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# THE ELECTORAL COLLEGE AND PRESIDENTIAL PARTICULARISM

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*Congressional scholars have long observed that electoral incentives encourage Members of Congress to prioritize the needs of their local constituencies over those of the nation as a whole. Indeed many analysts have pointed to increasingly gerrymandered and ideologically extreme districts as a major cause for the current dysfunction in Congress. As a result, scholars from across subfields have called for increased delegation of policymaking authority to the President as a partial solution to our current malaise. We argue, however, that inequality embedded into the very structure of our presidential electoral system incentivizes Presidents to also engage in particularistic politics. That is, Presidents, like Members of Congress, routinely pursue policies that disproportionately benefit Americans in constituencies likely to be most important in the next election. In this Article, we review evidence for such electorally induced particularism in the allocation of federal grants, the imposition of protectionist tariffs, and the provision of federal aid to states following natural disasters. While Presidents have always had incentives to engage in particularistic policies, the electoral incentives to do so have increased in recent years as the margins in presidential races have narrowed significantly.*

## INTRODUCTION

When searching for the quintessential image of dysfunction in our contemporary politics, most Americans instinctively think of the United States Capitol. They do so with good reason. Until the passage of omnibus legislation

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in January 2014, Congress has not managed to pass a complete budget – perhaps its most basic constitutional duty provided for in Article I – since 2005.<sup>1</sup> A small band of extremists brought the country to the brink of default in 2011, causing the country to lose its AAA credit rating. And a mere two years later, the same members hurled themselves, lemming like, toward the precipice of the fiscal cliff, only to be rescued by an eleventh hour deal that narrowly avoided default and reopened the government, which had been shut down weeks earlier. Meanwhile other key national priorities, from comprehensive immigration reform, to tax reform, to deficit reduction, and entitlement reform go unaddressed with little hope for serious legislative action in sight.

Potential sources of Congress's institutional dysfunction are clear and well known. The vast majority of members are now elected in "safe" districts. Insulated from genuine partisan competition, extremists within both parties have used primaries to elect ideologically extreme candidates to the nation's legislature, particularly on the Republican side of the aisle.<sup>2</sup> The result has been levels of partisan polarization in Congress not seen since the early twentieth century.<sup>3</sup> Within Congress there has been almost a complete breakdown of "the regular order," as perhaps best exemplified in the failures of the budgetary process. And in the upper chamber the use of filibusters has skyrocketed to such an extent that journalists routinely write that sixty votes are required to accomplish virtually anything of interest in the Senate. Finally, the true power brokers in both chambers all too often appear not to be party leaders in the mold of the respected dealmakers of yesterday, but rather an unusual cadre of extremist celebrity seekers more interested in stealing the

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<sup>1</sup> Kathleen Hunter & Derek Wallbank, *Obama Signs \$1.1 Trillion U.S. Government Spending Bill*, BLOOMBERG POL. (Jan. 17, 2014), <http://www.bloomberg.com/news/2014-01-16/senate-clears-obama-backed-1-1-trillion-spending-measure.html>, archived at <http://perma.cc/3FJB-HDRB>.

<sup>2</sup> For a discussion on asymmetric polarization, see THEDA SKOCPOL & VANESSA WILLIAMSON, *THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM* (2012); Edward G. Carmines, *Review Symposium: Class Politics, American Style*, 9 PERSP. ON POL. 645, 645-46 (2011). While pundits often emphasize the importance of gerrymandering and redistricting, some polarization scholars are skeptical, and a wide range of forces have been identified as drivers of congressional polarization. See, e.g., Joseph Bafumi & Michael C. Herron, *Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress*, 104 AM. POL. SCI. REV. 519 (2010); Richard Fleisher & John R. Bond, *The Shrinking Middle in the U.S. Congress*, 34 BRIT. J. POL. SCI. 429 (2004); Shigeo Hirano et al., *Primary Elections and Partisan Polarization in the U.S. Congress*, 5 Q.J. POL. SCI. 169 (2010); Nolan McCarty et al., *Does Gerrymandering Cause Polarization?*, 53 AM. J. POL. SCI. 666 (2009); Sean M. Theriault, *Party Polarization in the U.S. Congress: Member Replacement and Member Adaptation*, 12 PARTY POL. 483 (2006); cf. JOHN H. ALDRICH, *WHY PARTIES? A SECOND LOOK* 270-71, 282-83 (2d ed. 2011).

<sup>3</sup> McCarty et al., *supra* note 2, at 666 (presenting research regarding partisan differences).

media spotlight for themselves and their ideological causes than in the business of actual governance.

What is the end result? Legislative productivity is approaching the lowest levels on record in the modern era,<sup>4</sup> and Congress's approval rating has plummeted as low as the single digits.<sup>5</sup> What then is to be done? One logical answer according to many scholars has been to delegate even greater authority to the executive.

For example, Justice Elena Kagan has written at length defending the growth of what she has termed "presidential control of administration," which began with the centralization of regulatory policymaking within the Office of Management and Budget (OMB) during the Reagan Administration.<sup>6</sup> Through a variety of levers, Presidents since Reagan have sought to increase their control over the administrative state and policy implementation. Critics lament such developments as presidential power grabs that undermine Congress's constitutional prerogatives to insulate discretion delegated to executive agencies from presidential influence.<sup>7</sup> Yet Kagan defends increased presidential authority over bureaucratic policy implementation on both constitutional and normative grounds.<sup>8</sup> Regarding the former, Kagan argues that "statutory delegation to an executive agency official – although not to an independent agency head – usually should be read as allowing the President to assert directive authority, as Clinton did, over the exercise of the delegated discretion."<sup>9</sup> Yet her normative argument that presidential administrative control yields more desirable policy outcomes is even more forceful. Kagan argues that, whereas accountability and efficiency in bureaucratic policymaking are often held to be in tension, both can be achieved through enhanced presidential administrative control. As a unitary actor at the top of the bureaucratic pyramid, Presidents provide clear lines of accountability for performance. And perhaps even more importantly, the President will be more

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<sup>4</sup> See, e.g., Drew DeSilver, *Current Congress Is Not the Least Productive in Recent History, but Close*, PEW RES. CTR. (Sept. 3, 2013), <http://www.pewresearch.org/fact-tank/2013/09/03/current-congress-is-not-the-least-productive-in-recent-history-but-close>, archived at <http://perma.cc/NC27-XSXF>; Sarah Dutton et al., *Poll: Post-Shutdown, Congress Disapproval at All-Time High*, CBS NEWS (Oct. 22, 2013, 8:23 PM), <http://www.cbsnews.com/news/poll-post-shutdown-congress-disapproval-at-all-time-high>, archived at <http://perma.cc/5ES3-W3AJ>.

<sup>5</sup> Frank Newport, *Congress Job Approval Drops to All-Time Low for 2013*, GALLUP (Dec. 10, 2013), <http://www.gallup.com/poll/166196/congress-job-approval-drops-time-low-2013.aspx>, archived at <http://perma.cc/6ACY-XNUW> (finding that Americans' approval of Congress dipped to nine percent in November 2013).

<sup>6</sup> Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245 *passim* (2001).

<sup>7</sup> Richard H. Pildes & Cass R. Sunstein, *Reinventing the Regulatory State*, 62 U. CHI. L. REV. 1, 4-6 (1995) (discussing common criticisms of President Reagan's Executive Orders concerning OMB oversight of agencies).

<sup>8</sup> See Kagan, *supra* note 6.

<sup>9</sup> *Id.* at 2251.

likely to be responsive to the preferences of the median American: “[B]ecause the President has a national constituency, he is likely to consider, in setting the direction of administrative policy on an ongoing basis, the preferences of the general public, rather than merely parochial interests.”<sup>10</sup> The need for greater presidential authority is only heightened in an era of highly polarized divided government. “These new circumstances,” Kagan concludes, “create a need for institutional reforms that will strengthen the President’s ability to provide energetic leadership in an inhospitable political environment.”<sup>11</sup>

Similarly, congressional scholars Thomas Mann and Norman Ornstein, while somewhat more circumspect in their assessment of greater delegation to the executive, argue that the contemporary Congress is so fundamentally broken that greater presidential initiative may provide at least a partial corrective for our present malaise.<sup>12</sup> While commenting that presidential power has already expanded dramatically in recent decades at the expense of the legislature, Mann and Ornstein conclude that further “modest shifts to give more leeway to the executive make sense, given the current and continuing dysfunction.”<sup>13</sup>

Presidency scholars William Howell and Terry Moe have more forcefully called for expanded presidential power to rescue the country from its institutional malaise.<sup>14</sup> Discussing the myriad problems the United States faces, from climate change to grappling with debt and the global financial crisis to the ongoing war on terror, they ask who within our system of governance is

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<sup>10</sup> *Id.* at 2335; see also Jerry L. Mashaw, *Prodelegation: Why Administrators Should Make Political Decisions*, 1 J.L. ECON. & ORG. 81, 95-99 (1985) (arguing for broad delegations of power to administrative agencies, and stressing that presidential elections keep agencies in check). Kagan goes on to observe that, of course, Presidents can prioritize the needs of some constituencies over others from time to time:

Take the President out of the equation and what remains are individuals and entities with a far more tenuous connection to national majoritarian preferences and interests: administrative officials selected by the President himself; staff of the permanent bureaucracy; leaders of interest groups, which whether labeled “special” or “public” represent select and often small constituencies; and members of congressional committees and subcommittees almost guaranteed by their composition and associated incentive structure to be *unrepresentative* of national interests.

Kagan, *supra* note 6, at 2336 (citations omitted).

<sup>11</sup> Kagan, *supra* note 6, at 2344.

<sup>12</sup> THOMAS E. MANN & NORMAN J. ORNSTEIN, *IT’S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM* 172-78 (2012) (discussing the approach of transferring “more decision-making power from Congress to the executive branch”).

<sup>13</sup> *Id.* at 166.

<sup>14</sup> William G. Howell & Terry M. Moe, *Congress Should Be Required to Vote Up or Down on Legislation Proposed by the President* (unpublished manuscript) (on file with the Boston University Law Review) (arguing that the President is best suited to “solve the nation’s most pressing social problems” because Presidents represent the country as a whole, care about their legacies, and are unitary actors).

best positioned to craft genuine solutions.<sup>15</sup> Congress, they argue, is not the answer:

Truth be told, Congress is unlikely to provide the leadership needed to identify and design solutions for the nation's most vexing social problems. Its very character as a collective decision-making body nearly guarantees that it won't. Leadership is a scarce commodity among the 535 independently elected members who make up Congress, each with radically different views about what good policy looks like. . . . It should come as no surprise that the recent history of legislative activity is littered with bills that, in name, promise to confront challenges of national importance, but in fact constitute little more than disfigured conglomerations of sectional initiatives.<sup>16</sup>

Instead, expanded presidential power is the nation's best hope for grappling with contemporary challenges in a rational way that reflects the needs of the nation as a whole.

Certainly, there are good structural reasons to think the President, more so than any individual Member of Congress, will be a defender of the national interest. As Presidents since Washington have reminded us, the President alone in our system has a national constituency. He is the only public official accountable to the nation as a whole. Moreover, in sharp contrast to Congress, the President is a unitary actor who sits alone atop his governing institution. As such he is not burdened by the collective action dilemmas and torturous procedures riddled with transaction costs that often thwart progress in the legislature.<sup>17</sup> Presidents also lead a massive bureaucratic administrative state that actually implements public policy, a bureaucracy over which he enjoys multiple significant levers of influence, if not control.<sup>18</sup>

All too often, however, scholars have failed to examine systematically institutional sources of dysfunction ingrained into the presidency. While there is plainly much truth in such institutional assessments and characterizations, we argue that this conventional wisdom overstates much and, in some cases, distorts matters considerably. Specifically, we argue that the very constitutional structure of our electoral system ensures that some voters are of

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<sup>15</sup> *Id.* at 1-4 (discussing the “generational challenges” of the national debt and climate change).

<sup>16</sup> *Id.* at 7.

<sup>17</sup> WILLIAM G. HOWELL, *POWER WITHOUT PERSUASION: THE POLITICS OF DIRECT PRESIDENTIAL ACTION* 6-7 (2003).

<sup>18</sup> *See, e.g.*, DAVID E. LEWIS, *THE POLITICS OF PRESIDENTIAL APPOINTMENTS: POLITICAL CONTROL AND BUREAUCRATIC PERFORMANCE* 56 (2008) (“One way Presidents enhance bureaucratic control is to politicize.”); ANDREW RUDALEVIGE, *MANAGING THE PRESIDENT’S PROGRAM: PRESIDENTIAL LEADERSHIP AND LEGISLATIVE POLICY FORMULATION* (2002); Terry M. Moe, *Control and Feedback in Economic Regulation: The Case of the NLRB*, 79 *AM. POL. SCI. REV.* 1094, 1101 (1985) (critiquing congressional dominance theories and asserting presidential influence over the bureaucracy).

greater political importance to the President than others. Thus, across a wide range of policy areas, Presidents routinely pursue policies that disproportionately benefit voters in swing states at the expense of a fair and economically optimal distribution of federal resources. The continued presence of the Electoral College, combined with unit rule apportionment of electors, and voters' willingness to reward or punish Presidents for the localized consequences of federal policies, incentivize Presidents to engage in their own form of particularism – that is, to pursue policies that channel federal benefits disproportionately to certain politically important constituents at the expense of others. Moreover, the incentives for Presidents to engage in these particularistic behaviors have only increased with the rising competitiveness of presidential elections in recent decades. As a result, we argue it is far from clear that delegating additional authority to the President will produce more normatively positive policy outcomes. Rather, it may only result in the increasing prominence of presidentially induced particularism instead of congressional parochialism.

#### I. THE ELECTORAL COLLEGE AND THE ROOTS OF PRESIDENTIAL PARTICULARISM

Most calls for increased presidential power begin, like Presidents Theodore Roosevelt and Woodrow Wilson, by emphasizing the President's national constituency. While the Speaker of the House may be the second most powerful official in Washington, the Speaker is elected only by a narrow geographic constituency of about 700,000 people.<sup>19</sup> Presidents, by contrast, are elected by the nation as a whole, and thus, it is often argued, are uniquely responsive to the will of the national median voter.<sup>20</sup> While the contrast between Presidents and Members of Congress is indeed stark, all voters are not of equal political weight to the President as is so often implied. Rather, the Electoral College coupled with unit rule apportionment insures that some voters are of considerably greater political importance than others.

Political inequality in presidential elections is written into the very fabric of our constitutional system. First, because the allocation of electors mirrors that of each state's representation in Congress, small states (due to each state having two Senators, regardless of size) are over-represented in selecting the President. Second and more importantly, the Constitution grants states the power to determine the method of allocating its Electoral College votes.<sup>21</sup> All but two have embraced the unit rule and apportioned all of a state's electoral

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<sup>19</sup> *Congressional Apportionment*, NAT'L ATLAS, [http://nationalatlas.gov/articles/boundaries/a\\_conApport.html](http://nationalatlas.gov/articles/boundaries/a_conApport.html) (last visited Feb. 4, 2014), archived at <http://perma.cc/45Z3-ZG7E> (“The average size of a congressional district based on the 2010 Census apportionment population will be 710,767 . . .”).

<sup>20</sup> See, e.g., Kagan, *supra* note 6, at 2335.

<sup>21</sup> U.S. CONST. art. II, § 1, cl. 2.

votes to the plurality winner of that state's popular vote.<sup>22</sup> Thus in almost every instance voters in a handful of swing states will decide who becomes the nation's next President while millions of other Americans – indeed the vast majority – will de facto have virtually no influence on the outcome.

Critics of the Electoral College have long noted the many unintended consequences that have arisen from its design. Perhaps one of the most oft-cited and immediately obvious consequences is that presidential candidates concentrate the bulk of their time, advertising dollars, and resources reaching out and seeking to persuade voters in swing states at the expense of the majority of voters residing in other parts of the country.<sup>23</sup> And of course it sets the stage for the winner of the popular vote to lose the presidency as happened in 2000, and as could have happened in 2004, if Ohio had swung from Bush to Kerry. What has received much less attention, however, is how our electoral institutions tangibly affect policy outcomes by incentivizing Presidents to pursue policies that prioritize the needs of some Americans in politically valuable constituencies over others.

To be sure, the disproportionate electoral clout wielded by swing state voters insures that first term Presidents will devote the bulk of their time in an election year to wooing these would-be kingmakers. Whether the electoral incentive to court swing state voters should also affect presidential calculations in the policy arena, however, depends on how voters evaluate presidential performance at the ballot box. If voters primarily hold Presidents accountable for national policy outcomes – for example, the health of the national economy, whether the country is at war or at peace – then, fortuitously, Presidents maximize their electoral interests by pursuing policies that maximize national outcomes.<sup>24</sup> Electoral and good governance incentives

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<sup>22</sup> IRWIN L. MORRIS, *THE AMERICAN PRESIDENCY: AN ANALYTICAL APPROACH* 67 (2010) (“Except for Maine and Nebraska, all states allocate electors on a winner-take-all basis.”).

<sup>23</sup> See, e.g., John F. Banzhaf III, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral College*, 13 *VILL. L. REV.* 303, 323-24 (1968) (discussing the voting power of more populous states and its effect on per capita campaign expenditures and the presidential candidate's time); Larry M. Bartels, *Resource Allocation in a Presidential Campaign*, 47 *J. POL.* 928, 928-36 (1985) (analyzing resource allocation data for the 1976 Carter Campaign); Steven J. Brams & Morton D. Davis, *The 3/2's Rule in Presidential Campaigning*, 68 *AM. POL. SCI. REV.* 113, 116-20 (1974) (comparing the optimal resource allocations under a popular vote model and the Electoral College model); Jonathan Nagler & Jan Leighley, *Presidential Campaign Expenditures: Evidence on Allocations and Effects*, 73 *PUB. CHOICE* 319, 319-33 (1992) (analyzing television advertising expenditures in the 1972 campaign); David Strömberg, *How the Electoral College Influences Campaigns and Policy: The Probability of Being Florida*, 98 *AM. ECON. REV.* 769, 787 (2008) (“[C]ampaign resources are increasing in proportion to the number of electoral votes.”).

<sup>24</sup> For example, the electoral forecasting literature argues that presidential election outcomes can be predicted with uncanny accuracy relying on only a handful of variables measuring national conditions. See generally Alan I. Abramowitz, *Forecasting the 2008 Presidential Election with the Time-for-Change Model*, 4 *PS: POL. SCI. & POL.* 691 (2008);

would be in perfect alignment. If voters reward or punish Presidents for their policy choices, in part, based on the impact of those policies on voters' local communities, however, then Presidents will have strong electoral incentives to pursue policies that disproportionately benefit voters in swing states.

## II. HOW AMERICANS RESPOND TO TARGETED SPENDING

Do Presidents stand to reap electoral benefits from pursuing policies that target benefits to voters in key constituencies? This depends on two factors. First, voters must respond positively to policy benefits targeted to their districts. Second, voters must reward the President for delivering those benefits. We examine each in turn.

Consider the politics of federal spending. In our contemporary age of austerity, public opinion surveys regularly reveal considerable public willingness to restrain federal spending in the abstract. But does the geographic allocation of federal funds influence whether or not Americans are willing to support the spending program? To examine this we embedded a simple experiment within an online survey. A convenience sample of 559 respondents was recruited via Mechanical Turk. Although the sample is not nationally representative, it is considerably more diverse than undergraduate samples routinely used in many international relations studies of public opinion. Moreover recent research demonstrates that replicating experiments on samples recruited in this way yields very similar results to previously published studies with nationally representative samples.<sup>25</sup>

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Robert S. Erikson, *Economic Conditions and the Presidential Vote*, 83 AM. POL. SCI. REV. 567 (1989); Douglas A. Hibbs, Jr., *Implications of the "Bread and Peace" Model for the 2008 U.S. Presidential Election*, 137 PUB. CHOICE 1 (2008); Michael S. Lewis-Beck & Charles Tien, *The Job of President and the Jobs Model Forecast: Obama for '08?*, 41 PS: POL. SCI. & POL. 687 (2008). This view is also supported by the lengthy survey-based literature on sociotropic voting. See generally D. RODERICK KIEWIET, *MACROECONOMICS & MICROPOLITICS: THE ELECTORAL EFFECTS OF ECONOMIC ISSUES* (1983); Donald R. Kinder et al., *Economics and Politics in the 1984 American Presidential Election*, 33 AM. J. POL. SCI. 491 (1989); Donald R. Kinder & D. Roderick Kiewiet, *Sociotropic Politics: The American Case*, 11 BRIT. J. POL. SCI. 129 (1981); David J. Lanoue, *Retrospective and Prospective Voting in Presidential-Year Elections*, 47 POL. RES. Q. 193 (1994); Gregory B. Markus, *The Impact of Personal and National Economic Conditions on the Presidential Vote: A Pooled Cross-Sectional Analysis*, 32 AM. J. POL. SCI. 137 (1988).

<sup>25</sup> Adam J. Berinsky et al., *Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk*, 20 POL. ANALYSIS 351 (2012). On the use of Mechanical Turk samples, see, for example, ANIKET KITTUR ET AL., *CROWDSOURCING USER STUDIES WITH MECHANICAL TURK* 453 (2008); Michael Buhrmester et al., *Amazon's Mechanical Turk: A New Source of Inexpensive, Yet High-Quality, Data?*, 6 PERSP. ON PSYCHOL. SCI. 3 (2011). An additional concern regards the quality of the answers given by an online convenience sample. As a measure of quality control, the survey concluded with an attention filter. Embedded in a paragraph of text was an instruction for respondents to ignore the question itself and to check the other box and enter the numeric sequence 1, 2, 3 instead.

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Respondents were randomly assigned to one of four groups. Those in the first treatment group were told that the Department of Transportation had awarded fifty million dollars in new transportation grants to the respondent's home state. Those in the second treatment group read the same brief announcement of new grant spending, but the spending was identified as going to one of the other forty-nine states, selected by the computer at random. Respondents in the third treatment were told that the Department of Transportation had awarded fifty million dollars in new transportation grants to their home city.<sup>26</sup> Finally, those in the control group received no information about new grant spending. All subjects were then asked the same question: Do you approve or disapprove of federal spending on transportation infrastructure projects?

Table 1 presents the results. Because subjects were randomly assigned to the various experimental stimuli, the resulting differences in means are unbiased. In the control group baseline fifty-eight percent of respondents said that they approved of federal transportation spending. Among those who read about new grants in a state where they did not reside, we observe a slightly, but not significantly, lower level of support for federal transportation spending of fifty-five percent. Among respondents who read about new federal grant programs in their local communities, however, support for transportation spending soared. A full sixty-nine percent of respondents who learned of new grants to their home state backed federal transportation programs, and an even larger share, seventy-one percent, of respondents who read about new federal grants to their home city supported federal transportation spending.<sup>27</sup>

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Eighty-two percent of subjects answered the attention filter correctly. Results are virtually identical if those who did not answer the attention filter correctly are excluded from the analysis.

<sup>26</sup> The estimate of each respondent's home city was obtained by Qualtrics using the IP address of each respondent's computer. Subjects were debriefed at the conclusion of the experiment concerning the treatment and purposes of the study.

<sup>27</sup> The difference in means across the home state and home city treatments is not statistically significant.

Table 1. How Location of Spending Affects Support for Spending.

<i>Location of Spending</i>	<i>Percent Supporting</i>
Control	58%
Spending in Other State	55%
Spending in Home State	69%
Spending in Home City	71%

Note: The percentage of respondents supporting transportation spending when learning of a grant to their home state or home city is significantly higher than the relevant percentage in the control group or among those who learned of a grant to a state other than their home state.

Thus Americans plainly like federal spending that is targeted to where they live. But do they reward or punish Presidents for the share of federal benefits that their local communities receive? In previous research we explore this question in depth.<sup>28</sup> To illustrate our general findings consider the scatter plot presented in Figure 1 showing the relationship between the change in grant spending that each Pennsylvania county received over the year leading up to the 2008 presidential election on the x-axis and the change in vote share received within that county by the Republican candidate from 2004 to 2008 on the y-axis. That the 2008 Republican nominee, Senator John McCain, almost universally underperformed from President Bush's 2004 re-election victory is of little surprise. What is more interesting, however, is the clear finding that these deficits were minimized in counties that saw substantial increases in federal spending.

<sup>28</sup> Douglas L. Kriner & Andrew Reeves, *The Influence of Federal Spending on Presidential Elections*, 106 AM. POL. SCI. REV. 348 (2012).

Figure 1. Effects of Change in Grant Spending on GOP Fortunes in Pennsylvania, 2008.

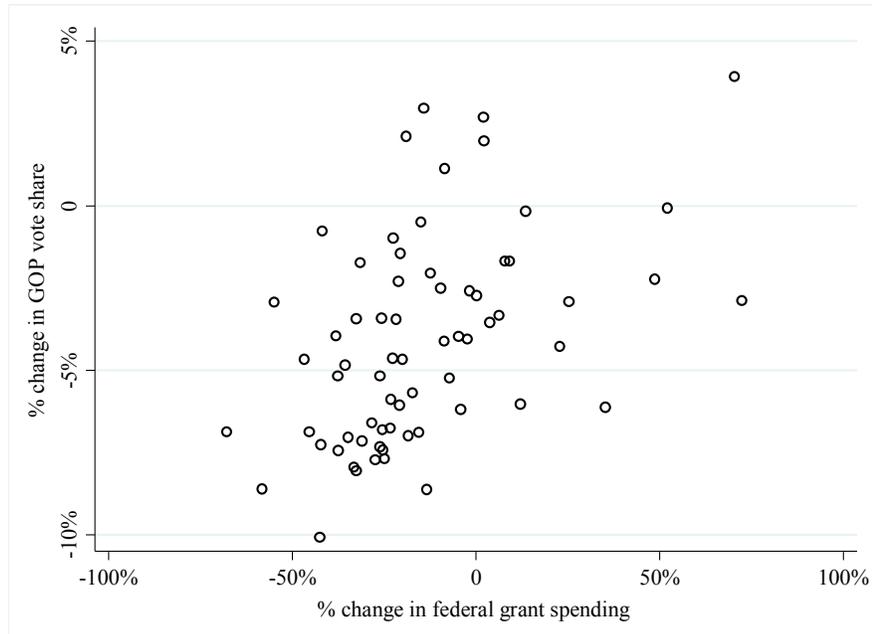


Table 2 presents data from all of the more than 3000 U.S. counties in the 2008 election. In most counties, Senator McCain lost ground as compared to President Bush's performance in 2004. As shown in Table 2, McCain still lost ground as compared to Bush's 2004 performance in counties that received large increases in grant spending in the preceding year; these losses were, however, significantly smaller. Roughly a quarter of counties experienced election year increases in grants that exceeded fifty percent. In these counties McCain lost on average a little more than 1.5% from Bush's 2004 baseline. By contrast, in the one-third of counties that experienced decreasing sums of federal grant spending that year, McCain lost on average almost four percent from Bush's 2004 baseline.

Table 2: Federal Spending and Change in GOP Vote Share, U.S. Counties 2008.

	<i>Increase or Decrease in Grant Spending in County</i>			
	<0%	0%-25%	26%-50%	>50%
<i>Change in GOP Vote Share (2004 to 2008)</i>	-3.98%	-3.30%	-3.02%	-1.63%
<i>Number of Counties</i>	1182	633	466	827

Note: Senator McCain performed better at the polls in counties where federal grant spending increased than in counties where spending decreased. For example, in counties where grant spending decreased over the preceding year, McCain lost almost four percent on average versus President Bush's performance in 2004. By contrast, in counties that experienced gains in grants of fifty percent or more, McCain lost only 1.6% on average versus President Bush's 2004 performance.

In previous research examining data from all counties in every election from 1988 through 2008, we show systematically that Presidents reap significant electoral rewards in counties that experienced increases in federal grant spending in the lead up to an election, and they suffer electoral losses in counties that witnessed decreases in the share of federal spending they received.<sup>29</sup> Moreover, these electoral effects are even larger in the electorally critical swing states.<sup>30</sup> Thus the stage is set for Presidents to pursue particularistic policies that cater to the needs and desires of the most politically valuable constituencies to reap electoral gain at the polls.

### III. THREE ILLUSTRATIONS OF PRESIDENTIAL PARTICULARISM

In our forthcoming book, *The Particularistic President*,<sup>31</sup> we systematically analyze a wealth of empirical data on federal grant spending, natural disaster declarations, and military base closures to show the powerful influence of particularistic impulses on presidential policymaking. Indeed the policy consequences of this particularism are stark, in many cases producing inequalities in the allocation of federal resources that exceed those produced by Congress, the classic purveyor of pork barrel politics. In the remainder of this Article, we illustrate the presidentially induced particularism we observe systematically across policy outcomes in the book. We do so with a series of cases showing Presidents explicitly pursuing policies designed not to maximize the national interest, but to shore up their own electoral prospects.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 358 (“[T]he electoral boost from grant spending is even larger in counties from swing states.”).

<sup>31</sup> DOUGLAS KRINER & ANDREW REEVES, *THE PARTICULARISTIC PRESIDENT* (forthcoming 2015).

*A. President Obama and O-H-I-O*

In his first budget negotiations with a partisan Congress, President Obama encountered an unexpected source of friction: earmarks. As a presidential candidate Obama had railed against pork barrel politics and vowed to eliminate earmarks. When the new President objected to budget language championed by congressional leaders of his own party because of the continued presence of earmarks, his criticism was summarily dismissed by Senate Majority Leader Harry Reid. Aptly summarizing the congressional reaction, House Majority Leader Steny Hoyer curtly replied, “I don’t think the White House has the ability to tell us what to do.”<sup>32</sup> Reluctantly the President ultimately signed the law, but he reiterated his promise to reign in wasteful congressional pork barrel spending in the future.

Despite having chastised members of his own party for seeking earmarked funds targeted to their own districts, President Obama demonstrated few qualms when endeavoring to shower Buckeye State residents with federal largesse as his own reelection approached. Eight years had passed since the 2004 election, but in 2012 the political situation remained uncannily similar in at least one regard: the election appeared to hinge on Ohio. The incumbent, President Obama, faced a stiff challenge from the Republican nominee, former Massachusetts Governor Mitt Romney. The race was one based largely on the President’s stewardship of the economy. The country was divided, with most states either clearly blue or plainly red. In 2004, President George W. Bush narrowly won reelection by a 286 to 251 vote in the Electoral College. Ohio’s twenty hotly contested electoral votes provided the slender margin of victory. Despite winning the national popular vote by more than three million ballots, if 60,000 Ohioans had switched their votes from Bush to Kerry, the Democratic challenger would have secured the presidency.

In the spring of 2012, President Obama’s advisors studied the electoral map and saw a similar scenario unfolding. Most were confident that the President, despite the sluggish economy, would continue to hold New England, the Mid-Atlantic, and the West Coast. A number of Midwestern states including Michigan, Illinois, Wisconsin, and Minnesota, also seemed likely to end up in the President’s column. Holding these states and adding New Mexico, where demographic changes continued to swing the state toward the Democrats, would put Obama at 251 electoral votes. Winning Ohio and its nineteen electoral votes would require Romney to run the table – to hold the Deep South and also carry the battlegrounds of Nevada, Colorado, and Iowa – just to force an Electoral College tie. Whereas President Obama held several paths to 270 without Ohio, a loss in Ohio would all but doom Romney’s electoral fortunes.

In contrast to other swing states like Michigan, Pennsylvania, or Illinois, Ohio had leaned Republican in recent presidential election contests. Yet the Obama campaign liked its chances in this bellwether state. This was in large

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<sup>32</sup> BOB WOODWARD, *THE PRICE OF POLITICS* 26-27 (2012).

part because of the Administration's politically risky bailout of General Motors and Chrysler. As the election year began the auto bailout was hardly popular nationwide. A February 2012 Gallup poll showed only forty-four percent of Americans approving of the "financial bailout for U.S. automakers that were in danger of failing," contrasted with fifty-one percent disapproving of the President's action.<sup>33</sup> But things were different in Ohio. In rescuing the auto industry the Administration saved hundreds of thousands of jobs in automotive suppliers, many of which are located in the counties hugging Ohio's Lake Erie coast. Exit polls in November 2008 showed nearly sixty percent of Ohio voters supported the bailouts; of those supporters, roughly three-quarters voted to reelect the President.<sup>34</sup>

Yet bailing out the automotive industry was not the only bold move that the Obama Administration made to benefit Ohio voters. In early 2012 the President made a number of trips to Ohio to claim credit for federal grant programs and awards that had directly created jobs in the Buckeye state. For example, the Administration had long championed the development of alternative energy generation. And in 2012 in the midst of an election campaign, the President was sure to highlight the decision to award federal dollars to Ohio's own Ashlawn Energy, which would expand production of vanadium redox fuel cells thanks to an award from the Department of Energy's Smart Grid Program. In announcing the grant at a small business forum in Cleveland Ohio, President Obama also emphasized Ashlawn's commitment to retraining workers from the local community in Painesville, Ohio for the new jobs that would be created.<sup>35</sup> In all, Ohio companies received more than \$125 million of clean energy grants, nearly four times the national state average.<sup>36</sup> Indeed President Obama reminded voters of this fact during a 2010 swing through the state, telling the crowd that:

[Ohio] received more funds than just about anybody in order to build on that clean energy economy . . . [a]lmost \$25 million of our investment went to a plant right here in Elyria that's helping produce the car batteries of the future. That's what we're going to keep on doing for the rest of 2010 and 2011 and 2012, until we've got this country working again.<sup>37</sup>

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<sup>33</sup> Frank Newport, *Americans' Opinions on Two of Obama's First Term Actions*, GALLUP (Feb. 24, 2012), <http://pollingmatters.gallup.com/2012/02/americans-opinions-on-two-of-obamas.html>, archived at <http://perma.cc/C68C-JF48>.

<sup>34</sup> Keith Laing, *Road to President Obama's Win in Ohio Paved by Support for Auto Bailout*, HILL (Nov. 7, 2012, 9:29 PM), <http://thehill.com/blogs/transportation-report/automobiles/266691-auto-bailout-paved-the-road-for-obamas-ohio-win->, archived at <http://perma.cc/X3YF-KRHY>.

<sup>35</sup> Remarks at the Closing Session of the Winning the Future Forum on Small Business in Cleveland, Ohio, 2011 DAILY COMP. PRES. DOC. 102, at 4 (Feb. 22, 2011).

<sup>36</sup> Jerry Markon & Alice Crites, *For Obama the Buckeye State May Be a Bull's-Eye*, WASH. POST, Sept. 26, 2012, at A1.

<sup>37</sup> President Barack Obama, Remarks at a Town Hall Meeting and a Question-and-

Other sectors of the Ohio economy would also benefit. When in March 2012 the President announced the creation of fifteen new manufacturing centers across the country, the first grant awarded was to a group from Youngstown, Ohio. Similarly, although passenger rail service between Cincinnati and Cleveland had ended four decades prior, in 2010 the Obama Administration sought to revive this route and others in Ohio through \$400 million of transportation grant funding.<sup>38</sup> Even in terms of Race to the Top education grants, the allocation of which is overseen by independent educators, Ohio emerged a clear winner, securing the fourth highest grant total of any state.<sup>39</sup>

Finally, in a campaign that would evolve into an argument over which candidate could do more for small businesses, the President was quick to emphasize to Ohio voters how new grants from the Small Business Administration (SBA) would bolster the local economy.<sup>40</sup> After attending a conference on small business creation in Cleveland, the seat of Cuyahoga County, which the President would need to win heavily to carry the state in November, President Obama trumpeted the many ways in which his Administration was channeling federal dollars into projects that would directly benefit the local economy.<sup>41</sup> One grant would bolster the FlexMatters cluster, which aimed to make Cleveland a global leader in the development and production of flexible electronics.<sup>42</sup> High tech in Ohio was not, however, the only winner. Indeed Micelli Dairy Products received what was the largest SBA grant awarded to date in an effort to expand its production of ricotta cheese and to expand its product line to include mozzarella and provolone.<sup>43</sup> Obama jovially proclaimed this “one of the tastiest investments the Government has ever made,” and commented that the grant directly led to the creation of sixty new jobs at the Buckeye Road facility in Cleveland.<sup>44</sup> The Administration approved over 2700 loans for small businesses in Ohio – a figure that well

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Answer Session in Elyria, Ohio, 2010 DAILY COMP. PRES. DOC. 46, at 5 (Jan. 22, 2010).

<sup>38</sup> Markon & Crites, *supra* note 36, at A1.

<sup>39</sup> *Id.*

<sup>40</sup> Remarks at the Closing Session of the Winning the Future Forum on Small Business in Cleveland, Ohio, *supra* note 35, at 4 (discussing SBA grants to Kent Displays and Miceli Dairy Products).

<sup>41</sup> *Id.* at 2-4 (discussing SBA and Department of Treasury programs).

<sup>42</sup> *Id.* at 3-4 (discussing a grant from SBA to Kent Displays, which manufactures flexible liquid crystal displays).

<sup>43</sup> Marcia Pledger, *Miceli Dairy Products Describes Plan for Expansion in Cleveland*, PLAIN DEALER (Jan. 6, 2011), [http://www.cleveland.com/business/index.ssf/2011/01/miceli\\_dairy\\_products\\_describe.html](http://www.cleveland.com/business/index.ssf/2011/01/miceli_dairy_products_describe.html), archived at <http://perma.cc/P46P-BR4Z> (“It’s not only the largest loan ever done in the history of the SBA, but more importantly it’s significant because of what it means for Cleveland,” said Gil Goldberg, director of the Cleveland SBA district, which includes most of the northern half of Ohio.”).

<sup>44</sup> See Remarks at the Closing Session of the Winning the Future Forum on Small Business in Cleveland, Ohio, *supra* note 35, at 3-4.

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surpassed the totals secured by many states with significantly larger populations.<sup>45</sup>

The Obama Administration undoubtedly believed that many of these policies – for example spending on alternative energy and mass transit – were in the national interest. When it came to deciding *where* such spending should go, however, it is interesting to note that federal dollars flowed overwhelmingly into a critically important swing state.

B. *President Bush and Steel Tariffs*

When Americans think of the 2000 presidential election, visions of Florida, “butterfly” ballots, hanging “chads,” and a five-four ruling from the United States Supreme Court spring to mind. While Florida was clearly the epicenter of the political battle after Election Day, however, equally critical to President George W. Bush’s electoral victory was West Virginia, a state that had solidly backed the Democratic candidate in five of the preceding six presidential elections. West Virginia twice awarded its electoral votes to Jimmy Carter, and Michael Dukakis carried the state by almost five percent over George H.W. Bush in 1988. And only four years before the 2000 race, Bill Clinton trounced Bob Dole in West Virginia, winning the state by roughly fifteen percentage points. George W. Bush, however, turned the tide and captured West Virginia; without its critically important five electoral votes, Bush would have lost the Electoral College (in addition to the popular vote) to Al Gore, even with his disputed victory in Florida.

Undoubtedly Bush’s victory was due in part to gradual ideological change and partisan realignment within the Mountain State. Many within the Bush-Cheney team, however, saw their victory as being in part attributable to a strategic error by the Clinton Administration. By failing to act aggressively enough in 1998 and 1999 to protect the failing steel industry, Clinton had missed an important opportunity to boost the Democratic ticket’s fortunes in West Virginia and other steel-producing states. This was a mistake that the new Bush Administration vowed not to repeat.

In late 1998, a consortium of major steel corporations and the United Steelworkers launched the Stand up for Steel campaign to pressure Washington to enact protective tariffs and antidumping measures to prop up a crumbling steel industry besieged by foreign competition and low-priced imports from overseas.<sup>46</sup> Responding to the political pressure the Republican-controlled House of Representatives easily passed legislation that would have established quotas for foreign steel imports. The Clinton Administration, by contrast, believed that the measure violated international trade agreements and vehemently opposed the House bill. After an extensive lobbying campaign in

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<sup>45</sup> Markon & Crites, *supra* note 36, at A1.

<sup>46</sup> Leslie Wayne, *American Steel at the Barricades: With Prices Low, Companies and Labor Unions Unite in a Campaign to Limit Imports*, N.Y. TIMES, Dec. 10, 1998, at C1.

the Senate, Clinton succeeded in killing the bill in the upper chamber.<sup>47</sup> In its place the President championed a more modest package of \$300 million in tax breaks and antidumping measures to provide the industry with some relief; the end result was far less than what the industry demanded.<sup>48</sup>

In the view of Robert B. Zoellick, U.S. Trade Representative under Bush, disaffected steelworkers and voters living in steel communities in West Virginia abandoned Gore as a result and likely provided Bush's margin of victory in the state.<sup>49</sup> Indeed the Bush-Cheney campaign sensed an opening created by Clinton's hesitance to back strong protective tariffs and instead to champion alternative ways of assisting workers in the ailing steel industry.<sup>50</sup> By contrast the Vice Presidential candidate hit the campaign trail promising voters that, if elected, he and Bush would take strong and decisive action to protect the steel industry. Many steelworkers admitted that they felt that Clinton betrayed them.<sup>51</sup> Seeking to capitalize on this voter disillusionment, Cheney pledged before a crowd in Weirton, West Virginia: "We will never lie to you. If our trading partners violate our trading laws, we will respond swiftly and firmly."<sup>52</sup> The campaign's efforts to reach out to traditional Democratic constituencies bore fruit, and Bush became the first nonincumbent Republican presidential candidate to carry West Virginia since 1928.

The steel industry would not wait long to test whether the Bush-Cheney promises of assistance were genuine. On June 5, 2001 President Bush, in response to strong pressure from steel companies, directed the U.S. International Trade Commission (USITC) to begin an investigation into whether foreign producers were engaging in predatory pricing and dumping steel into the U.S. market.<sup>53</sup> By the end of 2001 USITC concluded unanimously that the steel industry was the victim of unfair trade practices; the

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<sup>47</sup> Lori Nitschke, *Trade: White House, Farm Groups Stave off Senate Vote on Steel Import Quotas*, CONG. Q. WKLY., June 26, 1999, at 1563.

<sup>48</sup> See *American Trade Policy: Throwing Sand in the Gears*, ECONOMIST, Jan. 30, 1999, at 63. This is not to say that President Clinton was unresponsive to the electoral imperatives in play. Rather, *Congressional Quarterly Weekly* describes the Administration as seeking a middle ground because it "feared political repercussions for Vice President Al Gore if President Clinton were forced to choose between free-trade interests, which opposed the bill, and unions, which supported it." See Nitschke, *supra* note 47.

<sup>49</sup> Paul Magnusson & Michael Arndt, *Behind the Steel-Tariff Curtain*, BLOOMBERG BUSINESSWEEK (Mar. 7, 2002), <http://www.businessweek.com/stories/2002-03-07/behind-the-steel-tariff-curtain>, archived at <http://perma.cc/G4U6-MAEN>.

<sup>50</sup> See *id.*

<sup>51</sup> David E. Sanger & Joseph Kahn, *Bush Weighs Raising Steel Tariffs but Exempting Most Poor Nations*, N.Y. TIMES, Mar. 4, 2002, at A1.

<sup>52</sup> 149 CONG. REC. 32,323, 32,324 (Dec. 9, 2003) (statement of Sen. Byrd) (quoting then-vice presidential candidate Dick Cheney).

<sup>53</sup> STEPHEN COONEY, CONG. RESEARCH SERV., RS21152, STEEL: KEY ISSUES FOR CONGRESS 1 (2002).

members of the commission differed substantially, however, in terms of their proposed remedies.<sup>54</sup>

Many others disagreed with USITC and recommended against protective tariffs. Within the White House, Larry Lindsay, the director of the National Economic Council (who would later be fired for publicly estimating that the costs of the Iraq War could be as high as \$100 billion or even \$200 billion), strongly opposed protectionist remedies on classical economic grounds; higher tariffs might help steel producers in the short run, but they would also make U.S. manufactured goods that use steel less competitive on the global market.<sup>55</sup> Secretary of State Colin Powell also opposed protectionist tariffs warning that such a move could alienate key allies in the War on Terror in Europe. Many former trade officials also criticized protectionist measures. For example, former United States Trade Representative William Eberle suggested that a five to ten percent tariff might have been reasonable, but concluded that ultimately the problems with the U.S. steel industry were internal, not a result of unfair foreign competition.<sup>56</sup> Other analysts commented on the fact that there was little evidence of active dumping; indeed domestic overproduction was perhaps an even greater problem, with fifteen million tons of excess capacity. In addition to questioning the Administration's economic rationale for imposing the tariffs, virtually all analysts questioned their legality.<sup>57</sup>

Ultimately the Administration was left with a choice between abiding by its free trade principles or selectively abandoning them to pursue political gain in key rust belt states including West Virginia, Pennsylvania, Ohio, and Indiana. In addition to bolstering the President's own reelection prospects in 2004, helping steel was widely viewed as critical to keeping the Republican majority in the upcoming House midterm elections, as a number of Republicans won marginal races in steel-heavy districts in 2000. In the assessment of the *Economist*:

So Mr Bush faces a clear-cut test. He can take the politically expedient route, or he can stand up for the cause he claims to believe in. A president with an 80% approval rating does not need to pander too much to special interests. There are surely clever compromises that could offer help to

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<sup>54</sup> *Id.* at 2.

<sup>55</sup> See Donald Lambro, *Steel Tariffs Arouse Trade War Anxieties*, WASH. TIMES, Mar. 28, 2002, at A14 ("Larry Lindsey . . . warned that higher tariffs would invite retaliation from abroad . . . . The tariffs would also mean higher prices for thousands of U.S. manufacturers and consumers, from cars to washing machines to hot-water heaters.").

<sup>56</sup> See Kevin K. Ho, *Trading Rights and Wrongs: The 2002 Bush Steel Tariffs*, 21 BERKELEY J. INT'L L. 825, 826-27 (2003).

<sup>57</sup> Ambassador William Eberle, Remarks at the Center for Strategic and International Studies 2002 Seminar of Former U.S. Trade Representatives, *reprinted in Steel and Lumber, in TRADE POLICY CHALLENGES IN 2002*, at 47, 49 (Ctr. for Strategic & Int'l Studies ed., 2002) ("Even if they were given this tariff, they still couldn't afford to pay the legacy costs.").

steel workers without making a mockery of the Bush administration as a friend of free trade.<sup>58</sup>

Indeed the President could have pursued alternative legislative remedies to assist the steel industry and those affected by its contraction. For example the House introduced a bill to assist the steel industry with nearly thirteen billion dollars in retirement liabilities, and the Senate considered a bill to establish a steel worker health care trust fund.<sup>59</sup> These were the true costs saddling the industry. Both, however, were anathema to the Administration's ideology.

Ultimately on March 5, 2002, President Bush unilaterally imposed a range of tariffs, averaging approximately thirty percent, on imported steel products; interestingly, in almost every case, Bush's tariffs exceeded those recommended by USITC.<sup>60</sup> President Bush's chief political strategist, Karl Rove, was widely believed to have been a driving force behind the decision. For example Rove engaged in a public confrontation with free trade backers in New Orleans, a major port city, and articulated the Administration's rationale for the decision. In the assessment of *Bloomberg Businessweek*:

The White House characterized the decision as being driven solely by economics and international trade law. But that Bush's chief political strategist found himself so enmeshed in the minutiae of trade policy – and so many of the Administration's economic lieutenants found themselves arguing about politics – shows how the decision became a struggle of economics vs. politics.<sup>61</sup>

Further testifying to the key role played by politics, the tariffs themselves varied significantly across different types of imported steel products. The harshest tariffs were imposed on tin steel – precisely the type made by Weirton Steel in West Virginia, the state's biggest employer, and the site of Dick Cheney's October 2000 campaign promise.<sup>62</sup> Ultimately the President's own U.S. Trade Representative, Bob Zoellick, admitted that politics, not principle, drove the decision: “We are committed to moving forward with free trade,

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<sup>58</sup> *Bob Zoellick's Grand Strategy*, *ECONOMIST*, Mar. 2, 2002, at 35.

<sup>59</sup> Ho, *supra* note 56, at 834.

<sup>60</sup> Proclamation No. 7529, 3 C.F.R. 15 (2003) (reprinting President George W. Bush's March 5, 2002 proclamation titled “To Facilitate Positive Adjustments to Competition from Imports of Certain Steel Products”); Robert Read, *The Political Economy of Trade Protection: The Determinants and Welfare Impact of the 2002 U.S. Emergency Steel Safeguard Measures*, 28 *WORLD ECON.* 1119, 1120 (2005) (charting the USITC recommendation and the actual tariffs imposed).

<sup>61</sup> Magnusson & Arndt, *supra* note 49.

<sup>62</sup> James Cox, *Bush Slaps Tariffs on Steel Imports*, *USA TODAY* (Mar. 6, 2002), <http://usatoday30.usatoday.com/money/covers/2002-03-06-steel.htm>, archived at <http://perma.cc/46PA-FY6P>.

but . . . we have to manage political support for free trade at home.’ . . . ‘We have to create coalitions.’”<sup>63</sup>

The European Union, the main target of the sanctions (exporters in many other countries including Canada, Mexico, Brazil, and Russia were granted exceptions by the Administration) clearly believed the decision was primarily about politics – presidential electoral politics. Within days the European Union (EU) launched a formal complaint concerning the U.S. tariffs with the World Trade Organization (WTO) and announced plans for retaliatory sanctions of up to \$2.2 billion, including tariffs of up to 100% on certain American-made goods. The products targeted for counter-measures were hardly chosen at random. Rather, European Union commissioners carefully selected a range of products manufactured in swing states that would be decisive in the 2004 presidential election. The resulting “smart sanctions” would hit, among others, Harley-Davidson motorcycles (made in both Pennsylvania and Wisconsin) and Tropicana Orange Juice (headquartered in Florida). In the assessment of Paul Brenton, senior research fellow at the Centre for European Policy Studies: “They’re certainly trying to up the political ante . . . . If they’re trying to have an impact, that’s the best way to do it.”<sup>64</sup>

More than a year later in July of 2003, the WTO ruled that the Bush Administration’s steel tariffs were illegal.<sup>65</sup> The Administration appealed the ruling, which was upheld in November 2003 by the WTO’s appellate body.<sup>66</sup> A week before the European Union’s retaliatory actions were legally permitted

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<sup>63</sup> Jennifer Rich, *U.S. Admits That Politics Was Behind Steel Tariffs*, N.Y. TIMES, Mar. 14, 2002, at W1. Responding to such claims of political necessity, the *Economist* argued:

This steel-tariff plan, it is important to remember, lies well outside the ordinary run of bad economic policy: it is so wrong it makes other kinds of wealth-destroying intervention feel inadequate. And was it really politically inescapable? What a depressingly feeble excuse from a president who has promised, and shown, strong leadership in other respects, and who claimed, by the way, to be a champion of liberal trade. Mr Bush and his advisers should be ashamed.

*Tariffs on Steel: George Bush, Protectionist*, ECONOMIST, Mar. 9, 2002, at 13.

<sup>64</sup> Harold Brubaker, *EU Plans to Counter U.S. Steel Tariffs*, PHILA. INQUIRER (Mar. 23, 2002), [http://articles.philly.com/2002-03-23/business/25342433\\_1\\_steel-tariffs-harley-davidson-steel-imports](http://articles.philly.com/2002-03-23/business/25342433_1_steel-tariffs-harley-davidson-steel-imports), archived at <http://perma.cc/Q5BW-NS3W>. Similarly, Pascal Lamy, the E.U. Trade Commissioner, argued that this specific blend of targeted tariffs should maximize political leverage: “Counter measures are there to leverage a change of decision . . . . You have to do that in sectors and places where you can build a coalition.” Mark Tran, *EU Plans Retaliation for U.S. Steel Tariffs*, GUARDIAN (Mar. 22, 2002, 10:58 AM), <http://www.theguardian.com/world/2002/mar/22/usa.eu>, archived at <http://perma.cc/XD7V-7U4Q>.

<sup>65</sup> Robert Manor, *U.S. Steel Tariffs Must End, WTO Says*, CHI. TRIB., July 12, 2003, at C1 (“The administration’s response could also affect President Bush’s re-election prospects.”).

<sup>66</sup> *Steel Tariffs*, PBS (Nov. 10, 2003, 12:00 AM), [http://www.pbs.org/newshour/bb/international-july-dec03-steel\\_11-10](http://www.pbs.org/newshour/bb/international-july-dec03-steel_11-10), archived at <http://perma.cc/F6VX-YRRZ> (discussing the appeals panel’s decision).

to go into effect, President Bush reversed course and rescinded the steel tariffs, declaring that they had served their purpose of giving the domestic steel industry time to recover. While the tariffs were withdrawn before the 2004 election, they were in place for the 2002 midterms and potentially benefited Republican candidates in affected states. Moreover their imposition allowed President Bush to claim publicly that he had followed through on his campaign promise to help steel-producing states. Reminiscent of David Mayhew's argument that for members of Congress position taking can be more important than the actual end result,<sup>67</sup> the decision to impose the tariffs likely paid considerable political dividends, even if they were ultimately lifted before the 2004 presidential contest.<sup>68</sup>

In the final analysis the steel tariffs appear to have done little to accomplish their economic aims. Most studies found that the jobs saved in the steel industry were outweighed by those lost in other steel-consuming sectors.<sup>69</sup> Instead their primary goal appears to have been electoral. As Kevin Ho concluded:

Bush and Rove appeared to have applied a political rule to the steel glut problem based on their understandings, expectations and solutions *with regards to winning elections*. . . . Re-election concerns gained more

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<sup>67</sup> DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 61-62 (1974) ("The electoral requirement is not that he make pleasing things happen but that he make pleasing judgmental statements. The position itself is the political commodity.").

<sup>68</sup> Mark Lewis at *Forbes* predicted in March 2002 that President Bush knew the tariffs were illegal and that they would almost certainly be struck down by the WTO; Bush pushed forward, however, because he wanted to be able to say, "hey, I tried" to his steel supporters. Mark Lewis, *Bush to WTO: Save Me from Myself*, FORBES (Mar. 6, 2002, 12:20 PM), <http://www.forbes.com/2002/03/06/0306steel.html>, archived at <http://perma.cc/7QNZ-E4QQ>. Lewis further opined:

So Bush has bowed to political realities by giving the steel protectionists much – though not all – of what they asked for. Whether that will keep Ohio and West Virginia in the Republican column in 2004 remains to be decided. But even if the WTO decision has gone against the U.S. in the meantime, Bush will be able to claim credit for at least trying to help the domestic steel producers.

*Id.*

<sup>69</sup> See, e.g., JOSEPH FRANCOIS & LAURA M. BAUGHMAN, THE UNINTENDED CONSEQUENCES OF U.S. STEEL IMPORT TARIFFS: A QUANTIFICATION OF THE IMPACT DURING 2002, 12-15 (2003) ("Steel-consumers . . . lost more jobs to higher steel costs than the total number employed by steel producers."); GARY CLYDE HUFBAUER & BEN GOODRICH, STEEL PROTECTION AND JOB DISLOCATION (2003), archived at <http://perma.cc/5X3F-2RGH> ("Steel protection inevitably leads to worker layoffs in steel-using industries."). In the assessment of Robert Read, "[t]he Safeguards did not address the long-term structural problems of the steel sector – a lack of investment and competitiveness – but were rather a politically expedient strategy that *appeared* to assist the industry and appeased its protectionist sentiments." Read, *supra* note 60, at 1126.

weight than they were due, while international concerns and the practicality of the tariff policy were given diminished weight.<sup>70</sup>

Lambasting what he called an “unprecedented contempt for international rules,” Paul Krugman argued that only politics could explain the President’s decision.<sup>71</sup> “[I]f you believe that this is about the national interest, I’ve got a terrorist threat against the Brooklyn Bridge you might be willing to buy . . . . In the case of steel,” Krugman concluded, “Karl Rove weighed three electoral votes in West Virginia against the world trading system built up over 60 years, and the answer was apparently obvious.”<sup>72</sup>

### C. *Natural Disaster Declarations*

In the late hours of April 14, 2012 and the early morning of the next day, a destructive tornado hit Oklahoma, with most of the damage being concentrated in Woodward County. The National Weather Service estimated its wind speeds at between 136 and 165 miles per hour; there were six recorded fatalities and twenty-nine injuries.<sup>73</sup> Local news reported that the storm destroyed almost 100 homes and businesses.<sup>74</sup> Three days after the tornado touched down, Oklahoma Governor Mary Fallin requested that President Obama issue a presidential disaster declaration for the state of Oklahoma.<sup>75</sup> To the consternation of all those affected, the White House denied the request. Less than two months later Cheshire County in New Hampshire experienced heavy rains. According to Governor John Lynch these rains “caused major road wash outs, extensive debris and damage to state and local road infrastructure and facilities.”<sup>76</sup> Less than a week after the Governor made his request, the White House granted the declaration and cleared the way for federal dollars to flow into New Hampshire. Why did New Hampshire’s Governor receive a presidential disaster declaration while Oklahoma’s Governor was rebuffed? Our research suggests that the answer is in part based on presidential

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<sup>70</sup> Ho, *supra* note 56, at 842.

<sup>71</sup> Paul Krugman, *America the Scofflaw*, N.Y. TIMES, May 24, 2002, at A25.

<sup>72</sup> *Id.* West Virginia had five electoral votes in both 2000 and 2004. A loss of only three electoral votes, however, would have cost Bush his Electoral College majority in 2000.

<sup>73</sup> Nat’l Weather Serv. Weather Forecast Office, *The April 14-15, 2012 Woodward, Oklahoma Tornado*, NAT’L OCEANIC & ATMOSPHERIC ADMIN., <http://www.srh.noaa.gov/oun/?n=events-20120414-woodward> (last visited Feb. 14, 2014), *archived at* <http://perma.cc/QU8S-UMGG>.

<sup>74</sup> LaShauna Sewell, *Governor Requests Federal Disaster Assistance for Woodward*, NEWS 9 (Apr. 18, 2012, 2:59 PM), <http://www.news9.com/story/17526306/governor-requests-federal-disaster-assistance-for-woodward>, *archived at* <http://perma.cc/69Y4-EX7A>.

<sup>75</sup> *Id.* (“Gov. Mary Fallin requested Wednesday a federal disaster declaration for Woodward County following Sunday morning’s deadly tornado.”).

<sup>76</sup> Meghan Pierce, *Gov. Lynch Asks for Disaster Declaration*, N.H. UNION LEADER, June 8, 2012, at 3.

particularism. New Hampshire is a hotly contested swing state while Oklahoma is decidedly hostile electoral territory for President Obama.

Disaster declarations provide an ideal platform to explore the role of particularism in presidential decisionmaking because, like the steel tariffs examined previously, they are a policy venue in which Presidents wield unilateral authority with major consequences for distributive politics. Presidential discretion is considerable; there is no strict criterion for what qualifies as a natural disaster for federal assistance. The decision is by statute left solely to the President. The Stafford Act, the law which governs the process, declares that “any natural catastrophe . . . in any part of the United States, which *in the determination of the President* causes damage of sufficient severity and magnitude to warrant major disaster assistance.”<sup>77</sup> It is perhaps unsurprising that there are many critics of the process. Daniel J. Kaniewski, who was responsible for managing disaster declarations under President George W. Bush, noted that requests were often difficult because “there was no clear guidance” with respect to the decisions.<sup>78</sup> Another report reiterated the substantial leeway for presidential discretion in the disaster declaration process, stating that “experts in the field say the disaster standards are unclear – and often ignored. The result is that disaster decisions can seem arbitrary or politically motivated.”<sup>79</sup>

Given the breadth of resources made available by a disaster declaration, it is unsurprising that those who are denied are often incredulous and disheartened. These disaster declarations initiate the federal response to a natural disaster. Once this designation is made billions of dollars may flow into a state to aid in its recovery from a natural disaster. This funding may take the form of individual, public, or hazard mitigation assistance. The potential availability of benefits is vast and ranges from checks to individuals for the replacement of personal property to funds for local governments to flood-proof commercial properties.<sup>80</sup> One recent study estimated the federal disaster aid amounted to at least \$136 billion from 2011 to 2013, or about \$400 per household per year.<sup>81</sup>

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<sup>77</sup> 42 U.S.C. § 5122 (2012) (emphasis added).

<sup>78</sup> Jennifer Scholtes, *Political Pressure on Disaster Relief*, C.Q. WKLY., Oct. 15, 2012, at 2052.

<sup>79</sup> Daniel C. Vock & Jim Malewitz, *Disaster Declaration Denials Exasperate Governors*, STATELINE: DAILY NEWS SERV. PEW CHARITABLE TR. (Aug. 23, 2013), <http://www.pewstates.org/projects/stateline/headlines/disaster-declaration-denials-exasperate-governors-85899499704>, archived at <http://perma.cc/X6RL-69WP>.

<sup>80</sup> FEMA, A GUIDE TO THE DISASTER DECLARATION PROCESS AND FEDERAL DISASTER ASSISTANCE 2, 5 (n.d.), archived at <http://perma.cc/NU4W-KJZ6> (discussing “other needs assistance” and floodproofing commercial properties).

<sup>81</sup> DANIEL J. WEISS & JACKIE WEIDMAN, CTR. FOR AM. PROGRESS, DISASTROUS SPENDING: FEDERAL DISASTER-RELIEF EXPENDITURES RISE AMID MORE EXTREME WEATHER 1 (2013), archived at <http://perma.cc/N23C-2MMP>.

While anecdotes abound with respect to the influence of electoral factors, there is also systematic statistical evidence. A study by Reeves examines how the electoral importance of a state changes its likelihood of receiving a presidential disaster declaration.<sup>82</sup> Crucially this study controls for objective measures of need and a number of other factors. While need is the single best predictor of whether a state will receive a disaster declaration, the state's electoral importance can also dramatically change the balance. This is especially true after 1988, which saw the legislative expansion of presidential powers to declare disasters and a narrowing of victories in the Electoral College. During this time, an electorally competitive state was twice as likely to receive a disaster declaration as a nonswing state that saw the very same level of disaster damage.<sup>83</sup> This systematic evidence helps to explain, at least partially, some of the seemingly arbitrary decisions made with respect to disaster declarations. While they may seem arbitrary to the naïve observer, presidential particularism appears to play a substantial role beyond objective need.

Disaster declarations also appear to have the intended effect in bolstering electoral support for the President in key constituencies. The aftermath of a natural disaster provides a stark opportunity for a President and his surrogates literally to roll up their sleeves and help affected voters. In the aftermath of Hurricane Sandy, just days before the 2012 election, the *Associated Press* published a photo showing President Obama comforting a distraught victim from New Jersey.<sup>84</sup> Similarly with only months left before the 2004 elections, the White House posted photos of President George W. Bush and First Lady Laura Bush coming to the aid of voters in Florida struck by a series of hurricanes.<sup>85</sup> These photo opportunities offer stark images of presidential leadership on display to attentive voters, many of whom are distraught and in need of comfort. And Presidents are indeed rewarded for their efforts at the ballot box. Reeves' analysis of presidential elections at the state level found that disaster declarations produce increases in incumbent presidential vote share.<sup>86</sup> The study estimates that each disaster declaration is worth a little over one percentage point at the polls.<sup>87</sup>

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<sup>82</sup> Andrew Reeves, *Political Disaster: Unilateral Powers, Electoral Incentives, and Presidential Disaster Declarations*, 73 J. POL. 1142 (2011).

<sup>83</sup> *Id.* at 1148.

<sup>84</sup> Pablo Martinez Monsivais, *Barack Obama, Donna Vanzant*, ASSOCIATED PRESS (Oct. 31, 2012), <http://bigstory.ap.org/photo/barack-obama-donna-vanzant-1>, archived at <http://perma.cc/4G7Z-HS9C>.

<sup>85</sup> *Hurricane Relief 2004 Photo Essay*, THE WHITE HOUSE, <http://georgewbush-whitehouse.archives.gov/infocus/hurricane/photoessays> (last visited Mar. 20, 2014), archived at <http://perma.cc/J6DV-JCD3> (collecting photographs of President Bush and First Lady Laura Bush in several hurricane-damaged communities in Florida).

<sup>86</sup> Reeves, *supra* note 82, at 1149.

<sup>87</sup> *Id.*; cf. John T. Gasper & Andrew Reeves, *Make It Rain? Retrospection and the*

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Presidential disaster declarations provide an opportunity to examine presidential particularism in a context where the action is his and his alone. Unlike most of his decisions, disaster declarations are in response to forces that operate outside of the political world. What is more, the action serves the intended purpose – it yields votes. And, as we discuss previously, there is substantial evidence that in this context Presidents target resources not purely in a way consistent with a pure welfare model based on economic need, but in a manner that also takes into account their own electoral incentives.

#### CONCLUSION

In *The Particularistic President* we show that the three cases described previously – the targeting of federal dollars to Ohio, the politically motivated imposition of tariffs on foreign steel produced overwhelmingly in swing states, and systematic patterns in natural disaster declarations that prioritize requests from governors of swing states – are emblematic of a larger trend. Presidents routinely pursue policies that are not purely in the national interest, but that disproportionately benefit politically important constituencies. Presidents, pundits, and scholars alike are right to emphasize the presidency's position as the only office in our system of government elected by the country as a whole. Before championing ever-greater levels of delegation to the executive as a panacea for all that ails the nation's policymaking system, however, it is important to consider the reality that Presidents bring their own biases and political imperatives into the policy process. These forces dramatically shape policy outcomes in ways that frequently conflict with the national interest. A greater shift in power from one end of Pennsylvania Avenue to the other may simply replace congressional parochialism with presidentially induced particularism.

The institutional foundations of presidential particularism – the Electoral College and widespread adoption of unit rule apportionment of electors – are as old as the republic. There are strong reasons to believe, however, that the incentives for Presidents to engage in particularism in pursuit of electoral reward have increased significantly in recent years. Consider the following data from the national archives on presidential elections from Presidents Truman through Obama. Before Bill Clinton's election in 1992, the winner of post-World War II presidential elections averaged a margin of victory exceeding 300 votes in the Electoral College. For example Ronald Reagan won ninety-one percent of the electoral votes in 1980 and increased that margin to ninety-eight percent in 1984. Political pundits and analysts still divided states into battleground and nonbattleground states, but the winners of presidential contests routinely emerged victorious in wide swaths of the country. From 1992 through 2012, however, the average Electoral College margin of victory

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*Attentive Electorate in the Context of Natural Disasters*, 55 AM. J. POL. SCI. 340, 352 (2011) (finding that one presidential disaster declaration has an effect of 0.52 percentage points at the polls).

has shrunk significantly to 130 votes, with two elections in that span decided by fewer than forty.<sup>88</sup> This development reflects the larger growth of polarization in the country writ large. Much has been written on the emergence of red and blue America.<sup>89</sup> What is often overlooked, however, is that in such an environment the importance of swing state voters – and catering to their interests – has been magnified significantly. Thus contemporary Presidents may have even greater incentives to pursue particularistic policies for electoral gain than their predecessors. Rather than being a solution to our institutional malaise, the presidency may increasingly become a part of the problem.

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<sup>88</sup> The average margin of victory in the popular vote has also decreased significantly, from over ten percent in elections from 1948 through 1988 to less than five percent in elections from 1992 through 2012.

<sup>89</sup> See, e.g., ANDREW GELMAN ET AL., RED STATE, BLUE STATE, RICH STATE, POOR STATE: WHY AMERICANS VOTE THE WAY THEY DO (2008).