

CHAPTER FIVE

THE PATHS TO REFORM: COMBATTING THIRD-PARTY CONSTRAINTS

A coordinated campaign to attack many of the barriers to minor party success should be effective even if some constraints remain. A series of independent electoral reform efforts could set the stage for a transformation to multiparty democracy because the hurdles currently work together to keep the unstable two-party system in place. According to Gary Cox, altering just one of the major institutional constraints on third parties can have a substantial effect on diluting bipartism.¹ Changes in electoral law are especially promising because any decrease in the electoral conversion bias will have an impact on the propensity to create a multiparty system.

There are several proposed strategies for challenging the minor party constraints and each may play a role. As Diana Dwyre and Robin Kolodny put it,

One can easily imagine three sources of change: pressure from within the major parties, the court system, and the ballot box. Each of these sources of change is likely to have the most effect, respectively, on the cultural biases, legal obstacles, and institutional hurdles that minor parties face.²

This chapter explores each potential source of change, assessing the most likely targets for each approach.

¹ Gary W. Cox, *Making Votes Count*, Political Economy of Institutions and Decisions (Cambridge: Cambridge University Press, 1997), 70.

² Diana Dwyre and Robin Kolodny, "Barriers to Minor Party Success and Prospects for Change," in *Multiparty Politics in America*, ed. Paul S. Herrnson and John C. Green (Lanham, MD: Rowman & Littlefield Publishers, 1997), 181.

First, potential reforms are assessed for their feasibility as legislative proposals. Second, the chapter explores strategies for alleviating constraints through court intervention. Third, the chapter studies the role of direct initiative campaigns in building multiparty democracy. Next, the chapter shows that interest groups and academics can help bring about a multiparty system. Finally, the chapter investigates key issues involved in producing institutional change, including the centrality of the electoral system, the role of the media, and methods of financing.

Legislative Action

Legislatures are the obvious first place to turn to alter laws. Reforms enacted by Congress and state legislatures are a potential path to a multiparty system because legislative bodies have the power to remove many of the obstacles mentioned previously. According to Howard Scarrow, legislative action has historically played a role in party system transformation: "Contemporary party systems have been shaped by legislative actions taken at particular 'strategic points' in the nation's development."³

The problem is that all of the state legislatures and the Congress are controlled by Democrats and Republicans who will likely only work in their own interest. Thus, reforms that increase electoral competition are not high on the agenda. As Scarrow says, "Legislatures controlled by the major parties outlawed fusion candidacies; today, New York does not do so because governors and many legislators feel dependent on the minor

³ Howard A. Scarrow, "Duverger's Law, Fusion, and the Decline of American 'Third' Parties," *Western Political Quarterly* 38 (Winter 1985): 644.

parties."⁴ The solution is to pursue legislative reform that is in the interest of the party in control of the legislature.

Instant Runoff Voting

The most promising reform for adoption through legislative action is implementation of Instant Runoff Voting (IRV). IRV is designed to solve the problem of third-party candidates and independents being considered "spoilers" because they take votes away from the candidate closest to their ideological perspective. It allows citizens to rank the candidates by order of preference. The candidate with the least first place votes is eliminated in the first round of tabulation; the votes for the eliminated candidate are then transferred to the second choice of the voters who chose that candidate. This process continues until one candidate receives over half of the votes. Thus, no vote would be wasted. One could rank the Libertarian candidate first, the Reform Party candidate second, and the Republican candidate third; this vote still would not make the Democrat any more likely to win than if one ranked the Republican first.

This voting system has a chance of passage because it may help the major party in power. If the Democrats are in power but the Greens have caused them to lose a few races, for example, they may be willing to consider IRV. As Vermont state representative Terry Bouricius put it, "Established politicians can recognize how [IRV] can benefit them, at least in the short term, even as in the long term, it opens up third-party participation."⁵ All three Vermont gubernatorial candidates endorsed IRV.⁶

⁴ Ibid.

⁵ Terry Bouricius quoted in Alisa Solomon, "Taking Back the Vote," *The Village Voice*, 22 November 2000. Available: <<http://www.villagevoice.com/issues/0047/solomon.shtml>>. Accessed 1 March 2001.

Three Senators have introduced an IRV bill in Washington that covers elections for the state legislature, presidential electors, and Congress. Legislators in Maine, North Carolina, Massachusetts, Minnesota, Oregon, and Utah have introduced IRV bills that cover statewide offices.⁷ A New Mexico bill to use IRV passed one house but was killed in the other despite support from the Democrats and Greens.⁸ Senate Bills to require IRV for state offices have been introduced in Hawaii and Maryland as well.⁹ Even the California Assembly Speaker has introduced a bill to use IRV for special elections for statewide office.¹⁰ California activists are hoping to pass enabling legislation to allow localities that are not charter cities to establish IRV.¹¹

Proportional Representation

Though much less likely, changing the legislative electoral system would be a key to building a multiparty democracy. Proportional representation typically uses multi-member districts with a principle of full representation. Voters can then choose an ideological representative rather than merely a geographic one, creating what has been

⁶ Rob Richie, *Year End Report, 2000* (Takoma Park, MD: Center for Voting and Democracy, 2001). Available: <http://www.fairvote.org/e_news/yearend2000.htm>. Accessed 1 March 2001.

⁷ Richard Winger, "Alternative Voting," *Ballot Access News* 16 no. 10 (2001). Available: <<http://www.ballot-access.org/2001/0101.html>>. Accessed 3 March 2001; Californians for Proportional Representation, *PR/IRV Legislation* (Sacramento: Californians for Proportional Representation, 2001). Available: <<http://www.fairvoteca.org/legtable.htm>>. Accessed 1 March 2001.

⁸ Californians for Proportional Representation, *PR/IRV Legislation* (Sacramento: Californians for Proportional Representation, 2001). Available: <<http://www.fairvoteca.org/legtable.htm>>. Accessed 1 March 2001.

⁹ Midwest Democracy Center, *Instant Runoff Voting: In Your State* (Chicago: Midwest Democracy Center, 2001). Available: <<http://www.instantrunoff.com/states.html>>. Accessed 1 March 2001.

¹⁰ California IRV Coalition, *Legislative Action* (Sacramento: California IRV Coalition, 2001). Available: <<http://www.calirv.org/state/>>. Accessed 1 March 2001.

¹¹ *Ibid.*

called "districts of the mind." Thus, a variety of political parties emerge with every major perspective gaining a voice in the legislature. Even though most of the world's industrial democracies have adopted proportional voting systems to allow for more representative government, America has not. Advocates argue that establishing proportional representation in America would increase voter turnout, produce a more intelligent political debate, allow minority voices to be represented, and solve many of the problems of the current political culture.

Proportional representation is unlikely to be adopted but there is a potential to advance the agenda. Single-member districts have only been required since 1967; multi-member districts were used as late as 1842. The States' Choice of Voting Systems Act, introduced by Cynthia McKinney and Henry Watt, would allow states to implement multi-member districting for elections to the U.S. House, overturning the 1967 law that prevents the adoption of proportional representation by the states.¹² The promoters of the bill are emphasizing that states should have the right to choose their own electoral system.

Without any federal action, states could change the electoral systems for their legislatures. A state representative sponsored a cumulative voting bill in Illinois in 2000 but it did not make it out of committee.¹³ A California bill to require either proportional representation or single-member districts for large school districts passed one house but

¹² Center for Voting and Democracy, *Addressing Common Concerns about Multi-seat House Districts for U.S. House Elections* (Takoma Park, MD: Center for Voting and Democracy, 2000). Available: <<http://www.fairvote.org/library/statutes/scvsa99/wattfacts.htm>>. Accessed 1 March 2001.

¹³ Midwest Democracy Center, *Proposal to Put Cumulative Voting Back on the Ballot* (Chicago: Midwest Democracy Center, 2000). Available: <<http://www.prairienet.org/icpr/CV/proposal.html>>. Accessed 1 March 2001.

failed in the other.¹⁴ State investigations of electoral systems after the 2000 elections could produce more proposals for adopting proportional systems.

The Aftermath of the 2000 Election

Voting system upgrades are a much more likely agenda item that will help advance electoral reform. Eliminating punch-card voting has come to the top of the legislative agenda after the Florida recount. Voting equipment modernization bills are moving at the federal level; they would provide funding for updating punch-card balloting systems.¹⁵ Legislative actions to end punch-card balloting are also proceeding in many states. California may appropriate millions of dollars to update voting equipment. The Georgia governor recently signed a bill to provide uniform updated voting equipment statewide. States and localities that choose to upgrade will be improving the chances of a move to alternative voting systems because touch-screen and optical-scanned ballots are compatible with preference voting but punch-card voting systems are not.¹⁶ Upgrading equipment now will prevent opponents of electoral reform from using concerns about cost to block the implementation of new voting systems such as IRV.

The Florida recount may also serve as an impetus for another approach to electoral reform: the formation of a bipartisan commission on electoral reform. A bill to create a Federal Elections Review Commission has been introduced by Peter DeFazio

¹⁴ Californians for Proportional Representation, *PR/IRV Legislation*.

¹⁵ Ibid.

¹⁶ Caleb Kleppner, *State of the Industry: Compatibility of Voting Equipment with Ranked Ballots* (Takoma Park, MD: Center for Voting and Democracy, January 2001). Available: <<http://www.fairvote.org/administration/industry.htm>>. Accessed 17 April 2001.

and Jim Leach in the 2001 session. The DeFazio-Leach bill has 45 cosponsors.¹⁷ It is being promoted as a non-partisan effort that would not look at election 2000 irregularities but would instead focus on systemic problems of the electoral system. If it passes, the commission will study same-day voter registration and universal registration, ballot access, the Electoral College, IRV, proportional representation, and fusion; the commission would issue findings and recommendations.¹⁸

Britain's experience suggests that commission reports can put electoral reform on the agenda, even if the initial report does not recommend the specific reforms later adopted. The Labour Party's Plant Report did not endorse proportional representation but began a public debate about electoral reform issues. The Jenkins Report, later initiated to study the same basic topics by the current New Labour government, endorsed a version of proportional representation. That set the stage for reforms of the European Parliament elections and produced proportional representation systems for the Scottish and Welsh assemblies. A 1998 Vermont commission recommendation was the basis for an IRV bill that has been introduced in both houses of the legislature.¹⁹

In addition to the DeFazio-Leach bill, the Congress 2004 Commission Act introduced by Alcee Hastings would create a commission to study House size and election method; the bill cites proportional representation as an example of what the

¹⁷ Paula Lee, "Pressure Mounts for Electoral Reform," *Voice for Democracy: Newsletter of Californians for Proportional Representation*, January 2001, 1.

¹⁸ Center for Voting and Democracy, *Bipartisan Federal Elections Review Commission Act* (Takoma Park, MD: Center for Voting and Democracy, 2001). Available: <<http://www.fairvote.org/library/statues/ferc.htm>>. Accessed 1 March 2001.

¹⁹ Midwest Democracy Center, *Instant Runoff Voting: In Your State* (Chicago: Midwest Democracy Center, 2001). Available: <<http://www.instantrunoff.com/states.html>>. Accessed 1 March 2001.

commission would study.²⁰ A private commission with Jimmy Carter and Gerald Ford is also likely to make recommendations for changes to the electoral system.²¹ The American Bar Association and National Association of County Officials are also issuing reports. At least 11 states have created task forces to study electoral reform following the Florida recount. Most are focusing on voting equipment but each commission could be lobbied to expand their review of potential electoral reforms.

Ballot Access

Having shown that the rigidity of ballot access restrictions is related to inability of third parties to compete, and knowing that whatever the ballot restrictions, the cost in time, energy, and money is enormous for third parties, ballot access reform should be high on the agenda of electoral reformers. The historical examples of the Republicans, who were able to form and rise to power quickly from lack of ballot access requirements, and Roosevelt, who was able to gain ballot access in 49 states after his post-convention departure from the Republicans in 1912, show that removing ballot access restrictions could be a major opportunity for third-party success. Ansolabehere and Gerber conclude that easing ballot access requirements for major parties would even increase party competition: "If all states required only the most minimal standards, say an affidavit of residence, then the fraction of uncontested seats could be cut in half, and retirement rates would rise as well."²²

²⁰ Californians for Proportional Representation, *PR/IRV Legislation*.

²¹ Miles S. Rapoport, "Democracy's Moment," *The American Prospect* 12, no. 4 (2001). Available: <<http://www.prospect.org/print-friendly/pring/V12/5/rapoport-m.html>>. Accessed 20 March 2001.

²² Stephen Ansolabehere and Alan Gerber, "The Effects of Filing Fees and Petition Requirements on U.S. House Elections," *Legislative Studies Quarterly* 21 no. 2 (1996): 260.

There is some potential for legislative reform of ballot access. This session, ballot access bills in nine states would improve ballot access laws for third parties, including one that would allow major party primary voters to sign independent petitions. Five other bills are likely to be introduced soon.²³ The Appleseed Electoral Reform Project has developed a model ballot access law that could be adopted by any of the 50 states. The model act allows political parties to obtain ballot access through petition of 0.1 percent of registered voters, party registration by 0.05 percent of registered voters, or votes in a previous election for statewide office of at least 1 percent.²⁴ The act also allows petitioning by district, mandates space for write-in candidates and gives the same 0.1 percent requirement for petitioning by independent candidates. Lastly, it allows candidates of all parties to run on whichever party line they select.

Because most of the energy and resources spent on ballot access are related to regulation of petitions and not the sheer number of signatures required, reforms of the process included in the Appleseed model law are also important to third-party potential. The model law sets a filing deadline of August 15 and a beginning petition date of January 1. It eliminates regional distribution requirements and says that no other petitioning regulations shall be initiated by the state.

Merely ending discriminatory ballot access requirements would be an effective reform. The fifty states have each enacted a different set of requirements for new parties to gain access to the ballot. As a result, small parties in some regions have better

²³ Richard Winger, "Ballot Access Bills Introduced in 9 States," *Ballot Access News* 16 no. 11 (2001). Available: <<http://www.ballot-access.org/2001/0201.html>>. Accessed 3 March 2001.

²⁴ The Appleseed Center for Electoral Reform and the Harvard Legislative Research Bureau, "Statute: A Model Act for the Democratization of Ballot Access," *Harvard Journal on Legislation* 36 (Summer 1999): 451-470.

opportunities to compete than others and all third parties are faced with bureaucratic hurdles to get on the ballot. Congressman Ron Paul has authored the Voter Freedom Act to outlaw a variety of practices used by the major parties to restrict ballot access. The discriminatory practices that serve to entrench the two-party system include early filing deadlines, fees, and petition circulation restrictions.

Nationwide unified ballot access requirements would go even further in alleviating ballot access problems. Even if the federal standard did not make the laws more lenient, it would at least eliminate the confusion generated by vast differences among state laws. The American Civil Liberties Union has produced a model election law for either state or federal adoption.²⁵ Tim Penney's 1994 bill would have established a uniform federal standard requiring the signatures of 0.1 percent of voters to appear as a candidate for the House or Senate.²⁶ Congress held hearings on several bills to this effect introduced by Paul in 1998. According to John Anderson, however, the reform is unlikely: "Incumbent members of both major parties, with few exceptions, display almost no interest in [ballot access]."²⁷

Reformers have also advanced proposals to alleviate ballot access burdens for parties that run candidates frequently. Minor parties can often stay on the ballot if they maintain a certain number of party registrants. There is no means of identifying party registration in 22 states, however, so allowing other methods of measuring party

²⁵ Jimmie Rex McClellan, "Two Party Monopoly: Institutional Barriers to Third Party Participation in American Politics" (Ph.D. diss., Union for Experimenting Colleges and Universities, 1984), 230.

²⁶ Richard Winger, "The Importance of Ballot Access to Our Political System," *Long Term View* 2 no. 2 (1994): 40-45.

²⁷ John B. Anderson, "Prospects for a Third Party under Our Present Electoral System," *Long Term View* 2 no. 2 (1994): 35.

membership may be effective.²⁸ Many states that do allow registration have closed primaries that leave a disincentive to register with a third party; moves toward open primaries could therefore help third parties. Reformers could also build support for automatic ballot access for several years after the initial ballot qualification. Reforms of ballot access advanced by initiative proponents might also help alleviate third-party ballot access problems. Allowing online signature gathering, for example, would make it substantially easier to collect the required number of signatures.

The Electoral College

Knowing that presidential electoral rules have a tremendous influence on both third-party success in presidential elections and in legislative support, elimination of the Electoral College would be a major step towards a multiparty system in America. According to Abramson et al., overturning the Electoral College would improve minor party representation: "Directly electing the president by popular vote would threaten the Republican and Democratic presidential duopoly."²⁹ Supporters of Electoral College repeal and elimination of the requirement that candidates receive over half the electoral votes or the election is sent to Congress could claim that it would improve voter turnout by ending the "swing state" phenomenon. Most voters agree that the system is unfair and anti-democratic, particularly after the 2000 election.

The chance of passing such a Constitutional amendment through three-fourths of state legislators, however, is slim. The outcry after the 2000 election was not strong

²⁸ The Appleseed Center for Electoral Reform, 469.

²⁹ Paul R. Abramson, John H. Aldrich, Phil Paolino, and David W. Rohde. "Third Party and Independent Candidates in American Politics: Wallace, Anderson, and Perot," *Political Science Quarterly* 110 no. 3 (1995): 366.

enough to enable reform. Multiparty system advocates would also be wise to consider the affects of each reform proposal. According to Rosenstone et al.,

Contrary to popular belief, most current proposals for eliminating the Electoral College would not benefit third parties. The most widely supported plan calls for the direct popular election of the president with a runoff if no candidate receives 40 percent of the votes cast. But as long as a president can be elected with less than an absolute majority of the popular vote, the plan would, for all practical purposes, work like a single-member-district plurality system.³⁰

The best system would be a national IRV election for President but this proposal has yet to gain prominence.

It is much more likely that some state legislatures will adopt the proportional system of electoral vote distribution currently in use in Maine and Vermont. Bills in 15 states would assign electors by congressional district.³¹ This reform would be likely to improve third-party chances but, remembering that Ross Perot did not win a single congressional district in 1992, would probably not be a major advance. In the long term, elimination of the Electoral College must be a priority for multiparty system advocates but it does not seem to hold much immediate promise. The most likely scenario for change is probably an election with a strong third-party candidate that sent the election to the House of Representatives. If America soon has another presidential election where the popular vote is overruled by the Electoral College, it might also produce enough momentum for change.

³⁰ Steven J. Rosenstone, Roy L. Behr, and Edward H. Lazarus, *Third Parties in America: Citizen Response to Major Party Failure*, 2d ed. (Princeton: Princeton University Press, 1996), 257.

³¹ Robert Tanner, "Mountain of Election Ideas as Nation Seeks to Avoid Another Florida," Associated Press, 3 March 2001. Available: <<http://ap.pqarchiver.com/cgi-bin/display.cgi?id=3ac6a15c28a40Mpqaweb1P11018>>. Accessed 31 March 2001.

Voter Turnout

Another area of potential legislative change is reforms designed to increase voter turnout. Third parties will likely have to rely on unlikely voters for support; if reforms allow more people to vote, third parties may benefit the most. According to Minnesota Independence Party Chairman Dean Barkley, "Apathy is the number one enemy. You have to motivate the unmotivated."³² Poor, less-educated, and less likely voters are much more likely to believe that there is no difference between the major parties. Blue-collar workers, for instance, believe that there is no difference between the parties almost twice as often as professionals.³³ About one-third of those who do not vote say they did not vote as a political choice; some even claim they did not vote because they are shut out of the political system.³⁴ Jesse Ventura's 1998 campaign was built on bringing new people to the polls and he succeeded in increasing turnout from just over 53 percent to more than 60 percent.

The most common and effective category of changes to increase voter turnout focuses on voter registration. Same-day voter registration in Minnesota, for instance, was instrumental in Ventura's election. Most states require voters to register several weeks in advance of Election Day, discouraging potential new voters from participating. The six

³² Dean Barkley, "Strategy Problems for Third Parties." Panel discussion at a conference entitled "Independent Politics in a Global World." City University of New York Graduate Center, New York, 7 October 2000.

³³ Micah L. Sifry, "Finding the Lost Voters," *The American Prospect* 11, no. 6 (2000). Available: <<http://www.prospect.org/print-friendly/print/V11/6/sifry-m.html>>. Accessed 17 April 2001.

³⁴ *Ibid.*

states with same-day voter registration have 63.1 percent turnout compared to a national average of 51.2 percent.³⁵

Rudolph Giuliani, John McCain, and other prominent politicians have endorsed the reform. California Assembly Bill 1094 in the 2000 session began as a same day voter registration bill sponsored by Assembly Speaker Hertzburg and supported by the California Democratic Party and the AFL-CIO. It was approved by the Assembly but amended by the Senate to only allow registration up to 14 days prior to an election. In Illinois, two members of the house have introduced same-day voter registration.

Bill Luther and nine other members of the U.S. House have introduced a bill to require all states to allow same day voter registration in the 2001 session. The federal standard does not seem likely but Congress did previously consider encouraging the reform by exempting states with same day voter registration from the "motor voter" legislation.

Other methods of increasing voter turnout may also be popular with legislatures. Voters in several states, most notably California, are mailed comprehensive voter guides before each election. Guides for all states and all elections can be developed that include candidate statements, pro-con discussions of issues, endorsements, campaign contribution information, issue questionnaires, and voting records. The guides could be posted online and mailed or handed to each potential voter to ensure a more informed electorate. Even if voter pamphlets would not increase turnout, they might allow citizens to learn about minor party candidates who are otherwise virtually invisible.

³⁵ Rapoport.

Increasing civic education in high schools and adopting "Kids Voting" experiments that attempt to socialize children into voting have also been shown somewhat effective if accompanied by a focus on how government and candidate choices affect everyday life. Alternative voting methods such as Internet voting may eventually be considered if authentication technology is developed to allow users to vote online in a secure environment that prevents fraud and retains the tradition of the secret ballot.

Executive Actions

The Executive Branch of the federal government could also play a role in improving third-party chances. The government may be able to intervene in situations that are particularly discriminatory against third parties under the Voting Rights Act. After the Florida fiasco, the Department of Justice, the U.S. Commission on Civil Rights, and the Federal Election Commission are all likely to produce recommendations for electoral reform based on the complaints they received.³⁶ If third parties file complaints with executive agencies on a regular basis, the executive agencies might play an important role in challenging state and local laws. If an ethnically-based third party made it a practice to challenge state laws on racial grounds, the government might be willing to intervene.

Legal Strategies

Many of the impediments to third-party success might also be challenged in the courts. Theodore Lowi says that dismantling the two-party system will take "a full scale

³⁶ Ibid.

frontal assault on state laws, which takes money and litigation."³⁷ One overall problem is that courts are reluctant to interfere in "political questions" without "judicially discoverable and manageable standards for resolving it," as decided in *Baker v. Carr*.³⁸ In another potentially damaging precedent, the Supreme Court has also ruled that "Ballots serve primarily to elect candidates not for political expression."³⁹ The Court's voting rights jurisprudence has generally moved from disallowing the exclusion of entire groups to eliminating the dilution of an individual's vote.⁴⁰

Even under this precedent, electoral rules that entrench a two-party system are suspect. If damage to free speech and association could be demonstrated in the case of third-party exclusion, most barriers to third parties could be challenged in courts; regulations of First Amendment rights, after all, must be "narrowly tailored" to "advance compelling state interests."⁴¹ As Law Professor Samuel Issacharoff puts it,

If the freedom of expression and association clauses of the First Amendment may be construed to carry an equivalent of the antiestablishment provisions of the religion clauses, then the purposeful creation of rules seeking the establishment of the two major parties should be highly suspect.⁴²

³⁷ Theodore Lowi, "What's Wrong with the Two Party System?" Panel discussion at a conference entitled "Independent Politics in a Global World." City University of New York Graduate Center, New York, 7 October 2000.

³⁸ Mary Inman, "Symposium: Comment: Change through Proportional Representation: Resuscitating a Federal Electoral System," *University of Pennsylvania Law Review* 141 (May 1993): 2040.

³⁹ James Gray Pope, "Fusion, Timmons v. Twin Cities Area New Party, and the Future of Third Parties in the United States," *Rutgers Law Review* 50 (Winter 1998): 479.

⁴⁰ Samuel Issacharoff, "Supreme Court Destabilization of Single-member Districts," *Chicago Legal Forum*, 1995, 210.

⁴¹ Richard L. Hasen, "Entrenching the Duopoly," *Supreme Court Review*, 1997, 342.

⁴² Issacharoff, 234.

In his *City of Mobile v. Bolden* dissent, Justice Marshall points out that victims of minority vote dilution cannot be expected to support the political system if they are not given adequate representation.⁴³

The Court's most recent election decision could also serve as an important precedent. According to Lani Guinier, "[*Bush v. Gore*] could help open the local courthouse doors to election reform."⁴⁴ The language the court used in its decision, Guinier says, will help ignite local lawsuits against unfair electoral procedures. In *Bush v. Gore*, the Court ruled,

Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another.... We have observed that the idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.⁴⁵

According to Richard Winger, *Bush v. Gore* will help win several types of cases pursued by third parties: first, lawsuits against refusals to tally write-in votes; second, lawsuits against ballot labels for major parties but not for minor parties; third, lawsuits against ballot designs that place the major parties in a more prominent position; and fourth, ballot access cases in states that disallow write-in votes.⁴⁶ At the very least, *Bush v. Gore* has

⁴³ Inman, 2019.

⁴⁴ Lani Guinier, "A New Voting Rights Movement," *New York Times*, 18 December 2000, sec. A, p. 27.

⁴⁵ *Bush v. Gore*, 531 U.S. ____ (2000). Available: <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=00-949>>. Accessed 17 April 2001.

⁴⁶ Richard Winger, "High Court Expands Equal Protection for Voters," *Ballot Access News* 16 no. 10 (2001). Available: <<http://www.ballot-access.org/2001/0101.html>>. Accessed 3 March 2001.

encouraged angry law professors to work on challenges to electoral law based on the decision, encouraging students to engage in political action.⁴⁷

Ballot Access

Many courts have been the scenes of ballot access battles and the challenges are likely to continue. In *Norman v. Reed*, the Supreme Court affirmed the right to establish minor parties:

The right of citizens to create and develop new political parties derives from the First and the Fourteenth Amendments and advances the constitutional interest of likeminded voters to gather in pursuit of common political ends, thus enlarging all voters' opportunities to express their own political preferences.⁴⁸

Ballot access laws could be challenged under the equal protection clause and a uniform rule could be developed to determine what candidates are on the ballot in every state, perhaps requiring the establishment a national party under FECA.

Local legal challenges, however, may be a more successful strategy. The Green Party is pursuing a case against Georgia's 5 percent petition requirement for third parties, arguing that it violates the state constitution.⁴⁹ Pursuing state level ballot access cases on non-federal grounds is a fertile area for lawsuits. Ralph Nader sued several states over their petition deadline but then dropped the lawsuits after the campaigns, leaving no precedent for the next election in Illinois and North Carolina.⁵⁰

⁴⁷ Lani Guinier, "What We Must Overcome," *The American Prospect* 12, no. 5 (2001). Available: <<http://www.prospect.org/print-friendly/pring/V12/5/guinier-1.html>>. Accessed 20 March 2001.

⁴⁸ *Norman v. Reed*, 502 U.S. 279, 280 (1992). Available: <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=502&invol=279>>. Accessed 17 April 2001.

⁴⁹ Richard Winger, "Other Lawsuit News," *Ballot Access News* 16 no. 10 (2001). Available: <<http://www.ballot-access.org/2001/0101.html>>. Accessed 3 March 2001.

⁵⁰ *Ibid.*

This type of legal battle, with the focus only on the campaign and avoidance of the long-term interest in striking down ballot restrictions, is unlikely to advance the cause. Legal battles pursued in cooperation with other minor parties or by interest groups on behalf of all minor parties are likely to yield long-term results.

The petitioning regulations could also be challenged. According to the Appleseed Center, "Restrictions on who may circulate a petition may violate the First Amendment right to petition."⁵¹ Third parties could be helped by petition circulation lawsuits launched by initiative campaigners because many restrictions apply to both. It therefore may be worth pursuing a legal path alongside organizations that advance ballot initiatives on a regular basis.

Fusion

The courts have also been the major avenue pursued by those who favor fusion as the best option for minor parties. The New Party's court challenges invalidated anti-fusion laws in seven jurisdictions but failed to persuade the Supreme Court in *Timmons v. Twin Cities Area New Party*.⁵² The *Timmons* Court accepted the state interest in preventing interest group exploitation and insuring ballot standards. The Court's acceptance of the justification of maintaining the two-party system, however, is what allowed them to weigh the government interest favorably against the First Amendment burdens.⁵³

⁵¹ The Appleseed Center for Electoral Reform, 463.

⁵² Jason Gray Zengerle, "Hot Fusion," *The New Republic*, 28 October 1996. Available: <<http://www.newparty.org/fu.nr961028.html>>. Accessed 13 February 2001.

⁵³ Hasen, 339.

Because the Supreme Court agreed that preserving the two-party system was a compelling state interest, they set back most hopes of challenging laws preventing third parties on constitutional grounds.⁵⁴ The *Timmons* decision, however, may not be as destructive as initially anticipated. According to James Gray Pope, "The *Timmons* litigation was never really about third-party survival. At stake was not the existence of third parties, but their character and political significance in American electoral politics."⁵⁵

Timmons was the first time that the Supreme Court upheld a law using favoritism of the two-party system as a state interest, despite the fact that the State of Minnesota did not present that argument.⁵⁶ In *Williams v. Rhodes* in 1968, the Court had ruled against Ohio's argument that it needed to protect the two-party system. "The Ohio system does not merely favor a 'two-party system'; it favors two particular parties - the Republicans and the Democrats - and in effect tends to give them a complete monopoly," the Court ruled.⁵⁷ Later, Justice O'Connor endorsed the two-party system in her concurring opinion in *Davis v. Bandemer*; O'Connor's opinion was used in the *Timmons* decision.⁵⁸ At the state level, many kinds of lawsuits can still be pursued against legal obstacles to minor parties but the precedent in *Timmons* is a roadblock to those efforts.⁵⁹

⁵⁴ Pope, 504.

⁵⁵ *Ibid.*, 475.

⁵⁶ Hasen, 331.

⁵⁷ *Ibid.*, 334.

⁵⁸ *Ibid.*, 337.

⁵⁹ Dwyre and Kolodny, "Barriers to Minor Party Success and Prospects for Change," 182.

Proportional Representation

The most radical suggested legal strategy is the assertion that the courts could reform the entire electoral system. Though the reapportionment cases do not use proportional representation explicitly as a baseline, they do assume those results when they make comparisons.⁶⁰ The interpretation of the Voting Rights Act in *Thornburg v. Gingles* held at-large elections to a standard of comparison with single-member districts as a baseline for minority vote dilution. The decision might set back moves to multi-member districts but it involved "importing the existence of a remedy into the question of whether there was a violation," according to Mary Inman.⁶¹ This could be considered laying the groundwork for a comparison of the current electoral system with proportional representation.

In *Johnson v. De Grandy*, the Supreme Court held that proportional representation is a "presumptive defense" in vote dilution claims.⁶² The 1982 Voting Rights Act Amendments included "no proportional representation" language, however, and the Supreme Court has rejected proportional representation as a standard for voting rights cases.⁶³ Nevertheless, Inman says that there may still be precedent: "The Justices' disclaimers regarding proportional representation refer to the use of proportionality as a means of measuring the absence of discrimination... and not to proportional representation as an alternative electoral system."⁶⁴

⁶⁰ Inman, 2028.

⁶¹ Ibid., 2050.

⁶² Issacharoff, 222.

⁶³ Inman, 2050.

⁶⁴ Ibid., 2044.

Inman proposes that the Supreme Court should just mandate the Single Transferable Vote (STV) system for the House of Representatives based on the Fourteenth Amendment.⁶⁵ All states would set a threshold percentage based on their number of House members and votes would be successively transferred from winners and losers based on preference voting until the requisite number of people were elected from that state.

Though that may be unlikely, there is at least room to consider the possibility. According to Issacharoff, "In its voting rights jurisprudence the Court has unleashed a set of expectations for, and constraints upon, the operation of electoral systems that are foundationally destabilizing for districted election systems."⁶⁶ Issacharoff shows that the goals articulated in *Shaw v. Reno* and *Miller v. Johnson* cannot be accomplished under the current electoral system. Clarence Thomas, in a dissenting opinion that argued against the current voting rights position of the Court, noted that alternative voting systems are the only possible means for achieving the results requested. In oral arguments in the *Timmons* case, Supreme Court Justice Stephen Breyer asked why the Court would not have to overturn the entire electoral system if it overturned anti-fusion laws. Theodore Lowi believes it would be appropriate: "A direct test of the constitutionality of our two-party system would be welcome," he said, citing the First and Fourteenth Amendments.⁶⁷

Bush v. Gore may be an important place to start. As a compromise with the swing votes on the Supreme Court, the conservative justices had to endorse an opinion that

⁶⁵ Ibid., 1999.

⁶⁶ Issacharoff, 207.

⁶⁷ Theodore J. Lowi, "A Ticket to Democracy," *New York Times*, 28 December 1996, sec. 1, p. 27.

invoked the Fourteenth Amendment Equal Protection Clause to overturn the Florida Supreme Court decision mandating another recount. Though the Court's conservatives judged the case on grounds unrelated to the Fourteenth Amendment, the opinion stands as precedent for voting rights cases. Since the Equal Protection Clause has already been advanced to support far more than its framers intended, even in previous voting rights cases, the Supreme Court is in a position to support any electoral changes as requirements of the Fourteenth Amendment.

As Issacharoff explains, "Despite the limited application of the one-person, one-vote principle in distinguishing among equipopulational voting systems, the Court nonetheless did infuse these early voting cases with a strong measure of idealized political power." This is most clearly illustrated in *Reynolds v. Sims*, when the Court added that its one-person, one-vote rule should ensure that "each citizen have an equally effective voice in the election of a member of his legislature." The guarantee of an "equally effective voice" in turn would promote a process that yielded "fair and effective representation" for the electorate as a whole, or as the Court later would term it, a process that would be "politically fair."⁶⁸ In *Davis v. Bandemer*, the Court held justiciable "that each political group in a State should have the same chance to elect representatives of its choice as any other political group" but required proof of discrimination against a particular group.⁶⁹ In *Kirkpatrick v. Preisler*, the Supreme Court required "mathematical equality" for seat size in districting cases.⁷⁰

⁶⁸ Issacharoff, 213.

⁶⁹ Inman, 2034.

⁷⁰ *Ibid.*, 2030.

In *Whitcomb v. Chavis*, the Court found that if there was proof of minority vote dilution presented, at-large multimember elections could not be used.⁷¹ This criterion could easily be advanced to support proportional representation instead of single-member districts as the remedy. The *City of Mobile v. Bolden* Court, however, set the standard of proof to "purposeful discrimination." The *Bandemer* majority said that the key issue is whether a particular group is targeted: "[The Equal Protection Clause is violated] only when the electoral system is arranged in a manner that will consistently degrade.... a group of voters' influence on the political process as a whole."⁷² Inman says this is an "illusory" right because of the "high threshold of proof." This is a standard that could be met, however, if the right literature and evidence were advanced in court and if the case involved a member of an ethnically-based third party that gains significant support.

In *Anderson v. Celebrezze*, the Court found that the interest in protecting major parties was not outweighed by First Amendment concerns.⁷³ Inman says that the Supreme Court should review the electoral system with strict scrutiny due to the lack of minority representation.⁷⁴ Since the "one person, one vote" Supreme Court standard required constitutional amendments in most states and reapportionment in almost every state, Inman believes that establishing proportional representation via the Courts would not be an unprecedented burden.⁷⁵ Requiring proportional representation would eliminate the need for redistricting and might obtain public support over time, she says.

⁷¹ Ibid., 2037.

⁷² Ibid., 2035.

⁷³ Hasen, 335.

⁷⁴ Inman, 2023.

⁷⁵ Ibid., 2025.

Most states did indeed have their redistricting plans legally challenged after 1990 and these legal challenges in 2001 could form the basis of a challenge to the electoral system. Issacharoff concludes that a court-ordered move to alternative voting systems is a likely outcome of redistricting dilemmas:

The sum total is a districting process under greater pressure, under greater public scrutiny and judicial oversight, and still unable to deliver the promises of three decades of Supreme Court pronouncements.... These unrealized expectations, more visible than ever, ultimately are destabilizing to the established order of territorial districting. Into this void inevitably will surface renewed attention to alternatives to districting, particularly if these alternative systems emerge as more faithful to the substantive vision of fairness that has animated the case law to date.⁷⁶

If the Supreme Court is unwilling to order proportional representation, they may still be open to upholding proportional representation systems passed by individual states. If states passed proportional representation systems for U.S. House elections, the Supreme Court could uphold them on the grounds that the Constitution allows states to determine "the Times, Places, and Manner of holding Elections for Senators and Representatives."⁷⁷ Alternatively, Congress could pass an additional member proportional representation system and the Supreme Court could at least uphold it under the Fourteenth Amendment.

The Courts could also play a role in other challenges advanced by third parties. The Supreme Court may rule in *Cook v. Gralike* that the Constitution requires neutral

⁷⁶ Issacharoff, 239.

⁷⁷ Inman, 2027.

ballot formats, thus providing precedent to win cases against ballots that discriminate against minor parties with smaller headings or lower placement.⁷⁸

Initiative Campaigns

New Party leader Joel Rogers noted that after failing in the courts and the legislatures, third parties are left with the initiative process as a last option.⁷⁹ Voters in Florida already passed a referendum loosening ballot access laws with 64 percent support.⁸⁰ The public increasingly supports ballot access reform and other initiatives may be proposed to lower the burdens.⁸¹ In order to run successful initiative campaigns, multiparty system supporters will need to develop positive talking points. The Ballot Initiative Strategy Center, which aims to help leftist groups win initiative campaigns, has received some foundation funding and could be an effective vehicle for pursuing reform through initiatives.

IRV will appear on the Alaska ballot in 2002. The Republicans are advancing IRV because they have lost elections because of votes for right-wing parties. IRV is being promoted as a fair voting system that would increase choice. It would apply to the selection of Presidential electors but it would not affect the gubernatorial election because

⁷⁸ Richard Winger, "High Court May Mandate Fair Ballots," *Ballot Access News* 16 no. 8 (2001). Available: <<http://www.ballot-access.org/2000/1116.html>>. Accessed 3 March 2001.

⁷⁹ Joel Rogers, "Can Third Parties Transform the Two-Party System?" Panel discussion at a conference entitled "Independent Politics in a Global World." City University of New York Graduate Center, New York, 7 October 2000.

⁸⁰ The Appleseed Center for Electoral Reform, 454.

⁸¹ *Ibid.*, 452-454.

of a state constitutional requirement.⁸² The Midwest Democracy Center tried to qualify an initiative calling for cumulative voting for the 2000 Illinois ballot but could not collect enough signatures. Illinois requires 60 percent approval for a constitutional amendment and just obtaining a place on the ballot requires 269,000 valid signatures over 18 months.⁸³

Campaign finance reform proposals that would help third parties achieve success have been successful in several states. "Clean Money" campaign finance reform proposals have passed in Maine, Vermont, Arizona, and Massachusetts, all via ballot measures from 1996-1998. Public financing has gained national prominence through these initiative efforts. Even if initiatives fail, they could still be a beneficial tactic in this respect. As Steven Hill put it, "Win or lose, there is no better educational campaign than a voter initiative."⁸⁴

Of the 24 states that have initiatives, California and Oregon by far use it the most.⁸⁵ Circulating an initiative does not in any way guarantee victory but getting a popular initiative on the ballot with significant financial backing can be enough to pass a major alteration in the law. As of 1995, 78 California initiatives had been adopted into law, 31 percent of the 250 that had qualified for the ballot and 8.5 percent of the 910

⁸² Steve Padilla, "Voters Electing New Ways to Cast Ballots," *Los Angeles Times*, 25 June 2000, sec. A1 p. 3.

⁸³ Midwest Democracy Center.

⁸⁴ Steven Hill, *Standing on the Threshold of a Third Party Dream* (Takoma Park, MD: Center for Voting and Democracy, 1995). Available: <http://www.fairvote.org/library/third_parties/dream.htm>. Accessed 1 March 2001.

⁸⁵ Charlene Wear Simmons, *California's Statewide Initiative Process* (Sacramento: California Research Bureau, 1997), 14.

initiatives that have been titled and submitted for circulation.⁸⁶ Twenty-eight of those qualified were constitutional amendments, 46 were statutes, and four were a combination of both statutory and constitutional provisions.⁸⁷

California is the setting for the rise of many political movements that later spread throughout the United States. *The Political Almanac* defines California as the world's most diverse society.⁸⁸ A perceived leader in fashion and lifestyle, California founded the direct democracy movement, personal politics, and the reliance on political consultants. California's reputation for political leadership is mostly the result of laws passed in its progressive era.⁸⁹ California is a pacesetter in terms of the number of initiatives proposed at any given historical point. Interest groups could be responsible; they typically target California first with their proposals.⁹⁰

"There are a number of issues that start in California and once voters pass them, they become national issues," the Co-Director of the Center for Governmental Studies told the *New York Times*.⁹¹ Thus, California could be an important location to begin a major push toward multiparty democracy. Proposition H in San Francisco was the first major attempt at proportional representation in California. It was advanced as a way for the city's progressive community, labor movement, and lesbian and gay community to

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ The National Journal, *The Political Almanac* (Washington: National Journal, 1998). Available: <<http://nationaljournal.qpass.com/members/almanac/1998/ca.htm>>. Accessed 17 April 2001.

⁸⁹ League of Women Voters of California, *Initiative and Referendum in California: A Legacy Lost?* (Sacramento: League of Women Voters of California, 1984), 42.

⁹⁰ John Allswang, *California Initiatives and Referendums* (Los Angeles, California State University Press, 1991).

⁹¹ Todd Purdum, "When Lawmakers Waffle, and Sometimes Before, Voters Turn to the Ballot Measure," *New York Times* 31 March 1998, sec. A, p. 18.

gain representation but even had support from Republicans because they also were not represented.⁹² The 1996 initiative failed despite support from CALPIRG, the San Francisco Democratic Party Central Committee, and Jesse Jackson.⁹³

According to Center for Voting and Democracy National Field Director Dan Johnson-Weinberger, "The reason H failed is because G was on the ballot, which created the current district plan. And more people knew what districts were than preference voting (as the campaign called for a Single Transferable Vote system), and San Francisco had used districts in the 70s and there was a vocal constituency for districts. If G wasn't on the ballot, H might very well have won."⁹⁴ Californians for Proportional Representation ran the losing campaign to adopt proportional representation in San Francisco but has since expanded to pursue electoral reforms statewide. It includes members from several major and minor parties on its Board.⁹⁵

In 2000, charter amendments to endorse IRV for some elections were passed by voters in Oakland by 72 percent to 28 percent and in San Leandro by 63 percent to 37 percent.⁹⁶ When asked what groundwork would have to be laid before Californians for Proportional Representation could attempt to pass a California statewide initiative on proportional representation or IRV, Johnson-Weinberger responds: "In my opinion, 1000

⁹² Steven Hill, *Report from the Trenches: Planting PR in "Winner Take All" Soil* (Sacramento: Californians for Proportional Representation, 1996). Available: <<http://www.fairvoteca.org/measH/aboutH.htm>>. Accessed 1 March 2001.

⁹³ Ibid.

⁹⁴ Dan Johnson-Weinberger, interview by author, untaped, Los Angeles, 13 March 2001.

⁹⁵ Californians for Proportional Representation, *About CPR* (Sacramento: Californians for Proportional Representation, 2001). Available: <<http://www.fairvoteca.org/aboutcpr2.html>>. Accessed 1 March 2001.

activists, enough of a successful lobbying effort to pass PR or IRV through one of the houses and lots of editorial support. IRV is more likely than PR."⁹⁷

Interest Group Activity

Without support from interest groups, reformers will face significant obstacles, whether they pursue legislative action or direct initiatives. Multiparty system advocates must convince opinion leaders to join the reform campaign. Reformers will need to develop an infrastructure of organizations to advance reform; a core of dedicated activists can play a major role in building an electoral reform movement.

The key organization already involved in electoral reform is the Center for Voting and Democracy (CVD). CVD publishes op-eds, fields media inquiries, and lobbies congress on behalf of electoral reform. They have hired a full-time IRV lobbyist in Vermont to convince the legislature to endorse IRV for state legislative elections. Center for Voting and Democracy President John Anderson says that it is a remarkable moment for his organization and for electoral reform efforts:

The attention we received from media, civic groups and elected officials during the controversial ballot count in Florida was simply an exclamation point -- albeit a powerful one --- to a year that has demonstrated just how far 'alternative' election methods have moved into the mainstream of American debate and policy-making.⁹⁸

⁹⁶ Center for Voting and Democracy, *Voters Pass IRV Charter Amendments* (Takoma Park, MD: Center for Voting and Democracy, 2000). Available: <<http://www.fairvote.org/irv/irvwins.htm>>. Accessed 1 March 2001.

⁹⁷ Johnson-Weinberger.

⁹⁸ Richie.

Californians for Proportional Representation, which is associated with CVD, has chapters in Los Angeles, San Francisco, the South Bay, and the East Bay. CVD has helped found Web sites for IRV organizations in six states and over 20 states have email listserves for organizing IRV campaigns.⁹⁹ They have also sponsored several recent university conferences on electoral reform in California.

Interest groups have become the primary actors influencing policy outcomes in an age when mass parties have disappeared. The two dominant parties are largely responsible for the reliance on television in the political debate and the death of grass-roots politics; it is not an inherent condition of our system.¹⁰⁰ This presents two types of opportunities to alternative political organizers. First, the two major parties' focus on media politics has left grassroots organizing strategies open to alternative parties.¹⁰¹ Jesse Jackson's campaign recruited tens of thousands of volunteers nationwide, including many who had never participated in politics before.¹⁰² Jackson's grass-roots campaign included door-to-door work by volunteers; this process visibly showed disenchanted voters that alternatives did exist. Taking the grassroots path would likely include coalitions with unions. Unions can be powerful allies in elections; over 80 percent of union members will vote for a particular candidate if contacted by their union and asked to vote for that candidate.¹⁰³ Nader was able to earn a few endorsements from union

⁹⁹ Midwest Democracy Center, *Instant Runoff Voting: In Your State* (Chicago: Midwest Democracy Center, 2001). Available: <<http://www.instantrunoff.com/states.html>>. Accessed 1 March 2001.

¹⁰⁰ Reynolds, 96.

¹⁰¹ Ibid., 293.

¹⁰² Ibid., 89.

¹⁰³ Mazzocchi and Masters.

leaders but the Democratic Party has been the main recipient of help from organized labor.

Alternatively, without worrying about building a party structure, reformers could attempt to convince interest group leaders to join an independent campaign or formulate a media strategy for an electoral reform movement. Knowing that voters who are aware of candidate issue positions are more likely to support third parties and are likely to look to third-party solutions in times of crisis, the interest group path may be a better option, especially for an electoral reform movement separate from any particular party.

Now that many interest groups have stopped fighting for changes in major party platforms, they may seek independent action. The Progressives relied on non-profit organizations that would today be called "public interest groups" to advance their agenda. The profession of social worker expanded and became a hotbed of social activism.¹⁰⁴ Perhaps groups like government workers or students could play an expanded role in a new movement through organizational development. Mazocchi has noted that community organizers like the Association of Community Organizations for Reform Now (ACORN) need an independent option in order to be effective in local politics.¹⁰⁵ They could also be a base of support from which new parties could emerge; the New Party, for instance, is closely connected with ACORN.¹⁰⁶ Community organizers may also be willing to join the electoral reform movement.

¹⁰⁴ Arthur A. Ekirch, *Progressivism in America: A Study of the Era from Theodore Roosevelt to Woodrow Wilson* (New York: New Viewpoints, 1974), 70.

¹⁰⁵ Tony Mazzocchi, "Can Third Parties Transform the Two-Party System?" Panel discussion at a conference entitled "Independent Politics in a Global World." City University of New York Graduate Center, New York, 7 October 2000.

¹⁰⁶ Reynolds, 193.

Other groups are already taking leading roles in the movement. The Independent Politics Progressive Network (IPPN) launched a campaign for a Voters' Bill of Rights after the 2000 election, including Voting Rights Act extension, abolition of the Electoral College, full "clean money" public financing with free air time for all ballot-qualified candidates, IRV for all executive offices, proportional representation, ballot access reform, and a non-partisan FEC.¹⁰⁷ The campaign began with a "Pro-Democracy Week" leading up to inauguration day and was endorsed by many of those organizing the inauguration day protests. IPPN lacks resources and has been met with skepticism by the New Party and the Labor Party but just intends to build a communication network among independent leftists.¹⁰⁸

The Appleseed Electoral Reform Project at Harvard Law School and American University was founded in 1996 and has created 16 public interest law centers to pursue electoral reform through the courts.¹⁰⁹ The Project has helped challenge ballot access laws, provided advice to electoral reform organizations, held a conference on the two-party system, and encouraged papers and articles on electoral reform.¹¹⁰

The Institute for Policy Studies has organized an electoral reform campaign after the 2000 election with *The Nation* magazine. The Congressional Progressive Caucus, in

¹⁰⁷ Independent Politics Progressive Network, *A Voters' Bill of Rights* (Bloomfield, NJ: Independent Politics Progressive Network, 2001). Available: <<http://www.ippn.org/BofR.htm>>. Accessed 1 March 2001.

¹⁰⁸ Ted Glick, *Unity in Diversity: The IPPN Model* (Bloomfield, NJ: Independent Politics Progressive Network, 1997). Available: <<http://www.ippn.org/OAGlick.htm>>. Accessed 1 March 2001.

¹⁰⁹ Appleseed Electoral Reform Project, *Projects & Accomplishments* (Washington: Appleseed Foundation, 2001). Available: <<http://www.appleseeds.net/center.cfm?id=16>>. Accessed 1 March 2001.

¹¹⁰ Appleseed Electoral Reform Project, *Program Activities* (Cambridge: Harvard Law School, 2001). Available: <<http://www.law.harvard.edu/programs/programactivities.html>>. Accessed 1 March 2001.

parallel, held an "Action Agenda on Electoral Reform" conference on Capital Hill on January 19 to discuss proportional representation and other reforms that would help third parties.

Prominent interest groups have been involved as well. The League of Women Voters is engaged in a long-term study of electoral systems. The U.S. Public Interest Research Groups started a web-based lobbying campaign for IRV and Common Cause has also been discussing the issue.¹¹¹ The NAACP has joined with the League of Women Voters to endorse a modest plan for electoral reform. To be successful, multiparty system advocates will need to expand this network of interest groups, involving representatives of underrepresented social groups, general "good-government" organizations, and citizens groups of all ideological perspectives.

Academic Work

Having shown earlier that third-party success is prevented not only by actual barriers but by the perception that those barriers are unchangeable, opinion makers are likely to have an impact on the viability of an electoral reform movement. University professors could play an important role; the inclination of those who study American politics to support the two-party system has been a major contributor to the system's stability. As Theodore Lowi put it, "The priesthood within the political science and

¹¹¹ Richie.

journalist professions generally embraces with renewed vigor their faith in the virtues of the two-party system as the only way America can be governed."¹¹²

The Supreme Court most likely based its *Timmons* decision on the political science literature endorsing the two-party system without reviewing the pros and cons.¹¹³ Woodrow Wilson, who was both U.S. President and American Political Science Association (APSA) president, advanced a pro two-party system argument in his advocacy of "responsible party government."¹¹⁴ E.E. Schattschneider and V.O. Key continued this tradition as APSA presidents. In 1950, APSA published *Towards a More Responsible Two-Party System*, supporting only reform of the major parties.¹¹⁵

Several recent APSA presidents have promoted multiparty democracy and additional academic work could help advance the electoral reform movement. This study is part of an effort to expand the possibilities and endorse the notion that multiparty politics is possible in America. Raising awareness that third parties have traditionally been actively repressed by law enforcement and by electoral law may help to improve public support for reform.

Political scientists were a key factor in the development of Progressive ideology, applying evolutionary concepts to government.¹¹⁶ Academics paralleled the work of the muckraker journalists by decreasing their emphasis on the state and viewing government as a method for enacting reforms from social pressure. Sociology was born and the

¹¹² Gordon S. Black and Benjamin D. Black, *The Politics of American Discontent: How a New Party Can Make Democracy Work Again* (New York: John Wiley & Sons, 1994), 16.

¹¹³ Hasen, 332.

¹¹⁴ *Ibid.*, 345.

¹¹⁵ *Ibid.*, 346.

¹¹⁶ Ekirch, 28.

economic interpretation of U.S. history became prominent.¹¹⁷ In Wisconsin, the state university's connection to the state government helped advance the Progressive movement.¹¹⁸

More recently, Francis Fox Piven and Richard Cloward led the charge for the Motor Voter legislation, proving that academics can eventually have an impact on electoral reform.¹¹⁹ As a starting point, Instant Runoff Voting is already used to elect the American Political Science Association president.¹²⁰ Comparative government scholars have also explored institutional redesign of American politics to create a multiparty parliament; this emphasis on the abnormal nature of American politics in a global context may help advance the reform movement.

As noted earlier, the modernity debate in academia has spilled over into society in debates over multiculturalism, cultural relativism, and the primacy of science. Contrary to conventional wisdom, it is not necessary for postmodernists to "win" a debate about the nature of truth. As noted earlier, popular culture and political action have already entered a period of postmodernity that favors multiplicity and emphasizes the need for representation. Thus, the rise of the postmodern viewpoint in all disciplines and the cultural studies agenda can help contribute to an environment conducive to multiparty system formation. The postmodern reconception of identity and representation can challenge current politics and create the discursive space for alternatives.

¹¹⁷ Hofstadter, 200.

¹¹⁸ Ekirch, 110.

¹¹⁹ Rapoport.

¹²⁰ Ibid.

As Ekirch has written, the Progressives relied on trends among intellectuals: "As the social sciences, like the natural sciences, gained freedom from the restraints of fixed classification or absolute intellectual order, they too became evolutionary, empirical, and experimental."¹²¹ These trends produced intellectual leaders for the new movement, he says:

Joined together by the new scientific and experimental approach now characteristic of their respective disciplines, the insurgent intellectuals at the turn of the century were able to make their social thought the foundation of the developing ideology of the Progressive movement.¹²²

Intellectual leaders will also need to emerge in order to lead a new progressive movement for multiparty democracy.

The Centrality of Proportional Representation

Support from academics and interest groups is needed for a long-term strategy to create a political environment that allows more radical changes to be considered. According to Steven Hill, "There is no other structural change -- not campaign finance reform, not ballot access laws -- that is as important to the success and longevity of third parties as proportional representation."¹²³ Ron Walters has said that if electoral systems are not changed, all the coalition-building possible still cannot lead away from what he calls "political impotence."¹²⁴

¹²¹ Ekirch, 21.

¹²² Ibid., 33.

¹²³ Hill, *Standing on the Threshold of a Third Party Dream*.

¹²⁴ Ron Walters, "Lifeblood of American Politics of Lock-Up of American Government? The Meaning of the Two Party System," Panel discussion at a conference entitled "The Two-Party System and Its Discontents." American University, Washington, DC, 13 May 1999.

Any proportional representation system adopted by the U.S. would have a substantial impact on the party system. According to political scientist Christopher Allen,

Engaging in some speculation, it is likely that the change to a PR system in the United States would see the instant creation of at least eight parties. There would be rump versions of Democrats and Republicans, of course. But it's expected that there would be some serious growth of Reform, Libertarian, Labor and Green parties. The likely formation of one or more minority-based parties could be envisioned and last but not least, a Christian party.¹²⁵

Building a multiparty system will probably require at least some state experimentation with proportional representation. According to John Berg, America will likely enact some kind of proportional representation: "By 2100, we will move to a system where at a minimum on the state level you can be represented on some basis other than geography," he says.¹²⁶

Proportional representation is central to building a multiparty system because parties can rarely survive unless they achieve a reasonable amount of support in the legislature. A party cannot change the political debate or make itself a good partner until it can challenge both national elections and some legislative races.¹²⁷ New parties have been successful with only a few representatives in the legislature but competitive candidates for executive offices generally require support from at least a few members of

¹²⁵ Christopher Allen, *The Case for a Multi-party U.S. Parliament? American Politics in Comparative Perspective* (Athens: University of Georgia Department of Political Science, 2000). Available: <<http://www.arches.uga.edu/~csallen/parl.htm>>. Accessed 28 February 2001.

¹²⁶ Lisa Zagaroli and Michael Steel, "Two-party System May Die in 21st Century," *Detroit News*, 4 January 2000, sec. A p. 3.

¹²⁷ Robert Harmel, "The Impact of New Parties on Party Systems: Lessons for America from European Multiparty Systems," in *Multiparty Politics in America*, ed. Paul S. Herrnson and John C. Green (Lanham, MD: Rowman & Littlefield Publishers, 1997), 49.

the legislature.¹²⁸ Even gaining a small number of legislative seats can upset the balance of coalitions or give a party blackmail potential.

As John Anderson has said, "In my own personal experience, there was no more damaging argument against a third-party presidential candidacy in 1980 than the one that asked: 'How could you, a third-party candidate, possibly govern, bereft of any support in Congress?'"¹²⁹ Success in the national legislature could mean success as a party throughout the country. According to Black and Black,

If a new party could win 40 or 50 seats in the House of Representatives, or 10 seats in the Senate, it could provide the balance of power on a whole range of policy issues and, more importantly, on the crucial issue of who gets the leadership positions in both the House and the Senate.¹³⁰

The Types of PR

One potential problem is that there are almost as many types of proportional representation as there are advocates. In a Party List system, an ordered list of candidates is prepared and voters then select a party with the list of candidates most representative of their opinions. Candidates on the list are elected corresponding to the proportion of votes given to each party. In the Party List system, party members select the best party candidates or an ordered list of candidates is prepared based on a primary outcome. General election voters then select a party with the list of candidates most representative of their opinions. If a legislature has 100 seats and a party gets 12 percent of the vote, then the first 12 candidates on the party list will be elected.

¹²⁸ Ibid., 56.

¹²⁹ Anderson, 32.

¹³⁰ Black and Black, 170.

In the Single Transferable Vote (STV) system, large geographic districts are drawn with several representatives designated for each. Voters rank all the candidates in order of preference. In an effort to minimize wasted votes, candidates are then elected by achieving a quota level of support. This process continues until the candidates remaining equal the number of representatives allotted to the district. In a three-member district, this process would yield three representatives who had received approximately 33 percent support from the electorate. STV would allow voters to express preferences for one of the wings of a party and would ask voters to rank the candidates for constituency representative.

The same large geographic districts with several representatives are used in the Cumulative Voting system. Voters would be given a number of votes equal to the number of legislative seats in their district and could use all votes on a single candidate or distribute the votes among different candidates.

In a Borda system, voter preferences would be tabulated, giving zero points for a last place ranking, one point for a second-to-last place ranking, and an additional point for each higher ranking; the candidates with the most points would be elected. In a Quota Borda System, representation would be guaranteed to sizable populations; if any pair of candidates had solid support, the one with the higher Borda score would be elected; two would be elected if a set of candidates received double the quota.

The mixed-member system, used in Germany, utilizes a dual vote, one for a constituency representative and another for a party list. Many of the seats in the legislature are reserved for insuring party proportionality. Dual vote systems would allow voters to escape the predicament of having to choose between party and individual

representation. The Hansard Society variation would require that all candidates stand in single member district elections and would insure party proportionality by allocating extra seats to the best losers in particular parties.

A change to STV or a party list system for congressional representatives within a state could be accomplished without a constitutional amendment but a mixed-member system would require constitutional change. Some plans, however, seem too complicated to have a chance of passage in the U.S. According to Allen, "The flaw with the Guinier/McKinney [STV] proposals is that, in attempting to retain a concept of individual candidate representation, such plans shoot themselves in the foot by forgetting to keep it simple."¹³¹

Single-member districts are not required by the Constitution. A statutory change could allow state governments to use proportional representation systems to elect their delegations to the U.S. House of Representatives. States could already experiment with variations of proportional representations in state legislative elections. The idea that proportional representation is the key factor in third-party success is catching on among minor party members. The New Party may take on proportional representation as its new agenda item after the failure of fusion.¹³²

The Possibilities Without PR

There is some evidence, however, that proportional representation may not be the only path to multiparty democracy. Earlier this paper demonstrated that the stability of

¹³¹ Allen.

¹³² Steve Macek, *With Fusion Dead, New Party Weighs Options* (Bloomfield, NJ: Independent Politics Progressive Network, 1997). Available: <<http://www.ippn.org/MAFusion.htm>>. Accessed 1 March 2001.

the two-party system has been untested, even in plurality elections with single-member districts, because many other obstacles have been created for third parties. Libertarian Party Chairman Steve Dasbach believes it is possible for a minor party to be successful in the current electoral system, noting that the Libertarians are improving their financial viability and relying on new media to get their message out.¹³³ Some Libertarians believe that the party could probably focus their resources to elect many state legislative candidates, gaining a foothold for future growth.¹³⁴

In the current electoral system, targeting particular districts might be an effective strategy for gaining legislative representation. The Libertarian Party Chairman says that the party has not focused its resources on a single congressional district because they do not believe they have the money or a celebrity candidate to win anywhere; however, they expect to gain sufficient resources soon.¹³⁵ Neither Perot campaign followed this path to sustainability; despite promises to campaign for legislative races, Perot did not campaign with the hundreds of Reform Party candidates in 1996 and endorsed only one major party candidate.¹³⁶

Other potential strategies could also help third parties gain legislative representation. This study has shown that voting for third parties is positively related to

¹³³ Steve Dasbach, "Are There Viable Alternatives to the Status Quo?" Panel discussion at a conference entitled "The Two-Party System and Its Discontents." American University, Washington, DC, 13 May 1999.

¹³⁴ Terry Savage, "The Libertarian Party: A Pragmatic Approach to Party Building," in *Multiparty Politics in America*, ed. Paul S. Herrnson and John C. Green (Lanham, MD: Rowman & Littlefield Publishers, 1997), 144.

¹³⁵ Steve Dasbach, interview by author, untaped, New York, 14 October 2000.

¹³⁶ John C. Green and William Binning, "Surviving Perot: The Origins and Future of the Reform Party," in *Multiparty Politics in America*, ed. Paul S. Herrnson and John C. Green (Lanham, MD: Rowman & Littlefield Publishers, 1997), 92.

lack of viable competition between the major parties; thus, it might make sense for minor parties to focus on the congressional districts with no major party challenger. When the Libertarian Party contested congressional races that were not otherwise contested in 2000, they usually received 10 percent or more of the vote.

Another strategy would be to convince existing legislators to join a third party. According to Theodore Lowi, a third party must attract Republican and Democratic candidates to run with the third-party label and must elect a core of legislators that can make the difference in major policy decisions.¹³⁷ The progress on this front has been slow but one Minnesota Senator recently switched to Jesse Ventura's Independence Party and the Working Families Party elected one of its members to the New York state assembly in 2000. Proportional representation is thus the reform with the highest likelihood of success but not necessarily the only, or the most feasible, method of building multiparty democracy.

Public Relations and the Media

As shown earlier, many of the barriers to third-party voting are psychological. Knowing that a great deal of strategic voting does take place, and that many voters who preferred third-party candidates chose to vote for another candidate because they feared a "wasted vote," successful efforts to alleviate the psychological concerns are likely to increase the chances of third-party success. Without strategic voting, Perot may have won the 1992 election; it is possible that merely changing the perceptions of potential third-party success could help create the reality of multiparty democracy. The main

¹³⁷ Black and Black, 12.

opponents to reform, according to Black and Black, are "the propagandists of defeat," the opinion leaders engaged in an effort to prove that a new party cannot be successful.¹³⁸

The psychological basis for avoiding third-party voting has no real basis. As Riker has said, "it is objectively the case that one cannot expect to contribute much to the decision process [by voting]. If so, the rational action may be simply to express a preference."¹³⁹ This message will have to be advanced along with a response to the typical concern about helping to elect the candidate that one least likes. According to Labor Party leader Tony Mazzocchi, most of the legislation he favors has been passed by whoever is in power in times of public pressure rather than by his major party allies: "If you look at legislation we favored it's been passed by people you wouldn't vote for," he says.¹⁴⁰ This kind of endorsement of the long-term view and the outside pressure model of change could be an effective answer to concerns regarding the "spoiler effect."

Even if the "wasted vote" phenomenon could not be challenged, perhaps successful third parties could imitate the strategies of the major parties. This "wasted vote" phenomenon could have worked to Perot's advantage, for instance, had he stayed in the 1992 race and atop the polls. In late June, many commentators believed that Clinton was completely out of the race and that it was between Bush and Perot. Perot could have rallied traditional Democratic constituencies by showing that a Clinton vote was a wasted vote. At the very least, the Perot campaign's "don't waste your vote on politics as usual"

¹³⁸ Ibid., 163.

¹³⁹ William H. Riker, "The Two-Party System and Duverger's Law: An Essay on the History of Political Science," *American Political Science Review* 76, no. 4 (1982): 764.

¹⁴⁰ Mazzocchi and Masters.

message would have been much more effective if Perot had maintained second place in the polls.

In addition to attacking psychological blocks to third-party voting, it will also be important to show the advantages of taking the independent route for particular social groups. Organized black political revolts, for example, have been largely successful. In 1948, Henry Wallace targeted blacks with his Progressive Party, which became the catalyst for the rise of racial issues in that year's election. Truman's chief strategist convinced the candidate to place the issue high on his agenda because he was worried about losing the black vote to Wallace.¹⁴¹ After black voters turned out for Democrats in record numbers in 1952 but southerners defected from the Democratic Party to begin building a state's rights party, the Democrats retreated from the black agenda, making concessions to southern opponents of the civil rights movement.¹⁴² In 1956, the largest demographic shift in voting involved blacks switching to the Republicans; because support for Democrats among blacks dropped from 80 percent to 60 percent, civil rights issues were placed higher on the agenda of both parties.¹⁴³ As Piven and Cloward put it, "It was not the rise of a substantial black electoral bloc in the northern states that finally set the stage for civil rights concessions; it was the rise of black defections."¹⁴⁴

¹⁴¹ Piven and Cloward, 198.

¹⁴² *Ibid.*, 200.

¹⁴³ *Ibid.*, 215.

¹⁴⁴ *Ibid.*, 217.

Media Coverage

Perceptions cannot always be changed by logical arguments, however, because the media manages public perceptions. The media sets the agenda of public debate and frames the election storyline, and so it is clear that media problems for third parties must be addressed directly. According to Ralph Nader, however, "You can't ever expect a new political movement to be helped by the media."¹⁴⁵ Despite the difficulty, there have been efforts to try and alter the media landscape. Dasbach notes that the Libertarian Party has been able to use talk radio and the Internet to present its own image more effectively. Knowing that third parties in the past have relied on starting their own vast media networks, current third parties should consider creating their own journalistic endeavors.

A broader electoral reform movement will need to develop a media strategy like that of past major reform efforts. According to Hofstadter, "To an extraordinary degree the work of the Progressive movement rested upon its journalism. The fundamental critical achievement of American Progressivism was the business of exposure, and journalism was the chief occupational source of its creative writers."¹⁴⁶ The reach of the insurgent writers was the primary important difference from earlier eras; popular magazines led the muckraking movement. The muckrakers attacked all major institutions, but particularly focused on business corruption of government.¹⁴⁷ From this history, we can learn that watchdog journalism has a role to play in a new progressive movement. Even if reporters do not specifically advocate moving toward a multiparty

¹⁴⁵ Nader.

¹⁴⁶ Hofstadter, 186.

¹⁴⁷ Ekirch, 61.

system, continued investigations of major party corruption can play an important role in the movement.

The Progressives also challenged corporations directly, successfully pushing for self-regulatory schemes and private reform.¹⁴⁸ Modern reformers could take the same approach with key institutions such as the media. As shown earlier, the horse-race focus of the media trivializes third-party candidates and helps emphasize the "wasted vote" argument. Movements to reform this focus could have positive effects on the future of third parties. The Minnesota Compact, suggested by a 1995 article by Tom Hamburger in the *Minneapolis Star-Tribune* and implemented by the Humphrey Institute and the League of Women Voters for all Minnesota elections since 1996, is an example of a reform scheme that could be modeled in other states. The compact set standards for improving the depth of public campaign discussion.

Hundreds of candidates and media organizations signed the compact and it has served as a self-regulatory measure for both politicians and the media. According to a review by the Annenberg Public Policy Center, newspaper coverage after the compact improved:

Overall, the four newspapers tried to innovate in their coverage of election issues. They took seriously the need to help inform voters about political ads, to provide nuanced coverage of substantive issues, and to provide the information in a way that was meaningful to local people and their concerns. They appeared to be downplaying horse race coverage.¹⁴⁹

¹⁴⁸ Hofstadter, 242.

¹⁴⁹ Joseph N. Cappella and Mark Brewin, *The Minnesota Compact and the Election of 1996* (Philadelphia: Annenberg Public Policy Center, April 1998), 21.

Television news coverage was not as successful, with most stories still covering campaign strategy; in some instances, however, the stations were trying to work to improve their newscasts.¹⁵⁰

The Compact organizers sent materials to community groups to help plan for public forums on the campaign. In the 1996 election, the Compact produced ten debates for the Senate race, all including substantive questions from the press. Third-party candidates, however, were still not included in some debates because they lacked 10 percent support in the polls.¹⁵¹

Compliance with the Compact is voluntary but violations are subject to public scrutiny and are used by candidates as ammunition to challenge opponents.¹⁵² The Annenberg report concluded that the improvement in political discourse from the Minnesota Compact might have had more to do with the simple commitment to change and the thought put into improving coverage rather than the specific provisions of the Compact.¹⁵³ They recommend seminars for journalists on effective political coverage.

Even if the specific provisions of the Minnesota Compact were not endorsed elsewhere, any commitment to improved coverage and less focus on the horse race could help improve media coverage of third parties. Electoral reform advocates should challenge local and national media organizations to make such improvements. In Massachusetts, news organizations have come together to demand more public debates

¹⁵⁰ Capella and Brewin, 22.

¹⁵¹ Ibid., 14.

¹⁵² Ibid., 10.

¹⁵³ Ibid., 23.

from the candidates since 1994.¹⁵⁴ The media could play an important role in forcing major party candidates to invite third-party rivals to the debates; it would only take a few strong commitments by members of the press. Activists also need to convince polling companies to ask preference questions so as to gauge real support for candidates. For example, asking "Regardless of who you think will win, which candidate would you prefer to be president?" changes poll results substantially; many more people voice support for third parties.¹⁵⁵

Since the Fairness Doctrine and Equal Time Doctrine have faced repeal or produced exemptions where they could have helped third parties, enforcing those requirements or implementing new strategies for ensuring media fairness could also play a role in diversifying the opinions expressed in the media. A movement in favor of pluralist media will also help advance a multiparty system. Activists working for universal access and democratization as well as for community-based or radio and television rights will help improve media options. Increasing the numbers of citizen reporters and online activism could also diversify the media environment.

Activists could demand that either the Federal Communications Commission or Congress enforce fairness rules against dominant media companies. When the broadcasters switched from analog to digital, Congress could easily have required free television time for candidates.¹⁵⁶ They missed the opportunity but retain control over the public airwaves.

¹⁵⁴ Ibid., 22.

¹⁵⁵ Black and Black, 125.

¹⁵⁶ Allen.

Activists in the electoral reform movement will also need to improve public relations skills and find allies in the media. In California initiative elections, voters rely on television and newspapers as their most important source of information.¹⁵⁷ To have any hope to pass electoral reform initiatives, therefore, activists must make sure that the media portray the issues positively. Using resources such as the Strategic Press Information Network and other activist media training centers could help electoral reform advocates present a more positive public image. Already, there has been some progress in garnering media support. The *St. Petersburg Times* and *USA Today* editorialized in favor of IRV. Lani Guinier, William Raspberry, and Jim Hightower have also been publicizing electoral reform.¹⁵⁸

The Internet

A move toward a multiparty system will likely coincide with the democratization of the media brought about by the Internet. The history of political action, after all, has been substantially intertwined with a series of advancements in communications media.¹⁵⁹ The Internet is the most democratizing media of all time, promising virtually universal access to publishing. It opens the door to political communication for more parties, groups, and individual activists by dropping the price of entry into the political debate.¹⁶⁰

¹⁵⁷ League of Women Voters of California.

¹⁵⁸ Richie.

¹⁵⁹ Wayne Rash, *Politics on the Nets* (New York: W.H. Freeman, 1997), 56.

¹⁶⁰ *Ibid.*, 130.

This has the potential to alter the way campaigns are conducted. As Ronald Dworkin has said, the "national political 'debate' is now directed by ad executives and political consultants and conducted mainly through thirty-second 'sound bite' television and radio commercials."¹⁶¹ The dominance of television is said to create "sloganeering" and rash decision-making that decreases participation and informed voting. The Internet may be able to serve as an important alternative in future elections. Candidates, advocacy organizations, and individuals have already taken advantage of the opportunities of the World Wide Web.¹⁶² The Ventura for Governor Internet campaign in Minnesota has been credited with using the Internet to bring a large population of new young voters into the political process for the first time.

In the pre-Internet era, it was difficult and time consuming for voters to find information about candidates; mailing and production costs limited the amount of information available.¹⁶³ Many voters make uninformed choices not because they do not care about the outcome of an election but because becoming informed takes too much effort.¹⁶⁴ Particularly for those who feel removed from the political process, the availability of information about candidates is a critical factor in satisfaction with a campaign. The Internet has the potential permanently to correct for the lack of information available about issues and candidates. Ten percent of voters have already

¹⁶¹ Ronald Dworkin, "The Curse of American Politics," *N.Y. Review of Books*, 17 October 1996. Available: <<http://www.nybooks.com/nyrev/WWWarchdisplay.cgi?19961017019F>>. Accessed 1 March 2001.

¹⁶² Nicholas W. Allard and David A. Kass, "Law and Order in Cyberspace: Washington Report," *Hastings Communications and Entertainment Law Journal* 19 (1996): 563.

¹⁶³ Jon Oram, "Will the Real Candidate Please Stand Up?: Political Parody on the Internet," *Journal of Intellectual Property Law* 5 (Spring 1998): 108.

¹⁶⁴ *Ibid.*, 111.

used the Internet to gather information they used in a voting decision.¹⁶⁵ Exit poll respondents said that the information they found on the Internet was simply not available in traditional mediums.¹⁶⁶ They also highlighted the convenience of becoming informed using the Internet and the sheer volume of information available.¹⁶⁷

The Internet allows for new forms of political participation as well; cybervolunteering, including placing links on Web sites, online activism, and sending supportive email to friends, is allowing people previously frozen outside the political landscape to become involved.¹⁶⁸ Young people are currently using the Internet as a tool for political information gathering and expect to depend on the Internet for the remainder of their lives.¹⁶⁹ Internet campaigns should thus be an important part of both third-party campaigns and the movement for electoral reform. It presents an opportunity to work around the mainstream media and still reach a sizeable section of the electorate. Ralph Nader believes it can help increase civic motivation has said: "The Internet is a bright sign in an otherwise dismal picture."¹⁷⁰

The Debates

The presidential debates are another major area of campaign media appearances ripe for change. As noted earlier, debate inclusion increases third-party stature and

¹⁶⁵ Ibid., 115.

¹⁶⁶ Ibid., 119.

¹⁶⁷ Ibid., 112.

¹⁶⁸ Peter Levine, "Online Politics" Panel Discussion at *Online Politics and Democratic Values* Conference, The National Press Club, Washington, 29 March 1999.

¹⁶⁹ Cara Sheppard, *Cyberpoliticking* (Washington: Catholic University of America, 1996).

¹⁷⁰ Nader.

visibility. In *Becker v. Federal Election Commission*, Ralph Nader lost his initial bid to end the corporate-financed Commission on Presidential Debates.¹⁷¹ He is continuing his lawsuit efforts, however, and hopes to convince the Supreme Court to hear the case. Earlier, the FEC had rejected its own counsel's opinion that the debate commission was an election law violation. This had been the basis for a lawsuit against the FEC launched by Ross Perot and John Hagelin in 1996. It is possible that the FEC could overturn its previous position.

More likely, public pressure could force the debate commission to change its standards or force the major party candidates to participate in other debates that included minor party candidates. Ralph Nader tried this public relations campaign in the 2000 election and is convinced that it will be successful in the long term: "Never again will the debate commission have the power to control the process," he says.¹⁷² Laura Murphy Lee suggests two alternative approaches to opening the debates: first, encourage more debate entities to compete with the Commission on Presidential Debates and second, obtain pledges from major party candidates to participate in debates open to more candidates.¹⁷³

Inclusive debates could also be mandated by law, either by legislating that everyone on the ballot must be able to debate or by requiring a pledge to debate with all ballot-qualified candidates as a condition of public financing. The same approaches could be advanced on state and local levels, where third parties have traditionally been

¹⁷¹ Winger, "Other Lawsuit News."

¹⁷² Nader.

¹⁷³ Laura Murphy Lee, "The Debate Debate: A Dialogue on the Problem of Debate Exclusion," Panel discussion at a conference entitled "The Two-Party System and Its Discontents." American University, Washington, DC, 13 May 1999.

more successful at obtaining a place on the stage. Perhaps debate requirements should be included in the "clean money" campaign reform bills currently being advanced in the states.

Financing a Multiparty System

Lack of media attention for minor party candidates is related to the inability to purchase paid media. Knowing that the advertising disadvantage is a major inhibitor to third-party success and that third-party advertising has been successful when made possible, any strategy to increase funding for minor party campaigns would likely improve the chances of reaching a multiparty system. Because ballot access drives almost always use paid signature-gatherers, money would also help overcome other barriers. Funding for conventions could also help candidates improve media coverage.

Remembering that only Ross Perot has had access to similar levels of funding to the major party candidates and that most candidates are outspent more than fifty to one, any policy that leveled the playing field with regard to financing would likely be effective. This study noted that the difference in the relative success of Anderson and Perot was most likely due to Perot's financial advantage; thus any increase in independent candidate funding will improve the chances of success.

Third parties already have the potential to get federal matching funds in primary elections and can even receive general election funding if they reach a 5 percent threshold of votes. Three third-party candidates were given federal matching funds for their 2000 campaigns: Buchanan earned \$4,326,522, Nader earned \$723,308, and Hagelin received

\$650,347.¹⁷⁴ On the state level, Jesse Ventura raised \$35,000 so that he could get one-third of a million dollars in public financing, half his campaign budget. The financing, however, was not guaranteed; it only came after the election because he received 5 percent of the vote. Thus, banks were unwilling to supply him with a loan until late in the campaign; to counteract this, he was able to generate \$1,500 loans from visitors to his Web site.

Public Financing

Campaign finance reform has generally hurt rather than helped third-party chances, so it might be assumed that campaign finance proposals will not be likely to improve the situation. However, one method of campaign finance reform will improve third-party chances drastically: public financing for ballot-qualified candidates who accept contribution limits and raise a certain amount of seed money financing. The public financing is usually combined with free airtime from broadcasters, which would also improve third-party prospects.

Public Campaign's "clean money" campaign finance reform proposal is the most prominent of the reforms that would help independents. The public funding campaign is much further along than other electoral reform campaigns. As IPPN compared the efforts,

There is already much work and a number of victories that have been won as far as public financing in Maine, Vermont, Massachusetts, and Arizona, grassroots organizations hard at work in the majority of states, and a well-funded national organization, Public Campaign, continuing and pushing forward these efforts. There is much less work and hardly any victories that have been won in the area of PR/IRV, although there has been growing recognition of the critical importance

¹⁷⁴ Winger, "Other Lawsuit News."

of this reform thanks to the work of the Center for Voting and Democracy, the Greens and other groups.¹⁷⁵

Public financing is an effective response to a campaign finance debate that has been left in gridlock with no known escape route to solve for the concerns of the reformers and yet appease those that have significant problems with the limitation of political speech. Most campaign finance reform is aimed at the money supply but allowing free television time and providing a standard amount of public funding is aimed at the demand side.

Ideally, other reforms could be advanced that would be more beneficial to third parties. Challenger scholarships for needy candidates who have demonstrated support would be helpful. Relaxation of contribution limits only for minor parties has even been suggested. Public financing based on the top signature collectors would probably benefit third parties more, as they are used to collecting signatures. FECA could also be changed to make third-party funding proportional to the vote it received in the last election, rather than requiring 5 percent of the popular vote.¹⁷⁶

There is no vital need, however, to work for changes in the most popular current state-level public financing proposal. The "clean money" initiatives that have passed in several states give funds to all candidates that demonstrate support by collecting a sufficient number of \$5 contributions. Serious third-party candidates could probably work within these limitations to level the playing field with major party candidates. Some versions of the law, however, contain built in disadvantages for third parties that have not received high percentages of the vote in previous elections. Even in this form,

¹⁷⁵ Independent Politics Progressive Network, *On the Need for a Post-2000, Pro-Democracy Campaign*.

the law will just encourage independent candidates, who are given equal funding to major party contenders.

Financing the Electoral Reform Movement

The public financing initiatives were only passed with tremendous financial backing. An electoral reform movement based on lobbying and initiative campaign would require immense funding. Magleby studied 51 initiatives from 1954 to 1982 and found that 77 percent failed normally but that when proponents outspent opponents two-to-one, only 52 percent failed; where opponents outspent proponents two-to-one, 87 percent failed.¹⁷⁷ Lowenstein examined 25 propositions where spending exceeded \$250,000 and where one side outspent the other, two to one; the advantaged side was successful in 64 percent of the cases; the no side was 90 percent successful when it had the advantage.¹⁷⁸ Thus, being outspent by the major parties on an IRV or proportional representation initiative would be a major roadblock to reform. Knowing that a third party typically has to legally challenge ballot access laws or other restrictions in almost every state, money will also be important for supporting electoral reform lawsuits.

These key building blocks to a multiparty system can be advanced through unlimited funding from a few individuals or organizations because they are not subject to campaign finance regulation. Corporations and private foundations are the two major sources of funding for political initiatives. Corporations are unlikely to provide support, so foundations must be the key source of financing for an electoral reform movement.

¹⁷⁶ McClellan, 234.

¹⁷⁷ John Owens and Larry Wade, "Campaign Spending on California Ballot Propositions, 1924-1984: Trends and Voting Effects," *Western Political Quarterly* 39 (January 1986): 109.

¹⁷⁸ *Ibid.*

Progressivism coincided with the rise of foundations established by individuals with great wealth who felt a need to give something back to the community such as Andrew Carnegie and John D. Rockefeller.¹⁷⁹

Foundation funding has been key to the campaign finance reform movement. Public Campaign was founded with grants from the Schumann Foundation, the MacArthur Foundation and the Open Society Institute.¹⁸⁰ The Arca Foundation, the Carnegie Foundation, the Ford Foundation, the Joyce Foundation, the Tides Foundation, the Mott Charitable Trust, the Pew Charitable Trust, the Rockefeller Fund, and the Stern Family Fund are also funding campaign finance reform organizations.¹⁸¹ The Schumann Foundation contributed \$15 million to campaign finance reform, including \$5 million to Public Campaign.¹⁸² The Turner Foundation funded most of the organizing for the Montana campaign finance reform initiative.¹⁸³

Foundations cannot directly use funds for lobbying but they are able to avoid that tax provision by funneling money through other organizations. Eric Williams explains how the process works for campaign finance reform:

Proteus serves as the temporary holding tank for private foundation dollars through its Piper Fund, which funnels donations and grants to campaign finance reform advocates. The Piper Fund's motto is, "He who pays the Piper calls the tune." In 1998, the Piper Fund helped fund campaign finance reform efforts in 30 states. Much of the money was provided to lay the groundwork for future ballot

¹⁷⁹ Ekirch, 68.

¹⁸⁰ Eric Williams, "Philanthropy Notes: Big Money Behind Push for Campaign Reform: Wealthy Foundations, Individuals Want Taxpayers to Foot the Bill," *Capital Research Center Foundation Watch*, January 2001. Available: <<http://www.ippn.org/Pro-Democracy.htm>>. Accessed 1 March 2001.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

measures, but funds also went directly into ballot measure campaigns in Massachusetts and Arizona.¹⁸⁴

Proteus and Public Campaign, both funded by the foundation community, are the main supporters of the campaign finance reform initiatives.

The same foundation support could be relied upon to finance the electoral reform movement if a few major foundations were convinced that the reform agenda was worth pursuing. The Carnegie Corporation has set a goal of encouraging civic engagement and has a granting budget of \$10,500,000 for that purpose but it has so far not funded electoral reform organizations.¹⁸⁵ The Kirsch Foundation gave away \$601,750 in 2000 and has already given away \$500,000 in 2001 under its "Political Reform and Global Theme" but most has gone to support campaign finance reform.¹⁸⁶ The Ford Foundation has a Governance and Civil Society unit that works to "strengthen the civic and political participation of people and groups in charting the future of their societies."¹⁸⁷ That would seem to be a goal advanced by electoral reform; the Foundation has already granted \$80,000 to CVD.¹⁸⁸ The Pew Charitable Trust has set a similar goal "to renew elections as meaningful events in democratic life" and accepts requests from projects that help improve campaign discourse from political parties. It gave 31 grants worth \$25,702,000

¹⁸⁴ Ibid.

¹⁸⁵ Carnegie Corporation of New York, *The Corporation's Program: Special Projects: Civic Engagement for the Twenty-first Century* (New York: Carnegie Corporation of New York, 2001). Available: <http://www.carnegie.org/sub/program/special_projects.html>. Accessed 1 March 2001.

¹⁸⁶ Steven and Michele Kirsch Foundation, *Political Reform and Theme Grants* (San Jose: Steven and Michele Kirsch Foundation, 2001). Available: <<http://www.kirschfoundation.org/done/awarded.html>>. Accessed 1 March 2001.

¹⁸⁷ The Ford Foundation, *Governance and Civil Society Unit* (New York: Ford Foundation, 2001). Available: <<http://www.fordfound.org/program/govern.cfm>>. Accessed 1 March 2001.

¹⁸⁸ Ibid.

in 2000 but the grants did not go toward electoral reform initiatives.¹⁸⁹ The Stern Family Fund has taken steps to pursue the electoral reform agenda, helping to finance CVD and the Appleseed Electoral Reform Project.¹⁹⁰ The Arca Foundation has granted \$50,000 to CVD to promote instant runoff voting.¹⁹¹

The Open Society Institute's "Program on Government and Public Policy" aims to reform the political process. It has also focused on campaign finance reform but donated \$30,000 to the Appleseed Foundation, given \$175,000 to CVD, and funded a project by a policy institute to study proportional representation.¹⁹² The largest potential donor to an electoral reform movement is probably Open Society Institute funder George Soros. The Soros agenda is most likely advanced by multiparty democracy and he has already gathered financial support for and directly funded several multi-state initiative campaigns such as legalization of medical marijuana.

An electoral reform movement with connections in the mainstream interest group community, a few legislative and legal successes, and an agenda for future progress could likely gain financial support from the foundation community. With effective policy proposals, reasonable strategies, and appealing messages, the electoral reform movement could thus gain the resources it would need to be successful.

¹⁸⁹ The Pew Charitable Trusts, *Public Policy Program Guidelines* (New York: The Pew Charitable Trusts, 2001). Available: <<http://pewtrusts.com/programs/pp/ppguide.cfm>>. Accessed 1 March 2001.

¹⁹⁰ Stern Family Fund, *Strategic Opportunity Grants* (Arlington, VA: Stern Family Fund, 2000). Available: <<http://www.sternfund.org/supp00.html>>. Accessed 1 March 2001.

¹⁹¹ The Arca Foundation, *Grant's List* (Washington: Arca Foundation, 2000). Available: <<http://fdncenter.org/grantmaker/arca/glist2.html>>. Accessed 1 March 2001.

¹⁹² Program on Governance and Public Policy, *Our Work: Grants List* (New York: Open Society Institute, 2000). Available: <<http://www.soros.org/usprograms/campaign.htm>>. Accessed 1 March 2001.