
THE GEOGRAPHY OF CAMPAIGN FINANCE LAW

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Constitutional law is committed to a principle of geographic self-government: congressional districts and states are separately located and entitled to select different officials to send to Congress. James Madison explained in The Federalist Papers that checks and balances would only work if different places and their different politics were empowered to compete with and constrain one another. While constitutional law makes place significant for congressional elections, campaign finance law does not. Those with the resources to contribute often and in large amounts to congressional campaigns primarily reside in a few neighborhoods in a few metropolitan areas. Campaign finance law imposes no limitations and minimal disclosure on contributions from these places to other districts and states—places quite different than the ones where contributors reside. The result is that a few metropolitan areas dominate contributions to congressional campaigns.

Campaign finance law thus allows Congress to be controlled by very few places, dramatically undermining geographic self-government. While scholars have devoted substantial attention to other problematic features of money in politics, the geography of campaign finance law is a different constitutional problem justifying different constitutional solutions. This Article considers two types of legal responses: those that focus special attention on where campaign contributions are beginning and those that focus special attention on where campaign contributions are ending. While

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both types of solutions have their own respective constitutional benefits and negatives, they both share a common insight. Only by making campaign finance law conscious of place can we begin to address the problems of the geography of campaign finance law.

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INTRODUCTION

A few places in the United States control congressional elections in the rest of the country. A handful of metropolitan areas now feature the wealthiest Americans who contribute at substantially greater rates and in

substantially greater amounts to congressional campaigns.¹ Campaign finance law imposes no limitations and minimal disclosure on contributions from these places to other districts and states—places quite different than the ones where contributors reside.² After cases like *Citizens United v. FEC*³ and *McCutcheon v. FEC*,⁴ campaign finance law even indirectly privileges the types of independent spending vehicles concentrated in wealthier metropolitan areas.

The result is simple but profound: donors in five percent of the nation's zip codes—concentrated in the nation's major metropolitan areas—contribute more than three times as much in itemized contributions to federal elections than the rest of the country combined,⁵ with similar numbers being true of congressional elections in particular.⁶ As one even more recent study found, “[t]he average member of the House received just 11% of all campaign funds from donors inside the district,” with a handful of metropolitan areas dominating the list of donors.⁷ Different political communities elsewhere in the United States exercise limited power to select their own members to Congress. Places as divergent as Pittsburgh or Portland—or the rural areas surrounding them—have their voices in congressional elections drowned out by the voices of places like Houston or Los Angeles.

These circumstances raise a problem of constitutional proportion: they undermine our constitutional commitment to geographic self-government structuring how Congress is elected. James Madison thought it crucial that the Congress created by the new Constitution would represent the many

1. See James G. Gimpel, Frances E. Lee & Joshua Kaminski, *The Political Geography of Campaign Contributions in American Politics*, 68 J. POL. 626, 629–32 (2006); James G. Gimpel, Frances E. Lee, & Shanna Pearson-Merkowitz, *The Check Is in the Mail: Interdistrict Funding Flows in Congressional Elections*, 52 AM. J. POL. SCI. 373, 374, 377–78 (2008); James G. Gimpel, Frances E. Lee & Rebecca U. Thorpe, *The Wellsprings of Candidate Emergence: Geographic Origins of Statewide Candidacies in the United States*, 30 POL. GEOGRAPHY 25, 27 (2011).

2. See *infra* Part II.B.

3. *Citizens United v. FEC*, 558 U.S. 310 (2010).

4. *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

5. See Brittany H. Bramlett, James G. Gimpel & Frances E. Lee, *The Political Ecology of Opinion in Big-Donor Neighborhoods*, 33 POL. BEHAV. 565, 565–66 (2011).

6. See Gimpel, Lee & Kaminski, *supra* note 1, at 631–32.

7. Anne Baker, *The More Outside Money Politicians Take, the Less Well They Represent Their Constituents*, WASH. POST: MONKEY CAGE (Aug. 17, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/08/17/members-of-congress-follow-the-money-not-the-voters-heres-the-evidence> [hereinafter Baker, *The More Outside Money*] (summarizing findings). See also Anne E. Baker, *Getting Short-Changed? The Impact of Outside Money on District Representation*, 97 SOC. SCI. Q. 1096 (2016) (reporting comprehensive findings).

different places in the American “large republic.”⁸ This feature of legislative design was crucial not just for the success of the Congress, but also for the success of the entire Constitution. Madison explained that “local situation[s]” would shape ideological priorities and perspectives.⁹ Madison’s argument about political spillovers has been validated by political scientists.¹⁰ Checks and balances would operate only if “opposite and rival interests” competed with and constrained one another,¹¹ and those in different places would always have opposite and rival interests *because* they were in different places.

Scholars have yet to grapple with these problems fully. For those few scholars paying attention to the geography of campaign finance law, the details of where campaign contributions come from and where they go are largely ignored.¹² By and large, the intellectual oxygen related to campaign finance law has been occupied by those focusing on the constitutional dimensions of the power that the wealthy enjoy to shape federal elections.¹³

8. See THE FEDERALIST NO. 10, at 126–28 (James Madison) (Isaac Kramnick ed., 1987) (highlighting the differences between a “large” and a “small” republic).

9. See *id.* at 125–28.

10. The examples of this genre of scholarship are too numerous to list, but for some particularly compelling examples, see generally Shaun Bowler, Todd Donovan & Joseph Snipp, *Local Sources of Information and Voter Choice in State Elections: Microlevel Foundations of the “Friends and Neighbors” Effect*, 21 AM. POL. Q. 473 (1993); Seth C. McKee & Jeremy M. Teigen, *Probing the Reds and Blues: Sectionalism and Voter Location in the 2000 and 2004 U.S. Presidential Elections*, 28 POL. GEOGRAPHY 484 (2009); Jeffrey J. Mondak & Damaris Canache, *Personality and Political Culture in the American States*, 67 POL. RES. Q. 26 (2014); Jonathan Rodden, *The Geographic Distribution of Political Preferences*, 13 ANN. REV. POL. SCI. 321 (2010); Chris Tausanovitch & Christopher Warshaw, *Representation in Municipal Government*, 108 AM. POL. SCI. REV. 605 (2014).

11. THE FEDERALIST NO. 47, *supra* note 8, at 302–03 (James Madison). For an account of the importance of this principle, see David Fontana, *Government in Opposition*, 119 YALE L.J. 548, 581–95 (2009); David Fontana & Aziz Huq, *Institutional Dispositions in Constitutional Law*, 85 U. CHI. L. REV. (forthcoming 2018) (manuscript at 15–17) (on file with authors).

12. For those critical of campaign contributions flowing across districts and states, see JOHN PAUL STEVENS, SIX AMENDMENTS: HOW AND WHY WE SHOULD CHANGE THE CONSTITUTION 59 (2014) (“[I]t is unwise to allow persons who are not qualified to vote—whether they be corporations or nonresident individuals—to have a potentially greater power to affect the outcome of elections than eligible voters have.”); Anthony Johnstone, *Outside Influence*, 13 ELECTION L.J. 117, 117 (2014) (“The article suggests [the constitutionality] of . . . state regulations of outside influence across a range of political activities.”). For those supportive of this practice, see Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077, 1135–42 (2014); Todd E. Pettys, *Campaign Finance, Federalism, and the Case of the Long-Armed Donor*, 81 U. CHI. L. REV. DIALOGUE 77 (2014). Richard Briffault is the rare scholar to identify the geographically-limited origins of campaign contributions. See Richard Briffault, *Of Constituents and Contributors*, 2015 U. CHI. LEGAL F. 29, 36 (2015) (“[M]ost . . . non-constituent money c[omes] . . . from further away.”).

13. See, e.g., LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT xi (2011) (defining campaign finance reform to address the power of the wealthy as the “only issue in this country” and the issue to which “every important issue in American politics today is

The geography of campaign finance law is a conceptually different and prior problem. Communities defined by the absence of wealth are different communities than the geographical communities that the Constitution protects. A primary reason why wealthy communities controlling elections is a problem in the first place is because it leaves other Americans who constitute a separate political community without their own voice.¹⁴ Whether the wealthy constitute a different political community will depend on whether the wealthy are geographically integrated or—as in the United States now—geographically isolated.

This Article proceeds in four steps. Part I considers the role of place in democratic self-government. There is a long and deep commitment to geographic self-government in Congress as a matter of constitutional design and in judicial doctrine implementing that design. Part I argues that this principle remains vital today because we still live near those like us and we are made more like them simply by living near them. As the political scientist Jonathan Rodden has put it, “the probability that two randomly drawn individuals (or precincts) exhibit similar voting behavior is a function of the distance between their locations.”¹⁵

Part II considers the role of place in campaign finance law. Campaign finance law does not constrain or even mandate meaningful disclosure of contributions across districts or states. Part II further notes how after *Citizens United v. FEC*¹⁶ and *McCutcheon v. FEC*,¹⁷ campaign finance doctrine indirectly prioritizes “contributor areas” by liberating classes of contributions that disproportionately originate in these areas.

Part III turns to the normative problems created for geographic self-government by these features of campaign finance law. The exclusive focus is on congressional elections. Geographic self-government matters more for these elections, and these elections feature fewer small donors than presidential elections—and dollars can be important in more ways in

“tied”); Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 346 (2009) (arguing that “a serious problem” in the United States today is the campaign finance “seductions of a wealthy community”).

14. See, e.g., Lawrence Lessig, *What an Originalist Would Understand “Corruption” to Mean*, 102 CALIF. L. REV. 1, 13–15 (2014) (defining corruption and the problems with campaign finance law as involving an “improper dependence” on narrower groups than the whole public); Teachout, *supra* note 13, at 373–74 (defining “political corruption” as a “self-serving use of public power for private ends” by “narrow” political factions).

15. Rodden, *supra* note 10, at 322.

16. *Citizens United v. FEC*, 558 U.S. 310 (2010).

17. *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

congressional elections.¹⁸ Part III identifies how congressional districts and states face incentives to select candidates, run campaigns, and feature elected officials that cater excessively to the places where campaign money is located.

Part IV evaluates two different types of constitutional solutions to address these problems. The first and more problematic response is to constrain the places where too many campaign contributions are originating. The second and more compelling response is to empower the places where too few campaign contributions are beginning. While both types of solutions have their own respective constitutional benefits and negatives, they both share a common insight. Only by making campaign finance law conscious of place can we begin to address the problems of the geography of campaign finance law.

A caveat is in order about the geography of campaign finance law after the presidential election of 2016. Media coverage of that election has focused on these areas in America that have been left out of most of our political debates, and has suggested that the intensity of their support for Donald J. Trump during the 2016 election counterbalanced any contributions, and marks the political rebirth of these areas because of their greater political mobilization.¹⁹ There are reasons to be skeptical of the internal and external validity of this claim for purposes of this Article. First, the recipient areas identified in this Article includes many areas of the country beyond just the areas that supported Trump. Portland, for instance, did not support Trump, yet is a recipient area. Second, presidential elections are different than congressional elections. Greater political interest and information can counterbalance the power of campaign contributions. Third, if this narrative of recipient-area power does prove to be true—a claim of which I am skeptical—this does not undermine the claims in this Article. Many years of their voices being left out of Congress because of the geography of campaign finance law can explain any popular mobilization that counterbalances the power of contributors.

I. THE PLACE OF DEMOCRATIC SELF-GOVERNMENT

The Constitution was designed to create geographically separated congressional districts and states that would have at least some degree of

18. See, e.g., PETER L. FRANCA ET AL., *THE FINANCIERS OF CONGRESSIONAL ELECTIONS: INVESTORS, IDEOLOGUES, AND INTIMATES* 27–28 (2003) (comparing the empirics of congressional and presidential elections).

19. See, e.g., Robert Leonard, *Why Rural America Voted for Trump*, N.Y. TIMES, Jan. 5, 2017, at A23.

minimally separate electoral existence. Citizens in different places were believed to constitute different political communities *because* these citizens were in different places. Geographical distances generating political differences was a crucial feature of constitutional design to be leveraged, rather than a bug to be tolerated. Geographical distance helped define which political communities selecting officials to the legislature would be different enough that they should select their own officials. Geographical distance ensured that the officials sent to the legislature by these separated communities would be different enough that they would constrain and check one another.

The Supreme Court has treated this principle of geographic self-government as a free-standing principle, similar to a principle like the separation of powers.²⁰ Congressional districts and states are considered to be autonomous political communities constitutionally entitled to protect threats to their core existence. After several centuries of this constitutional design and doctrine, there is good empirical evidence produced by political scientists to believe that Madison's account of political spillovers is still accurate.

A. DESIGN

James Madison's famous essay in *Federalist Paper* No. 10 is a good place to start to understand geographic self-government in the legislature.²¹ Madison noted that the United States was a large territory composed of different interests.²² These different interests would never be identical, Madison argued, because the United States was a large territory. People far away from one another would always think differently because "local situation[s]" would shape their ideological priorities and perspectives.²³

Madison was previewing—and generating the foundations for—the

20. See generally John F. Manning, *Separation of Powers as Ordinary Interpretation*, 124 HARV. L. REV. 1939, 1941 (2011) ("The Supreme Court applies the structural provisions of the Constitution by relying on an overarching framework of 'separation of powers.'").

21. See Larry D. Kramer, *Madison's Audience*, 112 HARV. L. REV. 611, 611 (1999) (describing and criticizing the understanding of this essay as "the ur-text of American constitutional theory"). See also Frank H. Easterbrook, *The State of Madison's Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328, 1333 (1994) (describing the essay as "the best piece of political philosophy penned on this side of the Atlantic").

22. See Kramer, *supra* note 21, at 612 ("[W]hile eliminating the threat of faction might be impossible, Madison thought . . . [to] [e]xtend the republic's sphere . . . and the very diversity of the society will provide a margin of safety by, in effect, disabling any group from capturing or controlling government.").

23. THE FEDERALIST NO. 10, *supra* note 8, at 125–26 (James Madison).

important work of social scientists a century later, arguing that people were meaningfully shaped by those closest to them.²⁴ Individuals ideologically sort into and out of different physically defined communities. Once in these communities, individuals are shaped politically by those around them. As Cass Sunstein has written, we have much evidence showing that “[p]eople frequently think and do what they think and do because of what they think (relevant) others think and do.”²⁵ The most frequent and most important relationships we have are still with those most proximate to us.²⁶ These proximate relationships expose us to “argument pools.”²⁷ These argument pools define to officials what arguments are better or worse, and even what arguments are “on-the-wall” and “off-the-wall.”²⁸ These proximate relationships also produce personal and professional reputational costs for defying ideological norms.²⁹ These proximate influences that Madison identified have come to be called “spillovers.”³⁰ Legal scholars have focused mostly on economic spillovers,³¹ but the literature also suggests that there

24. See ALFRED MARSHALL, *PRINCIPLES OF ECONOMICS* 271 (reprint 2013) (8th ed. 1920) (noting that when others are physically proximate “[t]he mysteries of the trade become no mysteries; but are as it were in the air”).

25. CASS R. SUNSTEIN, *DESIGNING DEMOCRACY: WHAT CONSTITUTIONS DO* 16 (2001). See also Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607 (2000) (summarizing this literature about social influences). For the literature about place-specific influences on political behavior, see generally, for instance, Matthew Gentzkow & Jesse M. Shapiro, *Ideological Segregation Online and Offline*, 126 Q.J. ECON. 1799 (2011); Ian McDonald, *Migration and Sorting in the American Electorate: Evidence from the 2006 Cooperative Congressional Election Study*, 39 AM. POL. RES. 512 (2011); Marc Meredith, *Exploiting Friends-and-Neighbors to Estimate Coattail Effects*, 107 AM. POL. SCI. REV. 742 (2013); Nolan McCarty et al., *Geography and Polarization* (Aug. 26, 2013), https://web.stanford.edu/~jrodden/wp/geo_polar_apsa2013_V4.pdf.

26. See Luis M.A. Bettencourt, *The Origins of Scaling in Cities*, 340 SCIENCE 1438, 1439 (2013) (“The average number of local interactions per person [is affected by their spatial distance] . . .”); Diana Mok et al., *Does Distance Matter in the Age of the Internet?*, 47 URB. STUD. 2747, 2750 (2010) (noting how empirical evidence suggests that technology “work[s] synergistically with face-to-face contact”).

27. See Sushil Bikhchandani et al., *A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades*, 100 J. POL. ECON. 992, 995 (1992) (explaining the implications of limited argument pools). Cf. Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 715–35 (1999) (discussing how limited argument pools shape preferences).

28. See Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927, 945 n. 59, 945–48 (2006) (discussing how arguments that are “off-the-wall” have a difficult time being accepted in constitutional discourse).

29. See Damon Centola, *The Spread of Behavior in an Online Social Network Experiment*, 329 SCIENCE 1194, 1194, 1197 (2010) (“Whereas locally clustered ties may be redundant for simple contagions, like information or disease, they can be highly efficient for promoting behavioral diffusion.”).

30. See, e.g., Mario Forni & Sergio Paba, *Spillovers and the Growth of Local Industries*, 50 J. INDUS. ECON. 151, 161–63 (2002) (defining the use of “spillovers” in modern social science).

31. See, e.g., Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 192–209 (2001) (discussing how spillovers based on proximity should affect interlocal bargains); David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1673–77 (2013) (discussing what spillovers mean for zoning laws); Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic*

are political spillovers of the kind that Madison identified.³²

This understanding of geography as generating ideological heterogeneity was central to the original constitutional design. Because citizens in different places would be in different political communities, it made sense to allocate representation on the basis of geography. Indeed, our commitment to geographic self-government in the legislature “is so strong that prescriptions that call it into question are highly implausible.”³³ More than any other country in the world (except for the American-influenced system in the Philippines), where you physically reside in the United States³⁴ plays a crucial role in defining your electoral community for legislative elections.³⁵

Seats in the House of Representatives are apportioned among physical territories known as states.³⁶ The Constitution also requires that districts be created within the physical confines of each state.³⁷ If a candidate is elected to the House, that candidate must at minimum be an inhabitant of the particular state in which their House district is located.³⁸ Only voters within

City, 123 HARV. L. REV. 483, 483–88 (2009) (arguing that cities should regulate mobile capital in different ways because of the benefits of proximate locations).

32. See THE FEDERALIST NO. 10, *supra* note 8, at 126–28 (James Madison).

33. Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 776 n.18 (2013).

34. For instance, most laws define where individuals can vote as “that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.” N.Y. ELEC. LAW § 1-104(22) (McKinney 1998). See also IND. CODE § 3-5-2-42.5 (2017) (defining residence as the physical place where an individual has a permanent home); KAN. STAT. ANN. § 25-407 (West 2016) (same); KY. REV. STAT. ANN. § 116.035(1) (West 2016) (including a similar definition of residence and including several factors to define “permanent home”).

35. See John M. Carey & Matthew Soberg Shugart, *Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas*, 14 ELECTORAL STUD. 417, 425 (1994) (devising empirical measures to prove that the American system is strongly territorially-based). See also Frances E. Lee, *Geographic Representation and the U.S. Congress*, 67 MD. L. REV. 51, 52 (2007) (noting the importance of “geographic constituencies” to understanding the American system).

36. See U.S. CONST. art. I, § 2 (“Representatives . . . shall be apportioned among the several States . . .”).

37. The Supreme Court has used the territory-oriented “compactness and contiguity” as a relevant criterion in evaluating the constitutionality of how a district is drawn. See *Bush v. Vera*, 517 U.S. 952, 1048 (1996). The Court uses other criteria beyond territorial considerations in deciding whether how district lines are drawn are proper, but territorial considerations are always important. See *Bush v. Vera*, 517 U.S. 952, 965, 966, 1016 (1996); *Shaw v. Hunt*, 517 U.S. 899, 908, 938–39 (1996); *Miller v. Johnson*, 515 U.S. 900, 907, 910 (1995). See also *Miller*, 515 U.S. at 920 (“When members of a racial group *live together* in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes.”) (emphasis added) (quoting *Shaw v. Reno*, 517 U.S. 630, 646 (1993)). While this influences what makes for an acceptable physical boundary of the district, the important point for the purposes of this Article is that every district eventually can be defined by its physical boundaries.

38. See U.S. CONST. art. I, § 2 (stating that each person elected to the House must “be an Inhabitant

those districts can vote for representatives from those districts.³⁹

Elections to the Senate are structured by states defined by their physical boundaries.⁴⁰ If a candidate is elected to the Senate, that candidate must at minimum be an inhabitant of the particular state from which they are elected.⁴¹ The relevant community of voters is those within the physical territory that creates particular states.⁴²

Geographic self-government was important for more reasons than just defining political communities. It was a crucial mechanism to ensure the checks and balances necessary to preserve the Constitution. Madison and his contemporaries wanted to ensure that no single faction would dominate the federal government.⁴³ The search was on for mechanisms that would ensure multiple factions would constantly exist and could be empowered to constrain one another in perpetuity.⁴⁴ This mechanism generating “opposite and rival interests”⁴⁵ could not be “a mere demarcation on parchment of the constitutional limits”⁴⁶ of government. There needed to be features of human existence—a social or political mechanism—that would ensure different factions.

of that State in which he shall be chosen” at the moment “when elected”).

39. *See id.* (“The House of Representatives shall be composed of Members chosen . . . by the People of the several States . . .”).

40. *See* U.S. CONST. art. I, § 3 (“The Senate of the United States shall be composed of two Senators from each State . . .”).

41. *See id.*

42. *See* U.S. CONST. amend. XVII (“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof . . .”). Changes to these physical borders require special constitutional procedures. *See* U.S. CONST. art. IV, § 3 (“New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”). For a fantastic discussion of how these borders can be changed, see generally Joseph Blocher, *Selling State Borders*, 162 U. PA. L. REV. 241 (2014).

43. THE FEDERALIST NO. 10, *supra* note 8, at 122 (James Madison) (“Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed . . . as when he contemplates their propensity to this dangerous vice.”). *See also* THE FEDERALIST NO. 47, *supra* note 8, at 303 (James Madison) (describing the concentration of powers in a single faction as “the very definition of tyranny”).

44. *See* THE FEDERALIST NO. 10, *supra* note 8, at 127 (James Madison) (arguing for the necessity of “distinct parties and interests”); THE FEDERALIST NO. 51, *supra* note 8, at 319–20 (James Madison) (arguing for the importance of different “will[s]” and “ambition[s]”); Jon D. Michaels, *An Enduring, Evolving Separation of Powers*, 115 COLUM. L. REV. 515, 525 (2015) (“The Framers . . . endowed each group with distinct dispositional, political, and institutional characteristics. And they made each group answerable to different sets of constituencies . . .”).

45. *See* THE FEDERALIST NO. 47, *supra* note 8, at 302–03 (James Madison).

46. THE FEDERALIST NO. 48, *supra* note 8, at 312 (James Madison).

Geography was a mechanism that Madison and his contemporaries turned to in order to generate different factions. In smaller countries, there would not be enough geographical distance to generate perpetual ideological heterogeneity.⁴⁷ The American large republic, though, would constantly feature “a greater . . . extent of territory”⁴⁸ and therefore constantly generate the necessary factional heterogeneity. One faction “may kindle a flame within their particular States, but will be unable to spread a general conflagration” because those in other places would not be enticed by the flame due to their “local situation[s].”⁴⁹ There is a debate about whether Madison’s *Federalist Paper* No. 10 was an original and/or influential essay at the time, but the claim reflected in his essay—that geography would shape political community—seems to have been widely shared.⁵⁰

Because different factions would exist in different places, different places had to be empowered to ensure factional competition. Different places would have the “personal motives” to resist other places, and just needed “the constitutional means . . . to resist encroachments.”⁵¹ Congressional districts and states were the formal identities given to these different places empowered to select different officials.

Geographic self-government was meant to ensure this ideological heterogeneity in the legislature in service of checks and balances. Protecting the separate identity of districts and states from fundamental threats, then, became a central part of the checks and balances. Mechanisms to ensure “opposite and rival interests”⁵² competing with and constraining one another needed to have some practical bite for this to be achieved. If all that was required was that districts were represented by “[i]nhabitant[s]”⁵³ of the state of the district and selected by the “people”⁵⁴ of the state of the district, then all districts within that state could select the exact same representatives to

47. THE FEDERALIST NO. 10, *supra* note 8, at 127 (James Madison) (“The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.”).

48. *See id.*

49. *Id.* at 125–28.

50. Larry Kramer is *Federalist Paper* No. 10’s greatest critic, yet even he recognizes that the argument about geography shaping community was widely held. *See Kramer, supra* note 21, at 612 (noting the questions shared by many at the time about how to handle the many factions created by “a greater number of parties and territory”).

51. *See* THE FEDERALIST NO. 51, *supra* note 8, at 319 (James Madison).

52. THE FEDERALIST NO. 47, *supra* note 8, at 302–03 (James Madison).

53. U.S. CONST. art. I, § 2.

54. *Id.*

the House of Representatives. If all that was required was that “states” were represented in the Senate by senators selected by “the people” of the state,⁵⁵ then states could select the exact same senators to the Senate. Formalities would not ensure the heterogeneities necessary for factional competition—and for the checks and balances that would result.

This principle of geographic self-government was meant to authorize protective action when it was threatened. Citizens from outside of districts and states were expected and permitted to influence other districts and states, so long as this did not excessively undermine geographic self-government. *Federalist Paper* No. 10, for instance, anticipates that ambitious political leaders would try to persuade citizens in all districts and in all states to support their cause.⁵⁶ There is a First Amendment protecting efforts by those in one district or state trying to convince those in another district or state. Instead of ensuring that control over elections from outside of a district or a state could never exist, the focus was on ensuring that it did not go too far and entirely destroy geographic self-government.⁵⁷

B. DOCTRINE

We must protect this principle of geographic self-government, then, as a matter of constitutional obligation.⁵⁸ Courts have implemented this principle of geographic self-government. There is no singular constitutional provision that has been used to justify this principle of geographic self-government. Rather, there is a sense that the general constitutional structure yields this principle.⁵⁹ While cases primarily have applied this principle in

55. U.S. CONST., amend. XVII.

56. See THE FEDERALIST NO. 10, *supra* note 8, at 126–28 (James Madison) (“[F]actionous leaders . . . will [try] spread a general conflagration through the other States.”).

57. See *id.* at 123 (“There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence It could never be more truly said than of the first remedy, that it was worse than the disease.”); *id.* at 127 (“[A]s each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried”).

58. Scholars supportive of defining the American political community in national terms do not seem to engage fully with this notion that geographic self-government is not just a practical consideration, but also a constitutional obligation. For instance, Malcolm Feeley and Edward L. Rubin’s classic critique of the “national neurosis” of federalism admits to focusing exclusively on “policy reason[s].” Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903, 904–09 (1994).

59. See *Foley v. Connelie*, 435 U.S. 291, 294 (1978) (noting how this principle derives from “fine, and often difficult, questions of values”); *Sugarman v. Dougall*, 413 U.S. 634, 641 (1973) (noting Sugarman’s argument that there is a “fundamental concept of identity between a government and the members, or citizens, of the state”). See also *Sugarman*, 413 U.S. at 641–42 (“[T]he public employer has broad discretion to establish qualifications for its employees related to the integrity and efficiency of the

the context of states, courts have noted its applicability in the context of districts as well.⁶⁰ The doctrinal questions focus on the magnitude of the self-government interest combined with the magnitude of the threat to this self-government interest. If important matters of self-government are being interfered with in important ways, then geographic self-government is at risk and countermeasures are constitutionally important.

Courts first look to see whether the self-government interest at stake is so important that it is “intimately related to the process of democratic self-government.”⁶¹ Courts examine whether there are interests related to “the formulation, execution, or review of broad public policy.”⁶² Because of the importance of Congress, and the importance of geographic self-government to Congress, ensuring that districts and states have some minimal separate existence is presumably crucial to democratic self-government. By contrast, “the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions”⁶³ have been determined not to be sufficiently related to self-government.⁶⁴

Courts then look to see whether the interference with self-government is substantial. The Supreme Court has so far permitted the protection of the autonomy of districts or states only when their fundamental existence is at stake.⁶⁵ The doctrinal question is therefore not what existing scholarship assumes: whether citizens from another district or state can participate in the elections of a different district or state *at all*.⁶⁶ The doctrinal question is whether citizens from another district or state are exercising *too much* power in a different district or state.

operations of government.”).

60. See *Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982) (“Self-government, whether direct or through representatives, begins by defining the scope of the community of the governed and thus of the governors as well”); *Bluman v. FEC*, 800 F. Supp. 2d 281, 288–89 (D.D.C. 2011) (“In our view, spending money to influence voters and finance campaigns is at least as (and probably far more) closely related to democratic self-government than serving as a probation officer or public schoolteacher.”), *aff’d*, 565 U.S. 1104 (2012) (mem.).

61. *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

62. *Sugarman*, 413 U.S. at 647. See also *Foley*, 435 U.S. at 297–99 (asking whether the interest at stake involves “basic functions of government,” the “most sensitive areas of daily life” or involves “broad discretionary powers”).

63. *Foley*, 435 U.S. at 294.

64. For other cases in which the self-government interest is too minimal, see generally *Examining Bd. of Eng’rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976); *In re Griffiths*, 413 U.S. 717 (1973).

65. If the interference with self-government was trivial, it would be enough of a threat to “the process democratic of self-government.” *Bernal*, 467 U.S. at 220.

66. See, e.g., STEVENS, *supra* note 12, at 59 (proposing that only those entitled to vote in an election cannot contribute at all to candidates in that election).

If important stakes are being interfered with in important ways, then there is broad discretion to act to protect districts and states.⁶⁷ There is a legitimate “sovereign’s obligation ‘to preserve the basic conception of a political community.’”⁶⁸ Therefore, as the Supreme Court stated in *Holt Civic Club v. City of Tuscaloosa*, “a government unit may legitimately restrict the right to participate in its political processes to those who reside within its borders.”⁶⁹ Geographically defined self-governing units can “establish [their] own form of government and limit the right to govern.”⁷⁰

C. VIABILITY

Scholars have debated whether this constitutional commitment to geographic self-government makes any continued practical sense in an increasingly geographically mobile country.⁷¹ The modern empirical literature, though, finds that Madison had it right in *Federalist Paper* No. 10: local situations still do shape how we think and do create different geographically-defined political communities.⁷² The empirical literature finds even more specifically that “contributor areas” where campaign money is originating have different ideological priorities and perspectives than the “recipient areas” where campaign money is ending.

The argument that geography no longer defines political communities worth protecting—regardless of the constitutional obligation to do so—is most prominently featured in modern federalism scholarship. Skeptics of the continued need for federalism conclude that states no longer are distinctive political communities. Ernest Young, in an important new paper critical of this perspective, calls this the “One Nation” argument.⁷³ Malcolm Feeley and

67. See *Bernal*, 467 U.S. at 220–21 (describing the power to act within “broad boundaries”); *Sugarman*, 413 U.S. at 641 (noting “broad discretion”).

68. *Foley*, 435 U.S. at 296.

69. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68–69 (1978).

70. *Bernal*, 467 U.S. at 221.

71. For the most notable examples of these criticisms, see, MALCOLM M. FEELEY & EDWARD RUBIN, *FEDERALISM: POLITICAL IDENTITY AND TRAGIC COMPROMISE* 115 (2008) (“[T]he American people . . . have a unified political identity . . . [T]hey identify themselves primarily as Americans [and] insist on normative uniformity throughout the nation.”); Bulman-Pozen, *supra* note 12, at 1110 (“[A]ccounts that treat state identities as distinctive, deep-seated, and fixed face a host of complications.”); Jane Mansbridge, *Rethinking Representation*, 97 AM. POL. SCI. REV. 515, 522 (2003) (supporting the emergence of surrogate representatives because of a national polity, one “with whom one has no electoral relationship—that is, a representative in another district”).

72. See Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 HARV. L. REV. 1903, 1915 (2012) (“[G]eographic clusters are relatively common, while both random and uniform spatial distributions are relatively unusual.”). See also *supra* note 8.

73. See Ernest A. Young, *The Volk of New Jersey? State Identity, Distinctiveness, and Political Culture in the American Federal System* 8–14 (Feb. 24, 2015) (unpublished manuscript),

Edward Rubin are most prominently and most aggressively associated with this position.⁷⁴ Jessica Bulman-Pozen makes similar arguments in a recent article.⁷⁵ In her account, states become the institutional sites for the liberal-conservative divide to empower whichever ideological side is out of power at the national level.⁷⁶ There is no substantial need to create institutional sites for state-based ideological perspectives.⁷⁷

The empirical evidence suggests otherwise.⁷⁸ Political spillovers of the kind that Madison identified are still important, as discussed earlier. Consider empirical studies amplifying these findings. In one example, Oklahoma City Republicans are more conservative than Republicans in Tulsa in the same state, and much more conservative than Republicans in Boston.⁷⁹ For instance, when asked whether they wanted to “[p]rohibit illegal immigrants from using emergency hospital care and public schools,” Oklahoma City Republicans have different preferences than Tulsa Republicans, and much different preferences than Boston Republicans.⁸⁰

Of importance for this Article is that contributor areas are separated from and therefore different from recipient areas. Contributor areas feature people much more likely to travel to and interact with other contributor

http://scholarship.law.duke.edu/faculty_scholarship/3431. See also *id.* at i–ii (“I conclude that reports of the death of state identity are greatly exaggerated.”).

74. See Edward L. Rubin, *Puppy Federalism and the Blessings of America*, 574 ANNALS AM. ACAD. POL. & SOC. SCI. 37, 45–46 (2001) (“At present, the United States is a socially homogenized and politically centralized nation. Regional differences between different parts of the nation are minimal With the minor exceptions of Utah and Hawaii, there is no American state with a truly distinctive social profile.”).

75. See Bulman-Pozen, *supra* note 12, at 1081 (“People may identify with the states not because they represent something essentially different from the nation, but rather because they represent competing Democratic and Republican visions of the national will.”).

76. See *id.* (“Focusing on partisanship suggests that state-based identification may be fluid and partial—and, perhaps paradoxically, a means of expressing national identity—but nonetheless an important buttress of American federalism.”).

77. See *id.* at 1110–11 (“Today, individuals from Montana to Mississippi to Maine can eat at the same restaurant chains, shop at the same stores, read the same publications, and listen to the same music.”).

78. See *supra* note 10.

79. The raw data for this analysis is derived from several sources. Part of this data was published in two articles in political science journals. See generally Tausanovitch & Warshaw, *supra* note 10; Chris Tausanovitch and Christopher Warshaw, *Measuring Constituent Policy Preferences in Congress, State Legislatures, and Cities*, 75 J. POL. 330 (2013). The original data can be found online. See *City-Level Public Preference Estimates, Original Release*, AM. IDEOLOGY PROJECT, <http://www.americanideologyproject.com> (last visited Aug. 1, 2017) [hereinafter *City-Level Estimates*].

80. This is derived from the raw data provided by *City-Level Estimates*, *supra* note 79. There is also supportive data to be found in Tausanovitch & Warshaw, *supra* note 10, at 609.

areas.⁸¹ Contributor-area residents do not tend to relocate to recipient areas.⁸² The same is also true of those in recipient areas as well—they tend to interact with and stay in recipient areas. Residents of New York City, for instance, are much more likely to travel to or interact with those in Boston or Washington than with those in Pittsburgh or Portland, or to relocate to Boston or Washington than to Pittsburgh or Portland.⁸³ As Madison said, this means that different “local situation[s]” shape their ideological priorities and perspectives.⁸⁴

The result is different ideological priorities and perspectives in contributor areas as compared to recipient areas. For instance, the contributor areas shaping the sentiments of contributors there are supportive of increasing the minimum wage by large margins, while voters in recipient areas—from Portland to Pittsburgh—are less supportive.⁸⁵ As the leading empirical article on the issue puts it, “[e]ven after we account for individual characteristics that predict opinion—income, education, race, party identification, and church attendance—we find that the affluent donor neighborhood remains a source of attitude formation and constraint.”⁸⁶

Even if those scholars critical of geographic self-government were empirically correct that geography does not generate ideological variation, they would be observing an effect and making the effect seem inevitable and unavoidable.⁸⁷ Political spillovers are an established law of political science.

81. The literature on city networks finds that the same metropolitan areas that are contributor areas are also the most connected to one another—and the least connected to recipient areas. See Zachary R. Neal, *The Causal Relationship Between Employment and Business Networks in U.S. Cities*, 33 J. URB. AFF. 167 (2011) [hereinafter Neal, *Employment*]; Zachary Neal, *Differentiating Centrality and Power in the World City Network*, 48 URB. STUD. 2733 (2011) [hereinafter Neal, *Centrality*].

82. See Neal, *Employment*, *supra* note 81, at 175.

83. See Neal, *Centrality*, *supra* note 81, at 2745.

84. THE FEDERALIST NO. 10, *supra* note 8, at 125–28 (James Madison).

85. See Bramlett, Gimpel & Lee, *supra* note 5, at 571 (noting issues of agreement as including “minimum wage, affirmative action, Social Security private accounts, income redistribution, capital gains taxation, troop presence in Iraq”). See also *id.* (“[O]pinion in high-donor neighborhoods sharply contrasts with opinion in both the nation as a whole and in low-donor areas. High-donor areas are distinctively anti-populist on important issues that energize grassroots elements on both the left and the right.”); Briffault, *supra* note 12, at 48 (stating that “[l]arge and repeat donors . . . are more likely to want to balance the budget through spending cuts than tax increases, to worry more about inflation than unemployment, and to favor cutting social welfare programs” than other Americans).

86. Bramlett, Gimpel & Lee, *supra* note 5, at 567 (“[A]ctivist elite communities are more unrepresentative of the country than one would expect on the basis of the types of individuals who live there.”).

87. See Bulman-Pozen, *supra* note 12, at 1140–41 (“A critique internal to the argument I have offered might run as follows: for states to serve as political counterweights to the federal government . . . they must be meaningfully different from the federal government, but if state elections are shaped by individuals across the nation, we will not see significant divergence.”).

Like any other empirical law, though, they can be suppressed by other realities, such as substantial amounts of out-of-district and out-of-state campaign contributions.

II. THE PLACE OF CAMPAIGN FINANCE LAW

While our constitutional tradition makes geographic self-government an important principle, our campaign finance law does not. Those with the resources to contribute at meaningful rates and in meaningful amounts reside in a very small number of neighborhoods in a very small number of metropolitan areas. Campaign finance law permits and even privileges their contributions to congressional elections in recipient areas. The result of the place of contributors and the treatment of place by campaign finance law is that contributions to congressional campaigns are dominated by a few places in our large republic.

A. PLACING CONTRIBUTORS

We live in two political Americas in part because we live in two economic Americas. Campaign contributions are made at meaningful rates and in meaningful amounts only once a certain income threshold is crossed. In our current climate, those with these larger resources are concentrated in a small number of metropolitan areas. Other locations do not feature enough people with enough resources to match these contributor areas.

For a long period of time, regional income levels had started to converge.⁸⁸ In 1940, for instance, per capita income in Mississippi was slightly less than one-quarter that of New York residents.⁸⁹ By 1980, per capita income in Mississippi was about two-thirds that of New York.⁹⁰ Since that time, the trend has been back in the opposite direction.⁹¹ Mississippi now has less than three-fifths of the per capita income of New York City.⁹²

A substantial part of the growth in geographical economic disparities is because of the performance of a very few metropolitan areas. The empirics

88. An important recent economics paper charts the history and data surrounding this issue. *See generally* Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence Declined?* (Hutchins Ctr., Working Paper No. 21, 2015), https://www.brookings.edu/wp-content/uploads/2016/08/nwp21_ganong-shoag_final.pdf.

89. *See* BUREAU OF ECON. ANALYSIS, U.S. DEP'T OF COM., STATE PERSONAL INCOME: 1929–82 8 tbl.2 (1984).

90. *See id.* at 11 tbl.2.

91. *See* Phillip Longman, *Why the Economic Fates of America's Cities Diverged*, ATLANTIC (NOV. 28, 2015), <https://www.theatlantic.com/business/archive/2015/11/cities-economic-fates-diverge/417372>.

92. *See* Press Release, Bureau of Econ. Analysis, U.S. Dep't of Com., State Personal Income: 2016 tbl.1 (Mar. 28, 2017), <https://www.bea.gov/newsreleases/regional/spi/2017/pdf/spi0317.pdf>.

suggest that there is a “triumph of the city” more generally, but that fewer than ten metropolitan areas are the truly triumphant cities whose levels of growth surpass both other metropolitan areas and areas outside of metropolitan areas.⁹³ These handful of areas are often called “superstar cities.”⁹⁴

The growth in superstar metropolitan areas is driven not just by the higher human capital of residents in these areas, but by their constant and often exclusive interaction within wealthier areas.⁹⁵ The incentive is not just to locate in these areas, but to benefit from spillovers that are more accessible and more valuable within just these wealthier areas. Living in Manhattan makes you wealthier precisely because you will then mostly be interacting with others in Manhattan.⁹⁶

The major contributors to congressional campaigns are overwhelmingly located in these few superstar cities. Individuals are still the largest contributors to congressional elections.⁹⁷ Individuals have long been able to contribute directly to a congressional candidate or to national, state or local political parties that coordinate directly with the congressional candidate.⁹⁸ Individuals are also able to contribute to other “independent spending vehicles,”⁹⁹ organizations defined in part by their absence of coordination with congressional candidates¹⁰⁰ and therefore by their capacity to accept and spend money in unlimited amounts. This includes section 501(c) organizations,¹⁰¹ section 527 committees,¹⁰² as well as the now-infamous

93. See generally EDWARD GLAESER, TRIUMPH OF THE CITY: HOW URBAN SPACES MAKE US HUMAN (2011) (popularizing the phrase); Nathaniel Baum-Snow & Ronni Pavan, *Inequality and City Size*, 95 REV. ECON. & STAT. 1535 (2013) (analyzing the connection between skill composition and wage inequality across cities).

94. See Joseph Gyourko, Christopher Mayer & Todd Sinai, *Superstar Cities 2* (Nat'l Bureau Econ. Research, Working Paper No. 12355, 2006).

95. See David Schleicher, *The City as Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1519.

96. See *id.*

97. See Stephen Ansolabehere et al., *Why Is There So Little Money in U.S. Politics?*, 17 J. ECON. PERSP. 105, 109 (2003) (“It is evident that individuals, rather than organizations, are by far the most important source of campaign funds.”).

98. See 52 U.S.C. § 30116(a)(1) (2015); 78 FED. REG. 8532 (2013).

99. Richard Briffault, *Super PACs*, 96 MINN. L. REV. 1644, 1648 (2012). [hereinafter Briffault, *Super PACs*].

100. See *id.* at 1651 (noting that these vehicles are defined by their “absence of prearrangement and coordination of an expenditure with the candidate or his agent”).

101. These organizations are defined primarily by their other social purposes. See I.R.C. § 501(c)(4)–(6) (2012). They must limit their spending on elections to less than half of what their organization spends in a year. These organizations need not publicly disclose their donors to the same extent as other organizations. See *id.* §§ 527(j)(2)(B), 6033, 6104; 52 U.S.C. §§ 30102–04.

102. Section 527 committees are organizations that are not candidate, party or standard political

Super PACs.¹⁰³

Meaningful contributions to congressional campaigns from individuals usually only begin once individuals have a quite high income. Those with lower income volunteer as much of their time as those with higher incomes, but do not have the resources to contribute as often or as much.¹⁰⁴ In one study from 2004, for instance, 78% of those contributing \$200 or more had family incomes over \$100,000.¹⁰⁵ Donors giving \$2,600 or more related to congressional campaigns constitute more than four-fifths of contributions to congressional campaigns.¹⁰⁶ Those contributing \$2,600 have a median income close to \$1 million per year.¹⁰⁷ There are approximately 389,000 millionaires in New York City (using net assets as the measure of wealth), nine times the number of millionaires in all of Mississippi—even though Mississippi has 49,000 square miles to New York City’s 4,000.¹⁰⁸

National political parties can contribute directly to congressional candidates or can engage in their own campaign expenditures.¹⁰⁹ The leadership of these parties making the decisions about which candidates to contribute to or otherwise support are located in Washington.¹¹⁰ Federal law creates a generic category of “political committees,” which includes “any committee, club, association, or other group of persons which receives

action committees, and therefore need not register with the Federal Election Commission. These committees can maintain this privacy so long as they do not engage in “express advocacy” of federal candidates for office. For an overview of these organizations, see generally Richard Briffault, *The 527 Problem . . . and the Buckley Problem*, 73 GEO. WASH. L. REV. 949 (2005).

103. Super PACs can expressly support or oppose congressional candidates so long as they do not engage directly with the candidate. See R. SAM GARRETT, CONG. RESEARCH SERV., R42042, SUPER PACS IN FEDERAL ELECTIONS: OVERVIEW AND ISSUES FOR CONGRESS 1 (2016). Super PACs can engage in unlimited spending by collecting unlimited amounts from a wider range of sources. See *id.* at 2, 3–4 & nn.a–b.

104. See Spencer Overton, *The Participation Interest*, 100 GEO. L.J. 1259, 1301 (2012).

105. See INST. FOR POLITICS, DEMOCRACY AND THE INTERNET, SMALL DONORS AND ONLINE GIVING: A STUDY OF DONORS TO THE 2004 PRESIDENTIAL CAMPAIGNS 12 (2006), http://www.cfinst.org/president/pdf/IPDI_SmallDonors.pdf [hereinafter INST. FOR POLITICS]; Wesley Y. Joe et al., *Do Small Donors Improve Representation? Some Answers from Recent Gubernatorial and State Legislative Elections* 19–20 tbl.1 (Campaign Fin. Inst., Research Paper, 2008), http://www.cfinst.org/pdf/books-reports/APSA_2008_SmallDonors.pdf.

106. See INST. FOR POLITICS, *supra* note 105; Joe et al., *supra* note 105, at 19–20 tbl.1.

107. See INST. FOR POLITICS, *supra* note 105; Joe et al., *supra* note 105, at 19–20 tbl.1.

108. *Compare Which Cities Have the Most Millionaires*, ECONOMIST: GRAPHIC DETAIL, (May 9, 2013), <http://www.economist.com/blogs/graphicdetail/2013/05/daily-chart-7>, with *Millionaires by State Ranking 2016*, PHOENIX MARKETING INT’L, <https://store.phoenixmi.com/pages/millionairesbystateranking2016> (last visited Aug. 2, 2017).

109. See Peter Olsen-Phillips, *DCCC and NRCC Drive Outside Spending in the House*, SUNLIGHT FOUNDATION: BLOG (Oct. 7, 2014, 9:33 AM), <http://sunlightfoundation.com/blog/2014/10/07/dccc-and-nrcc-drive-outside-spending-in-the-house>.

110. See *id.*

contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.”¹¹¹ Political action committees are overwhelmingly located in Washington or other contributor areas as well.¹¹²

B. PLACING DOCTRINE

Campaign finance law includes essentially no limitations on contributions flowing from contributor areas to recipient areas. After *Citizens United* and *McCutcheon*, campaign finance law indirectly privileges contributor areas by liberating their major contributors and their independent spending vehicles from the regulations that still constrain the spending vehicles more available in other areas.

1. Campaign Finance Law Has No Place

Campaign finance law does not include any meaningful geographical limitations. Consider, first, those contributing directly to congressional candidates or to political parties that can coordinate directly with candidates. Federal law permits contributions to any candidate or any candidate organization active in any House election or Senate race, regardless of the location of the contributions or the campaigns.¹¹³ The only geographical limitation on the contributions is that federal law prevents a “foreign national” from making any contributions to a federal election.¹¹⁴ The statutory definition of foreign national is narrow. A “foreign national” is an individual who is not a citizen of the United States, nor a permanent resident

111. 52 U.S.C. § 30101(4)(A) (2015). A local committee of a political party can also be a “political committee,” even though political parties are separately regulated than political committees generally. *See id.* § 30101(4)(C), (16) (defining a “political party” as “an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization”).

112. *See* David Fontana, *The Big Money Politics Problem We Need to Talk About*, HUFF. POST (Jun. 27, 2014, 8:55 AM), http://www.huffingtonpost.com/david-fontana/the-problem-with-bigger-m_b_5536521.html.

113. While federal campaign finance law has largely avoided regulating contributor-area contributions to recipient areas, at least two different states have attempted to do so. *See* Landell v. Sorrell, 382 F.3d 91, 146 (2d Cir. 2004), *rev'd sub nom.* Randall v. Sorrell, 548 U.S. 230 (2006); Vannatta v. Keisling, 151 F.3d 1215, 1218 (9th Cir. 1998); Whitmore v. FEC, 68 F.3d 1212, 1214–16 (9th Cir. 1995). *See also* Briffault, *supra* note 12, at 67–68 (“Outside money almost surely cannot be barred or subject to aggregate dollar or percentage caps. Outside money is just as protected by the First Amendment as constituent money . . .”).

114. *See* 52 U.S.C. § 30121(a). *See generally* Bluman v. FEC, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff'd*, 132 S. Ct. 1087 (2012) (mem.). *See also* Citizens United v. FEC, 558 U.S. 310, 362 (2010) (“We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.”). For a helpful discussion of this case, *see* Bulman-Pozen, *supra* note 12, at 1135–42.

of the United States.¹¹⁵

Federal law does feature some geographical disclosure rules for those contributing. Contributors of all forms must engage in “identification,” meaning they provide basic background information about themselves.¹¹⁶ All that must be disclosed is “the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.”¹¹⁷ The Federal Election Commission (FEC) has defined the “mailing address” that must be disclosed simply to mean the formally registered location of the contributor, rather than their principal place of business.¹¹⁸

Similar rules prevail for the increasingly important organizations engaged in “independent expenditures.”¹¹⁹ The three primary forms of organizations differ in many respects, but share an essential commonality: all “may engage in election-related spending without dollar limits and accept contributions to pay for that spending from individuals, corporations, and unions without dollar limits.”¹²⁰ For each form of independent organization, contributions can come from anywhere. Super PACs, for instance, are treated as “political committees” within the definition of the Federal Election Campaign Act (“FECA”) and the Bipartisan Campaign Reform Act (“BCRA”),¹²¹ meaning they simply must disclose a formal address.¹²² Similar rules prevail for 527s¹²³ and for 501(c) organizations.¹²⁴

Campaign finance law has no “place” in even broader and more surprising ways than one might anticipate. Not only can contributions to or related to congressional campaigns come from anywhere, but congressional campaigns themselves can be located anywhere. Congressional campaigns

115. See 52 U.S.C. § 30121(b).

116. See 52 U.S.C. § 30101(13).

117. *Id.*

118. See *FEC Form 1: Statement of Organization*, FEC, <http://www.fec.gov/pdf/forms/fecfrm1.pdf> (last visited Aug. 2, 2017). Political party committees of the national, state, or district varieties can contribute from anywhere to anywhere so long as they also disclose the appropriate geographical information, such as their address. The rules for political action committees (PACs) are that when they register they must indicate their “name [and] address.” See 52 U.S.C. § 30103(b)(1).

119. For a nice overview, see Briffault, *Super PACs*, *supra* note 99, at 1646–50.

120. *Id.* at 1649.

121. See Federal Election Commission, *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 Fed. Reg. 80803 (proposed Dec. 27, 2011) (to be codified at 11 C.F.R. pt. 114). See also Federal Election Campaign Act of 1971, Pub. Law 92-225, 86 Stat. 3 (1972) (codified as amended at 52 U.S.C. § 30101 et seq.); Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002) (codified as amended at 52 U.S.C. § 30101 et seq.).

122. See 52 U.S.C. § 30101(13).

123. See I.R.C. § 527(3) (2012).

124. See *id.* § 501(c)(1).

must file their address and the address for key campaign members (like their treasurer), but there are no legal limitations on where that address must be.¹²⁵ To minimize costs, many campaigns employ staff members (such as treasurers) working out of distant locations.¹²⁶

Organizations active in congressional campaigns can be located anywhere. These organizations will often adopt names that suggest they are located in the congressional district or state in which they are active, even though they are located thousands of miles away. There is no law of negligent misrepresentation limiting such behavior, and indeed it would pose constitutional problems to have such laws.¹²⁷

2. *Citizens United* and *McCutcheon*

The past decade has witnessed a revolution in campaign finance law. The deregulatory decisions of the Roberts Court are also geographically distributional decisions.¹²⁸ Two decisions in particular have given contributor areas more power under federal constitutional law: *Citizens United v. FEC*¹²⁹ and its doctrinal aftermath, and then, more recently *McCutcheon v. FEC*.¹³⁰ The result of *Citizens United* and *McCutcheon* together is that it is even easier than previously for contributions to flow from contributor areas.

First, *Citizens United* invalidated a federal law¹³¹ that prevented corporations and labor unions from using their general treasury funds to

125. There are no legal rules requiring that campaigns, political parties or PACs have any operations in the district or state that they most intend to influence. See 52 U.S.C. § 30101(15). Without the immediate political pressure that candidates face, it is more common for political parties and PACs to be located far from the locations they attempt to influence. Several state political parties have key staffers located in Washington. See DONALD H. HAIDER, WHEN GOVERNMENTS COME TO WASHINGTON: GOVERNORS, MAYORS, AND INTERGOVERNMENTAL LOBBYING 98 (1974); Miriam Seifter, *States as Interest Groups in the Administrative Process*, 100 VA. L. REV. 953, 961–63 (2014).

126. See Miriam Galston, *Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities*, 71 TEX. L. REV. 1269, 1274–75 (1992).

127. See, e.g., *United States v. Alvarez*, 567 U.S. 709, 722 (2012) (“The Government has not demonstrated that false statements generally should constitute a new category of unprotected speech on this basis.”); *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)) (stating that the First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office”).

128. Scholarly analyses on the distributional effects of these decisions have focused more on what these decisions mean for the power of political parties relative to outside spending groups. See generally, e.g., Joseph Fishkin & Heather K. Gerken, *The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175; Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 CORNELL L. REV. 531 (2016).

129. *Citizens United v. FEC*, 558 U.S. 310 (2010).

130. *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

131. See 2 U.S.C. § 441b (2012) (transferred to 52 U.S.C. § 30118 (2015)).

engage in certain forms of campaign expenditures related to federal elections. More significant for this Article, though, was what *Citizens United* triggered in the lower courts in the years after it. With expenditure limitations being invalidated, contribution limits on organizations independent of congressional campaigns are gradually being invalidated as well. This empowers contributor areas, and therefore also incentivizes coordination with—and co-location with—contributor-area political leaders.

Citizens United decided that the only acceptable interests that campaign finance laws could target were quid pro quo corruption or the appearance of quid pro quo corruption.¹³² *Citizens United* also decided that independent expenditures, “as a matter of law,” do not generate either quid pro quo corruption or its appearance.¹³³ Applying that logic, in the years to come, several courts invalidated limitations on contributions to organizations engaged in independent expenditures.¹³⁴ If there is no strong governmental interest in regulating independent expenditures, these courts decided, then there is no strong governmental interest in regulating those who contribute to organizations engaged in making independent expenditures.¹³⁵

This doctrinal change has geographical consequences. Individuals with the financial resources to contribute in large and now unlimited amounts reside and operate in contributor areas. Organizations tend to contribute more often and more amounts to elections in their district or state.¹³⁶ Now that there are no limitations on contributions to these groups, this means that contributions that target campaigns in other, distant, recipient areas can be made.¹³⁷

Citizens United and its progeny not only liberate contributor areas to contribute more, but also incentivize them to contribute using contributor-area human capital. This is for a few reasons. Now that contributions in massive amounts are permitted, a national strategy is truly possible for these outside spending groups. Contributing lots of money means that one can

132. See *Citizens United*, 558 U.S. at 359.

133. See also *SpeechNow.org v. FEC*, 599 F.3d 686, 694 (D.C. Cir. 2010) (en banc).

134. See *id.* at 695.

135. See *id.* at 696 (“[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure—only organizations.”).

136. See generally Jenna Bednar & Elisabeth R. Gerber, *Political Geography, Campaign Contributions, and Representation* (Apr. 2011) (unpublished manuscript), http://www-personal.umich.edu/~jbednar/WIP/irod_050211_wfigs.pdf.

137. See, e.g., James A. Gardner, *The Myth of State Autonomy: Federalism, Political Parties, and the National Colonization of State Politics*, 29 J. L. & POL. 1, 43 (2013) (noting this phenomenon after *Citizens United*).

shape lots of elections in lots of places. For instance, Karl Rove's American Crossroads Super PAC sees its mission as the more national goal of undermining "the bureaucracy culture of Washington."¹³⁸ With national strategy usually comes national human political capital, and those with that kind of ability are disproportionately located in contributor areas.¹³⁹

There is also an incentive to retain human political capital located in contributor areas because *Citizens United* and its progeny contemplate a world in which outside spending groups are subject to the control of their wealthy contributors in contributor areas.¹⁴⁰ The wealthy contributors funding them desire "a degree of control and responsiveness that the official parties and official campaigns cannot [provide]."¹⁴¹ Control and responsiveness are more easily provided if these wealthy donors can walk down the street or drive across town to confer with those using their contributions. Outside spending groups therefore retain not just national political talent, but political talent that is proximate to (contributor-area-located) major contributors.¹⁴²

Second, the other blockbuster campaign finance decision of the Roberts Court, *McCutcheon v. FEC*, also increased the power of contributor areas relative to recipient areas. By removing aggregate contribution limitations, *McCutcheon* enables more contributions to move greater distances. As with *Citizens United* and its aftermath, this means more contributor-area activity in recipient areas, and also more contributor-area human capital retained to assist with this.

For many years, FECA (as amended by BCRA) has included limitations on how much an individual contributor could give to any particular candidate, political party, or PAC.¹⁴³ Likewise, federal law has constrained how much national, state or local political party committees—as well as

138. See Steven Law, *About American Crossroads*, AMERICAN CROSSROADS, <http://www.americancrossroads.org/about> (last visited Aug. 2, 2017).

139. See, e.g., Gimpel, Lee & Thorpe, *supra* note 1, at 26 (providing empirical evidence that being in these areas permits individuals to "develop political skills and inclinations to launch a political career").

140. See *Citizens United v. FEC*, 558 U.S. 310, 360 (2010) ("By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.").

141. Fishkin & Gerken, *supra* note 128, at 194.

142. See *id.* at 197 (noting that "the highest tier of donors can afford" "to pay for talent of the same caliber as a Karl Rove or a Jim Messina").

143. See 52 U.S.C. § 30116(a)(1) (2015); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013). A PAC is an organization that raises and/or spends money related to federal elections, and notably can do so by contributing directly to candidates. The difference between a PAC and a Super PAC is that a Super PAC only makes independent expenditures, meaning a Super PAC cannot contribute directly to candidates. See *SpeechNow.org v. FEC*, 599 F.3d 686, 695–96 (D.C. Cir. 2010) (en banc).

PACs—could contribute to candidates.¹⁴⁴ These constraints were also meaningfully low. In the 2013–14 federal election season, individuals could contribute only \$5,200 to a candidate (half for a primary election and half for a general election), \$32,400 to a single national political party committee, \$10,000 to a single state or local party committee, and \$5,000 to a PAC.¹⁴⁵ These limitations—for now, at least¹⁴⁶—still stand as valid federal law.

What *McCutcheon* changed is how much contributors can give *in total*. Federal law limited how much an individual could contribute to all federal candidates,¹⁴⁷ to political parties,¹⁴⁸ and to PACs.¹⁴⁹ *McCutcheon* invalidated these limitations. Campaigns in the same geographical community are the campaigns that large contributors—like other citizens—know better and care about more deeply.¹⁵⁰ The result was that these larger donors reached their aggregate contribution limitations primarily in contributor areas and were prohibited from contributing to recipient area elections. After *McCutcheon*, larger donors from contributor areas can now keep contributing to elections even after they contribute to contributor-area elections.

With the greater national distribution of individual contributions will likely also come greater desire for national assistance with that distribution. Shawn McCutcheon, for instance, testified at trial what he would do if the aggregate contribution limitations were not present. McCutcheon is a wealthy businessman in Alabama, but planned to relocate part of his operations to Washington and retain political staff in Washington if he was permitted to contribute more nationally.¹⁵¹ He had retained Southern political staff to help with his more local congressional contributions, but with a more national strategy he wanted more national staff and interaction with them by locating near them in Washington.¹⁵²

144. See 52 U.S.C. § 30116(a)(2).

145. See *id.* § 30116(a)(1); Price Index Adjustments, 78 Fed. Reg. at 8532.

146. In the 2012 election season, 646 total donors hit the maximum aggregate contribution limitations. See Fishkin & Gerken, *supra* note 128, at 196.

147. This limit was \$48,600 for the 2013–14 election cycle. Price Index Adjustments, 78 Fed. Reg. at 8532.

148. This limit was \$32,400 for each year of the 2013–14 election cycle. *Id.*

149. This limit was \$48,600 for the 2013–14 election cycle. *Id.*

150. See generally, *e.g.*, James G. Gimpel, Kimberly A. Karnes, John McTague & Shanna Pearson-Merkowitz, *Distance-Decay in the Political Geography of Friends-and-Neighbors Voting*, 27 POL. GEOGRAPHY 231 (2008) (presenting a theory about the relevance of distance to candidate support during a campaign).

151. See *McCutcheon v. FEC*, 893 F. Supp. 2d 133, 136–37 (D.D.C. 2014), *rev'd*, 134 S. Ct. 1434 (2014).

152. See *id.* at 137.

C. PLACING CONTRIBUTIONS

The geography of campaign finance practice is dominated by a very small number of contributor areas. Let us return to the different forms of contributors identified in Section A. First, let us take individual contributors, still the largest source of campaign contributions.¹⁵³ The data indicates that a handful of metropolitan areas dominate total individual contributions to congressional elections. Contributors residing in 5 percent of the zip codes in the United States gave 77 percent of all itemized individual contributions to congressional elections as of ten years ago.¹⁵⁴ These contributor areas usually include “urban areas on the coasts, particularly the Philadelphia-New York-Boston corridor, Southern California, and the major Great Lakes cities of Chicago and Detroit.”¹⁵⁵

Second, let us take organizational participants in congressional elections. National political parties are located in Washington. The committees established by the national Democratic and Republican parties to support their House and Senate candidates play a central role in congressional elections.¹⁵⁶ In over 90 percent of the most heavily contested House and Senate elections in 2014, the national party campaign committees were the biggest spenders on behalf of the candidates.¹⁵⁷ These party committees can receive contributions from anywhere and use these contributions anywhere, so long as the minimal geographical disclosure rules are satisfied.¹⁵⁸ Similar patterns have emerged for Super PACs. Super PAC contributors like Peter Singer have hosted events for recipient-area candidates so that these candidates can receive contributions from his neighborhood.¹⁵⁹

Contributor areas for individual and organizational contributions do not vary substantially between the political parties. Democratic candidates raise a slightly greater percentage of their contributions in New York City relative to Republican candidates, and Republican candidates raise a slightly greater percentage of their contributions in Houston relative to Democratic

153. See Ansolabehere et al., *supra* note 97, at 109.

154. See Bramlett, Gimpel & Lee, *supra* note 5, at 566.

155. Gimpel, Lee & Kaminski, *supra* note 1, at 628.

156. See Olsen-Phillips, *supra* note 109 (discussing party contributions to House elections).

157. See *id.*

158. See 52 U.S.C. §30101(13) (2012).

159. See Maggie Haberman & Nicholas Confessore, *Paul Singer, Influential Billionaire, Throws Support to Marco Rubio for President*, N.Y. TIMES (Oct. 30, 2015), <https://www.nytimes.com/2015/10/31/us/politics/paul-singer-influential-billionaire-throws-support-to-marco-rubio-for-president.html>.

candidates.¹⁶⁰ Metropolitan areas outside of the contributor areas come close to being major contributing areas for the Republicans, because Republican candidates “exhibit a broader geographical base than Democratic candidates in the Upper Midwest, the Plains, and the Mountain states.”¹⁶¹ These variations are trivial, because the results are the same: very few places dominate campaign contributions for both political parties.

III. GEOGRAPHIC SELF-GOVERNMENT MEETS CAMPAIGN FINANCE LAW

Campaign finance law permits and even prioritizes the transmission of campaign contributions from contributor areas to recipient areas. A volume of literature demonstrates that with contributions comes meaningful influence.¹⁶² Incentives are created that encourage potential and actual candidates as well as elected officials to focus excessive amounts of attention on the very few contributor areas in the United States. The result is that contributor areas substantially shape the congressional candidates, campaigns and officials that are meant to represent recipient areas.

A. CANDIDATE SELECTION

If geographical communities are to govern themselves, then these communities must be permitted to decide which candidates to choose between on Election Day. The Supreme Court has called these decisions about which candidates to place on the ballot decisions of “the most fundamental sort.”¹⁶³ Because of this, neither Congress nor states can “add

160. See Gimpel, Lee & Kaminski, *supra* note 1, at 629, 637.

161. See *id.* at 627–28 (finding that contributions to the two parties are “quite similar geographically despite significant differences in the geographic distribution of the parties’ mass support”); *id.* at 629 (noting small geographical differences because “Democrats receive significant contributions from locations in North Carolina, Georgia, and along the Gulf Coast from Houston to Florida’s panhandle . . . [and] Republicans . . . raise very substantial sums from Boston, New York City, the DC suburbs, the San Francisco Bay Area, Chicago, Detroit, [and] the Twin Cities . . .”).

162. See, e.g., Austin v. Mich. State Chamber of Com., 494 U.S. 652, 660 (1990) (identifying the “corrosive and distorting effects of immense aggregations of wealth”). For some of the best empirical evidence, see Joseph Bafumi & Michael C. Herron, *Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress*, 104 AM. POL. SCI. REV. 519, 536 (2010); Walter J. Stone & Elizabeth N. Simas, *Candidate Valence and Ideological Positions in U.S. House Elections*, 54 AM. J. POL. SCI. 371, 381 (2010).

163. Gregory v. Ashcroft, 501 U.S. 452, 460 (1991). The Court has emphasized this most dramatically when it comes to states. See Taylor v. Beckham, 178 U.S. 548, 570–71 (1900) (“It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers . . . should be exclusive and free from external interference . . .”); Boyd v. Nebraska *ex rel.* Thayer, 143 U.S. 135, 161 (1892) (“Each State has the power to prescribe the qualifications of its officers, and the manner in which they shall be chosen . . .”).

qualifications to those enumerated in the Constitution.”¹⁶⁴ Self-government means self-selection of the candidates to be on the ballot.

The geography of campaign finance law though, creates incentives giving contributor areas substantial power over who runs for congressional office in recipient areas. Without the capacity to raise large amounts of contributions in contributor areas, recipient-area candidates do not have a chance to win their elections. Without a chance to win their elections, recipient-area candidates either will not seek office or often will not receive the necessary endorsements to become a nominated candidate for congressional office in the first place. Recipient-area voters cast their ballots, but campaign finance law permits contributor areas substantially to influence whose name appears on the ballot.

First, potential candidates will be less likely to run for office if they do not have sufficient connections in contributor areas. The empirical evidence indicates that individuals decide to run for federal office if they believe that they have a realistic chance of winning that office.¹⁶⁵ Candidates only have a realistic chance of winning federal office if they can raise the necessary amounts of money.¹⁶⁶ In the midterm congressional elections in 2014, the lowest amount necessary to raise for a competitive congressional election was between two and three million dollars for a House election and ten to twenty times that for a Senate election.¹⁶⁷

The resources available in recipient areas are simply insufficient to reach these numbers. In most recipient areas, the most that can be raised within a House district in a recipient area is approximately \$500,000.¹⁶⁸ In recipient areas that are part of major metropolitan areas, the most that can be raised within a House district is closer to approximately \$750,000, and sometimes slightly more than that.¹⁶⁹ It is extremely difficult—if not impossible, based on past empirics and practice—to raise the necessary

164. U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 805 (1995).

165. See generally Richard L. Fox & Jennifer L. Lawless, *To Run or Not to Run for Office: Explaining Nascent Political Ambition*, 49 AM. J. POL. SCI. 642 (2005); Danielle M. Thomsen, *Ideological Moderates Won't Run: How Party Fit Matters for Partisan Polarization in Congress*, 76 J. POL. 786 (2014).

166. See Richard L. Hasen, *Three Wrong Progressive Approaches (and One Right One) to Campaign Finance Reform*, 8 HARV. L. & POL'Y REV. 21, 33 (2014); Michael S. Kang, *The Year of the Super PAC*, 81 GEO. WASH. L. REV. 1902, 1914 (2013).

167. See Russ Choma, *Money Won on Tuesday, but Rules of the Game Changed*, OPEN SECRETS (Nov. 5, 2014), <http://www.opensecrets.org/news/2014/11/money-won-on-tuesday-but-rules-of-the-game-changed>.

168. See Fontana, *supra* note 112.

169. See *id.*

money without the appropriate networks and aptitudes in contributor areas.

That means that substantial contributions must be obtained from contributor areas if a potential candidate is to run a viable campaign for Congress. The political science literature has demonstrated that strong, personal relationships facilitate campaign contributions.¹⁷⁰ The candidates that can raise that kind of campaign cash are therefore those with the strongest connections to contributor areas.¹⁷¹

Second, even if candidates without connections in contributor areas do decide to seek a congressional office, their ability to receive their local, state and national party's support will be shaped by their contributor-area connections. Political party endorsements of candidates greatly assist these candidates in winning a party primary and becoming the party's nominee.¹⁷² Party endorsements can supply campaign funding for the primary candidate, mobilize primary voters, and provide positive media attention.¹⁷³ Parties want to nominate candidates who can win. Political parties will therefore be incentivized to evaluate the contributor-area connections of candidates to see if these candidates can raise money for the campaign.

There is an exception to this de facto contributor-area veto: self-funded candidates. These candidates can generate the campaign cash necessary to run a strong congressional campaign, and therefore have no problems receiving party nominations. Congressional elections therefore feature candidates with very little connection to recipient areas but the capacity to self-fund. Sean Eldridge, for instance, had never lived in the Hudson Valley before moving there and spending \$4.25 million of his own money to campaign (unsuccessfully) for Congress.¹⁷⁴ While self-funded candidates do

170. See CLIFFORD W. BROWN, JR., LYNDIA W. POWELL & CLYDE WILCOX, *SERIOUS MONEY: FUNDRAISING AND CONTRIBUTING IN PRESIDENTIAL NOMINATION CAMPAIGNS* 67 (1995); FRANCIA ET AL., *supra* note 18, at 14–16.

171. See, e.g., Gimpel, Lee & Thorpe, *supra* note 1, at 26 (“Place location matters because more densely populated areas encompass greater social, political, and economic diversity, more heterogeneous interests, and a more diverse set of organizations in which individuals can develop political skills and inclinations to launch a political career.”). The Constitution only requires that a representative or senator be an inhabitant of the district or state on the day that they are sworn into office, so there is no constitutional problem with this. See *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 589 (5th Cir. 2006); *Strong v. Breaux*, 612 So. 2d 111, 111 (La. Ct. App. 1992) (per curiam).

172. See generally Casey B.K. Dominguez, *Does the Party Matter? Endorsements in Congressional Primaries*, 64 POL. RES. Q. 534 (2011) (describing sources of endorsements and their effect on primary elections); Thad Kousser et al., *Kingmakers or Cheerleaders? Party Power and the Causal Effects of Endorsements*, 68 POL. RES. Q. 443 (2015) (analyzing empirical studies about the connection between endorsement and voting for candidates).

173. See Kousser, *supra* note 172, at 445–47.

174. See James Kirchick, *The Rise and Fall of Chris Hughes and Sean Eldridge, America's Worst*

not have to demonstrate connections to contributor areas, it is almost always the case (given the reality of two economic Americas) that their money comes from contributor areas.

B. CANDIDATE CAMPAIGNS

The congressional campaign is a crucial moment in geographic self-government. During this moment, voters are supposed to learn what they need to know about candidates to make decisions about the best candidate to serve them in office. Candidates in turn learn about voters and what choices in office would best serve their constituents. Because our campaign finance law permits contributor areas to dominate elections in other places, the congressional campaign faces incentives to become something different. Contributor areas use their control to shape the staffing, strategies and issues being debated in recipient areas in a way that appeals to contributor areas. Campaigns in one place become about the concerns of another place.

First, contributors in all forms will often request (or even demand) that campaigns in recipient areas hire staffers these contributors know well as a condition of continuing to fund recipient area candidates. Candidates will not dare endanger losing that amount of campaign cash. Candidates therefore comply with these demands. Contributors from recipient areas will prefer staffers that they know from their activities in contributor areas. Hiring campaign staff for the congressional campaign connected to the contributor can signal to the contributor the ideological affinity between the candidate's campaign and the ideological goals of the contributor. This can induce more campaign dollars to be spent to support the candidate.

The party's national congressional campaign staff also will encourage a form of contributor-area control over recipient-area staffing. The overwhelming supermajority of recipient-area campaigns rely on the national congressional campaign committees for major campaign support.¹⁷⁵ National congressional campaign staff will insist that congressional candidates retain the staffers that national party campaign committees desire. The list is composed of party staffers who have worked on presidential campaigns and congressional campaigns in other districts and states.¹⁷⁶

Gay Power Couple, DAILY BEAST (Dec. 8, 2014, 9:43 PM), <http://www.thedailybeast.com/the-rise-and-fall-of-chris-hughes-and-sean-eldridge-americas-worst-gay-power-couple>.

175. See ANTHONY GIERZYNSKI, LEGISLATIVE PARTY CAMPAIGN COMMITTEES IN THE AMERICAN STATES 110 (2015); Olsen-Phillips, *supra* note 109.

176. See generally Paul Webb & Robin Kolodny, *Professional Staff in Political Parties*, in HANDBOOK OF PARTY POLITICS 337 (Richard S. Katz & William Crotty eds., 2006). Hans Noel's important studies on the networks of political professions furnish strong evidence of this as well. Key

The result of these dynamics is that campaign staffers hired for recipient-area elections have little knowledge about the issues facing the particular district or state in which the campaign is transpiring. Staffers have spent their formative campaign years learning the issues and strategies of contributor areas.¹⁷⁷ Campaign staffers—with aspirations focused elsewhere—have little incentive to learn about the particular recipient district or state.¹⁷⁸ These staffers do not remain involved in the recipient-area politics once the campaign is over. Contributor-area staffers are and remain outsiders to recipient areas.¹⁷⁹ If a congressional candidate for whom the campaign manager or finance director works loses the race, but still appeals sufficiently to the party committee or Super PAC contributor from the contributor area elsewhere, there could be even greater opportunities in the future in other campaigns in other places.

Once contributor-area staffers are tasked to operate in recipient areas, a mismatch results. These staffers are different than the local leaders, media and voters they are trying to persuade. These staffers might try to make their recipient-area candidate truly a recipient-area candidate, but have a distorted vision of the recipient area.¹⁸⁰ Because these contributor-area staffers cannot help but see things through their contributor-area eyes, they cannot help but make recipient-area campaigns about contributor-area concerns—and recipient-area voters can tell.¹⁸¹

Many campaigns are aware of this mismatch, and try to manage the cognitive dissonance between non-local staff and local elite, media and

campaign staffers spend time alternating between presidential campaigns, congressional campaigns, and legislative party committees. *See generally* Gregory Koger, Seth Masket & Hans Noel, *Partisan Webs: Information Exchange and Party Networks*, 39 BRIT. J. POL. SCI. 633 (2009); Brendan Nyhan & Jacob M. Montgomery, *Connecting the Candidates: Consultant Networks and the Diffusion of Campaign Strategy in American Congressional Elections*, 59 AM. J. POL. SCI. 292 (2015).

177. *See generally* Daniel Kreiss & Christopher Jasinski, *The Sources of Innovation in Political Communication: A Comparative Analysis of the Careers of Digital, Data, and Analytics Staffers on Republican and Democratic Presidential Campaigns and Partisan Firm Founding, 2004–2012* (Sept. 2, 2015) (unpublished manuscript), https://danielkreiss.files.wordpress.com/2010/05/kreissjasinski_digitalpoliticsstafferspublic.pdf (documenting the diffusion of campaign strategies).

178. *See* Ryan D. Enos & Eitan D. Hersh, *Party Activists as Campaign Advertisers: The Ground Campaign as a Principal-Agent Problem*, 109 AM. POL. SCI. REV. 252, 255 (2015) (“Campaign workers have personal incentives . . .”).

179. *See id.* at 256 (“[A] direct voter contact strategy employed by labor unions is different. Unions have a more stable, known pool of surrogates But the typical candidate campaign, which arises for a short-term election season and relies on willing volunteers, exhibits the features of the principal-agent problem.”).

180. Many empirical studies have started to find, for instance, that as campaign contributions disseminate to recipient areas, campaign strategies used by the same campaign staffers proliferate all of these campaign races. *See* Nyhan & Montgomery, *supra* note 176, at 293.

181. *See* Enos & Hersh, *supra* note 178, at 255 (providing empirical evidence of this mismatch).

voters. In the 2008 presidential campaign, the Obama campaign encouraged campaign staffers to highlight their credentials as a local volunteer when this was true.¹⁸² During the 2012 presidential campaign, Ron Paul brought many staff members from outside of the state to work on the Iowa caucus. He informed these volunteers that they should “look, dress, shave, sound and behave in a way” that would be more authentically Iowan.¹⁸³ Recipient-area candidates will use predefined scripts and ensure that campaign staffers use these scripts.¹⁸⁴

Second, contributors make recipient-area campaigns about contributor areas not just by the staff they help place in recipient areas, but also through direct coercion and persuasion. Contributors donate—and donate to particular candidates—for ideological reasons.¹⁸⁵ This means that candidates are incentivized to align their campaigns with the ideologies of contributor-area contributors if they want their contributions.¹⁸⁶ As one leading study found, “[a]mong both Republican[] and Democrat[] [senators], the average ideological congruence [with major] donors is nearly perfect.”¹⁸⁷ The result is that recipient-area candidates take positions that represent the ideological priorities and preferences of contributor areas.¹⁸⁸

182. See *Suggested Script, Walk for Change Weekend*, OBAMA ‘08, <https://web.archive.org/web/20080704113148/http://my.barackobama.com/page/content/0609resources> (last visited Aug. 21, 2017) (“Hi, . . . I’m a local volunteer with Barack Obama’s presidential campaign. Today people all across America are talking with their neighbors about how we can change the direction our country is heading in . . .”).

183. Richard A. Oppel, Jr., *Marching Orders for Paul’s Volunteers: Do Shave, Don’t Tweet*, N.Y. TIMES (Dec. 28, 2011), <http://www.nytimes.com/2011/12/29/us/politics/ron-pauls-young-iowa-volunteers-clean-up-for-the-cause.html>.

184. See generally David W. Nickerson, *Quality is Job One: Professional and Volunteer Voter Mobilization Calls*, 51 AM. J. POL. SCI. 269 (2007); David W. Nickerson & Todd Rogers, *Political Campaigns and Big Data*, 28 J. ECON. PERSP. 51 (2014).

185. See Clyde Wilcox et al., *With Limits Raised, Who Will Give More? The Impact of BCRA on Individual Donors*, in LIFE AFTER REFORM: WHEN THE BIPARTISAN CAMPAIGN REFORM ACT MEETS POLITICS 61, 73 (Michael J. Malbin ed., 2003) (examining donors to congressional campaigns); Joe et al., *supra* note 105, at 4–17.

186. See Seth E. Masket & Hans Noel, *Serving Two Masters: Using Referenda to Assess Partisan Versus Dyadic Legislative Representation*, 65 POL. RES. Q. 104, 112 (2011).

187. Michael J. Barber, *Representing the Preferences of Donors, Partisans, and Voters in the U.S. Senate* 80 PUB. OPINION Q. 225, 238 (2016). See also *McConnell v. FEC*, 540 U.S. 93, 182 (2003) (“Large soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder.”), *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010); *id.* at 308 (Kennedy, J., concurring in part and dissenting in part) (“[T]he making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment . . .”).

188. For evidence of this, see Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 AM. J. POL. SCI. 545, 547 (2016); Jesse H. Rhodes & Brian F. Schaffner, *Economic Inequality and Representation in the U.S. House: A New Approach Using Population-Level Data* 36–38 (2013) (unpublished manuscript),

C. CANDIDATES IN OFFICE

Our constitutional system is meant to generate incentives for those in legislative office to focus on their constituents.¹⁸⁹ Members of the House face reelection every two years by their constituents in their districts.¹⁹⁰ Members of the Senate face reelection every six years by their constituents in their state.¹⁹¹ The campaign finance system that permits contributor areas to dominate recipient-area elections, though, provides members of Congress with incentives to focus on contributor areas.¹⁹²

First, the empirical evidence suggests that the desire to achieve reelection is at the top of the list of legislators' desires.¹⁹³ As a practical matter, the overwhelming supermajority of members of the House and Senate do not fear losing their seats if they seek reelection.¹⁹⁴ Only if something dramatic happens does a member of Congress genuinely fear losing their seat.

That something dramatic can be the introduction of large sums of campaign contributions supporting actual or potential opponents. The presence of a well-funded opposition substantially reduces the power of

<http://people.umass.edu/schaffne/Schaffner.Rhodes.MPSA.2013.pdf>. One report during the 2016 presidential primaries, for instance, noted that Republican presidential candidate Ted Cruz spoke very differently when before contributors in Manhattan than when before voters in Iowa. See Mike Allen & Daniel Lippman, *More Audio Leaks from Cruz Fundraisers Coming This Week*, POLITICO: PLAYBOOK (Dec. 14, 2015, 7:26 AM), <http://www.politico.com/playbook/2015/12/politico-playbook-presented-by-qualcomm-exclusive-more-audio-leaks-from-cruz-fundraisers-coming-this-week-no-letting-up-campaigns-to-skip-christmas-truce-cruz-built-myers-briggs-for-politics-remembering-evelyn-lieberman-mentor-to-so-many-211731> (“[W]hen addressing Manhattan donors, Cruz strikes a more moderate and inclusive tone on social issues than he does when speaking to Iowa audiences. Some donors say that New York Cruz sounds different than Iowa Cruz.”).

189. See Jacob E. Gersen, *Unbundled Powers*, 96 VA. L. REV. 301, 312 (2010); Torsten Persson, Gérard Roland & Guido Tabellini, *Separation of Powers and Political Accountability*, 112 Q.J. ECON. 1163, 1165–66 (1997).

190. See U.S. CONST. art. I, § 2 (“The House of Representatives shall be composed of Members chosen every second Year.”).

191. See U.S. CONST. amend. XVII (“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years.”).

192. See Baker, *The More Outside Money*, *supra* note 7 (“The more money a member of Congress gets from donors outside the district, the less that member represents his or her constituents’ preferences.”).

193. For the classic account, see DAVID R. MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* 108, 112, 115, 127 (1974). The account has been complicated to include other legislator motivations, but the reelection imperative still prevails. See Einer Elhauge, *Are Term Limits Undemocratic?*, 64 U. CHI. L. REV. 83, 111 (1997).

194. See Connie Cass, *Congress Is Wildly Unpopular, But Safe in Their Seats*, PBS NEWSHOUR (June 30, 2014, 9:22 AM), <http://www.pbs.org/newshour/rundown/congress-wildly-unpopular-safe-seats>.

incumbency.¹⁹⁵ For financial support of an actual or potential opponent to be significant, it must be in the millions of dollars. Given the geographical distribution of campaign contributions, that means that only an opponent who can raise substantial contributions in contributor areas threatens an incumbent.

This creates incentives for recipient-area officials to spend time and devote significant attention to contributor areas. To prevent any credible opponent from emerging in the first place, incumbents will themselves amass major campaign contributions.¹⁹⁶ These major campaign contributions will have to originate in contributor areas. Incumbent members of Congress in recipient areas take steps to cultivate support in those contributor areas.¹⁹⁷

Second, legislators seek greater amounts of power to pursue ideological or material gains, either through obtaining more power in their current positions or through obtaining more powerful positions in the future.¹⁹⁸ Many sitting members of Congress do—or would if possible—desire greater status or power within Congress, or even higher office. To obtain greater power within a current position or higher office, even greater amounts of money will need to be raised in the future, and thus even closer relationships with contributor areas will be necessary to raise that money. To obtain higher office or greater power within a current position, more elite media attention will be necessary, and these media networks are also located in contributor areas. Future ambition is therefore also tied to contributor areas.

D. SURROGATE REPRESENTATION

Geographic self-government is not the only unit of self-government in the American system. National self-government defines the American

195. See Gary C. Jacobson, *Strategic Politicians and the Dynamics of U.S. House Elections, 1946–86*, 83 AM. POL. SCI. REV. 773, 773 (1989); Jonathan S. Krasno, Donald Philip Green & Jonathan A. Cowden, *The Dynamics of Campaign Fundraising in House Elections*, 56 J. POL. 459, 461 (1994).

196. See Jay Goodliffe, *The Effect of War Chests on Challenger Entry in U.S. House Elections*, 45 AM. J. POL. SCI. 830, 830 (2001); Robert E. Hogan, *Campaign War Chests and Challenger Emergence in State Legislative Elections*, 54 POL. RES. Q. 815, 815 (2001).

197. See, e.g., Michael J. Ensley, *Individual Campaign Contributions and Candidate Ideology*, 138 PUB. CHOICE 221, 222–24 (2009); Bertram Johnson, *Individual Contributions: A Fundraising Advantage for the Ideologically Extreme?*, 38 AM. POL. RES. 890, 891–94 (2010).

198. See RICHARD F. FENNO, JR., HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS 137 (1978) (demonstrating that members of Congress desire reelection but also power in Congress and more desirable public policy resulting from that power); MORRIS P. FIORINA, REPRESENTATIVES, ROLL CALLS, AND CONSTITUENCIES 31 (1975) (“Reelection, legislative influence, prestige, policy, higher office, public service—all may play their part.”). As Joseph Schlesinger famously noted, “an ambitious politician must act today in terms of the electorate he hopes to win tomorrow.” JOSEPH A. SCHLESINGER, AMBITION AND POLITICS: POLITICAL CAREERS IN THE UNITED STATES 6 (1966).

political system as well.¹⁹⁹ The goal of any American system of campaign finance law should be to balance local and national self-government. Scholars who have written about money traveling across districts and states have noted the benefits for self-government of contributing to elections far away without considering the costs—because they have not noticed the geographical inequality resulting from this form of campaign-contribution practice.²⁰⁰

Those who have defended the current system have used the lens of “surrogate representation.” As Jane Mansbridge famously noted:

Surrogate representation, both state- and nationwide, plays the normatively critical role of providing representation to voters who lose in their own district. Because both federal and state electoral systems use single member districts, with first-past-the-post, winner-take-all majority elections, citizens whose preferred policies attract a minority of voters in their own districts could theoretically end up with no representation at all in the legislature.²⁰¹

Americans do live in a national political unit,²⁰² and do identify with this national political unit.²⁰³ There are substantial benefits, then, to permitting them to identify with other parts of the national political unit—even if those parts of the national political community are parts of a different district or state political community.

Surrogate representation might be normatively desirable, but not if it comes at the significant cost of meaningful geographic self-government. The

199. See *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (“It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.”), *aff’d*, 565 U.S. 1104 (2012) (mem.).

200. For the most significant description of the problem, see the excellent discussion in Briffault, *supra* note 12, at 38–41.

201. Mansbridge, *supra* note 71, at 523. See also Bulman-Pozen, *supra* note 12, at 1136 (“Americans . . . seek to create momentum for a particular policy or political party, to build a real-life example to inform national debate, or simply to take comfort in knowing that their preferences are actual policy—and their partisan group is in control—somewhere.”); Pettys, *supra* note 12, at 87 (“If one’s political identity is bound up with that of the nation, one has strong social-psychological incentives to secure congressional leadership that is compatible with one’s own preferences.”).

202. For instance, Americans from all places elect a single president for the entire country. The same House of Representatives and Senate represent Americans from all places.

203. See, e.g., Edward L. Rubin, *Puppy Federalism and the Blessings of America*, 574 ANNALS AM. ACAD. POL. & SOC. SCI. 37, 45–46 (2001) (“At present, the United States is a socially homogenized and politically centralized nation.”).

goal is to balance surrogate and geographical representation, rather than to have one swallow and subsume the other. Scholars discuss surrogate representation as not undermining geographical representation. To them, surrogate representation implicitly or explicitly features a roughly egalitarian, two-way direction of contributions traffic.²⁰⁴ In return for a campaign finance law that provides national self-government benefits, there is very little negative in terms of local self-government costs. I can shape campaigns in your home, and you can shape campaigns in my home. Rural upstate New York can contribute to and shape its own campaigns as well as those in New York City, and vice versa.

Campaign finance law undermines this prerequisite of parity. A tiny fraction of individuals and organizations, almost exclusively located in a few metropolitan areas, engage in surrogate representation, and no one else joins them. Recipient areas do not have the resources to contribute in meaningful amounts to contributor areas. There is almost no added national self-government benefit for almost all Americans. On the negative side, the relative amounts of contributions from a relatively small number of different and distant places undermine geographic self-government in most of the United States.

IV. SOLUTIONS

This Part evaluates two different types of responses to the geography of campaign finance law: those targeting where campaign contributions start, and those targeting where campaign contributions finish. Both types of responses have their own distinctive strengths. Both types of responses face significant political difficulties in being enacted.²⁰⁵ Both types of responses also have their own normative tradeoffs.

Scholars and policymakers have mostly focused on limiting contributions coming from out of district and from out of state. If too much money is coming from too few places, one response is to limit how much money comes from those places. However, focusing on limiting

204. See, e.g., Bulman-Pozen, *supra* note 12, at 1140 (“[P]olitical participation across state lines reflects and reaffirms the states’ significance as governments and sites of political community. Most narrowly, such participation allows individuals who feel alienated from their own state government to affiliate with another state government.”); Mansbridge, *supra* note 71, at 522 (“A member of Congress from Minnesota, for example, may lead the Congressional opposition to a war opposed by significant numbers of voters in Missouri and Ohio whose own representatives support the war.”).

205. See Richard Briffault, *Reforming Campaign Finance Reform: A Review of Voting with Dollars*, 91 CALIF. L. REV. 643, 647–48 (2003) [hereinafter Briffault, *Reforming*] (“There has never been a public-funding program for congressional elections.”).

contributions from out of district and from out of state has significant problems as a policy matter. Under current doctrine—doctrine that might change depending on the Supreme Court evolves following the addition of Justice Gorsuch—this type of response is almost surely unconstitutional anyway.

This Part also evaluates a different type of response, one that focuses on contribution imports rather than contribution exports. This Part introduces the concept of “political enterprise zones.” One of the policy tools most established in the law to target geographically-focused problems is the notion of “enterprise zones,” policies focused on those places that most need the assistance.²⁰⁶ Campaign finance law has had no place, but political enterprise zones would make campaign finance law place-conscious. State and local laws have started to utilize this policy design, and this Part evaluates its desirability as a matter of federal law.

Recipient areas would feature disclosure rules that make salient the role of out-of-district or out-of-state contributions. Recipient areas would feature contribution rules that would encourage contributions from within recipient areas to countermand the control generated by contributions from elsewhere. The risk, though, is that these rules would be ineffectual more than counterproductive. This Part considers this risk, and considers the merits of policy tools to address that risk.

A. CONTRIBUTOR-AREA SOLUTIONS

1. Forms

The primary response to the geography of campaign finance law has been to prohibit or constrain out-of-district or out-of-state contributions. Some have proposed an outright prohibition on campaign contributions to candidates running in elections in which the contributors cannot vote. In his book, former Justice John Paul Stevens proposes permitting only voters in an election to be contributors in that election.²⁰⁷ Oregon voters passed a law

206. For a general discussion of enterprise zone policies, see the overviews in JERRY MITCHELL, *BUSINESS IMPROVEMENT DISTRICTS AND THE SHAPE OF AMERICAN CITIES* 3 (2008); Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 368 (1999); Richard C. Schragger, *Rethinking the Theory and Practice of Local Economic Development*, 77 U. CHI. L. REV. 311, 323–24 (2010). Richard Briffault’s paper on contributions from other jurisdictions introduces some of the foundations for political enterprise zones. See Briffault, *supra* note 12, at 64–67.

207. See STEVENS, *supra* note 12, at 59 (“[I]t is unwise to allow persons who are not qualified to vote—whether they be corporations or nonresident individuals—to have a potentially greater power to affect the outcome of elections than eligible voters have.”). See also 52 U.S.C. § 30121(a) (2015)

creating such a rule for state elections in 1994.²⁰⁸

Others have proposed permitting such contributions, but limiting their aggregate amount. Alaska and Hawaii have created such a rule for state elections.²⁰⁹ These rules can take several forms. They can prohibit candidates from accepting contributions that exceed a certain amount from out of state or out of district.²¹⁰ They can prohibit candidates from accepting a certain percentage of their total contributions from out of state or out of district.²¹¹

The benefits of these solutions should be obvious: they protect the ability of districts and states to self-govern. If there is too much out-of-district or out-of-state money coming into a campaign, these solutions generate a clear legal prohibition preventing that from happening. The ambition is not to generate more money in congressional campaigns, or to generate more different money in congressional campaigns. The ambition is to limit the wrong kind of money in congressional campaigns, and supporters of these solutions believe their policy designs accomplish that.

2. Policy Concerns

Contributor-area solutions have significant normative tradeoffs. First, prohibiting or significantly limiting contributions from elsewhere would undermine some of the benefits that derive from these contributions. Contributions from out of district or out of state generate the benefits of “surrogate representation” by permitting citizens to identify with officials elsewhere.²¹² Identifying with candidates that have a real chance of winning office in other places can be the only means by which those in the political

(prohibiting foreign contributions); *Bluman v. FEC*, 800 F. Supp. 2d 281, 283 (D.D.C. 2011) (upholding prohibition), *aff'd*, 565 U.S. 1104 (2012) (mem.); *Briffault*, *supra* note 12, at 52 (considering a related proposal).

208. See *VanNatta v. Keisling*, 151 F.3d 1215, 1218 (9th Cir. 1998) (reviewing the constitutionality of an Oregon ballot measure prohibiting state candidates from “us[ing] or direct[ing] only contributions which originate from individuals who at the time of their donation were residents of the electoral district of the public office sought by the candidate”), *superseded by Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377 (2000).

209. See ALASKA STAT. § 15.13.072 (2016); HAW. REV. STAT. ANN. § 11-362 (LexisNexis 2016). It is also worth noting that the Alaska and Hawaii statutes simply distinguish between in-state and out-of-state contributions. This permits contributions from those within the state but in another electoral district in the state. In other words, it does not create the direct linkage that Justice Stevens suggested. Other states have matched only those campaign contributions received by constituents. See, e.g., ARIZ. REV. STAT. ANN. § 16-946 (2016); CONN. GEN. STAT. § 9-704 (2015); FLA. STAT. § 106.33 (2016); MICH. COMP. LAWS ANN. § 169.212 (West 2005).

210. See ALASKA STAT. § 15.13.072.

211. See *id.*; HAW. REV. STAT. ANN. § 11-362.

212. See *Mansbridge*, *supra* note 71, at 522 (“Surrogate representation is representation by a representative with whom one has no electoral relationship.”).

minority in another place can find a voice that speaks to them and for them.²¹³

Second, contributions flowing from out of district or out of state do serve important goals in recipient areas. Contributions from out of district or out of state—like all contributions—increase the amount of attention paid to the candidates receiving the contributions. This leads to voters having more information and making more informed decisions.²¹⁴ These contributions, by generating more campaign discussion, can also increase voter turnout in recipient areas.²¹⁵

Contributions from contributor areas—the wealthiest and most powerful parts of the United States—also serve as a unique signal of the national significance of a candidate.²¹⁶ Voters find it appealing if a candidate in their district or state has a national reputation.²¹⁷ Voters find this validates their district or state. Voters also believe that this will yield other, more tangible benefits if that candidate triumphs in their campaign, such as increased governmental spending in their district or state.

3. Constitutional Concerns

Limiting or prohibiting contributions from out of district or out of state

213. Scholars defending the current campaign finance law regime have noted these surrogate representative benefits. *See, e.g.*, Bulman-Pozen, *supra* note 12, at 1136 (“Americans . . . seek to create momentum for a particular policy or political party [in another state] . . . or simply to take comfort in knowing that their preferences are actual policy—and their partisan group is in control—somewhere.”); Pettys, *supra* note 12, at 82 (“[A]ny American can claim any member of Congress as his or her own and can direct his or her campaign contributions accordingly.”).

214. *See, e.g.*, Christopher S. Elmendorf, *Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections, and Common Law Statutes*, 160 U. PA. L. REV. 377, 443–44 (2012) (discussing empirical studies proving this); Gerald C. Wright, *Charles Adrian and the Study of Nonpartisan Elections*, 61 POL. RES. Q. 13, 13–16 (2008) (summarizing political science research demonstrating that more contributions equal more attention, which reduces problematic bases for voter decisions).

215. *See, e.g.*, Alan S. Gerber & Donald P. Green, *The Effects of Canvassing, Telephone Calls, and Direct Mail on Voter Turnout: A Field Experiment*, 94 AM. POL. SCI. REV. 653, 655 (2000) (reporting on literature finding more campaign attention has a slight effect on voter turnout); Donald P. Green et al, *Field Experiments and the Study of Voter Turnout*, 23 J. ELECTIONS, PUB. OPINION & PARTIES 27, 30 (2013) (same).

216. This is similar to the data political scientists have generated about the effects of a presidential visit to a district or state. *See, e.g.*, Paul S. Herrnson & Irwin L. Morris, *Presidential Campaigning in the 2002 Congressional Elections*, 32 LEGIS. STUD. Q. 629, 635–38 (2007) (finding a statistically significant effect generated by presidential visits); Rob Mellen, Jr. & Kathleen Searles, *Midterm Mobilization: The President as Campaigner-in-Chief During Midterm House Elections, 1982–2006*, 13 WHITE HOUSE STUD. 187, 191–92 (2013) (same).

217. *See* Alan I. Abramowitz, *Incumbency, Campaign Spending, and the Decline of Competition in U.S. House Elections*, 53 J. POL. 34, 42 (1991); Markus Prior, *The Incumbent in the Living Room: The Rise of Television and the Incumbency Advantage in U.S. House Elections*, 68 J. POL. 657, 666 (2006).

faces another problem: it is almost surely unconstitutional under existing doctrine.²¹⁸ Although following the death of Justice Antonin Scalia, doctrine surrounding campaign finance law might have changed if his replacement had been seated by a Democratic president.²¹⁹ Justice Scalia was a powerful voice for the 5:4 majority in many of the cases that made it more difficult for the government to regulate campaign contributions.²²⁰ Now, though, these cases remain good law, and there is little reason to expect that Justice Gorsuch will assist in overruling or undermining the anti-regulatory doctrines of the Roberts Court.²²¹

Under current doctrine, as Richard Briffault has written, “[i]t is virtually certain that the Supreme Court would invalidate laws that target

218. These laws have surprisingly fared differently in different courts. Compare, e.g., *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999) (upholding Alaska’s law), cert. denied 528 U.S. 1153 (2000), with *Landell v. Sorrell*, 118 F. Supp. 2d 459, 484 (D. Vt. 2000) (invalidating Vermont’s law), aff’d in part and vacated in part, 382 F.3d 91 (2d Cir. 2004), rev’d sub nom. *Randall v. Sorrell*, 548 U.S. 230 (2006). Part of the explanation for this is geographical variation in jurisprudential approaches by judges, but part of the explanation is also the rapidly changing campaign finance law of the Roberts Court. The Alaska decision was reached before cases like *Citizens United* and *McCutcheon*, and so its doctrinal structure is outdated. For instance, the Alaska court states that “contribution limits” have not been a particular source of concern for the Supreme Court. See *Alaska Civil Liberties Union*, 978 P.2d at 62. Recent Supreme Court decisions have noted the constitutional problems with contribution limits. See, e.g., *McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014) (“The right to participate in democracy through political contributions is protected by the First Amendment”); *id.* at 1441 (“Congress may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others.”).

219. See, e.g., Maggie Haberman, *Hillary Clinton Says Citizens United Would Guide Supreme Court Picks*, N.Y. TIMES: FIRST DRAFT, (May 19, 2016, 7:02 AM), <http://www.nytimes.com/politics/first-draft/2015/05/19/today-in-politics-clinton-says-citizens-united-would-guide-her-supreme-court-picks> (“Most presidential candidates go out of their way to avoid appearances of having a litmus test for Supreme Court appointees. . . . Mrs. Clinton . . . said publicly that she did have such a metric: overturning the *Citizens United* decision of 2010.”); David Weigel, *Clinton Will Push Constitutional Amendment to “Overturn Citizens United,”* WASH. POST (July 16, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/07/16/clinton-will-push-constitutional-amendment-to-overturn-citizens-united/> (“I will . . . appoint Supreme Court justices who understand that [*Citizens United*] was a disaster for our democracy . . .”).

220. Richard L. Hasen, *How Scalia’s Death Could Shake Up Campaign Finance*, POLITICO MAGAZINE (Feb. 14, 2016), <http://www.politico.com/magazine/story/2016/02/antonin-scalia-death-campaign-finance-reform-213633#ixzz4H3FzKjyS> (“Almost all of the important campaign finance decisions for a generation have been decided by a 5–4 majority on the Supreme Court.”). See *Citizens United v. FEC*, 558 U.S. 310, 393 (2010) (Scalia, J., concurring) (“[T]o exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.”).

221. See, e.g., David G. Savage, *Gorsuch Dissents as Supreme Court Upholds Ban on Big-Money Gifts to Parties*, L.A. TIMES (May 22, 2017, 12:10 PM), <http://www.latimes.com/politics/la-na-pol-gorsuch-court-20170522-story.html> (“The dissent by Gorsuch is his first and most significant decision since joining the court last month, and it puts him squarely on the side of conservatives and Republican lawyers who believe that limits on political money are unconstitutional.”).

contributions by non-constituents, including those that limit the amount or percentage of total donations a candidate or political committee may accept from non-constituents as well as laws that ban non-constituent donations outright.²²² Limiting or prohibiting contributions from contributor areas would constitute a burden on political speech, and is therefore “subject to exacting judicial review.”²²³ The Supreme Court has been particularly skeptical of prohibiting speech based on the identity of the speaker.²²⁴ Contributor-area solutions are identity-based speech limitations because they prohibit or constrain speech based on the geographical identity of the speaker.

The Court has indicated that preventing quid pro quo corruption or its appearance is an acceptable compelling interest that could justify some burdens on political speech.²²⁵ Quid pro quo corruption is usually defined as “dollars for political favors.”²²⁶ It is hard to see how contributions from out of district or state pose corruption problems. Is it that these contributions are particularly likely to use “dollars for political favors”²²⁷? If anything, the empirical evidence seems to suggest that these contributors are uniquely motivated by ideological considerations rather than transactional access considerations.²²⁸

B. RECIPIENT-AREA SOLUTIONS

Information disclosure and contribution regulation are the twin pillars of campaign finance law.²²⁹ Creating geographically targeted approaches to

222. Briffault, *supra* note 12, at 62.

223. *Id.* See also *Wagner v. FEC*, 793 F.3d 1, 5 (D.C. Cir. 2015) (“Laws that regulate campaign contributions . . . are subject to ‘a lesser but still rigorous standard of review.’”) (citations omitted), *cert. denied*, 136 S. Ct. 895 (2016).

224. See, e.g., *Citizens United*, 558 U.S. at 340 (prohibiting contribution limitations “distinguishing among different speakers, allowing speech by some but not others”).

225. See *Citizens United*, 558 U.S. at 359 (“When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.”).

226. *FEC v. Nat’l Conservative Political Action Comm’n*, 470 U.S. 480, 496–97 (1985).

227. *Id.* See also Briffault, *supra* note 12, at 62 (“As both the Ninth and Second Circuits have noted, there is no reason to believe that a donation from a non-constituent presents a greater danger of corruption than a donation of comparable size from a constituent.”).

228. See Bramlett, Gimpel & Lee, *supra* note 5, at 572; Gimpel, Lee & Kaminski, *supra* note 1, at 635; Gimpel, Lee & Pearson-Merkowitz, *supra* note 1, at 374, 377–78.

229. This will remain the case so long as *Buckley v. Valeo* remains good law and makes it easier to regulate contributions than expenditures. See *Buckley v. Valeo*, 424 U.S. 1, 23 (1976) (per curiam) (“[E]xpenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than . . . limitations on financial contributions [and are therefore more suspect].”) See also *McCutcheon v. FEC*, 134 S. Ct. 1434, 1445 (2014) (“Notwithstanding the robust debate, we see no need in this case to revisit *Buckley’s* distinction between contributions and

both of these twin pillars—creating political enterprise zones—is another type of solution to the problematic geography of campaign finance law. Recipient-area solutions do not focus on what contributor areas cannot do, but on what recipient areas can do. To be sure, though, both of these steps have their own problems, but many of these problems can be managed or mitigated through policy design mechanisms.

1. Placing Disclosure

The geography of campaign finance law generates an informational problem for congressional elections. Elections work best when voters have the requisite information about candidates.²³⁰ Voters can then select “the good types” that share their basic concerns.²³¹ Voters consider the geographical background of a candidate for office as relevant information in assessing whether that candidate is the “good type” like them that they want to represent them.²³²

Geographically targeted disclosure can therefore provide voters with the information they need to “follow the money and hold representatives accountable for any trails they don’t like.”²³³ The Supreme Court noted in *Buckley v. Valeo* that “disclosure provides the electorate with information ‘as to where political campaign money comes from’” in the first place.²³⁴ Providing voters with information about the origins of contributions “alert[s] the voter to the interests to which a candidate is most likely to be responsive.”²³⁵ If outside control of elections is a concern, then, disclosing

expenditures.”)

230. See ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 219 (1957) (noting the informational problems voters have during elections); ARTHUR LUPIA & MATHEW D. MCCUBBINS, THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW? 79 (1998) (same).

231. See Scott Ashworth & Ethan Bueno de Mesquita, *Delivering the Goods: Legislative Particularism in Different Electoral and Institutional Settings*, 68 J. POL. 168, 168–69 (2006) (demonstrating the values that voters prefer to assess the quality of elected officials); Sanford C. Gordon, Gregory A. Huber & Dimitri Landa, *Challenger Entry and Voter Learning*, 101 AM. POL. SCI. REV. 303 (2007) (demonstrating how entry into an electoral campaign by a challenger can provide valuable information about candidate quality).

232. See, e.g., Bowler, Donovan & Snipp, *supra* note 10, at 475–76 (summarizing the empirical evidence); Tom W. Rice & Alisa A. Macht, *The Hometown Advantage: Mobilization or Conversation?*, 9 POL. BEHAV. 257, 257 (1987) (same).

233. Kathleen M. Sullivan, *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311, 326.

234. *Buckley*, 424 U.S. at 66–67 (quoting H.R. REP. NO. 92-564, at 4 (1971)).

235. *Id.* For empirical evidence finding this ambition often to be effectively satisfied, see, for instance, Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994) (providing evidence that information about contributors can compensate for the lack of information about items actually on the ballot). There is also evidence in the other direction. See generally Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647 (2011) (noting general problems with mandated

information about the geographical origins of contributions could be of assistance.

Current federal law, though, does not provide for a robust regime of geographical disclosure. It only requires the disclosure of the addresses of campaign contributors.²³⁶ This requirement must only be disclosed at the time of the contribution, not at the time of the usage of the contribution.²³⁷ This information need only be disclosed in documents submitted to the Federal Election Commission (FEC), not in any other location.²³⁸ The federal statute requiring that the “address” of the contribution must be disclosed does not require that the address actually be reflective of the geographical origins of the contributions, but simply be reflective of a location sometimes used for business by the contributor.²³⁹

With this minimal requirement, out-of-district or out-of-state contributions are largely hidden. Candidates do not disclose the geographical origins of the contributions that funded campaign advertisements in the advertisements themselves. Candidates do not publicize the geographical origins of the contributions anywhere other than in obscure FEC documents. Contributions are provided through specially created organizations that sound like recipient-area organizations (the “Alaska First PAC”), and that have an address in recipient areas.

Since more substantial information is not disclosed, recipient-area candidates can focus parts of their campaigns on making themselves seem local—without any meaningfully disclosed information to counter that narrative. If the district or state is rural, then their advertising will focus on the candidate’s experience with the outdoors. If the district or state has many military facilities, then their advertising will focus on the candidate’s experience in or with the military. Voters will not do the research to challenge these authenticity claims, and local media lacks the resources to do so.

Disclosure opponents tend to focus more on how little disclosure does, rather than on the harms it does.²⁴⁰ Whether that is true for political

disclosures). *See also* Richard R. Lau & David P. Redlawsk, *Advantages and Disadvantages of Cognitive Heuristics in Political Decision Making*, 45 AM. J. POL. SCI. 951, 953 (2001) (finding limited benefits of contributor disclosures in elections).

236. *See* 52 U.S.C. § 30103(b) (2015).

237. *See id.* §§ 30103(b), 30104(c).

238. *See id.* § 30104(a)(1), (g)(3).

239. *See id.* §§ 30104(b), 30101(13).

240. *See* Briffault, *Reforming*, *supra* note 205, at 652–53 (“Although it is inherently difficult to measure the contributions not made due to disclosure laws, the significant and rapidly growing number

enterprise zones depends on what type of geographical information is disclosed. If geographically targeted disclosure merely makes more salient the individual or organizational names of the out-of-district or out-of-state contributors, it would have minimal informational effects. Saying that “this advertisement was paid for by Peter Singer,” for instance, would not have resonated much with the voters of rural upstate New York in a recent congressional race that featured many contributions from Singer.²⁴¹ If geographically targeted disclosure says after an advertisement that “this advertisement was paid for by a billionaire from New York City,” the influence would be more substantial. If geographically targeted disclosure says after an advertisement that “82 percent of Representative Stefanik’s contributions are from out of district,” that could have an influence somewhere in the middle.²⁴²

Whether geographical disclosure would matter also depends the salience of the format by which this disclosure is communicated. Federal law does currently require that multiple disclosures spaced out over a period of time must be made—and made in salient places—when federal law considers that information to be particularly important.²⁴³ BCRA (also known as McCain-Feingold) famously made into federal law a “Stand by Your Ad” provision. BCRA required candidates for federal office—as well as other organizations supporting or opposing federal candidates—to include in political advertisements “a statement [by the candidate] that identifies the candidate and states that the candidate has approved the communication.”²⁴⁴ Geographically targeted disclosure could likewise be required at the time of contribution and at the time of expenditure.²⁴⁵

of large contributions . . . suggest that disclosure laws have not done much to discourage large donations.”).

241. See Frank Pagano, *Stefanik Follows the Money*, ADIRONDACK DAILY ENTERPRISE (July 13, 2015), <http://content.adirondackdailyenterprise.com/?p=554504/Stefanik-follows-the-money.html> (“Does Rep. Elise Stefanik work for us . . . ? Her biggest donor was multibillionaire Peter Singer, a hedge and vulture fund CEO from New York City.”).

242. See *Florida Congressional Candidate Goes on Tirade Against Reporter*, POLITICO (Aug. 22, 2016, 5:25 AM), <http://www.politico.com/states/florida/story/2016/08/florida-congressional-candidate-goes-on-twitter-tirade-104864> (“Former Secret Service agent and congressional candidate Dan Bongino went on a screaming, profanity-laced tirade Sunday . . . [following reporting about how] only 6 percent of [his] itemized donations came from Collier and Lee counties.”).

243. See generally FEC, SPECIAL NOTICES ON POLITICAL ADS AND SOLICITATIONS (2006), http://www.fec.gov/pages/brochures/spec_notice_brochure.pdf.

244. 52 U.S.C. § 30120(d) (2015).

245. Justin Levitt has proposed a related disclaimer. See Justin Levitt, *Confronting the Impact of Citizens United*, 29 YALE L. & POL’Y REV. 217, 227–28 (2010) (proposing information related to “simple proxies for the quantity and fervor of local support for a particular communication”).

2. Placing Matching

Geographically targeted matching campaign contributions could be part of political enterprise zones.²⁴⁶ Other mechanisms to generate additional campaign contributions in recipient areas appear unlikely to be of assistance because there are not individuals or organizations with the requisite amounts of wealth in those areas. Federal law could supplement the small contributions made in recipient areas with matching public funds.

For every dollar made to a recipient-area campaign by a recipient-area voter, a public match of several dollars would ensue. The FEC already requires contributors to identify their address as part of their contributions.²⁴⁷ Once that zip code matches with a recipient-area zip code, a match of several dollars would automatically be deposited in the campaign account of the candidate receiving the contribution.

Similar geographically-targeted matching funds have and do exist elsewhere. Presidential candidates are eligible to receive matching grants if they raise at least \$5,000 in at least twenty states.²⁴⁸ In New York City, candidates for borough presidents and city council members receive several dollars in a public match for every dollar received from “residents.”²⁴⁹

Matching funds would have two effects to improve recipient-area power in recipient-area elections. First, it would increase the amount of contribution payout from recipient areas even if recipient areas do not increase total contributions. Let us take the New York City match, one of the most successful matching programs in existence. It matches at six dollars for every dollar of contributions, up to \$175.²⁵⁰ If there was a six-to-one match for recipient-area contributions, then recipient-area contributions would compete with contributor-area contributions.²⁵¹

246. For a discussion of the experiences of different jurisdictions employing matching contributions, see Hasen, *supra* note 166, at 33; Kenneth R. Mayer, *Public Election Funding: An Assessment of What We Would Like to Know*, 11 FORUM 365, 378 (2013). Tax credits have proven to be less effective and less significant, although one could imagine them as a useful and similarly structured supplement to matching programs.

247. See 52 U.S.C. § 30101(13).

248. See *Presidential Election Campaign Fund*, FEC, <https://transition.fec.gov/press/bkgnd/fund.shtm> [hereinafter *Campaign Fund*] (last updated May 13, 2016).

249. See N.Y.C. ADMIN. CODE §§ 3-702(3), 3(2)(a) (2016).

250. See ANGELA MIGALLY & SUSAN LISS, BRENNAN CTR. FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 4 (2010).

251. The proposed matching programs that Congress has considered would use matching for congressional and presidential elections. For these elections—within certain limitations—the match would be four to one. See S. 752, 111th Cong. § 523(a) (2009); H.R. 1826, 111th Cong. § 523(a) (2009) (introduced by Senators Dick Durbin (D-IL) and Arlen Specter (D-PA), and by Representatives John

Second, matching programs could actually increase recipient-area contributions even before there is a multiple match. Matching programs in political enterprise zones would be a highly salient program. It would serve as a form of concentrated benefit provided to these areas, rather than the more diffuse and therefore unnoticed benefit of providing a little bit of public money to a lot of people in a lot of places. There is evidence that other salient matching programs in specific jurisdictions have had this effect.²⁵² In New York City, the number of donors increased by 35 percent after the multiple match program commenced.²⁵³ New York residents were four times more likely to contribute to city elections (with multiple matching) than to state races (with no multiple matching).²⁵⁴

Political scientists have demonstrated there is a political talent drain plaguing recipient areas as well.²⁵⁵ More cash from recipient areas would give recipient-area candidates more incentives to hire staffers with connections in the recipient-area district or state.²⁵⁶ More cash would mean that expatriates with political talent could also move back and add their political talent to recipient-area causes.

There are problems that some matching programs face, although policy designs could be used to address some of these problems. Other matching programs—like the New York City program—conceived of their role as also limiting the total cost of campaigns.²⁵⁷ Matching contributions are only for smaller contributions.²⁵⁸ Matching contributions are also only for individual

Larson (D-CT) and Walter Jones (R-NC)). Even at four to one, recipient-area contributions exceed contributor-area contributions. The presidential matching program is a dollar-for-dollar match. *See* I.R.C. § 9034(a) (2012).

252. *See* MIGALLY & LISS, *supra* note 250, at 17.

253. *See id.* at 13.

254. *See* Overton, *supra* note 104, at 1297.

255. *See* Gimpel, Lee & Thorpe, *supra* note 1, at 25–27.

256. The scholarship indicates that “localness” is a means of connecting with voters. *See* Enos & Hersh, *supra* note 178, at 255; Gur Huberman, *Familiarity Breeds Investment*, 14 REV. FIN. STUD. 659 (2001); Gregory S. Thielemann, *Local Advantage in Campaign Financing: Friends, Neighbors, and Their Money in Texas Supreme Court Elections*, 55 J. POL. 472 (1993). If connecting with recipient-area voters was not that significant previously because it would not produce major campaign contributions, then political enterprise zones changes that.

257. *See* New York City, N.Y., Local Law No. 8, § 1 (Feb. 29, 1988) (describing the Act as intended “to reduce improper influence of local officers by large campaign contributions and to enhance public confidence in local government”). *See also id.* (“[I]t is vitally important to democracy . . . to ensure that citizens, regardless of their personal wealth, access to large contributions or other financial connections, are enabled and encouraged to compete effectively for public office . . .”).

258. *See* MIGALLY & LISS, *supra* note 250, at 4 (“[S]tarting in the 2001 elections, the City matched the first \$250 of each contribution at a four-to-one ratio. . . the City further democratized the system, when it lowered the matchable amount to the first \$175 of each contribution.”).

contributions.²⁵⁹ Public funding has also often meant spending limitations for candidates.²⁶⁰

Public funding programs that try to limit the total cost of campaigns eventually result in certain candidates opting out of public financing altogether.²⁶¹ Certain recipient-area candidates would likely do the same. Imagine a Senator Tom Cotton (R-AK) or Representative Elise Stefanik (R-NY), two young political stars from recipient areas. Contributor-area support for their candidacies was substantial enough that they likely would have or could have exceeded any spending limitations. Political enterprise zones would, in all likelihood, increase the total amount of spending in campaigns anyway, so a spending limitation would make no sense for other reasons.²⁶²

Another concern is related to the argument behind “the hydraulics of campaign finance reform.”²⁶³ Contributions find a way to where they are needed and where they can be used, and contributions can increase in amount if needed as well. With political enterprise zones increasing recipient-area contributions, wouldn’t contributor-area contributions just increase proportionately to ensure their continued significance? This could be true, but would be a question of calibrating multiple matches at the right amount. At some level of multiple matching, contributor areas will decide to stop increasing contributions, and will either focus all their contributions in some areas or contribute relatively less to more areas.

3. Placing Concerns

The classic concern with place-based policies is that they neglect to

259. See NEW YORK CITY, N.Y., ADMIN. CODE § 3-702(3) (2016) (“The term ‘matchable contribution’ shall mean (i) a contribution . . . made by a natural person resident in the city of New York”); see also *id.* § 3-703(1)(a), (14)(a)(iii).

260. See Richard Briffault, *Public Funding and Democratic Elections*, 148 U. PA. L. REV. 563, 568 (1999) (“All existing systems for providing public funds to candidates require those who accept public funds to agree to accept limits on their campaign spending.”) [hereinafter Briffault, *Public*]. See, e.g., ARIZ. REV. STAT. ANN. §§ 16-941, 16-947 (2016); CONN. GEN. STAT. § 9-702 (2015); FLA. STAT. § 106.33 (2016); HAW. REV. STAT. ANN. § 11-423 (LexisNexis 2016); ME. REV. STAT. tit. 21-A, § 1125(6) (2016); MD. CODE ANN., ELEC. LAW § 15-105 (2017); MASS. GEN. LAWS, ch. 55C, § 1A (2016); MICH. COMP. LAWS § 169.267 (2016); MINN. STAT. § 10A.25 (2016); NEB. REV. STAT. § 32-1604 (2011) (repealed 2013); N.J. STAT. ANN. § 19:44A-7 (West 2016); N.M. STAT. ANN. § 1-19A-3 (West 2016); N.C. GEN. STAT. § 163-278.64 (2011) (repealed 2013); R.I. GEN. LAWS § 17-25-19 (2016); VT. STAT. ANN. tit. 17 § 2853 (2015); WIS. STAT. ANN. § 11.50 (West 2011) (repealed 2011).

261. See Richard Briffault, *Public*, *supra* note 260, at 586.

262. See Briffault, *Reforming*, *supra* note 205, at 648 (criticizing a “misguided desire to reduce not just the role of private money in politics but the amount of money in elections generally”).

263. See Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1705 (1999).

consider the mobility of human capital.²⁶⁴ Individuals have incentives to receive the subsidies from places and use these subsidies where they will attract the greatest return—which could mean another place. This could mean relocating shortly after receiving the subsidies, or outsourcing many responsibilities to be performed outside of the place intended to receive the subsidies.

These concerns about place-based policies do not apply with as much force in the context of congressional elections. Places will continue to need representation in the House of Representatives and the Senate regardless of whether these places are economically desirable locations. We are not trying to maximize efficiency. We are trying to achieve representation. Put another way: political places will and must continue to exist, even though economic places might not.

There is also less concern about the mobility of human capital as regards political enterprise zones. One feature of place-based policies, particularly in Europe, is the presence of “clawback” provisions.²⁶⁵ These provisions require—as a condition of accepting place-based subsidies—that the subsidies not be used in the near future in other places.

The nature of politics means that clawback provisions are less necessary for political enterprise zones. Political candidates running for office in one place tend not to run for office in another place. Their connections and name recognition are not perfectly geographically portable.²⁶⁶ Running in a different place seems like political opportunism rather than political authenticity. A political candidate benefitting from political enterprise zones might run for a higher office (i.e., Senate after House) or a lateral office (i.e., Governor after House) in the same location, but is less likely to use the political capital built in a recipient area in another area.

Political enterprise zones do not present constitutional problems. There are no convincing First Amendment concerns. The Court still clearly permits campaign finance disclosures.²⁶⁷ The doctrine does not require that a danger

264. See, e.g., Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business*, 110 HARV. L. REV. 377, 382–89 (1996) (highlighting the range of policy responses to human mobility undermining place-based policies); Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 URB. STUD. 1275, 1281–83 (2006) (providing an economic case against place-based policies because of human mobility).

265. See Larry C. Ledebur & Douglas Woodward, *Adding a Stick to the Carrot: Location Incentives with Clawbacks, Recisions, and Recalibrations*, 4 ECON. DEV. Q. 221, 226 (1990); Schragger, *supra* note 31, at 508–12.

266. See, e.g., Bowler, Donovan & Snipp, *supra* note 10, at 475–76.

267. See *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“[D]isclosure permits citizens and

of corruption be demonstrated in order to sustain a disclosure rule.²⁶⁸ Placing campaign finance matching is not a burden on speech. Unlike *Arizona Free Enterprise v. Bennett*, the subsidies are not “in direct response to the political speech of another.”²⁶⁹ Political enterprise zones are more like the “viewpoint-neutral subsidy given to one speaker” that the Court has decided does not constitute a burden.²⁷⁰

Distinguishing between places for purposes of political enterprise zones does not pose a series Equal Protection Clause problem. Place is not a suspect or quasi-suspect classification pursuant to Equal Protection doctrine.²⁷¹ Federal law constantly makes distinctions based on geographical location.²⁷²

If these enterprise zones do burden speech or create problematic distinctions, a form of place-based equality—often called federalism in the doctrine²⁷³—can be an interest to justify political enterprise zones. The Court has generally said there is no valid state interest “in equalizing the relative ability of individuals and groups to influence the outcome of elections.”²⁷⁴ The Court has never, though, addressed whether place-based equality would be a valid interest, and indeed has found doctrinal means to avoid addressing that question.²⁷⁵

A place-based equality rationale asks the conservative Justices normally skeptical of campaign finance regulation to balance that against

shareholders to react to the speech of corporate entities in a proper way.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“[D]isclosure promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

268. See *McConnell v. FEC*, 540 U.S. 93, 194–202 (2003), *overruled in part by* *Citizens United v. FEC*, 558 U.S. 310 (2010); *Buckley v. Valeo*, 424 U.S. 1, 80–82 (1976) (per curiam).

269. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 743 (2011).

270. *Id.*

271. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part) (approving the use of geographical considerations in drawing school district boundaries); *Pyke v. Cuomo*, 567 F.3d 74, 78 (2d Cir. 2009) (deciding that geographical classifications are not “insidious proxies for suspect racial classifications”); *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616, 638 (7th Cir. 2007) (deciding and explaining why the Supreme Court has decided that geographical classifications are not subject to heightened scrutiny).

272. See generally Thomas B. Colby, *In Defense of the Equal Sovereignty Principle*, 65 DUKE L.J. 1087 (2016) (explaining and justifying these rules).

273. Many of the passages praising federalism in the Court’s oft-quoted *Gregory v. Ashcroft* opinion reference place-based considerations. See *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (“[Federalism] assures a decentralized government that will be more sensitive to the diverse needs of a heterogeneous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government.”).

274. *Buckley v. Valeo*, 424 U.S. 1, 48 (1976) (per curiam).

275. See *Citizens United v. FEC*, 558 U.S. 310, 362 (2010) (“We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation’s political process.”).

their normal concern for federalism. Political scientists writing about judicial behavior have noted that judicial behavior is multi-dimensional.²⁷⁶ When many issues are involved in a case, preferences along many dimensions must be measured. It could be that conservative Justices skeptical of campaign finance regulation are more supportive of it when the interest asserted is place-based.

Indeed, these concerns have received doctrinal recognition in other situations by judges otherwise skeptical of regulating speech. A three-judge panel in the District of Columbia recently upheld a constitutional challenge to prohibitions of campaign contributions on similar grounds.²⁷⁷ It was a conservative judge (Brett Kavanaugh, now elevated to the Court of Appeals for the District of Columbia Circuit) who wrote the opinion upholding the prohibition on foreign contributions.²⁷⁸

CONCLUSION

The increasingly salient sense that our campaign finance law permits electoral control by the powerful and not by the people has become a central concern on both sides of the ideological aisle. Lost in this discussion, though, is another empirical truth of modern politics: it is the people in a very few places in the United States that control politics in the rest of the United States. If you want to know who will run and win the next election for Congress in small town U.S.A.—or Pittsburgh or Portland—ask those in a few secluded neighborhoods in Houston or New York City. Every citizen has a place, and so every citizen should find the absence of place in campaign finance law troubling in our large republic.

James Madison characterized the concentration of power as “the very definition of tyranny.”²⁷⁹ Campaign contribution power is now geographically concentrated. For Democrats and Republicans alike, how their candidacies for Congress fare and how their time in Congress goes will depend heavily on what happens when they travel to a few metropolitan areas. We have taken a dynamic and diverse country and squished power in

276. See generally Benjamin E. Lauderdale & Tom S. Clark, *The Supreme Court's Many Median Justices*, 106 AM. POL. SCI. REV. 847 (2012) (noting cases in which different doctrinal stimuli point towards different doctrinal outcomes).

277. *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012) (mem.).

278. However, threads in the *Bluman* opinion do seem to distinguish between contributions by those outside of the country and contributions by those outside of the state or district. See Briffault, *supra* note 12, at 62 (“[*Bluman*] treat[s] ‘the American political community’ as the relevant political community for campaign finance purposes . . .”). See *Bluman*, 800 F. Supp. 2d at 288–90 (“[C]itizens of other states and municipalities are all members of the American political community.”).

279. See THE FEDERALIST NO. 47, *supra* note 8, at 303 (James Madison).

that country into a few street blocks. Americans of differing ideological perspectives might not be able to agree on much, but they surely all agree that this is a problem that we can identify and start to address.

