Making choices real: Increasing electoral participation by voting for none

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MAKING CHOICES REAL: INCREASING
ELECTORAL PARTICIPATION BY
VOTING FOR NONE

by

Shanna S. Phillips

Bachelor of Arts
Arizona State University
1997

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ABSTRACT

Making Choices Real: Increasing Electoral Participation By Voting for None

by

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While Nevada legislators have consistently changed Nevada’s election laws in order to keep up with the advance of modern society, there are several problems with Nevada’s election rules. I intend to discuss reforms that could increase the effectiveness of the “none of these candidates” law in Nevada. First, I will assess the need for a binding “none of these candidates” law since the 1970’s. I will track patterns of electoral participation so that I can assess the impact of Nevada’s electoral laws on the voters of our state. Next, I will define the problems with Nevada’s electoral structure and address the theoretical reasons that make a binding version of “none of these candidates” necessary. I will conclude by addressing different ways to get a binding version of the “none of these candidates” law adopted in Nevada and throughout the United States.
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CHAPTER 1

INTRODUCTION

While Nevada legislators have consistently changed Nevada's election laws in order to keep up with the advance of modern society, there are several problems with Nevada's election rules. I will demonstrate that we have reached a critical juncture in Nevada's history where a small change could significantly improve our electoral system. This is not to say that the current system is inherently flawed, but instead that our system could be improved in a way that would make it more democratic.

Research Questions

I intend to discuss a reform that could increase the effectiveness of Nevada's electoral system. The binding "none of these candidates" option that I propose will act as a partial solution to Nevada's poor turnout and lack of trust in public officials. There are a host of proposals for campaign finance reform, term limits and other types of reform that can be discussed with reference to each specific problem that I will address, but a binding "none of these candidates" law is the only single piece of legislation that can bring us one step closer to solving all of these problems simultaneously. The binding "none of these candidates" law cannot solve all of Nevada's problems, but it is certainly a step in the right
direction. Nevada's current "none of the above" statute is impotent when dealing with these issues because it is not binding on the players that it seeks to restrain, but a binding version of the statute offers some hope for improvement. The current law exists as only a token reform that has little impact on which candidate is elected to office.

In the following chapter, I will assess the need for a binding "none of these candidates" law since the 1970's by framing the issue in the context in which it was originally adopted. I will further explain the nuances of the existing law and the changes that a binding "none of these candidates" law would make. In the second chapter, I will define the problems with Nevada's electoral structure and address the theoretical reasons that make a binding version of "none of these candidates" necessary. I will also elaborate on specific problems caused by Nevada's electoral procedures and discuss how this reform could improve the effectiveness of Nevada's electoral process. Chapter three will discuss specific vices that contribute to electoral problems and methods that a binding version of "none of these candidates" would employ to control these vices. I will conclude by addressing different ways to get a binding version of the "none of these candidates" law adopted in Nevada and throughout the United States.

Purpose of the Study

Careful analysis of an existing law requires more than just a reading of the statute. We have to consider the context in which laws were made and the problems that these laws sought to address in order to fully appreciate the intent.
of existing legislation. It is easy for us to understand the motivation of a legislator when a problem is resolved, but existing laws that have not successfully resolved problems are still worthy of academic analysis. Through the analysis and refinement of unsuccessful laws, we uncover strategies to change those laws so that they become successful in achieving their goals. The "none of these candidates" law fits well within the boundaries of this category. While "none of these candidates" has not successfully resolved the problem of distrust that it sought to redress, this legislation is worthy of academic analysis because review of the law may lead to the development of reforms that can accomplish the goals of the existing legislation.

In the midst of the Watergate scandal, the Nevada legislature adopted the "none of these candidates" law to increase trust for public officials. The act was passed to smooth over differences between elected officials and their constituents during a time when contempt for politicians was rampant. The law required that "none of these candidates" must appear below the list of candidate names in every statewide race. Legislators thought that they could earn back the public's trust by adopting an unprecedented policy that demonstrated the worthiness of the government establishment.

When state assemblyman Don Mello first proposed the "none of these candidates" law, the Las Vegas Sun printed an editorial boasting that "it is entirely possible that in one simple stroke, Mello hit upon a scheme that will do more to bring about economy and efficiency in office than all the fancy election
reform proposals combined" ("Frustrated Voters," 1975). Unfortunately, the merits of the bill were soon compromised by two sacrifices that were made to secure its adoption. The "none of these candidates" law challenged the public to vote for "none of the above" when candidates are not worthy of public office, but the state assembly ensured that the public would not take full advantage of the legislation by amending the bill to include a clause stating that "none of these candidates" can never win an election (Journal of the Assembly, 1975). This amendment changed the legislation so that "none of these candidates" acted as an actual candidate solely for documentation purposes without changing the results of the election. After amending the bill, the assembly voted 34 to 3 in favor of its adoption. While this concession had to be made in order to secure a majority vote, Mello's original legislation provided for a more equitable solution for voters who choose "none of the above" instead of another candidate.

Adoption in the Nevada senate required further concessions to be made. After the first reading of the bill, senators voted to "indefinitely postpone" consideration of the bill, but the measure was reconsidered a week later when Chairman Gibson of the Senate Government Affairs Committee noted that "there was no representation from the sponsors of the bill" (Minutes of Senate Meetings 30 and 33, 1975). The attending senators voted unanimously to reconsider the

\[1\] "Frustrated Voters May Get a Choice," Las Vegas Sun, 12 March 1975.


\[3\] Nevada General Assembly, Journal of the Assembly, Fifty-eighth Session, 26 March 1975 (Carson City, 1975), 111, 489. Two members of the assembly were absent at the time that the vote was taken. Another member was present, but refused to vote on the bill.
bill in the absence of its sponsors. The only debate that took place in the senate dealt with whether the “none of these candidates” law should apply to elected judges and local officials. The senate amended the legislation to apply only to statewide offices (including seats in the U.S. Senate and U.S. House of Representatives) and the bill was sent back to the assembly for approval. There is little doubt that Nevada senators created the statewide office limitation to avoid running against “none of these candidates” in the next election. Legislators adopted the current “none of these candidates” law as a symbolic, token reform to enhance public relations without endangering their likelihood for reelection. They watered down the law because they wanted the public to vote them back into office in the next election.

Nevada is currently the only state that gives voters the option of choosing “none of these candidates” in every statewide race, but there are two serious problems with Nevada’s law. First, Nevada’s law is not binding in cases where “none of these candidates” wins the election. Nevada’s “none of these candidates” law is the equivalent of a vote for a losing candidate because it does not change the results of the election. In two elections immediately following Nevada’s 1976 adoption of the “none of these candidates” law, both of Nevada’s Republican congressional primaries were won by “none of these candidates.” In the four cases where “none of the above” has won a statewide primary election,

* Nevada Senate, Government Affairs Committee, Minutes of Meeting No. 30—April 10, 1975, (Carson City, 1975), 2.
Nevada Senate, Government Affairs Committee, Minutes of Meeting No. 33—April 17, 1975, (Carson City, 1975), 2.
the second place candidates were still given the victory.\textsuperscript{5} "It's as if the second-place finisher at this year's Olympic games was awarded the Gold Medal," commented the \textit{Wall Street Journal} (1996).\textsuperscript{6}

Next, Nevada's law does not mandate the appearance of "none of these candidates" in every political race. Since the state gained a second congressional seat in 1980, "none of these candidates" no longer appears on any of Nevada's congressional ballots. The "none of these candidates" option also does not appear next to candidate names in the bulk of Nevada's political races because of the "statewide office" limitation. In 1996, there were only fourteen statewide offices, but there were sixty-five local offices.\textsuperscript{7} Even though terms for these offices are staggered so that we will never vote for all seventy-nine offices

\textsuperscript{5} "None of these candidates" (16,097 votes) won the 1976 republican congressional primary against Anthony Dart (8,097) and Walden Charles Earhart (9,831). Earhart was awarded the republican nomination for the office of U.S. Representative, but he lost the general election to democratic incumbent congressman Jim Santini. "None of these candidates" (18,383) beat Earhart (16,599) again in the republican primary for secretary of state in 1978. George Cotton (9,168) also lost to "none of these candidates" in the 1978 republican primary for secretary of state. Earhart was awarded the victory, but he lost the general election race to the incumbent secretary of state William D. Swackhamer. During the 1978 republican primary, "none of these candidates" (15,441) also beat three candidates for the office of republican congressman—Bill O'Mara (14,610), Martin Hoffenblum (2,982) and Sam Cavnar (13,102). O'Mara was awarded the victory in the primary, but he lost the congressional race to incumbent congressman Jim Santini in the general election. The only victory for "none of these candidates" in a democratic primary occurred in the 1986 race for state treasurer when "none of these candidates" (19,891) beat five other candidates running for the office. Patrick M. FitzPatrick (18,389) was awarded the victory against Nadean Reed (15,245), John Chrissinger (13,065), Stan Knight (8,498) and Harold L. Singer (6,710) in the primary, but republican Ken Santor beat FitzPatrick in the general election.

\textsuperscript{6} "Give Voters a Real Choice," in the \textit{Wall Street Journal}, par. 1 [Lkd. What is Binding None of the Above?] (3 June 1996 [cited 10 February 1999]); available from World Wide Web @ http://www.nader96.org/wsj.htm

\textsuperscript{7} For the purposes of this paper, local offices will refer only to those offices listed in Secretary of State Dean Heller's \textit{Political History of Nevada 1996}. These offices include two seats in the U.S. House of Representatives, eleven members of the Board of Regents, eleven members of the State Board of Education, and forty-one district judges.
in one election, local offices constitute the bulk of the offices on the ballot in any election.

The intentions of state assemblyman Don Mello were noble even though these compromises led to an ineffective, token reform. In spite of numerous political scandals, elected officials wanted to demonstrate that they were worthy of being trusted without actually putting their jobs on the line. The law exemplifies the power of the public to make legislators feel that they need to prove their integrity, but the law did not carry enough weight to achieve its primary objective because it is not binding on candidates when "none of these candidates" wins a plurality of the votes. While there is some merit to the legislatures argument that "none of these candidates" is not an actual candidate and therefore cannot hold public office, there is another option called binding "none of the above."

Definition of Terms

"None of the above" (NOTA) can occur in two forms: binding and non-binding. A non-binding version of "none of these candidates" offers voters the option of choosing NOTA on the ballot, but awards the victory to the second place candidate when NOTA wins the race. In this scenario, it is possible to help the person you like the least (the second place candidate) win the election by voting for NOTA instead of voting for the lesser of two evils. This is the version of "none of these candidates" that we have in Nevada. A binding version of NOTA offers voters the option of choosing NOTA on the ballot, but it does not
declare the second place candidate the winner in the event that NOTA wins the
election. Instead of giving the victory to a candidate that did not win a plurality of
the votes, the binding version of NOTA forces the state to hold a special election
to fill the vacancy within one month of the original election. Candidates that lose
to NOTA in the first election are not eligible to have their names on the ballot in
the special election. Losing candidates are ineligible because the voters have
already chosen not to elect those candidates to public office.

One popular variation of the "none of these candidates" law is called
preferential "none of the above." Preferential NOTA can be used by states that
employ either the binding or non-binding versions of the "none of these
candidates" law. The preferential method allows voters three options: (1) only
select their favored candidate, (2) only select "none of the above" or (3) select
"none of the above" in conjunction with a candidate name so that votes are not
wasted in cases where NOTA fails to win the election. California's None of the
Above Voter Empowerment Act would have allowed the use of preferential
NOTA, but it failed to secure a majority vote in the March 2000 election. NOTA
advocates estimate that organizations in as many as fifteen states are
considering initiatives to get preferential "none of the above" on the ballot (Wood,
1997). 8 "This flavor of NOTA would not force you to throw away your vote to
express dissatisfaction," says Washington state NOTA advocate John Murray,

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8 Ibid.

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"you can vote for a candidate and also say you'd rather have 'none of the above'" (1999).⁹

While election software upgrades would be necessary to count multiple votes, preferential NOTA advocates feel that the cost of upgrading the counting and reporting systems in various states would be outweighed by the benefits of the new ballot option. Critics often point to the costs of a special election and the lack of high quality candidates as their primary objections to NOTA. While it is true that an additional election would cost taxpayers more money, the extra money would be well spent if citizens were rewarded with good government.

"None of these candidates" has won four primary elections since its adoption in 1976, but plurality rules did not apply to those races because the second place candidates were awarded the political offices in those races. A special election due to NOTA would not be any more costly than run-off elections paid for in other states when no candidate receives a majority of the votes. Eleven states held run-off elections in 1998 because candidates did not earn at least 51% of the popular vote. The extra election did not cause undue economic hardship in these states. Instead, the run-off election provided citizens with an extra opportunity to forge a consensus about which candidate was favored among the populace.

NOTA operates on the same principal. When "none of these candidates" places higher than the other candidates for political office, a special election is


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held to determine which candidate should assume the duties of that political office. This process cannot ensure that a majority of citizens will vote in favor of one candidate or the other, but the extra election increases the probability of such a result. A fresh list of candidate names would be generated for the run-off election to give voters better alternatives than the candidates in the original election. The candidates from the original election would not be eligible to run in the special election because voters have already chosen not to elect those candidates to public office. The only exception to this rule would be that losing candidates from other political races could run for the vacant office in the special election. The person with a plurality of the votes in the special election would assume the office because “none of these candidates” would not appear on the ballot in the special election.

It is unlikely that voters would use the NOTA option frivolously because the special election results would be final. There would not be an option for NOTA in the special election. Nevada has employed a non-binding version of NOTA for nearly twenty-five years, but NOTA has only taken first place in a handful of elections. We should expect more frequent use of NOTA if we employ a binding version of the law, but increased use would not be destructive to electoral politics or the state’s economy. Citizens may resolve to exercise their option to vote for NOTA in several races immediately after the passage of such a law, but this is a small price to pay for democracy. The threat of using NOTA should be enough to change the way that politicians behave by making them
more accountable to their constituents (Pitney, "The Right to Vote No," 1994).\textsuperscript{10} If politicians are willing to clean up their act, they will not need to worry about whether or not NOTA could be used against them or about whether or not NOTA will be overused in general.

NOTA opponents argue that parties will not be able to find candidates to run in the second election, but this is unlikely because second place candidates from other political races would be eligible to run in the special election. Often, the best candidates on the ballot are running against each other in the same political race. For instance, a binding "none of these candidates" law could have had a dramatic impact over the 1998 congressional races in Nevada. Senior Senator Harry Reid pulled out a narrow victory over the powerful Representative John Ensign in the 1998 Nevada senate race. Meanwhile, two relative unknowns, Shelly Berkley and Don Chairez, battled for the seat in the House of Representatives that Ensign vacated. Assuming that Nevada had a binding NOTA system and the race for Ensign's open seat had resulted in a victory for "none of the above," Ensign would have been able to use the special election to run for re-election to his seat in the House of Representatives after losing the senate race to Reid. In Federalist 10, James Madison established that our founding fathers intended to provide an electoral system in which those candidates "who possess the most attractive merit, and the most diffusive and established characters" would be elected to office to represent the people

\textsuperscript{10} Pitney, "The Right to Vote No," par. 17.
(Pitney, "The Right to Vote No," 1994). A binding "none of these candidates" law would secure a place for losing candidates who possess the merit and desire to get elected to other offices by offering voters a chance to restructure candidate lists in the special election. This process would ensure that voters retain the most valuable candidates and dispose of the least worthy candidates by choosing "none of the above." A binding "none of these candidates" law would allow voters to send candidates a message warning them to improve when candidates are not meeting the standards that the electorate desires. This is a far cry from the system that we have now, but binding NOTA offers the possibility of an electoral system that is truly based on merit.

Special Election Details

Critics have charged that special elections unintentionally favor candidates who lose races in the original election because the public is already familiar with their candidacies, but this perceived inequality is no different from that experienced whenever losing candidates campaign in future elections. The goal of the special election is to find the best potential candidates to serve the public. It would be counterproductive to eliminate suitable candidates simply because the public knows them better than the other candidates.

The rules for special general elections would vary slightly from the rules for special primary elections. In the event that NOTA wins a plurality of the votes

in a general election race, the special election would consist of two elections—a special primary election to nominate a new list of candidates from each political party and a special general election to determine the winner of the vacant post. In cases where NOTA wins a plurality of the votes during a primary election, a special primary election would be held within one month of the original primary, but the general election would be held on the regularly scheduled date.

In order to maximize voter turnout and minimize the costs of the special election, all special elections would be conducted using the vote-by-mail format. Opponents have criticized the mail-in election format on grounds that it encourages the laziest portion of the electorate to vote and it increases election fraud, but widespread use of the vote-by-mail format in Oregon has proven otherwise. Oregon has been using the mail-in election format since 1987 for many of the state’s local and special elections (Southwell and Burchett, 1997). Upon the October 1995 resignation of Oregon Senator Bob Packwood, the state conducted a closely monitored special election using the vote-by-mail format to find Packwood’s successor. The 1996 Oregon Senate election was the first federal election to require the exclusive use of mail-in ballots.

In order to analyze the impact of the vote-by-mail format on election returns, surveys were mailed to the Oregon electorate along with their ballots.

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13 Ibid., par. 1.
Follow-up surveys were also given by telephone and through the mail.\textsuperscript{14} Scholars found that 77% of the Oregon electorate favored voting through the mail, usually because voting-by-mail was more convenient and less time consuming.\textsuperscript{15} While one out of four voters reported that another person was in the room while they were filling out their ballot, only three people reported that “the presence of another person made them feel pressured to vote a certain way” and only one person reported that his/her vote changed as a result of pressure from another person in the room.\textsuperscript{16} Since 99.7% of those surveyed reported no perceived pressure to change their vote, Oregon’s vote-by-mail format retained the freedom of choice associated with traditional voting.\textsuperscript{17}

Even though analysis of the Oregon results revealed a higher incidence of non-partisan voting, election results are not likely to be altered by the vote-by-mail format.\textsuperscript{18} According to the Oregon study, “partisan advantage is virtually non-existent under vote-by-mail” and “the outcome of the 1996 special Senate election appears to have been unaffected by the electoral format.”\textsuperscript{19} The use of the vote-by-mail format in Nevada’s special elections should yield results similar to those experienced in Oregon.

\begin{itemize}
\item \textsuperscript{14} Ibid., par. 12.
\item \textsuperscript{15} Ibid., Table I.
\item \textsuperscript{16} Ibid., Table II.
\item \textsuperscript{17} Ibid., Table II, par. 28.
\item \textsuperscript{18} Ibid., par. 20.
\item \textsuperscript{19} Ibid., par. 29.
\end{itemize}
Significance of the Study

There is a movement building among at least fifteen states to get binding preference NOTA on the ballot (Wood, 1997). Gary Hoover of the Free Congress Foundation suggests that:

Many voters would embrace the idea of NOTA. In 1990, 52 percent of Texas voters told the Gallup poll that, if possible, they would have voted for NOTA instead of either gubernatorial candidate Republican Clayton Williams or Democrat Ann Richards. Louisiana voters would have welcomed the option to vote for NOTA in their 1991 race for governor between the born-again Nazi David Duke and the criminal Edwin Edwards. In a Mason-Dixon poll taken just before the vote, 66 percent of the Louisiana voters wished the state had a "None of the Above" line on its ballot. In a hypothetical runoff election against Duke and Edwards, NOTA finished with 30 percent of the vote. Ironically, just months before that election, the Louisiana legislature rejected a proposal to add NOTA to the state's ballots (Hoover, 1993).

The Louisiana race that forced voters to chose between "former KKK leader" David Duke and "ethically-challenged" Edwin Edwards was "dubbed the wizard versus the lizard" because it typifies the dilemma voters face when they are forced to chose between two unworthy candidates (Washington State Campaign for Democracy, 1998). Why should voters have to choose between two evils? Voters see NOTA as a vehicle for positive change in government. If an unopposed incumbent casts an unpopular vote in the months just before an

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20 Wood, par. 3.


22 "None of the Above," par. 6 [Lkd. Washington State Campaign for Democracy—Preference None of the Above (NOTA)] [cited 27 April 1999]; available from World Wide Web @ http://www.nader96.org/bnota.htm

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election, why not vote for the “none of the above” line on the ballot? According to Common Cause, this scenario is not unlikely since, “79 Congressmen were running without major party opposition when the ‘bipartisan’ budget bill, which contained tax increases, was considered right before the election” (Lilienthal, 1996).23 At that time, voters were faced with the choice of casting their ballot for the lesser of two evils or not voting at all. Binding preference NOTA would allow voters to express their dissatisfaction with the candidates on the ballot without wasting their votes.

Voters may also need NOTA when a scandal is uncovered in the weeks just before an election. In 1996, Oregon’s voters found out that republican Wes Cooley had allegedly falsified his war record and altered the date on his marriage certificate. Sources confirm that, “in the primary, Cooley was unopposed, but more blank ballots and write-ins were cast than votes for his renomination” (Lilienthal, 1996).24 Eventually, the Oregon State GOP persuaded Cooley to resign, but NOTA would have given voters, instead of party leaders, the opportunity to choose whether Cooley’s name should appear on the ballot in the general election. Daniel Wood of the Christian Science Monitor compares “none of the above” to a police officer driving in traffic because his presence “affects the


24 Ibid.
law-abiding behavior of all drivers within view," just as the presence of NOTA would affect the behavior of every candidate on the ballot (1997).25

"None of the above" is gaining momentum on both sides of the ideological spectrum. Ralph Nader, Nation magazine and The Boston Globe support NOTA on the left side of the political spectrum while the Wall Street Journal and the Manchester Union-Leader support NOTA on the right (Hoover, 1993).26 Political scientists like Curtis Gans, head of the Committee for Study of the American Electorate, and Seymour Martin Lipset of Stanford University's Hoover Institution have also voiced their support for binding "none of the above" (Hoover, 1993).27 According to Claremont McKenna Government Professor John J. Pitney Jr., "NOTA would hardly cure all of contemporary democracy's problems, but it would give voters a better alternative to the bad choices they often find in the polling booth and change candidates' behavior for the better" (Pitney, 1994).28

25 Wood, par. 9.
26 Hoover, par. 12.
27 Ibid., par. 13.
CHAPTER 2

REVIEW OF TURNOUT STATISTICS

Throughout this chapter we will be evaluating the connection between dissatisfaction with Nevada's electoral system and low voter turnout. Nevada is only one case study, but it provides the best indicators for evaluating people's reactions to a binding "none of these candidates" law because it is the only state that currently employs a non-binding form of NOTA. This chapter will focus on aspects of a binding "none of these candidates" law that offer encouragement for citizens who are reluctant to vote in Nevada's elections. Not only will a binding "none of these candidates" law make our society more democratic, but it will also open the lines of communication between citizens and legislators so that other problems may be resolved in the process.

Even though Nevada's version of NOTA does not take advantage of the full impact that "none of these candidates" can have on democracy, it is receiving increasing attention as a symbol for democratic voting in the United States. More than twenty-five states employ some variation of NOTA in at least one political race, but Nevada is the only state to mandate the appearance of "none of these candidates" below the list of candidate names in every statewide political race. NOTA is the equivalent of a "no confidence" vote in a parliamentary system, but it is exercised by the people rather than by the legislature (Nader, "None of the
The opportunity for voters to withhold their consent from a particular list of candidates makes NOTA democratic.

Democracy

Political theorists have traditionally defined democracy as the people ruling themselves. In order to rule themselves effectively in a representative democracy, citizens must consent to being governed and they must be given a meaningful choice as to who will represent them. The existing electoral system fails on both counts. In our system, citizens consent to allowing representatives to make decisions for them by voting in elections, but there is no conventional mechanism in place for withholding consent from a set of candidates for public office. When candidates run for office without opposition, citizens are forced without consent to having these officials make decisions for them, even if a majority of voters would have voted against the candidate. In this case, they are not free to rule themselves because they are not making the ultimate decision regarding who will represent them and how they will be ruled. In cases where citizens are forced to choose between two unacceptable candidates, voters are robbed of the opportunity to withhold their consent from that slate of candidates. Voters in this situation must consent to the lesser of two evils because they are given no recourse other than leaving the ballot blank. While our system provides us with a conventional method for consenting, it offers no conventional method

1 Ralph Nader, "None of the Above: Proper, Long Overdue," in Policy Insights, par. 3 [online journal] [cited 27 April 1999]; available from World Wide Web @http://www.nader96.org/nota1.htm

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for withholding consent from a particular list of candidates. A protest vote in the form of a binding "none of these candidates" law would offer citizens the option of withholding their consent without compelling citizens to challenge the government through unconventional protests. In order to express consent, the people must have the option of withholding their consent as well. An act is not consensual if you are forced into it. According to political scientist John J. Pitney,

NOTA would secure the right to say no. If free government is really based on the consent of the governed, it follows that people should have a clear way of withholding consent from the unworthy, the unknown, or the unopposed (The Right to Vote for None of the Above, 1994).^2

Non-voting is not an effective option for withholding consent because non-voting has traditionally been considered a silent expression of consent.

Potential voters may feel that there is no use voting because there is not a meaningful difference between the candidates of the two ruling parties. The more potential voters protest by staying home on Election Day, the more elected officials feel that they can dismiss the wishes of their constituents and concentrate on pleasing interest groups and elites. According to Steve Lilienthal:

American voters are supposed to have choices between—at the very least—two candidates offering contrasting philosophies. However, all too often, their choices are severely circumscribed because today's political campaigns have become contests, not of ideas, but of poll ratings and fundraising prowess (1998).^3

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NOTA allows third party voters to clump their votes together in a manner that ensures that their votes will be counted and reported in the Secretary of State’s official election results. This gives voters the opportunity to bring public attention to their lack of confidence in the candidates listed on the ballot. Binding “none of these candidates” option would allow voters to show their disapproval for the candidates listed on the ballot without abstaining from participation in the electoral process or wasting their vote on an option that cannot win the election.

Turnout Statistics

The widening gap between citizens eligible to vote and actual voters indicates that citizens are becoming increasingly dissatisfied with their electoral choices. According to Winders, “less than 70% of the voting-age population in the U.S. is registered to vote” and turnout among our nation’s youth ranks twenty percent below the national average (1999). If this dissatisfaction cannot be cured, “none of these candidates” may be able to mitigate some of the problems by offering citizens an institutional outlet for their dissatisfaction. Citizens should not be forced to resort to unconventional protest when an effective ballot measure is all that is needed for them to express their dissatisfaction. A binding “none of these candidates” option allows citizens to constructively express their criticism against candidates on the ballot without abstaining from the electoral process altogether.

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Figure 1 illustrates the pattern for registration and voting in Nevada. The data for Figure 1 was obtained by dividing the number of people who are old


enough to vote in Nevada by the number of registered voters and by the number of people who voted for each presidential election year surveyed. The percentage of registered voters reached its lowest point in the survey during the 1980 presidential election when only 49.6% of Nevada's voting age population was registered to vote. Between 1980 and 1992 the percentage of registered voters and the percentage of people who voted gradually increased by 15% and 9% respectively, but since the 1992 election, turnout has decreased and registration rates have remained the same. The lowest level of voter turnout during the years surveyed occurred in 1996 when only 38.3% of Nevada's eligible voters showed up at the polls.

By June 1999, 150,618 voters were registered as non-partisans or third party supporters. The rest of Nevada's 893,061 registered voters were almost evenly split between the Republican Party (371,499) and the Democratic Party (370,944). Only 64% of Nevada's voting age population is currently registered to vote and only 38% of the voting age population turned out to vote in the 1996 Presidential Election. According to the Federal Election Commission, Nevada's registration rates rank 10% below the national average and turnout ranks 11%

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6 The number of people counted to ascertain the voting age population is slightly inflated because a small percentage of adults are not eligible to vote due to their status as a citizen of another country, convicted felon or mentally incompetent person as determined by a court of law.

7 Nevada's County Clerks and Registrars of Voters, "Statewide Voter Registration Figures for the End of June 1999 by County and Party." ONLINE. (June 1999 [cited 22 July 1999]); Secretary of State available @ http://sos.nv.us/nvelection/voter_reg/0699main.htm
below the national average. This information is even more alarming when we note that Nevada's population is growing faster than any other western state, but turnout rates have not increased as quickly in comparison. In the ten-year interval between 1980 and 1990, Nevada's voting age population increased by 50% while the percentage of voters among the voting age population increased by only 27%. During the eight years between 1990 and 1998 Nevada's population increased again by 45% while the percentage of voters among the voting age population increased by a mere 37%. According to the data presented in Figure 1, roughly ten percent of the registered public failed to exercise their right to vote in each Presidential election year surveyed. While the percentage of citizens registered to vote in Nevada remained constant between the 1992 and 1996 election cycles, more than one-fourth of the registered public abstained from voting in 1996. This suggests that despite Nevada's tremendous population growth between the 1992 and 1996 election cycles, the number of people who register to vote in Nevada is relatively stable and the number of

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9 Narroll, Maud and Sandra Allen. Budget and Planning Department. "Nevada Statistical Abstract." A special report prepared in cooperation with the Nevada Department of Administration. ONLINE. [22 July 1999]; Governor available at http://www.state.nv.us/budget/sapop.htm


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people who actually vote is declining. Many believe that dissatisfaction with
government is the reason behind this decline. According to Rock the Vote
President Mark Strama, "public frustration with government has been the most
powerful force in American politics in the 1990's" (75). Low voter turnout is one
consequence of that frustration.

While the current "none of these candidates" law has provided an
ineffective solution for the growing turnout problem, a binding "none of these
candidates" law offers some hope of inspiring registered voters to show up at the
polls on Election Day. The temporary increase in voter turnout seen in 1992 may
suggest that a growing number of Nevadans who would not go to the polls in
order to vote for a lesser of two evils, will go if given another choice. Many non-
partisans and third party voters went to the polls on Election Day in 1992 so that
they could vote for Ross Perot because the Perot candidacy appealed to people
who are alienated by the politics of the two major parties. According to Rock the
Vote President Mark Strama:

The movement away from party allegiance is especially
pronounced among young people . . . Rock the Vote registers more
Independents than Republicans and Democrats combined . . .
Young people tell us all the time that no one in the political system
seems to be talking to them. (1998)\textsuperscript{12}

The Perot candidacy provided a viable alternative to the politics of the two major
parties in 1992, but that meaningful alternative deteriorated with Perot's last

\textsuperscript{11} Mark Strama, "Overcoming Cynicism: Youth Participation and Electoral Politics."

\textsuperscript{12} Ibid., 77-78.
minute candidacy in 1996. As Figure 2\(^{13}\) suggests, third party votes among Nevada's statewide political contests increased from 9,878 in 1988 to a record-breaking 168,975 in 1992.\(^{14}\) At the same time, "none of these candidates" votes remained relatively stable. This suggests that the increase in 1992 turnout shown in Figure 1 and the increase in 1992 third party votes can be explained by the attraction of disenchanted voters to the perceived viability of Perot's third party candidacy. By waiting until the last minute to announce his candidacy in 1996, Ross Perot failed to inspire all of his 1992 supporters to vote on Election Day. If Perot's supporters knew that he was running for the presidency in 1996, they may have felt that he did not have a reasonable chance of winning because Perot support decreased from 26% of Nevada voters in 1992 to 9% of Nevada voters in the 1996 presidential election. Turnout decreased by 12% and third party votes decreased by 113,522 votes the same year because non-partisans and third party supporters who voted for Perot in 1992 decided to stay home on Election Day in 1996. This data tells us that there is support for alternative candidates among potential voters, but those voters will not show up on Election Day unless they perceive a reasonable chance of changing the election results. A binding "none of these candidates" law offers hope for these disenchanted voters by allowing them to voice their disapproval against candidates who do not adequately address their needs, offering them a consistent alternative to the two

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\(^{13}\) Heller, 313-329.

\(^{14}\) The data for Figure 2 was calculated by adding all third party votes for statewide offices recorded in Nevada for each year surveyed. These totals do not reflect solely the number of people who voted for Perot in the 1992 election.
major parties and giving them a reason to show up at their polling place on Election Day.

More than 70% of the nation's eighteen-to-twenty-four-year-olds abstained from voting in the 1996 election.\(^{15}\) The irony in that statistic is that more people in this age group are participating in community activities through volunteer work than ever before. In 1997 UCLA conducted a nationwide survey of college freshmen. The survey found that college freshmen were more likely to spend time doing volunteer work in 1997 than they were in 1967, but they also found that college freshmen in 1997 were less concerned about politics than any other class over the last thirty years.\(^{16}\) The study indicated that these young people could not see any connection between their volunteer work and politics.\(^{17}\) The young people in the study did not want to be associated with politics and they lacked any view of how they had contributed to society beyond the immediate gratification for themselves and those they were helping. The study concluded that their actions are a result of an unprecedented decline in trust for government that is correlated with the decline in electoral participation. Allowing voters to publicly voice their distrust through "none of the above" may be a step towards bringing potential voters back in to electoral politics by creating a dialogue between citizens and politicians about how to solve problems with the political system.

\(^{15}\) Strama, 71.

\(^{16}\) Ibid.

\(^{17}\) Ibid.
A survey conducted by Rock the Vote found that only 27% of adults between the ages of seventeen and twenty-nine believed that the 1996 presidential candidates were honest or truthful (1998). According to Strama, young people are "skeptical of political parties, frustrated with the political process, and distrustful of politicians" (1998). We can only hope that a binding "none of these candidates" law can motivate those who are distrustful of candidates on the ballot to come to the polls and voice their distrust publicly. A significant "none of the above" vote may motivate the two major parties to realign themselves so that the needs of disengaged voters are addressed in the political system. If voter outrage, due to the lack of an honest candidate, is a factor in the declining turnout rate, "none of the above" offers some hope of fixing the problem by threatening the candidacy of any politician who voters deem unworthy of political office.

Declining partisanship appears to be a strong motivating factor in declining participation. As the public has become less partisan in nature, politicians have moved toward the center of the ideological spectrum in order to attract voters. This middle of the road phenomenon is correlated with the downward spiral in citizen participation rates. Since both parties are walking the center line on political issues, partisan disagreements have focused on programmatic differences rather than general ideological differences. These "programmatic differences" usually revolve around how much funding should be given to specific

\[18\) Ibid.

\[19\) Ibid.

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policies and how specific portions of a bill should be tailored rather than focusing on ideological disagreements. Such dry issues do not attract the attention of the mass public because they focus on technical specialization rather than on a core ideological assumption that can be applied to various policies. While this trend makes our politics more homogeneous, it also makes the choice between two candidates (holding subtle variations of the same viewpoint) less significant. If there is no real difference between candidates, why bother voting? A binding "none of these candidates" law would give citizens who stray from the center of the ideological spectrum an opportunity to voice their disapproval of various policies without discouraging citizens from voting. Not only do candidates have to listen to the arguments of the opposing party in a binding "none of the above" system, but they also have to listen to the arguments of a disenchanted non-partisan coalition with the option to choose "none of the above."

Figure 2 is a summary of the average vote for "none of these candidates" among all statewide general election races and the highest vote for "none of these candidates" in any one general election race between 1976 and 1996. While the average "none of these candidates" vote averaged across all of the election years studied is only 8%, the figure illustrates that "none of these candidates" will usually earn approximately 20% of the vote in at least one statewide race. Thus, one in five voters will be dissatisfied with every candidate listed on the ballot in at least one statewide general election race. The average and highest NOTA votes for the presidential election years surveyed (8.5% and
17.7%, respectively) are roughly equal to the average and highest NOTA votes experienced in the off-year elections surveyed (8.2% and 18.2%, respectively). Thus, we may conclude that state supreme court races stabilize the number of NOTA votes so that the difference between presidential election years and off-year elections is no longer noticeable.

Even though Nevada’s current “none of these candidates” law cannot change election outcomes, voters often choose to invoke the “none of these candidates” option in statewide primary races. Figure 3\textsuperscript{21} shows the average vote for “none of these candidates” in every statewide primary race from 1976 through 1996, the average “none of these candidates” vote in each statewide

\begin{table}
\centering
\begin{tabular}{lccccccccccccc}
\hline
\hline
\textbf{Average NOTA} & 8% & 7% & 5% & 6% & 8% & 7% & 4% & 14% & 12% & 7% & 14% & 8% \\
\textbf{Highest NOTA} & 22% & 23% & 12% & 18% & 16% & 17% & 7% & 27% & 26% & 24% & 21% & 20% \\
\hline
\end{tabular}
\caption{General Election NOTA Votes in Nevada}
\end{table}

\textsuperscript{20} Ibid., 313-329. The AVG column represents the average of the totals from all of the years surveyed in each category.

\textsuperscript{21} Ibid., 345-353.
party primary, and the highest “none of these candidates” vote in each election year surveyed. The year 1984 was omitted from the table because there were no statewide primary races in that year. The 1996 average “none of these candidates” vote for the democratic party primary was also omitted because the democrats did not hold any statewide primaries that year. The 9% figure for the other three categories in 1996 result from only one statewide republican primary held in that year. The average “none of these candidates” vote among Democrats (12%) and Republicans (16%) in their party primaries are relatively similar. NOTA does not appear to benefit one party over the other. This explains why “none of these candidates” is considered a non-partisan reform with advocates on both sides of the political spectrum. The intense frequency of “none of these candidates” votes tabulated in primary elections suggests that voters are attempting to send their political parties a message to recruit stronger candidates or risk party members defecting and voting for another party’s candidate. This message is currently ineffective because parties know that “none of the above” votes will not cost them the election. A binding NOTA system would force political parties to recruit stronger candidates to run in the primary election or risk having to recruit a second batch of candidates for the special election.
Figure 3. Primary Election NOTA Votes

Percentage of NOTA Votes

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Average</td>
<td>22%</td>
<td>18%</td>
<td>14%</td>
<td>13%</td>
<td>16%</td>
<td>9%</td>
<td>16%</td>
<td>8%</td>
<td>14%</td>
<td>9%</td>
<td>14%</td>
</tr>
<tr>
<td>Highest</td>
<td>47%</td>
<td>42%</td>
<td>34%</td>
<td>30%</td>
<td>24%</td>
<td>10%</td>
<td>28%</td>
<td>13%</td>
<td>24%</td>
<td>9%</td>
<td>28%</td>
</tr>
<tr>
<td>Democrat Average</td>
<td>6%</td>
<td>14%</td>
<td>21%</td>
<td>10%</td>
<td>12%</td>
<td>9%</td>
<td>14%</td>
<td>4%</td>
<td>14%</td>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>Republican Average</td>
<td>22%</td>
<td>21%</td>
<td>12%</td>
<td>18%</td>
<td>20%</td>
<td>10%</td>
<td>18%</td>
<td>13%</td>
<td>14%</td>
<td>9%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Election Years Surveyed

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Figure 4. General Election Turnout Drop-off

![Graph showing the percentage drop-off between the highest and lowest statewide office elections for different years.]

- **Partisan Races**
  - 1976: 1%
  - 1978: 4%
  - 1980: 1%
  - 1982: 5%
  - 1984: 6%
  - 1986: 4%
  - 1988: 2%
  - 1990: 5%
  - 1992: 4%
  - 1994: 2%
  - 1996: 3%

- **All Races**
  - 1976: 18%
  - 1978: 17%
  - 1980: 7%
  - 1982: 16%
  - 1984: 23%
  - 1986: 12%
  - 1988: 4%
  - 1990: 16%
  - 1992: 14%
  - 1994: 3%
  - 1996: 14%

Election Years Surveyed

Figure 5. Primary Election Turnout Drop-off

![Graph showing the percentage drop-off between the highest and lowest statewide office elections for different years.]

- **Total Drop-off**
  - 1976: 55%
  - 1978: 53%
  - 1980: 40%
  - 1982: 42%
  - 1984: 27%
  - 1986: 14%
  - 1988: 18%
  - 1990: 17%
  - 1992: 11%
  - 1994: 36%
  - 1996: 11%

- **Democrat Drop-off**
  - 1976: 5%
  - 1978: 23%
  - 1980: 3%
  - 1982: 10%
  - 1984: 9%
  - 1986: 5%
  - 1988: 5%
  - 1990: 11%
  - 1992: 36%

- **Republican Drop-off**
  - 1976: 29%
  - 1978: 17%
  - 1980: 19%
  - 1982: 8%
  - 1984: 6%
  - 1986: 14%
  - 1988: 6%
  - 1990: 17%
  - 1992: 7%

Election Years Surveyed

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The level of turnout drop-off depicted in Figure 4 and Figure 5 indicates heightening dissatisfaction among citizens who regularly vote. Drop-off is characterized by a tendency to vote for some offices on the ballot, but reject voting for others. These citizens go to the polls and vote for the candidates at the top of the ticket, but they refuse to vote for state Supreme Court justices and local officials at the bottom of the ticket. Levels of turnout drop-off are significant to the study of the "none of these candidates" law because NOTA opponents believe that turnout drop-off currently demonstrates lack of confidence in the candidates on the ballot without humiliating any elected officials running for office. Upon original consideration of Nevada's "none of these candidates" law, the Clark County Registrar of Voters, Stanton Colton, told the assembly "the total number of votes cast for all candidates, subtracted from the total number of people who voted in that precinct, provides you with an expression of no-confidence." According to Colton, this eliminates the need for a "none of these candidates" law to make the information public (Colton, 1975).

When the Nevada assembly originally debated the merits of Mello's "none of these candidates" law, opponents focused on turnout drop-off as one reason for rejecting the landmark legislation. These speakers claimed that drop-off is

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22 Ibid., 345-353. For the purposes of this study, partisan races include President/ Vice-President, Senator, U.S. Representative, Governor, Lieutenant Governor, Secretary of State, Treasurer, Controller and Attorney General.

23 Ibid., 313-329. In order to account for blank cells, the reader should note that there was no Democratic Primary in 1988 or 1992 and there was no Republican Primary in 1996. Neither party held a statewide primary in 1984.

indicative of the number of voters who lack confidence in the candidates on the ballot, therefore making a line on the ballot reading "none of the above" redundant and unnecessary. The problem is that turnout drop-off is still focusing on non-voting as a method for voters to withhold consent from a list of candidates. If drop-off is synonymous with lack of confidence for the candidates listed on the ballot, calculations of turnout drop-off should be looked at in conjunction with the number of registered voters who stayed home on Election Day. While NOTA opponents may view turnout drop off as an expression of a lack of confidence, other officials attribute turnout drop-off to less menacing factors like ballot fatigue or lack of party cues. One way to determine how much turnout drop-off is indicative of a lack of confidence for candidates on the ballot is to enact binding "none of the above" legislation.

Figure 4 demonstrates that while 97% of those who vote usually vote in every partisan race, 13% of those who vote will usually refuse to cast their ballot for at least one supreme court justice or local official in the general election. This is significant because the costs to the voter for checking a few extra boxes are minimal. Most supreme court races are either uncontested or non-competitive due to the lack of knowledge of the candidates listed on the ballot. While turnout drop-off may sometimes indicate a lack of confidence with candidates on the ballot, elected officials will not take it seriously when it does not have the

Nevada Assembly, Election Committee, Election Committee Minutes—March 25, 1975, (Carson City, 1975), 2.

26 Heller, 313-329.
power to affect their re-election prospects. A binding 'none of these candidates' law would allow voters to send candidates a clear signal conveying their lack of trust for candidates on the ballot.

Turnout drop-off rates increase significantly in primary elections where nearly one-third of those voting abstain from casting ballots in at least one primary race. Without significant turnout drop-off from party members, there would be more votes for supreme court justices and local officials than for partisan offices. In the state primary, non-partisans receive a ballot that does not include any partisan races, but partisans vote for both partisan and non-partisan offices. In a hypothetical primary we can assume that 400,000 Republican ballots are sent out, 400,000 Democratic primary ballots are sent out and 200,000 non-partisan primary ballots are sent out. We will also assume that half of the people in each category vote in the primary election and people who vote cast ballots do so for every office on the ticket. The results would be 500,000 votes for non-partisan offices and 200,000 votes for each party's candidates in the primary election. Even if we combine the votes for partisan offices, non-partisan votes exceed partisan votes by 100,000 votes. If there were 0 ballots returned from non-partisans and all of the partisans voted for every office on the ballot, there would still be 400,000 votes in non-partisan races and 400,000 votes in partisan races. Thus, without high turnout drop-off and low non-partisan turnout in primary elections, non-partisan votes would always outnumber partisan votes in the primary election. Since partisans vote for members of their own party as well as non-partisan offices in the state primary, one would expect that
the combination of partisan and non-partisan votes would be significantly higher than votes for partisan offices from either of the two major parties. Ironically, despite the increasing number of non-partisan voters casting ballots in Nevada's primary elections, partisan offices get more votes than non-partisan offices due to turnout drop-off and low turnout among non-partisans in primary elections. Allowing voters to choose the "none of these candidates" option in local races would lead to less turnout drop-off by weeding out candidates that voters have deemed unworthy of political office. Significant victories for NOTA in primary elections would send party leaders a message to recruit a stronger slate of candidates in the next election.

A review of Nevada’s low voter turnout, the high percentages of non-binding NOTA votes in Nevada’s electoral system and the dramatic drop-off rate among voters suggest that voters are dissatisfied with elected officials in Nevada. The average NOTA vote from 1976 to 1996 is 8%. Extremely low NOTA votes in presidential races depress the NOTA average over all elections because the presidential race normally attracts extraordinarily qualified candidates for public office. Races for supreme court justice reflect the opposite extreme. The average NOTA vote among races for a seat as a justice on the Nevada Supreme Court is 17%. The lowest NOTA vote that was received in any supreme court justice race was 5%. Seventeen percent of voters will cast their ballot for president and vice president without voting for Nevada supreme court justices in the average presidential election year, while 12% of citizens will cast their ballot for governor or senator in the average off-year election without voting for any
Nevada supreme court justices, like other less known politicians, often run unopposed. The binding version of “none of these candidates” would offer voters an automatic alternative to these unopposed candidates. According to Dr. Pitney, “with NOTA, even unopposed candidates could lose if the voters deemed them unworthy” (1994). “The prospect of such a defeat might discourage bottom-feeders from seeking office, and would give party leaders an incentive to consider merit when making endorsements,” quips Pitney (1994).

Often, citizens are given no choice regarding their elected officials because there is only one candidate running for office. Figure 6 illustrates the frequency of races where only one candidate is running for political office in Nevada. In cases where elections are uncontested, we simply award the election to a person who filled out the application to have their name placed on the ballot. Citizens are still asked to come to the polls and vote in uncontested general election races, but we do not give these citizens any option for voting against uncontested officials. The “none of these candidates” option offers voters a way to withdraw their consent from a candidate when he or she is the only person on the ballot. Nevada law does not permit the appearance of uncontested races on primary ballots; hence, there is no institutional outlet for withholding consent from candidates in uncontested primaries. Unlike other

\[\text{\textsuperscript{27} Ibid.}\]

\[\text{\textsuperscript{28} Ibid.}\]

\[\text{\textsuperscript{29} Heller, 313-329; 330-353.}\]
states, Nevada law also prohibits writing in a candidate that voters prefer over those candidates listed on the ballot. The "none of these candidates" option provides disapproving citizens with their only opportunity to have their complaints against unopposed candidates documented in the official election results. The "none of the above" option makes voting more democratic because it offers citizens an alternative to voting for unopposed candidates.

Figure 6. Uncontested Races

<table>
<thead>
<tr>
<th>Election Years Surveyed</th>
<th>Statewide Primary</th>
<th>All Primary</th>
<th>Statewide General</th>
<th>All General</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>57% 25% 20%</td>
<td>71% 73% 58%</td>
<td>25% 11% 0%</td>
<td>43% 58% 39%</td>
</tr>
<tr>
<td>1978</td>
<td>25% 88% 40%</td>
<td>60% 60% 50%</td>
<td>9% 20% 18%</td>
<td>18% 57% 22%</td>
</tr>
<tr>
<td>1980</td>
<td>25% 67% 28%</td>
<td>86% 52% 70%</td>
<td>20% 17% 0%</td>
<td>25% 48% 26%</td>
</tr>
<tr>
<td>1982</td>
<td>60% 40% 28%</td>
<td>72% 78% 45%</td>
<td>0% 11% 0%</td>
<td>22% 47% 37%</td>
</tr>
<tr>
<td>1984</td>
<td>26% 60% 67%</td>
<td>76% 76% 67%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td>50% 44%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>71% 73% 58%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1998 1998 1998 1998</td>
<td>58% 52% 70% 72%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999</td>
<td>86% 76% 67%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1999 1999 1999 1999 1999</td>
<td>52% 52% 70% 72%</td>
<td>26% 26% 23%</td>
<td>11% 11% 11%</td>
<td>37% 37% 37%</td>
</tr>
<tr>
<td>AVG</td>
<td>57% 25% 20%</td>
<td>71% 73% 58%</td>
<td>25% 11% 0%</td>
<td>43% 58% 39%</td>
</tr>
</tbody>
</table>
Uncontested races present a very real problem in Nevada's electoral system. The lack of an opponent deprives voters of their right to choose who will represent them because they are forced to consent to the only candidate on the ballot or abstain from voting altogether. If voters are not given an effective choice as to which candidates they can elect, the process is not democratic. Figure 8 indicates that between 1976 and 1996, 37% of all general election races were uncontested in Nevada. Eleven percent of Nevada's statewide offices were uncontested in the same time frame. The statistics for primary races are even more alarming. On average, 67% of all primary races and 44% of statewide primaries offer voters only one candidate to choose from. Figure 7 shows that about half of all offices were uncontested in five of the eleven general election years surveyed—1976, 1978, 1984, 1990 and 1996. When opposing candidates are absent from half of the offices on the ballot, we begin to question how so-called "elected officials" are chosen for office. In uncontested races, candidates who file paperwork to run for office are automatically selected to fill the position. This procedure could have a devastating effect on the quality of elected officials. Local races are 26% more likely than statewide races to be uncontested on average, but statewide elected offices are the only offices that give voters the "none of these candidates" option in Nevada—even when races for local offices have no opposing candidates. Democracy thrives on the citizens' choice.

\textsuperscript{30} Ibid., 313-329, 345-354. For the purposes of this study, President/ Vice President, U.S. Senator, U.S. Representative, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General and Supreme Court Justice Seats A through E are considered statewide or national offices. The title national office was added because the office of US Representative in Congress was not considered a statewide office after the state gained a second seat in the House of Representatives in 1982.
for local offices have no opposing candidates. Democracy thrives on the citizens’ ability to make a choice about the way they want to be governed and who will represent his interests best. Nevada’s current system does not offer disenchanted voters a meaningful choice when there is only one candidate listed on the ballot, you can vote for that candidate or not vote at all. The binding version of “none of these candidates” would offer voters an automatic alternative to unopposed candidates.

Dissatisfied citizens are not given any real choice when it comes to representation. The lack of a clear alternative to the candidates listed on the ballot illustrates a weakness in our electoral system. When a citizen does not approve of any of the candidates listed on the ballot, his choices are limited to choosing the lesser of two evils or not voting at all. Since non-voting does not prevent unworthy candidates from taking office, it is not a viable method of consenting to or withdrawing your consent from a particular slate of government officials. Citizens are not given a democratic choice when they are deprived of the ability to withhold their consent from a list of candidates for public office. Consent should be a positive demonstration of approval for a candidate instead of a choice between lesser evils. Amending ballots so that “none of these candidates” appears beneath the list of candidate names for every office would give voters the option of formally withholding their consent from all of the candidates on the ballot. This gives disenfranchised voters a reason to come to the polls on Election Day and it puts elected officials more in touch with the needs and desires of their constituents. At the same time, “none of these candidates”
would offer the electorate a chance to demonstrate their approval for a new slate of candidates instead of limiting voters to a choice between two evils.

The option to choose NOTA would increase citizens' feelings of political efficacy. Frequent occurrences of uncontested races can decrease citizens' feelings of political efficacy by consistently robbing them of their opportunity to elect public officials. In a binding NOTA system, special elections would exist as proof that citizens' voices have been heard and candidates would be accountable to their constituents. Voters would no longer have to decide on the lesser of two evils. If voters do not like the candidates, they can cast their ballots for NOTA. “None of these candidates” provides an institutional outlet for expressing dissatisfaction with politicians. Citizens would no longer have to demonstrate their dissatisfaction by abstaining on Election Day. A mobilized electorate is vital to the concept of democracy. The people must express their wishes in order to rule themselves democratically. If NOTA can reform our current system of choosing between lesser evils to provide a choice between responsive policy-makers, the benefits would be priceless.
CHAPTER 3

THE INCUMBENCY ADVANTAGE

Once a candidate is elected to office, the system is tailored to discourage citizens from withdrawing their consent from that elected official. Incumbent congressmen are given a variety of resources for communicating with their constituents including free postage for official business, free use of studios to produce radio and television footage, internet service, and free long distance telephone service (Jacobson, 1997). Congressmen also have a generous budget to pay for their office space, personal staff and travel to and from the district (Jacobson, 1997). Challengers must pay for such luxuries either from their own pockets or through fundraising efforts.

The retention rate of incumbent congressmen demonstrates that a second candidate on the ballot does not always induce enough competition to give voters a real choice. Common Cause, a watchdog group created to keep citizens informed about elected officials, calculates that on average 90% of House congressional elections are not competitive, "meaning that either there is no major party opponent to the incumbent or that the opponent is grossly under-

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2 Ibid.

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financed" (Nader, None of the Above: Proper, Long, Overdue, 1999).³ One study of the 1988 campaign season concluded that an incumbent congressman's odds of dying during his term in office were actually higher that his odds of losing a reelection attempt due to the 98% incumbent retention rate in that election (Hoover, 1993).⁴ There was a 93% incumbent retention rate in the U.S. Congress in 1992 despite public outrage over the House bank scandal, controversy surrounding congressmen voting for financial incentives to retire early and redistricting following the 1990 census (Hoover, 1993).⁵ Former California Secretary of State Tony Miller contends that, "the inability to raise huge sums of money to match incumbent war chest funds sometimes drives potentially excellent candidates from the arena altogether" (1994).⁶ "Eighteen house races in eleven states topped one million dollars" in 1990, according to one study (Miller, 1994).⁷ Few challengers can muster the finances and support to throw an incumbent out of office. Voters may be given a choice between an unworthy incumbent and an unknown challenger who lacks the financial resources to win.

³ Ralph Nader, "None of the Above: Proper, Long Overdue," in Policy Insights, par. 8. [online journal] [cited 27 April 1999]; available from World Wide Web @ http://www.nader99.org/nota1.htm

⁴ Gary Hoover, "None of the Above—The People's Veto," in Policy Insights, par. 5 [online journal] vol. 521 (December 1993 [cited 10 February 1999]); available from World Wide Web @ http://www.nota.org/pi521.htm

⁵ Ibid.

⁶ Tony Miller, "The Case for None of the Above," in Policy Insights, par. 3 [online journal] vol. 615 (September 1994 [cited 10 March 1999]); available from World Wide Web @ http://www.nota.org/pi615.html

⁷ Ibid., par. 4.
the election (Pitney, The Right to Vote No, 1994). Since media moguls and campaign patrons often ignore minor party candidates, they have "little hope of competing in any real way to provide voters with a clear alternative to their better known, vastly better-funded opponents" (Miller, 1994). Faced with insurmountable odds, qualified challengers are often driven away from public office. "None of the above" ensures that there is always a recognizable candidate to challenge entrenched incumbents; that candidate is "none of the above."

Figure 7. General Election Races Involving an Incumbent

<table>
<thead>
<tr>
<th>Year</th>
<th>Statewide</th>
<th>Local</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>100%</td>
<td>20%</td>
<td>43%</td>
</tr>
<tr>
<td>1978</td>
<td>44%</td>
<td>19%</td>
<td>24%</td>
</tr>
<tr>
<td>1980</td>
<td>60%</td>
<td>56%</td>
<td>57%</td>
</tr>
<tr>
<td>1982</td>
<td>36%</td>
<td>6%</td>
<td>18%</td>
</tr>
<tr>
<td>1984</td>
<td>100%</td>
<td>69%</td>
<td>72%</td>
</tr>
<tr>
<td>1986</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
</tr>
<tr>
<td>1988</td>
<td>60%</td>
<td>36%</td>
<td>44%</td>
</tr>
<tr>
<td>1990</td>
<td>60%</td>
<td>68%</td>
<td>67%</td>
</tr>
<tr>
<td>1992</td>
<td>83%</td>
<td>39%</td>
<td>53%</td>
</tr>
<tr>
<td>1994</td>
<td>70%</td>
<td>18%</td>
<td>43%</td>
</tr>
<tr>
<td>1996</td>
<td>60%</td>
<td>68%</td>
<td>67%</td>
</tr>
</tbody>
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9 Miller, par. 3.
While these statistics reflect incumbency trends across the United States, an inquiry into Nevada elections provides similar results. In the average election year, nearly half of the offices on the Nevada ballot feature an incumbent running for re-election.\textsuperscript{10} To make matters worse, the incumbent faces only a 15% chance that he will lose his re-election bid. “None of these candidates” challenges incumbents to prove that they are worthy of re-election when they are not facing competition from other candidates on the ballot. Competition among political candidates allows voters to choose the most worthy candidate instead of settling on an incumbent who does not adequately represent their interests.

Figure 7\textsuperscript{11} represents the likelihood that an incumbent will be running for any given seat during the election years surveyed. Calculations for Figure 7 are obtained by dividing the total number of races by the number of incumbents running for re-election that year.\textsuperscript{12} The figure suggests that more incumbents run for office during presidential election years, regardless of whether you are looking at local, state or national races in Nevada. According to Figure 7, an average of 49% of the races on the ballot between 1976 and 1996 feature incumbents. The average increases to 56% if you look exclusively at the presidential election years surveyed and drops to 41% if you look only at off-year elections. The percentage of races involving incumbents increased steadily during presidential

\begin{footnotesize}
\textsuperscript{10} The calculation that incumbents are running for 49% of the offices on the ballot in the average election year between 1976 and 1996 is based on data revealed in Figure 7.


\textsuperscript{12} For the purposes of Figure 7 and Figure 8, local offices refer only to those offices listed in Secretary of State Dean Heller’s Political History of Nevada 1996. These offices include two
election years through 1984 and then decreased from 72% in 1980 to 44% in 1984. Since the incumbency rate during a presidential election year reached its low of 44% in 1984, it has increased gradually in each subsequent election, falling at 67% in 1996. The trend toward incumbents campaigning in off-year elections increased gradually from its low of 18% in 1982 to its high of 67% in 1990, but the number decreased to 43% in the 1994 election cycle. The percentage of offices that feature incumbents between 1976 and 1996 range from a low of 18% in 1982 to a high of 72% in 1984.

At the state and national level, Figure 7 reveals that an average of 66% of the races on Nevada’s ballots involved incumbents running for re-election during the years surveyed. The average number of incumbents running for state and national offices increases to 77% during presidential election years, but that figure is offset by incumbents campaigning for only 53% of the races in off-year elections. While the number of incumbents campaigning for state and national offices during presidential election years has increased sharply in 1984 to 100% and 1992 to 83%, these increases have been followed by decreases to the level of 60% in 1980, 1988 and 1996. The trend for state and national incumbents during off-year elections has increased from 36% in 1982 to 70% in 1994. The lowest number of incumbents campaigning for state and national offices in Nevada occurred in 1982 when incumbents were featured in only 36% of the races on the ballot. The highest percentage occurred in 1976 and 1984 when

seats in the U.S. House of Representatives, eleven members of the Board of Regents, eleven members of the State Board of Education, and forty-one district judges.
every state and national office in Nevada featured an incumbent running for re-election.

At the local level, an average of 41% of the races on the ballot featured an incumbent running for re-election. The average increased to 48% when presidential election years were isolated from the other data and dropped to 33% when only off-year elections were considered. The percentage of local races featuring an incumbent during the presidential election years surveyed increased from a low of 20% during the 1976 election to a high of 69% during the 1984 election, but these increases were followed by a decrease to 36% in 1988 and a recovery back to 68% in 1996. The number of local incumbents campaigning in off-year elections increased from a low of 6% in 1982 to a high of 68% in 1990, then decreased sharply to 18% in 1994.

Despite the high percentages of re-election attempts captured in Figure 7, the numbers are lower than expected due to the creation of new local offices during almost every election year surveyed. The increase in local officials reflects the growing number of Nevada residents, but more offices do not ensure more effective representation. Most of the new local offices featured races that were not competitive because there was only one candidate campaigning for the new position. To make matters worse, the candidate who was campaigning for the new local office was often unknown to the mass public.

"None of these candidates" is useful during elections where there is either no opposing candidate or no candidate that is known to voters on the ballot. In cases where candidates are running unopposed, "none of the above" offers
automatic opposition. Voting for an unknown politician is very risky considering the amount of responsibility that we entrust to public office holders. When the candidates running for a particular office on the ballot are unknown to the voters, “none of these candidates” offers an incentive for candidates to make their name known to the public. Encouraging voters to choose “none of these candidates” when they lack political knowledge of every candidate on the ballot is beneficial to the electoral process because it shifts responsibility for providing information about the issues of the campaign from the public back to the candidate. Threatening candidates with “none of the above” votes gives the candidate an incentive to address issues in the campaign and make his message readily available to potential voters. Even candidates in uncontested races would have to address issues in their campaign to avoid losing to “none of the above” on Election Day. “None of these candidates” would ensure that citizens are given a choice in these local races. With a binding “none of these candidates” law there is hope that elections could become more focused on issues that constituents care about and less focused on thirty second soundbites that convey very little information.

Figure 8 portrays the percentage of victorious incumbents in any given election year from 1976 through 1996. While state and national candidates are more likely to run for reelection according to Figure 7, they are not more likely to win their reelection attempt when compared to local officials in Figure 8. The odds of an incumbent victory are good regardless of the level of government that the candidate is campaigning to serve in. In 1976 and 1986 every incumbent
running was reelected. According to the data presented in Figure 10, every incumbent seeking statewide office was reelected in 1976, 1978, 1986, 1990 and 1996. One hundred percent of the local officials running in 1976, 1982, 1986, 1992 and 1994 also won re-election.

Calculations for Figure 8 were obtained by dividing the total number of incumbents on the ballot by the number of candidates who won the election. Figure 9 reflects the total number of incumbents on the ballot, while Figure 10 reflects the number of incumbents who were successful in winning their re-election campaigns. While Figure 7 shows that incumbents are more likely to run for re-election during presidential election years, Figure 10 shows that incumbents are more likely to win their re-election attempts during off-year

\[\text{Figure 8. Percentage of Incumbent Victories}\]

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</tr>
</thead>
<tbody>
<tr>
<td>Statewide</td>
<td>100%</td>
<td>100%</td>
<td>67%</td>
<td>50%</td>
<td>80%</td>
<td>100%</td>
<td>67%</td>
<td>100%</td>
<td>80%</td>
<td>86%</td>
<td>100%</td>
</tr>
<tr>
<td>Local</td>
<td>100%</td>
<td>86%</td>
<td>80%</td>
<td>100%</td>
<td>90%</td>
<td>100%</td>
<td>50%</td>
<td>91%</td>
<td>100%</td>
<td>100%</td>
<td>94%</td>
</tr>
<tr>
<td>All Offices</td>
<td>100%</td>
<td>91%</td>
<td>75%</td>
<td>60%</td>
<td>88%</td>
<td>100%</td>
<td>57%</td>
<td>92%</td>
<td>90%</td>
<td>89%</td>
<td>95%</td>
</tr>
</tbody>
</table>

\[\text{Election Years Surveyed}\]

Ibid., 313-329.
elections. Incumbents are 5% more likely to win at the state and national level and 9% more likely to win at the local level during an off-year election. On average, the incumbent has an 85% probability that he will be re-elected regardless of the level of government that he is seeking office in. The incumbency retention rate for state and national offices in Nevada is 82% during a presidential election year and 87% during an off-year election. At the local level, incumbents face an 86% incumbent retention rate during presidential election years and a 95% retention rate during off-year elections. The data for all of Nevada’s elected offices ranges from 57% of incumbents winning their re-election attempts in 1988 to 100% of incumbents winning re-election in 1976 and 1986.

"None of the above" forces incumbents to run competitive, informative elections that benefit all of society. Voters who are dissatisfied with government often view the current incumbent retention rate as evidence that their vote would not be effective in removing that candidate from public office. "None of these candidates" gives these voters the opportunity to voice their dissatisfaction with incumbents even if they cannot amass enough votes to have the incumbent thrown out of office. If a special election were held because an incumbent lost to "none of these candidates," it could go a long way towards improving political efficacy among the mass public and encouraging disenchanted voters to show up at the polls.
Money

The sources behind generous campaign contributions act to intensify the dissatisfaction of voters with incumbent officials. Increasing contributions from special interests can lead to less consideration for constituent needs. Special interests view campaign contributions as an investment. The group contributes money to the candidate's campaign out of the hope that the candidate, once in office, will act as an advocate for the group by voting down legislation offensive to the group and possibly sponsoring legislation in the group's interest. This system of indirect quid pro quo acts as one causal effect in the degenerating relationship between citizens and politicians. Candidates noble enough to resist special interests will be so underfunded that they have no real chance of winning the election. At the same time, candidates who sell out to the highest special interest bidders are reelected to carry out favors for organized interests to the detriment of the people at large. According to a Common Cause study of the 1992 election, "349 incumbent members of the House of Representatives received nearly ten times more contributions from political action committees than their opponents" (Miller, 1994).\textsuperscript{14} While 24 of the 349 challengers were successful in defeating the incumbent, "325 or 93% of the incumbents were returned to office, some owing more than half of their success to special interests" (Miller, 1994).\textsuperscript{15} "As candidates rely more and more on major contributors and PACs," Miller contends, "voters feel more distanced from the

\textsuperscript{14} Miller, par. 5.

\textsuperscript{15} Ibid.
decision-making process” (1994).

The distance is caused by voters feeling that “the big decisions have already been made by the big money interests before candidates' names even appear on the ballot and that whoever is elected is so beholden to those interests that the voice of ‘the little guy’ will not be heard” (1994).

NOTA advocates like Tony Miller are confident that “a victory for ‘None of the Above’ would send a very strong message to officeholders, candidates and campaigners that . . . it’s time for a change, time to listen to the voters, not the consultants; time to consider the public interest, not their own political interests” (1994).

Money is an easy target because the cost of running a successful campaign has skyrocketed. Statistics show that it costs almost half a million dollars to run a successful campaign for a seat in the House of Representatives. Statistics also show that the candidate with the most money will win the election most of the time. Incumbents get more political contributions than do their competitors; thus, the increase in the amount of money available to incumbents accounts for their high retention rates. According to Common Cause, only five percent of U.S. House races were “financially competitive” in 1990 (Hoover, 1993).

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16 Ibid., par. 8.
17 Ibid.
18 Ibid., par. 9.
19 Hoover, par. 4.
It is not surprising that these statistics reflecting the impact of money on political campaigns would contribute to a decline in the feeling that a person's vote matters. The one man, one vote strategy handed down by the Supreme Court in *Baker v. Carr*\(^{20}\) has been diluted by the ruling in *Buckley v. Valeo*\(^{21}\) that political spending is the equivalent of political speech. Money is actually more effective than speech when it comes to influence over the political process. According to Winders, money contributed to the decline in party mobilization more than any other factor (1999).\(^{22}\) Political parties have focused on fundraising rather than mobilization because it is a more efficient way of winning an election. Winders claims that PACs have "limited policy options and outcomes by increasing their influence over the two major political parties" (1999).\(^{23}\) Winders concludes that "political parties have become more reliant on money than on organization, and mobilizing voters has become secondary (at best) to fundraising" (1999).\(^{24}\)

A significant portion of the money raised during a campaign is spent on negative advertisements. Negative campaign advertisements rely on name-calling and mudslinging to get their messages across. The purpose of a campaign advertisement is to manipulate a political issue into a one-sided sound


\(^{23}\) Ibid., 853-854.

\(^{24}\) Ibid., 853.
bite powerful enough to persuade voters in favor of the candidate sponsoring the advertisement. A thirty-second sound bite will never tell you the whole story; these sound bites often rely on a voter's ignorance about what has not been said to persuade them. Voters remember the advertisements when they go to the polls, but the average voter is not given enough information in these commercials to differentiate fact from fiction. The bitter irony is that campaign advertisements are created to intentionally confuse voters by manipulating the facts and making it appear that the other candidate has done something wrong. Campaign consultants boast that the best campaign advertisements have a grain of truth to them, but they never mention the number of lies that they extol. Politicians hope that voters will believe their lies and vote based on them. They conduct polling to figure out which lies are most believable and they continue to use these tactics in every election year.

Interest groups and PACs often use their contributions to pay for advertisements attacking a candidate's opponent even though surveys show that negative advertisements demobilize the electorate. With NOTA in the picture, candidates have an incentive not to show negative advertisements because NOTA offers voters an alternative to voting for the candidates engaging in mudslinging. The cost of financing another candidate in the special election coupled with a decline in the incumbency advantage would make monetary campaign contributions less efficient mechanisms for influencing policy under a binding NOTA system. Candidates would be forced to use real issues to get their name out to the public. NOTA would also help third party candidates who
cannot raise money like Republicans and Democrats. Everyone would enter the special election on equal footing. The time constraints between the general election and the special election would hamper party efforts to collect large cash reserves. "Moneyed interests might not invest so heavily in incumbents if their longevity was no longer guaranteed," asserts Hoover (1993). Less negative advertising would foster campaigns based on the issues. NOTA would shift the candidate's focus from monetary contributions back to mobilizing the electorate. At the same time, NOTA would make it easier for citizens to gain accurate political knowledge.

A system controlled by special interests and elites can not be considered democratic. According to Ralph Nader:

Nothing is more costly than unchallenged control of nominations and elections by what Thomas Jefferson called the 'monied interests.' When Thomas Jefferson saw the purpose of representative government as counteracting the 'excesses of the monied interests,' he was recognizing that democracy's central point is to work on the maldistribution of power and make it more susceptible to reordering, challenge, displacement and where particularly extreme, being outlawed. American history has marked this progress by abolishing slavery and expanding the franchise to include women and minorities. (NOTA: Cutting the Big Boys Down to Size," 1996)  

Elected officials are obligated to take the wishes of their constituents into account if the process is to be considered democratic. Voting is merely symbolic if it does not determine how a candidate will behave while in office. Rule by the people

25 Hoover, par. 6.


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requires that voting must serve as a tool for enforcing accountability among elected officials. "None of these candidates" forces incumbents to address the demands of their constituents because it offers voters a viable alternative to elections traditionally dominated by career Democrats and Republicans.

According to Professor Amy:

The basic purpose of elections in the United States is to produce legislative bodies that reflect the will of the people. [This] notion . . . is central to most Americans conception of democracy. We believe that the more representative such a body is, the more likely it is to pass laws that embody the views of the public—which is much of what democratic government is all about . . . The more representative the legislature the more democratic the election system . . . John Adams argued that legislatures in the United States 'should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason, and act like them . . . Our voting system consistently violates this basic democratic principle; it often produces legislatures that fail to accurately mirror the political preferences of the public (1993)."^\textsuperscript{27}

Representation occurs when policies change because of the will of the electorate. Since little representation actually takes place, those who disagree with the policies supported by the two major parties never have a real chance to see their opinions shape policies. If we want elections to act as tools of accountability, voters must be given the opportunity punish candidates who have broken campaign promises and betrayed the public trust. NOTA supplies voters with that opportunity when there is no opponent present or when the opponent is too weak to provide any real challenge against the incumbent. Professor Pitney suggests that, "if previously unopposed incumbents started losing 20% or 30% of the vote to NOTA, they would be foolish not to reexamine what they were
doing wrong," especially since, "a large NOTA vote would serve as an unmistakable sign of incumbent vulnerability, thereby drawing strong challengers into the next race" (Pitney, "The Right to Vote No," 1994).  

"Politicians would fear the ultimate humiliation of losing an election to 'none of the above' and they would do anything in their power to avoid such a defeat," asserts Pitney (Right to Vote No, 1994). Fear of losing to NOTA may prompt politicians to be more responsive to their constituents. Politicians would be forced to consider the fact that a high percentage of "none of the above" votes would act as a signal for better qualified challengers to enter the race against the incumbent in the next election. NOTA would increase the chances of putting representatives who are trustworthy in office by decreasing the role of money and increasing the role of accountability in the political system.

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29 Ibid., par. 17.
CHAPTER 4

ADOPTION PROCEDURES

In 1916, progressive Senator Robert La Follette asserted that the people should decide whether their nation should go to war instead of allowing the government to make a decision of such great consequence. La Follette’s plan called for a national “war referendum” where the people would be able to change the law through the process of signing petitions and voting on the issue in a federal election (Walsh and Kulman, 1996). While La Follette may have won a few battles over the national “war referendum,” he certainly failed to win the war because a national referendum was never enacted. La Follette’s crusade is relevant in the battle to get a binding form of “none of these candidates” on the ballot because any measure, other than the adoption of federal legislation mandating NOTA in all elections, would have to be adopted at the state level. The consequence of state action is that the battle to get a binding “none of these candidates” on the ballot would have to be waged separately in all fifty states. The problem for NOTA advocates would be that only twenty-seven states currently allow citizens to enact legislation through the initiative or popular referendum processes, but every state except Delaware has a mechanism in

\[1\] Kenneth T. Walsh and Linda Kulman, “Bigfooting in Gucci Loafers: Let’s Have the Voters do more Lawmaking at the Ballot Box” in U.S. News & World Report, par. 1 [online journal] vol. 121 (December 30, 1996); available from Wilson Select @ http://firstsearch.oclc.org

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place allowing citizens to vote for changes to the state constitution (Magleby, 1998).\(^2\) While the lack of a national referendum makes the battle for the adoption of a binding “none of these candidates” law more difficult, it does not make the battle impossible to win. Often, when an initiative or referendum is passed by one state, media coverage of the issue compels other states to enact similar laws (Magleby, 1998).\(^3\)

Four years prior to Lafollette’s crusade for a “war referendum,” the Nevada constitution was amended to allow citizens to directly initiate legislation (Heller, 1997).\(^4\) While the 1912 amendment promoted direct democracy by allowing citizens to make laws, several safeguards were put into place to ensure that only the most worthy initiatives would actually become law. The amendment required ten percent of the voters in thirteen of Nevada’s seventeen counties to sign a petition to put the issue on the ballot. If the required signatures were obtained, the initiative would appear on the ballot in the next two general elections. The initiative would not become law unless it was approved by a majority of the voters in both elections. Between 1950 and 1997 sixty-five constitutional amendments succeeded in the petition phase of the initiative, but failed to secure majority approval in one or both of the next two elections.\(^5\) Fifty-five initiatives that did not require constitutional amendment appeared on the ballot in the same time


\(^3\) Ibid., par. 4.


\(^5\) Ibid., 83.
Nevada's constitution allows citizens to change existing laws through the referendum process, which has similar requirements.

Initiative and referendum are the methods that would garner the most success in enacting a binding "none of these candidates" law. While it may be possible to get binding NOTA passed through the legislature, it is unlikely that such an attempt would be successful. Legislative adoption would require NOTA advocates to convince the legislature to undercut their own legislative authority and reduce their reelection potential by enacting NOTA. Even if it were possible to get the issue passed through the legislature, concessions would probably require compromises to be made by NOTA advocates. The initiative and referendum processes are superior to adoption by the legislature because they allow NOTA proponents to determine the language used in the law and the explanation of the issue on the ballot.

The downside of using the initiative and referendum processes is that abuses of these democratic devices have lead to widespread adoption of initiatives and referendums promoted by big businesses and special interests instead of regular citizens. It is ironic that the tools progressive reformers used to limit the power of special interests—initiatives and referendums—are the same tools that special interests have embraced to make policy in the modern era. Researchers found that 80 percent of initiatives that became law in the 1980's were won by the side that spent the most money promoting the issue (Mattson, ibid.).
Despite the tendency for money to dominate the initiative process, "groups of citizens who lack financial power can still organize and get their voices heard, and sometimes even change laws" (Mattson, 1999).

In order to effectively promote the NOTA initiative, advocates should bring the issue to the public consciousness for debate. Addressing the issue in a variety of forums such as newspaper and magazine editorials, radio and television call in shows, letters to public officials, and websites offer cost effective grassroots methods for bringing the issue to the attention of the public. Organizing citizen groups around the issue and soliciting monetary contributions to advertise in the initiative campaign would also be necessary for success in adopting a binding "none of these candidates" law. The lack of monetary support behind the "none of these candidates" issue is often blamed for failed NOTA initiatives in Wyoming (1991), Colorado (1993), Michigan (1995), Ohio (1996), Pennsylvania (1996), Arizona (1997) and California (1998), but the issue is gaining momentum due to increased exposure.

Something must be done to resolve the crisis of confidence that is brewing in the American political system. Citizens must be connected to their government so that democracy can function properly. A binding form of the "none of these candidates" law is only one step in the right direction. While NOTA may not be enough to solve the turnout problem on its own, it is a step toward increasing citizen connectedness and voter participation. NOTA is a

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7 Kevin Mattson, "Taking back the Initiative: Renewing Progressive Democracy" in Social Policy, par. 2 [online journal] vol. 29 no. 4 (Summer 1999); available from Wilson Select @ http://firstsearch.oclc.org

8 Mattson, par. 4.
change in our electoral system that could increase partisanship, trust, efficacy, and knowledge regarding politics by improving the pool of candidates holding political office and offering these candidates an incentive to reach out to the public. While NOTA would change the structure of American elections, the change would not be disruptive because voters would be given the option of selecting candidates as they do in the status quo or exercising a new privilege by selecting NOTA. Nader estimates that “a binding NOTA would pass handily in the nearly two dozen states that have initiative and referendum [procedures] statewide” (“NOTA: Cutting the Big Boys Down to Size,” 1996). The most serious consequence facing a society that employs NOTA would be the cost of a special election, but the benefits of good government clearly outweigh the risks of such costs. Experts like Steve Lilienthal say that, “voting for NOTA is an expression of the belief that citizens should be able to elect worthy leaders,” because, “NOTA empowers voters to demand the best—not simply settle for whatever they are given” (Lilienthal, “NOTA Movement,” 1998).

NOTA will increase our chances of putting trustworthy politicians back into office by decreasing the role of money and increasing the role of accountability in our political system. If we want elections to act as tools to enforce accountability, voters must punish candidates who have broken campaign promises and betrayed the public trust. Voters cannot punish

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dishonest politicians when they are forced to choose between two dishonest politicians. While it may be rational to choose the lesser of two evils under the circumstances, changes must be made to ensure that voters are not forced to make that choice in the future. The first step toward increasing participation is giving voters a real choice that makes a real difference. The "none of these candidates" law accomplishes that goal.
FREQUENTLY ASKED QUESTIONS

1. Why not pass some other type of legislation (campaign finance reform, term limits, etc.) instead of binding NOTA?

Binding NOTA does not have to exist exclusive of these other reforms, but it is the only single measure that can address all of these problems collectively. Too many pieces of legislation may overwhelm part time legislators and lead to ineffective reform. Passing a binding NOTA resolution could buy the legislature time to research whether other reforms would be necessary. Representatives may also view binding NOTA as being less controversial than some of these other reforms. This may make it easier to push binding NOTA through the legislature.

2. Why should we make changes when the system is not broken?

The rising number of third party and “none of these candidates” votes, the decline in voter turnout and increasing cynicism about local politicians suggests that there are problems with the political system that need to be addressed. In effect, the system is broken and NOTA would be a step toward fixing it.
3. Why not just count non-voters?

Politicians do not take non-voters seriously. Elected officials often assume that non-voters are content with the political system or they would show up at the polls and try to change things. This assumption is incorrect. People who are not happy with their living situations due to poverty or other factors usually do not vote because they feel that there vote is not meaningful enough to change their situation. Thus, non-voting is not an effective mechanism for withholding consent from elected officials because it is often misinterpreted as contentment rather than dissatisfaction.

4. What is wrong with using unconventional protest to demonstrate voter dissatisfaction instead of adopting NOTA?

It is difficult to organize unconventional protests among non-voters because they constitute such a large and diverse portion of society. Aside from the organizational difficulties that non-voters would face in order to bring attention to their protest, such protests may be misconstrued as protests against government in general, protests against the office in general or protests against only one of several candidates on the ballot. A binding “none of these candidates” law eliminates this confusion by allowing voters to clearly express their dissatisfaction against a particular slate of candidates in the election. Citizens should not be forced to resort to unconventional protest in a democratic system. A binding
none of these candidates" option would allow citizens to express their dissatisfaction constructively so that a dialogue between citizens and politicians can be established in order to solve problems with the political system without creating unnecessary upheaval.

5. Why shouldn’t NOTA appear on special election ballots?

My decision not to include NOTA on special election ballots is a compromise that may be necessary to secure approval from state legislators who are concerned with the costs of numerous special elections. While it is unlikely that citizens would choose NOTA over the candidate list in special elections, opponents worry that the monetary costs of several special elections would outweigh the benefits of NOTA legislation. Filling the vacant office is less of a concern because the Nevada constitution allows the governor to temporarily appoint someone to fill the vacant office until another special election can be held.

6. What if NOTA backfires and increases the amount of money necessary to run a successful campaign?

The argument that NOTA will decrease money in political campaigns is based on three factors: the incumbency factor, the surprise factor and the timing factor. The incumbency factor is based on the idea that if incumbents are not re-elected as often in a binding NOTA system, people will be less likely to invest so much
money in their candidacies. The surprise factor relies on the fact that parties will not know in advance which races will have a special election or if any special elections will be held at all. Thus, political parties could either save some of their campaign contributions for the special election (if it occurs) or spend all of their money on the first candidate and hope that he does not lose to NOTA. The first scenario provides less money involved in most campaigns because most races will not require expenses for a special election. The second alternative reflects the state of political expenditures in the status quo. Either way, we don't see extra fundraising for the special election. The timing factor reflects that there is only one month between the regular election and the special election. One month does not give parties much time to raise money and it is likely that these campaigns would be characterized less by political advertisements and more by media attention drawn by a NOTA victory in the first election.

Since NOTA would make candidates a less marketable investment, it is possible that NOTA would decrease candidate contributions and increase party building contributions that could be used to market new candidates in the special election. Due to the Supreme Court's decision in Buckley v. Valeo that political spending is the equivalent of political speech, no campaign finance reform legislation, other than a constitutional amendment outlawing soft money contributions, can guarantee that the money used in political campaigns will not be filtered over into the soft money category. Since people would be able to choose NOTA whenever they lack political information about a list of candidates, binding NOTA legislation increases the likelihood that campaign contributions will
be spent informing citizens about the issues of the campaign instead of just getting the candidate's name out. NOTA will always have more name recognition than the other candidates so candidates will have to run informative campaigns to beat NOTA. If we cannot say that NOTA will decrease the amount of money spent in political campaigns, we can still say that it will ensure that the money spent in political campaigns is better spent to educate the public about the candidates. The benefits of adopting NOTA legislation, even without the argument that it decreases campaign spending, would still outweigh these costs.


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