

# **A CALL FOR COMPROMISE: EXAMINING POLARIZATION AND THE POTENTIAL USE OF ADR SOLUTIONS IN CONGRESS POST-TRUMP ADMINISTRATION**

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## I. INTRODUCTION

America serves as a mediator for global conflicts between other countries, but there is a disconnect between its role abroad and how it resolves conflicts within its own government. Considering high political polarization, political antipathy, and the need to “get things done” in a post-Trump America and a post-January-6th-Insurgency democracy, this article discusses the need for and potential benefits of using ADR in Congress.

Section II takes a more in-depth look at political polarization over history and the external and internal theories behind contemporary partisanship. It also touches upon the psychological consequences of political polarization, specifically hatred and intolerance, which toxifies Congress as a professional work environment and adulterates the legislative process itself. Section III provides a brief examination of negotiation and mediation, discusses the advantages and detriments of implementing ADR in Congress, and explores ADR’s potential to mitigate congressional polarization by reviewing how ADR has been implemented successfully in other government venues.

Section IV briefly explains Congress’ role in determining the funding for the U.S. government and increasing the debt ceiling before exploring two comparative case studies illustrating the breakdown of Congressional relationships and the extreme animosity spurring from increased political polarization. The first case study discusses the Congressional budget crisis in 1997 under President Clinton, and the second case study discusses the Congressional budget crisis in 2021 under President Biden—notably during which time the January 6th Insurgency was being investigated and some Congresspeople still falsely persisted that the 2020 election was “stolen” from former-President Trump—and Congress’ intense political antipathy and disfunction in finding a solution.

Section V discusses three possible ADR solutions to implement in Congress to increase legislative productivity and mitigate the effects of political polarization. It also notes the respective solutions’ advantages and detriments in being implemented. Lastly, Section VI ends this note with a brief conclusion.

## II. POLITICAL POLARIZATION

Political polarization is “the vast and growing gap between liberals and conservatives . . . [which is] a defining feature of American politics

today.”<sup>1</sup> Composed of ““excessive partisanship and deep ideological division among political elites and officeholders,”” political polarization inhibits the legislative process by halting productivity and diminishing the efficacy of democratic governance.<sup>2</sup> A distinctive rise in polarization occurred in the 1970s, and the gap between parties and their respective ideology has only increased in the years following.<sup>3</sup> It is no coincidence then that Congressional productivity has plummeted since 2020<sup>4</sup> or that 114th Congress (2016) was the most politically polarized Congress in over a hundred years.<sup>5</sup> The question therefore presents itself: In a post-Trump America—perceived to be even more politically divisive and fractured than ever before—will political parties continue to legislate in a proverbial never-ending game of tug-of-war, each trying to gain the upper hand through underhanded tactics or by changing the rules of the game?

The Founding Fathers did not intend for the institution of political parties—in fact, they warned about parties’ destructive natures.<sup>6</sup> Rather than relying on political parties, “the Framers intended for both majority and minority opinions to be safeguarded by our system of checks and balances.”<sup>7</sup> Nevertheless, political parties formed in the 1790s as “vehicles of promotion” to bridge the gap between elected officials and their constituents.<sup>8</sup> Some might argue forming political parties was beneficial for America, if not inevitable, in

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<sup>1</sup> *Beyond Red vs. Blue: The Political Typology*, PEW RSCH. CTR. (June 26, 2014), <https://www.pewresearch.org/politics/2014/06/26/the-political-typology-beyond-red-vs-blue/> [https://perma.cc/4Z69-AUHA].

<sup>2</sup> Lindsey Phipps, *A Divided Nation: Political Polarization and Dispute Resolution*, 17 PEPP. DISP. RESOL. L.J. 111, 112–13 (2017) (citing Michael Barber & Nolan McCarty, *Causes and Consequences of Polarization*, in *Negotiating Plea Agreements*, AM. POL. SCI. ASS’N 19, 19 (2016)).

<sup>3</sup> See Drew DeSilver, *The Polarized Congress of Today Has its Roots in the 1970s*, PEW RSCH. CTR. (Mar. 10, 2022), <http://www.pewresearch.org/fact-tank/2014/06/12/polarized-politics-in-congress-began-in-the-1970s-and-has-been-getting-worse-ever-since/> [https://perma.cc/WX47-WVNN].

<sup>4</sup> See Neal Rothschild, *Productivity in Congress Tanked in 2020*, AXIOS (Dec. 14, 2020), <https://www.axios.com/2020/12/14/congress-legislation-covid-19-2020> [https://perma.cc/GBA5-A63F].

<sup>5</sup> There is no data analysis for Congresses post-2016, so it is indeterminate whether Congress has continued to become more or less polarized. See Philip Bump, *Farewell to the Most Polarized Congress in More Than 100 Years!*, WASH. POST (Dec. 21, 2016, 11:08 AM), <https://www.washingtonpost.com/news/the-fix/wp/2016/12/21/farewell-to-the-most-polarized-congress-in-over-100-years/> [https://perma.cc/4HT5-L8VQ].

<sup>6</sup> See Todd Phillips, *Political Parties Were Never Meant to Be*, HUFFINGTON POST (Aug. 31, 2012, 1:32 PM), [http://www.huffingtonpost.com/todd-phillips/political-parties-were-ne\\_b\\_1846903.html](http://www.huffingtonpost.com/todd-phillips/political-parties-were-ne_b_1846903.html) [https://perma.cc/J9LT-JTXN].

<sup>7</sup> See Phipps, *supra* note 2, at 112.

<sup>8</sup> See Phillips, *supra* note 6.

the course of establishing strong democratic traditions. Yet, political parties as they exist today, extrapolated from their original mission of connecting officials and constituents, in an age of mass-communication and social echo-chambers, seem to do more harm than good. This section discusses the theories behind political polarization in Congress, both external and internal, before discussing the substantial negative impact of political polarization, not just on the legislative process, but on the zeitgeist of America as a whole, which further substantiates the need for ADR in Congress.

### A. *Theories of Polarization*

#### 1. *EXTERNAL*

External theories of political polarization “emphasize movement in the societal, economic, and electoral environments, and how they have altered incentives for political officials to cooperate or polarize.”<sup>9</sup> There are four main external theories that seek to explain political polarization: (1) polarized electorate theory, (2) “Clucking Theorem,” (3) “meddling media” theory, and (4) re-election theory.

The polarized electorate theory states that Congresspeople, as elected officials, are polarized because their constituents are.<sup>10</sup> This theory is as enticing, and evidentially shaky, as a “*deus ex machinas*.” Polarized electorate theory relies upon evidential support from two notions: (1) the notions of partisan sorting—the increasing support for political parties based on ideology—and (2) constituents’ increasingly polarized policy preferences.<sup>11</sup> Indeed, there is some evidence that American voters have become better sorted into the party system.<sup>12</sup> Previous studies have suggested that voters’ policy positions have remained just as ideologically moderate on key issues and policies as they always have been, while Congresspeople are increasingly more extreme in their policy positions.<sup>13</sup> Accordingly, the polarized electorate

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<sup>9</sup> See *id.*

<sup>10</sup> See Barber & McCarty, *supra* note 2, at 23.

<sup>11</sup> See *id.*

<sup>12</sup> See generally Morris P. Fiorina, *The Political Parties Have Sorted*, HOOVER INST. 1 (2016), [https://www.hoover.org/sites/default/files/research/docs/fiorina\\_3\\_finalfile.pdf](https://www.hoover.org/sites/default/files/research/docs/fiorina_3_finalfile.pdf) [<https://perma.cc/8JWY-XHL7>]. See also, Melissa De Witte, *Party Sorting to Blame for Political Stalemate, Says Stanford Political Scientist*, STANFORD NEWS (Oct. 26, 2020), <https://news.stanford.edu/2020/10/26/party-sorting-blame-political-stalemate/> [<https://perma.cc/WXF3-LSRG>].

<sup>13</sup> See Vicky Chuqiao Yang et al., *Why Are U.S. Parties So Polarized? A 'Satisficing' Dynamical Model*, 62 SOC’Y FOR INDUS. & APPLIED MATHEMATICS REV. 646, 647 (2020).

theory is often dismissed as having minimal credibility.<sup>14</sup> Yet, this dismissal is now called into question considering new evidence that American voters are, in fact, becoming more polarized in the policy positions.<sup>15</sup>

A 2010 study provides evidence that “a lower [economic] growth rate increases the support for extreme political platforms,” and “extreme platforms are unlikely to gain majorities in OECD countries, unless there is an extreme drop in the GDP per capita growth rate.”<sup>16</sup> America, an OECD (Organization for Economic Co-operation and Development) country member, had a declining GDP per capita growth rate in 2018 and 2019,<sup>17</sup> and a GDP per capita decrease in 2020.<sup>18</sup> Compared to past historical trends, the GDP per capita growth rate was much lower in the 2010s and 2020s compared to the 1970s—when polarization became the predominant characteristic of politics—which was a lower rate than the GDP per capital growth rate pre-1970s.<sup>19</sup> This theory is important considering a 2021 study that found the “US experienced the largest increase in polarization over [the past four decades]” compared to eleven other OECD countries.<sup>20</sup> Moreover, the increase in American polarization over the past four decades was found to be statistically significant.<sup>21</sup> This Note does not aim to argue a causal connection between the two studies, only to point out that the polarized electorate theory may have more credence than previously accounted for. If the American GDP per capita growth rate continues to decline, it is increasingly feasible that over the next

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<sup>14</sup> See, e.g., Phipps, *supra* note 2, at 116. (“[Polarized Electorate] theory lacks substantial evidence to support it . . .”).

<sup>15</sup> See Levi Boxell et al., *Cross-Country Trends in Affective Polarization*, NAT’L BUREAU OF ECON. RSCH. 1, 2 (2020), [https://www.nber.org/system/files/working\\_papers/w26669/w26669.pdf](https://www.nber.org/system/files/working_papers/w26669/w26669.pdf) [<https://perma.cc/ZF2G-ER6W>].

<sup>16</sup> Markus Brückner & Hans Peter Grüner, *Economic Growth and the Rise of Political Extremism: Theory and Evidence*, CEPR 1 (Mar. 17, 2010), <https://ssrn.com/abstract=1573427> [<https://perma.cc/A4H6-6CU2>].

<sup>17</sup> The GDP per capita growth from 2017 to 2018 increased at a rate of 4.87%, but the GDP per capita growth from 2018 to 2019 increased only at a rate of 3.66%, thus there was a lower economic growth rate, even if the economy was growing. See *U.S. GDP Per Capita 1960-2022*, MACROTRENDS, <https://www.macrotrends.net/countries/USA/united-states/gdp-per-capita> [<https://perma.cc/2MC5-T4H3>] (last visited Mar. 24, 2022).

<sup>18</sup> The actual GDP per capita amount in 2020 was \$63,531, which was a 2.44% decline from 2019, signaling a significant drop in the GDP per capita growth rate. *Id.*

<sup>19</sup> See *id.*; *U.S. GDP Growth Rate Over Time*, BUREAU ECON. ANALYSIS, [https://upload.wikimedia.org/wikipedia/commons/c/c8/U.S.\\_GDP\\_Growth\\_Rate\\_Over\\_Time.png](https://upload.wikimedia.org/wikipedia/commons/c/c8/U.S._GDP_Growth_Rate_Over_Time.png) [<https://perma.cc/C9LY-4ED9>] (last visited July 18, 2023).

<sup>20</sup> See Boxell et al., *supra* note 15.

<sup>21</sup> See *id.* at 10–11.