

# Democracy on a Shoestring

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*Democracy requires money. Voters must be registered, voting rolls updated, election dates advertised, voting technology purchased and tested, poll workers trained, ballots designed, votes counted and verified, and on and on. Despite the importance of election expenditures, we have a shamefully inadequate amount of information about how much our elections cost. This Article, based on a novel and painstakingly hand-coded dataset, provides much needed information on election expenditures across multiple years from four states: California, Arizona, Texas, and Florida. These states, given their unique characteristics, provide a compelling sample set.*

*In what we believe to be a completely novel approach to the collection of election expenditure data, we supplement our hand-coded data with predictive machine learning. This allows us to estimate average annual election spending across multiple government units. Our findings, unsurprisingly, reveal great variation both across and within states. But our findings also reveal that much of the variation is seemingly unconnected to poverty, race, and other traditional explanations of electoral disadvantage. This brings into question many basic assumptions legislators, courts, and scholars harbor about election expenditures. Our findings implicate not only policy discussions about election funding but also the limitations of doctrinal interventions and judicial remedies that are divorced from issues of resource allocation.*

*The Article proceeds in five parts: Part I provides background on election funding, including a discussion of election costs and what the most common funding sources are. This Part also discusses election law doctrines and how they do not directly consider election expenditures. Part II outlines our*

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*data and methods. Part III presents our main findings. Part IV responds to the findings and explores potential doctrines under which election expenditures might be considered. Part V weighs the pros and cons of several nondoctrinal proposals for election administration reform.*

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## INTRODUCTION

In December 2017, Representative Blake Farenthold, a member of Congress from Texas's Gulf Coast, announced that he would not be seeking reelection.<sup>1</sup> His announcement followed public allegations made by, among others, two former press secretaries that he “had an

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1. Sheryl Gay Stolberg, *Blake Farenthold, Texas Congressman Accused of Sexual Harassment, Will Not Run Again*, N.Y. TIMES (Dec. 14, 2017), <https://www.nytimes.com/2017/12/14/us/politics/blake-farenthold-texas-harassment.html> [https://perma.cc/9N7H-Y222].

explosive temper, berated them repeatedly, made sexually explicit jokes and engaged in casual sexual banter that set a tone followed by his underlings.”<sup>2</sup> He ultimately resigned in April 2018.<sup>3</sup> In the wake of Farenthold’s resignation, Texas governor Greg Abbott called for a special election to replace him, despite the fact that his successor would potentially serve only a few months.<sup>4</sup> The special election was strongly opposed by county officials who were forced to use emergency funds to cover the costs.<sup>5</sup> “This election is costing us what we don’t have,” said one county official.<sup>6</sup>

The episode highlights a simple truth: democracy requires money. Voters must be registered, voting rolls updated, election dates advertised, voting technology purchased and tested, poll workers trained, ballots designed, votes counted and verified, and on and on. All of this can be done well or poorly. Regrettably, “[n]o one knows how much it costs to run elections in the United States.”<sup>7</sup>

While keen observers of the electoral terrain warn of election “meltdowns”<sup>8</sup> and “emergencies”<sup>9</sup> that threaten our electoral process,

2. *Id.*

3. *Farenthold Resigns from Congress*, POLITICO, <https://www.politico.com/story/2018/04/06/farenthold-resigns-from-congress-507059> (last updated Apr. 6, 2018, 5:40 PM) [<https://perma.cc/72MB-ZU9V>].

4. Patrick Svitek, *Texas Gov. Greg Abbott Schedules June 30 Special Election to Fill U.S. Rep. Blake Farenthold’s Seat*, TEX. TRIB., <https://www.texastribune.org/2018/04/24/texas-greg-abbott-special-election-blake-farenthold-june-30> (last updated Apr. 24, 2018, 4:00 PM) [<https://perma.cc/45LW-95SQ>].

5. Didi Martinez, *Texas Officials Rage Against ‘Crazy’ Farenthold Election*, POLITICO (June 26, 2018, 2:47 PM), <https://www.politico.com/story/2018/06/26/blake-farenthold-election-texas-674865> [<https://perma.cc/PTL6-FCSN>] (“County officials say expenses associated with a special election are forcing them to reach into their contingency funds – accounts set up to cover government emergencies – or significantly downsize their operations.”).

6. *Id.* (quoting Caldwell County Elections Administrator Pam Ohlendorf).

7. Katy Owens Hubler & Wendy Underhill, *Election Costs: Who Pays and with Which Funds?*, NAT’L CONF. OF STATE LEGISLATURES (Mar. 2018), <https://www.ncsl.org/research/elections-and-campaigns/election-costs-who-pays-and-with-which-funds.aspx> [<https://perma.cc/BGP4-TSK4>]; see Zachary Mohr, Martha Kropf, JoEllen Pope, Mary Joe Shepherd & Madison Esterle, *Election Administration Spending in Local Election Jurisdictions: Results from a Nationwide Data Collection Project 2* (July 26–27, 2018) (unpublished paper from 2018 Election Sciences, Reform, and Administration Conference), <https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/mohr.pdf> [<https://perma.cc/PLM6-XHVB>] (“While U.S. policymakers have provided for more centralized data concerning voter turnout, provisional votes and registered voters, no scholars that we know of have unearthed cost data in a systematic way nationwide.”).

8. See RICHARD L. HASEN, *ELECTION MELTDOWN: DIRTY TRICKS, DISTRUST, AND THE THREAT TO AMERICAN DEMOCRACY* (2020); RICHARD L. HASEN, *THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN* (2012).

9. Michael T. Morley, *Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J. 545, 547 (2018) (“Most state election codes do not contain provisions that specifically attempt to mitigate the impact of public health crises, extreme weather events, natural disasters, terrorist attacks, and other calamities (collectively, ‘emergencies’) on the electoral process.”).

often elided is the more consequential yet prosaic issue of election funding. State and local election officials cite insufficient resources as their chief concern.<sup>10</sup> Whether seeking to update voter registration databases, overhaul election security programs in response to Russian interference in the 2016 election,<sup>11</sup> or alter voting procedures in light of COVID-19,<sup>12</sup> state and local governments need financial support. And the support they are currently receiving is inadequate.<sup>13</sup> Election officials are, according to Michigan director of elections Christopher Thomas, “at the bottom of the food chain when it comes to resources.”<sup>14</sup> This alone is disconcerting and justifies an auditing of election spending.<sup>15</sup>

Given our lack of spending data, it is difficult to know which reforms are sensible. For instance, data revealing intrastate spending disparities might indicate that resources are being ineffectively distributed. Ideally, within each state, all voters will receive roughly the same level of voting-related services. Yet we know, anecdotally, that counties, which generally run elections in the United States, differ markedly in their election system performance. Relatedly, we simply do not know how intercounty spending disparities relate to other variables, like county size and county demographics. The absence of this information further complicates reform prospects. For these reasons,

10. PRESIDENTIAL COMM’N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION 10 (2014), <https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/466754/doc/slspublic/Amer%20Voting%20Exper-final%20draft%2001-04-14-1.pdf> [<https://perma.cc/JP6V-SMM2>] (“The most universal complaint of election administrators in testimony before the Commission concerned a lack of resources.”).

11. See NAT’L INTEL. COUNCIL, ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS (2017), [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf) [<https://perma.cc/94S2-BCHH>] (detailing Russian interference).

12. Alexa Corse & Dustin Volz, *States Explore More Vote-By-Mail Options to Cope with Coronavirus*, WALL ST. J., <https://www.wsj.com/articles/states-explore-more-vote-by-mail-options-to-cope-with-coronavirus-11585306800> (last updated Mar. 27, 2020, 2:19 PM) [<https://perma.cc/Ry4J-8SQD>].

13. See CHRISTOPHER R. DELUZIO, LIZ HOWARD, PAUL ROSENZWEIG, DAVID SALVO & RACHAEL DEAN WILSON, BRENNAN CTR. FOR JUST., DEFUNDING ELECTIONS: FEDERAL FUNDING NEEDS FOR STATE ELECTION SECURITY (2019), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Defending\\_Elections.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Defending_Elections.pdf) [<https://perma.cc/LT6N-V849>] (making the case for additional federal grant funds based on a six-state analysis).

14. Pat Beall, Catharina Felke & Elizabeth Mulvey, *As Trump and Biden Battle, Election Officials Are Running Out of Time, Money for November*, PBS (July 14, 2020), <https://www.pbs.org/wgbh/frontline/article/covid-voting-mail-in-ballots-election-officials-running-out-of-time-money-for-november/?sf125413278=1> [<https://perma.cc/RH25-5Y3C>].

15. See Stephen Ansolabehere & Nathaniel Persily, *Measuring Election System Performance*, 13 N.Y.U. J. LEGIS. & PUB. POL’Y 445, 449 (2010) (“For example, there exists no census of election administration to collect reliable and comprehensive data, including (1) the number of elections run each year, (2) the resources of election offices (staffing and budgets), (3) the backgrounds and political orientations of election officers, and (4) the number of poll workers.”).

based on a novel and painstakingly hand-coded dataset, this Article provides much needed information on election expenditures from four states: California, Arizona, Texas, and Florida. These states, given their unique characteristics,<sup>16</sup> provide a compelling sample set.<sup>17</sup>

Unsurprisingly, we find that election expenditures vary significantly both across and within states and that, in many communities, spending is frugal. But our findings also reveal that much of the variation is seemingly unconnected to poverty, race, and other traditional explanations of electoral disadvantage. For instance, some rich counties spend less on elections than their poor neighbors; some large counties spend less than small counties. Election spending in majority-minority communities seems largely indistinguishable from spending in predominantly white communities. In short, basic assumptions one might have about resource allocation are brought into question.

To be sure, data on election expenditures can only tell us so much, and many questions remain unanswered.<sup>18</sup> What is the precise relationship between election spending and election quality? Why do we tend to see poorer election administration in big cities? Why, given what we know about the inadequacy of election services in many minority communities, are those inadequacies not revealed by data on election spending? These are immensely important questions that exceed the scope of what follows. But our findings, which are based on both public documents and responses we received from county and subcounty officials, nevertheless have important doctrinal and normative

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16. Among other features, the states differ in size, demographic profile, governance structure, and political orientation. See *infra* Section II.A.

17. We are aware of only one other team of researchers that is attempting to measure election expenditures on as large a scale, though their findings remain unpublished. A group of social scientists, based out of the University of North Carolina at Charlotte and funded by the MIT Election Data and Science Lab, are engaged in a nationwide data collection project that attempts to gather information that is similar to ours. See Mohr et al., *supra* note 7. Our project, however, differs in important ways. Simply stated, our project examines election expenditures in combination with overall budget numbers (from the Census Annual Survey of State and Local Government Finances) and with demographic data (from the American Community Survey). We also include multi-tier overlapping government expenditures (through geographic matchups). Moreover, given our legal training, our project evaluates how this fiscal data might inform election law doctrines. Finally, our data is more recent, includes findings from different jurisdictions, and, as detailed below, is collected in part by predictive machine learning. In short, this Article presents novel empirical findings and draws important doctrinal implications unlikely to be replicated elsewhere.

18. One such question is how to account for varying funding source origins. See Mohr et al., *supra* note 7, at 16 (“Some states may pay for election equipment, equipment maintenance, and training. Cost accounting may be needed to standardize the costs of election administration so that the expenditures that are being observed, most often at the local level, are apples to apples comparisons.”).

implications pertaining to each of these questions and provide a foundation on which future research can build.

First, just the variation itself in election expenditures from place to place should give us pause, even if it is easily explainable. Even in a world without bad faith, political meddling, or questionable motives, it is difficult to run elections well without sufficient financial backing. Overworked, undertrained, poorly supported election staff are less likely than their well-resourced counterparts to administer elections in an optimally inclusive and secure manner. Perhaps more money, and more equalizing money, can help fix many election law-related issues. As such, we propose that states utilize funding-redistribution measures to establish a minimal, or adequate, level of election services. A voter in a poor part of the rural Texas Panhandle should receive the same minimally acceptable level of election services as a rich voter in an urban technology hub, even if certain differences are justified.

Second, our findings highlight the limitations of doctrinal interventions and judicial remedies that are divorced from issues of resource allocation. The animating impulse of many election law doctrines is participation—the ability to participate in politics on equal terms with others. The bulk of contemporary litigation is over voting rights for individuals and groups that allege they are being unjustly burdened in their ability to meaningfully take part in a fair political process. Given this fact, it is odd that election expenditures are rarely a central aspect of litigation. We discuss this discordance between “doctrine and dollars” below.

The Article proceeds in five parts: Part I provides background on election funding, including a discussion of election costs and what the most common funding sources are. This Part also discusses election law doctrines and how they do not directly consider election expenditures. Part II outlines our data and methods. In addition to the reported findings, the Article uses predictive machine learning to supplement remaining gaps in the research. Part III includes our main findings. Part IV responds to the findings and explores potential doctrines under which election expenditures might be considered. Part V weighs the pros and cons of several nondoctrinal proposals for election administration reform.

## I. THE PRICE OF ELECTIONS

Given the vast heterogeneity of government units across the country, a degree of modesty is in order when making claims about the price of elections. In some locations, elections are well-funded and occur without incident. In others, as described in the Introduction, a single

election can cause financial distress. At times, federal funding supplements state and local expenditures, though such funding is typically quite limited and sporadic.<sup>19</sup> More commonly, state and local governments are required to finance elections on their own. This Part provides background on election funding, including what the most common funding sources are. It also discusses election law doctrines and how they do not directly consider election expenditures.

### A. Election Costs

To call the American electoral system decentralized risks understatement. State and local governments are in charge of administering elections and, accordingly, have to pay for election administration.<sup>20</sup> Local governments, in particular, “manage voter registration systems, vote tabulation systems, absentee ballots, vote reports, and the precincts, polling stations, and legions of poll workers necessary to carry out an election.”<sup>21</sup> Some of the costs associated with these responsibilities are minimal. For instance, reserving a local gymnasium for use as a polling site is not a great expense. Similarly, the costs associated with training local election officials is not likely to be great. Constant experimentation also leads to cost savings. For example, Los Angeles County replaced thousands of its polling sites

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19. See, e.g., DELUZIO ET AL., *supra* note 13, at 1:

Critically, in 2018 Congress provided \$380 million in Help America Vote Act (HAVA) grant funds to help states bolster their election security. Grant recipient states had to submit a grant narrative—a list of specific election security projects (and estimated costs) that the state planned to fund with grant money—and provide a 5 percent state match within two years;

Matthew M. Damschroder, *Of Money, Machines, and Management: Election Administration from an Administrator’s Perspective*, 12 ELECTION L.J. 195, 195 (2013) (describing the “five main outcomes” of the Help America Vote Act); Miles Parks, *Congress Allocates \$425 Million for Election Security in New Legislation*, NPR (Dec. 16, 2019, 5:02 PM), <https://www.npr.org/2019/12/16/788490509/congress-allocates-425-million-for-election-security-in-new-legislation> [<https://perma.cc/XS43-PN2S>] (“Although Congress has agreed to support elections infrastructure around the nation, it does so in large, unpredictable chunks as opposed to predictable year-over-year appropriations — which many election officials would prefer.”). Four-hundred million dollars in election security grants were included in the Coronavirus Aid, Relief, and Economic Security Act, *Covid-19 Stimulus Bill: What It Means for States*, NAT’L CONF. OF STATE LEGISLATURES (Apr. 2, 2020), <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/coronavirus-stimulus-bill-states.aspx> [<https://perma.cc/DZU4-KUHW>], a sum that many believe to be woefully inadequate. See, e.g., Martin Matishak, *Think Tank Estimates \$2 Billion Cost to Carry Out November Election During Pandemic*, POLITICO (Mar. 19, 2020), <https://www.politico.com/news/2020/03/19/2020-election-cost-coronavirus-138232> [<https://perma.cc/EMC2-W6ZR>].

20. See Justin Weinstein-Tull, *Election Law Federalism*, 114 MICH. L. REV. 747, 778 (2016) (“The degree and kind of decentralization varies by state, but nearly all aspects of election administration are delegated to local governments by at least some set of states.”).

21. Ansolabehere & Persily, *supra* note 15, at 448.

with vote centers.<sup>22</sup> The move was designed to provide greater convenience by permitting voting at any vote center in the county over an eleven-day period. Beyond simple convenience, though, vote centers are also cost-effective.<sup>23</sup> In short, whether through state appropriations or local bond measures, certain costs are both predictable and bearable.

Other costs, though, are much more burdensome. Running a primary election is often quite expensive.<sup>24</sup> California's 2012 decision to hold only one, rather than two, primary elections reportedly "saved the California state budget approximately \$100 million."<sup>25</sup> Technological upgrades, including new voting machines and related security measures, can also be remarkably costly.<sup>26</sup> For example, Arizona election officials claim that they "do not currently have funds they need to expand cybersecurity assistance to local election officials or replace legacy voting systems."<sup>27</sup> Colorado's secretary of state has raised similar concerns about the cost of cybersecurity protections.<sup>28</sup> Even assuming cybersecurity protections can be bought and installed, information technology specialists are necessary to monitor system performance.<sup>29</sup>

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22. Matt Stiles & Ryan Menezes, *Now You Can Vote Anywhere in L.A. County. Find a Location*, L.A. TIMES (Feb. 11, 2020), <https://www.latimes.com/projects/la-county-vote-center-locations> [https://perma.cc/2GGD-SM6J]; Austin Cross, *Enjoy Your Local Polling Place While You Can. It Probably Won't Last*, LAIST (Oct. 30, 2018, 6:00 AM), [https://laist.com/2018/10/30/los\\_angeles\\_local\\_polling\\_place\\_voting\\_centers.php](https://laist.com/2018/10/30/los_angeles_local_polling_place_voting_centers.php) [https://perma.cc/MP9E-ENS6]; see also David McClendon, *Top 5 Takeaways About the Vote Your Way Campaign*, JANUARYADVISORS (Dec. 20, 2019), <https://www.januaryadvisors.com/vote-your-way-top-5-takeaways> [https://perma.cc/QE3B-L9J3] (reviewing a voting campaign from Harris County, Texas, that allowed voters to vote at any polling location, not just the one assigned to their precinct).

23. NAT'L CONF. OF STATE LEGISLATURES, *THE PRICE OF DEMOCRACY: SPLITTING THE BILL FOR ELECTIONS* 25 (2018), [https://www.ncsl.org/Portals/1/Documents/Elections/Final\\_Costs\\_Report-Splitting\\_the\\_Bill\\_for\\_Elections\\_32084.pdf](https://www.ncsl.org/Portals/1/Documents/Elections/Final_Costs_Report-Splitting_the_Bill_for_Elections_32084.pdf) [https://perma.cc/A58Z-H8LX] ("Having vote centers reduces a jurisdiction's need for precinct polling places. Fewer polling places means fewer poll workers are needed, as well as potentially fewer supplies and rental costs for polling place locations, all of which can save a jurisdiction money.").

24. See BARBARA NORRANDER, *THE IMPERFECT PRIMARY: ODDITIES, BIASES, AND STRENGTHS OF U.S. PRESIDENTIAL NOMINATION POLITICS* 138 (3d ed. 2019) ("In several recent election years, a handful of states canceled their presidential primaries in [the] face of state budget shortfalls.").

25. *Id.* at 143.

26. NAT'L CONF. OF STATE LEGISLATURES, *supra* note 23, at 2 ("While elections technology costs are just one part of the overall costs of elections, they are the driving cost in policy conversations, at least at the legislative level. That's because most states are looking to replace their equipment before the 2020 presidential election.").

27. DELUZIO ET AL., *supra* note 13, at 4.

28. Michael Wines, *\$250 Million to Keep Votes Safe? Experts Say Billions Are Needed*, N.Y. TIMES, <https://www.nytimes.com/2019/09/25/us/mitch-mcconnell-election-security-bill-.html> (last updated Sept. 26, 2019) [https://perma.cc/3H3F-EHM3].

29. See Damschroder, *supra* note 19, at 198 ("Ten years since the promise of an IT revolution in election administration was kick-started by [the Help America Vote Act], election administrators—and the local government officials who must now foot most of the bill to keep it all going—are wondering whether the ongoing price tag is worth it.").



This requires hiring election officials or specialists with the requisite technological skills.

Outside of elections, funds are needed simply to maintain registration databases. The Help America Vote Act of 2002 (“HAVA”)<sup>30</sup> requires states to maintain centralized voter registration databases. Among other things, this requires coordinating with local governments,<sup>31</sup> providing a means of accepting and processing registrations from individuals and organizations that register new voters, and empowering state agencies to register new voters when individuals utilize their services.<sup>32</sup> These bureaucratic obligations are not without cost.<sup>33</sup> In sum, elections involve both fixed and variable costs for which state and local governments must budget.

### B. Who Pays?

So, where does the money come from? The National Conference of State Legislatures (“NCSL”) reports that most costs are still borne by counties and local governments, but, over time, states have increased their financial support.<sup>34</sup> Nearly all states, with the sole exception of North Dakota, maintain statewide voter registration lists that are paid for with state funds.<sup>35</sup> States typically also pay for elections, though the

30. 42 U.S.C. §§ 15301-15545 (recodified at 52 U.S.C. §§ 20901-21145).

31. See, e.g., NAT’L CONF. OF STATE LEGISLATURES, *supra* note 23, at 17 (“[I]n Texas, 215 of the 254 counties directly use the Texas statewide voter registration system to manage their data, and another 39 counties manage their own voter registration data and exchange data with the statewide database every night.”); Justin Weinstein-Tull, *State Bureaucratic Undermining*, 85 U. CHI. L. REV. 1083, 1102 (2018) (“Because California’s elections system is highly decentralized—voter registration happens at the local level—and because local public assistance and DMV offices collect the voter registration forms, those local agencies must coordinate with local registrars’ offices to deliver the forms.”).

32. The latter is an obligation required by the National Voter Registration Act of 1993. See 52 U.S.C. § 20504 (requiring motor vehicle offices to register voters); 52 U.S.C. § 20506 (requiring public assistance offices and disability services offices to register voters).

33. See Mohr et al., *supra* note 7, at 25:

The cost of an *election* is simply the cost of the personnel, equipment, and supplies needed to conduct an election during the relatively brief period of time when people are voting. The cost of *elections* is the cost of all election administration that includes the cost of the election and the additional costs of maintaining and securing the voter registration database, updating it with DMV and military records, updating, testing, and securing the voting equipment, and training election officials throughout the year. In sum, the cost of elections is greater than the cost of an election.

(emphasis added).

34. See *Election Costs: What States Pay*, NAT’L CONF. OF STATE LEGISLATURES (Aug. 3, 2018), <https://www.ncsl.org/research/elections-and-campaigns/election-costs.aspx#SVRS> [<https://perma.cc/DXL4-RC9C>] (“A series of federal laws in the last 50 years have had the impact of putting more of the responsibility (and therefore the cost) of elections on states, rather than local jurisdictions.”).

35. *Id.*

details of how much and for which types of elections vary greatly. For example, in Delaware, the state Department of Elections pays for all elections in the state.<sup>36</sup> In Alabama, the state covers the entire cost of elections involving only federal or state candidates, but only half the cost of elections involving federal, state, and county races.<sup>37</sup> In Michigan, local governments may seek reimbursement for the cost of running a presidential primary.<sup>38</sup>

State financial support primarily comes from state tax revenues.<sup>39</sup> Counties—whose budgets are typically comprised of federal money, state money, and local property taxes—use their general funds to administer elections. Local governments, school districts, and special purpose districts also use their general funds to pay for elections and in some instances will reimburse counties for the inclusion of local issues on a county-produced ballot.<sup>40</sup>

The least consistent form of funding comes from the federal government. Such funding is infrequent and spotty. In 2019, the Congressional Research Service reported that “Congress has authorized significant federal funding for state and local election administration in one bill: HAVA.”<sup>41</sup> HAVA initially provided the means for states to upgrade their voting systems.<sup>42</sup> It has since been used to improve election security, with Congress allocating \$380 million to that end in early 2018 and an additional \$425 million in late 2019.<sup>43</sup> More recently, Congress included \$400 million in election funding in the Coronavirus Aid, Relief, and Economic Security Act, passed in March 2020.<sup>44</sup> These are paltry amounts given acknowledged financial needs.<sup>45</sup>

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36. *Id.*

37. *Id.*

38. *Id.*

39. Hubler & Underhill, *supra* note 7 (“For states that do help with election funding, the money can come from a direct appropriation. In cases where policy choices increase costs for local jurisdictions, such as implementing early voting or enhanced post-election audit procedures, states may fund the new mandate.”).

40. See, e.g., CAROLYN CHU & NICK SCHROEDER, LEGIS. ANALYST’S OFF., THE 2017-18 BUDGET: CONSIDERING THE STATE’S ROLE IN ELECTIONS 3 (2017), <https://lao.ca.gov/reports/2017/3634/state-role-elections-033017.pdf> [<https://perma.cc/U9CQ-TERK>].

41. KAREN L. SHANTON, CONG. RSCH. SERV., R45549, THE STATE AND LOCAL ROLE IN ELECTION ADMINISTRATION: DUTIES AND STRUCTURES 9 (2019), <https://fas.org/sgp/crs/misc/R45549.pdf> [<https://perma.cc/WSJ2-5LTM>].

42. Weinstein-Tull, *supra* note 20, at 757–59.

43. Parks, *supra* note 19.

44. Emily Cochrane & Nicholas Fandos, *Senate Approves \$2 Trillion Stimulus After Bipartisan Deal*, N.Y. TIMES, <https://www.nytimes.com/2020/03/25/us/politics/coronavirus-senate-deal.html> (last updated May 5, 2020) [<https://perma.cc/JR44-C3QK>].

45. See generally DELUZIO ET AL., *supra* note 13 (finding that current federal funding for elections is insufficient).

### C. Doctrine and Dollars

Does legal doctrine account for resource disparities? The short answer is no. Voters who feel they have been unjustly excluded or disadvantaged have several legal theories under which they might seek recourse. The most common statutory cause of action is the Voting Rights Act of 1965 (“VRA”),<sup>46</sup> which prohibits both vote denial<sup>47</sup> and vote dilution<sup>48</sup> on account of race or color. Though the doctrine remains confused, voters might pursue a cause of action under the First Amendment.<sup>49</sup> Intentional racial discrimination, though difficult to establish, can be challenged under the Fourteenth Amendment.<sup>50</sup> And the framework most commonly applied to election regulations, a form of judicial review unique to election law commonly known as *Anderson-Burdick*,<sup>51</sup> balances burdens on voters against state interests, also under the Fourteenth Amendment.<sup>52</sup> None of these legal theories provides an ideal fit for challenging resource disparities.

The VRA is aimed at remedying racial discrimination in the political process. First Amendment theories of the right to vote turn on contested notions about the parameters of speech and association.<sup>53</sup> The Fourteenth Amendment’s prohibition on intentional racial discrimination is, barring a damning evidentiary record, inapposite.

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46. 52 U.S.C. § 10301 (prohibiting states from applying any “standard, practice, or procedure . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”).

47. See, e.g., *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1011 (9th Cir. 2020) (en banc) (“The results test of Section 2 [of the Voting Rights Act] applies in both vote dilution and vote denial cases.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 239 (4th Cir. 2014) (“Indeed, Section 2’s plain language makes clear that vote denial is precisely the kind of issue Section 2 was intended to address.”).

48. *Thornburg v. Gingles*, 478 U.S. 30 (1986) (analyzing a vote dilution claim under the VRA).

49. See Joshua S. Sellers, *Political Participation, Expressive Association, and Judicial Review*, 69 AM. U. L. REV. 1617, 1624–28 (2020); Armand Derfner & J. Gerald Hebert, *Voting Is Speech*, 34 YALE L. & POL’Y REV. 471, 472 (2016) (“The First Amendment is a logical locus for voting protection for several reasons.”).

50. See, e.g., *Hunter v. Underwood*, 471 U.S. 222, 227–28 (1985) (“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” (internal quotation marks omitted) (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 492 U.S. 252, 265 (1977)); see also Aziz Z. Huq, *What Is Discriminatory Intent?*, 103 CORNELL L. REV. 1211, 1212, 1220 (2018).

51. The shorthand refers to two Supreme Court cases addressing regulations of the electoral process. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

52. See Sellers, *supra* note 49, at 1624–28 (explaining *Anderson-Burdick*).

53. *Id.* at 1628–35.

And *Anderson-Burdick*, while potentially applicable, has in practice provided substantial deference to states.<sup>54</sup>

Perhaps this is perfectly tolerable. Perhaps the last thing we want is courts second-guessing state and local governments' spending choices. Moreover, disparate resource allocation may in many instances be good public policy. There are compelling reasons not to unthinkingly equalize election expenditures across all counties: counties vary in size, population, and need.<sup>55</sup> Further, nothing mandates that elections be generously funded. Above a relatively low threshold level of access, one could argue, voters have little legal basis to challenge antiquated or even inconvenient voting procedures.

Under this way of thinking, judicial review is appropriately limited to circumstances in which the right to vote is severely impeded, or in which certain classes of voters are systematically disadvantaged. In general, however, election services may very well be poor. Just as we lack an affirmative right to vote,<sup>56</sup> we lack an affirmative right to a smoothly run, convenient election system. On the other hand, it is reasonable to suspect that election administration problems are related to funding. Again, election administrators themselves cite a lack of funding as their principal concern. The question remains: Are there *any* doctrinal grounds on which disparate election expenditures might be challenged?

One underdeveloped doctrinal possibility derives from the Supreme Court's decision in *Bush v. Gore*,<sup>57</sup> in which the Court ended the recounting of contested ballots in Florida, effectively awarding the presidency to George W. Bush.<sup>58</sup> For all the controversy over the decision, the equal protection holding held promise for voting rights advocates.<sup>59</sup> In reinforcing the principle that franchise equality extends

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54. Joshua A. Douglas, *(Mis)trusting States to Run Elections*, 92 WASH. U. L. REV. 553, 554 (2015); Ellen D. Katz, *Withdrawal: The Roberts Court and the Retreat from Election Law*, 93 MINN. L. REV. 1615, 1631 (2009).

55. Richard L. Hasen, *When Is Uniformity of People, Not Counties, Appropriate in Election Administration? The Cases of Early and Sunday Voting*, 2015 U. CHI. LEGAL F. 193, 198; David C. Kimball & Brady Baybeck, *Are All Jurisdictions Equal? Size Disparity in Election Administration*, 12 ELECTION L.J. 130, 142 (2013) ("Densely populated local jurisdictions are substantially different than smaller jurisdictions in many measurable indicators of election administration.").

56. See Jesse Wegman, *Why Voting Discrimination Haunts America*, N.Y. TIMES (Feb. 7, 2020), <https://www.nytimes.com/2020/02/07/opinion/15th-amendment-voting-anniversary.html> [<https://perma.cc/6FET-W4B4>].

57. 531 U.S. 98 (2000) (per curiam).

58. For a full accounting of the case, see Edward B. Foley, *Bush v. Gore: The Court Stops the Recount*, in ELECTION LAW STORIES 541 (Joshua A. Douglas & Eugene D. Mazo eds., 2016).

59. See Richard L. Hasen, *The Untimely Death of Bush v. Gore*, 60 STAN. L. REV. 1, 2 (2007) ("[T]he opinion could usher in an era when courts would use the equal protection clause as a tool to fix some fundamental inequalities in the 'nuts and bolts' of our country's hyper-decentralized election administration system.").

to the “manner”<sup>60</sup> of voting, and in assailing “arbitrary and disparate treatment”<sup>61</sup> by the state, the Court indicated support for general fairness in the realm of election administration.<sup>62</sup> In fact, the Court specifically relied on an earlier decision in which it invalidated “arbitrary and disparate treatment to voters *in its different counties*.”<sup>63</sup>

To be sure, *Bush v. Gore* also includes language that cuts against a broad equal protection holding.<sup>64</sup> And scholars continue to debate its relevance.<sup>65</sup> But one judicial circuit has relied on the decision to invalidate not just intercounty disparities, but a number of laws involving the arbitrary treatment of voters.<sup>66</sup> A workable litigation theory, then, would depend on tethering such arbitrary treatment of voters to identifiable resource disparities. We consider the practicality of such a theory in Section IV.A.

A second doctrinal possibility for challenging disparate election expenditures, one premised on the notion of electoral adequacy, might exist under judicial interpretations of state constitutions. As Josh Douglas has noted, “all fifty states provide explicit voting protection for their citizens.”<sup>67</sup> Further, twenty-six states include language in their constitutions ensuring some form of “free” elections.<sup>68</sup> And finally, *Anderson-Burdick* provides a third doctrinal basis on which inadequate election resources might be challenged. We consider these possibilities in Sections IV.B and IV.C. But first, we turn to a discussion of our data, methods, and main findings.

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60. *Bush*, 531 U.S. at 104.

61. *Id.*

62. See Samuel Issacharoff, Opinion, *The Court in the Crossfire*, N.Y. TIMES (Dec. 14, 2000), <https://www.nytimes.com/2000/12/14/opinion/the-court-in-the-crossfire.html> [<https://perma.cc/D34J-RN4B>] (“[The Court] has asserted a new constitutional requirement: to avoid disparate and unfair treatment of voters.”).

63. *Bush*, 531 U.S. at 107 (emphasis added) (citing *Gray v. Sanders*, 372 U.S. 368 (1963)).

64. *Id.* at 109 (“Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities.”).

65. Derek T. Muller, *The Democracy Ratchet*, 94 IND. L.J. 451, 483 (2019) (“Courts have occasionally invoked the equal protection claim in *Bush v. Gore* when considering election law-related litigation. I hesitate even to raise *Bush v. Gore*.”); Hasen, *supra* note 55, at 193 (“Almost a decade and a half since the Supreme Court’s controversial decision in *Bush v. Gore*, no one knows what the case’s Equal Protection principle means or if it exists at all.”).

66. See generally Richard L. Hasen, *The 2012 Voting Wars, Judicial Backstops, and the Resurrection of Bush v. Gore*, 81 GEO. WASH. L. REV. 1865 (2013) (summarizing the United States Court of Appeals for the Sixth Circuit’s reliance on and expansion of *Bush v. Gore*).

67. Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 101 (2014).

68. *Id.* at 103 (“As an added level of protection, twenty-six states include a provision in their constitutions stating that elections shall be ‘free,’ ‘free and equal,’ or ‘free and open.’”).

## II. DATA AND METHODS

As a country, we have a shamefully inadequate amount of information about how our elections are paid for. Anecdotes, while interesting, present a complex picture that simply reinforces the need for data. For example, as noted above, Los Angeles County has sufficient resources to open additional voting centers and develop a new generation of voting machines. But not all local governments are as fortunate. A lack of resources potentially affects the quality of operations. Consider the hiring of election staffers. The *New York Times* describes the recruitment of poll workers in New York City as “a perennial problem,”<sup>69</sup> yet efforts to increase poll worker pay above fourteen dollars an hour have failed.<sup>70</sup> Elections administrators in Missoula County, Montana, are paid just \$8.65 an hour, less than they would be paid down the road at the local Walmart.<sup>71</sup> Alas, for job applicants, “enthusiasm for democracy is a must!”<sup>72</sup>

These examples suggest variation in how much money communities spend on election administration. But is such variation rare or the norm? To move beyond anecdotes, we collected data on the election-related expenditures of multiple tiers of government. Our aim was to approximate, as much as possible, how much money is spent in different parts of the country. Because so little of this research exists, our focus was on overall funding patterns rather than granularity. This Part outlines our data and methods.

## A. Local Government Budgets

Since multiple tiers of government have a hand in funding elections, we collected budget data on multiple tiers and combined

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69. Spenser Mestel, *The Path to Becoming an Underpaid, Underappreciated and Absolutely Necessary Election Poll Worker*, N.Y. TIMES (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/nyregion/the-path-to-becoming-an-underpaid-underappreciated-and-absolutely-necessary-election-poll-worker.html> [https://perma.cc/74TP-35RE].

70. *Id.*:

Every year for the past eight years, the Board of Elections has asked the State Assembly to increase compensation for poll workers – this year by paying poll workers \$100 for the four-hour training and \$300 for the roughly 17 hours of work on Election Day. The proposal has never passed.

71. Peter Christian, *Missoula County Looks to Hire 600 Election Judges for 2020*, NEWSTALK KGVO (Jan. 21, 2020), <https://newstalkkgvo.com/missoula-county-looks-to-hire-600-election-judges-for-2020> [https://perma.cc/SSP7-5QYQ] (“\$8.65 is our basic wage for most entry level positions.”).

72. *Election Judge Qualifications & Duties*, MISSOULA CNTY., MONT., <https://www.missoulacounty.us/government/administration/elections-office/election-judge-information/election-judge-qualifications-duties> (last visited Mar. 10, 2021) [https://perma.cc/7EM7-EQ49].

them. The data is from four states: California, Arizona, Texas, and Florida. These states are in no way a random or representative sample of the United States as a whole. They are, however, commonly thought to reflect different political realities, represent different approaches to governance, have varied histories, and exhibit geographical diversity. These four states also capture a sizable share of the national population (almost a third). And these four states are frequently in the headlines for election-related affairs. As such, we hope to make claims about these four states specifically and, with caution, speculate about the likely conditions elsewhere.

Crucial to all subsequent claims is the observation that even in just these four states, different tiers of government have varied revenue structures, expenses, and governing responsibilities. A county or county-equivalent in one part of the country cannot necessarily be equated with a county elsewhere just because they share the same designation. States have great leeway under the U.S. Constitution to structure their relationships with substate governing entities.<sup>73</sup> Therefore, we must be careful about making simplistic comparisons between states.

Our analysis is strongest when we compare similar governing entities with neighbors that share similar tasks. Noting that Los Angeles spends more (or less) on elections than Houston is less informative than comparing counties and cities within the greater Los Angeles or Houston metropolitan areas. This is also the reason why our data collection was not a random sample of, say, counties in the United States. Since different counties across the United States handle different kinds and volumes of elections, comparisons within a random sample of counties would likely be misleading or present an incomplete picture.<sup>74</sup>

Our data collection strategy began by utilizing the U.S. Census Bureau's Census of Governments to identify counties, county-equivalents, cities, towns, townships, and villages that might have a hand in funding and running elections.<sup>75</sup> The Census of Governments is administered every five years (in years ending in "2" and "7"). The survey is thorough and yields very high response rates from close to

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73. See Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361, 1371–74 (2020) (discussing states' ability to substantively and structurally preempt local governing entities).

74. We considered collecting data on the number of local elections administered or even the number of votes cast, but we simply lack the resources to do this additional data collection. We hope future researchers will iterate on our work, perhaps by creating a compelling index measure of local election activity.

75. *Census of Governments*, U.S. CENSUS BUREAU, <https://www.census.gov/econ/overview/go0100.html> (last visited Mar. 10, 2021) [<https://perma.cc/Z5VW-6MWP>].

ninety thousand local government entities, certainly far beyond what we could have accomplished.<sup>76</sup> The end result, for our purposes, is an up-to-date list of the hundreds of county and municipal governments in these states.<sup>77</sup>

We then utilize this list to research election-related expenditures one government entity at a time. At times, this was as simple as navigating to, say, a town's official website and downloading PDFs of previous budgets. At other times, we had to email or call local government officials to obtain budgets that were otherwise unavailable. Again, sometimes this process was simple and quick; sometimes it required significant time and patience.<sup>78</sup>

Once we obtained the budgets, we had to extract the relevant information on election administration expenses. The budgets varied tremendously in length, style, digital format, and organization.<sup>79</sup> Some government entities grouped all their election administration expenses together in one clearly labeled place. Others distributed these expenses across multiple entries, often hundreds of pages apart, that we then added together (e.g., equipment costs in one part of the budget, and salaries in another, or voter registration expenses separated from operational costs). Because of this variance, we want to stress that the data is fuzzy.

For example, while some budgets list expenditures in great detail, down to the last stamp put on a letter, others are vaguer, providing only a broad overview of election administration expenditures. In some counties there is a shared pool of office stationery that election administrators use but that does not appear in their individual budget. In other places, such expenses are separately listed. This variance creates room for interpretation. All our findings must be read with this cautionary note in mind.<sup>80</sup> But election work is

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76. *Id.* We are mindful of the possibility of new local governments being chartered during the timespan that we studied, or of local governments dissolving or merging. Neither event, however, is common in the four states that we studied and, in general, occurs with local government units that are not populous.

77. The Census Bureau also conducts an Annual Survey of Governments that includes tremendously useful information on government finances. That survey, however, is unfortunately not granular enough for election-related activities. See Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 288–89 (2020) (discussing the Annual Survey of Governments, its methodology, and the data it collects).

78. Many thanks, again, to our wonderful research assistants who dedicated themselves to this task with uncommon diligence. Many thanks also to the numerous local government officials who generously helped us.

79. This variation ruled out, for our purposes, automated web scrapping, parsing, and the like. Some of the budgets are not machine readable. Not even the search function works on these documents.

80. In a few instances this made data collection impossible. For example, in the City of Wichita Falls, Texas, the city clerk is responsible for a variety of tasks, including maintaining legal



sufficiently important and distinct such that it is often treated as a separate and clearly labelled budget line item. This gives us confidence that the core of what we capture in the budgets is stable across jurisdictions. Again, this argument is strongest when comparing neighbors in the same state and weakest when comparing across states.

Having collected election administration expenses from one jurisdiction for one year, we then repeated this process for multiple years for each government entity. Collecting data on only one year would have greatly sped up the process and allowed for a broader geographic scope. But we believe multiyear collection was necessary to account for uneven expenditures across years. A town or county might report unrepresentatively high election administration expenditures in one year for idiosyncratic reasons. Perhaps there was an unusual string of special elections that year, or perhaps the county election administration building burned down and needed to be replaced.<sup>81</sup> Such possibilities are very difficult to observe and include as control variables, thus, collecting data on a single year might have problematically skewed the analysis. Idiosyncratic events happen, though, and must be acknowledged. Our approach takes this reality into account by utilizing the mean inflation-adjusted election administration expenditures in each jurisdiction across seven years, ending in 2017 (we started collecting data in 2018).<sup>82</sup>

An additional reason to collect budget expenditures from multiple years is that budget years are not uniform. Some local governments close their budgets in May and some in October. Consequently, it becomes difficult to compare expenditures in a single budget year. For example, a “2016” budget that closes in October of 2016 might contain significant expenditures related to the presidential election that year, but no expenditures of the election itself. It would be difficult to meaningfully compare such a budget with one that closes one month later (even closer to the election) or two months later (right after the election). As such, a multiyear approach also helps ensure that

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files on all contracts, “maintaining ownership records on all City cemeteries,” and “managing and conducting all City elections.” The budget contains information on the city clerk’s office but does not separate out with sufficient clarity all election expenditures. *Annual Operating Budget for Fiscal Year 2017-18*, CITY OF WICHITA FALLS, TEX. 403–06 (Oct. 1, 2017), <http://www.wichitafallstx.gov/DocumentCenter/View/30021/Final-Adopted-Budget-2017-2018> [<https://perma.cc/LX8T-59KS>].

81. Similarly, expensive voting equipment purchases are sometimes concentrated in one year and sometimes spread out over multiple years.

82. The reality is that for some jurisdictions we have data for seven years, but for others we have data for fewer years. Some counties make only the last few years of budgets readily available. Also, whenever possible we collected data on actual expenditures rather than budgeted expenditures. Often these two numbers are closely aligned, but some government entities systematically overbudget.

variation in budget closing dates does not overshadow what we are trying to measure.

For these reasons, we flatten the time-series data we collected for these jurisdictions into a single inflation-adjusted mean.<sup>83</sup> This approach implies that we, in a way, lose a tremendous amount of information: we report only one data point per government unit rather than seven. We thought this was necessary, however, to make that one data point strong and reliable. Our time span allows us to smooth expenditures across time and present a better measure of “typical” expenditures. Of course, data on more years would always be better, but we believe seven years of data represents a reasonable compromise between feasibility and accuracy. The seven-year time span includes multiple types of elections (local, state, congressional, and presidential) as well as various forms of direct democracy like referendums, initiatives, and recalls.

### *B. Composite Estimates of Election Expenditures*

Next, we bifurcated our analysis. For some of the figures in the following sections we focus on single government entities (e.g., counties). In those figures, we simply report the budget numbers we collected. By contrast, in other parts of the analysis we seek to provide a sense of how much money multiple government entities are spending on election administration in a specific location. As such, some of the analysis below utilizes composite estimates of election administration expenditures. Many voters are almost certainly oblivious to the distinction. Most voters do not know, and many perhaps do not care, who pays for the election services that they receive.<sup>84</sup> But they are keenly aware when operations are well run and when they are not. For instance, a voter in a town might receive election services from that town, the county, the state, and, to a much smaller degree, the federal government. And the voting experience might be affected by which entity is footing the bill. To account for this, we aggregated and disaggregated the election administration expenditure means from the previous step of the analysis into small geographic units.

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83. While we adjusted for inflation (which was relatively low during the observed timespan), we did not adjust for cost of living. Other researchers might want to incorporate such a measure. We did not do so here because significant election expenditures are invariable (e.g., voting equipment costing the same, whether purchased by a county with a low or high cost of living).

84. As noted, many policymakers are similarly uninformed. Martha Kropf & JoEllen V. Pope, *Election Costs: A Study of North Carolina*, in *THE FUTURE OF ELECTION ADMINISTRATION* 185, 185 (Mitchell Brown, Kathleen Hale & Bridgett A. King eds., 2020) (noting that the amount that state and local governments spend on elections “remains a mystery to scholars and policymakers”).

The unit of analysis that we chose was U.S. census tracts (“tracts” or “census tracts”). We chose tracts because they are fairly small, reasonably permanent,<sup>85</sup> and often socially meaningful statistical subgroups of a county.<sup>86</sup> Tract populations typically range from slightly above a thousand individuals to eight thousand individuals, but most contain around four thousand individuals.<sup>87</sup> Each county contains at least one census tract. We used geometric intersection algorithms to proportionally disaggregate county election administration expenditures according to the population of the constitutive census tracts in each county.<sup>88</sup> For towns, townships, villages, and cities, we aggregated expenditures if subcounty governments were smaller than census tracts and disaggregated if they contained multiple census tracts.

We then created per capita expenditure measures for government units and census tracts.<sup>89</sup> We combined these measures with demographic and economic data from the American Community Survey (“ACS”). The ACS is continuously administered by the U.S. Census Bureau. Every year, more than three million households across the United States receive ACS forms.<sup>90</sup> The responses present an

85. Census tracts are typically adjusted for the decennial census that is administered in years ending in “0.” Since our data collection does not span across multiple decennial censuses, the tracts remained largely the same (the Census Bureau at times allows for small boundary adjustments between decennial censuses, but this had likely little or no effect on our findings in this Article).

86. Census tracts are comprised of block groups that are, in turn, comprised of blocks. Because our data is not sufficiently granular, we decided not to use block groups or blocks as our primary unit of analysis. Conversely, the census also tracks other geographies that might be of interest to other researchers, most notably federal congressional districts. But because our work here focuses on *all* election administration work, not only work related to federal elections, we utilize a more granular unit of analysis. Also, federal congressional district boundaries do not necessarily correspond to local government boundaries. See *generally* *Glossary*, U.S. CENSUS BUREAU, <https://www.census.gov/glossary> (last visited Mar. 11, 2021) [<https://perma.cc/9WTY-NG6R>] (user can manually search for census terms).

87. *United States Census Information @ Pitt: Understanding Census Geography*, UNIV. OF PITTSBURGH LIBR. SYS., <https://pitt.libguides.com/uscensus/understandinggeography#:~:text=Census%20tracts%20generally%20contain%20between,follow%20relatively%20permanent%20visible%20features> (last updated Aug. 28, 2020, 12:33 PM) [<https://perma.cc/J3RG-MZU4>]. The Census Bureau combines tracts when one of them gets close to the one thousand population mark. Conversely, it splits tracts when they get close to eight thousand. See *id.* (“Census tracts generally contain between 1,000 and 8,000 people with an optimum size of 4,000 people.”).

88. To do this, we matched our data and census data with geographic data that identified the physical shape of each census tract, county, and municipality. Each of these units can be represented as a polygon on a given projection of the globe. Once we treat these units as polygons, we can then check for overlapping polygonal geometries (contain, equals, disjoint, within, touch, covers, etc.).

89. Keeping in mind that populations changed over the timespan we studied.

90. *The Importance of the American Community Survey and the 2020 Census*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html> (last updated Oct. 16, 2020) [<https://perma.cc/S3H7-8GXS>]. A sample form can be found online. See *2020 ACS*

ongoing, evolving, and detailed snapshot of key variables. While it is a sample, it is a large sample based on a well-administered survey with high response rates. The ACS variables allow us to connect election administration expenditures in a specific location with other variables of interest from that neighborhood (e.g., household incomes, unemployment rates, demographic variables, education variables, etc.).

### *C. Inferred Estimates*

Despite our best efforts, we were not able to collect data for all the government units we identified. Tables 1 and 2 document the breadth of our data collection effort.

TABLE 1: COUNTY COVERAGE

	Overall # of Counties	Counties without Data	Percentage Collected	Percentage of Population Covered
Arizona	15	0	100	100
California	58	0	100	100
Florida	67	0	100	100
Texas	254	97	61.81	95.81

Table 1 displays our county data. We were able to collect complete data from all counties in California, Florida, and Arizona, but not Texas. Texas has an unusually large number of counties (254). Some of them are rural and sparsely populated, containing only a few hundred or a few thousand residents. The county governments in such places frequently rely on part-time officials who lack the resources and economies of scale that some of the populous counties can marshal.<sup>91</sup>

Many small Texas counties do not have an online presence or have websites that have not been updated recently. Some of them did not respond to our requests for data, and we were otherwise unable to collect data from them. Many others make data available online or upon request, but the budgets are not sufficiently detailed to reliably identify election administration expenditures. Still, we were able to collect data from counties that contain more than ninety-five percent of the population of Texas.

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Form, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/about/forms-and-instructions/2020-form.html> (last updated Jan. 2, 2020) [<https://perma.cc/PQ5P-G7RX>].

91. See generally Kellen Zale, *Part-Time Government*, 80 OHIO ST. L.J. 987 (2019) (assessing the power dynamics of part-time city councils).

Table 2 presents the same information for municipalities. Again, while we were not able to collect data for many small towns, townships, and villages, we were able to collect data from municipalities covering the brunt of the relevant population in three of the four states.<sup>92</sup>

TABLE 2: MUNICIPALITY COVERAGE

	Overall # of Municipalities	Municipalities without data	Percentage Collected	Percentage of Population Covered
Arizona	91	24	73.63	94.31
California	482	69	85.68	92.39
Florida	411	293	28.71	33.90
Texas	1217	414	65.98	94.01

Incomplete data, of course, always raises the danger of bias. Perhaps lack of data covaries predictably and obscures precisely what we try to observe. For example, perhaps only the smallest and poorest towns and cities do not make budgets available and their exclusion from the dataset hides what is happening in those communities. That is certainly a possibility, but one we consider unlikely.

Our experience in collecting the data is that the availability of budgets is unrelated to the variables that interest us. As previously stated, some small and poor towns do not make their budgets available online (perhaps because they only have a perfunctory online presence), but many others do. Also, many county and city administrators generously responded to our email and phone inquiries. We can only speculate why they did so, but we frequently got the impression that many of them are genuinely committed to transparent local governance, appreciate the attention paid to often overlooked communities, or simply are nice people. In short, without knowing for sure, we suspect that the holes in our data do not systematically exaggerate or obscure the relationships we want to examine in this Article. But caution is in order, and we invite future researchers to create more complete datasets.

For parts of our analysis, we supplemented the data with inferred data gathered through the use of predictive machine learning. We want to stress that inferred data is data that we did not collect, but data that we predicted based on our hand-collected data and data from the Census Bureau. We clearly identify and label all inferred data

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92. To calculate the percentages for “Percentage of Population Covered,” we utilized as denominators only people who live in municipalities (“relevant population”) rather than the whole population (which would have included people outside of municipal borders).

points in the analysis below. Many figures will present findings based on collected data alone, while other present both combined and inferred data. Cautious and skeptical readers should disregard the supplemented data and focus only on findings based on collected data.

We tested the supplementation of our hand-collected data using a variety of supervised machine learning approaches.<sup>93</sup> We explored k-nearest neighbors classification algorithms, random forests models, regression models, and deep learning networks. For each model, we trained our algorithm with input examples from our hand-coded dataset that indicate the desired output (mean annual inflation-adjusted per capita election administration expenditures). We then evaluated which approach yielded the most reliable responses, given the structure of our data.

We found that multiple models performed nearly identically. Some were more accurate in one state but lagged a bit in others. Some performed marginally better for counties than municipalities. In the end, we decided to stack the four highest-performing models to derive robust and resilient estimates. We utilize the stacked predicted values of these models in all our subsequent figures that include inferred estimates.

#### *D. Limitations and Strengths*

We want to emphasize some of the limitations of our approach. The first is that it only yields an estimate, one embedded with numerous assumptions.<sup>94</sup> The second important limitation is that we collected substate data only from counties, cities, towns, townships, and villages, but did not collect data on special purpose districts. Insofar as such districts independently raise revenue that is then spent on election administration tasks, this could skew our analysis. We impressionistically found that many special districts, to the extent they perform election administrative tasks, do so through intragovernmental payments either to or from other substate government units.

Despite these limitations, our hand-coding of hundreds of budgets, coupled with the predictive machine learning, creates our best estimate of local election administration expenditures.<sup>95</sup> To our

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93. To account for local variation, we repeated this process for each state and kept all training model and prediction data separate. In other words, predictions for, say, a town in Texas derive solely from observed data from Texas rather than any other state.

94. We would be thrilled if future researchers improved and iterated on our approach.

95. To be more precise: this approach creates our best estimate of the aggregate mean annual local per capita election administration expenses that multiple units deploy in a given place.

knowledge, this methodology has never been used in this context. The strength of this approach is that it allows us to make novel geographic comparisons that inform crucial policy and doctrinal debates.

### III. MAIN FINDINGS

The previous Part explained how we collected and analyzed data from hundreds of county and subcounty government units that have a hand in funding and running elections. This Part includes our main findings. We stress three points.

First, geographic comparison in the four states we studied reveals massive variation between and within states in the funding of election services. The multiple and overlapping government layers in one part of a state might have many multiple times the resources of those in other parts of a state. Insofar as spending is associated with quality, a person in one part of, say Texas or California, might receive far more and better election services than in another part of the state. Funding levels, as previously noted, are not necessarily commensurate with the quality of election services, but of course we cannot begin to explore a relationship between the two without knowing how much is being spent.

Second, we were unable to establish a clear connection between funding variation and variables like race, poverty, and education levels. This is perhaps our most striking finding. We expected variation in funding to be strongly related to known sources of electoral disadvantage. Instead, we find odd local idiosyncrasies to be the dominant feature. This complicates the conventional narrative in which election officials systematically underinvest in poor or minority communities. To be clear, such underinvestment exists in an unfortunate number of instances and, in many instances seems intentional. But our data suggests that the simplest version of the conventional narrative—that disadvantaged communities are always forced to operate with fewer resources than their peer communities—is perhaps oversimplified.

Third, we find surprisingly low spending levels. While there are some outlier local governments that invest heavily in election administration, most spend very little (typically around \$4.50–\$8.50 annual per capita).<sup>96</sup>

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96. These findings generally align with the preliminary results reported by the UNC-Charlotte research team. *See* Mohr et al., *supra* note 7, at 22–23.

*A. Geographic Variation*

We begin with a geographic representation of our data, first focusing on municipalities, then on counties, and then tracts. The advantage of a geographic approach is that it locates data in real space. This allows us to represent a mountain of difficult data in a condensed format that permits readers to explore and test their intuitions.<sup>97</sup> Figure 1 focuses on the election expenditures of municipalities in California. The Census Bureau identifies more than a thousand cities, towns, villages, townships, and other municipalities that might have a hand in funding and running elections. They range from Los Angeles with a population of around four million to small towns with a few hundred residents.<sup>98</sup> To make their average election expenditures comparable, we represent in Figure 1 per capita expenditures in different colors:<sup>99</sup> The deeper the brown, the more local spending levels are below the state median; the stronger the green, the more local spending is above the state median. Grey indicates expenditures around the state median.<sup>100</sup> Figure 1 includes both observed and inferred data. (Appendix 1 provides the same figure with only observed data.)

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97. See Roger Michalski, *MDL Immunity: Lessons from the National Prescription Opiate Litigation*, 69 AM. U. L. REV. 175, 196 (2019) (“Geography is information-rich, multifaceted, and underutilized.”).

98. Geographic size is, of course, not synonymous with importance and often has little relationship to population size.

99. A note to readers: In order to observe the color coding in the figures that follow, please access the online version of this Article on the *Vanderbilt Law Review*’s website, <https://www.vanderbiltlawreview.org>.

100. Each quarter standard deviation from the state mean results in a deepening hue.



FIGURE 1: OBSERVED AND INFERRED PER CAPITA  
MUNICIPAL EXPENDITURES IN CALIFORNIA



*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

Figure 1 illustrates the great number of municipalities in California and their geographic dispersal. While big coastal cities and Sacramento are easy to identify, Figure 1 also shows the

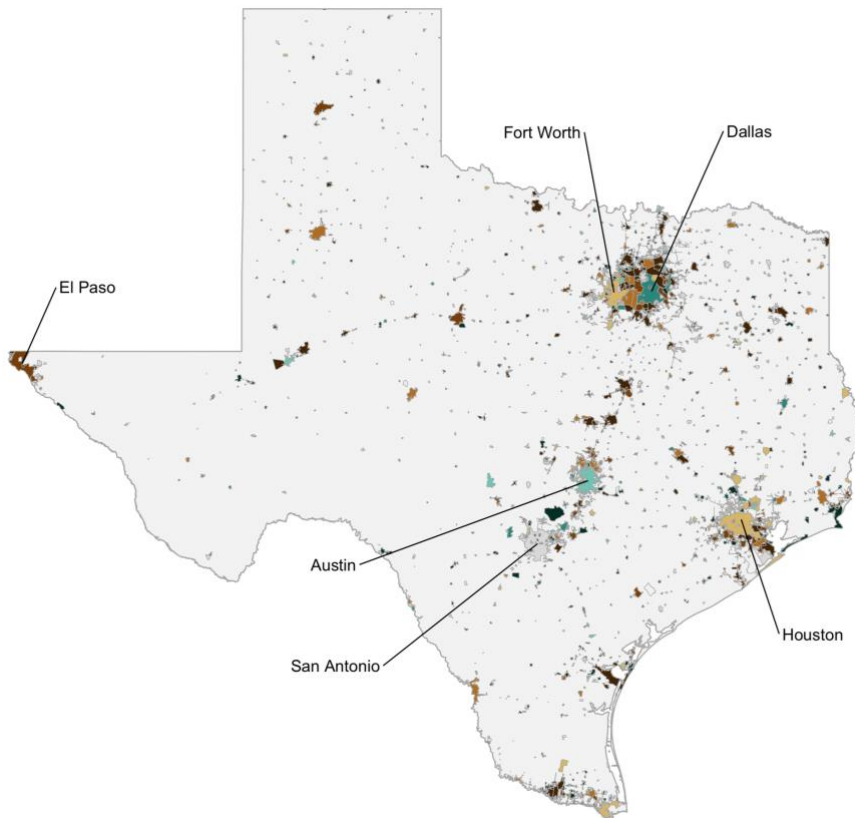
many municipalities in the Central Valley along Highway 99 and Northern California.

The biggest lesson of Figure 1 is the great range of local election expenditures. Many municipalities spend less than a dollar per person per year on election expenditures, while others spend many multiples more. While the median is low, the distribution is also noticeable. Most municipalities spend at or below the statewide median on election expenditures. Yet, the relatively few municipalities that spend more, spend far above the average.

The next lesson of Figure 1 is the lack of a predictable pattern. High election expenditure jurisdictions are distributed throughout the state, many in places that might be hard to predict. Conversely, numerous well-known and wealthy municipalities fall on the lower end of the expenditure spectrum. There simply is no clear pattern to the variation (say, a coastal versus interior divide that might be suggested by political differences). Instead, we observed a sprinkled pattern where similarly situated neighbors are multiple standard deviations apart on election expenditures.

These lessons hold true in the other three states where we collected data.

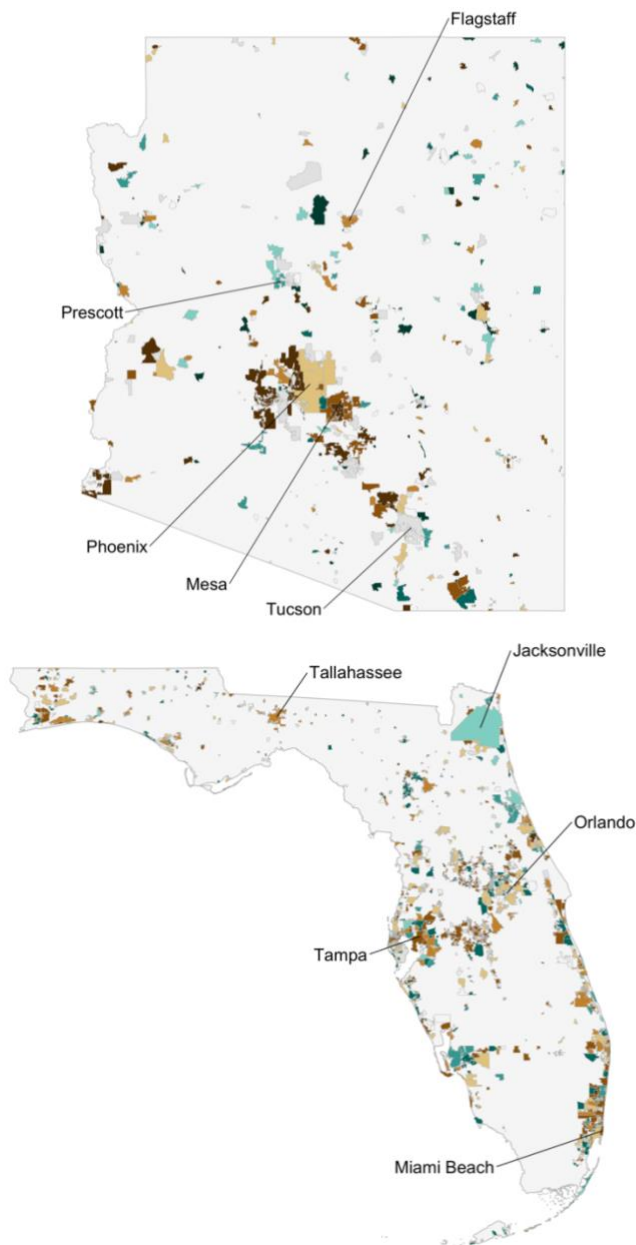
FIGURE 2: OBSERVED AND INFERRED PER CAPITA  
MUNICIPAL EXPENDITURES IN TEXAS



*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

Figure 2 shows the geographic dispersal of municipalities in Texas, including a string of towns along the I-20 and I-35 corridors. Election expenditures, once again color coded by standard deviations away from the state median, vary drastically throughout the state. But they also vary within distinct parts of the state. For example, the Dallas-Fort Worth greater metropolitan area includes many cities and towns. Some have below average expenditures, while some neighboring towns are well above average. We will explore this variation in greater detail in the next Section. For now, we merely seek to demonstrate the geographic variation in election expenditures that, as Figure 3 shows, also holds true in Arizona and Florida.

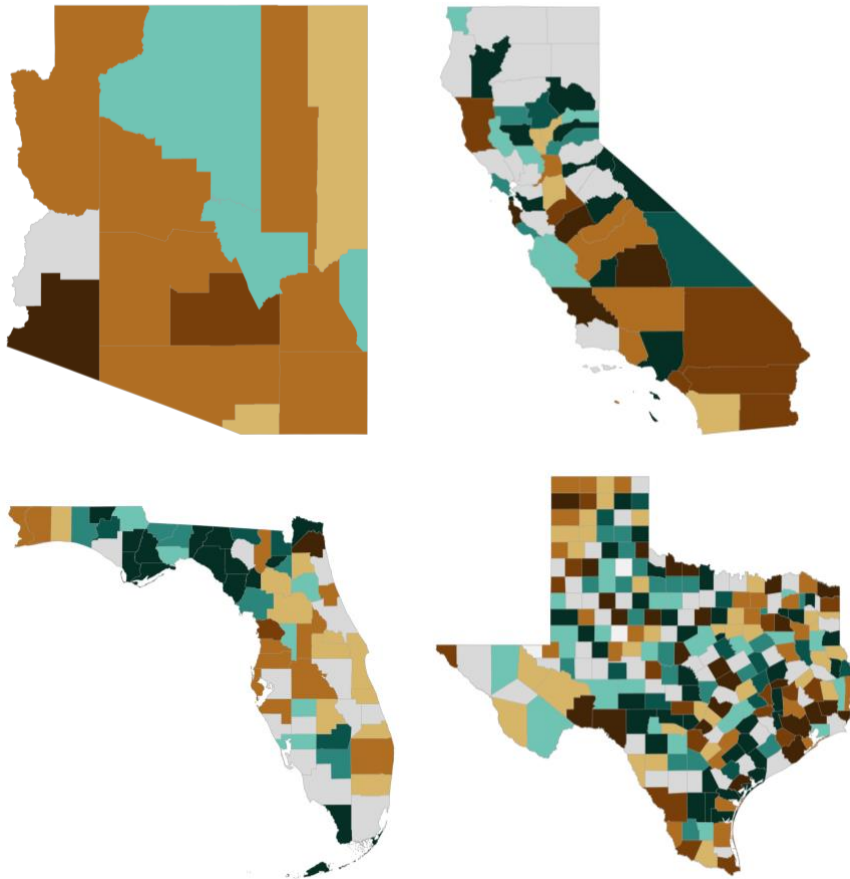
FIGURE 3: OBSERVED AND INFERRED PER CAPITA MUNICIPAL EXPENDITURES IN ARIZONA AND FLORIDA



*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

The previous figures showed municipal election expenditures. Perhaps, one might imagine, municipalities differ in how much they spend on elections, but counties do not (or differ less). Perhaps in many places, municipalities vary more than counties, given counties' governing responsibilities. To explore this possibility, Figure 4 geographically represents the election expenditures of different counties. The Figure includes inferred county-level data for Texas.

FIGURE 4: OBSERVED AND INFERRED  
PER CAPITA COUNTY EXPENDITURES



*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

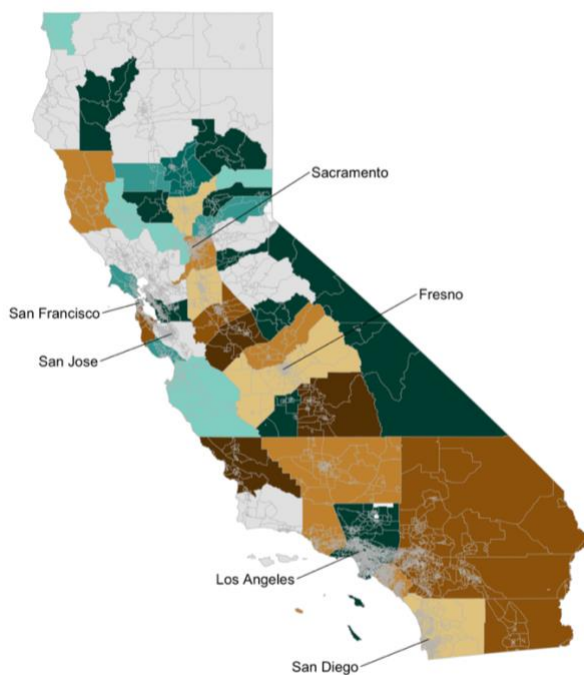
Figure 4 again displays a great deal of data. Like the municipal figures, this Figure does not show geographic patterns along the lines that we expected. Instead, we observe a colorful patchwork of altering

election expenditures. Driving across one of these states, one could continuously toggle back and forth between counties that spend significantly below and above the state average.

Perhaps this finding is due to a myopic misunderstanding of election expenditures. In many places, municipalities and counties work in concert to organize, run, and fund elections. For instance, it could be that one locale focuses its election activities at the county level, thereby minimizing the role that municipalities play. Alternatively, another locale might channel election expenditures primarily through cities and towns, while relegating the county government to a more modest role. If true, these two locales might have identical or similar election expenditures, rendering the previous figures misleading.

To explore this possibility, Figure 5 aggregates and disaggregates county and municipal government election expenditures according to census tracts.<sup>101</sup> We again begin with California.

FIGURE 5: OBSERVED AND INFERRED PER CAPITA CENSUS TRACT EXPENDITURES IN CALIFORNIA



*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

101. See *supra* notes 85–88 and accompanying text.

Figure 5 provides a sense of how county and subcounty election expenditures interact in California. As a general matter, this Figure closely tracks the California county-only expenditures provided in Figure 4. The reason is simple: in most areas of California, county election expenditures dwarf subcounty expenditures (typically eight to one). Therefore, the impact of municipal expenditures is often modest. That is, municipal expenditures are rarely high enough to overcome the significant variation in county-to-county expenditures observed in Figure 4.

Nevertheless, while limited, municipal expenditures still contribute to overall state heterogeneity by creating subcounty variation. Two voters within the same county might be differently situated because one receives election services only from the county while the other receives services from both the county and their town. For example, while Fresno County spends below the state average, the City of Fresno's significantly above-average election expenditures bring the overall expenditures close to the state average. There are also examples of compounding effects, where low county expenditures are deepened by low city expenditures and, conversely, where a voter receives the benefit of both high city and county expenditures. Sometimes both effects occur side by side.

Similar patterns to those observed in California hold true in Florida, Texas, and Arizona. While these are only four states, we speculate that other states are no different. Perhaps this is because states typically do not have overarching, statewide mechanisms to detect unequal election expenditures, let alone counteract them. Without more information and a normalizing mechanism, it is not surprising that there is massive geographic variation in election expenditures.

### *B. Null Findings*

The geographic variation observed above demands further inquiry. What drives these different spending patterns? We are not aware of any deep theoretical accounts describing the variables that affect local election administration spending decisions. Therefore, we have little guidance to inform the construction of a causal model. That said, our findings suggest a complex and unexpected relationship between election expenditures and voter disadvantage. Countless reports, studies, and news pieces reveal various forms of voter

suppression, particularly within minority communities.<sup>102</sup> Yet, surprisingly, judged only by the amount of money spent, one would *not* anticipate a greater number of voting-related problems in these communities. We discuss our general findings before considering possible explanations for this specific incongruity between our findings and common expectations.

We begin our account with a simple scatterplot<sup>103</sup> that shows the relationship between election expenditures in various California municipalities and the percentage of the municipality that is defined as nonwhite by the Census Bureau.<sup>104</sup> Municipalities on the left-hand side are more homogenously white, while municipalities towards the right are less so. Observations toward the bottom indicate low-expenditure jurisdictions while observations higher up have higher expenditure levels. Figure 6 includes predicted and observed data. Observed values are marked by a dark border while predicted data lacks such borders. (Appendix 2 provides the same graph with only observed data.)

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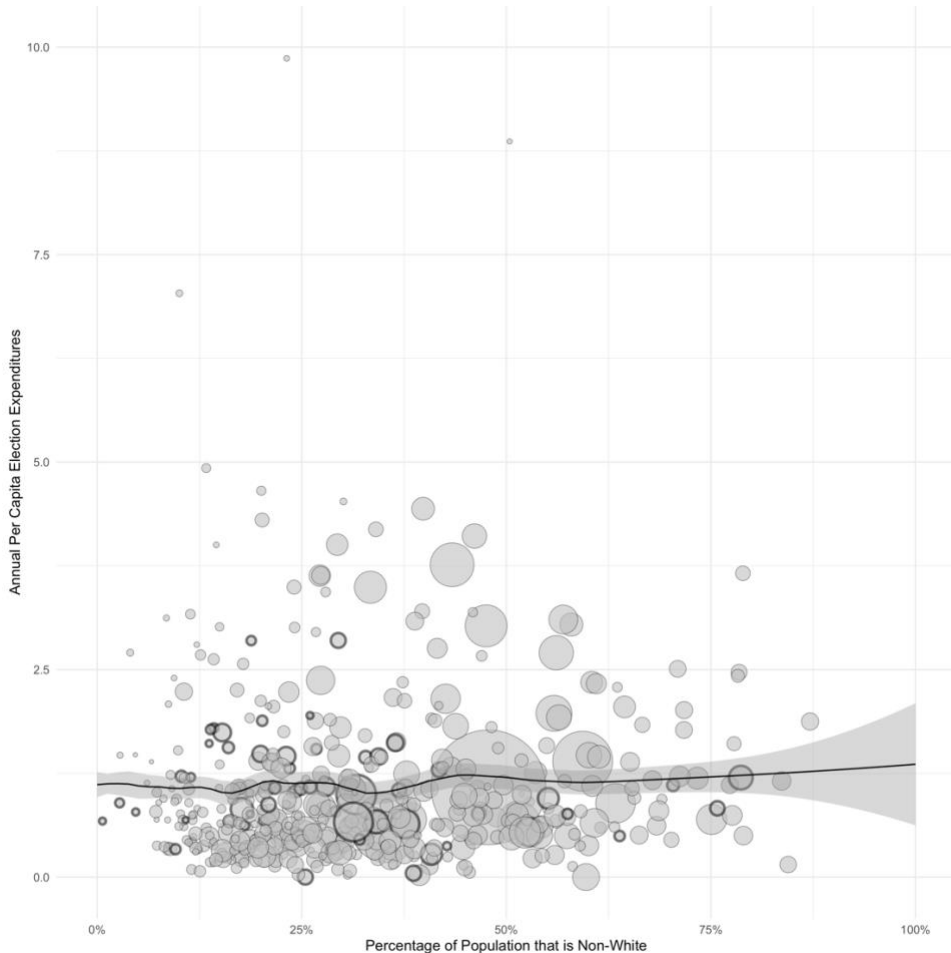
102. *E.g.*, Theodore R. Johnson, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression> [<https://perma.cc/A7VP-CR2L>]; Michael Wines, *Voting Rights Advocates Used to Have an Ally in the Government. That's Changing.*, N.Y. TIMES (Aug. 12, 2018), <https://www.nytimes.com/2018/08/12/us/voting-rights-voter-id-suppression.html> [<https://perma.cc/X4CZ-5Y8Z>].

103. Michael Friendly & Daniel Denis, *The Early Origins and Development of the Scatterplot*, 41 J. HIST. BEHAV. SCIS. 103, 103 (2005) (“[W]e define a scatterplot as a plot of two variables,  $x$  and  $y$ , measured independently to produce bivariate pairs  $(x_i, y_i)$ , and displayed as individual points on a coordinate grid typically defined by horizontal and vertical axes, where there is no necessary functional relation between  $x$  and  $y$ .”).

104. We recognize, of course, that the census categories are only crude proxies.



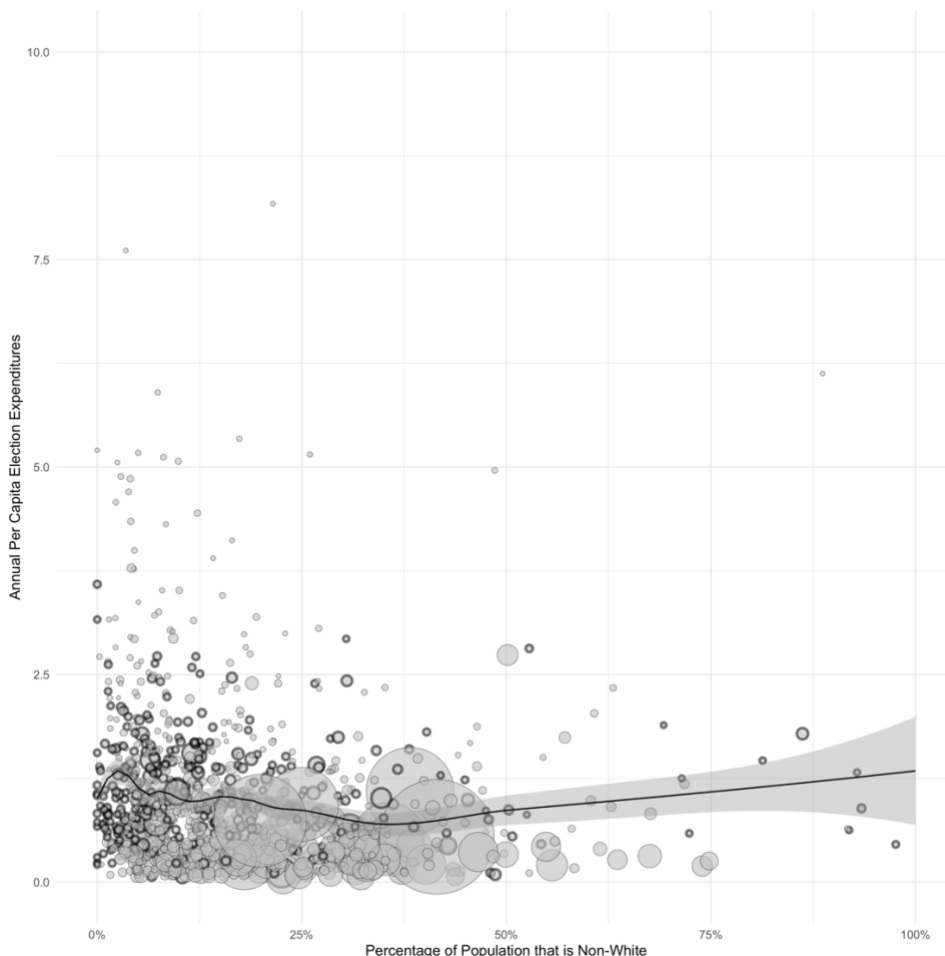
FIGURE 6: SCATTERPLOT OF ELECTION EXPENDITURES TO NON-WHITE POPULATION FOR MUNICIPALITIES IN CALIFORNIA



*Notes:* Municipalities are sized by population. Includes inferred observations (highlighted by black borders). Extreme outliers not shown in the Figure.

The black trend line (with gray ninety-five percent confidence intervals) indicates the correlation between election expenditures and demographic diversity. It is almost entirely flat. While there is, of course, variation between different municipalities, that variation is not related in an obvious manner to demographic diversity. Figure 7 shows the same information for Texas. (Appendix 3 provides the same graph with only observed data.)

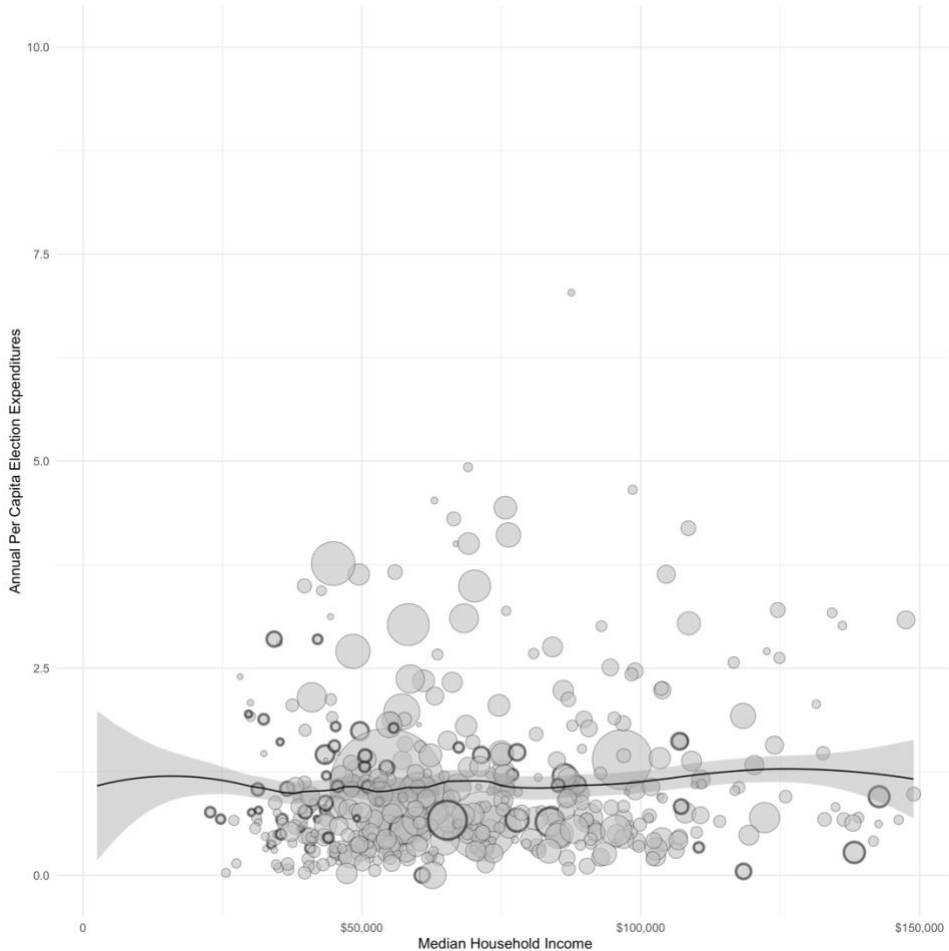
FIGURE 7: SCATTERPLOT OF ELECTION EXPENDITURES TO  
NON-WHITE POPULATION FOR MUNICIPALITIES IN TEXAS



*Notes:* Municipalities are sized by population. Includes inferred observations (highlighted by black borders). Extreme outliers not shown in the Figure.

Once again, we observe a mostly flat trend line. The same holds true in Arizona and Florida. Other traditional variables similarly fail to show dramatic trends. For example, one might expect that median household income is strongly correlated with election expenditures in a community. After all, more income means more wealth, a stronger tax base, and more money to spend. Yet, as Figure 8 shows, the relationship is again flat.

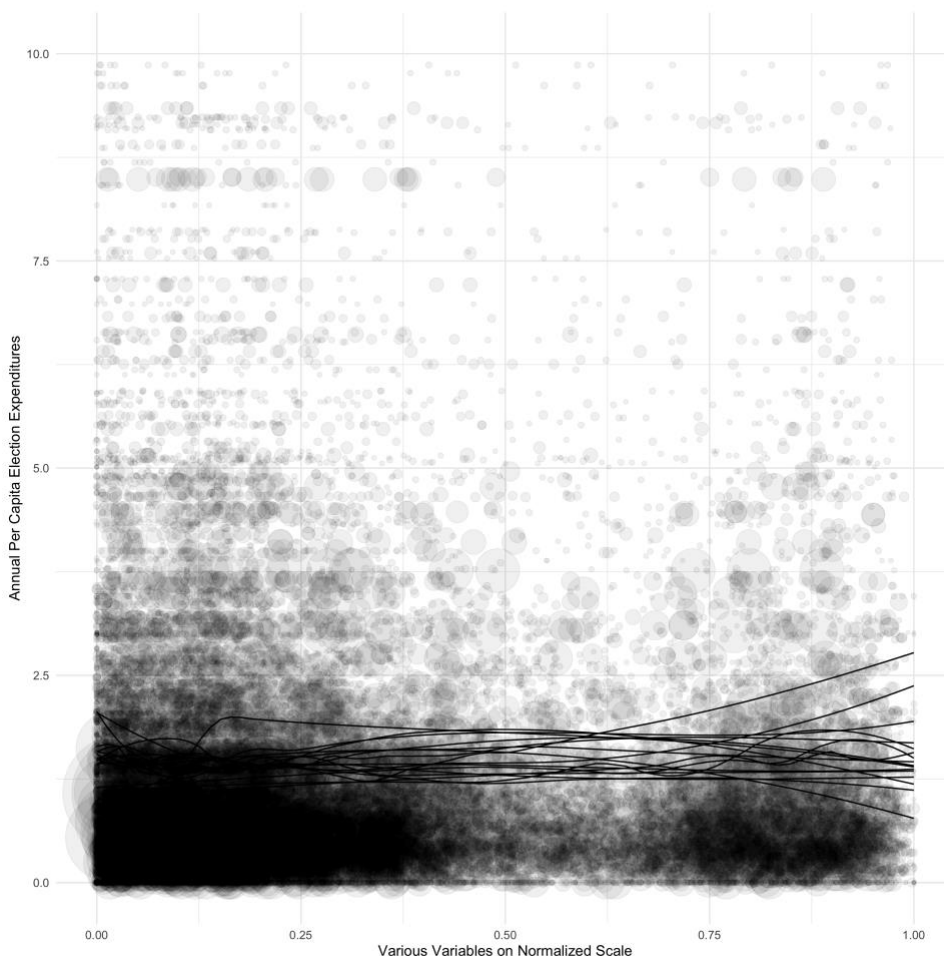
FIGURE 8: SCATTERPLOT OF ELECTION EXPENDITURES  
TO MEDIAN HOUSEHOLD INCOME IN CALIFORNIA



*Notes:* Municipalities are sized by population. Includes inferred observations (highlighted by black borders). Extreme outliers not shown in the Figure.

These figures are suggestive, but they are, of course, grossly incomplete. For four states and many variables of interest, one could multiply these figures a hundred times over. Instead of presenting reams of largely duplicative figures, Figure 9 combines all four states and numerous variables (on a normalized scale).

FIGURE 9: SCATTERPLOT OF NORMALIZED VARIABLES



*Notes:* Municipalities are sized by population. Includes observed and predicted data. Extreme outliers not shown in the Figure.

Figure 9 once again shows flat trend lines, this time across all four states and across numerous variables. This is an intuitive, though of course also incomplete, way to summarize the data.

A more systematic way to structure the inquiry is through regression analysis that includes a host of variables all at once (and, potentially, all four states as well). That was, indeed, our starting point. We intended to report the results of a series of models estimating observed and predicted election administration expenditures. These models used a variety of explanatory and control variables including median household income, median age, nonwhite population percentage, Hispanic and Latino population percentages, non-U.S.

citizen percentages, educational achievement measures, female-to-male earnings ratios, employment status measures, mobility measures, type and extent of health care coverage measures, poverty shares, disability measures, and volume of government assistance recipients. In short, these variables represented a smorgasbord of likely variables that could explain community differences.

Despite this promise, our models turned out inconclusive. Most commonly, the models lacked statistical or substantive significance. Even where that was not the case, the direction of the effects swung widely from one specification to the next. At this point, even if we found a model specification that produced intelligible, clear, and statistically significant coefficients, we would still be hesitant to report such a model, as it might simply be the result of unintentional p-hacking.

We did not expect to find small coefficients that were barely statistically significant or dependent on stumbling upon a fragile model specification. The standard here was higher. Perhaps a model specification we have not tried would produce statistically significant coefficients, but we are not satisfied that the search for the just-so model would be good enough. In the end, we do not report on these models here because we lack confidence in them. The stakes are high, and the data seems insufficient to draw strong inferences.<sup>105</sup> The clear implication is that our data does not allow us to claim that election administration expenditures are systematically related to the presumptive explanations of electoral disadvantage.<sup>106</sup>

But what about minority voter disadvantage? Perhaps the most revealing aspect of our findings is that minority voter disadvantage is seemingly *not* related to fiscal constraints. In light of this null finding, what can be said about electoral marginalization? After all, it is indisputably the case that minorities, living and voting in minority communities, are often impaired by subpar election administration. The Leadership Conference Education Fund recently reported:

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105. Of course, this is not to say that more theoretical work on causal links might not lead the way towards findings of clear causal effects. We strongly encourage such work. Our data and analysis, however, simply do not presently support such claims.

106. There are many other possible explanations. For example, an unobserved independent variable might drive election administration expenses (and also covary with a host of other variables). Perhaps the most likely candidate for such a variable is local party politics. We did not include this variable in our dataset in part because of significant theoretical and data-collection difficulties (e.g., it is often difficult to determine which elected and nonelected officials drive budgetary decisions over multiple years). That said, the UNC-Charlotte research team has considered this possibility in North Carolina. See Zachary Mohr, JoEllen V. Pope, Martha E. Kropf & Mary Jo Sheperd, *Strategic Spending: Does Politics Influence Election Administration Expenditure?*, 63 AM. J. POL. SCI. 427 (2019) (finding that political partisanship does not appear to influence election administration expenditures in North Carolina).

[A] growing number of states and localities across the country have attempted to suppress voter participation among Black and Brown communities in various ways. States have shortened voting hours and days, enacted new barriers to voter registration, purged millions of eligible votes from the rolls, implemented strict voter identification laws, reshaped voting districts, and closed polling places.<sup>107</sup>

The incongruity between our findings and common beliefs about the fiscal deprivation of minority communities raises several interesting possibilities, all of which should form the basis for future research.

One possibility is that our sample set does not include locations in which minority voter disadvantage exists. This explanation is unlikely, as our sample contains large, diverse cities including Houston, Phoenix, and Los Angeles, in which minority voters are often confronted with woeful election administration.<sup>108</sup> A second possibility is that roughly even election expenditures across counties and census tracts obscure uneven needs. For example, minority populations may more often require certain voting services, like ballot language assistance, than is the case for other populations. If true, jurisdictions serving such populations need *excess* funding, and even an equitable level of funding would prove inadequate and result in a variety of cascading problems. While possible, it seems unlikely that minority voters have unique needs that are drastically different from others.

Another possibility is that election laws disproportionately impact minority voters *despite* sufficient election expenditures. That is, perhaps the right to vote is inherently fragile, thereby elevating the significance of preexisting infirmities.<sup>109</sup> Under this possibility, the burdens on minority voters caused by, for instance, polling place closures or cutbacks to early voting days, while very real, simply have little to do with funding. If these burdens exist independent of any cost concerns, a different set of non-expenditure-related reforms are warranted.

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107. THE LEADERSHIP CONF. EDUC. FUND, THE LEADERSHIP CONF. ON CIV. & HUM. RTS., DEMOCRACY DIVERTED: POLLING PLACE CLOSURES AND THE RIGHT TO VOTE 6 (2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf> [<https://perma.cc/86B3-MH7E>].

108. See, e.g., Alexa Ura, *Harris County Clerk Apologizes to Voters, "Takes Full Responsibility" for Long Waits to Vote in Houston*, TEX. TRIB. (Mar. 6, 2020, 10:00 AM), <https://www.texastribune.org/2020/03/06/harris-county-clerk-apologizes-long-waits-vote-houston> [<https://perma.cc/69YQ-ZWW4>] (describing "excessively long lines experienced at voting sites serving mostly black and Hispanic communities"); Dianna M. Nández & Agnel Philip, *Maricopa County Residents Purged from Voter Rolls More Than 1 Million Times in Past Decade*, AZCENTRAL, <https://www.azcentral.com/story/news/politics/elections/2018/11/04/minorities-poor-areas-most-affected-maricopa-county-voter-purges/1855248002> (last updated Nov. 4, 2018, 1:47 PM) [<https://perma.cc/2V23-LEYU>] ("Purges of inactive voters in Maricopa County over the past 10 years have disproportionately affected lower-income communities, where minorities make up a larger share of the population . . .").

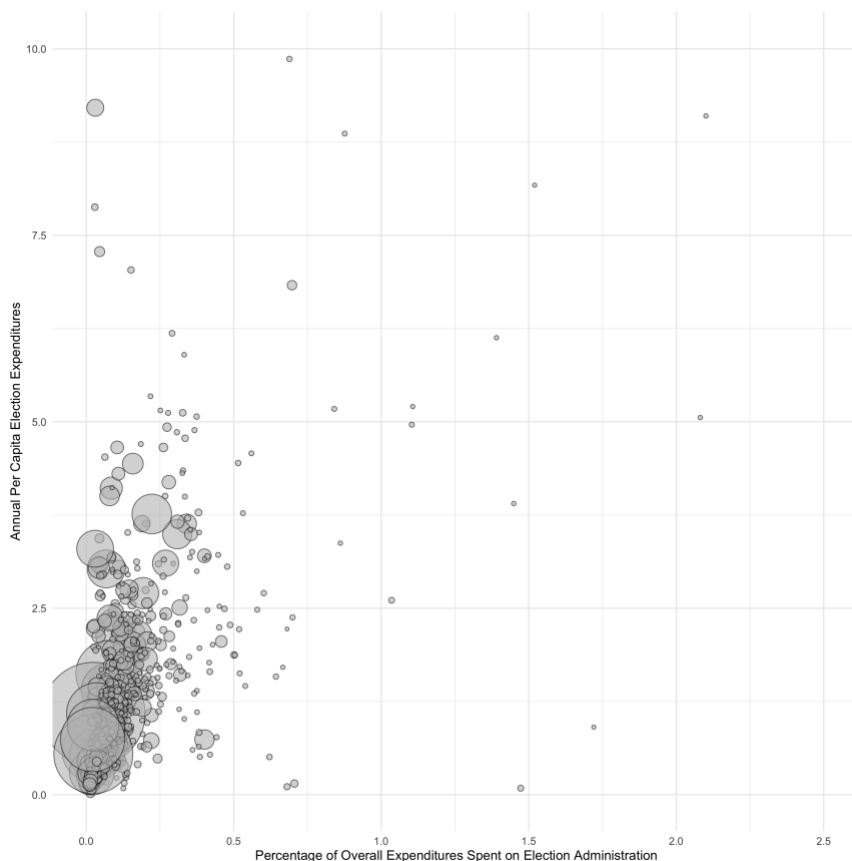
109. See Joshua S. Sellers & Justin Weinstein-Tull, *Constructing the Right to Vote*, 96 N.Y.U. L. REV. (forthcoming 2021).

Finally, there is of course the possibility that our methodology fails to capture the relevant unit of analysis. Perhaps counties, census tracts, and municipalities are not where we should expect to find election expenditure disparities. It is possible that such disparities would only be revealed through more granular neighborhood appraisals. Unfortunately, our data does not capture that level of detail. We hope that others will use our data as a starting point for exploring these possibilities.

### *C. Comparing Democracy and Burritos*

Implicit in the previous figures is a measure of how much municipalities and counties spend on elections. The numbers tend to be quite low. Of course, there are numerous outliers, but typically, a municipality spends only a few dollars per person on election work. Counties tend to spend more, but still typically spend less than the price of a burrito. This is a measure of absolute values. What about relative expenditures? Figure 10 shows absolute and relative investments in election administration. Each dot represents a municipality in one of the four states where we collected data. The vertical axis shows election expenditures in absolute terms. The horizontal axis shows election expenditures in relative terms (the percentage of the municipal budget devoted to election work).

FIGURE 10: SCATTERPLOT OF MUNICIPAL ABSOLUTE AND RELATIVE ELECTION ADMINISTRATION EXPENDITURES

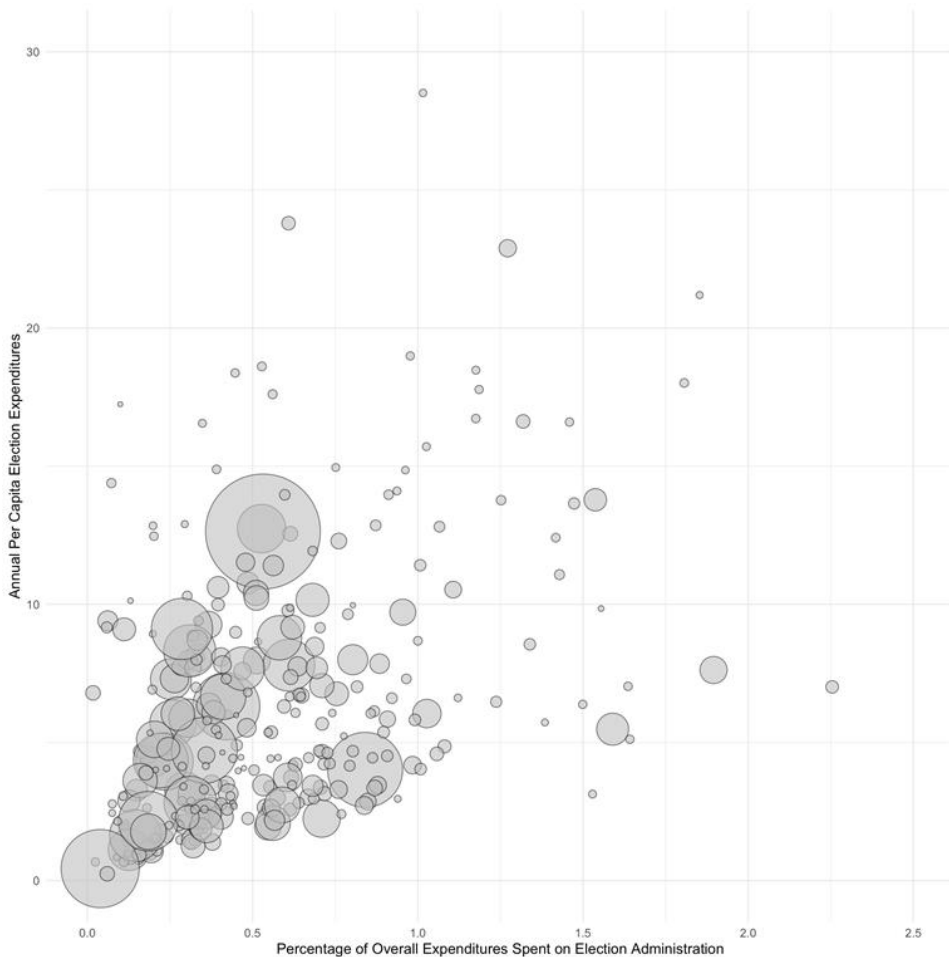


As the Figure makes clear, most municipalities spend less than one percent of their budgets on elections.<sup>110</sup> Many spend far less. Figure 10 also suggests that municipalities that spend more on elections in absolute terms also spend more on elections in relative terms. As Figure 11 shows, the same applies to county expenditures.

110. By contrast, local governments often spend around five percent of their general expenditures on police protection. BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., STATE AND LOCAL GOVERNMENT EXPENDITURES ON POLICE PROTECTION IN THE U.S., 2000-2017, at 1, 6 (2020), <https://www.bjs.gov/content/pub/pdf/slgeppus0017.pdf> [<https://perma.cc/YPF4-9UDT>].



FIGURE 11: SCATTERPLOT OF COUNTY ABSOLUTE AND RELATIVE ELECTION ADMINISTRATION EXPENDITURES



Most observed counties spend less than ten dollars per capita on elections, and very few spend more than twenty dollars per capita. Election administration in most counties accounts for less than one percent of their expenditures, though there are more outliers here than in Figure 10.<sup>111</sup>

111. See Auburn Professor and National Institute for Election Administration Research and Practice Director Comments on Election Technology in Light of Iowa Caucus Issues, AUBURN UNIV. (Feb. 4, 2020), <https://ocm.auburn.edu/experts/2020/02/041249-iowa-caucus-issues.php> [<https://perma.cc/48WA-3F7Q>] (“[O]ur study indicates that the average portion of a county budget spent on election operations is about 0.5 percent—more or less in some places of course, but likely

## IV. REIMAGINING DOCTRINE

Overall, one of the animating purposes of this project is to inspire further thinking about the relationship between election expenditures and election law doctrines. How might expenditure data be relevant in election law litigation? This Part responds to the findings and explores potential doctrines under which election expenditures might be considered.

A clarifying point at the outset: our data collection was focused on inputs. Given the consistently expressed need by election administrators for more money, we wanted to uncover how much money is being spent, on average, and whether any identifiable spending patterns exist. As noted above, we largely found election expenditures to be idiosyncratic. This general finding renders inapposite many of the most common election law claims. Absent evidence of spending disparities between majority-minority and majority-white communities, Section 2 of the Voting Rights Act, which forbids any “standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,”<sup>112</sup> is unviable. Likewise, with no evidence of the intentional deprivation of election expenditures to select communities, Fourteenth Amendment claims based on intentional discrimination are rendered moot.

The larger point is that any viable legal claim premised on unequal or inadequate election expenditures rests on the ability to show a demonstrable link between spending (inputs) and the quality of election administration (outputs). Our data is focused only on the former. Consequently, the legal analysis that follows is speculative. We wish there were a data repository tracking election performance at the local level—something akin to what the MIT Election Data and Science Lab provides for the state level.<sup>113</sup> If so, we could easily compare our data against various indicators of election administration and highlight where poor election administration corresponds to low spending. But that is currently not possible. Presuming possession of the relevant information, however, we believe the doctrines discussed below are germane.

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less than 1 percent most everywhere. That is not a lot of investment for the government function that undergirds our democracy.”).

112. 52 U.S.C. § 10301.

113. *Election Performance Index: Indicators*, MIT ELECTION DATA & SCI. LAB., <https://elections.mit.edu/#/data/indicators> (last visited Mar. 11, 2021) [<https://perma.cc/NBG7-XRV>].

*A. Bush v. Gore as Precedent*

Section I.C briefly introduced the possibility of relying on *Bush v. Gore* as a basis for challenging the differential treatment of voters.<sup>114</sup> Recall that the case suggested that “arbitrary and disparate treatment” of voters by a state is unconstitutional.<sup>115</sup> Also recall that the import given to this pronouncement is widely contested, with some arguing that it applies, if at all, only to circumstances nearly indistinguishable from those of the case, and others arguing that it introduced a new legal basis to contest differential voter treatment more broadly. A thorough summary of the debate is outside the scope of this Article, but, in his comprehensive analysis of *Bush v. Gore*’s jurisprudential legacy, Michael Morley concludes that the decision’s “Uniformity Principle,”<sup>116</sup> the principle mandating the uniform treatment of voters, “has evolved into a fully enforceable, generally applicable election-law doctrine.”<sup>117</sup> In short, it is plausible that *Bush v. Gore* can be relied on to challenge intercounty disparities in election expenditures when such disparities are found to meaningfully influence voter services.

Consider the following scenario. Imagine a county, flush with cash, in which county election officials decide to adopt a state-of-the-art voting machine. The machine is easy to use, efficient, virtually unhackable, and records votes in both electronic and paper forms. Further, the county can afford to pay a large number of election staffers to guide voters through the process of using the machine without difficulty. Voters in the county universally laud the voting process, and voter error rates are nonexistent.

Now assume the neighboring county, which is demographically indistinguishable and of similar size, is cash strapped. Its voters cast their ballots on decades-old electronic voting machines that are challenging to operate, highly vulnerable to cyberattack, and do not provide a paper trail. Polling place assistance exists, but is minimal, and voters routinely leave the polling site unsure if their preferences were accurately recorded. Error rates exceed those found elsewhere in the state. Voters in the county detest the voting process and many have withdrawn from participation due to frustration. Are these voters simply out of luck?

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114. 531 U.S. 98 (2000) (per curiam); *supra* Section I.C.

115. *Bush*, 531 U.S. at 104–05.

116. Michael T. Morley, *Bush v. Gore’s Uniformity Principle and the Equal Protection of the Right to Vote*, 28 GEO. MASON L. REV. 229, 231 (2020).

117. *Id.* at 233.

This scenario provides an example of when a *Bush v. Gore*-style challenge based around disparate resources might be sensible.<sup>118</sup> Voters in the county with the outdated voting machines should have standing to challenge the comparative financial inadequacy of their election system. Of course, and to reiterate, any allegations based on such intercounty disparities would need to be tethered to actual voting problems.<sup>119</sup> And it would be necessary to trace the funding disparity to a decision made by state or local officials.<sup>120</sup> Thorny questions will undoubtedly arise about administrative costs, funding streams, and unfulfilled obligations.<sup>121</sup> But, where record evidence establishes a link between election expenditures and electoral disadvantage, we believe *Bush v. Gore* should serve as a precedent on which litigants can rely.

Perhaps a challenge could be structured around findings of the sort we provide in this Article—per capita election funding. As noted in Part II, our findings are most probative when used to compare neighboring or similarly situated counties. It is worth repeating that complete equality in election spending is both implausible and unwise; it fails to capture local idiosyncrasies. When jurisdictions can be fairly compared, however, the Equal Protection Clause might be interpreted to require *substantial equality* of election services across counties within each state. Thus, when a cash-strapped county with limited polling sites has substantially higher voter wait times than like counties in the state, such a disparity would be actionable. A claim of this sort is most promising where state (opposed to local) officials largely oversee and finance elections and where funding and budgetary decisions can be scrutinized.

Incidentally, plaintiffs who challenged Georgia's election system in 2019 made a version of this claim. As background, the 2018 election in Georgia—in which nearly four million votes were cast—was centered around the gubernatorial election between Secretary of State Brian Kemp and former minority leader in the Georgia House of Representatives Stacey Abrams. Following Kemp's election, Abrams

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118. See Hasen, *supra* note 55, at 206 (“[I]f county discretion leads to significantly greater opportunities to vote for voters in some counties rather than others, an equal protection claim seems plausible.”).

119. See Morley, *supra* note 116, at 262 (“Courts have also invalidated substantial variations among localities’ election procedures or resources that led to disparities in voting opportunities.”).

120. See generally Edward B. Foley, *Refining the Bush v. Gore Taxonomy*, 68 OHIO ST. L.J. 1035 (2007) (providing a useful taxonomy of hypothetical *Bush v. Gore*-type claims). Foley exhibits skepticism of at least one version of the claim we endorse. *Id.* at 1047 (“A local ballot shortage caused by the locality’s mistaken interpretation of a statewide mandate would obviously be much less easy to justify than a local ballot shortage caused by a deliberate, budget-cutting decision pursuant to express legislative authority to make this local policy choice.”).

121. See Sellers & Scharff, *supra* note 73, at 1395–96; Sellers & Weinstein-Tull, *supra* note 109.

formed an organization—Fair Fight Action—that challenged multiple aspects of Georgia’s election system.<sup>122</sup>

The organization’s amended complaint contains a wide variety of claims, including one alleging that “Georgia’s voting system [] violates Equal Protection because voters are subject to arbitrary and inconsistent differences in rules, processes, and burdens depending on where voters happen to reside.”<sup>123</sup> By “abdicating their responsibilities under state law,”<sup>124</sup> the complaint argues, state officials “have allowed the voting processes in the 159 counties in Georgia to devolve into an arbitrary and inconsistent web of actual laws, erroneous interpretations of laws, and local rules that are often unannounced until applied to a voter. These inconsistent, nonuniform rules subject voters to unequal voting strength.”<sup>125</sup> Citing *Bush v. Gore*, the complaint accuses state officials of turning a blind eye to shortcomings within certain local election systems and to the differential allocation of resources across counties.<sup>126</sup> The type of data we provide offers, at a minimum, a useful supplement to claims of this sort.

Finally, the plausibility of a claim rooted in *Bush v. Gore*, or the Equal Protection Clause generally, is strengthened by the categorization of the right to vote as a fundamental right.<sup>127</sup> Unconstitutional abridgment or deprivation of the right to vote need not occur through express prohibition or restraint; government failure to facilitate the right to vote is also constitutionally problematic. Put differently, guaranteeing the right to vote, yet failing to finance the necessary apparatus for voters to effectively exercise that right, is unconstitutional (in)activity.<sup>128</sup> In sum, election expenditure data permits intercounty comparisons that enhance litigants’ claims to equality in the distribution of election services.

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122. See Jelani Cobb, *Stacey Abrams’s Fight for a Fair Vote*, NEW YORKER (Aug. 12, 2019), <https://www.newyorker.com/magazine/2019/08/19/stacey-abrams-fight-for-a-fair-vote> [https://perma.cc/32WF-9MTP]. The litigation was initially entitled *Fair Fight Action, Inc. v. Raffensperger*. E.g., Plaintiffs’ Memorandum of Law in Support of Motion for a Temporary Restraining Order and Preliminary Injunction, *Fair Fight Action, Inc. v. Raffensperger*, No. 18-cv-05391 (N.D. Ga. Dec. 16, 2019), ECF No. 159-1. Fair Fight Action, Inc. has since dropped out of the litigation, which is now entitled *Ebenezer Baptist Church of Atlanta v. Raffensperger*.

123. Amended Complaint for Declaratory and Injunctive Relief at 72, *Fair Fight Action, Inc. v. Raffensperger*, No. 18-cv-05391 (N.D. Ga. Feb. 19, 2019), ECF No. 41.

124. *Id.*

125. *Id.* at 72–73.

126. *Id.*

127. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666–67 (1966).

128. See Sellers & Weinstein-Tull, *supra* note 109.

*B. Electoral Adequacy*

As emphasized throughout this Article, the absence of election expenditure data stifles reform efforts. Data along the lines of what we provide here introduces the possibility of a legal claim premised on the notion of electoral adequacy. The notion of adequacy in the electoral context is conceptually tricky, yet it avoids the challenges presented by equality arguments. Moreover, the concept of adequacy has been helpfully explicated in the context of education reform litigation.<sup>129</sup>

As background, advocates for educational equity initially brought claims seeking equal, or roughly equal, educational spending per pupil.<sup>130</sup> That strategy shifted in 1989 at the start of what is conventionally known as the “third wave” of education litigation,<sup>131</sup> after which plaintiffs sought not equality per se, but instead, a minimal, or adequate, level of educational services to which children are entitled. As summarized by Richard Briffault,

Under the adequacy theory, the constitutional violation is not that school districts depend on drastically unequal property tax bases or that per pupil expenditures vary across districts largely according to local wealth, but that the state government has failed to assure that all public school children in the state are receiving an adequate education.<sup>132</sup>

The success of the shift towards educational adequacy—one study puts litigants’ success rate at sixty percent—turned on the general amenability of state officials to educational standards,<sup>133</sup> as well as judges’ willingness to creatively utilize their remedial authority.<sup>134</sup> How might these lessons be applied in the electoral context?

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129. For a fuller examination of the concept of adequacy in the educational and election litigation contexts, see *id.*

130. William S. Koski, *Beyond Dollars? The Promises and Pitfalls of the Next Generation of Educational Rights Litigation*, 117 COLUM. L. REV. 1897, 1901 (2017) (“Although early litigation focused on the development of the right to equal per-pupil funding, or at least a school finance scheme not dependent upon local property wealth, more recent litigation has sought to define qualitatively the substantive education to which children are constitutionally entitled.”); Caroline M. Hoxby, *All School Finance Equalizations Are Not Created Equal*, 16 Q.J. ECON. 1189, 1189–92 (2001).

131. Koski, *supra* note 130, at 1904.

132. Richard Briffault, *Adding Adequacy to Equity: The Evolving Legal Theory of School Finance Reform* 1–2 (Columbia L. Sch. Pub. L. Working Paper, Paper No. 06-111; Princeton L. & Pub. Affs. Working Paper, Paper No. 06-013, 2006), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=906145](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=906145) [<https://perma.cc/ZRE5-VU8W>]; see Koski, *supra* note 130, at 1904 (“An adequate education is understood to mean a specific qualitative level of educational resources or, focusing on outcomes, a specific level of resources required to achieve certain educational outcomes based on external and fixed standards.”).

133. Koski, *supra* note 130, at 1906.

134. Christopher S. Elmendorf, *From Educational Adequacy to Representational Adequacy: A New Template for Legal Attacks on Partisan Gerrymanders*, 59 WM. & MARY L. REV. 1601, 1631–32 (2018).

For one, serious theoretical work needs to be done regarding what a baseline level of election services should entail. In the educational context, policymakers and judges made precise determinations about everything from library holdings to the number of calculators needed in a trigonometry class.<sup>135</sup> We need similar, deep thinking about election administration analogues.<sup>136</sup>

Second, we need more reliable data about election spending. As is true for all rights, at some point, fiscal considerations must be broached, as appropriations choices are inevitably informed by available funds. Education reformers have the benefit of transparency when it comes to educational spending. Until we have a better sense of what is currently being spent in the election context, pragmatic recommendations remain challenging.

Third, reformers need to construct viable legal theories in support of the notion of electoral adequacy. School finance plaintiffs evolved their theories from equity, to adequacy, and beyond.<sup>137</sup> Following the Supreme Court's decision in *San Antonio Independent School District v. Rodriguez*, rejecting plaintiffs' claim that inequitably funded school districts violate the Equal Protection Clause,<sup>138</sup> legal challenges are now typically brought under state constitutions. State constitutions also provide a promising, though completely undeveloped, avenue for electoral adequacy claims.

Josh Douglas identifies several states with constitutions in which elections are guaranteed to be either "free and open" or "free and equal."<sup>139</sup> These provisions provide a textual hook on which electoral adequacy claims might be brought, a textual hook that is not qualitatively different than the state constitutional provisions promising "thorough and efficient" or "general and uniform" educational systems. A successful electoral adequacy claim might order

state legislatures to clarify the maximum amount of time that voters should wait in line to vote, how many voting machines per capita each jurisdiction is required to maintain, how poll workers are to be trained, or how much money each jurisdiction is to receive from the state for election technology.<sup>140</sup>

In sum, electoral adequacy warrants further analysis.

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135. Sellers & Weinstein-Tull, *supra* note 109.

136. *Id.*

137. See generally Aaron Y. Tang, *Broken Systems, Broken Duties: A New Theory for School Finance Litigation*, 94 MARQ. L. REV. 1195 (2011) (discussing the traditional legal theories and arguing for a new approach, the "broken system theory").

138. 411 U.S. 1, 54–55 (1973).

139. Douglas, *supra* note 67, at 144–49.

140. Sellers & Weinstein-Tull, *supra* note 109.

*C. Broadening the Balancing Test*

In addition to challenges based on *Bush v. Gore* or state constitutions, the aforementioned *Anderson-Burdick* standard of review might be expanded to account for inadequate election expenditures. We refer to “expanding” or “broadening” the balancing test simply because, to date, assessments of election administration resources have not meaningfully factored into the doctrine. Recall that *Anderson-Burdick* balances burdens on voters against state interests.<sup>141</sup> If a state or county enacts a severe burden on the right to vote, that restriction will be subject to strict scrutiny.<sup>142</sup> By contrast, if the restriction is “evenhanded” and “protect[s] the integrity and reliability of the electoral process,”<sup>143</sup> courts balance the burden on the voter “against the ‘precise interests put forward by the State as justifications for the burden imposed by its rule.’ ”<sup>144</sup>

It is uncommon for courts to find that government regulations constitute severe burdens on voters. That said, *Anderson-Burdick* introduced a self-consciously “flexible standard” that might have traction here.<sup>145</sup> Take the earlier example about voting machines. Voters in the impoverished county are arguably subjected to an impermissible burden on their right to vote: their voting experience is laborious, and most notably, the sanctity of their votes is shaky, given the vulnerability of the voting machines and the lack of a paper trail. The reason the county has not upgraded its machines is because it cannot afford to do so. Under *Anderson-Burdick*, state and local governments should, we believe, be subjected to exacting scrutiny that requires an explanation as to why their elections are inadequately funded. This is essentially another type of electoral adequacy claim, as outlined in the previous Section.

Many questions might be raised about the county’s fiscal decisions under the balancing test. Sticking with the example, what interests can the county advance in defense of its use of a problematic voting machine? Are fiscal constraints alone sufficient to justify the county’s choice to maintain the status quo? To take another example, could a county close a large number of polling sites in the interest of, say, balancing its budget? And when would voters have a right of action against the state in response to such closures?

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141. See *supra* notes 51–52 and accompanying text.

142. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189–90 (2008).

143. *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983)).

144. *Id.* at 190 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)).

145. *Burdick*, 504 U.S. at 434.



These are difficult questions that we hope to tackle in depth in future work. For now, we simply suggest that litigants supplement traditional legal theories with claims regarding election expenditures. Whether under *Bush v. Gore*, state constitutions, or *Anderson-Burdick*, we believe there is doctrinal space for novel arguments along these lines.

#### *D. Race to the Top?*

One of the fundamental difficulties in answering the questions presented above is the absence of an agreement about what a baseline level of voting services entails. How long is too long to wait in line at a polling site? Is a paper trail for an electronic voting machine essential? How many early voting days, if any, should be provided? Fundamental differences of opinion over these issues are widespread.

If, as posited above, election law doctrines begin to account for intercounty disparities in election expenditures that relate to voting irregularities or inequalities, would this effectively require a statewide leveling up of election services? Put differently, do intercounty comparisons necessitate equality of services? We do not think so. For one, there are many reasons to favor local experimentation in the realm of election administration.<sup>146</sup> We should encourage creative efforts to expedite the voting experience, increase the number of available voting days, and expand the electorate to nonvoting populations. Election administration is not an area where a one-size-fits-all approach is sensible, and a simplistic emphasis on costs alone elides this complexity.

Second, we should remain sensitive to the possibility that there is waste and inefficiency within the election system that can be eliminated without compromising electoral equity. The elimination of such waste could result in lowering election expenditures. Simply because one county or city makes such changes should not bring that

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146. Sellers & Scharff, *supra* note 73, at 1400–02; see Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 975 (2019):

Local governments, the argument goes, serve as critical sites for democratic participation and local political engagement. Local participation reinforces bedrock public values as people learn to cooperate to solve problems that face much more significant collective-action challenges at larger scales. As a result, local governments have a distinctive capacity to reflect community needs in polities that foster local voice;

Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1233 (2018) (“City power is necessary to vindicate the values of diversity, majority rule, and local self-government.”); Heather K. Gerken, *The Supreme Court, 2009 Term — Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 23 (2010) (“[S]ome think that localities represent *better* sites for pursuing federalism’s values because they are closer to the people, offer more realistic options for voting with one’s feet, and map more closely onto communities of interest.”).

jurisdiction under scrutiny merely because it spends less on elections than a comparable jurisdiction. Again, to the extent that election expenditures are legally relevant, it is because of their relationship to inadequate voter services.

In short, even under the doctrinal possibilities explored above, we do not endorse a legal requirement mandating that all counties within a state emulate the single county that seemingly runs elections the best. That said, we reiterate our belief that policymakers, judges, and other experts should create standards for assessing election administration performance.<sup>147</sup> These standards should, in our view, exceed the current legal floor that prohibits only outright discrimination or manifest injustices.<sup>148</sup>

All of this heightens the urgency and importance of gathering more data to further explore the currently obscure relationship between election expenditures and election services. With that data, the likelihood of doctrinal evolution premised on disparate election expenditures will increase.<sup>149</sup>

## V. OTHER REFORM PROPOSALS

This Part very briefly weighs the pros and cons of several nondoctrinal proposals for election administration reform. Overall, we believe that more money should be spent on election administration. In what follows, we explore several policy proposals pertaining to election funding. Importantly, most of these proposals are not mutually exclusive.

### A. Direct Aid

Sometimes the most obvious solution is the best one: perhaps we should just give more money to counties and cities to administer elections. Certainly, plenty of anecdotal evidence suggests that local officials feel resource deprived. Direct aid is most sensible when administered as part of an aid formula.<sup>150</sup> Unconditional direct aid

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147. Sellers & Weinstein-Tull, *supra* note 109.

148. See, e.g., *Burdick*, 504 U.S. at 434 (noting that only “severe” restrictions on voting rights receive the highest level of legal scrutiny).

149. In addition, as noted above, more data demonstrating similar expenditures across counties will allow for the rejection of insincere claims by county and city governments that their inability to meet a minimum standard of election services is funding related.

150. See Bo Zhao & Katharine Bradbury, *Designing State Aid Formulas*, 28 J. POL’Y ANALYSIS & MGMT. 278, 279 (2009) (“A large portion of state aid is distributed through formulas, some of which allocate categorical grants for specific programs, some of which provide unconditional lump-sum grants aimed at general fiscal equalization, and many of which fall somewhere in between.”).

that affords local governments complete discretion is inadvisable in this context.<sup>151</sup>

Aid that is tethered to local needs provides the best chance at electoral equity.<sup>152</sup> As discussed in the previous Part, the absence of standards for assessing election administration performance complicates our ability to make suggestions that are overly categorical. We are confident, however, in claiming that many local governments are currently under resourced and that state governments (and ideally the federal government) should provide additional funds in support of increased and improved election services.<sup>153</sup>

### *B. Mandated Spending Levels*

Though direct aid tied to a well-crafted aid formula may be the best solution, there are several alternatives worth considering. One alternative involves states mandating certain spending levels by local governments. This would, at first glance, seem to accomplish the same leveling up as direct aid (with conditions), yet would preserve a greater degree of local control.

The drawback to this suggested solution is the potential discordance between spending levels and the quality of election services. Simply mandating spending levels does nothing to ensure that local governments use their resources wisely. County officials might invest in robust cybersecurity measures while failing to pay for a sufficient number of polling sites. Moreover, the prophylactic nature of this reform does not account for local tailoring. As noted above, spending levels, while probative—particularly when they are woefully low—do not tell a complete story. It would be foolish to mandate increased spending levels in a jurisdiction that currently excels at election administration.

Finally, for financially struggling jurisdictions, this proposal would require redirecting sparse resources away from other underfunded responsibilities, including public schools and public

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151. At least until a threshold of electoral equality is achieved.

152. See COMM. ON NAT'L STAT., NAT'L RSCH. COUNCIL OF THE NAT'L ACADS., STATISTICAL ISSUES IN ALLOCATING FUNDS BY FORMULA 21–22 (Thomas A. Louis, Thomas B. Jabine & Marisa A. Gerstein eds., 2003) (describing how aid programs can encourage spending on certain local services).

153. Essentially, we are advocating for “categorical equity” in elections. See Helen F. Ladd & John Yinger, *The Case for Equalizing Aid*, 47 NAT'L TAX J. 211, 212 (1994) (“The most fundamental equity argument for equalizing aid is categorical equity, which exists when all citizens have fair access to public services that are thought to be particularly important to their opportunities in life.”).

benefits programs. On balance, we do not find this particular reform to be promising.

### *C. Nonlocal Election Administration*

Greater state involvement in and oversight of elections are additional commonly proposed solutions to electoral dysfunction.<sup>154</sup> Legally, local governments lack sovereignty and, as such, enjoy no inviolable protection against state intrusion.<sup>155</sup> Even local governments that have been afforded “home rule” are not fully protected from state preemption.<sup>156</sup> Consequently, if a state chooses to completely run elections on its own, without local government involvement, the state’s decision would, in most instances, be sound.

On the other hand, states have come to rely on local governments to administer elections and, for the most part, have no vested interest in the outcome of minor local elections.<sup>157</sup> In addition, complete state-level management of elections would conceivably cost the state a significant sum, perhaps more than states would prefer to pay; at a minimum, a reallocation of state/local funds would be required. Relatedly, state management would require assembling a team of officials to oversee election administration.

Nevertheless, this is a potentially promising reform effort. The United States is an outlier in the way it manages elections. Most of the world has moved towards centralization, sometimes partisan, sometimes not.<sup>158</sup> Our highly decentralized process, while justifiably protective of innovation, contains inefficiencies that could be mitigated through greater state consolidation and control.<sup>159</sup>

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154. Greater federal involvement is less commonly endorsed due to both political and constitutional constraints. See U.S. CONST. art. I, §§ 2, 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”). That said, political constraints aside, Congress possesses expansive authority to regulate “most electoral levels and topics.” Nicholas O. Stephanopoulos, *The Sweep of the Electoral Power*, CONST. COMMENT. (forthcoming 2021) (manuscript at 62), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3715826](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715826) [<https://perma.cc/8BLL-3978>].

155. Sellers & Scharff, *supra* note 73, at 1371–74; Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 115–17 (2017).

156. Sellers & Scharff, *supra* note 73, at 1373.

157. For a detailed overview and analysis of state preemption in the electoral context, see *id.*

158. Daniel P. Tokaji, *Comparative Election Administration: A Legal Perspective on Electoral Institutions*, in COMPARATIVE ELECTION LAW (forthcoming 2021) (manuscript at 7–8), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3500868](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500868) [<https://perma.cc/D4P6-GRAT>].

159. See generally ALEC C. EWALD, THE WAY WE VOTE: THE LOCAL DIMENSIONS OF AMERICAN SUFFRAGE (2009) (describing the impact of local variation on voting practices in the United States).

*D. Forced Consolidation and Soft Consolidation*

A final possibility involves the forced consolidation of multiple small communities into mega-election-administration districts. Such districts could then allocate funding among localities. School districts often do just that; they combine multiple towns, townships, villages, cities, and unincorporated areas into one big district that then redistributes resources and sets policies among schools. The analogy to schools is telling because history suggests massive resistance to such efforts (e.g., busing schemes to integrate schools). Potentially, there would be significant local resistance to forced consolidation schemes in this context as well.

But election administration and schooling are also *not* analogous in important ways. Perhaps most centrally, election administration typically does not create the same visceral responses as questions of where one's children will spend a good chunk of each day. Also, as Section III.C showed, most communities devote less than one percent of their budget to election administration tasks. Education, by contrast, takes up a sizable chunk of local budgets.<sup>160</sup> Equalizing election administration funding would thus be a smaller task (compared to overall expenditures) than equalizing education funding.

Perhaps the bigger roadblock to forced consolidation schemes is geographical in nature: well-funded electoral jurisdictions are often not adjacent to their poorer neighbors. A geographically contiguous mega-election-district is only sometimes possible. The best hope for this proposal is to shift more and more responsibilities from municipalities to counties that can then equalize resources. In states with few and similarly situated counties, this could go a long way towards equalizing election funding. But in states with many counties that are not similarly situated (e.g., Texas), shifting more power towards counties will do little to equalize resources for the bulk of the population. In these locations, nonlocal election consolidation is preferable.

Beyond forced consolidation is the possibility of soft consolidation, where municipalities retain their separate administrations and responsibilities, but states create structures designed to scale solutions cheaply and efficiently. For example, a state might create a nonobligatory program to purchase technology where

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160. See *Elementary and Secondary Education Expenditures*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/elementary-and-secondary-education-expenditures#> (last visited Mar. 13, 2021) [<https://perma.cc/DDLG-5V2H>] ("In 2017, state and local governments spent \$660 billion, or more than one-fifth (21 percent) of direct general spending, on elementary and secondary education.").

municipalities can freely opt in. This proposal would protect local control and local agency while leveraging economies of scale. If a sufficient number of such programs exist, and a sufficient number of municipalities decide to opt in, this would create a quasi-consolidated election district.

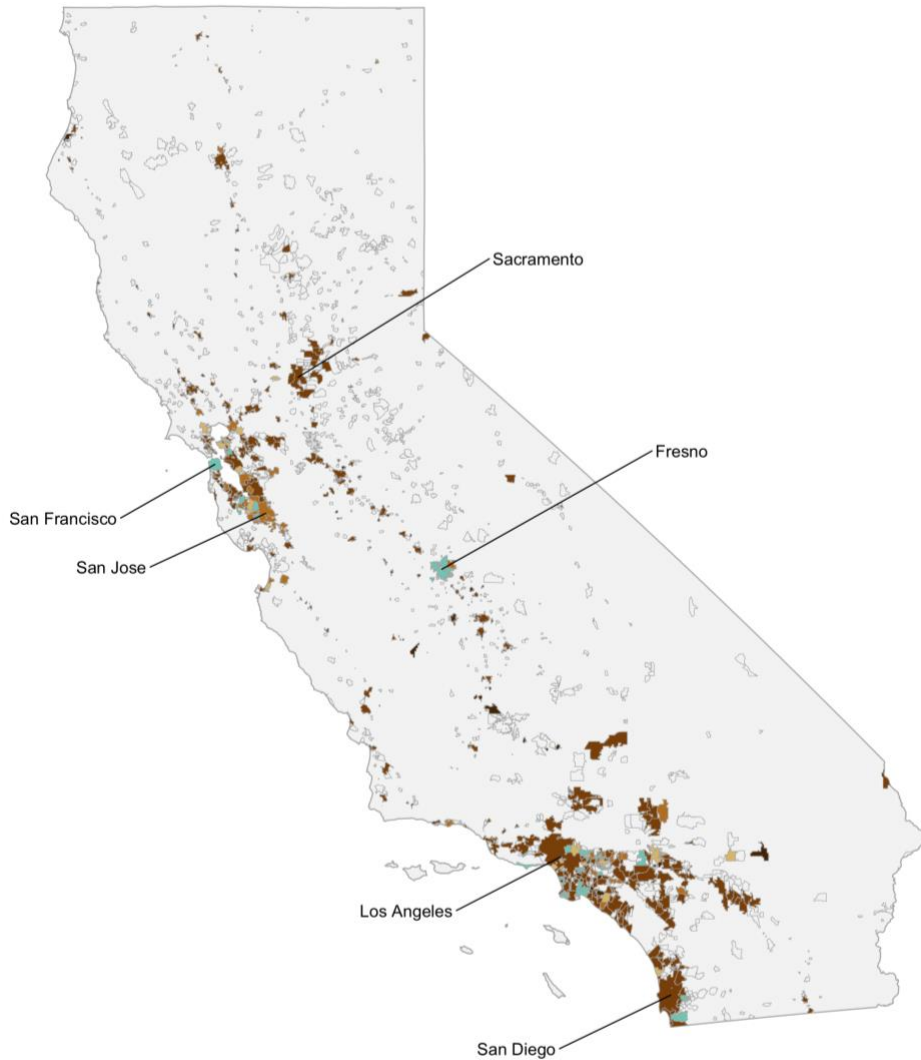
### CONCLUSION

This project only scratches the surface of what remains to be discovered about election expenditures. Nevertheless, this Article has highlighted both how little money is spent on protecting and preserving our most fundamental right—the right to vote—and how much spending variance exists between cities and counties, even those that border one another. The latter revelation introduces a multitude of fruitful lines of inquiry for scholars to pursue.

Beyond the data collection, though, we also offered preliminary thoughts on how our data implicates doctrinal and policy issues pertaining to election administration. Despite its significance, election funding does not meaningfully factor into existing election law doctrines or remedies. We suspect this is due to a lack of data and the enormous complexity associated with “following the money” in our highly decentralized election system. Yet, when financial shortfalls are the cause of electoral disadvantage, perhaps litigants should more forcefully draw out the connections between those disadvantages and identifiable resource disparities. Perhaps democracy on a shoestring is only a partial democracy at best.

## APPENDIXES

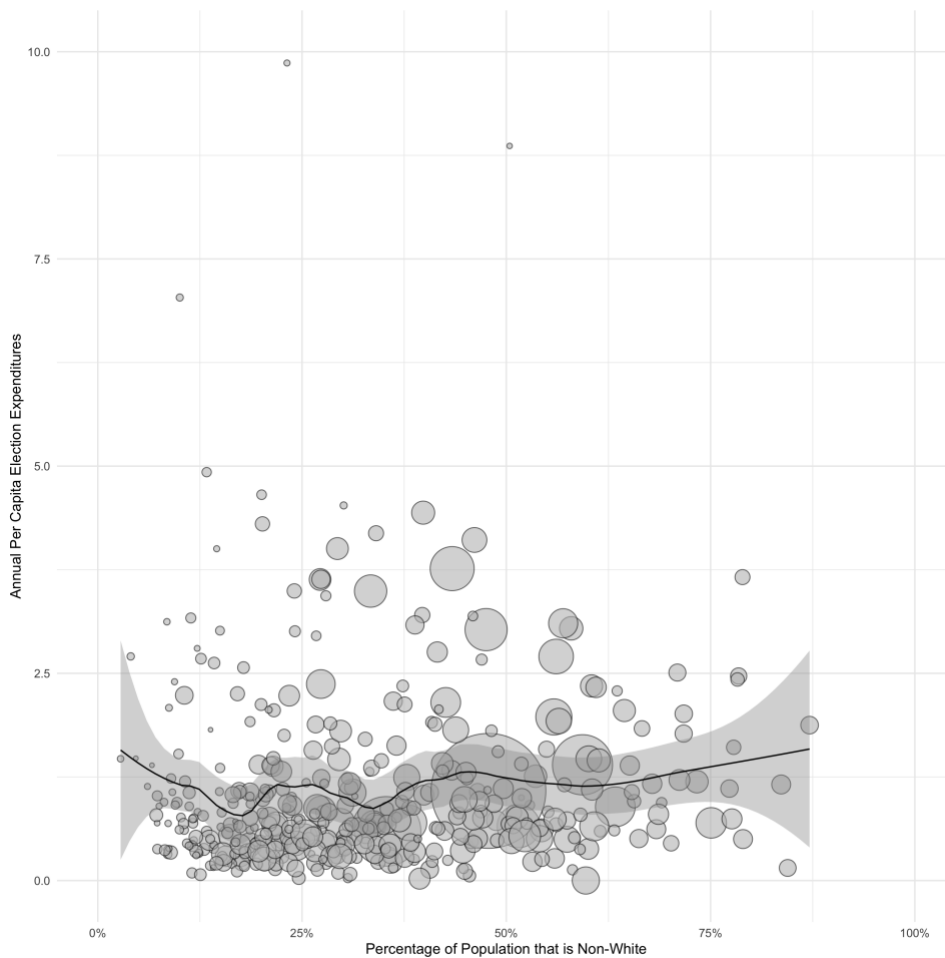
## APPENDIX 1

FIGURE 1 (ALTERNATE): OBSERVED PER CAPITA  
MUNICIPAL EXPENDITURES IN CALIFORNIA

*Notes:* Deepening browns indicate expenditures below state median; stronger greens indicate above state median; grey indicates a band surrounding the state median.

## APPENDIX 2

FIGURE 6 (ALTERNATE): SCATTERPLOT OF ELECTION  
EXPENDITURES TO NON-WHITE POPULATION FOR  
MUNICIPALITIES IN CALIFORNIA – OBSERVED ONLY

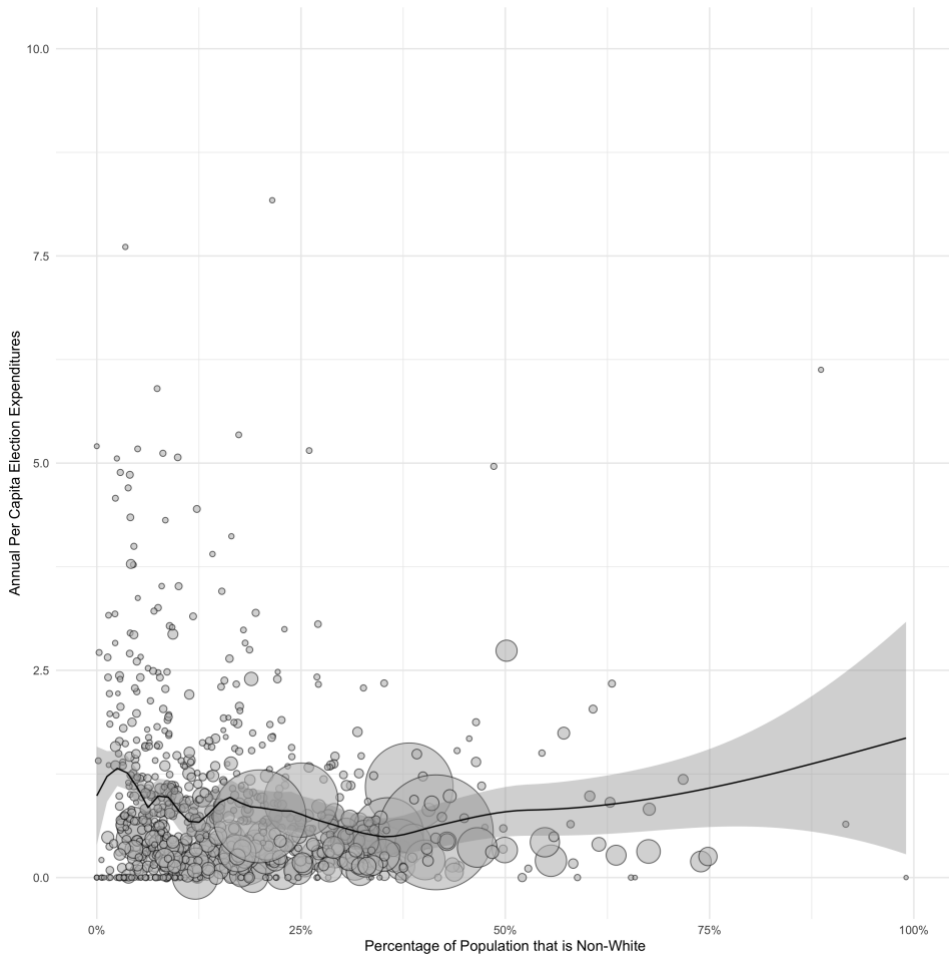


*Notes:* Municipalities are sized by population.  
Extreme outliers removed from Figure.



## APPENDIX 3

FIGURE 7 (ALTERNATE): SCATTERPLOT OF ELECTION  
EXPENDITURES TO NON-WHITE POPULATION FOR  
MUNICIPALITIES IN TEXAS – OBSERVED ONLY



*Notes:* Municipalities are sized by population.  
Extreme outliers removed from Figure.