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VOTE.COM AND INTERNET POLITICS: A COMMENT ON DICK MORRIS'S VERSION OF INTERNET DEMOCRACY

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A much sought-after political advisor, Dick Morris is also a successful Internet entrepreneur. His popular website VOTE.com sponsors informal polls on political issues and hosts discussion of nonpolitical topics such as travel, technology, business, and sports. Already 1.2 million people have registered at this site, which also features insightful analysis of politics by Morris. As Morris has designed VOTE.com, when one votes on a discrete opinion poll, an e-mail is sent to the concerned political leaders. As an example, the result of the pre-election poll, "Is George W. Bush Smart Enough to be President?" was forwarded to both George W. Bush and Al Gore.[1] As I will discuss below, however, this fashion of testing public opinion is loaded with troubling forms of systematic bias.

In *Direct Democracy and the Internet*, Dick Morris assumes yet another role, that of Internet prophet. Yet, his provocative essay demonstrates that even the most politically astute observer faces difficulties in predicting the Internet's impact on the future of American politics. In his essay, as well as in his recently published book *VOTE.com*, Morris portrays a dramatically improved post-Internet political landscape, which he develops in three predictions.

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1. *See Is George Bush Smart Enough to be President?*, VOTE.com, *at* http://www.vote.com/archivevotes.html (last visited Nov. 7, 2000).

First, Morris forecasts cheaper elections due to the Internet's influence.[2]   Second, he argues that the move of the electoral franchise online will encourage greater voter participation.[3]   Third, Morris believes that the general movement of politics from television to the Internet will stimulate an evolution of our system of governance to a more direct form of democracy.[4]   In a burst of enthusiasm, Morris concludes his essay with these words, "Democracy is on its way."[5]   This language echoes, in an unintended fashion no doubt, Leonard Cohen, who, in the chorus of a 1992 song, promised, "[d]emocracy is coming to the U.S.A."[6]

In this Essay, I examine each of Morris's three predictions in turn and find them contestable. Like Morris, however, I am unable to resist the role of cyberspace seer and throughout this paper will speculate on the Internet's likely impact on democratic self-rule in the United States. My conclusions are generally pessimistic. I am skeptical that political use of the Internet in the United States will stimulate cheaper elections or lead to broader-based voter participation. As a normative matter, moreover, I am doubtful as to the glories of greater direct democracy through use of Internet referenda. Finally, I identify one additional point for pessimism, the impact of Internet politics on information privacy. Yet, the Internet, like our political system, is malleable. The question for the future is how we might shape cyberspace and the political process on it to avoid negative and encourage positive results from any move to online politics.

I.   MORE EXPENSIVE ELECTIONS

Morris observes that the Internet is growing at a time when the television audience is shrinking. As the use of the Internet expands, Morris predicts that politicians will follow voters by "shifting their

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2. *See* Dick Morris, *Direct Democracy and the Internet*, 34 LOY. L.A. L. REV. 1033, 1041-42 (2001).

3. *See id.* at 1051-52.

4. *See id.* at 1033-34.

5. *Id.* at 1053.

6. LEONARD COHEN, "DEMOCRACY" ON THE FUTURE (Sony Records 1992).

focus from on-air to online."[7]   Morris depicts the relationship between politicians and the governed through a stark metaphor of predatory lions and their victims. As he memorably states, "[l]ike hunting lions who must follow the migration of the antelopes on whom they feed, political campaigns will have no choice but to transfer the bulk of their attention to the Internet."[8]

In his essay, Morris has identified an important emerging trend, which is the rise of the Internet as a force in politics. His conclusion is that the Internet will reduce the cost of elections; this verdict appears, in my judgment, to be unlikely. Morris argues, "[t]his trend [of recourse to the Internet] will decrease the reliance on large financial contributors and will reverse the long-term trend toward more and more expensive campaigns."[9]   In fact, the best current evidence suggests both that the combination of politics and the Internet will heighten the long-term trend towards more expensive elections and that large financial contributors will remain welcome and influential.

While the use of the Internet is growing, the critical issue is the fashion in which the Internet contributes to a fragmentation of media sources that, paradoxically enough, makes advertising on remaining mass media as important, or even more important, than ever before. As a further trend, convergence between the Internet and television is likely to increase fragmentation and make it more expensive to reach any given number of viewers, or in Internet parlance, "eyeballs." Finally, convergence is also being accompanied by increasing media concentration in cyberspace, and this long-term trend is also likely to increase the cost of political campaigns. Morris does note the trend of fragmentation; he observes that the Internet offers a "democratization of the flow of information [that] is rapidly eroding the power bases of journalistic baronies" throughout the nation.[10] He misses, however, the fashion in which the very fragmentation of the Internet is strengthening the appeal of the remaining—splintered— mass media, in particular broadcast television and cable. Only these media currently deliver the mass audience, or, stated with more

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7. Morris, *supra* note 2, at 1033.
8. *Id.*
9. *Id.* at 1033-34
10. *Id.* at 1044.

precision, the more or less neatly segmented groups that modern political campaigns seek to influence through advertising. Indeed, campaigns in the 2000 election cycle are relying on television and cable advertisements as never before.

The New York Senate race between Hillary Clinton and Rick Lazio illustrates this heightened reliance on mass media. Both candidates waged their campaigns through targeted advertising based on whether a television slot offered access to male, middle-aged viewers, or senior citizens, or young females. As the *New York Times* summarizes, "[t]he decisions about where to put commercials are among the most important in any campaign because television advertising, in many ways, *is* the campaign, consuming at least half of a typical candidate's total spending."[11] Thus, Morris is correct to point to the Internet's fragmentation of media sources, but the result of this development is to make mass media advertising more important than ever before. This situation is already contributing to the high cost of election campaigns this year.

In the future, moreover, the Internet is likely to become assimilated to the expensive, mass marketing model that we find at present in broadcast television and cable. Simply put, a movement is underway to make the Internet more like the old network-centric world. Due to a convergence of technology and concentration in ownership of content and infrastructure, advertising on the Internet will become more expensive at precisely the same time it becomes more important for politicians.

The AOL-Time Warner merger provides a clear example of these trends in cyberspace. AOL is the leading Internet service provider with twenty-nine million subscribers in the United States; Time Warner provides both media content and high speed cable lines serving 12.5 million customers.[12] In the aftermath of their planned merger, a combined AOL-Time Warner will control a large subscriber base, rich content, and, perhaps most importantly of all, fast broadband connections. This company is interested not only in bringing the Internet to its customers over cable lines, but in linking

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11. Felicity Barringer, *Spending So Much to Sway So Few*, N.Y. TIMES, Oct. 8, 2000, at 37 (emphasis added).

12. *See* Edward Robinson, *AOL's PipeDream*, BUSINESS2.COM, Oct. 10, 2000, *at* http://www.business2.com/content/magazine/indepth/2000/09/29/20136.

online content and television programs through its "AOLTV" product.[13] AOLTV is an interactive service that brings AOL features and services to members' TV sets; it enables them to access their e-mail, send instant messages, and surf the Internet from their TV.

Eben Moglen and Pam Karlen have aptly described the consequences of developments such as the AOL-Time Warner merger in *The Soul of a New Political Machine*.[14] As Moglen and Karlen note,

> [M]edia organizations have sought to bring the Internet under their control by reducing the technology's power for equalizing communications opportunities, recreating in the telecommunications infrastructure of the net the "broadcaster-consumer" model previously imposed on the electromagnetic spectrum, in which a few dominant voices speak and the rest of society merely listens.[15]

Companies that control these new "broadcast-consumer" areas of the Internet will try to keep their viewers within their sphere of influence.

Walls are likely to go up on parts of previously unfenced areas of cyberspace to keep consumers from wandering off. This attempt to return to the broadcaster-consumer model has many implications; if this activity is only partially successful, it will increase the cost of political advertising on the new, mass media areas on the Internet. As Elizabeth Garrett has noted, the cost of reaching parties in the remaining fragmented areas of the Internet is likely to involve tapping the expertise of a new breed of expensive specialists.[16] She writes, "Sophisticated use of this new technology . . . will depend on expertise, and in most cases, candidates will not possess such expertise and may not be able to obtain it through volunteers."[17] Garrett foresees a continuing influence in the realm of Internet

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13. *See What is AOLTV, at* http://www.aol.com/anywhere/aoltv/whatis.html (last visited Jan. 18, 2000).

14. Eben Moglen & Pam Karlen, *The Soul of a New Political Machine: The Online, The Color Line, and Electronic Democracy*, 34 LOY. L.A. L. REV. 1089 (2001).

15. *Id.* at 1097-98.

16. *See* Elizabeth Garrett, *Political Intermediaries and the Internet Revolution*, 34 LOY. L.A. L. REV. 1055, 1059 (2001).

17. *Id.*

politics for savvy political operatives as well as for political parties.[18]

A final fashion in which the Internet will raise election expenditures is through its increasing exploitation as a fundraising tool. A rational political candidate is not like the purchaser in a typical
market, who will seek to purchase a particular item for the lowest cost possible. Rather, the rational political candidate is likely to seek to maximize the size of her campaign budget. The payoff for a candidate will be not only in winning an election, but in increased name recognition, which is useful in the overall process of governance. Thus, to the extent that political cash raised on the Internet would otherwise not be tapped, this money will increase total expenditures during campaigns.

Some evidence exists that politicians are already using the Internet in a fashion that will raise overall expenditures. One historical moment in the Internet's emergence as a fundraising vehicle came during Senator John McCain's "cyber-fundraisers," an element of his unsuccessful campaign for the Republican presidential nomination.[19] After a nineteen point victory in the New Hampshire primary, Senator McCain was able to use his website to raise millions in a relatively short period. In fact, on the night of his New Hampshire victory, McCain was collecting donations at the rate of $20,000 an hour via credit card donations at his campaign's website.[20] Note, however, that people only knew about this website because McCain had used appearances on television and advertisements in traditional media to publicize its existence.[21] Here, we have another indication of the likely continuing importance of existing electronic media.

Despite the Internet's use as a fundraising tool, it is nevertheless unclear whether it will decrease politicians' reliance on large financial contributors. To return to the McCain example, the failure

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18. *See id.*
19. *See* Don Van Natta, Jr., *Courting Web-Head Cash*, N.Y. TIMES, Feb. 13, 2000, at 4.
20. *See id.*
21. *See* James Fallows, *Internet Illusions*, N.Y. REV. BOOKS, Nov. 16, 2000, at 28, 29; Jonathan GS Koppell, *Where's the Revolution?*, INDUSTRY STANDARD, Mar. 6, 2000, *available at* http://www.thestandard.com/article/display/0,1151,12538,00.html.

of his challenge to George W. Bush, the candidate of the Republican establishment, also marked a triumph for old-style fundraising. Although Bush raised money through the Internet, he also relied upon pre-Internet techniques. One of his old fashioned fundraising appeals involved asking 200 "Pioneers" to raise $100,000 each. The Pioneers did so by telephoning friends, writing letters, and "gather[ing] checks with a lot of zeroes."[22] Corporate and special interest groups also contributed money to the Bush campaign through such traditional appeals.

The cost of political campaigning is likely to remain high. In Mark Danner's gloomy appraisal, "American politicians have been forced to become a species of bagmen who collect money from the wealthy and deliver it to television in order to sell themselves to the voters."[23] According to Danner's assessment, political advertising this year will enrich the major networks and broadcast stations alone by $600 million.[24] Lavish spending is also taking place for advertisements on cable stations. Politicians are spending on this election at a rate that exceeds that of previous campaigns.[25] In fact, near the end of this election cycle, candidates began to worry about inadequate broadcast time to air their advertisements.[26] As *Business Week* observed, "Too many campaigns are chasing too few ad slots."[27] At last, we see a possible contribution of the Internet: cyberspace will offer endless space for political advertising. In the future, the Internet is likely to be assimilated into the machinery of election campaigning and will contribute to the increasing costs of campaigning.

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22. Van Natta, *supra* note 19, at 4.

23. Mark Danner, *The Shame of Political TV*, N.Y. REV. BOOKS, Sept. 21, 2000, at 101.

24. *See id.*

25. *See* Ruth Marcus, *U.S. Campaigns Fuel $3 Billion in Spending*, WASH. POST, Nov. 6, 2000, at A1.

26. *See* Lorraine Woellert & Tom Lowry, *A Political Nightmare: Not Enough Airtime*, BUS. WK., Oct. 23, 2000, at 110, 112.

27. *Id.*; *see also* Leslie Wayne, *Air Time is at Premium as Election Draws Near*, N.Y. TIMES, Nov. 1, 2000, at A30 (discussing the shortage of airtime for political advertising).

II. GREATER (MARGINAL) ELECTORAL PARTICIPATION FOR HIGHER SOCIO-ECONOMIC GROUPS

Beyond predicting cheaper elections, Morris asserts that the migration of the electoral franchise to online voting will stimulate greater voter participation. As an indication of this trend, Morris points to the online voting experiment in this year's Arizona Democratic primary. Morris concludes, "[w]hen voting online becomes part of a seamless web of participation through online voting on issues, the electorate will find new enthusiasm for the political process."[28] Cyber-voting will help reverse the trend of electoral apathy. My prediction here is more cautious: in my view, a move to online voting will lead to marginally greater rates of electoral participation for nonvoting holdouts in higher socioeconomic groups.

The low rate of participation in voting in the United States does more than reflect poorly on our civic virtue—it raises a threat to the legitimacy of American democracy. Frank I. Michelman's careful normative justification of voting helps explain the nature of this threat. Michelman attributes the American attachment to Election Day to rough intuitions of necessity and rough intuitions of human dignity and autonomy.[29] With reliance on John Rawl's work, he terms this result a matter of "pure procedural justice."[30] Michelman writes, "Political disagreements arise, and sometimes they have to be resolved—formerly, officially—so that the country and its people can get on with their lives."[31]

As fewer and fewer people participate in the franchise, however, there can be less of a sense that political disagreements have been resolved and that we can get on with our lives. Here we see that Michelman's work can be used to identify the danger of the low rate of electoral participation. As a consequence of this state of voter apathy, our leaders may increasingly rely on what Michelman terms a "substantive sense" of the majority.[32] As he portrays this concept,

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28. Morris, *supra* note 2, at 1051-52.
29. *See* Frank I. Michelman, *Why Voting?*, 34 LOY. L.A. L. REV. 985, 999 (2001).
30. *Id.* at 998.
31. *Id.* at 999.
32. *See id.* at 989-90.

it lacks appeal.

The substantive majority is a largely inchoate body, a "silent majority," that ambitious leaders can conjure up and that can be used to exclude others. The danger is that under an ever-declining rate of voter participation, electoral results will matter less than the "sensibility" of the so-called substantive majority. Politicians will compete not only to win elections, but in a continuous process of convincing the masses that they have best identified and translated the spirit of the substantive majority into the spirit of the laws.

The promise of Internet voting is to increase electoral participation and thereby bolster the normative role of the franchise that Michelman identifies—that is, the procedural role of voting. In my view, however, online voting is likely only to increase voting at the margin, and, at that, only by reducing the number of holdouts in groups already more likely to vote. Moreover, similar to initiatives such as Motor Voting Registration and Voting-by-Mail, online voting may prove unlikely to reverse the overall trend of diminishing electoral participation. In the November 2000 election, for example, overall voter turnout was only marginally greater than that in 1996—despite nearly $1 billion spent alone on campaign television advertisements.[33] Voter turnout in that election year remained considerably lower than for the 1992 presidential election.

To understand my gloomy conclusion about Internet voting, we can utilize a model from public choice theory to cast light on the dynamics of voting. In examining disappointing electoral participation in the United States, public choice scholars have examined the issues of both, "Why *don't* people vote?" and "Why *do* people vote?"[34] In answering these questions, the scholars have raised "the paradox of voting." This term refers to the puzzle that many Americans still vote although: (1) virtually no one expects that her vote will affect the outcome of an election, and (2) voting itself is not "costless," as it takes time to cast a ballot, and, for those who are conscientious, to find out how they should vote.[35] Under this

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33. *See* Yochi J. Dreazen, *Voter Turnout Stays Low Despite Barrage of Ads, Closeness of Race*, WALL ST. J., Nov. 9, 2000, at A16.

34. For a concise summary, see MAXWELL L. STEARNS, PUBLIC CHOICE AND PUBLIC LAW 64-72 (1997).

35. *See* DANIEL A. FARBER & PHILIP P. FRICKEY, LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION 24-25 (1991).

framework, Internet voting has the potential to lower the "costs" of electoral participation. It reduces the necessary investment in the time that it takes to cast a ballot or to find out information that will help one decide for whom to vote. Yet, this cost reduction only takes place for those who are already connected to the information superhighway.

At precisely this point, however, the "digital divide" emerges as a potent factor. This term refers to the uneven distribution of Internet access in the United States.[36] In general, Internet access at present tracks socio-economic status, and the digital divide may last as long as another generation. A Pew Foundation survey recently found, for example, that fifty-seven percent of those currently without Internet access do not plan to get it.[37] As a result of this disparity in Internet access, cyber-voting will have the greatest positive impact on the "costs" for the Internet "haves," that is, those who already have access to the Internet. Yet, those who have access to the Internet are likely to belong to social groups that are more likely to vote—groups of higher socio-economic status.

Under this analysis, a move to Internet voting appears to be a modest policy for reaching holdouts in groups already more likely to vote. In their review of existing empirical studies of Motor-Voter and Voting-by-Mail reforms, and their own analysis of the Arizona online voting experiment, R. Michael Alvarez and Jonathan Nagler reach the same conclusion. Alvarez and Nagler conclude that as "voting is made easier, it is those who already tend to vote who will take advantage of the easier voting."[38] While we might otherwise be ready to rejoice over every extra vote, the reforms of Motor-Voter and Voting-by-Mail, as Alvarez and Nagler note, have proved unable to narrow the turnout gap between those of different socio-economic status.[39] Indeed these attempts to increase flexibility in registration

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36. For a recent survey, see HARLAN LEBO, THE UCLA INTERNET REPORT: SURVEYING THE DIGITAL FUTURE 11-15 (2000), *at* http://www.ccp.ucla.edu/pages/internet-report.asp.

37. *See* AMANDA LENHART, PEW INTERNET & AM. LIFE PROJECT, *Who's Not Online: 57% of Those Without Internet Access Say They Do Not Plan to Log On* 2 (2000), *at* http://www.pewinternet.org/ reports/toc.asp?Report=21.

38. R. Michael Alvarez & Jonathan Nagler, *The Likely Consequences of Internet Voting for Political Representatives*, 34 LOY. L.A. L. REV. 1115, 1126 (2001).

39. *See id.* at 1122-26.

and voting mechanisms have been unable, at least so far, to reverse the overall downward trend of voting participation.[40] The procedural justification for voting, and, more generally, the norm of democracy as an ongoing participatory and electoral process is unlikely to receive much assistance from Internet voting.

III. THE DUBIOUS CHARMS OF INTERNET DIRECT DEMOCRACY

The final element in Morris's optimistic vision for the Internet concerns its heightening of direct democracy. He predicts, "[The Internet] will likely usher in a new era of more direct control of public decisions by the voters themselves and will probably further constrain the discretion of our elected officials in making decisions adverse to those sanctioned by public approval."[41] This process will occur because the public will have access to more information and public officials will be more obedient to online polls. In particular, Morris seems to have in mind a heightened influence for online polls, such as those that VOTE.com, his website, provides. Morris predicts that these polls will intimidate politicians into obedience to the *vox populi*. He writes, "[v]oters know they are being consulted, know they voted, become engaged in the decision, and will vent their anger at any of their elected representatives who ignore their wishes."[42] Although such polls will not be legally binding, they will be "politically binding."[43]

The nonbinding kind of Internet poll that Morris has in mind is likely to be less of a boon than he expects. At least four objections are possible to them. First, as long as we have a digital divide, we face a problem of inherently tainted results in any Internet opinion poll. Moreover, this taint is especially problematic because it moves results in favor of already favored socio-economic groups. Beyond the digital divide, a second objection to Internet opinion polls is that, to the extent that they rely on any kind of self-reporting, inaccuracies in the sampling of public desires are inevitable. The classic example of such a sampling flaw came in the newspaper poll before the

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40. *See* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 315 (2000).

41. Morris, *supra* note 2, at 1046.

42. *Id.* at 1049.

43. *Id.*

Roosevelt-Landon election of 1936 that asked people to write in their choice for the presidency. The result was a resounding victory for Landon.[44] To be sure, in a nation with low voting participation in official elections, a kind of sampling issue also arises. As I have noted, the danger of the low rate of electoral participation is that it may make our official elections seem less important, and therefore less decisive in resolving political issues. Yet, this difficulty will only be exacerbated when we face the issue of whether myriad online polls have resolved or not resolved any given issue.

The third difficulty with an online poll is the "framing effect." A frame is a particular fashion in which a choice is described.[45] Beginning with the path-breaking research of Daniel Kahneman and Amos Tversky, social psychologists have identified the pervasive impact of reference points in shaping decisions.[46] A classic example concerns the way in which people are more desirous of preventing loss than promoting gain and will favor options that are framed to emphasize this inclination.[47] A frame can also be shaped to build on information that people find more, rather than less, salient. Consider in this regard a poll at VOTE.com that inquires whether or not Vice President Gore's behavior in the final presidential debate was "obnoxious."[48] Each choice, yes and no, is quite literally "framed" by a box with additional information. The "pro" box states, "the Democratic nominee acted like a bully so much that former first lady Barbara Bush told ABC that she was worried he would 'hit' her son."[49] Thus, our vote in this poll is framed by our feelings about concepts such as "former first lady" and boys hitting other boys.

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44. *See* Eric Pace, *George H. Gallup is Dead at 82; Pioneer in Public Opinion Polling*, N.Y. TIMES, July 28, 1984, at 1.

45. *See* PHILIP G. ZIMBARDO & RICHARD J. GERRIG, PSYCHOLOGY AND LIFE 355 (15th ed. 1999).

46. *See* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCIENCE 453, 456 (1981).

47. Thus, Program A (save money by insulating your house) will be less effective in motivating people than Program B (stop losing money every day through lack of insulation). *See* ELLIOT ARONSON, THE SOCIAL ANIMAL 129-31 (7th ed. 1994).

48. *See Was Al Gore Obnoxious in the Final Presidential Debate?*, VOTE.com, *at* http://www.vote.com/vote/18243621/ (last visited Jan. 26, 2001).

49. *Id.*

Those who shape the frames for online polling will have a powerful role in influencing outcomes.

My fourth and final concern is that Internet polling will be as open to influence by special interests as direct democracy has proven to be in the offline world. Despite the heroic image of grassroots movements shaping referenda, the reality is frequently quite different. Public choice theorists have made us aware of the extent to which special interests seek to capture influence through "rent-seeking" in the legislative process. In a similar fashion, direct democracy can be open to manipulation. Consider this example of top down use of the referendum process in the offline world: Paul Allen, one of the cofounders of Microsoft and a billionaire, purchased the Seattle Seahawks football team and sought to obtain public financing of a new football stadium that would cost approximately $425 million.[50] Allen spent $6.3 million on a professional campaign to obtain the signatures necessary for a ballot referendum regarding the construction and to campaign for its approval.[51] In addition, he paid almost $4 million for the special election itself, that is, he footed the multimillion dollar cost of polling Washington state voters on this issue.[52] The referendum was held only slightly more than a month after the Washington Secretary of State and the Seahawks worked out this reimbursement agreement.[53] The measure passed with fifty-one percent of the votes with only slightly more than half of eligible voters participating.[54]

For even a nonbillionaire such as myself, it is obvious that it is worth spending less than eleven million to be able to gain control of $425 million of "Other People's Money." This example also demonstrates that those who have earned billions in cyberspace are already seeking to influence the process of lawmaking—and not just through rent-seeking from the legislative branch. Most crucially, it demonstrates that direct democracy is as open to top-down influence as the legislative process. Just as election professionals are now hired to gather signatures and to "sell" proposed direct lawmaking to

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50. *See* DAVID S. BRODER, DEMOCRACY DERAILED 171 (2000).
51. *See id.*
52. *See id.*
53. *See* Brower v. State of Washington, 969 P.2d 42, 47 (Wash. Ct. App. 1998).
54. *See id.* at 48.

the public through mass media advertising, we can expect a new breed of such consultants to be available to shape the process of online voting. The role of concerned reformers, including scholars who study the Internet, must be to think about how to limit the real dangers of this process on the Internet.

IV. PRIVACY PROBLEMS

For Morris, the political campaigns of the future will take place through personalized means such as targeted e-mail. Morris writes, "[n]ow that over 100 million Americans have e-addresses, the potential for targeted, free communication via e-mail is enormous."[55] He goes on to envision campaigns that involve "e-mail volleys attacking, parrying, and counter-thrusting up to the moment of Election Day morning."[56] This aspect of future campaigning can be thought of as involving "push" media. Morris also depicts a future aspect of electioneering that he calls the "voluntary campaign" in which citizens will only receive messages that they wish to hear.[57] He predicts, "[c]ampaigns will have to focus their attention on becoming sufficiently attractive to win the voters' attention rather than mapping out uninvited intrusions into their lives."[58] This aspect of campaigning involves "pull" media.

Whether or not push or pull media are involved, voters will only wish to be involved in online politics if an adequate level of information privacy is provided. To understand why voter participation in cyberspace politics will be closely affected by privacy concerns, one requires a sense of information privacy's normative purpose. Democratic social systems require information privacy because each citizen, whether acting within a single social role or multiple roles, requires some insulation from observation and influence. As the sociologist Robert Merton states, "[p]rivacy is not only a personal predilection, though it may be that, too. It is a requirement of social systems . . . ."[59] Information privacy is not derived from the state of nature or an inborn capacity of autonomy,

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55. Morris, *supra* note 2, at 1042.

56. *Id.*

57. *See id.* at 1043.

58. *Id.*

59. ROBERT K. MERTON, ON SOCIAL STRUCTURE AND SCIENCE 118 (Piotr Sztompka ed., 1996).

but from its essential relation to the health of a democratic society. It helps to form the society in which we live and to shape our individual identities.

As I have elsewhere proposed, standards of information privacy should be considered as normatively defining "information territories."[60]   These multidimensional data preserves will insulate personal data from different kinds of observation by different parties; these territories will shape patterns of knowledge and ignorance of personal data. The function of these preserves is to prevent different kinds of "outing," that is, revelation of otherwise fully or partially hidden aspects of one's life, before different audiences. After all, decision making in a democracy depends on individuals who are anchored in a variety of social settings.

Morris's push and pull media on the Internet will upset the existing data preserves that American society has developed for personal information relating to politics. As a first example of how current privacy standards will be altered, federal election law requires that federal campaigns collect information about donations they receive.[61] Accessing these data was once difficult.[62] Interested parties were generally obliged to visit the Federal Election Commission's (FEC's) office in downtown Washington, D.C. to view this information. These data are now increasingly available from multiple sources on the Internet. An op-ed article in the *New York Times* even reported on a website that sorts political contributions by zip code, which allows one to find out the political affiliations and activities of one's neighbors.[63]

As a second example of changes in the privacy balance, voter profiles are increasingly collected and sold. One political consulting

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60. *See* Paul M. Schwartz, *Beyond Lessig's Code for Internet Privacy: Cyberspace Filters, Privacy Control, and Fair Information Practices*, 2000 WIS. L. REV. 743, 761-62; Paul M. Schwartz, *Internet Privacy and the State*, 32 CONN. L. REV. 815, 834-43 (2000); Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 VAND. L. REV. 1609, 1658-66 (1999).

61. *See* 2 U.S.C. § 438 (1994).

62. *See, e.g.*, Fed. Election Comm'n (FEC) v. Legi-Tech, 967 F. Supp. 523, 535 (D.D.C. 1997) (holding that a computerized database service that provides subscribers with FEC information violated Federal Election Campaign Act section prohibiting commercial use of FEC contribution information).

63. *See* Fred Bernstein, *An Online Peek at Your Politics*, N.Y. TIMES, Oct. 4, 2000, at A35.

firm engaged in this trade, Aristotle International, has compiled the nation's largest voter database, which includes the names of 150 million Americans registered to vote.[64] The Aristotle database is precise enough to allow politicians to contact Democrats or Republicans in a given district between ages of forty-five and fifty-five who own their homes and have annual incomes of more than $75,000. Moreover, this company's database lists are sorted by characteristics such as ethnicity and gender. Aristotle is also helping politicians transmit campaign advertisements to specific voters using the Internet.[65] It is doing so by merging its database of offline activities with e-mail addresses.

Morris predicts that the Internet will heighten participation in voting through such means as targeted e-mails and websites attractive enough to gain our ongoing allegiance. Yet, the danger is that people will further retreat from involvement in politics if Internet activities create a continuous, opaque process in which one's interests and preferences are catalogued, stored, and shared with others. Indeed, information processing can become coercive of decision making itself when it undermines an individual's ability to make choices about participation in social and political life. The Internet, in the absence of the right kind of rules for privacy, will not have much promise to become a space for participation in political life.

V. CONCLUSION

In this Essay, I have responded to Dick Morris's predictions that the Internet will lead to cheaper elections, greater voter participation, and a more direct form of democracy. In my judgment, electoral activity in cyberspace will help increase electoral expenditures, have little effect on voter participation—apart from making it easier for Internet "haves" to exercise the electoral franchise—and make it

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64. *See* Aaron Pressman, *Voters for Sale*, INDUSTRY STANDARD, Nov. 6, 2000, *available at* http://www.thestandard.com/article/display/0,1151,19864,00.html.

65. *See id.* For an article about a database of Michigan voter profiles maintained by a company called Practical Political Consulting, see Jodi Wilgoren, *Getting a Lock on Michigan Voters, List by List*, N.Y. TIMES, Nov. 7, 2000, at A24.

possible for a new kind of top-down manipulation of referenda and other processes of direct democracy. Moreover, the Internet will upset the existing privacy preserves that American society has developed for personal information relating to political life. The danger is that the negative impact on information privacy will make individuals less willing to participate in politics.

After this pessimism, I wish to end this Essay on a positive note. As I have noted earlier, the Internet is malleable, and the critical task will be to shape cyberspace and the political process on it to avoid negative results and gather positive results from any move to online politics. As one indication of the kind of thought that is necessary, Jerry Kang has proposed inventive ways to create zones in cyberspace that might have a positive impact on race relations.[66] Similar in this respect to the ideas of Mogel and Karlan, Kang points to the potential value of virtual communities.[67] As this scholarship indicates, the Internet, while not a cure-all for the political ills of the United States, can help form part of a solution. It can help fulfill a prediction made by both Dick Morris and Leonard Cohen; the Internet can help democracy come to the U.S.A.

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66. *See* Jerry Kang, *Cyber-Race*, 114 HARV. L. REV. 1131 (2000).
67. *See id.*; *see also* Moglen & Karlen, *supra* note 14, at 1100.

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