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ONE PERSON, ONE VOTE?—WHY CITIZENS’ VOTES CARRY UNEQUAL WEIGHT DESPITE *BAKER* AND HOW IT MATTERS*

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THE COURT’S VOTING POWER PRINCIPLE

Baker v. Carr stands for the (at times contested) principle that the federal courts may intervene to assess whether citizens’ votes carry equal weight in state voting procedures.¹ According to the *Baker Court*, before *Baker*—and the revolution that it spawned—citizens’ votes did not have equal influence on the lawmaking process, contrary to what the Constitution requires because differently-sized populations could be represented by the same number of elected officials.

We contend that even after *Baker* and its associated cases, voters remain unequal. At least from the perspective of a member of Congress seeking reelection, some citizens (i.e., likely voters and “swing” voters) are more important than others. Consequently, members of Congress tend to act in closer concert with the

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¹ *Baker v. Carr*, 369 U.S. 186 (1962). For an example of contestation of the *Baker* principle, see Nelson Lund, *From Baker v. Carr to Bush v. Gore, and Back*, 62 CASE W. RES. L. REV. 947 (2012). The principle was extended to federal elections in *Wesberry v. Sanders*, 376 U.S. 1 (1964).

preferences of constituents whose votes matter more. Since some groups (e.g., the young, racial/ethnic minorities) are less likely to vote or be swing voters, these groups tend to receive less of what they want from government compared to other groups.

The Court's approach in *Baker* presumes the relative homogeneity of citizens' policy preferences within electoral districts and conceives of the legislature as primarily a distributive body where all citizens desire a larger share of the federal pie. In this case, if differently sized (and disagreeing) districts are both represented by a single legislator, the citizens of the more populous district will have their votes diluted. In order for citizens to have equal influence over legislative outcomes, district populations must be equal. As the Court later articulated in *Reynolds v. Sims*—"the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."²

*Gray v. Sanders*³ then signaled that *within* a single electoral district (in *Gray*, a state), electoral rules that aggregate votes in such a manner that votes are not counted equally are also unconstitutional. At issue in *Gray* was whether the Democratic Party primary for the nomination of U.S. Senate and other statewide officers could employ a "county-unit" system wherein unit votes were allocated to counties by population, but the relationship between population and units in the allocation formula was logarithmic rather than linear. In striking down this election procedure, the Court extended *Baker* to require equally populated geographical units within electoral districts. That is, citizens should have equal say in the selection of their elected representatives.

Here, the Court contemplates that citizens in a district who belong to politically relevant demographic groups will not always agree with one another about the best policy direction and, in this case, all individuals should have equal say in the selection of their elected representative: "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit."⁴ To aggregate individual votes in such a way that a minority could defeat a majority, as was true in Georgia before *Gray*, meant that citizens' votes carried unequal

² *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

³ 372 U.S. 368 (1963).

⁴ *Id.* at 379.

weight. This, of course, the Court could not abide: “Once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.”⁵ Finally, invoking the Equal Protection Clause of the 14th Amendment, the *Gray* Court concluded: “The conception of political equality . . . can mean only one thing—one person, one vote.”⁶

This Article contends that, in these cases, the Court was concerned about whether citizens have equal say in the selection of officials not only because it may affect who wins an election. Additionally, and perhaps even more importantly, the Court was concerned about this issue because regardless of who wins any given race we have reason to expect that in any system where votes are unequally weighted, elected officials will serve the interests of those whose votes matter most. Stated another way, one important motivation behind the one person, one vote principle is to move our system of government toward equal representation.

Behind *Baker* is an empirical assumption that when citizens hold unequal voting weight, their elected representatives will be more attentive to those holding more electoral weight. A half-century later, we test this assumption. Below, we ask first whether citizens really have equal voting power. Finding that they do not, we examine whether *Baker*’s assumption is correct, asking whether citizens with more voting power are better represented. We argue that despite *Baker* and *Gray*, voting power is not equal across the population. Some votes affect the outcome of an election more than others. Moreover, citizens’ preferences are not reflected in the actions of their representatives in equal measure. Those with more voting power tend to enjoy greater correspondence between their policy preferences and their representatives’ actions than is true for those with less voting power. We argue that the *Baker* court assumed correctly that unequal votes would lead to unequal representation of constituents’ policy preferences in their representatives’ behavior in office. Although the *Baker* decision and those following it may have moved the country closer to one of equal voting power, significant inequality in voting power remains.

THE MEANING AND IMPORTANCE OF VOTING POWER

Members of Congress (MCs) have electoral incentives to treat constituents unequally. To see this, think of an MC who has the

⁵ *Id.* at 381. As we make clear below, the Court’s notion of “voting power” in this line of cases is related to, but also distinct from, the conception of voting power we analyze below.

⁶ *Id.*

capacity to choose a small number of her total constituents who would become slightly more favorable toward her. Who would she choose? Presumably, she would choose those constituents who are likely to vote. Improving a small group of citizens' favorability toward the MC would not help her re-election effort if the target constituents do not typically vote. Only those who vote can weigh in on the re-election or rejection of the incumbent.⁷ In addition, the MC would presumably choose constituents who sit on the fence between voting for or against her. A small bit of newfound favorability toward the MC will not affect the votes of constituents who long ago determined to vote for or against her. Thus, MCs, who have to allocate scarce resources like their advertising dollars, time, and roll-call votes, have incentives to allocate those resources to affect the votes of likely voters who are not yet committed to voting for or against the MC. This is not to dismiss an MC's need to attend to his or her "base" supporters; however, "swing" or "marginal" voters will receive disproportionate attention from a calculating politician.⁸ As Larry Bartels put it, "[r]ational candidates seeking to maximize their electoral prospects must 'go hunting where the ducks are,' tailoring their appeals to those prospective voters who are both likely to turn out and susceptible to conversion."⁹

The concept of voting power reflects the contribution an individual will make to an incumbent's re-election effort. MCs can easily assess any given citizen's voting power from fairly basic and relatively easily ascertained political characteristics. The relevant political characteristics include demographic or attitudinal qualities a citizen possesses that provide a cue to elected officials about the citizen's likely political behavior. For instance, in the United States we might say that a citizen's race/ethnicity, income, gender, and age—as well as whether the individual is a partisan or an independent—are likely to convey information to an elected official about two aspects of the citizen's likely political behavior.

First, these qualities may convey information about the likelihood that the individual will participate in the next election. For instance, if an individual is a twenty-five year old Latino male, based on his age or ethnicity or gender (or a combination of the three) and the turnout

⁷ See Larry M. Bartels, *Where the Ducks Are: Voting Power in a Party System*, in *POLITICIANS AND PARTY POLITICS* 43, 45 (John G. Geer ed., 1998) ("[P]oliticians must care more . . . about the views of regular voters than about the views of people who seldom or never get to the polls.").

⁸ See STANLEY KELLEY, JR., *INTERPRETING ELECTIONS* 87–95 (1983) (discussing the impact of marginal voters on the 1964 presidential election).

⁹ Bartels, *supra* note 7, at 43.

propensity of these groups, the official can estimate the likelihood that the individual will participate in the next election. Individuals with high turnout propensities are more likely to influence an MC's re-election prospects because they are very likely to vote for either the incumbent or the challenger. These individuals, therefore, have more voting power than those unlikely to vote.

Second, these qualities provide cues about an individual's tendency to favor one of the parties. So, using the individual in the preceding paragraph once again as an example, the elected official will want to assess the tendency of the young, Latinos, and males to favor one of the parties. Individuals whose qualities suggest that they do not have a tendency to favor one of the parties possess more voting power. Citizens whose votes are up for grabs are especially attractive because their votes are both not already secured and not unattainable. Thought of another way, these votes can be won, but if they are not, they are very likely to go to one's opponent.

Voting power merits our attention because inequalities in voting power are likely to be translated into inequalities in political influence. To see this, we build a theoretical argument from a series of assumptions to two hypotheses:

ASSUMPTION 1: AN INSTITUTIONAL CONFIGURATION WITH SINGLE-MEMBER DISTRICTS

Article I, section 2 of the Constitution provides that, "The House of Representatives shall be composed of Members chosen every second year by the People of the several States . . . Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers."¹⁰ The Constitution did not, however, specify the manner in which representatives are to be apportioned or the means of electing representatives. The Framers did appear to contemplate the possibility of single-member districts. James Madison wrote in *Federalist Paper Number 56*, "divide the largest State into ten or twelve districts and it will be found that there will be no peculiar interests . . . which will not be within the knowledge of the Representative of the district."¹¹ Nevertheless, most of the original thirteen states used multi-member districts in the first congressional elections.¹²

¹⁰ U.S. CONST. art. I, § 2.

¹¹ THE FEDERALIST NO. 56, at 340 (James Madison) (Isaac Kramnick ed., Penguin Books 1987).

¹² MICHAEL J. DUBIN, UNITED STATES CONGRESSIONAL ELECTIONS, 1788–1997: THE OFFICIAL RESULTS OF THE ELECTIONS OF THE 1ST THROUGH 105TH CONGRESSES (McFarland and Co. ed., 1998).

Over the next half-century, single-member districts were adopted with increasing frequency such that by 1842 only six states were electing representatives at-large and twenty-two states were electing representatives in single-member districts (three states had only one representative).¹³ This arrangement changed with the Apportionment Act of 1842, which contained a requirement of single-member districts: representatives “shall be elected by districts composed of contiguous territory equal in number to the number of representatives to which said state may be entitled, no one district electing more than one representative.”¹⁴

This prescription was not always followed nor enforced until 1967 when Congress prohibited at-large and other multi-member elections by states with more than one House seat.¹⁵

The use of single member districts matters for the allocation of voting power across citizens not only because, as the *Baker* court recognized, it argues for equally-populated districts, but also because the single-member district electoral system affects the number of political parties that vie for office. As Maurice Duverger would have predicted, the widespread adoption of single-member district elections has largely restricted the American political system to just two political parties,¹⁶ or two “effective” parties.¹⁷ In a two-party system where some voters are unwilling to make a “standing decision”¹⁸ to vote for the candidates of one of the parties they will, all else equal, possess more voting power. That is, the vote choices of these “swing voters” will largely determine which candidate is victorious. Conversely, as the number of parties proliferates and more voters easily identify a party with which they are comfortable making a standing decision, the voting power of citizens becomes more equal.

¹³ *Id.*

¹⁴ Reapportionment Act of 1842, ch. 323, 5 Stat. 491.

¹⁵ Law of Dec. 14, 1967, Pub. L. No. 90-196, 81 Stat. 581. Only two states, Hawaii and New Mexico, were affected by this legislation: all other states were using elections by district. Meanwhile in the United States Senate the staggered election of each state's two Senators has effectively resulted in single member district Senate elections. Each state's Senate seats, most crucially, are filled in a separate election, even on the rare occasion when they are held simultaneously.

¹⁶ See MAURICE DUVERGER, POLITICAL PARTIES 217 (Barbara North & Robert North trans., John Wiley & Sons ed. 1954) (1951) (“[T]he simple-majority single-ballot system favours the two-party system.”) (emphasis in the original).

¹⁷ See, e.g., Rein Taagepera & Matthew Soberg Shugart, *Predicting the Number of Parties: A Quantitative Model of Duverger's Mechanical Effect*, 87 AM. POL. SCI. REV. 455, 455 (1993) (presenting a model for estimating electoral systems based on the “effective” number of parties).

¹⁸ V. O. Key, Jr. & Frank Munger, *Social Determinism and Electoral Decision: the Case of Indiana*, in AMERICAN VOTING BEHAVIOR 281, 286 (Eugene Burdick & Arthur J. Brodbeck ed., 1959).

That is, if all voters are predictable supporters of one of the parties then virtually no voters are swing voters and voting power reduces to a function of anticipated turnout. Conversely, party proliferation may make it easier for voters to imagine voting for another party because it may decrease the average dissimilarity of at least some party platforms. In this case, most voters may be swing voters that again tend to equalize voting power across citizen subgroups.

In contrast, in a two-party system, a group whose members are highly unlikely to vote for one of the parties may well be all but ignored. Candidates' scarce resources will be focused instead on swing voters rather than those who have made the "standing decision" to support one particular party. Individuals who are largely unpersuadable or unconvertible will have lower voting power than swing voters. This electoral system can lead to some groups being "captured" by one party since the group generally cannot be expected to vote for the other party.¹⁹

ASSUMPTION 2: MCS DESIRE RE-ELECTION

There was a time when this assumption might not have been broadly supportable. In the early Congresses, there was heavy turnover.²⁰ Today, we can safely assume that MCs desire re-election. In 2010, just 7.5 percent (33 of 435) House Members retired—the remainder stood for re-election. Of the thirty-three retirees, most stood for election to other offices such as Governor or Senator of their state, requiring that they relinquish their House seat. This number also includes those who retired from any form of employment. Finally, of those who retire but assume other positions, we can designate many of these retirements as strategic departures to avoid electoral defeat.²¹ This leaves very little evidence that MCs do not desire re-election.

¹⁹ See PAUL FRYMER, *UNEASY ALLIANCES: RACE AND PARTY COMPETITION IN AMERICA*, 27, 40–46 (1999) (using the term "capture" to discuss how parties marginalize minority interests).

²⁰ According to James Sterling Young, "[f]or the first four decades of national government between one third and two thirds of the congressional community left every two years not to return. . . . [O]n the average, the biennial turnover was 41.5 percent of the total membership" JAMES STERLING YOUNG, *THE WASHINGTON COMMUNITY 1800–1828*, 89, 90–91 (1966).

²¹ See, e.g., GARY C. JACOBSON & SAMUEL KERNELL, *STRATEGY AND CHOICE IN CONGRESSIONAL ELECTIONS* 49 (2d ed. 1983) ("It is difficult to believe . . . that vulnerability does not occasionally contribute to retirement decisions . . ."); Walter J. Stone, Sarah A. Fulton, Cherie D. Maestas & L. Sandy Maisel, *Incumbency Reconsidered: Prospects, Strategic Retirement, and Incumbent Quality in U.S. House Elections*, 72 J. POL. 178, 185 (2010) ("[V]ariables that affect incumbents' decisions about running or retiring may also influence their vote share in the general election."); Timothy Groseclose & Keith Krehbiel, *Golden Parachutes, Rubber Checks, and Strategic Retirements from the 102d House*, 38 AM. J. POL. SCI. 75, 89 (1994) (discussing the variables involved in an incumbent's decision to retire);

We can also look to many of the features of the modern Congress, which some have argued were chosen by MCs themselves as tools to facilitate re-election, for additional evidence of the desire for re-election.²² Mayhew argued that many of the features of the modern Congress—including the committee system, the taking of roll-call votes, and the ability to send franked mail—have been adopted primarily to facilitate MCs’ re-election.²³ The embeddedness of these features suggests that MCs continue to desire re-election.

ASSUMPTION 3: MCs’ RE-ELECTION REQUIRES ATTENTION TO CITIZENS’ CONCERNS

Working from the assumption that MCs are re-election seekers, the potential of electoral punishment for failing to represent constituents’ policy preferences provides an incentive to cast roll-call votes in line with constituents’ wishes.²⁴ In fact, the threat of electoral punishment is the primary basis of policy representation: “we believe that constituents’ preferences are reflected in a representative’s voting (if at all) primarily through his concern for his electoral survival.”²⁵ Prior studies have documented that MCs whose voting patterns diverge from the preferred direction of their district are less likely to be re-elected, or are re-elected by narrower margins.²⁶ Moreover, after MCs

Jennifer Wolak, *Strategic Retirements: The Influence of Public Preferences On Voluntary Departures from Congress*, 32 LEGIS. STUD. Q. 285, 301 (2007) (“[F]or members of the House, perceptions of the nation’s economic health influence rates of voluntary departure.”).

²² See DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 81–82 (1974) (arguing that “the organization of Congress meets remarkably well the electoral needs of its members. To put it another way, if a group of planners sat down and tried to design a pair of American national assemblies with the goal of serving members’ electoral needs year in and year out, they would be hard pressed to improve on what exists.”).

²³ *Id.* at 84–97.

²⁴ See MORRIS FIORINA, REPRESENTATIVES, ROLL CALLS, AND CONSTITUENCIES 29–40 (1974); see also Donald R. Matthews & James A. Stimson, *Decision-Making by U.S. Representatives: A Preliminary Model*, in POLITICAL DECISION-MAKING 14, 16–17 (S. Sydney Ulmer ed., 1970) (arguing that “congressmen attempt to cast their votes so as to enhance the chances of achieving their goals [primary among them is re-election]. . . . The potential payoffs to congressmen for casting roll-call votes in a reasonably rational way are so great and the potential risks of following any other course so large, that the members try, and try hard, to be reasonable.”) (emphasis in original).

²⁵ FIORINA, *supra* note 24, at 31.

²⁶ Brandice Canes-Wrone, David W. Brady, & John F. Cogan, *Out of Step, Out of Office: Electoral Accountability and House Members’ Voting*, 96 AM. POL. SCI. REV. 127, 132–33 (2002) (providing data showing the effect of roll-call votes on electoral results); Stephen Ansolabehere & Philip Edward Jones, *Constituents’ Responses to Congressional Roll-Call Voting*, 54 AM. J. POL. SCI. 583, 591–92 (2010) (providing data showing the effect of roll-call votes on voter choice); John D. Griffin, Brian Newman & David Nickerson, *Voting Power, Policy Representation, and Disparities in Voting’s Rewards* (Mar. 1, 2012) (unpublished manuscript) (on file with authors) (discussing the effects of roll-call votes on elections).

announce their intention to retire and are no longer bound by the threat of re-election, their votes begin to diverge more from their district's preferred direction.²⁷

ASSUMPTION 4: MCs ATTEND TO CITIZENS' CONCERNS USING ROLL CALLS

One of the chief tools that MCs use to increase their appeal to constituents is the roll-call vote. As David Mayhew argued, in their constant quest for re-election, elected officials benefit from opportunities to "tailor [their] positions" on the issues of the day.²⁸ One visible, credible way for an official to take a position is to cast a recorded, public vote. Indeed, roll-call voting is an optional feature of House procedure.²⁹ Mayhew's argument is that the adoption of the House roll-call rule is evidence that MCs view roll-call voting as an opportunity to take positions that their constituents (or some substantial subset of them) will look favorably on.³⁰ Candidates challenging incumbents typically try to take advantage of any roll-call votes that may be unpopular in the electoral district. For example, several candidates in the 2010 elections focused their campaigns on incumbents' votes for the Troubled Asset Relief Program (TARP), President Barack Obama's economic stimulus package, the health care overhaul, or an energy reform package dubbed "cap and trade" legislation, each of which had become unpopular in many districts of the House of Representatives. These roll-call votes appear to have cost incumbents votes at the ballot box.³¹

²⁷ Lawrence S. Rothenberg & Mitchell S. Sanders, *Severing the Electoral Connection: Shirking in the Contemporary Congress*, 44 AM. J. POL. SCI. 316, 321 (2000) ("[T]he expected *Ideological Change* for retiring members and for political aspirants is (respectively) 52 and 44 percent larger than for continuing members.") (emphasis in original).

²⁸ MAYHEW, *supra* note 22, at 64.

²⁹ Not all votes are recorded roll-call votes. For example, a voice vote "means that lawmakers call out 'yea' or 'nay' on one side or the other when a question is put by the presiding officer," and there is no record of who voted or in what way they voted under division or standing votes. WALTER J. OLESZEK, *CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS* 177 (7th ed. 2007).

³⁰ See also James M. Snyder, Jr. & Michael M. Ting, *Roll Calls, Party Labels, and Elections*, 11 POL. ANALYSIS 419, 422, 431 (2003) (formulating how the prospect of re-election affects legislator's voting choices).

³¹ See David W. Brady, Morris P. Fiorina & Arjun S. Wilkins, *The 2010 Elections: Why Did Political Science Forecasts Go Awry?*, 44 PS: POL. SCI. & POL. 247, 248 (2011) (noting that "a positive vote on health care appears to have had a negative impact on members' vote shares in all but the most heavily Democratic districts."); Brendan Nyhan, Eric McGhee, John Sides, Seth Masket & Steven Greene, *One Vote Out of Step? The Effects of Salient Roll Call Votes in the 2010 Election*, AM. POL. RES. (forthcoming) (discussing the effects of roll-call votes); Seth Masket & Steven Greene, *The Price of Reform*, HUFFINGTON POST, Oct. 8, 2010, http://www.huffingtonpost.com/seth-masket/the-price-of-reform_b_755785.html (noting that roll-call votes have "clearly created a dynamic that has disadvantaged reform supporters in

ASSUMPTION 5: CITIZENS' CONCERNS AND THEIR EXPECTED
CONTRIBUTION TO MC RE-ELECTION VARY

Despite some evidence that citizens are self-segregating along political lines³² and the conventional wisdom that many congressional districts are drawn to be relatively homogenous,³³ the sizeable populations of congressional districts virtually guarantees that at least on some issues citizens within a district will disagree with one another. Indeed, this was precisely Madison's antidote to cure the "mischiefs of faction," or groups of citizens who agree with each other on virtually all the matters of the day—a republic with large constituencies.³⁴

As noted above, when their constituents do not agree with each other MCs have incentives to dole out strategically whatever resources are at their disposal that may shift constituents' views of the MC, focusing such efforts on likely voters who are convertible. The probability of turning out to vote varies across the public.³⁵ In addition, some groups in the American public are more convertible than others. This will mean that voting power varies across the public.

ASSUMPTION 6: MCs IDENTIFY CITIZEN SUBGROUPS BY CONCERN
AND VOTING POWER

We maintain that it is plausible that MCs can identify citizens' voting power. From sources such as the census, voter files, polls, and just spending time in the district, it is not difficult for MCs and their staffs to ascertain the demographic profile of their district, the general likelihood that members of various groups in the district will vote, and whether those groups typically vote for the member's party, the opposition party, or vacillate between them. For example, Fenno observed that "House members describe their districts' internal

conservative districts."); Eric McGhee, Brendan Nyhan & John Sides, *Midterm Postmortem*, BOS. REV., Nov. 11, 2010, <http://bostonreview.net/BR35.6/sides.php> (finding that a "Democratic incumbent in the average district represented by Democratic incumbents actually lost about two-thirds of a percentage point for every yes vote.").

³² See BEN BISHOP AND ROBERT G. CUSHING, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED IN AMERICA IS TEARING US APART* 9 (2009) (discussing political segregation).

³³ *But see* Alan I. Abramowitz, Brad Alexander & Matthew Gunning, *Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections*, 68 J. POL. 75, 75 (2006) (arguing that redistricting has not contributed to the decline in electoral competition).

³⁴ James Madison, *Federalist 10*, THE FEDERALIST PAPERS 122–128 (Isaac Kramnick ed., Penguin Books 1987) (1788).

³⁵ See SIDNEY VERBA, KAY LEHMAN SCHOLZMAN & HENRY E. BRADY, *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS*, 190, 233 (1995) (breaking down voter activity by race and class).

makeup using political science's most familiar demographic and political variables: socioeconomic structure, ideology, ethnicity, residential patterns, religion, partisanship, stability, diversity, etc. Every congressman, in his mind's eye, sees his geographical constituency in terms of some special configuration of such variables."³⁶

HYPOTHESIS 1: MC VOTING FAVORS THOSE WITH MORE VOTING POWER

MCs' re-election incentives, in the face of an electorate with diverse preferences and unequal likelihood of affecting the election outcome, will lead them to attend to some constituents' concerns more than those of others. All else equal, MCs must focus their re-election efforts on those with the greatest potential to deliver their re-election.³⁷ If so, constituents with greater voting power (i.e., likely voters and convertible voters), should enjoy more policy representation than those with less voting power. By policy representation, we mean the match between a constituent's preferred action and their representative's actual behavior. According to Bartels, "disparities in the force of . . . [candidates'] strategic imperative [to compete for individuals' votes] can produce disparities in electoral influence."³⁸ If re-election concerns are the primary motivation for policy representation and if roll calls are a resource to gain support, when casting roll-call votes, MCs should try to appeal to those who will most affect the MC's re-election chances.

A number of studies support this contention, showing that voters are generally better represented than those who tend not to vote.³⁹

³⁶ RICHARD F. FENNO JR., *HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS 2* (1978).

³⁷ This is a *ceteris paribus* claim, since co-partisanship, ideology, and other factors also affect the quality of representation. See, e.g., Charles S. Bullock III & David W. Brady, *Party, Constituency, and Roll-Call Voting in the U. S. Senate*, 8 LEGIS. STUD. Q. 29, 38–39 (1983) (providing models of constituency influences, party, Americans for Democratic Action, and Conservative Coalition support in the 93rd Senate).

³⁸ Bartels, *supra* note 7, at 48.

³⁹ See e.g., WILLIAM R. KEECH, *THE IMPACT OF NEGRO VOTING: THE ROLE OF THE VOTE IN THE QUEST FOR EQUALITY 48–79* (1968) (discussing the impact of African Americans' votes on various aspects of social and political life); John D. Griffin & Brian Newman, *Are Voters Better Represented?*, 67 J. POL. 1206, 1215, 1219–20 (2005) (discussing the impact of voter, nonvoter, senator, and "communicator" ideology on roll-call voting); Kim Quaile Hill, Jan E. Leighley, & Angela Hinton-Andersson, *Lower-Class Mobilization and Policy Linkage in the U.S. States*, 39 AM. J. POL. SCI. 75, 79–81 (1995) ("[P]rovid[ing] evidence . . . on the direct relationship between lower-class mobilization and welfare policy."); Paul S. Martin, *Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money*, 47 AM. J. POL. SCI. 110, 117–19 (2003) (providing statistics on voters' influence over changes in federal grant expenditures). But see Christopher R. Ellis, Joseph Daniel Ura & Jenna Ashley-Robinson, *The Dynamic Consequences of Nonvoting in American National Elections*, 59 POL.

Finding that voters are better represented relates to one piece of Bartels' notion of voting power (that pertaining to turnout propensity), but these studies do not speak to whether convertible voters are especially well represented. We provide a first test of the hypothesis that those with greater voting power, defined more comprehensively, are better represented.

ASSUMPTION 8: MCs DO NOT ATTEND TO THE CONCERNS OF NONVOTERS

There are reasons to believe that elected officials are blind to the policy concerns of nonvoters. For example, in our study of U.S. Senators, we demonstrated that nonvoters' opinions have no independent effect on Senators' roll-call behavior.⁴⁰ This lack of responsiveness to nonvoters may be owing to elected officials' willful ignorance of nonvoters. After all, "[t]he blunt truth is that politicians and officials are under no compulsion to pay much heed to classes and groups of citizens that do not vote."⁴¹ Or, more benignly, because nonvoters are less likely to communicate with officials, officials have less occasion to learn of nonvoters' concerns.⁴² Therefore, "[t]hose in public life are more likely to be aware of, and to pay attention to, the needs and preferences of those who are active."⁴³ In either case, the lesson is, "if you don't vote, you don't count."⁴⁴

HYPOTHESIS 2: THE REWARDS OF VOTING DIFFER ACROSS POLITICALLY RELEVANT GROUPS

The second hypothesis stems directly from citizens' unequal voting power. If elected officials value the votes of some individuals more than others, within groups whose votes are less valued the policy rewards of voting will be lower than the rewards within groups

RES. Q. 227, 231–32 (2006) ("We ... find little evidence that policymakers respond disproportionately to the policy preferences of the electorate, ignoring the large segment of the public that does not vote.").

⁴⁰ See Griffin & Newman, *supra* note 39, at 1215 (providing statistics on the effect of voter and nonvoter ideology on roll-call voting).

⁴¹ V.O. KEY, JR., *SOUTHERN POLITICS IN STATE AND NATION* 527 (1949).

⁴² See Griffin & Newman, *supra* note 39, at 1207–08, 1219–21 ("Elected officials will have a hard time representing the opinions of individuals who do not communicate their views."); Warren E. Miller & Donald E. Stokes, *Constituency Influence in Congress*, 57 AM. POL. SCI. REV. 45, 52 (1963) ("Representative's perceptions and attitudes are more strongly associated with the attitude of his electoral majority than they are with the attitudes of the constituency as a whole.") (emphasis in the original).

⁴³ VERBA, SCHLOZMAN, & BRADY, *supra* note 35, at 163.

⁴⁴ Walter Dean Burnham, *The Turnout Problem*, in *ELECTIONS AMERICAN STYLE* 97, 99 (A. James Reichley ed., 1987).

whose support is more sought after. Recall Assumption 8 that elected officials do little to appeal to the preferences of nonvoters regardless of the voting power of the groups to which they belong. If officials' roll-call decisions are shaped more by the opinions of voters who belong to groups with more voting power than by voters with less voting power, then we should expect the policy representation of voters and nonvoters to be less distinguishable within groups with less voting power. That is, the rewards of voting will be unequal across groups.

CALCULATING GROUP VOTING POWER

Larry Bartels offers a relatively straightforward method of calculating the voting power of individuals using national public opinion surveys.⁴⁵ We adopt this method, using the 2004 National Annenberg Election Survey (NAES).⁴⁶ This survey offers a very large number of respondents (roughly seventy thousand) with which to work, enabling us to examine smaller subgroups of citizens than many surveys allow. The first part of the calculation involves estimating an individual's probability of turning out to vote. This is relatively simple.⁴⁷ The second part of the calculation estimates the extent to which a voter is convertible (meaning she could vote for either party's candidate), conditional on turning out to vote at all. This requires initially estimating the probability that an individual will vote for the Democratic candidate,⁴⁸ and then "folding" the scale at the

⁴⁵ See Bartels, *supra* note 6, at 47–50 (describing his method of calculation in detail).

⁴⁶ DANIEL ROMER, KATE KENSKI, KENNETH WINNEG, CHRISTOPHER ADASIEWICZ, & KATHLEEN HALL JAMIESON, CAPTURING CAMPAIGN DYNAMICS 2000 & 2004: THE NATIONAL ANNENBERG ELECTION SURVEY 14–19 (2006).

⁴⁷ See Bartels, *supra* note 7, at 47–50, 69–73, setting out the method as follows: Estimating an individual's probability of turning out to vote is done via a basic probit model, a statistical method that takes as the dependent variable whether a survey respondent reported voting or not voting. The model's independent variables consist of the strength of the respondent's party identification (i.e., 0 = independent, 1 = independent "leaning" toward one of the two major parties, 2 = a "not strong" Democrat or Republican, and 3 = "strong" Democrat or Republican), a series of indicator variables for African Americans, Southern African Americans, southern residence, eastern residence, western residence, residence in a city, residence in a suburb (each taking on the value of 1 if a respondent fits in a category and 0 otherwise), the number of children in the household, respondent's age, respondent's age squared, respondent's sex, respondent's educational attainment, respondent's household income, whether anyone in the household is a union member, the respondent's attendance of religious services, whether the respondent is Protestant, Catholic, or Jewish, and the strength of the respondent's preference for one presidential candidate over the other. This model uses the information from almost 70,000 respondents to estimate the probability that each individual turned out to vote based on the variables in the model.

⁴⁸ Estimation of the probability that an individual voted for the Democrat is accomplished via a method similar to estimating the probability of turnout described in *supra* note 43. Vote choice probabilities are estimated via a probit model with the dependent variable equal to one if an individual claimed to have voted for John Kerry and zero otherwise. The independent

value of .5 so that individuals very likely or very unlikely to vote for the Republican would have very low values and those respondents with a 50 percent probability of voting for the Republican would have the highest value.⁴⁹ This calculation generates a 0 to 50 scale, which we multiplied by two so that both the probability of turnout and the swing-voter scales extend from 0 to 100. An individual's voting power, then, is the product of these two numbers, divided by 100 so that voting power again theoretically ranges from 0 to 100.⁵⁰

The first column of entries in Table 1 *infra* displays the average probability of turnout for various groups based on these calculations. Compared to individuals who identify as being a Republican or Democrat, independents are less likely to vote. Copartisans (individuals whose member of the House of Representatives is a member of the same political party the respondent identifies with) have an 85 percent probability of voting. Copartisan constituents generally enjoy high levels of policy representation, a point which will be more important below.⁵¹ Similarly, outpartisans (individuals who identify with one party and whose House member affiliates with the other major party) have an 84 percent probability of turning out to vote. In contrast, independents (who by definition cannot be copartisans or outpartisans) have only a 76 percent chance of voting. Although these figures illustrate the well-known tendency of surveys to overestimate turnout, as these figures well exceed observed behavior in presidential-year voter participation, they comport well with previous studies of turnout finding that independents tend to be less likely to vote than partisans.⁵²

variables are the same as those in the probability of turnout model except the vote choice model excludes the strength of partisanship and the strength of the individual's preference for one candidate over the other.

⁴⁹ Specifically, we took the absolute value of .50-probability of vote for Democrat and then multiplied the resulting value by -1.

⁵⁰ For an even more precise measure of voting power, we could incorporate the size of the group in the electoral unit. We do not, however, possess district-level data on age and partisanship. See also John D. Griffin & Brian Newman, Voting Power, Policy Representation, and Disparities in Voting's Rewards 8-15 (unpublished manuscript) (on file with The Case Western Reserve University Law Review), where we included group size in calculating the voting power of racial/ethnic groups and obtained results similar to those we report here.

⁵¹ See, e.g., Bullock & Brady, *supra* note 37, at 38-39 (providing models of constituency influences, party, Americans for Democratic Action, and Conservative Coalition support in the 93rd Senate); Joshua D. Clinton, *Representation in Congress: Constituents and Roll Calls in the 106th House*, 68 J. POL. 397, 403-04 (2006) (providing statistics on roll call behavior and constituency preferences).

⁵² See Paul R. Abramson & John H. Aldrich, *The Decline of Electoral Participation in America*, 76 AM. POL. SCI. REV. 502, 506-09 (1982) (discussing statistics on party identification and turnout); Timothy J. Feddersen & Wolfgang Pesendorfer, *The Swing Voter's Curse*, 86 AM. ECON. REV. 408, 418 (1996) ("Empirical work has . . . demonstrated that independent voters are

Differences in the probability of voting are especially stark when we look at young voters as compared to the rest of the public. Citizens over thirty years of age have an average probability of voting of 86 percent, far above the 51 percent chance of voting for the average citizen under thirty. These estimates again comport well with prior research on age and turnout.⁵³ Finally, as is well documented elsewhere, African Americans and Latinos are less likely to vote than are whites.⁵⁴ On average, whites have a probability of voting of 82 percent, compared to 76 percent for African Americans and 63 percent for Latinos.⁵⁵

The second column of values in Table 1 reflects the average for each group's tendency to be a convertible group—that is, open to voting for either party's candidate. There are significant differences across groups on this measure as well. As we might guess, individuals who say they consider themselves a Republican or Democrat are relatively non-convertible, with average scores of about 10 on the 0 to 100 scale. In contrast, independents, the quintessential swing voters, are far more convertible. Their average score of 73 is the largest of any group we examine. In contrast, there is little difference in the scores of young voters compared to other voters (31 vs. 29).

There are also significant differences in the convertibility of racial/ethnic groups.⁵⁶ Whites are the most convertible, with an average score of 30. Latinos are a very close second (29), while

much more likely to abstain than partisans.”). The well-known tendency for surveys to overestimate turnout rates, *see e.g.*, Jeffrey A. Karp & David Brockington, *Social Desirability and Response Validity: A Comparative Analysis of Overreporting Voter Turnout in Five Countries*, 67 J. POL. 825, 830 (2005) (providing statistics on overreporting in various countries), does not cause problems for the type of analysis we employ here. *See* Griffin & Newman, *supra* note 39, at 1212–1213, 1224–1225 (citation omitted) (“[T]he error in independent variables induced by overreporting only leads to minor biases in models of turnout and candidate choice.”).

⁵³ Wattenberg reports that the turnout rate for voters sixty–five years old and older outpaces that of voters between twenty–one and twenty–four years old by a ratio of 1.3 to 1 to as much as 2 to 1 from 1964 to 2004. *See* MARTIN P. WATTENBERG, *IS VOTING FOR YOUNG PEOPLE?* 91 (3d ed., 2012).

⁵⁴ *See, e.g.*, VERBA, SCHLOZMAN, & BRADY, *supra* note 35, 232–33 (providing statistics on voting habits by racial/ethnic groups).

⁵⁵ The NAES sampled some Latinos who were not citizens. We excluded these respondents since they are ineligible to vote. If we included non-citizens, the average probability of turning out among Latinos would be lower.

⁵⁶ Over the last three decades, whites have been far more evenly split between the major party candidates for president than were African Americans. In the eight presidential elections from 1980 to 2008 on average, 42.6 percent of whites voted for the Democrat. In contrast, over this period, an average of 90 percent of African Americans voted for the Democrat in the race. Although Latinos also tend to support Democrats, they have done so at lower rates than African Americans, as 66 percent of Latino voters pulled the lever for the Democrat over this period. *See Exit Polls*, N.Y. TIMES, <http://elections.nytimes.com/2008/results/president/exitpolls.html> (last visited Mar. 5, 2012) (reporting this data).

African Americans are far less convertible (16). That is, whites are approximately twice as convertible as African Americans. The low score for African Americans supports the notion that African Americans as a group are a largely “captured” constituency of the Democratic Party and unable to be persuaded by Republicans.⁵⁷ Bartels found similar estimates, concluding that African Americans are “by far the least pivotal group in the American electorate.”⁵⁸

Multiplying the average probabilities of turnout by the average convertibility scores provides us with a more comprehensive estimate of each group’s average voting power (see the third column of Table 1). According to this measure, independents have about five times as much voting power as partisans (56 vs. 10), while those under thirty years of age have only about 60 percent of the voting power of the rest of the public (16 vs. 25). Along the same lines, African Americans have about one-half the voting power of whites (12 vs. 24), while Latinos have about two-thirds the voting power of whites (18 vs. 24). Although all votes legally count the same, some votes are more valuable to candidates than others. More specifically, independent, non-young, white votes are more valuable to candidates than partisan, young, minority votes.

⁵⁷ FRYMER, *supra* note 19, at 40–46.

⁵⁸ Bartels, *supra* note 7, at 65.

Table 1: Average Voting Power of Groups

	Probability of Turnout	Convertibility	Voting Power	Win Percentage
All	80.6	29.0	23.4	55.2
Copartisans	84.7	9.8	8.3	62.6
Outpartisans	83.6	11.9	9.9	46.3
Independents	75.9	73.4	55.7	53.9
Under 30	50.7	30.6	15.5	53.8
30 and Over	85.7	28.8	24.7	55.4
African American	76.0	15.5	11.8	51.3
Latino	62.9	29.1	18.3	49.3
White	81.6	29.9	24.4	55.8

Source: 2008 National Annenberg Election Survey. Each scale ranges from 0 to 100. Each cell represents the group average as calculated by the authors.

VOTING POWER MATTERS FOR POLICY REPRESENTATION

The differences in voting power displayed in Table 1 matter because MCs tend to vote in concert with the preferences of their constituents who have more voting power. Individuals with more voting power tend to get more of what they want from their MCs. To show this, we created a summary measure of each individual's policy representation. As noted above, we define policy representation as the degree to which an individual's MC casts roll-call votes as the individual would prefer. Thus, our measure requires knowing how individuals would prefer MCs to vote and how their MCs actually voted. The 2004 NAES asked respondents their preferred policy in several issue domains and identifies their congressional district. In the subsequent two years, during the 109th Congress (2005-2006), several of those issues came up for a roll-call vote in the U.S. House of Representatives.⁵⁹ In particular, of the twenty-four "key votes" of

⁵⁹ It is critical that the constituency preferences be collected *prior to* the MCs' roll-call votes. Evidence suggests that in some cases, MC votes on a particular issue affect their

the 109th Congress, as identified by *Congressional Quarterly*, there were nine roll-call votes we can match to constituency preferences.⁶⁰ For these votes, we know how constituents wanted their MC to vote and we know how their MC voted. On each vote, we count a constituent a “winner” if her MC voted as she preferred. For example, if a constituent said she opposes the federal government negotiating more free trade agreements and her MC voted against the Central American Free Trade Agreement (CAFTA), the constituent is a winner on this roll-call vote. In contrast, if a constituent’s MC voted in opposition to the constituent’s preference (the constituent opposes free trade agreements, but her MC voted in favor of CAFTA), the constituent is a “loser” on this roll-call vote.⁶¹ We then calculated the proportion of roll-call votes on which each individual was a “winner” and multiplied this ratio by 100. We term this 0 to 100 scale “win percentage.”⁶²

As Table 1 shows, the average win percentage is 55. However, there is also significant variation across the groups included in Table 1.⁶³ A central feature of this variation relates to copartisanship. Studies of policy representation routinely find that copartisans’

constituents’ preferences on that issue. See Kim Quaile Hill & Patricia A. Hurley, *Dyadic Representation Reappraised*, 43 AM. J. POL. SCI. 109, 121, 125 (1999) (providing models on constituency social welfare and civil rights preferences); Patricia A. Hurley & Kim Quaile Hill, *Beyond the Demand-Input Model: A Theory of Representational Linkages*, 65 J. POL. 304, 318–21 (2003) (providing and discussing statistics on dyadic representational linkages on domestic welfare policy). If we measure constituency preferences after roll-call votes have been cast, a relationship between constituency preferences and MC roll-call votes may not mean that MCs are responding to constituent preferences, but that MCs are persuading their constituents and shaping their preferences.

⁶⁰ See *Weekly Index*, 64 CQ WKLY. 65, 145 (2006) (providing statistical information about the “key votes”); *Weekly Index*, 65 CQ WKLY. 1, 85 (2007) (same).

⁶¹ If *Congressional Quarterly* identified a member as not voting but “stated for,” we treat the vote as if the member voted yea, and similarly if the member was reported as “stating against,” we treat the vote as if the member voted nay. We ignore abstaining members for purposes of that particular roll-call vote.

⁶² We analyze only those respondents who answered enough items to be classified as a winner or loser on at least three roll-call votes. This eliminates some of our sample, but this is preferable to including individuals who were winners (or losers) on a single vote and therefore look as though they were winners (or losers) on all nine votes. Ultimately, our findings are similar regardless of where we draw the cutoff line for excluding citizens.

⁶³ The variation in policy representation reflected in Table 1 mirrors fairly closely variation in policy representation uncovered in previous analyses using different measures of policy representation. See LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* 257–67 (2008) (providing and discussing statistics on MCs’ responsiveness to various groups); JOHN D. GRIFFIN & BRIAN NEWMAN, *MINORITY REPORT: EVALUATING POLITICAL EQUALITY IN AMERICA* 64–69, 80–95 (2008) (discussing various groups in relation to policy outcomes and MC responsiveness); Martin Gilens, *Inequality and Democratic Responsiveness*, 69 PUB. OPINION Q. 778, 785–89 (2005) (discussing policy outcomes in relation to different income groups).

preferences are far more often reflected in MCs' roll-call voting than is the case for non-copartisans.⁶⁴ Our data show the same: copartisans have an average win percentage of 63 percent, 8 points above the overall average (55 percent) and 13 points above the average of the rest of the public (50 percent). Political scientists have argued for decades that one of the ways policy representation arises is through voters' selection of likeminded MCs.⁶⁵ When constituents elect an MC who thinks as the constituents do and shares many important policy preferences, when policies come up for a vote, if the MC "votes her conscience," she is also voting as those constituents prefer. In many cases, copartisan constituents will elect likeminded MCs, giving copartisans especially high win percentages. Note that this explanation for copartisans' high win percentage is independent of voting power; copartisans' high win percentages do not derive from their voting power, but from another source. Since copartisans have much less voting power than independents, but have high win percentages for other reasons, we control for copartisanship as we continue to examine the relationship between voting power and policy representation. In addition, we will return to the 13-point difference between the win percentages of copartisans and others as a benchmark throughout our discussion.

Controlling for copartisanship, individuals with higher voting power enjoy higher win percentages.⁶⁶ Perhaps the best way to see this is to compare the estimated win percentage of individuals with relatively low and relatively high levels of voting power. For example, an individual at the 25th percentile of voting power is estimated to have a win percentage 3.25 points lower than an individual at the 75th percentile of voting power. If we move to individuals at the 10th and 90th percentiles of the voting power distribution, the difference rises to 7 points.

To provide a sense of how big a 3- or 7-point difference in win percentage is, we refer to two benchmarks. The first, defined above, is the 13-point difference in win percentage between copartisans and the

⁶⁴ See Bullock & Brady, *supra* note 37, at 38–39 (providing models of constituency influences, party, Americans for Democratic Action, and Conservative Coalition support in the 93rd Senate); Clinton, *supra* note 50, at 403–04 (providing statistics on roll call behavior and constituency preferences).

⁶⁵ See, e.g., Miller & Stokes, *supra* note 42, at 52; Robert S. Erikson, *Roll Calls, Reputations, and Representation in the U.S. Senate*, 15 LEGIS. STUD. Q. 623, 634 (1990); Griffin & Newman, *supra* note 39, at 1219.

⁶⁶ Specifically, we regressed win percentage on voting power and an indicator variable for copartisanship. As expected, copartisanship was highly significant, both substantively and statistically ($p < .001$). The model estimates that co—partisans have win percentages 15 points higher than others. The unstandardized coefficient for voting power is .11, with a standard error of .006. The coefficient is statistically significant at the .001 level.

rest of the public, one of the largest differences we observe anywhere in this study. The second benchmark relates to income groups. Many recent studies have found that high income earners are more likely to see their preferred outcomes favored by government decision makers than are low income earners.⁶⁷ Many are deeply troubled by these findings. The American Political Science Association even formed a task force to examine the issue.⁶⁸ Like earlier studies, our data find income and policy representation are linked. Dividing the sample into three income groups of roughly the same size, we find that high-income earners have win percentages 2 points higher than low income earners, on average. Given the great scholarly and political attention paid to the income gap in representation, we take it as another important benchmark to employ in our analysis.

Returning now to the 3- or 7-point gaps relating to voting power, we see that both are larger than the gaps between high- and low-income earners. In addition, the 7-point win percentage gap between the 10th and 90th percentile is roughly half the size of the difference between copartisans and non-copartisans. That is, being on the high end of the voting power scale brings a policy representation advantage about half the size of being able to choose the party of one's MC. In short, voting power matters because constituents with higher voting power tend to have higher win percentages.⁶⁹

GROUP VOTING POWER AND GROUP REPRESENTATION

Summing up the results so far, we have seen that different groups have different levels of voting power and that voting power generally is related to policy representation. In this section, we show that groups with low voting power tend also to enjoy less policy representation. That is, despite the one person, one vote principle,

⁶⁷ See Gilens, *supra* note 63, at 789 (noting that “government policy appears to be fairly responsive to the well-off and virtually unrelated to the desires of the low- and middle-income citizens.”); BARTELS, *supra* note 63, at 257–267 (exploring the extent to which the responsiveness of senators to public opinion reflects differential responsiveness to the senators’ affluent constituents).

⁶⁸ See *INEQUALITY AND AMERICAN DEMOCRACY: WHAT WE KNOW AND WHAT WE NEED TO LEARN 1* (Lawrence R. Jacobs & Theda Skocpol eds., 2005) (concluding that public officials are more responsive to privileged citizens who are well organized and participate in politics, compared to less affluent citizens).

⁶⁹ Controlling for other factors known to affect policy representation does not affect this key finding. If we control for copartisanship, respondents’ race/ethnicity, sex, age, and income, along with the consistency and popularity of their preferences, and the political heterogeneity of the district, we continue to find that voting power is substantively and statistically significant. The coefficient for voting power is slightly smaller, at .10 (standard error = .006, $p < .001$), meaning the difference in estimated win percentage between individuals at the 25th and 75th percentile shrinks slightly to 3.1 points. The difference between 10th and 90th percentiles shrinks slightly to 6.6 points.

political factors make some votes more valuable to candidates with the consequence that some groups get more of what they want from government.

The last column in Table 1 presents the averages for groups' win percentages. We begin with partisan groups. Given that copartisans enjoy such effective policy representation independent of the group's voting power, the best way to observe voting power's impact among partisan groups is to compare independents to outpartisans. Recall that independents have far greater voting power than outpartisans. As Table 1 shows, independents also enjoy higher win percentages. The average win percentage for outpartisans (46) is 8 points lower than the average for independents (54).⁷⁰ This 8-point difference is again about half the size of the effect of copartisanship we saw above and much larger than the income gap in policy representation.

Table 1 also shows that young citizens, who have less voting power than their older counterparts, also have somewhat lower win percentages. Those under thirty had an average win percentage of 53.8, compared to 55.4, a difference of about 1.5 points. This difference is much smaller than the gap between copartisans and others and is smaller than the income gap. However, even slightly lower win percentages based solely on age may be cause for concern.

Finally, recall that African Americans and Latinos have less voting power than do white citizens. Table 1 shows that minority groups also have lower average win percentages than do whites. On average, whites have a win percentage just under 56. In contrast, African Americans' average win percentage is 51, 4.5 points lower than whites' average win percentage. Latinos' win percentage is even lower on average, at just above 49, 6.5 points lower than that of whites. The gap between both minority groups and whites is larger

⁷⁰ The difference is statistically significant at the $p < .001$ level. It is important to point out a potential problem for our analyses. The figures we just cited were calculated from across all congressional districts. Such figures can be misleading. In order for groups to be represented unequally by a MC, the two groups must want the MC to do different things. If both groups want the MC to vote in favor of a bill, the MC cannot help but to represent both groups equally. Moreover, imagine a district where 75 percent of group A prefers a "yea" vote on a bill, while 55 percent of group B prefers a "yea" vote. The district's MC will represent both groups most effectively by casting a "yea" vote. By our measure, group A's members will be better represented on average because 75 percent of the group prefers a "yea" vote. The MC could not have represented group B any better however by voting "nay." Thus, when groups prefer the same roll-call vote, it does not make sense to say that the MC is advantaging one group over the other when she votes as majorities of each group prefer. If we want to see whether MCs side with one group against the other, we must look at instances where group A prefers a "yea" vote and group B prefers a "nay" vote. We can do this by analyzing only those congressional districts where one group's average preference for the roll-call vote (yea or nay) differs from the average preference of the other group. We call these "conflict districts." When we focus on these districts, we find results similar to those reported in Table 1 and below.

than the income gap in win percentage and is between one-third and one-half the size of copartisanship's effect.

Of course, we are examining groups in isolation when in reality every constituent belongs to an ethnic or racial group, one of the party categories, and one of the age categories. When we take each of these factors into account, along with several other factors that affect policy representation, we continue to find that groups with less voting power experience lower win percentages.⁷¹ Taking partisanship, age, race, and ethnicity into account, independents have win percentages 8 points higher than outpartisans, citizens under thirty have win percentages 1 point lower than older citizens, the average win percentage of African Americans is 3 points lower than that of whites, while the average win percentage of Latinos is 4.5 points lower than that of whites. In sum, groups with more voting power tend also to be better represented.

THE IMPORTANCE OF BEING CONVERTIBLE

When we unpack voting power into its two components, it becomes clear that being convertible in elections is the more important factor for policy representation. This is not to say that the probability that a citizen votes is irrelevant. Someone at the 25th percentile in terms of probability of turning out has a win percentage just over 1 point lower than a citizen who is at the 75th percentile. Moreover, there is a 2.5-point win percentage difference between those at the 10th and 90th percentile.

Clearly, the probability of voting matters.⁷² Recall that independents are about 8 percentage points less likely to vote than

⁷¹ Specifically, we estimated an OLS model with win percentage as the dependent variable and controlling for co—partisanship, respondents' race/ethnicity, sex, age, and income, along with the consistency and popularity of their preferences and the political heterogeneity of the district.

⁷² See Griffin & Newman, *supra* note 39, at 1216–1217 (reporting the results of a study that shows while “Senators are disproportionately responsive to voters . . . Senators do not respond to their nonvoting constituents at all, even when [the nonvoting constituent] identifi[es] with the Senator’s party.”); Martin, *supra* note 39, at 116–122 (concluding that “counties that vote at higher rates are rewarded with higher per capita federal expenditures.”); Arend Lijphart, *Unequal Participation: Democracy’s Unresolved Dilemma* Presidential Address, *American Political Science Association*, 1996, 91 AM. POL. SCI. REV. 1, 1 (1997) (noting that representation and influence are biased in favor of more privileged citizens, who engage in intensive modes of participations both at the conventional level, such as working in election campaigns and contributing money to parties or candidates, and unconventional level, like participating in boycotts, and blocking traffic); Sidney Verba, *The Citizen as Respondent: Sample Surveys and American Democracy* Presidential Address, *American Political Science Association*, 1995, 90 AM. POL. SCI. REV. 1, 1 (1996) (“There is a close connection between subject and method in this research, between citizen participation and representative democracy. . .”).

partisans. Our results estimate that if independents were as likely to vote as partisans, they would gain about half a point on the win percentage scale. More significantly, recall that citizens under thirty are 35 percentage points less likely to vote compared to those over thirty. If younger citizens voted at rates equal to those over thirty, their policy representation would increase by an estimated 1.8 points. Remember that this is essentially the size of the existing age gap in representation. Finally, recall that Latinos are 19 percentage points less likely to vote than whites are. If Latinos equalized their probability of voting compared to whites, these figures estimate that their policy representation would increase by about a point.

As much as the probability of voting matters for policy representation, being convertible matters more. Controlling for the effects of copartisanship, a citizen who is at the 25th percentile of the convertibility distribution will have a win percentage 4.5 points lower than someone at the 75th percentile. More dramatically, someone at the 10th percentile will have a win percentage 7.5 points lower than someone at the 90th percentile. Recall from above that independents are dramatically more convertible in elections compared to partisans. If independents were to become only as convertible as partisans, their win percentages would drop by an estimated 5.6 points.

Recall also that African Americans are far less convertible than whites on average. If the average African American could somehow become as convertible as the average white voter, the average win percentage for African Americans would rise by an estimated 1.3 points. Given that the total gap between the average win percentages of African Americans and whites is 4.5 points, the 1.3-point difference associated with being convertible is roughly one-third of the difference between the groups. Clearly, other factors are also at work in the dynamics of race and representation, but African Americans' limited convertibility in elections appears to depress the degree to which this group gets what it wants from government.⁷³

NOT ALL VOTES BRING REWARDS

Low levels of voting power point to a difficult challenge for groups that are traditionally disadvantaged in American politics. One of the most obvious strategies a group can adopt to gain greater

⁷³ In a model that controls for a host of other factors shaping policy representation, the estimated effect of probability of turnout falls short of traditional levels of statistical significance. In contrast, the estimated effect of being pivotal is virtually the same (a citizen at the 25th percentile is estimated to have a win percentage 4.25 points lower than an equivalent citizen at the 75th percentile, all else equal; the difference between the 90th and 10th percentiles is 7.4 points).

political clout is to vote at higher rates. Indeed, one of the chief goals of the Civil Rights Movement was to establish a secure franchise for minority groups so those groups could gain political voice. Empirically, evidence suggests that those who vote enjoy higher levels of policy representation.⁷⁴ That is, voting brings rewards in terms of policy representation. Consequently, someone seeking to move toward greater equality in policy representation across groups might look to boosting turnout as an effective strategy. In fact, turning out to vote might be an especially powerful strategy for equalizing the policy representation of groups. Voting is a radically egalitarian way to participate in politics. Every person can only vote once. In contrast, wealthy individuals can donate huge sums in (uncoordinated) efforts to elect or defeat candidates for office, while poor individuals may not afford to donate any money.⁷⁵

However, one implication of voting power is that not all votes will reap the same rewards. If a group's votes are less important to an MC seeking re-election than another group's votes, the MC may seek to reward voters from that group less than she will reward voters from other groups with more voting power. Given the choice between rewarding the voters from a group with high voting power, a group especially important to the MC's re-election prospects, and rewarding a group with low voting power, the MC will presumably reward voters from the high voting power group.

We find some evidence that this is true. Independent voters have win percentages 4 points higher than independents who did not vote. In contrast, outpartisan voters were no better off than outpartisans who did not vote. In fact, they were a bit worse off. Young voters were a bit better represented than young nonvoters by 1.4 points, but older voters gained a bit more (2.3 points) over nonvoters.⁷⁶

Differences in voting's rewards are especially significant for African Americans. Whites gain from voting. On average, white

⁷⁴ See Griffin & Newman, *supra* note 38, at 1215–1217 (discussing the results a study which “suggest that Senators are disproportionately responsive to voters”); Martin, *supra* note 39, at 116–122 (noting that Senators do not respond to their nonvoting constituents, even if these constituents identify with the Senator's party); Verba, *supra* note 72, at 1 (“But citizen [political] activity is perhaps the major way the public's needs and preferences are communicated to governing elites.”); Lijphart, *supra* note 72, at 1 (noting that “unequal participation spells unequal influence”).

⁷⁵ See Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 YALE L. & POL'Y REV. 273, (1993) (“Private money is a controlling force in American politics and government. . . . [M]onied interests organized around their relationship to wealth dominate the fundraising process that, to a large extent, determines which candidates for public office will win and what they will do once elected.”).

⁷⁶ Each of the differences we describe in this paragraph is statistically significant at the .05 level (or less) using a two-tailed test.

voters' win percentage is 3 points higher than white nonvoters' average win percentage.⁷⁷ Latino voters are also better represented than Latino nonvoters by about 4 points.⁷⁸ In contrast, African Americans who vote are no better represented by their MCs than African Americans who do not vote. The difference between African American voters and nonvoters is so small (less than 1 point) that it is statistically insignificant, meaning that we cannot be sure there is any difference at all.⁷⁹ Simply put, in contrast to whites, we cannot conclude that voting brings any representation benefit to African Americans. Thus, the franchise may prove to be a limited strategy to boost the policy representation of African Americans.

AVENUES FOR REFORM

We close by considering how the distribution of voting power might become more similar across groups. First, we note that the drawing of congressional districts to create majority-minority districts (MMDs), districts in which the majority of the population is non-white, appears to have little impact on the distribution of voting power among African Americans. African Americans in MMDs are 2 percentage points more likely to vote than African Americans in non-MMDs, but are also 2 points less convertible than African Americans in non-MMDs. The win percentage of African Americans residing in MMDs is statistically indistinguishable from the win percentage of African Americans in other districts. MMDs have important consequences for minority representation,⁸⁰ but they do not appear to affect African Americans' voting power in any obvious way.

Since voting power consists of two parts, changes to either could shift the distribution toward greater parity across groups. One potential reform that would virtually equalize the probability of voting across groups is to make voting mandatory, as it is in some other countries, like Australia, Austria, Belgium, and Singapore.⁸¹ As president of the American Political Science Association, Arend

⁷⁷ The difference is statistically significant at the .0001 level.

⁷⁸ The difference is statistically significant at the .05 level.

⁷⁹ The difference between the win percentage of African American voters and nonvoters is 0.7 points, with a p-value of .75.

⁸⁰ See, e.g., DAVID LUBLIN, *THE PARADOX OF REPRESENTATION: RACIAL GERRYMANDERING AND MINORITY INTERESTS IN CONGRESS* 23–38 (1997) (discussing the positive effect of the racial redistricting strategy on the election of new African-American representatives); Charles Cameron, David Epstein & Sharyn O'Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, 90 AM. POL. SCI. REV. 794, 794 (1996) (discussing the role concentrated minority voting districts had on the rise of the 'theory of black electoral success' in which minority interests have been advanced through the election of minority officials).

⁸¹ Norman Ornstein, *Vote or Else*, N.Y. TIMES, Aug. 10, 2006, at A23.

Lijphart advocated for compulsory voting as a means of leveling the political clout of various groups in American politics.⁸² Others have occasionally advocated for compulsory voting in the United States as well.⁸³ Aside from the low likelihood that politicians elected under current laws would adopt a dramatically different set of laws and the “libertarian belief prevalent in the United States against government interference in the decision to vote,”⁸⁴ other, less draconian, reforms could boost turnout in the United States. For example, some reforms could decrease the costs of registration, as the National Voter Registration Act of 1993, the so-called “motor voter” law, attempted to do.⁸⁵ Potential reforms include allowing Election Day registration, eliminating voter identification laws, and allowing voters to register by mail or electronically. Such measures are estimated to have some, albeit sometimes relatively minor, effects on turnout rates.⁸⁶ Importantly, the effects of at least some of these reforms are estimated to have the greatest effect on turnout rates among citizens under thirty years old.⁸⁷

Although electoral changes may alter turnout rates, they may have a limited impact on groups’ relative political influence. First, as we saw above, of the two components of voting power, the probability of turnout has less effect on policy representation. Even if we equalized the probability of turnout across groups, significant differences in voting power would remain across racial groups and between independents and partisans. Second, we cannot be sure how newly mobilized voters would vote. There is a common assumption that

⁸² Lijphart, *supra* note 72, at 8–10.

⁸³ See Alan Wertheimer, *In Defense of Compulsory Voting*, in PARTICIPATION IN POLITICS 276, 2–93 (J. Roland Pennock & John W. Chapman eds., 1975) (“If I am right in suspecting that compulsory voting would not be accepted, it is not because it is not a good idea—rather, it would only confirm one of the major premises of the argument, that men are not always rational.”); Ornstein, *supra* note 81, at A23 (“Mandatory voting comes with a price: a modest loss of freedom. But this would be more than balanced by the revitalization of the rapidly vanishing center in American politics.”).

⁸⁴ Richard L. Hasen, *Voting Without Law?*, 144 U. PA. L. REV. 2135, 2174 (1996); see also Michael G. Colantuono, Comment, *The Revision of American State Constitutions: Legislative Power, Popular Sovereignty, and Constitutional Change*, 75 CAL. L. REV. 1473, 1503 (1987) (“Compulsory voting is fundamentally inconsistent with the individualism of American political culture, and it seems doubtful that Americans would accept such a plan.”).

⁸⁵ Pub. L. No. 103–31, 107 Stat. 77 (1993).

⁸⁶ In their study of the effect of the so-called “motor voter” law, Highton and Wolfinger estimate that turnout increased by 4.7 percent through Colorado’s motor voter program and if all states permitted registration on Election Day, national turnout would increase by 8.7 percentage points. Benjamin Highton & Raymond E. Wolfinger, *Estimating the Effects of the National Voter Registration Act of 1993*, 20 POL. BEHAV. 79, 84, 87 (1998). Highton also finds that states with election-day registration had turnout 10 percentage points higher than other states. Benjamin Highton, *Easy Registration and Voter Turnout*, 59 J. POL. 565, 568–69 (1997).

⁸⁷ Highton & Wolfinger, *supra* note 86, at 84, 87.

Democrats and progressive causes would benefit from increased turnout such that “if everybody in this country voted, the Democrats would be in for the next 100 years.”⁸⁸ Analyses routinely find, however, that if everyone voted, electoral outcomes would be only modestly different.⁸⁹ Since the act of participating in politics may alter some newly mobilized citizens’ political preferences, it is difficult to know exactly what the electorate would look like under conditions of increased turnout. In particular, it would be difficult to know how new voters’ convertibility scores would compare to their current scores.

Another means of equalizing voting power would be to make groups that are currently “captured” by one party more convertible. The primary means of doing so are presumably by moving away from the current two-party system or by making “captured” groups more convertible within the current system. A move toward multiple political parties would presumably give groups more options so that if a party begins to ignore a group, the group can credibly threaten to vote for another party. If significant numbers of any group could conceivably vote for two or more different parties, members of the group are more convertible and therefore have more voting power. Various electoral reforms could encourage the development and electoral viability of multiple parties, including moves to proportional representation or cumulative voting rules and/or multi-member districts in which several candidates are elected by the same constituency.⁹⁰ Proposals for major changes to electoral laws in the United States have historically been met with skepticism or outright hostility.⁹¹

⁸⁸ D.C. Denison, *A Conversation with John Kenneth Galbraith*, CAL. MONTHLY, Feb. 1986, at 11.

⁸⁹ For example, Highton and Wolfinger estimate that if everyone had voted in the 1992 presidential election, Bill Clinton would have gained an additional 2.5 percentage points in the popular vote. Benjamin Highton & Raymond E. Wolfinger, *The Political Implications of Higher Turnout*, 31 BRIT. J.POL. SCI. 179, 189 (2001). For estimates of increases of Democrats’ vote share if everyone voted in U.S. Senate elections, see Jack Citrin, Eric Schickler & John Sides, *What if Everyone Voted? Simulating the Impact of Increased Turnout in Senate Elections*, 47 AM. POL. SCI. REV. 75, 83 (2003) (estimating that Democrats’ vote share could increase by as much as 5 percentage points, and that the outcome of only four of ninety-one Senate races over a six-year period would have changed if everyone had voted).

⁹⁰ GARY COX, MAKING VOTES COUNT: STRATEGIC COORDINATION IN THE WORLD’S ELECTORAL SYSTEMS 40–68 (1997) (discussing different types of electoral systems around the world).

⁹¹ In one fairly high profile example, Lani Guinier, Bill Clinton’s nominee for Assistant Attorney General for Civil Rights faced considerable criticism for her advocacy of electoral reform, ultimately withdrawing her nomination presumably in part as a consequence. Stephen L. Carter, *Foreword to LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* vii–xx (1994).

Short of encouraging a multi-party system, there may be ways to make relatively non-convertible groups like African Americans more convertible. One recent study finds that African Americans' policy preferences have become less liberal and more moderate over time, perhaps making African Americans more open to the GOP.⁹² From time to time, Republicans have made overtures to African American voters, sometimes explicitly arguing that Democrats have ignored African American interests. For example, George W. Bush challenged the Urban League, asking:

Does the Democrat [sic] party take African American voters for granted? It's a fair question. I know plenty of politicians assume they have your vote. But do they earn it and do they deserve it? Is it a good thing for the African American community to be represented mainly by one political party? That's a legitimate question. How is it possible to gain political leverage if the party is never forced to compete? Have the traditional solutions of the Democrat [sic] party truly served the African American community?"⁹³

Although it is possible that the Republican Party could appeal to African Americans, at this point it remains hard to imagine a major effort on the Republicans' part or an overwhelming response by African American voters.

In summary, we have shown that candidates running for re-election have incentives to appeal to constituents with greater voting power more than those with less voting power because the former have a greater impact on the election's outcome. Since voting power is distributed unequally across important groups in American politics, one consequence of candidates' incentives is that some groups—namely those with more voting power—tend to get more of what they want from government than others. The *Baker* Court's sense that unequal voting power would lead to inequalities in political representation appears to be accurate. Moreover, some groups of voters (again, those with more voting power) improve the attentiveness of elected officials to their concerns by voting, while those who possess less voting power appear to gain little or nothing by voting. We have reviewed a variety of potential reforms that could move the distribution of voting power toward equality. Each of the

⁹² KATHERINE TATE, WHAT'S GOING ON? POLITICAL INCORPORATION AND THE TRANSFORMATION OF BLACK PUBLIC OPINION 1–13 (2010).

⁹³ George W. Bush, *President Emphasizes Minority Entrepreneurship at Urban League, Remarks by the President to the 2004 National Urban League Conference*, (July 23, 2004, 10:35 AM), <http://georgewbush-whitehouse.archives.gov/news/releases/2004/07/20040723-8.html>.

reforms appears unlikely to be implemented any time soon. Consequently, it appears to us most likely that the inequalities in voting power we observe today will persist despite the legal equality of votes established in *Baker*.