LAWMAKERS AND ECONOMIC OTHERING

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Abstract

In 2017, Congress adopted the Opportunity Zone tax incentive to drive investment to poor places. Capital invested in qualified opportunity funds may reduce and, in some cases, eliminate capital gains tax liability. Limiting tax on capital gains is a boon to those with capital gains, namely the very wealthy. It would be unsurprising, therefore, that companies raising funds to invest in poor Opportunity Zones are located primarily outside the designated struggling zones. Original data analysis from the Securities Exchange Commission and state business entity databases confirms that most Opportunity Zones investment companies are located outside the zones.

This is the first law review article to analyze data about the location of Opportunity Zone investment companies. It argues that the current law impedes the ability of Opportunity Zone residents to engage with development projects since most investors are located outside the designated zones. Projects lack transparency. On a granular level, residents lack knowledge of property ownership. On a systemic level, communities struggle to discern financial forces at play in their neighborhoods.

The Article connects the lack of transparency in place-based economic development activity broadly with the theoretical notion of economic othering. Othering is the process of establishing an "in-group" that stands in opposition to an inferior "out-group." Zone residents, who are excluded from selecting investment projects in their communities, are othered in favor of investors. To avoid economic othering, lawmakers should reform the Opportunity Zone incentive—and other place-based economic development laws—to improve transparency for residents.

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I. Introduction

In 2017, Congress adopted the Opportunity Zone incentive as part of the Trump Administration's Tax Cuts and Jobs Act.[1] The incentive offers investors the ability to defer, and in some cases avoid, capital gains liability on funds invested in real estate or small businesses that are located in designated Opportunity Zones.[2] Since implementation, assessing the

1. *See* I.R.C. § 1400Z-1.

2. Edward W. De Barbieri, *The Origin Story of the Opportunity Zone Incentive: A Review of David Wessel's* Only the Rich Can Play, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 9, 9-10 (2022) (describing the three potential benefits of the Opportunity Zone incentive to investors). The task of designating the zones was delegated to state governors. I.R.C. § 1400Z-1.

success—or failure—of the incentive has proven a challenge.[3] Reports are mixed.[4]

One of its most significant criticisms is that the Opportunity Zone incentive lacks transparency around project selection.[5] Further, Opportunity Zone investment companies need not have a specific location in zones or connection to zone residents.[6] Finally, original data analysis first presented in this Article reveals that most firms raising capital from investors are located outside designated zones.[7]

CIM, for instance, is a company organized around owning, operating, and developing real estate and infrastructure projects.[8] The CIM business model is to raise money and invest it in urban areas primed for growth.[9] Its offices, located in Los Angeles, are not in an Opportunity Zone.[10] CIM implements a process for investing funds and returns value to shareholders—most of whom are removed from particular development projects.[11] CIM investment

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3. Two things are true in assessing public policy: (1) it takes a long time to implement, and (2) it is hard to prove causation. Ted De Barbieri (@TedDeBarbieri), TWITTER (July 19, 2021, 8:07 PM), https://twitter.com/TedDeBarbieri/status/1417290148845395968 (summarizing remarks by Andrew P. Hunter, defense official and Assistant Secretary of the Air Force for Acquisition, Technology and Logistics).

4. *See e.g.*, Brett Theodos et al., *The Opportunity Zone Incentive Isn't Living Up to Its Equitable Development Goals. Here Are Four Ways to Improve It*, URB. INST. (June 17, 2020), https://www.urban.org/urban-wire/opportunity-zone-incentive-isnt-living-its-equitable-development-goals-here-are-four-ways-improve-it.

5. *See, e.g.*, Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82, 148 (2020) ("There are two key problems with respect to transparency as it applies to improving the Opportunism Zone. First, the tool lacks a periodic reporting requirement. Second, the process for zone designation in the states and territories is opaque . . . .").

6. *See infra* Section II.B.

7. *See infra* Section IV.B.

8. *Who We Are*, CIM, https://www.cimgroup.com/about (last visited Dec. 20, 2023). CIM Group offers securities through an affiliated broker-dealer CCO Capital, LLC. *Id.* This investment fund was selected because it is representative of other funds that focus on raising Opportunity Zone capital for mixed-use real estate projects.

9. In this way, it is not unlike the former Canyon Johnson Urban Fund, formed by the basketball star Earvin "Magic" Johnson and K. Robert Turner. *See* Felix Oberholzer-Gee & Alexa Arena, Harv. Bus. Sch., Case No. 706-442, Canyon Johnson Urban Fund (Sept. 2007 rev.) (presenting the Canyon Johnson Urban Fund's investing strategy and posing a choice between two competing project proposals for the fund's consideration).

10. Data on file with author.

11. Publicly available database information indicates that CIM's Opportunity Zone Fund has raised $4 billion. *See Opportunity Zone Strategy*, CIM, https://www.cimgroup.com/investment-platforms/real-estate/ground-up-development/opportunity-zones (last visited Jan. 25, 2024). Around half of the areas CIM invests in are located in federally designated Opportunity Zones. *See id.* CIM Group has a process for determining where to invest. *See*

projects that are subsidized by the Opportunity Zone incentive need not involve, disclose information to, or even benefit area residents.[12] Investment funds organized by groups such as CIM are commonplace in the landscape of Opportunity Zone investing.[13]

Another Opportunity Zone investment company, The Gravitas Fund, invests in single family homes in the Denver suburbs.[14] Like CIM, Gravitas raises funds from outside investors who are unlikely to live in the houses Gravitas buys and rents out.[15] Like CIM, the primary office address used for

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CIM's Community Qualification Process, CIM, https://fulfillment.marketpowerweb.com/showpdf-sku.cfg?sku=BRO-QC&clientcode=COLE [https://perma.cc/73CE-4EA2] (last updated Dec. 31, 2023). This process is based on five-points: improving market dynamics in a place, achieving broad public support, obtaining private investment, locating areas underserved by real estate and infrastructure, and assessing the firm's capacity to invest at least $100 million in an area within five years. *Id.* Of the 135 communities that CIM has qualified for investment since 1994, sixty-five communities are located within federally designated Opportunity Zones. *Opportunity Zone Strategy*, *supra.* It is not surprising that Opportunity Zone investors are focused on real estate investment projects. CIM and Gravitas are examples of two preferences that developers pursue: mixed-use commercial projects or single-family residential homes. Mixed-use commercial projects include office, retail, manufacturing, industrial, some multi-family residential "live/work" communities, and related business-focused uses. *See* Armani Builders (Pvt) Ltd, *Residential vs Commercial Real Estate | Which Is the Best for Investment Purposes?*, LINKEDIN (June 1, 2023), https://www.linkedin.com/pulse/residential-vs-commercial-real-estate-which-best/. Single-family residential home investing involves acquiring a large number of homes to rent and then sell to homeowners. *Id.* Additional Opportunity Zone investing strategies include green energy and other infrastructure development; however, these projects are outliers. *See Greenbacker Renewable Opportunity Zone Fund*, GREENBACKER CAP., https://greenbackercapital.com/greenbacker-renewable-opportunity-zone-fund/ (last visited Jan. 25, 2024).

12. *See CIM's Community Qualification Process*, *supra* note 11.

13. DAVID WESSEL, ONLY THE RICH CAN PLAY: HOW WASHINGTON WORKS IN THE NEW GILDED AGE 7-12, 14-16 (2021) (describing a gathering of Opportunity Zone investors in Las Vegas and the real estate professionals involved in leveraging the incentive for gain).

14. Formed by Sebastian Partners, the Gravitas QOZ Fund I, LLC indicates its investment highlights in a summary document on the firm's website. Sebastian Partners, *Single-Family Homes-Income Properties Offering Highlights*, THE GRAVITAS FUND, https://perma.cc/VPN7-5XS7 (last visited Feb. 25, 2024) (presenting the key deal points for this fund). Specifically, The Gravitas Fund set out to raise $20 million to buy single family homes in Aurora, a town outside Denver, to rent and then sell after around eleven years to maximize gains offered by the Opportunity Zone incentive. *Id*. Investments held for at least ten years in Opportunity Zones can permanently avoid capital gains on the underlying investment since they receive stepped up basis. 26 U.S.C. § 1400Z-2(c).

15. In 2019, both CIM and Gravitas made filings with the SEC to raise capital from outside investors. Data on file with author. Like CIM, Gravitas invests funds through a detailed

Gravitas is located outside of designated Opportunity Zones.[16] It is unsurprising that these two funds are located outside of designated Opportunity Zones since there is no requirement in the law that funds must be located within designated zones.[17]

To raise funds from investors, companies need to file for exemption with the United States Securities and Exchanges Commission ("SEC").[18] SEC datasets for 2019, 2020, and 2021 show that Opportunity Zone investment companies were located mostly outside the designated Opportunity Zones.[19]

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strategy. *See CIM's Community Qualification Process*, *supra* note 11; *Single-Family Homes-Income Properties Offering Highlights*, *supra* note 14.

16. 2019 filing data for CIM and Gravitas with the SEC indicated office addresses located outside Opportunity Zones. Data on file with author.

17. 26 U.S.C. § 1400Z-1-2.

18. About a year before Congress adopted the Opportunity Zone incentive, the SEC implemented rules to permit crowdfunding. *See* Lindsay M. Abate, *One Year of Equity Crowdfunding: Initial Market Developments and Trends*, U.S. SMALL BUS. ADMIN.: OFF. OF ADVOCACY (Mar. 29, 2018), https://www.crowdfundinsider.com/wp-content/uploads/2018/03/SBA-Crowdfunding_Issue_Brief_2018.pdf (analyzing the first year of crowdfunding activity from May 16, 2016 to May 16, 2017). Crowdfunding is the process of raising capital through small-dollar contributions using online platforms. C. Steven Bradford, *Crowdfunding and the Federal Securities Law*, 2012 COLUM. BUS. L. REV. 1, 5 (presenting the regulatory framework through which crowdfunding exists and placing the activity within federal securities laws). Crowdfunding rulemaking was authorized by the Jumpstart Our Business Startups Act of 2012, an Obama-era bill. *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012) [hereinafter JOBS Act].

19. Data was collected using search term "opportunity zone" in filer entity names. Data on file with author. States that included the nation's largest metropolitan commuting regions overlapped with areas experiencing the greatest amount of Opportunity Zone investing. Patrick Kennedy & Harrison Wheeler, *Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence* 16 (U.S. Cong. Joint Comm. on Tax'n, Working Paper, Apr. 12, 2021), https://static1.squarespace.com/static/57a3c0fcd482e9189b09e101/t/607893b915858d7bd0d198ba/1618514881004/oz_kennedy_wheeler.pdf. For a time range, we collected data for calendar years 2019, 2020, and 2021. These were the same years included in the SEC map that had initially given rise to this research. *See Capital Trends*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/education/capitalraising/trends (last updated Sept. 20, 2023). Some states in particular years did have significant amounts of funds located in Opportunity Zones—Arizona in 2019, for instance, had 40% of funds located in Opportunity Zones. Yet, those instances were largely outliers. To qualify for the Opportunity Zone incentive companies must invest in Qualified Opportunity Funds. 26 U.S.C. § 1400Z-2(a)(1), (d).

However, not all Opportunity Zone investment companies raise funds from investors. Some invest their own money.[20] Those companies using their own capital need only make entity-formation filings in the state in which they are located.[21] Data analyzed for Opportunity Zone investment companies through state entity datasets indicates a higher percentage are located in designated zones.[22] One hypothesis to explain an increased location of investment companies in designated zones might be that they are purchasing real property in a zone.[23]

This Article contributes to existing legal scholarship focusing on the importance of project transparency and applying the notion of economic othering to place-based economic development. This Article engages with the growing Opportunity Zone literature to critique how government at all levels engages in place-based economic development.[24] One recent critique by Eldar and Garber focuses on the disconnect between the incentive's

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20. *See* Noah Buhayar, *Trump Tax Break's Hidden Frenzy: Corporate Giants Are Rushing In*, BLOOMBERG (Dec. 12, 2019, 3:00 AM), https://www.bloomberg.com/news/features/2019-12-12/filing-frenzy-shows-companies-lining-up-for-poor-area-tax-breaks.

21. *Key Issues in Selecting Formation State*, WOLTERS KLUWER (Nov. 21, 2019), https://www.wolterskluwer.com/en/expert-insights/key-issues-in-selecting-formation-state.

22. Data collected using the search phrase "opportunity zone" in the legal names of filers and filing address data analyzed for location in an Opportunity Zone. Data on file with the author. The data collected came from the same ten states with the greatest amount of economic activity, based on metropolitan commuting area, and early data about Opportunity Zone investment. *Id.* For the state-level entity formation data, there were many more total entities discovered than the team was able to locate with the securities data alone. This finding is consistent with other reports identified in our research. For example, one Bloomberg reporter found over 1,800 entities formed in Delaware with "opportunity zone" or initials such as "QOZB" in the name. Buhayar, *supra* note 20 (reporting on a large number of employers forming Opportunity Zone investing entities in Delaware).

23. An alternative hypothesis is that a greater number of entities formed means a greater opportunity for entities to be located in Opportunity Zones. Let us call this the statistical hypothesis. However, in light of the reporting that many companies are forming Opportunity Zone investment entities for their own capital deployment, the notion that entities using their own capital to invest in Opportunity Zones are more likely to be located in a designated zone seems consistent. The data does not definitively support this hypothesis. However, it seems like a plausible answer to why there are more entities located in designated Opportunity Zones when using state-level entity formation data than the data collected for entities seeking securities exemption.

24. *See infra* Section II.C. In recent years, the author has researched the Opportunity Zone incentive and developed a critique expressed elsewhere at length. *See generally* Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82 (2020); Michele D. Layser et al. *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445 (2021); Edward W. De Barbieri, *Supporting Small Businesses in Place*, 48 FORDHAM URB. L.J. 1107 (2021); Edward W. De Barbieri, *Community-Based Tax Incentives*, 19 PITT. TAX REV. 1 (2021).

purpose and the terms included in its execution.[25] Project transparency at the selection, planning, and construction phases is important in determining how new infrastructure improves—or fails to improve—the lives of people.[26]

This Article uses the notion of *othering* to identify how lawmakers exclude residents of poor places from decisions surrounding capital investment. Othering—the act of viewing or treating individuals or groups as different—is pervasive in the economic context.[27] Lawmakers engage in economic othering when laws limit information to residents of areas primed for economic development.[28] Economic othering at law occurs in many ways. The Opportunity Zone incentive is but one of the ways economic othering occurs in the law.

This Article is the first to raise the notion of economic othering in the context of place-based economic development. It suggests that strategies that drive capital to poor places but lack transparency are likely to fail at responding to resident needs. In contrast, a non-othering approach to economic development in poor places would account for resident needs. Such an approach would place transparency at the fore when allocating incentives for capital investment.

This Article proceeds in the following way. Part II discusses Opportunity Zones and situates the Opportunity Zone incentive among the history of place-based economic development policy interventions offered by states and the federal government. Part II then introduces what this Article terms economic othering. This part also discusses how economic othering limits project transparency for area residents. Part III explores deregulatory efforts to exempt low-dollar fundraising, including through the issuance of security instruments, using web-based digital platforms.

Part IV presents an analysis of data, including the location of Opportunity Zone investment companies, collected from a SEC database and state entity formation databases. Part V discusses the implications of this Article's

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25. Ofer Eldar & Chelsea Garber, *Opportunity Zones: A Program in Search of a Purpose*, 102 B.U. L. REV. 1397, 1401 (2022).

26. *See* ORG. FOR ECON. COOP. AND DEV. (OECD), GETTING INFRASTRUCTURE RIGHT: THE TEN KEY GOVERNANCE CHALLENGES AND POLICY OPTIONS 16 (2017), https://www.oecd.org/gov/getting-infrastructure-right.pdf. Economic Innovation Group leaders, including Sean Parker, referred to the Opportunity Zone incentive as a "Marshall Plan for the heartland." Evan Halper, *How a Tech Billionaire's Bid to Uplift the Poor Became a Windfall for the Rich*, L.A. TIMES (Apr. 6, 2022, 4:00 AM), https://www.latimes.com/politics/story/2022-04-06/la-na-pol-opportunity-zones-sean-parker. It follows that residents' lives must necessarily be improved for the incentive to prove successful. *See id.*

27. *See infra* Section II.E.

28. *See infra* Section II.E.

findings for policymakers seeking to improve transparency in place-based economic development laws such as the Opportunity Zone incentive.

II. Opportunity Zones, Place-Based Economic Development, and Economic Othering

A number of phenomena have led to a recent policy focus on developing state and local economies. State and local governments, for instance, are under pressure from constituents to not only provide essential services, such as public safety, education, and transportation, but also to drive economic growth.[29] For elected officials, the economic development mandate is a more recent addition to their job descriptions.[30]

At the same time, Congress is reluctant to expand ongoing people-based entitlements.[31] Vast tax incentives, such as the national Opportunity Zone incentive, and even the grant-based Paycheck Protection Program, have focused on aiding investors and business owners.[32] Tax incentives often obfuscate the true amount of government financial intervention.[33] The impact

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29. *See generally* NATHAN M. JENSEN & EDMUND J. MALESKY, INCENTIVES TO PANDER: HOW POLITICIANS USE CORPORATE WELFARE FOR POLITICAL GAIN 58-59 (2018) (discussing the political benefits afforded to elected officials who take credit for attracting or retaining jobs for their constituents).

30. *See* Ass'n of Am. L. Schs., *Section on State and Local Government Law and Community Economic Development Joint Program*, YOUTUBE, at 6:15-6:39 (Feb. 2, 2022), https://www.youtube.com/watch?v=FTtUexQADjY. At this gathering, Mayor Darrel Steinberg commented, "[T]he public is rightly calling on cities and city leadership to take the lead on economic empowerment, on racial equity, on the great economic divide, certainly on affordable housing and homelessness." *Id.*

31. The legislative and executive branches of government have preferred one-time, or periodic, stimulus payments for which they can receive short-term credit. *See, e.g.*, Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, § 2201(a), 134 Stat. 281, 335 (2020) (codified at 26 U.S.C. § 6428(d)) (authorizing a single stimulus payment to all individuals in early 2020).

32. For instance, reports have indicated that Paycheck Protection Program funds went disproportionately to business *owners* rather than to *workers*. David Autor et al., *The $800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 29669, 2022), https://www.nber.org/papers/w29669?utm_campaign=ntwh&utm_medium=email&utm_source=ntwg24.

33. *See, e.g.*, Jason Fichtner & Jacob Feldman, *When Are Tax Expenditures Really Spending? A Look at Tax Expenditures and Lessons from the Tax Reform Act of 1986*, at 4 (Mercatus Ctr. at George Mason Univ., Working Paper No. 11-45, 2011), https://www.mercatus.org/system/files/Tax_expenditures_FichtnerFeldman_WP1145_0.pdf.

of pandemic era crisis spending continues to be analyzed along with waste, fraud, and abuse that accompanied such release of funds into the economy.[34]

This Part frames the conversation around place-based economic development. It first distinguishes between place-based and people-based interventions. At the same time, it builds on the observation that both place and people are overlapping concepts.[35] Finally, it introduces the notion of othering in the context of economic development.

A. Fiscal, Monetary Policy and State and Local Power

State and local governments are constrained with respect to setting federal monetary policy.[36] In many ways, this is a good thing: individuals and businesses do not need to carry banknotes from private banks,[37] state banks,[38] or regional credit issuers.[39] Instead, we share a single Federal Reserve note.[40]

In other ways, however, centralizing national currency and the monetary policy to support a common federal economic enterprise excludes state and

34. *See* Ryan Tracy, *Evidence of PPP Fraud Mounts, Officials Say*, WALL ST. J. (Nov. 8, 2020, 9:04 AM), https://www.wsj.com/articles/ppp-was-a-fraudster-free-for-all-investigators-say-11604832072.

35. As Nestor Davidson has written: "People are place and places are people . . . ." Nestor M. Davidson, Essay, *Reconciling People and Place in Housing and Community Development Policy*, 16 GEO. J. ON POVERTY L. & POL'Y 1, 10 (2009).

36. *See* Frank E. Morris, *Impact of Monetary Policy on State and Local Governments: An Empirical Study*, 15 J. FIN. 232, 232 (1960) ("[I]t has been charged that the brunt of a restrictive monetary policy is borne by . . . state and local governments . . . .").

37. *See What Is Lawful Money? How Is It Different from Legal Tender?*, BD. OF GOVERNORS OF THE FED. RESERVE SYS., https://www.federalreserve.gov/faqs/money_15197.htm (last visited Nov. 11, 2023).

38. *See, e.g.*, *History of BND*, BANK OF N.D., https://bnd.nd.gov/history-of-bnd/ (last visited Feb. 25, 2024) (describing the formation of the Bank of North Dakota in 1919 as the only remaining state-owned bank in the United States).

39. Richard H. Timberlake, Jr., *The Independent Treasury and Monetary Policy Before the Civil War*, 27 S. ECON. J. 92, 96 (1960) (presenting tabular data showing, between 1836 and 1859, the value of state bank notes and deposits compared with currency held in banks and Treasury notes).

40. *See* Michael Lambert et al., *Costs and Benefits of Replacing the $1 Federal Reserve Note with a $1 U.S. Coin*, FED. RSRV. BD. (Dec. 2013) (Staff Working Paper), https://www.federalreserve.gov/paymentsystems/files/staff-working-paper-20131211.pdf (studying whether the paper Federal Reserve dollar note should be replaced with a dollar coin).

local power.[41] In a modern economy, of course, trade-offs are necessary.[42] In the case of the United States, centralizing monetary policy takes the form of ceding authority to the Federal Reserve Board and the Federal Open Market Committee.[43]

This is not a paper about monetary policy. However, it is important to identify that monetary policy, including the process of quantitative easing that pumped trillions of dollars into the U.S. economy during the 2010s, led to massive economic gains for those who own assets such as shares in the nation's most profitable businesses.[44] The role of the Federal Reserve in setting monetary policy led to asset inflation, which increased wealth inequality across the country.[45]

By contrast, Congress and the White House, as well as state legislatures, governors, local legislatures, and local executives, are constrained in terms of their ability to set fiscal policy alone.[46] Policies that impact the government's ability to raise revenue may be federal in nature—such as the Opportunity Zone tax incentive, which is the main subject of this Part—or

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41. Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1850 (2010) ("What is left for the states to do . . . once they have committed to a common currency and (eventually) a national bank . . . ?").

42. Philip E. Tetlock, *Coping With Trade-Offs: Psychological Constraints and Political Implications*, *in* ELEMENTS OF REASON: COGNITION, CHOICE, AND THE BOUNDS OF RATIONALITY 239, 239 (Arthur Lupia et al. eds., 2000).

43. Comprising the seven members of the Board of Governors, the president of the Federal Reserve Bank of New York, and four of the remaining eleven regional Federal Reserve Banks. *About the FMOC*, BD. OF GOVERNORS OF THE FED. RESERVE SYS., https://www.federalreserve.gov/monetarypolicy/fomc.htm (last visited Feb. 6, 2024). The Federal Reserve Board, and the Federal Open Market Committee, control a key lending interest rate—the short-term Federal funds rate—as well as the amount of money printed and circulating in the economy. *Id.* The Fed collectively has kept short-term interest rates near 0%. Fed focus has been on keeping asset inflation—the value of securities such as shares of publicly traded companies—high, while managing consumer price inflation. *See, e.g.*, CHRISTOPHER LEONARD, THE LORDS OF EASY MONEY: HOW THE FEDERAL RESERVE BROKE THE AMERICAN ECONOMY 81-83 (2022). The result has been those individuals with wealth—the top 1% of Americans who own at least 31% of the wealth in the country—have seen their wealth grow. *Id.* at 295-96. The bottom 50% of the country own just 2% of the wealth in the country. *Id.* at 295.

44. *Id.* at 26, 119.

45. Albany L. Sch., *Chris Leonard on "The Lords of Easy Money" – First Mondays*, YOUTUBE, at 14:30-16:50 (Mar. 8, 2022), https://www.youtube.com/watch?v=Cwfs5N4HpEA.

46. For a discussion of the interaction between state and local fiscal authority and the implications for local autonomy, see generally Clayton P. Gillette, *Fiscal Home Rule*, 86 DENV. U. L. REV. 1241 (2009).

may arise at the state or local level.[47] At a minimum, states and localities must raise revenue through taxes to deliver essential services (including police and safety, education, and homelessness prevention) with state guidance, regulation, and often oversight.[48] Thus, when we consider tax incentives, we are focused on the side of policy that concerns tax, spending, and granting tax exemptions. These policy goals are separate and apart from monetary policy that is controlled by the Federal Reserve Board, the Federal Open Market Committee, and to lesser extents, by the presidents of the Federal Reserve Banks.

B. Opportunity Zones

The Opportunity Zone tax incentive is a barnacle of the 2017 Tax Cuts and Jobs Act.[49] The Opportunity Zone law allows investors with capital gains—earnings generated through the sale of an appreciated asset, such as stock in a company—to delay, and in some cases, avoid, capital gains liability.[50] It offers three main benefits. First, investors can briefly defer tax liability arising from the sale of something of value. Second, the tax basis, for the purpose of calculating capital gains, is stepped up. Third, if gains are invested for a particular period, then investors can avoid tax liability entirely.[51]

The Opportunity Zone incentive lacks any reporting or transparency requirements.[52] A number of bills have been introduced in Congress to reform the Opportunity Zone incentive.[53] Most recently, Senators Tim Scott and Corey Booker led a bicameral, bipartisan bill called the Opportunity

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47. *See id.* For current data about state conformity with the federal Opportunity Zone incentive, for example, see *State Tax Code Conformity – Personal Income*, NOVOGRADAC, https://www.novoco.com/resource-centers/opportunity-zones-resource-center/state-tax-code-conformity-personal-income (last visited Feb. 6, 2024).

48. *See* Ass'n of Am. L. Schs, *supra* note 30 (comments of Mayor Darrel Steinberg).

49. De Barbieri, *supra* note 2, at 9 (reviewing a recent book about how the Opportunity Zone incentive is being used in practice, particularly in how it benefits the already wealthy).

50. *See* 26 U.S.C. §§ 1400Z-1, 1400Z-2.

51. *Id.* § 1400Z-2(c).

52. *See id.* §§ 1400Z-1, 1400Z-2. Reforms have been proposed (by Sen. Ron Wyden and Reps. David Scott, James Clyburn, and Rashida Tlaib) but nothing has actually altered the law yet.

53. *See e.g.*, Improving and Reinstating the Monitoring, Prevention, Accountability, Certification, and Transparency Provisions of Opportunity Zones (IMPACT Act), S. 2994, 116th Cong. § 6039K (2019); Opportunity Zone Reporting and Reform Act, S. 2787, 116th Cong. § 8 (2019); Opportunity Zone Reform Act, H.R. 5042, 116th Cong. § 7 (2019).

Zones Transparency, Extension, and Improvement Act.[54] The Biden Administration has similarly considered reforms to the Opportunity Zone incentive.[55]

In October 2021, the Government Accountability Office ("GAO") released a report on Opportunity Zones.[56] It found mixed results with respect to Opportunity Zone investments.[57] Further, the GAO recommended that the Internal Revenue Service both address risks presented by lack of data available and research compliance issues presented by very wealthy investors and large Qualified Opportunity Funds.[58] The most comprehensive study to date of anonymous tax return data shows very few—only 16%—of Opportunity Zones have received any Opportunity Zone investment.[59]

Of course, there are bright spots. David Wessel, in his recent book *Only the Rich Can Play*, discusses the SoLa Impact fund in Los Angeles and the positive neighborhood-level contributions its investments are making.[60] SoLa Impact—Los Angeles' largest Section 8 subsidized housing landlord—has a mission to bring capital to neighborhoods most in need.[61] SoLa Impact, through its Beehive Opportunity Zone business campus, also prioritizes local entrepreneurs and businesses with social missions.[62]

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54. Opportunity Zones Transparency, Extension, and Improvement Act, S. 4065, 117th Cong. (2022).

55. Jim Tankersley, *Biden Administration Debating How to Overhaul a Trump-Era Tax Break*, N.Y. TIMES (Apr. 23, 2021), https://www.nytimes.com/2021/04/21/business/biden-trump-opportunity-zones.html (summarizing current efforts to reform the Opportunity Zone incentive).

56. U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-104019, OPPORTUNITY ZONES: CENSUS TRACT DESIGNATIONS, INVESTMENT ACTIVITIES, AND IRS CHALLENGES ENSURING TAXPAYER COMPLIANCE (2021), https://www.gao.gov/assets/gao-22-104019.pdf.

57. *Id.*

58. *Id.* at 44. That is government-speak for "make sure rich people aren't avoiding paying taxes they should otherwise pay."

59. *See* Kennedy & Wheeler, *supra* note 19, at 3 (showing that only already gentrifying areas of the country, and scant rural areas, are receiving Opportunity Zone investment).

60. *See* WESSEL, *supra* note 13, at 242-45 (discussing the mission and activities of SoLa Impact).

61. *About Us*, SOLA IMPACT, https://web.archive.org/web/20220814215908/https://solaimpact.com/about-us/ (last visited Feb. 25, 2024) ("With the thesis that a company could 'do good' not only because it was the right thing to do, but because it made sense financially, SoLa Impact has grown from '2 guys in a garage' to over 100 employees.").

62. *Welcome to the Beehive*, THE BEEHIVE: A SOLA IMPACT CO., https://www.solabeehive.com/events (last visited Feb. 6, 2024).

Few community-based economic development companies are as promising as SoLa Impact.[63] Based in Los Angeles, in a federally-designated Opportunity Zone, SoLa Impact raises investment capital and focuses its investment activities on double bottom line-oriented projects that yield both financial return and social impact.[64] Specifically, SoLa's founders seek to construct affordable housing for low-income tenants in Opportunity Zones and expand access to capital for Black and Brown entrepreneurs, individuals, and communities in particular areas.[65] SoLa seeks to use capitalism to solve the problems brought on by capitalism.[66] To a large extent, SoLa Impact is an outlier since there is no requirement that Opportunity Zone investment companies have a social mission or locate in designated zones.[67]

SoLa Impact appeared in the data we collected and analyzed.[68] SoLa Impact, as Wessel writes, and our data confirms, is the exception and not the rule in Opportunity Zone funds.[69] Some firms, such as CIM, have commercial real estate portfolios in dense urban areas but lack an explicit social mission.[70] Other firms, such as Sebastian Partners' Gravitas Fund are engaged in single-family home income generating properties in the suburbs of Denver.[71]

As a capital raising tool for small businesses, the Opportunity Zone incentive has proven weak. Rather, Opportunity Zone investors favor

63. SoLa Impact is the leading urban focused Opportunity Zone investment fund. Timothy Schoof et al., *SoLa Impact: A Case Study on Funding Holistic Solutions for Economic Mobility in Southern California*, FORBES (May 11, 2022, 11:13 AM), https://www.forbes.com/sites/sorensonimpact/2022/05/11/sola-impact-a-case-study-on-funding-holistic-solutions-for-economic-mobility-in-southern-california/?sh=deb666229340 ("These projects contribute to a pro-neighborhood, 'uplift, not uproot' development ethos, aiming to better sustain current tenants and improve the economic viability of existing communities.").

64. *See* SOLA IMPACT, https://solaimpact.com/ (last visited Feb. 6, 2024).

65. *See* Schoof et al., *supra* note 63.

66. CEO Martin Muoto expressed the mission of SoLa: "[H]ow do you create racial equality and in many respects, use capitalism to solve the problems capitalism created?" *Id.* (quoting Muoto).

67. They must avoid performing a number of "sin" business activities listed in 26 U.S.C. § 144(c)(6)(B). *See* 26 U.S.C. § 1400Z-2(d)(3)(A)(iii).

68. *See infra* Section IV.B.

69. *See* WESSEL, *supra* note 13, at 267, 274 (describing how SoLa Impact and other mission-based developers yield fewer Opportunity Zone investment dollars, and few development projects house activities such as SoLa Impact's Beehive).

70. *See supra* notes 8-13 and accompanying text (discussion of CIM Group).

71. *See supra* notes 14-17 and accompanying text (discussion of the Gravitas Fund). Gravitas Fund lacks a social mission as well. *See supra* note 14.

commercial real estate investments.[72] It was reported that even Treasury officials acknowledged how the incentive is well-suited as a vehicle for raising capital for real estate.[73] In essence, the skepticism from the Treasury about the viability of small business investing has played out. More investors have chosen commercial real estate.[74] And, from analysis discussed in Part IV below, that investing behavior has tended towards two poles: mixed-use commercial and single-family residential.[75]

Yet, this was not what Opportunity Zone supporters claimed the Opportunity Zone incentive would do once implemented.[76] Opportunity Zone advocates extolled the benefits the incentive would yield for small businesses located in capital-starved urban and rural areas.[77]

C. Place-Based Economic Development Literature

In recent years, a number of legal academic scholars have published on the subject of placed-based economic development with a focus on

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72. *See, e.g.*, Kennedy & Wheeler, *supra* note 19, at 27-28 ("We find that OZ investments are highly spatially concentrated in a relatively small number of census tracts, *and are heavily concentrated in the real estate sector*." (emphasis added)).

73. At least one political appointee at the U.S. Treasury involved in formulating the rules to implement the Opportunity Zone incentive favored real estate investments in struggling areas over risky investments in start-up small businesses. David Wessel writes that John Lettieri of the Economic Innovation Group said that a Trump political appointee at the Treasury told Lettieri that some within the Treasury thought orienting the incentive to real estate investments was safer than encouraging investments in start-up for-profit firms. *See* WESSEL, *supra* note 13, at 140.

74. SMART GROWTH AM. & DEMOCRACY AT WORK INST., UNREALIZED GAINS: OPPORTUNITY ZONES AND SMALL BUSINESSES 19 (Oct. 2020), https://smartgrowthamerica.org/wp-content/uploads/2020/10/Unrealized-Gains-Final.pdf.

75. The CIM and Gravitas examples discussed at the beginning of this Introduction are representative examples of the two poles of real estate investing typical of Opportunity Zone investors. *See supra* notes 8-17 and accompanying text. On the one hand is mixed-use multi-family housing, commercial, and retail. On the other hand is a single-family home investment strategy.

76. Senator Tim Scott, the sine qua non in Congress of the Opportunity Zone incentive, describes Opportunity Zones on his public-facing website as "economically-distressed communities" tied to a federal incentive to "drive private investment into our nation's most distressed zip codes." *Opportunity Zones*, TIM SCOTT: U.S. SENATOR S.C., https://www.scott.senate.gov/issues/opportunity-zones/ (last visited Feb. 8, 2024).

77. *See* Halper, *supra* note 26. This bait-and-switch typifies how power is wielded in Washington, D.C. *See* WESSEL, *supra* note 13, at 91. For a related treatment of how the last tax overhaul was passed in Congress, see JEFFREY H. BIRNBAUM & ALAN S. MURRAY, SHOWDOWN AT GUCCI GULCH: LAWMAKERS, LOBBYISTS, AND THE UNLIKELY TRIUMPH OF TAX REFORM (1987).

Opportunity Zones.[78] In an overwhelmingly reform-minded tone, Professors Tracy Kaye, Michelle D. Layser, Anika Singh Lemar, Blaine G. Saito, Brandon Weiss, Rashmi Dyal-Chand, and this author have contributed to a special issue of the *Fordham Urban Law Journal* following a symposium held in February 2021.[79] In addition, Michelle D. Layser, Marie Sapirie, and this author contributed to a special issue of the *Pittsburgh Tax Review* on how to effectively implement place-based tax incentives, with an Opportunity Zone focus.[80] Several recently written articles point out shortcomings in implementation and suggest reforms to the Opportunity Zone incentive.[81] Finally, Professor Michelle D. Layser recently identified the legal and political barriers to reforming state place-based tax incentives.[82]

Two observations stem from the existing analysis and legal academic scholarship on Opportunity Zones. First, scholars are seeking to understand how investors are deploying capital for small businesses and real property located in areas designated for capital investment. The first part of the story asks: what phenomena are occurring following the adoption of the Opportunity Zone incentive?

Second, based on what is occurring, scholars seek to both opine about the causes for such occurrences and then suggest ways to reform or alter the policy with respect to Opportunity Zone incentives. This is the research task that observers and academics undertake. At the same time, policy changes, including those related to the Opportunity Zone incentives, often result in

78. Outside the legal academic literature, there is significant interest in Opportunity Zones. *See, e.g.*, Symposium, *An Evaluation of the Impact and Potential of Opportunity Zones* 24 CITYSCAPE: J. POL'Y DEV. & RSCH., no. 1, 2022, at 1 (featuring articles about the impact and potential of OZs).

79. Symposium, *A Taxing War on Poverty: Opportunity Zones and the Promise of Investment and Economic Development*, 48 FORDHAM URB. L.J. 1067 (2021) (pointing out, generally, the weaknesses of the Opportunity Zone incentive and suggesting mechanisms for reform).

80. *See generally* Michelle D. Layser, *Financing Affordable Housing in Opportunity Zones*, 19 PITT. TAX REV. 1 (2021); Marie Sapirie, *Made in America, Made in Opportunity Zones*, 19 PITT. TAX REV. 33 (2021); Edward W. De Barbieri, *Community Based Tax Incentives*, 19 PITT. TAX REV. 83 (2021).

81. Ofer Eldar & Chelsea Garber, *Opportunity Zones: A Program in Search of a Purpose*, 102 B.U. L. REV. 1397, 1400-03, (2022) (critically assessing the purpose behind the Opportunity Zone incentive); Brandon M. Weiss, *Opportunity Zones, 1031 Exchanges, and Universal Housing Vouchers*, 110 CALIF. L. REV. 179, 191, 214, (2022) (analyzing 1031 exchanges, the Opportunity Zone incentive, and proposing to fully fund Housing Choice Vouchers instead of continuing 1031 exchanges and the Opportunity Zone incentive).

82. *See generally* Michelle D. Layser, *Removing Barriers to State Tax Incentive Reform*, 171 PENN. L. REV. 1235 (2023).

unintended consequences, and further, the outcomes can take a long time to appear.[83]

Stepping back for a moment, this Article contributes to the existing body of research by telling the story about how Opportunity Zone investors are reacting through the lens of entity formation.[84] In addition, the location of new entities formed for the purpose of Opportunity Zone investing is relevant in terms of who is doing the investing and whether local residents in Opportunity Zones actually have input, purchase, and influence in determining how Opportunity Zone capital inflows are directed.[85]

D. Place-Based and People-Based Concepts of Economic Development

Economic development law and policy, in recent years, has taken a focus on place. Areas in the urban core and rural spaces that have been left behind, both by fleeing populations and limited business growth, are the renewed focus of government-backed tools and programs.[86] Place-based economic development tax incentives, job creation tax credits, and even cash grants are among the legal levers used by government at all levels.[87]

Yet, the places where lawmakers appear to direct capital and jobs continue to struggle. Investors have largely passed over most areas designated by state governors as federal Opportunity Zones.[88] So-called "legacy cities" and the workers who inhabit them continue to compete for jobs, new companies, and economic activity.[89] Conversely, already wealthy cities and suburbs continue to prosper due to income growth among professional services workers, increasing home prices and overall economic expansion.[90]

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83. *See* De Barbieri (@TedDeBarbieri), *supra* note 3.

84. *See infra* Part IV.

85. *See infra* Part IV.

86. *See* KENAN FIKRI ET AL., ECON. INNOVATION GRP., EIG BRIEF: EXAMINING THE LATEST MULTI-YEAR EVIDENCE ON THE SCALE AND EFFECTS OF OPPORTUNITY ZONES INVESTMENT 2 (2023), https://eig.org/wp-content/uploads/2023/03/Examining-the-Latest-Multi-Year-Evidence-on-Opportunity-Zones-Investment.pdf.

87. *See* David Neumark & Helen Simpson, *Place-Based Policies* 31 (Nat'l Bureau of Econ. Rsch., Working Paper 20049, Apr. 2014), https://www.nber.org/system/files/working_papers/w20049/w20049.pdf.

88. KENAN FIKRI & BENAJMIN GLASNER, ECON. INNOVATION GRP., ARE OPPORTUNITY ZONES WORKING? WHAT THE LITERATURE TELLS US 4 (2023), https://eig.org/wp-content/uploads/2023/10/Are-Opportunity-Zones-Working.pdf.

89. *See* ALAN MALLACH & LAVEA BRACHMAN, LINCOLN INST. OF LAND POL'Y, REGENERATING AMERICA'S LEGACY CITIES 7 (2013), https://ti.org/pdfs/LegacyCities.pdf.

90. Jean Ross, *New Research Adds to Evidence That Opportunity Zone Tax Breaks Are Costly and Ineffective*, CTR. FOR AM. PROGRESS (June 18, 2022), https://www.american

When policymakers consider ways to intervene in the economies of particular places, people-based interventions are alternative options to place-based ones.[91] People-based interventions are prominent poverty alleviation tools.[92] Poverty alleviation tools differ from economic development strategies.[93] However, each has a role to play in the context of adopting a growth-based strategy, distributing financial support through transfers, and addressing racial and economic inequality.

The Opportunity Zone incentive is a continuation of a congressional shift towards place-based economic development policy.[94] This Article is concerned primarily with the Opportunity Zone incentive as a place-based economic development tool.[95] In identifying data concerning the location of Opportunity Zone entities, this Article seeks to contribute to the discussion about the effectiveness of the Opportunity Zone incentive as a place-based economic development intervention.

E. Economic Othering

There is a point in human development where individuals recognize themselves as distinct from others. Jacques Lacan, the French medical doctor and psychoanalyst, called this the "mirror stage."[96] During this phase, between six and eighteen months of age, babies begin to recognize a maternal "Other," which has its own set of wants, needs, and expectations.[97]

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progress.org/article/new-research-adds-to-evidence-that-opportunity-zone-tax-breaks-are-costly-and-ineffective/.

91. For a discussion of people-based interventions in contrast to place-based economic development strategies, see Edward W. De Barbieri, *Purchasing Population Growth*, 98 INDIANA L.J. 573, 583-93 (2023).

92. Federal, and state, earned income tax credits, for instance, are people-based poverty alleviation interventions. 26 U.S.C. § 32.

93. De Barbieri, *supra* note 91, at 587; Weiss, *supra* note 81, at 193.

94. Michelle D. Layser, *A Typology of Place-Based Investment Tax Incentives*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 403, 409 (2019) (presenting a typological approach to analyzing place-based tax incentives, including Opportunity Zones).

95. It is the case that since the COVID-19 pandemic, Congress has issued numerous economic stimulus interventions geared at employers, workers, and those who own assets, such as shares of company stock. Michelle D. Layser et al., *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 482-506 (2021) (describing the COVID-19 pandemic economic interventions and their focus on aiding employers, as well as workers).

96. Jacques Lacan, *The Mirror Stage as Formative of the Function of the I as Revealed in Psychoanalytic Experience*, *in* THE CONTINENTAL PHILOSOPHY READER 330, 330 (Richard Kearney & Mara Rainwater eds., 1996).

97. *Id.* at 330-31.

Gayatri Chakravorty Spivak developed a notion of othering in the context of postcolonial theory.[98] Spivak uses a reading of historical letters and language patterns to offer examples of othering.[99] Specifically, Spivak's scholarship examines The East India Company's establishment of colonies and how actors differentiated "master" from "native" populations.[100]

In the context of place-based economic development, the notion of othering may be well-placed. Difference is imbedded in an incentive for wealthy investors to park capital in projects located in poor areas without requiring disclosure of information related to the project.[101] The incentive encourages outsiders to bring capital to new places without having to demonstrate that they have obtained a nuanced understanding of what the residents need.[102]

Lawmakers engage in economic othering to the extent that laws reinforce differences between outside investors—those with capital—and native residents—those who lack information (and power).[103] For incentives to avoid othering, lawmakers ought to align investor and resident interests. Advancing transparency is one way to align those key interests.

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98. Oscar Thomas-Olalde & Astride Velho, *Othering and Its Effects – Exploring the Concept*, *in* WRITING POSTCOLONIAL HISTORIES OF INTERCULTURAL EDUCATION 27 (Heike Niedrig & Christian Ydesen eds., 2011).

99. *See id.* at 33.

100. Gayatri Chakravorty Spivak, *The Rani of Sirmur: An Essay in Reading the Archives*, 24 HIST. & THEORY 247, 256 (1985).

101. *See* Arlene Martinez, *5 Questions with David Wessel: Opportunity Zones, a Rich Man's Game*, GOOD JOBS FIRST (Nov. 9, 2021), https://goodjobsfirst.org/5-questions-david-wessel-opportunity-zones-rich-mans-game/. *See supra* Part II.

102. *See infra* Section V.C. Investors, and fund managers, do not need to be located in an Opportunity Zone in order to invest in, or advise on the investment of funds in, a qualifying project. *See* 26 U.S.C. § 1400Z-2. Further, there is a cottage industry of professionals, not required to be located in Opportunity Zones, providing services to fund managers, investors, and developers. One conference organizer, Ali Jahangiri, hosts regular events bringing together investors and developers. See *Ali Jahangiri*, FORBES, https://councils.forbes.com/profile/Ali-Jahangiri-Owner-CEO-Uglobal-com-Opportunityzone-com-EB5Investors-com-Eb5-Investors/26e31438-9e35-4514-8aa7-eba5abf12d36 (last visited Feb. 9, 2024); *Opportunity Zone Expo Arizona*, OPPORTUNITY ZONE, https://www.opportunityzone.com/conference/opportunity-zone-expo-arizona/ (last visited Feb. 26, 2024). A conference was held on October 3, 2022 in Arizona. *Id.*

103. *See* Ross, *supra* note 90.

III. Capital Raising Deregulation

In recent years, law and policymakers have worked to deregulate consumer protection regimes that limit the ability of businesses, including those owned by marginalized owners, to raise capital.[104] Crowdfunding emerged to increase access of small companies to small-dollar equity capital raising efforts.[105] Congress acted in the early 2010s to permit flexibility for crowdfunding tools through additional exemption from securities law.[106] This Part summarizes those deregulatory efforts, explores their legal history, and assesses the effectiveness of those efforts. Particular attention is placed on the racial wealth gap and how businesses owned by marginalized owners access capital.

A. Racial Wealth Gap, Income Inequality, and Accessing Capital

Wealth accumulation tracks race.[107] For instance, among those homeowners who refinanced their home mortgages to take advantage of historic low interest rates, only 3.7% were African American homeowners.[108] African American households make up 13.3% of the population and 9.1% of homeowners.[109] Small business ownership—another marker for wealth—has similar implications based on race and gender of the owner. One recent survey indicates that 18.7% of small business owners are members of

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104. For a discussion of these efforts, see Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L.J. 419, 424 (2018) (highlighting the "laudable steps . . . to support entrepreneurship and democratize the entrepreneurial ecosystem through the implementation of crowdfunding" among other reforms).

105. Bradford, *supra* note 18, at 1 (explaining crowdfunding—small-dollar fundraising over the Internet—and its interactions with federal securities laws).

106. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 302, 126 Stat. 306, 315-21 (2012).

107. There are a number of factors at play in the passage of intergenerational wealth, including inheritances, which tend to be higher for white families than for families from marginalized groups. Maury Gittleman & Edward N. Wolff, *Racial Differences in Patterns of Wealth Accumulation*, 39 J. HUM. RES. 193, 195 (2004) ("We find . . . that between 1984 and 1994 inheritances raised the rate of wealth accumulation of whites relative to that of African Americans.").

108. KRISTOPHER GERARDI ET AL., FED. RSRV. BANK OF BOSTON, RACIAL DIFFERENCES IN MORTGAGE REFINANCING, DISTRESS, AND HOUSING WEALTH ACCUMULATION DURING COVID-19, at 2 (2021), https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2021/cpp20210622.pdf.

109. *Id.*

marginalized racial groups, and 20.9% of small business owners are women.[110]

Adopting policy that meaningfully addresses the racial wealth gap is an endeavor fraught with best intentions and acts of omission and commission.[111] However, policy attention shifted in the 2010s to "democratizing" capital access by making it more accessible, not just to those who have benefitted from asset inflation but to those who rely on wage income to live on.[112] Crowdfunding is the process of sourcing start-up funds through a large number of small-dollar donors through digital platforms that greatly reduce transaction costs.[113] Many view crowdfunding as another way for entrepreneurs to raise funds from nontraditional means.[114] Some entrepreneurs, for instance, may be unable to access capital because of poor credit history, lack of experience borrowing funds, involvement with the criminal justice system, immigration status, or other impediment.[115]

Policymakers were reluctant to relax securities protection laws too quickly for fear that unsophisticated investors may lose large sums of money without recourse.[116] Over time, Congress legislated a solution to permit entrepreneurs

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110. Press Release, U.S. Census Bureau, U.S. Census Bureau Releases New Data on Minority-Owned, Veteran-Owned, and Women-Owned Businesses (Oct. 26, 2023), https://www.census.gov/newsroom/press-releases/2023/annual-business-survey-employer-business-characteristics.html.

111. Asset inflation, brought on by massive quantitative easing in the 2010s, has further concentrated wealth among those who own assets. *See* LEONARD, *supra* note 43, at 119. Wage earners, on the other hand, have not enjoyed the wealth accumulation benefits of asset inflation. *Id.* States and cities are limited as we learned already in terms of their ability to set fiscal policy, as is Congress and the White House: executive and legislative actors at all levels of government are beholden to the Federal Reserve with respect to monetary policy. *Id.* at 78-79.

112. Ethan Mollick & Alicia Rob, *Democratizing Innovation and Capital Access: The Role of Crowdfunding*, CAL. MGMT. REV., Feb. 2016, at 72, 75-76 (summarizing the impact of venture capital funding on companies initially formed through crowdfunding).

113. *See* Bradford, *supra* note 18, at 5.

114. Paul Belleflamme et al., *Crowdfunding: An Industrial Organization Perspective* 1-2 (Louvain Sch. of Mgmt., Working Paper, 2010) ("[T]he main objective of crowdfunding is to provide entrepreneurs with an alternative way to raise funds.").

115. In many cases small business owners with criminal histories are unable to participate in federal small business loan programs because of past convictions. *See* Defy Ventures, Inc. v. U.S. Small Bus. Admin., 469 F. Supp. 3d 459, 465 (2020) (challenging federal agency prohibition on extending Paycheck Protection Program loans to certain small businesses based on criminal history of owners).

116. *See* Robert B. Thompson & Donald C. Langevoort, *Redrawing the Public-Private Boundaries in Entrepreneurial Capital Raising*, 98 CORNELL L. REV. 1573, 1574 (2013) ("Loosening up on the securities laws' regulatory burdens was the chosen legislative solution,

to raise start-up funds through digital platforms that focus on small-dollar investments.[117] The resulting rule is Regulation Crowdfunding.[118]

B. What Is Regulation Crowdfunding?

This Section focuses on what Regulation Crowdfunding is. It begins with the history of crowdfunding technology, and it studies proposals to exempt crowdfunding from state and federal securities laws. Next, it discusses both Title III of the 2012 Jumpstart Our Business Startups (JOBS) Act and a key component of Title III, the Capital Raising Online While Deterring Fraud and Unethical Disclosure (CROWDFUND) Act. Finally, it presents the SEC's implementation of crowdfunding through Regulation Crowdfunding.

As mentioned above, crowdfunding is the use of web connected platforms to raise capital through small-dollar contributions from numerous investors.[119] Entrepreneurs, through technology, developed the capacity to directly communicate in real time with large numbers of potential investors with no incremental transaction costs.[120] Sites such as Kiva, Kickstarter, and IndieGoGo have assisted entrepreneurs in raising billions of dollars in just a few years.[121] Crowdfunding follows the crowdsourcing of information, which is manifest in technology such as Wikipedia or Google Search.[122]

There are five types of crowdfunding methods. These methods include donations, reward, pre-purchase, lending, and equity.[123] For the purposes of

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demonstrating a political willingness to trade off some level of investor protection in order to promote capital formation and its hoped-for payoff, job creation.").

117. Press Release, The White House, President Obama to Sign Jumpstart Our Business Startups (JOBS) Act (Apr. 5, 2012), https://obamawhitehouse.archives.gov/the-press-office/2012/04/05/president-obama-sign-jumpstart-our-business-startups-jobs-act.

118. Regulation Crowdfunding, General Rules and Regulations, 17 C.F.R. § 227 (2022).

119. *See* Bradford, *supra* note 18, at 5. Small-dollar fundraising has proved viable, lucrative, and successful in the political arena through the presidential campaigns of Bernie Sanders and Donald Trump. *See* Richard H. Pildes, *Small Dollars, Big Changes*, WASH. POST (Feb. 6, 2020), https://www.washingtonpost.com/outlook/2020/02/06/small-dollars-big-changes/.

120. Bradford, *supra* note 18, at 5.

121. *Id.* These sites do not necessarily offer share/equity ownership, instead, often they promise a good or services in exchange for a contribution. One of the most successful campaigns on Kickstart was a watch created by a company called Pebble that raised $300 million. Tanushree Mitra & Eric Gilbert, *The Language That Gets People to Give: Phrases That Predict Success on Kickstarter*, *in* CSCW'14: PROCEEDINGS OF THE 17TH ACM CONFERENCE ON COMPUTER SUPPORTED COOPERATIVE WORK & SOCIAL COMPUTING 49, 49 (Ass'n for Computing Mach., 2014), https://perma.cc/B8BB-FMBR.

122. *See* Bradford, *supra* note 18, at 27-28.

123. *Id.* at 14.

this Article, the equity model is the most relevant because it directly implicates the sale of a security. That is, if an entrepreneur offers company equity in exchange for a small-dollar contribution, then that transaction is subject to securities laws.

Recognizing the popularity of crowdfunding and the desire to offer equity from many entrepreneurs, Congress adopted the 2012 JOBS Act.[124] Title III of the JOBS Act includes the CROWDFUND ACT.[125] President Obama signed the JOBS Act in April 2012.[126] The CROWDFUND ACT authorized the SEC to issue a rule permitting securities exemptions for crowdfunding.[127] That rulemaking occurred in 2015.[128] Regulation Crowdfunding permits companies to use an approved fundraising platform to raise up to five million dollars in a twelve-month period.[129] Investors can contribute a certain percentage of their incomes based on how much they earn in a given year.[130] For example, the lowest earners are limited to investing no more than $2,500 in a twelve-month period.[131]

C. What Is Regulation Crowdfunding Designed to Address?

This Section focuses on how Regulation Crowdfunding was supposed to be operationalized.[132] Regulation Crowdfunding was designed to address two

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124. *See* Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012).

125. Id. §§ 301-305, 126 Stat. at 315-23.

126. *Spotlight on Jumpstart Our Business Startups (JOBS) Act*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/spotlight/jobs-act (last updated Dec. 9, 2016).

127. *See* Jumpstart Our Business Startups Act, § 302(c), 126 Stat. at 320.

128. Press Release, U.S. Sec. & Exch. Comm'n, SEC Adopts Rules to Permit Crowdfunding (Oct. 30, 2015), https://www.sec.gov/news/pressrelease/2015-249.html (paving the way for filers to claim exemption and use a digital platform to raise capital using equity issuance for small-dollar donations).

129. *Regulation Crowdfunding*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/education/smallbusiness/exemptofferings/regcrowdfunding (last updated May 5, 2023). Equity issuance can be initially less expensive for entrepreneurs since there is no repayment obligation or interest payments to make, and therefore more attractive than loans, pre-purchase, or other types of crowdfunding. *See Advantages vs. Disadvantages of Equity Financing*, THE HARTFORD, https://www.thehartford.com/business-insurance/strategy/business-financing/equity-financing (last visited Feb. 8, 2024).

130. *Updated Investor Bulletin: Regulation Crowdfunding for Investors*, U.S. SEC. & EXCH. COMM'N (Oct. 14, 2022), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_crowdfunding-.html.

131. *Id.*

132. Of course, while Regulation Crowdfunding is new, the idea of small-dollar fundraising is not. Laila Sabagh, Comment, *The SEC's Regulation Crowdfunding: The Issuer's Dilemma*, 2 ALR ACCORD 111, 112 (2017). The United States, through Hungarian

issues raised by crowdfunding: registration requirements for the sale of securities under the Securities Act of 1933 and SEC standards that may treat crowdfunding platforms as brokers and investment advisers.[133] As a threshold matter, analyzing whether crowdfunding activities amount to the sale of securities is an important first step.

The relevant test is well known to law students taking an upper-level law school course in securities regulation. The U.S. Supreme Court defined the phrase "investment contract" as a contract involving an investment of money, in a common enterprise, with an expectation of profits, arising solely from the efforts of the promoter or a third party.[134] Applying the investment contract definition to the different types of crowdfunding allows us to quickly sort through which types of crowdfunding activities may involve the sale of securities.

In the case of the donation model of crowdfunding, entrepreneurs are not offering securities to investors because contributors receive nothing tangible in return for their contributions.[135] In the case of a reward or pre-purchase model, there is not a sale of security either since all the investor is promised is the specified reward or pre-purchased product.[136] There is no promise of additional financial return. Since neither the donation, reward, nor pre-purchase model involve the sale of securities, each model can continue without the need for the assistance of Regulation Crowdfunding.

It is only when crowdfunding models cross the line into the sale of a security that Regulation Crowdfunding's deregulatory approach provides a benefit. In the equity model of crowdfunding, there is usually the sale of a security.[137] Investors who receive corporate stock in exchange for their

American politician and newspaper publisher Joseph Pulitzer, raised funds to complete the Statue of Liberty in New York harbor through small-dollar contributions. *Id.* at 117-18.

133. *See* Bradford, *supra* note 18, at 29.

134. Sec. & Exch. Comm'n v. W.J. Howey Co., 328 U.S. 293, 298 (1946).

135. Gifts are given without the expectation of profits or anything else in return. Bradford, *supra* note 18, at 31.

136. In other words, one gets what one pays for. Corporations have used this technique to launch new products: Tesla, for example, raised cash, and thus boosted its share price, by accepting approximately 500,000 refundable $1,000 deposits for its Model 3 vehicle. Bradford Cornell, *The Tesla Run-Up: A Follow-Up with Investment Implications*, J. OF PORTFOLIO MGMT., Fall 2016, at 1, 3.

137. Lisa T. Alexander, *Cyberfinancing for Economic Justice*, 4 WM. & MARY BUS. L. REV. 309, 357-62 (2018) (providing a typology of crowdfunding intermediaries and detailing the development of equity crowdfunding intermediary entities).

contributions are purchasing a security.[138] In the case of the lending model, the analysis is complicated by the fact that the definition of a security may include some forms of debt since a return can consist of a fixed payment or a fixed rate of interest.[139]

D. How Effective Has Regulation Crowdfunding Been at Increasing Capital Access?

There are certainly examples of successful crowdfunding campaigns. Two advertising executives "raised" two hundred million dollars in pledges from over five million individuals over six months in order to purchase the Pabst Brewing business.[140] Their lawyer claims the two never intended to purchase Pabst but instead were conducting an experiment.[141] Nevertheless, the SEC closed down the "offering" for failing to register.[142]

Professor Lynnise Pantin argued that isolated deregulatory efforts to permit crowdfunding do little to address the "widening racial wealth gap."[143] Pantin's skepticism of Regulation Crowdfunding is warranted. Further, in the initial years since Regulation Crowdfunding was adopted, Pantin's prediction has largely come true: Black-owned businesses continue to struggle, even before the pandemic.[144] During the pandemic, businesses owned by African Americans and other marginalized groups struggled earlier

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138. Andrew A. Schwartz, *Crowdfunding Securities*, 88 NOTRE DAME L. REV. 1457, 1458 (2013).

139. *See* Alexander, *supra* note 137, at 362-63 (describing the typology of intermediaries that offer loan products).

140. *In re* Migliozzi II, Securities Act Release No. 33-9216, 2011 WL 2246317 (June 8, 2011).

141. Chad Bray, *Huge Beer Run Halted by Those No Fun D.C. Regulators*, WALL ST. J. (June 8, 2011, 4:05 PM), https://www.wsj.com/articles/BL-LB-40186 ("[T]he duo simply wanted to conduct an experiment online in crowdsourcing and saw that Pabst was for sale at the time.").

142. *See In re Migliozzi II*, 2011 WL 2246317, at *2.

143. *See* Pantin, *supra* note 104, at 424.

144. DEDRICK ASANTE-MUHAMMAD ET AL., NAT'L CMTY. REINVESTMENT COAL., BLACK ENTREPRENEURSHIP'S LETHAL PRE-EXISTING CONDITION: THE RACIAL WEALTH DIVIDE DURING THE COVID CRISIS 3 (2021), https://ncrc.org/black-entrepreneurships-lethal-pre-existing-condition-the-racial-wealth-divide-during-the-covid-crisis/.

in the pandemic.[145] Separately, Latino firms only received 2.1% of the venture capital extended in 2021.[146]

It may simply be correlation rather than causation that the adoption of Regulation Crowdfunding occurred at a time when businesses owned by marginalized owners have continued to struggle. This is unsurprising. Policy developments often do not have intended results; and further, such results can take a long time to occur. Perhaps it is too much to expect a deregulatory security offering to address the racial wealth gap. Answering that question is beyond the scope of this Article. What follows in Part IV describes a study the author performed to determine what information can be gleaned from SEC and Department of State entity filings with respect to filers engaged in Opportunity Zone investing.

IV. Opportunity Zone Investment Fund Location Data

This Part describes a study of Opportunity Zone investment funds based on data from both the SEC and entity-formation filings from state secretaries of state. Section A discusses our research design. Section B describes our findings. Section C explores whether there are any conclusions to be drawn between Regulation Crowdfunding filings and Opportunity Zone location. Finally, Sections D and E analyze the locations of Opportunity Zone filers and discuss the implications of this analysis on federal place-based economic development tax incentives, including the Opportunity Zone law.

This Article uses this novel data set to explore the geographic location of investment funds created to engage in economic development activity in places identified as needing capital and jobs. It begins by presenting the current state of law and policy efforts to engage in place-based economic development. It then discusses efforts to democratize capital raising activity through deregulation of consumer protection laws in the area of securities offerings—Regulation Crowdfunding and Regulation D in particular.

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145. Robert W. Fairlie, *The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey* 1 (Nat'l Bureau Econ. Rsch., Working Paper No. 27309, June 2020) (analyzing data from the Bureau of Labor Statistics Current Population Survey indicating 41% of African American businesses and 32% of Latinx businesses disappeared in early 2020). As a result of these closures, many businesses owned by marginalized owners failed to receive similar amounts of funds from the government at all levels.

146. Arielle Pardes, *Latino Founders Have a Hard Time Raising Money from VCs*, WIRED (Jan. 26, 2022 8:38 AM), https://www.wired.com/story/latino-founders-hard-raising-money-vcs/. Hat tip to my colleague Professor Fermin Mendez, for sharing this source with me.

Next, it presents novel data gathered through SEC exemption filings, as well as state-level entity formation filings. Using these publicly available data, the author used address information for the filing entities to determine whether filers are located in Treasury-certified Opportunity Zones.[147]

A. Research Design

The research team initially sought to investigate the location of businesses using the Regulation Crowdfunding exemption as a capital-raising tool in recent years.[148] We turned to the SEC EDGAR database for detailed data.[149] To gain a geographically representative perspective, we focused on fifteen states, each of which had Regulation Crowdfunding activity.[150] To narrow our search focus, we focused on eight geographically representative states—Arizona, Connecticut, Georgia, Missouri, Nebraska, North Carolina, Pennsylvania, and Washington—for 2019 Regulation Crowdfunding

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147. Rebecca Lester et al., *Opportunity Zones: An Analysis of the Policy's Implications*, 90 TAXNOTES 221, 221-22, 231 (2018) ("Opportunity zones were established . . . to encourage economic development and job creation in low-income communities across the United States."). To the extent that the Opportunity Zone incentive was sold to members of Congress and the administration, support for small business and capital-starved areas was key. *See* WESSEL, *supra* note 13, at 229 ("The point of Opportunity Zones, Congress and Treasury said repeatedly, is 'to encourage economic growth and investment in designated distressed communities.'"). What actually occurs once designation happened is another matter. *Id.* at 163-67 (discussing what happened on the ground once Opportunity Zones were designated, including that most investment went to real estate, and also that fundraising was incredibly overhyped).

148. Recent SEC spatially-presented data formed the initial spark for our research question. *Capital Trends*, *supra* note 19 (showing the number of filings made and the range in dollars raised across the United States since 2019). On our tabs we selected "States," "Regulation Crowdfunding," and 2019. This information was then recorded into the 2019 book on the first page. This information is supposed to show the number of companies that were investing in Opportunity Zones. Recent SEC spatially-presented data formed the initial spark for our research question. The author's initial curiosity in commencing this research was to identify whether businesses that happened to be located in Opportunity Zones were also using Regulation Crowdfunding, a tool to democratize capital access. In late 2021, the author came across a map published by the SEC showing the locations of Regulation Crowdfunding and several other filing options made across the country since 2019. Another securities exemption available for small businesses and investors seeking to raise funds. *See* 17 C.F.R. § 230.501 (2020). Thank you to my Albany Law School colleague Professor Fermín Mendez for showing me the map.

149. *Filings & Forms*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar.shtml (last visited Feb. 8, 2024).

150. These states were Arizona, California, Colorado, Connecticut, Florida, Georgia, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Utah, and Washington.

filings.[151] For each state, we searched company filings made using Form C, the required disclosure form Regulation Crowdfunding filers.[152] Our working assumption was that small businesses using Regulation Crowdfunding to raise capital will share at least two features: low-capital intensive enterprises,[153] and owners will be based locally so that profits are recycled locally and add to local economic development.[154] The team then sought to analyze how many of the filers seeking securities law exemption under Regulation Crowdfunding were located within federally designated Opportunity Zones. That a business would elect to use Regulation Crowdfunding—a proxy for a capital-starved business—and be located in an Opportunity Zone—a location designated as one in need of investment—would appear to be an ideal outcome from a federal economic policy lens.[155]

Greater use of crowdfunding by small businesses in low-income areas might mean that Congress was successful in directing capital to business owners in places that lack capital access.[156] To determine whether there was any connection between Regulation Crowdfunding filers and location within an Opportunity Zone we collected data about crowdfunding filers from the SEC database known as EDGAR.[157]

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151. In addition to being geographically representative, these states did not overwhelm the research team with data. California, for instance, had over one thousand filings. Rather than review that volume of data, the team focused on states with a more modest number of filings to review, at least at the outset.

152. *Form C Under the Securities Act of 1933*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/files/formc.pdf (last visited Feb. 8, 2024).

153. *See* John L. Orcutt, *Did the SEC Create Expanded "Blue Sky Notice Filings" When It Raised Regulation Crowdfunding's Offering Limit to $5 Million and Adjusted Its Investment Limits?*, 11 HOUSTON L. REV. 99, 101-02 (2021) (discussing how the Regulation Crowdfunding limits filers to raising no more than $5 million).

154. *See* Mark S. Mygrant, *Keeping Profits at Home: A Study of Firm Ownership and the Geographical Concentration of Capital Gains in the United States*, 35 LOC. ECON. 460, 461-62, 478 (2020) (studying how employee-owned and family-owned firms concentrate firm-created wealth in local communities more so than do publicly traded ones).

155. Or at least it would seem possible to draw correlation, if not causation, between the two policies adopted by Congress.

156. Both the Opportunity Zone incentive and Regulation Crowdfunding were policy innovations designed to spur small business growth. In the case of the Opportunity Zone incentive, the stated purpose was to capitalize small businesses in particular places starved of capital. *See* Scott, *supra* note 76; *see also* Wessel, *supra* note 13. Regulation Crowdfunding by design is a deregulatory innovation to make it easier for small businesses to raise capital by issuing shares.

157. *EDGAR Full Text Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/search/ (last visited Feb. 8, 2024).

Next, if the source of capital matters for Opportunity Zone investments, perhaps the incentive ought to reflect investor location. For example, since funds raising capital from outsiders tend to be located outside Opportunity Zones, researchers might explore whether that outcome is beneficial or detrimental to Opportunity Zone growth. Further, if funds are located within Opportunity Zones and formed by insiders alone, or corporations on their own behalf, that is those not filing for securities laws exemptions, then one might test whether that outcome has benefits for Opportunity Zone growth. If, for instance, most such funds are focused on already gentrifying areas, that is likely a less desirable outcome. However, if fund location is creating greater capital investment in areas starved of capital, policymakers ought to tout that result and the benefits external investment brings.

There are two assumptions underlying our research design. The first assumption we made was that businesses using Regulation Crowdfunding had a limited ability to access capital. In other words, since Regulation Crowdfunding targeted business owners who could not otherwise raise capital, businesses that used it would theoretically add to economic activity that would not otherwise occur. We assumed that a larger economic pie is a positive outcome.

The second assumption we made with this research design is that a business located in an Opportunity Zone has great value because, by definition, the communities in Opportunity Zones need economic development. The assumption we are making is that the residents in the designated zones can benefit from economic activity occurring in those zones. Measuring the benefits that accrue to residents of Opportunity Zones is not simple. However, we assumed that businesses which happen to be located in Opportunity Zones and that previously could not access capital markets without Regulation Crowdfunding would benefit residents through increased economic activity.[158]

Next, we used the phrase "Opportunity Zone" to locate filing entities using securities exemptions such as Regulation Crowdfunding and Regulation D to raise funds to invest in a designated Opportunity Zone. For this search, we adjusted our focus to center on the top ten states comprising the commuting areas with top Opportunity Zone investment during 2019.[159] We selected these states based on data presented by Kennedy and Wheeler indicating total

158. Of course, this is an assumption. It is beyond the scope of this Article to prove that this assumption is the correct one.

159. *See* Kennedy & Wheeler, *supra* note 19, at 16.

Opportunity Zone investment for the top twenty-five commuting zones in the nation.[160]

The final source of data that we investigated was state-level entity formation data. We ran the search phrase "Opportunity Zone" in the business entity databases for each of the same top ten Opportunity Zone investment attracting states. We then examined the filing addresses for each fund and cross-referenced each address to determine whether its location was within a designated Opportunity Zone.

As above, we assumed that the location of an Opportunity Zone Fund in an Opportunity Zone is a net positive feature. In other words, locating an Opportunity Zone Fund in an Opportunity Zone likely has benefits in terms of improvement of residents' lives. Again, it is beyond the scope of this Article to prove this connection. However, it is an assumption that we are making in designing our research.

The following Section details a presentation of the data collected.

B. Findings

The initial information collected about location of crowdfunding filers led to more questions than answers.[161] We found variation among the number of filings per state and the locations of filers' primary addresses.[162] In some instances, many filings were located in Opportunity Zones. In other instances, few to none were located in a designated Opportunity Zone.[163]

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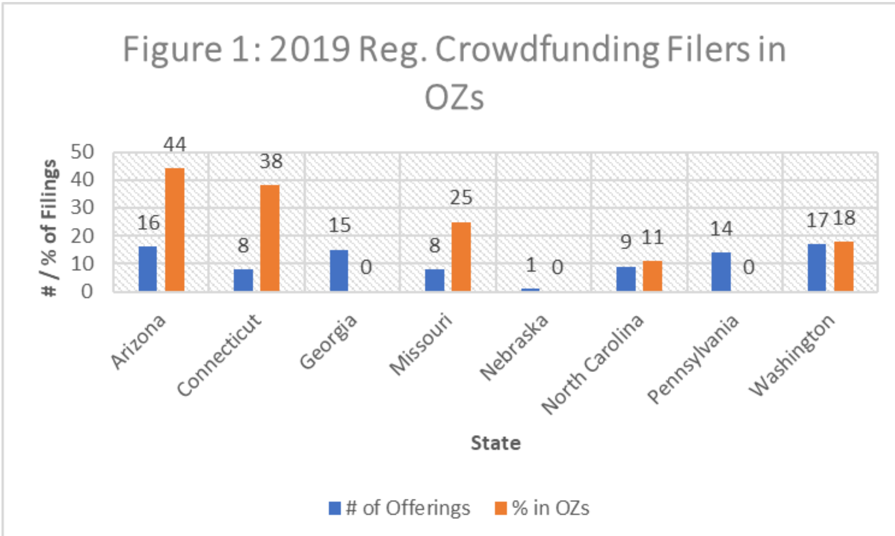
160. *Id.*

161. For instance, out of the fifty states, thirty-six states reported funds on the map of Regulation Crowdfunding filers as well as both D.C. and Puerto Rico. *See Capital Trends*, *supra* note 19. The other states were not reported because no crowdfunding was used in these states. *Id.* The top ten states that had the most numbered offerings that were recorded were: California, New York, Texas, Massachusetts, Florida, Pennsylvania, Virginia, Connecticut, Colorado, and Arizona. *Id.* The amount of money that was raised was anywhere from over $16 million in California to about $150,000 in states that only had one or two offerings. *Id.* (selecting "Counties" from the "Where" dropdown menu, "Regulation Crowdfunding from the "How" dropdown menu, and "2019" from the "When" dropdown menu, and then adding the county totals for the relevant state). The most specific location information we were able to obtain using this first map was county-level data. In other words, if a filer was located in a particular county, we were able to gain that information. However, we did not have address level detail. For instance, in 2019, we were able to see that there were two Regulation Crowdfunding filers in Saratoga County, New York, raising a total of $350,000. *Id.*

162. *Opportunity Zones Map*, OPPORTUNITYDB, https://opportunitydb.com/tools/map/ (last visited Feb. 8, 2024). Using this database we were able to type in any address and determine if the locations are in an opportunity zone.

163. We did not do searches for California and New York. However, the reported filing information on the SEC map provides some data. In the SEC map, California and New York



As Figure 1 shows, several states had significant crossover between Regulation Crowdfunding filers and location in Opportunity Zones. Arizona, Connecticut, and Missouri each had 44%, 38%, and 25% of Regulation Crowdfunding filers located in Opportunity Zones.[164] Although, the total number of filers for these states was very low.[165] Arizona had sixteen filers, which ranks it among the highest.[166] Connecticut and Missouri each had only eight Regulation Crowdfunding filers.[167] For other states, such as Georgia, Nebraska, and Pennsylvania, there were no Regulation Crowdfunding filers located in designated Opportunity Zones.[168]

We did not know what to make of this data. The limited number of filers in states with significant crossover between Regulation Crowdfunding and Opportunity Zone location made us skeptical of any important takeaways.

had the greatest number of filings, at seventy-nine and forty-five respectively. See *Capital Trends*, *supra* note 19 (selecting "States" from the "Where" dropdown menu, "Regulation Crowdfunding" from the "How" dropdown menu, and "2019" from the "When" dropdown menu). Coincidentally, California and New York were the states that reported raising the most amount of capital: $16.16 million and $11.14 million respectively. *Id.* Our findings are summarized in "Figure 1: 2019 Reg. Crowdfunding Filers in OZs."

164. *See supra* Figure 1.

165. *See supra* Figure 1.

166. *See supra* Figure 1.

167. *See supra* Figure 1.

168. *See supra* Figure 1.

The mixed data collected from states with larger numbers of filers did not point to any initial conclusions. We pressed on.

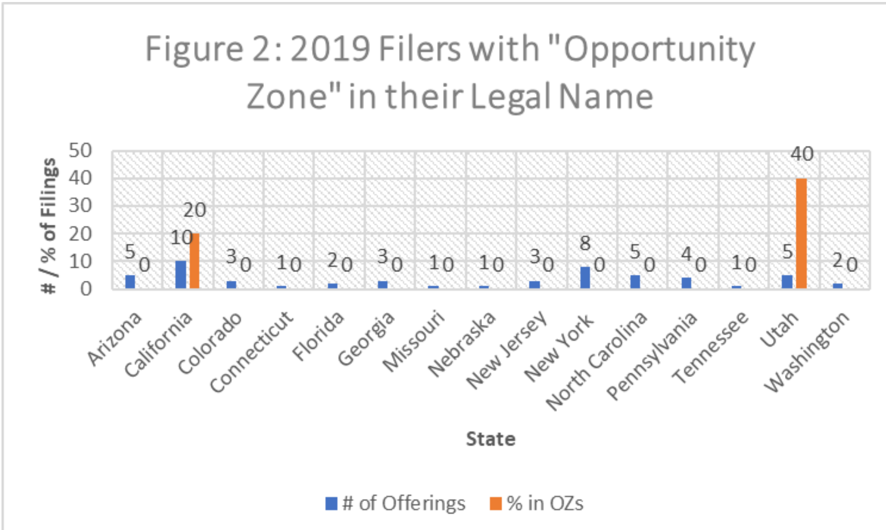
We ran a second search using the SEC's EDGAR database but limited our search to filers with the phrase "opportunity zone" in the entity name.[169] The goal of this search was to collect information about more traditional investment companies that happened to also be investing in Opportunity Zone projects. For example, it is possible that an investment fund could be located in Manhattan yet invest in Denver suburbs or Section 8 housing in Los Angeles. However, the author's working hypothesis is that location of investment firm matters with respect to the impact an investment has on the lives of residents of the particular place. An investment fund in Manhattan, the logic goes, might not accurately perceive what a community needs with respect to real estate development.

For the calendar year 2019, the data collected began to tell a story. This data is presented below in Figure 2. Right away, most entities that filed to raise capital using a Regulation Crowdfunding or Regulation D exemption and that also bore the phrase "opportunity zone" in their legal names were located outside the designated Opportunity Zones.[170] This data is not surprising since investors located outside the Opportunity Zones are the audience for the exemption.[171]

169. For this search we broadened the number of states that we ran searches for to include a total of fourteen states. These states included Arizona, California, Connecticut, Florida, Georgia, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Utah, and Washington. We were able to increase the number of states because limiting the search terms further provided fewer results per state, and therefore less overall data to analyze.

170. Only two states, California and Utah, had any filers with the phrase "opportunity zone" in their legal names located in Opportunity Zones, at 20% and 40% respectively. *See infra* Figure 2.

171. Individuals and families with capital gains—which may be invested in Opportunity Zones to defer or avoid taxation—tend to be higher income and live in high-income areas. Benjamin H. Harris & Lucie Parker, Tax Pol'y Ctr., Urb. Inst. & Brookings Inst., Net Capital Gains Across Zip Codes 3 (Dec. 12, 2014), https://www.urban.org/sites/default/files/publication/33611/2000041-net-capital-gains-across-zip-codes.pdf ("[A]ggregate capital gains are concentrated in high-income zip code since higher-income taxpayers are more likely to hold corporate stocks directly, rather than in retirement accounts, and to hold much larger amounts of assets more likely to yield capital gains subject to tax."). Since so little data is available about the location of Opportunity Zone fund investors, this research is significant in telling the story of how Opportunity Zone incentives are flowing.



In addition, we analyzed the individual filing entities for each of the states we examined.[172] First, California and New York have the greatest number of entities filing, with ten and eight respectively. Second, Utah and California had the greatest number of filers located in Opportunity Zones at 40% and 20%, respectively.[173] However, the majority of the states had 0% of their offices located in opportunity zones.

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172. *See supra* Figure 2. For example, for the dataset from the 2019 calendar year, we found ten companies filed with the SEC that had "opportunity zone" in their name in California. For other states, we collected filing names and filing addresses for companies in their corresponding state. Upon finding the company, the SEC database makes available forms that were required to be filed, primarily Form D. This allowed us to obtain investment activity information for each company. More specifically, each company listed their executive officers, the business type, and the address of the office among other factors. The executive officers did not turn up any names that were easily recognized and the business type category was generally vague. The business type that was generally listed tended to either be listed as "other real estate" or "investment fund." Neither of these categories showed exactly what they were investing in. We conducted our own additional research to obtain investment activity information.

173. *See supra* Figure 2. While filers' offices might not be located in designated Opportunity Zones, that fact does not mean that those filers were not investing in Opportunity Zone projects. It simply means that the filing entity's office was outside of an Opportunity Zone. We also note proximity of offices in relation to an Opportunity Zone. If the location was a few blocks away from an Opportunity Zone it was listed as "close to OZ" and if it was towns or further away, it was listed as "not close to OZ."

While the data showing states with significant percentages of filers in Opportunity Zones seemed interesting, the total number of offerings was low. Thus, it appeared difficult to draw any particular conclusions. We continued in our data collection efforts.

The final set of information we collected for this group of filers was general information about each company's activities.[174] For many companies, investment information was readily available.[175] We discovered that most companies were primarily focused in real estate.[176] Real estate companies were split into two groups in regards to real estate. The first group primarily focused on acquiring single-family/multi-family homes and using them as rental properties.[177] The second group was focused on creating mixed-use office, retail, and residential buildings that it could lease to other companies and wealthy urban professionals.[178] At this stage, we began to identify funds such as CIM Group and Gravitas that were highlighted in the Introduction above, among others.[179]

CIM Group is representative of developers that seek to develop mixed-use commercial real estate more broadly.[180] CIM Group's Opportunity Zone Strategy involves developing commercial real estate and infrastructure projects within Opportunity Zone communities.[181] Prior to adopting the Opportunity Zone incentive, CIM Group already had experience developing real estate within the urban core. For example, CIM Group was involved in developing property within downtown Oakland, California in 2007.[182]

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174. We relied on publicly available information using Internet searches using entity names to identify filer investment activity.

175. Most companies are large investing companies and therefore finding investor-focus content was not challenging.

176. This finding confirmed our assumption, based on what we read elsewhere in the literature, that most Opportunity Zone investors are focused on investing in real estate projects. *See, e.g.*, Theodos et al., *supra* note 4 ("Although OZs were designed to spur job creation, most OZ capital is flowing into real estate and not into operating businesses.").

177. *See, e.g.*, Sebastian Partners, *supra* note 14. This document shows the plans on what was being invested into, profit projections, etc.

178. *See, e.g.*, *Opportunity Zone Strategy*, *supra* note 11.

179. For another example based in California, see *Qualified Opportunity Zones*, PAC. OAK CAP. ADVISORS, https://pacificoakcapitaladvisors.com/learning/qualified-opportunity-zones (last visited Feb. 9, 2024).

180. Press Release, CIM, CIM Group Provides More Than $3.8 Billion in Commercial Real Estate Loans in 2022 (Jan. 31, 2023), https://www.cimgroup.com/press-releases/cim-group-provides-more-than-3-8-billion-in-commercial-real-estate-loans-in-2022.

181. *Opportunity Zone Strategy*, supra note 11.

182. *Id.*

Additionally, CIM Group was involved in the redevelopment of Jack London Square in Los Angeles, California through many mixed-use projects.[183]

Another type of Opportunity Zone fund investor is focused solely on single-family residential property. The Gravitas Fund, is a representative example of a single-family home investor.[184] The Gravitas Fund planned to acquire up to 100 single-family homes in Opportunity Zones in and around Aurora (a suburb of Denver, Colorado) to rent and generate income through the eleven-year Opportunity Zone hold period to maximize the available tax incentives.[185]

There were outliers with respect to investing strategies. For example, Greenback Renewable Opportunity Zone Fund LLC only invests in green energy projects occurring in Opportunity Zones.[186]

Lastly, it may seem tautological that companies seeking to raise funds from wealthy investors would have marketing materials targeting this audience. However, we observed that the business models for these filers taken together appeared tailored to wealthier individuals as potential investors.[187] One of the Opportunity Zone investment funds stated that the minimum amount to invest was $100,000.[188] Most funds that the team analyzed did not give an exact number but implied that a large investment was necessary to buy into the fund.

Our next data collection period was from the calendar year 2020. For filings made during the year 2020, we gathered information on companies that had the phrase "Opportunity Zone" in the entity's name. A major

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183. *Jack London Square*, CIM, https://www.cimgroup.com/portfolio/asset-case-studies/jack-london-square (last visited Feb. 9, 2024).

184. *See* Sebastian Partners, *supra* note 14.

185. *See id.*

186. *Greenbacker Renewable Opportunity Zone Fund*, *supra* note 11. This company's focus is on adding new solar farms in Opportunity Zones as a new and renewable energy source. *See id.*; GREENBACKER RENEWABLE ENERGY CO., IMPACT REPORT 2022, at 13-15 (2023), https://greenbackercapital.com/wp-content/uploads/2023/07/Greenbacker-Impact-Report-2022.pdf. Notably, however, the overall investment strategy deals with acquisition of real property. *See Sustainable Real Estate*, GREENBACKER CAP., https://greenbackercapital.com/sustainable-real-estate/ (last visited Feb. 9, 2024).

187. Seeking to attract investable capital gains from wealthy individuals and companies is consistent with the reporting David Wessel did for his book *Only the Rich Can Play*, including interviewing individuals at an Opportunity Zone conference in Las Vegas. *See* WESSEL, *supra* note 13, at 7-21.

188. Which is consistent with what appears in the literature about Opportunity Zone investing. Ryan Ermey, *Opportunity Zone Investing: Is It for You?*, KIPLINGER (June 5, 2019), https://www.kiplinger.com/article/investing/T041-C000-S002-opportunity-zone-investing-is-it-for-you.html.

difference was that we narrowly focused on ten states:[189] Alabama,[190] Arizona,[191] California,[192] Colorado,[193] Florida,[194] New Jersey,[195] New York,[196] Pennsylvania,[197] Tennessee,[198] and Utah.[199] Most business addresses were listed outside of an Opportunity Zone. Data from 2020 is presented in Figure 3.

The 2020 data collected followed a similar pattern as the 2019 data. Filers seeking securities law exemptions prioritized investing in acquiring and developing commercial real estate. Development focus followed a pattern of either single-family home investment on the one hand or mixed-use commercial/office and multi-family properties on the other. Filers not investing in real estate development were few.

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189. As with other searches, we chose these states to reasonably limit the volume of information gathered. Here, we reduced the number of states to those that included those metropolitan regions that were reported to have raised the most Opportunity Zone capital. *See* Kennedy & Wheeler, *supra* note 19, at 16. In collecting the data, we used the same categories as our 2019 dataset: the name of the entity, identifiable individuals, business type listed, website information, street address, city, state, zip code, and location in or proximity to an Opportunity Zone.

190. *See infra* Figure 3. Zero filers listed with "Opportunity Zone" in their legal name.

191. *See infra* Figure 3. Five businesses listed with "Opportunity Zone" in their legal name. All companies focused on multi-family or single-family real estate investing.

192. *See infra* Figure 3. Ten businesses listed with "Opportunity Zone" in their legal name.

193. *See infra* Figure 3. One business listed with "Opportunity Zone" in their legal name.

194. *See infra* Figure 3. Two businesses listed with "Opportunity Zone" in their legal name. Both of the investment companies were focused on acquiring multi-family housing.

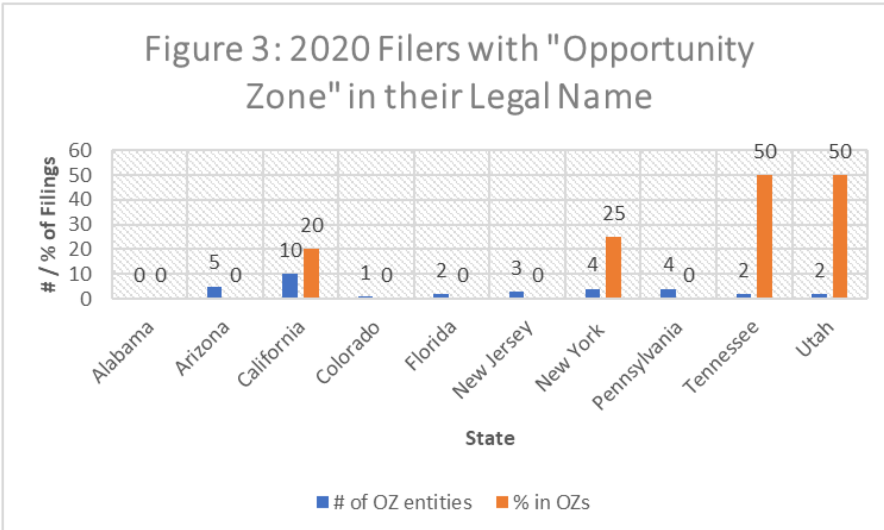
195. *See infra* Figure 3. Three businesses listed with "Opportunity Zone" in their legal name. Limited information available about each.

196. *See infra* Figure 3. Four businesses listed with "Opportunity Zone" in their legal name. For additional detail, these businesses are each focused primarily in acquiring real estate.

197. *See infra* Figure 3. Four businesses listed with "Opportunity Zone" in their legal name. Three of the businesses followed a similar pattern of investing in real estate such as single family or multi-family homes, as well as student housing and commercial office projects. Augusta Fermentation QZ, LLC is a unique investment fund because they focused primarily in investing into plant-based ingredients for consumer products, which was an unusual investing activity. Press Release, Augusta Fermentation QZ, LLC, Augusta Fermentation Qualified Opportunity Fund (QOF) Announces First Investment into the Manus Bio Qualified Opportunity Zone Business (QOZB) (Nov. 23, 2020), https://perma.cc/JV4A-LBJZ.

198. *See supra* Figure 3. Two businesses listed with "Opportunity Zone" in their legal name. Both companies focused on investing in and acquiring real estate for development.

199. *See supra* Figure 3. Two businesses listed with "Opportunity Zone" in their legal name. Both companies' investment strategies prioritize real estate investing and development.



For 2021, the fewest number of filing entities were identified. It is unclear whether the dearth of filings was related to the COVID-19 pandemic.[200] That question is beyond the scope of this Article. Regardless of the reason, there seemed to be fewer companies with "Opportunity Zone" in their legal names seeking Regulation D or Regulation Crowdfunding securities law exemptions in 2021. Also, many of the companies happened to be listed from 2019 or 2020 that we had already identified.[201] As a result, there was less information to search for the companies found in the 2021 calendar year.

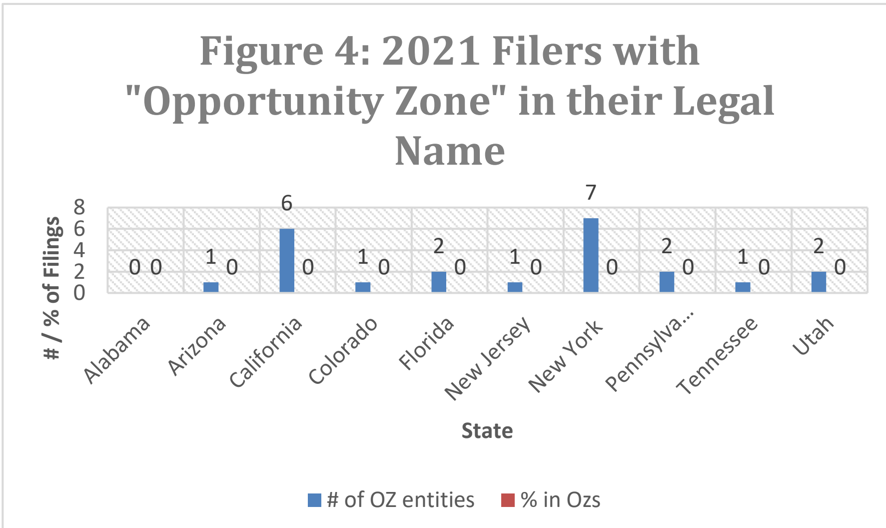
Overall, the information collected for the calendar year 2021 repeated data points collected for 2019 and 2020.[202] The states searched for the 2021 calendar year were the same ten states used in the 2020 calendar year

200. Evidence supports the conclusion that share price in publicly traded firms investing in real estate fell dramatically in March 2020 when the pandemic shutdowns first occurred in the United States. Mieszko Mazur et al., *COVID-19 and the March 2020 Stock Market Crash. Evidence from the S&P1500*, 38 FIN. RSCH. LETTERS, article no. 101690, Jan. 2021, at 1, 3, https://perma.cc/9A39-3WU2.

201. *Compare supra* Figure 3 *and supra* Figure 2 *with infra* Figure 4. Companies that appeared twice were: Caliber Tax Advantage Opportunity Zone Fund (Arizona), CIM Opportunity Zone Fund (California), Pacific Oak Opportunity Zone Fund (California), Bridge Opportunity Zone Fund (Utah). All companies in Colorado, Florida, Pennsylvania, and Tennessee identified in the 2021 dataset also appeared in the 2020 dataset, meaning that all companies in those states filed information in both 2020 and 2021 calendar years.

202. Namely, the filing entity name, street address, city, state, zip code, whether they were in an opportunity zone fund, and notes on how close they were to an opportunity zone fund.

search.[203] A summary of the 2021 data is provided in Figure 4. Four states had the same number of filers as reported in 2020.[204] One state had one less filing than the previous year.[205] Two states had two fewer filings,[206] one state had three fewer filings,[207] and two states had four fewer filings.[208]



Exhausting our inquiry with the SEC database, we turned our attention to the data from state business entity filings.[209] The working assumption adopted by the research team was that the SEC data would show companies seeking to raise money from others to invest in Opportunity Zone projects.

203. Again, those states are Alabama, Arizona, California, Colorado, Florida, New Jersey, New York, Pennsylvania, Tennessee, and Utah.

204. *See* Figure 4. Alabama (0), Colorado (1), Florida (2), and Utah (2). *Id.*

205. *See* Figure 4. Tennessee (1). *Id.*

206. *See* Figure 4. New Jersey (1), and Pennsylvania (2). *Id.*

207. *See* Figure 4. New York (7). *Id.*

208. *See* Figure 4. Arizona (1), and California (6). *Id.*

209. Certainly, more work can be done to determine whether such a correlation exists between securities law filings and Opportunity Zone businesses. That work is beyond the scope of this Article. Such data collection might include a year-to-year comparison of filings made for Regulation Crowdfunding and Regulation D and the location of such filers. Since Regulation Crowdfunding was enacted in 2012 and the rules for the Opportunity Zone law were enacted in 2018 and 2019, the author had thought that the two laws might result in an overlapping result. However, based on our initial research, such a connection was not obviously apparent. The author invites such discussion and collaboration should other scholars be interested in exploring the available data.

The locations of these companies might indicate presence in or absence from Opportunity Zones. State entity data would show entities formed with the phrase "Opportunity Zone" in a company's legal name and allow us to find the location.

A word about location. Presence within an Opportunity Zone likely indicates the investor's interest to actually improve or develop the area in which the investment is made. For an investor located outside of an Opportunity Zone, we assume the focus is primarily on extracting income from an investment. Additional outcomes, such as overall growth in an area or the improvement to residents living near the investment, are merely ancillary benefits.

Of course, this assumption might not be true. And it might not be true in all cases. An investor located within an Opportunity Zone may value overall area improvement because it benefits future business opportunities. Alternatively, the investor may be located outside of an Opportunity Zone but may genuinely *care* about improving the lives of residents in the Opportunity Zone. However, measuring how much an individual or a company cares is difficult.

Conversely, simply locating within a given Opportunity Zone does not necessarily mean that an investor will value improving the lives of residents of the Opportunity Zone. Instead, the investor may have chosen the location in the Opportunity Zone because it was financially advantageous to purchase a property within the Opportunity Zone. The research team recognizes that this assumption—an investor located in an Opportunity Zone results in a better outcome for improvement of the lives of residents of the Opportunity Zone—is tenuous. However, there are possible advantages when an investor locates in an Opportunity Zone to improve the lives of residents. Namely, investors are more likely to engage with residents when executing an investment if both groups neighbor each other. And neighbors are more likely to observe and offer feedback about an investment—say, a real estate development project—if they can not only see it but can also identify the individual or company that are in the community in which the investment is occurring. We will revisit this issue in Section V.C, discussing implications of this research.

The final data collection effort focused on collecting company information for firms investing in Opportunity Zones that had not filed for federal securities law exemption. To gather information about companies that were investing in Opportunity Zones but had not necessarily claimed securities law exemption, we turned to state entity-formation databases. Each of the fifty states have entity formation databases.[210] Typically, this information is searchable via the Internet.[211]

Using publicly available state entity databases for the same eleven states that were searched in the securities filings for 2020 and 2021 calendar years,[212] the research team identified filings made in each state. The team collected relevant information such as the company's filing name, street address, city, state, and zip code. Using address information, the team then determined whether the filing entity was located in an Opportunity Zone.[213] Below is a brief description of the findings for each state.

Alabama had eighteen companies listed with "Opportunity Zone" in their legal name.[214] The total percentage of businesses that were in Opportunity Zones was 50%, which is much higher than compared to the SEC search results.[215] Arizona resulted in thirty companies listed with "Opportunity Zone" in their legal name.[216] Only 13% of the businesses were located in Opportunity Zones.[217] For California, there were one hundred companies

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210. A list of the websites for these databases is posted on a third-party website. SECRETARY OF STATE CORPORATION & BUSINESS ENTITY SEARCH, http://www.secstates.com (last visited Feb. 9, 2024).

211. For example, the first state listed alphabetically, Alabama, has a business entity records database available on its Secretary of State website. *Business Entity Records*, ALA. SEC'Y OF STATE, https://arc-sos.state.al.us/CGI/CORPNAME.MBR/INPUT (last visited Nov. 24, 2023)

212. Alabama, Arizona, California, Colorado, Florida, New Jersey, New York, Pennsylvania, Tennessee, and Utah.

213. The team noted proximity to an Opportunity Zone, and other notes as the search process was executed. In addition, the team noted any company that was listed in both the SEC search and the state search.

214. *Business Entity Records*, *supra* note 211 (inputting "Opportunity Zone" for the Name and clicking "Search").

215. There was no overlap between the SEC and the state search because the SEC search came back with no companies in Alabama. *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (inputting "Opportunity Zone" for the company name, selecting the "Contains" button toggle, and clicking "Find Companies") (last visited Feb. 9, 2024).

216. *Entity Search*, ARIZ. CORP. COMM'N, https://ecorp.azcc.gov/EntitySearch/Index (selecting "Contains" from the dropdown menu, inputting "Opportunity Zone" for the entity name, selecting "Domestic" from the entity type dropdown menu, selecting "Active" from the entity status dropdown menu, and selecting the "Search" button) (last visited Feb. 9, 2024).

217. Four companies were listed on both the state and the SEC searches.

listed with "Opportunity Zone" in their legal name.[218] Similar to Arizona, only 13% of the California businesses were located in Opportunity Zones.[219]

In Colorado, there were forty-one companies with "Opportunity Zone" in their legal name.[220] Seventeen percent of the businesses were located in Opportunity Zones.[221] Delaware had seventeen companies with "Opportunity Zone" in their legal name.[222] Thirty-five percent of the businesses were located in Opportunity Zones.[223] For Florida, there were fifteen companies listed with "Opportunity Zone" in their legal name.[224] Only 7% were located in Opportunity Zones.[225]

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218. *Business Search*, CAL. SEC'Y OF STATE, https://bizfileonline.sos.ca.gov/search/business (inputting "Opportunity Zone" in the search box, expanding to an advanced search, selecting the "Contains" button, selecting the "Entity Information Search" button, selecting "Active" from the status dropdown menu, and selecting the "Search" button) (last visited Feb. 9, 2024).

219. Data on file with author. Ten companies were listed on both the state and the SEC searches. Data on file with author.

220. *Advanced Search*, COLO. SEC'Y OF STATE, https://www.sos.state.co.us/biz/AdvancedSearchCriteria.do (inputting "Opportunity Zone" for name, selecting the "Business Name" box, and selecting "Search" button) (last visited Feb. 9, 2024).

221. Data on file with author. A total of three companies were listed in both the state and SEC searches. Data on file with author.

222. *General Information Name Search*, STATE OF DEL. DEP'T OF STATE, https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (inputting "Opportunity Zone" for Entity Name and selecting the "Search" button) (last visited Feb. 9, 2024). Admittedly, this number is much more modest than the 1,800 filings one reporter identified in Delaware for firms using the phrase "Opportunity Zone" or the letters "QOZF" for "Qualified Opportunity Zone Fund." *See* Buhayar, *supra* note 22. As the author has stated previously, the goal with this research has been to collect a reasonable amount of data to analyze. In making choices on search terms the author is undoubtedly making a choice in analyzing certain points—which appear to be representative—and excluding others to make the research task more manageable.

223. Data on file with author.

224. *Division of Corporations*, FLA. DEP'T OF STATE, https://search.sunbiz.org/Inquiry/CorporationSearch/ByName (inputting "Opportunity Zone" in entity zone) (last visited Feb. 9, 2024). The Florida search appeared to only offer names that either started with the phrase "Opportunity Zone" or had the article "The" followed by the phrase "Opportunity Zone."

225. Data on file with author.

New Jersey had the second highest total number of companies listed with the phrase "Opportunity Zone" in their legal name.[226] Thirteen percent of the businesses were located in Opportunity Zones.[227]

New York had forty-nine companies listed with "Opportunity Zone" in their legal name.[228] Approximately 20% of the companies were listed in Opportunity Zones.[229] Pennsylvania had thirty-three companies listed with "Opportunity Zone" in their legal name.[230] Approximately 28% of the companies were listed in Opportunity Zones.[231] In Tennessee fifteen companies were identified as having "Opportunity Zone" in their legal

226. Three companies were listed in both the state and SEC searches. *Business Entity Status Report*, N.J. DEP'T OF THE TREASURY: DIV. OF REVENUE & ENTER. SERVS., BUS. RECS. SERV., https://www.njportal.com/DOR/businessrecords/EntityDocs/BusinessStatCopies.aspx (selecting the "Business Name" button, inputting "Opportunity Zone" for Business Name, and selecting the "Continue" button) (last visited Feb. 9, 2024); *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (inputting "Opportunity Zone" for company name, selecting "contains," selecting "New Jersey" in the dropdown menu, and selecting "Find Companies") (last visited Feb. 9, 2024). Two additional entities were initially identified but excluded from our data reported here. The first "400 Claremont Ave. Opportunity Zone IV, LLC" changed its legal name to "New Hudson Contractors LLC." As a result, we excluded it from our list. The second, "Saxum Opportunity Zone Fund III LP," had a similar name to several other entities that appeared to be formed by Saxum Real Estate, a private equity real estate investment and development firm. *About*, SAXUM REAL ESTATE, https://saxumre.com/about/ (last visited Feb. 9, 2024). Since we could not identify the address for this entity we excluded it from our list.

227. Data on file with author. Two states had addresses located in New York, instead of New Jersey. Data on file with author.

228. *Search Our Corporation and Business Entity Database*, N.Y. DEP'T OF STATE: DIV. OF CORPS., https://apps.dos.ny.gov/publicInquiry/ (selecting "Entity Name" for search by button toggle, inputting "Opportunity Zone" for Entity Name, selecting "Active" from Entity type dropdown menu, selecting "Contains" from search functionality dropdown menu, selecting "Corporation," "LimitedLiabilityCompany," "LimitedPartnership," and "LimitedLiabilityPartnership" for entity list, and clicking "Search the Database") (last visited Feb. 9, 2024). Only one company was reported in both the state search and the SEC search.

229. Data on file with author.

230. Only one company was reported in both the state search and the SEC search in Pennsylvania as well. *Business Search*, PA. DEP'T OF STATE, https://file.dos.pa.gov/search/business (input "Opportunity Zone" in the search box, select the "Advanced" dropdown, select "Contains," select "Active" from the Status dropdown menu, and select "Search") (last visited Feb. 9, 2024); *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (inputting "Opportunity Zone" for company name, selecting "contains," selecting "Pennsylvania" from the dropdown menu, and selecting "Find Companies") (last visited Feb. 9, 2024).

231. Data on file with author.

name.[232] A total of 58% of the companies listed in the state department search were in Opportunity Zones.[233] For Utah, the total number of companies with "Opportunity Zone" in their legal name was thirty-five.[234] A total of 24% of the companies listed in the state department search were in Opportunity Zones.[235]

In summary, the number of companies identified in the state databases that had "Opportunity Zone" in their legal name and were simultaneously located in Opportunity Zones was much higher than the SEC data we collected.[236] In all states, at least some of the companies identified were located in Opportunity Zones.[237] In the SEC dataset, it was very common for states to have zero companies located in an Opportunity Zone.[238] Almost all states comparatively had an increase in the number of companies that were located in an Opportunity Zone.[239] For example, two states—Alabama and Tennessee—had 50% or more of identified companies located in Opportunity Zones.[240] Figure 5, presented below, displays these findings.

The state database searches resulted in a total number of companies that was greater than the SEC datasets.[241] In every state the number of companies

232. *Business Information Search*, TENN. SEC'Y OF STATE, https://tnbear.tn.gov/ECommerce/FilingSearch.aspx (inputting "Opportunity Zone" for search name, selecting the "Contains" button, selecting the "Active Entities Only," and selecting "Search") (last visited Feb. 9, 2024).

233. Data on file with author. Two of the companies were reported in the SEC search and in the state department search. *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (inputting "Opportunity Zone" for company name, selecting "contains," selecting "Tennessee" from the dropdown menu, and selecting "Find Companies") (last visited Feb. 9, 2024).

234. *Business Search*, UTAH DIV. OF CORPS. & COM. CODE, https://secure.utah.gov/bes/index.html (inputting "Opportunity Zone" for business name and selecting the "Search" button) (last visited Feb. 9, 2024).

235. Data on file with author. Two of the companies were reported in the SEC search and in the state department search. *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (inputting "Opportunity Zone" for company name, selecting "contains," selecting "Utah" from the dropdown menu, and selecting "Find Companies") (last visited Feb. 9, 2024).

236. *See infra* Figure 5.

237. *See infra* Figure 5.

238. *See infra* Figure 5.

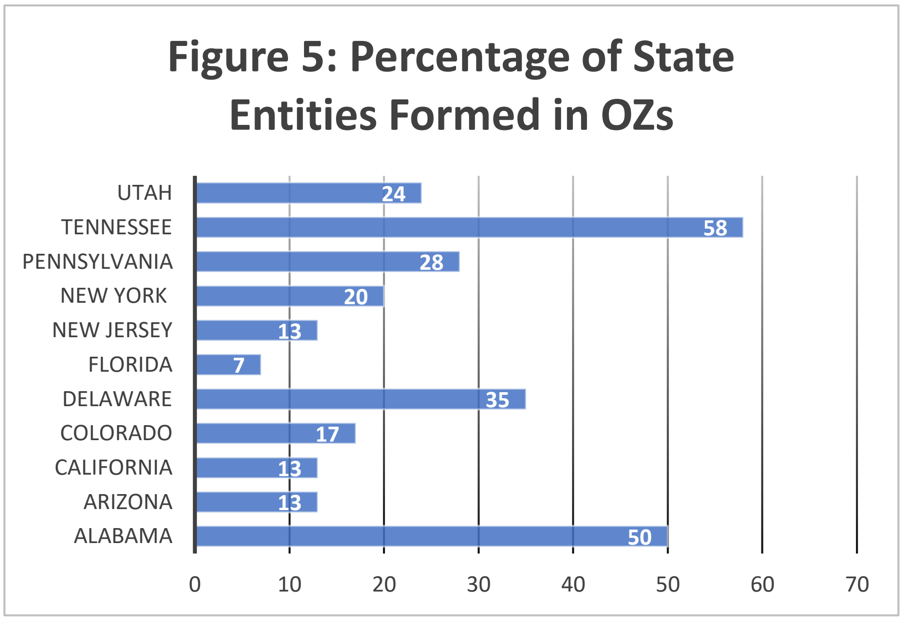
239. *See infra* Figure 5.

240. *See infra* Figure 5.

241. *See infra* Figures 6 and 7. Compare the results from the SEC and state databases. For example, in both 2020 and 2021, the SEC search revealed Alabama had zero companies with "Opportunity Zone" in the entity name. Data on file with the author. In contrast, the state search produced eighteen companies. Data on file with the author.

reported increased compared to the SEC database searches in any of the years searched.

In addition, the number of companies that overlapped between both datasets was very low.[242] Why this is the case is uncertain but clearly there are more companies filing to form in particular states than are filing for securities law exemptions with the federal government.



242. *See infra* Figure 6. For example, California had 100 companies reported but ten of those companies also filed with the SEC.

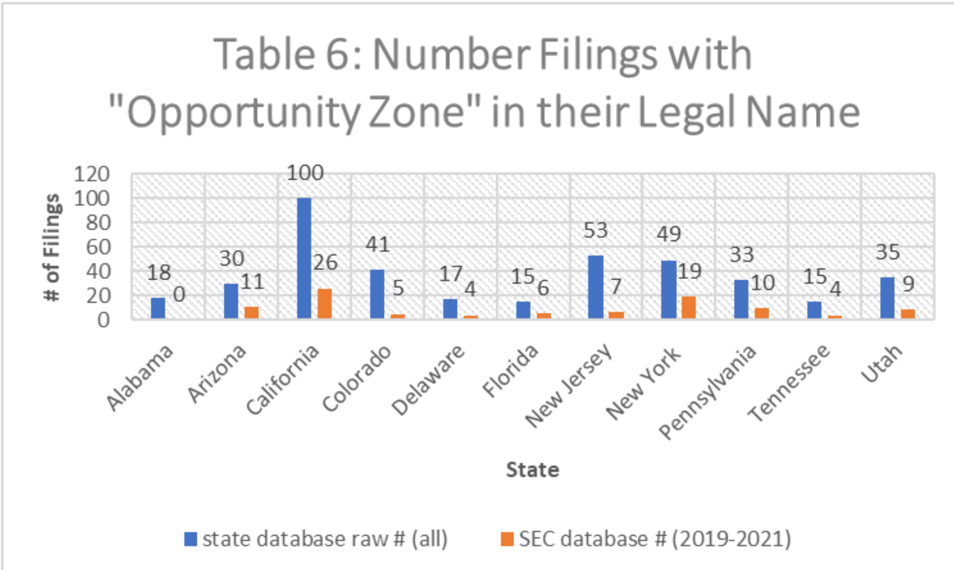


Table 6: Number Filings with "Opportunity Zone" in their Legal Name
# of Filings
120
100
80
60
40
20
0
18 0
30 11
100 26
41 5
17 4
15 6
53 7
49 19
33 10
15 4
35 9
Alabama
Arizona
California
Colorado
Delaware
Florida
New Jersey
New York
Pennsylvania
Tennessee
Utah
State
state database raw # (all)
SEC database # (2019-2021)

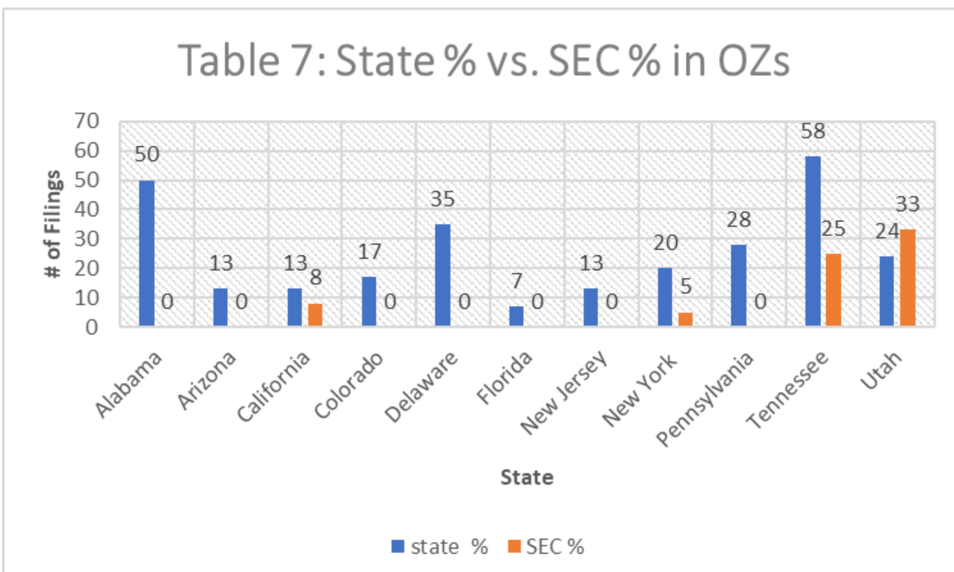


Table 7: State % vs. SEC % in OZs
# of Filings
70
60
50
40
30
20
10
0
50 0
13 0
13 8
17 0
35 0
7 0
13 0
20 5
28 0
58 25
24 33
Alabama
Arizona
California
Colorado
Delaware
Florida
New Jersey
New York
Pennsylvania
Tennessee
Utah
State
state %
SEC %

V. Implications of Data Collected and Analyzed

The implications of the above data contribute to the scholarly discourse about how the Opportunity Zone incentive impacts low-income areas, both urban and rural.[243] There are three main takeaways from our dataset. First, there is a clear preference among Opportunity Zone Fund investors for funding commercial real estate projects rather than small businesses.

Second, the source of capital is likely responsible for the location of Opportunity Zone Funds. Third, with respect to resident engagement, our data appears to suggest that resident engagement is insignificant both for funds raising capital from outside investors as well as those closely held and family funds. We turn to each in greater detail below.

Another consequence of the data presented in this Article is the potential inability of Opportunity Zone residents to engage in project planning. If funds raising capital come from outside of Opportunity Zones, residents may have fewer chances to engage in project design. Similarly, fund location within Opportunity Zones for insiders and corporations may have beneficial results for residents—or it may not. Answering the question how residents benefit from, or fail to benefit from fund location, is a question for future research.

A. Preference for Commercial Real Estate Investing

At the outset of this research project, the literature made clear that investors in Opportunity Zones were overwhelmingly deploying capital to real estate projects.[244] Our research confirmed this phenomenon. Investors, including those raising funds from other people and companies, are primarily focused on Opportunity Zone incentives for real estate projects.[245] Investors, we learned, have a strong preference for commercial real estate investments.[246]

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243. *See* discussion *supra* in Section II.C.

244. In Portland, Oregon, for instance, the entire downtown area—an already capital rich locale—was designated an Opportunity Zone, leading developers to take advantage of the Opportunity Zone incentive for projects that were likely to be built anyways. Noah Buhayar & Lauren Leatherby, *Welcome to Tax Breaklandia*, BLOOMBERG, https://www.bloomberg.com/graphics/2019-portland-opportunity-zones/ (last visited Feb. 9, 2024).

245. *See supra* Section IV.B.

246. *See, e.g.,* Hillstone Opportunity Zone Fund I, LLC, a fund formed by Hillstone Advantage Partners, LLC, to "sponsor Qualified Opportunity Funds focused on the acquisition and development of income-producing commercial and industrial real estate in strategically identified 'Opportunity Zones' to generate consistent returns and a profitable exit, with minimal tax consequences to maximize investors gains, all while maximizing community impact." *Leveraging Experience to Generate Returns*, HILLSTONE ADVANTAGE PARTNERS,

Investment preferences tend toward either mixed-use commercial real estate on the one hand or single-family home acquisition and rental income generation on the other. This finding is significant. The Opportunity Zone incentive was sold in Congress as a mechanism for small businesses to raise capital.[247] John Lettieri, President and Chief Executive Officer of the "think tank" primarily responsible for moving the Opportunity Zone incentive through Congress, made clear that small businesses were the focus of Opportunity Zone investment. "While the [Opportunity Zone] incentive was designed to support a wide variety of needs across communities," said Lettieri during testimony in 2019 before the House Committee on Small Business, "its central purpose was to support new business and existing small and medium-sized firms in need of growth capital."[248]

Our findings confirm, however, that investment is flowing to real estate projects and not to small businesses.[249] This finding supports the "bait and switch" argument that although the Opportunity Zone incentive was originally sold as a tool for small business capital raising, it actually was intentionally designed for real estate projects that exclude small businesses. In *Only the Rich Can Play*, David Wessel confirms the purpose of the design, highlighting that Treasury officials were skeptical of a program geared towards funding small businesses in capital starved neighborhoods.[250] As a result, rules written by the Treasury favored commercial real estate investment projects.[251]

Our data supports the proposition that the drafters at the Treasury were effective. Most investors have favored commercial real estate in the two categories mentioned above: mixed use on the one hand and single family on the other. Accessing capital remains one of the top three challenges facing small businesses, particularly those businesses owned by marginalized

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LLC, https://web.archive.org/web/20230204185422/https://hillstoneadvantage.com/ (last visited Feb. 9, 2024).

247. *See* WESSEL, *supra* note 13, at 229 ("The point of Opportunity Zones, Congress and Treasury said repeatedly, is 'to encourage economic growth and investment in designated distressed communities.'").

248. John W. Lettieri, *Can Opportunity Zones Address Concerns in the Small Business Economy? – Testimony Before the House Committee on Small Business*, ECON. INNOVATION GRP. (Oct. 17, 2019), https://eig.org/testimony-can-opportunity-zones-address-concerns-in-the-small-business-economy/.

249. *See supra* Section IV.B.

250. *See* WESSEL, *supra* note 13, at 140.

251. *Id.*

owners.[252] Thus, there is evidence to support the argument that the Opportunity Zone incentive—despite advocates' statements to the contrary—has not meaningfully impacted small businesses in need of capital.

B. Source of Capital, Social Mission, and Opportunity Zone Investment Location

The data collected indicates that most Opportunity Zone investment funds raising money from outsiders—entities that filed for securities laws exemption—are located outside the designated zones.[253] This finding is not necessarily surprising. Only the wealthy who possess capital gains in the first place are eligible to receive Opportunity Zone tax incentives.[254]

Most wealthy individuals and firms are located outside low-income areas,[255] only a quarter of which may be designated Opportunity Zones.[256] Therefore, it follows that most investors are likely located outside Opportunity Zones because, if only the rich profit from the incentive, and the rich are located outside low-income areas, then most investors will be located outside the designated low-income zones. Mainstream financial institutions, including fund managers seeking to raise capital from a few wealthy elites, are likely to follow the money and also locate in higher-income areas outside designated zones.[257]

Why were more entities with the words "Opportunity Zone" in their legal names identified through state corporate entity searches rather than through the three years of securities filing data?[258] What does the higher percentage of entities in the state database tell us about how investors are raising

252. Jennifer F. Hegleson et al., *Natural Hazards Compound COVID-19 Impacts on Small Businesses Disproportionately for Historically Underrepresented Group Operators*, 72 INT'L J. OF DISASTER RISK REDUCTION, article no. 102845, 2002, at 1, 3, https://perma.cc/63RQ-GFDV ("There are at least three major access challenges to [Historically Underrepresented Group Operator] businesses: (1) access to capital, (2) access to skill development, and (3) access to formal business networks.").

253. *See supra* Section IV.B.

254. 26 U.S.C. § 1400Z-2.

255. *See* Harris & Parker, *supra* note 171, at 3 ("The concentration of capital gains by zip code is stark. . . . [N]early three-fourths of capital gains . . . were reported by the 16.4 percent of filers residing in zip codes in the top [Adjusted Gross Income] decile.").

256. 26 U.S.C. § 1400Z-1.

257. *See generally* Wayne Simpson & Jerry Buckland, *Dynamics of the Location of Financial Institutions: Who Is Serving the Inner City?*, 30 ECON. DEV. Q. 358 (2016) (supporting the assertion, at least in Toronto, that mainstream financial institutions find low income areas less attractive to market their services, which may present a barrier to inner-city resident upward mobility).

258. *See supra* Section IV.B.

capital?[259] Finally, can we learn anything about the engagement of Opportunity Zone residents through the analysis of this dataset?[260] This subsection will focus on these questions.

First, with respect to the increased number of identified entities filing at the state level, there are several possible explanations. For one, forming an entity is an initial and, often, less costly process than filing for securities exemption.[261] It is possible that more entities initially filed at the state level with the intent to eventually raise funds through a securities exemption process.[262]

It is possible, then, that the most obvious answer is that many Opportunity Zone investment entities do not need to raise capital through solicitation. In other words, many investors, either individuals, families, or companies, may already possess capital through the sale of another asset. As a result, entity formation is the only filing necessary, other than an eventual tax filing for the entity.[263] In this regard, it is unsurprising that there are more Opportunity Zone investment entities filed at the state level.[264]

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259. *See supra* Section IV.B.

260. With respect to the question of engagement, it is worth noting that the Opportunity Zone tool lacks a moment for participation by individuals or intermediary entities regarding the sorts of projects that receive Opportunity Zone investment. *See* De Barbieri, *supra* note 5, at 111. Early on, evidence points to little benefit of the Opportunity Zone tool with respect to improving the lives of residents located in the designated zones. *See* Matthew Freedman et al., *JUE Insight: The Impacts of Opportunity Zones on Zone Residents*, J. OF URB. ECONS., Jan. 2023, at 1, 7-8.

261. In California, for instance, which was the state with the most numerous results of entities with the phrase "Opportunity Zone" in their legal name, there is no filing cost to form a Limited Liability Company online, although there is an $800 annual minimum tax. *Limited Liability Company*, CAL. FRANCHISE TAX BD., https://www.ftb.ca.gov/file/business/types/limited-liability-company/index.html (last updated Jan. 1, 2024). That is still much less than the fees charged by some online crowdfunding platforms, which can charge in the range of $7,000 for preparation services, and platform set up fees in the area of $3,500. *"Direct" Regulation CF Crowdfunding Offering Preparation Services – Launching Late August 2021*, REGUL. D RES.: NEWS, (Aug. 4, 2021), https://perma.cc/JJ9M-3RCY.

262. Since there was little overlap between the SEC and state database sets it is difficult to determine company intent with respect to raising funds. It is beyond the scope of this project to reach a conclusion with respect to company fundraising intent.

263. This assertion is supported by reporting and research showing over 1,800 Opportunity Zone investment entities (identified not just with the words "Opportunity Zone" but also the acronym "QOZF" (standing for Qualified Opportunity Zone Fund) formed in Delaware alone). *See* Buhayar, *supra* note 20.

264. It is worth repeating that our search was limited in both SEC and state databases to companies with the phrase "Opportunity Zone" and did not consider other firms that lacked that phrase. It is not a requirement that companies use the words "Opportunity Zone" in the

Regarding where Opportunity Zone investors locate, it appears that companies are more likely to be located in Opportunity Zones when not filing for securities-law exemption.[265] This noteworthy finding suggests that when investors seek to raise capital from others for Opportunity Zone investing, they are more likely to be located outside of Opportunity Zones.[266] However, when investors are using their own capital, they may decide to locate within an Opportunity Zone, perhaps first by purchasing or developing commercial real estate within a designated zone.[267]

Specifically, for investment companies raising capital from outside investors, the location of such funds tends to be outside Opportunity Zones. We must note one exception: mission-based investment firms, such as SoLa Impact both raise funds from outside investors using securities law filings and locate in Opportunity Zones. But SoLa does not represent the norm. For those funds, such as family funds and other closely held funds, that have raised funds from the sale of other assets, it is possible that such funds are more likely to locate in an Opportunity Zone.

The research also suggests that the source of capital for Opportunity Zone Funds impacts the location of such funds. It appears that for funds raising capital from others—excluding those with a specific social mission—they are more likely to be located outside the Opportunity Zones. However, for those funds raising capital from closely held sources, such as families, it appears that more are located in Opportunity Zones.

If Congress intended to involve a wide range of investors, including residents themselves in Opportunity Zone project investments, the current

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name of a company investing in Opportunity Zones. *See* 26 U.S.C. § 1400Z-2. No doubt there are additional firms in both the SEC and state databases that were not captured in our searches. Nevertheless, our data tells a story that adds to the discussion about what investors are actually doing with respect to Opportunity Zone investing.

265. *See supra* Section IV.B.

266. This is unsurprising since the largest investment management funds in the world are located in and around some of the most productive metropolitan regions in the United States, including New York City, Boston, Philadelphia, and Los Angeles. *See* Tim Lemke, *The 10 Largest Investment Management Companies Worldwide*, THE BALANCE (Mar. 17, 2022), https://www.thebalance.com/which-firms-have-the-most-assets-under-management-4173923.

267. Ogden Commons JV LLC, for example, was formed in Delaware as a business vehicle through which to develop a mixed-use real estate project in Chicago's North Lawndale neighborhood. Tracy A. Kaye, *Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs*, 48 FORDHAM URB. L. J. 1067, 1072 (2021).

approach is not conducive to inclusive investment strategies.[268] Rather, the Opportunity Zone incentive favors those who already have access to mechanisms for wealth creation and investment, instead of expanding the group of individuals or firms who experience financial gain. Again, this finding supports other conclusions in the literature about who benefits from the Opportunity Zone incentive. As David Wessel puts it, "Don't Blame the Players, Blame the Game."[269]

What was surprising with respect to source of capital and firm location was that many inside investors—those not seeking to raise funds through capital markets—appear to prefer locating in Opportunity Zones.[270] This finding suggests that perhaps some aspect of the Opportunity Zone incentive is working.[271] Specifically, since a higher percentage of state-registered funds are located in Opportunity Zones, it appears that the incentive may lead to increased investor ownership, at least in the areas with the highest amount of Opportunity Zone investment.[272]

To be clear, our data does not suggest that Opportunity Zone investment is occurring equitably across Opportunity Zones. Since the states we explored were those that were identified by others as already having a large amount of investments, our dataset was skewed towards those states with already productive metropolitan regions which were experiencing Opportunity Zone investment.

C. Lack of Opportunity Zone Resident Engagement

With respect to resident engagement, this data does not offer much to analyze about how investors engage local residents around Opportunity Zone investments.[273] Whether locating an Opportunity Zone investment firm in a

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268. This confirms our suspicions that participation in Opportunity Zone investments are out of reach of most residents of Opportunity Zones, and indeed each taxpayer, including those without tens of thousands of dollars in capital gains proceeds to invest. *See* Ermey, *supra* note 188.

269. WESSEL, *supra* note 13, at 143 (title of chapter 8); *see id.* at 143-61 (chapter 8).

270. *See supra* Section IV.B.

271. To the extent that there is an aspect of the Opportunity Zone incentive that has a positive outcome, such outcomes should be expressed, and policy changes ought to flow from such positive results.

272. Noting Kennedy and Wheeler's findings that most Opportunity Zone investment is only flowing to 16% of Opportunity Zones that the investigators studied (84% of designated Opportunity Zone tracts studied received zero Opportunity Zone investment). *See* Kennedy & Wheeler, *supra* note 19, at 10. It is beyond the scope of this Article to address whether the addresses of firms identified as being located in Opportunity Zones are also within (or outside of) those zones identified by Kennedy and Wheeler.

273. Admittedly, resident engagement was not a primary focus of our data collection.

designated zone has a greater impact on the eventual project is unclear based on the data collected. This author has argued elsewhere that improving the lives of residents within designated zones should be a metric for measuring Opportunity Zone incentive success.[274]

Certainly, a number of Opportunity Zone investment companies have a focus on resident engagement and social and economic impact.[275] SoLa in Los Angeles is one such example that was identified in the Securities and Exchange Commission data, and the State of California entity formation data.[276] It is beyond the scope of this Article to conclude whether the location of an Opportunity Zone investment company has an impact on resident engagement or any level of social or economic impact metrics.

The data, for example, did not include analysis of resident engagement. However, the author would like to identify how our research may impact resident engagement. Perhaps these observations can lead to future research.

For one, since it appears that the location of an Opportunity Zone investment company likely depends on the source of capital, those seeking to influence the activities of Opportunity Zone investors will be wise to explore the source of the firm's capital. The author has an untested suspicion that when investors are located outside Opportunity Zones, resident engagement is likely to be very low. Also, the author suspects that Opportunity Zone companies located in designated zones may be slightly more likely to engage residents or be influenced by neighbors.

Shifting focus for a moment, the fact that resident engagement is not a part of the Opportunity Zone incentive demonstrates a lack of concern among Congress and the Treasury that the involvement of neighbors is important. Further, a lack of attention to the improvement of the lives of residents in the designated zones demonstrates lack of care with respect to Opportunity Zone incentive outcomes. Our research supports the assertion made by others that the Opportunity Zone incentive is something done *to*—rather than *with*—residents of low-income neighborhoods.[277]

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274. De Barbieri, *supra* note 5, at 132.

275. *See* WESSEL, *supra* note 13, at 241-64.

276. *See Business Search*, CAL. SEC'Y OF STATE, https://bizfileonline.sos.ca.gov/search/business (enter "SoLa Impact" in the search box) (last visited Jan. 9, 2024); *Company Search*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html (enter "SoLa Impact" for Company name, select "Contains," select "California" from the state dropdown box, and select "Find Companies) (last visited Feb. 9, 2024).

277. Aaron Seybert, *ProPublica Investigation Shows How Opportunity Zones Can Miss the Mark*, KRESGE FOUND. (June 26, 2019), https://kresge.org/news-views/propublica-investigation-shows-how-opportunity-zones-can-miss-the-mark/.

To improve the Opportunity Zone incentive, the Treasury should collect additional information about the outcomes of Opportunity Zone investments and consider adding more focus and restrictions into place-based economic development policies such as the Opportunity Zone tax incentive. In addition, more study of resident engagement is needed to determine what is occurring with respect to the activities of Opportunity Zone investment companies. Particularly for firms raising capital through securities law exemption, there exist few moments for resident engagement. This matters to the extent one agrees that resident engagement is important.[278]

To involve a wider range of investors, alternative forms of investment may be necessary. The SoLa model mentioned above has specific social and economic justice metrics that broadly support businesses located in the Opportunity Zones in Los Angeles where SoLa operates.[279] Another example that merits further study for possible use in connection with place-based economic development tax incentives is a community investment trust approach.[280]

VI. Conclusion

In the context of place-based economic development laws, lawmakers routinely engage in othering. Economic othering at law occurs through tax incentives such as the Opportunity Zone by ignoring transparency for zone residents. Neighbors lack knowledge of who owns the property next door. Consequently, neighborhoods are developed without input from residents.

Appreciating this difference among investors and residents is key to solving the problem created by economic othering. Advancing transparency can avoid the negative externalities caused by othering at law. There is much improvement to be made to place-based economic development activities when conceived of through this theoretical frame.

To reach this conclusion, this Article has explored possible connections between deregulatory efforts with respect to securities law exemptions and economic development incentives, including the Opportunity Zone. On the surface, small businesses owned by marginalized owners and located in

278. Admittedly, the author recognizes that the merits of resident engagement need not be taken as universally recognized as useful to place-based tax incentive success.

279. *See* SoLa Impact, *supra* note 61.

280. A community investment trust approach, initially developed by Mercy Corps in Oregon, is being adopted in other areas of the country. Mike Martin, *Community Loan Fund Purchases Building for Community Investment Trust*, CMTY. LOAN FUND OF THE CAP. REGION (June 10, 2022), https://mycommunityloanfund.org/community-loan-fund-purchases-building-for-community-investment-trust/.

economically depressed areas appear to be the intended beneficiaries of policies such as Regulation Crowdfunding and the Opportunity Zone incentive. Through Regulation Crowdfunding, businesses are supposed to have simplified access to capital through low-dollar contributions made on digital platforms. Through Opportunity Zones, small businesses owned in struggling urban and rural areas are supposed to have easier access to investment dollars contributed by individuals seeking capital gains avoidance.

It appears there is little discernible correlation between the use of Regulation Crowdfunding and the Opportunity Zone incentive. Specifically, no conclusions were reached when studying the location of Regulation Crowdfunding filers that were also located in Opportunity Zones. However, data analysis revealed a strong industry preference for focusing Opportunity Zone investing on commercial real estate over small businesses. The types of commercial real estate investment tended towards one of two poles: either mixed-use projects in denser urban areas or single-family homes in inner ring and other suburban plots. This finding—that investors prefer commercial real estate projects over small business interests—reinforced a real estate bias for Opportunity Zone investors that has been reported elsewhere in news outlets and the Opportunity Zone literature.[281]

The source of capital appears to influence the location of Opportunity Zone investment companies. In the data collected and analyzed from filers seeking to raise capital for Opportunity Zone investment using securities law exemptions, those filers tended to be located outside Opportunity Zones. By contrast, for funds that simply formed a business entity within a given state, more entities tended to be located within Opportunity Zones.[282]

To explain this last significant finding, one working hypothesis stands out: an investment company located in an Opportunity Zone may be investing their own capital because the benefits of the Opportunity Zone incentive encourage commercial real estate investments.

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281. These preferences for commercial real estate investing align with the consensus viewpoint on how the Opportunity Zone incentive was implemented: commercial real estate investments were deemed "safer" by Treasury, and so small business investments were disfavored in the Opportunity Zone regulations.

282. As discussed above, there is of course variation across the states the research team explored. See *supra* Section IV.B. However, the percentage of entities located within Opportunity Zones is higher for the entities formed in states that did not elect to raise capital using securities laws exemptions. This likelihood was still not greater than half; however, it was higher than the Securities and Exchange Commission dataset.

Opportunity Zones investment companies raising capital using securities law exemptions are still investing in commercial real estate projects. Those companies, however, are choosing to invest in real estate projects that do not require the companies to locate within a designated zone. Instead, those same companies are investing their capital in projects that are located in the designated zones.

There are individual funds discussed above that support this hypothesis. CIM Group, Gravitas Partners, among others come to mind. However, to test this hypothesis, researchers could analyze individual fund investments through interviews and other data submitted concerning the investment choices of Opportunity Zone funds.

Since most Opportunity Zone investment companies raising capital using securities-law exemptions are located outside Opportunity Zones, the chance for residents to engage in Opportunity Zone project development for these companies is likely low. This assumption is significant since it relates to the ability of residents of designated zones to influence possible outcomes with respect to the improvement of their lives. Contending that Opportunity Zone residents have some useful perspective on how capital should be used in their neighborhoods may or may not be persuasive. But lack of engagement reinforces existing power structures and impedes meaningful community and grassroots institution leadership development.

It may be likely that residents of Opportunity Zones will experience greater influence over projects led by Opportunity Zone investment companies located within a designated zone. Since those companies investing their own capital are more likely to be located in a designated zone, residents and advocates ought to focus their efforts, attention, and organizing strategies on Opportunity Zone investment companies using their own capital, rather than those raising capital from outside investors using securities-law exemptions.

To test this hypothesis, one could explore how activities of Opportunity Zone investment companies improve the lives of residents in a designated zone. Metrics such as unemployment rates, rates of savings, educational attainment, and health outcomes could be useful proxies for success. Such tests could be the focus for future study, research, and analysis.