

7-11-2023

Blue State Exodus?

Jon D. Michaels

David L. Noll

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Law and Politics Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Jon D. Michaels and David L. Noll *Blue State Exodus?*, 2023 Pepp. L. Rev. 58 (2023)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol2023/iss1/4>

This Article is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Blue State Exodus?

Jon D. Michaels^φ & David L. Noll[‡]

Abstract

American businesses and families are leaving Blue states in record numbers for destinations like Texas, Florida, and Georgia. This migration of people, businesses, and tax dollars has prompted claims of a “Blue state exodus” prompted by “leftist politicians imposing leftist ideology.” As expressed by Utah’s Senator Mike Lee, the “exodus” proves that “the Left’s policies don’t work.”

But does the movement of taxpayers from Blue to Red states really signal a rejection of progressive policies? This Essay argues that, before accepting that interpretation, we should consider another possibility. Perhaps Blue states aren’t overly progressive, but insufficiently so. Paralyzed by political dynamics that keep them from offering affordable housing and addressing police violence, and prevented by the Supreme Court from taking aggressive action on gun violence and public health, Blue states are losing taxpayers and unable to attract Red-state refugees seeking to escape punishing anti-Black, anti-choice, and anti-LGBTQ+ policies, in large measure because they’re unable to offer a sufficiently meaningful alternative to life in Red America to justify their higher cost of living.

This account of the Blue state exodus has very different implications from Lee’s. It suggests that, rather than tacking to the center, Blue states should redouble efforts to prioritize affordability, stop subsidizing Red states, and position themselves to insist on a new national settlement—one in which civil rights, economic justice, and sound public administration are respected across the nation.

^φ Professor of Law, UCLA School of Law.

[‡] Professor of Law & Associate Dean for Faculty Research and Development, Rutgers Law School. For assistance with this Essay, we thank Jacob Grumbach, Eleanor Ritter, and Ms. Ritter’s colleagues on the *Pepperdine Law Review*.

TABLE OF CONTENTS

INTRODUCTION	60
I. TOO PROGRESSIVE . . . OR NOT PROGRESSIVE ENOUGH?	61
II. TRUE COMPETITION.....	67
A. <i>Affordability</i>	69
B. <i>Divestment and Reorientation</i>	71
III. RECONCILIATION, NOT COMPETITION: BLUE STATES' ROLE IN THE FIGHT FOR A NEW NATIONAL SETTLEMENT.....	72

INTRODUCTION

Americans love to keep score. We track the teams that have collected the most World Series rings and college football championships; the actors who have taken home the most Academy Awards; the artists who we spent the most minutes listening to on Spotify. We even track IRS spreadsheets documenting the movements of taxpayers across state lines.

And when it comes to such interstate migration, the trendlines are clear. Over the past several years, a series of reports have shown that American businesses and families are leaving Blue states in record numbers for destinations such as Florida, Texas, Arizona, Indiana, and Georgia.¹

For America's political Right, the lessons to take from these reports are obvious. When the IRS published data in Spring 2023, Senator Mike Lee of Utah crowed that the numbers confirm that "the Left's policies don't work and in fact hurt poor and middle-class Americans."² Describing the influx of migrants to Texas and Florida as a "Blue State Exodus," the highly partisan *Wall Street Journal* editorial board placed the blame squarely on Democrats' failed fiscal policies,³ a diagnosis that a *Forbes* essayist shared.⁴ Florida Governor Ron DeSantis insisted he, too, knew the culprit: the influx of New Yorkers and Californians into the Sunshine State was the result of "leftist politicians imposing leftist ideology."⁵

But is the outflow of Americans from Blue states really proof positive that progressive policies states have scared off families and businesses? The

1. *The Blue State Exodus Accelerates*, WALL ST. J. OPINION (Apr. 28, 2023), <https://www.wsj.com/articles/illinois-j-b-pritzker-taxes-states-irs-ec3da356?st=255qz1xq4pyvhfe>; Hans Johnson & Eric McGhee, *Who's Leaving California—and Who's Moving In?*, PUB. POL'Y INST. CA. (Mar. 21, 2023), https://www.ppic.org/blog/whos-leaving-california-and-whos-moving-in/?utm_source=rss&utm_medium=rss&utm_campaign=whos-leaving-california-and-whos-moving-in?utm_source=ppic&utm_medium=email&utm_campaign=blog_subscriber; Emily Badger, Robert Gebeloff & Josh Katz, *Coastal Cities Priced Out Low-Wage Workers. Now College Graduates are Leaving, Too*, N.Y. TIMES (May 13, 2023), <https://www.nytimes.com/interactive/2023/05/15/upshot/migrations-college-super-cities.html>.

2. Senator Mike Lee (@BasedMikeLee), TWITTER (Apr. 23, 2023, 4:14 PM), <https://twitter.com/BasedMikeLee/status/1652451391670202368?s=20%5C>.

3. *Blue State Exodus*, *supra* note 1 ("Raising taxes to pay for under-funded public worker pensions and bloated social programs doesn't help the Land of Lincoln attract talent. . . . The data is clear that Illinois and other states dominated by progressives are losing human talent in droves to better-governed states.").

4. Adam A. Millsap, *Bad Economic Policies are one Reason People are Leaving Blue States*, FORBES (Feb. 14, 2023), <https://www.forbes.com/sites/adammillsap/2023/02/14/bad-economic-policies-are-one-reason-people-are-leaving-blue-states/?sh=192c147c4682> ("The latest U.S. migration data show that many people are leaving blue states such as California and New York, and economic policies that deter work and stifle entrepreneurship are partly to blame.").

5. See Don Lee, *Why Are Californians Moving to Florida?* L.A. TIMES (Mar. 9, 2023), <https://www.latimes.com/politics/story/2023-03-09/are-californians-really-packing-up-for-florida-as-desantis-claims> (quoting a speech DeSantis gave ahead of announcing his 2024 presidential bid).

Times' David Brooks offered a more nuanced take, arguing that the re-locating families and businesses are seeking "a red-blue mash-up" that happens to track his brand of Reasonable Guy centrism: "Republicans at the state level provide the general business climate, but Democrats at the local level influence the schools, provide many social services and create a civil atmosphere that welcomes diversity and attracts highly educated workers."⁶

While Brooks' account is plausible, it overlooks a key feature of the environment to which Blue-to-Red emigres are decamping. Cities like Austin, Raleigh, Durham, Miami, Nashville, and Tampa may be progressive bastions, but the states they're located in are firmly under Republican control. And those state legislatures are increasingly enacting policies that run roughshod over local governments' authority to set local policy, particularly on matters central to the White, Christian nationalism of today's MAGA movement.⁷ Emblematic of this new wave of state legislation is Texas' infamous S.B. 8, which offers lucrative bounties to "any person" who sues abortion providers, insurers, and friends of people seeking reproductive healthcare, circumventing local DAs' ability to exercise prosecutorial discretion.⁸

And S.B. 8 is only the beginning. Red state legislatures have put in place scores of vigilante-empowering anti-Black, anti-choice, and anti-LGBTQ+ policies since Trump left the White House.⁹ Rather than celebrating Blue-city/Red-state residency, Brooks should be sounding the alarm. Increasingly intolerant and authoritarian state legislatures threaten to bulldoze progressive communities, turning municipal assurances of tolerance and economic justice into empty promises.

I. TOO PROGRESSIVE . . . OR NOT PROGRESSIVE ENOUGH?

Before accepting the triumphant claims that progressive policies have failed—or even Brooks' more modest mash-up hypothesis—we should

6. David Brooks, *Why People Are Fleeing Blue Cities for Red States*, N.Y. TIMES (Apr. 13, 2023), <https://www.nytimes.com/2023/04/13/opinion/sun-belt-migration.html>.

7. See, e.g., Matt Dixon, *Ron DeSantis Suspends Second Elected Prosecutor as His 2024 Campaign Struggles*, NBC NEWS (Aug. 9, 2023), <https://www.nbcnews.com/politics/2024-election/ron-desantis-suspends-second-elected-prosecutor-monique-worrell-rcna98968>; Gus Bova, *The "Death Star" Bill is About Kneecapping Democracy in Texas*, TEX. OBS. (Jul. 31, 2023), <https://www.tex-asobserver.org/death-star-hb-2127-democracy/>; see generally JON D. MICHAELS & DAVID NOLL, VIGILANTE DEMOCRACY (forthcoming 2024) (describing Red-state efforts to override or stamp out progressive policymaking at the municipal levels of government) (manuscript on file with authors); Richard Briffault, *Preemption: The Continuing Challenge*, 36 J. LAND USE 83 (2021) (exploring the trend toward aggressive state preemption of local government actions—as well as a newer trend of inverse preemption by local governments enacting laws to counter state laws).

8. TEX. HEALTH & SAFETY CODE ANN. § 171.201.

9. See Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 105 CORNELL L. REV. 1187, 1198–1212 (2023).

consider another possibility. Our hypothesis is as follows: Blue states aren't *too* progressive. Rather, they are *insufficiently* so. They're losing taxpayers because they've failed to provide a meaningful contrast to life in Red States. As such, Blue state residents and business owners aren't getting enough value to justify continuing to pay higher taxes, incur the higher costs of living, and comply with more onerous regulatory burdens.

Progressive health, climate, and socioeconomic programs are all quite popular¹⁰—and are ever more so as elected officials in the likes of Texas, Tennessee, and Florida fight fabricated culture wars, downplay the plague of gun violence, ignore or ridicule undeniable health crises, and hatch increasingly elaborate and gratuitous plots to sabotage public education.¹¹ The choice between progressive and right-wing policies is a stark one; and, contrary to what appears to be happening, any competition between progressive and right-wing jurisdictions should favor the former. But just because progressive policies are popular doesn't mean they're legally enacted policy. And in fact, an array of powerful actors and institutions are blocking Blue states from adopting the policies that voters clearly prefer.

Let's start with the Supreme Court. Elected officials in Blue states would love to enact robust gun-control laws that have clear payoffs for public

10. See, e.g., Sara Burnett, *AP-NORC poll: Most in US Say They Want Stricter Gun Laws*, ASSOCIATED PRESS (Aug. 23, 2022), <https://apnews.com/article/gun-violence-covid-health-chicago-c912ecc5619e925c5ea7447d36808715>; Paul Constant, *The American Appetite to Tax the Rich is High—and Growing with Each Passing Year*, BUS. INSIDER (Jul. 23, 2022), <https://www.businessinsider.com/why-more-americans-want-tax-rich-2022-7>; Steven Shepard, *Abortion Was a 50/50 Issue. Now, it's Republican Quicksand*, POLITICO (Apr. 8, 2023), <https://www.politico.com/news/2023/04/08/republican-party-abortion-trap-00091088>; Molly Seltzer, *Fighting Climate Change is Wildly Popular, but Most Americans Don't Know that other People Feel the Same Way*, PRINCETON NEWS (Aug. 24, 2022), <https://www.princeton.edu/news/2022/08/24/fighting-climate-change-wildly-popular-most-americans-dont-know-other-people-feel>; Margot Sanger-Katz, *On More Generous Terms, Obamacare Proves Newly Popular*, N.Y. TIMES (Dec. 22, 2021), <https://www.ny-times.com/2021/12/22/upshot/on-more-generous-terms-obamacare-proves-newly-popular.html>.

11. Joanne Kenen, *The Stunning Reach of America's Gun Violence Epidemic*, POLITICO (Apr. 12, 2023), <https://www.politico.com/newsletters/politico-nightly/2023/04/12/the-stunning-reach-of-americas-gun-violence-epidemic-00091778>; Kayode Crown, "All of a Sudden It's Undrinkable": *Why an Entire US City has no Clean Water*, THE GUARDIAN (Sept. 1, 2022), <https://www.theguardian.com/us-news/2022/sep/01/jackson-mississippi-clean-drinking-water-flooding-problems>; Selena Simmons-Dufin, "Live Free and Die?" *The Sad State of U.S. Life Expectancy*, NPR (Mar. 25, 2023), <https://www.npr.org/sections/health-shots/2023/03/25/1164819944/live-free-and-die-the-sad-state-of-u-s-life-expectancy>; Christopher Collins, *Disrupt, Deplete, Destroy*, TEX. OBS. (Mar. 21, 2022), <https://www.texasobserver.org/disrupt-deplete-destroy/>; Karin Fischer, *The Red-State Disadvantage*, CHRON. HIGHER ED. (Feb. 11, 2022), <https://www.chronicle.com/article/the-red-state-disadvantage>; Madison Hall, *Book Bans and Restrictions are a Losing Issue for Republicans*, BUS. INSIDER (Feb. 27, 2023), <https://www.businessinsider.com/book-banning-in-america-losing-issue-for-republicans-2023-2>; see generally Michaels & Noll, *supra* note 9 (exploring how, despite public support for progressive policies, Red states have been able to enact laws that defy national and local majority preferences).

safety.¹² But the Court, relying on amateur-hour historical research¹³ and judicial *ipse dixit*,¹⁴ has effectively forced a version of open carry legislation on the nation at large in the guise of constitutional interpretation, and a bloc of Justices seem intent on preventing states from prohibiting AR-15-style guns, the weapon of choice in devastating attacks on schools, malls, and synagogues.¹⁵ Moreover, the Court's newfound elevation of religious claims to preferential treatment over democratic governance constrains progressive states and counties seeking to—among other things—safeguard public health, finance public schools, and prohibit discrimination against LGBTQ+ persons.¹⁶ Things may only get worse if, as many observers fear, the Court soon

12. Victoria Balara, *Fox News Poll: Voters Voice Strong Support for Gun Reform*, FOX NEWS (Jun. 15, 2022), <https://www.foxnews.com/official-polls/fox-news-poll-voters-voice-support-gun-reform>; Burnett, *supra* note 10; Daniel W. Webster, *Evidence to Guide Gun Violence Prevention in America*, 36 ANN. REV. PUB. HEALTH 1 (2015), <https://www.annualreviews.org/doi/abs/10.1146/annurev-pub-health-031914-122542>; see generally Hannah Wiley, *California Legislature Approves Concealed-Carry Limits, Teeing Up Possible Supreme Court Fight*, L.A. TIMES (Sept. 12, 2023), <https://www.latimes.com/california/story/2023-09-12/california-democrats-concealed-carry-senate-bill-2-anthony-portantino-gavin-newsom-bruen-supreme-court-guns>; Edward Helmore, *Gun Rights Group Sues New Mexico Governor over Emergency Firearm Ban*, THE GUARDIAN (Sept. 10, 2023), <https://www.theguardian.com/us-news/2023/sep/10/new-mexico-gun-restrictions-lawsuit>.

13. See, e.g., Saul Cornell, *Cherry-Picked History and Ideology-Driven Outcomes: Bruen's Originalist Distortions*, SCOTUSBLOG (July 22, 2022), <https://www.scotusblog.com/2022/06/cherry-picked-history-and-ideology-driven-outcomes-bruens-originalist-distortions/> (“The majority opinion in *New York State Rifle & Pistol Association v. Bruen* invokes the authority of history but presents a version of the past that is little more than an ideological fantasy.”).

14. See, e.g., Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 DUKE L.J. 67 (2023).

15. Tierney Sneed, *How the Supreme Court Put Gun Control Laws in Jeopardy Nationwide*, CNN (Oct. 10, 2022), <https://www.cnn.com/2022/10/09/politics/gun-control-second-amendment-supreme-court-bruen-fallout/index.html>; Andrew Chung, *U.S. Supreme Court Throws Out Rulings Upholding Gun Restrictions*, REUTERS (Jun. 30, 2022), <https://www.reuters.com/world/us/us-supreme-court-orders-lower-courts-reconsider-gun-law-challenges-2022-06-30/>; Sanya Mansoor, *States Are Banning Assault Weapons. Courts Could Stop Them*, TIME (Mar. 30, 2023), <https://time.com/6267296/state-assault-weapons-bans-courts-future/>; Taylor Romine, *Federal Judge Strikes Down Decades-Old California Ban on Assault Weapons*, CNN (Oct. 20, 2023), <https://www.cnn.com/2023/10/20/us/judge-blocks-california-assault-weapon-ban/index.html>.

16. Jessica Gresko, *Justices: California Can't Enforce Indoor Church Service Ban*, ASSOCIATED PRESS (Feb. 6, 2021), <https://apnews.com/article/politics-us-supreme-court-california-coronavirus-pandemic-ea77004949becf4b74f9b98930ddec18>; Pete Williams & Rebecca Shabad, *Supreme Court Blocks NY From Enforcing Covid Limits on Churches*, NBC NEWS (Nov. 25, 2020), <https://www.nbcnews.com/news/us-news/supreme-court-blocks-ny-enforcing-covid-limits-churches-n1249079>; Nina Totenberg, *Supreme Court Rules Maine's Tuition Assistance Program Must Cover Religious Schools*, NPR (Jun. 21, 2022), <https://www.npr.org/2022/06/21/1105348236/supreme-court-rules-maines-tuition-assistance-program-must-cover-religious-schools>; Jessica Gresko & Mark Sherman, *Justices Spar in Latest Clash of Religion and Gay Rights*, AP (Dec. 5, 2022), <https://apnews.com/article/us-supreme-court-entertainment-religion-race-and-ethnicity-discrimination-9f2a76e9c72b6e0dc2a513a968328799>; Solcyra Burga, *The Implications of Supreme Court's 303 Creative Decision Are Already Being Felt*, TIME (Jul. 16, 2023), <https://time.com/6295024/303-creative-supreme-court-future-implications/>; see generally

recognizes “fetal personhood” or resurrects the nineteenth-century Comstock Act, depriving Blue states of the ability to guarantee abortion access within their borders.¹⁷

But the defensive line blocking Blue states goes beyond 1 First Street; fault lies with Congress, too. Under our federal tax scheme, Blue states subsidize Red-state healthcare, infrastructure, and social services, depriving them of monies that otherwise could be returned to taxpayers or used to fund progressive priorities.¹⁸ By an overwhelming margin, Blue-state residents pay more per capita in federal taxes than Red-state residents.¹⁹ Just as critically, Red states receive significantly more per capita in federal expenditures.²⁰ This net transfer from Blue to Red states allows residents of states such as Alabama, Louisiana, and South Carolina to enjoy services underwritten by folks from New Jersey and Connecticut. Consider a recent *New York Times* profile of highly educated families who moved from Blue-state cities to those in Red

Jon D. Michaels & Emme Tyler, *Just-Right Government: Interstate Compacts and Multistate Governance in an Era of Political Polarization, Policy Paralysis, and Bad-Faith Partisanship*, 98 IND. L.J. 863 (2023) (exploring how progressive reform efforts have been stifled as the judiciary shifts to the right).

17. See, e.g., Kate Zernike, *Is a Fetus a Person? An Anti-Abortion Strategy Says Yes*, N.Y. TIMES (Aug. 21, 2022), <https://www.nytimes.com/2022/08/21/us/abortion-anti-fetus-person.html>; Kelsey Butler & Patricia Hurtado, *Is a Fetus a Person? The Next Big Abortion Fight Centers on Fetal Rights*, WASH. POST (Oct. 12, 2022), https://www.washingtonpost.com/business/is-a-fetus-a-person-the-next-big-abortion-fight-centers-on-fetal-rights/2022/10/12/ad47ef44-4a5c-11ed-8153-96ee97b218d2_story.html; Rebecca Kluchin, *If Courts Recognize Fetal Personhood, Women’s Rights are Curtailed*, WASH. POST (May 12, 2022), <https://www.washingtonpost.com/outlook/2022/05/12/if-courts-recognize-fetal-personhood-womens-rights-are-curtailed/>; Michelle Goldberg, *The Hideous Resurrection of the Comstock Act*, N.Y. TIMES OPINION (Apr. 8, 2023), <https://www.nytimes.com/2023/04/08/opinion/comstock-laws-abortion-texas.html>; Amy Littlefield, *The Poison Pill in the Mifepristone Lawsuit that could Trigger a National Abortion Ban*, THE NATION (Apr. 26, 2023), <https://www.thenation.com/article/society/comstock-act-jonathan-mitchell/>.

18. See, e.g., Andrew Van Dam & Linda Chong, *Do Blue-State Taxes Really Subsidize Red-State Benefits?*, WASH. POST (July 7, 2021), <https://www.washingtonpost.com/business/2023/07/07/states-federal-benefits/> (“Eight of the 10 states that get the most money back from the federal government per dollar they pay into the system voted for Trump in 2020. Nine of the 10 states that got the least voted for Biden. The typical red state gets back 19 cents more for each dollar sent to Washington than its blue-state friends.”). But see, e.g., Skip Estes, *No, ‘Blue States’ Do Not Bail Out ‘Red States.’* THE HILL (Jun. 11, 2020), <https://thehill.com/opinion/finance/502321-no-blue-states-do-not-bailout-red-states/> (“Far from a dependency caused by state political leaning, it is typical for states to receive more in federal funds than they collect in federal taxes — an anomaly made possible only by rampant federal deficit spending.”).

19. See, e.g., Murad Anita, *Blue States Pay More Than Their Fair Share. Here are the Receipts*, TAMPA BAY TIMES (Jan. 22, 2022), <https://www.tampabay.com/opinion/2022/01/22/blue-states-pay-more-than-their-fair-share-here-are-the-receipts-column/> (“A study by the Rockefeller Institute of Government found that traditional Democratic states contributed significantly more federal taxes per citizen than Republican states.”).

20. *Id.* (“Republican states receive far more in federal dollar expenditures than they contribute in taxes.”); *Who Gives and Who Gets?: Explore the Balance of Payments between States and the Federal Government*, ROCKEFELLER INST. OF GOV’T, <https://rockinst.org/issue-areas/fiscal-analysis/balance-of-payments-portal/> (last visited Nov. 18, 2023).

states. In keeping with the general consensus, the *Times* underscored cost-of-living concerns.²¹ What would happen if these subsidies were cut back or removed? Were taxes slashed (as many Red-state politicians seemingly want) or Blue-to-Red federal transfers offset (as many Blue-state politicians want), residents of Blue states would face fewer affordability challenges.²² Meanwhile, those in Red states would either be forced to pay higher state taxes (to make up for the loss in Blue-state federal transfers), or they'd have to do without many of the basic services they've come to rely on.²³

Mike Lee, Ron DeSantis, the *Wall Street Journal*, and columnists at the *Times* and *Forbes* no doubt know this. That means they also know that the so-called competition between Blue and Red ideologies is hardly a fair fight. If Red states stopped receiving Blue-state transfers, they would either have to cut back on services that Blue states are currently subsidizing, eliminate them, or raise taxes. However they responded, Red states would look considerably less attractive to those contemplating a move from Blue America.

It's easy to blame the Court and Congress for holding Blue states back.²⁴

21. See Badger, Gebeloff, and Katz, *supra* note 1.

22. Laura Davison, *All About SALT, the Tax Deduction that Divides the US*, BLOOMBERG (Apr. 12, 2021), <https://www.bloomberg.com/news/articles/2021-04-12/all-about-salt-the-tax-deduction-that-divides-u-s-quicktake>; Laura Weiss, *New "SALT" Caucus Rejuvenates Efforts to Relieve Deduction Cap*, ROLL CALL (Feb. 8, 2023), <https://rollcall.com/2023/02/08/new-salt-caucus-rejuvenates-efforts-to-relieve-deduction-cap/>.

23. For the same reason, Blue-state "outreach" projects, such as the nascent reproductive-rights initiatives to cover travel and medical expenses for pregnant persons who live in Red states, raise the cost of living for residents of Blue states while making life in states with abortion bans far more palatable than they'd otherwise be. Geoff Mulvilhill & Bill Barrow, *Democratic Governors Form Alliance on Abortion Rights*, ASSOCIATED PRESS (Feb. 21, 2023), <https://apnews.com/article/abortion-us-supreme-court-politics-texas-gavin-newsom-5db36213df3b4de5ad94ebbb53d01d30>; Adam Beam, *California Budget to Cover Some Out-of-State Abortion Travel*, ASSOCIATED PRESS (Aug. 26, 2022), <https://apnews.com/article/abortion-us-supreme-court-california-gavin-newsom-729c1df436b5efa69d1cbff438f5905c>. Firms exacerbate the Blue state disadvantage. Emma Goldberg, *These Companies Will Cover Travel Expenses for Employee Abortions*, N.Y. TIMES (Aug. 19, 2022), <https://www.nytimes.com/article/abortion-companies-travel-expenses.html>. They move from California to Texas, taking advantage of the lower taxes and more lax labor and environmental regulations, and then use just a fraction of those cost savings to subsidize out-of-state reproductive health care for employees and their family members.

24. One significant context in which Congress and the Court work in parallel to reinforce Blue-Red inequality is the environment. In late May, the Court issued a painfully parsimonious reading of the Clean Water Act that leaves many wetlands beyond the reach of federal protection. *Sackett v. EPA*, 598 U.S. 651 (2023). Unless Congress passes legislation to expand (and make more explicit) federal protections—which seems all but impossible given Republican control of the House and the Senate's filibuster rule—states will have to do more heavy lifting on their own to safeguard their environments. See Ian Millhiser, *A New Supreme Court Opinion is Terrible News if You Care About Clean Water*, VOX (May 25, 2023), <https://www.vox.com/2023/5/25/23737426/supreme-court-clean-water-act-epa-pollution-wetlands-sackett-alito> (noting that the new, narrow interpretation of the Clean Water Act is likely to exclude more than half of the nation's wetlands and "significantly curtail the federal government's ability to protect American waters" writ large).

Needless to add, the ruling places extra pressure and shifts additional costs on those states and

So let's be clear: the fault lies with the ostensibly progressive states, too.²⁵ Proposals to increase affordable housing, address homelessness, expand public transportation, prioritize environmental justice, and introduce equity initiatives in the public schools are often stymied by the type of NIMBYism and school-zoning decisions that are at times antithetical to progressive politics.²⁶ Just as importantly, Blue states and cities have done little (and, thanks to police unions, have limited power) to curb overzealous, racist, or vindictive police departments.²⁷ As Jake Grumbach has shown, Blue states end up enacting policing and carceral policies that tend to be similar to, if not indistinguishable from, those found in Red states.²⁸

So long as the Blue states and Red states are unable to compete fairly on guns and taxes—and fail to compete on other issues—it's wrong to interpret the ongoing Blue state exodus as a repudiation of progressive policies or even, as Brooks would have it, an effort to split the baby. More plausibly, elected officials in Blue states aren't doing (and at times cannot do) enough to make life in such places as New York, California, Illinois, and Maryland sufficiently safer, sufficiently more equitable, and sufficiently more enriching to justify the higher cost of living.²⁹ In a true competition, we wager we'd see a very

localities committed to protecting wetlands. While this is an opportunity for Blue states to distinguish themselves from Red states, it is also a major offloading of costs, which will necessarily be shouldered by Blue state residents and corporations.

Moreover, it'll be incomplete. Assuming Blue states seek to fill the federal regulatory void and Red states do not, Blue states will still be adversely affected by the failure of Red states to protect the wetlands located within their boundaries. In short, Red-state apathy will impose negative externalities on Blue states, which have heretofore relied on uniform federal regulation of wetlands to slow down and reduce the flow of pollution as well as control flooding. Likewise, life in Red states will be somewhat improved by the positive externalities of Blue states taking care of their wetlands.

25. Johnny Harris & Binyamin Appelbaum, *Blue States, You're the Problem*, N.Y. TIMES OPINION (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/opinion/democrats-blue-states-legislation.html>.

26. *The American Left's Chronic NIMBY Problem*, FIN. TIMES (Dec. 14, 2022), <https://www.ft.com/content/a3a2a44d-53ba-4eb9-9a56-c6c6e2a3e2e2>; Tomas Monarrez & Carina Chen, *Dividing Lines: Racially Unequal School Boundaries in US Public School Systems*, URB. INST. (Sept. 1, 2021), available at <https://www.urban.org/research/publication/dividing-lines-racially-unequal-school-boundaries-us-public-school-systems>; Howard Blume, *Economic Segregation in Schools has Worsened, Widening Achievement Gaps, Study Says*, L.A. TIMES (Feb. 1, 2022), <https://www.latimes.com/california/story/2022-02-01/economic-segregation-in-schools-has-worsened-study-says>.

27. Philip Elliot, *California Democrats Were in a NIMBY Mood on Tuesday*, TIME (Jun. 8, 2022), <https://time.com/6185537/democrats-california-crime-elections/>; JOANNA SCHWARTZ, SHIELDED: HOW THE POLICE BECAME UNTOUCHABLE (2023).

28. JACOB M. GRUMBACH, LABORATORIES AGAINST DEMOCRACY: HOW NATIONAL PARTIES TRANSFORMED STATE POLITICS (2022).

29. See Nicquel Terry Ellis, *One of Louisiana's Only Pediatric Cardiologists has Left the State over Anti-LGBTQ Legislation*, CNN (Sept. 1, 2023), <https://www.cnn.com/2023/09/01/us/jake-kleinmahon-doctor-leaves-louisiana-reaj/index.html>; Lori Rozsa, *Florida Anti-LGBTQ Laws Prompt Families Who Feel Unsafe to Flee*, WASH. POST (Jun. 10, 2023),

different kind of migration—one in the opposite direction.

II. TRUE COMPETITION

Our alternate account of the Blue state “exodus” raises the question: What *should* Blue states be doing to address the dynamics we have sketched? In our opinion, a lot.

The starting point is to recognize that the goal is not to win a simple competition for families or tax dollars. That perspective, familiar from the economic literature on “foot voting,”³⁰ might make plenty of sense in normal times, when the differences between Red- and Blue-state policies are ones of degree, not kind. In Normal-world, states compete over tax rates, the strictness or permissiveness of labor and environmental regulations, the quality of their schools and social safety net, and maybe even the extent to which public policy is informed by specific sectarian commitments. But the competition plays out against the backdrop of a baseline of civil rights that do not depend on the state one finds oneself in—a baseline that allows individuals to vote with their feet without foregoing their status as members of the democratic community.³¹ To be sure, this baseline only emerged in the decades after Congress enacted the Civil Rights Act of 1964 and Voting Rights Act of 1965—and even then, it was incomplete and contested. But even this progress is under threat. The one-two-three punch of a barely functional Congress, a Supreme Court hostile to democratic equality, and rising state-level authoritarianism means that the federal floor—the basic condition for *real* interjurisdictional competition—is eroding. As we discuss elsewhere,³² Red states are enacting laws and regulations and issuing directives that are anti-democratic,³³

<https://www.washingtonpost.com/nation/2023/06/10/florida-anti-lgbtq-laws/> (noting affordability barriers).

30. See generally Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 516 (1956) (arguing that individuals express their political and economic preferences by moving to communities that match those preferences—that is, by “voting with their feet”); Wai-Man Liu & Phong Ngo, *Voting with your Feet: Political Competition and Internal Migration in the United States*, 65 EUR. J. POL. ECON. 101931 (2020) (developing empirical evidence for the hypothesis that people “vote with their feet” in response to a lack of political competition, and finding that “people tend to migrate towards more politically competitive states”).

31. For insightful discussion of this point, see Ronald Brownstein, *Red States Are Building a Nation Within a Nation*, CNN (Jul. 26, 2022), <https://www.cnn.com/2022/07/26/politics/red-states-blue-states-control-of-national-policy-fault-lines/index.html>.

32. See MICHAELS & NOLL, *supra* note 7; Michaels & Noll, *supra* note 9, at 1193.

33. For instance, Red states have increasingly proposed restrictive voting rights bills, such as bills that “seek to curb mail voting,” “tighten identification requirements,” or “allow state officials to meddle in the elections process by, for example, directing new resources to pursue the prosecution of election officials for ordinary conduct.” See Michael Waldman, *Voting Rights Are Expanding in Blue States, Contracting in Red*, BRENNAN CTR. FOR JUST. (Mar. 1, 2023), <https://www.brennan-center.org/our-work/analysis-opinion/voting-rights-are-expanding-blue-states-contracting-red>. A

reckless,³⁴ and oppressive, particularly to women,³⁵ LGBTQ+ persons,³⁶ the disabled community,³⁷ and Black Americans.³⁸ Meanwhile, middle-of-the-road (“red-blue mash-up”) political possibilities are increasingly foreclosed as Red-state governors and state legislatures are hard at work exerting fuller control over liberal-leaning cities and counties such as Houston and Memphis.³⁹

In this new landscape, it’d be a mistake for Blue states to tack further to the right and try to out-compete Red states by serving up a *mélange* of right-

similar trend has emerged with the increased removal of local Democratic officials in Red states, especially in light of newly proposed laws that would allow legislatures to remove local officials more easily. See, e.g., Nick Corasaniti & Reid J. Epstein, *How Republican States Are Expanding Their Power Over Elections*, N.Y. TIMES (last updated Jul. 1, 2021), <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html> (“Republicans have introduced at least 216 bills in 41 states to give legislatures more power over elections officials [T]he laws allow Republicans to remove local officials they don’t like, and because several of them have been Black Democrats, voting rights groups fear that these are further attempts to disenfranchise voters of color.”).

34. A prime example of Red-state recklessness is in the field of public health, with Red states proposing laws to limit the power of public health agencies and prevent certain public health mandates (such as mask or vaccine mandates). See, e.g., Lauren Weber & Anna Maria Barry-Jester, *Republicans in At Least 26 States Have Rolled Back Public Health Powers Amid Pandemic*, L.A. TIMES (Sept. 15, 2021), <https://www.latimes.com/science/story/2021-09-15/republicans-roll-back-public-health-powers-amid-pandemic>. Likewise, Red states have disregarded political violence. See David French, *The Growing Danger of Political Violence Threatens to Destabilize America*, TIME (Oct. 14, 2020), <https://time.com/5899579/danger-american-political-violence/>.

35. One such law is Texas’ S.B. 8, which targets those who provide reproductive health services as well as those who support pregnant persons seeking those services. See *supra* notes 8–9 and accompanying text.

36. In recent months, Red states have advanced laws targeting transgender youth, laws that may permit discrimination in places of public accommodation, and laws censoring certain books or other aspects of school curricula. See Cullen Peele, *Roundup of Anti-LGBTQ+ Legislation Advancing In States Across the Country*, HUMAN RIGHTS CAMPAIGN (May 23, 2023), <https://www.hrc.org/press-releases/roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country>.

37. Anti-mask policies, for example, disproportionately threaten the safety of people with disabilities. See Beatrice Adler-Bolton, *“Mask Off at the Door” Policies Undermine Our Rights As Disabled People*, DISABILITY VISIBILITY PROJ. (Apr. 9, 2023), <https://disabilityvisibilityproject.com/2023/04/09/mask-off-at-the-door-policies-undermine-our-rights-as-disabled-people/>.

38. Several Red states have sought to limit (or completely prohibit) the teaching of Critical Race Theory (“CRT”), which emphasizes the structural dimensions of racism and the ways racism shapes our political, social, legal, and economic institutions. Some have gone so far as to prohibit schools from even mentioning CRT altogether or teaching concepts associated with CRT. See Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS INST. (Nov. 2021), <https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/>.

39. See Brooks, *supra* note 6 and accompanying text (explaining the “red-blue mashup” concept, or the idea that Red states with Blue major cities can have more balanced political atmospheres); see also *supra* notes 10–11 and accompanying text (critiquing the practicality of the “red-blue mashup”); Tim Murphy, *Republicans Around the Country Are Trying to Rob Democrats of the Right to Govern*, MOTHER JONES (2023), <https://www.motherjones.com/politics/2023/05/republicans-local-control-desantis-tennessee/> (suggesting that Memphis and Houston are two progressive cities whose legislative, regulatory, and law-enforcement agendas have been curtailed by their more conservative state governments).

wing economics and progressive social policy. Instead, they can—and should—stake out bold, progressive policies. Their goals should be four-fold:

- To ensure their current residents aren't forced (priced) out of Blue states *and into worse situations*.
- To ensure Red-state residents aren't kept (priced) out of Blue states and thus *stuck* in bad situations.
- To force Red-state governors and legislatures to bear the full economic and political costs of waging a one-sided culture war against not only their own people and businesses but, at times, the people and business of the entire United States.
- To force a new national Red-state rapprochement on terms far more favorable to Blue states (and, of course, civil rights and democratic equality across America).

Blue states' policy interventions, in turn, ought to focus on two priorities: (1) affordability; and (2) limiting cross-subsidization and export of Red states' dangerous, anti-democratic practices.

A. Affordability

Some of the most alarming statistics about the contemporary United States involve quality of life and life expectancy. Unique among advanced nations, life expectancy in the United States is actually declining.⁴⁰ And things may be getting worse: younger generations are on track to earn less than their parents and grandparents.⁴¹ The nationwide housing crisis⁴² and aggressive march of climate change promise to compound these challenges.

Particularly with the federal government incapacitated by legislative gridlock and courts hostile to social welfare regulations,⁴³ it falls on the states to pick up the slack. It must be a priority for Blue states to make housing, health

40. See Selena Simmons-Duffin, 'Live Free and Die?' *The Sad State of U.S. Life Expectancy*, NPR (Mar. 25, 2023), <https://www.npr.org/sections/health-shots/2023/03/25/1164819944/live-free-and-die-the-sad-state-of-u-s-life-expectancy>.

41. Tami Luhby, *Many Millennials Are Worse Off Than Their Parents – A First in American History*, CNN (Jan. 11, 2020) <https://www.cnn.com/2020/01/11/politics/millennials-income-stalled-upward-mobility-us/index.html>.

42. See, e.g., *The Affordable Housing Crisis Grows While Efforts to Increase Supply Fall Short*, GOV'T ACCOUNTABILITY OFF. (Oct. 12, 2023), <https://www.gao.gov/blog/affordable-housing-crisis-grows-while-efforts-increase-supply-fall-short>.

43. See, e.g., Daniel Deacon & Leah Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009, 1078–91 (2023) (arguing that the Court's recent major questions doctrine jurisprudence limits Congress's ability to delegate authority to agencies to regulate, even in situations where agencies' expertise and flexibility are particularly valuable in promoting social welfare).

care, and higher education attainable and to make communities and workplaces safe and sustainable. They need to do so to make it affordable for residents and businesses to remain in those high-cost states and avoid having to relocate into Red states, which may have lower costs of living but are far less safe and equitable for large segments of the American population. Of no small importance, Blue states need to prioritize affordability to make it feasible for Red-state families to relocate to more accepting, validating, and empowering communities.

The model here should be proven interventions that harness the enormous power of American capitalism to improve quality of life for those at the bottom of the income spectrum. We certainly know how to do this type of policymaking, though our willingness to do so (especially for extended periods) is often lacking. The 2021 American Rescue Plan Act is a case in point. The Act's child tax credits contributed to a 46% decline in child poverty between 2020 and 2021⁴⁴—before Congress declined to extend them, erasing the pandemic-era gains.⁴⁵

We recognize that gains with respect to affordability may require regulatory reforms that some progressive groups may object to.⁴⁶ We also recognize that Blue states will need to raise taxes to better support families and businesses. And we recognize, too, that raising taxes tends to prompt high earners to relocate—in this case, to Red states. But that's not necessarily true, or even likely, under current circumstances, especially when Red state culture-war policies are so stifling and alienating. So, to retain (and, we'd urge, increase) Blue states' "value proposition," progressive governors and state legislatures should more fully and explicitly guarantee the equal rights and equal protection of all, with special emphasis on those most targeted in Red America.

Among other things, Blue states ought to lock in—ideally by state constitutional amendment—abortion rights, LGBTQ+ rights (including marital rights, adoption rights, and families' right to direct medical decisions concerning gender-affirming care), and rights to inclusive education free from book bans, curricular restrictions, or anti-transgender policies. Blue states also ought to provide additional protections for public servants, notably election

44. Kalee Burns, Liana Fox, & Danielle Wilson, *Child Poverty Fell to Record Low 5.2%*, U.S. CENSUS BUREAU (Sept. 13, 2022), <https://www.census.gov/library/stories/2022/09/record-drop-in-child-poverty.html>.

45. Press Release, Ctr. for Budget and Policy Priorities, *Record Rise in Poverty Highlights Importance of Child Tax Credit; Health Coverage Marks a High Point Before Pandemic Safeguards Ended* (Sept. 12, 2023), <https://www.cbpp.org/press/statements/record-rise-in-poverty-highlights-importance-of-child-tax-credit-health-coverage>.

46. See, e.g., Rachel M. Cohen, *The Big, Neglected Problem that Should Be Biden's Top Priority*, VOX (Mar. 1, 2023), <https://www.vox.com/policy/23595421/biden-affordable-housing-shortage-supply> (suggesting that relaxing some environmental regulations might make housing more affordable and abundant).

administrators, teachers, and public-health officials whose vital work is currently under attack across large swaths of Blue and Red states alike. Not too long ago, most, if not all, of us would take these rights and protections for granted. But no longer. And just as they prize access to the Getty, the Lincoln Center, and the Met, high-income individuals should prize living in well-functioning democracies, even if the price of admission is a higher tax bill.

B. Divestment and Reorientation

Blue states such as California, New York, Illinois, Michigan, and Washington, among others, are economic juggernauts. They have highly educated populations and are home to the lion's share of America's biggest and most dynamic businesses. As discussed above, through federal redistributive tax programs, Blue-state residents and businesses subsidize Red states; they thereby indirectly finance Red states engaged in resource-intensive culture wars (while Red states remain affordable).⁴⁷ And here's the kicker: Blue-state progressives are typically among the biggest supporters of substantial federal taxes.

Given the obstacles to enacting progressive policy at the federal level (thanks again to congressional gridlock and a judiciary that is rolling back federal regulatory powers at a breakneck speed),⁴⁸ national lawmakers from Blue states should rethink their longstanding opposition to federal tax cuts.⁴⁹ Though joining with Red-state Republicans in seeking to lower federal taxes may seem entirely uncharacteristic, impudent, and possibly even callous, it makes good political sense and will lead, ultimately, to opportunities to expand the American welfare state. First, Blue state residents and businesses will be able to keep higher percentages of their earnings; Blue state governments can then increase state-level taxes—and use the additional revenue to finance state-level affordability programs. And, second, without federal taxes flowing into Red states, those Red states will have fewer resources to, again,

47. See *supra* note 18 and accompanying text.

48. See *supra* note 43 and accompanying text.

49. See, e.g., David Lawder & Richard Cowan, *U.S. House Democrats Seek to Roll Back Trump Tax Cuts for Wealthy Corporations*, REUTERS (Sept. 13, 2021), <https://www.reuters.com/world/us/us-house-democrats-seek-corporate-tax-increase-265-percent-2021-09-13/>; see also Jonathan Chait, *The Triumph of Taxophobia*, DEM. J. (Spring 2011), <https://democracyjournal.org/magazine/20/the-triumph-of-taxophobia/> (“Two generations ago, . . . [f]iscal conservatism meant opposition to deficits and inflation. Today, the old fiscal conservatism has been embraced by the mainstream of the Democratic Party.”); Ron Elving, *The Democratic Push to Tax the Rich More is 40 Years in the Making*, NPR (Sept. 16, 2021), <https://www.npr.org/2021/09/16/1036853972/biden-democrats-tax-the-rich-reagan-trump-reconciliation/> (“It will be hard to get every Democrat in the Senate and virtually every one of them in the House of Representatives to accept the compromises and disappointments sure to be found in an eventual deal [about tax cuts]. But difficult as this is, the president and his party would have no shot whatsoever without the reconciliation process.”).

prosecute culture wars. This means they'll have to raise more taxes locally (making Red states less economically attractive) or forgo their aggressive policing of women, LGBTQ+ persons, and Black Americans (making Red states less dangerously authoritarian).

Blue states can use their economic might in other ways too. Blue-state public pensions hold massive amounts of securities. And Blue-state governments spend considerable sums on all sorts of contractors. At least some Blue states have a history of divesting from firms involved in the production of goods that we now recognize as threats to democracy—e.g., tobacco, fossil fuel, and guns.⁵⁰ And some political jurisdictions, including the federal government, have a history of refusing to contract with firms that engage in various discriminatory practices⁵¹ (or simply with firms operating out of states that have passed anti-LGBTQ+ laws).⁵² These tools of investment and contracting can, today, be used to put pressure on Red states to ease up on their culture-war policies. After all, the firms that will be most harmed by divestment and procurement bans will be those who do most of their work in Red states. If those firms lose capital and business opportunities, they may not be able to employ as many workers or otherwise support the Red state economy. These forgone opportunities will undoubtedly make Red states less competitive and, perhaps, inclined to ease up on their culture-war policies.

Last, Blue states ought to offset these forgone social, political, and economic ties with Red states and businesses operating out of Red states by forging tighter connections with like-minded foreign governments. Transnational partnerships are already a big deal—and are already an especially big deal in cosmopolitan Blue states on the west and east coasts. But further intensification of those relationships will not only compensate for Blue states' detachment from Red America but will also leave Red states even more isolated.

III. RECONCILIATION, NOT COMPETITION: BLUE STATES' ROLE IN THE FIGHT FOR A NEW NATIONAL SETTLEMENT

That takes us back to the goals Blue states should be pursuing as they take

50. Anne Barnard, *New York's \$226 Billion Pension Fund is Dropping Fossil Fuel Stocks*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/2020/12/09/nyregion/new-york-pension-fossil-fuels.html>; *Connecticut To Stop Investing Pension Money in Gun Manufacturers*, CBS NEWS (Dec. 3, 2019), <https://www.cbsnews.com/news/connecticut-pension-fund-to-divest-30-million-from-gun-companies/>; *California Public Pension System to Sell All Tobacco Stocks*, KCRA (Dec. 19, 2016), <https://www.kcra.com/article/california-public-pension-system-to-sell-all-tobacco-stocks/8518558>.

51. Exec. Order No. 8802, 6 Fed. Reg. 3109 (Jun. 27, 1941).

52. E.g., Press Release, Office of London N. Breed, Mayor of San Francisco, City Announces Implementation of Supervisor Vallie Brown's Ordinance to Ban Doing Business with States That Have Restrictive Abortion Laws (Oct. 16, 2019), <https://sfmayor.org/article/city-announces-implementation-supervisor-vallie-browns-ordinance-ban-doing-business-states>.

stock of the outflow of residents to Red states. Americans love competition. And yet, given how dangerously polarized we are—and how much room Red states have been permitted to implement anti-democratic, authoritarian policies—the goal cannot be simply to win more households and corporate headquarters. While it's true that Blue states need to engage in greater, more intensive competition, that competition should be geared toward producing conciliation.

To that end, we emphasize that while our policy recommendations are indeed unsparing, they're not meant to be punitive. They aim, rather, to buoy the relative financial and political standing of Blue states (where democratic equality and civil rights are still prized) while making an economically compromised and isolated Red America more apt to moderate its policies and, eventually, seek a national rapprochement. Right now, MAGA Republicans from Red states are the ones refusing to engage in collective, bipartisan governance in Congress—and are relying on federal courts to protect their anti-democratic, authoritarian policies. But if Red America is no longer attracting residents and businesses, and instead losing them, perhaps they'll be motivated to re-engage, at which point Blue states can negotiate a resumption of national policymaking on everything from voting rights to the environment—and do so from a position of relative strength.