the change from plurality to ranked choice voting impacts a voter's understanding of the voting process. Any voting system change requires substantial voter outreach on the part of election administrators to ensure the electorate knows how to complete their ballot. Transitioning to a new voting system like RCV requires the extra step of distinguishing its voting process from that of the former plurality system. It is clear from the ongoing implementation of RCV in city and state jurisdictions that this education is possible, but the strength of outreach varies based on that jurisdiction's administrative capacity. The impact of RCV on voter preparedness is therefore largely situational based on the implementing jurisdiction. For example, New York City used RCV for the first time in its June 2021 mayoral race, prompting Christina Greer, a political science professor at Fordham University, to observe that "We're asking people to fundamentally shift and change the way they've voted their entire lives, in a very short period of time, with very little education, in the wake of a global pandemic."[25]

There are multiple potential drop-off points for voters using RCV. The first is their ability to understand the ranking instructions explained on the ballot. A study of the 2021 mayoral race found that "voters in locations with lower levels of educational attainment and median household incomes had higher shares of overvote voidable ballots than those in locations with higher educational attainment and incomes."[26] These results again emphasize the crucial role that voter outreach plays in ensuring that RCV is an accessible system to all voters.

[24] Sarah John, Haley Smith, and Elizabeth Zack, "The alternative vote: Do changes in single-member voting systems affect descriptive representation of women and minorities?" *Electoral Studies* 54, (August 2018): 90-102. https://doi.org/10.1016/j.electstud.2018.05.009.
[25] Andrew Prokop, "Ranked-choice voting: How New York's new system works, and what it means for everybody else," *Vox,* June 16, 2021, https://www.vox.com/22443775/ranked-choice-voting-explained-new-york-strategy.
[26] Lindsey Cormack, "More Choices, More Problems? Ranked Choice Voting Errors in New York City," *American Politics Research* 52, no. 3 (December 2023), https://doi.org/10.1177/1532673X231220640.

The second drop-off point is the voters' usage of rankings themselves. RCV opponents argue that the system does not guarantee a winner with majority voter support because of ballot exhaustion. RCV jurisdictions have different rules for ranking: some limit the number of candidates that voters can rank, while others allow voters to rank as many or as few candidates as they wish. Regardless of these specifications, there is always a chance that all of a voter's ranked selections could be eliminated throughout the ranked vote tabulation process. Ballot exhaustion is not just theoretical. FairVote found that "of the 128 U.S. ranked-choice elections that have proceeded to at least a second round of counting, only sixty-four ended up producing a winner with a majority of the voters who turned out."[27] Insofar as voters use their rankings in different ways, voters who rank more candidates conceivably have more say in an election's outcome, which echoes concerns about representation present in the current plurality system.

In November of this year, voters in Oregon and Nevada will decide whether to adopt RCV via ballot measure. Both measures passing will represent "the largest-ever expansion of RCV in the United States, doubling the number of states that use the system statewide."[28] Citizens may choose the system, but it is ultimately up to state election administrators to roll it out. There is a dense body of research on the benefits and costs of RCV. However, there is little collective consideration of *how* RCV is implemented. Reforms must be evaluated in terms of feasibility rather than just conceptual validity. As such, advocates and opponents of RCV alike must answer the question: Can states realistically change their voting systems from plurality to ranked choice?

PART II: RCV IN PRACTICE

The Ranked Choice Voting Resource Center, recognized as the premier source for RCV information in the United States by policymakers and administrators, defines successful implementation as a combination of executing the system and delivering on the system's marketed benefits.[29] The Center's Protect the Win report finds five primary variables which

[27] "Research and data on RCV in practice," FairVote, https://fairvote.org/resources/data-on-rcv/#research_rcvwinners.
[28] "Ballot Measures," FairVote, https://fairvote.org/ballot-measures/.
[29] "The Implementation Project," Ranked Choice Voting Resource Center, https://www.rcvresources.org/the-implementation-project.

measure an implementing jurisdiction's success: administrative costs, voter and candidate outreach, technical implementation, legal compliance, and political defense.[30]

ADMINISTRATIVE COSTS

The costs associated with RCV implementation vary based on the existing capabilities of—and resources available to—the implementing jurisdiction. The National Conference of State Legislatures (NCSL) conducted a survey of local election officials who implemented RCV to gather data on the one-time costs associated with transitioning to the voting system. Officials reported costs pertaining to equipment changes or software costs needed to conduct RCV elections, voter education, purchases of single-use items like ballot paper, and the labor of implementing these changes and RCV at large. The survey results found that the median cost per voter was 43 cents, with the median total cost of implementation at $17,000. However, the average cost (outliers included) was estimated at $154,759.[31] While excluding outliers in many cases yields more descriptive results, the average cost of implementation here is just as revealing because it captures the high variability in administrative costs between jurisdictions. The existing pool of data on RCV in the United States is limited to the fifty-two jurisdictions that have used it, each of which vary in size and the kinds of races they use RCV for. When considering the feasibility of implementing RCV for federal elections, data on administrative costs for states that use RCV statewide is especially valuable.

Alaska and Maine are the only two states that currently use RCV statewide for state and federal races. Election administrators involved in the initial implementation of RCV in Alaska in 2022 estimated the total cost to be nearly $4 million dollars, with $3.2-$3.5 million allocated to education and outreach and another $200,000 for software and systems updates.[32] This data may provide a more accurate picture of the financial demands for statewide implementation but remains limited in its usefulness because every state operates with a different administrative

[30] Grace Ramsey et al., "Protect the Win: An Advocate's Guide to Implementing Ranked Choice Voting," Ranked Choice Voting Resource Center, January 2023, https://www.rcvresources.org/blog-post/march-2023-protect-the-win-an-advocates-guide-to-implementing-rcv.
[31] Francis Neely and Jason McDaniel, "Report Ranked Choice Voting in Practice: Implementation Considerations for Policymakers," National Conference of State Legislatures, 2022, https://www.ncsl.org/elections-and-campaigns/ranked-choice-voting-in-practice-implementation-considerations-for-policymakers.
[32] Nivea Krishnan, Brian Jackson, and Tiffany Montemayor, Reflection on Alaska's Ranked Choice Voting Implementation Process, 2024.

budget. Furthermore, a state's unique demographic and geographic profile may require further investment. In Alaska's case, nearly 60% of the state's residents lack broadband access, leading state election administrators in 2022 to invest in mail-based educational materials and radio programming, which are outreach mechanisms other states may not need to allocate as much money to.[33]

State-specific administrative costs aside, federal legislation incentivizing state-level transitions from plurality to RCV systems could offset implementation costs. U.S. Senators Michael Bennet (D - Colorado) and Angus King (I - Maine) reintroduced the Voter Choice Act in November 2023, which "provides $40 million in federal grants to cover up to 50% of the cost for state and local governments that choose to adopt RCV."[34] Deb Otis, Director of Research and Policy at FairVote, celebrated the bill's reintroduction by stating that the Act will "give more Americans the opportunity to try RCV – by helping to offset any voter education and implementation costs with approaches that further boost election security and voter confidence."[35] Given that RCV is a rising but still underutilized voting system in the United States, federal legislation has the potential to make the initial implementation of RCV more accessible to state and local jurisdictions that would otherwise lack the financial resources to execute it. Accessibility, however, means little if voters fail to accept the new system.

VOTER AND CANDIDATE EDUCATION

Implementing a new voting system requires substantial investment in (and varied approaches to) voter education. The Center for Civic Design's list of best practices for designing voter education includes: presenting information in plain language, working with qualified translators to create in-language materials, and applying the Bite-Snack-Meal approach to give voters the right amount of information at the right time.[36] An experimental study run during San Francisco's general election in 2020 lends more support to the idea that the benefits of RCV may

[33] Krishnan, Reflection, 2024.
[34] Michael Bennet U.S. Senator for Colorado, "Following Election Day, Bennet, King Reintroduce Bill to Promote Ranked Choice Voting," press release, November 15, 2023, https://www.bennet.senate.gov/public/index.cfm/2023/11/following-election-day-bennet-king-reintroduce-bill-to-promote-ranked-choice-voting.
[35] Will Mantell, "Voter Choice Act Reintroduced in the Senate," FairVote, November 15, 2023, https://fairvote.org/press/voter-choice-act-reintroduced-23/.
[36] "Best Practices: Designing Ranked Choice Voting Voter Education," Center for Civic Design, May 24, 2018, https://civicdesign.org/topics/rcv/.

not be realized by all citizens. Researchers found that uninformed voters were far less likely to rank the candidates compared to their informed counterparts.

Every implementing jurisdiction, at a minimum, has a page on their Secretary of State's website (or administrative equivalent) dedicated to explaining ranked choice voting. Even so, maximizing the usage of RCV requires that election administrators proactively reach out to voters throughout their jurisdiction. Tiffany Montemayor, the Public Relations Specialist for Alaska's Board of Elections during their implementation in 2022, outlined their comprehensive state-led approach to voter education that met the needs of their constituency. For example, Montemayor highlighted that there are thirteen languages spoken in Alaska, eleven of which are native, traditionally unwritten languages.[37] To make sure all voting information was accessible, her team translated every material, from informational videos to mailed pamphlets, by working with panels of native speakers. Montemayor also adopted the Center's Bite-Snack-Meal approach by pivoting from tabulation-based information to ballot completion information as she learned the latter was what concerned voters more.[38]

Voter education was a cornerstone of Maine's statewide RCV implementation process, as well. In contrast to Alaska's expansive budget, Maine's election administration had virtually no funding for RCV implementation. As such, they prioritized efficiency in resource development, concentrating on outreach via their website, social media platforms, and in-person meetings.[39] The Director of Communications for Maine's Secretary of State, Kristen Muszynski, reported at the RCV Resource Center's 2019 Symposium that the sample marked RCV ballots on their website were especially helpful to voters, echoing Montemayor's findings that ballot completion should be a focus of RCV voter education. Muszynski and her team also conducted a library tour around the state to engage constituents in person.[40]

Alaska and Maine's differing voter education strategies are largely a product of 1) their state's unique demographic considerations and 2) the financial resources available to their election administration teams. A federal bill that subsidizes RCV implementation in state and local jurisdictions would likely allow for greater outreach beyond the minimum website and

[37] Krishnan, Reflection, 2024.
[38] Krishnan, Reflection, 2024.
[39] Kristen Muszynski, "February 2020: Statewide Voter Education in Maine," 2019 Ranked Choice Voting Resource Center Symposium, 2024.
[40] Muszynski, "Statewide Voter."

physical ballot instructions updates that all jurisdictions must execute. At the same time, federal funding's tendency to demand same-ness between states may produce requirements that prevent the implementing jurisdiction from relying on that funding for targeted constituent outreach.

Either way, feasibility along the metric of voter education is therefore not a question of *if* a state is able to execute it, but rather the degree of their execution, which will have a direct impact on RCV usage by voters and voter turnout more broadly. Execution capacity is also impacted by staff bandwidth. Muszynski reported that there were only fourteen people in Maine's Election Division, and of those fourteen, even fewer were able to field questions about specific ballot completion concerns.[41] Similarly, Alaska's Division of Elections had twenty-two full-time staff responsible for executing statewide and local elections since the state does not use a county structure.[42] While projected capacity with a larger staff is largely speculative, insofar as outreach effectiveness and effort generally have a positive correlation, staff capacity may also impact how many voters actually rank candidates when given the option.

TECHNICAL IMPLEMENTATION

RCV tabulation requires a certain functionality from the voting system used by the implementing jurisdiction. This makes technical considerations one of the foremost factors to consider when evaluating feasibility. There are ten voting system manufacturers registered with the U.S. Election Assistance Commission (EAC), and four have certain versions of their software with RCV capabilities.[43] However, every software differs in terms of the physical voting equipment they are compatible with, the number of rankings it can accommodate, and whether they can tabulate internally or if tabulation runs through a separate module.[44] If a jurisdiction's existing physical equipment and/or voting tabulation software cannot accommodate RCV, they will incur additional administrative costs to update those systems to ensure compliance, in turn increasing the budget necessary to execute RCV. In Alaska's case, they had replaced decades-old

[41] Muszynski, "Statewide Voter."
[42] Krishnan, Reflection, 2024.
[43] "Registered Manufacturers," U.S. Election Assistance Commission, 2024, https://www.eac.gov/voting-equipment/registered-manufacturers.
[44] "Election Planning," Ranked Choice Voting Resource Center, https://www.rcvresources.org/election-planning.

voting equipment and software with Dominion Voting Systems in early 2020, so they only needed to pay the cost of updating the Dominion software to a version with RCV capabilities.[45]

The cost of updating voting equipment is high. In fact, state-level progress in updating voting systems since 2016 is primarily the result of an "influx of federal funding for election security," according to the Brennan Center for Justice.[46] Updating voting equipment is a necessity for states regardless of RCV, but the unique tabulation method for RCV makes the purchase and/or update of voting systems inevitable for most jurisdictions. All that said, a landscape analysis of national RCV system capability shows that twenty-six states are preparing for RCV or are RCV ready, and another nineteen states are RCV capable, meaning that 90% of the country's voting systems are at a minimum moving toward RCV readiness.[47] As such, from a technical perspective, RCV implementation is growing more and more feasible nationwide.

LEGAL DEFENSE

RCV is typically passed through a citizen's initiative, such as a ballot measure, or through a piece of legislation. Regardless of the method, neither avenue is required to consider the legality of their proposed implementation process. Thus, the first step for election administrators is to square the legislation with existing statutes and their voting systems. Alaska's 2020 ballot measure included a clause that stated voters could not skip two rankings when ranking candidates; however, their existing Dominion system did not have the ability to catch these skips. So, Alaska election officials had to work with Dominion to update their system and certify it in time to implement it in their 2022 elections.[48] In addition to technical compliance, election administrators may need to pass additional administrative regulations to implement the law. Virginia's Administrative Code, for example, has a chapter devoted to ranked choice voting, which includes definitions for RCV terminology, transparency and outreach guidelines for election administrators, and tabulation methodology.[49] This aspect of legal defense involves administrators working with legal counsel to define how the RCV law

[45] Krishnan, Reflection, 2024.
[46] Derek Tisler and Lawrence Norden, "Costs for Replacing Voting Equipment in 2024," Brennan Center for Justice, 2024, https://www.brennancenter.org/our-work/analysis-opinion/costs-replacing-voting-equipment-2024.
[47] "RCV Maps," Ranked Choice Voting Resource Center, https://www.rcvresources.org/state-assessments.
[48] Krishnan, Reflection, 2024.
[49] "Administrative Code: Chapter 100. Ranked Choice Voting," Virginia Law, https://law.lis.virginia.gov/admincodefull/title1/agency20/chapter100/.

passed in their jurisdiction interacts with existing regulations and to ensure compliance throughout implementation.[50]

The other dimension of legal defense involves addressing lawsuits raised by RCV. The jurisdiction's election administrators take a neutral stance on RCV, but legal challenges to the system can significantly stall the administration's implementation timeline. This was the case in Maine, where voters approved RCV on November 8, 2016, but the system did not apply to elections until after January 1, 2018. In between, the Maine Senate requested an advisory opinion from the state's Supreme Judicial Court regarding the constitutionality of RCV as applied to general elections for State Representative, State Senator, and Governor. After two years of a combination of advisory opinions, failed legislation, and vetoes, on April 17, 2018, the Court issued its decision on the Senate's case, finding that RCV would be in effect for the state's primary on June 12, 2018.[51] The Secretary of State had begun RCV implementation prior to the decision, but the short turnaround time between the ruling and the state's primary still placed a heavy burden on Maine's Election Division.[52] While legal challenges in and of themselves raise barriers to implementation, the rulings on these challenges often side with RCV constitutionality. RCV systems have been upheld by several state Supreme Courts, including Alaska, Massachusetts, and Minnesota. In fact, Maine is the only outlier, with its Supreme Court issuing an advisory (non-binding) opinion that the election of certain state officials using RCV violated provisions of the state Constitution.[53] Legal defense is, therefore, a primarily offensive implementation task for election administrators to pre-empt legal challenges.

POLITICAL DEFENSE

No implementation analysis would be complete without considering political factors. Interestingly enough, RCV faces strong support and opposition from both major political parties, impacting the probability of its initial adoption more than its implementation post-passage. RCV is clearly on the rise, with up to four states (Colorado, Idaho, Nevada, and Oregon) holding

[50] Krishnan, Reflection, 2024.
[51] "Bureau of Corporations, Elections & Commissions," Maine Department of the Secretary of State, https://www.maine.gov/sos/cec/elec/upcoming/rankedchoicefaq.html.
[52] Muszynski, "Statewide Voter."
[53] "Ranked-Choice Voting: Legal Challenges and Considerations for Congress," Congressional Research Service, October 12, 2022, https://crsreports.congress.gov/product/pdf/LSB/LSB10837.

referendums on adopting the system this fall.[54] One reason for its rising popularity may be the splintering of Republican standpoints on the system. In 2022, the Republican National Committee wrote a resolution unequivocally rejecting RCV, calling on "Congress, state legislatures, and voters to oppose ranked choice voting in every locality and level of government and return elections to easier systems that have worked for centuries for fair and transparent elections."[55] Despite this national-level condemnation, several solidly red states use RCV. In Utah, twenty-one cities have held ranked choice elections for the past three years.[56] Virginia Republicans also used RCV in 2021 to choose Glen Youngkin as the party's nominee for governor.

Equally interesting is that some high-profile Democrats are among RCV's opponents. Governor Gavin Newsom, for example, vetoed California State Senate Bill 212 in 2019, which would have expanded the use of RCV in the state on account that its usage in several California jurisdictions "has often led to voter confusion, and that the promise that ranked choice voting leads to greater democracy is not necessarily fulfilled."[57] While the stances of policymakers undoubtedly pose barriers to passing RCV legislation through the traditional bill process, once passed, partisan dynamics become less influential in terms of implementing the system. Alaska's election officials recalled their interaction with misinformation campaigns regarding RCV in 2022, yet reported that their strong partnerships with local media channels and diversified approach to voter outreach made combating that misinformation easier.[58] Moreover, citizen-driven policy proposals for RCV implementation are growing more popular, meaning that voters rather than policymakers have an outsized say in whether or not they use RCV.[59] Nevertheless, political opponents to RCV may issue challenges through the court process to delay implementation, thus underscoring the aforementioned importance of legal defense.

[54] Michael Wines, "Liberals Love Ranked-Choice Voting. Will Conservatives?" *The New York Times*, February 8, 2024, https://www.nytimes.com/2024/02/08/us/ranked-choice-voting-elections.html?unlocked_article_code=1.T00.dJcB.YLFD_T2kjov8&smid=nytcore-ios-share&referringSource=articleShare&sgrp=c-cb.
[55] "RESOLUTION TO OFFICIALLY OPPOSE RANKED CHOICE VOTING ACROSS THE COUNTRY," Republican National Committee, 2022, https://prod-static.gop.com/media/2-RESOLUTION-TO-OFFICIALLY-OPPOSE-RANKED-CHOICE-VOTING-ACROSS-THE-COUNTRY.pdf.
[56] Wines, "Ranked-Choice Voting."
[57] Gavin Newsom, "Office of the Governor Veto Message," California Governor, October 13, 2019, https://www.gov.ca.gov/wp-content/uploads/2019/10/SB-212-Veto-Message.pdf.
[58] Krishnan, Reflection, 2024.
[59] Wines, "Ranked-Choice Voting."

CONCLUSION

While not adopted federally, members of Congress have pushed for RCV on multiple occasions, from HR 4464 in 2019 to HR 3863 in 2021. These bills have either sought to require RCV use for federal elections or provided incentives for states to implement it by subsidizing implementation costs. Across all five RCV factors (administrative costs, voter and candidate education, technical implementation, legal defense, and political defense), it is clear that federal support can only make implementation more feasible on a national scale. Not only are most states working toward equipment and software updates that will make them RCV capable, but the practice is constitutional and can be sufficiently understood by voters with the appropriate outreach. This paper reveals that the feasibility of implementing RCV for federal elections is directly correlated to the degree of investment, both financial and otherwise, made into implementation. The question is not whether RCV *can* happen but rather how *well* it can be executed.

The mere presence of RCV on the ballot in Nevada, Oregon, Colorado, and Idaho this November is likely to drive nationwide policy conversations about voting rights and election reforms. Voters' decisions in these states will reflect our nation's preparedness for the kind of wide-scale, systemic reform that is needed to combat decades-long issues of voter suppression and unequal representation. Thus, RCV is no longer a thought experiment but a realistic policy option that must be carefully considered by policymakers, analysts, and voters.

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