
POWER AND POWERLESSNESS IN LOCAL GOVERNMENT: A RESPONSE TO PROFESSOR SWAN

*Ann M. Eisenberg**

Are rural communities powerful or powerless? This question arises regularly in today's national public and scholarly discourses. The collective interest in the issue of rural power stems in large part from hotly contested national and state elections in which strong, polarized political preferences play out along geographic lines.¹ Election maps show us how consistently sparsely populated regions, in which people live in small towns or remote counties, emerge an indignant-conservative red.² Big cities, by contrast, predictably materialize with the forbearing-liberal blue. Especially with ever-polarized public health measures implicated by the ongoing pandemic — which has affected matters as intimate as whether face masks are required or not and where³ — we are all acutely cognizant of whether we live in a red state or a blue state, or a red county or a blue municipality.

These enduring, polarized political patterns have drawn attention to an “urban-rural divide” in politics, prompting inquiries into how the nation arrived at this point and what the implications are.⁴ One central implication is the inordinate power that residents of sparsely populated regions wield in various political bodies, including the Electoral College and legislatures at the federal and state level.⁵ For instance, because of the distribution of electoral votes per population in the Electoral College, “one Wyoming voter has roughly the same vote power as four New York voters [in presidential elections].”⁶ In this sense, more sparsely populated communities are powerful to a degree that threatens

* Associate Professor of Law, University of South Carolina School of Law.

¹ See, e.g., Kirk Siegler, *Biden's Win Shows Rural-Urban Divide Has Grown Since 2016*, NPR (Nov. 18, 2020, 5:00 AM), <https://www.npr.org/2020/11/18/934631994/bidens-win-shows-rural-urban-divide-has-grown-since-2016> [<https://perma.cc/A7UE-GL2A>].

² See Alice Park et al., *An Extremely Detailed Map of the 2020 Election*, N.Y. TIMES (Mar. 30, 2021), <https://www.nytimes.com/interactive/2021/upshot/2020-election-map.html> [<https://perma.cc/NX62-SVUB>].

³ See Mike Olson, *Columbia Mayor Steve Benjamin Responds to AG's Letter Regarding Mask Mandate in Schools*, ABC COLUMBIA (Aug. 10, 2021, 6:12 PM), <https://www.abccolumbia.com/2021/08/10/columbia-mayor-steve-benjamin-responds-to-ags-letter-regarding-mask-mandate-in-schools> [<https://perma.cc/52TF-9QJT>].

⁴ See Josh Kron, *Red State, Blue City: How the Urban-Rural Divide Is Splitting America*, THE ATLANTIC (Nov. 30, 2012), <https://www.theatlantic.com/politics/archive/2012/11/red-state-blue-city-how-the-urban-rural-divide-is-splitting-america/265686> [<https://perma.cc/Z9AZ-HJCN>].

⁵ See Eric W. Orts, *Senate Democracy: Our Lockean Paradox*, 68 AM. U. L. REV. 1981, 1981 (2019).

⁶ Chris Kirk, *How Powerful Is Your Vote?*, SLATE (Nov. 2, 2012, 6:04 PM), http://www.slate.com/articles/news_and_politics/map_of_the_week/2012/11/presidential_election_a_map_showing_the_vote_power_of_all_50_states.html [<https://perma.cc/TY6M-TA5W>].

representative democracy itself in a disturbing system of rule by a predominantly older, whiter, more conservative minority.⁷ Commentary focused on this aspect of the question of rural power tends to conclude that rural communities are indeed powerful — and dangerously so.

Yet, while the political urban-rural divide reveals the rural as dangerously powerful, the economic urban-rural divide reveals the rural as the underdog. Larger cities dominate the economy.⁸ This dominance is sometimes attributed to cities attracting talent or being innately more appealing. However, national and global economic restructuring through deregulation, liberalized trade, consolidated agriculture, developments in the energy and environmental sectors, the weakening of unions, and automation have all contributed to depopulating and deteriorating rural landscapes.⁹ Cities are also not necessarily easy to move to, with the widespread skyrocketing of housing costs and local resistance to inclusionary zoning.¹⁰ Meanwhile, poverty rates are higher and more entrenched outside dense urban centers.¹¹ Rural residents still struggle to access high-speed broadband internet, public transportation, and affordable doctors and lawyers. Health outcomes are consistently worse in rural communities than in urban ones.¹² The 2010 recession and the ongoing pandemic have exacerbated all of these trends, shuttering more rural businesses and challenging regional economic vitality.¹³ In this sense, then, many rural communities are relatively disempowered in the daunting economic losses they have borne and challenges they still face.

Both of these geographically themed divides have broad relevance for the role of local government in the United States, given local government's centrality to both political representation and community economic development. In her article *Constitutional Off-Loading at the City Limits*, Professor Swan very usefully tackles a question of law,

⁷ See Kenneth Owen, *Minority Rule Cannot Last in America*, THE ATLANTIC (Dec. 2, 2020), <https://www.theatlantic.com/ideas/archive/2020/12/minority-rule-cannot-last-america/617272> [https://perma.cc/45FG-PQ8E].

⁸ See Richard C. Schragger, *Federalism, Metropolitanism, and the Problem of States*, 105 VA. L. REV. 1537, 1603 (2019).

⁹ See generally JENNIFER SHERMAN, *DIVIDING PARADISE* (2021) (documenting a variety of factors driving a decline in traditional rural ways of life).

¹⁰ See, e.g., J.K. Dineen, "No Slums in the Sunset": Backlash over Affordable Housing Development Intensifies in Western S.F. Neighborhood, S.F. CHRON. (Jan. 20, 2021, 3:14 PM), <https://www.sfchronicle.com/bayarea/article/Slum-charges-fly-in-fracas-over-affordable-15880321.php> [https://perma.cc/US3L-5PHG].

¹¹ See Janet L. Wallace & Lisa R. Pruitt, *Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights*, 77 MO. L. REV. 95, 117 (2012).

¹² *Rural Health Disparities*, RURAL HEALTH INFO. HUB (Apr. 22, 2019), <https://www.ruralhealthinfo.org/topics/rural-health-disparities> [https://perma.cc/UR87-ARAJ].

¹³ See Hanna Love & Mike Powe, *Rural Small Businesses Need Local Solutions to Survive*, BROOKINGS (Dec. 1, 2020), <https://www.brookings.edu/research/rural-small-businesses-need-local-solutions-to-survive> [https://perma.cc/C2UD-CH8W].

geography, and political and economic power.¹⁴ Namely, she assesses how courts treat municipalities attempting to engage in “constitutional off-loading,” by which municipalities infringe upon a constitutional right based on the rationale that the right can be exercised extraterritorially, typically in a nearby jurisdiction.¹⁵ Swan analyzes courts’ uniformly divergent constitutional treatment of local governments depending on their size, in which a more restrictive rule is applied to large municipalities and a more lenient rule is applied to small ones. What results from this divergent treatment is one set of constitutional expectations and rules for large cities and another set for the small towns that make up many rural communities and suburbs. This “horizontal tailoring” — defined as “when the same legal principle is applied differently within the same level of government”¹⁶ — introduces new implications for the many tensions in politics, economics, and culture that track along U.S. landscapes.

This Response first provides a brief summary of Swan’s article. It then offers a normative critique of Swan’s primary conclusion that the problems and benefits associated with the phenomenon she observes will “ultimately push toward a more balanced localism for all” and may help defuse urban-rural polarization.¹⁷ Specifically, the Response argues that having divergent constitutional standards for different types of local government is more concerning than Swan’s analysis proposes, although the discussion also suggests that horizontal tailoring may not actually be as surprising or novel as the article implies. Courts’ questionable reliance on place-based stereotypes, the democratic deficits associated with local governance, and varying standards for localism and constitutional protections all deserve more scrutiny as possible contributors to the urgent societal rifts described above, and as likely not yet reflecting optimal distributions of political and economic power.

Constitutional off-loading begins with municipalities’ efforts to exclude undesirable land uses. As a common example, a municipality may try to argue that an ordinance that would prevent a proposed strip club from opening within its borders is not an unconstitutional violation of First Amendment rights because there are strip clubs available in a nearby urban center or elsewhere within its county.¹⁸ Swan observes a pattern in courts’ treatment of this argument: small municipalities are frequently able to advance the argument of extraterritorial availability

¹⁴ See Sarah L. Swan, *Constitutional Off-Loading at the City Limits*, 135 HARV. L. REV. 831 (2022).

¹⁵ *Id.* at 848.

¹⁶ *Id.* at 861 (emphasis omitted).

¹⁷ *Id.* at 888.

¹⁸ See *id.* at 841–43.

successfully, while large municipalities are uniformly not allowed to do so.¹⁹

Thus, in cases concerning small municipalities, courts accede that towns could “entirely ban commercial live entertainment”²⁰ and “zone out such uses completely” despite First Amendment protections.²¹ Courts rely on ideas such as “reasonable alternatives,” “nearby access,” and “artificial” and “arbitrary” local government boundaries to justify allowing exclusion.²² Courts tell cities, on the other hand, that it is “hard to imagine” someone suggesting a city like Chicago could prohibit free speech or religious liberty “on the rationale that those rights may be freely enjoyed in the suburbs.”²³

At first glance, Swan explains, one might conclude that courts are giving small municipalities special treatment and that this horizontal tailoring gives them greater power to pursue self-determination through more robust opportunities to off-load constitutional obligations on neighboring localities.²⁴ Big cities are forced to bear more diverse land uses despite their potential undesirability, whereas small municipalities have greater control over keeping the perceived undesirables out. In this sense, small towns — including the thousands of small towns that comprise much of rural America²⁵ and the many suburbs outside urban centers whose conservative political leanings often resemble rural ones²⁶ — are relatively powerful. The implication for the urban-rural divides described above is that “small conservative ‘red’ towns can maintain and even deepen their conservative community character through exclusions, while large ‘blue’ cities are prohibited from crafting their progressive community character through similar exclusionary methods.”²⁷

But, Swan argues, the story is more complex than that. Courts’ respect and enforcement of jurisdictional borders are what make those borders meaningful — what make them exist at all, in fact. Thus, there is a catch to small towns’ apparently greater discretion to off-load constitutional obligations on neighboring jurisdictions. Courts’ acquiescence to this practice reflects not their respect for small-town autonomy, but their disregard for small-town borders.²⁸ The treatment of small

¹⁹ *Id.* at 843, 853–54.

²⁰ *Id.* at 846 (quoting JULES B. GERARD & SCOTT D. BERGTHOLD, LOCAL REGULATION OF ADULT BUSINESS § 4:4 (2020)).

²¹ *Id.* (quoting GERARD & BERGTHOLD, *supra* note 20, § 4:6).

²² *Id.* at 850.

²³ *Id.* at 856.

²⁴ *See id.* at 869.

²⁵ *See* ROBERT WUTHNOW, THE LEFT BEHIND 5 (2018).

²⁶ *See* KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT 13 (2016).

²⁷ Swan, *supra* note 14, at 836.

²⁸ *See id.* at 877.

municipalities' borders as permeable reveals the limits of local municipal sovereignty on a small scale. By contrast, in being told by courts that they must be constitutionally inclusive, large cities are empowered as locally sovereign — more than as mere political subdivisions of the state, and instead as equivalents of the state.²⁹ Thus, Swan concludes, the joke is on the small towns: they can have their cake (constitutional off-loading) but not eat it too (maintain the respect afforded to a strong, meaningful political subdivision or standalone jurisdictional entity).³⁰ In this sense, then, many rural communities and suburbs are once again revealed as relatively powerless in the form of their reduced constitutional significance.³¹

Swan concludes that the benefits of courts horizontally tailoring constitutional off-loading likely outweigh whatever problems the practice poses.³² Small municipalities' ability to exclude exacerbates the proliferation of homogeneous, exclusive, wealth-hoarding enclaves throughout the country, in turn contributing to today's geographically imbued political polarization.³³ But the alternative — top-down, paternalistic mandates for constitutional inclusivity — can contribute to backlash and political polarization in its own way.³⁴ Swan concludes that both options — “respect or force” — are problematic.³⁵ Too much deference to small towns “threaten[s] to increase political polarization” by “enabl[ing] these localities to adopt an increasingly extreme constitutional community character.”³⁶ Yet paternalistic mandates risk “breed[ing] resentment.”³⁷

Since courts are damned if they do (allow unmitigated localism) and damned if they don't (mitigate localism with paternalistic mandates), Swan argues that they may as well engage in horizontal tailoring of constitutional off-loading, giving small localities the impression of power with the one hand — by letting them engage in constitutional off-loading — while minimizing it with the other — by treating their borders as less constitutionally significant than those of large cities, after which “claims to localism are weakened.”³⁸

²⁹ See *id.* at 883–84.

³⁰ See *id.* at 877–79.

³¹ Cf. Alan Romero, *Extraterritorial Land Use Regulation and Bridging the Urban-Rural Divide*, 87 UMKC L. REV. 867, 867–68 (2019) (noting that many rural residents are governed by counties rather than municipalities, and that cities that do not represent rural residents may be allowed to regulate them, exacerbating urban-rural tensions).

³² Swan, *supra* note 14, at 853 (characterizing horizontal constitutional off-loading as having offsetting costs and benefits for small towns and large cities, respectively).

³³ *Id.* at 880, 885.

³⁴ *Id.* at 867–68.

³⁵ *Id.* at 868.

³⁶ *Id.*

³⁷ *Id.* at 869.

³⁸ *Id.* at 871; see *id.* at 870–71.

Swan reasons that this approach represents an “evening [of] the localism playing field”³⁹ by laying a conceptual basis to counteract various evils that strong small-town borders have facilitated, including racial segregation, disregard for externalities imposed on neighboring communities, and other parochial or selfish interests.⁴⁰ Swan anticipates that courts could use this conceptual foundation to diminish small towns’ localism — and, therefore, their capacity for harm⁴¹ — by resisting small localities’ efforts “to become more visible[,] . . . seeking acknowledgement as valid constitutional interpreters and actors.”⁴² This, in turn, may help the process of reducing urban-rural polarization by “unbundl[ing]’ the urban and rural packages offered” by the political parties associated respectively with each place.⁴³

Swan’s analysis also emphasizes the practical consequences that flow from horizontal tailoring for cities. Most significantly, the analysis offers large cities a conceptual tool to be used in preemption battles.⁴⁴ Conservative states have been aggressively trying to preempt large, progressive cities’ efforts to pursue liberal legislation, such as anti-discrimination ordinances, plastic bag bans, and regulation of extractive industries. If courts’ approach to constitutional off-loading can be understood as tacitly elevating large cities’ constitutional status to an even footing with states, cities have stronger claims against preemption.

Other than highlighting the benefits of these consequences, Swan’s analysis does not quite tackle the question of whether horizontal tailoring in constitutional off-loading is a sound doctrinal approach. The bait-and-switch that small communities reach for — special treatment that is ultimately condescension, which helps confuse powerlessness and power — brings to mind two related pieces of literature. The first is Professor Lisa Pruitt’s *Rural Rhetoric*, a longstanding pillar of the rural legal studies canon and an important empirical study on how state courts conceptualize and treat the rural.⁴⁵ The second is Professor Rick Su’s *Democracy in Rural America*, which examines the role of local government in furthering representative democracy outside large cities.⁴⁶

Rural Rhetoric and Swan’s analysis touch on similar themes involving place-based stereotypes, what courts in turn do with those stereotypes, and the implications of courts’ reliance on stereotypes. Both Swan and Pruitt observe that in our public and legal imagination, places

³⁹ *Id.* at 888.

⁴⁰ *Id.* at 872–76.

⁴¹ *Cf. id.* at 868, 880.

⁴² *Id.* at 880.

⁴³ *Id.* at 887.

⁴⁴ *Id.* at 884–85.

⁴⁵ See Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159 (2006).

⁴⁶ See Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837 (2020).

outside of cities are often romanticized as safe, wholesome, clean, quiet, and interconnected — as opposed to the chaos and dangers supposedly lurking in the big city.⁴⁷ Yet both Swan and Pruitt observe that there is a cost to a widespread understanding of a romanticized version of place. Neighborliness and a sense of safety, for instance, are associated with homogeneity and exclusivity. When courts assume towns are “safe,” they not only likely overlook actual dangers faced by vulnerable members of those communities, but they also make more nefarious assumptions about the nature of the community.

Both Swan and Pruitt conclude that when courts apply law to localities based in stereotypes, courts reify and cement those stereotypes, reconstituting these places in the courts’ own conceptualization of them.⁴⁸ Thus, a court that gives legal weight to a community’s perceived homogeneity in turn reconstitutes the community as homogeneous. Swan concludes that treating small communities in this way may be a natural outgrowth of the different public and legal conceptualizations of small and large municipalities and, alongside the risks associated with paternalism, makes it seem almost unavoidable.⁴⁹ Pruitt concludes, by contrast, that courts’ “frequent reliance on nostalgic stereotypes” results in inattention to real conditions in these places and “is generally disappointing.”⁵⁰ It seems worth asking, then, whether horizontal tailoring in constitutional off-loading is as advantageous as Swan suggests, or whether the practice is more reflective of the many problems she describes with the approach before she concludes that it holds promise.

Democracy in Rural America turns the lens on small local governments and their deficits as vehicles for democratic empowerment outside large urban centers. Su argues “that rural communities currently lack the power to address many of the challenges they face today and that this powerlessness is rooted in the manner in which rural local governments are defined in American law.”⁵¹ Rural local governments were not designed to be representative of local democratic interests in the first place, Su argues, because they were designated on maps as subdivisions for state control, with local government employees, like sheriffs, often still today employed directly by the state and not expected to answer to

⁴⁷ See Swan, *supra* note 14, at 865–71; Pruitt, *supra* note 45, at 169.

⁴⁸ See Swan, *supra* note 14, at 836; Pruitt, *supra* note 45, at 172.

⁴⁹ See Swan, *supra* note 14, at 836.

⁵⁰ Pruitt, *supra* note 45, at 234; cf. Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 376 (2001) (characterizing the choice between localism and paternalism as a false dichotomy).

⁵¹ Su, *supra* note 46, at 839.

the locality.⁵² These historical roots combined with local disenfranchisement means a rural community “can sometimes bear little relationship to the local government that governs [it]” — meaning a decision passed at the local level is likely to be flawed in its representation of local will.⁵³ In terms of local autonomy and pathways to self-determination, states’ widespread adoption of twentieth-century home rule often excluded towns, viewing them as fundamentally different legal creatures than large cities, with far fewer powers. In short, Su says, “home rule largely left rural America out.”⁵⁴ The absence of local autonomy has been coupled in recent decades with the growing role in rural affairs of state and federal agencies, which “are not directly responsive to local constituents”⁵⁵ and further exacerbate a sense of rural powerlessness.⁵⁶ Ultimately, Su concludes, rural towns and counties are very limited in their ability to channel the interests of their residents.

Su’s article offers some additional context for Swan’s analysis. First, Su concludes that the popular conception of rural local governments as bastions of self-governance, a romanticized notion that Swan references, is simply not an accurate reflection of the modern reality.⁵⁷ Second, and more centrally, legislatures and courts have historically treated cities and towns as fundamentally legally different, with different structures and different rights and responsibilities. Viewed in this light, horizontal tailoring of constitutional off-loading becomes quite a bit less surprising because cities and towns have never truly been considered the same level and creature of local government. Perhaps horizontal tailoring as described here is not really horizontal tailoring of a different standard across two equivalent levels of government, but more like slightly diagonal tailoring of a different standard across a level of government with substantial internal variation linked to population size.

Putting all these pieces together — place-based stereotypes, democratic deficits, constitutional protections, and varying standards for localism — it is tempting to conclude that small towns are indulged with localism when they do not need it and denied localism when they do. In other words, courts give small municipalities leeway to shape their own destinies when a strip club wants to come to town — after all, the sensitive, traditional locals would simply be unable to bear such an affront to their moral values. But then, small municipalities are denied the opportunity to shape their own destinies when they need it to influence regional livelihoods and opportunities in a way that can actually keep their communities afloat.

⁵² See *id.* at 855–60.

⁵³ *Id.* at 855.

⁵⁴ *Id.* at 863.

⁵⁵ *Id.* at 867.

⁵⁶ *Id.* at 867–68.

⁵⁷ See Swan, *supra* note 14, at 836; Su, *supra* note 46, at 867–68.

Some small-town residents are, of course, perfectly happy with homogenization and exclusion, and they can make those interests known through their local governments. But, when courts elevate those interests over others — such as the rights of sexual, political, and religious minorities — they are perhaps not actually doing communities qua communities any favors, but merely ceding small localities to the local fiefdoms that antimajoritarian safeguards are designed to protect against.⁵⁸ Meanwhile, failing to enable meaningful local input on other land uses, such as major federal energy projects, helps further undermine struggling regional economies. This may work out just fine for the wealthier small-town suburbs that siphon off the benefits of metropolitan centers without bearing any of the costs, as Swan points out.⁵⁹ But, for the rural populations that do not have that luxury, the limits of small-town government have been very costly.

These tensions call into question Swan's conclusion that the benefits and burdens associated with divergent responsibilities between small towns and cities ultimately weigh in favor of horizontal tailoring of constitutional off-loading. Courts' divergent treatment of local governments based on size is probably appropriate in many circumstances. I have argued in prior work that a small, remote municipality is a fundamentally different creature than the City of Chicago.⁶⁰ But the juxtaposition Swan highlights seems more concerning than her conclusion that it "evens the localism playing field" because small towns are punished for their exclusionary tactics with reduced constitutional significance.

It seems as if instances of rural and suburban empowerment — whether relating to politics, land use, or even rhetorical imagery — are outdated, based on outdated notions of national population distribution and outdated notions of what communities outside cities are and can be. If courts condescend to treat small towns as closed-minded and intolerant, courts help make rural communities and suburbs as much, in turn helping to drive the young, the progressive, and those of minority backgrounds to more population-dense locales where their interests stand to

⁵⁸ See Swan, *supra* note 14, at 868 (suggesting that constitutional off-loading risks undermining "uniform protection of rights everywhere in the country" (quoting Mark D. Rosen, *The Surprisingly Strong Case for Tailoring Constitutional Principles*, 153 U. PA. L. REV. 1513, 1632 (2005))); cf. Schragger, *supra* note 50, at 372–74 (characterizing much of the localism debate as a conflict between individual rights and community norms, and arguing that the definition of "community" — as a product of contested political norms — is central to whether a particular community's norms are entitled to respect).

⁵⁹ See Swan, *supra* note 14, at 875; Su, *supra* note 46, at 859.

⁶⁰ See generally Ann M. Eisenberg, *Rural Blight*, 13 HARV. L. & POL'Y REV. 187 (2018) (arguing that small, remote local governments need specialized support to take on community development initiatives effectively).

receive greater protection.⁶¹ Small towns' weak borders do not offer much consolation for this deleterious population sorting.

Meanwhile, small towns' ability to engage in constitutional off-loading in some contexts has not borne fruit for small towns by way of affording them meaningful avenues to self-determination. For those who have always seen at least some small towns as underdogs, modest municipalities having weak constitutional significance is neither a revelation nor an adequate consolation prize for their occasional wins. When a small municipality tries to pass a controversial ordinance — such as by aiming to exclude or regulate hydraulic fracturing or monopolistic, industrial agricultural activity — a state can and often will preempt them. That horizontal tailoring of constitutional off-loading affords states more ammunition to disregard small towns' constitutional significance does not seem neutral or positive in this context, but in fact rings in subjugation.

As Su points out, small towns' power deficits might help explain in part why political appeals to a sense of voicelessness have proven disproportionately impactful outside cities.⁶² Despite their seemingly robust land use decisionmaking power, small towns and sparsely populated counties have failed to take control over whether plants can close and effectuate mass layoffs;⁶³ over how to refill tax coffers drained of former timber and coal revenues;⁶⁴ over keeping the local nuclear plant from giving residents cancer;⁶⁵ over whether to keep natural gas drilling

⁶¹ Cf. Schragger, *supra* note 50, at 376 (arguing that law institutes one particular version of the local to the exclusion of multiple possible alternative localisms).

⁶² See Su, *supra* note 46, at 840; Ian Scoones et al., *Emancipatory Rural Politics: Confronting Authoritarian Populism*, 45 J. PEASANT STUD. 1, 7–9 (2018).

⁶³ See generally Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America's Eroding Industrial Base*, 81 GEO. L.J. 1757, 1758 (1993) (describing grassroots efforts to keep employers in the face of deindustrialization); Brady Dennis & Steven Mufson, *In Small Towns Across the Nation, the Death of a Coal Plant Leaves an Unmistakable Void*, WASH. POST (Mar. 28, 2019), https://www.washingtonpost.com/national/health-science/thats-what-happens-when-a-big-plant-shuts-down-in-a-small-town/2019/03/28/57d62700-4a57-11e9-9663-00ac73f49662_story.html [<https://perma.cc/DD6F-S9GU>] (describing economic challenges in small towns that lose coal plants); John Seewer, *Ripples from U.S. Nuclear Plant Closings Overwhelm Small Towns*, AP NEWS (Mar. 26, 2017), <https://apnews.com/article/nv-state-wire-us-news-ap-top-news-mi-state-wire-oh-state-wire-612d238dffbe47coa6da47d2b6541439> [<https://perma.cc/3PND-TRUF>] (describing economic challenges in towns that lose nuclear plants).

⁶⁴ See generally Michelle W. Anderson, *The Western, Rural Rustbelt: Learning from Local Fiscal Crisis in Oregon*, 50 WILLAMETTE L. REV. 465, 469 (2014) (detailing fiscal struggles among local governments that have lost economic activity in the timber industry); Adele Morris, Noah Kaufman & Siddhi Doshi, *The Risk of Fiscal Collapse in Coal-Reliant Communities*, BROOKINGS (July 15, 2019), <https://www.brookings.edu/research/the-risk-of-fiscal-collapse-in-coal-reliant-communities> [<https://perma.cc/5HBF-MA2L>] (detailing the risk of local government fiscal collapse in coal-reliant communities).

⁶⁵ See generally LOKA ASHWOOD, *FOR-PROFIT DEMOCRACY: WHY THE GOVERNMENT IS LOSING THE TRUST OF RURAL AMERICA* 161 (2018) (detailing environmental and health struggles of rural residents engaged with local nuclear plants).

and pipelines out;⁶⁶ over whether the local hospital will close;⁶⁷ over whether local doctors' offices will be flooded with opioids;⁶⁸ over keeping consolidated agribusiness in check;⁶⁹ over access to national transportation and telecommunications infrastructure;⁷⁰ over keeping small businesses afloat against unfettered corporate competition;⁷¹ and over preventing school consolidation.⁷² But maybe, at the very least, they can keep the strip club at bay.

⁶⁶ See Heidi Gorovitz Robertson, *Cities and Citizens Seethe: A Case Study of Local Efforts to Influence Natural Gas Pipeline Routing Decisions*, 122 W. VA. L. REV. 881, 883 (2020); Heidi Gorovitz Robertson, *When States' Legislation and Constitutions Collide with Angry Locals: Shale Oil and Gas Development and Its Many Masters*, 41 WM. & MARY ENV'T L. & POL'Y REV. 55, 58–61 (2016).

⁶⁷ See generally U.S. GOV'T ACCOUNTABILITY OFF., GAO 21-93, RURAL HOSPITAL CLOSURES: AFFECTED RESIDENTS HAD REDUCED ACCESS TO HEALTH CARE SERVICES 20–22 (2020), <https://www.gao.gov/assets/gao-21-93.pdf> [<https://perma.cc/6F8M-W32U>]; Taylor Sisk, *As Appalachian Hospitals Disappear, Rural Americans Grapple with Limited Care*, NAT'L GEOGRAPHIC (July 14, 2021), <https://www.nationalgeographic.com/history/article/appalachian-hospitals-are-disappearing> [<https://perma.cc/J2VH-U79V>].

⁶⁸ See *Effler v. Purdue Pharma L.P.*, 614 S.W.3d 681, 684 (Tenn. 2020) (holding that plaintiffs' allegation that drug manufacturers "knowingly participated in the illegal drug market" was sufficient to state a claim); *City of Charleston v. Joint Comm'n on Accreditation of Health Care Orgs.*, 473 F. Supp. 3d 596 (S.D. W. Va. 2020) (finding that municipalities stated a claim adequate for standing in a negligence lawsuit against an organization that collaborated with opioid manufacturers to issue pain-management standards); Scott Higham, Sari Horwitz & Steven Rich, *76 Billion Opioid Pills: Newly Released Federal Data Unmasks the Epidemic*, WASH. POST (July 16, 2019), https://www.washingtonpost.com/investigations/76-billion-opioid-pills-newly-released-federal-data-unmasks-the-epidemic/2019/07/16/5f29fd62-a73e-11e9-86dd-d7foe60391e9_story.html [<https://perma.cc/NCH7-ZD4U>] (noting that rural communities were hit particularly hard by the opioid crisis).

⁶⁹ See Alexander A. Reinert, *The Right to Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694, 1695 (1998) (describing state right-to-farm laws, which restrict local governments' ability to pass ordinances restricting agricultural activity).

⁷⁰ See Aditi Shrikant, *Why Air Service Is So Crucial for Small Cities*, VOX (Nov. 12, 2018, 7:01 AM), <https://www.vox.com/the-goods/2018/11/12/18080806/air-service-small-cities-crucial> [<https://perma.cc/24C7-SGMJ>] ("For smaller towns and cities, the availability of air travel is always on the chopping block as airlines cut small-plane service and consolidate in major cities."); Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1785–98 (2021).

⁷¹ See Love & Powe, *supra* note 13.

⁷² See Robert M. Bastress, *The Impact of Litigation on Rural Students: From Free Textbooks to School Consolidation*, 82 NEB. L. REV. 9, 30–31 (2003).