Empowering the Energy Transition in Rural Electric Cooperatives*

Rural Electric Cooperatives electrified rural America, enabling millions to catch up to their urban counterparts. Cooperatives are nonprofit utilities with boards elected by the member-owners, consumers who own the means of production. In the spirit of their populist origins, cooperatives were intended to provide rural Americans with autonomy over their power. Thus, both federal and state governments maintain a hands-off approach to cooperatives, presuming them to self-regulate through democratic means. Now, even as cooperatives have fulfilled their purpose to electrify the country, the Inflation Reduction Act ("IRA") sought to capitalize on their second purpose and use them as a tool to invest in rural America.

Yet, cooperatives have strayed from their founding democratic principles, stymying progress in the clean energy transition. Their boards are elected on a "one meter, one vote" basis, promote proxy voting, obstruct candidates challenging incumbents, and suppress votes to limit participation in the elections.

The directors on cooperative boards shield themselves from accountability from the member-owners who are supposed to elect them. The lack of accountability makes the boards unresponsive to member-owners' needs. As a result, cooperatives overly rely on fuels—especially coal—that are both more expensive and harmful to rural residents.

There is optimism for reform. The 501(c)(12) tax-exempt status conferred by the Internal Revenue Service can be leveraged by member-owners to reform their cooperatives. They can (1) file complaints that their boards are not complying with requirements to maintain 501(c)(12) status; (2) file derivative lawsuits claiming boards are breaching fiduciary duties; and (3) take advantage of tax-deductible 501(c)(3) funding for cooperative election campaigns. Reformed, truly self-regulating and democratic cooperatives could promote energy localism and uplift the communities they serve.

Part I of this Comment explains how cooperatives were designed to be self-regulating and the goals the IRA had for them. Part II demonstrates how the democratic design has failed and left many rural Americans with expensive,

dirty power. Part III outlines potential reforms to repair that democratic design and discusses the role cooperatives could play to empower rural Americans.

INTRODUCTION

The stranglehold that disinformation and polarization have on American attitudes towards energy and climate change can feel like an insurmountable barrier to a sustainable future. Those with financial incentives to oppose clean energy, as well as partisans who exploit distrust and skepticism for political gain, have weaponized disinformation about clean energy to prevent market forces from accelerating the otherwise inevitable clean transition.[1] Against the backdrop of these discouraging political circumstances, the Biden

1. *See* MATTHEW EISENSON, JACOB ELKIN, ANDY FITCH, MATTHEW ARD, KAYA SITTINGER & SAMUEL LAVINE, SABIN CTR. FOR CLIMATE CHANGE L., REBUTTING 33 FALSE CLAIMS ABOUT SOLAR, WIND, AND ELECTRIC VEHICLES (2025), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1218&context=sabin_climate_change [https://perma.cc/98N6-S3TQ (staff-uploaded archive)]; Julia Simon, *Misinformation Is Derailing Renewable Energy Projects Across the United States*, NPR (Mar. 28, 2022, at 05:00 ET), https://www.npr.org/2022/03/28/1086790531/renewable-energy-projects-wind-energy-solar-energy-climate-change-misinformation [https://perma.cc/29X9-674A] (discussing how President Trump has made false claims about wind energy, and groups with ties to the fossil fuel industry sponsor the spread of misleading information about clean energy).

administration passed the Inflation Reduction Act ("IRA"),[2] a landmark spending bill that revived hope for a sustainable American future. However, even as the Trump administration seeks to dismantle the IRA, many of the benefits from its investments remain tangible.[3] For example, as part of its multifaceted approach to driving clean energy development and lowering consumer costs, the IRA provided several federal funding opportunities for Rural Electric Cooperatives ("cooperatives"), sharpening focus on these organizations.[4]

Cooperatives are nonprofit, member-owned organizations that are a significant part of this country's energy infrastructure. They provide power to forty-two million Americans.[5] They reach more than half the country's land mass, and their customers account for 10% of total retail electricity sales.[6] Despite their relative obscurity,[7] cooperatives' size and scope make them important to any discussion about energy reform and climate change.

The origin story of electric cooperatives is a heartening one. In the 1930s, the Roosevelt administration saw the cooperative model as the necessary salve to electrify a rural America that had been left behind by private utility companies.[8] At the time, these for-profit companies deemed investments in these areas to be too unprofitable to warrant building the infrastructure necessary to connect them to the grid. Thus, rural America severely lagged behind urban areas in access to power.[9] In response, the landmark Rural Electrification Act of 1936[10] authorized loans to farmers to form cooperatives and install power lines on their properties.[11] The purpose of these cooperatives was to kickstart electrification of these areas[12] and create power—in the literal

2. Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (codified as amended in scattered sections of 26 and 42 U.S.C.).

3. *See infra* Section I.C.

4. Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818, 2020–21 (codified in scattered sections of 26 U.S.C.).

5. *Electric Co-op Facts & Figures*, NAT'L RURAL ELEC. COOP. ASS'N (June 25, 2025), https://www.electric.coop/electric-cooperative-fact-sheet [https://perma.cc/K6JF-MGY7].

6. Nikit Abhyankar, Umed Paliwal, Michael O'Boyle, Michelle Solomon, Jeremy Fisher & Amol Phadke, *A New Era for Rural Electric Cooperatives: New Clean Energy Investments, Supported by Federal Incentives, Will Reduce Rates, Emissions, and Reliance on Outside Power*, at 1, *in* 36 ELEC. J. art. 107334 (2023), https://www.sciencedirect.com/science/article/pii/S104061902300101X [https://perma.cc/SK4V-Z8UV (staff-uploaded archive)].

7. Legal scholarship, especially, on cooperatives has been limited to date. *See* Alexandra B. Klass & Gabriel Chan, *Cooperative Clean Energy*, 100 N.C. L. REV. 1, 7 (2021).

8. Almost every town and city in the United States was electrified by 1930, progressing ahead of rural areas. Carl Kitchens & Price Fishback, *Flip the Switch: The Impact of the Rural Electrification Administration 1935–1940*, 75 J. ECON. HIST. 1161, 1163–65 (2015).

9. *Id.* at 1163.

10. Rural Electrification Act of 1936, Pub. L. No. 74-605, 49 Stat. 1363 (codified as amended at 7 U.S.C. §§ 901 to 950cc-2).

11. *Id.* at 1363.

12. Kitchens & Fishback, *supra* note 8, at 1163.

sense—by and for the people,[13] giving rural Americans autonomy over their own energy futures.

Cooperatives' populist nature is easy to romanticize. But today, many of the 900 electric cooperatives in the United States have strayed from their democratic origins. This Comment argues that cooperative boards of directors rely on anti-democratic practices to stay in power and demonstrates why making these boards more democratic—more beholden to their constituents—could accelerate the transition to clean energy. It makes the case for prioritizing the reform of rural electric cooperatives in three parts. Part I provides background on existing law governing rural electric cooperatives. It traces cooperative history, explains why they are considered self-regulating, and demonstrates how the IRA made them an instrument to invest in rural America and a focal point of energy reform. Part II describes how the cooperative founding principles are undermined by four anti-democratic practices employed by their boards of directors. Part III considers how to leverage the 501(c)(12) structure of cooperatives. It argues that despite falling short of their original purpose, reformed cooperatives could have an important place in the American energy landscape. Ultimately, this Comment argues that harnessing the enforcement power of the IRS and taking advantage of its regulations could return cooperatives to their democratic origins and hasten the national transition to clean energy.[14]

I. RURAL ELECTRIC COOPERATIVES: A DEMOCRATIC DESIGN FOR RURAL AMERICA

The cooperative model was designed to provide electricity to rural Americans as an alternative to the traditional for-profit utility model.[15] The cooperatives were structured to be democratically accountable without the need for extensive government oversight. This self-regulating structure was intended

13. *See* Darrah Perryman, *More Than Just a Co-op: How Cooperatives Strengthen Economic Power*, USDA (Oct. 24, 2022, at 09:13 ET), https://www.usda.gov/about-usda/news/blog/more-just-co-op-how-cooperatives-strengthen-economic-power [https://perma.cc/96BJ-RZHL].

14. Though cooperative board governance is a national issue, this Comment is especially concerned with cooperatives in the South. Additionally, since state law is particularly relevant to cooperatives and utilities, this Comment focuses on North Carolina to explain these laws.

15. For a more detailed history of cooperatives and background of existing federal and state law relevant to these cooperatives, see Klass & Chan, *supra* note 7, at 10–30. At the time that article was published in this same journal, scholarship on Rural Electric Cooperatives was extremely limited. Alexandra Klass and Gabriel Chan noted then that a Westlaw search of law review articles on cooperatives and clean energy yielded only two results. *Id.* at 7 n.23. Their article explains the legal framework of cooperatives to an audience largely unfamiliar with the topic. So as not to reinvent the wheel, this Comment relies on their work and does not delve too deeply into the background of cooperatives. However, because common knowledge of cooperatives is still low, this Part overviews the democratic origins that cooperatives must return to. *See id*. at 3 ("[T]his scholarship has for the most part ignored the role of rural electric cooperatives . . .").

to give rural Americans autonomy over their own power sources and a continued say in energy policies affecting them. As such, even once rural America caught up to its urban counterparts—today, virtually 100% of the United States has access to electricity—cooperatives still had purpose. With that first purpose fulfilled, the IRA sought to capitalize on the second, acting as a catalyst to revive the cooperatives' origins as engines to uplift rural America.

A. *What Is a Rural Electric Cooperative?*

The nature of the energy sector inevitably lends itself to monopolistic concerns,[16] and different approaches have developed to try to protect consumers.[17] The most common approach in the United States (including in the South[18]) is to have governmental bodies regulate the prices of for-profit, investor-owned utilities ("IOUs") that have "exclusive franchise."[19] For example, Duke Energy is a monopoly regulated by the North Carolina Utilities Commission,[20] which is made up of five commissioners appointed by state elected officials.[21] Duke Energy serves about 3.4 million homes and businesses in the state.[22] As of 2024, these IOUs serve 68% of the country.[23]

16. Klass & Chan, *supra* note 7, at 10 (citing Richard A. Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548, 548 (1968)) (describing the energy sector as a natural monopoly when the entire demand for a product is satisfied at lowest cost by one firm).

17. *Id.* at 10–11 ("There are generally four primary approaches to protecting consumers from bearing the costs of [in] electric service delivery. . . .).

18. This Comment uses "the South" to refer to the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Across these fourteen states, approximately 61% of customers are buying from investor-owned utilities ("IOUs"). Table 9: Sales to Ultimate Customers Statistics, 2024, row 19, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2025), https://www.eia.gov/electricity/state/georgia/ [https://perma.cc/FA3H-2LS9] [hereinafter Table 9] (compiling data from *US Electricity Profile 2024*, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2025), https://www.eia.gov/electricity/state/index.php [https://perma.cc/UC72-DN4M] (select chosen state from "Other State Profiles" dropdown; then click "Full Data Tables 1–19"; reference Table 9 for each state)) (comparing the total number of IOU customers to customers of other ownership sources for each state in the South). Of note, however, the ratio of cooperative customers to IOU customers is much greater in the South than it is elsewhere in the United States—with some states even having more cooperative customers than IOU customers—emphasizing further the role these organizations have in the South in particular. *Id.* at row 21.

19. Klass & Chan, *supra* note 7, at 10 n.35; *Utilities*, U.S. DEP'T TRANS., https://www.transportation.gov/rural/ev/toolkit/ev-partnership-opportunities/electric-utilities [https://perma.cc/2WJT-PEEY].

20. *Utility Monopolies Still Reign in the South*, S. ENV'T L. CTR. (Jan. 27, 2024), https://www.southernenvironment.org/news/utility-monopolies-still-reign-in-the-south [https://perma.cc/S49N-HGFP].

21. N.C. GEN. STAT. § 62-10(a).

22. Elizabeth Ouzts, *End Duke Energy's Monopoly in North Carolina? It's Complicated*, CANARY MEDIA (Feb. 24, 2020), https://energynews.us/2020/02/24/end-duke-energys-monopoly-in-north-carolina-its-complicated [https://perma.cc/T39K-E2XA].

23. Table 9, *supra* note 18, at row 21 (providing the data to calculate the 68% by dividing total IOU customers (99,885,706) by the total customers (146,260,012), then multiplying by 100, equaling 68.29%) *Id.*

Another approach to consumer protection is the electric cooperative. Broadly, cooperatives (electric or otherwise) are autonomous organizations comprised of people with common "economic, social, and cultural needs and aspirations" who jointly own and democratically control their enterprise.[24] A rural electric cooperative, specifically, is a nonprofit utility with boards elected by the member-owners[25] who "own the means of production."[26] Because the consumers are also the owners, these electric cooperatives should provide electricity "in a manner that benefits member-owners"[27] and "aligns the interests of producers with consumers, converting any excess revenues back to the cooperative's consumers through capital credits."[28]

Though the first cooperatives can be traced to the early 1910s, their significance skyrocketed during the New Deal. Access to electric power was a defining issue in the 1932 presidential election, with then-candidate Franklin Roosevelt proclaiming in a campaign speech:

> Electricity is no longer a luxury. . . . It lights our homes, our places of work and our streets. . . . [I]t can become the willing servant of the family in countless ways. It can relieve the drudgery of the housewife and lift the great burden off the shoulders of the hardworking farmer. . . [W]here a community—a city or county or a district is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable basic right . . . to set up, after a fair referendum to its voters has been had, its own governmentally owned and operated service.[29]

Four years later, Congress passed the Rural Electrification Act, appropriating $410 million to the new Rural Electrification Administration ("REA") to make loans for rural electrification purposes over a ten-year period.[30] The REA helped establish cooperatives across the country, and the success was rapid: in 1925, 96.8% of farms had no electricity; by 1950, that number had shrunk to 10%.[31] Between 1936 and 1941, more farms became electrified than in the previous fifty-three years since the start of centrally distributed electricity.[32] Today, the Rural Electrification Act is "considered one

24. *What Is a Cooperative?*, INT'L COOP. ALL., https://ica.coop/en/cooperatives/what-is-a-cooperative [https://perma.cc/5ERH-QZ9H].

25. But see Section II.B, *infra*, to see how they fall short of this election standard.

26. Klass & Chan, *supra* note 7, at 11.

27. *Id.* at 26.

28. *Id.* at 11.

29. Franklin D. Roosevelt, Campaign Address in Portland, Oregon on Public Utilities and Development of Hydro-Electric Power (Sep. 21, 1932), https://www.presidency.ucsb.edu/documents/campaign-address-portland-oregon-public-utilities-and-development-hydro-electric-power [https://perma.cc/ZV96-MMBS] [hereinafter Campaign Address].

30. Gabriel Pacyniak, *Greening the Old New Deal: Strengthening Rural Electric Cooperative Supports and Oversight to Combat Climate Change*, 85 MO. L. REV. 409, 425 (2020).

31. Kitchens & Fishback, *supra* note 8, at 1163.

32. *Id.* at 1162.

of the most immediate and profound successes in the history of federal policy-making for the national economy."[33]

Every cooperative is governed by a board of directors that operates like a typical corporate board, but with certain restrictions unique to the cooperative structure.[34] Directors are usually owner-members, and, in many states, a director may be elected to represent a specific district within the cooperative territory.[35] Otherwise, these cooperatives generally have similar "election methods, conflict-of-interest rules, and other familiar corporate board restrictions."[36]

There are two primary levels to the cooperative governance structure, distribution cooperatives and generation and transmission cooperatives ("G&Ts"). A distribution cooperative resells and distributes power to retail consumers, connecting the national grid to the member-owners across that crucial "last mile."[37] G&Ts are formed by distribution cooperatives banding together to generate and transmit wholesale electricity.[38] Together, distribution cooperatives and G&Ts generate 5% and deliver 13% of total U.S. electricity, serve 42 million people in forty-eight states, and own 42% (2.7 million miles)

33. Pacyniak, *supra* note 30, at 412 (quoting Laurence J. Malone, *Rural Electrification Administration*, EH.NET (Mar. 16, 2008), https://eh.net/encyclopedia/rural-electrification-administration [https://perma.cc/PBP6-C54E]); *see also History: The Story Behind America's Electric Cooperatives and NRECA*, NAT'L RURAL ELEC. COOP. ASS'N, https://www.electric.coop/our-organization/history [https://perma.cc/T8AH-YBTN] ("Today, about 99 percent of the nation's farms have electric service. Most rural electrification is the product of locally owned rural electric cooperatives. . . .").

34. *See* Debra C. Jeter, Randall S. Thomas & Harwell Wells, *Democracy and Dysfunction: Rural Electric Cooperatives and the Surprising Persistence of the Separation of Ownership and Control*, 70 ALA. L. REV. 361, 396 (2018).

35. *Id.*

36. *Id.*

37. Jim Cooper, *Electric Co-Operatives: From New Deal to Bad Deal?*, 45 HARV. J. ON LEGIS. 335, 335 (2008) (quoting TOM STANDAGE, THE VICTORIAN INTERNET 206 (1999)). Representative Cooper, a former Tennessee congressman, compared cooperatives connecting rural consumers to the grid to what those in the telecommunications industry refer to as the "last mile," which is the most visible—and often the most expensive—part of getting people connected. *See id.*

38. G&T boards are comprised of directors elected by the boards of the distribution cooperatives. *See* Ethan Greenberg & Corina McKendry, *Contested Power: Energy Democracy and the Repoliticization of Electricity in the Western U.S.*, 73 ENERGY RSCH. & SOC. SCI. 1, 2 (2021) ("[G]eneration and transmission cooperatives are coops of coops."); *see also* Press Release, N.C. Elec. Membership Corp. Elects Offs. to Bd. of Dirs., N.C. Elec. Coops., https://www.ncelectriccooperatives.com/who-we-are/spotlight/north-carolina-electric-membership-corporation-elects-officials-to-board-of-directors-2 [https://perma.cc/5EFX-VYFU]; *Co-op Leaders Meet in Raleigh for 2023 Annual Meeting*, CAROLINA COUNTRY (June 2023), https://www.carolinacountry.com/departments/more-power-to-you/co-op-leaders-meet-in-raleigh-for-2023-annual-meeting [https://perma.cc/93X9-7FJH]. It seems worth noting that this relatively simple fact was difficult to synthesize and corroborate as no single source appears to say it anywhere. Even something so simple as "who elects the G&T boards" is shrouded by cooperatives' lack of transparency. See Part II, *infra*, for analysis on this lack of transparency.

of electric distribution lines.[39] The South is home to almost a third of these cooperatives,[40] which serve more than 14 million consumers across the region.[41]

B. *Cooperatives Are Meant To Self-Regulate with Democracy*

Despite the sizeable footprint of cooperatives, both the federal and state governments maintain a hands-off approach to regulation. Instead, cooperatives are meant to "self-regulate."[42] Self-regulating, even as defined by the National Rural Electric Cooperative Association ("NRECA"),[43] means democratically governed.[44] The notion that cooperatives are democratic forms the bedrock principle of the political approach to them.

39. NAT'L RURAL ELEC. COOP. ASS'N, AMERICA'S COOPERATIVE ELECTRIC UTILITIES: THE NATION'S CONSUMER OWNED ELECTRIC UTILITY NETWORK (2025), https://www.cooperative.com/programs-services/bts/Documents/Data/Electric-Co-op-Fact-Sheet.pdf [https://perma.cc/WEP4-8LDC].

40. RURAL POWER PROJECT, LAB. NEIGHBOR RSCH. & TRAINING CTR, DEMOCRACY LOST & DISCRIMINATION FOUND: THE CRISIS IN RURAL ELECTRIC COOPERATIVES IN THE SOUTH (2016) [hereinafter RURAL POWER PROJECT], https://ruralpowerproject.org/wp-content/uploads/2016/02/Rural-Power___Final.pdf [https://perma.cc/7PZF-XL4Z].

41. Table 9, *supra* note 18, rows 5–18 (providing the number of cooperative consumers in Southern states: Alabama (617,677), Arkansas (568,185), Florida (1,370,542), Georgia (2,293,935), Kentucky (891,979), Louisiana (444,500), Mississippi (809,731), Missouri (804,310), North Carolina (1,216,281), South Carolina (914,054), Tennessee (1,216,968), Texas (2,926,317), Virginia (705,621), and West Virginia (7,534)).

42. *See* Cooper, *supra* note 37, at 345 (citing several sources that describe electric cooperatives as "self-regulating"); *see also* Klass & Chan, *supra* note 7, at 20.

43. The NRECA is a trade association with representatives from cooperative boards across the country. It has been criticized for its lack of transparency and governance concerns, which follows given that the representatives from each cooperative are the very board members this Comment argues are elected undemocratically. *See infra* Section II.B. The NRECA has no political affiliation, but its lobbying, political donation, and policy advocacy efforts have often aligned more with conservative efforts, including environmental de-regulation. *See National Rural Electric Cooperative Assn*, OPEN SECRETS (2024), https://www.opensecrets.org/orgs/national-rural-electric-cooperative-assn/summary?id=d000000153 [https://perma.cc/9HNT-C3US (staff-uploaded archive)]. The IRA did somewhat change this calculus, given how much money it promised to cooperatives. The NRECA is navigating difficult territory now, wanting the Trump administration to pursue deregulation but also not to rescind the funding. For example, in late 2024, the NRECA sent a letter to President Trump requesting that his administration repeal several environmental regulations, but also to express support for the "successful implementation" and "effective and efficient use" of funds for cooperatives. Andres Picon & Emma Dumain, *Reality of Repealing Green Credits Sinks in for Divided GOP*, E&E NEWS (Dec. 5, 2024, at 06:42 ET), https://www.eenews.net/articles/reality-of-repealing-green-credits-sinks-in-for-divided-gop/ [https://perma.cc/6BEU-KRPV].

44. In a 2010 public comment to the Department of Energy, the NRECA wrote: "Cooperatives are inherently self-regulating because they are owned and governed by their member-consumers. Because the Cooperative ratepayers and owners are one and the same, the Cooperative is presumed to act in the best interest of its members." Nat'l Rural Elec. Coop. Ass'n, Comments in Response to the U.S. Dep't of Energy Request for Information Addressing Policy and Logistical Challenges to Smart Grid Implementation 75 FR 57006 (Nov. 1, 2010), https://www.energy.gov/oe/articles/comments-national-rural-electric-cooperative-association-request-information-addressing [https://perma.cc/XC2X-28Q6].

At the federal level, since the Rural Electrification Act was passed in 1936, there have been three primary agencies with responsibilities relevant to the governance of cooperatives: the Internal Revenue Service ("IRS"),[45] the REA (now known as the Rural Utility Service),[46] and the Federal Energy Regulatory Commission ("FERC").[47] Agency policies and court decisions together demonstrate how cooperatives are meant to self-regulate through democracy.

The IRS requires cooperatives generally to self-regulate to be tax-exempt. Rural electric cooperatives are tax-exempt as 501(c)(12) entities by the IRS's Internal Revenue Code ("IRC").[48] The IRC defines 501(c)(12) entities as "benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, electric companies, or like organizations."[49] Rural Electric Cooperatives are considered "like organizations" under this definition.[50] The IRS imposes three requirements on such organizations to remain exempt from federal taxes. They must (1) be "organized and operated" under cooperative principles, (2) adhere to the intended purpose of activities exempted by the code, and (3) derive at least 85% of their income from their members.[51] *Puget Sound Plywood, Inc. v. Commissioner*[52] is considered the seminal opinion controlling laws of cooperatives. The opinion holds "democratic control by the worker-members themselves" to be a fundamental principle of cooperatives.[53] In simple terms, the IRS considers democratic participation to be a core tenet of the entities

45. *Id.* But for a summary of other agencies with some relevant responsibilities, see Lily Faulconer, Madeline Labovitz & Ethan Blumenthal, *North Carolina's Electric Cooperatives*, UNC CTR. FOR CLIMATE, ENERGY, ENV'T & ECON. 1, 2 (2019), https://law.unc.edu/wp-content/uploads/2019/09/ncelectriccoops.pdf [https://perma.cc/S8SN-QDKV]. However, these roles are much smaller.

46. See Section I.A, *supra*, for a history of this agency. It is now an agency within the Department of Agriculture. Pacyniak, *supra* note 30, at 412.

47. FERC is an independent agency that replaced the Federal Power Commission. Pacyniak, *supra* note 30, at 423 n.68.

48. *Current Technical Issues: Electric Cooperatives and Cooperative Telephone Companies Described in IRC 501(c)(12)*, *in* EXEMPT ORGS. CONTINUING PRO. EDUC. TECH. INSTRUCTION PROGRAM FOR FISCAL YEAR 1980 (1979) [hereinafter *Current Technical Issues*], https://www.irs.gov/pub/irs-tege/eotopici8O.pdf [https://perma.cc/8LU3-DZ8T] ("Although electric cooperatives are not specifically mentioned in IRC 501(c)(12), it was held in Rev. Rul. 67-265, 1967-1 C.B. 205, that a cooperative organization furnishing heat and light to its members is a "like organization" within the meaning of the statute."). However, not all cooperatives are tax-exempt. *Six Myths About Cooperatives Debunked*, U.S. DEP'T AGRIC.: BLOG (Oct. 17, 2022, at 09:42 ET), https://www.usda.gov/about-usda/news/blog/2022/10/17/six-myths-about-cooperatives-debunked [https://perma.cc/FS5D-5C6H (staff-uploaded archive)].

49. *Current Technical Issues*, *supra* note 48, at 44.

50. *Id.*

51. Michael Seto & Cheryl Chasin, *General Survey of I.R.C. 501(c)(12) Cooperatives and Examination of Current Issues*, *in* EXEMPT ORG. 2002 CONTINUING PRO. EDUC. TECH. INSTRUCTION PROGRAM 175, 177 (2002), https://www.irs.gov/pub/irs-tege/eotopice02.pdf [https://perma.cc/6ZKD-A6UF] (describing the three requirements for exemption under I.R.C. 501(c)(12)).

52. 44 T.C. 305 (1965).

53. *Id.* at 306.

organized as cooperatives for tax purposes. Therefore, it logically follows that until the agency withdraws that tax-exempt status, the IRS presumes rural electric cooperatives are indeed democratic.

The Rural Utility Service takes a similar tack. Soon after its founding, the REA adopted the position that cooperatives are self-regulating and "advocated for minimal state regulation" of them.[54] The REA drafted model state legislation, which established the authority to create cooperatives and exempt them from regulation by state utility commissions. These model acts also reflected the same commitment to "safeguard[ing] the democratic principle" initially espoused by Roosevelt.[55] For example, they called for governance by an elected board of trustees and allowed members to "call special meetings and to initiate changes by petition."[56] The REA's guidelines for cooperatives also included seven principles: (1) open membership, (2) democratic control, or one member one vote, (3) invested capital gets no profits (4) return of profits to the members, (5) political, religious, and racial neutrality, (6) cash trading, no credit business, and (7) education in cooperation.[57] These populist intentions justified the Roosevelt administration's call for cooperatives to remain exempt from state regulation.[58]

In recent decades, the REA / Rural Utility Service has retreated from even regulatory powers it once exerted. Before the 1990s, the REA / Rural Utility Service constrained the rates G&Ts could charge distribution cooperatives in their wholesale contracts.[59] It also demanded certain requirements of cooperative boards, including when they consulted their general managers and engineers.[60] In 1995, however, the Rural Utility Service limited many of these "operational controls."[61] Courts have also limited the Rural Utility Service's power. For example, in *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*,[62] the U.S. Supreme Court held that the Rural Electrification Act's grant of regulatory authority to the Rural Utility Service did not preempt state regulation of cooperatives.[63] Thus, this agency cannot further regulate cooperatives, leaving them to self-regulate if states do not step in.

54. Pacyniak, *supra* note 30, at 436.

55. *See* RURAL ELECTRIFICATION ADMINISTRATION, A DRAFT OF A RURAL ELECTRIC COOPERATIVE ACT 4 (1939).

56. *Id.*

57. RURAL ELECTRIFICATION ADMIN., A GUIDE FOR MEMBERS OF REA COOPERATIVES 19 (1939), https://books.googleusercontent.com/books/content [https://perma.cc/47BL-5A3T (staff-uploaded archive)].

58. *See id.* at 19, 22–23.

59. Pacyniak, *supra* note 30, at 439.

60. *Id.*

61. *Id.* at 440.

62. 461 U.S. 375 (1983).

63. *Id.* at 385.

The Court has similarly limited FERC's oversight authority of cooperatives.[64] Also in *Arkansas Electric Cooperative Corp.*, the Court found that the Federal Power Act,[65] which established the Federal Power Commission ("FPC") (now known as FERC), did not authorize the agency to regulate cooperatives in the way that it does other utilities.[66] And the agency itself agreed that their authority did not extend to cooperatives.[67] In other words, neither the agency itself nor the Supreme Court believed the agency to have oversight authority over cooperatives.

Although the Supreme Court rejected the notion that cooperatives are *inherently* self-regulating by leaving open how and when *states* may regulate them, most states still view cooperatives as self-regulating.[68] For example, when it comes to rates, most state public utility commissions either have no jurisdiction over cooperative rates or make it optional for cooperatives to opt into regulation. In just a handful of states, the public utility commission has *some* power when rates reach egregiously high levels or cooperatives exceed a certain size.[69] As of 2020, only seven states could fully regulate how cooperatives must serve their member-owners.[70]

And few states impose clean energy standards on cooperatives, despite most of these states imposing some on IOUs.[71] In North Carolina, for example, a 2007 bill set lower renewable energy standards for cooperatives than it did for IOUs like Duke Energy. It even allowed them to meet those standards by purchasing credits rather than making actual investments.[72] And a 2017 bill exempted cooperatives from a program for the "competitive procurement of

64. *Id.* at 384; Pacyniak, *supra* note 30, at 439.

65. Federal Power Act, ch. 687, § 202, 74 Stat. 848, 848–49 (1935) (codified as amended at 16 U.S.C. § 824). The Federal Water Power Act, which later became the Federal Power Act, established the Federal Power Commission, now known as FERC. Federal Water Power Act, ch. 285, 41 Stat. 1063 (1920) (codified as amended at 16 U.S.C. §§ 791a–828c) (establishing the Federal Power Commission); Department of Energy Organization Act, Pub. L. No. 95-91, §§ 401–402, 91 Stat. 565, 582–83 (1977) (codified as amended at 42 U.S.C. §§ 7171–7172) (renaming FPC as FERC).

66. *Ark. Elec. Coop. Corp.*, 461 U.S. at 384. As such, although the FPA authorizes FERC to regulate rates, charges, and contracts of private utilities, it does not do the same for cooperatives. Klass & Chan, *supra* note 7, at 18.

67. Klass & Chan, *supra* note 7, at 18 (citing as examples Salt River Project Agric. Improvement & Power Dist. v. Fed. Power Comm'n, 391 F.2d 470, 474 (D.C. Cir. 1968); City of Paris v. Fed. Power Comm'n, 399 F.2d 983, 986 (D.C. Cir. 1968); *In re* Dairyland Power Coop., 37 F.P.C. 12, 15 (1967)).

68. Klass & Chan, *supra* note 7, at 19 (citing *Ark. Elec. Coop. Corp.*, 461 U.S. at 394).

69. *Id.* at 20–21.

70. Arizona, Hawaii, Kentucky, Louisiana, Maine, Maryland, and Vermont. *Id.* at 20.

71. *See id.* at 22.

72. Benjamin Brown, The Inflation Reduction Act's Provisions for North Carolina's Electric Cooperatives 2–3 (Mar. 12, 2023) (unpublished manuscript), https://law.unc.edu/wp-content/uploads/2023/05/Brown_ForPublication.pdf [https://perma.cc/FP34-WSSD] (citing Act of Aug. 2, 2007, ch. 62, § 2.(a), 2007 N.C. Sess. Laws 397 (codified as amended at N.C. GEN. STAT. § 62-133.7)).

energy and capacity from renewable energy facilities."[73] In sum, the federal government's power to regulate cooperatives has been limited by case law and administrative decisions, and few states have sought to fill that regulatory role because cooperatives are supposed to self-regulate.

C. *Cooperatives Were Reinvigorated by the Inflation Reduction Act*

The IRA was a catalyst for reviving cooperatives as instruments of progress in their rural communities. The crowning piece of President Biden's legacy, the IRA was a spending bill primarily focused on climate change.[74] Among its many provisions, the bill included a multi-billion-dollar investment in cooperatives.[75] Cooperatives were a medium to invest in rural areas and help them reap the benefits associated with clean energy: lower costs and a cleaner environment. Cooperative principles, especially democratic control and return of gains to consumers,[76] made them the ideal vehicle for this endeavor. Because cooperatives rely disproportionately on coal for electricity,[77] they were also a way to make progress in the clean energy transition.

The IRA recognized that cooperatives have struggled to raise enough equity for the up-front expenses associated with investing in the transition to renewable energy.[78] The IRA gave tax credits and grants to overcome these barriers by providing funds to cover some up-front costs.[79] The IRA also underscored what scholars had been saying for years: "[R]etiring [coal] plants and replacing them with cleaner energy sources would reduce the nation's

73. *Id.* at 3 (quoting Act of June 30, 2017, ch. 62, § 2.(a), 2017 Sess. Laws 192 (codified as amended at N.C. GEN. STAT. § 62-110.8)).

74. Rather than afford more substantive protection to certain environmental areas, the IRA authorized $369 billion in federal spending on clean energy initiatives targeted at reducing carbon emissions by roughly 40% by 2030. SENATE DEMOCRATS, SUMMARY: THE INFLATION REDUCTION ACT OF 2022 (2022), https://www.democrats.senate.gov/imo/media/doc/inflation_reduction_act_one_page_summary.pdf [https://perma.cc/2PJD-9LJN].

75. Inflation Reduction Act of 2022, Pub. L. No. 117–169, § 22004, 136 Stat. 1818, 2020–21 (codified as amended at 7 U.S.C. § 8103). A final-hour compromise between factions in the Democratic Party, it was regarded as the most transformative climate bill ever passed by the U.S. Congress. *See* Jim Tankersley, *Biden Signs Expansive Health, Climate and Tax Law*, N.Y. TIMES (Aug. 16, 2022), https://www.nytimes.com/2022/08/16/business/biden-climate-tax-inflation-reduction.html [https://perma.cc/YG7C-W6VJ (staff-uploaded, dark archive)].

76. RURAL ELECTRIFICATION ADMIN., *supra* note 57, at 22–25.

77. *See infra* Section II.C.

78. *See* EVERGREEN COLLABORATIVE, NEXT-GENERATION RURAL ELECTRIFICATION: HOW RURAL ELECTRIC CO-OPS CAN REPOWER AMERICA WITH THE INFLATION REDUCTION ACT 15–16 (2023) [hereinafter EVERGREEN COLLABORATIVE], https://www.evergreenaction.com/policy-hub/How-Rural-Electric-Co-ops-Can-Repower-America-with-the-Inflation-Reduction-Act-August-2023.pdf [https://perma.cc/V4SJ-9BV2].

79. *Id.* at 2.

contribution to global climate change and help ensure that rural America is not left with billions of dollars of stranded assets."[80]

The IRA made possible several major funding opportunities for cooperatives, including a direct-pay option for renewable energy tax credits and major grant funding.[81] First, the bill allowed cooperatives to access clean energy tax credits that were previously only available to IOUs and other corporations. As nonprofit entities that do not pay federal income tax, cooperatives were ineligible to receive income tax credits until the IRA.[82] For IOUs and other corporations, Congress first created the Production Tax Credits ("PTC") and Investment Tax Credits ("ITC") for home and business owners in 1978[83] to "reduce U.S. consumption of oil and natural gas by encouraging the commercialization of a broader range of energy technologies and resources."[84] Today, the PTC provides a tax credit for every kilowatt-hour ("kWh") of electricity produced at a qualified facility during its first ten years of operation, primarily applying to wind energy.[85] The ITC is a "lump sum tax credit" that either a homeowner or a large-scale solar producer can claim when their solar array[86] becomes operational.[87] The IRA extended these two credits, creating a new direct-pay option for tax-exempt entities—including cooperatives—to access $30 billion of each type of credit.[88] Now, cooperatives can "receive a direct payment from the IRS equal to the full value of tax credits."[89] These

80. Klass & Chan, *supra* note 7, at 5. Climate-related stranded assets are "any assets that suffer unanticipated or premature write-downs, devaluations, or conversions to liabilities," which would include debt a cooperative owes for the building of a coal plant that becomes too expensive or that the government will no longer allow to run. *See Considerations for Climate Stranded Assets*, KMPG (2022), https://kpmg.com/us/en/articles/2022/considerations-for-climate-stranded-assets.html [https://perma.cc/S7GN-9M5W].

81. *See* EVERGREEN COLLABORATIVE, *supra* note 78, at 2–3.

82. *See Current Technical Issues*, *supra* note 48, at 2; IRS, RURAL ELECTRIC COOPERATIVES 1 (2024), https://www.irs.gov/pub/irs-pdf/p5817a.pdf [https://perma.cc/G7WE-MRVX].

83. Energy Tax Act of 1978, Pub. L. No. 95-618, 92 Stat. 3174 (codified as amended in scattered sections of 26 and 42 U.S.C.).

84. CONGRESSIONAL RSCH. SERV., THE ENERGY CREDIT OR ENERGY INVESTMENT TAX CREDIT (ITC) 1 (2021), https://crsreports.congress.gov/product/pdf/IF/IF10479 [https://perma.cc/9K4S-B5BH (staff-uploaded archive)].

85. *See* CONGRESSIONAL RSCH. SERV., PROPOSED TAX PREFERENCE FOR DOMESTIC CONTENT IN ENERGY INFRASTRUCTURE 2 (2022), https://crsreports.congress.gov/product/pdf/IN/IN11983 [https://perma.cc/DMU5-QKAZ (staff-uploaded archive)].

86. A collection of solar panels is called a solar array. Kerry Thoubboron, *Solar Arrays: What Are They & Why Do You Need Them?*, ENERGYSAGE (Jan. 3, 2023), https://www.energysage.com/solar/installing-a-solar-array-everything-you-need-to-know [https://perma.cc/8TWK-5F4P].

87. Miguel Yañez-Barnuevo, *Clean Energy Tax Credits Get a Boost in New Climate Law*, ENV'T & ENERGY STUDY INST. (Sep. 9, 2022), https://www.eesi.org/articles/view/clean-energy-tax-credits-get-a-boost-in-new-climate-law [https://perma.cc/BX3Y-SDY4].

88. Inflation Reduction Act of 2022, Pub. L. No. 117–169, §§ 13101–13102, 136 Stat. 1818, 1906–21 (codified as amended at 26 U.S.C. §§ 45, 48, 50); Yañez-Barnuevo, *supra* note 87.

89. EVERGREEN COLLABORATIVE, *supra* note 78, at 15.

credits reduced the total cost of wind, solar, and battery storage for cooperatives by at least 30%.[90]

The IRA also instituted several "bonus" credit possibilities for cooperatives if they met certain criteria.[91] For example, the bill incentivized domestic production with credits for projects using U.S. steel and other components.[92] Additionally, because so many cooperatives serve communities with extreme poverty, hazardous brownfield sites,[93] and strong historical economic ties to extractive industries, projects built in an "energy community" would be entitled to bonus credit.[94] Cooperatives could also receive additional credit if their projects were built in low-income communities or on Tribal land.[95] These credits for cooperatives helped the IRA's dual purpose of investing in rural America and ushering along the clean energy transition.[96]

The second part of the IRA's strategy for cooperatives was a variety of grants. The biggest grants were administered through the United States Department of Agriculture ("USDA"): the Empowering Rural America ("New ERA") program, which provided $9.7 billion in grants and loans for renewable energy, followed by the Powering Affordable Clean Energy program, which offered an additional $1 billion in "partially forgivable loans."[97] Under the New ERA program, cooperatives could use both the grant and loan elements of the program, with the additional requirement that grants be matched 3:1 with other financing (including direct-pay tax credits and other low-cost loans) and that no one utility could receive more than 10% of the total pool ($970 million).[98]

90. SIERRA CLUB, RURAL COOPERATIVE UTILITIES AND THE INFLATION REDUCTION ACT 1 (2022) [hereinafter SIERRA CLUB], https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/Rural-Cooperatives-IRA%20-%20Fact%20sheet.pdf [https://perma.cc/97RR-GYG8].

91. EVERGREEN COLLABORATIVE, *supra* note 78, at 16.

92. *Id.* at 17.

93. The North Carolina Department of Environmental Quality defines a brownfield site as "an abandoned, idled or underused property where the threat of environmental contamination has hindered its redevelopment." *Brownfields Redevelopment Section*, N.C. DEP'T OF ENV'T QUALITY, https://www.deq.nc.gov/about/divisions/waste-management/brownfields-redevelopment-section [https://perma.cc/X83A-XEAK].

94. EVERGREEN COLLABORATIVE, *supra* note 78, at 17; Inflation Reduction Act of 2022, Pub. L. No. 117–169, § 13101, 136 Stat. 1818, 1906–13 (codified as amended at 26 U.S.C. § 45).

95. EVERGREEN COLLABORATIVE, *supra* note 78, at 14.

96. *See FACT SHEET: How the Inflation Reduction Act Helps Rural Communities*, AM. PRESIDENCY PROJECT (Aug. 17, 2022), https://www.presidency.ucsb.edu/documents/fact-sheet-how-the-inflation-reduction-act-helps-rural-communities [https://perma.cc/F5PC-2M8C] (discussing how the IRA "expands rural opportunities" by investing in rural electric cooperatives); *see also* Ben Thomas, *4 Big Ways the Inflation Reduction Act Invests in Rural America*, ENV'T DEF. FUND (Dec. 22, 2022), https://www.edf.org/4-big-ways-inflation-reduction-act-invests-rural-america [https://perma.cc/AKW9-QBDU].

97. EVERGREEN COLLABORATIVE, *supra* note 78, at 2; *see also PACE Project Announcements*, U.S. DEP'T OF AGRIC., RURAL DEV., https://www.rd.usda.gov/new-energy-deployment/pace-project-announcements [https://perma.cc/GFN5-JJF2].

98. SIERRA CLUB, *supra* note 90.

Other funding opportunities included loans and grants from the U.S. Department of Energy and Environmental Protection Agency.[99] Cooperatives have been able to strategically "stack" these opportunities to "carry forward the ambitious legacy of past electrification efforts."[100] In December 2024, the USDA announced that there had been $4.37 billion in investments in cooperatives through the New ERA program, in addition to the nearly $12 billion awarded earlier in 2024.[101]

Months into the Trump administration, the IRA's impact on cooperatives has not been reversed. First, although the administration did somewhat limit the tax credit scheme,[102] it has not eliminated it entirely.[103] Instead, the One Big Beautiful Bill Act[104] moved the deadline earlier for wind and solar projects to begin construction in order to qualify.[105] These projects still qualify for the full value of the current incentives as long as they are already under construction, start construction within a year of the bill's signing, or will be serviceable by 2027 if they begin construction after the twelve-month window.[106] There continues to be debate about how the Department of the Treasury should define

99. EVERGREEN COLLABORATIVE, *supra* note 78, at 16–18.

100. *Id.* at 2. The Sierra Club demonstrated what this stacking could look like: if a cooperative proposes a billion-dollar project looking to retire an existing coal plant, build replacement solar and storage facilities, and upgrade transmission lines, the ERA program could cover $250 million of the project's costs through grants. It could then provide low-cost refinancing for remaining debt on the existing coal plant. SIERRA CLUB, *supra* note 90, at 3. And, if this project is to be located near the retired coal facility, the solar and storage may qualify for a 50% direct-pay tax credit (the 30% base plus the energy community bonus). *Id.* With another quarter of the cooperative's capital costs paid by USDA's grants, 75% of the project total cost could be covered by IRA-enabled credits and grants. *Id.*

101. Press Release, U.S. Dep't Agric., USDA Announces Another Round of Historic Investments to Increase Access to Clean, Affordable Energy Across the Country (Dec. 19, 2024), https://www.usda.gov/about-usda/news/press-releases/2024/12/19/usda-announces-another-round-historic-investments-increase-access-clean-affordable-energy-across [https://perma.cc/9VP8-MSEP (staff-uploaded archive)].

102. *See* SOLAR ENERGY INDUS. ASS'N, EXPLAINED: CLEAN ENERGY PROVISIONS IN THE "ONE BIG BEAUTIFUL BILL" (2025), https://seia.org/wp-content/uploads/2025/07/OBBB-fact-sheet_july-2025.pdf [https://perma.cc/3Y62-89KC].

103. Molly Christian, *NRECA: Treasury Should Keep Start-of-Construction Rules for Energy Credits*, NAT'L RURAL ELEC. COOP. ASS'N (July 22, 2025), https://www.electric.coop/nreca-treasury-should-keep-start-of-construction-rules-for-energy-credits [https://perma.cc/N49Z-3V4X]. Even if the administration wants to revisit the issue, it has become difficult to do so with a Congress focused on other issues. *See, e.g.*, Kevin Freking, *Government Shutdown Talk Is Starting Early Ahead of a Difficult Funding Fight in Congress This Fall*, AP NEWS (July 29, 2025, at 08:00 ET), https://apnews.com/article/congress-spending-trump-government-shutdown-democrats-republicans-a282c46016d64c5f4ffb8c3c99c9077e [https://perma.cc/XZ8T-PRFN (staff-uploaded archive)] (explaining that after prioritizing the passage of the One Big Beautiful Bill Act, Congress's focus for the rest of the term turned to avoiding government shutdowns).

104. One Big Beautiful Bill Act, Pub. L. No. 119–21, 139 Stat. 72 (2025) (codified as amended in scattered sections of U.S.C.).

105. Christian, *supra* note 103.

106. Additionally, "[t]he new law maintains credits past 2030 for nuclear energy, carbon capture, batteries and hydropower." *Id.*

"already under construction." Currently its definition is: construction has begun if "significant physical work on the project has started or the developer meets a 'safe harbor' test where it has paid or incurred at least 5% of the total project cost."[107] President Trump issued an executive order on July 7, 2025 directing the Treasury to "restrict[] the use of broad safe harbors [for wind and solar facilities] unless a substantial portion of a subject facility has been built," and it gave the agency forty-five days to issue guidance.[108] The NRECA has urged the Treasury not to make further changes.[109]

Second, even though the freezes on federal funding did put some cooperatives "in limbo,"[110] in its final days, the Biden administration tried to get much of the earmarked funds paid out to reduce the chances of them being redirected under the Trump administration.[111] The USDA does appear to have released some funds to cooperatives,[112] but clawing back as much of the IRA funding has remained a priority of this administration.[113] In any case, even doing so successfully or more dramatically changing tax policy will not entirely dampen the catalyst effect of the IRA in bolstering the awareness and import of cooperatives.

Indeed, with so much funding on the line, it is important that the self-regulating model of cooperatives functions as designed. Misspent funds or delayed projects could deprive rural Americans of the benefits of these investments as well as jeopardize the progress towards clean energy that cooperatives must make for the United States to continue its transition.

II. THE DEMOCRATIC DESIGN IS FAILING

In practice, cooperatives have ceased to be truly self-regulating because their boards shield themselves from democratic accountability. As a result, these cooperatives are failing to fulfill their purpose to uplift rural Americans and are

107. *Id.*

108. Exec. Order No. 14,315, 90 Fed. Reg. 30821 (July 10, 2025), https://www.whitehouse.gov/presidential-actions/2025/07/ending-market-distorting-subsidies-for-unreliable-foreign-controlled-energy-sources/ [https://perma.cc/5YXY-6HGJ].

109. Christian, *supra* note 103.

110. *See* Adam Aton & E&E News, *Trump Spending Freeze on Rural Electric Co-ops Could Raise Energy Costs*, SCI. AM. (Feb. 11, 2025), https://www.scientificamerican.com/article/trump-spending-freeze-on-rural-electric-co-ops-could-raise-energy-costs/ [https://perma.cc/EWX2-9MM7].

111. Debra K. Rubin, *Rural Power Co-ops Gain $4.37B in Late-Stage US Clean Energy Project Funding*, ENG'G NEWS-REC. (Dec. 27, 2024), https://www.enr.com/articles/60111-rural-power-co-ops-gain-437b-in-late-stage-us-clean-energy-project-funding [https://perma.cc/2LM8-PZ45].

112. *See, e.g.*, Mark Jaffe, *Trump Administration Releases $3.2B in Federal Funds for Colorado's Electric Co-ops. There May Be a Catch*, COLO. SUN (Apr. 3, 2025, at 14:43 MT), https://coloradosun.com/2025/04/02/electric-coop-clean-energy-grants-new-era-colorado/ [https://perma.cc/9AR5-3NA2].

113. Brian Dabbs, *DOE to Pull Back $13B from Clean Energy Projects*, POLITICO E&E NEWS (Sep. 24, 2025, at 13:34 ET), https://www.eenews.net/articles/doe-to-pull-back-13b-from-clean-energy-projects/ [https://perma.cc/WP2M-3SGT].

unrepresentative of the communities they serve. This Part argues that these boards employ four anti-democratic practices to limit their accountability to their constituents: relying on a one-meter-one-vote distribution, using proxy voting, obstructing members' candidacies, and suppressing votes.[114] Together, these practices insulate cooperatives from market and political forces that incentivize clean energy. Overcoming these practices is necessary for cooperatives to self-regulate for the benefit of the people they serve.

A. *Who Regulates the Self-Regulators?*

Cooperatives should be regulated by their own voters. Cooperatives typically host an annual meeting where members vote for the board of directors.[115] A vote for a cooperative board director should theoretically enable member-owners to make direct demands of their board that residents served by IOUs would only be able to make more indirectly. For example, in North Carolina, residents dissatisfied with Duke Energy's service or rates may first contact the utility directly. If the issue is not resolved, they can seek assistance from the Public Staff Consumer Services Division, an independent agency under the North Carolina Utilities Commission which advocates for consumers.[116] And if that also fails, residents may file a formal complaint with the North Carolina Utilities Commission.[117] But the commission itself is not democratically elected (as it is in some states[118]). Frustrated residents may have to resort to petitioning the Governor or General Assembly to demand the Utilities Commission exert pressure on Duke Energy.[119] Because governors and legislators are elected for a variety of reasons, they may not feel strong electoral

114. While a definitive survey of bylaws of cooperatives across the country is beyond the scope of this Comment, this author settled on these four categories based on a review of existing scholarship and a series of anecdotal discussions about individual cooperatives, both of which revealed existing anti-democratic patterns. Furthermore, as history demonstrates in state-run elections, elected officials have tried myriad ways to shield themselves from their constituents. *See, e.g.*, Farrell Evans, *How Jim Crow-Era Laws Suppressed the African American Vote for Generations*, HISTORY, https://www.history.com/news/jim-crow-laws-black-vote [https://perma.cc/Q4VP-27GD] (last updated May 28, 2025). Accordingly, this Comment does not claim that cooperative board members could not try other methods to stay in power.

115. Jeter et al., *supra* note 34, at 388.

116. *North Carolina Utilities Commission—Public Staff*, N.C. UTILS. COMM'N, https://www.ncuc.gov/consumer/publicstaff.html [https://perma.cc/M22N-KX6V].

117. *See* Aaron Sánchez-Guerra, *Did You Lose Power in Durham Last Week? How To File Complaints with State & Duke Energy*, NEWS & OBSERVER (Jan. 22, 2024, at 21:10 ET), https://www.newsobserver.com/news/local/counties/durham-county/article284537300.html [https://perma.cc/3FCA-X7PS].

118. *Public Service Commissioner (State Executive Office)*, BALLOTPEDIA, https://ballotpedia.org/Public_Service_Commissioner_(state_executive_office) [https://perma.cc/KYU9-845R].

119. *See* N.C. GEN. STAT. § 62-10(a) (2024).

pressure to deal specifically with utility issues. But at least there are elected officials to exercise regulatory authority over Duke Energy.[120]

In theory, cooperative boards of directors should be more responsive to electoral demands: they are elected *only* to deal with utility issues.[121] But cooperative board elections have such low turnout that boards are insulated from electoral pressure.[122] Low voter turnout in cooperative board elections has long "translate[d] to weak accountability for cooperative boards of directors."[123] A 2016 study showed that more than 70% of cooperative elections consistently had turnouts of less than 10%.[124] In comparison, on average, even off-year municipal elections often have voter turnout of at least 20%.[125] As such, with so few people voting in these elections, directors have little incentive to enact policies that the members would like and that would get the directors re-elected.

Incumbent directors benefit from low voter turnout for several reasons. First, incumbents often benefit from their high name recognition among the few who consistently turn out.[126] Second, preventing a meeting from ever reaching a quorum could prevent an election, resulting in a default win for the incumbent.[127] Typically, incumbent directors will continue in their position on a board if the cooperative fails to hold an election in a given year.[128] Third, if they keep a quorum requirement low enough, hand-picked members attending the meeting could sway the whole thing in a desirable direction for the

120. *See id.*; *see also* Justin Worland, *The Backlash to High Electric Bills Could Transform U.S. Politics*, TIME (Aug. 27, 2025), https://time.com/7311613/ai-electricity-bills-georgia-politics [https://perma.cc/RE9W-E636] (explaining how backlash to rising electricity prices—driven in part by "costly coal-fired power plants"—is motivating higher turnout in utility commission elections).

121. *See generally* Klass & Chan, *supra* note 7 (explaining that rural electric cooperatives are governed by member-elected boards whose authority is limited to managing the cooperative's utility operations).

122. RURAL POWER PROJECT, *supra* note 40, at 26.

123. Pacyniak, *supra* note 30, at 446.

124. JOHN FARRELL, MATT GRIMLEY & NICK STUMO-LANGER, REPORT: RE-MEMBER-ING THE ELECTRIC COOPERATIVE, INST. FOR LOC. SELF-RELIANCE 7 (2016), https://ilsr.org/articles/report-remembering-the-electric-cooperative [https://perma.cc/7X8H-FQVA (staff-uploaded archive)].

125. RURAL POWER PROJECT, *supra* note 40, at 26.

126. *See* Brandon Smith, *Why Do Incumbents Have Such a Big Advantage in Elections?*, WFYI (Dec. 28, 2023), https://www.wfyi.org/news/articles/why-do-incumbents-have-such-a-big-advantage-in-elections [https://perma.cc/8JLQ-AYQQ].

127. *See* Jeter et al., *supra* note 34, at 397.

128. *See id.* at 431–32 (citing as an example *Bylaws § 4.04*, HOLSTON ELEC. COOP., https://www.holstonelectric.com/sites/default/files/documents/ByLaws%2010.12.23%20FULL%20VERSION.pdf [https://perma.cc/832E-SNRK] ("Failure of an election for a given year shall allow the incumbents whose directorship would have been voted on to hold over only until the next member meeting at which a quorum is present and they or their successors shall be elected, whichever be the case.")).

incumbents.[129] When a quorum is low, directors easily win a vote just by recruiting a few allies to attend. For elected officials to be accountable to their constituents, they must fear repercussions for their actions once elected.[130] If they never lose elections, they have nothing to fear.

One sign that directors are not facing democratic elections is the contrast between the demographics of these cooperative boards and the communities they represent. For example, in the South, "economically powerful whites" historically dominated the boards of cooperatives in Black-majority areas through "intimidation, misinformation, and blatant manipulation of electoral procedures."[131] These practices carried on a legacy from the Jim Crow era, when Southern governments created barriers to voter registration and voting for Black Americans.[132] Even as the 1960s Civil Rights Movement brought about more representative local governments, cooperatives remained largely unchanged.[133]

The picture today has hardly improved. A 2021 study examined the 313 electric cooperatives in twelve Southern states and found that 87% of directors on cooperative boards in the South were men and 93.1% of directors were white.[134] Only 6.3% were Black and 0.5% were Hispanic.[135] These numbers are

129. Cooper, *supra* note 37, at 362 ("Conversely, the number of co-op employees may be enough to pick all the directors during an annual meeting that is poorly attended by members who are not employees. Such rules serve to entrench co-op directors, management, and employees." (footnote omitted)).

130. *See id.* at 339.

131. Henry Leifermann & Pat Wehner, *A Question of Power: Race and Democracy in Rural Electric Co-ops*, 18 S. CHANGES 3, 3 (1996), https://southernchanges.digitalscholarship.emory.edu/sc18-3-4_001/sc18-3-4_002 [https://perma.cc/BRX7-CBUJ].

132. *See African American Voting Rights*, LIBR. OF CONG., https://www.loc.gov/classroom-materials/elections/voters/african-americans/ [https://perma.cc/D9A3-BB6L].

133. Kate Aronoff, *Bringing Power to the People: The Unlikely Case for Utility Populism*, DISSENT MAG. (2017), https://www.dissentmagazine.org/article/the-unlikely-case-for-utility-populism-rural-electric-cooperative [https://perma.cc/X2HC-XG33].

134. *Electric Cooperative Board Diversity Is a Failure in the South*, ACORN INT'L, https://acorninternational.org/index.php/our-work/research/electric-cooperative-board-diversity-failure [https://perma.cc/4RBH-LX76]. This study included the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. *Id.*

135. *Id.*

particularly stark given the demographics of their electorates.[136] In 2021, the overall population of these states was 56% white and 20% Black.[137]

Low turnout is not just an apathetic, tacit endorsement of the status quo. Many boards have intentionally structured their election practices to prevent competition and keep turnout low.[138] The next section argues that these "old boys networks of board members"[139] insulate themselves from their constituents—the member-owners—resulting in "separation of ownership and control."[140] Without any of the "traditional corporate law checks" that private utilities might face, such as pressure from shareholders and regulation from the state, cooperative boards become accountable only to their own self-interests.[141] And their interests often stand in stark opposition to delivering cheaper and cleaner energy.[142]

B. Cooperatives Are Undemocratic in Four Ways

1. One Meter, One Vote

Many cooperative boards are elected on a *one meter, one vote* basis.[143] The number of votes is determined by the number of utility meters, not the number of people in a home. So when four people in a duplex share one meter, for example, they still only have one vote between them.[144] As a result, families or communities sharing a meter have watered-down voting power compared to

136. Across the South, the demographics of cooperative boards are enormously at odds with their members. A few examples are as follows, though these numbers are based only on cooperatives that actually release photographs or demographic information. (1) Black Warrior and Pioneer cooperatives in Alabama serve populations that are about 40% Black, but only three out of the eighteen directors across the two boards are Black. *Id.* (2) Every single director serving Arkansas's seventeen cooperatives is white, despite the state's population being 15% Black. *Id.* (3) In Florida, Suwannee Valley Electric Cooperative serves an area with a Black population of approximately 20%, but its board is entirely white. *Id.* (4) Only 5.6% of directors in Georgia are Black, despite the population of Georgia being 32.6% Black. *Id.* (5) Just 3% of directors in Louisiana are Black, despite the state having a population that is 32.8% Black. *Id.* (6) In Mississippi, 7.9% of directors are Black, while the state is 37.8% Black. *Id.* One positive note is not only is the racial discrepancy of directors to population lower in North Carolina (North Carolina is 22% Black, and 15% of directors are Black), but it is also home to one of only three cooperatives with a majority Black board: Roanoke Electric Cooperative. *Id.*

137. *Id.*

138. *See* Leifermann & Wehner, *supra* note 131, at 9, 11, 15.

139. Aronoff, *supra* note 133.

140. Jeter et al., *supra* note 34, at 397–98.

141. *Id.* at 368.

142. *See infra* Section II.C.

143. U.S. DEP'T OF ENERGY, APPENDIX: ELECTRICITY SYSTEM OVERVIEW A-34 (2017), https://www.energy.gov/sites/prod/files/2017/02/f34/Appendix--Electricity%20System%20Overview.pdf [https://perma.cc/WE6S-P2RK].

144. Even though some cooperatives may refer to their policy as each member having a vote, in practice a person cannot be a member without an account tied to one meter, making it the same practice. *See*, *e.g.*, *Bylaws, art. III*, *§ 5*, TRI-COUNTY ELEC. COOP., https://www.tricountycoop.com/bylaws [https://perma.cc/2TKY-7QVL] (last revised July 13, 2019); *see also* Cooper, *supra* note 40, at 361.

those served by IOUs, who have equal voting power in elections for utility commissions that regulate IOUs.[145] Furthermore, unlike rent or property ownership, where fixed costs divided among more people means a lower cost per person, more people sharing a meter would not lower per-person electricity use and therefore would not reduce costs. As such, people served by a cooperative may have strong interests in cooperative policy direction, even if they share a meter. This policy specifically disenfranchises both low-income people and people of color because those groups are disproportionately likely to live in multigenerational homes or in multi-family housing (like duplexes and apartments)[146] where they may share a meter with many other people.

Ironically, the *one meter, one vote* practice not only forces households to share a single vote but may also give some wealthy individuals or entities more votes. For example, Tri-County Electric Cooperative in Texas serves many large entities like horse farms and oil businesses with many meters,[147] and some of these large entities could share one owner. Member-owners have complained that even though the cooperative's bylaws specify that "[n]o member may hold more than one membership in the Cooperative,"[148] the cooperative uses number of meters to designate the number of votes, giving the large business owners considerably more voting power than everyone else.[149]

One meter, one vote polices do sometimes get praised in contrast with IOU operations,[150] but this praise is misplaced. While shareholders can accumulate more influence over IOUs by purchasing more shares,[151] the more appropriate comparison of voting power is between cooperatives and utility commissions or public power districts. These publicly elected entities oversee the IOUs and give people say in their regulation.[152] Simply put, electricity consumers with no

145. *See supra* notes 115–20 and accompanying text.

146. Significant scholarship explains how single-family zoning excludes Black Americans and low-income people. Richard D. Kahlenberg & Kimberly Quick, *Attacking the Black-White Opportunity Gap That Comes from Residential Segregation*, CENTURY FOUND. 7, 12 (June 25, 2019), https://production-tcf.imgix.net/app/uploads/2019/06/24132107/housingsegregation_PDF.pdf [https://perma.cc/QPH7-UKQX].

147. *About Us*, TRI-COUNTY ELEC. COOP., https://tcectexas.com/about-us [https://perma.cc/3BNF-G9AQ].

148. *Bylaws*, *supra* note 144, art. I, § 1.

149. John Farrell, *Why Aren't Rural Electric Cooperatives Champions of Local Clean Power?*, INST. FOR LOC. SELF-RELIANCE (Aug. 18, 2014), https://ilsr.org/articles/rural-electric-cooperatives-champions-local-clean-power [https://perma.cc/C32G-L85J (staff-uploaded archive)] ("Democratic control (one member, one vote). Not always. Some electric cooperatives award one vote per meter, and some customers (e.g. farmers, industry) have more than one meter.").

150. *See* Cooper, *supra* note 37, at 361. Although Cooper describes the practice as "one member, one vote," the practice he is referring to is simply *one meter*, *one vote* framed in a generous light. *See id.*

151. *Id.*

152. *See generally* AM. PUB. POWER ASS'N, PUBLIC POWER FOR YOUR COMMUNITY (2016), https://www.publicpower.org/system/files/documents/municipalization-public_power_for_your_community.pdf [https://perma.cc/8F9M-9KWX] (explaining public power and its application to communities).

shares in their IOU can still vote to regulate their IOU through their statewide utility commission.[153] All consumers of IOUs—shareholders or otherwise—are equal in a public ballot box. Consumers served by cooperatives have no way to influence regulation if the cooperative dilutes their vote through a *one meter, one vote* scheme.

2. Proxy Voting

Many cooperatives also use proxy voting to prevent choice and thwart attempts at change. Proxy voting is when members can delegate their voting power to other members to vote on their behalf. Under these policies, members cannot ensure their vote is for directors who support policies the member supports. Directors also have fewer members to keep happy and persuade to vote for them if the only people who show up to the meetings are voting on behalf of many other members. Yet like *one meter, one vote* policies, proxy voting has been applauded by some for its democratic value because it ostensibly makes voting easier for members who can assign their votes without coming to a meeting.[154] But little is achieved with proxy voting that could not also be achieved with simple mail-in ballots, which also allow members to vote without coming to meetings.[155] In fact, the original REA discouraged proxy voting in order to promote more participation by cooperative member-owners.[156]

Nevertheless, many cooperatives do rely on proxy voting, which can entrench incumbents.[157] Some even appoint a separate committee to vote on behalf of its members. For example, according to the bylaws of the Citizens Electric Corporation in Missouri, not only does the incumbent board of directors appoint an "Official Proxy Committee" to "cast any and all votes" for members who have made them their proxies, but the "proxies shall remain in full force and effect" until explicitly revoked.[158] Simply put, this board-appointed committee submits votes on behalf of any member who previously

153. *See supra* Section I.B.

154. In fact, one scholar described members in cooperatives without proxy voting as "disenfranchised." Jeter et al., *supra* note 34, at 366.

155. *See Voting Methods & Instructions*, PEDERNALES ELEC. COOP., https://mypec.com/voting-methods-instructions [https://perma.cc/HD8Q-9TVB] (listing numerous ways to participate in the Pedernales annual election).

156. Pacyniak, *supra* note 30, at 446.

157. Matt Grimley, *Just How Democratic Are Rural Electric Cooperatives?*, INST. FOR LOC. SELF-RELIANCE (Jan. 13, 2016), https://ilsr.org/articles/just-how-democratic-are-rural-electric-cooperatives [https://perma.cc/ATD9-MHGV (staff-uploaded archive)].

158. BY-LAWS OF CITIZENS ELECTRIC CORPORATION § 6(a) (May 18, 2023), https://www.cecmo.com/sites/default/files/By-Laws%205.18.2023%20(002)_0.pdf [https://perma.cc/HB9D-4XDE (staff-uploaded archive)].

used a proxy ballot and who did not return a ballot in a subsequent election.[159] This committee thus acts as a shield between the board and the voters.

Proxy voting was at the center of an infamous cooperative scandal, one that even broke into mainstream news. Pedernales Electric Cooperative in Texas was wracked with "tales of intimidation and mismanagement," including the theft of hundreds of thousands of dollars and several subsequent prison sentences.[160] Incumbents on that board had been there for as long as forty years because of proxy voting with the board of directors appointing its own nominating committee which voted on behalf of members.[161] In response to the scandal and pressure from the Texas State Legislature, one of Pedernales's first major reforms was to abolish proxy voting and reintroduce accountability.[162]

3. Candidate Obstruction

Additionally, many cooperatives obstruct member-owners from running to challenge the incumbents.[163] Organizers recruiting candidates warn of several strategies designed to make the process of running challenging to navigate. The lack of transparency about procedures for annual elections makes it difficult for member-owners to know the rules and avoid tripping on them.[164] The NRECA even commissioned a report to examine the challenges this lack of transparency poses to good governance, but it then kept the report secret until it was accidentally leaked.[165] For example, boards often obscure the deadlines for potential candidates and bury rules in their complicated bylaws.[166] Boards also often require impossibly large numbers of signatures for petitions be collected in severely limited periods of time.[167] Meanwhile, incumbents do not have to collect a single signature because they do not fill out petitions to run for

159. This example was highlighted by the Institute of Local Self-Reliance and Pacyniak, but the cooperative has made no changes since, and the bylaws remain the same. *Id.*

160. *It All Began with an Innocent Phone Call . . .*, PUBLIC CITIZEN (Apr. 5, 2011), https://www.citizen.org/news/it-all-began-with-an-innocent-phone-call/ [https://perma.cc/8TVE-Z8V6].

161. *See* RIC STERNBERG, *GreenDreams - Pedernales Electric Coop Revolution* (YouTube, Feb. 10, 2011), https://www.youtube.com/watch?v=KIJHRMCxbrM&ab_channel=RicSternberg [https://perma.cc/AXS3-833A].

162. Press Release, Tex. Senate, Electric Co-op Transparency Bill Passes Senate (Apr. 22, 2009), https://senate.texas.gov/news.php?id=20090422a [https://perma.cc/K6JU-6BPG].

163. *See, e.g.*, Jeter et al., *supra* note 34, at 428–31.

164. *See* Joe Smyth, *An "Electric Cooperative Governance Task Force Report" Urging Co-Op Transparency Was Kept Secret Until Now*, ENERGY & POL'Y INST. (Dec. 12, 2019), https://energyandpolicy.org/an-electric-cooperative-governance-task-force-report-urging-co-op-transparency-was-kept-secret-until-now [https://perma.cc/4T6G-5YS9]; RURAL POWER PROJECT, *supra* note 40, at 28.

165. Smyth, *supra* note 164.

166. RURAL POWER COALITION, *Rural Electric Cooperative Co-lab #6: Co-op Elections*, at 56:52–57:58 (YouTube, Apr. 9, 2025), https://www.youtube.com/watch?v=i5basfdI_-g [https://perma.cc/6KF8-LVQT].

167. Grimley, *supra* note 157; *see also* Jeter et al., *supra* note 34, at 430.

reelection.[168] And because signatures must come from members—not just residents served by cooperatives—these petitions exacerbate the effects of *one member, one vote* policies.[169] In 2009, one cooperative in Kentucky saw its first challenge to a sitting board member in the cooperative's entire seventy-one-year history.[170] As a result, many cooperatives have boards with directors who have served for decades.[171]

Several case studies exemplify the undemocratic practices that make it difficult for member-owners to challenge incumbent directors. One example of candidate obstruction is Greystone EMC in Georgia which requires candidates to have a credit of "average" or above.[172] Some cooperatives even require all candidates to be advanced by the board-appointed nominating committee. This incumbent-selected committee has the power to gatekeep a candidate from challenging those same incumbents.[173] Organizers in South Carolina have recounted how in 2025, a woman tried to run for a seat on the board of Blue Ridge Electric Cooperative in South Carolina but was prevented from having her name on the ballot because she supposedly paid one utility bill a day late.[174] The organizers insisted that nowhere in the bylaws did this rule exist. Her story is not unique; other organizers have complained that cooperatives deem people ineligible to be a director for something as minor as one late utility bill when they were "19 and in college."[175] So the very people most likely hurt from high utility rates—those who struggled with bills at any point—cannot run for the positions responsible for reducing those rates.

4. Voter Suppression

Finally, many boards find creative ways to suppress the votes of member-owners. Meeting times are rarely publicized, and even when they are, the voting window can be so limited that member-owners have little opportunity to participate. Cooperatives also do not hold their annual meetings during typical

168. *See, e.g.*, *Amended and Restated Bylaws, art. III, § 3.07*, COBB ELEC. MEMBERSHIP CORP. (Sep. 13, 2025), https://www.cobbemc.com/sites/default/files/documents/about/Master-Bylaws-Amended-Sept-13-2025.pdf [https://perma.cc/QSZ7-5QBB].

169. *See* RURAL POWER COALITION, *supra* note 166, at 55:00–59:27 (describing the sorts of costs associated with running in these elections and trying to comply with the difficult rules).

170. FARRELL ET AL., *supra* note 124, at 7.

171. *Id.* at 8.

172. *Bylaws, art. IV, § 4.02*, GREYSTONE POWER CORP., https://greystonepower.com/sites/default/files/GreyStone%20Power%20Bylaws.pdf [https://perma.cc/R2XA-3WDQ].

173. *Bylaws, art. III, § 3*, PRESQUE ISLE ELEC. & GAS COOP. (2022), https://www.pieg.com/wp-content/uploads/2022-Amended-Bylaws.pdf [https://perma.cc/C9W5-R4E5].

174. *See* Email Interview with Organizers from the Rural Elec. Coop. Election Toolkit (Mar. 4, 2025) (on file with the North Carolina Law Review).

175. RURAL POWER COALITION, *supra* note 166, at 08:50–09:11.

election season, opting instead for arbitrary days during the year.[176] For example, Middle Georgia EMC, a member of Oglethorpe G&T—one of the most prolific coal-producing G&Ts in the country—hosts its elections for one and a half hours, mid-week, at a single church, despite serving seven vast counties. In 2025, all three directors were re-elected with no opposition.[177] In Tennessee, boards only need to give their members five days' notice for the annual meeting.[178] In 2014, the Rural Power Project contacted 288 cooperatives across the South to request information about their annual meetings.[179] Not even one acknowledged receiving the letter, leading the Project to conclude that this was "simply a startling silence almost statistically improbable unless the standard operating procedure for all Southern cooperatives is to refuse any information and resist any transparency."[180] Similarly, in researching cooperative practices for this Comment, this author was unable to learn more about the annual meetings of any of the cooperatives contacted.

There are also repeated anecdotes of voter intimidation tactics used to silence member-owners broadly. In the 1990s, reports highlighted threats against organizers trying to reform their cooperatives.[181] In writing this Comment, this author heard similar stories from local organizers and reviewed numerous similar complaints in social media groups from cooperative members. One activist pushing for change in Tri-County Electric (which is facing increasing public scrutiny for corruption[182]) claims his power was cut off in retaliation for calling for more transparency.[183] He believes he was threatened with criminal charges and harassing legal campaigns just for asking questions.[184]

176. *See, e.g.*, *2024 Annual Meeting*, RANDOLPH ELEC. MEMBERSHIP CORP., https://www.randolphemc.com/2024-annual-meeting [https://perma.cc/KL2S-ECCV] (describing how the meeting took place on June 21, 2024).

177. *Annual Meeting*, Middle Georgia EMC (July 10, 2025), https://www.mgemc.com/annual-meeting [https://perma.cc/98VJ-7F8G]; *Service Area*, Middle Georgia EMC, https://www.mgemc.com/service-area [https://perma.cc/L9F6-Y7Q2].

178. Jeter et al., *supra* note 34, at 422.

179. RURAL POWER PROJECT, *supra* note 40, at 28.

180. *Id.*

181. Leifermann & Wehner, *supra* note 131, at 11 ("In the course of the twenty-one campaigns, organizers and project staff encountered threats, physical intimidation, frequent manipulation of election procedures, and the use of racially-charged rhetoric to rally white support for incumbents.").

182. Kim Roberts, *Tri-County Electric Working to Clean Up Past Failures, Improve Finances*, TEXAN (Feb. 21, 2025), https://thetexan.news/issues/energy/tri-county-electric-working-to-clean-up-past-failures-improve-finances/article_3fa82554-efd1-11ef-9201-0b9d011b2774.html [https://perma.cc/98WZ-264J]; Brad Johnson, *Tri-County Electric Cooperative CEO Fired, Accused of Fraudulent Purchase of Football Tickets, AirPods, Star Wars Pens*, TEXAN (Oct. 30, 2023), https://thetexan.news/judicial/tri-county-electric-cooperative-ceo-fired-accused-of-fraudulent-purchase-of-football-tickets-airpods-star/article_b09bdb50-74e6-11ee-9284-97bb324ba137.html [https://perma.cc/F242-RABE].

183. *See* Telephone Interview with Member-Owner and Loc. Organizer of the Tri-County Elec. Coop. (July 12, 2025) (on file with the North Carolina Law Review).

184. *Id.*; *see, e.g.*, Stephen Rorai II, FACEBOOK (Feb. 28, 2025), https://www.facebook.com/groups/638435194322753/posts/993183202181282/ [https://perma.cc/G5F7-838N (staff-uploaded archive)].

C. *Cooperatives Are Failing To Uplift Rural America*

Cooperatives undermine their original purpose to provide autonomy and agency in rural America by employing these undemocratic practices. Because they are unresponsive to member-owner needs, cooperatives overly rely on fuels—namely, coal—that are (1) more expensive and (2) harmful to rural residents.

First, by relying on coal, cooperatives saddle members with unnecessarily high costs, despite the availability of cheaper renewable alternatives. Broadly, several prominent studies show that a "rapid green energy transition" is likely to result in trillions of net savings globally.[185] Clean energy technologies are significantly more cost-effective over their lifespans than technologies reliant on fossil fuels, even accounting for "upfront" costs associated with upgrading to renewable energy sources.[186] The International Renewable Energy Agency found that, between 2010 and 2020, the unit costs of solar energy decreased by 85%, onshore wind energy by 56%, and offshore wind energy by 48%.[187] Even before the IRA incentives, 72% of coal plants in the United States were calculated to be more expensive to run than replacing them with local wind, solar, and energy storage-resources.[188] After the IRA, this number skyrocketed to 99%.[189] With coal costing so much more than clean energy,[190] any organization looking to reduce costs should prioritize clean energy.

185. Strikingly, these studies all make these conclusions without even accounting for the inevitable costs of persistent climate-related damage if we do not transition. Rupert Way, Matthew C. Ives, Penny Mealy & J. Doyne Farmer, *Empirically Grounded Technology Forecasts and the Energy Transition*, 6 JOULE 2057, 2057 (2022); *see also* Press Release, Columbia Business School, Study Finds Transitioning to Renewable Energy Is More Affordable Than Utility Companies Are Admitting (Apr. 25, 2023), https://business.columbia.edu/newsroom/press-releases/study-finds-transitioning-renewable-energy-more-affordable-utility [https://perma.cc/CJM4-LETQ (staff-uploaded archive)].

186. *Renewable Energy – Powering a Safer and Prosperous Future*, UNITED NATIONS: CLIMATE ACTION, https://www.un.org/en/climatechange/raising-ambition/renewable-energy [https://perma.cc/2XVQ-8M9W].

187. ARINA ANISIE, EMANUELE BIANCO, HERIB BLANCO, FRANCISCO BOSHELL, XAVIER CASALS, JINLEI FENG, CARLOS GUADARRAMA, DIALA HAWILA, SEUNGWOO KANG, ÁLVARO LÓPEZ-PEÑA, DIVYAM NAGPAL, BISHAL PARAJULI, GANDHI PRAGADA, GAYATHRI PRAKASH, FARAN RANA, MICHAEL RENNER, GONDIA SOKHNA SECK, EMANUELE TAIBI & AAKARSHAN VAID, INT'L RENEWABLE ENERGY AGENCY, WORLD ENERGY TRANSITIONS OUTLOOK 2022, at 17 (2022), https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2022/Mar/IRENA_World_Energy_Transitions_Outlook_2022.pdf [https://perma.cc/L6UX-2993].

188. Michelle Solomon, Eric Gimon, Mike O'Boyle, Umed Paliwal & Amol Phadke, *The Coal Cost Crossover 3.0: Local Renewables Plus Storage Create New Opportunities for Customer Savings and Community Reinvestment*, ENERGY INNOVATION POL'Y & TECH. LLC 1, 6 (Jan. 2023), https://energyinnovation.org/report/the-coal-cost-crossover-3-0 [https://perma.cc/CR32-2N4U].

189. *Id.* at 1–2.

190. *See* Ivan Penn, *Energy Bills Are Soaring in America's Coal Capital*, N.Y. TIMES (Sep. 30, 2025), https://www.nytimes.com/2025/09/29/business/west-virginia-electricity-prices-coal.html [https://perma.cc/6KS2-4J3B (staff-uploaded, dark archive)].

Indeed, though renewable energy became dramatically cheaper than coal even before the IRA, the savings since its passage have become even harder for cooperatives to ignore.[191] Research on the effects of the IRA has found that the lowest-cost path for cooperatives—reducing energy costs by 15 to 20%—would mean delivering 80 to 90% clean energy in the next decade.[192] "Rapid renewable energy deployment" in cooperatives and retirement of their entire coal fleet by 2032 could lower wholesale electricity costs by up to 20% compared to 2021 rates.[193] While such reduced costs would be appealing for any organization, it is particularly important for cooperatives.

Cooperatives should be especially price-conscious for two reasons. First, cooperatives nationwide serve 92% of persistent poverty counties.[194] This problem is particularly prevalent in the South, home to many of the poorest states and counties in the country.[195] For example, cooperative territories in North Carolina have significantly higher poverty rates than the rest of the state.[196] Second, the nature of these more rural territories often results in higher operational costs. With each household further apart than in the more urban areas that IOUs tend to serve, the infrastructure maintenance in rural areas can

191. *See* Abhyankar et al., *supra* note 6, at 1.

192. *Id.* at 10.

193. *Id.* at 1.

194. U.S. Dep't of Agric., Proclamation Letter on National Cooperative Month (Oct. 2024), https://www.rd.usda.gov/media/file/download/usda-rd-signed-national-cooperative-month-proclamation-09302024.pdf [https://perma.cc/C8DG-RKCN (staff-uploaded archive)]. A persistent poverty county is one with a poverty rate that has been at least 20% for 30 or more years. JOSEPH DALAKER, CONG. RSCH. SERV., R45100, THE 10-20-30 PROVISION: DEFINING PERSISTENT POVERTY COUNTIES (2025), https://crsreports.congress.gov/product/pdf/R/R45100 [https://perma.cc/V8TG-6MQ9].

195. *See* Press Release, Econ. Pol'y Inst., The South's High Poverty Rates and Low Economic Mobility Are the Result of Racist, Anti-Worker Policies (Apr. 3, 2025), https://www.epi.org/press/the-souths-high-poverty-rates-and-low-economic-mobility-are-the-result-of-racist-anti-worker-policies [https://perma.cc/38Z2-K2V8 (staff-uploaded archive)].

196. Libbie Weimer, *North Carolina's Electric Cooperatives*, https://www.libbieweimer.com/nc-electric-coops [https://perma.cc/NV58-B9NF]; *see also* Rory McIlmoil, Comment Letter on North Carolina's Clean Energy Plan (Sep. 9, 2019) (unpublished comment to N.C. Dep't of Env't Quality), https://appvoices.org/resources/energy-democracy/AppVoices_CEP_Comments.pdf [https://perma.cc/9NH2-CGZP].

In fact, consumers served by cooperatives often pay more than those in territories served by IOUs. *See, e.g.*, *North Carolina Electricity Profile 2024*, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2025), https://www.eia.gov/electricity/state/NorthCarolina [https://perma.cc/QH6H-MTAE] (click "Full Data Tables 1–19"; view Table 9) (looking at the average price to ultimate customers (cents/kWh) compared to other ownership sources for each state); *Alabama Electricity Profile 2024*, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2025), https://www.eia.gov/electricity/state/alabama [https://perma.cc/FKU7-3KYU] (same); *Mississippi Electricity Profile 2024*, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2025), https://www.eia.gov/electricity/state/mississippi [https://perma.cc/6WT3-LTBG] (same).

be less efficient and more costly.[197] Indeed, the very reason cooperatives formed was to contend with the high costs associated with serving these rural areas.[198]

Yet, despite facing natural price disadvantages while serving some of the poorest Americans, cooperatives do not do enough to reduce their costs. For one, cooperatives disproportionately rely on fossil fuels, especially coal. In 2021 (before any effects of the IRA), 32% of the energy portfolio of cooperatives nationally was coal, with natural gas making up 29%.[199] In contrast, nationally, coal accounted for just 20% of power generation.[200] As of 2024, cooperatives owned and operated 13% of coal plants in the United States,[201] still disproportionately high compared to their overall place in the energy sector.[202] Even post-IRA, cooperatives still fully own nineteen coal plants that have no set retirement date.[203] Through these plants, cooperatives own over 16 gigawatts worth of coal energy,[204] all from plants with no plans to be phased out or replaced. As a result of high coal use, cooperatives only saw an 18% decrease in

197. Adam Schwartz, *How Your Cooperative Compares to Other Utilities*, CAROLINA COUNTRY (May 2015), https://www.carolinacountry.com/departments/first-person/how-your-cooperative-compares-to-other-utilities [https://perma.cc/Q48M-AGAA]; Cooper, *supra* note 37, at 363 ("IOUs . . . serve higher density areas but . . . are also more efficient.").

198. *See supra* Part I.

199. Abhyankar et al., *supra* note 6, at 1–2.

200. Benjamin Storrow, *The Climate Law Spurs Rural Electric Co-ops' Retreat From Coal*, E&E NEWS BY POLITICO: CLIMATEWIRE (Sep. 9, 2024, at 06:15 ET), https://www.eenews.net/articles/the-climate-law-spurs-rural-electric-co-ops-retreat-from-coal-2/ [https://perma.cc/QZ7T-2LED].

201. *Form EIA-860 Detailed Data With Previous Form Data*, U.S. ENERGY INFO. ADMIN. (Sep. 9, 2025), https://www.eia.gov/electricity/data/eia860/ [https://perma.cc/VPJ4-4XAR]. Ownership data shows that cooperatives owned about 13% of U.S. coal-fired capacity in 2024, and that coal units comprised about 60% of the cooperative-owned generation portfolio. *Id.* 13% was calculated by using Form EIA-860 (2024), which lists ownership details for all U.S. power plants. *Id.* Coal generators (fuel codes BIT, SUB, LIG, or WC) were matched with their ownership shares, and the cooperative utilities ("Entity Type C") were totaled. *Id.* Their combined shares showed that cooperatives owned about 13% of total U.S. coal capacity in 2024. *Id.* 60% was calculated by using the same EIA-860 (2024) data. *Id.* All generating units owned by cooperative utilities were aggregated across fuel types, applying each ownership share. The totals showed that about 60% of cooperative-owned capacity came from coal-fired units in 2024. *Id.* When Alexandra Klass and Gabriel Chan published their article in the *North Carolina Law Review* in 2019, they wrote: "Rural electric cooperatives own 12% of the nation's coal-fired power plants by output, and those plants, in turn, produce 56% of the energy generation from plants owned by rural electric cooperatives." Klass & Chan, *supra* note 7, at 4 n.8. This Comment mimics their calculation method to update it for 2024.

202. Abhyankar et al., *supra* note 6 (noting that cooperatives account for just "5% of the nation's electricity generation and possess[] 6% of its transmission lines").

203. *Coal*, U.S. ENERGY INFORMATION ADMINISTRATION, https://www.eia.gov/coal/data.php [https://perma.cc/V86P-7JFG] (providing the data to calculate that nineteen coal plants have no set retirement date) (select "Coal-Fired Electric Power Plants"; then choose "2024" from the "Releases" dropdown; then filter that data for cooperatives, *see supra* note 201 and accompanying text, that have no retirement date). That number does not even include the many coal plants with no retirement date that cooperatives contract with or have partial ownership over.

204. *Id.*

carbon dioxide emissions from 2005 to 2019,[205] whereas the rest of the electricity sector saw a 34% decrease.[206] Even with IRA funding incentivizing change, many cooperative boards still continue to promote coal.[207] In sum, cooperatives use fossil fuels at a higher rate than the rest of the utility sector, in turn burdening member-owners with unnecessarily high costs.

"The economics are clear," according to Energy Right—a conservative group advocating for renewable energy as a "market-based" strategy.[208] Investing in renewable energy is the "cheapest" way to meet energy demands, which is why investors and developers are both "making rational choices to incorporate more renewables into their portfolios."[209] Take Appalachian Power (a subsidiary of American Electric Power) which announced that its customers would see a "significant" 20% reduction in electricity costs due to "an increase in renewable power sources."[210] Optimism about growth expectations from shareholders appears to be encouraging IOUs to expand and promote their renewable portfolios to sustain the investor confidence.[211]

205. Klass & Chan, *supra* note 7, at 6 (citing NAT'L RURAL ELEC. COOP. ASS'N, AMERICA'S ELECTRIC COOPERATIVES 2 (2021), https://www.electric.coop/wp-content/uploads/ 2021/04/Co-op-Facts-and-Figures.pdf [https://perma.cc/DRD6-6KXV]).

206. Kevin Nakolan, *U.S. Energy-Related Carbon Dioxide Emissions Fell in 2019, Mainly in Electric Generation*, U.S. ENERGY INFO. ADMIN. (Nov. 10, 2020), https://www.eia.gov/todayinenergy/detail.php?id=45836 [https://perma.cc/V9RZ-9KRB] (calculating the fall from 619 metric tons per megawatthour (mt/MWh) in 2005 to 408 mt/MWh in 2019 to be approximately 34%).

207. *See* Erin Kelly, *Arizona Co-op Leader to Congress: Coal Is Crucial Part of the Energy Mix*, NAT'L RURAL ELEC. COOP. ASS'N (June 27, 2025), https://www.electric.coop/arizona-co-op-leader-to-congress-coal-is-crucial-part-of-the-energy-mix [https://perma.cc/KD7H-7ZL3]; Molly Christian, *NRECA Urges EPA to Swiftly Finalize Repeal of Power Plant Greenhouse Gas Rule*, NAT'L RURAL ELEC. COOP. ASS'N (Aug. 7, 2025), https://www.electric.coop/nreca-urges-epa-to-swiftly-finalize-repeal-of-power-plant-greenhouse-gas-rule [https://perma.cc/Q8AH-GB5Y]. In fact, even before the IRA, there were already two low-cost federal loan guarantee programs available to North Carolina cooperatives to "capitalize energy efficiency and renewable energy programs." McIlmoil, *supra* note 197, at 6. Yet, North Carolina's cooperatives by and large did little to take advantage of them or help their members to. *Id.*

208. Ben Wilson, *Letting the Market Lead: How Cost-Effective Renewables Can Save Consumers Money* (Nov. 3, 2025), https://cardinalnews.org/2025/11/03/letting-the-market-lead-how-cost-effective-renewables-can-save-consumers-money [https://perma.cc/9FPM-GLBG].

209. *Id.*

210. Alexia Stanbridge, *Appalachian Power Customers in Virginia To See Reduction in Bill*, ABC 13 NEWS (Oct. 30, 2025, at 18:31 ET), https://wset.com/news/local/appalachian-power-customers-in-virginia-to-see-24-percent-decrease-to-electric-bills-october-2025-energy-prices-legislation-va-commonwealth [https://perma.cc/KBN7-MTTD (staff-uploaded archive)].

211. IOUs with significant renewable or carbon-free energy businesses have attracted high valuation multiples in capital markets. High valuation multiples mean investors are pricing a company at a relatively high value compared to its earnings or other fundamentals, often reflecting optimism, growth expectations, or strong demand. In such cases, shareholders appear to assign a premium to utilities positioned for the clean energy transition, rewarding them with stronger price-to-earnings ratios and growth expectations. One prominent example is Constellation Energy, the nation's largest producer of carbon-free electricity, which trades at a price-to-earnings ratio of roughly thirty-four, well

But while IOUs have "begun to embrace the clean energy transition" because they have found "new alignment" between their fiduciary responsibility to their shareholders and strategies to build clean energy, cooperatives have not made similar progress.[212]

What accounts for this difference? In simple terms, cooperatives face very different incentives. Cooperatives lack pressure from voters and face none of the investor pressure that characterizes IOUs. Undemocratic cooperatives make the boards unresponsive to any pressure from the member-owners who want lower utility costs. Indeed, with directors on cooperative boards retaining their board seats regardless of whether they provide the cheapest energy possible to the member-owners, cooperatives feel little pressure to be proactive in the clean energy transition. Until these cooperatives are accountable to their member-owners, many rural Americans will not see the decreasing utility costs associated with clean energy.

Second, many of the country's poorest electricity consumers not only pay higher rates than they could be, but they are also exposed to toxic pollutants that their urban neighbors are not. The toxic pollution from fossil fuel plants harms residents, workers, and the environment around them—directly undermining their purpose in bringing prosperity to rural America. In fact, these rural communities are more likely to suffer the harmful effects of exposure to fossil fuel pollution than other wealthier or urban American communities.[213] When coal burns, it releases many toxins and pollutants into the air, which have been documented to cause asthma, cancer, heart disease, and brain damage.[214] For every 1 kW increase of coal capacity per person in any of the 83 countries studied, the relative risk of lung cancer increased 59% among men and 85%

above the industry average in the teens and low twenties. *Constellation Energy Corporation (CEG)*, YAHOO! FINANCE, https://finance.yahoo.com/quote/CEG/key-statistics [https://perma.cc/G63S-7PJS (staff-uploaded archive)]. Likewise, Florida Light and Power, a subsidiary of NextEra Energy—the largest generator of renewable energy among U.S. utility holding companies and a leading solar investor—has attracted consistently bullish investor sentiment. Maleha Afzal, *Is NextEra Energy, Inc. (NEE) the Best Stock To Buy and Hold for 5 Years?*, YAHOO! FINANCE (Nov. 9, 2024), https://finance.yahoo.com/news/nextera-energy-inc-nee-best-190812560.html [https://perma.cc/2R4Q-TMLR (staff-uploaded archive)]. In looking at price multiples of these stocks, investors are prepared to pay significantly more for each dollar of earning for clean energy than they are for each dollar of earning for dirty because of the long-term viability of each. Of course, empirical studies would be needed to demonstrate this dynamic more explicitly. Nevertheless, it is not hard to reason that investors would be bullish on clean energy given its price and cautious about fossil fuels that could leave them with stranded assets.

212. Klass & Chan, *supra* note 7, at 39.

213. *See generally* EVERGREEN COLLABORATIVE, *supra* note 78 (describing how the cooperative funding targeted areas highlighted by the Justice40 initiative).

214. *Id.*

among women.[215] Transitioning to renewable energy is important for the health of these cooperative member-owners as well as to mitigate the climate damage that fossil fuel pollution is inflicting.

Of course, the IRA provisions for cooperatives were intended to address these very issues: decrease utility costs and environmental hazards. Certainly, they did shock the inertia at many cooperatives and injected new incentives into the mix. Yet, the risk remains that the money is not used to facilitate clean energy in poor communities as intended. Cooperatives have the potential to uplift their communities but only with a renewed commitment to democracy and accountability. With increased accountability, cooperatives can better mirror their profit-driven counterparts that are more responsive to fuel prices and environmental concerns and bring prosperity to rural America, as they were initially designed to do.

III. REPAIRING THE DEMOCRATIC DESIGN

Cooperatives may have successfully electrified rural America, but until they become truly self-regulating, their full purpose remains unrealized. And there is consensus in the (noticeably scarce[216]) scholarship that cooperatives are undemocratic, unrepresentative, and unaccountable to their members.[217] These scholars have proposed different approaches to shape cooperatives into the self-regulating organizations they are presumed to be. This Comment builds on existing scholarship by proposing another approach: wielding cooperatives' 501(c)(12) status to improve democratic accountability and promote sustainable energy. Reformed cooperatives could uplift and empower rural Americans.

A. *What Proposals Exist To Fix These Problems?*

One proposal is for new federal legislation to overhaul how cooperatives work. Professor Gabriel Pacyniak argues that state and federal regulatory structures must change for cooperatives to reform. He suggests that G&T cooperatives should be subject to "rigorous integrated resource planning requirements" and that state utility commissions must be granted oversight of those G&Ts.[218] His work sheds valuable light on the presumption built into regulatory structures that cooperatives are self-regulating and illuminates just how far short they fall from that ideal.[219] But his proposals require extensive

215. *Reliance on Coal Linked with Lung Cancer Incidence*, HARVARD T.H. CHAN SCH. PUB. HEALTH (Feb. 6, 2019), https://hsph.harvard.edu/news/reliance-on-coal-linked-with-lung-cancer-incidence [https://perma.cc/Q8XV-DP4D].

216. Klass & Chan, *supra* note 7, at 7.

217. *See, e.g.*, *id.* at 23; Pacyniak, *supra* note 30, at 446; Jeter et al., *supra* note 34, at 396.

218. Pacyniak, *supra* note 30, at 418.

219. *Id.* at 442.

new legislation,[220] which seems unlikely at present. In the meantime, immediate solutions are required—especially given how much additional money has flowed to cooperatives since the IRA—to address cooperative governance issues.

Professors Alexandra Klass and Gabriel Chan propose another informative course of action that does not require waiting on new legislation: they urge cooperatives to draw on the seven cooperative principles.[221] The authors argue that board elections need to be more inclusive to increase democratic participation and accountability to members. They point out that, "empirically," cooperatives fall short of equally representing their constituents in terms of gender and race.[222] Though this Comment draws on this notion, democratic aspirations may not normalize in cooperatives without an external force nudging them away from apathy and stagnation.

Finally, in 2014, W.G. Beecher wrote a student note arguing that cooperatives no longer warrant a tax-exempt status as 501(c)(12) organizations. Beecher reasoned that taxing cooperatives would "encourage [them] to pursue honest and efficient operations" and allow them to overcome the "inefficient and detrimental practices" that fester at present.[223] However, under Beecher's approach, there is no room to acknowledge some of the benefits a reformed, truly self-regulating cooperative could have in our current environment. Removing the tax-exempt 501(c)(12) status entirely would effectively destroy what makes a cooperative a cooperative.[224] Instead, the status can be wielded against undemocratic cooperatives to catalyze change.

B. *Cooperative Member-Owners Can Leverage 501(c)(12) Status*

With so many cooperatives keeping their members from intentionally or accidentally participating, the question is whether these cooperatives are so undemocratic as to sustain legal action. There is little question that *one member, one vote* policies deny equal voting power to cooperative consumers. But even before reaching levels of scrutiny, there is a tall hurdle: courts have rarely viewed government subsidies[225] or extensive regulation as sufficient to constitute "state action."[226] For example, the U.S. Supreme Court has held that

220. *See id.*

221. Klass & Chan, *supra* note 7, at 1–2. As a reminder, the seven cooperative principles are: open and voluntary membership; democratic member control; members' economic participation; autonomy and independence; education, training, and information; cooperation among cooperatives; and concern for community. *Id*.

222. *Id.* at 84–87.

223. *See* W.G. Beecher, Note, *Is It Time To Revoke the Tax-Exempt Status of Rural Electric Cooperatives?*, 5 WASH. & LEE J. ENERGY CLIMATE & ENV'T 221, 249 (2014).

224. *See supra* note 48 and accompanying text (explaining the tax-exempt status of cooperatives in Part I, *supra*).

225. *See* Rendell-Baker v. Kohn, 457 U.S. 830, 830 (1982).

226. *See* Jackson v. Metropolitan Edison Co., 419 U.S. 345, 358 (1974).

privately-owned utilities are not "state actors."[227] And even the government may create voting districts or schemes that may be unconstitutional in broader elections as long as the election is only for a government entity of "limited purpose."[228] A court is unlikely to distinguish the actions of rural electric cooperatives from the entities in those cases. Instead, in looking to the IRC's 501(c)(12) requirements, this Comment seeks a clear-eyed, realistic solution, responsive to the current political environment.

To remain tax-exempt under 501(c)(12), organizations must abide by "cooperative principles," especially "democratic member control," "autonomy and independence," and "concern for community."[229] With top-down reform appearing unlikely during the second Trump administration, zeroing in on cooperatives' 501(c)(12) status can empower member-owners to reclaim their cooperatives and their autonomy.

There are three ways the 501(c)(12) requirements can be useful for reform: (1) member-owners can file IRS complaints against their cooperatives and wield the threat of status revocation; (2) member-owners can file lawsuits for breach of fiduciary duties; and (3) 501(c)(3) organizations, typically barred from political activity, can fund campaigns for director seats and organize more IRS complaints.

First, filing IRS complaints about cooperative board behavior could pressure the board to reform. When member-owners suspect the electric cooperative of failing to comply with the 501(c)(12) requirements, they can either file a Tax-Exempt Organization Complaint or submit a letter to the Tax Exempt and Government Entities Division of the IRS.[230] Specifically, they could claim that the cooperative has ceased to be "organized and operated" under cooperative principles because of its election practices.[231] This process would require detailed documentation of the cooperative's potential violations and could, in theory, trigger an IRS investigation into the cooperative's activity.[232] If the investigation confirmed noncompliance with the IRC requirements, the IRS could sanction the organization, including by revoking tax-exemption.[233] With the force of this threat behind them, member-owners

227. *See id.*

228. *See* Ball v. James, 451 U.S. 355 (1981) (holding that a state-owned utility district did not violate the Equal Protection Clause by limiting voting to landowners because the district had a narrow purpose that disproportionately affected landowners).

229. See notes 48 and 57, *supra*, to recall why these cooperative principles are integral to tax-exemption.

230. *IRS Complaint Process - Tax-Exempt Organizations*, IRS, https://www.irs.gov/charities-non-profits/irs-complaint-process-tax-exempt-organizations [https://perma.cc/4QVZ-FFQD] [hereinafter *IRS Complaint Process*].

231. *See supra* note 51 and accompanying text.

232. *See IRS Complaint Process*, *supra* note 230.

233. *Id.*

may be able to pressure cooperatives to reform their election processes. Broad revocation for all cooperatives would destroy them. But a fear—induced by IRS complaints—of losing that tax-exempt status could prompt reform.

Though relatively untested, this tax-focused pressure campaign approach is gaining some grassroots traction. Georgia Watch, a public accountability watchdog, set out to assess how compliant Georgia's cooperatives are with 501(c)(12) requirements. Though the organization concluded that five of the six cooperatives it reviewed were compliant, its report notes that cooperatives self-reported their activities, and they avoided labeling any activities as non-compliant if they could plausibly be said to meet the minimum requirements. Furthermore, it found that the "majority of the cooperatives studied for this project apparently made little to no effort to ensure a truly democratic and inclusive governance that would involve at least 5% of members."[234] In short, such organizations show there is promise in a tax-focused approach to pressure cooperatives.

Second, member-owners could file derivative lawsuits[235] claiming that their cooperative board is breaching its fiduciary duties.[236] If a nonprofit—including a 501(c)(12) cooperative—has a governing board, the board and its members are considered fiduciaries, which means they have a legal duty to perform their roles with "zealous" good faith and loyalty to the organization.[237] As part of these duties, cooperative directors must comply with their cooperatives' applicable bylaws and articles of incorporation.[238] As discussed in Parts I and II, cooperative boards are expected to be elected democratically in order to be self-regulating. Therefore, a derivative claim from member-owners could seek injunctive relief ordering the election practices to change where

234. GA. WATCH CONSUMER ENERGY PROGRAM, GEORGIA ELECTRIC MEMBERSHIP COOPERATIVES: IRC §501(C)(12) COMPLIANCE AND TRANSPARENCY 9 (2015), https://www.georgiawatch.org/wp-content/uploads/2015/11/GEORGIA-EMCs_Report-on-IRS-Compliance-and-Transparency.pdf [https://perma.cc/JH8G-UVR2]. Even 5% seems remarkably low.

235. A derivative lawsuit is "a lawsuit filed by a shareholder on behalf of the corporation against directors . . . who breach[ed] their duties." *Shareholder Derivative Suit*, LEGAL INFO. INST., CORNELL L. SCH., https://www.law.cornell.edu/wex/shareholder_derivative_suit [https://perma.cc/4Z8Q-CQKF]. Though membership-based nonprofits do not have shareholders, the members themselves could bring such a lawsuit. Thomas Lee Hazen & Lisa Love Hazen, *Punctilios and Nonprofit Corporate Governance—A Comprehensive Look at Nonprofit Directors' Fiduciary Duties*, 14 U. PENN J. BUS. L. 347, 411 (2012).

236. For a thorough discussion on the fiduciary duties owed by the boards of nonprofits, see Hazen & Hazen, *supra* note 235.

237. *Id.* at 349.

238. 14 Agricultural Law § 131.05 (2025) ("It is an elementary principle of corporation law that directors of corporations have three duties: obedience, loyalty and care. Cooperative directors have the same duties. The duty of obedience requires directors to comply with the provisions of the incorporating statute, articles of incorporation, bylaws, and the applicable local, state and federal laws.").

applicable.[239] This strategy has potential: a federal district judge recently denied the NRECA's motion to dismiss a class action suit claiming it breached its fiduciary duties by mismanaging a pension plan.[240] Because many states have statutes limiting the liability of cooperative directors, it will be incumbent on legal professionals to examine their state's applicable nonprofit corporation statutes as well as the bylaws of the cooperative in question.[241] In any case, like the IRA complaint strategy, even increased threat of litigation could coax some positive change.

Third, the 501(c)(12) structure can be advantageous to recruit and run candidates for cooperative board elections. In normal elections, 501(c)(3) tax-exempt organizations—the most typical form of a tax-exempt nonprofit—are prohibited from aiding candidates for public office. As such, 501(c)(3)s are quite restricted in the political and election related work they do, and are generally limited to non-partisan voter education and registration.[242] But such issue-based nonprofits can use regular 501(c)(3) tax-deductible funding ("c(3) funding") to help member-owners endeavor to change their cooperatives.[243] Importantly, candidates for cooperative boards are *not* candidates for public office because cooperatives are not publicly owned entities.[244] Therefore, these issue-based nonprofits are free to engage in cooperative elections however they please without violating the electioneering prohibition in the IRC.[245] This set-up is

239. *See supra* Parts I & II.

240. James Van Bramer, *Judge Allows National Rural Electric Cooperative Fiduciary Breach Case To Continue*, PLANSPONSER (Sep. 24, 2025), https://www.plansponsor.com/judge-allows-national-rural-electric-cooperative-fiduciary-breach-case-to-continue/ [https://perma.cc/2GW5-JTZX].

241. Jeter et al., *supra* note 34, at 423. The amended North Carolina Nonprofit Corporation Act outlines the procedures for derivative proceedings brought against a nonprofit board. North Carolina Non-Profit Corporation Act, ch. 801, 1986 N.C. Sess. Laws 30 (codified as amended at N.C. GEN. STAT. § 55A). The Act also states that cooperatives are authorized to enact provisions eliminating monetary damages arising out of actions against directors in their personal capacity. But general individual immunity from civil liability is not applicable when the director "compensated for his services beyond reimbursement for expenses," "[w]as not acting within the scope of his official duties," or "[w]as not acting in good faith" (among others). N.C. GEN. STAT. § 55A-8-60(a)(1)(2)(3) (2025). *But see* N.C. GEN. STAT. § 117-46 (2025) (stating that under the North Carolina Electrification Act, corporations formed under that chapter have the authority to indemnify board members against expenses and liabilities incurred in their official capacities). In North Carolina, cooperative member-owners may have a viable legal theory for successful derivative claim for injunctive relief against cooperative boards acting undemocratically.

242. *Exemption Requirements—Section 501(c)(3) Organizations*, IRS (Aug. 20, 2025), https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations [https://perma.cc/3UW5-A4PD] ("[A 501(c)(3) organization] may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.").

243. *See* 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

244. *Id.*

245. 26 U.S.C. § 501(c)(3) (excluding organizations seeking this tax-exempt status if they "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

crucial for any member-owner considering running a campaign. Doing so is extraordinarily costly given the size of these districts and the uphill battle against the sitting directors.[246]

Several organizations have emerged across the country to help prospective candidates with just those issues. For example, a group called the New Economy Coalition, made up of eleven regional organizations, has developed the Rural Electric Cooperative Toolkit.[247] The toolkit includes guidance, articles, brochures, and contact information to learn from skilled organizers, geared to people looking to get more engaged in their cooperatives and maybe run for a board seat.[248] The Rural Power Coalition is another prominent issue-based nonprofit campaigning for future cooperatives to be grounded in justice, democracy, and resiliency.[249] These organizing powers can also create a coordinated legal strategy: helping member-owners file IRS complaints to increase the chances the IRS takes notice, and helping them file derivative lawsuits claiming breach of fiduciary duties, in turn reinforcing the rest of this strategy.

In that vein, in 2017, Alabama reverend and county commissioner James Carter sought an injunction against Black Warrior Electric Cooperative to compel the cooperative to "operate in a more open, transparent, and democratic manner in accordance with . . . IRS tax exemptions."[250] Carter found that the cooperative had not had a quorum at a meeting in decades, violating the principles of being a tax-exempt, democratic cooperative. At the court hearing, the general manager was called to testify and reportedly conceded, that at that point, no one on the BWEMC Board of Directors had "been elected at a membership meeting. All persons on the board were selected and appointed by the board."[251] Carter also said,

> The cooperative has used this lack of a quorum, to allow its board of directors to perpetuate itself, without any democratic input from the members. We have also determined that there are no African-American

246. *See* RURAL POWER PROJECT, *supra* note 40, at 2 ("Transparency is rare and too many rules and procedures are designed to maintain a status quo that seems more frozen in the fifties before the advent of the civil rights and women's rights' movements in the South and nationally, than equipped to fairly service and deliver progress to all members of the cooperatives equitably.").

247. *About Us*, RURAL ELECTRIC COOPERATIVE TOOLKIT, https://www.electriccooporganizing.org/aboutus [https://perma.cc/ALW4-SZEE].

248. Toolkit, RURAL ELECTRIC COOPERATIVE TOOLKIT, https://www.electriccooporganizing.org/toolkit [https://perma.cc/DF7K-98WH].

249. *About the Rural Power Coalition*, RURAL POWER COALITION, https://www.ruralpower.us/about [https://perma.cc/5V29-JTS6].

250. John Zippert, *Judge Hardaway Turns Down Request for Injunction to Stay the Black Warrior EMC By-Law Change Vote*, GREENE CNTY. DEMOCRAT (May 3, 2017), https://greenecodemocrat.com/tag/rev-james-carter-vs-black-warrior-electric-membership-corporation [https://perma.cc/7APH-SZEM] [hereinafter Zippert, *Judge Turns Down Request*].

251. *Id.*

> members of the BWEMC Board of Directors, which makes it unrepresentative of its membership in rural communities of the Alabama Black Belt.[252]

Though the injunction was denied and the case dismissed by a local judge,[253] similar litigation could still be promising. Creative lawyering and well-drafted complaints may find success in some courts, but successful lawsuits will require significant funding, underscoring again the importance of (c)(3) funding for cooperative reform purposes. Such legal efforts could galvanize member-owners to realize the goal of self-regulation for themselves.

In short, cooperatives should not necessarily be stripped of their tax-exempt status prescriptively. Instead, that very status should be wielded to give rural Americans democratic control over their power once more, both through the threat of losing tax exemption and through creative campaigning.

C. *Cooperatives Can Harness the Benefits of Energy Localism*

In their ideal form—truly self-regulating through democratic accountability—cooperatives could reinvigorate the disadvantaged communities many of them serve. This self-regulatory ability of cooperatives, immune to interference from government overreach, could provide an ideal way to promote democratic engagement in rural America. Many rural communities face desperate challenges related to rising poverty, unemployment, and drug abuse. And these communities often have no means of addressing these issues at the local level.[254] With little power, even compared to local governments of incorporated cities and towns, "democratic participation" can feel purposeless, which in turn may drive the widespread "anti-government sentiment and anti-establishment fervor" now associated with national U.S. politics.[255]

Emphasizing an "energy democracy" will be necessary to an effective clean energy transition.[256] Professor Rick Su uses the term "energy localism" to encapsulate why local residents should have more say over energy decisions affecting them.[257] Rather than centralizing energy policy to bypass local decision-makers, national policymakers should empower local governments as a

252. John Zippert, *Advocates Urge a "NO" Vote Black Warrior EMC Sends Out Package of Revised By-Laws for a Membership Vote by May 1*, GREENE CNTY. DEMOCRAT (Apr. 20, 2017), https://greenecodemocrat.com/tag/black-warrior-electric-membership-corporation [https://perma.cc/UTC4-VQL2].

253. Zippert, *Judge Turns Down Request*, *supra* note 250.

254. Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 839 (2020). Rural local governments are large and artificially constructed political jurisdictions that do not serve as "bona fide representatives" of their communities. *Id.*

255. *Id.* at 840.

256. Klass & Chan, *supra* note 7, at 24.

257. Rick Su, *The Localist Constraints of Energy Localism*, 36 J. LAND USE & ENV'T L. 271, 272 (2021) [hereinafter Su, *Energy Localism*].

more effective means of achieving clean energy progress.[258] Such progress is necessary to curb some of the most harmful effects of climate change,[259] minimize the cancerous effects of pollution on Americans' health,[260] and reduce prohibitively high utility rates thrust upon the poorest Americans.[261] The "rapidly changing energy system" also facilitates "greater autonomous decision-making" because small-scale businesses and homeowners now have opportunities to participate more directly in energy markets with solar and other resources.[262] As a result, this "increasingly distributed decision-making potential" has aligned clean energy advocates and proponents of energy democracy because both "seek to bolster local control of the energy system."[263]

However, many local governments lack the capacity to take on the responsibilities associated with a robust energy localism. Right now, the only power that local governments have is zoning, which has led to reactionary "NIMBY" (Not-In-My-Back-Yard)[264] policymaking. When local governments exercise zoning powers over proposed clean energy developments, they often do so because of a "dearth of legal tools that local governments possess when it comes to the regulation of energy more generally."[265] Su argues that zoning as a reactive and not a proactive means of engaging with policy gives residents a means only to oppose any energy development, and not the ability to shape it more broadly. This "binary" and "indirect" local regulation of energy may exacerbate the local opposition to clean energy and mask more nuanced views of the issues.[266]

Self-regulating cooperatives, in contrast, allow communities to shape the energy policies that will affect them most. Giving residents "more agency"[267]

258. Su, *Energy Localism*, *supra* note 257, at 276.

259. *See supra* notes 187–91 and accompanying text.

260. *See supra* notes 194–96 and accompanying text.

261. *See supra* Section II.C.

262. Klass & Chan, *supra* note 7, at 83. Opportunities to put solar on your roof or for a farmer to contract to build turbines on his fallow land distribute the power over power supply. *See* Bill McKibben, *The Next Power Plant Is on the Roof and in the Basement*, NEW YORKER (Nov. 20, 2023), https://www.newyorker.com/news/daily-comment/the-next-power-plant-is-on-the-roof-and-in-the-basement [https://perma.cc/U5H7-XE5A].

263. Klass & Chan, *supra* note 78, at 83.

264. Su, *Energy Localism*, *supra* note 257, at 281 ("'not-in-my-backyard' kind of thinking"). The term NIMBY is typically used to criticize the communities who oppose development projects in their own neighborhoods, even if they know the project may be beneficial to the larger community.

265. Su, *Energy Localism*, *supra* note 257, at 288–89. The permitting and siting decisions from so many layers of government can make building clean energy slow and arduous, and the process is hampered when one part of a project is stalled because local individuals threaten to oust their local governments if they grant approval. *See Don't Ignore Local Communities: How Grid Projects Get Stuck*, HARVARD SALATA INSTIT. CLIMATE & SUSTAINABILITY (June 5, 2024), https://salatainstitute.harvard.edu/dont-ignore-local-communities-how-grid-projects-get-stuck [https://perma.cc/N92N-CEJG].

266. Su, *Energy Localism*, *supra* note 257, at 289.

267. *Id.* at 282; *see also* Worland, *supra* note 120.

over the energy policy directly impacting their day-to-day lives by turning to energy localism could help some residents feel less "disconnected" from national policymaking. Cooperative elected boards can decide what kind of energy the cooperative uses, from where they buy or produce it, and at what rate to sell it. By making energy policy more locally democratic, the cost of renewable energy will hopefully become so attractive to cooperative voters that the benefits of moving away from fossil fuels will finally break through the "culture war"[268] of misinformation driving much of the discussion about renewables today.[269] Eventually, many voters will be unable to ignore how much more expensive fossil energy is than renewable energy, and with democratically accountable boards, they can empower their cooperatives to embrace the change. Perhaps, without the frustrations erupting when distant governments dictate policy unilaterally, some of the reactionary backlash to renewable energy may subside. Cooperatives embody the best of energy localism, a democratic means to embrace the future of clean energy.

CONCLUSION

The IRA promised a giant investment in a sustainable future. The legislation prompted an infrastructure boon in the communities both most in need of new industry and most skeptical of a renewable energy transition. But its potential as a means of assuring rural voters that they have not been neglected has fallen resoundingly flat.

Instead of despairing, however, clean energy proponents must embrace energy localism. As President Roosevelt proclaimed: A community has the "undeniable basic right" to a satisfactory utility service.[270] One effective way to achieve this goal is to allocate resources to helping member-owners reform their cooperatives through litigation, run for their board seats, participate in their elections, and effectuate policy change. More democratic cooperatives are subject to similar cost incentives as are private utility companies, which are regulated by elected officials who know their voters will balk at rising rates. A cooperative beholden to its member-owners is incentivized to provide cheaper energy if that is what the members are demanding. And there is now little doubt that renewable energy is substantially cheaper than fossil fuels. Therefore, more democratic cooperatives would mean more demand for clean energy, despite the present administration hostile to this goal.

Reform for cooperatives can also encourage civic engagement and empower rural communities to set their own terms on energy policy, without

268. Kate Yoder, *How To Take Climate Change Out of the Culture Wars*, LAIST (Dec. 2, 2024, at 05:00 ET), https://laist.com/news/politics/climate-change-culture-wars [https://perma.cc/8AJF-GBRT].

269. *See* Simon, *supra* note 1.

270. Campaign Address, *supra* note 29.

having to fundamentally alter state law or government structures. Advancing clean energy in communities currently unreceptive to it is a worthy goal on its own, but promoting democracy in rural electric cooperatives is also a realistic means to galvanize rural autonomy. Accordingly, reforming cooperatives should be a priority to anyone concerned about building a more sustainable future for all Americans.

KATRINA SMITH**

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