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THE POLITICS OF THE RURAL VOTE

Debra Lyn Bassett

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THE POLITICS OF THE RURAL VOTE*

Debra Lyn Bassett†

I. INTRODUCTION

This article is about dispelling myths. Rural dwellers are thought to live in peaceful idyllic settings where issues are simple and unproblematic. A reduced focus on material goods renders money of less concern than in the faster paced style of urban living. Moreover, the political interests of rural dwellers are more fully protected than warranted by their actual numbers. Due to the Framers' compromises on behalf of the smaller states, institutional protections are inherent in our system of government for rural interests. These protections render conventional concerns about garnering political attention, acquiring political funding, and attaining political power largely irrelevant. For example, the issue most important to rural dwellers, that of federal subsidies to protect family farms, receives both attention and substantial congressional funding.

False. Entirely, demonstrably false. This article explores the intersection of money, politics, and rural dwellers, and concludes that, contrary to popular belief, rural dwellers have disproportionately little political voice.

In the political arena, money is power. Without campaign funds, a political candidate usually cannot purchase the advertisements and air time necessary to convey his or her message to the public¹—and without a

* In this article, Professor Bassett analyzes the rural congressional base, rural political contributions, and the inequities in property distribution, and concludes that these disparities translate into disparities in political power for rural dwellers.

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1. JOHN THEILMANN & AL WILHITE, DISCRIMINATION AND CONGRESSIONAL CAMPAIGN CONTRIBUTIONS 36 (1991).

[Much of a candidate's campaign money] is consumed by media expenses: newspaper advertising, billboards and yard signs, and bumper stickers and other paraphernalia, radio, and especially television time. Other expenses include telephone and postage costs, office and equipment rental, travel

political base, election is impossible.² The importance of campaign financing to the outcome of political elections thus renders political donors very powerful.³ Political donors enable certain voices to be heard above others in the political arena.

Only 600,000 Americans—one-quarter of one percent of the nation's population—are political donors.⁴ Ninety-five percent of these donors are white; eighty percent are men; eighty percent are over age forty-five; and eighty-one percent have annual incomes above \$100,000.⁵ These

expenses, and salaries. . . . Many candidates are also turning to consultants for advice in all stages of their campaigns.

Id. (citations omitted); *see also id.* at 53 (discussing direct mailings to voters, communications costs, and administrative costs).

2. *Id.* at 35.

Campaigning for public office in the United States is costly as candidates want to gain name recognition, publicize stands on the issues, and acquire and motivate supporters. Even in the colonial era, candidates were expected to [buy] drinks for the crowd. None of this can be accomplished without financial resources.

Id.; FEDERAL ELECTION COMMISSION, FINANCING THE 1996 PRESIDENTIAL CAMPAIGN (reporting that in the 1996 presidential general election campaigns, Clinton spent \$36,679,887; Dole spent \$48,537,793; Perot spent \$15,867,309), *available at* <http://www.fec.gov/pres96/presgen1.htm> (last visited Sept. 27, 2003); *see* FEDERAL ELECTION COMMISSION, FEC REPORTS ON CONGRESSIONAL FUNDRAISING FOR 1997-98 (reporting that in 1998, winning Senate candidates spent \$158,300,000 and thus individually spent an average of \$666,206, and that winning House candidates spent \$289,800,000 and thus individually spent an average of \$4,655,882), *available at* <http://www.fec.gov/press/canye98.htm> (last visited Sept. 27, 2003).

3. Jason P. Conti, *The Forgotten Few: Campaign Finance Reform and Its Impact on Minority and Female Candidates*, 22 B.C. THIRD WORLD L.J. 99, 108 (2002).

Fundraising is so important that the only way challenger candidates can overcome the advantages of incumbency is to amass a gigantic war chest to support their effort. In order to amass the necessary funds, challengers face the equally unenviable prospects of either gathering large sums of money from individual donors and/or dipping into their personal funds.

Id.; *id.* at 109 (“Studies have shown that throughout the years, there is a ‘reasonably strong and positive relationship between the amount of money spent by challengers and the share of the vote they received.’”); *id.* at 112 (“Given that the top-spending candidate in the 1998 House elections won 95% of the time, candidates with an inherent disadvantage in raising campaign cash will have a much more difficult time winning elections.”).

4. Ellen S. Miller, *Guess What? Political Donors are Old, Rich White Men*, THE HILL (D.C.), July 1, 1998, at 5, LEXIS, News Library, The Hill File.

5. *Id.*

[O]nly 4.6 percent of individuals filing tax returns in 1995 . . . declared income over \$100,000. The vast majority of Americans make less than \$50,000 a year, in fact. A minuscule .29 percent declared income over \$500,000, while the Joyce survey discovered that 20 percent of the donors made that much.

....

. . . Fifty-one percent of the population is female, but only one-in-five donors is a woman. African-Americans make up 12.6 percent of the

characteristics do not reflect the “average American,” and the voices of minorities, women, and the poor are largely missing from the political arena.⁶

The voice of another “minority,” however, is also largely missing from the political arena—a voice widely overlooked on a number of levels. This additional missing voice is that of rural dwellers. Today, the vast majority of our population—more than eighty percent—resides in urban and suburban areas, leaving only approximately twenty percent in rural areas.⁷ This rural minority is both underrepresented and misunderstood.

One example of the urban majority’s many misconceptions regarding the rural minority is the widespread political belief that federal farm subsidies bankroll family farms.⁸ The reality is starkly different: only six percent of

population and Hispanics, Asians and Native Americans make up another 4.6 percent, but less than one percent in the Joyce survey identified themselves as people of color.

Only 12.8 percent of the country is 65 years or older, but nearly half of the donors said they were over the age of 60.

Id.; see also Joyce Foundation of Chicago, *Individual Congressional Campaign Contributors: Wealthy, Conservative and Reform-Minded* (June 9, 1998), at www.opensecrets.org/pubs/donors/donors.asp (study finding “congressional donors to be mainly wealthy, upper-status men, who tended to have conservative views, especially on economic issues”); *id.* (“More than four-fifths [of political donors] have college degrees and two-fifths hold a post-graduate degree (most frequently a law degree or MBA)” and most had “high-status occupations, frequently in business or professions such as law or medicine.”).

6. See, e.g., Conti, *supra* note 3, at 99 (concluding that “in order for the diversity of those holding elective office to better reflect the diversity of the nation as a whole, reformers must take the concerns of minority and female candidates into account”); Spencer Overton, *But Some Are More Equal: Race, Exclusion, and Campaign Finance*, 80 TEX. L. REV. 987, 987 (2002) [hereinafter Overton, *Some Are More Equal*] (revealing that “people of color comprise approximately thirty percent of the nation’s population, but represent only about one percent of those who make significant political contributions to federal campaigns”); Spencer Overton, *Racial Disparities and the Political Function of Property*, 49 UCLA L. REV. 1553, 1574 (2002) (concluding that discriminatory allocation of substantive property rights “hinder[s] the ability of people of color to forge political identities”); Spencer Overton, *Voices From the Past: Race, Privilege, and Campaign Finance*, 79 N.C. L. REV. 1541, 1541 (2001) [hereinafter Overton, *Voices From the Past*] (stating that “political inequality stems from wealth inequality”); Terry Smith, *Race and Money in Politics*, 79 N.C. L. REV. 1469, 1469 (2001) (claiming that “race and money enable each other in the political process”).

7. STATE PROFILES: THE POPULATION AND ECONOMY OF EACH U.S. STATE 3 (Courtenay M. Slater & Martha G. Davis eds., 1st ed. 1999) (“About 80 percent of the U.S. population lived in metropolitan areas in 1997.”).

8. See, e.g., Dennis T. Avery, *Farm Subsidies or Feeding People*, WORLD AND I, May 1, 2003, at 38 (stating that “family farms, not corporations, still dominate . . . conventional agriculture”); *id.* (“Farm subsidies are just a way for politicians to buy votes.”); *id.* (“[It is a myth] that huge numbers of farmers are being forced off the land against their will. Most left cheerfully for the higher pay and ‘bright lights’ of the cities.”); Richard Rahn, *How Many Phone Services Needed?*, WASH. TIMES, July 2, 2002, at A14 (“The government tells us that we need

all rural dwellers live on farms; nearly ninety-eight percent of all rural workers are engaged in non-farm employment.⁹ Farm subsidies largely benefit agribusiness, not individual family farms.¹⁰ If only six percent of the rural population farms, and if farm subsidies benefit agribusiness rather than rural individuals, then who are our rural dwellers and how are their voices represented?

The answer to the first question is complex; the answer to the latter question is not. Our rural population is a heterogeneous one encompassing different regions, different races, different incomes, different goals, different needs, and different problems.¹¹ Despite the racial, religious, and occupational diversity of rural America, however, rural dwellers are tied together by virtue of living in rural areas, and common issues exist for those residing in the most isolated—the most rural—of rural areas, including unifying themes of isolation, poverty, and lack of access to goods and services.¹² The widely heralded advent of computer technology has not

more farmers than the market tells us we need. The result is tens of billions of dollars in farm subsidies each year to big farmers—“to protect the family farm.”); Gary G. Wofford, *Letters to the Editor*, SUCCESSFUL FARMING, Sept. 1, 2002, at 6 (“The money you receive from farm subsidies is no different than welfare.”).

9. Econ. Dev. Dig., *Back to the Future: The Farm Bill and Rural Economic Development*, at <http://www.nado.org/pubs/september1.html> (last visited Sept. 27, 2003) (reporting that only 6.3% of rural Americans live on farms).

10. See Dick Lugar, *The Farm Bill Charade*, N.Y. TIMES, Jan. 21, 2002, at A15 (noting that our ineffective agricultural policy “exacerbates the consolidation of farm ownership, with the concentration of benefits going to a minority of farmers in a handful of states. The majority of payments in most states go to the top tenth of farmers.”); Donald E. Voth, *A Brief History and Assessment of Federal Rural Development Programs and Policies*, 25 U. MEM. L. REV. 1265, 1288 (1995) (“This original federal commitment to rural America has . . . been progressively co-opted into a narrower focus upon commercial and production agriculture.”).

11. J. Dennis Murray & Peter A. Keller, *Psychology and Rural America: Current Status and Future Directions*, 46 AM. PSYCHOLOGIST 220, 222 (1991) (noting that America’s rural dwellers “are a heterogeneous group”); see also Rhodes Cook, *America’s Heartland: Neither One Mind Nor One Heart*, 55 CONG. Q. WKLY. REP. 2243, 2243 (1997) (observing that rural America “is hardly monolithic.”); Charles W. Fluharty, *Refrain or Reality: A United States Rural Policy?*, 23 J. LEGAL MED. 57, 58 (2002) (“One of the greatest challenges that rural America faces in the public policy arena is its tremendous diversity—across space, circumstance, culture, and demography.”).

12. See RURAL SOCIOLOGICAL SOC’Y TASK FORCE ON PERSISTENT RURAL POVERTY, PERSISTENT POVERTY IN RURAL AMERICA 174 (Forrest A. Deseran ed., 1993) [hereinafter PERSISTENT POVERTY] (noting that “access to basic services such as health care often is limited or nonexistent.”); *id.* at 246 (noting the “limited availability, affordability, and accessibility of health care in rural areas”); *id.* (noting that “[t]he time and expense of traveling to facilities [for rural residents] also [limit] their utilization, especially for preventive care”); KENNETH P. WILKINSON, THE COMMUNITY IN RURAL AMERICA 101 (1991) (“Ruralness seems likely to continue to be a source of disadvantage in access to jobs, income, services, and many other goals in the future as it has been in the past, notwithstanding periods of rural growth and notwithstanding developments in technology . . .”).

eliminated these concerns, because many rural dwellers in our most isolated rural areas lack telephone, cable, and Internet service.¹³

One of the most significant barriers to the delivery of all forms of social services in rural settings is geography. Although there is considerable variation in different regions of the country, people in rural settings tend to be distributed across wide expanses of land, making it difficult to organize community development or efficient service delivery.

Murray & Keller, *supra* note 11, at 224; see also Fern K. Willits et al., *Persistence of Rural/Urban Differences*, in RURAL SOCIETY IN THE U.S.: ISSUES FOR THE 1980S 69, 71 (Don A. Dillman & Daryl J. Hobbs eds., 1982).

Historically, rural people have been disadvantaged in regard to the quality and quantity of many public services that contribute to their well-being or a full life: fire and police protection; educational, religious, and transportation facilities; welfare activities; health care; water, refuse, and sewage systems; organized recreational activities; and shopping outlets.

Id. See generally Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 301–23 (2003) [hereinafter Bassett, *Ruralism*] (discussing isolation, poverty, and lack of access to goods and services in rural areas).

13. See Don A. Dillman, *Telematics and Rural Development*, in RURAL POLICIES FOR THE 1990s 292, 299 (Cornelia B. Flora & James A. Christenson eds., 1991) (observing that in some rural counties in 1987, as many as half of the residents had party lines, in which multiple households shared a single common telephone line; digital switching was unavailable; cellular telephone service was unavailable; voice mail and video conferencing were unavailable); NEIL WEBSDALE, RURAL WOMAN BATTERING AND THE JUSTICE SYSTEM at xvi (Claire M. Renzetti & Jeffrey L. Edleson eds., 1998) (noting that telephone subscription rates in rural areas are “much lower than they are in cities”); RALPH A. WEISHEIT ET AL., NAT’L INST. OF JUSTICE, CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA 9–11 (2d ed. 1999):

[I]n Kentucky, of the 108 nonmetropolitan counties, “the percentage of houses without telephone service ranges from 2.5 percent to 29.3 percent, with 22 counties having more than 20 percent of the homes without telephone service In urban areas those without a phone often can find one next door or down the block when emergencies arise. In rural areas the nearest telephone may be some distance away. Similarly, in many parts of rural America there are no carriers of service for mobile telephones.

Id.; Judith I. Boyce & Bert R. Boyce, *The New Technology Doesn't Help Much When It Comes to Reaching the Rural Poor*, 31 AM. LIBRS., May 2000, at 50 (“[T]he new technology [does not] help much when it comes to reaching the rural poor. While the Internet generally has tremendous potential for overcoming limitations of distance and time, the rural poor are often disadvantaged electronically as well as economically.”); *id.* (noting that for the rural poor, “transportation is a major problem, telephone service is limited, and Internet connection is unlikely”); Cheryl R. Lee, *Cyberbanking: A New Frontier for Discrimination?*, 26 RUTGERS COMPUTER & TECH. L.J. 277, 287 (2000) (reporting that “as of 1995, 6.2 million homes were without telephone service” and noting that “households with incomes over \$75,000 were over twenty times more likely to have home Internet access than were the lowest income rural households”); Anu Manchikanti, *Report Says Lives of Kids Getting Better*, THE OREGONIAN, June 20, 2000, at B12 (“Data reveal that 5 percent of children in Oregon live in households without telephones, 44 percent without computers, and 70 percent have no access to the Internet.”); see also PERSISTENT POVERTY, *supra* note 12, at 174 (“[T]elephone service and other utilities are often costly or unavailable in rural [areas] . . .”).

How are these rural voices represented? The reality is that they are not, and campaign financing, as currently configured, further disenfranchises the disenfranchised. Rural dwellers lack political power and accordingly are largely ignored.

Conventional wisdom tells us that the peculiar structure of our government gives rural dwellers political power beyond their actual numbers.¹⁴ Perhaps one of the most persistent beliefs in this regard is that the electoral college provides rural dwellers with a substantial and disproportionate advantage in the political process.¹⁵ However, as this article explains in more detail in a subsequent section,¹⁶ the electoral college currently provides an advantage to large states—the so-called advantage to rural dwellers does not exist. And in reality, we already know this, as evidenced by the attention lavished by political candidates upon urban—rather than rural—states.¹⁷

This article analyzes rural political power, concluding that, contrary to popular belief, rural dwellers today are largely voiceless and powerless. Part II of this article examines the meaning of “rural” in terms of numbers and definitions.¹⁸ Part III traces the historical background of the rural electoral base and the fifty-year decline in its power.¹⁹ Part IV analyzes the

14. Prior to the 1960s, the state legislatures were malapportioned in such a fashion that rural dwellers possessed an enhanced political power disproportionate to their actual numbers. Cook, *supra* note 11, at 2244 (“Through much of this century, rural America was able to maintain bastions of political might in malapportioned legislatures—at both the state and national level.”). In the early 1960s, however, the Supreme Court issued a series of reapportionment cases to remedy this situation and to eliminate the resultant inequitable balance of political power. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Baker v. Carr*, 369 U.S. 186 (1962). In the intervening forty years since those decisions, rural voters have lost not just their previous unfair advantage, but also their power has eroded to the point where they are grossly underrepresented in proportion to their actual numbers. See *infra* notes 36–50 (discussing the political representation of rural dwellers). This article does not seek to restore the former inequitable imbalance favoring rural dwellers, but instead seeks to bring notice to rural dwellers’ current underrepresentation and to offer proposals to increase their political voice.

15. See Michael Herz, *How the Electoral College Imitates the World Series*, 23 CARDOZO L. REV. 1191, 1194 n.13 (2002) (noting that “popular coverage of the 2000 election focused almost exclusively on this purported bias in favor of small states,” when, in fact, “it is the larger states that benefit”).

16. See *infra* notes 184–206 (discussing the impact of the electoral college’s winner-take-all approach upon rural voters).

17. See Lloyd Omdahl, *Many Facets Involved in Electoral College Debate*, BISMARCK TRIB., Nov. 26, 2000, at 5C (“[T]he campaign strategy of the candidates . . . [includes the fact that p]residential aspirants focus their campaigns on the larger urban states . . .”).

18. See *infra* notes 23–35 and accompanying text (examining the meaning of “rural”).

19. See *infra* notes 36–50 and accompanying text (tracing the historical background of the rural electoral base).

connection between rural income and political contributions, concluding that political contributions, which serve, in large part, to shape the political agenda, grossly underrepresent the interests of rural dwellers.²⁰ Part V examines the contradictions in Supreme Court jurisprudence and the resultant disparities in rural political power.²¹ Finally, Part VI proposes two specific reforms, involving changes to campaign financing and to the electoral college process, to enhance the political voice of rural dwellers.²²

II. WHAT IS RURAL?

“[N]onmetro America comprises 2,052 counties [seventy-five percent of all counties], contains 75 percent of the Nation’s land, and is home to 17 percent (49 million) of the U.S. population.”²³ “Rural” has many definitions, depending upon the context. Perhaps one of the most widely used definitions is that of the United States Census Bureau, which has intersecting definitions of “urban” and “rural,” and essentially defines “rural” by exclusion.²⁴ “Urban” includes “all territory, population, and housing units located within an urbanized area or an urban cluster.”²⁵ Such “urbanized areas” and “urban clusters” include densely settled territory, consisting of: “(1) core census block groups or blocks that have a population density of at least 1,000 people per square mile, and (2) surrounding census blocks that have an overall density of at least 500 people per square mile.”²⁶ In contrast, “rural” includes “all territory, population, and housing units located outside of [urbanized areas] and [urban clusters].”²⁷

Despite the existence of this Census Bureau definition of “rural,” the meaning of “rural” is inconsistent even among federal agencies. Some

20. See *infra* notes 51–78 and accompanying text (analyzing rural income and rural political contributions).

21. See *infra* notes 79–162 and accompanying text (examining Supreme Court jurisprudence and disparities in rural political power).

22. See *infra* notes 163–206 and accompanying text (proposing reforms to campaign financing and the electoral college process).

23. Econ. Res. Serv., U.S. Dep’t of Agric., *Measuring Rurality*, at <http://www.ers.usda.gov/briefing/rurality/NewDefinitions> (last modified Aug. 21, 2003).

24. U.S. Census Bureau, *Census 2000 Urban and Rural Classification*, at http://www.census.gov/geo/www/ua/ua_2k.html (last modified July 28, 2003).

25. *Id.*

26. *Id.*

27. *Id.*

agencies use the Census Bureau definitions;²⁸ others have created very different definitions. For example, community development block grant programs define “rural” as communities of 50,000 or fewer people;²⁹ the Farmers Home Administration defines “rural” as 10,000 or fewer people;³⁰ the Rural Electrification Act defines “rural” as 1,500 or fewer people.³¹

Adding to the complexity of the issue is the fact that these definitions focus upon demographics, which is only one dimension of what it means to be “rural.” As one writer has observed, there are “at least four basic dimensions of meaning [to the word ‘rural’]: (1) demographic, (2) economic (or occupational), (3) social structural, and (4) cultural.”³² Attempts to integrate all of these dimensions into a single workable definition of “rural” have repeatedly failed.³³ Contributing to the difficulty is the fact that rural America is a widely diverse group.

The people of rural America are a heterogeneous group with great diversity in cultures, occupations, wealth, lifestyles, and physical geography. For example, rural New England is quite different from the more sparsely populated rural areas of the Southwest, where large open areas further separate people. Rural areas also contain significant numbers of minority populations that are often physically isolated and have unique social service needs. Such groups range from predominantly poor Appalachian Whites, isolated Native Americans, poor southern Blacks, and linguistically isolated Hispanics in the Southwest. Many rural areas of North America also contain culturally isolated communities settled by a single immigrant group.³⁴

This article will focus on demographics, but will also refer, on occasion, to the economic, social structural, and cultural meanings of “rural.”

Despite the diversity of rural America, one particular factor brings greater commonality to the notion of what is rural—and that factor goes to isolation. Accordingly, a more helpful approach might define “rural” as

28. See, e.g., 7 U.S.C. § 913 (2000) (rural electricity and telephone service); 23 U.S.C. § 101(a)(36) (2000) (federal aid to highways); 42 U.S.C. § 1395ww(d)(2)(D) (2000) (payments to hospitals for inpatient hospital services under the Social Security Act).

29. See 42 U.S.C. § 11501(a)(2)(B)(i) (2000) (defining the minimum designation in rural areas as requiring a population of less than 50,000).

30. See 7 U.S.C. § 1926(a)(7) (2000) (“The terms ‘rural’ and ‘rural area’ mean a city, town, or unincorporated area that has a population of no more than 10,000 inhabitants.”). *repeated by* Pub. L. No. 107-171, § 6020(b)(1), 116 Stat. 363 (2002).

31. See Rural Electrification Act of 1936, Pub. L. No. 74-605, 49 Stat. 1363.

32. WEISHEIT ET AL., *supra* note 13, at 180.

33. *Id.* at 179–80; see also *id.* at 183 (noting that “there is no one correct definition of rural”).

34. Murray & Keller, *supra* note 11, at 222.

those communities with a population of 2,500 or fewer people, and which are located at least fifty miles from a community with a population of 20,000 or more people. This definition would hone our focus upon the smallest, most isolated rural communities rather than those which are very nearly suburban, and correspondingly increase the number of issues that these communities have in common.³⁵ The next part of this article examines these unifying rural issues and in the process provides some insights into our most rural populations.

III. THE RURAL POLITICAL VOICE: ELECTORAL BASE AND NUMBER OF REPRESENTATIVES

Although our nation has rural-agrarian roots, industrialization began as early as the Civil War.³⁶ Industrialization proceeded slowly, and our population began shifting toward urban living early in the 1900s. After World War II, another shift occurred, which corresponded with an increase in suburban living.

Since the nation had not completely opened the western frontier until well into the twentieth century, the United States' transition to an entirely industrialized nation proceeded slowly. Moreover, ideologies and philosophical traditions invariably cause changes in producing and living to lag behind financial and technological modifications. Thus, traditional rural-agrarian thought patterns persisted through not only the early years of the 1900s, but the years following World War I as well.³⁷

By 1990, more than half of our nation's population resided in cities with a population of more than one million.³⁸

35. I have previously proposed defining "rural" in the same manner. See Bassett, *Ruralism*, *supra* note 12, at 290 ("This definition, while imperfect, avoids the inclusion of 'suburban' communities and highlights the peculiar difficulties encountered by those who reside in especially small, isolated, rural communities."). However, despite its desirability, the divergent definitions used by government and private sources serve as a practical obstacle to employing this alternative definition throughout this article.

36. See, e.g., WILLIAM MILLER, *A NEW HISTORY OF THE UNITED STATES* 269 (1958) ("[L]eading entrepreneurs and speculators promoted the huge expansion of American industry after the Civil War . . ."); 1 RICHARD B. MORRIS & WILLIAM GREENLEAF, *U.S.A. THE HISTORY OF A NATION* 654 (1969) ("[T]he Civil War represented a triumph of the industrial North over the agricultural South and forecast, if it did not promote, the enormously rapid industrialization of the nation which followed in its wake.").

37. Harold F. Breimyer, *Agricultural Philosophies and Policies in the New Deal*, 68 *MINN. L. REV.* 333, 334 (1983).

38. Fluharty, *supra* note 11, at 65.

This shift from rural living to urban and suburban living correspondingly reduced rural political power. Even as recently as 1966, there were 181 congressional districts—forty-two percent of the House of Representatives—with a majority rural population.³⁹ But the percentage of congressional districts with a majority rural population has dropped dramatically and continues to fall. By 1993, only seventy-seven congressional districts—eighteen percent of the House—had a majority rural population.⁴⁰ By 1996, only fifteen percent of the House districts had a majority rural population.⁴¹ Using the definition employed by *Congressional Quarterly*, which considers a district to be “rural” only if its non-metro population is sixty percent or higher, by 1998 there were fifty-seven rural congressional districts—thirteen percent of the House.⁴²

These fifty-seven rural congressional districts are dispersed throughout the country. The South and Midwest regions of the United States each have twenty-one rural congressional districts; the East has eight rural congressional districts; and the West has seven rural congressional districts.⁴³ Thus, rural districts appear in all regions of the country, creating geographical diversity among rural dwellers. However, this geographical diversity also results in a dilution of political power.

Today, only thirteen states have a rural majority: Montana (seventy-six percent rural), Wyoming (seventy percent rural), Idaho (sixty-nine percent rural), Mississippi (sixty-nine percent rural), Vermont (sixty-eight percent rural), South Dakota (sixty-seven percent rural), Maine (sixty percent rural), Alaska (fifty-nine percent rural), West Virginia (fifty-eight percent rural),

39. Cook, *supra* note 11, at 2244.

40. *Id.*

41. Fluharty, *supra* note 11, at 66.

42. Cook, *supra* note 11, at 2244. The rural districts were Alabama, Districts 3 and 4; Arkansas, Districts 1 and 4; Colorado, District 3; Georgia, Districts 2, 8, and 9; Idaho, District 2; Illinois, Districts 17 and 19; Indiana, District 5; Iowa, Districts 2, 3, and 5; Kansas, Districts 1 and 2; Kentucky, Districts 1, 2, and 5; Maine, Districts 1 and 2; Michigan, Districts 1 and 4; Minnesota, Districts 1, 2, and 7; Mississippi, Districts 1, 2, 3, and 4; Missouri, Districts 4 and 8; the District of Montana; Nebraska, District 3; New Hampshire, District 2; New Mexico, Districts 2 and 3; New York District 24; North Carolina, Districts 1 and 11; Ohio, Districts 5 and 6; Oklahoma, District 3; Oregon, District 2; Pennsylvania, Districts 5 and 9; the District of South Dakota; Tennessee, District 4; Texas, Districts 2 and 17; the District of Vermont; Virginia, District 9; West Virginia, District 3; Wisconsin, Districts 6 and 7; and the District of Wyoming. *Id.*

43. *Id.*; see also Rural Policy Research Institute, *Rural Policy Context, Political Characteristics in Rural America*, at <http://www.rupri.org/resources/context/politic.html> (last visited Sept. 28, 2003) (discussing rural policy context and the political characteristics in rural America).

North Dakota (fifty-seven percent rural), Iowa (fifty-six percent rural), Arkansas (fifty-five percent rural), and Kentucky (fifty-two percent rural).⁴⁴

Not surprisingly, these rural states, due to their more dispersed, smaller populations, carry fewer electoral votes. The exact disparity, however, is surprising: these thirteen states together represent merely fifty-nine electoral votes—only five more than the electoral votes held by the state of California alone.⁴⁵

Thus, although rural dwellers comprise approximately twenty percent of the nation's population, only thirteen percent of the House congressional districts have a majority rural population, and less than eleven percent of the 538 total electoral votes⁴⁶ are held by rural majority states. Accordingly, rural dwellers are grossly underrepresented in proportion to their actual numbers. Due to their rural—and thus smaller—populations, these same rural majority states also are apportioned fewer representatives to the House of Representatives: Montana (one representative), Wyoming (one representative), Idaho (two representatives), Mississippi (four representatives), Vermont (one representative), South Dakota (one representative), Maine (two representatives), Alaska (one representative), West Virginia (three representatives), North Dakota (one representative), Iowa (five representatives), Arkansas (four representatives), and Kentucky (six representatives).⁴⁷ Thus, these thirteen states together represent only thirty-two of the 435 members of the House of Representatives—which is approximately seven percent.⁴⁸

The small numbers and geographical dispersion of rural dwellers serve to render them politically “invisible.”

Rural people are so widely dispersed that they are politically invisible. They are a demographic and political majority in only . . . a handful of congressional districts. Even in states with a numerically large rural population, rural people are often a particularly small demographic minority. California has 2.2

44. Cook, *supra* note 11, at 2244.

45. See Fed. Election Comm'n, *Distribution of Electoral Votes*, at <http://www.fec.gov/pages/elecvote.htm> (last modified Feb. 18, 1997) (Montana (three electoral votes), Wyoming (three electoral votes), Idaho (four electoral votes), Mississippi (seven electoral votes), Vermont (three electoral votes), South Dakota (three electoral votes), Maine (four electoral votes), Alaska (three electoral votes), West Virginia (five electoral votes), North Dakota (three electoral votes), Iowa (seven electoral votes), Arkansas (six electoral votes), and Kentucky (eight electoral votes)).

46. *Id.* (stating there are 538 total electoral votes).

47. See U.S. Dep't of Commerce, U.S. Census Bureau, *Table 1: Apportionment Population and Number of Representatives, by State: Census 2000*, at <http://www.census.gov/population/cen2000/tab01.pdf> (Dec. 28, 2000).

48. *Id.*

million rural people—more than all but seven states—but they constitute less than eight percent of California's population.⁴⁹

As a result of their geographical dispersion and political invisibility, rural dwellers have been rendered politically powerless.

It's difficult to influence the political system when you are a member of a minority—in this case, the rural minority. As we have democratized the country, we have taken this lack of political clout into consideration for the protection of minorities made up of various ethnic groups and even for women. But no such protection has been contemplated for the rural minority, whose values and traditions are now being voted into oblivion by the larger, urban population. . . .

Laws that now govern the rural culture—which covers 90 percent of the nation's landmass—are, in effect, being dictated by an urban majority that lives in the other 10 percent of the United States, a majority that is often ignorant of the ways of the people whose lives they are controlling. Rural people feel powerless and disenfranchised because they *are* powerless and disenfranchised.⁵⁰

Thus the dispersion of rural dwellers throughout the country, together with their minority status, dilutes their political power and renders them politically invisible. Moreover, rural dwellers lack power and influence not only with respect to their actual numbers and their political representation in terms of congressional representatives and electoral votes, but also with respect to income and political contributions.

IV. RURAL INCOME AND POLITICAL CONTRIBUTIONS

In addition to the underrepresentation of rural dwellers in numerical terms, both rural congressional districts and states with a rural majority tend to be poorer and less politically powerful than the average. A 1993 study revealed that no rural congressional district ranked in the top 100 in family median income.⁵¹ Indeed, most rural districts ranked in the bottom 100 in family median income.⁵²

49. Bassett, *Ruralism*, *supra* note 12, at 291–92; *see also* Fluharty, *supra* note 11, at 65.

50. JOEL DYER, *HARVEST OF RAGE: WHY OKLAHOMA CITY IS ONLY THE BEGINNING* 165–66 (1997).

51. 53 CONG. Q. ALMANAC 10–13 (1997); Cong. Res. Serv., *CRS Report for Congress, Districts of the 103d Congress: Income Data and Rankings* (Penny Hill Press, 1993) [hereinafter *CRS Report for Congress*].

52. *Id.*

As previously noted, fifty-seven of the 435 congressional districts are rural.⁵³ Of these fifty-seven districts, thirty-eight districts—or sixty-seven percent—fall within the bottom 100 of all congressional districts with respect to per capita income.⁵⁴ Per capita income for all congressional districts ranges from a low of \$9,803 to a high of \$53,752, with a mean of \$21,563.⁵⁵ Per capita income for all rural congressional districts, however, ranges only to a high of \$26,186, with a mean of \$17,909.⁵⁶ For the sixty-seven percent falling within the bottom 100 grouping, per capita income ranges to a high of only \$18,595, with a mean of \$15,993.⁵⁷

The disparities become even more striking when we use a smaller geographical area—counties—rather than the larger areas encompassed by

53. Cook, *supra* note 11, at 2244; *see supra* note 42 (listing rural congressional districts).

54. Cook, *supra* note 11, at 2244. Those congressional districts include Alabama, Districts 3 and 4; Arkansas, Districts 1 and 4; Georgia, District 2; Idaho, District 2; Illinois, District 19; Iowa, District 5; Kentucky, Districts 1, 2, and 5; Maine, District 2; Michigan, District 1; Minnesota, District 7; Mississippi, Districts 1, 2, 3, and 4; Missouri, Districts 4 and 8; District of Montana; Nebraska, District 3; New Mexico, Districts 2 and 3; New York, District 24; North Carolina, District 1; Ohio, District 6; Oklahoma, District 3; Pennsylvania, Districts 5 and 9; District of South Dakota; Tennessee, District 4; Texas, Districts 2 and 17; Virginia, District 9; West Virginia, District 3; and Wisconsin, District 7. Cook, *supra* note 11, at 2244.

55. *See* U.S. Census Bureau, American Factfinder, 108th Congressional District Summary File Sample, at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&lang=en&ts= (last visited October 26, 2003) (providing per capita income information in 1999 dollars by congressional district). The low of \$9,803, and the high of \$53,752, were both from the same state—New York—from District 16 and District 14, respectively. *Id.*

56. *Id.* Per capita income in 1999 dollars for the rural congressional districts were as follows: Alabama, District 3, \$16,363; Alabama, District 4, \$16,456; Arkansas, District 1, \$15,170; Arkansas, District 4, \$15,564; Colorado, District 3, \$19,148; Georgia, District 2, \$15,128; Georgia, District 8, \$23,202; Georgia, District 9, \$19,475; Idaho, District 2, \$17,820; Illinois, District 17, \$17,894; Illinois, District 19, \$19,356; Indiana, District 5, \$26,186; Iowa, District 2, \$20,515; Iowa, District 3, \$21,777; Iowa, District 5, \$17,976; Kansas, District 1, \$17,255; Kansas, District 2, \$18,595; Kentucky, District 1, \$16,269; Kentucky, District 2, \$17,413; Kentucky, District 5, \$12,513; Maine, District 1, \$21,736; Maine, District 2, \$17,116; Michigan, District 1, \$17,700; Michigan, District 4, \$19,347; Minnesota, District 1, \$19,889; Minnesota, District 2, \$25,718; Minnesota, District 7, \$17,603; Mississippi, District 1, \$16,156; Mississippi, District 2, \$13,616; Mississippi, District 3, \$17,218; Mississippi, District 4, \$16,422; Missouri, District 4, \$17,127; Missouri, District 8, \$14,862; District of Montana, \$17,151; Nebraska, District 3, \$16,962; New Hampshire, District 2, \$23,744; New Mexico, District 2, \$14,239; New Mexico, District 3, \$17,193; New York, District 24, \$17,979; North Carolina, District 1, \$14,864; North Carolina, District 11, \$19,005; Ohio, District 5, \$19,031; Ohio, District 6, \$17,039; Oklahoma, District 3, \$16,350; Oregon, District 2, \$18,218; Pennsylvania, District 5, \$16,692; Pennsylvania, District 9, \$16,805; District of South Dakota, \$17,562; Tennessee, District 4, \$16,592; Texas, District 2, \$15,755; Texas, District 17, \$16,640; District of Vermont, \$20,625; Virginia, District 9, \$16,336; West Virginia, District 3, \$15,053; Wisconsin, District 6, \$20,506; Wisconsin, District 7, \$18,749; District of Wyoming, \$19,134. *Id.*

57. *See supra* note 56 (showing ranges of income used in calculations).

congressional districts. Rural areas have a disproportionately large portion of the poor.⁵⁸ Not only is the level of poverty striking in rural areas—indeed, of the 250 poorest counties in America, 244 are rural⁵⁹—but poverty becomes more acute in more remote rural areas.⁶⁰

“As a whole, America’s rural population has lower incomes, lower employment levels, and higher poverty levels than urban and suburban America.”⁶¹ Moreover, for many rural dwellers, low wages trap even full-time workers into poverty.⁶² Although low-wage positions constitute a

58. Murray & Keller, *supra* note 11, at 222 (“A disproportionate number of the nation’s poor are in rural areas, and the poorest counties in the United States are rural.”) (citation omitted); Ann R. Tickamyer & Cynthia M. Duncan, *Poverty and Opportunity Structure in Rural America*, 16 ANN. REV. SOC. 67, 68 (1990) (“Rural America has long had a disproportionate share of the nation’s poverty population. Currently communities located outside metropolitan statistical areas have one fifth of the nation’s population but one third of the poor.”); *see also* Marlon H. Wijnberg & Kathleen M. Reding, *Reclaiming a Stress Focus: The Hassles of Rural, Poor Single Mothers*, 80 FAMILIES IN SOC’Y: J. CONTEMP. HUM. SERVICES 506, 506 (1999) (“Rural poverty remains invisible to much of society as it exists in places where few Americans live or travel, and it is overshadowed by the very visible urban pockets of poverty.”).

59. Elizabeth Beeson & Marty Strange, *Why Rural Matters: The Need for Every State to Take Action on Rural Education* (Aug. 2000), at <http://www.ruraledu.org/streport/streport.html> (last visited Mar. 1, 2003); *see also* OSHA GRAY DAVIDSON, BROKEN HEARTLAND: THE RISE OF AMERICA’S RURAL GHETTO 77 (1996) (noting that “of the 150 worst Hunger Counties [in the United States], 97% are in rural areas”) (citing PHYSICIAN TASK FORCE ON HUNGER IN AMERICA, HARVARD SCHOOL OF PUBLIC HEALTH, HUNGER COUNTIES (1986)).

60. *See* WEISHEIT ET AL., *supra* note 13, at 22 (noting that “the highest poverty levels are in rural nonmetropolitan areas [distant from urban centers], while the lowest poverty levels are in rural locations within [or immediately adjacent to] metropolitan areas”).

61. Rural Policy Research Institute, *Rural Policy Context, Income Characteristics in Rural America*, at <http://www.rupri.org/resources/context/income.html> (last visited Sept. 22, 2003) (discussing income characteristics in rural America); *see* 2001 COUNTY & CITY EXTRA: ANNUAL METRO, CITY & COUNTY DATA BOOK 6 (10th ed. 2001) (noting that “counties with low median household income in 1997 were virtually all nonmetropolitan”). This was also true of counties with the highest poverty rates. *Id.* (“Large city poverty rates are typically lower than those in these extremely poor rural counties.”); *see also* Craig Anthony Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL’Y REV. 191, 204 n.9 (1990) (“Rural residents receive only 80 percent as much income as urban residents.”).

Rural real earnings per nonfarm job rose by 1.3 percent during 1997, from \$22,473 in 1996 to \$22,985 in 1997. Urban real earnings per nonfarm job increased at a faster pace (2.1 percent), rising from \$30,955 in 1996 to \$32,825 in 1997. . . . The rural-urban earnings gap persisted and widened during the 1990’s. In 1989, rural earnings per nonfarm job were 73.8 percent of urban earnings. By 1997, that ratio had fallen to 70 percent.

USDA, *Rural Conditions and Trends*, Dec. 2000, at 51 [hereinafter *Rural Conditions*].

62. DAVIDSON, *supra* note 59, at 74.

The rural poor differ from the urban poor in an even more important facet of unemployment: their ranks contain a far higher percentage of workers. Even when working full-time, year-round, the residents of rural ghettos are far more likely to remain trapped in poverty than are urban workers, due to low wages.

significant portion of rural employment, some rural counties essentially have a low-wage local economy due to the prevalence of these low-wage positions—and the lesser availability of higher-paying positions.⁶³ The 465 rural counties with the highest proportion of workers in low-wage positions have some features in common. These counties have fewer job opportunities in industries that tend to pay higher wages, such as manufacturing.⁶⁴ They also tend to have lower wage scales across all types of employment.⁶⁵ And, again, they tend to be located in the most isolated rural areas—areas that are less populated and more remote from urban centers.⁶⁶

Poorer individuals obviously have less disposable income with which to make political contributions, while wealthy individuals have more disposable income with which to make such contributions. This unsurprising proposition was given empirical support in a 1999 study by Public Campaign, entitled, *The Color of Money: Campaign Contributions and Race*,⁶⁷ which found “that the vast majority of contributions came from areas that are primarily white and wealthy.”⁶⁸ The pattern held in all 50 states.⁶⁹

In the 100 highest-giving zip codes, total campaign contributions ranged from a low of \$753,710 to a high of \$9,295,990.⁷⁰ Perhaps not surprisingly, forty of these highest-giving zip codes also appear among the nation’s 100

Id.; see also *Rural Conditions*, *supra* note 61, at 11 (“The rural low-wage rate of 27.2 percent in 1999 far exceeded the urban rate of 19.3 percent.”).

63. See *Rural Conditions*, *supra* note 61, at 18.

64. *Id.* at 21 (noting that “few low-wage counties depend on mining or manufacturing, which usually pay above-average wages in rural counties.”).

65. *Id.* at 22 (“Without exception among the top 25 industries, average wages are lower in low-wage counties.”).

66. *Id.* at 18–19 (“Two-thirds have no urban population, meaning no towns with at least 2,500 people”); see also *id.* at 25 (“Small populations and remoteness remain the most salient features of low-wage counties”).

67. Public Campaign, *The Color of Money: Campaign Contributions and Race, Executive Summary*, at <http://www.colorofmoney.org/execsumm.html> (last visited Sept. 26, 2003). This study compared the racial composition of zip codes with zip-code data disclosed by political contributors. *Id.*

68. *Id.*

69. *Id.*

70. See Public Campaign, *The Color of Money: Campaign Contributions and Race, Maps and Tables*, at <http://www.colorofmoney.org> (last visited Sept. 26, 2003) (listing the 100 highest-giving zip code areas in the United States).

wealthiest zip codes.⁷¹ However, none—not one—of the 100 highest-giving zip codes is located in a rural congressional district.⁷²

It is not particularly surprising that eighty-one percent of all political donors have annual incomes of \$100,000 or higher.⁷³ When one lives in poverty, after struggling to pay for food, shelter, and transportation, there often isn't much, if any, money left at the end of the month.⁷⁴ Even for those in the middle class, a political contribution of fifty dollars may seem very generous in light of the competing uses to which the money could be put, and the fact that, unlike donations to charitable organizations, such contributions are not tax-deductible.⁷⁵ Indeed, the reality is that “the major

71. See Top Zip Codes of the U.S.A., at <http://www.usc.edu/dept/source/zipcode/zipusa.htm> (last visited Sept. 3, 2003) (listing the top 100 wealthy zip codes in the United States).

72. The 100 highest-giving zip codes were (in descending order): 10021 (New York), 10022 (New York), 90210 (California), 10017 (New York), 20008 (District of Columbia), 20007 (District of Columbia), 10128 (New York), 33480 (Florida), 10028 (New York), 90067 (California), 20036 (District of Columbia), 10019 (New York), 60611 (Illinois), 06830 (Connecticut), 37205 (Tennessee), 77002 (Texas), 20854 (Maryland), 20016 (District of Columbia), 10020 (New York), 10023 (New York), 90049 (California), 20815 (Maryland), 77019 (Texas), 20005 (District of Columbia), 94104 (California), 37215 (Tennessee), 22101 (Virginia), 30305 (Georgia), 30327 (Georgia), 60614 (Illinois), 90024 (California), 08540 (New Jersey), 75205 (Texas), 10004 (New York), 60093 (Illinois), 02110 (Massachusetts), 75201 (Texas), 63124 (Missouri), 10024 (New York), 22314 (Virginia), 19103 (Pennsylvania), 77024 (Texas), 20037 (District of Columbia), 60606 (Illinois), 45243 (Ohio), 60521 (Illinois), 60610 (Illinois), 10583 (New York), 20817 (Maryland), 60045 (Illinois), 06831 (Connecticut), 20006 (District of Columbia), 10016 (New York), 22102 (Virginia), 94111 (California), 90077 (California), 80202 (Colorado), 48302 (Michigan), 02116 (Massachusetts), 48304 (Michigan), 10036 (New York), 76102 (Texas), 92037 (California), 22207 (Virginia), 63105 (Missouri), 60035 (Illinois), 60601 (Illinois), 07078 (New Jersey), 75225 (Texas), 02138 (Massachusetts), 94010 (California), 20003 (District of Columbia), 94027 (California), 20004 (District of Columbia), 02193 (Massachusetts), 92660 (California), 33133 (Florida), 19807 (Delaware), 90212 (California), 02146 (Massachusetts), 77027 (Texas), 30339 (Georgia), 20816 (Maryland), 97201 (Oregon), 94025 (California), 22202 (Virginia), 06880 (Connecticut), 94115 (California), 55391 (Minnesota), 90069 (California), 78209 (Texas), 02167 (Massachusetts), 77056 (Texas), 48236 (Michigan), 37027 (Tennessee), 72207 (Arkansas), 90272 (California), 60602 (Illinois), 06840 (Connecticut), and 33940 (Florida). Public Campaign, *The Color of Money: Campaign Contributions and Race*, at <http://www.colorofmoney.org> (last visited Oct. 8, 2003).

73. See *supra* note 5 and accompanying text (noting the composition of political donors in the United States).

74. CITIZEN PARTICIPATION PROJECT, A STUDY OF THE VOLUNTARY ACTIVITY OF THE AMERICAN PUBLIC IN POLITICS, VOLUNTARY ASSOCIATIONS, CHARITIES AND RELIGION: SUMMARY OF FINDINGS 5–6 (1992) (finding that citizens earning more than \$125,000 a year, who constitute only 2.7% of the population, are ten times more likely to make a campaign contribution than citizens earning less than \$15,000 a year, who constitute 17.7% of the population).

75. See Note, *The Political Activity of Think Tanks: The Case for Mandatory Contributor Disclosure*, 115 HARV. L. REV. 1502, 1517 (2002) (“[N]either political contributions nor

determinant of giving money is having money.”⁷⁶ Only four to six percent of Americans make any political contributions *at all*.⁷⁷ The existing inequitable property distribution in this country necessarily results in disparities in wealth, and these disparities in wealth and political contributions lead to disparities in political power.⁷⁸

V. DISPARITIES IN RURAL POLITICAL POWER

The disparities in power between urban dwellers and rural dwellers—both political and otherwise—have been noted on previous occasions.⁷⁹

The urban population, which is both highly concentrated and much larger than the rural population, pressures the federal government to deal with . . . problems

. . . .

. . . [W]hen compared to urban residents, the rural underclass is politically weak. Widely dispersed, they lack the organization, financial resources, and concentrated voting strength necessary to influence public policy.⁸⁰

Congressional campaign spending has not always depended on the individual fundraising efforts that are used today. Before the Civil War, the political parties themselves generally footed campaign expenses.

lobbying expenditures are tax-deductible by either corporations or individuals”) (citation omitted).

76. Henry E. Brady et al., *Beyond SES: A Resource Model of Political Participation*, 89 AM. POL. SCI. REV. 271, 283 (1995).

77. E. Joshua Rosenkranz, *Faulty Assumptions in “Faulty Assumptions”: A Response to Professor Smith’s Critiques of Campaign Finance Reform*, 30 CONN. L. REV. 867, 888 (1998).

78. See Overton, *Some are More Equal*, *supra* note 6, at 989 (“By using the First Amendment to undermine legislative restrictions on the use of political money, courts effectively enshrine the existing distribution of property as a baseline for political advantage.”); see also *infra* note 122 and accompanying text.

79. See KNOWING YOUR PLACE: RURAL IDENTITY AND CULTURAL HIERARCHY 2 (Barbara Ching & Gerald W. Creed eds., 1997) (“[T]he rural/urban distinction underlies many of the power relations that shape the experiences of people in nearly every culture.”); *id.* at 17 (“[T]he city remains the locus of political, economic and cultural power.”); see also DYER, *supra* note 50, at 15 (“[Rural dwellers’] pleas for assistance have gone unanswered, as if they couldn’t be heard over the noise of the city.”). See generally Bernice Lott, *Cognitive and Behavioral Distancing from the Poor*, 57 AM. PSYCHOLOGIST 100, 101 (2002) (“Power, defined as access to resources, enables the group with greatest access to set the rules, frame the discourse, and name and describe those with less power. . . . ‘[I]t is power . . . that enables one to discriminate.’”) (citation omitted).

80. Arnold, *supra* note 61, at 194–95.

Prior to the Civil War, congressional campaign expenditures were much lower and generally involved expenditures by the political parties. In order to present a broad-based front on the issues, national party organizations might support newspapers such as Philip Freneau's *National Gazette*, which the Democratic-Republican party subsidized in 1791. Congressional candidates usually did not campaign in the modern sense, preferring to woo the voters based on their merits, a few rounds of drinks on election day, and a reliance on the party to turn out the voters.⁸¹

Although political parties were the major source of campaign funding well into the twentieth century, political fundraising underwent a transformation during the 1896 presidential campaign.

The McKinley campaign exhibited many political firsts such as its skilled merchandising of the candidate and the use of technology, the telephone. Most notably it contributed the first modern fundraiser: Mark Hanna. Hanna had long been involved in Ohio politics and had supported the political ascent of McKinley in the state. In 1896 he personally bore most of the presidential nomination costs of McKinley, a sum well over \$100,000. After McKinley garnered the nomination, Hanna came into his own as he levied a tariff on corporations and banks. If a contribution was too low, he returned it with a pointed note to reconsider, and if too much was sent, the donor received a refund. A man of scrupulous personal honesty, Hanna kept meticulous records as well as refusing to make promises in return for contributions or to spend

81. THEILMANN & WILHITE, *supra* note 1, at 36-37; *see also id.* at 38 ("Nineteenth-century political parties were more than sources of campaign money—they usually controlled the nomination process, ran the campaign, and mobilized the voters."); *see also* FRANK J. SORAUF, *INSIDE CAMPAIGN FINANCE: MYTHS AND REALITIES* 2-3 (1992) (describing twentieth century politics).

For most of the twentieth century American campaign finance was ruled by the political parties and their sleekly affluent "fat cats." The parties dominated finance because they dominated the campaigns themselves. They either chose the candidates or provided the votes for their nomination in primary elections, and they managed the full span of the campaigns, from the circulation of nomination petitions through the hosting of the election-night celebrations. . . . Much of the party-centered campaigning needed no cash; it rested heavily on services volunteered or bartered for some party-controlled favor. But when the campaign needed cash, the party raised it—often from the candidates themselves, since providing money for the campaign, either from acquaintances or from one's own resources, was frequently a condition of receiving the party's nomination.

When cash in large sums was needed, the parties went to men of wealth, the storied fat cats of party and campaign lore.

Id.

money buying votes. Such behavior shocked the political bosses of the time, but it produced results. . . . Hanna became a prototype for future fund-raisers, but most candidates relied on tried-and-true methods, which included fat cats, passing the hat at rallies, and other small-scale, time-intensive forms of raising money.⁸²

When the political parties lost their clout in the 1960s, candidates began running their own campaigns.⁸³ The advent of television campaigning⁸⁴ and campaign specialists⁸⁵ increased the expense of campaigning,⁸⁶ resulting in heightened concerns regarding the regulation of American campaign finance. Although campaign finance reforms began in 1907, comprehensive reforms did not occur until the 1974 amendments to the Federal Election Campaign Act of 1971 (FECA).⁸⁷

82. THEILMAN & WILHITE, *supra* note 1, at 38–39.

83. See Larry Kramer, *Understanding Federalism*, 47 VAND. L. REV. 1485, 1529 (1994) (noting that until the late 1950s, political party backing was essential for election to a federal office); *id.* at 1531 (noting that since the 1950s, internal party reforms have “weakened the power of party elites”); *id.* at 1536 (noting that “[c]andidates [today] run their own campaigns . . . [due to] the congruence of [these] developments.”).

84. Whereas in 1952 only 34 percent of American households had a television set, 92 percent did by 1964. Campaigning was never the same again, both for the growing number of political commercials and for the restructuring of campaigns to produce sound bites and gripping pictures for the nightly network news. Not surprisingly, it was in the first full flush of television expenditures for campaigning, during the 1960s, that the costs of campaigning first rose at a rate sharply greater than that of inflation. Herbert Alexander estimates that spending in all American campaigns rose from \$200 million in 1964 to \$425 million by 1972.

See SORAUF, *supra* note 81, at 3.

85. See *id.* at 4 (“[A]s if to replace the parties in campaigns, there arose a clan of campaign specialists for hire: media consultants, polling experts, organizers, even tutors in the art of using television.”).

86. To rent media time and the new campaign technocrats one needed cash—lots of it. And so the burden of raising campaign money passed from party to candidate, and the fat cats became as important to the candidates as they had been for the parties. Moreover, because it was so candidate-centered, American campaign finance became much more campaign-specific, and, thus, much more expensive.

Id. at 5.

87. Congress took its first reforming step in 1907. Reacting to the growing political power of the new corporate wealth, it outlawed contributions to congressional and presidential candidates by banks or corporations. In a reform history in which there are few enduring landmarks, that ban on direct corporate contributions in federal elections stands to this day.

The results of Congress’s other reforms were less enduring. It joined the “control through publicity” movement . . . by passing a halfhearted disclosure law in 1911, and in that same year it enacted limits on candidate spending for House and Senate campaigns. Then it returned to reform in the

The 1971 FECA limited media-advertising expenditures in congressional campaigns to \$50,000 or ten cents per voting age resident, a formula that permitted senatorial candidates in California to spend almost \$1.4 million. . . .

....

Although technically Congress's work in 1974 was a series of amendments to the FECA of 1971, in reality it was a new and comprehensive piece of legislation, the first attempt at an all-inclusive, integrated system of regulation for congressional and presidential campaigns.⁸⁸

The 1974 amendments included limits on contributions,⁸⁹ limits on spending,⁹⁰ and public funding of presidential elections.⁹¹ The United

unpromising years of the 1920s with legislation in 1925 to reinforce reporting requirements and raise spending limits. The spending limit for a House seat, for example, was set between \$2,500 and \$5,000 depending on the number of votes in the district in the previous election. Further legislation in 1940 added contribution limits to the arsenal of regulation for the first time; individuals were limited to contributions of \$5,000 to a candidate for the presidency or Congress. During World War II the long-standing ban against corporate contributions was extended to labor unions.

All of this regulation scarcely impeded the flow of campaign money. Much of the reform legislation, both of Congress and the states, seems to have been passed with the loopholes tailored in. Contribution and spending limits applied only to the candidates themselves; other committees set up to assist their campaigns, often called "volunteer" committees, were unaffected by the limits. Moreover, neither the states nor the Congress set up special agencies to oversee compliance with the laws or to make financial reports public. In fact, the required reports of candidates and party committees under federal law were deposited with the staffs of the House and the Senate, rarely to be exhumed from unmarked boxes in inaccessible closets. As for the investigation and enforcement of violations, the responsibility fell to a Justice Department whose traditions and budgets had not prepared it for riding herd on candidate spending. Not surprisingly, there were no prosecutions under the 1925 law, from its origin to its repeal in 1971.

Id. at 5–6. Indeed, the longstanding ban on direct corporate political contributions referenced in the passage above was recently affirmed by the Supreme Court. *See Fed. Election Comm'n v. Beaumont*, ___ U.S. ___, 123 S. Ct. 2200 (2003) (upholding ban on direct corporate political contributions); *see also id.* at 2203 ("Since 1907, federal law has barred corporations from contributing directly to candidates for federal office."). This proscription, however, does not prevent "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes." *Id.* (quoting 2 U.S.C. §§ 441b(b)(2)(C)). For a historical account of federal disclosure laws, see *Buckley v. Valeo*, 424 U.S. 1, 61–62 (1976).

88. SORAUF, *supra* note 81, at 7–8.

89. *Limits on contributions*:

-
- Individuals could contribute a maximum of \$1,000 per candidate per election. In this and all other limits the primary and general elections came to count separately; thus the limit was in effect \$2,000 per candidate in a two-year election cycle.
 - Individuals were also limited to a calendar-year total of \$25,000 in all contributions, with sublimits for the year of \$20,000 to national party committees and \$5,000 to a [political action committee] or any other party committee.
 - Political action committees (PACs) and party committees were limited to contributions of \$5,000 per candidate per election (or \$10,000 in the cycle).
 - Party committees, too, could contribute no more than \$5,000 per election to a candidate. The major party senatorial campaign committees, however, were permitted to contribute \$17,500 to each of their party's senatorial candidates.

Id. at 9–10.

90. *Limits on spending (all except the first were struck down in Buckley v. Valeo):*

- Different formulas governed the spending of political party committees 'on behalf of' their candidates for the Congress. Committees were limited to \$10,000 in spending for House campaigns, indexed to 1974 dollars (value in 1991: \$26,500). The minimum limit for Senate campaigns was set exactly at twice that; an adjustment formula raised the limit for races in the more populous states, with the California limit in 1991 rising to \$1,166,493.
- Candidate expenditures were limited in two ways. Candidates and their families were limited to \$35,000 per year (Senate) or \$25,000 (House) in contributions to their own campaigns. Their campaigns for a House seat were limited to \$70,000 in total spending; Senate campaigns could spend the greater of either \$100,000 or 8 cents times the voting-age population of the state, both totals indexed to 1974 dollars.
- Independent spending by groups and individuals to support or oppose a candidate was limited to \$1,000 per candidate per election. Such spending was 'independent' if it was made without the cooperation or knowledge of the candidate.

Id. at 10.

91. *Id.*

Public Funding of Presidential Elections:

- Candidates for the presidency established eligibility for federal matching of all individual contributions of \$250 or less; spending limits were set in each state as well as an overall national spending limit of \$10 million in 1974 dollars.
- Full voluntary public funding was instituted at a spending limit (\$20 million in 1974 dollars) for major party candidates in the post-convention, general election campaign.

Id.

States Supreme Court, however, struck down most of the spending limits in *Buckley v. Valeo*.⁹²

Buckley concerned challenges to the contribution and spending limits of these FECA Amendments of 1974, including a \$1,000 per individual per election contribution limit, and limits on the amounts that could be spent by a campaign, by a non-candidate on a candidate's behalf, and by a candidate from the candidate's own personal funds.⁹³ The Supreme Court upheld the \$1,000 individual contribution limit,⁹⁴ but invalidated the spending restrictions imposed by the 1974 amendments.⁹⁵ Noting that "television, radio, and other mass media" were "indispensable instruments of effective political speech,"⁹⁶ the Court observed that the expense of such media rendered "the raising of large sums of money an ever more essential ingredient of an effective candidacy."⁹⁷ The Court deemed spending so crucial to effective political speech that restrictions on spending constituted, in essence, a restriction on speech.⁹⁸

A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill

92. 424 U.S. 1 (1976).

93. See 18 U.S.C. § 608(a)(1), (c); *id.* § 608(e)(1) (repealed 1976).

94. *Buckley*, 424 U.S. at 26 ("It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation."). In 2000, the Court reaffirmed the constitutionality of limiting political contributions. See *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 397–98 (2000) (upholding Missouri's contribution limit for candidates for statewide office against a challenge that the limit was too low).

95. *Buckley*, 424 U.S. at 26; see also *supra* note 90 and accompanying text (setting forth the limits on spending under the 1974 amendments to FECA).

96. *Buckley*, 424 U.S. at 19.

97. *Id.* at 26.

98. *Id.*; see also *id.* at 18 n.17 ("[T]he Act's dollar ceilings restrict[ed] the extent of the reasonable use of virtually every means of communicating information."). A number of commentators have argued that *Buckley* equates money with speech. See, e.g., Lillian R. BeVier, *Campaign Finance Reform: Specious Arguments, Intractable Dilemmas*, 94 COLUM. L. REV. 1258, 1277 (1994); Alan B. Morrison, *What If . . . Buckley Were Overturned?*, 16 CONST. COMMENTARY 347, 369–70 (1999). However, one commentator has drawn a more nuanced conclusion—that *Buckley*'s rationale was not to equate money with speech, but instead that "money is so important to 'effective political speech' that a restriction on spending money effectively constituted a restriction on speech." Overton, *Some Are More Equal*, *supra* note 6, at 993 n.23.

or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.⁹⁹

The recent Bipartisan Campaign Reform Act of 2002¹⁰⁰ again amended FECA.¹⁰¹ The amendments included banning soft money,¹⁰² increasing the individual political contribution limits to a candidate in each election from \$1,000 to \$2,000,¹⁰³ increasing the aggregate individual contribution limit from \$25,000 to \$37,500,¹⁰⁴ and creating the availability of an increased limit for candidates running against independently wealthy opponents.¹⁰⁵ However, tactics are already surfacing for evading the restrictions created by the new amendments.¹⁰⁶

99. *Buckley*, 424 U.S. at 19.

100. Pub. L. No. 107-155, 116 Stat. 81, *codified at* 2 U.S.C. § 431.

101. *See id.* § 101 (stating that the Act amends "Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431 et seq.))" by adding the new sections indicated).

102. *Id.* § 323.

103. *Id.* § 307(a) ("Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. § 441a(a)(1)) is amended—(1) in subparagraph (A), by striking '\$1,000' and inserting '\$2,000'").

104. *Id.* § 307(b).

105. *Id.* § 319.

106. *See* Don Van Natta, Jr. & Richard A. Oppel, Jr., *Parties Set Up Groups to Elect Soft Money Ban*, N.Y. TIMES, Nov. 2, 2002, at A1 (noting that both the Republican and Democratic parties have established alternative methods for collecting and spending unlimited campaign donations in order to circumvent the McCain-Feingold amendments). The phrase "McCain-Feingold amendments" refers to the Bipartisan Campaign Reform Act of 2002 ("BCRA"). *See supra* note 100. The Supreme Court agreed to expedite its review of the constitutionality of the BCRA, scheduling oral arguments for September 8, 2003. *See Elections—Campaign Finance: Supreme Court Expedites BCRA Case, Will Hear Four-Hour Argument Sept. 8*, 71 U.S.L.W. 2772 (June 10, 2003).

The U.S. solicitor general and the Federal Election Commission, with the support of congressional sponsors of the Bipartisan Campaign Reform Act, . . . asked the U.S. Supreme Court to set an expedited schedule to consider the constitutionality of the nation's new campaign finance law by hearing oral arguments in the case in September, a month before the court traditionally begins a new term.

Government Backers of BCRA Ask Justices for Expedited Briefing, Arguments on Review, 71 U.S.L.W. 2758 (June 3, 2003) (citations omitted).

A. The Contradiction of Buckley v. Valeo

In *Buckley*, the Supreme Court reached a result in contradiction with the very underlying principles it was purporting to promote. As an initial matter, the Court noted the importance of the political process:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order “to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” . . . In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.¹⁰⁷

In upholding contribution limits, the *Buckley* Court noted the value of “deter[ring] actual corruption and avoid[ing] the appearance of corruption”¹⁰⁸ However, by striking down spending limits, the Court did nothing to address the corollary of this problem: the elimination of spending limits as essentially auctioning political offices to the highest bidder.¹⁰⁹

Moreover, in contrast to the idea of “bringing about [the] political and social changes desired by the people,”¹¹⁰ the Court’s invalidation of campaign spending limits permits only the changes desired by the biggest fundraisers and the largest contributors. *Buckley*’s authorization of unbounded spending completes the transposition of politics into a money-

107. *Buckley*, 424 U.S. at 14–15 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957) (alteration in original)); see also *Reynolds v. Sims*, 377 U.S. 533, 560 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”) (quoting *Westberry v. Sanders*, 376 U.S. 1, 17 (1964)); *id.* at 568 (“The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.”).

108. *Buckley*, 424 U.S. at 67.

109. Studies have shown that in most elections, the winner is whoever spent the most money. See THEILMANN & WILHITE, *supra* note 1, at 48 (“[T]he better funded candidate is the victor in most congressional elections.”); Conti, *supra* note 3, at 112 (noting that in the 1998 House elections, the top-spending candidate won ninety-five percent of the time); see also DAN CLAWSON ET AL., *MONEY TALKS: CORPORATE PACS AND POLITICAL INFLUENCE* 8 (1992) (“[T]he champion money raiser wins almost regardless of the merits.”); Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 YALE L. & POL’Y REV. 273, 288 (1993) [hereinafter Raskin & Bonifaz, *Equal Protection*] (“The candidate who raises and spends the most money wins in better than four out of five races.”).

110. *Buckley*, 424 U.S. at 14.

focused issue. Politicians have no incentive to appease, much less actually court, those constituents who make no campaign contributions, or who send a modest contribution of twenty or fifty dollars.¹¹¹ Politicians have every incentive, however, to promote the interests of donors—both individual and corporate¹¹²—who make large political contributions.¹¹³

Common sense tells us that integrity requires distance from monetary influence. We would expect a judge to recuse herself from a case involving a large donor to her campaign, because to hear the case would impugn her impartiality and impair her ability to do her job effectively.¹¹⁴ Yet similar conflicts of interest in the legislative and executive arenas are not only largely disregarded, but treated as part of doing business.¹¹⁵ Accordingly,

111. See Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 300 (“Those who can give ten dollars, but for whom \$200 is unthinkable, are at an awesome, if relative, disadvantage; . . . the great bulk of all campaign money—seventy-seven percent—is raised in contributions of \$200 or more.”).

A campaign financing system driven by extreme wealth disparity will inevitably reflect the needs and concerns of the persons who pay for the system, and it will ignore the needs and concerns of persons who lack the means to participate in the funding process. . . . This means that issues of importance to the holders of great wealth are more likely to find themselves on the agenda than issues of importance to the poor.

Burt Neuborne, *Toward a Democracy-Centered Reading of the First Amendment*, 93 NW. U. L. REV. 1055, 1072 (1999).

112. As noted previously, the law has long precluded direct political contributions from corporations to political candidates. See *supra* note 87 (discussing this ban). However, this ban on direct contributions has not eliminated corporate contributions; it has merely led to the creation of diversionary entities through which such contributions are funneled, such as political action committees and independent campaigns. Accordingly, this article refers to “corporate” donors and contributions rather than using the more technically accurate—but nevertheless sanitized and somewhat misleading—references to the diversionary entities.

113. Congress is far more responsive to the political interests of the wealthy than the poor, and often acts to the detriment of those who do not participate in the wealth primary. As political campaign costs and expenditures have soared in the last two decades, poor and working-class people have steadily lost economic ground, while wealthy individuals and corporations have been greatly enriched.

Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 301. The attention paid by politicians to wealthy donors is not restricted to U.S. politics. See *Adopt Zero Tolerance to Corruption: The Curse of Modern Democracy*, THE INDEP. (London), Jan. 12, 2000, at 3 (“It does not take political genius to understand that wealthy donors expect political payback.”).

114. Indeed, such a financial conflict of interest mandates judicial disqualification. See, e.g., MODEL CODE OF JUDICIAL CONDUCT Canon 3E(1)(e) (2002) (requiring judicial disqualification when the judge “knows or learns by means of a timely motion that a party or a party’s lawyer” has made a large political contribution to the judge’s campaign). See generally Debra Lyn Bassett, *Judicial Disqualification in the Federal Appellate Courts*, 87 IOWA L. REV. 1213 (2002).

115. See, e.g., *Hungry for Good News About the Election? Try This*, USA TODAY, Dec. 6, 2000, at 24A (“When a new president and Congress take over Washington next month, they’ll

contrary to *Buckley*'s purported goal, the current system of campaign financing serves to facilitate both actual corruption and the appearance of corruption.

One of the arguments raised, and rejected, in *Buckley* was that spending limitations were justified by equality concerns.¹¹⁶ Refusing to acknowledge the inequality built into the current campaign financing process, the Supreme Court in *Buckley* stated that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."¹¹⁷ The fallacy of the Court's approach in *Buckley* has been identified by a number of prominent commentators.¹¹⁸

In particular, the *Buckley* Court's focus on the First Amendment, to the exclusion of the Fourteenth Amendment, failed to address the equal protection issues in campaign finance.¹¹⁹ Commentators have argued the

be awash in a record \$3 billion tide of private campaign contributions, and their donors will be looking for payback in favors from government.").

Gov.-elect Jeb Bush and the Republican Party were swept to victory by the twin forces of money and message, but stern tests now await the winners.

A wide range of business interests soon will be seeking payback after fueling the GOP's fund-raising machine to a record \$27 million this year.

....

Industry groups, the law enforcement community, minorities, religious conservatives and even state prison officers are seeking some kind of return from their investment in the governor's race.

John Kennedy, *Line Forms to Ask Favors From Bush; He Must Deal With Big Donors Who Want Paybacks and Voters Who Want Quick Results*, ORLANDO SENTINEL, Nov. 8, 1998, at B1; see also Marianne Means, *Do We Really Need Another Uncontrolled Starr Clone?*, SUN-SENTINEL (Ft. Lauderdale), July 25, 1998, at 17A ("There are so many entangling relationships among donors, politicians, lobbyists and workerbees that it is difficult to separate legitimate contributions from prosecutable paybacks."); Garry Wills, *Politics by the Old Rules*, N.Y. TIMES, Mar. 4, 1997, at A23 ("In President Clinton's case, a monetary favor could get you a ride on Air Force One, a dinner (or breakfast or coffee) at the White House, a stay in the Lincoln Bedroom.").

116. *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976).

117. *Id.*

118. See, e.g., CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* 97-98 (1993) (criticizing the Supreme Court's rejection of equality as a justification for campaign finance reform); David A. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 COLUM. L. REV. 1369, 1382-85 (1994) (arguing that those who have money should not be permitted to have greater influence over the political process by virtue of their contributions).

119. See *Buckley*, 424 U.S. at 13-21; Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160, 1164 (1994) [hereinafter Raskin & Bonifaz, *Constitutional Imperative*] (asserting that campaign financing "is best formulated in terms of equal protection rather than in the rarified and abstracted language of free speech"); see also Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 279 ("The purpose of this Article is to demonstrate that the current campaign

woeful inadequacy of campaign finance jurisprudence with respect to race,¹²⁰ gender,¹²¹ and disparities in wealth.¹²² Similar arguments also apply to rural dwellers, who are at a disadvantage both numerically and financially. *Buckley* also failed to acknowledge the preexisting inequities in the distribution of property, which provides an inherent advantage to those who are already wealthy.¹²³

Buckley's analysis focuses upon one particular concern: the appearance (or actuality) of undue influence created by large financial contributions.¹²⁴ This approach is based on two flawed assumptions. First, by examining only potential monetary limitations upon campaign contributions, the current campaign financing scheme overlooks disparities in income and wealth, making an unspoken—and indeed unspeakable—assumption that the monetary resources with which to make a political contribution are equally available to all. This premise is, of course, demonstrably untrue.¹²⁵ Disparities in economic resources exist throughout society, and particularly for women, minorities, and rural dwellers. Disparities in wealth translate into disparities in political power. Ignored in the current reforms is the reality that the failure to acknowledge these disparities will perpetuate them.

finance regime is inconsistent with equal protection or, at the very least, warrants congressional action to vindicate equal protection.”).

120. Overton, *Some Are More Equal*, *supra* note 6, at 987 (discussing impact of campaign finance reform on minority candidates).

121. See Conti, *supra* note 3, at 104–05, 113–15 (discussing impact of campaign finance reform on female candidates).

122. See Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1392–93 (1994) [hereinafter Sunstein, *Political Equality*] (“In democratic politics, a norm of equality is important: disparities in wealth ought not lead to disparities in power over government.”); see also Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 273.

123. See J.M. Balkin, *Some Realism About Pluralism: Legal Realist Approaches to the First Amendment*, 1990 DUKE L.J. 375, 379 (“One could argue that free speech in a situation of radically unequal economic power is not free speech at all because it is skewed by the preexisting distribution of property.”); Overton, *Some Are More Equal*, *supra* note 6, at 989 (“Existing frameworks fail to acknowledge that past state-mandated discrimination against racial minorities has shaped the current distribution of property, which in turn hinders the ability of many people of color to participate fully in a privately financed political system.”).

124. *Buckley*, 424 U.S. at 25–27.

125. In 1995, median household income was \$35,766 for whites, \$22,860 for Latinos, and \$22,393 for African Americans. Examination of contemporary household net worth, which consists of all assets less any debts, reveals a more complete picture of the effects of intergenerational transfers of wealth. In 1995, the median net worth for white households (\$61,000) was over eight times greater than African-American households (\$7,400) and over twelve times greater than Latino households (\$5,000).

Overton, *Voices from the Past*, *supra* note 6, at 1549 (citation omitted).

Second, to the extent that undue influence is a valid concern, such undue influence is much more troublesome in the context of perceived “indebtedness” to business or lobbying organizations¹²⁶ and *Buckley* inadequately addressed this angle. As problematic as large individual contributions may be to the actual and perceived fairness of the political system, large corporate contributions increase these concerns exponentially.¹²⁷

Another contradiction appears when the Court’s earlier holding in *Reynolds v. Sims*¹²⁸ is contrasted with its holding in *Buckley*. In *Reynolds*, the Court articulated its famous “one person, one vote” principle,¹²⁹ yet in *Buckley*, the Court refused to acknowledge equality as a consideration in the

126. See, e.g., Richard Sisk, *Bush Eyes Settlement, Not Lawsuit*, DAILY NEWS (N.Y.), June 29, 2001, at 4.

President Bush signaled yesterday that his administration will seek a settlement in the Microsoft anti-trust suit a week after dropping the huge case against the tobacco industry.

....

Campaign finance watchdog groups said the settlement pushes in the tobacco and Microsoft cases were a form of political payback to corporate donors.

....

Microsoft and its officials contributed \$2 million to the GOP in the last election, and company execs were part of a Republican fund-raising bash in Washington that raised \$20 million Wednesday night.

Id.

127. See David E. Rosenbaum, *In Political Money Game, The Year of Big Loopholes*, N.Y. TIMES, Dec. 26, 1996, at A1.

It is impossible to prove exactly what donors get in return for their contributions. A direct payoff would clearly be illegal, a violation of the bribery statutes. The stock answer from politicians and contributors alike is that all that is expected and all that is returned is better access to the politicians for the donors. Yet, this answer depends on believing, for instance, that there is no connection between the millions of dollars that the Archer-Daniels-Midland Company and its chairman, Dwayne Andreas, have donated over the last quarter century to politicians from both parties and the multibillion-dollar tax break the Government allows for ethanol, one of the company’s main products. . . . No one is afraid of the [Federal] [E]lection [C]ommission. The agency’s authority is limited. And when it does crack down on wrongdoing, the action almost always comes too late to affect the outcome of the election.

Id.

128. 377 U.S. 533 (1964).

129. *Id.* at 558.

context of campaign finance.¹³⁰ In both instances, the Court's result served to reduce the power of rural dwellers.

We do not think of "one person, one vote" as an example of reducing the speech of some to enhance the relative speech of others, but that is only because the principle seems so natural. When legislatures were malapportioned, rural voters had a more effective voice than urban voters. Reapportionment reduced their influence to enhance the relative influence of others. We might unreflectively say that the rural voters were deprived of voting power that was not rightfully theirs, while my ability to make a campaign contribution is rightfully mine unless the government has a good reason to take it away. But this formulation begs the question, of course. We have to explain why superior spending power is rightfully mine but superior voting power is not. If equalization is a legitimate (in fact mandatory) reason for rearranging voting rights, it is not clear why it is an illegitimate reason for rearranging other rights to political participation.¹³¹

Thus, the "one person, one vote" principle, which accords each individual a single vote of equal weight, assures that the candidate with the greatest number of votes will prevail—yet the views espoused by political candidates are not shaped by equal segments of the population. The current system permits the wealthy to purchase a disproportionate political voice—in essence, to purchase more than the single vote each individual is allocated.¹³² Accordingly, political views are shaped by a miniscule percentage of the population—a segment that is both non-diverse and non-rural.

The Supreme Court has noted that equal protection is violated "when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole."¹³³ Authorizing the spending of private money without limitation undermines public confidence in the political process by selling political offices on the auction block to the highest bidder. This process also violates equal protection by creating, in essence, a financial prerequisite to full participation in the political process. The apparent necessity of wealth—either personal or gathered from the contributions of others—to attain

130. *Buckley*, 424 U.S. at 48–49 (stating that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment").

131. Strauss, *supra* note 118, at 1383.

132. See *supra* notes 4–5, 73–77 and accompanying text (discussing donor population characteristics).

133. *Davis v. Bandemer*, 478 U.S. 109, 132 (1986).

political office¹³⁴ creates a financial prerequisite for political participation reminiscent of the discredited poll tax.¹³⁵

B. *The Importance of Place in Policy and Politics*

A number of illusions and assumptions perpetuate the myth that the interests of rural dwellers are fully represented in the political process. One such illusion, discussed in Part VI, is the erroneous notion that the use of the electoral college in the presidential general election provides rural dwellers with a substantial and disproportionate advantage in the presidential election process.¹³⁶ Another example is the notion that early presidential primary elections in rural states, such as the Iowa Caucus, accord protection to rural political interests. Further examination, however, reveals the fallacy of this assumption.

Early presidential primary elections in rural states do indeed bring political candidates to those states, and candidates likely spend more time in those states than they would otherwise.¹³⁷ Does this translate, however, into rural political power? The answer to this question is found by examining whether political platforms reflect an understanding of, an interest in, and proposals aimed at rural issues—and thus the answer is no.

Presidential candidates campaigning in rural states tend to roll up their shirtsleeves¹³⁸ (or wear flannel),¹³⁹ proclaim their identification with the

134. See *supra* note 2.

135. See U.S. CONST. amend. XXIV (banning poll taxes in federal elections); *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (striking down poll tax in state elections); see also *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (striking down state filing fees for political office as “barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from which voters might choose”).

136. See *infra* notes 184–206 and accompanying text (discussing the impact of the electoral college’s winner-take-all approach on rural voters).

137. See *Dean Making Seventh Trip to Iowa*, THE BULLETIN’S FRONTRUNNER, July 16, 2002 (noting that as of July 2002—more than a year before the presidential primaries—presidential candidate Howard Dean had already made seven trips to Iowa, “the state where the selection of presidential nominees begins with precinct caucuses.”).

138. See, e.g., Jordan Bonfante, *Democrats: Strong Message, Wrong Messenger*, TIME, Jan. 13, 1992, at 19 (“Take the recent joint appearance of [Jerry] Brown and Iowa Senator Tom Harkin at a breakfast for 1,500 liberal Democratic farmers and senior citizens in Moline, Ill. Harkin rolled up his working-class sleeves When Brown’s turn came, he also peeled to his shirtsleeves”); Ronald Brownstein, *Public Seeing Campaign Through Eye of the TV Cameras*, 16 NAT’L J. 1752 (1984) (“[A]s [Walter] Mondale, in rolled-up shirtsleeves again, put it in Peoria: ‘Pick a President who hurts when you hurt.’”); Matt Stearns, *Dean Formally Announces Democratic Presidential Bid*, KNIGHT RIDDER WASH. BUREAU, June 24, 2003 (reporting speech by presidential candidate Howard Dean, who was wearing his “shirtsleeves rolled back to the elbows”); Chris Taylor, *How Dean is Winning the Web*, TIME, July 14, 2003,

“everyman,” and promise continued federal farm subsidies—subsidies which, as addressed at the outset of this article, do not tend to benefit small family farms.¹⁴⁰ Otherwise, politicians tend to discuss the state of the economy generally, rather than problems and potential solutions pertaining specifically to rural dwellers.¹⁴¹ In other words, rural states receive superficial attention from presidential candidates, which is a far cry from actual political clout.

Presidential candidates do not consider rural dwellers a powerful political constituency, and do not tailor their platforms to address rural concerns.¹⁴² At most, such political candidates pay lip service to rural dwellers¹⁴³ in order to secure the votes necessary to stay in the news and thereby retain political viability and momentum.¹⁴⁴ In other words, rural

at 40 (describing presidential candidate Howard Dean as “[t]he former Vermont Governor, whose trademark look is a blue shirt with rolled-up sleeves”).

139. See, e.g., Joy Darlington, *Watching the Campaign With Media-Savvy Kids*, INSIGHT ON THE NEWS, Nov. 4, 1996, at 20 (reporting the practice of “making a candidate seem to be a ‘regular guy’ by dressing him in a flannel shirt instead of a business suit”); Wladyslaw Pleszczyński, *About This Month*, AM. SPECTATOR, Apr. 1996 (“When last seen, Lamar Alexander, the darling of the best and the brightest inside the Beltway, was . . . still wearing that flannel shirt at high noon.”).

140. See *supra* notes 9–10 and accompanying text (noting that federal farm subsidies benefit agribusiness; only six percent of all rural dwellers live on farms).

141. See Brit Hume, *Fox Special Report with Brit Hume* (Fox television broadcast, May 21, 2003) (noting that most presidential candidates “are talking about health care or the economy,” with the exception of candidate John Edwards, who “is making time to talk about farming and rural issues”).

142. See Matt Bai, *Nascar-Lovin*, N.Y. TIMES, Sept. 15, 2002, § 6, at 94 (“Although they won’t say so on the record, some Democratic strategists believe that since rural areas are shrinking anyway, the party shouldn’t waste critical resources appealing to them.”); Jerry Hagstrom, *Rural Battleground*, 28 NAT’L J. 2284 (1996) (“Nothing seems to bore Washington policy makers more than farm bills and rural affairs.”); *id.* (quoting a political columnist as stating that “rural areas and rural issues have been profoundly neglected”).

143. See Bai, *supra* note 142, § 6, at 94 (“At least some of the [presidential] candidates . . . are looking for cheap gimmicks to get the attention of rural voters, but without a real policy agenda behind them.”); Elizabeth Benjamin, *Democrats to Get Rural Views*, TIMES UNION (Albany, NY), May 25, 2003, at C1 (quoting the Democratic Rural Conference Chair as stating that presidential candidates have “to move from lip service to accountability”).

144. See Charlie Cook, *For Now, Kerry Leads the “Buzz” Competition*, 35 NAT’L J. (2003).

[Joe] Lieberman, the Democrats’ 2000 vice presidential nominee, holds or shares the lead in most national polls. Yet it is not clear which early-2004 state offers his best chance to actually win and establish the early momentum—“the Big Mo,” in the vernacular of President George H.W. Bush—that is so important. Running ahead in early polls may prove to be of little value to Lieberman if a rival does well enough in both Iowa and New Hampshire to capture most of the momentum heading into the two February 3 primaries and beyond.

states are a stepping stone, not a goal in themselves. The prize is not the rural states; the prize is the large, urban states—the source of both votes¹⁴⁵ and major donors.¹⁴⁶

Another interesting, but erroneous, assumption regarding rural voters concerns party affiliation. Rural diversity influences the political characteristics of rural America. Rural Americans “are generally less affluent, more likely to be white and politically more conservative than the rest of the nation, particularly on social issues such as abortion and gun control.”¹⁴⁷ Contrary to the assumptions of many urban Democrats, however, “rural” is not necessarily synonymous with “Republican.” Rural voters have a maverick spirit:

[R]ural America may be called the least predictable of the nation’s demographic or geographic blocs. While most rural districts elected Republicans to the House, a clear majority of the rural districts also voted for President Clinton.

And it is this willingness to split ballots and make quick partisan turnarounds that enables the rural voter to retain some measure of political importance. . . . [R]ural America is often up for grabs.

Throughout the nation’s history, rural discontent with the status quo has been a cornerstone of congressional upheaval¹⁴⁸

This independence ensures that rural voters cannot—or at least should not—be taken for granted. An illustration of this independent spirit occurred when Senator James Jeffords, an elected Republican from the rural

Id.; see also *Iowa/New Hampshire Winter Book: TIE Asked Six Experts How the Early Stages of the 2004 Democratic Primary Season Could Shake Out*, INT’L ECON., Mar. 22, 2003, at 18 (“Whoever comes in first and second in Iowa will have considerable momentum going into the New Hampshire primary Whoever places second and possibly a close or unexpected third place garners momentum, benefiting from what has been called the ‘slingshot effect,’ catapulting them into the next phase of primaries.”).

145. See Alexis Simendinger et al., *Pondering a Popular Vote*, 32 NAT’L J. 3650 (2000) (quoting a demographer as saying that if presidential elections were determined solely by the popular vote, “in a general election, voters would never see a presidential candidate if they lived in any town that did not have an NFL football team”).

146. See *supra* notes 70–78 and accompanying text (discussing rural income and political contributions).

147. Cook, *supra* note 11, at 2243.

148. *Id.*

Country values, which tend to emphasize self-reliance and social conservatism, often work to the political advantage of Republicans. But that can be offset, at least in some rural areas, by a sense of unease with the economic status quo. Rural areas “lag behind the cities in income and tend toward populism, left and right.”

Id. at 2248.

state of Vermont, left the Republican Party and became an Independent,¹⁴⁹ thus preventing the Republicans from maintaining control of the Senate—and was applauded by his constituents for doing so.¹⁵⁰

There are some who believe that so long as all are provided the right to vote, baseline fairness has been achieved and no more need be provided. In other words, if one has the money to hobnob with and influence political candidates, this is, after all, no different than all of the other advantages and benefits that inure to the wealthy in the United States.

[At a political fundraising event in Hollywood raising millions of dollars,] Barbra Streisand was a co-host, co-sponsor of the fund

149. See Kathy Kiely, *What Pushed Jeffords*, USA TODAY, May 24, 2001, at 1A (“A president who has been praised for deft and genial handling of Congress now stands accused of heavy-handedness and a lack of common courtesy in his dealings with Jeffords. . . . [Jeffords] has seen his authority circumscribed and his pet projects ignored this year.”).

The White House snubbed Jeffords last month when it held an event honoring a teacher of the year from Vermont. Bush aides also let Sen. Judd Gregg (R-N.H.) play a key role on education issues, another slap at Jeffords, who had served as a leader on education issues for the GOP.

Bush aides later threatened to scuttle a bill vital to Vermont, the Northeast Dairy Compact.

Andrew Miga, *Jeffords Set to Defect, Hand Power to Dems*, BOSTON HERALD, May 24, 2001, at 1.

Beltway Republicans who are crying foul over Jeffords’s defection . . . ought to look to their own behavior. In the evenly divided Senate, Republican Party leaders have brooked no dissent. . . .

They treated Jeffords shabbily, pointedly not inviting him to a White House awards ceremony for a Vermont teacher because he had voted for more education funding—and less of a tax cut—against the president’s wishes.

Editorial, *Forcing Jeffords Out*, BOSTON GLOBE, May 25, 2001, at A22 (“James Jeffords didn’t jump from the Republican Party yesterday. He was pushed.”).

150. See Mickey Edwards, *Jeffords Switch Could Energize GOP*, BOSTON HERALD, May 24, 2001, at 35 (noting that “Jeffords’ perspectives were remarkably singular and his constituency is as strikingly independent-minded as he is The Almanac of American Politics describes Jeffords as ‘almost quixotic.’”); Elizabeth Mehren, *A Senator’s Decision*, L.A. TIMES, May 24, 2001, at A21 (“[W]hile staunchly, insistently Republican, Vermont was never a conservative state Jeffords . . . embodies that strain of Republican: liberal on social issues, cautious with fiscal matters.”); *id.* (quoting a University of Vermont political science professor who stated that Vermont is “a democratic state with a small ‘d’ We’re small, we’re quirky and we don’t give a damn what people think.”); Joan Vennoch, *A Vermonter All the Way*, BOSTON GLOBE, May 25, 2001, at A23 (noting that Jeffords’ political switch, announced at a news conference in Vermont, was greeted with cheers from the audience); see also Fluharty, *supra* note 11, at 66 (noting the emergence of “a more fluid, less partisan rural electorate”); RURAL POLICY RESEARCH INSTITUTE, RURAL POLICY CONTEXT, POLITICAL CHARACTERISTICS IN RURAL AMERICA, at <http://www.rupri.org/resources/context/politic.html> (last visited Sep. 4, 2003) (stating that “[t]he mix of conservatism and populism in rural areas . . . makes rural voters a political wildcard in future elections”).

raiser. She was willing to [speak with reporters]. . . . And the reporter asked, “Well, I’d like to know, what do you think? What do you think about this process?” She said, “What do you mean, what do I think?” “What do you think about the process of people who give so much money and candidates who have to take so much money in order to run?” And she says, “Well, that is what’s great about America. If you have the money, you can get it. If you have the money, you can spend it.” So then the follow-up question from the reporter, “Well, what about those people who don’t have the money?” And she kind of looked a little stunned by that question. She stepped back and she said, “They can vote.” And she ran away.¹⁵¹

The right to vote, however, is insufficient standing alone. “For the [F]ramers, heterogeneity was beneficial, indeed indispensable; discussion must take place among people who were different.”¹⁵² Having the right to vote gives one a voice only at the very end of the political process. Voting rights alone do nothing to enable one to bring particular issues to the fore or to shape the debate.¹⁵³

The danger posed by the concentration of political contributions by older, white, wealthy, males lies not in the contributions themselves, but in the influence these contributions buy.¹⁵⁴ The resultant influence amounts to purchasing political power.¹⁵⁵ Political donors buy political attention, while non-donors are ignored. “Non-contributors are excluded from the system in two major ways. First, they are not able to help their candidates of choice

151. John Bonifaz, *Challenging the Campaign Finance System as a Voting Rights Barrier: A Legal Strategy*, 43 HOW. L.J. 65, 85 (1999).

152. CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* 24 (1993) [hereinafter SUNSTEIN, *PARTIAL CONSTITUTION*]. Professor Smith has asked if there really are “views we are not hearing that we ought to be hearing.” Bradley A. Smith, *Money Talks: Speech, Corruption, Equality, and Campaign Finance*, 86 GEO. L.J. 45, 70 (1997). To my mind, the answer to Professor Smith’s question is obvious: the largely homogeneous nature of both political contributors and political candidates will necessarily limit the diversity of the issues raised as well as the scope of the debate.

153. See Edward B. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principal of Campaign Finance*, 94 COLUM. L. REV. 1204, 1227 (1994) (“[A] citizen does not have equal input in the electoral process if she is denied an equal opportunity to participate in the argumentative stage of the process.”).

154. See FRED WERTHEIMER, *THE COMMON CAUSE MANUAL ON MONEY AND POLITICS* 3 (Common Cause 1972) (noting that major campaign contributors who donate without expectation of any benefit are rare as major donors expect some “return” on their “investment”).

155. See Neuborne, *supra* note 111, at 1072; Raskin & Bonifaz, *Constitutional Imperative*, *supra* note 119, at 1162 (“Money is . . . unequally distributed, which means that persons who have more wealth can buy more goods, including political and governmental favors.”); Sunstein, *Political Equality*, *supra* note 122, at 1390 (observing that “there is no good reason to allow disparities in wealth to be translated into disparities in political power”).

run and win. Second, incumbent lawmakers largely ignore non-contributors because they hold no promise of financial support for the next election.”¹⁵⁶

Because higher incomes and greater wealth are found in urban areas, political contributions disproportionately promote the interests of wealthy urban dwellers rather than the poor and/or rural dwellers.

“[T]he people we send to Washington no longer look to and listen to those segments of society that don’t give campaign money. The tougher the race (or the longer they stay in office), the more time they spend with contributors (vs. constituents) the more they lose touch with the concerns of those ordinary folk back home. The lawmakers no longer have the luxury to talk to their one-time friends and neighbors about school safety and child care and job security. Instead, they have to shake hands at high-donor cocktail parties where they’ll hear about capital gains and inheritance taxes and the negative impact of a minimum-wage hike. Whose concerns will be heeded: those of the top 100 donor communities (80 percent white) that gave an average of \$1.4 million or the 100 communities with the highest concentration of people of color that gave an average of \$7,000?”¹⁵⁷

Despite the considerably larger numbers of less affluent voters, politicians are attentive to the greater *money* of their comparatively few wealthy constituents, not the greater *number* of their less-wealthy constituents:

[T]he politics of rich and poor hasn’t played out the way you might think. Since the incomes of America’s wealthy have soared while ordinary families have seen at best small gains, you might have expected politicians to seek votes by proposing to soak the rich. In fact, however, the polarization of politics has occurred because the Republicans have moved to the right, not because the Democrats have moved to the left. And actual economic policy has moved steadily in favor of the wealthy.¹⁵⁸

If campaign financing disproportionately promotes the interests of wealthy urban dwellers, how are the interests of rural dwellers promoted? The answer is that by and large, those interests are not promoted. A

156. Public Campaign, *The Color of Money: Campaign Contributions and Race, Executive Summary* (1999), at <http://www.colorofmoney.org/execsumm.html> (last visited Oct. 27, 2003); see also *supra* notes 111–13 and accompanying text (discussing the greater attention paid by politicians to the interests of wealthy donors).

157. Public Campaign, *The Color of Money: Campaign Contributions and Race, Executive Summary*, at <http://www.colorofmoney.org/execsumm.html>. (last visited Nov. 21, 2003).

158. Paul Krugman, *For Richer: How the Permissive Capitalism of the Boom Destroyed American Equality*, N.Y. TIMES, Oct. 20, 2002, (Magazine), at 62, 77.

politician's motivation to listen to the concerns of major donors is obviously much higher than the motivation to listen to the concerns of non-donors. A comparison of the major tax increases and major tax cuts as they impact the wealthy and the working class underscores this disparity:

The major tax cuts of the past 25 years, the Reagan cuts in the 1980's and the recent Bush cuts, were both heavily tilted toward the very well off. (Despite obfuscations, it remains true that more than half the Bush tax cut will eventually go to the top 1 percent of families.) The major tax increase over that period, the increase in payroll taxes in the 1980's, fell most heavily on working-class families.¹⁵⁹

One of the more recent examples of the political impact of wealthy donors deals with reforms to the estate tax, which impacted only the wealthy, yet was very popular even among those who would never be subject to the estate tax:

In 1999, only the top 2 percent of estates paid any tax at all, and half of the estate tax was paid by only 3,300 estates, 0.16 percent of the total, with a minimum value of \$5 million and an average value of \$17 million. A quarter of the tax was paid by just 467 estates worth more than \$20 million.

....

... [Yet] much of the general public has been convinced that the estate tax is a bad thing. If you try talking about the tax to a group of moderately prosperous retirees, you get some interesting reactions. They refer to it as the "death tax"; many of them believe that their estates will face punitive taxation, even though most of them will pay little or nothing; they are convinced that small businesses and family farms bear the brunt of the tax.¹⁶⁰

If public policies impacted urban and rural areas in precisely the same manner, and if urban and rural areas faced precisely the same issues and concerns, perhaps the disparities in political power between urban dwellers and rural dwellers would be less troublesome. But, of course, this is not the case.

Public policies have different impacts across space. Rural and urban areas face different issues based on economic, demographic, and locational issues, and therefore have different policy needs. If these differences are not taken into account, federal policies can

159. *Id.*

160. *Id.* at 77, 141.

have unanticipated or unintended effects on rural areas because of their distinctive characteristics.¹⁶¹

As one commentator has observed, unless rural America can secure a voice in the public policy arena, “the relative power of rural ideas, policies, and people will continue to decline.”¹⁶² And indeed, rural political power, which has been in decline for fifty years, continues to diminish. The proposals set forth in the next section aim to enhance the political voice of rural dwellers.

VI. A MORE EQUITABLE SOLUTION

America’s political system is largely based on a notion of majority rule.¹⁶³ In this “majority rule” system, if we assume that each individual will vote in a manner that promotes his or her own self-interest, we would assume the result that minority views will be overruled every time—whether those minority views are racial, ethnic, religious, economic, environmental, or rural. If this is true, why should we struggle to ensure that minority views are heard?

The answer is threefold. First, not all individuals vote in an economically self-interested manner.¹⁶⁴ For example, some wealthy individuals will vote in an economically disadvantageous manner because they personally believe that the government should provide increased services to the disenfranchised, and are willing to pay increased taxes in

161. RURAL POLICY RESEARCH INST., RURAL POLICY CONTEXT, THE IMPORTANCE OF PLACE IN PUBLIC POLICY, at <http://www.rupri.org/resources/context/pubpolicy.html> (last visited Sept. 4, 2003) (discussing rural policy context and the importance of places in public policy).

162. Fluharty, *supra* note 11, at 72.

163. See John O. McGinnis & Michael B. Rappaport, *Our Supermajoritarian Constitution*, 80 TEX. L. REV. 703, 729 (2002) (“Within democracies, it is generally assumed that majority rule is the best voting rule.”). *But see generally* Frank I. Michelman, “*Protecting the People From Themselves, or How Direct Can Democracy Be?*,” 45 UCLA L. REV. 1717 (1998) (discussing difficulties of equating democracy with majority rule).

164. A classic example of acting in an economically disadvantageous manner occurs when an individual is willing to pay higher taxes, and a substantial number of individuals have indicated exactly such a willingness when higher taxes would benefit particular causes. See, e.g., Alyson C. Flournoy, *Restoration Rx: An Evaluation and Prescription*, 42 ARIZ. L. REV. 187, 203 n.68 (2000) (reporting a poll in which thirty-four percent of the respondents indicated they were willing to pay higher taxes to protect the environment); Timothy Stoltzfus Jost, *Private or Public Approaches to Insuring the Uninsured: Lessons from International Experience with Private Insurance*, 76 N.Y.U. L. REV. 419, 484 (2001) (stating that according to recent opinion polls, sixty-nine percent of Americans “are willing to pay higher taxes to ensure coverage for the uninsured”).

order to fund such services.¹⁶⁵ Second, because our current campaign financing system relies heavily on contributions, the wealthy—who numerically constitute a minority—do not receive minority treatment, but instead, in practical terms, have a disproportionate influence over the issues due to the influence they are able to purchase.¹⁶⁶ Third, with respect to many issues, intelligent and informed voting cannot occur unless alternative points of view are articulated and explored.¹⁶⁷

So how can we ensure that minority views are heard? An effective proposal requires a multifaceted approach that reduces the effect of financial contributions upon the shaping of the issues, while simultaneously increasing the voices of numerical minorities. Specifically, with respect to enhancing the voice of rural populations in proportion to their numbers, this requires changes to campaign financing and to the electoral college.¹⁶⁸

165. See, e.g., Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1, 52 (1996) (reporting that a 1993 poll found "81% of the public would be willing to pay higher taxes to fund increased government aid to homeless people"); Amy L. Wax, *Rethinking Welfare Rights: Reciprocity Norms, Reactive Attitudes, and the Political Economy of Welfare Reform*, LAW & CONTEMP. PROBS., Winter/Spring 2000, at 257, 273 ("Although a small number of respondents point to cutting costs as the most important goal of welfare reform, most would be willing to pay higher taxes for programs that help welfare recipients help themselves.").

166. See Paul M. Schwartz, *Voting Technology and Democracy*, 77 N.Y.U. L. REV. 625, 644 n.87 (2002) (noting "[t]he national debate about campaign finance reform and the disproportionate influence that rich donors can obtain from elected politicians"); see also *supra* note 132 and accompanying text.

167. See SUNSTEIN, *PARTIAL CONSTITUTION*, *supra* note 152, at 24; see also Raskin & Bonifaz, *Constitutional Imperative*, *supra* note 119, at 1183 ("It is ironic that the current regime is defended on the basis of First Amendment values when so little real debate takes place and so many incumbents are able to eschew live discussion in favor of superficial attack and voice-over ads issued as unreturnable sallies.").

168. It is entirely possible that these proposals will have little impact on election results. The importance of these proposals lies in facilitating the access to, and enhancing the voice of, rural dwellers in the political arena. See Elisabeth Schüssler Fiorenza, *Public Discourse, Religion, and Wo/men's Struggles for Justice*, 51 DEPAUL L. REV. 1077, 1101 (2002) ("[E]quality, freedom, and democracy cannot be realized if . . . voices are unraised, unheard, and unheeded . . ."); Lani Guinier, *Supreme Democracy: Bush v. Gore Redux*, 34 LOY. U. CHI. L.J. 23, 29 (2002) (Democracy requires "interactive, engaging, and egalitarian spaces in which the people can become informed, can deliberate, and can eventually influence public decision-making."); Calvin R. Massey, *Hate Speech, Cultural Diversity, and the Foundational Paradigms of Free Expression*, 40 UCLA L. REV. 103, 123 (1992) ("[T]he process of public discourse must be kept open to all individual voices in order to preserve democracy's claim to autonomy . . .").

A. Campaign Financing Reforms

The current campaign financing system permits the wealthy, who constitute a minority of the United States population, to define the choices that voters face—thus setting the agenda. A restructuring of campaign finance, to lessen the wealthy's disproportionate influence, would reduce the financial power inherent in the current system, would better serve the population as a whole, and would benefit rural dwellers in particular.

Wealth in the United States is skewed, with the top one-half of one percent of the households possessing more than one-quarter of the nation's total household net worth, and the top one percent holding more than one-third of the nation's total household net worth.¹⁶⁹ The wealth held by the top one percent of U.S. households is the same as the total aggregate wealth held by combining the entire bottom ninety percent of all households.¹⁷⁰

The current structure of campaign financing, with its emphasis on private money, permits only a tiny fraction of the population to participate in the framing of the issues.¹⁷¹ Even assuming benevolence by what is, essentially, a ruling class, the fact remains that such a small, homogeneous group will not bring the depth and breadth of discourse that results from discussions by a larger, more diverse group.¹⁷² As Professor Fiss has observed, "Relying upon private wealth to finance public elections, even if it is the candidates' own money, thus has two unwelcome effects on politics: it prevents voters from hearing certain perspectives, and it prevents some would-be participants in the political process from effectively airing their views."¹⁷³

169. BRIAN W. CASHELL, REPORT FOR CONGRESS: THE DISTRIBUTION OF HOUSEHOLD WEALTH IN THE UNITED STATES, at CRS-3 (Penny Hill Press, updated 2002).

170. *Id.*

171. See Miller, *supra* note 4 and accompanying text (political donors constitute only one-quarter of one percent of the population).

172. The effective exclusion of candidates lacking personal or political access to wealth leaves poorer citizens without a natural rallying point in the electoral process. True, less affluent voters can sometimes find affluent candidates with whom they agree, . . . but surely the distorting mechanism of the wealth primary systematically undermines the development of political leadership, organization, and consciousness in poorer communities.

See Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 300. As I have stated in my previous writing on ruralism (discrimination against rural dwellers), it is not my intention to directly equate ruralism with racism or sexism. See Bassett, *Ruralism*, *supra* note 12, at 329 ("Although it is not my intention to directly equate ruralism with racism or sex discrimination, the use of limited analogies is appropriate.") (footnote omitted). The current system of campaign financing squelches many voices, and rural dwellers are among them.

173. Owen M. Fiss, *Money and Politics*, 97 COLUM. L. REV. 2470, 2480 (1997).

Toward that end, this article adds its voice to those who have called for the public financing of political campaigns.¹⁷⁴ There can be no pretense that such a task will be easy, and problems undoubtedly will subsequently develop under this alternative model.¹⁷⁵ However, the current approach to campaign financing is widely believed to be—and, at least on occasion, is in fact—corrupt, which has led to voter disengagement, disgust, and apathy.¹⁷⁶

Public financing of political campaigns is not a perfect solution. No campaign financing proposal, whether public financing, some type of voucher program,¹⁷⁷ or simply modifications to existing contribution

174. See, e.g., Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, U. CHI. LEGAL F., 1999, at 60 (calling for public financing of campaigns); Conti, *supra* note 3, at 156 (“To enact real reform, to truly give minorities and women the chance to reach parity in the United States Congress, full public financing needs to be enacted.”); Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 331 (urging a “mobiliz[ation of] public and judicial perception to recognize the equal protection imperative of public campaign financing”); Smith, *supra* note 6, at 1522 (calling for “a system of public financing or public subsidies to poorer candidates. Inclusionary reform will perhaps have to embrace such a scheme, whatever its imperfections.”).

175. See Sunstein, *Political Equality*, *supra* note 122, at 1400 (noting that regulation sometimes has unintended consequences); see also Bradley A. Smith, *Some Problems with Taxpayer-Funded Political Campaigns*, 148 U. PA. L. REV. 591, 598 (1999) (noting the “propensity of campaign finance regulation to be particularly prone to the law of unintended consequences”); Kathleen M. Sullivan, *Political Money and Freedom of Speech*, 30 U.C. DAVIS L. REV. 663, 687–88 (1997) (discussing unintended consequences of campaign finance legislation). For example, the concern has been expressed that soft money bans would disproportionately affect women and minority candidates because they are unable to raise hard money as easily as incumbents. See Conti, *supra* note 3, at 132 (“Because female and minority candidates are underrepresented and therefore tend to be challenger candidates, it naturally follows that they would be disproportionately affected by a ban on soft money.”); Overton, *Some Are More Equal*, *supra* note 6, at 1041–42 & n.241 (discussing possibility that ban on soft money may disadvantage minority political candidates).

176. See Raskin & Bonifaz, *Equal Protection*, *supra* note 109, at 277 (“Not surprisingly, the nonaffluent majority continues to lose ground in public policy and turn away in disgust from the political system.”).

177. Voucher proposals typically involve some dollar allocation per voter, which represents all that the voter—including the political candidate himself or herself—may donate to political campaigns. See, e.g., Bruce A. Ackerman, *Crediting the Voters: A New Beginning for Campaign Finance*, AM. PROSPECT, Spring 1993, at 71, 78–79 (proposing a campaign donation voucher system); Foley, *supra* note 153, at 1204 (“The Constitution of the United States should contain a principle, which I shall call ‘equal-dollars-per-voter,’ that would guarantee to each eligible voter equal financial resources for purposes of supporting or opposing any candidate or initiative on the ballot in any election held within the United States.”); Richard L. Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 CAL. L. REV. 1, 20–27 (1996) (proposing a voucher system of campaign finance reform); *id.* at 5 (“With limited exceptions, only funds from the voucher system could be spent to support or oppose candidates for elected federal offices.”).

limits¹⁷⁸ will yield a perfect solution. Public financing of political campaigns, however, has several specific advantages.

As an initial matter, the Supreme Court expressly mentioned public financing in the *Buckley* case as a constitutionally viable option, stating:

Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forego private fundraising and accept public funding.¹⁷⁹

This suggests that public financing has some benefit over voucher proposals, which may pose constitutional concerns.¹⁸⁰

Second, the availability of public financing, while not eliminating the possibility that an opponent will solicit private money,¹⁸¹ would provide full funding to a candidate upon a showing of a specified level of support.¹⁸² This would enable individuals with neither personal wealth nor wealthy backers to pursue political office, and thus would permit individuals from more diverse segments of society to participate in the political process. Public financing would particularly assist rural dwellers, who typically have fewer personal financial resources, and, coming from poorer areas, are far less likely to have wealthy political backers.

Third, candidates who seek political office using public financing, under proposals where candidates pledge not to campaign for private money after they qualify,¹⁸³ may reduce the conflicts of interest inherent in the current campaign financing scheme, which result from large contributions from private sources. Over time, pressure from constituents in the general population could lead to unanimous candidate agreement to public

178. See, e.g., CAMPAIGN FINANCE REFORM, A SOURCEBOOK 108–09 (Anthony Corrado et al. eds., 1997) (arguing for higher individual contribution limits).

179. *Buckley v. Valeo*, 424 U.S. 1, 57 n.65 (1976).

180. See Hasen, *supra* note 177, at 44 (noting that the constitutionality of a voucher system of campaign finance reform “is far from certain”).

181. See Conti, *supra* note 3, at 143 (“The typical full public funding proposal first makes the program voluntary so as to comply with *Buckley*”).

182. See, e.g., Raskin & Bonifaz, *Constitutional Imperative*, *supra* note 119, at 1190 (requiring 1,000 contributions of \$5 for House candidates and 2,000 contributions of \$5 for Senate candidates in states with one House district; states with more than one House district would require the collection of an additional 250 \$5 contributions per district). One similar state campaign financing system is Arizona’s “Citizens Clean Elections Act.” See ARIZ. REV. STAT. ANN. §§ 16-901 to 16-961 (West 2001).

183. See Raskin & Bonifaz, *Constitutional Imperative*, *supra* note 119, at 1190–92 (suggesting specific public financing amounts in exchange for an agreement that the candidate would not raise private funding during the primary and general elections).

financing to avoid the negative voter perceptions associated with private funding.

Thus, public financing of political campaigns offers a number of benefits, and for rural dwellers the benefit is enhanced access to the political process. Another proposal benefiting rural dwellers involves modifications to the electoral college process.

B. Electoral College Reforms

Another factor stemming from the particular configuration of our political processes that contributes to the dilution of rural dwellers' political power is our winner-take-all system of electoral votes, which ensures that the voices of the more numerous urban populace will be heard above the voices of the less numerous rural populace.¹⁸⁴

The creation of the electoral college is widely acknowledged as being a compromise measure rather than the most fair or democratic procedure available.¹⁸⁵ The electoral college process is set forth in Article II, section 1, of the Constitution.¹⁸⁶ According to Article II, section 1, each state is to

184. “[D]espite the imbalance in the electoral college favoring small states, the large urban States have come into dominance because of the operation of the unit [winner-take-all] rule. Most defenders of the present system do not dispute this point.” John F. Banzhaf III, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral College*, 13 VILL. L. REV. 304, 328 (1968) (quoting STAFF OF THE SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS, COMMITTEE ON THE JUDICIARY, THE ELECTORAL COLLEGE, OPERATION AND EFFECT OF PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES 31–32 (Comm. Print 1961)).

185. See, e.g., 3 JONATHAN ELLIOT, *DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 494 (Reprint ed. 1987) (1888) (quoting James Madison describing the creative electoral process as a compromise but that he had “found no better way of selecting the man in whom [the people] place in the highest confidence”); MAX FARRAND, *THE FRAMING OF THE CONSTITUTION OF THE UNITED STATES* 164–68 (1913) (compromise between larger state, nationalistic delegates and smaller, state-oriented delegates); Paul Finkelman, *Slavery and the Constitutional Convention, Making a Covenant with Death*, in *BEYOND CONFEDERATION: ORIGINS OF THE CONSTITUTION AND AMERICAN NATIONAL IDENTITY* 210 (Richard Beeman et al. eds., 1987) (noting that the electoral college developed to appease slaveholding interests); Robert N. Clinton, *A Brief History of the Adoption of the United States Constitution*, 75 IOWA L. REV. 891, 900–01 (1990) (describing a compromise between large and small state interests); Victor Williams & Alison M. MacDonald, *Rethinking Article II, Section 1 and Its Twelfth Amendment Restatement: Challenging Our Nation's Malapportioned, Undemocratic Presidential Election Systems*, 77 MARQ. L. REV. 201, 202 n.6 (1994) (discussing the compromise between North and South over slavery); see also Akhil Reed Amar, *The Electoral College, Unfair From Day One*, N.Y. TIMES, Nov. 9, 2000, at A23 (arguing that the electoral college is tainted by the slavery compromise).

186. U.S. CONST. art. II, § 1, cl. 2 provides, in pertinent part:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no

appoint “in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.”¹⁸⁷ Thus the electoral college merged together the population-based Representative determination with the non-population-based Senator determination in providing the number of electoral votes per state. This, of course, gave large states more votes in light of their greater numbers of House Representatives, but tempered that advantage just a bit through the two additional electors provided to every state, regardless of size, which represented the number of Senators allocated to each state.

Although the additional two electors were provided on a per state basis, rather than on the basis of population, the effect is far from equalization due to the dramatically larger numbers of Representatives from urban states. Indeed, the extra two electors were not intended as a special benefit to small states in the formulation of the electoral college, but instead were meant merely to maintain consistency with the congressional representation compromise.¹⁸⁸ Accordingly, in net effect, the electoral college provides the same balance of state representation that exists in the bicameral Congress. The benefit to small states actually lies not in the basic electoral college process itself, but in the default system that comes into play when no candidate receives a majority of the electoral votes—a scenario that has occurred only twice in our nation’s history, in 1800 and 1824.¹⁸⁹ Under this default system, the election moves to the House of Representatives, where each state delegation has one vote, thus providing each state with an equal say, regardless of differences in population.¹⁹⁰

The Constitution provides that the electors decide who will become the president, and each state legislature may decide the manner by which its electors are chosen.¹⁹¹ Although the state legislature may appoint the

Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

187. *Id.*

188. LAWRENCE D. LONGLEY & NEIL R. PEIRCE, *THE ELECTORAL COLLEGE PRIMER* 2000, at 22 (1999) (noting that the additional two electors were included to maintain consistency with the Connecticut Compromise).

189. NEIL R. PEIRCE & LAWRENCE D. LONGLEY, *THE PEOPLE’S PRESIDENT: THE ELECTORAL COLLEGE IN AMERICAN HISTORY AND THE DIRECT VOTE ALTERNATIVE* 36–52 (rev. ed. 1981) (describing the 1800 and 1824 elections involving Thomas Jefferson and Aaron Burr, and Andrew Jackson, John Quincy Adams, and William H. Crawford, respectively, which were decided by the House of Representatives).

190. See U.S. CONST. amend. XII (“[I]n choosing the President, the votes shall be taken by states, the representation from each state having one vote . . .”).

191. U.S. CONST. art. II, § 1. The Twelfth Amendment, added in 1804, further provides:

state's electors, every state legislature has instead delegated that authority to its constituency—the state's voters.¹⁹² In every state except Maine and Nebraska, the winner of the popular vote in the state takes all, receiving the votes of all of the state's electors.¹⁹³ However, the Framers clearly did not intend, and apparently did not anticipate, today's winner-take-all system.¹⁹⁴

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their Ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all the persons voted for as President, and of all persons voted for as Vice-President, and of the Number of Votes for each, which lists they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the Certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. —The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

U.S. CONST. amend. XII.

192. See James M. Fischer, *Discretion and Politics: Ruminations on the Recent Presidential Election and the Role of Discretion in the Florida Presidential Election Recount*, 69 U. CIN. L. REV. 807, 854 n.163 (2001) (“Over the years, the practice has evolved that each state legislature has enacted laws conferring on the voters of that state the power to select that state’s electors.”).

193. See Williams & MacDonald, *supra* note 185, at 206–07 & n.33. This winner-take-all approach applies whether the candidate receives a plurality or majority of the votes. *Id.* at 207.

194. See, e.g., Sanford Levinson, *Gerrymandering and the Brooding Omnipresence of Proportional Representation: Why Won't It Go Away?*, 33 UCLA L. REV. 257, 281 (1985); Guillermo Owen, *Evaluation of a Presidential Election Game*, 69 AM. POL. SCI. REV. 947, 953 (1975) (arguing that the Framers likely did not anticipate the winner-take-all approach); Note,

Under the winner-take-all system used by forty-eight of the fifty states, the political candidate who wins a state's popular vote receives all of that state's electoral votes, regardless of whether the candidate won by a wide—or a narrow—margin. The votes cast for any other candidate are totally disregarded, even if the election was a “squeaker.” It is as if the votes for anyone other than the prevailing candidate were never cast, and indeed, the votes cast for other candidates are commonly referred to as “wasted votes.”¹⁹⁵

Statisticians have demonstrated that the winner-take-all system results in a significant electoral college advantage—an advantage to large states, not small states.¹⁹⁶ Under the winner-take-all system, individual voters in large states have more voting power than voters in small states.¹⁹⁷ Indeed, a 1968 study found that a New York voter had 3.312 times the voting power of a District of Columbia voter.¹⁹⁸ Despite some limitations in the 1968 study,

Rethinking the Electoral College Debate: The Framers, Federalism, and One Person, One Vote, 114 HARV. L. REV. 2526, 2531 (2001) [hereinafter Note, *Electoral College Debate*] (same).

195. See DAVID W. ABBOTT & JAMES P. LEVINE, WRONG WINNER: THE COMING DEBACLE IN THE ELECTORAL COLLEGE 22–24 (1991) (discussing how “wasted votes” in presidential elections can lead to discrepancies between the popular vote and the electoral vote); see also Williams & MacDonald, *supra* note 185, at 233–34 (“Millions of Americans who participate in a general presidential election by voting, supporting, and even campaigning for a candidate of their choice may well be participating in a futile, meaningless act.”).

196. Banzhaf, *supra* note 184, at 306.

[Describing a game theory and computer analysis] in which it was determined that a voter in New York State has 3.312 times the voting power of a citizen in another part of the country. . . . Such a disparity in favor of the citizens of New York and the other large states . . . repudiates the often voiced view that the inequalities in the present system favor the residents of the less populous states.

Id.; see also Birch Bayh, *The Electoral College*, 13 VILL. L. REV. 333, 333 (1968) (“[T]he present electoral system is inherently unfair and undemocratic. It inflates the voting power of citizens in the few largest states and dilutes the voting power of the citizens of the vast majority of states.”).

197. See, e.g., Banzhaf, *supra* note 184, at 324–25 (noting that the electoral college gives large states “an excessive amount of voting power”); George Rabinowitz & Stuart Elaine MacDonald, *The Power of the States in U.S. Presidential Elections*, 80 AM. POL. SCI. REV. 65, 75 (1986) (adjusting the Banzhaf model and concluding that the large state advantage still holds); Carleton W. Sterling, *The Electoral College Biases Revealed: The Conventional Wisdom and Game Theory Models Notwithstanding*, 31 W. POL. Q. 159, 160–61 (1978); Note, *Electoral College Debate*, *supra* note 194, at 2526.

198. Banzhaf, *supra* note 184, at 313; see Note, *Electoral College Debate*, *supra* note 194, at 2536 (noting that despite some shortcomings with the Banzhaf model, the large state advantage exists); see also Rabinowitz & MacDonald, *supra* note 197, at 77 (Upon adjusting the Banzhaf model, “the results are far more striking. We find that a citizen of California is more than twenty times (20.2) as powerful as a citizen of Rhode Island.”); Sterling, *supra* note 197, at 162 (asserting that Banzhaf’s “widely cited ratio” of 3.312 “may [be] overstate[d] . . .

the fact remains that “[c]andidates will disproportionately vie for the attention of voters in large, competitive states. To the extent that the largest states are not competitive, candidates will target the next-largest states that are competitive in an attempt to capture the large electoral prizes at stake in the winner-take-all system.”¹⁹⁹ This large-state advantage inherent in the winner-take-all system encourages political candidates to focus their attention upon, and address issues relevant to, non-rural voters.²⁰⁰

Citizens of the small and medium-sized states are severely deprived of voting power in comparison with the residents of the few very populous states who have far more voting power than the others. The present Electoral College system, in conjunction with state imposed unit-vote (“winner take all”) laws . . . greatly favors the citizens of the most populous states and deprives citizens of the less populous states of an equal chance to affect the election of the President.²⁰¹

The winner-take-all system employed by nearly all states for choosing electors to the electoral college disenfranchises rural dwellers. It has been noted on many occasions that presidential candidates tend to focus their campaigns on twelve to fifteen of the larger states—the more urban states with more electoral votes:

because of the peculiar apportionment of the District of Columbia. Nevertheless, the very largest states have power indices about twice that of the least populous states.”).

199. Note, *Electoral College Debate*, *supra* note 194, at 2536–37; see also Jamin B. Raskin, *What’s Wrong With Bush v. Gore and Why We Need to Amend the Constitution to Ensure It Never Happens Again*, 61 MD. L. REV. 652, 705–06 (2002) (describing Banzhaf’s 1968 study as “superb” and noting that “[m]any scholars have since corroborated and elaborated the Banzhaf thesis that, all other things being equal, it makes more sense in the electoral college regime for candidates to invest resources in larger states than in smaller ones”).

200. See Banzhaf, *supra* note 184, at 326 (noting that the large state advantage likely would “surprise those who have always assumed that the present electoral college system favor[s] the rural citizens from the less populous states because they have a larger number of electoral votes per capita.”); Note, *Electoral College Debate*, *supra* note 194, at 2540 (“The [Electoral College’s] general unpredictability renders implausible any justification that centers on federalism or benefiting small states.”).

201. Banzhaf, *supra* note 184, at 313.

The existing electoral college system discriminates against voters in the small and middle-sized states by giving citizens of the large states an excessive amount of voting power. Citizens of states like New York and California have over two and one-half times as much chance to affect the election of the President as residents of some of the smaller states Disparities in voting power of over 200% have been demonstrated and disparities of over 100% are not uncommon.

Id. at 324–25.

[T]he [electoral college's] winner-take-all feature . . . gives the large urban states the most influence.

. . . Presidential aspirants focus their campaigns on the larger urban states where they can bag large blocks of electoral votes.

. . . .

. . . The real constituency of the Electoral College—and the presidents it elects—consists of 12 to 15 of the larger urban states.²⁰²

Thus, “the small states’ edge is rather theoretical. In every practical way, it is the larger states that benefit—they get the attention because they have the votes, and, almost always, as go the large states, so goes the election.”²⁰³ The winner-take-all process encourages candidates to focus on urban areas and urban states, and to allocate less effort to wooing rural areas and rural states. Moreover, because rural dwellers are dispersed throughout the country, the winner-take-all system may effectively eliminate the voice of rural dwellers by according all electoral votes to the majority (or plurality) candidate.

Accordingly, dovetailing with the proposed changes to campaign financing is this article’s call for modifications to the electoral college process. As the Supreme Court has cogently observed, “a President is elected not by popular vote, but by winning the popular vote in enough States to have a majority in the electoral college.”²⁰⁴ The impact of the current electoral college process upon the underlying themes of “one person, one vote” and “majority rule” were illustrated in the most recent presidential election, in which the candidate with the greater number of popular votes (Al Gore) nevertheless lost the election to the candidate with fewer popular votes (George W. Bush).²⁰⁵

202. Omdahl, *supra* note 17, at 5C; *see also* Arnold, *supra* note 61, at 194 (“[T]he President depends more on urban-based electoral votes. Therefore, his administration is less likely to place as high a value on rural issues or enthusiastically to administer programs that benefit the rural poor.”); DYER, *supra* note 50, at 13 (“Unfortunately, [politicians] believe their pollsters, who tell them that the measly number of votes controlled by rural Americans will mean little, come election time.”).

203. Herz, *supra* note 15, at 1194 n.13.

204. *Buckley*, 424 U.S. at 106.

205. The Bush-Gore presidential election was the fourth time that the winner of the popular vote did not win the electoral vote. *See* Bill Press, *It's Over—Now, Let's Fix It* (Dec. 15, 2000), at <http://www.cnn.com/2000/ALLPOLITICS/stories/12/15/press.column/index.html> (last visited Oct. 1, 2003). The last time a candidate won the presidency despite losing the popular vote was in 1888, when Benjamin Harrison defeated Grover Cleveland, despite Cleveland’s 5,540,309 votes to Harrison’s 5,444,337 votes. 2 JAMES T. HAVEL, U.S. PRESIDENTIAL CANDIDATES AND ELECTIONS: A BIOGRAPHICAL AND HISTORICAL GUIDE 64 (1996). The other races included the

The winner-take-all approach dilutes the political power of rural dwellers. Minority voters within a winner-take-all state will never cast a meaningful presidential vote because the only votes that count are those of the majority (or plurality). In essence, in a winner-take-all system, minority votes are replaced by the votes of the majority, so that the minority votes are indeed totally worthless. Accordingly, this article calls for the adoption of proportional representation in the electoral college by all states to more accurately reflect the popular vote within each state.

Under the concept of proportional representation, candidates would receive a percentage of a state's electoral votes in direct proportion to the percentage of the popular vote that the candidate received in that state. Thus, a candidate winning fifty-one percent of the popular vote would receive fifty-one percent of that state's electoral votes.²⁰⁶ This approach benefits rural dwellers and other minority groups by permitting their political voices to be heard—even if they ultimately do not prevail—rather than the complete silencing of their voices that occurs under the winner-take-all approach.

Reflecting the outcome of the popular vote in the electoral college process serves several purposes. The concept of rule-by-democracy is furthered through this process. Proportional representation accords both continued respect and continued vitality to minority voters. Under proportional representation, votes for a non-prevailing party are not erased, ignored, or transformed—they stand on their own and potentially may join with votes from other states to more effectively mirror the popular vote. Proportional representation serves to keep the focus on individual votes, rather than only the large states. Although the wishes of the majority will still prevail, the votes of minority groups retain their full proportional value, rather than suffering the dilution—indeed the outright elimination—that accompanies the current electoral college process.

victory of John Quincy Adams over Andrew Jackson (despite Jackson's 153,544 popular votes compared with Adams' 108,740 votes), *id.* at 12, Rutherford Hayes' victory over Samuel Tilden (despite the official tally of 4,300,590 popular votes for Tilden and 4,036,298 for Hayes), *id.* at 50, and the victory of Thomas Jefferson over John Adams, *id.* at 64. See Paul Finkelman, *The Founders and Slavery: Little Ventured, Little Gained*, 13 YALE J.L. & HUMAN. 413, 442–43 (2001) (describing the creation of the electoral college and the three-fifths compromise with respect to counting slaves for representation).

206. See, e.g., Williams & MacDonald, *supra* note 185, at 254–55 (discussing proportional representation).

VII. CONCLUSION

Rural dwellers are the subject of many misconceptions. Among these misconceptions is the belief that the particular structure of our government gives rural dwellers political power beyond their actual numbers. Reality, however, yields a different story. Rural dwellers are politically underrepresented in proportion to their actual numbers, and rural issues accordingly receive less attention. As a result, rural dwellers receive inadequate political representation. This article proposes reforms to enhance the political voice of rural dwellers, including calls for public campaign financing and for modifications to the current electoral college process that would substitute proportional representation for the winner-take-all feature used in most states.
