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Response to Madison McWithey

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In this Response, Jack Foster* discusses Madison McWithey's recent Boston College Law Review E. Supp. Essay *Taking a Deeper Dive into Progressive Prosecution: Evaluating the Trend Through the Lens of Geography, Part One*. That Essay can be found [here](#).

RESPONSE

Madison McWithey correctly identifies that district attorney elections in large urban jurisdictions receive the lion's share of media and academic attention in regards to the progressive prosecutor movement. Attracting and extending the kind of buzz surrounding progressive prosecutors in Philadelphia, Boston, and Houston to mid-size urban, suburban, and rural jurisdictions would serve the "experiment" of progressive prosecution well.

The author also argues that although there is no "playbook" for the progressive prosecutor, these prosecutors must manage certain internal forces if they hope to achieve their goals. Further, the author argues that district attorney offices in low-population jurisdictions may be more likely to succeed because they have lower attorney turnover, better understanding of the community, and greater ability to limit implicit bias. While there is room for argument on each of those points, I suggest any comparison of urban and rural jurisdictions must first examine those jurisdictions' respective motivations for electing progressive prosecutors.

Popular awareness and organizing efforts against mass incarceration, police shootings, and drug sentencing schemes have been critical to the election of progressive prosecutors, at least in large urban jurisdictions such as Boston and Philadelphia. Non-white voters in large urban jurisdictions supported progressive prosecutors because those aspects of the criminal justice system disproportionately affect communities of color. As I mention in my [Note](#), Fordham Law Professor John Pfaff argues that district attorney races in minority-white urban jurisdictions provide a local democratic counterbalance to the disparately-impactful criminal laws passed in majority-white state legislatures.

There is less research and reporting on voter motivations that lead to the election of progressive prosecutors in majority-white rural or suburban jurisdictions. Perhaps, as the author suggests, disapproval of the taxpayer burden caused by high incarceration rates undergirds "Smart on Crime"-style prosecutors. Concern about the opioid epidemic, political partisanship, local crime rates, or other factors may drive voter interest in progressive prosecutors. Regardless, different motivations will drive different policy than that pursued in large urban jurisdictions. Just as the internal dynamics of prosecutor offices vary among urban and rural jurisdictions, so too does the appetite of the electorate. It will be interesting to compare the differences in the policy pursued by urban and rural progressive prosecutors, as well as their effectiveness.

* J.D. Boston College Law School, 2020.