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CONFRONTING PSEUDO CAESARS WITH PAPER TIGERS

Defending the Right to Vote

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ABSTRACT

Concerned by the growing democratic erosion and international cross fertilization of right-wing authoritarian actors, this study employs a qualitative comparative analysis looking at authoritarian practices of two political parties, Republicans in the US and Fidesz in Hungary, and their attempts to sabotage accountability by suppressing the will of the people as expressed by the right to freely and equally vote. To discern the scope and effect of these authoritarian practices, this analysis examines prior scholarly research, legal cases and commentary, statutory law, journalistic analysis, news reports, NGO reports, and extensive personal interviews conducted in Budapest by the author of lawyers, journalists, Professors, researchers, and activists.

It finds that with Hungary, authoritarian practices have been clandestine and gradual, albeit legal, and thus contrary to expectations given the weakening of the press, opposition, and courts in the recent democratic erosion to an electoral autocracy. The opposite is true in the US such that despite strong opposition, strong courts and press, the Republican authoritarian practices are blatant and bold evidencing a psychology of meanness. This study provides some analysis and explanation of these findings.

This study also assesses, as ineffectual, the Human Rights mechanism and other legal avenues to challenge these authoritarian practices in each country, while suggesting a significant strengthening of International Election Observation as a possibly more effective tool for confronting authoritarianism. It concludes by urging action to confront authoritarians.

TABLE OF CONTENTS

INTRODUCTION	1.
METHODOLOGY	3.
US Republican Party	4.
Fidesz	4.
Hypothesis	8.
RESEARCH CONTEXT	9.
Polyarchy and More	10.
Democratization Waves	11.
Hybrid Regimes	12.
Legitimation Scheme	14.
Democratic Erosion	15.
Authoritarian Practices	17.
COMPARATIVE ANALYSIS	19.
United States of America	20.
Partisan Gerrymandering	20.
Historical Precedent	21.
US Supreme Court	25.
Pennsylvania Supreme Court	27.
A New Trend	29.
Supermajorities	31.
Florida Authoritarians	34.
Gerrymandering Effects	36.

Strict Photo Voter ID Laws	38.
Impact of Shelby County v. Holder	39.
New Republican Restrictions	41.
Effects of Authoritarianism	43.
Hungary	46.
Gerrymandering and Omission	47.
A Designed Advantage	53.
Authoritarian Effects	54.
Clandestine and Legal	56.
Winner Compensation	57.
Expatriate Discrimination	58.
Minority Discrimination	63.
CONFRONTING AUTHORITARIAN PRACTICES	66.
Human Rights Mechanisms	66.
European Court of Human Rights	69.
European Court of Justice	71.
Treaty on European Union	71.
Fundamental Law of Hungary	72.
Alien Tort Statute	75.
Inter-American Commission on Human Rights	77.
International Election Observation	79.
CONCLUSION	82.
BIBLIOGRAPHY	88.
APPENDIX	106.

LIST OF FIGURES

Figure 1. Democratic Erosion as New Trend Leading to Autocracy in Third Wave	16.
Figure 2. Pennsylvania's 7 th District Through Time	29.
Figure 3. Free and Equal Clauses in State Constitutions	30.
Figure 4. Veto Proof Majorities	32.
Figure 5. Voter ID laws since 2005	42.
Figure 6. Photo ID laws with more details	42.
Figure 7. Fidesz vote share by OEVK size (number of votes)	50.
Figure 8. Percentage Deviation by Constituency as of January 12, 2022	51.
Figure 9. 2022 Hungarian Parliamentary Election Tentative Results	52.
Figure 10. Demonstrating gerrymandered advantage to Fidesz	54.
Figure 11. Location of Hungarian Diaspora in neighboring countries	59.
Figure 12. Average Score on Authoritarian Index Democrats vs Republicans	86.

INTRODUCTION

On May 4, 2023, the American sponsored Conservative Political Action Conference (CPAC) was held in Budapest Hungary. This was the second year the American Conservative Union political group has gone to Hungary to highlight shared goals and values with the ruling Fidesz party in Hungary, but also to allow Hungary's Prime Minister Viktor Orbán a forum to espouse his right-wing illiberalism, and authoritarian views. Orbán had previously been invited to speak at the CPAC 2022 in Texas only a few months before, and before that in April of 2022, CPAC was also in Budapest.

At CPAC 2022 in Budapest Orbán concluded his remarks by saying “We must take up the fight, and in this fight, we can only succeed if we are together and organized. We must take back the institutions in Washington and Brussels. We must find friends and allies in one another. We must coordinate the movement of our troops because we face a great challenge. The decisive year will be 2024: you will have presidential and congressional elections, and we will have elections to the European Parliament. These two locations will define the two fronts in the battle being fought for Western civilization.”¹

This recent and growing cross-fertilization between an authoritarian autocrat in a former Soviet controlled country in Eastern Europe and an increasingly growing authoritarian segment of the Republican Party in the United States has not gone unnoticed. Observers have noted increasing contact between these groups.² For example, Katalin Novák, the first female Hungarian president, met Ron DeSantis in March of 2023. The Governor of Florida and currently a Republican Presidential hopeful has made a name for himself in taking strong right wing stands on a number of cultural issues, but more importantly has used authoritarian tactics such as extreme partisan gerrymandering, attacking universities and school boards, corporations and prosecutors who challenge his political views.³ He has the backing of a supermajority in the

¹ Viktor Orbán speech (2022, May 24) at *CPAC 2022 in Budapest*. <https://visegradpost.com/en/2022/05/24/viktor-orbans-speech-at-the-cpac-on-19-may-2022/> (Final access July 10, 2023)

² Reston, M. (2022 April 22). Ron DeSantis Flexes the Raw Power of his Imperial Governorship. *CNN*. <https://edition.cnn.com/2022/04/22/politics/governor-desantis-imperial-governorship-analysis/index.html> (Final Access July 12, 2023)

³ Chait, J. (2022, July 22). Ron DeSantis Would Kill Democracy Slowly and Methodically Whether he's as bad as Trump isn't the question. *New York Magazine*. <https://nymag.com/intelligencer/2022/07/ron-desantis-authoritarian-democracy-trump-2024-republican.htm>. (Final Access July 10, 2023)

Florida legislature and has appointed the majority of Judges on the Florida Supreme Court.⁴ The evident blatant undermining of democratic institutions in Florida is stunning. Pseudo Caesars are working together.

Kurt Bardella, an adviser to the Democratic National Committee, has this unvarnished partisan take on this new reality: “They see a blueprint for fascism. They see someone who embodies the Republican party’s values of obstructing free and fair elections, of undermining democratic institutions, of expanding government power and politicizing the judicial branch, marginalizing minority communities, and corrupting the pillars of a free society. When you talk about an autocratic regime, that’s what Prime Minister Orbán is in Hungary and it’s exactly the blueprint that Republicans are hoping to follow here in the United States of America. It’s not surprising in the least that, especially in a place like CPAC Texas, these rightwing white nationalists are embracing someone like Orbán.”⁵

This attempt to spread Orbán’s style of “illiberalism” into the USA has been recently tracked by Political Capitol and Heinrich Boll Stiftung in a joint study.⁶ They note that “in the United States of America, Fidesz has built close ties with the Republican Party, especially with its Trumpist wing. In this process, Orbán's anti-immigration and anti-gender policies, the activities of Hungarian GONGOs,⁷ the US lobbyists he has hired, and biased coverage in pro-Trump US media have played a significant role.”⁸

⁴ Craig, T., Rosza, L. How DeSantis became Florida’s most powerful governor in a generation. (2023, April 23). *The Washington Post*. <https://www.washingtonpost.com/nation/2023/04/16/florida-ron-desantis-governor-legislature-power/>. (Final Access July 10, 2023)

⁵ Kurt Burdella, as interviewed by Smith, D. (2022, August 5) Viktor Orbán turns Texas conference into transatlantic far-right love-in. *The Guardian*. <https://www.theguardian.com/us-news/2022/aug/06/viktor-orban-cpac-far-right-us-trump> (Final Access July 13, 2023)

⁶ Political Capitol and Heinrich Boll Stiftung. (2022, December) The building of Hungarian political influence – The Orbán regime's efforts to export illiberalism. *Political Capital*. https://cz.boell.org/sites/default/files/2023-01/pc_boell_the-building-of-hungarian-political-influence_en_1.pdf. (Final Access July 10, 2023)

⁷ A government-organized non-governmental organization (GONGO) is a non-governmental organization that was set up or sponsored by a government in order to further its political interests and mimic the civic groups and civil society at home or promote its international or geopolitical interests abroad. The conservative Danube Institute in Budapest is an example that is funded by Hungarian State funds. *Wikipedia*. https://en.wikipedia.org/wiki/Government-organized_non-governmental_organization. (Final Access July 11, 2023)

⁸ Political Capitol and Heinrich Boll Stiftung, *Ibid*. p.4.

It also has been noted that the UK is a target of Orbán as well. Noted British-Hungarian journalist Alex Faludy, recently detailed the ongoing efforts and connections with the Conservatives in the UK and Fidesz. He writes, “lately, Tory borrowing from Orbán’s playbook has extended to charging for press accreditation for key events to critical media and considering imposing price controls on foodstuffs to tackle inflation – trialed in Hungary since 2022. Extensive use of “Henry VIII powers” that allow the government to legislate without parliamentary scrutiny have uneasy parallels with Orbán’s abuse of “rule by decree” powers conferred in the Covid emergency and in use ever since.”⁹ In Hungary, Faludy has been blacklisted by Fidesz.¹⁰

This rising authoritarianism of these political groups led by “Pseudo Caesars” is the subject of this study. The focus is on their manipulations of the right to vote and the suppression of the will of the people.

METHODOLOGY

This present study explores just a small part of this disturbing political phenomena. In particular, it employs a qualitative comparative analysis looking at “authoritarian practices”¹¹ of the two political parties, Republicans in the US and Fidesz in Hungary, and their attempts to sabotage accountability by suppressing the will of the people as expressed by the right to freely and equally vote. To discern the scope and effect of these authoritarian practices, this analysis examines prior scholarly research, legal cases and commentary, statutory law, journalistic analysis, news reports, NGO reports, and extensive personal interviews conducted in Budapest by the author of lawyers, journalists, Professors, researchers, and activists.¹²

⁹ Faludy, A. (2023, June). Why are Tory MPS trying to bring the Orbán Playbook to British Politics? *The Guardian*. <https://www.theguardian.com/profile/alex-faludy> (Final Access July 10, 2023)

¹⁰ Interview Alex Faludy in Budapest, April 30, 2023.

¹¹ A term and unit of observation coined by Glasius, M. (2018) What Authoritarianism is and is not... A Practice Perspective. *International Affairs* 94 (3) pp. 515–533. <https://academic.oup.com/ia/article/94/3/515/4992409> (Final Access July 13, 2023)

¹² Multiple attempts to contact and to interview government or party officials in Hungary were not returned.

As part of this process, it is important at first to understand the differences between the two political parties in this study. They may currently have some ideological similarities, but their history and current societal context is vastly different.

US Republican Party

The US Republican Party is the second oldest party in the United States,¹³ dating from 1854 when it was founded as a liberal anti-slavery coalition of northern Protestants, factory workers, businesspeople, and wealthy farmers. They successfully elected Abraham Lincoln and their ranks grew with freed black men joining after the Civil War. However, they ideologically shifted to the right after the election of Franklin Delano Roosevelt in 1932 and grew even more white and conservative from the 1950s until they recently have taken a stronger turn closer to the far right after the election of the populist president Donald Trump in 2016.

They are privately funded and exist and compete in all states and the federal elections in the oldest democracy in the world. The US has a centuries old constitution, a strong legal system, and courts, with a strong independent media and a strong main opposition party. It is also a multi-racial, ethnic, political, and cultural mix of 340 million people. The US Republican party operates in this unique environment. This greatly differs from the circumstances and history of Fidesz in Hungary.

Fidesz

Fidesz (Hungarian Civic Alliance) was registered as a liberal social democrat political party in 1990 in opposition to the Hungarian Socialist after the collapse of the Soviet Union and Russian control of Hungary. Interestingly, its original platform had several left-wing elements. It had historical roots in an underground student movement founded in March of 1988.¹⁴

¹³ The US Democratic party is the oldest being founded in 1828.

¹⁴ At first, they limited membership to under age 35.

This changed after 1994 as it shifted to the right ideologically, and later re-gained, after having a majority from 1998-2002, a supermajority in the unicameral parliament in 2010.¹⁵ With the new supermajority the party wrote and passed a new Constitution (Fundamental law) and have ruled ever since, with an actual increase in their majority in 2022 against a united opposition coalition. In the last 13 years, their policies have become increasingly far right and authoritarian. Orbán self identifies the party policies as “Christian Illiberal Democracy” which despite being within the European Union, is in seemingly constant battle with Brussels.¹⁶

Unlike the United States, Hungary is a young and fragile democracy of about 9.5 million almost ethnically homogeneous people which the European Parliament recently has categorized as no longer an actual democracy but an “electoral autocracy.”¹⁷ The ruling regime has a very disorganized, split, weak and financially deficient opposition. The judicial system is suspected of being controlled by the ruling regime, and the Constitutional Court has a majority of Fidesz appointees.¹⁸

In addition, Fidesz also has gained, through regulatory fines and rules as well as acquisitions of media outlets,¹⁹ almost a monopoly on media and propaganda, especially in rural areas.²⁰ It also spends a large budget on social media advertising and according to the Hungarian

¹⁵ From interviews with Professor Gábor Tóka May 30 and June 2, 2023, and with Róbert László May 31, 2023, in Budapest.

¹⁶ Randeria, S. (2022, April 27). Democracy in Question” Podcast of CEU President Shalini Randeria speaking to Professor Gábor Tóka. *Central European University*. Accessible here: <https://www.ceu.edu/article/2022-04-27/newest-episode-democracy-question-podcast-features-Gábor-Tóka>. (Final Access July 10, 2023)

¹⁷ The adopted EP text can be accessed here: <https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy>. (Final Access July 13, 2023)

¹⁸ Garamvolgyi, F., Rankin, J. (2022, August 14). Viktor Orbán’s grip on Hungary’s courts threatens rule of law, warns judge. *The Guardian*. <https://www.theguardian.com/world/2022/aug/14/viktor-orban-grip-on-hungary-courts-threatens-rule-of-law-warns-judge> (Final Access July 10, 2023)

¹⁹ Olterman, P. (2023, June 23) Authors leave Hungarian publisher in protest at sale to Orbán-linked college. *The Guardian*. <https://www.theguardian.com/world/2023/jun/23/authors-leave-hungarian-publisher-in-protest-at-sale-to-orban-linked-college>. (Final Access July 10, 2023)

²⁰ As of this writing in Budapest city and suburbs, the regime has plastered a poster in almost every conceivable setting showing images of opposition leaders in black and white with the claim in large red letters above saying they want war, and if you support them Hungary will be in a war. The next parliamentary elections will be in 2026, years hence.

Civil Liberties Union, internet freedom in Hungary continues to decline, and the government has admitted to purchasing and using spyware on targeting journalist and lawyers.²¹ It also has directly attacked journalist.²²

Furthermore, Freedom House reports: “The Fidesz government has passed antimigrant and anti-LGBT+ policies, as well as laws that hamper the operations of opposition groups, journalists, universities, and nongovernmental organizations (NGOs) that are critical of the ruling party or whose perspectives Fidesz otherwise finds unfavorable.”²³

Specifically looking at Hungarian elections administration, the OSCE/OHDIHR’s report of the 2022 parliamentary elections states “ the campaign was marked by the absence of a level playing field, characterized by a pervasive overlap between the ruling coalition’s campaign messages and the government’s information campaigns, giving an advantage to the ruling coalition and blurring the line between state and party ...The ODIHR EOM received claims that, mainly in rural areas, opposition campaign activities were hindered by pressure on voters, often by local mayors, not to attend opposition events. The sending of emails and text messages with campaign messages led to allegations of the misuse of voters ’personal data by the government, the ruling party and the United for Hungary opposition coalition.”²⁴ It is clear in their extensive report, that the election in 2022 was unfair and purposely designed to be so and had been heavily manipulated. The 2014 and 2018 elections apparently suffered the same fate.²⁵

In an earlier joint report with the Venice Commission of the Council of Europe, OSCE noted that election related legislative changes in 2020 were done very quickly and with a “ lack of meaningful public consultations (which is) particularly worrisome when they concern

²¹ Interview with Dániel Döbrentey, HCLU lawyer on April 11, 2023, in Budapest.

²² Lozovsky, I. (2023, March 13). They Tried to Frame Us’: New Assault on Hungarian Journalists Highlights Media Freedom Crisis in the Heart of Europe. *Organized Crime and Corruption Project*. <https://www.occrp.org/en/blog/17408-they-tried-to-frame-us-new-assault-on-hungarian-journalists-highlights-media-freedom-crisis-in-the-heart-of-europe>. (Final Access July 10, 2023)

²³ Freedom House. (2023). *Hungary*. <https://freedomhouse.org/country/hungary/freedom-world/2023>. (Final Access July 10, 2023)

²⁴ OSCE. (2022, July 29). *Hungarian Parliamentary Elections and Referendum 3 April 2022, ODIHR Election Observation Mission Final Report*. ODIHR., p.3. <https://www.osce.org/odihr/elections/hungary/511441> (Final Access July 10, 2023)

²⁵ Interview with Gábor Tóka June 2,2023 in Budapest.

electoral legislation, which should not be seen as a political instrument: when defining the rules of the game which have to ensure a level playing field and respect for electoral rights, broad political consensus as well as extensive consultations with all relevant stakeholders are crucial.”²⁶ It noted that this tactic had been done repeatedly since 2010 and Fidesz was abusing its supermajority. In sum, the manipulated and well-crafted political environment which Fidesz has built in Hungary has no comparison to the United States.

Furthermore, many commentators have observed a cultural element in Hungarian society which enhances to the ability of the Fidesz regime to gain and retain power. There is an ingrained elitism in which many fear the elites, they are taught to not question authority as it is against the “natural order.”²⁷ This may be attributed to a long history of feudalism and then overloads by occupying powers for centuries.²⁸ It is as if Fidesz has tapped into this history and cultural element to sustain their power.

Journalist Zsafia Banatu of Unhack Democracy has additionally identified a co-dependent system of clientelism and a sort of pseudo feudalism in Hungary.²⁹ “Clientelism is a quid pro quo exchange of electoral support for some agreed behavior by a politician or one of their agents, often called a broker.”³⁰ Banatu has uncovered massive instance of this behavior and has documented thousands of individual cases perpetrated by Fidesz.

This has been also investigated and confirmed by researchers from New York University who looked at the 2014 Hungarian Parliament elections and found “two of these clientelistic strategies (welfare coercion and welfare favors) politicize state resources. In the case of other clientelistic strategies (vote-buying and private coercion), candidates use private resources and

²⁶ Venice Commission and OSCE/ ODIHR. (2021, October 18). Joint Opinion No. 1040/2021 OSCE/ODIHR Opinion Nr.: ELE-HUN/430/2021. P.4. HUNGARY. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)039-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)039-e) (Final Access July 10, 2023)

²⁷ Interview with Dániel Döbrentey, Ibid.

²⁸ Simon, J. (1993, June) Post-paternalist Political Culture in Hungary: Relationship Between Citizens and Politics During and After the "Melancholic Revolution" (1989-1991). *Communist and Post-Communist Studies* 26(2). pp. 226-238. (Final Access July 10, 2023)

²⁹ Interview with Zsafia Banatu of Unhack Democracy on April 18, 2023, in Budapest.

³⁰ Mares, I., Young, L. (2019, April). Varieties of Clientelism in Hungarian Elections. *Comparative Politics* 51(3). pp. 449-471., P.1. <https://www.jstor.org/stable/26663939>. (Final Access July 10, 2023)

brokers who are not state employees to incentivize voters to support a candidate.”³¹ In sum, for Hungary and the US the history, culture and political systems are quite different.

Hypothesis

Given these stark differences in the political environment it is possible to make a working assumption that authoritarian practices aimed at sabotaging accountability by suppressing the right to vote in Hungary would be blatant and an obvious abuse of power of their supermajority. The opposite would be true in the USA, for the Republican party. The key here, for Hungary, being the lack of controls through the court, opposition and media to restrain the political behavior around elections by Fidesz, and conversely the existence of those factors as determinative in the USA.

For this study to assess whether a given authoritarian practice is blatant, we will look to the methods employed as well as the common sense understanding of blatant. Blatant action is not clandestine, is intended to be known by the common voters and is often if not illegal, is testing the boundaries of the law. The authoritarian actor or group’s action is designed to be known and attacking. They may clothe it in politically correct language or justify it with equivocal reasoning, but there is no question the action is being taken openly.

Given this context, this study will thus test this hypothesis:

Hypothesis: The more constrained by law, media, civil society, and strong opposition, the less blatant authoritarian practices through voter suppression will be at sabotaging accountability and thus violating the Human Right of voting as expressing the will of the people.

Although the authoritarian practices of both Fidesz and a part of the Republican party are clearly broad and numerous, this study will be limited to and provide analysis of the voter suppression tactics of partisan gerrymandering in both countries, as well as Voter ID laws in the United States and discriminatory treatment of expats and minority voters in Hungary. Also, the

³¹ Mares, I., Young, L. *Ibid*, p. 468.

peculiar electoral law of “winner compensation” in Hungary will be examined. Additionally, before making some generalization and drawing some conclusions, this thesis will briefly look at Human Rights mechanisms and other legal avenues to confront these authoritarian practices. The purpose is to place this study in the real-world context of confronting authoritarian actors in the USA and Hungary.

RESEARCH CONTEXT

This study can be placed in the academic effort of the study of authoritarianism. In particular this is a study with a focus on authoritarian practices of a political group, rather than a study at the State level. It will thus, in the context of Hungary, look at how the current regime sustains power, and in the context of USA, how the Republican party is attempting to gain power.

Research, trying to define and understand authoritarianism began after World War II when scholars tried to make sense of the rise a fascism and totalitarian regimes the world had just suffered from. They also were contending with the expansion of Communism at the beginning of the Cold War. Thus, in the midst of the war, Joseph Schumpeter (1943) developed an idea of democracy, to contrast with totalitarianism, that it was an “institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote”.³²

This definition seemed to reflect theories of market capitalism with the candidates or parties as capitalist vying to sell their ideas to the market of consumers who used their vote to buy the ideas. Totalitarianism thus simply was the opposite...the lack of a free competition for a free vote. There was no capitalist, no market, no choice and no voting. It was sort of analogous to a monopoly. This made sense in a world viewed through capitalists colored glasses and with many totalitarian regimes and monarchies, and a few democracies.³³

³² Schumpeter, J. (1943). *Capitalism, socialism and democracy*. Allen & Unwin, p. 260

³³ To be sure, Schumpeter of course predicted capitalism would be replaced gradually with socialism. He failed to predict that in places like Hungary, Socialism eventually was replaced by the current electoral autocracy.

Polyarchy and More

A few decades later, in the midst of the full-blown Cold War, Robert Dahl (1971) saw a world not as simplistic in which complex and varied democracies had started to flourish.³⁴ Dahl studied American politics in the 1960s and coined the term polyarchy, or the rule by many, with the many being interest groups and political parties.³⁵ According to Dahl, this polyarchy system is open, and inclusive of different groups and has free competitive elections.

He also stressed that inclusiveness and contestation of elections was the core concept and give this inclusiveness, in polyarchy, there is not an overriding ideology dictating outcomes. No hegemony of the elite. Most importantly, by his thinking, democracies were more than just about free and competitive elections, you had to have the elements of free society as well, to be in the Democracy club.

Dahl thus identified seven crucial elements of democracies as:

1. universal suffrage and the right to run for public office,
2. free and fairly conducted elections,
3. the right to free speech and protection to exercise it by law and courts,
4. independent media free from government control,
5. the right to form political parties
6. a government that listens and acts to voters' concerns, and
7. accountability of government (and parties) to election outcomes and government.

His ideas focused on the quality of the democracy, but also in the process he explored the idea that there is a democratization process, a spectrum, from or to authoritarianism and these elements can be measured to see how far along a society was in becoming a democracy.

A few years after Dahl, Juan Linz (1975), mapped out the difference between Totalitarianism and Authoritarianism. He defined authoritarianism as a regime with limited

³⁴ Culturally this period coincided with an anti-authoritarianism wave that had started with at the end of the WWII, and continued to flourish intellectually with the bohemian, hippie and even punk social phenomenon as well as the current antifa movement.

³⁵Dahl, R. (1971). *Polyarchy: participation and opposition*. Yale University Press.

levels of pluralism, a mentality rather than ideology, weak political mobilization, and a relatively unrestrained leadership.³⁶ This drew on his earlier study in 1964 which argued the Franco's Spain regime was not totalitarian but rather a new regime typed called authoritarian. This set a new end pole of a spectrum between Democracy and Authoritarianism, but as has been observed, the blending or fusion in between these two poles had yet to be studied such that Linz did not discuss the concept of a hybrid regime.

Looking closer at the causative nature of socio-economic factors in driving societies away from authoritarian regimes and toward democracy, Guillermo O'Donnell in 1979 theorized that authoritarianism can result and be sustained by economic development, and not always lead to democracy, at least in Argentina and Brazil.³⁷ He saw bureaucrats and the elite military grabbing power and the importance of looking at economics in understanding what made them sustainable. He coined the term "bureaucratic authoritarianism." It was a new, although apparently unique to South America, archetype he also placed on the spectrum that Dahl had suggested.

Democratization Waves

Then later, looking at a much longer historical view, Sam Huntington (1991) developed the concept of three waves of democratization in the modern period and two reversals toward authoritarianism.³⁸ His conclusion is similar to O'Donnell in the importance of social-economic factors, but he clearly argues the opposite. He states "economic development makes democracy possible; political leadership makes it real. For democracies to come into being, future political elites will have to believe, at a minimum, that democracy is the least bad form of government for their societies and for themselves. They will also need the skills to bring about the transition to

³⁶ Linz, J. (1975). *Totalitarian and authoritarian regimes, Handbook of Political Science*, v.3. Addison-Wesley.

³⁷ O'Donnell, G. (1979) *Modernization and Bureaucratic Authoritarianism. Studies in South American Politics*. University of California Press.

³⁸ Huntington, S.P. (1991) Democracy's Third Wave. *Journal of Democracy*, 2(2) Spring, pp. 12-34. <https://www.journalofdemocracy.org/articles/democracys-third-wave/> (Final Access July 10, 2023) See also his book: Huntington, S. P. (1991). *The Third Wave of Democratization in the Late Twentieth Century*. University of Oklahoma Press.

democracy while facing both radical oppositionists and authoritarian hard-liners who inevitably will attempt to undermine their efforts.”³⁹

Hybrid Regimes

Accepting Huntington’s formulation and adding specificity to Dahl’s spectrum and some hybrids between the poles was the input that Larry Diamond (2002) provided a few decades later. The collapse of the Soviet Union in 1989 spurred on, especially in Eastern Europe, a flourishing of “new” democracies according to Diamond, and efforts led to a wave “of democratic transitions, which essentially crested in the mid-1990s. For some years now, it has been apparent that a great many of the new regimes are not themselves democratic, or any longer ‘in transition’ to democracy.”⁴⁰ Thus, he proposed these categorizations:

- Closed Authoritarian regimes which do not hold multiparty elections;
- Hegemonic Electoral Authoritarian regimes which hold uncompetitive multiparty elections that are not free or fair;
- Competitive Authoritarian Regimes which hold competitive, albeit unfair or un-free multiparty elections;
- Electoral Democracies which hold free and fair multiparty elections although civil liberties are not fully protected and enforced;
- Liberal Democracies which hold free and fair multiparty elections and broadly protect civil liberties.

Diamond also noticed that in those countries where democratization has slowed or stopped, or even reversed in the mid-1990s, that these countries still formally held elections and mimicked democratic institutions in society, but these all masked the real and progressing authoritarianism. He noted, agreeing with Huntington, that even with unfair elections being held,

³⁹ Ibid, p.25.

⁴⁰ Diamond, L. J. (2002). Thinking about hybrid regimes. *Journal of Democracy*, 13(2), pp.21–35. p.23. <https://www.journalofdemocracy.org/articles/elections-without-democracy-thinking-about-hybrid-regimes/> (Final Access July 10, 2023)

it is still possible an opposition party or candidate would win but,” it required a level of opposition mobilization, unity, skill, and heroism far beyond what would normally be required for victory in a democracy.”⁴¹ He also stressed that it also requires international election observers to expose the authoritarian practices and delegitimize the election and the authoritarian regime.⁴² That last point was a recognition of the recent significant increase in international election observation and the influence of western democracies in pressuring societies to advance to democracy.

Diamond further defined “semi democratic” regimes where “the freedom and fairness of elections (is) so compromised that electoral outcomes, while competitive, still deviate significantly from popular preferences; and/or where civil and political liberties are so limited that some political orientations and interests are unable to organize and express themselves”⁴³ So, the elements that Dahl identified as elements that must exist to be in the “Democracy club,” play a crucial role in how authoritarian regimes hold power over time, specifically how they attack those and undermine those necessary elements of democracy. It hints that there may be certain authoritarian practices, especially surrounding elections, which are key to understanding authoritarianism’s grip on power.

Following Diamond, Levitsky and Way (2010), employing massive research data, proposed a new category called Competitive Authoritarianism, which was a hybrid in between the poles of Dahl’s spectrum.⁴⁴ They defined this new category as “civilian regimes in which formal democratic institutions exist and are widely viewed as the primary means of gaining power, but in which incumbents’ abuse of the state places them at a significant advantage vis-à-vis their opponents.”⁴⁵ Importantly, they saw this is only a post Cold War phenomenon.

They argue that three factors of 1. Western linkages, 2. the power of the regime to organize, and 3. Western leverage or pressure can affect whether a hybrid becomes or became a

⁴¹ Ibid, p.24.

⁴² This is a key point to which we will return to late in this study.

⁴³ Ibid, p.25.

⁴⁴ Levitsky, S., & Way, L. A. (2010). *Competitive authoritarianism: Hybrid regimes after the Cold War*. Cambridge University Press.

⁴⁵ Ibid, p.5.

democracy, or an unstable or stable autocracy. So, where western linkages are powerful, almost all become democracies, where organized regimes not greatly affected by Western linkages, they become stable autocracies. Where neither of the first two factors exist or are very weak, it depends on leverage of the West. So, if Western democracies heavily target this regime with Western values of democracy, they are or become more unstable since opposition forces are emboldened. If not as much Western values pressure or it is weak, the regime is more stable because they are able to suppress opposition with impunity.

Legitimation Scheme

Then, Andreas Schedler (2013) proposed a further refinement of Diamond's categories with Electoral Authoritarianism.⁴⁶ He focused on Dahl's Competitive Authoritarian type. He argues that "electoral authoritarian regimes establish the institutions of liberal democracy on paper, yet subvert them in practice through severe, widespread and systematic manipulation."⁴⁷ With electoral authoritarianism, the elections are open, involve universal suffrage (if not equal), and allow opposition to take minority seats in a parliamentary system, but often below an amount to stop a supermajority of the regime's party or coalition. For without that crucial supermajority, the regime is unable to further use authoritarian practices to subvert the democratic institutions.

However, the manipulation of laws, rules and regulations, as well as other tactics guarantees they are not fair and legitimate legally, and almost (not certainly) guarantees they continue to hold power. Schedler posits that by having elections, the regime can never be certain they will win or how secure their grip on power is at any moment, so the perceived level of threat determines the extent of their manipulation and authoritarian practices. Thus, again, he turns to the authoritarian practices as the operative tool for manipulation of the election results.

But, a seemingly fair election, without blatant and obvious fraud or manipulation is very important to project "legitimation" of the claim to power of the regime. Therefore, the key to

⁴⁶ Ibid p 14.

⁴⁷ Schedler, A. (2013) *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism*. Oxford University Press, p. 2.

stability and sustaining power is that the electoral manipulations be clandestine and be done in a normatively legal process.

This is a key pillar of stability for an autocratic regime as argued by Johannes Gerschewski.⁴⁸ Gerschewski (2013) asked the question, what makes some autocracies endure and other collapse? He first identifies three ‘waves’ of thinking in authoritarian studies; the totalitarian wave of the 1930s-1960s, the rise of authoritarianism in the 1960s-1980s, and the rise of autocracies after the 1990s. He wrote as the optimism of the third wave of democratization from the end of the Soviet Union was over and autocracies still persisted. He identified three pillars of stability for a regime as legitimation, repression, and co-optation, to understand this persistence in the modern context.

Legitimation through elections that appear to be legal and fair is crucial. He concludes “no political regime can endure only on repression and co-optation. Legitimation is a third complementary ‘pillar’ that also sustains autocratic rule. A leader can gain access to power by using repression, but in the long run, all types of political regimes need to legitimate their rule”⁴⁹ and “by using elections and the image of responsiveness to the demands of the people they give themselves the pretense of a democratic-procedural legitimacy.”⁵⁰

Democratic Erosion

This observation about legitimation seems to be demonstrated by the work of Staffan I. Lindberg and Anna Lührmann and who looked at that third reversal wave of autocracy and made some interesting observation about the processes going on. The dates for the first two reverse waves based on their data were: first reverse wave 1922–1942; second reverse wave to 1960–1975. They note in the third reversal wave the authoritarian leaders and parties since the 1990s

⁴⁸ Gerschewski, J. (2013) The three pillars of stability: legitimation, repression, and co-optation in autocratic regimes. *Democratization*, 20(1), pp. 13–38. <https://www.econstor.eu/bitstream/10419/200982/1/f-17712-full-text-Gerschewski-Pillars-v2.pdf> (Final Access July 10, 2023)

⁴⁹ Dukalskis, A., & Gerschewski, J. (2017). What autocracies say (and what citizens hear): Proposing four mechanisms of autocratic legitimation. *Contemporary politics*, 23(3), 251-268, p3. https://www.researchgate.net/publication/315329840_What_autocracies_say_and_what_citizens_hear_proposing_four_mechanisms_of_autocratic_legitimation (Final Access July 10, 2023)

⁵⁰ Ibid, p.5

“have mainly use(d) legal and gradual strategies to undermine democracies.” They argue, “based on original data, we show that about 68% of all contemporary autocratization episodes starting in democracies are led by incumbents who came to power legally and typically by democratic elections”⁵¹ They characterize this phenomenon as” democratic erosion.” This unique change is illustrated in this graphic from their work.

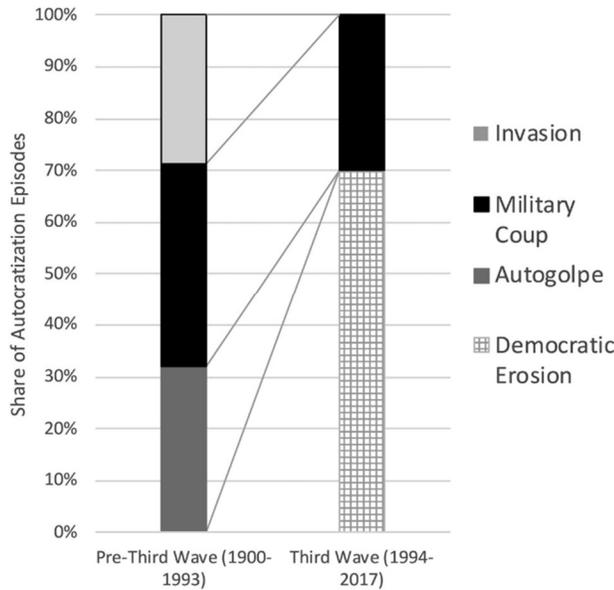


Figure 1. Democratic Erosion as New Trend Leading to Autocracy in Third Wave⁵²

Democratic erosion in the third wave involves undermining democratic institutions, but not abolishing them outright. It is also characterized by a more secretive and thus not blatant process. They may gain control of them, regulate their conduct, corrupt them or as they do with elections, quietly use legal changes to determine outcomes well in advance of election day.

They, however, need these institutions, even in diminished or controlled form, to support the perception of legitimacy, as Gerschski has posited, to their citizens, but also to international actors like aid sources. The researchers note, “such processes account for 70% in

⁵¹ Lührmannand, A. and Lindberg, S. I. (2019) A third wave of autocratization is here: what is new about it? *Democratization*. 26(7), pp. 1095–1113, p. 1108. <https://www.tandfonline.com/doi/full/10.1080/13510347.2019.1582029> (Final Access July 13, 2023)

⁵² Source: Lührmannand, A. and Lindberg, S. J.

the third reversal wave with prominent cases of such gradual deterioration ... aspiring autocrats have clearly found a new set of tools to stay in power, and that news has spread.”⁵³

The most important conclusion that Lüthmann and Linberg found is “sudden and illegal moves to autocracy tend to provoke national and international opposition. The tests we present suggest that contemporary autocratizers have learned their lesson and thus now proceed in a much slower and much less noticeable way than their historical predecessors. Thus, while democracy has undoubtedly come under threat, its normative power still seems to force aspiring autocrats to play a game of deception.”⁵⁴ Modern autocrats are clandestine, deceptive and yet employ legality in their methods and take a more gradual approach. They sort of act like a cancer on democracy, using democratic institutions and the pretense of legitimation to kill democracy.

Authoritarian Practices

Trying to understand more in detail how these deceptive autocrats work and are successful, Sarah Birch (2011) has explored what she calls Electoral Malpractice, or the tactics and practices employed to manipulate an election outcome to retain power by authoritarian actors.⁵⁵ She uses democratic theory and defines Electoral Malpractice as a range of deviant practices contrary to ideal norms of democracy.

She notes that the ideal democracy is conceived as a public trust, and therefore, electoral malpractice is the “manipulation of electoral processes and outcomes so as to substitute personal or partisan benefit for the public interest.”⁵⁶ A violation of that trust can be found in the manipulation of elections. In this model of democracy, “collective choice is carried out on an

⁵³ Ibid, p.1105.

⁵⁴ Ibid, p1108.

⁵⁵ Birch, S. (2011). *Electoral Malpractice*. Oxford Publishing.

⁵⁶ Ibid, p.14.

equal basis when the views of each member of the community are considered equally valid.”⁵⁷ Practices of manipulation of that process corrupts the very basis for democracy.

However, she does make a crucial distinction about what is not, in her analysis, Electoral Malpractice. She specifically separates other electoral conduct that “hinders the ability of elections to realize policy accountability.”⁵⁸ She clearly defines her study subject as “a violation that serves to substitute personal or partisan gain on the part of a restricted number of political actors for popular control by all.”⁵⁹

Marlies Glasius’s (2023) focus of authoritarianism is exactly what Birch chose to not study.⁶⁰ Glasius argues that authoritarian practices that sabotage accountability of the elected persons in control is the proper study of authoritarianism. Thus, she defines an authoritarian practice as ‘a pattern of actions, embedded in an organized context, sabotaging accountability to people over whom a configuration of actors exerts a degree of control, or their representatives, by disabling their voice and disabling their access to information,”⁶¹ For her, the partisan or personal benefit that Birch sees important, is not the proper focus, but rather the fact that electoral practices of manipulation are an attempt to silence the people in trying to hold those in charge accountable. Autocrats know that if held accountable, they will lose their power.

Glasius also makes a distinction between authoritarian practices and illiberalism, that later which refers to patterned and organized infringements of individual autonomy and dignity. She notes that they are usually part of the same system, yet “the difference lies in the type of harm effected: authoritarian practices primarily constitute a threat to democratic processes, while illiberal practices are primarily a human rights problem.”⁶² That is a particularly important position, however, the right to vote is a Human Right. So, manipulating elections is also a Human Rights problem.

⁵⁷ Ibid, p.14.

⁵⁸ Ibid, p.25.

⁵⁹ Ibid, p.26.

⁶⁰ Glasius, M. (2023) *Authoritarian Practices in a Global Age*. Oxford University Press.

⁶¹ Ibid, p.10.

⁶² Glasius, M. (2018) *Ibid*, p. 529.

Birch further suggests that more civil society and less corruption produces elections that are fairer. Conversely, she finds that clientelism, corruption and traditional hierarchical social structure leads to less fair elections.

One of her key findings confirms that the most important phase of election process is the “up-Stream” processes that take place before election day,⁶³ when electoral laws are manipulated, and the voter preferences are manipulated. So, she suggests, therefore, election observation and investigation should be focused well before the day of the election and be focused more on authoritarian practices in the electoral laws. This is where further study and eventual litigation can be most effective.

She notes that her study focused on less than perfect democracies and suggested an analysis of established democracies might be useful. Thus, a comparative analysis of Hungary and USA is warranted as an examination of a young and increasingly imperfect democracy and the USA as an old and well-established democracy that has previously and recently suffered increasing authoritarian practices.

The research context explained above focuses the attention for thus study on what appears to be “democratic erosion” in both the USA and Hungary, but the focus is not at the State level per se, but rather the authoritarian practices of voter suppression of the two political parties. It will explore the legitimation impulse for having the appearance of free and fair elections. This will be followed by an analysis of the applicability and effectiveness of Human Rights mechanisms and other legal means to confront authoritarian actors who sabotage the right to vote.

COMPARATIVE ANALYSIS

Thus, the first part of this study will focus on the United States and two authoritarian practices of voter suppression. The two distinct tactics that will be examined here are gerrymandering and strict photo ID requirements for voters.⁶⁴

⁶³ Birch, p.163.

⁶⁴ It should be noted that these two are arguably the most blatant and impactful, yet there are many other tactics being used in the United States. See, list of 61 compiled in 2019 by Barbara Arnwine of The Voting Rights Alliance. <https://www.votingrightsalliance.org/forms-of-voter-suppression> (Final Access July 10, 2023)

United States of America

There is, unfortunately, a sad and long history of attempts at suppressing the will of the people in democracies. However, in the United States it has evolved from a race-based effort to currently a mostly, though not exclusively, partisan ordeal. To be sure, some partisan gerrymandering still has in part racist results, but that is primarily because African American voters overwhelmingly vote for Democratic candidates. Also, it is not only a one-sided phenomenon, as both Republican and Democratic parties have and still do engage in partisan gerrymandering, yet since 2006 it has been greatly increased in Republican controlled state legislatures. The strict photo ID push, however, has been a recent effort by Republican led legislatures.⁶⁵

At the heart of these two voter suppression tactics is an attempt to thwart or sabotage accountability of elected officials in the democratic election process. This concept is captured in the common phrase “politicians choosing their voters, rather than the people choosing their representatives.” This study will proceed by using Glasius’s definition of an authoritarian practice as, ‘a pattern of actions, embedded in an organized context, sabotaging accountability to people over whom a configuration of actors exerts a degree of control, or their representatives, by disabling their voice and disabling their access to information,’”⁶⁶

Partisan Gerrymandering

First, a definition. What is Partisan Gerrymandering in the USA context? Every decade since the founding of the United States there is a constitutionally mandated census. The first took place in 1790 and therefore there have now been 23 in the past 233 years. The decennial census is very important for many reasons, but primarily, after 1972, the states legislatures must redraw voting district lines based on population data gathered in the census. As per the US

⁶⁵ One recent analysis indicates the rise in these authoritarian practices is partially driven by the polarization of American political thought and the resulting narrow majorities of either part in Congress. Brownstein, R. (2023, June 20). Why power in Congress is now so precarious.” *CNN*. <https://edition.cnn.com/2023/06/20/politics/congress-butterfly-effect-fault-lines/index.html> (Final Access July 10, 2023)

⁶⁶ Glasius, M. Ibid. P. 527.

Constitution, these legislators use these district lines to allocate representation in US Congress and their own state legislatures, it is also the basis of resource and federal funds distribution.

Improperly imbuing this process with politics can result, it is argued, in a perversion of the will of the people. This process was explained recently by the US Supreme Court in the case of Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n, 576 U.S. 787, (2015), in which it stated that partisan gerrymandering is “the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power.”⁶⁷ This acts to dilute the vote, silence the voice, and sabotage accountability and hinders the expression of the will of the people.

Historical Precedent

Partisan Gerrymandering has an exceptionally long history in the United States, which begins even before the United States existed. During the colonial era, a century before the first Pennsylvania Constitution of 1776, King Charles II tried to pack the English parliament with his Tory political allies. His legal method was simple, he used the ancient writ of Quo Warranto to question the authority of boroughs and entities and thus to fiddle with the voters in the boroughs from which members were elected. Quo Warranto literally means “By what authority or warrant.”

Starting in 1681 he unilaterally, with the Writ, changed or revoked municipal corporate charters for boroughs.⁶⁸ With this method, he controlled who in the boroughs could vote for members of Parliament (delimiting suffrage) and, whether particular boroughs would even get representation by revoking the corporate charter, something he did for the entire city of London for five years. His abuse would even extend to the colonies in America when he revoked the Massachusetts Bay Colony Charter in 1684. This was clearly an authoritarian practice which was not surprising from a monarch yet was done in the context of a parliamentary system as well.

⁶⁷ Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n, 576 U.S. 787 (2015), P. 791.
<https://supreme.justia.com/cases/federal/us/576/13-1314/> (Final Access July 11, 2023)

⁶⁸ Bertrall L. R. (2021). Challenging the Crown: Legislative Independence and the Origins of the Free Elections Clause, 73 *Ala L. Rev.* 221, pp. 258-59, pp. 267-77. (Final Access July 11, 2023)

His efforts were however cut short when he died in 1685. Nevertheless, his brother James II continued the process. In fact, James liked the tactic, and he used it again in 1688. James was about manipulating boundaries and representation to weaken the Whig's power and give the upper hand to loyalists. This is almost exactly the motivation of current day partisan gerrymandering.⁶⁹ Of course, history shows this was part of the inspiration for the Glorious Revolution removing and replacing the Catholic James with his Protestant daughter Mary and William III of Orange. This in turn resulted in Parliament clearly asserting its primacy in England with the English Bill of Rights of 1689.

In that document, the Parliament, clearly addressing the near decade of abuse by the monarchy with attempts to politically manipulate the elections of members to Parliament. It stated in relevant part:

English Bill of Rights 1689

An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom; . . .

By violating the freedom of election of members to serve in Parliament; . . .

And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare

That election of members of Parliament ought to be free.⁷⁰

⁶⁹ Ibid. at 269-77.

⁷⁰ English Bill of Rights 1689. https://avalon.law.yale.edu/17th_century/england.asp (Final Access July 11, 2023)

Now, about a century later, in the British colony founded by Quaker William Penn called Pennsylvania, they of course knew full well about the English Bill of Rights and the provisions of free elections of parliament contained therein. They had been having trouble with their own legislature.⁷¹

Wealthy landowners in a few counties near Philadelphia had delayed recognition of western Pennsylvania's newest counties and growing populations, as well as the poor working-class men in the City of Philadelphia who could not vote since they did not own land.⁷² Thus, in response they incorporated into their new revolutionary constitution the English Bill of Rights phrase "ought to be free", expanded the application to "all elections", not just Parliament, and they made it clear that land ownership was not a prerequisite. Thus, it read:

PA Constitution of 1776:

VII. That all elections **ought to be free**; and that all free men having a sufficient evident common interest with, **and attachment to the community**, have a right to elect officers, or to be elected into office.⁷³

Problems with political manipulation of districts, however, sadly continued despite this history and language. This led to another Constitutional Convention in 1790 in which the delegates secured, according to the PA Supreme Court, the principle that, "popular elections in which the people's right to elect their representatives in government would be equally available to all, and would, hereinafter, not be intentionally diminished by laws that discriminated against a voter based on his social or economic status, geography of his residence, or his religious and

⁷¹ Pennsylvania's Constitution, when adopted in 1776, was widely viewed as "the most radically democratic of all the early state constitutions." Ken Gormley, "Overview of Pennsylvania Constitutional Law," as appearing in Gormley, Ken, ed. (2004). *The Pennsylvania Constitution A Treatise on Rights and Liberties*, Bisel Publishing., p. 3.

⁷² Branning, R. (1960.) *Pennsylvania Constitutional Development*. University of Pittsburgh Press.

⁷³ PA Constitution of 1776, Article VII. <https://www.paconstitution.org/texts-of-the-constitution/1776-2/> (Final Access July 11, 2023)

political beliefs”⁷⁴ They added a crucial element, namely “equality” and they changed “ought” to “shall” to make it a simple command. Thus, this clause now read:

PA Constitution of 1790:

Sect. V. That elections **shall be free and equal.**⁷⁵

With both of these Constitutions, freemen were allowed to vote, including freed slaves and after 1780, when PA abolished slavey, all men. However, in 1838 Pennsylvania voters ratified a third state constitution restricting, in another clause, the franchise to "white freemen" only. The clause about elections being free and equal remained, but they now eliminated the franchise of primarily wealthy Black men who had been voting since slavery was abolished in 1780 in Pennsylvania.⁷⁶

The blatant racism of this change was just one small part of the growing flame of social injustice, slavery and Human Rights violations which culminated in the American Civil War from 1861-1865. After the war in 1870, the 15th Amendment granted African American men the right to vote, and the 14th Amendment established the concept of equal protection of the laws to all Citizens. Thus, the 14th Amendment would now serve as a foundation upon which the Human Right to freely vote would be guaranteed.⁷⁷

Following the Civil War and the passage of the two previously mentioned amendments, Pennsylvania also enacted a new Constitution a few years later in 1874, which again modified the elections clause. It got rid of the “white freemen” language, and added a unique provision that no power may “interfere” with the “free exercise” of the “right of suffrage.”

⁷⁴ League of Women Voters of Pa. v. Commonwealth, 178 A.3d 737, 808 (Pa. 2018).
<https://casetext.com/case/league-of-women-voters-of-pa-v-commonwealth-15> (Final access July 11, 2023)

⁷⁵ PA Constitution of 1790, Sect. V. <https://www.paconstitution.org/texts-of-the-constitution/1790-2/>. (Final Access July 11, 2023)

⁷⁶ Wood, N. (2011). A Sacrifice on the Altar of Slavery': Doughface Politics and Black Disenfranchisement in Pennsylvania, 1837–1838. *Journal of the Early Republic*. 31, pp. 75–106. (Final Access July 11, 2023)

⁷⁷ 14th Amendment reads: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. US Const. amend 14. <https://www.law.cornell.edu/constitution> (Final Access July 10, 2023) (Final Access July 11, 2023)

PA Constitution of 1874:

§ 5. Elections. Elections **shall be free and equal**; and no power, civil or military, shall at **any time interfere to prevent the free exercise of the right of suffrage**.⁷⁸

This clause has remained in the PA Constitution now for nearly 150 years. After its adoption, the United States suffered under racist gerrymandering and other racist attempts to suppress African American voters, primarily in the Southern states, for almost a century until the final passage of The Voting Rights Act of 1965(VRA) a landmark piece of federal legislation in the United States that prohibited racial discrimination in voting. This clearly prohibited racial gerrymandering, but partisan gerrymandering remained.⁷⁹

US Supreme Court

A few years before congress enacted the VRA, in another landmark case, the US Supreme Court held in Baker v. Carr, 369 U.S. 186 (1962)⁸⁰ that federal courts can consider gerrymandering claims under the Equal Protection clause of the 14th Amendment, saying it is not a purely political question.⁸¹ Political questions are those matters which are constitutionally committed to either the legislative or executive branches, or are otherwise beyond the competency of courts.

⁷⁸ PA Constitution of 1874, Sect 5. <https://www.paconstitution.org/texts-of-the-constitution/1874-2/>. (Final Access July 12, 2023)

⁷⁹ The US Supreme Court re-affirmed the VRA's constitutionality and the racial gerrymandering prohibition while this thesis was being written in the Allen, Secretary of State, et al v. Milligan, et al. 599 U. S. ____ (2023). https://www.supremecourt.gov/opinions/22pdf/21-1086_1co6.pdf (Final access July 11, 2023)

⁸⁰ Baker v. Carr, 369 U.S. 186 (1962). <https://supreme.justia.com/cases/federal/us/369/186/> (Final Access July 11, 2023)

⁸¹ The court later clarified: "Equal Protection Clause of the Fourteenth Amendment limits the authority of a State Legislature in designing the geographical districts from which representatives are chosen either for the State Legislature or for the Federal House of Representatives." Gray v. Sanders, 372 U.S. 368, 380 (1963) The same case stated: "The conception of political equality from the Declaration of Independence to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing-one person, one vote." P. 381. <https://supreme.justia.com/cases/federal/us/372/368/>. (Final Access July 11, 2023)

Almost a quarter century later, in Davis v. Bandemer, 478 U.S. 109 (1986)⁸² the Supreme Court finally held that partisan gerrymandering can be decided by Federal Courts but failed to establish a set of standards to decide any case. Unfortunately, that left it open for the same court with different justices to then overrule Davis v. Bandemer (and Baker v Carr in part) in the controversial case of Rucho v. Common Cause 139 S. Ct. 2484 (2019). In Rucho, the Court essentially punted and held partisan gerrymandering claims present political questions beyond the reach of the federal courts.⁸³ It would now be up to Congress and/or each State's courts.

In a scathing dissent in Rucho, Justice Elena Kagan⁸⁴ wrote succinctly that “the plaintiffs asked only that the courts bar politicians from entrenching themselves in power by diluting the votes of their rivals’ supporters. And the courts, using neutral and manageable—and eminently legal—standards, provided that (and only that) relief. This Court should have cheered, not overturned, that restoration of the people’s power to vote.”⁸⁵

She continued, “gerrymandering, in short, helps create the polarized political system so many Americans loathe. And gerrymandering is, as so many Justices have emphasized before, anti-democratic in the most profound sense”⁸⁶ She concluded, “of all times to abandon the Court's duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court's role in that system is to defend its

⁸² Davis v. Bandemer, 478 U.S. 109 (1986). <https://supreme.justia.com/cases/federal/us/478/109/> (Final Access July 11, 2023)

⁸³ Rucho v. Common Cause, 139 S. Ct. 2484 (2019). <https://casetext.com/case/rucho-v-common-cause-2> (Final Access July 12, 2023)

⁸⁴ Justice Kagan framed the issue this way in her dissent:” For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities. And not just any constitutional violation. The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives. In so doing, the partisan gerrymanders here debased and dishonored our democracy, turning upside-down the core American idea that all governmental power derives from the people. These gerrymanders enabled politicians to entrench themselves in office as against voters’ preferences. They promoted partisanship above respect for the popular will. They encouraged a politics of polarization and dysfunction. If left unchecked, gerrymanders like the ones here may irreparably damage our system of government.” Rucho Dissent p. 35.

⁸⁵ Rucho dissent p 29.

⁸⁶ Rucho dissent p 32.

foundations. None is more important than free and fair elections. With respect but deep sadness, I dissent.”⁸⁷

Her dissent gets at the heart of this type of voter suppression as an authoritarian practice which acts in derogation of the will of the people, a configuration of actors exerting a degree of control to disable the voice of the people. In sum, US Supreme Court left it up to the state legislatures to freely “entrench themselves in power by diluting the votes of their rival’s supporters.” The only apparent check on that authoritarian practice would be the US Congress or the State Courts with the US Constitution offering no relief.

Congress, as Rucho was pending, did in fact draft H.R. 1, 116th Cong. (2019)⁸⁸ in the US House which commanded: “Each State shall establish a nonpartisan agency in the legislative branch of the State government to appoint the members of the independent redistricting commission for the State...”⁸⁹ However, crudely impotent as it is, the US Senate failed to act. Thus, the only possible check in the current political climate would be each State’s judiciaries.

Pennsylvania Supreme Court

This is where Pennsylvania comes back into this tale. The year before Rucho, the Pennsylvania Supreme Court plainly and boldly, in a groundbreaking case, held “[a]n election corrupted by extensive, sophisticated gerrymandering and partisan dilution of votes is not ‘free and equal’.”⁹⁰

In League of Women Voters of Pa. v. Commonwealth, 178 A.3d 737, 808 (Pa. 2018), the Court found that the map drawn after the 2010 Census by a Republican controlled legislature violated the Free and Equal Elections Clause of the Pennsylvania Constitution. The Court explained that “[i]t is axiomatic that a diluted vote is not an equal vote, as all voters do not have an equal opportunity to translate their votes into representation. This is the antithesis of a healthy

⁸⁷ Rucho dissent p 33.

⁸⁸ H.R. 1, 116th Cong. (2019. <https://www.congress.gov/bill/116th-congress/house-bill/1> (Final Access July 12, 2023)

⁸⁹ H.R. 1, *Ibid*, at § 2414.

⁹⁰ League of Women Voters of Pa. v. Commonwealth, *Ibid*, p 814.

representative democracy. Indeed, for our form of government to operate as intended, each and every Pennsylvania voter must have the same free and equal opportunity to select his or her representatives.”⁹¹ The court soundly rejected this authoritarian practice to suppress the will of the people.

As far as a workable standard the US Supreme Court could not find, the PA Supreme Court found that “neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts...provide a ‘floor’ of protection for an individual against the dilution of his or her vote in the creation of such districts.”⁹² They went on to state that when “these neutral criteria have been subordinated, in whole or in part, to considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates [the Free and Equal Elections Clause] of the Pennsylvania Constitution.”⁹³ What made it clear to the court was that, unlike the US Constitution, the Pennsylvania Constitution had a free and equal clause.

This interesting image below visually illustrates what the Court had to address. It shows the evolution of just one district in Pennsylvania near Philadelphia from 1952 till 2013. This shows quite clearly that after the Republican party took control of the State Legislature in 2010, it produced one of the most egregious examples of partisan gerrymandering in the United States.

In Pennsylvania, Republicans are a minority in registered voters and average vote share, so they used partisan gerrymandering to group high concentrations of Democratic voters into five Democratic districts. By giving up those districts as guaranteed Democratic wins, in return, the Republicans were able to achieve 13 districts with a Republican advantage by carefully breaking up the remaining Democratic areas across the state. This along with other efforts produced a 13-5 delegation in favor of the Republicans.⁹⁴

⁹¹ Ibid, p.820.

⁹² Ibid, p.817.

⁹³ Ibid, p. 817.

⁹⁴ In the League of Women Voters case, the court imposed a map which produced a 9 - 9 split. After the 2020 census, the State lost one seat, and now the split is 9-8 in favor of the Democrats. So 13-5 to 9-8, switching majority.

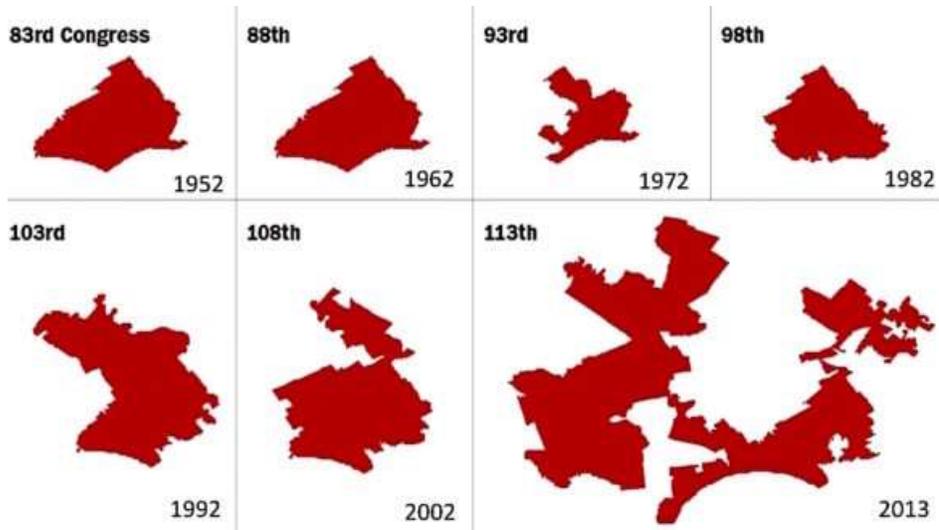


Figure 2. Pennsylvania's 7th District Through Time.⁹⁵

The problem was not just its odd shape in 2013. It was a prime example of cracking: The lines spread poor urban communities out among suburban and rural areas. Classic partisan gerrymandering pure and simple.

A New Trend

This started a small trend. In addition to Pennsylvania's case, as of this writing, four other states have prohibited partisan gerrymandering; one by a constitutional free and equal clause (Alaska), and three by referendum producing a constitutional amendment, Florida, New York and Ohio. However, 30 additional states have free and equal clauses in their constitutions, and it is notable how many actually used Pennsylvania's exact language.⁹⁶

Thus, as seen by this following graphic, the field is ripe for challenge and defense of the right to vote. Some States do have Free and Equal clauses in their constitutions, and some do not. A clear majority, however, do and if Pennsylvania's reasoning is accepted in currently pending

⁹⁵ Source: Washington Post Published May 20, 2014, Lewis, J., Devine, B., Pritcher, L., Martis, K. of UCLA.

⁹⁶ At this time 30 different lawsuits are pending in 13 states, with Utah and New Mexico expected to rule this summer.

lawsuits, it could result in a massive defense of the right to vote against this authoritarian practice currently being use by the Republican party to gain and sustain political power.

It is interesting to note that three of the no constitutional clause states have amended their constitutions to prohibit partisan gerrymandering. They are all large and important states as well, Ohio, New York, and Florida. However, in the case of Florida, as will be shown later, even constitutional amendments do not deter authoritarians who gain a supermajority and control the judiciary.

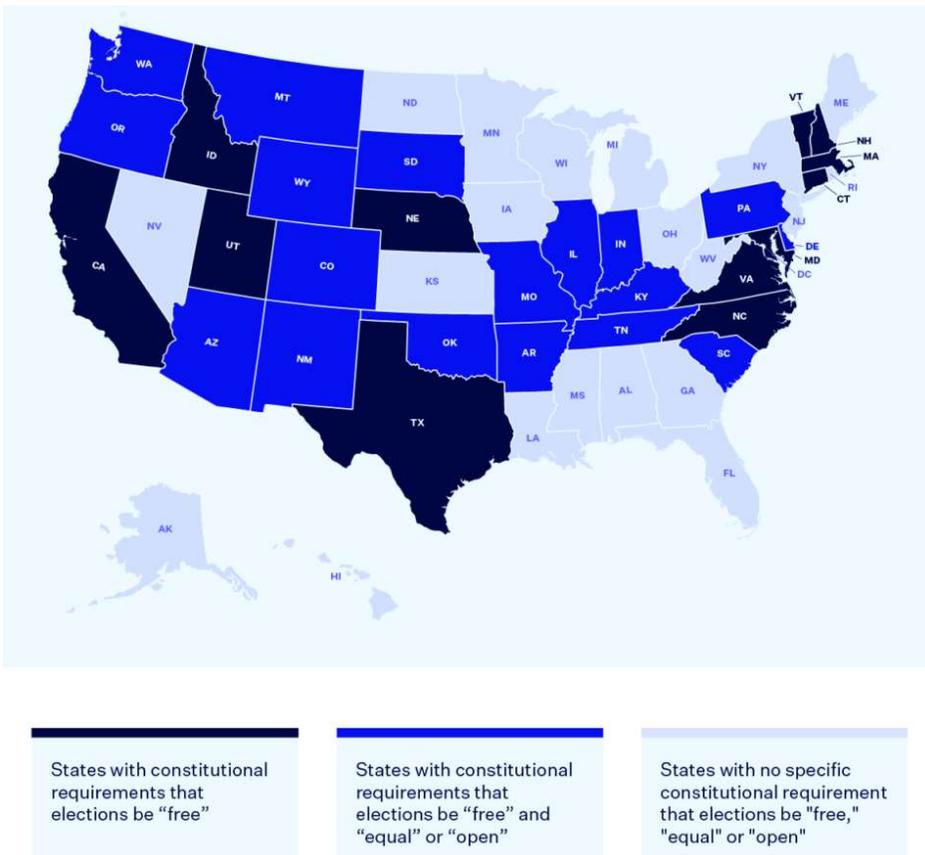


Figure 3. Free and Equal Clauses in State Constitutions.⁹⁷

However, those political authoritarians who see the trend against partisan gerrymandering and see they keep losing in State courts, have also advanced a new theory called the Independent

⁹⁷ Source: *National Conference of State Legislatures*. <https://www.ncsl.org/redistricting-and-census/free-and-equal-election-clauses-in-state-constitutions>

State Legislature theory.⁹⁸ This theory claims that State legislatures have supreme and unchecked powers in redistricting. No State court, citizen referendum, or Governor can act as a check on that power. The implications of the US Supreme Court approving this theory “would essentially hand the future of democratic representation in the states to those motivated to entrench political power in a single party.”⁹⁹ Unexpectedly, given the current make-up of the Court, on June 27, 2023, the US Supreme Court soundly rejected this theory in a 6-3 opinion in the case of Moore v. Harper, 21-1271 OT 2022(2023).¹⁰⁰

Supermajorities

This is good news, since it would have severely sabotaged accountability when veto proof supermajorities of that single party are obtained as a result of gerrymandering that is not reviewable. However, those supermajorities are doing other damage.

For example, in North Carolina, a new supermajority of Republicans enacted abortion restrictions. In Vermont, a new supermajority of Democrats imposed a climate-sensitive home heating law. In Louisiana, a supermajority is targeting LGBTQ+ communities.¹⁰¹

In Florida, laws are being enacted banning Critical Race Theory and attacking the gay community. Republican-led legislatures in Kansas and Kentucky this year also overrode vetoes by Democratic governors, including on bills dealing with transgender issues, abortion, and work requirements for food assistance. It is clear, the authoritarian

⁹⁸ The US Supreme Court had rejected this theory just a few years ago in Arizona State Legislature v. Arizona Independent Redistricting Commission, 576 U.S. 787 (2015). *Ibid*.

⁹⁹ McCord, Mary (October 26, 2022). "*Brief of Amici Curiae Bipartisan Group of Former Public Officials, Former Judges, and Election Experts From Pennsylvania in Support of Respondents*". <https://www.democracydocket.com/wp-content/uploads/2021/11/2022-10-26-bipartisan-public-officials.pdf> (Final Access July 12, 2023)

¹⁰⁰ The impact this decision may have on partisan gerrymandering is to be determined. Moore v. Harper, 21-1271 OT 2022 (US Supreme Court 2023). https://www.supremecourt.gov/opinions/22pdf/21-1271_3f14.pdf (Final Access July 12, 2023)

¹⁰¹ Chavez, R. (2023), May 18). Why youth activists in Louisiana say they’ll ‘no longer stay quiet. *Nation*. <https://www.pbs.org/newshour/nation/why-youth-activists-in-louisiana-say-theyll-no-longer-stay-quiet>. (Final Access July 10, 2023)

practice of partisan gerrymandering can produce more abuses of Human Rights in an advanced democracy. It can also sabotage accountability to the people.

The following map shows veto proof majority with legislature distribution.¹⁰² The darker colored states are where the governorship is held by the opposite party. Republicans completely control 19 states, with Democrats controlling 9.

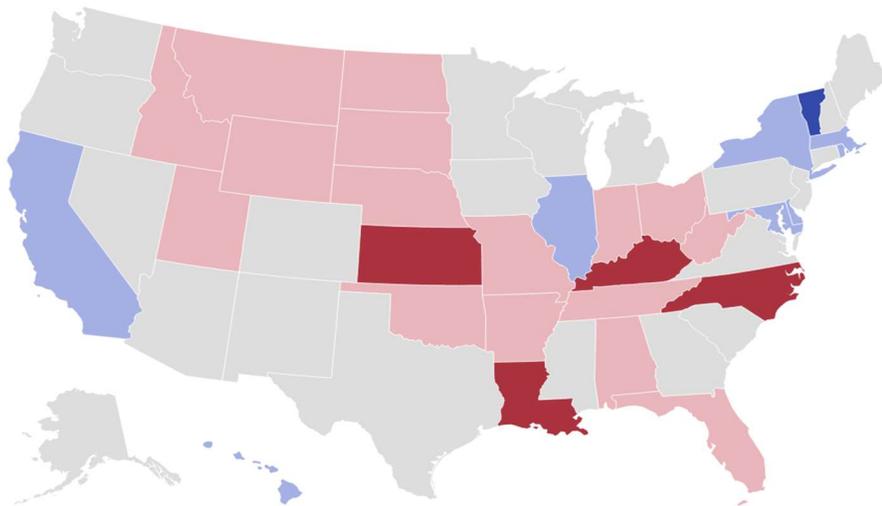


Figure 4. Veto Proof Majorities.¹⁰³

“All that we have is our voice,” said North Carolina state Rep. Marcia Morey, a Democratic whip. But now “there’s no need for (Republicans) to have any dialogue.”¹⁰⁴ In Tennessee, a Republican supermajority recently expelled three Democrats protesting for gun control, and the majority’s sever limitation of debate.¹⁰⁵ Montana’s supermajority banned a transgender representative from the house floor for saying lawmakers would have

¹⁰² Veto-proof majorities exist when one party controls enough members in a chamber to override a gubernatorial veto. When these majorities exist in both chambers, that party can effectively enact legislation without considering the governor.

¹⁰³ Source: *Ballotpedia*. https://ballotpedia.org/Veto_overrides_in_state_legislatures (access April 5, 2023)

¹⁰⁴ Farrington, B. (2023, June 17). Supermajorities in state capitols push controversial policies to the edge, *The Associated Press*. <https://www.usnews.com/news/best-states/missouri/articles/2023-06-17/supermajorities-in-state-capitols-push-controversial-policies-to-the-edge> (Final Access July 10, 2023)

¹⁰⁵ Kruesi, K., Matties, J. (2023, April 23) Tennessee’s House expels 2 of 3 Democrats over guns protest, by *The Associated Press*. <https://apnews.com/article/tennessee-lawmakers-expulsion-d3f40559c56a051ecc49e416a7b5dade> (Final Access July 10, 2023)

“blood on their hands” for prohibiting gender affirming treatments.¹⁰⁶ What is stunning in these and other similar situations, the opposing parties’ views, as well as the views of those voters that elected them, were deemed irrelevant and in fact in some instances, the supermajority acted to physically remove and silence dissenters.

This troubling American experience with partisan gerrymandering in the last 25 years was noted and foreshadowed by Justice Anthony Kennedy of the US Supreme Court in his famous concurrence in Vieth v. Jubelirer, 541 U.S. 267 (2004)¹⁰⁷. Justice Kennedy observed “as these precedents show, First Amendment concerns arise where a State enacts a law that has the purpose and effect of subjecting a group of voters or their party to disfavored treatment by reason of their views. In the context of partisan gerrymandering, that means that First Amendment concerns arise where an apportionment has the purpose and effect of burdening a group of voters' representational rights.”¹⁰⁸

He further bemoaned “The ordered working of our Republic, and of the democratic process, depends on a sense of decorum and restraint in all branches of government, and in the citizenry itself. Here, one has the sense that legislative restraint was abandoned. That should not be thought to serve the interests of our political order. Nor should it be thought to serve our interest in demonstrating to the world how democracy works. Whether spoken with concern or pride, it is unfortunate that our legislators have reached the point of declaring that, when it comes to apportionment: “We are in the business of rigging elections.” Hoeffel, Six Incumbents Are a Week Away from Easy Election, Winston-Salem Journal, Jan. 27, 1998, p. B1 (quoting a North Carolina state senator). “¹⁰⁹

¹⁰⁶ Trotta, D. (2023, April 28). Montana transgender legislator silenced after 'blood on your hands' comment. *Reuters*. www.reuters.com/world/us/montana-transgender-legislator-censured-after-blood-your-hands-comment-2023-04-26/. (Final Access July 11, 2023)

¹⁰⁷ Vieth v. Jubelirer, 541 U.S. 267 (2004). <https://supreme.justia.com/cases/federal/us/541/267/> (Final Access July 10, 2023)

¹⁰⁸ *Ibid*, p314.

¹⁰⁹ *Ibid*, p.317.

Florida Authoritarians

A recent example of the blatantness of an authoritarian practice in the USA is shown by the actions of the Governor of Florida, Ron DeSantis. As noted above, the people of Florida made it crystal clear in 2010 their distaste for partisan gerrymandering. They also made it illegal to deny or abridge the opportunity of racial or language minorities to participate in the political process. Here is the amendment:

Florida's 2010 Constitutional Amendment

Section 20. Standards for establishing congressional district boundaries.

In establishing Congressional district boundaries:

- (1) No apportionment plan or individual district shall be drawn with the **intent to favor or disfavor a political party or an incumbent**; and districts shall not be drawn with the intent or **result of denying or abridging the equal opportunity of racial or language minorities** to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

After the 2010 Census and after this Amendment was overwhelmingly passed by the voters of Florida, the Republican controlled Legislature flaunted the law and still drew a partisan gerrymandered map.¹¹⁰ This map favored Republicans 19-8. In 2015, the Florida Supreme Court said the map drawn by the Legislature was unconstitutionally gerrymandered to favor Republicans. The Court imposed its own map as a result, which in fact elected a Black representative from the area around Jacksonville. This map produced a 16-11 Republican majority Delegation.

Then the decennial census happened in 2020 and time came to re-draw the maps in Florida, as in all states. Florida had also gained one more seat because of population growth.

¹¹⁰ The Amendment passed with a 62.93% majority of voters.

The Republican legislature drew new maps which kept this Jacksonville area representative district intact. They proposed a 16-12 split, in line with the Constitution and population changes.

But the authoritarian Republican Governor Ron DeSantis had his own map ready. His plan broke up this Jacksonville district into four different ones, all of which favored Republicans, thus eliminating the Black representative. This despite and in blatant disregard of the Constitutional amendment passed by voters. Additionally, through clear partisan gerrymandering efforts it also guaranteed 20 seats to Republicans compared to the 16 the Legislature had drawn and eliminated two of the four districts of Black representatives from the prior map. Last April, the Florida legislature passed DeSantis's map. The current delegation is 20-8 Republican.¹¹¹

Florida State Representative Tracie Davis a Democrat said "You hate when we use the word disenfranchisement. You turn your back. You look the other way. But you have to realize that is exactly what this is: Gutting, now-CD 4 ... leaves us simply without representation. It simply means that the Black population in Florida that lives north of the I-4 corridor, their voices will be diluted. Their power in this process simply washed away."¹¹²

Cecile Scoon, president of the Florida chapter of the League of Women Voters, had this to say of DeSantis's efforts to attack voting rights. "It's all connected to 'we don't care what you vote,'" she said. "'We don't care what you say. We know better and we're going to silence you. We are not in the land of the free any more in the state of Florida."¹¹³ This is blatant authoritarianism aimed at suppressing accountability to the voters of elected Republican representatives.

¹¹¹ Voter registration in Florida has historically long been in favor of Democrats, although in the past few years Republicans have gained a slight lead. In the last Presidential election, the Republican candidate garnered the most votes at 51.4%.

¹¹² Saunders, J., Turner, J., Dailey, R. (2022, April 21). Florida House Redistricting Plan Passes as Democrats Protest *CBS Miami*. <https://www.cbsnews.com/miami/news/florida-house-redistricting-plan-passes-democrats-protest/>. (Final Access July 10, 2023)

¹¹³ As quoted in: Levine, S. (2023, April 12) How Ron DeSantis waged a targeted assault on Black Voters: 'I fear for what's to come. *Guardian*. <https://www.theguardian.com/us-news/2023/apr/12/ron-desantis-voting-rights-black-voters-florida-gerrymander?ref=foreverwars.ghost.io>. (Final access July 10, 2023)

Gerrymandering Effects

The result of this gerrymandering effort is that it is increasingly the rule that elected officials choose their voters rather than the other way around. A test of this is how many districts of the 435 in the US House are actually competitive. According to a specific analysis from a non-partisan institution the Cook Political Report, the number of toss-up districts has become so low as to be embarrassing in a supposed haven of Democracy.¹¹⁴ The Cook Report currently sees only 25 seats of the 435 as competitive.¹¹⁵ That is unprecedented.

Another problem is there is very often a major discrepancy between the popular vote and the congressional delegation. For instance, in “North Carolina, in 2018, Democrat candidates for the U.S. House obtained 1,632,720 votes and 3 seats, while Republicans obtained 1,706,795 votes and 10 seats. In California, Democrats obtained 8 million votes and 46 seats, while Republicans obtained 4 million votes and 7 seats.”¹¹⁶ In common sense understanding, it is clear that the will of the people is not reflected in this partisan gerrymander process.

This issue of a congressional delegation not reflecting the popular vote as well as the demographic distribution of the voters is one of the most telling pieces of evidence of an authoritarian practice trying to sabotage the will of the people. The US Supreme Court, as this thesis was being prepared, also refused to hear an appeal from Louisiana. In this case, Robinson v. Ardoin, No. 22-30333 (5th Cir. 2022)¹¹⁷, Louisiana state Republican officials drew a map that was passed by the Republican legislature over Democratic Gov. John Bel Edwards’ veto.

¹¹⁴ Walter, A. (2023). *CPRS House Ratings*. The Cook Political Report. <https://www.cookpolitical.com/ratings/house-race-ratings>. (Final Access July 10, 2023)

¹¹⁵ The CPR House Race Ratings assess the competitiveness of all 435 House elections in 2024. Competitiveness is determined by several factors, including the district's political makeup, the candidates' strengths and weaknesses, the political environment in the state and nationally, and interviews with candidates and campaign professionals.

¹¹⁶ OSCE, (2023, May 9) United States of America Mid-Term Congressional Elections 8 November 2022 ODIHR Limited Election Observation Mission Final Report, *OSCE*. <https://www.osce.org/odihr/elections/usa/521509> (Final Access July 10, 2023)

¹¹⁷ Robinson v. Ardoin, No. 22-30333 (5th Cir. 2022). <https://law.justia.com/cases/federal/appellate-courts/ca5/22-30333/22-30333-2022-06-12.html> (Final Access July 10, 2023)

The Republican supermajority blatantly showed its power. That map made only one of six districts majority Black. The 2020 census showed that the state's population is 33% Black, suggesting a 4-2 delegation was more representative and that "cracking" had occurred to limit the Black representation who overwhelmingly vote Democratic.

In Robinson, The District Court had found the map was drawn with racial intent to dilute the Black vote, and ordered a new map drawn. On Appeal, the Fifth Court of Appeals was starting to have expedited proceedings to do just that, when the case was put on hold by appeal the US Supreme Court. On June 25, 2023, the Court lifted the hold and allow the lower court to proceed with imposing a fair map.

Notably, a common argument against comparing a congressional delegation with the demographics of voters in a given state to assess fairness, is presented by Justice Clarence Thomas in his concurrence in the Rucho case from 2019 noted above. Thomas: "Deny it as appellants may (and do), this standard rests upon the principle that groups (or at least political-action groups) have a right to proportional representation. But the Constitution contains no such principle. It guarantees equal protection of the law to persons, not equal representation in government to equivalently sized groups. It nowhere says that farmers or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers." ¹¹⁸

The problem is this sets up a straw man argument. Gerrymandering dilutes a group of voter's voices. That intended dilution results in the unfairness that is evident in the fact that a congressional delegation does not match the demographics of voters. The dilution is the problem, and the lack of proportional representation is the effect. Thomas attacks the effect as saying it is not prohibited in the Constitution (which is disputed), but the problem of how that is created is the constitutional violation, the abuse of the right to vote and be equally heard.

So as an analogy, Thomas is saying to a person who complains they have been subject to racial discrimination in not getting a job, that the law does not guarantee a job. But the law does prohibit racial discrimination in employment decisions. Thus, the means, not then end, is the proper focus for voting rights issues around partisan gerrymandering, Justice Thomas, notwithstanding.

¹¹⁸ Rucho, Thomas Concurrence, *Ibid*, p.9.

The other problem with this partisan gerrymandering is that primary elections become the only elections important in reality as the general election is a forgone conclusion. And given primary voters, which are usually a small portion of party stalwarts, are the most radical politically, this only increases the polarization of the society and Congress. This is especially relevant in the majority of state primaries that are closed to only party members. Also, independent voters, which in most states are precluded from voting in the primary races, find themselves marginalized and having no say at all.

In sum, partisan gerrymandering in the United States has a long history, is blatant and has been increasingly a tactic in supermajority states controlled by Republicans. This study's hypothesis is therefore not proved in this instance. In fact, just the opposite has been found. In a society where there is a strong opposition, strong media, strong civil society NGOs, and judiciary, the authoritarian practice of partisan gerrymandering is blatant and extremely abused especially in supermajority states that are controlled by Republicans.

Strict Voter ID Laws

Another important effort of Voter Suppression prominent in the United States is having a strict requirement of photo identification to vote. First, it should be clear, if two conditions were met, this tactic would not qualify as voter suppression. One, if there was a free, easily obtainable, and automatic national photo ID issued to every voting American citizen, and two, there was widespread fraud wherein people were falsely claiming to be a person they were not to vote. Neither of these conditions is met in the United States presently. This tactic not only dilutes the right to vote and the will of the people, but it also precludes any voice at all to large groups of voters.

In 2002, the US Congress passed a new law called Help America Vote Act (HAVA).¹¹⁹ It required States to have voters present identification, not necessarily photo ID, at registration or at the poll for the first time they vote in a federal election. Note, this law requires a onetime showing only. This was a new innovation as since 1788, no such requirement existed. A few

¹¹⁹ Help America Vote Act (2002). 52 U.S.C. 20901 to 21145.
https://www.eac.gov/about/help_america_vote_act.aspx. (Final Access July 11, 2023)

States before the HAVA had ID requirements, but not photo ID. It really was not a controversial or political issue.¹²⁰

That changed in 2005 when the state of Indiana enacted a strict photo ID law for voting. It required the showing of a photo ID to get the ballot, and if the person did not have such ID, they could only vote provisionally, and they were required show a photo ID within 10 days to an election official to have the vote count. In the case of Crawford v. Marion County Election Board, 553 U.S. 181 (2008), the United States Supreme Court held that this law did not violate the United States Constitution. In dissent, Justice Souter argued that Indiana had the burden of producing actual evidence of the existence of fraud, as opposed to relying on abstract harms, before imposing "an unreasonable and irrelevant burden on voters who are poor and old."¹²¹ This has framed the debate and political struggles for the last two decades on this issue.

Then, five years later, the US Supreme Court then struck down a major part of the Voter Rights Act of 1965 in the case of Shelby County v Holder. 570 U.S. 529 (2013).¹²² On June 25, 2013, the court's conservative majority ruled that the government was using old data to determine which states were required to have their voting rules approved by the government. Before the ruling, nine states (and several other counties and townships) had been subjected to this requirement.

Impact of Shelby County v. Holder

Since that holding, Republican controlled legislatures have introduced hundreds of bills to manipulate election laws across the country. Texas acted curiously with great haste; the legislature introduced a strict voter ID law at midnight after the Supreme Court decision was handed down in 2013. The law instantly made ineligible, by not having the correct ID, an estimated 608,407 voters in Texas, representing a total of about 4.5% of registered voters. Almost all of these efforts have been directed at limiting and/or precluding the free exercise of the right to vote.

¹²⁰ Then as now, the United States has never issued national photo ID cards as identification. It remains as a small minority of countries that do not have them.

¹²¹ Crawford v. Marion County Election Board, 553 U.S. 181 (2008), Dissent part A. <https://supreme.justia.com/cases/federal/us/553/181/> (Final Access July 11, 2023)

¹²² Shelby County v Holder, 570 U.S. 529 (2013). <https://supreme.justia.com/cases/federal/us/570/529> (Final Access July 12, 2023)

The Texas case is telling, since the law they enacted after Shelby, was the same law that just over a year prior have failed pre-clearance under the VRA. The state took the VRA denial to the US District Court that unanimously ruled in Texas v. Holder, 888 F.Supp.2d 113 (DC Circuit Court 2012), that the law would negatively impact minority voter turnout and impose strict burdens upon the poor. The Court noted, "The State of Texas enacted a voter ID law that--at least to our knowledge--is the most stringent in the country. That law will almost certainly have retrogressive effect: it imposes strict, unforgiving burdens on the poor, and racial minorities in Texas are disproportionately likely to live in poverty."¹²³ The Court noted that the state legislature when told of the likely disenfranchisement of many Texans, still refused to pass proposed amendments to lessen these consequences.

Furthermore, the perceived partisan consequences of the turnout effects of these laws are validated by the fact that Democratic Party strongly oppose strict photo ID laws and that such laws have only been passed in states where the Republican Party controls state government. Dr. Benjamin Highton’s early research in 2017 showed it is readily apparent that the Republican Party's control of state government appears to be a necessary condition for the adoption of a strict photo ID law.¹²⁴

State adoption of strict photo ID laws as of 2017¹²⁵

Year	State	Party control of house/senate/governor
2005	Georgia	Rep/Rep/Rep
2005	Indiana	Rep/Rep/Rep
2006	Missouri	Rep/Rep/Rep
2011	Alabama	Rep/Rep/Rep
2011	Kansas	Rep/Rep/Rep
2011	Tennessee	Rep/Rep/Rep

¹²³ Texas v. Holder, 888 F.Supp.2d 113, p. 145 (DC Circuit Court 2012) (Final Access July 12, 2023)

¹²⁴ Highton, B. (2017). Voter Identification Laws and Voter Turnout in the United States. *Annual Review of Political Science*, 20, pp. 149-167. <https://www.annualreviews.org/doi/10.1146/annurev-polisci-051215-022822> (Final Access July 11, 2023)

¹²⁵ This list has expanded to 36 after 2015 and contracted with judicial review. For example Pennsylvania’s law was later thrown out by the PA Supreme Court. Ohio just was added in March of 2023.

2011 Texas	Rep/Rep/Rep
2011 Wisconsin	Rep/Rep/Rep
2012 Mississippi	Rep/Rep/Rep
2012 Pennsylvania	Rep/Rep/Rep
2013 Arkansas	Rep/Rep/Dem
2013 North Carolina	Rep/Rep/Rep
2013 Tennessee	Rep/Rep/Rep
2013 Virginia	Rep/Even /Rep
2015 North Dakota	Rep/Rep/Rep

From a political perspective this makes sense. The success of the Civil Rights movement of the 1960s and the passage of the VRA has shifted African American voters to now overwhelming vote for Democrats in the past half century. Also, the Democratic party’s focus on social welfare and entitlement programs has great appeal to lower-income voters. In response to a changing electoral environment, the Republican party has become the primary perpetrator of a wide range of suppression efforts and authoritarian practices.¹²⁶

New Republican Restrictions

More recent research also finds “recently, many states have reversed the decades-long trend of facilitating ballot access by enacting a wave of laws requesting or requiring identification from registrants before they vote...We consistently find that the propensity to adopt is greatest when control of the governor’s office and legislature switches to Republicans (relationships not previously identified), and that this likelihood increases further as the size of Black and Latino populations in the state expands.”¹²⁷

¹²⁶ Bentele KG, O'Brien EE. (2013). Jim Crow 2.0? Why states consider and adopt restrictive voter access policies. *Perspect. Polit.* 11pp. 1088–116. https://scholarworks.umb.edu/sociology_faculty_pubs/11/ (Final Access July 10, 2023)

¹²⁷ James, C. and Stewart III, C. (2022, July 23). Changing Access to Voting in the Aftermath of the 2020 Election. *SSRN*. <https://ssrn.com/abstract=4171019>.

These two graphics shows the most current state of Voter ID laws by state:

■ No ID required ■ Non-photo ID required ■ Photo ID required

Source: [Ballotpedia](https://ballotpedia.org)

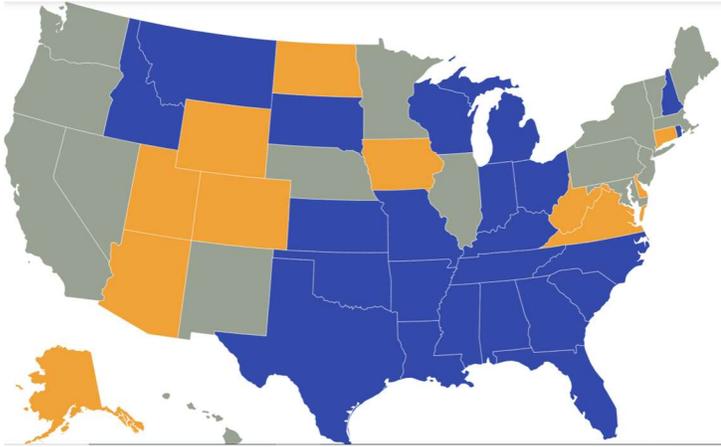


Figure 5. Voter ID laws since 2005¹²⁸

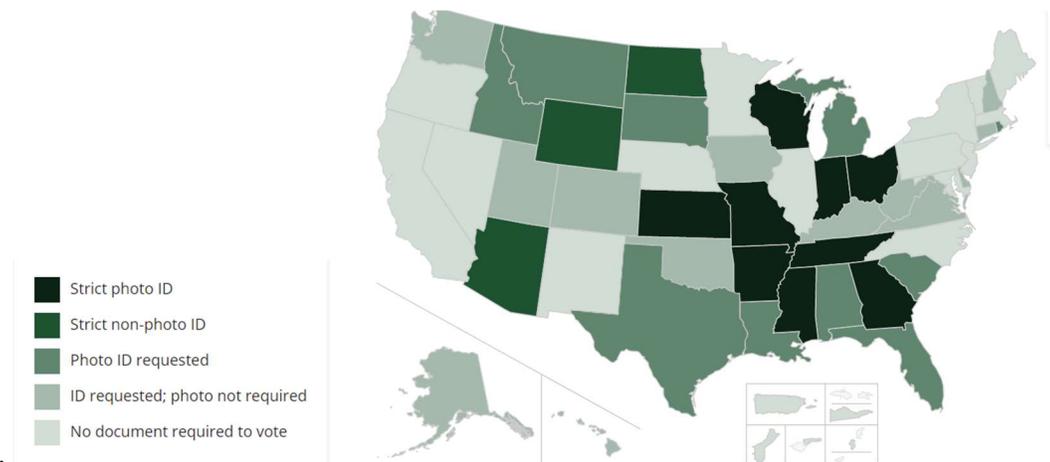


Figure 6. Photo ID laws with more details.¹²⁹

¹²⁸ Source *Ballotpedia*. https://ballotpedia.org/Voter_identification_laws_by_state

¹²⁹ Source: *Brennan Center of NYU*. <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-id> (Final Access July 10, 2023)

Effects of Authoritarianism

So, what has been the result of these law changes? Professor Michael Hammer of the University of Maryland has researched this question and asked who lacked Photo ID in the 2020 elections. He noted that a similar survey was done by the Brennan Center at New York University Law School in 2006 which revealed 11% or about 25 million US Citizen voters lacked ID to vote at that time.

In March of 2023, his study, focusing on the 36 states that have the voter ID requirement, concluded that “with the demographics most likely to lack valid voter ID being among the fastest-growing demographic groups in the country—including young people, people of color and particularly young people of color—the potential for voter ID laws to keep more eligible citizens from casting a ballot is likely to rise as well as we head toward the 2024 elections and beyond.”¹³⁰ Some of the findings, directly extracted verbatim here from this study include:

- “Nearly 29 million voting-age U.S. citizens lacked a valid driver’s license and over 7 million had no other form of non-expired government-issued photo identification.
- In states with strict photo identification laws in 2020, over 3 million voting-age U.S. citizens did not have a current driver’s license, and over 1 million did not have a non-expired government-issued photo identification.
- More than 11 million people ages 18-29 did not have a current driver’s license, and more than 3 million did not have any unexpired government issued photo ID.
- Members of underrepresented racial and ethnic groups were less likely to have a current driver’s license or other government-issued photo ID. An estimated 1.86 million Black non-Hispanic Americans (6.2%) and 1.86 million Hispanic Americans (6.1%) lack a photo ID, as do 4.5% of those who identify as Native American, Native Alaskan or another race. This compares to just 2.3% of White non-Hispanic Americans and 1.6% of Asian, Native Hawaiian or other Pacific Islander Americans.

¹³⁰ Hammer, M., Novey, S. (2023, March 13). Who Lacked Voter ID in 2020: An Exploration of the American National Election Studies. University of Maryland., P. 2. https://www.voteriders.org/wp-content/uploads/2023/04/CDCE_VoteRiders_ANES2020Report_Spring2023.pdf. (Final Access July 10, 2023)

- Individuals with a high school degree or less were the least likely of people of all educational levels to have a current driver’s license or any photo ID. Over 18.5 million people who did not complete high school or whose highest level of education is a high school degree did not have a driver’s license.
- The analysis found a strong relationship between income and lack of a driver’s license, with adult Americans who earn less than \$30,000 lacking a driver’s license at a rate about five times greater than the highest income category of \$100,000 or more.
- Those who were not registered and those who did not vote in 2020 were far more likely to lack a current driver’s license and any photo ID. Adult Americans who were not registered to vote were three times more likely to lack a driver’s license (30%) than those who were registered (11%). The results were similar when comparing 2020 non-voters to 2020 voters, demonstrating the disproportionate barrier that voter ID laws may create for non-voters or infrequent voters, as well as new or first-time voters.”¹³¹

Another study from the Institute for Public Policy and Social Science Research at Michigan State University found a significant effect of photo voter ID laws.¹³² Using actual voting records of 50,000 voters, the research in 2016 found strong evidence suggesting that racial minorities’, the demographic that most reliably votes Democratic, turnout is decreased with voter ID laws.

The authors conclude that “the analysis suggests that strict ID laws of any sort do impact the racial balance of the electorate. Working through the effects of the significant interactions, we find that the gap in turnout between Latinos and whites is estimated to grow by 13.3 points in strict non-photo ID states. Likewise, the gap between Blacks and whites is 7.4 points higher in strict non-photo ID states all else equal. The pattern of estimated effects for primary elections is nearly identical. In primaries with strict non-photo laws, Latinos fall a further 14.2 points behind whites and Blacks end up 11.4 points further behind whites, according to the model. Requiring

¹³¹ *Ibid*, p. 7-8.

¹³² Hajnal, Z., Lajevardi, N., and Neilson, L. (2016, January). Voter Identification Laws and the Suppression of Minority Votes. *IPPSR Journal*, Michigan State University. <http://ippsr.msu.edu/research/voter-identification-laws-and-suppression-minority-votes>. (Final Access July 10, 2023)

identification of any sort appears to have a real effect on who votes and who does not. These laws hurt the minority community and help to give whites an outsized voice in American democracy elections”.¹³³

This study also looked at what party the voters belonged to. Because it is well known that minority voters tend to be Democrats, strict voter ID laws hit that group dramatically. They found that when strict ID laws are instituted, the gap of people voting between Republicans and Democrats in primary contests (within party) more than doubles from 4.3 points to 9.8 points. Likewise, the turnout gap between conservative and liberal voters almost triples from 7.7 to 20.4 points. Their research shows voter suppression in real life context.

As noted above, the most successful challenge to these laws has been the assertion that they violate the right to vote, based upon state constitutional “free and equal” type clauses. However, since there is evidence that the laws are in part designed to disenfranchise minority voters, it can be argued that voter ID laws violate Section 2 of the VRA, which prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen...to vote on account of race or color.”¹³⁴ As noted above, the US Supreme Court very recently affirmed Section 2 of the VRA in racial gerrymandering, so it is conceivable that a challenge there would be successful.

Jacob Grumbach, at the University of Washington just published a study that measured the democratic quality of American states from 2000 to 2018.¹³⁵ He studied certain indicators,

¹³³ Ibid, p.22.

¹³⁴ SECTION 2 OF THE VOTING RIGHTS ACT

42 U.S.C. § 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation.

a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b

¹³⁵ Grumbach, J. (2022). *Laboratories Against Democracy: How National Parties Transformed State Politics* Princeton University Press.

including gerrymandering. In States that had been dominated by Republicans over the most recent 20 years, he found them to be substantially less democratic in reality. Contrarily, those controlled by Democrats and those with a divided government saw no such loss. This work shows how authoritarian minded groups are using state legislatures to suppress the vote via gerrymandering and Voter ID laws. This attacks the very foundation of representative democracy and should be considered an existential threat.

Thus, it is clear that again, the hypothesis for the USA has not been found true. Voter ID laws are blatant, just like gerrymandering. Yes, it might be cloaked as fighting fraud claims by politicians, in reality the voters know that claim is actually and demonstratively not true. It has been widely published as such in the media and political discussions. Therefore, it can only be concluded that this authoritarian practice is designed to suppresses specific voters and acts to sabotage accountability of elected officials and leaders to the will of the people.

Hungary

In September of 2022, the European Parliament declared Hungary was no longer a democracy, but a hybrid regime called an Electoral Autocracy.¹³⁶ Such is a country in which elections are regularly held but without respecting basic democratic norms.¹³⁷ The EU then quickly acted and held back in December nearly 28 Billion Euros in funds for Hungary's lack of reforms to end corruption, attack on rule of law and basic human rights. The EU should add to its list of Human Rights violation voter suppression and election manipulation.

Present day Hungary only came into existence after the collapse of the Soviet Union in 1989, and the present system of government only traces back to 2012 when a new Fundamental

136 European Parliament (2022, July 25). Interim Report on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (Report). Committee on Civil Liberties, Justice and Home. https://www.europarl.europa.eu/doceo/document/A-9-2022-0217_EN.html (Final Access July 11, 2023)

137 Liboreio, J. (2022, September 16). Hungary is no longer a full democracy but an 'electoral autocracy,' MEPs declare in new report. *Euronews*. <https://www.euronews.com/my-europe/2022/09/15/hungary-is-no-longer-a-full-democracy-but-an-electoral-autocracy-meps-declare-in-new-repor>. (Final Access July 11, 2023)

Law came into effect. From about 1990 until 2010, Hungary was progressing to a full and healthy Democracy by most observer's accounts.

This included an independent Constitutional Court. For example, in the case of Decision 30/1992 (V. 26.) Ab In The Name Of The Republic Of Hungary, Constitutional Court decision 1992,¹³⁸ the court annulled by judicial fiat a section of the Criminal Code which made it a crime to disparage the Hungarian nation. The court said importantly, "Therefore, the freedom of expression has a special place among constitutional fundamental rights, in effect it is the "mother right" of several freedoms, the so-called fundamental rights of communication. Enumerated rights derived from this "mother right" are the right to free speech and the right to the freedom of the press, with the latter encompassing the freedom of all media, as well as the right to be informed and the right to freely obtain information. In a broader sense, the freedom of expression includes artistic and literary freedoms, the freedom to distribute and disseminate works of art, the freedom of scientific research and the freedom to teach scientific knowledge."¹³⁹

The court then concluded, "The abstract and hypothetical threat to public peace does not in itself sufficiently justify criminal law restriction by Section 269 (2) of the fundamental right to the freedom of expression, a right whose exercise is indispensable for the functioning of a democratic state under the rule of law."¹⁴⁰ It is clear, three years into the new democracy, democratic values and human rights seemed to be present and growing. That all changed in 2010 with the significant electoral victory of Fidesz headed by a populist authoritarian leader Viktor Orbán.

Gerrymandering and Omission

The new regime, as stated above, wrote a new Fundamental Law. Now, unlike the USA, in which every ten years the census figures require re-districting by State legislatures, in

¹³⁸ Ab In The Name Of The Republic Of Hungary (1992) Decision 30/1992 (V. 26.) Constitutional Court. [http://public.mkab.hu/dev/dontesek.nsf/0/d4cc956c6c04b7e2c1258382003c442a/\\$FILE/en_0030_1992.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/d4cc956c6c04b7e2c1258382003c442a/$FILE/en_0030_1992.pdf) (Final Access July 11, 223)

¹³⁹ Ibid, Part III, Paragraph 2.1 of the opinion.

¹⁴⁰ Ibid, Part V, Paragraph 4.

Hungary, their Fundamental Law¹⁴¹ actually requires adjustment of any district which deviates more than 20% from the baseline population of the average of all districts of the last election.¹⁴²

It reads in relevant part:

CCIII of 2011 law
on the election of parliamentary representatives

4. The individual constituencies

§ 4. (1) In each individual electoral district, one member of parliament can be elected.

(2) The individual constituencies must be formed in such a way that

a) **they must not cross the county borders and the capital city,**

b) **they form a contiguous area,**

c) **the number of eligible voters should be approximately the same.**

(6) **If the deviation contained in paragraph (4) exceeds twenty percent, the Parliament shall amend Annex No. 2.** In the period between the first day of the year preceding the general election of the members of the Parliament and the day of the general election of the members of the Parliament - with the exception of the election due to the dissolution or dissolution of the Parliament - no amendments to Annex No. 2 may take place.¹⁴³

Importantly, there is evidence that partisan gerrymandering occurred when the present district lines were drawn in late 2011. According to Professor Gábor Tóka of Central European University, it was an overnight emergency session and detailed down to streets using “linguistic

¹⁴¹ The Fundamental Law of Hungary (Hungarian: Magyarország alaptörvénye), the country's constitution, was adopted by parliament on 18 April 2011, promulgated by the president a week later and entered into force on 1 January 2012.

¹⁴² International standards actually require adjustment at 10% deviation, or half that allowed in Hungary.

¹⁴³ Act XXXVI of 2013 contains the same rules for local municipal elections.

corrections” as amendments to delineate boundaries.¹⁴⁴ While sporadically government politicians informed the public about potential changes in the evolving election system, until November 20, 2011 (Sunday night when then faction-head János Lázár submitted the Bill on the new election act) reliable information on district boundaries were only known to an unidentified group of people. Since then, district boundaries have not been significantly changed, although in 2011 and even in 2013 they underwent slight modifications.¹⁴⁵

Data Analyst Adam Sanyo with his review of the 2018 election, calculates the process has given Fidezs, the ruling party, an advantage of 3-3.5%, or about 250 to 300K voter advantage.¹⁴⁶ This means Fidesz can still win a closely contested election with 250-300k less votes than the opposition parties due to the distribution of voters by constituency. He has shown evidence of packing, or the placing of opponent’s voters in safe seats in Budapest, as well as packing (6% advantage) their voters in smaller rural districts.¹⁴⁷

In the new electoral system adopted by the Fidesz government in 2012, the constituency maps were redrawn to favor the governing party. The following chart, prepared by Adam Sanyo after the 2018 election, shows that on average, constituencies favoring Fidesz - where Fidesz is likely to have a higher vote share - are 6% smaller on average which means that the opposition parties must receive 300,000 more votes to win the same number of constituencies as Fidesz.

¹⁴⁴ Interview with Dr. Gábor on June 2, 2023, in Budapest.

¹⁴⁵ Ibid.

¹⁴⁶ Interview with Adam Sanyo on May 5, 2023, in Budapest.

¹⁴⁷ Banuta, Z., Goat, E. (2019, May 17) *Fresh evidence of Hungary vote-rigging raises concerns of fraud in European elections*. Open Democracy. <https://www.opendemocracy.net/en/breaking-fresh-evidence-hungary-vote-rigging-raises-concerns-fraud-european-elections/> (Final Access July 11, 2023)

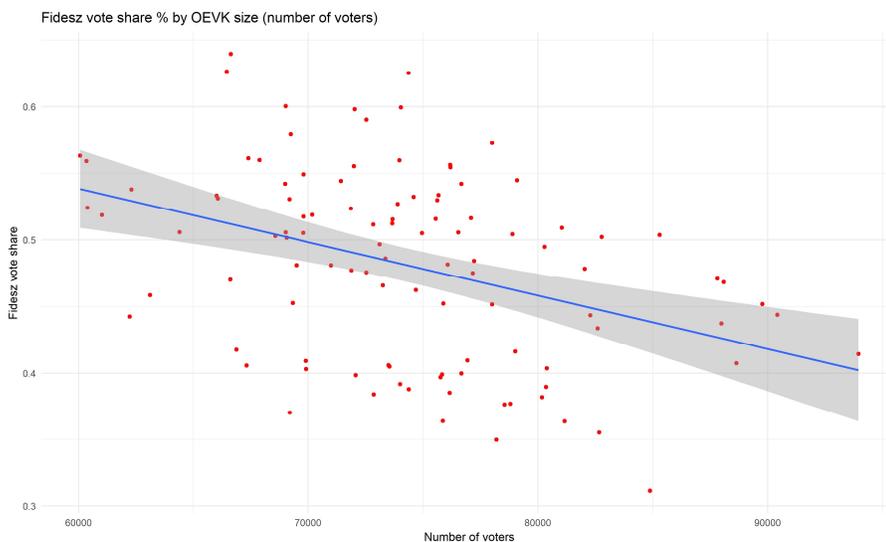


Figure 7 Fidesz vote share by OEVK size (number of votes)¹⁴⁸

Another observer Professor Kim Lane Scheppele. notes the clandestine process “created districts that varied immensely in size, with the smallest containing sixty-thousand voters and the largest, around ninety thousand. Not surprisingly, the large districts were in the left-opposition strongholds, while the smaller districts were in Fidesz country.”¹⁴⁹ These were in obvious disregard of the law which requires “the number of eligible voters should be approximately the same.”¹⁵⁰

It is clear with Hungary, the current problem is not decennial partisan gerrymandering as in the United States, but actually not complying with the Fundamental Law and correcting out of balance districts in terms of population size.¹⁵¹ According to Dr. Zoltan Reti, this is a political choice by Fidesz.¹⁵² A look at this graphic explains why. This shows the deviation from the mean of populations in districts as of January 12, 2022, before the last election.

¹⁴⁸ Source: Data research of Adam Sanyo, CEU.

¹⁴⁹ Scheppele, K. (2022, July). How Viktor Orbán Wins. *Journal of Democracy*, 33, (3), pp 45-61, p.49. <https://www.journalofdemocracy.org/articles/how-viktor-orban-wins/> (Final Access July 11, 2023)

¹⁵⁰ CCIII of 2011, 4 (4); also interview with Dr. Scheppele on May 12, 2023, Vienna.

¹⁵¹ Paragraph 21 of General Comment 25 to Article 25 of the ICCPR states: “...within the framework of each State's electoral system, **the vote of one elector should be equal to the vote of another.**”

¹⁵² Interview with Dr. Reti on June 7, 2023 in Budapest.

Az országgyűlési egyéni választókerületek
választásra jogosultjainak területi
egyenlőtlensége (2022. január 12.)

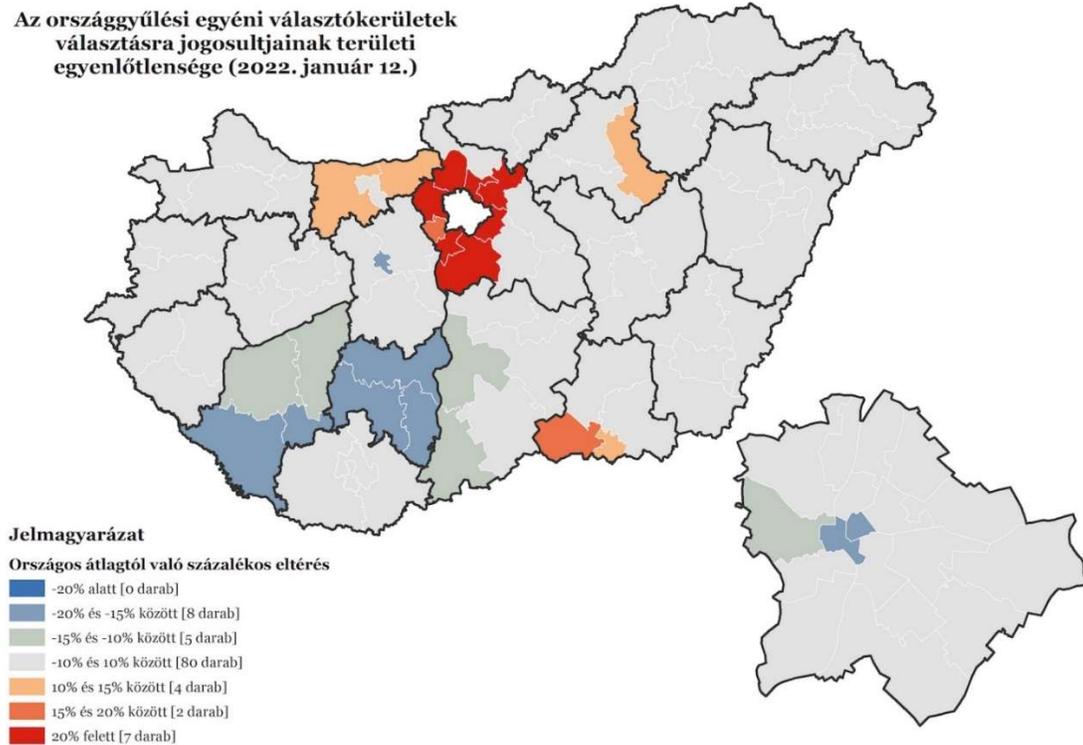


Figure 8. Percentage Deviation by Constituency as of January 12, 2022¹⁵³

. The seven districts where it is more than +20% (bright red above) and by law Parliament must re-draw, are all districts where Fidesz has power in Pest County.¹⁵⁴ However, the next graphic shows that they won with less than 50% in 5 of those districts and in one they were barely over 50%.¹⁵⁵

¹⁵³ Source: Adam Sanyo.

¹⁵⁴ It should be noted that 25 of the 106 exceed the ODIHR standard that election districts vary in size by no more than 10 percent, including -10% in rural districts where Fidesz voters are concentrated. Hungary clearly violates International Standards.

¹⁵⁵ The vote totals were arguably a direct result of the overtly racist, homophobic and pro fascist, Mi hazánk mozgalom (Our Homeland Movement), that secured six seats in the new parliament. It is now the third largest party in Hungary. It ranks as the most extreme far-right party to gain parliamentary representation in Hungary since World War II.

Pest 2	46,3%	Pest 7	49,22%
Pest 3	51,94%	Pest 8	45,55%
Pest 5	46,3%	Pest 11	56,81%
Pest 6	49,05%		

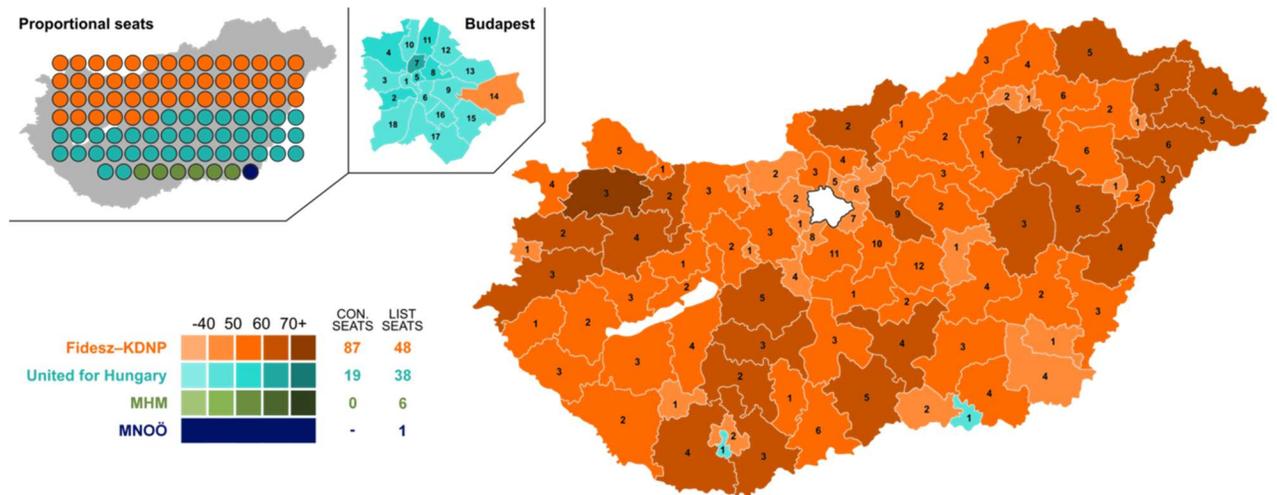


Figure 9: 2022 Hungarian Parliamentary Election Tentative Results¹⁵⁶

Re-drawing the districts by Parliament within Pest County would mean drawing lines shifting voters to the north and southeast, areas where Fidesz holds large voter blocks, and thus theoretically diluting enough from Fidesz in the current districts and correspondingly strengthening the opposition to overcome their small majority or plurality in at least 6 of these 7 districts. Remember, they did not even reach 50% in most of these districts in Pest, as it is close to Budapest the stronghold of the united opposition. If that would happen, they would clearly lose their 2/3 majority in parliament and significantly reduce their brute power and authoritarian practices.

There was an attempt to follow the Fundamental Law and correct these deviations before the recent 2022 Census and Election. In August 2020, the National Elections Office (NEO) head

¹⁵⁶ Source: ErintheCute (2022, April 4) https://commons.wikimedia.org/wiki/File:2022_Hungarian_parliamentary_election_-_Template.svg (Final Access July 11, 2023)

submitted to the Ministry of Justice new maps that revised constituencies in Pest County. The two concerned constituencies were No. 02 and 05 in Pest at that time before the Census.

This was submitted shortly before the head of the NEO resigned. The proposal was never brought for a vote in parliament, showing the power and partisan interest of the supermajority. In actuality, the changes were insignificant and did not correct the out of balance problem.¹⁵⁷ Still, in December 2020, an opposition party member motioned for acceptance, as per the law, the same boundary revision proposal.¹⁵⁸ This was voted down by the Fidesz majority.¹⁵⁹ This is a direct violation of the Fundamental Law and shows they are aware they may lose their supermajority.

A Designed Advantage

The following graph which was developed before the 2022 parliamentary elections by 21 Research Centre shows that the original 2011 gerrymandering and the failure to correct the growing deviation between districts give Fidesz such an advantage, that even if more people voted for the opposition coalition, they would still not get control of parliament. In order to win a majority, the opposition needs about 3-4 percentage points more than Fidesz. In case of an equality of votes (47-47%), Fidesz wins 55-45% majority of the seats in the parliament. Furthermore, even with a slight (2 percentage points) advantage for the opposition, the government can expect a 52-48 mandate majority outcome.¹⁶⁰

¹⁵⁷ Interview with Professor Gábor Tóka, June 7, 2023, in Budapest.

¹⁵⁸ See, OSCE (2022, July 29). Hungarian Parliamentary Elections and Referendum 3 April 2022, ODIHR Election Observation Mission Final Report. *ODIHR*. <https://www.osce.org/odihr/elections/hungary/511441> (Final Access July 11, 2023)

¹⁵⁹ Interview with Professor Gábor Tóka, May 30, 2023, in Budapest.

¹⁶⁰ Róna, D., Kósa, L., Hóka, I., Keszthely, A. (2020) *Before the battle An interactive election map and parliamentary seat allocation calculator for the 2022 elections*. 21 Research Centre. <https://21kutatokozpont.hu/wp-content/uploads/2020/11/Election-simulation.pdf> (Final Access July 10, 2023)

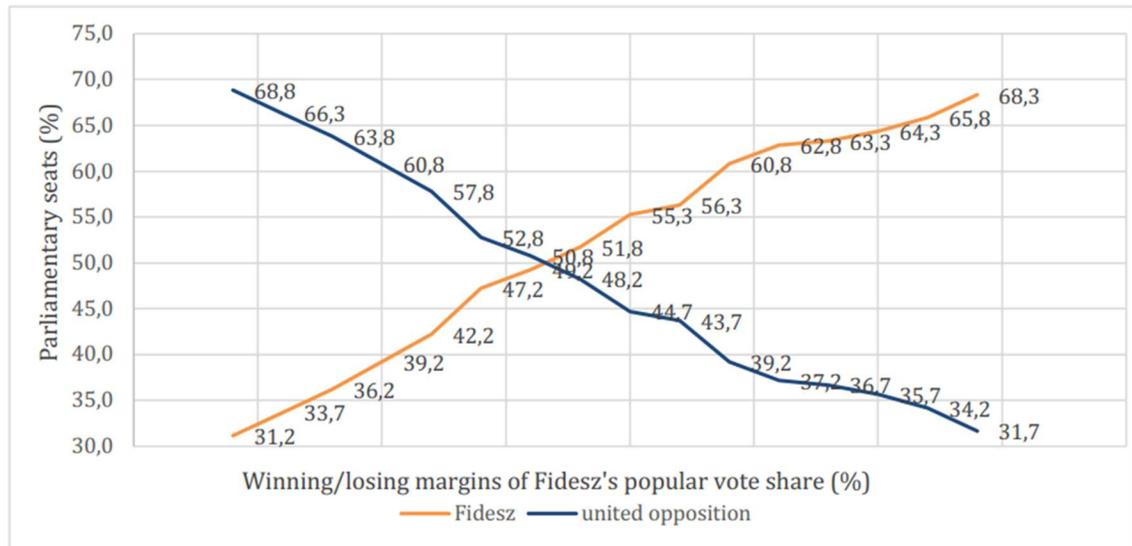


Figure 10. Demonstrating gerrymandered advantage to Fidesz.¹⁶¹

Since Fidesz has a supermajority in Parliament, their unwillingness to follow the Fundamental Law as required and re-district is an authoritarian practice to sabotage accountability and suppress the voters will. This is not blatant, however, but still an act of omission. It is highly likely the common voter has no idea in Hungary of either the original gerrymandering or the failure to correct.¹⁶²

Authoritarian Effects

As a further example of their authoritarian practice in sabotaging the voice of the people,¹⁶³ here is the 2016 decision of the European Court of Human Rights Case of Karacsony

¹⁶¹ Source: 21 Research Center

¹⁶² Interview with Zsofia Banuta on April 18, 2023.

¹⁶³ Mándli and Others v. Hungary. application no. 63164/16. (ECtHR 2020). The case concerned the suspension of the applicants' Parliament accreditation as journalists. Found Violation of Article 10; Szurovecz v. Hungary. application no. 15428/16 (ECtHR 2019) The case concerned media access to reception facilities for asylum-seekers. The applicant in the case, a journalist for an Internet news portal, complained about the authorities' refusal of his request to carry out interviews and take photographs at the Debrecen Reception Centre, thus preventing him from reporting on the living conditions there. Violation of Article 10.
[https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-202540%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-202540%22]) and
[https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-196418%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-196418%22]) (Final Access July 10, 2023)

and others v. Hungary (Applications nos. 42461/13 and 44357/13).¹⁶⁴ This case was against the authoritarian suppression of opposition's voice in parliament. Opposition MPs had used a megaphone and sign to accuse the regime of lying and cheating. The regime fined them *ex post facto*, and the MPs were not allowed to even contest. The court held: "In the light of the above considerations, the Court concludes that the interference with the applicants' right to freedom of expression was not "necessary in a democratic society" and that, accordingly, there has been a violation of Article 10 of the Convention on this account."¹⁶⁵

Another more recent example of the authoritarian practice of intimidation to silence the voice of opposition is the distressing case of Lili Pankotai a high school teenager who spoke at a massive protest for better salaries for teachers on October 23, 2022. The protests of 10,000 plus began in October of 2022 and occasionally reoccur in Budapest to this day.¹⁶⁶ The regime, through her high school officials, tried to silence her in her hometown and high school in Pecs, so she had to move to Budapest to another school.¹⁶⁷

In a recent interview she had this telling thought about the impact of such authoritarianism: Q: How do you imagine your future? Are you staying in Budapest? PL: "I will definitely not go to university in Hungary. If it's a university, then it's abroad, if not, then unfortunately it's also probably abroad. I was always the kid who said without thinking: I'm not staying at home. In the past months, I felt that yes, I will stay here and do everything to make the country livable. But as long as the majority of Hungarian people do not want this, we will not be

¹⁶⁴ Karacsony and others v. Hungary (Applications nos. 42461/13 and 44357/13)(ECtHR 2016) [http://hudoc.echr.coe.int/rus#{%22itemid%22:\[%22002-11041%22\]}](http://hudoc.echr.coe.int/rus#{%22itemid%22:[%22002-11041%22]}) (Final Access July 20, 2023)

¹⁶⁵ *Ibid*, paragraph 162 of the decision.

¹⁶⁶ Than, K., Fenyó, K., (2022, October 6). Protesters throng central Budapest in support of Hungarian teachers. *Reuters*, October 6, 2022. <https://www.reuters.com/world/europe/students-form-human-chains-across-budapest-supporting-teachers-strike-2022-10-05/>. (Final Access July 10, 2023)

¹⁶⁷ Halasz, N. (2023, January 20). Lili Pankotai is suing her former school for humiliating her because of her opinion. *Telex*. https://telex-hu.translate.googleusercontent.com/2023/01/20/tasz-pankotai-lili-per-iskola-fenntarto-oktatas-akg-birosag-interju?_x_tr_sl=hu&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc&_x_tr_hist=true. (Final Access July 10, 2023)

able to achieve drastic changes. My friends think the same way, so unfortunately the debate here is not about which university to go to, but about which country.”¹⁶⁸

Clandestine and Legal

Although many different NGOs, observers and Civic Society groups have identified, election law tampering, media manipulation, fake parties, control of propaganda, vote fraud, illegal election tactics, including vote buying, voter intimidation, tampering with postal votes, missing ballots and election software malfunctions, space does not allow a discussion of all these here.¹⁶⁹ However, it is noted that all these tactics are not considered blatant, but more secretive and hidden in the sense the regime denies them.

One interesting tactic, however, was highlighted by Professor Kim Scheppele.¹⁷⁰ It was a change in the election law just four months before the election in 2022. This change allowed voters to vote in any district, not just of their residence. Touted as a good thing of convenience, the problem is the follow up. Retired mathematics Professor Dr. Zolton Reti has noted that the counting of these “Nomadic Voters” does not match and is suspect as counting is not done locally with opposition participation as normal, but at the national level controlled by Fidesz.¹⁷¹ Thus, he suspects this new tactic allows Fidesz to amend, change to delete the votes of voters who decide to not vote in their home district.

Additionally, organizations including the OSCE¹⁷² and Transparency International have accused the Fidesz government of controlling unbalanced media coverage to promote party

¹⁶⁸ This sentiment apparently is widely shared as thousands of Hungarian young have left under the regime of Fidesz. See footnote 165.

¹⁶⁹ See for example, Lazlo, R. (2016) The new Hungarian election system’s beneficiaries, *Political Capital*.; Elliott Goat, E., Banta, Z. (2019, May 17). Fresh evidence of Hungary vote-rigging raises concerns of fraud in European election. *Open Democracy*.; Scheppele, K. (2022, July). How Viktor Orbán Wins. *Journal of Democracy*, 33(3), pp. 45–61.; Hockenos, P. (2022, April 1). The Secrets to Viktor Orbán’s Success: Hungary’s prime minister will likely win a fourth consecutive election with an original political formula. *FP Dispatch*. (full citations in bibliography)

¹⁷⁰ Interview with Professor Kim Scheppele, May 12, Vienna.

¹⁷¹ Interview with Zolton Reti, June 7, 2023, Budapest.

¹⁷² Hungarian Parliamentary Elections and Referendum 3 April 2022, ODIHR Election Observation Mission Final Report of July 29, 2022.

propaganda, packing the judiciary with loyalist, and ignoring legal campaign finance limits. Again, not blatant authoritarian practices, but if true, repressive, nonetheless. The regime will and has denied these observations.

However, three more tactics of the current Fidesz regime deserve attention. These are all election law changes driven and approved by the supermajority of Fidesz. Again, they are all legal changes, done in the background, and part of the Fundamental Law. The first is unique to Hungary and it has been argued is the most crucial authoritarian practice to ensure a supermajority in 2014, 2018 and 2022.¹⁷³ Yet even this crucial tactic, was not blatant and done as an election law crafted in 2012 as a “Cardinal Law” with the new Fundamental Law.

Winner Compensation

Hungary has a Compensatory Mixed System for elections, which has parallel party list and single member district voting. This means the voter votes for a candidate to represent their district in parliament, and they also vote for a party list. The party list is closed and the order on the list is set by the parties.¹⁷⁴

For the single member districts, the person with the most votes wins a seat. In Hungary, this decides 106 seats in their 199-seat parliament. This “first past the post” system is familiar to most electoral systems of course, however, like many mixed electoral systems, the votes for the losers are then transferred to the party list contest to seat the remaining 93 seats. In a sense, some voters get to “vote” three times. Once each for the party list and their district, but then the losing vote in the district is again counted on the party list. This system of “loser compensation” was designed to make the system more proportional and thus more representative of the will of the people.¹⁷⁵ It is a counterbalance to the “one past the post” system. It is common in mixed parliamentary systems around the world.

¹⁷³ Interview with Dániel Döbrentey of Hungarian Civil Liberties Union on April 11, 2023, in Budapest.

¹⁷⁴ Hegedus, D. (2021, December 4) Elections in a Frankenstate: The Hungarian Election Law. *Europe and Me*. <https://europeandme.eu/elections-in-a-frankenstate-the-hungarian-electoral-law/> (Final Access July 10, 2023)

¹⁷⁵ Netherlands Helsinki Committee (2022, April 14). *Systematic backsliding of the Rule of Law in Hungary: Rule by Law*. <https://www.nhc.nl/systematic-backsliding-of-the-rule-of-law-in-hungary-rule-by-law/> (Final Access July 11, 2023)

But Fidesz has added a “winner compensation” to this standard system.¹⁷⁶ The votes for the winner above what they needed to win, also go to the party list. This acts to effectively negate the purpose of the loser compensation (proportional representation) element of a compensatory mixed system, and in fact actually can grossly magnify a big win by a single party.¹⁷⁷ In the case of Hungary, it has allowed Fidesz to obtain a supermajority in the last three elections.¹⁷⁸ This of course, with the supermajority, sabotages accountability of the regime.¹⁷⁹

Expatriate Discrimination

Two other tactics are more clearly aimed at voter suppression. The first is the discriminatory treatment of ex-patriate Hungarians residing in another country at the time of the election. According to the election procedures, these citizens, who still maintain a residence or domicile in Hungary, can only vote at an Embassy or Consulate in person. They are prohibited from voting by mail.

Thus, they need to incur, if they can, great expense to travel to an embassy abroad, and get an appointment, take leave from work, etc. Often, in a large country as the USA, the person may need to travel thousands of kilometers. For example, there are only 4 consulates of Hungary in the entire United States. This acts as a strong deterrent to voting for many expatriates.

Compare this with a Hungarian citizen, who does not have a residence in Hungary, and more than likely never even stepped a foot into Hungary their entire life. They are allowed to vote by mail. But the insidiousness of this law and discrimination only is apparent if you understand history and the Hungarian government’s aid to a particular part of the diaspora. This

¹⁷⁶ According to the Dr. Gábor Tóka, a Senior Research Fellow in the Vera and Donald Blinken Open Society Archives at the Central European University, Budapest, the author of this peculiar tactic was János Áder, the first president of Hungary under the 2012 Constitution. Interview with Dr. Gábor on May 30, 2023, in Budapest.

¹⁷⁷ Data Analyst Adam Sanyo has calculated this scheme accounted for 7 seats in 2014, 6 in 2018 and 6 in 2022. Interview in Budapest on May 5, 2023.

¹⁷⁸ Added to this scheme is the curious granting of citizenship to ethnic Hungarians who have never lived or have a residence in Hungary as voters. It is estimated that 96% of these voters vote for Fidesz. See discussion below.

¹⁷⁹ For example, Fidesz in 2022 won the popular vote by 54.13%, but they secured under this system 68% of the seats in the Hungarian Parliament.

map shows the location of substantial concentration of ethnic Hungarians in neighboring countries.¹⁸⁰ They number close to 2 million, with half that in Romania.



Figure 11. Location of Hungarian Diaspora in neighboring countries.¹⁸¹

Most of these people, shown in light green, did not actually emigrate and are descendants of those that lost their country citizenship a century ago with the re-drawing of boundaries in 1920 with the Treaty of Trianon at the end of WWI. For them, this perceived injustice has likely created a generational psychology of grievance as well as nostalgia which was ripe for the Fiedezs regime to exploit with nationalist rhetoric since taking power in 2010.¹⁸²

One of the first things the Fidesz regime did after winning in 2010 with a supermajority, was to liberalize naturalization law making it easy to become a citizen for these people and more importantly acquire a right to vote. Thus, now every person who was a Hungarian citizen or a descendant of a person who was a Hungarian citizen before 1920 in the Kingdom of Hungary or between 1941 and 1945 (Nazi period) could naturalize, even if they do not live in Hungary or even visited. The noted areas of the map above were part of the Kingdom of Hungary before

¹⁸⁰ Sebők László's ethnic map of Central and Southeastern Europe. (2009)

¹⁸¹ Ibid, <https://hu.m.wikipedia.org/wiki/F%C3%A1jl:MagyarsOutsideHungary.png> (Final Access July 11, 2023)

¹⁸² See, Lijtmaer, R. M. (2022). Social Trauma, Nostalgia and Mourning in the Immigration Experience. *The American Journal of Psychoanalysis*, 82, pp.305–319. (Final Access July 11, 2023)

1920. Those voting from abroad in this group are more than 96% in favor of Fidesz in the recent three elections. They average about 250-300 thousand votes.¹⁸³ Since they do not have a residence in Hungary, the law allows them to vote by mail.

The huge support evident in that 96% figure for Fidesz is no surprise. In the village of Csuzsa in Croatia, a resident told a reporter this: "Orbán has granted [us] Hungarian citizenship, and since 2017 we have been receiving a lot of support," said local resident Ilona Pinkert. "That's why we vote for them, and we don't care who the opposition is in Hungary and what they want."¹⁸⁴ This is a typical opinion.

And, according to research, she is correct about the support. A recent report found that support for the diaspora has grown twentyfold from 2011 to around 670 million euros in 2022. The money is primarily used for Hungarian-language media and education, with the remainder going to local social, religious, and cultural programs.¹⁸⁵ However, Investigative Journalism for Europe has investigated money being spent on political campaigns as well.¹⁸⁶

Interestingly, by law in Hungary there is a ten-year gap between registrations to vote. This is also true of these non-resident new Hungarian citizens. According to Dr. Zolton Reti, the huge amount of money being spent by the Government, with a ten-year gap between voter registrations, and the fact that the government provides no way to check the status or deaths of registrants makes a substantial portion of these votes suspect. The registration is valid for 10 years or until a change of address. More importantly, it will be automatically extended in case of voting, so in effect, Hungarian citizens in the neighboring countries, only have to re-register in case of not voting twice or in case a change of home address. He also points out that statistics

¹⁸³ Interview with Adam Sanyo, May 5, 2023, in Budapest.

¹⁸⁴ Rutai, L. A (2022, February 21). Tale Of Two Diasporas: The Battle For Hungarian Voters Abroad. *Radio Free Europe*. (Final Access July 11, 2023)

¹⁸⁵ Drucker, J. (2022 January 12). Divide and Conquer. *The Beacon Project*. <https://www.iribeaconproject.org/our-work-analysis-and-insights/2022-01-12/divide-and-conquer>. (Final Access July 11, 2023)

¹⁸⁶ Investigative Journalism for Europe (2023) <http://hungarianmoney.eu/>. (Final Access July 11, 2023)

show populations of these neighboring countries declining significantly through emigration and low birth rates, yet voter registrations of these new Hungarian Citizens keep going up.¹⁸⁷

Additionally, Hungary, which has the least strict mail-in voting regulations in Europe, doesn't require IDs to obtain mail in ballots. Concerns are that fraud is possible because there is little scope for verification of identities, or check that people are even still alive. The National Election Office does not even have authority, by law, to check whether voters are alive in a foreign country.¹⁸⁸ Simple demographic changes dictates that a portion, a sizable portion given life expectancy, of those people die in a ten-year period.¹⁸⁹

But also, in the last election, mail in ballots were found burnt in Transylvania.¹⁹⁰ According to reports, they were all for the opposition. Thus, even the handling of the votes from abroad leaves room for meddling by Fidesz. But that is not all to this picture. This group is only one part, although large, of the Hungarian diaspora.

There is a smaller but growing group in the Hungarian diaspora. The second group is made up of émigrés from communism, students, and, more recently, skilled migrants who have left the country for work or to live abroad, primarily in the European Union. Being part of the Schengen Zone since 2007 allows these Hungarians to seek work and temporary residence elsewhere. This benefit has been seized by many Hungarians.

There is a growing number of skilled workers, Hungarian doctors, medical personnel, scientists and researchers that have found desirable opportunities abroad in the last decades. Hungary has a large pool of well-qualified and educated young or middle-aged people who find only limited opportunities at home; thus, they seek jobs elsewhere. This newer expatriate population is thought to number about 600,000 to a million people. Hungarians leaving to join the diaspora on an annual basis since 2010 has risen from about 18,000 to now about 70,000.¹⁹¹

¹⁸⁷ Interview with Dr. Reti, June 7, 2023, in Budapest.

¹⁸⁸ Róbert László interview in Budapest, May 3, 2023

¹⁸⁹ Interview of Adam Sanyo, *Ibid.*

¹⁹⁰ Hungary Today. (2022 April 1). Discarded, Burnt Postal Ballots Found-Growing Scandals around Postal Voting. *Hungary Today*.<https://hungarytoday.hu/discarded-burnt-postal-ballots-scandals-postal-voting-hungary-fidesz-opposition-rmdsz/> (Final Access July 10, 2023)

¹⁹¹ Source: Statista online. <https://www.statista.com/statistics/1127762/population-of-hungary/> (Final Access July 11, 2023)

In 2022 an extensive research effort of 21 Research Center asked 5,000 ex-patriots of Hungary from around the world, their voting preference. The results showed that a mere 11% would support Fidesz. This means close to 90% of this group of citizens would support a party other than Fidesz.

Here we can see the real reason behind making it difficult for them to vote.¹⁹² Thus it seems clear this is voter suppression of the ex-patriot vote. It has been estimated, given the requirement to vote in person at the embassy, that fewer than 15% of these voters actually get to an embassy to vote.¹⁹³ This fact was born out in the 2019 European Parliament election, when Momentum, a pro-European centrist movement, accounted for 9.9 per cent of the Hungarian national vote but 29 per cent of the diaspora vote.¹⁹⁴ Fidesz is clearly not a pro-European party.

A case was brought to the European Court of Human Rights on this very issue of discrimination and unequal treatment between the two distinct groups in the diaspora. The Plaintiffs pled the case as a violation of Article 3 of the 1st Protocol to the European Convention on Human Rights, which guarantees the right to vote. In the case of Zsófia Vamos and Others v. Hungary, Application 48145/14 (ECt, HR 2015)¹⁹⁵ the Court curiously rejected the applicants argument that the unequal treatment was a violation of the Convention.

It reasoned that the well known and often derided “margin of appreciation” judicial standard employed by the Court allowed to Member states saying in the operative holding; “For the Court, the voting arrangements reflecting the distinction between the different situations of voters outside Hungary cannot be regarded as overstepping the State’s margin of appreciation in this field. It is not for the Court to pass judgment on the efficiency of the organization of a voting system.”¹⁹⁶

¹⁹² 21 Research Center (2022, February 10). The Shunned Crowd: Political preferences social attitudes and missing votes of Hungarians emigrants in the 2022 Parliamentary Elections 21 *Research Center*. In Hungarian here: https://21kutatokozpont.hu/wp-content/uploads/2021/11/a_tavoltartott_tomeg_2022_02.pdf (Final Access July 11, 2023)

¹⁹³ Fubini, F. (2020, January 1) Voter suppression comes to Europe. *IPS Journal* <https://www.ips-journal.eu/topics/european-integration/voter-suppression-comes-to-europe-3999/> (Final Access July 11, 2023)

¹⁹⁴ Fubini, *ibid*, p.3

¹⁹⁵ Zsófia Vamos and Others v. Hungary, Application 48145/14 (ECt, HR 2015) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-153061%22%5D%7D> (Final Access July 11, 2023)

¹⁹⁶ *Ibid*, paragraph 20 of the opinion.

But the problem is, the efficiency of the voting system was not in question nor the issue in the case. It was quite clear the obvious discrimination suffered, and the violation of the expatriate's vote and their Human Rights was the issue. In addition, the Court also ignored the fact that this rule was crafted by Fidesz to specifically violate the rights of the expatriates since they would vote against their party. Thus, it can be argued that this was a very poor decision.

Minority Discrimination

The other authoritarian practice which is discriminatory is the treatment of minority voters to suppress their votes. Plaintiffs from Hungary did also bring a case on this discrimination. With regard to this tactic, the European Court of Human Rights recently ruled in November 2022 in the case of Case of Bakirdzi and E.C. v. Hungary Applications nos. 49636/14 and 65678/14 (2022)¹⁹⁷ finding a violation of Article 3 of the 1st Protocol to the ECHR.¹⁹⁸ The text of the Protocol is given below.

This case arose out of the peculiar requirement in Hungary that if a person registers as an ethnic minority, they are precluded from voting for a party list, but only the closed list created by their governing minority council. The decision states: “66. The Court has doubts that a system in which a vote may be cast only for a specific closed list of candidates, and which requires voters to abandon their party affiliations in order to have representation as a member of a minority ensures “the free expression of the opinion of the people in the choice of the legislature.”¹⁹⁹

One commentator Dr. Peter Kallai has observed: “The decision of the Court did not go this far in its text, but I argue that the whole electoral system is exclusionary towards minorities. Those who choose to register as national minority voters for reasons of identity and national

¹⁹⁷ Case of Bakirdzi and E.C. v. Hungary, Applications nos. 49636/14 and 65678/14 (ECtHR 2022) <https://www.eods.eu/elex/uploads/files/6437bf04889f4-CASE%20OF%20BAKIRDZI%20AND%20E.C.%20v.%20HUNGARY.pdf> (Final Access July 11, 2023)

¹⁹⁸ European Convention on Human Rights (1950), ratified by Hungary in 1992. https://www.echr.coe.int/documents/d/echr/convention_eng (Final Access July 11, 2023)

¹⁹⁹ Article 3 of Protocol No. 1– Right to free elections “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” European Convention on Human Rights.

belonging have limited possibilities in terms of choosing their own representatives, even though this is the first and foremost condition of minority representation.”²⁰⁰

Professor Anna Unger notes this dilemma and argues that the system basically precludes minority representation to all but maybe two groups. She argues that it is difficult to remedy this by further reducing the preferential quota as the system is already a violation of the principle of equality.²⁰¹ She suggests a system that theoretically allows a given minority to enter parliament may need to go as low as 10 times less than the current quota of about 20,000 votes, which itself is 4 times lower than required for other parties. She notes the smallest minority is Slovenians with 2345 registered voters.

The Court decision, however, is not without criticism. Professor Balázs Majtényi of Eotvos Lorán University in Budapest has observed that the Court showed a weak reasoning and seemingly did not fully understand Hungarian Law to come to its otherwise laudable conclusion.²⁰² For example, he notes that the court challenged as discriminatory the Hungarian system in which it reduces down to a fourth number of votes a minority group needs to achieve to reach a seat in parliament. But Professor Majtényi points out this “is particularly surprising because this type of parliamentary representation which exists mainly in Eastern and Central Europe, was introduced by these countries to comply with international standards (e.g., article 15 of the Framework Convention for the Protection of National Minorities) under pressure from the European institutions, including the Council of Europe.”²⁰³

²⁰⁰ Kalllai, P. (2022, December 20) Preferential Non-Representation? Case of Bakirdzi and E. C. V Hungary. *Strasbourg Observers*. Professor Kalllai teaches at Eötvös Loránd University in Budapest. <https://strasbourgobservers.com/2022/12/20/preferential-non-representation-case-of-bakirdzi-and-e-c-v-hungary/> (Final Access July 11, 2023)

²⁰¹ Unger, A. (2022, December 5) Putting an End to Minority Voter Disenfranchising in Hungary. *VerfassungsBlog*, Anna Unger holds a PhD in Political Science from Eötvös Loránd University and is an Associate Professor. <https://verfassungsblog.de/putting-an-end-to-minority-voter-disenfranchising-in-hungary/> (Final Access July 11, 2023)

²⁰² Majtényi, B. (2023, January 9). The Right Answer Without A Reasonable Argument? The Shortcomings Of Bakirdzi And E.C. V. Hungary. *Strasbourg Observers*. <https://strasbourgobservers.com/2023/01/19/the-right-answer-without-a-reasonable-argument-the-shortcomings-of-bakirdzi-and-e-c-v-hungary/> (Final Access July 11, 2023)

²⁰³ Ibid.

One possible solution for the minority citizens would be to join as a coalition and submit a party list and then allowing every Hungarian Citizen an additional vote to choose the minority representative for this coalition. Two necessary qualifications would be to exclude any minority party in this process that has been able to garner a seat. In this last election, this was only the German minority voters. The Roma could numerically be able to do this as well with 3% of the population, but in the last election they failed to submit a minority party list.

The other qualification would be to exclude any other party, including Fidesz in meddling with this minority party list. This would include any orchestrated judicial veto. This was in part why the Roma did not have a list in the last election, since Fidesz wanted their ally on the list. Since that did not happen, they used a corrupt judicial process to strike down the list.²⁰⁴

Nevertheless, it seems evident that this system as set now is in fact designed to exclude minority participation. Again, not blatant and appearing not even intentional, but what is crucial, is the government was sued in the European Court more than 8 years ago, and since the decision of the Court it still has failed to act. Failure to correct is a clear indication of an authoritarian practice to suppress minority voices and participation.

So, it is evident that winner compensation, the gerrymandering and the failure to correct, the discrimination of expatriates and the effective exclusion of minorities all indicate authoritarian practices designed to sabotage accountability of the Fidesz supermajority. These, and the other tactics noted above, are all done clandestinely, in the law and not blatantly. As the mayor of Budapest recently observed, “how could a government that self-identifies as Christian be so popular in the most secular country in Europe? In my view, these are questions asked in a left-wing paradigm. They presuppose that politics is about correct solutions, choices between good and bad, and that politics as well as vote behavior are rational. Meanwhile, the kind of politics that is extremely successful today in Hungary does not consider whether a particular measure is good or bad for the many; it only cares whether it serves the interests of the powerful few.”²⁰⁵

²⁰⁴ Interview with Dr. Zoltan Reti, June 7, 2023 in Budapest.

²⁰⁵ Lakner, Z. (2023, January 3) Interview of Gergely Karácsony. Budapest Mayor. *Green European Journal*. <https://www.greeneuropeanjournal.eu/to-change-politics-in-hungary-we-need-to-find-the-switch/> (Final Access July 10, 2023)

CONFRONTING AUTHORITARIAN PRACTICES

Human Rights Mechanisms

Given the situation as described in this study, how can the right to vote be defended against these authoritarian practices in both the USA and Hungary? The Human Right to vote and the right to public participation in government is enshrined in relevant part, in Article 21 of the Universal Declaration of Human Rights (“UDHR”) of 1948.²⁰⁶ It provides that:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Later, these principles were set to a treaty. Thus, Article 25 of the International Covenant on Civil and Political Rights (“ICCPR”)²⁰⁷ which came in to force in 1976 requires that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

(b) **To vote and to be elected** at genuine periodic elections which shall be by **universal and equal suffrage** and shall be held by secret ballot, guaranteeing the **free expression of the will of the electors**.

²⁰⁶ Universal Declaration of Human Rights (1948). <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Final Access July 12, 2023)

²⁰⁷ International Covenant on Civil and Political Rights (1976) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Final Access July 11, 2023)

The reference to Article 2 is relevant here, since it precludes the authoritarian practices identified above in both the USA and Hungary. Article 2 of the ICCPR reads:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, **political or other opinion**, national or social origin, property, birth or other status.

These are grand ideas, and statements of Human Rights, but without the ability to enforce them, they are just grand statements and arguably illusory. The ICCPR has no tribunal of Human Rights to which petitions can be made and relief sought. Both Hungary and USA have ratified the ICCPR. But, as many have observed, the “central problem has become not so much finding a universal law of human rights (most agree that one now exists), but enforcing that law”²⁰⁸

Alternatively, the U.N. has various mechanism to shine light on Human Rights issues, such as the Universal Periodic Review (UPR). “This unique process involves a review of the human rights records of all UN Member States every 4.5 years. The UPR is a State-driven process, under the direction of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.”²⁰⁹ It also involves input from Civil Society and NGO groups, as well as other member states of the U.N.

The UPR has been criticized as flawed, but in balance it has improved recognition and discussion of human rights around the world.²¹⁰ Unfortunately and surprisingly, the most recent

²⁰⁸ Janis, M. (1993) *An Introduction to International Law (2nd ed)*, Aspen Publishers, p. 249.

²⁰⁹ <https://www.ohchr.org/en/hr-bodies/upr/upr-main>. (Final Access July 11, 202)

²¹⁰ Groves, S. (2020, August) The U.S. Universal Periodic Review: Flawed from the Start. *The Heritage Foundation*. <https://www.heritage.org/report/the-us-universal-periodic-review-flawed-the-start> (Final Access July 11, 2023)

Review in 2021 of Hungary makes no mention of these voting rights issues in this study.²¹¹ Even in the 2016 UPR process, the report by an NGO mentioned only one restriction in the right to vote of persons with disability. It was not mentioned in the final report.

This contrasts greatly with the most recent UPR Report in 2020 for the United States.²¹² The stakeholders report from the NGOs specifically mentions both partisan gerrymandering and Voter ID as major issue in the United States affecting the right to vote.²¹³ It specifically references the recent report of OSCE/ODIHR of the US 2020 Federal Elections and how it identified these tactics in the US. Germany in the final report calls on legal changes on voter ID issue, with Greece and Russian Federation calling on the US to ensure the full exercise of the voting rights of US Citizens.

This difference in treatment likely is in some respects the result of what has been shown in this thesis. With the identified authoritarian practices being so blatant in the US, with a strong opposition and free media, they are front and center in political conversations and are easily identified and therefore a subject of discussion in the UPR process. Of course, it is also argued here that for Hungary, the opposite is true. There is a controlled media, weak opposition and the authoritarian practices are subdued and hidden in legal changes and manipulations.

However, what is clear is, the UPR process of shining light and “naming and shaming” has not led to changes in the United States on these two issues of voter suppression.²¹⁴ In fact, since 2020, it has only gotten worse as noted in this comparative study.²¹⁵ And, with Hungary, the fact that the report does not even mention the attacks on the right to vote obviously shows the

²¹¹ Human Rights Council. (2021, December 21). *Universal Periodic Review-Hungary*, United Nations. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/383/07/PDF/G2138307.pdf?OpenElement> (Final Access July 11, 2023)

²¹² Human Rights Council. (2020, December 15). *Universal Periodic Review-USA*, United Nations. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/348/52/PDF/G2034852.pdf?OpenElement> (Final Access July 11, 2023)

²¹³ It was raised by the National Lawyers Guild and International Association of Democratic Lawyers, New York.

²¹⁴ The UN has also the possibility of appointing a Special Rapporteur to investigate derogations of the right to vote. This mechanism can lead to a closer look, but without enforcement powers, such investigations and reports are similarly weak.

²¹⁵ Grumbach, J. (2022, December 1) Laboratories of Democratic Backsliding. *American Political Science Review*. pp. 1-18. <https://www.cambridge.org/core/journals/american-political-science-review/article/laboratories-of-democratic-backsliding/0742F08306EFDD8612539F089853E4FE> (Final Access July 12, 2023)

process has failed Hungarians on this issue.²¹⁶ It is easy to conclude that the mentioned treaties and the UPR are mostly paper tigers in the face of these authoritarian practices.²¹⁷

European Court of Human Rights

However, Hungary is also a signatory country to the regional European Convention on Human Rights (ECHR).²¹⁸ Protocol One of the ECHR reads:

Protocol 1 (ECHR)

ARTICLE 3 Right to free elections The High Contracting Parties undertake to hold **free elections** at reasonable intervals by secret ballot, under conditions **which will ensure the free expression of the opinion of the people in the choice of the legislature.**

In the case of Hungary, they are subject to the jurisdiction of the European Court of Human Rights which sits in Stroudsburg, France.²¹⁹ Hungary ratified the European Convention on Human Rights in 1992. If this Court finds a violation of Human Rights by a member State, the Committee of Ministers of the Council of Europe is responsible for enforcing the Court's judgments. States are bound by the decisions of the Court and must execute them accordingly. Often this means amending legislation to ensure that the violation does not continue to occur. However, crucially, the Court does not have the authority to overrule a national decision or annul national laws.

²¹⁶ There may be hope for Hungary in the next review in 2025 before their next parliamentary elections.

²¹⁷ Bodansky D., (1991) Human Rights and Universal Jurisdiction. Mark Gibney (ed), World Justice? U.S. Courts and International Human Rights. pp 1-22.

²¹⁸ *Ibid*, fn 195.

²¹⁹ The European Court of Human Rights, which enforces the European Convention on Human Rights is part of the Council of Europe. The Council of Europe founded, in 1949 amidst the ruins of Europe from WWII, aims to uphold Human Right, democracy and the rule of law in Europe. It now has 46 member states, covering a population of approximately 700 million.

As mentioned above, the European Court of Human Rights recently, in the case of Case of Bakirdzi and E.C. v. Hungary (November 10, 2022), the Court held, unanimously, that the restrictions on the Plaintiff's voting rights as minorities had constituted a violation of Article 3 of Protocol No.1 to the Convention (right to free elections) taken in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights. They awarded nothing more than attorney fees to the victims. Here is the problem with the results of the judgment.

First, the case was filed in July of 2014, and it took the Court over 8 years to decide. There is a wise saying, "Justice Delayed is Justice Denied." For eight years and two more parliamentary elections minority voters suffered a violation of their Human Right to vote. What is more it has now been 9 months since, and the European Parliamentary elections are scheduled for June of 2024. The Hungarian government has not moved to amend the election laws to correct the violation of the minority right to vote. The Fidesz party has a supermajority. It can, and has many times in the past decade, use this power to amend the law. It still has not acted and likely will not for years, if ever. As noted above, the Court has no power to annul domestic legislation.

The other problem with the Court's judgements is that some States ignore them, or seriously drag their feet in implementation. According to the European Implementation Network (EIN), as of June 2023, 49% of the leading judgments handed down by the Court in the last 10 years are still pending implementation. There are around 1,300 leading judgments pending overall. The average time that leading judgments have been pending implementation is, as of January 2023, six years and almost 5 months.²²⁰ Unfortunately Hungary is one of the worst offenders. EIN reports that it has 43 major judgments still pending implementation, and 76% of the cases in the last 10 years remain on average over 6 years, during the current Fidesz regime period.²²¹

²²⁰ The EIN website and data can be accessed here: <https://www.einnetwork.org/countries-overview>. (Final Access July 11, 2023)

²²¹ In addition to the Bakirdzi and E.C. v. Hungary case, the court has seven other cases involving suppression of opposition voice pending and not implemented: Mandli and Others v. Hungary (63164/16) 2020 Decision attacking journalist; ATV ZRT v. Hungary, (61178/14) 2020 Decision attack on Media; SZUROVECZ v. Hungary, (15428/16) 2019 Decision attack on Journalist; Herbai v. Hungary, (11608/15) 2020 Decision attack on

European Court of Justice

There is another Court in Europe, however, that might be an avenue to enforce Human Rights obligations. Since Hungary joined the European Union in 2004, it has been subject to the European Court of Justice founded in 1952 and based in Luxembourg. This Court is tasked with upholding and enforcing the Treaties of the Union and its' laws. The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law.

Cases are normally brought against a Union state, such as Hungary, by the European Commission. In fact, right now, the Commission is suing Hungary at the European Court of Justice to reverse a law restricting access to information on LGBTQ issues as well as a decision to revoke the broadcast license of the country's last independent radio station. Interestingly, 15 other member States, out of 27, have joined this action. With this Court, Article 258 TFEU²²², allows the imposition of ongoing fines upon the member State with infringement proceedings. Therefore, delay as in the European Court of Human Rights is not a viable option for a decision from this court. Thus, the European Court of Justice is a potential avenue for seeking redress of the authoritarian practices in Hungary.

Treaty on European Union

Additionally, it has been argued that Article 10 of the Treaty on European Union (TEU)²²³ could be used to confront the problem of undemocratic Member State representatives in the European Council and the Council, like Hungary.²²⁴ This reads:

opposition private company; Magyar Kétfarkú Kutya Part v. Hungary (201/17) 2020 Decision fines imposed on political party; Magyar Hésinki Bizottság v. Hungary(18030/11) 2016 Decision, withholding information from NGO; Patyi and Others v. Hungary(5529/05) 2009 Decision ban opponent assembly. (full citations in bibliography)

²²² Treaty on the Functioning of the European Union. (1950). https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF (Final Access July 11, 2023)

²²³ Treaty on European Union (TEU) (2007) <https://lexparency.org/eu/TEU/>. (Final Access July 12, 2023)

²²⁴Cotter, J. (2022) To Everything there is a season: Instrumentalizing Article 10 TEU to exclude undemocratic member state representatives from the European Council and the Council. *European Law Review* 47(1). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4032080. (Final Access July 12, 2023)

Article 10

1. The functioning of the Union shall be **founded on representative democracy**.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, **themselves democratically accountable either to their national Parliaments, or to their citizens**.
3. **Every citizen shall have the right to participate in the democratic life of the Union**. Decisions shall be taken as openly and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to **expressing the will of citizens of the Union**.

Under this provision, there seems to be an argument that if Hungary is no longer a Democracy, then they should not be allowed to have representation in the European Parliament. Basically, if Orbán is not accountable to the Citizens of Hungary since he has employed, through Fidesz, authoritarian practices to sabotage that accountability, then he and as a result Hungary should not have a representative in the European Parliament.

Fundamental Law of Hungary

These regional treaty-based Courts and Treaties are not the only avenue of course. The Fundamental Law of Hungary contains a clear dictate on voting rights. Relevant sections are:

Article B)

- (1) Hungary shall be an independent, democratic rule-of-law State.
- (2) The form of government of Hungary shall be a republic.
- (3) **The source of public power shall be the people.**
- (4) **The power shall be exercised by the people through elected representatives or, in exceptional cases, directly.**

Article XXIII

(1) **Every adult Hungarian citizen shall have the right to vote** and to be voted for in elections of Members of the National Assembly, of local government representatives and mayors and of Members of the European Parliament.

THE STATE

The National Assembly

Article 2

(1) **Members of the National Assembly shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in the manner laid down in a cardinal Act.**

Faced with the clear statements of the right to vote and that elections are to be the free expression of the will of the people, the obvious question is why has there been no known domestic court challenge to the voter suppression tactics noted above in Hungary. Why has winner compensation been allowed to remain, why have not the deviations from the mean in the district populations been changed, and why has the discriminatory treatment of ex-pats and minorities not been questioned in the Hungarian Courts?

One probable reason is mentioned in the opinion of the European Court of Human Rights (ECtHR) case of Bakirdzi and E.C. v. Hungary involving the discriminatory treatment of minorities right to vote. In the case, the Hungarian government challenged admissibility of the case since the Plaintiff's did not appeal a local commission decision or file any case in the Constitutional Court.

In proceedings before the ECtHR, a case must first be determined admissible so that the court can actually hear and decide the case. The Convention has this rule of admissibility:

Article 35 § 1 of the Convention – Admissibility criteria²²⁵

“1. The Court may only deal with the matter **after all domestic remedies have been exhausted**, according to the generally recognized rules of international law ...”

In the case, the Plaintiff responded to the Government’s claim that in order to exhaust, there must be a clear procedure and basis to appeal in the law and there must be a real possibility of relief. The Court agreed with the plaintiffs that it was not clear how procedurally and under what provisions of the Fundamental Law they could appeal to the High Court. Thus, the exhaustion rule did not apply.

Not spoken in the opinion, however, is the more likely reason about no possibility of relief. Taking a challenge to the Fundamental Law given the realities of the judicial system under Fidesz is an apparent exercise in futility. In 2015, Eötvös Károly Institute, the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union published a study which examined the Fidesz control of the Constitutional Court.²²⁶ Their research and analysis showed quite convincingly, after the regime took control of the Court in 2013, the decisions took a decidedly pro-government turn. The analysis concluded “the ruling Fidesz government has succeeded in shaping the Constitutional Court into a loyal body, as opposed to the independent and genuine counterbalance to government power it should represent.”²²⁷

The method of gaining this control was done again, with the Fidesz supermajority to, 1.) Change the law to allow one party to appoint Judges, without and consultation or consent of the

²²⁵ It is also to be found in other international human-rights treaties for example: the International Covenant on Civil and Political Rights (Article 41(1)(c)) and the Optional Protocol thereto (Articles 2 and 5(2)(b)); the American Convention on Human Rights (Article 46); and the African Charter on Human and Peoples’ Rights (Articles 50 and 56(5)).

²²⁶ Eotvos Karoly institute, Hungarian Helsinki Committee, Hungarian Civil Liberties Union. (2015). Analysis of the performance of Hungary’s “One-Party Elected” Constitutional Court Judges Between 2011 and 2014. *Eotvos Karoly Institute*. https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf. (Final Access July 11, 2023)

²²⁷ Ibid.

opposition, 2.) pack the court by increasing the number of Judges from 11 to 15. and 3.) Increasing the terms from 9-12 years plus eliminate the mandatory retirement age. Thus, the Constitutional Court has become no impediment to the authoritarian practices and machinations of the Fidesz regime.

According to Hungarian Helsinki Committee,²²⁸ the domestic courts in Hungary are also now in the complete control of Fidesz through manipulations of the law and regulations. There has been a concerted effort to undermine the independence of the judiciary starting in 2010 by HHC analysis. Primarily, the party has used their control of Parliament to design administrative and other regulations to ensure that political sensitive cases are diverted to loyal Judges. This has been at the heart of the EU's blocking of funds to Hungary.²²⁹

Alien Tort Statute

One final option might be available to Hungarian citizens to confront Fidesz. However, it is not in Hungary but rather in the United States, and it is salient because of the cross-fertilization between the Republican party and other individuals or groups such as CPAC in the USA and Fiedesz and Orbán.

One of the oldest statues in the United States is the Alien Tort Statute of 1789 (ATS). It was passed by the very first congress in the new Democracy just at the end of the Revolutionary War. It is only one unique sentence:

The district courts shall have original jurisdiction of any civil action **by an alien** for a **tort only**, committed in violation of the **law of nations or a treaty of the United States.**²³⁰

²²⁸Hungarian Helsinki Committee. (2022, October 26). Court Capture Project Completed. *Hungarian Helsinki Committee*. <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Court-Capture-Project-Completed-20221026.pdf> (Final Access July 11, 2023)

²²⁹ Sorgi, G. (2023, May 17). EU Lawmakers say Hungary is not Ready for Frozen EU Funds. *Politico*. <https://www.politico.eu/article/eu-lawmakers-say-hungary-is-not-ready-for-frozen-eu-funds/> (Final Access July 11, 2023)

²³⁰ 28 U.S.C. Section 1350.

It allows foreign nationals to bring a tort action in the Federal Courts of the United States as a violation of either the “law of nations” or “treaty of the “United States.” Before even considering the two jurisdictional prongs of the statute, the first question is what tort are we talking about?

The argument could be advanced that, say for example, CPAC, by inviting Orbán and allowing him to speak in Texas in 2022, and later having their conference in Budapest in which he was the keynote speaker in 2023, they have aided and abetted his authoritarian practices in Hungary. In particular, CPAC has helped him and Fidesz continue to suppress the right to vote in Hungary.

The aiding and abetting aspect of this tort is covered by the ATS. Specifically, the fact that CPAC itself did not commit themselves the authoritarian practices in Hungary does not relieve them of liability. The US Supreme Court recently held in the case of Nestlé USA, Inc. v. Doe, 593 U. S. ___ (2021) that so called accessory liability is cognizable under the ATS and aiding and abetting is actionable.²³¹

Also, as noted above, the right to freely vote is guaranteed in the Fundamental Law of Hungary, and of course it is part of the ICCPR to which Hungary and US have signed. Thus, the tort committed by CPAC is the intentional interference with the right to vote of the Hungarian Citizen since they are aiding and abetting Fidesz and Orbán.

However, there a number of legal hurdles and space does not allow a full discussion of them here. For example, the ICCPR is clearly part of the second prong as a “treaty of the United States” but lower courts in the United States have found it not to be “self-executing” and thus requiring Congress to create a private right of action under the ATS to bring any action.²³²

<https://www.law.cornell.edu/uscode/text/28/1350#:~:text=The%20district%20courts%20shall%20have,treaty%20of%20the%20United%20States.> (Final Access July 11, 2023)

²³¹ Nestlé USA, Inc. v. Doe, 593 U. S. ___ (2021). https://www.supremecourt.gov/opinions/20pdf/19-416_i4dj.pdf (Final Access July 10, 2023)

²³² See for example: Jama v. INS, 22 F. Supp. 2d, 353, 365(D.N.J. 1998). <https://law.justia.com/cases/federal/district-courts/FSupp2/22/353/2420155/> (Final Access July 10, 2023)

Congress has not done that.²³³ A good legal strategy might be to challenge directly the self-serving Senate statement that the ICCPR is not self-executing on its face or in its purpose.

Of course, the first prong is also a possibility. The argument here would be that the right to vote is a human right that is part of the “law of nations.”²³⁴ The human rights norms embodied in the U.N. Charter, the Universal Declaration of Human Rights, and the ICCPR, as well as all Regional Human Rights treaties are all evidence of customary international law, but what extent is crucial. However, so far only extremely limited number of human rights such as to be free from torture have been recognized by the courts under the ATS. Again, a creative and forceful legal strategy might expand the ATS jurisprudence to include the right to vote as the law of the nations.

Inter-American Commission on Human Rights

In the case of the United States, there is no option at the regional level to take a case to a Human Rights court. The US has signed the American Convention on Human Rights in 1977²³⁵, but to date have failed to ratify this treaty. In the United States system, a treaty can be signed by the President, but must be ratified by the vote of a supermajority of 2/3rds of the U.S. Senate. Thus, the US is not subject to the jurisdiction of the Inter-American Court of Human Rights provided under that Treaty.

However, the US is part of the Organization of American States (OAS) which created the Inter-American Commission on Human Rights as part of the Human Rights protection system in the Americas. In 1993, a committee of Washington DC residents petitioned the Commission to find US Government in violation of their right to vote, as DC residents cannot vote in

²³³ “Upon ratification of the ICCPR, the Senate attached a "declaration" (as opposed to a "reservation" entered for articles 7 and 15). The declaration stated that the provisions of Article 2 cited above are not self-executing, 138 Cong.Rec. S4783, at S4784 (Daily ed. Apr. 2, 1992). "Non-self-executing" means that absent any further actions by the Congress to incorporate them into domestic law, the courts may not enforce them.” Jama, p.365.

²³⁴ Of course, democracy and the attendant right to vote is not accepted by all nations, but it is by the vast majority who have signed international treaties, including USA and Hungary.

²³⁵ American Convention on Human Rights in 1977, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (Final Access July 10, 2023)

Congressional Elections and do not have an elected representative in Congress.²³⁶ They alleged this was a violation of Articles II (right to equality before law) and XX (right to vote and to participate in government) of the American Declaration of the Rights and Duties of Man.²³⁷ Article XX reads:

Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, **and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.**²³⁸

Ten years later, in December of 2003, the Commission did find the US in violation.²³⁹ However, the Commission can only recommend a State to take legal action, and in this instance cannot refer the matter to the Inter -American Court since the US has not accepted jurisdiction. Thus, the regional Human Rights system in the Americas cannot be an avenue of relief for partisan gerrymandering and Voter ID laws in the Unites States.

That said, it is evidently clear that the domestic judiciary in the United States has been and continues to be a strong and powerful means to thwart some of the authoritarian practices of the Republican party. In the US system, the checks and balances design has so far worked. On the issue of racial gerrymandering, the very recent US Supreme Court cases continue to uphold Article 2 of the VRA. Partisan gerrymandering is gradually, but it seems surely, being eradicated by State Supreme Courts and by constitutional amendments. As long as political opposition is strong, the media is free and attentive and civil society groups highlight

²³⁶ Report N° 98/03* Case 11.204 Statehood Solidarity Committee United States (December 29, 2003) <http://cidh.org/annualrep/2003eng/USA.11204.htm> (Final Access July 11, 2023)

²³⁷ Since 2006, the United Nations Human Rights Committee report has cited the United States for denying D.C. residents voting rights in violation of the International Covenant on Civil and Political Rights, a treaty the United States ratified in 1992. However, as noted here, there is no enforcement mechanism.

²³⁸ American Declaration of the Rights and Duties of Man (1948) https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf (Final Access July 10, 2023)

²³⁹ Opinion at paragraph 117. The Commission hereby concludes that the State is responsible for violations of the Petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

authoritarian practices and bring legal actions, liberal democracy it seems will survive the attempts to degrade democracy to electoral authoritarianism in the USA.

International Election Observation

Aside from the judicial avenues described above, there is one other important option that, with modification, can prove to be a power tool to confront authoritarian practices as described in this study. That tool is International Election Monitoring (IEM), however, it too, in present form, needs to be changed to be more effective.

International Election Monitoring aims to support political participation in democracies.²⁴⁰ This fundamental right to participate in the political process is guaranteed by Article 25 of the International Covenant on Civil and Political Rights (ICCPR), and includes voting as well as forming political groups, standing for office and being involved in debates. This all allows participation by citizens in governmental policy through their elected representatives. Thus, international monitoring of the election process can be crucial to support this right.

Both Hungary and the USA are part of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which promotes democratic elections, respect for human rights, tolerance and non-discrimination, and the rule of law. Unlike the U.N. Treaty mechanisms, IEM is there on the ground, in country at the local level, and interacting with the people and governments.

In her analysis, Dr. Christina Binder has identified three aspects of IEM done by organizations such as OSCE that improve and adds value to the electoral process. She first notes that the very fact that international observers are present can improve the quality of the election process. “The presence of an impartial and objective third party should strengthen the position of the opposition, improve the security of local actors and, on election day, deter overt acts of

²⁴⁰ “International involvement has become common “beyond conflict-ridden countries. For instance, the prevalence of election observation, monitoring the freedom and fairness of power transitions, has expanded from less than 10% of all elections in the 1960s to almost 80% in the 2000s” Matancok, A. M. (2022). *How International Actors Help Enforce Domestic Deals*, *Annual Review of Political Science*, 23, pp. 357-383, p. 358. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3602489 (Final Access July 10, 2023). Even a consolidated democracy, such as the USA has had international observers since 2002.

electoral fraud.”²⁴¹ It is hard to stuff the box when a nonpartisan observer is watching and later observing the counting.

She also points out that this process is normally conducted according to well-developed standards and an ethical code.²⁴² Thus, this knowledge of standards and best practices are transmitted to the national poll workers and officials, and therefore improves the entire process going forward. Observers act and are seen as experts and can impart their knowledge at the local level directly.

Dr. Binder also argues that the independent reports carry weight and prestige toward supporting the legitimacy of the winner’s claim to govern, or to the opposition’s judicial challenge. What’s more, the reports, in interim form, are usually produced very quickly after an election, usually before results are announced. This can act to stabilize wild speculation and calm the political climate.

Some additional implications have been noted by the Carter Center’s Plan of Action from 2017.²⁴³ The Center observes that the final reports can be used in the U,N, UPR process and other treaty monitoring mechanisms. They also take note that international observers have a unique position “on the ground” and can observe and report on other Human Rights issues and identify gaps in international law such as voting protections of stateless people and refugees. They can also be on the front lines combatting misinformation in social media and identify voter suppression efforts, which would be key in Hungary or similar electoral autocracies where these efforts are clandestine and not blatant.

Furthermore, the OSCE notes that observers develop partnerships with other international observer organizations, civil society organizations and with NGOs. To that end, “issues such as voter and population registration, participation of women in elections, campaign financing and the resolution of election disputes, “are addressed with broader focus and with expertise. Most missions include legal, political, media and technical experts who are leveraged

²⁴¹ Binder, C., ed. (2022). *Elgar Encyclopedia of Human Rights*. Edward Elgar Publishing pp. 37-35, p 40.

²⁴² See, Declaration Of Principles For International Election Observation and Code Of Conduct For International Election Observers (2005, October 27), at the United Nations, New York. <https://www.ndi.org/DoP> (Final Access July 11, 2023)

²⁴³ The Carter Center (2017) *Human Rights and Election Standards Plan of Action*, p. 7, <https://electionstandards.cartercenter.org/at-work/hres/> (Final Access July 10, 2023)

to address these issues in detail.²⁴⁴

Additionally, the presence of non-partisan observers can give motivation to whistleblowers to step forward. This can result in rooting out actual fraud, deception, criminal conduct, and voter suppression in elections. Even without nefarious conduct, the process can expose failures and security gaps in the election systems. Even if the government knows of these flaws or even put them to impede accountability, the exposure by IEM personal can bring out that to the voters and population.

Also, the more extensive and complete these reports are, the more they can be used in court proceedings to challenge or defend an election result. Observers can be called as independent expert fact witnesses.²⁴⁵ Thus, the value is not in the election process, but rather to the quick resolution of legitimate disputes in the courts. This in turn would calm the political climate in states that respect the rule of law. This of course assumes an independent judiciary which can be quite a challenge in Hungary. That does not, however, preclude any appeals to the ECJ or ECtHR using these reports.

Also, there is a benefit derived from what can be termed the “embarrassment factor” in consolidated democracies like the United States. Seeing an international election observer in your local polling place and maybe even being interviewed on TV, can elicit an embarrassment response from the election officials and citizens. They might think only those ‘other’ countries need observers, so why us now? This in turn can prompt introspection, calls for transparency and foster political debate about the quality and legitimacy of their election processes. That can only ultimately strengthen the right to political participation.

Finally, in both Hungary and the USA, currently, it is highly unlikely that the vast majority of voters never even know of the OSCE/ODIHR and other IEM reports, let alone read and discuss them. Therefore, there must be a process that shines the light on these reports and

²⁴⁴ OSCE/ ODIHR (2010). *Election Observation Handbook, Sixth edition*, p. 98
<https://www.osce.org/odihr/elections/68439> (Final Access July 10, 2023)

²⁴⁵ Furthermore, as Dr. Binder notes, the reports of these observations increasingly have been cited by Human Rights Tribunals. Suksi M, (2016). The Use of Election Observation Reports in Regional Human Rights Jurisprudence. 34 *Nordic Journal of Human Rights* 229. pp 229-246,
https://www.researchgate.net/publication/310734945_The_Use_of_Election_Observation_Reports_in_Regional_Human_Rights_Jurisprudence (Final Access July 11, 2023)

the underlying observations and recommendations.

Thus, it is proposed here that this tool can be strengthened by making it a condition of all 57 OSCE member States that they agree to shine the light. Thus, it should be required that after each observation missions that the government, media, judiciary, and all political actors, including candidates and parties, must respond to the issues raised in the report in an open widely televised forum.

OSCE experts should control the debate and discussion and allow NGOs and Citizens to ask questions and demand answers and actions from their government and politicians. The same desire to have legitimation using procedural democracy in Hungary, as an example, can be the hook to secure this type of forum. Again, this would be a mandatory condition to have an IEM providing the desired “legitimation” of the government’s election.

This suggested change, combined with additionally employing the methodology of the Electoral Cycle Approach²⁴⁶ developed by the European Commission of the EU and International Institute for Democracy and Electoral Assistance (IDEA) may be the most effective way to confront authoritarian practices.

The Electoral Cycle Approach aims to think of assistance before, during, and in between elections out 10 years, and well beyond just the one election event. It is an ongoing process of learning and adapting to make better elections. That way, lessons learned, and actions taken can be monitored and hopefully sustained. It also can be a very valuable tool, combined with IEM and the additional aggressive open forum ideas suggested here, to confront authoritarian practices discussed in this study.

CONCLUSION

The first observation from this study is that in both countries, the working hypothesis was not borne out by the comparative analysis done here. For each, the reasons are different.

In Hungary, the Fidesz regime has carefully crafted a political environment that has it effectively completely controlling media, weakening and dividing any opposition, neutering

²⁴⁶ The methodology is explained here: <https://aceproject.org/ace-en/focus/focus-on-effective-electoral-assistance/the-electoral-cycle-approach>.

any NGO and Civil Society, fostering and exploiting clientelism, and corrupting the judiciary. This has been built because of and in the context of a historically determined cultural normative structure that dictates people should be subservient to and not question the elites for to do otherwise would be not the “natural order” of society.

Given this reality, it would be expected that ongoing and new authoritarian practices would be blatant since no societal constraint exists or have been severely weakened since 2010. However, the regimes manipulations of the electoral institution have not been blatant and follow a pattern of secretive and gradual manipulations in law.

Now, to be sure, Orbán’s political rhetoric is anything but subdued or polite. Last summer he made explicit racist, anti-Semitic and ethnonationalistic statements like “We do not want to become peoples of mixed-race”²⁴⁷ when speaking of recent refugees, Muslims and other migrants in Hungary. He has attacked the Roma ethnic minority in racist terms. He also has repeatedly disparaged migrants from Africa and the Middle East and attacked the NGOs trying to assist them in obtaining asylum.

This tactic most assuredly gains him support among the far right in Hungary and likely in that portion of the diaspora in neighboring countries. It also explicitly connects him to far right and white supremacist in the USA and elsewhere in Europe. Thus, this explains his cross-fertilization efforts in spreading his illiberalism with the CPAC appearances. This may well be part of a strategy to co-opt the rising power of the Nazi inspired right wing party in Hungary, *Mi hazánk mozgalom* (Our Homeland Movement), which, as noted already, won a surprising 6 seats in the 2022 parliamentary elections.

That said, the observed pattern of authoritarian practices in Hungary with regard to suppression of the right to vote fit best the model proposed by Lindberg and Lührmannand. Hungary is clearly a part of the third reversal wave towards autocracy. Remember, Hungary, post soviet control, enjoyed two decades of pluralistic democracy, in which elections were contested and parties switched power. Democratic institutions flourished and gained strength.

The process since 2010, however, is most clearly identified as secretive and legal, with the use of the supermajority to manipulate laws as well as almost all other democratic

²⁴⁷ Speech by Prime Minister Viktor Orbán at the 31st Bálványos Summer Free University and Student Camp (2022, July 22) <https://abouthungary.hu/speeches-and-remarks/speech-by-prime-minister-viktor-orban-at-the-31-st-balvanyos-summer-free-university-and-student-camp> (Final Access July 11, 2023)

institutions and in the process sabotage accountability. Hungary is sadly a prime example of democracy erosion as posited by these researchers. Fidesz has crafted gradual changes within a facade of legal legitimacy. Thus, winner compensation, gerrymandering (and failure to correct deviations) and the discriminatory laws regarding expats and minorities are the most prominent tactics employed to suppress the right to vote.

It seems also clear that Fidesz fits the definition of an authoritarian regime proposed by Linz in that there is a limited level of pluralism, and they appeal to a mentality rather than ideology. Yes, Orbán claims it is illiberalism, but that is not an ideology. In reality, it is just a lust for power and an anti-democratic mentality employed as a means to gain and sustain that power. This is also combined with weak political mobilization of the opposition and a de-facto unrestrained authoritarian leadership with Orbán.

It is also evident that Fidesz came to power through elections, and they still need the legitimization effect of elections to appear fair to sustain power. Schedler's work correctly predicted this tactic and need to appear legitimate, and Gerschetski explained its persistence.

Orbán calls it "Christian Illiberal Democracy." In a speech in 2014 he claimed "in order to be able to do this in 2010, and especially these days, we needed to courageously state a sentence, a sentence that, similar to the ones enumerated here, was considered to be a sacrilege in the liberal world order. We needed to state that a democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy."²⁴⁸ It is clear that this authoritarian still needs to claim legitimacy by claiming democracy, but without the Dahl requirements to be in the Democracy club. The European Parliament was correct, Hungary is sadly now an Electoral Autocracy.

The United States Republican party, on the other hand, does not seem to fit these models. Again, this study has disproved the hypothesis with regard to the US Republican party. The efforts at voter suppression are blatant and at times shameful. This study has shown that clearly some portion of this party, especially since the election of Donald Trump, have veered most decidedly towards authoritarianism.

²⁴⁸ Viktor Orbán's speech at Băile Tuşnad (Tusnádfürdő) of 26 July 2014 *Budapest Beacon*. <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/> (Final Access July 11, 2023)

A recent article by Brian Klaas suggests States controlled by Republicans have become laboratories of autocracy.²⁴⁹ As a blatant and very disturbing example, he points to Mississippi, where an all-white Republican supermajority legislature has actually set up a parallel court system for white citizens to disregard the elected black Judges in Jackson. Jackson, the capital is 80% Black. Decades of extreme partisan gerrymandering in Mississippi guarantees the white Republicans can pass any law without a single Democratic vote. This is similar to Fidesz’s 2/3 majority in Hungary. Almost all the Democrats are Black.

Jackson Mayor Chokwe Antar Lumumba Lumumba accused the Legislature of practicing “plantation politics”²⁵⁰ in terms of its treatment of Jackson, and of the bill, he said: “It reminds me of apartheid.”²⁵¹ Another democratic representative said it was just like Jim Crow-era 1890 Constitution that was written to strip voting rights from Black Mississippians. “This is just like the 1890 Constitution all over again,” Rep. Blackmon said from the floor. “We are doing exactly what they said they were doing back then: ‘Helping those people because they can’t govern themselves.’”²⁵² The last comment refers to a racist trope espoused during the post civil war period in the American south.

But the level of authoritarian practices in each state is different. James and Stewart have detected in their study of post 2020 election results that “among Republican-dominated states, the most active legislatures were those in which the 2020 presidential election was close. This confirms findings from across American history that legislative activity to expand or contract the electorate has often been motivated by electoral threat.”²⁵³ They also note that the most restrictive and bold State legislatures are where the Republicans gained control of both the

²⁴⁹ Klaas, B. (2023, April 18). The Red States Experimenting with Authoritarianism They’ve become laboratories of autocracy. *Atlantic*. <https://www.theatlantic.com/ideas/archive/2023/04/america-democracy-autocracy-laboratories/673751/> (Final Access July 11, 2023)

²⁵⁰ Referring to farms in the south that had slaves.

²⁵¹ Harrison, B. Ganuchau, A. (2023, February 7) ‘Only in Mississippi’: White representatives vote to create white-appointed court system for Blackest city in America. *Mississippi Today*. <https://mississippitoday.org/2023/02/07/jackson-court-system-house-bill-1020/> (Final Access July 11, 2023)

²⁵² Ibid.

²⁵³ James and Stewart, Ibid, p.2

House, Senate and governorship, but also where the last Presidential elections were very close. It seems the threat combined with absolute power brings out the authoritarian impulse.

That study also makes a very interesting finding about the opposing party’s behavior as well. They found that “expansionary legislation was not more likely or more expansive in the more competitive Democratic states. Thus, the behavior of Democratic legislators and governors in these states seems better explained in terms of values about voting — it should be easier to vote, regardless of the consequences for partisan competition.”²⁵⁴ So it is clear that if the two party’s behavior differs when they have gained veto proof control and have an election threat from a close election, there must be another causative factor in explaining the blatant authoritarian practices increasing in the Republican party.

This graphic suggests an answer. From 1992 until 2016, people were asked questions in surveys that study authoritarian personality traits. It is evident that the two political groups have increasing divergence.

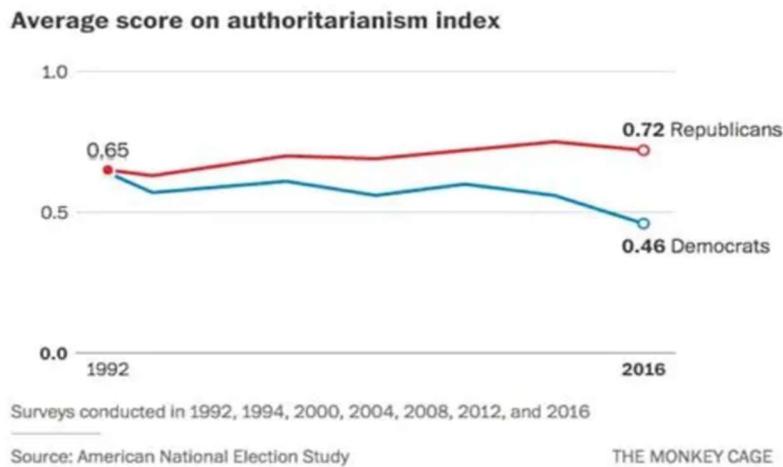


Figure. 12 Average Score on Authoritarian Index Democrats vs Republicans²⁵⁵

Furthermore, one study from Psychology and looking at the connection of psychology to political opinions and moral decision making, found in the USA, “interpersonal-affective (Boldness and Meanness) traits were higher in Republicans compared to Democrats. Moreover,

²⁵⁴ Ibid, p.32.

²⁵⁵ Source: American National Election Study

Boldness was associated with conservative opinions on economic issues, while Meanness evinced stronger relations to conservative opinions on social issues. Triarchic domains also evidenced unique associations to issues concerning minorities or discrimination. Further, empathy mediated relations between Meanness and decreased support for certain issues (e.g., affirmative action). Overall, psychopathy, particularly the interpersonal-affective traits, appear pertinent to political attitudes, while empathy deficits may statistically account for unique effects of Meanness.²⁵⁶ This insight combined with the political contexts, veto proof control of legislatures, perceived election threat, authoritarian personality traits, and legal manipulations help explain the boldness and blatant authoritarian actions of the Republican controlled legislatures with the voter suppression efforts.

The proposed explanations differ as to why the hypothesis failed to predict the political behavior of Fidesz and with explaining the behavior of the Republican party. For Fidesz, the necessity to appear to be having legitimate elections drives the secretive and gradual legal changes. This is the result of the process of democratic erosion and the reality of an electoral autocracy. For the Republican party, the boldness and blatantness is primarily explained by power lust, perceived election threats and the psychology of boldness and meanness combined with authoritarian traits in Republican voters and politicians.

The lyrics of a song from the 1960s in America provides one final thought to the people of Hungary and the United States who have and will confront Pseudo Caesars:

Freedom isn't free! Freedom isn't free!
You've got to pay a price,
You've got to sacrifice for your liberty.

Freedom is a word often heard today,
But if you want to keep it there's a price to pay.
Each generation's got to win it anew,
'Cause it's not something handed down to you.²⁵⁷

²⁵⁶ Preston, O, Anestis, J. (2018) Psychopathic traits and politics: Examining affiliation, support of political issues, and the role of empathy. *Personality and Individual Differences*, Vol 131, Abstract, pp. 142-148 <https://doi.org/10.1016/j.paid.2018.04.034>. (Final Access July 11, 2023)

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APPENDIX

Selected List of Interviewees:

Zsafia Banuta

Co-Founder of Unhack Democracy based in Brussels. She holds degrees from IE Business School (MBA) and Hofstra University (BA). Her journalist work is focused on Hungary and Eastern Europe.

Attorney Dániel Döbrentey

Lawyer and a political scientist and the coordinator of the Voting Rights Program of the Hungarian Civil Liberties Union, which is a Budapest-based human rights NGO, founded in 1994. He holds degrees from Eötvös Loránd University (BA & MA)

Reverend Alexander Faludy

Anglican priest presently pursuing legal studies. He is also a noted journalist. University of Cambridge (BA) and University of Oxford (Theo). A famous child prodigy who was the youngest to graduate from Cambridge since 1773.

Professor Róbert László

Election Specialist at Political Capital and Professor in the electoral program at the National University of Public Service. Degrees held from University of Economics and Public Administration and Corvinus University of Budapest.

Professor Dr. Gábor Tóka

Senior Research Fellow in the Vera and Donald Blinken Open Society Archives at the Central European University, Budapest. He has held research fellowships at the University of Oxford, the Robert Schuman Centre for Advanced Studies in Florence, the Juan March Institute in Madrid, the Munck Centre at the University of Toronto, the Woodrow Wilson Center in Washington, the Kellogg Center at the University of Notre Dame, and the Mannheim Centre for European Social Research. Ph.D. in Sociology, Eötvös Loránd University, Budapest.

Dr. Zolton Reti

Retired American/Hungarian Mathematics Professor based in Budapest. University of Florida (Ph. D)

Adam Sanyo

Senior Data Analyst / Political Analyst at Arm Hungary, Ltd. Based in Budapest. He holds degrees from University of Debrecen (BS) and Central European University (MSc).

Professor Dr. Kim Scheppele

American scholar of law and politics. She is the Laurance S. Rockefeller Professor of Sociology and International Affairs in the Princeton School of Public and International Affairs and in the University Center for Human Values at Princeton University. She joined the Princeton faculty in 2005, after nearly a decade as the John J. O'Brien Professor of Comparative Law and Professor of Sociology at the University of Pennsylvania Law School, where she is still a faculty fellow. She received her PhD in sociology from the University of Chicago (1985) and her BA in urban studies from Barnard College (1975). Scheppele is an expert on authoritarian regimes, as well as Hungarian and Poland's politics and law.