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## YALE LAW & POLICY REVIEW

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### The Geographic (Un)representativeness of the Federal Reserve Board of Governors

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## INTRODUCTION

In 1913, Congress passed the Federal Reserve Act in an attempt to provide more stability to the banking system and to allow for more effective control of monetary policy by creating the Federal Reserve System, an independent agency.<sup>1</sup> The Federal Reserve System “consists of a seven member Board of Governors with headquarters in Washington, D.C., and twelve Reserve Banks located in major cities throughout the United States.”<sup>2</sup> Section 10 of the Federal Reserve Act and subsequent statutes require that, “[i]n selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country.”<sup>3</sup> Those seven members of the Board of Governors<sup>4</sup> make up a majority of the Federal Open Market Committee (FOMC), the body that sets monetary policy for the country.<sup>5</sup> The President of the Federal Reserve Bank of New York is also a member of the FOMC, and the other four voting members of the FOMC are a rotating set of presidents from the other eleven Federal Reserve Banks.<sup>6</sup> Thus, the Board of Governors, if voting together, always has sufficient votes to control the decisions of the FOMC.

1. See ROGER T. JOHNSON, FEDERAL RESERVE BANK OF BOSTON, HISTORICAL BEGINNINGS . . . THE FEDERAL RESERVE 17-32 (2010), <https://www.bostonfed.org/about/pubs/begin.pdf> (describing the historical development of the Federal Reserve System and the passage of the Federal Reserve Act).
2. *The Structure of the Federal Reserve System*, FED. RES. BD., <http://www.federalreserve.gov/pubs/frseries/frseri.htm> (last visited Feb. 14, 2016).
3. Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913) (codified at 12 U.S.C. § 241 (2012)). Section 10 includes several imprecise terms, such as “from,” “due regard,” “fair representation,” and “geographical divisions.” Later sections in this Note will attempt to flesh out what those terms have been understood to mean over time.
4. The Board of Governors, comprised of “Governors,” was originally referred to as the Federal Reserve Board, composed of “Members,” but this difference in official appellation did not reduce the importance of geographic diversity among appointive members. See *Membership of the Board of Governors of the Federal Reserve System, 1914-Present*, BD. OF GOVERNORS OF THE FED. RES. SYS., <http://www.federalreserve.gov/aboutthefed/bios/board/boardmembership.htm> [hereinafter *Membership of the Board of Governors*] (“The Banking Act of 1935, approved Aug. 23, 1935, changed the name of the Federal Reserve Board to the Board of Governors of the Federal Reserve System. It also changed the title from Members to Governors. Section 203(a) provided that: ‘Hereafter the Federal Reserve Board shall be known as the ‘Board of Governors of the Federal Reserve System,’ and the governor and vice governor of the Federal Reserve Board shall be known as the ‘chairman’ and the ‘vice chairman’ respectively, of the Board of Governors of the Federal Reserve System.’”).
5. See *id.*
6. See *id.*

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However, some commentators have criticized the Federal Reserve's financial stability and monetary policies as favoring the interests of East Coast and Wall Street banks at the expense of the "Main Street" economy<sup>7</sup> and smaller banks.<sup>8</sup> As a partial response to those concerns, Congress, in a bipartisan measure proposed by Senator David Vitter (R-LA) and supported by Democrats such as Senator Elizabeth Warren (D-MA), recently amended 12 U.S.C. § 241 to require the President to "appoint at least 1 member" to the Federal Reserve Board of Governors "with demonstrated primary experience working in or supervising community banks having less than \$10,000,000,000 in total assets."<sup>9</sup> This amendment provides more specificity to the requirement that "the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests . . . of the country" but does not amend the geographic diversity requirements that originated in Section 10 of the Federal Reserve Act.

This Note examines the legislative history of Section 10 of the Federal Reserve Act, describes the relevance of geographic representativeness in recent confirmations of Board members, reveals interesting historical trends in Federal Reserve Board of Governors membership, and describes how the geographic composition of the Board may affect the Board's implementation of monetary and financial stability policy. To correct the errors of the Office of Legal Counsel (OLC), which incompletely analyzed the legislative history of the geographic diversity requirements in an attempt to increase Executive nomination discretion, Part I analyzes the legislative history of Section 241's geographic diversity requirements and shows that populist members of Congress viewed these requirements as essential to prevent East Coast or Wall Street interests from dominating the Board of Governors.<sup>10</sup> Part II describes how these geographic re-

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7. See, e.g., NEIL BAROFSKY, *BAILOUT: HOW WASHINGTON ABANDONED MAIN STREET WHILE RESCUING WALL STREET* (2012).
  8. See, e.g., Hester Peirce et al., *How Are Small Banks Faring Under Dodd-Frank?* (Mercatus Ctr., George Washington Univ. Working Paper, 2014) [http://mercatus.org/sites/default/files/Peirce\\_SmallBankSurvey\\_v1.pdf](http://mercatus.org/sites/default/files/Peirce_SmallBankSurvey_v1.pdf) (describing how the Dodd-Frank Act and Federal Reserve regulations have been reducing the number of small banks and contributing to consolidation in the banking industry).
  9. 160 CONG. REC. S4584 (daily ed. July 17, 2014) (Amendment No. 3550); see Terrorism Risk Insurance Program Reauthorization Act of 2015, Pub. L. No. 114-1, § 109, 129 Stat. 3, 9 (2015) (to be codified at 12 U.S.C. § 241); see also Press Release, Sen. Jeff Merkley and Sen. Elizabeth Warren, Senators Merkley and Warren Call on President Obama to Fill Vacant Fed Slots with Strong Financial Reform Advocates (May 28, 2014), <http://www.merkley.senate.gov/news/press-releases/senators-merkley-and-warren-call-on-president-obama-to-fill-vacant-fed-slots-with-strong-financial-reform-advocates>.
  10. While this Note utilizes legislative history in correcting the OLC's faulty understanding of the geographic diversity requirements, the entire episode perhaps serves as a cautionary tale about the weaknesses of relying on committee reports and floor speeches alone in statutory interpretation. See ANTONIN SCALIA &

quirements were applied in recent confirmation hearings of Board members, particularly the hearings that prevented Peter Diamond, a Nobel Laureate in economics, from assuming a position on the Board of Governors. Largely thanks to the inaccurate conclusions of the OLC, the geographic diversity requirements “have for some time been effectively read out of the Federal Reserve Act,” as Mark Calabria of the Cato Institute has noted disapprovingly.<sup>11</sup> Part III discusses this Note’s research, by far the most comprehensive analysis of this unexplored subject, into how the Executive and the Senate historically have viewed the geographic connections of successful nominees to the Board of Governors. While the other diversity components of Section 10 are even more difficult to measure and less salient to the Senate at the time it votes on nominees, each nominee to the Board of Governors is described in Senate deliberations as “of” a particular state, which helps establish congressional understanding of where a nominee is from.<sup>12</sup> Part III reveals that Board members from eastern Federal Reserve Districts have dominated the Board’s membership for the past two decades with eighty percent of all recently confirmed nominees born on the East Coast. Finally, Part III also demonstrates that the overwhelming East Coast dominance on the Board of Governors is a recent phenomenon that diverges from a history of greater geographic diversity. Part IV provides brief policy suggestions for carrying out Mark Calabria’s recommendations for improving and clarifying the geographic diversity requirements.

#### I. LEGISLATIVE HISTORY OF THE GEOGRAPHIC DIVERSITY REQUIREMENTS

Section 241 includes two separate provisions dealing with geographic diversity that must be considered by the President when selecting Board members: (1) “not more than one [appointive member of the Board of Governors] shall be selected from any one Federal Reserve district”; and (2) “the President shall have due regard to a fair representation of the . . . geographical divisions of the country.”<sup>13</sup> The legislative history of Section 241 confirms that both these re-

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BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 369-90 (2012) (explaining “[t]he false notion that committee reports and floor speeches are worthwhile aids in statutory construction”).

11. Mark Calabria, Letter to the Editor, *Change the Fed’s Center of Gravity*, WALL ST. J. (Mar. 24, 2015), <http://www.wsj.com/articles/change-the-feds-center-of-gravity-letters-to-the-editor-1427124907>.
12. For a discussion of this approach to establishing the Senate’s understanding and an acknowledgment of the difficulties this method still presents, see *infra* notes 105-109, 120, 131-135 and accompanying text.
13. See Federal Reserve Board—Residency of Board Member (12 U.S.C. § 241), 2 Op. O.L.C. 391, 391, 393 n.3 (1977) (conceding the textual basis for two separate geographic diversity requirements); 12 U.S.C. § 241 (2012). The selection of the word “shall” creates the impression that these provisions act as requirements, at least for the President when considering whom to nominate, and not as mere suggestions, but this question, particularly for the second requirement with its

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quirements were designed to address concerns of members of Congress in 1913 that the Federal Reserve Board would represent the interests of East Coast bankers to the detriment of the entire country.

A. *The Amendment of the Secret Caucus*

The geographic diversity requirements of Section 10 were part of the original 1913 Federal Reserve Act,<sup>14</sup> and the statutory requirements for appointive members have not changed materially since then. The Federal Reserve Act arose as a counter-proposal to the Aldrich Plan, which Senator Nelson W. Aldrich (R-RI) presented to a group of “businessmen in Washington, DC” early in 1911.<sup>15</sup> The Aldrich Plan would have established a centralized bank “called the National Reserve Association, with branches all over the country and with the power to issue currency, and to rediscount the commercial paper of member banks. Control of the institution would reside in a board of directors, the overwhelming majority of whom would be bankers.”<sup>16</sup> The Aldrich Plan was introduced as legislation and supported by Republican Senators.<sup>17</sup> However, the Democratically-controlled Congress took no action on the legislation. Progressive and populist Democrats, such as William Jennings Bryan, complained that “the Aldrich plan would not provide for adequate public control of the banking system, that it would enhance the power of the larger banks and the influence of Wall Street, and that its currency reform provisions would be dangerously inflationary.”<sup>18</sup>

To counter the Aldrich Plan, Congressman Carter Glass (D-VA) and Senator Robert Owen (D-OK) worked with President Woodrow Wilson to craft a banking plan that would allow for government control of the banking system while avoiding too much centralization by authorizing geographically dispersed Federal Reserve Banks and Districts, although this first proposed plan lacked the Federal Reserve Board geographic diversity requirements.<sup>19</sup> When the pro-

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vague mention of “fair representation,” is subject to debate and interpretation as discussed throughout this Note. At the least, a nomination that gives no “due regard” for geographic diversity would fail this requirement. 12 U.S.C. § 241 (2012).

14. Federal Reserve Act, Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913) (“In selecting the five appointive members of the Federal Reserve Board, not more than one of whom shall be selected from any one Federal reserve district, the President shall have due regard to a fair representation of the different . . . geographical divisions of the country.”).
15. JOHNSON, *supra* note 1, at 18.
16. *Id.*
17. See 48 CONG. REC. 840 (1912) (statement of Sen. Burton) (introducing S. 4431, “A bill to incorporate the National Reserve Association of the United States, and for other purposes”).
18. JOHNSON, *supra* note 1, at 18.
19. *Id.* at 22-24.

positional faced opposition in the House of Representatives, the Democratic congressmen met in a secret caucus to resolve their differences and amend the bill.<sup>20</sup> While the Democratic caucus kept no public record of its debate, several Democratic congressmen who preferred to conduct business in the open referred to the secret caucus's deliberations in later congressional debates. Most significantly, Congressman William Murray (D-OK) described the reasoning behind the insertion of the geographic diversity requirements, which were included in an amendment he had proposed in the secret Democratic caucus:

It is admitted by Mr. Glass and the proponents of this bill that it will all depend on this board of seven, and I tell you that they must not only be honest and competent, but they must represent every section of this country. This board, if selected east of Washington, would know little and care less about the agricultural and other interests in the Western and Southern States. Our commercial paper is entirely different. In Oklahoma about the only prime commercial paper is that based upon cattle and agricultural products, particularly cotton. Therefore I introduced an amendment in the caucus providing that not more than one of these four appointed by the President shall be selected from the same regional reserve district. That amendment was adopted.<sup>21</sup>

Thus, according to Congressman Murray's explanation of his amendment, the Federal Reserve Board needed to represent "every section of this country," particularly the "agricultural and other interests in the Western and Southern States."<sup>22</sup> If the appointive members of the Board were selected almost exclusively from the East Coast (or "east of Washington,"<sup>23</sup> in Congressman Murray's phrasing), then the Board would not be a "fair representation of the . . . geographical divisions of the country," in the language that was adopted in the final version of the Federal Reserve Act.<sup>24</sup> The additional requirement that not more than one of the appointive members could be from any one Reserve District provided further assurances that the Board would not be dominated by members from any one geographic region.

### *B. Resistance and Congressional Acquiescence*

Congressman Glass and several members of the House Committee on Banking and Currency from the East Coast "strongly resisted" the amendment

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20. See 50 CONG. REC. 5007 (1913) (statement of Rep. Thompson) ("[T]he bill was prepared in a secret caucus, without a hearing, and away from the gaze of the American people.").

21. 50 CONG. REC. 5021 (1913) (statement of Rep. Murray).

22. *Id.*

23. *Id.*

24. 12 U.S.C. § 241 (2012).

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offered by Congressman Murray,<sup>25</sup> and Glass, as Chairman of the House Committee on Banking and Currency, attempted to downplay the geographic diversity provisions in the Committee Report:

The provision that the President in making his selections shall so far as possible select them in order to represent the different geographical regions of the country has been inserted in very general language in order that, while it might not be minutely mandatory, it should be the expressed wish of the Congress that no undue preponderance should be allowed to any one portion of the Nation at the expense of other portions. The provision, however, does not bind the President to any slavish recognition of given geographical sections.<sup>26</sup>

However, Congressman Glass's explanation of the geographic diversity requirements was neither in conformity with the bill's entire text, including the first geographic diversity requirement, nor the understanding of the rest of the Democratic caucus that had added the requirements. First, Congressman Glass recognized only the second geographic diversity requirement, and his claim that the provision did "not bind the President to any slavish recognition of given geographical sections"<sup>27</sup> runs directly against the hard standard of the first geographic diversity requirement that "not more than one [member] shall be selected from any one Federal reserve district,"<sup>28</sup> itself a recognition of geographic sections. Second, the Committee Report was published on September 9,<sup>29</sup> but Congressman Murray's explanation of his amendment in the House of Representatives on September 16 as imposing stricter selection limits rebutted Glass's slanted interpretation of the geographic diversity requirements.<sup>30</sup> The understanding of Congressman Murray and each congressman who had supported the geographic diversity requirements went unchallenged between September 16 and the House of Representative's passage of the bill on September 18, 1913.<sup>31</sup>

Although Chairman Owen and several members of the Senate Committee on Banking and Currency initially attempted to remove the first geographic di-

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25. 50 CONG. REC. 5020 (1913) (statement of Rep. Murray) ("All amendments were strongly resisted by Chairman Glass and all the members of the committee except Neeley of Kansas; Ragsdale, of South Carolina; Eagle, of Texas; and Wingo, of Arkansas; but many of these amendments, particularly those in the interest of the West and agriculture generally, were supported by these four members of the committee, and greatly aided by other gentlemen who were not members of the committee.").

26. H.R. REP. NO. 63-69, at 43 (1913).

27. *Id.*

28. Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913).

29. H.R. REP. NO. 63-69, at 1.

30. 50 CONG. REC. 5020-21 (1913).

31. 50 CONG. REC. 5127-30 (1913).

versity requirement,<sup>32</sup> Senator Owen ultimately backed down and included both geographic diversity requirements in the final Senate bill.<sup>33</sup> At the same time, the Senate version eliminated a requirement that the Board members be divided evenly between the two dominant parties,<sup>34</sup> a requirement that was central to Congressman Glass's designs for the Federal Reserve Board.<sup>35</sup> Nevertheless, contrary to Congressman Glass's views and in line with the populist Democrats, such as Congressman Murray, who had amended the bill in the Democratic caucus, the enacted version of the Federal Reserve Act included the two geographic diversity requirements but no bipartisanship requirement.<sup>36</sup>

Like Congressman Murray and the populist House Democrats, the Senate was aware of the impact of the two geographic diversity requirements. One of the major debates surrounding the Federal Reserve Act was determining how to initially draw the boundaries of the Federal Reserve Districts, and the Senate version of the bill required the participation of at least two members of the Federal Reserve Board in making that initial determination.<sup>37</sup> In explaining why the Senate version did not require the input of all the members of the Federal Reserve Board, Senator John Shafroth (D-CO) explained: "[I]f we require all these men to be appointed before the districts are created, the President can not determine if a man who lives, for instance, on the Mississippi River would belong to the St. Louis district or the Chicago district."<sup>38</sup> In the same debate, Senator Theodore Burton (R-OH), despite his opposition to the Senate version, confirmed that understanding of the first geographic diversity requirement: "[The President] would not choose two, say, from one of the great financial centers of the United States."<sup>39</sup> These contributions from Senators Shafroth and Burton demonstrate that the Senate understood the geographic diversity requirements

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32. See S. REP. NO. 63-133, at 19, 45 (1913) (views of Sen. Owen and Exhibit A). Senator Owen had "at the time of the House caucus in August . . . publicly assailed the bill's regional bias." JOHNSON, *supra* note 1, at 29.

33. See 51 CONG. REC. 24 (1913); see also JOHNSON, *supra* note 1, at 29-31 (noting that Senator Owen had to compromise with populist Democrats in order to move their support away from the competing Vanderlip Plan).

34. S. REP. NO. 63-133, at 44.

35. H.R. REP. NO. 63-69, at 43 (1913) ("It can not be too emphatically stated that the committee regards the Federal reserve board as a distinctly nonpartisan organization whose functions are to be wholly divorced from politics.").

36. See Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913).

37. See S. DOC. NO. 63-335, at 3-4 (1913) (comparing the House, Senate, and final versions of the Federal Reserve Act).

38. 51 CONG. REC. 852 (1914) (statement of Sen. Shafroth).

39. *Id.* (statement of Sen. Burton).



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as focusing on current residency, where an appointee “lives,” as opposed to where the appointees were born.<sup>40</sup>

Despite the efforts of Congressman Glass and Senator Owen to trivialize or eliminate the geographic diversity requirements, populist Democrats such as Congressman Murray and Republican Senators opposing the Federal Reserve Act both understood the import of the geographic diversity requirements in requiring appointees to live in different districts at the time of appointment and to represent the nation’s different regions. Senator Elihu Root (R-NY), in debates on the Senate version of the Federal Reserve Act, aptly described what was at stake:

[E]very member of the Federal reserve board will come representing a section of the country, and everyone will have behind him a body of people whom by the terms of his appointment he, to a certain degree, represents, for where you have a board created with reference to sectional distribution, necessarily there is a representation of sections. Everyone will be under pressure from the people of his section to use his influence to turn the life stream toward his own home to encourage and increase the prosperity of business . . . . [I]t will have to be more than ordinary human nature that will enable this board to stand against the constant pressure for inflation that will be brought to bear upon them.<sup>41</sup>

Senator Root well understood that the inflationary monetary policy preferences of the populist Democrats stood “against New York,”<sup>42</sup> which preferred deflationary policies at the time, and populist Democrats structured the Federal Reserve Board so that it would be particularly responsive to the monetary policy preferences of the West and South, regions that the populist Democrats represented.

### C. *The Continued Relevance of Geographic Diversity*

The considerations underlying the debate about geographic representativeness are as central to the Federal Reserve’s effectiveness today as they were in 1913. The Federal Reserve, with the power to control monetary policy and vast swaths of banking regulations with little democratic oversight, is perhaps the strongest independent agency in our system of government,<sup>43</sup> and commenta-

40. This interpretation of “from” as equivalent to where an appointee lives and comes “out of” at the time of initial confirmation is consistent with the public meaning of “from” at the time of the Federal Reserve Act’s enactment. *See infra* note 55 and accompanying text.

41. 51 CONG. REC. 969 (1913) (statement of Sen. Root).

42. *Id.*

43. *See* Bernard Shull, *The Impact of Financial Reform on Federal Reserve Autonomy* 15 (Levy Econ. Inst., Working Papers Series WP No. 735, 2012), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2176822](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2176822) (“[P]rovisions of Dodd-

tors frequently referred to the Federal Reserve as a fourth branch of government even before the Dodd-Frank Act increased its power.<sup>44</sup> As with other independent agencies or even the Supreme Court,<sup>45</sup> the largely unchecked power of the Federal Reserve becomes more troubling as its policy-crafting membership becomes further divorced from the country it serves.

Although no study has analyzed the historic levels of geographic representation on the Board of Governors in relation to the requirements of Section 10 of the Federal Reserve Act, the Federal Reserve Bank presidents, when voting members of the FOMC, and the members of the Board of Governors have been repeatedly shown to vote for monetary policies that favor the interests of the districts they represent.<sup>46</sup> If the geographic diversity requirements adopted by Congress are not enforced, FOMC monetary policy and Federal Reserve regulation may be distorted in favor of the overrepresented districts.

While dissents from FOMC decisions have never been a frequent occurrence, analysis of these dissents confirms that the Governors have been voting in an increasingly homogenous manner over the past twenty years. Daniel Thornton and David Wheelock, for example, found that, of the seventy-six

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Frank and other developments surrounding the financial crisis of 2008-09 have expanded the Fed's power and influence enormously.”).

44. See, e.g., BERNARD SHULL, *THE FOURTH BRANCH: THE FEDERAL RESERVE'S UNLIKELY RISE TO POWER AND INFLUENCE* 169 (2005) (“The independence that provides the Federal Reserve with the capacity to alter its policies and operational procedures without legislation is conducive to adaptation. The independence of the System has been augmented by its ability to generate revenues sufficient to support whatever staff its officials decide is needed, free of the congressional budget process.”).
45. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584, 2629 (2015) (Scalia, J., dissenting) (“Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court . . . . Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner . . . .”); A.E. Dick Howard, *The Changing Face of the Supreme Court*, 101 VA. L. REV. 231, 251 (2015) (“Geography has obviously not played a significant part in recent presidents’ nomination calculus. . . . Even those justices who are ostensibly from outside of the mid-Atlantic and northeastern parts of the country have spent the bulk of their professional careers in the BosWash corridor.”). At the state level, some states, such as Tennessee, have instituted geographic diversity requirements of their own for the selection of judges. See TENN. CONST. art. VI, § 2 (“The Supreme Court shall consist of five Judges, of whom not more than two shall reside in any one of the grand divisions of the State.”).
46. See Ellen E. Meade & D. Nathan Sheets, *Regional Influences on FOMC Voting Patterns*, 37 J. MONEY, CREDIT & BANKING 661 (2005); John A. Gildea, *The Regional Representation of Federal Reserve Bank Presidents*, 24 J. MONEY, CREDIT & BANKING 215 (1992). It should be noted that these studies mainly focused on voting patterns before the breakdown in Section 10 enforcement described later in the Note.

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FOMC policy dissents from 1994 through 2013, only four of those seventy-six dissents came from a Governor instead of a regional Reserve Bank president.<sup>47</sup> When the Board of Governors was more geographically diverse, the dissent rate for Governors was similar to that of Presidents, but Governors have historically displayed a stronger inclination toward looser monetary policy than the tighter economic policy of many dissenting Presidents.<sup>48</sup> These voting patterns are consistent with the hypothesis that the increasingly East-Coast-centric Board of Governors has contributed to laxer monetary policies in the past twenty years, an approach that particularly favored distressed Wall Street firms during the Great Recession.

## II. APPLICATION OF THE GEOGRAPHIC DIVERSITY REQUIREMENTS

Notwithstanding the intent of Congressman Murray and populist Democrats that the Board of Governors “must represent every section of the country,” Section 10’s geographic restrictions have not been carefully interpreted over time. Presidents, intent on nominating individuals with similar political values, close personal ties, or recognized expertise, began to bend the requirements of Section 241 away from the focus on residency, which was the primary emphasis of Congressman Murray and the first nominations to the Federal Reserve Board,<sup>49</sup> and toward inclusion of where the nominee was born. However, the departures from the geographic diversity requirements with recent nominees, particularly Peter Diamond, have sparked Senate opposition and encouraged calls for statutory reform to counteract the centralization of Federal Reserve power on the East Coast, particularly in Washington, D.C., despite the population shift west of the Mississippi River.<sup>50</sup>

A. *The OLC’s Loosening of the Geographic Diversity Requirements*

The first five confirmed nominees to the Federal Reserve Board in 1914 satisfied both geographic diversity requirements and, even if they were born else-

47. Daniel L. Thornton & David C. Wheelock, *Making Sense of Dissents: A History of FOMC Dissents*, 96 FED. RES. BANK OF ST. LOUIS REV. 213, 215 (2014).

48. *Id.* at 223 (demonstrating that eighty-four percent of Presidents’ dissents were in favor of *tighter* monetary policy while sixty-four percent of Governors’ dissents were in favor of *easier* monetary policy).

49. *See infra* notes 52-55 and accompanying text.

50. *See infra* notes 92-93 and accompanying text; *see also* Paul D. Mueller, *Dissonance Within the Federal Reserve System 6* (Jan. 2, 2014) (unpublished manuscript), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2373847](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2373847) (“[G]overnors are appointed for political reasons. Why else would the current President flagrantly disregard the geographic requirements of section 10 of the Federal Reserve Act and appoint two governors who are technically not eligible to be governors . . . ?”).

where,<sup>51</sup> had deep and long-term residency connections to the Federal Reserve Districts they were nominated from: Charles Hamlin of Massachusetts in the Boston District for the term ending in 1916; Paul Warburg of New York in the New York District for the term ending in 1918; Frederic Delano of Illinois in the Chicago District for the term ending in 1920; William P.G. Harding of Alabama in the Atlanta District for the term ending in 1922; and Adolph Miller of California in the San Francisco District for the term ending in 1924.<sup>52</sup> Although the nominees represented a compromise with conservative Republicans by strongly representing bankers and including two nominees from the East Coast,<sup>53</sup> the two Board members from the East Coast occupied the shortest two terms, and the other Board members represented the South, Midwest, and West. By the time that Adolph Miller was reappointed for his third term beginning in 1934, the President and the Senate found it appropriate to confirm him as the first appointed member from the Richmond District because he was by then “of the District of Columbia”<sup>54</sup> since he had been a resident of the Richmond District for such a long period of time.<sup>55</sup>

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51. These nominations suggest that residency was more important than birth in establishing geographic diversity. *See infra* notes 120, 131-132 and accompanying text.
  52. ROGER S. WHITE, CONG. RESEARCH SERV., HG2563, MEMBERSHIP OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM DECEMBER 1913-OCTOBER 1986, at 7-8 (1986); *see* JOHNSON, *supra* note 1, at 51-54 (describing the political compromise and business backgrounds of the first confirmed nominees).
  53. JOHNSON, *supra* note 1, at 51-54.
  54. 79 CONG. REC. 764 (1935) (report of Sen. Fletcher). *See also* WHITE, *supra* note 52, at 8 (noting that Adolph Miller’s final reappointment was from the Richmond District).
  55. Despite the example of Adolph Miller’s reappointment to a third term to represent the Richmond District, an examination of the public meaning of “from” at the enactment of the Federal Reserve Act in 1913 demonstrates how a Governor reappointed to a consecutive term might still qualify as from his original district despite subsequent occupancy in or around Washington, D.C. By 1901, an accepted definition of “from” was “[i]ndicating the place, quarter, etc. whence something comes or is brought or fetched; often = out of” such as in “[h]e came from Cambridge.” 4 A NEW ENGLISH DICTIONARY ON HISTORICAL PRINCIPLES: FOUNDED MAINLY ON THE MATERIALS COLLECTED BY THE PHILOLOGICAL SOCIETY 561 (James A. H. Murray ed., 1901). “From” retained a similar definition in 1913 as “[o]ut of the neighborhood of; lessening or losing proximity to; leaving behind; by reason of; out of; by aid of.” WEBSTER’S REVISED UNABRIDGED DICTIONARY 598 (Noah Porter ed., G & C Merriam Co. 1913). Because Adolph Miller came from or was otherwise brought “out of” the San Francisco District at the time of initial confirmation, the Senate’s determination that he was still from that district for the first reconfirmation seems plausible. Interestingly, a similar scenario occurred in one of the most popular books published in America in 1913: L. Frank Baum’s *The Patchwork Girl of Oz*. In the book, “Dorothy Gale of Kansas,” where she had lived her entire life with the exception of “several trips to the Land of Oz before she

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During the subsequent decades, the President and willing members of the Senate started to apply the geographic diversity requirements of Section 241 in a looser manner, and the confirmation of G. William Miller in 1978 marked a sea change in the interpretation of those requirements. G. William Miller was born in Oklahoma within the Kansas City District, received his law degree from the University of California's School of Law at Berkeley in the San Francisco District, initially worked at Cravath, Swaine & Moore in the New York District, and then joined Textron Inc. in Rhode Island where he worked from 1957 to 1978 in the Boston District.<sup>56</sup> However, because Governor Henry Wallich was currently serving from the Boston District, President Carter requested the opinion of the Office of Legal Counsel regarding Section 241 in an attempt to justify the nomination.<sup>57</sup> The Office of Legal Counsel, in the most extensive treatment of Section 241 since the enactment of the Federal Reserve Act, agreed with the opinion of Congressman Glass that "the statute was not drafted as a residency requirement" but failed to note the statements of Congressman Murray about the Democratic caucus's understanding of Section 10 of the Federal Reserve Act.<sup>58</sup>

Furthermore, the Office of Legal Counsel relied on historic examples to show that the first diversity requirement (i.e. that "not more than one [member of the Board of Governors] shall be selected from any one Federal Reserve district") did not require a nominee to be both born and have residency in the district from which he was nominated.<sup>59</sup> The Office of Legal Counsel used the ex-

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came to live there for good," became "Princess Dorothy of Oz" by edict of her friend Ozma. L. FRANK BAUM, *THE PATCHWORK GIRL OF OZ* 15, 203-04 (1913). Nevertheless, Dorothy is still described after her appointment as "[a] lass from Kansas" and never as "from Oz." *Id.* at 140. This example supports the idea that residency at time of first confirmation could still justify a later description as "from" that original district.

56. *G. William Miller Biography*, BOARD OF GOVERNORS OF THE FED. RESERVE SYS., <http://www.federalreservehistory.org/People/DetailView/42> (last visited Feb. 14, 2016).
57. *See* Federal Reserve Board—Residency of Board Member (12 U.S.C. § 241), 2 Op. O.L.C. 391, 391 (1977).
58. *Id.* at 391-92 & n.2 ("We have been unable to find any other relevant legislative history. . . . The legislative debates, while exhaustive, are likewise not relevant to the question posed herein.").
59. *Id.* at 392-93. OLC did concede the existence of the second geographic diversity requirement but decided to focus on the first requirement, which was more troubling for this nomination. *See id.* at 393 n.3 (1977) ("As written, the statute suggests that Congress may focus not only on the question of the nominee's ability to represent the region from which he is selected, but also on the question whether the nominee may occasion an over-representation of some other district (in this case the district covering Rhode Island). Our analysis would indicate, however, that the important inquiry will focus upon the substantiality of the nominee's contacts [sic] with, and knowledgeability about, the district from which he is selected rather than upon his contacts and relationships in some other region.").

amples of Adolph Miller, who had been a member of the Federal Reserve Board for two decades by the time he was nominated from the Richmond District, and Andrew Brimmer, who was born in Louisiana but nominated from the Philadelphia District, to show that the Senate had confirmed nominees not native to the claimed district.<sup>60</sup> However, the Office of Legal Counsel understated the residency tie that Andrew Brimmer had to the Philadelphia District by arguing:

At the time of his nomination he lived in the Washington area and was an Assistant Secretary at the Commerce Department. Immediately before coming to Commerce, Mr. Brimmer was a faculty member at the Wharton School of Finance and Commerce in Philadelphia for several years, that being his only contact with Philadelphia. He was 'selected from' the Philadelphia district based on that contact.<sup>61</sup>

The Office of Legal Counsel failed to note that, as Senator Joseph Clark (D-PA) explained at Dr. Andrew Brimmer's confirmation hearing, Andrew Brimmer was "presently a resident and voter in Pennsylvania" at the time of his confirmation.<sup>62</sup> Due to his continued status as a faculty member of the University of Pennsylvania and his maintained residency in Pennsylvania, Andrew Brimmer had been a resident of the Philadelphia District for the five years preceding his appointment to the Board of Governors.<sup>63</sup>

To support the opposite idea that a nominee could be native to but not currently a resident of the claimed district, the Office of Legal Counsel cited the examples of Robert Holland, nominated from the Kansas City District because he was born in Nebraska and lived there until age twenty-one, and James Louis Robertson, also born in Nebraska and nominated from the Kansas City District.<sup>64</sup> The Office of Legal Counsel applied this rule to support the proposition "that the President might well conclude that a nominee who was born in Oklahoma and who was raised in that part of the country could fairly represent the 'financial, agriculture, industrial, and commercial interests' of the geographical area covered by the Kansas City district."<sup>65</sup>

While the Office of Legal Counsel would be correct in applying this rule based on Senate practice during the first sixty years of the Federal Reserve Act, the confirmation of G. William Miller is troubling because he was ultimately nominated neither from the Boston District, where he had resided in Rhode Is-

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60. *Id.* at 392.

61. *Id.*

62. *Nominations of Dr. Andrew F. Brimmer and William W. Sherrill: Hearing Before the S. Comm. on Banking and Currency, 89th Cong. 2 (1966) (statement of Sen. Clark).*

63. *See id.* at 1-2.

64. Federal Reserve Board—Residency of Board Member (12 U.S.C. § 241), 2 Op. O.L.C. 391, 392-93 (1977).

65. *Id.* at 393. Although born in Oklahoma, G. William Miller "spent the bulk of his childhood and adolescence in Texas," which is not covered by the Kansas City District. *Id.* at 391 & n.1.

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land for two decades, nor from the Kansas City District, where he was born, but from the San Francisco District.<sup>66</sup> When Senator Jesse Helms (R-NC) raised the concern that G. William Miller was “a director of the Federal Reserve Bank of Boston and a legal resident of Rhode Island,”<sup>67</sup> Miller responded that:

It is my understanding that my nomination will be from the State of California, where I lived for 5 years, attended the University of California School of Law, own property, and where I am a member of the bar. I understand that an opinion has been given by the Attorney General’s Office that an adequate relationship exists in order for me to be a representative of that district.<sup>68</sup>

To clarify, Senator Helms asked Miller if he “live[s] in Rhode Island now,” and G. William Miller responded in the affirmative.<sup>69</sup> Miller’s response inaccurately portrayed the opinion of the Office of Legal Counsel, which described Miller as an acceptable nominee from the Kansas City District where he was born but made no mention of the San Francisco District.<sup>70</sup> Attending law school in a state decades ago, being admitted to its bar (not uncommon due to bar admission reciprocity), and owning some property (even a beach house would suffice) are sufficiently over-inclusive as to render Section 241 entirely ineffective. Although the text of Section 241 might conceivably allow the nomination either born in or a resident of the district of nomination, the interpretation Mr. Miller presented to the Senate allowed for the confirmation of a nominee who was neither a native nor a resident of the district of nomination.

Instead of demonstrating a careful consideration of the history and text of Section 241’s geographic diversity requirements, the Senate hearing showcased the Senators’ willingness to accept without examination Mr. Miller’s representation of the Office of Legal Counsel’s opinion in order to confirm someone who was “close friends for more than 15 years” with and had served as the campaign chairman for Senator Claiborne Pell (D-RI).<sup>71</sup> Usually in Federal Reserve Board confirmation hearings, a Senator or two from the nominee’s state give the first statements in support of the nominee, such as Senator Clark of Pennsylvania speaking in favor of Dr. Brimmer’s nomination from the Philadelphia

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66. *See Nomination of G. William Miller: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs, 95th Cong. 46 (1978)* (statements of Sen. Helms and G. William Miller, nominee).

67. *Id.* (statement of Sen. Helms).

68. *Id.* (statement of G. William Miller, nominee).

69. *Id.* (statements of Sen. Helms and G. William Miller, nominee).

70. Federal Reserve Board—Residency of Board Member (12 U.S.C. § 241), 2 Op. O.L.C. 391, 393 (1977).

71. *Nomination of G. William Miller: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs, 95th Cong. 1-3 (1978)* (statement of Sen. Pell).

District,<sup>72</sup> but the two Senators from Rhode Island took on that responsibility for Mr. Miller's confirmation hearing<sup>73</sup> even though a Democratic Senator from California was a member of the Senate Committee for Banking, Housing, and Urban Affairs at the time.<sup>74</sup>

*B. Reevaluation of the Geographic Diversity Requirements and Peter Diamond*

The confirmation of Mr. Miller to the Board of Governors led to even laxer Senate enforcement of the geographic diversity requirements, as discussed in Parts IV and V, but the Senate essentially began ignoring the requirements altogether when the Executive labeled Dr. Susan Bies as from the Chicago District even though she had been born in New York and was residing in Memphis, TN, within the St. Louis District, at the time of her nomination.<sup>75</sup> Although Dr. Bies had only spent three years in the Chicago District three decades before her nomination while completing a graduate degree at Northwestern University and working at the Federal Reserve Bank of Chicago,<sup>76</sup> Dr. Bies was nominated neither from the St. Louis District nor the New York District for the simple reason that other Governors were representing those districts at the time of her confirmation.<sup>77</sup> The confirmation of Dr. Bies was a particularly stark departure from the text and history of Section 241 because the Senate dispensed entirely with pretense and confirmed a candidate that the Senate labeled repeatedly as "of Tennessee,"<sup>78</sup> a state not at all within the Chicago District.

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72. See, e.g., *Nominations of Dr. Andrew F. Brimmer and William W. Sherrill: Hearing Before the S. Comm. on Banking and Currency*, 89th Cong. 1-2 (1966) (statement of Sen. Clark).

73. *Nomination of G. William Miller: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs*, 95th Cong. 1-4 (1978) (statements of Sen. Pell and Sen. Chafee).

74. *Id.* at ii (noting that Senator Alan Cranston (D-CA) was a member of the Committee).

75. *Nominations of Mark W. Olson, Susan Schmidt Bies, James E. Gilleran, Allan I. Mendelowitz, Eduardo Aguirre, Jr., Franz S. Leichter, John T. Korsmo, and Randall S. Kroszner: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs*, 107th Cong. 35-43 (2001) (statements of Susan Schmidt Bies, nominee).

76. *Id.* at 35-36, 43. Dr. Bies had even worked more recently at the Federal Reserve Bank of St. Louis. *Id.* at 36, 43.

77. See *Membership of the Board of Governors*, *supra* note 4 (noting that Laurence H. Meyer represented the St. Louis District while Alan Greenspan represented the New York District in 2001).

78. See *Nominations of Mark W. Olson, Susan Schmidt Bies, James E. Gilleran, Allan I. Mendelowitz, Eduardo Aguirre, Jr., Franz S. Leichter, John T. Korsmo, and Randall S. Kroszner: Hearing Before the S. Comm. on Banking, Hous. & Urban Affairs*, 107th Cong. i, iii, 1, 6 (2001) (describing Susan Schmidt Bies as "of Tennessee").



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The departure from the text of Section 241 came to a head with the 2010 nomination of Dr. Peter Diamond, born in New York and a professor at the Massachusetts Institute for Technology since 1966, to represent the Chicago District on the Board of Governors.<sup>79</sup> Although the Senate's initial consideration of Peter Diamond focused on his qualifications as a labor economist and views of monetary policy,<sup>80</sup> the Senate Committee on Banking, Housing, and Urban Affairs noted that Peter Diamond was "of Massachusetts."<sup>81</sup> Even though the Senate confirmed Janet Yellen and Sarah Bloom Raskin,<sup>82</sup> nominated to the Board of Governors at the same time as Peter Diamond, Peter Diamond's nomination stalled when Senator Richard Shelby (R-AL) noticed that Peter Diamond did not comply with the geographic diversity requirements of Section 241.<sup>83</sup> At best, a White House spokesman noted that Peter Diamond had "lectured at Northwestern University in Evanston, Illinois, received its Erwin Plein Nemmers Prize in Economics, and presented 'numerous seminars' at Northwestern and the University of Chicago,"<sup>84</sup> and the Federal Reserve Board's

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79. See Scott Lanman, *The Spat over a Fed Seat for Peter Diamond*, BLOOMBERG BUS. (Mar. 31, 2011), [http://www.bloomberg.com/bw/magazine/content/11\\_15/b4223036827518.htm](http://www.bloomberg.com/bw/magazine/content/11_15/b4223036827518.htm) ("The White House says Diamond would represent the Chicago Fed district, even though his nomination papers say he's "of Massachusetts," prompting Shelby to say the professor should be barred from serving, as Fed Governor Daniel Tarullo already represents the Boston district."); see also *Peter A. Diamond - Facts*, NOBEL MEDIA AB, [http://www.nobelprize.org/nobel\\_prizes/economic-sciences/laureates/2010/diamond-facts.html](http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2010/diamond-facts.html) (describing Peter Diamond's place of birth and institutional affiliations) (last visited Feb. 14, 2016).
80. *Nominations of Janet L. Yellen, Peter A. Diamond, Sarah Bloom Raskin, Osvaldo Luis Gratacos Munet, and Steve A. Linick: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 111th Cong. 50-58 (2010) (responses to written questions of Sen. Shelby and Sen. Vitter from Peter Diamond).
81. *Id.* at iii, 1, 16.
82. See *Membership of the Board of Governors*, *supra* note 4 (noting that Janet Yellen was reappointed on October 4, 2010, and that Sarah Bloom Raskin was appointed on October 4, 2010).
83. See *Executive Session to Consider the Nomination of Dr. Peter A. Diamond, of Massachusetts, To Be a Member of the Board of Governors of the Federal Reserve System: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 111th Cong. 2-3 (2010) [hereinafter *Executive Session to Consider the Nomination of Dr. Peter A. Diamond*] (statement of Sen. Shelby) ("[I]t has come to our attention that Professor Diamond's nomination does not comply with the express language or implied intent of the law."). As full disclosure, the author of this Note worked for Senator Shelby on the U.S. Senate Committee on Banking, Housing, and Urban Affairs for less than three months in 2011. The views expressed in this Note are the author's alone and do not represent the opinion of Senator Shelby.
84. Scott Lanman, *Fed Nominee, Nobelist Diamond Takes on Alfalfa Bill*, BLOOMBERG BUS. (Nov. 15, 2010), <http://www.bloomberg.com/news/articles/2010-11-15/fed-nominee-diamond-takes-on-alfalfa-bill-after-getting-a-boost-from-nobel>.

Deputy Secretary claimed that “[t]he home district of each member of the Board is determined by the President” alone.<sup>85</sup>

As Senator Shelby noted, the nomination papers from President Obama conceded that Peter Diamond was from Massachusetts:

It appears Peter Diamond, whose nomination papers indicate he is “of Massachusetts” and current Board member Daniel Tarullo, whose nomination papers also indicated he was “of Massachusetts” cannot serve at the same time and comply with Section 10 of the Federal Reserve Act. I understand that “The White House,” whoever that may be, has stated that Peter Diamond will be representing Chicago for purposes of the law. I think we all know, however, that the geographical diversity requirement of the law is not an ex post facto designation.<sup>86</sup>

Although the President’s designation of Peter Diamond as “of Massachusetts” allowed Senator Shelby to make a narrower argument about the first geographic diversity requirement, Senator Shelby went on to note the broader restrictions of both geographic diversity requirements despite recent Senate practice:

I realize that the Committee has favorably reported nominees in the past who should have been disqualified for the same reason. I am not aware, however, that the Committee did so knowing that the nominee had virtually no nexus to the relevant district. In this instance, we are fully aware of this conflict[,] and I don’t believe that we should or can proceed with the nomination in willful violation of the law. . . . Therefore, I move that the Committee disapprove the nominee and inform the President that he must select a candidate that comports with the geographic diversity requirement in the law. In fact, we should encourage the President to select an individual from Ohio or Kentucky because they lie in the Federal Reserve district that has historically been the least represented.<sup>87</sup>

In blocking the nomination because another member of the Board of Governors was serving from that district and by referencing the historic underrepresentation of the Cleveland District, Senator Shelby invoked both geographic diversity requirements of Section 241, and Peter Diamond eventually withdrew his nomination in 2011.<sup>88</sup>

Following the failed nomination of Peter Diamond, some commenters have noted that greater specification of the geographic diversity requirements would help rein in the centralization of the Federal Reserve Board. Allan Meltzer, an economist and historian of the Federal Reserve, claimed during Peter Dia-

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85. *Id.*

86. *Executive Session to Consider the Nomination of Dr. Peter A. Diamond*, *supra* note 83, at 4-5 (statement of Sen. Shelby).

87. *Id.* at 6-7.

88. Peter A. Diamond, *When a Nobel Prize Isn’t Enough*, N.Y. TIMES (June 5, 2011), <http://www.nytimes.com/2011/06/06/opinion/06diamond.html>.

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mond's confirmation struggles: "There is no standard by which someone is said to be a resident. Since we claim to be a government of laws, we should define residency or repeal the restriction."<sup>89</sup> Richard Fisher, the outgoing President of the Federal Reserve Bank of Dallas and a perpetual opponent of how the Board of Governors and the Federal Reserve Bank of New York orchestrated the Federal Reserve's response to the financial crisis, recently suggested moving power away from Washington, D.C., and the Federal Reserve Bank of New York and toward the eleven other reserve banks.<sup>90</sup> Ironically, a recently disclosed Federal Reserve paper, dubbed the "Triangle Document," revealed that, consistent with the long history of centralization within the Federal Reserve System, the Board of Governors has instead been transferring more of the Federal Reserve Bank of New York's powers to the Board of Governors itself in Washington, D.C.<sup>91</sup>

In response, critics of centralization suggested adding two more reserve banks to tip the voting balance on the FOMC toward the states west of the Mississippi River, which in 2014 had 42% of the population but only four of the twelve reserve banks.<sup>92</sup> A brief letter to the editor of *The Wall Street Journal* by Mark Calabria of the Cato Institute suggested instead that Congress should enforce "these requirements, which have for some time been effectively read out of the Federal Reserve Act" by "defining representation to mean at least 10 years residency in a reserve district, thereby ruling out attempts to claim that a nominee represents a district other than the (already represented) one he or she resides in, merely by virtue of having lectured there—as happened in Peter Diamond's case."<sup>93</sup> The following analysis in this Note, countering the narrative of the Office of Legal Counsel, demonstrates that, consistent with the text and leg-

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89. Lanman, *supra* note 84.

90. Michael S. Derby, *Fisher Says Fed Should Move Power Away from New York Fed*, WALL ST. J.: REAL TIME ECON. (Feb. 11, 2015, 8:00 AM), <http://blogs.wsj.com/economics/2015/02/11/fisher-says-fed-should-move-power-away-from-new-york-fed> ("I understand the suspicions that surround the New York Fed' and believe that power within the central bank must be moved away from the bank, and also from the board of governors in Washington, toward the other 11 regional Fed banks, Mr. Fisher said.").

91. Jon Hilsenrath, *Washington Strips New York Fed's Power*, WALL ST. J. (Mar. 4, 2015), <http://www.wsj.com/articles/washington-strips-new-york-feds-power-1425526210>; see also Sarah Binder, *The Politics of Centralizing Power in the Fed*, WASH. POST: MONKEY CAGE (Mar. 10, 2015) <http://www.washingtonpost.com/blogs/monkeycage/wp/2015/03/10/the-politics-of-centralizing-power-in-the-fed> (noting the history of centralization toward the Board of Governors in Washington, D.C.).

92. See John Dearie, *The U.S. Needs Two More Federal Reserve Banks*, WALL ST. J. (Mar. 15, 2015), <http://www.wsj.com/articles/john-dearie-the-u-s-needs-two-more-federal-reserve-banks-1426458210>.

93. Mark Calabria, Letter to the Editor, *Change the Fed's Center of Gravity*, WALL ST. J. (Mar. 24, 2015), <http://www.wsj.com/articles/change-the-feds-center-of-gravity-letters-to-the-editor-1427124907>.

islative history of Section 241, the Senate did in fact adhere to the geographic diversity requirements during the first six decades of the Federal Reserve by preventing the confirmation of nominees who neither resided nor were born in the district they were nominated from, and, consistent with the claims of Senator Shelby, Parts IV and V demonstrate that only in the past two decades has the Senate knowingly confirmed nominees not from the district of nomination.

### III. THE GROWING GEOGRAPHIC MISREPRESENTATION ON THE BOARD OF GOVERNORS

To test the claim of Mark Calabria that the membership of the Board of Governors increasingly over-represents the East Coast and has not been “a fair representation of the . . . geographical divisions of the country,”<sup>94</sup> the author collected data on every confirmed nominee to the Board of Governors. The data, described in this Part, confirms that the Board of Governors has historically over-represented the East Coast with the over-representation becoming much more severe in the past two decades. Additionally, as Senator Shelby claimed in trying to stop this trend by blocking the nomination of Peter Diamond, the Senate only recently has knowingly confirmed nominees who have scant ties to a district they are nominated to represent on the Board of Governors.

#### A. Data Collection

First, giving deference to the President’s own presumptive interpretation of what is a “fair representation of the different . . . geographical divisions of the country,” I collected data on the apparent presidential understanding of each confirmed nominee’s district at the time of first appointment using the Federal Reserve Board website<sup>95</sup> and the Independent Regulatory Commissioner Database of the Inter-university Consortium for Political and Social Research.<sup>96</sup> I chose not to include *ex officio* members of the early Federal Reserve Board because the requirements of Section 241 only ever applied to the “the five appointive members of the Federal Reserve Board.”<sup>97</sup> If the nominee was confirmed to non-consecutive terms or was reappointed from a different district, I included the nominee twice.<sup>98</sup> This approach resulted in ninety-four confirmations as data points.

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94. 12 U.S.C. § 241 (2012).

95. *Membership of the Board of Governors*, *supra* note 4.

96. David C. Nixon, *Independent Regulatory Commissioner Database, 1887-2000 (ICPSR 4221)*, INTER-U. CONSORTIUM FOR POL. & SOC. RES. (Sept. 25, 2007), <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/4221>.

97. *See* Federal Reserve Act, Pub. L. No. 63-43, § 10, 38 Stat. 251, 260 (1913).

98. This only occurred for three members of the Federal Reserve Board: (1) Adolph Miller, confirmed first from the San Francisco District and later reappointed from the Richmond District; (2) Janet Yellen, confirmed to non-consecutive terms from

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Second, to see how the Senate itself has interpreted the geographic diversity requirements, I used congressional debates and committee hearings to determine which state the Senate viewed the nominees as coming from. For example, both the Senate Banking Committee on Banking, Housing, and Urban Affairs<sup>99</sup> and the entire Senate in its confirmation vote<sup>100</sup> described Susan Schmidt Bies as “of Tennessee” even though the Executive would claim that she represented the Chicago District.<sup>101</sup> A nomination could be blocked due to Senate concern about the geographic diversity requirements, as happened with Peter Diamond because individuals had already been confirmed from the Boston District. Thus, to give fullest deference to the Executive and the Senate, who, if they were considering the geographic diversity requirements, would not be affected in future confirmations by a nomination that was withdrawn or rejected, I excluded any nominee who did not obtain Senate confirmation.<sup>102</sup> Using the state information, I then determined the district that the Senate viewed the nominee as coming from at the time of that nomination or when first nominated if serving consecutive terms.<sup>103</sup>

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the San Francisco District; and (3) Ben Bernanke, confirmed to non-consecutive terms from the Atlanta District. *See Membership of the Board of Governors, supra* note 4. If anything, the repetitions decrease the strength of the results suggesting increasing overrepresentation by the New York and Richmond Districts.

99. *Nominations of Mark W. Olson, Susan Schmidt Bies, James E. Gilleran, Allan I. Mendelowitz, Eduardo Aguirre, Jr., and Randall S. Kroszner: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs, 107th Cong. i, iii, 1, 6 (2001) (describing Susan Schmidt Bies as “of Tennessee”).*
100. 147 CONG. REC. 24,369 (2001) (statement of the presiding officer) (“The nominations considered and confirmed are as follows: . . . Susan Schmidt Bies, of Tennessee, to be a Member of the Board of Governors of the Federal Reserve System for a term of fourteen years from February 1, 1998.”).
101. *See Membership of the Board of Governors, supra* note 4.
102. For example, President Wilson nominated Frederic Delano from the Chicago District after his earlier nominee from the Chicago District withdrew following a political scandal. *See JOHNSON, supra* note 1, at 51-54. President Wilson’s nomination of another individual from the Chicago District was an attempt to maintain geographic balance and does not count as a violation of the geographic diversity requirements because the first nominee was never confirmed and thus never impacted the geographic diversity of the Federal Reserve Board.
103. While Section 10 is vague about what is a “geographical division[] of the country,” the legislative history of the Federal Reserve Act and early nominations showed concern about the East Coast, especially the northeast, as a division of the country that might cumulatively gain too much control over the Federal Reserve Board, and the major debates surrounding the drawing of district lines confirm that understanding. *See JOHNSON, supra* note 1, at 34-36. Although some venerable authorities have suggested that “California does not count” as a “genuine” Western state, *see, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2629 (2015) (Scalia, J., dissenting), the San Francisco District is based in California, and Californians were counted accordingly.

Because the Federal Reserve District boundaries, but not the Federal Reserve Banks, have changed slightly over the years and since a few states reside in more than one district due to recent boundary revisions,<sup>104</sup> I interpreted those nominees who were from a state in multiple districts in accordance with the Executive's understanding absent a divergence that was recognized by the Senate. For example, New Jersey is divided between the Philadelphia District and the New York District.<sup>105</sup> Alan Blinder, "of New Jersey," testified that he had "lived most of [his] life in the Third Federal Reserve District (Philadelphia)" and thus qualified as from the Philadelphia District according to the Senate's understanding,<sup>106</sup> and the President agreed that Alan Blinder represented the Philadelphia District.<sup>107</sup> However, Ben Bernanke, "of New Jersey," testified that he was serving "as a two-term elected Member of the Montgomery Township (New Jersey) Board of Education" at the time of his first confirmation so the Senate viewed Bernanke as coming from the New York District, which includes Montgomery Township, New Jersey,<sup>108</sup> even though the Executive viewed him as from the Atlanta District where he was born and lived for the first four months of his life.<sup>109</sup> The determination of Ben Bernanke's district was the closest call made in sorting through the Senate's understanding of where a nominee was from, and the determination still only changed where on the East Coast the Senate thought he was from (the New York, Philadelphia, or Atlanta District).

Third, because the Senate was at times willing to confirm a nominee born in a district other than the one where he currently resided, I gathered data on the place of birth and district of birth for each nominee mostly using the historical biographies provided by the Federal Reserve.<sup>110</sup> Additionally, I labeled whether the state of birth was on the East Coast, elsewhere in the United States,

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104. See *The Twelve Federal Reserve Districts*, FED. RES. BOARD, <http://www.federalreserve.gov/otherfrb.htm> (providing a map of the current districts and noting that "the Board of Governors revised the branch boundaries of the System in February 1996"). To see the similarity with the simpler original boundary map, see Sandra Kollen Ghizoni, *Reserve Bank Organization Committee Announces Selection of Reserve Bank Cities and District Boundaries*, FED. RES. HIST., <http://www.federalreservehistory.org/Events/DetailView/16>.

105. See *The Twelve Federal Reserve Districts*, *supra* note 104.

106. *Nominations of Alan S. Blinder, Steven M.H. Wallman, and Philip N. Diehl: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 103d Cong. i, iii, 1, 12, 47 (1994) (descriptions of Alan Blinder as "of New Jersey" and statement of Alan Blinder).

107. See *Membership of the Board of Governors*, *supra* note 4.

108. *Nominations of Harvey J. Goldschmid, Paul S. Atkins, Donald L. Kohn, Ben S. Bernanke, and Philip Merrill: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 107th Cong. i, iv, 77, 81, 82, 90, 106 (2002) (statement of Ben Bernanke) (describing Ben Bernanke as "of New Jersey" or "from New Jersey").

109. See *Membership of the Board of Governors*, *supra* note 4.

110. *Id.*

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or abroad as an objective method for comparing the geographic representativeness of appointees over time under the conceivable interpretation of the geographic diversity requirements as allowing either birth or residency to qualify.

*B. Results and Evidence of Growing Misrepresentation*

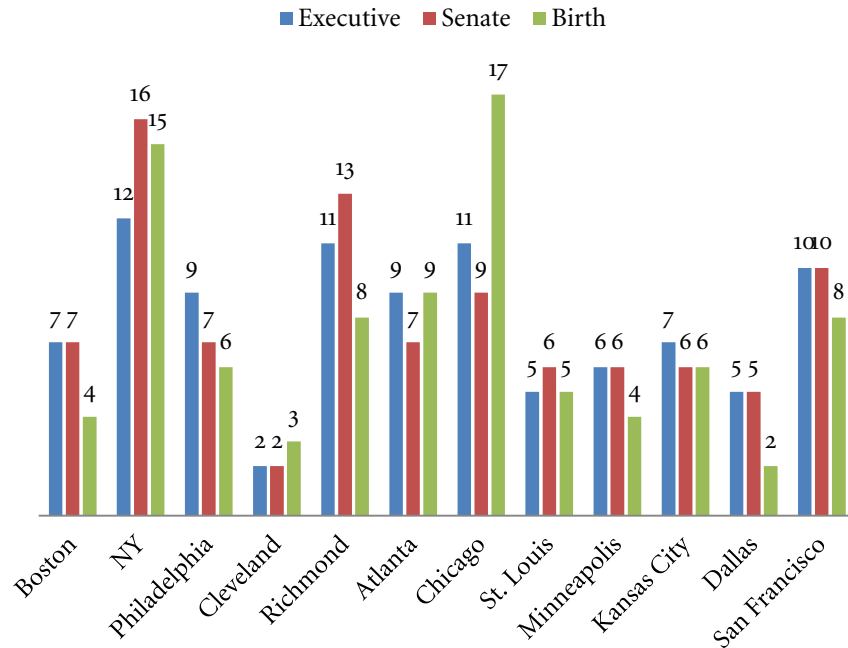
The results of my analysis demonstrate the decisive bias towards appointees from the East Coast, a preference that has grown more pronounced in the past two decades. Figure 1 lists each of the twelve reserve districts with the blue bars indicating how many appointees the President understands as coming from that district; the red bars indicate how many appointees the Senate claimed came from that district; and the green bars show how many appointees were born in that district.<sup>111</sup> As Figure 1 shows, the Executive understood 48 appointees—over half of the 94 confirmations—to come from districts headquartered in a state on the East Coast, and the Senate understood 50 of the appointees to come from an East Coast district. If the appointees were divided evenly among the districts, we could expect 7-8 to come from each district. As Senator Shelby noted in the committee deliberations on Peter Diamond's nomination,<sup>112</sup> the Cleveland District was the worst represented of all with the Dallas, Minneapolis, and St. Louis Districts also receiving less than an expected number of appointees. Although the Chicago District was well-represented, the disparity with the number of individuals born in the Chicago District indicates that many individuals born in the Chicago District had long established residency in other districts, especially those on the East Coast, at the time of nomination.

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111. For example, the President nominated 12 confirmed appointees from the New York District; the Senate understood 16 appointees to come from the New York District; and 15 appointees were born in that district.

112. *Executive Session to Consider the Nomination of Dr. Peter A. Diamond*, *supra* note 83, at 5.

FIGURE 1: APPOINTMENTS 1914-2015



The regional disparities have become more pronounced in the past two decades of confirmations, as demonstrated by Figure 2. In the past twenty years, the Executive understood 70% of appointees to have come from districts based on the East Coast, and the Senate understood 80% of appointees to have come from the East Coast. More astonishing, the Senate understood 60% of nominees to have come from the New York and Richmond Districts alone, and, since the founding of the Federal Reserve Board, 6 of the 13 appointees recognized by the Senate as from the Richmond District, which includes Washington, D.C., have been appointed within the past twenty years.<sup>113</sup> While the Executive only under-

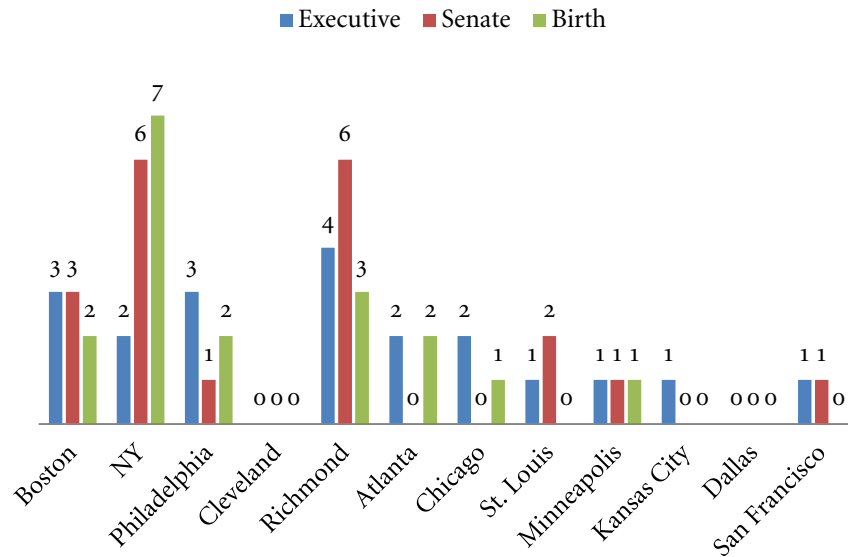
113. Additionally, the Senate Committee on Banking, Housing, and Urban Affairs viewed Daniel Tarullo, who had spent the prior few decades in the Washington, D.C., area before his appointment in 2009, as “of Maryland” within the Richmond District. See *Nominations of: Mary Shapiro, Christina D. Romer, Austan D. Goolsbee, Cecilia E. Rouse, and Daniel K. Tarullo: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 111th Cong. 1, iv, 1, 42 (2009) (describing Daniel Tarullo as “of Maryland”). Because the Executive viewed Tarullo, born in Massachusetts, as representing the Boston District and due to characterization on the Senate floor of Tarullo as “of Massachusetts,” I classified him as from the Boston District according to the Senate’s understanding. 155 CONG. REC. 14,143 (2009) (describing Daniel Tarullo as “of Massachusetts”); *Membership of the Board*



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stood 2 confirmed nominees from 1996 to 2015 to come from the New York District, Alan Greenspan, representing the New York District, served on the Board of Governors from 1987 to 2006 when he was replaced by Ben Bernanke, whom Congress viewed as coming from the New York District, and Kevin Warsh was appointed from the New York District less than a month after Alan

## FIGURE 2: APPOINTMENTS 1996-2015



Greenspan stepped down from the Board of Governors.<sup>114</sup>

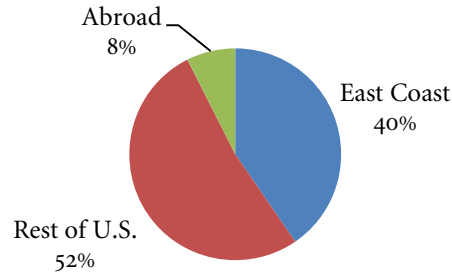
An analysis of the states where each appointee to the Board of Governors was born presents an even starker picture of how dominant the East Coast has become in the past two decades. As Figure 3 shows, the East Coast has historically had a slight advantage when it comes to Federal Reserve Board nominations, but we could expect that the percentage of confirmed nominees born on the East Coast would have fallen as larger and larger portions of the population were born west of the Mississippi River during the course of the twentieth and twenty-first centuries.<sup>115</sup>

*of Governors, supra* note 4 (claiming Daniel Tarullo represented the Boston District).

114. See *Membership of the Board of Governors, supra* note 4.

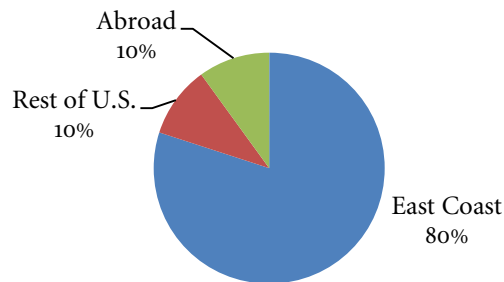
115. For a discussion of the shift in the country's demographics, see Dearie, *supra* note 92.

FIGURE 3: BIRTH 1914-2015



Contrary to the nation's demographic shift, the proportion of appointees from 1996 to 2015 born on the East Coast is double the historical rate as shown in Figure 4. Fully 80% of all confirmed nominees in the past two decades were born on the East Coast, and individuals born abroad accounted for the same percentage of appointees as individuals born anywhere else in the United States. One of the recent appointees born abroad had even served on the central bank of another country for eight years before his appointment to the Board of Governors.<sup>116</sup> Removing the past two decades from the data pool reveals the historical aberrance of the most recent twenty years of confirmations as Figure 5 demonstrates that 63% of all appointees from 1914 until 1995 were born anywhere in the United States other than the East Coast. If it weren't for the recent East Coast bias, the birthplaces of appointees would largely track the country as a whole.

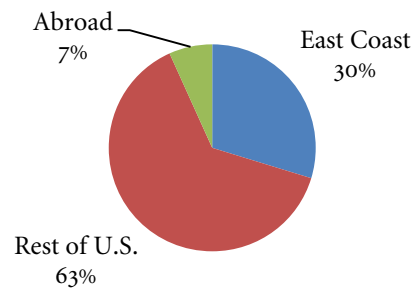
FIGURE 4: BIRTH 1996-2015



116. *Stanley Fischer*, BD. GOVERNORS FED. RES. SYS., <http://www.federalreserve.gov/aboutthefed/bios/board/fischer.htm> ("Prior to his appointment to the Board, Dr. Fischer was governor of the Bank of Israel from 2005 through 2013.").

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FIGURE 5: BIRTH 1914-1995



As Senator Shelby claimed,<sup>117</sup> only recently has the Senate been willing to confirm nominees who are not of a state within the district that the Executive claims to appoint them from.<sup>118</sup> In over a century of the Federal Reserve Board, all nine of these knowing disconnects by either the Senate Banking Committee or the Senate itself have come in the past fifteen years: Susan Schmidt Bies in 2001;<sup>119</sup> Ben Bernanke in 2002;<sup>120</sup> Donald Kohn in 2002;<sup>121</sup> Ben Bernanke in 2006 for a non-consecutive term as Chairman of the Board of Governors;<sup>122</sup> Randall

117. See *Executive Session to Consider the Nomination of Dr. Peter A. Diamond*, *supra* note 83 (statement of Sen. Shelby).

118. The Senate, as it does for individuals testifying before a Senate committee, normally indicates which state they believe the nominee is from (the relevant statutory inquiry is which district the nominee is from) by saying that the individual is “of” that state. Additionally, the Senate is sometimes willing to say an individual is “of” a state where he or she is born if that matches with the Executive understanding of the district that the nominee will represent. See *infra* notes 131-132 and accompanying text.

119. 147 CONG. REC. 24,369 (2001) (statement of the presiding officer) (describing Susan Schmidt Bies as “of Tennessee”); *Membership of the Board of Governors*, *supra* note 4 (claiming Susan S. Bies represented the Chicago District).

120. *Nominations of Harvey J. Goldschmid, Paul S. Atkins, Donald L. Kohn, Ben S. Bernanke, and Philip Merrill: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 107th Cong. i, iv, 77, 81, 90 (2002) [hereinafter *Goldschmid, Atkins, Kohn, Bernanke, and Merrill Nominations Hearing*] (descriptions of Ben Bernanke as “of New Jersey” or “from New Jersey”); *Membership of the Board of Governors*, *supra* note 4 (claiming Ben Bernanke represented the Atlanta District).

121. *Goldschmid, Atkins, Kohn, Bernanke, and Merrill Nominations Hearing*, *supra* note 120, at i, iii, 77, 79 (describing Donald Kohn as “of Virginia”); *Membership of the Board of Governors*, *supra* note 4 (claiming Donald Kohn represented the Kansas City District).

122. 152 CONG. REC. 369 (2006) (describing Ben Bernanke as “of New Jersey”); *Membership of the Board of Governors*, *supra* note 4 (claiming Ben Bernanke represented the Atlanta District).

Kroszner in 2006;<sup>123</sup> Frederic Mishkin in 2006;<sup>124</sup> Elizabeth Duke in 2008;<sup>125</sup> Jerome Powell in 2012;<sup>126</sup> and Jeremy Stein in 2012.<sup>127</sup> Of these nine confirmations, three might still be acceptable if birth is sufficient to establish a connection to the district without the Senate expressly recognizing that the appointee represented that district: Ben Bernanke in 2002;<sup>128</sup> Ben Bernanke in 2006 for a non-consecutive term;<sup>129</sup> and Jeremy Stein in 2012.<sup>130</sup> Nevertheless, until recently, the Senate normally identified a nominee, if he or she did not already have residency within the district,<sup>131</sup> as “of” the state he or she was born in if that state is in

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123. 152 CONG. REC. 2095 (2006) (describing Randall Kroszner as “of New Jersey”); *Membership of the Board of Governors*, *supra* note 4 (claiming Randall Kroszner represented the Richmond District).
124. 152 CONG. REC. 15,994 (2006) (describing Frederic Mishkin as “of New York”); *Membership of the Board of Governors*, *supra* note 4 (claiming Frederic Mishkin represented the Boston District).
125. 154 CONG. REC. 14,143 (2008) (describing Elizabeth Duke as “of Virginia”); *Membership of the Board of Governors*, *supra* note 4 (claiming Elizabeth Duke represented the Philadelphia District).
126. *Nominations of: Jerome H. Powell, Jeremy C. Stein, Jeremiah O. Norton, Richard B. Berner, and Christy Romero: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs, 112th Cong. i, iii, 1, 5* [hereinafter *Powell, Stein, Norton, Berner, and Romero Nominations Hearing*] (describing Jerome Powell as “of Maryland”); *Membership of the Board of Governors*, *supra* note 4 (claiming Jerome Powell represented the Philadelphia District).
127. *Powell, Stein, Norton, Berner, and Romero Nominations Hearing*, *supra* note 126, at i, iii, 1, 6 (describing Jeremy Stein as “of Massachusetts”); *Membership of the Board of Governors*, *supra* note 4 (claiming Jeremy Stein represented the Chicago District).
128. Ben Bernanke was born in August, GA, and the Executive claimed he represented the Atlanta District even though he grew up in South Carolina, which is within the Richmond District. *Ben S. Bernanke*, BD. GOVERNORS FED. RES. SYS., <http://www.federalreservehistory.org/People/DetailView/12>.
129. *Id.*
130. Jeremy Stein was born in Chicago, and the Executive claimed he represented the Chicago District even though he had spent his career teaching in Massachusetts and working in government in Washington, D.C. *Jeremy C. Stein*, BOARD GOVERNORS FED. RES. SYS., <http://www.federalreservehistory.org/People/DetailView/59>.
131. Perhaps in recognition of the importance of residency, the Senate’s default is to describe a nominee as “of” the state where he or she currently resides if that state is also within the district. If the nominee is neither born nor resides in the district, the Senate still describes the nominee as “of” the state where he or she resides. For example, Susan Bies was confirmed as “of Tennessee.” 147 CONG. REC. 24,369 (2001); *see supra* note 119.

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the district the President claims the nominee will represent.<sup>132</sup> Thus, the Senate's understanding of which district the nominee would represent still differed from the President's understanding of the confirmations of Bernanke and Stein, both of whom the Senate claimed as from the East Coast.<sup>133</sup>

These nine contested confirmations represent a majority of the sixteen confirmations in the past fifteen years. While the confirmation of any individual appointee might be concerning in the sense that the Senate and the President are not being clear about which part of the country the candidate come from, the real concern comes from the worry that the President is trying to hide the fact that the appointees are not, as a whole, in conformance with the geographical diversity requirements. For example, the nomination of Susan Bies ran afoul of the first geographical diversity requirement because one governor on the Board of Governors at the time of her confirmation already represented the St. Louis District, where Susan Bies was residing, and another governor represented the New York District, where Susan Bies was born.<sup>134</sup> Any one disconnect between the Senate and Executive understanding is not particularly troubling, but Figure 2 and Figure 4 suggest that the disconnect derives from a desire to avoid triggering the restrictions of the geographical diversity requirements according to a well-supported interpretation of Section 241.<sup>135</sup>

## IV. POLICY SOLUTIONS &amp; CONCLUSION

Section 10 of the Federal Reserve Act requires that the President, when selecting members of the Board of Governors, (i) not select more than one member from any one Federal Reserve district; and (ii) have "due regard to a fair

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132. For example, Nancy Teeters was confirmed "of Indiana" because she was born and grew up in Indiana despite residing in the Richmond District at the time of her appointment. See 124 CONG. REC. 29,718 (1978) (confirming "Nancy Hay Teeters, of Indiana, to be a member of the Board of Governors of the Federal Reserve System"); *Nomination of Nancy H. Teeters: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 95th Cong. 2 (statement of Sen. Proxmire, Chairman) ("I notice that you did come from Indiana. I challenged Birch on that. I didn't understand that you were an Indiana native, but I see you are, that you went to Horace Mann Elementary School in Marion, Ind., and Martin Boots Junior High in Marion so I can see why Marion and Senator Bayh are so proud of your background. You also went to Marion High School and graduated from Marion, so you are a Hoosier.").

133. See *supra* notes 128-130.

134. See *supra* text accompanying note 78.

135. Interpretation of statutes is often made difficult by how vaguely written, sometimes intentionally, the statutes are. See Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 14-15 (Amy Gutman ed., 1997) (discussing the difficulties of statutory interpretation and the shortcomings of strict construction).

representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country.” As this Note has shown, the geographic diversity requirements in Section 10 of the Federal Reserve Act were intended to address concerns by members of the 1913 enacting Congress that, without them, East Coast interests would be disproportionately represented on the Board of Governors to the detriment of the rest of the country, particularly to farmers in the Western and Southern parts of the country who, at the time of the Federal Reserve Act’s enactment, preferred more inflationary monetary policy.

This Note has shown that, in recent years, the President and Senate have not carefully interpreted or applied the geographic restrictions. Additionally, this Note’s analysis of Board members shows that a number of nominees who were neither natives nor current residents of the district from which they were nominated have gained Senate confirmation, possibly in an attempt to avoid triggering the geographic diversity requirements when considering the Board’s membership as a whole. In the past fifteen years the Senate has confirmed nine nominees who had only minimal ties with the district they were purportedly “from.” Moreover, during the past twenty years, members with ties to the East Coast have had disproportionate representation on the Board of Governors. The geographic balance that Congress envisioned and expressed to the public when it enacted the Federal Reserve Act in 1913 has been seemingly undermined with regulations and monetary policy potentially shifting in favor of the East Coast.

Further legislative efforts should define the geographic diversity requirements with greater specificity and ensure that other diversity efforts are clear in defining their terms.<sup>136</sup> For example, the Senate could determine the geographic origin of a nominee by considering the nominee’s reported home address on federal income tax forms or by noting where the nominee is registered to vote in the years before initial nomination. As opposed to the *ex post* narratives about geographic origin crafted upon nomination to the Board of Governors, prospective nominees are less likely to manipulate such details years in advance based on a distant possibility of nomination. Despite the increasingly mobile nature of our economy, geography remains a key differentiating factor for ideology at both the state and local level,<sup>137</sup> and clearer definitions of geographic

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136. As an example of the need to define diversity requirements carefully, President Obama recently nominated Allan Landon, who is exempt from the requirements of the recent legislative change, to act as a representative of community bankers on the Board of Governors, but Landon might not have qualified as a community banker under Senator Vitter’s amendment depending on how the Senate and the President evaluate the Bank of Hawaii’s assets. Ryan Tracy, *Landon May Not Be Community Banker Under New Legislation*, WALL ST. J.: MONEYBEAT (Jan. 8, 2015, 12:20 PM), <http://blogs.wsj.com/moneybeat/2015/01/08/landon-may-not-be-community-banker-under-new-legislation>.

137. See BILL BISHOP, *THE BIG SORT* (2008) (describing the ideological sorting of Americans among different states and within even the county level); Wendy K.

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representativeness would help ensure that the Board of Governors is not dominated by any one regional faction.

In addition to improved definitional specificity, Congress could restructure the geographic arrangements of Section 241. For example, Congress could amend Section 241 to require that at least one Governor must come from the Cleveland, St. Louis, Minneapolis, Kansas City, or Dallas District to improve the representation of these perennially underrepresented districts on neither the Atlantic nor Pacific coasts. Alternatively, Congress could implement a rotating system for the seats on the Board of Governors similar to the system used for determining which Reserve Bank presidents sit on the FOMC.<sup>138</sup> Although such an approach might constrain the choices of the Executive, the expansion of the nation's population and banking sector since 1913 has increased the number of individuals qualified for service on the Board of Governors, and this plan would prevent the Executive from continually replacing East Coast Governors with new Governors from the same Federal Reserve districts. Slight modifications in the Federal Reserve district boundaries could also hinder creative attempts to avoid appointing two Governors from the same district. For example, moving the southern half of New Jersey, or at least the portion encompassing Princeton University, out of the Philadelphia district and into the New York district would undermine attempts to claim residents of the greater New York City area or Princeton professors as from the Philadelphia district.

The geographic diversity requirements, properly understood, build upon the strengths of a geographically expansive republic because, to utilize the wisdom of James Madison, "the greater number of citizens and extent of territory which may be brought within the compass of" the Board of Governors "renders factious combinations less to be dreaded."<sup>139</sup> By preventing any limited set of Federal Reserve districts from dominating the Board of Governors, Congress created a barrier to prevent the dominance of regional factions, and a return to the traditional understanding of Section 241 would reinvigorate this protection against a homogenous Board of Governors.

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Tam Cho et al., *Voter Migration and the Geographic Sorting of the American Electorate*, 103 ANNALS ASS'N AM. GEOGRAPHERS 856, 856 (2013) ("Relying on data for millions of partisan migrants across seven states, we show that partisans relocate based on destination characteristics such as racial composition, income, and population density but additionally prefer to relocate in areas populated with copartisans.").

138. See *The Structure of the Federal Reserve System*, *supra* note 2.

139. THE FEDERALIST NO. 10 (James Madison).