

THE NEUTRAL CRITERIA MYTH

JAMES PILTCH*

Academics, policymakers, and judges alike almost universally agree that local subdivision preservation and compactness serve essential roles in redistricting. They often argue—and other times accept as given—that these criteria simultaneously protect against partisan gerrymanders and ensure nonpartisan communities receive the representation they deserve.

This support is a normative and practical puzzle. It is well established both that local governments and their subdividing lines often create segregation and inequality and that compact communities reflect the same issues. Indeed, existing empirical research also finds that these criteria undermine partisan fairness and competitiveness—the stated goals of election law reform.

This Article shows that these flaws, when taken seriously, undermine the normative and political neutrality of these redistricting criteria. Building on this observation, it makes the novel argument that redistricting should abandon these criteria because they honor and empower exclusionary communities while reducing the fairness and competitiveness of elections. This Article argues for replacing subdivision preservation and compactness as the primary redistricting criteria with a partisan fairness metric, as well as a geographically and conceptually expanded idea of communities of interest. Ultimately, this Article calls for a new conversation about which partisan and nonpartisan communities deserve representation in redistricting and how election law reformers and map-drawers can take new approaches to delivering that representation.

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* Associate at Hecker Fink LLP. Thank you to Daniel Hemel, Heather Gerken, John Infranca, Joshua Matz, Derek Muller, David Schleicher, Doug Spencer, and Nick Stephanopoulos for their remarkably helpful feedback on this Article at every stage from its inception to its completion. Thank you, too, to Matt Brundage, Ella Bunnell, Henock Dory, Jared Hirschfeld, Emma Kromm, Hilary Ledwell, Jim Huang, Paloma O'Connor, Alexandra Piltch, and Matthew Piltch for the many conversations that made this piece possible. And thank you to Juliet Jacques, Zachary Renier, August Rice, and the entire staff of the *Wisconsin Law Review* for their perceptive edits. All errors are my own.

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INTRODUCTION

Amidst current intense conflict over redistricting law, two points of near universal agreement remain. The first is that political subdivision lines are not only useful for constraining partisan gerrymandering but are also worthy of preservation because cities, towns, and counties deserve representation in their own right. The second is that, all else equal, congressional and state legislative districts should be compact in the name of preventing gerrymandering and preserving shared local interests. These two criteria have deep historical roots,¹ have been widely adopted in both blue and red states,² and have amassed support from academics, reformers, and political figures alike.³

In practice, subdivision preservation and compactness—two of the three traditional redistricting criteria, alongside contiguity—ensure that political geography dominates American elections, specifically

1. See, e.g., *Baker v. Carr*, 369 U.S. 186, 317–19 (1962) (Frankfurter, J., dissenting) (describing the deep history of subdivision use in the United States, noting for example that at the time of the Constitution, six of the thirteen states used exclusively local boundaries for redistricting).

2. See, e.g., Yunsieq P. Kim & Jowei Chen, *Gerrymandered by Definition: The Distortion of “Traditional” Districting Criteria and a Proposal for Their Empirical Redefinition*, 2021 WIS. L. REV. 101, 183–85 (showing how widely used these criteria are).

3. See *infra* notes 4, 10–14 and accompanying text.

communities who live close to one another. The defense of these criteria is that they are neutral: Academics, judges, and reformers maintain that subdivision preservation and compactness transcend the biases of politics and, therefore, are useful for creating representative, unbiased maps.⁴

This Article aims to unsettle this seemingly settled debate. It does so by identifying and addressing two puzzles, one normative and one practical, surrounding the criteria's broad academic acceptance and widespread use.

The normative puzzle concerns why there is such steadfast support for these criteria in light of their documented inherent flaws. Scholars have repeatedly shown that local government lines often reflect and facilitate the worst of citizen preferences—namely, race- and class-based exclusion—and that “compact” communities are frequently segregated ones.⁵ And yet, the election law literature has thus far not considered the implications of these flaws for the types of communities these redistricting criteria honor and represent and, therefore, for their non-partisan and normative virtue.⁶

A second puzzle relates to their practical merits for partisan politics. Empirical research shows that, far from preventing partisan bias in elections, these criteria serve as a roadblock to both fair *and* competitive elections. Specifically, they favor rural voters over urban voters, thereby creating a systemic partisan bias toward the Republican Party (whose modern voters disproportionately live in rural places).⁷ Likewise,

4. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2521 (2019) (Kagan, J., dissenting) (arguing that the state criteria like the ones discussed here are “non-partisan” and that their use would be a “virtue” in redistricting cases heard in federal court); see also James A. Gardner, *One Person, One Vote and the Possibility of Political Community*, 80 N.C. L. REV. 1237, 1238 (2002) [hereinafter Gardner, *One Person*] (arguing that political subdivisions offer a promising foundation for community representation); *Support H.R. 1, the For the People Act*, LEADERSHIP CONF. ON CIV. & HUM. RTS. (Mar. 1, 2019) [hereinafter *Support H.R. 1*], <https://civilrights.org/resource/support-h-r-1-the-for-the-people-act> [<https://perma.cc/2Y33-N8N6>] (showing a wide range of advocacy organizations supporting the bill that would have codified the use of political subdivision and neighborhood preservation, which indirectly would have the effect of making districts more compact).

5. See *infra* Part II.

6. Compactness is implicated in these flaws, too, because local government policy and exclusion inherently shape who lives close to one another. See *infra* Section II.C.

7. See Jowei Chen & Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, 8 Q.J. POL. SCI. 239, 266 (2013) (“Third, our simulation results offer insight into the likely effect of various redistricting reforms, such as Amendments 5 and 6 in Florida, that attempt to mandate the seemingly objective districting criteria of compactness, contiguity, and respect for municipal boundaries. Our simulation method mimics the type of districting process mandated by such reforms. Our results suggest that in Florida, New York, Pennsylvania, and other urbanized states with substantial rural peripheries, such reforms are likely to lock in a powerful source of pro-Republican electoral bias”); see also John F. Nagle, *What*

because voters increasingly live in homogenous communities, districts that preserve those communities are less likely to be competitive.⁸ Subdivision preservation and compactness simultaneously mask and facilitate the politicization of the redistricting process. And yet, even as evidence mounts that the neutrality of these criteria is more myth than truth, scholars have not suggested that it may be time to abandon them.

This Article is the first to argue that redistricting should no longer use these criteria. In doing so, it is also the first to challenge subdivision preservation's normative merit as a criterion—to argue that subdivision preservation is inherently, and irredeemably, flawed.⁹ As a part of this Article's proposed solution, it advocates for more expansive communities of interest, both conceptually and geographically, than the literature has previously. More broadly, it calls for a new discussion about which nonpartisan and partisan communities deserve representation and on what grounds, as well as a reconsideration of who qualifies as a “bad” actor within election law in light of these criteria's flaws.

In discussing these puzzles and resulting conclusions, this Article necessarily departs from the existing literature. Scholars and practitioners have rightly noted these criteria's manifold merits. As a starting point, they make the nesting of districts easier and, therefore, election administration more efficient and voter-friendly.¹⁰ Practitioners have also

Criteria Should Be Used for Redistricting Reform?, 18 ELECTION L.J. 63, 63 (2019) [hereinafter Nagle, *What Criteria Should Be Used*] (“For fairer maps, it appears to be necessary to ‘anti-gerrymander’ by relaxing the traditional criteria in order to overcome the political geography in Pennsylvania which apparently makes a Democratic gerrymander practically impossible.”). *But see* Nicholas O. Stephanopoulos, *Election Law for the New Electorate* 4 (Harv. Pub. L. Working Paper, Paper No. 24-02, 2024) [hereinafter Stephanopoulos, *Election Law for the New Electorate*], <https://ssrn.com/abstract=4871529> [<https://perma.cc/EU6V-XFBE>] (arguing that the most intense effects of geographic polarization for partisan fairness may have passed).

8. *See, e.g.*, James G. Gimpel & Laurel Harbridge-Yong, *Conflicting Goals of Redistricting: Do Districts that Maximize Competition Reckon with Communities of Interest*, 19 ELECTION L.J. 451, 451–52 (2020) [hereinafter *Conflicting Goals of Redistricting*] (arguing that there has been a significant decline in competitive counties in Pennsylvania and North Carolina, a shift that has significant implications for the competitiveness of elections); *see also* David Wasserman, *Realignment, More Than Redistricting, Has Decimated Swing Seats*, COOK POL. REP. (Apr. 5, 2023), <https://www.cookpolitical.com/cook-pvi/realignment-more-redistricting-has-decimated-swing-house-seats> (arguing that partisan sorting has eliminated competitive districts more so than gerrymandering has).

9. Scholars have previously noted the inadequacy of compactness, though not precisely on the grounds done so here. *Cf.* Daniel R. Ortiz, *Cultural Compactness*, 105 MICH. L. REV. FIRST IMPRESSIONS 48, 49–50 (2006) (explaining the myriad ways in which compactness as a concept might confine minority representation in cases brought under section 2 of the Voting Rights Act).

10. *See, e.g.*, John A. Curiel, *Measuring and Managing Splits in Election Administration*, MIT ELECTION DATA & SCI. LAB (Feb. 17, 2021),

noted that these criteria help identify whether something politically nefarious has occurred—that they stymie bad actors and that their violation indicates intent to gerrymander.¹¹ These criteria also have deep roots in history and are widely adopted such that political actors see them as neutral and nonpartisan.¹² Still others note that subdivision preservation gives communities a voice while compact districts allow for more responsive representation.¹³ Indeed, some scholars have argued that these criteria may facilitate better government.¹⁴

Despite these virtues, this near unanimity may be misguided. Outcomes aside, these criteria honor local manipulation, exclusion, and segregation. These criteria also make it more challenging both to overcome geographic bias in the pursuit of fair maps and to create competitive districts in modern elections.¹⁵ The critiques that this Article brings to the forefront of the redistricting debate suggest that there is an irreconcilable conflict between the aspiration to fairness and

<https://electionlab.mit.edu/articles/measuring-and-managing-splits-election-administration> (arguing that splitting geographic communities makes nesting of districts, and therefore, election administration more difficult).

11. See, e.g., Sam Hirsch, A Proposal for Redistricting Reform: A Model State Constitutional Amendment 14 (Jan. 8, 2009) (unpublished manuscript), https://img.slate.com/media/1/123125/123054/2207789/2208001/2208423/Hirsch_Redistricting.pdf [<https://perma.cc/34B8-2NN3>] (presented at the American Mathematical Society's Special Session on the Redistricting Problem); see also Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL'Y REV. 301, 302 (1991) (arguing for compactness as a means to constrain legislatures); Michael McDonald, *The Predominance Test: A Judicially Manageable Compactness Standard for Redistricting*, 129 YALE L.J.F. 18, 18 (2019) (arguing that compactness can constrain the most egregious gerrymanders).

12. See Kim & Chen, *supra* note 2, at 104–06.

13. SAM HIRSCH & DANIEL ORTIZ, THE REFORM INST., BEYOND PARTY LINES: PRINCIPLES FOR REDISTRICTING REFORM 15, 19 (2005), https://www.acslaw.org/wp-content/uploads/old-uploads/originals/documents/The_Reform_Institute_Beyond_Party_Lines_Principals_for_Redistricting_Reform.pdf [<https://perma.cc/7REE-VWLF>].

14. See Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 816 (2013) [hereinafter Stephanopoulos, *Our Electoral Exceptionalism*] (identifying compactness and political subdivision preservation as homogenizing criteria which create more responsive governance); see also Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. PA. L. REV. 1379, 1432, 1440 (2012) [hereinafter Stephanopoulos, *The Territorial Community*] (arguing for the use of subdivisions as the foundation for territorially based districts); James A. Gardner, *What Is "Fair" Partisan Representation, and How Can It Be Constitutionalized? The Case for a Return to Fixed Election Districts*, 90 MARQ. L. REV. 555, 559 (2007) [hereinafter Gardner, *Fixed Election Districts*] (going even further to argue that local subdivisions should serve as fixed electoral boundaries with shifting numbers of representatives in order to make elections fairer).

15. See *supra* notes 7–8 and accompanying text.

competitiveness, on the one hand, and the use of subdivision preservation and compactness, on the other.

Scholars' and practitioners' current widespread faith in these criteria has significant real-world consequences for voters, particularly because reform-minded entities also believe in their use. Redistricting commissions have enormous trust in these criteria.¹⁶ So do nonpartisan groups who want fairer elections.¹⁷ The arguments here should give these reformers pause, both about the types of nonpartisan communities they try to represent and the effect of these so-called neutral criteria on election outcomes. Reforms that continue to emphasize geography will likely limit the possibilities of truly fair and competitive maps. The retirement of two of America's traditional redistricting criteria would be a seismic shift in American elections. But such a change may nevertheless be necessary and urgent.¹⁸

In making these arguments, this Article draws upon concepts that are central to election law and to understanding the criteria's supposed strengths and actual weaknesses. "Partisan fairness" when invoked here means that electoral outcomes should roughly equal the partisan breakdown of states and the country (as opposed to whether a map drawer had nefarious intent),¹⁹ while "competitiveness" means how closely contested races are individually and on net.²⁰ This Article treats partisan

16. See John A. Curiel, *Partisan Polygons: Geographic Compactness and Efficient Gerrymanders* iii (2016) (M.A. thesis, University of North Carolina at Chapel Hill) (ProQuest) [hereinafter Curiel, *Partisan Polygons*] (arguing that these criteria hold particular appeal to independent commissions); see also Justin Mark Levitt, *Introducing "Clustering": Redistricting in Geographic Perspective* xvi (2016) (Ph.D. dissertation, University of California, San Diego) (ProQuest) (showing that independent commissions "consistently refuse to trade compactness for . . . competitiveness").

17. See *Support H.R. 1*, *supra* note 4 (noting the support of numerous nonpartisan advocacy groups for the use of these criteria in H.R. 1).

18. The elimination of these criteria without the adoption of the other policies suggested here—a partisan fairness requirement and an expanded definition of communities of interest—could possibly exacerbate partisan gerrymandering even further. This Article accordingly proposes a compromise path in Section IV.C.

19. See Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. CHI. L. REV. 831, 833 (2015) (noting that one way of explaining partisan fairness is treating "major parties symmetrically with respect to the conversion of votes to seats"); see also Adam Cox, *Partisan Fairness and Redistricting Politics*, 79 N.Y.U. L. REV. 751, 754 (2004) (explaining partisan fairness as a shared goal of election law).

20. See Richard H. Pildes, *The Theory of Political Competition*, 85 VA. L. REV. 1605, 1607, 1611 (1999) (arguing that politics often prevents parties from contesting one another without superficial barriers); see also Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643, 646 (1998) (arguing that "democratic politics is akin in important respects to a robustly competitive market—a market whose vitality depends on both clear rules of engagement and on the ritual cleansing born of competition" and further arguing

fairness as the primary goal of redistricting but remains attentive to how subdivision preservation and compactness also hinder competitiveness. “Neutral”—the adjective often used to describe these criteria that this Article challenges—is frequently invoked to mean that the criteria are not themselves political.²¹ In particular, this Article challenges both these criteria’s facial neutrality, arguing that they reflect and perpetuate certain noxious politics, and their neutrality as applied, showing that they have a pervasive effect on electoral outcomes.

This Article proceeds in four parts. Part I establishes the widespread use of the subdivision preservation and compactness criteria, both historically and in modern state practice.

Part II shows how common beliefs about these criteria’s neutrality clash with critical elements of their creation and the types of communities they represent. In the case of municipal boundaries (“bottom-up subdivisions”), it details how motivated political groups frequently capture municipal lines via exclusionary means and for exclusionary purposes, thereby undermining their use as a neutral criterion. For county lines (“top-down subdivisions”), Part II shows that their use as a criterion permits legislators to create favorable lines in the county-line redrawing process that can then benefit them during redistricting, even as they claim county lines are neutral, and argues that county lines were frequently created to further racial segregation such that their use in redistricting today brings some of the worst practices of the past into our electoral present. Finally, it argues that given America’s grave and pervasive segregation, a compactness criterion ensures that districts reflect the siloed, unequal communities prevalent in American life.

Part III turns to these criteria’s impact on partisan outcomes. It argues first that these criteria create a fundamental bias toward rural voters and, because the parties have sorted along urban-rural lines, privilege the contemporary Republican Party.²² Part III also argues that considering increased political self-sorting and geographic polarization,

that legal rules should seek to protect that market from the anticompetitive behavior of politicians).

21. See Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1781–85 (2012) (explaining how Fourteenth Amendment jurisprudence allows so many discriminatory mechanisms to exist under the presumption of neutrality because of the requirement to show intent); see also *Rucho v. Common Cause*, 139 S. Ct. 2484, 2521 (2019) (Kagan, J., dissenting) (arguing that the state criteria like the ones discussed here are “non-partisan”).

22. See, e.g., Nicholas Eubank & Jonathan Rodden, *Who Is My Neighbor? The Spatial Efficiency of Partisanship*, 7 STAT. & PUB. POL’Y 87, 87–88 (2020) (explaining that Democrats are more inefficiently spaced than Republicans). At a minimum, map drawers must actively fight the bias these criteria create. At most, the bias may be unshakeable. See Chen & Rodden, *supra* note 7, at 266. But see Stephanopoulos, *Election Law for the New Electorate*, *supra* note 7, at 4 (arguing this effect may be receding).

these criteria make elections less competitive and our political bodies more extreme.²³

Part IV turns to the solution. It argues that to address redistricting law's weaknesses today, state legislatures should replace subdivision preservation and compactness with new criteria even as they preserve single-seat districts (although it takes no stance on whether those districts must be contiguous).²⁴ The first criterion it proposes is a partisan fairness requirement, which is more likely to lead to competitive elections than the current geographic-based criteria. The next criterion, a more robust idea of communities of interest than currently exists, will recognize multifaceted communities without allowing geography to become political destiny. Given the widespread use of subdivision preservation and compactness—and the possible resistance to abandoning their use—Part IV also offers a potential compromise path. The Article concludes with a consideration of its arguments' implications about who qualifies as a “bad” actor and who does not in election law.

Eliminating these criteria would undoubtedly be complex, and this Article aims primarily to untangle the puzzles identified above. Nevertheless, it makes its arguments in the fullest and most direct terms possible in the hopes that doing so helps elucidate the best path forward.

I. THE HEGEMONY OF SUBDIVISION PRESERVATION

23. See, e.g., Amy Walter, *America on Trial Separation*, COOK POL. REP. (Mar. 30, 2023), <https://www.cookpolitical.com/analysis/national/national-politics/america-trial-separation> (showing how this effect has appeared in districts across the country).

24. By abandoning their use, it means all varieties of these criteria. Some states have requirements that “require compactness to be prioritized as much as possible” or something of that sort, while others have whole-county preservation provisions. Kim & Chen, *supra* note 2, at 183. For more discussion of how states use these criteria, see *infra* notes 63–65 and accompanying text.

This Article is agnostic on the use of contiguity. The biggest benefit it may offer is stability and some sense to voters that districts still resemble what they are accustomed to. Likewise, it may offer some small benefit in constraining what Richard Holden and John Friedman describe as “optimal gerrymandering,” wherein a party in power creates a series of 55–45 districts by matching voters of different commitments (without contiguity, it would be possible to do this matching from truly any part of the state). See John N. Friedman & Richard T. Holden, *Optimal Gerrymandering: Sometimes Pack, but Never Crack*, 98 AM. ECON. REV. 113, 113, 115 (2008).

However, a strong partisan fairness requirement would help address this issue, and contiguity may in fact constrain the types of communities of interest this Article argues redistricting should represent. All told, contiguity raises far fewer concerns than the other neutral criteria and, therefore, is not a focus of this Article even if it may lack independent merit.

AND COMPACTNESS

It is difficult to overstate how deeply rooted political subdivision preservation and compactness are in doctrine, history, and policy. Their use and appeal are widespread and longstanding, across ideologies and branches of government. Though much of election law is a source of contest, these criteria's relevance—even their preeminence—is not.

This Part outlines the depth and breadth of their role in American election law. It summarizes their place in history and their doctrinal roots, before explaining their centrality to elections across the country.

A. History and Supreme Court Doctrine (and Dicta)

Over time, historical practice as well as Supreme Court doctrine and dicta have facilitated political subdivision preservation and compactness's prominent role in redistricting. Though never adopted as criteria for constraining partisan gerrymandering, multiple Justices have championed them for that purpose. The Court also adopted them as tools for identifying racial gerrymandering. The criteria and the idea that underlies them—namely that people who live close to one another or within a pre-existing boundary should vote together because they have shared interests—have been recognized as both politically neutral and normatively virtuous.

By all indications, a commitment to political subdivision preservation—and, therefore, indirectly compactness—predates current conversations about redistricting and partisan fairness. Indeed, political subdivisions' role in elections is older than the country.²⁵ After the Founding, local subdivision lines and the commitment to territorial communities played a critical role in shaping elections. As Nicholas Stephanopoulos explains:

[S]tate constitutions frequently prohibited districts from dividing political subdivisions, and occasionally defined districts outright as combinations of smaller subunits. At the federal level too, congressional districts in the 1800s typically were composed of whole towns and counties and rarely crossed their boundaries. In this era, the “principle that local government units should be kept intact for purposes of

25. Stephanopoulos, *The Territorial Community*, *supra* note 14, at 1405–07.

representation” was “almost universally accepted” for both state and federal elections.²⁶

There is little reason to think that politics and partisanship did not inform this policy choice at the Founding—to believe that politicians saw these criteria as neutral at that point. In his dissent in *Baker v. Carr*,²⁷ Justice Frankfurter indicated as much. There, he stressed that these criteria were used with political advantage in mind and with the political inequality their use created clear to all.²⁸ It is not unreasonable to think that the way these criteria favored rural counties and voters from the beginning played at least some role in their adoption and widespread use.

Despite subdivision lines’ political impact, until the one-person, one-vote revolution of the 1960s—which set a national baseline of representativeness for the whole country and therefore required states to alter their redistricting plans—subdivision preservation remained a central element of redistricting law in many states.²⁹ Compactness as a redistricting criterion began to develop its roots in the mid-nineteenth century, too, in large part due to the belief that representatives should easily be able to travel their districts.³⁰ Indeed, in the Apportionment Act of 1901, Congress proposed creating congressional districts of “compact territory.”³¹

A belief that people who live in a community together ought to vote together animated judicial thinking even at the birth of one-person, one-vote. In *Reynolds v. Sims*,³² Justice Warren openly called for using political subdivisions in redistricting: “Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.”³³ He was particularly sensitive to the importance of subdivision preservation in the case of state legislatures: “A consideration that appears to be of more substance in justifying some

26. *Id.* at 1407 (footnotes omitted) (quoting James A. Gardner, *Foreword: Representation Without Party: Lessons from State Constitutional Attempts To Control Gerrymandering*, 37 RUTGERS L.J. 881, 914 (2006)).

27. 369 U.S. 186 (1962).

28. *Id.* at 302–06 (Frankfurter, J., dissenting).

29. Stephanopoulos, *The Territorial Community*, *supra* note 14, at 1407–09 (explaining how in the 1950s, “[t]he ‘most common practice’ was to allocate representatives to state legislative districts, composed of one or more whole counties, in ‘rough proportion to their respective populations’” (quoting Gardner, *Fixed Election Districts*, *supra* note 14, at 578)); *see also supra* note 1 (discussing Justice Frankfurter’s dissent in *Baker v. Carr*).

30. *See* HIRSCH & ORTIZ, *supra* note 13, at 19.

31. Kim & Chen, *supra* note 2, at 182.

32. 377 U.S. 533 (1964).

33. *Id.* at 578–79.

deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions.”³⁴ The Court put its stamp on subdivisions’ importance to American political life even as elections entered a new age.

As arguments about partisan gerrymandering then began to arrive at the Court, subdivision preservation and compactness became aspirational possibilities for preventing bias in elections. In *Karcher v. Daggett*,³⁵ Justice Stevens argued that both tools provide an objective, justiciable means of analyzing partisan gerrymandering. In the case of subdivisions, he stressed their stability, convenience, and their measurability as the sources of their helpfulness.³⁶ And about compactness, he wrote, “[a]s with the numerical standard, it seems fair to conclude that drastic departures from compactness are a signal that something may be amiss.”³⁷ In the cases that followed about partisan gerrymandering, compactness and political subdivisions arose time and again as dissenting Justices sought a standard that could solve the problem of unfair maps.³⁸ Justice Powell in *Davis v. Bandemer*,³⁹ for example, echoed Justices Stevens and Warren in stressing the importance of subdivision preservation both for preventing gerrymandering and for representing communities *qua* communities.⁴⁰ Critically, despite the Court never

34. *Id.* at 580.

35. 462 U.S. 725 (1983).

36. *Id.* at 758–59 (Stevens, J., concurring) (“Subdivision boundaries tend to remain stable over time. Residents of political units such as townships, cities, and counties often develop a community of interests, particularly when the subdivision plays an important role in the provision of governmental services. In addition, legislative districts that do not cross subdivision boundaries are administratively convenient and less likely to confuse the voters. Although the significance of deviations from subdivision boundaries will vary with the number of legislative seats and the number, size, and shape of the State’s subdivisions, the number can be counted and alternative plans can be compared.” (footnotes omitted)).

37. *Id.* at 758 (Stevens, J., concurring).

38. *See, e.g., Vieth v. Jubelirer*, 541 U.S. 267, 322, 348 (2004) (Ginsburg, Souter & Stevens, JJ., dissenting).

39. 478 U.S. 109 (1986).

40. *See id.* at 173 (“[T]he most important of these factors are the shapes of voting districts and adherence to established political subdivision boundaries.”); *id.* at 177 (explaining that “the potential for voter disillusion and nonparticipation is great” when subdivisions are not preserved in districts (quoting *Bandemer v. Davis*, 603 F. Supp. 1479, 1494 (1984))). Perhaps Justice Powell’s opinion should be read in light of his opinions in *Village of Arlington Heights v. Metropolitan Development Housing Corp.*, where he said plaintiffs needed to prove discriminatory intent. 429 U.S. 252, 265 (1977). In other words, his commitment to subdivisions—and their actions—as facially neutral may be central to his jurisprudence. It is also worth considering his opinion in *San Antonio Independent School District v. Rodriguez*, where he permitted inequities between school districts to persist on the grounds of local control. 411 U.S. 1, 49–51, 54–55 (1973). This opinion largely ignored the clear racial element of the lines and the fact that

identifying an acceptable measure for partisan gerrymandering and subsequently ruling it nonjusticiable,⁴¹ it never rejected the validity of a state independently requiring these criteria in redistricting. Indeed, the Court actively recognized subdivision preservation as a valid interest that would justify some wavering from one-person, one-vote for state legislative maps.⁴² Although the criteria never became a savior at the Supreme Court for advocates against partisan gerrymandering, subdivision preservation explicitly and compactness implicitly received the Court's blessing as important interests in redistricting law.⁴³

Compactness and subdivision preservation ultimately found doctrinal life in racial gerrymandering cases, with compactness becoming a particularly potent tool in this context. In *Shaw v. Reno*,⁴⁴ Justice O'Connor wrote that violation of these principles may indicate a racial gerrymander has occurred "because they are objective factors."⁴⁵

More generally, compactness has taken on a special meaning in the context of the Voting Rights Act of 1965 (VRA). In *Thornburg v. Gingles*,⁴⁶ the Supreme Court explained that compactness was a prerequisite for racial representation within the meaning of the VRA.⁴⁷ The implications of such a holding are telling: For minority groups to be worthy of formal political representation, they must live close to one another. Minorities spread throughout a state could be rendered

people could not necessarily choose where they live. Justice Powell's views on subdivision lines and neutrality on questions of race appear to go hand-in-hand, then. On the other hand, he seemed quite aware of the power of lines in *Keyes v. School District No. 1*, when he pushed for the majority to get rid of the de jure versus de facto segregation distinction (in exchange for eliminating busing as a remedy, which the majority rejected). 413 U.S. 189, 217–19 (1973) (Powell, J., concurring). For Justice Powell's beliefs about segregation, see Haney-López, *supra* note 21, at 1804 (explaining that "[Justice] Powell advocated that constitutional liability for segregation be imposed on the basis of outcomes and institutional responsibility: If segregated schools persisted, school boards and other related government institutions should be presumed responsible"). And yet, when it comes to housing and his blindness to its effects, see *id.* at 1811 & n.140 (explaining his blindness to the "kinetics of White flight" in *Village of Arlington* and the parallels between *Rodriguez* and *Village of Arlington*).

41. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2498–502 (2019).

42. See *Mahan v. Howell*, 410 U.S. 315, 329 (1973) ("The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one.").

43. See *Rucho*, 139 S. Ct. at 2520–22 (Kagan, J., dissenting).

44. 509 U.S. 630 (1993).

45. *Id.* at 647.

46. 478 U.S. 30 (1986).

47. See *id.* at 47–48, 50 ("First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.").

unrepresented, due to no reason other than arbitrary political geography.⁴⁸ The fact that states cannot violate the redistricting principles of their own state for a remedy under the VRA means that compactness can potentially do “double damage” to minority groups.⁴⁹ Legislators in states with a compactness requirement with a distinct meaning must be doubly attentive to how close people live together.⁵⁰ Compactness has a funneling effect, then. Only certain minorities who live close to one another can have majority districts, and mapmakers must draw those districts in a way that is more concerned with honoring the state’s idea of compactness rather than what is best for minority groups.

The sum of these Supreme Court decisions is that aside from the one-person, one-vote principle, subdivision preservation and compactness have been the dominant forces in Supreme Court doctrine and thinking about redistricting for decades now. They have shaped what is possible for racial minorities’ representation and driven much of the writing about the “why” and “how” of redistricting.

The ideas put forth by the Court about the virtues of these criteria remain salient in discussion around the purpose of redistricting law today. Scholars have noted that these criteria may make voters more engaged and districts and representatives more representative of voter interests.⁵¹ Others defend them on purely normative grounds, arguing that subdivisions and communities who live close to one another deserve representation regardless of other impacts.⁵² Compactness and subdivision preservation’s merits have become internalized to nearly all debates surrounding redistricting law.⁵³

48. Likewise, those who live close to one another may not receive representation if they lack sufficient cultural compactness. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 434 (2006); *see also* Ortiz, *supra* note 9, at 49–50.

49. *See* Micah Altman & Michael McDonald, *Redistricting Criteria: The Voting Rights Act*, PUB. MAPPING PROJECT, <http://www.publicmapping.org/what-is-redistricting/redistricting-criteria-the-voting-rights-act> [<https://perma.cc/5WZH-CLKM>].

50. *See* Kim & Chen, *supra* note 2, at 183 (explaining that Iowa and Montana “require that ‘the compactness of a district is greatest when the length of the district and the width of the district are equal’” (quoting IOWA CODE § 42.4(4)(a) (2024) and MONT. CODE ANN. § 5-1-115(2)(d) (2023))).

51. *See, e.g.*, Stephanopoulos, *Our Electoral Exceptionalism*, *supra* note 14, at 824–25.

52. *See, e.g.*, Gardner, *One Person*, *supra* note 4, at 1238 (lamenting that “[i]n its heavy emphasis on the individual as the appropriate unit of political power, and its corresponding indifference to local community as an organizing principle for the exercise of political power, the one-person, one-vote standard seems to reflect an underlying liberal nationalism that elevates to primacy the relationship of individuals to the nation and to one another, unmediated by intermediate community groupings”).

53. *See supra* notes 1–4, 10–14 and accompanying text.

B. The Current Redistricting Law Landscape

Given the Supreme Court’s ruling in *Rucho v. Common Cause*⁵⁴—that partisan gerrymandering is not a justiciable claim⁵⁵—the practical power of these redistricting criteria is in Congress and the states.

At the federal level, recent legislative efforts to reform American elections have sought to include subdivision preservation and, indirectly, compactness. House Bill 1 (“H.R. 1”), the For the People Act, would have required districts to preserve “neighborhoods” and “political subdivisions.”⁵⁶ The preservation of neighborhoods would have a similar effect to compactness in keeping people who live close together in the same districts. Although the bill failed, it received votes from nearly every Democrat in the House and garnered support from a variety of advocacy groups.⁵⁷ Such enthusiasm from self-identified reformers indicates the extent to which the notion that people who live together ought to vote together is engrained in redistricting conversations.⁵⁸

In the absence of federal-level reform, it is notable that states are in broad alignment on the apparent usefulness of these redistricting criteria. Table 1 highlights the extent of their use.⁵⁹

54. 139 S. Ct. 2484 (2019).

55. *Id.* at 2506–07.

56. For the People Act of 2021, H.R. 1, 117th Cong. § 2403(a)(4) (as received in Senate, Mar. 11, 2021).

57. See 167 CONG. REC. H1072 (daily ed. Mar. 3, 2021) (roll call) (showing only one Democrat, Rep. Thompson (Miss.), voted against H.R. 1); see also *Support H.R. 1*, *supra* note 4.

58. The partisan fairness requirement in the Act would help mitigate the worst effects of these criteria and, therefore, would have been a significant step forward for gerrymandering reform. See § 2403(b) (establishing “No Favoring or Disfavoring Political Parties” as a redistricting criterion). The use of the criteria is highlighted here as proof of how normalized they are within political reform communities.

59. Except where otherwise noted, this data draws from Yunsieg Kim and Jowei Chen, see Kim & Chen, *supra* note 2, at 183–85.

	State Legislative Districts	Congressional Districts
Compactness	38	26
County Preservation	39	26
Municipal (town or city) Preservation	33	21
Both compactness and the preservation of at least one type of subdivision ⁶⁰	25	13
Neither ⁶¹	7	22 ⁶²

Table 1. Frequency of Use in State Redistricting Requirements

These criteria are used so prevalently that Yunsieg Kim and Jowei Chen found that subdivision preservation and compactness empirically qualify as “traditional redistricting criteria.”⁶³ In contrast, only fifteen states require the consideration of communities of interest for state legislative districts, and only eleven do so for congressional districts.⁶⁴ Meanwhile, nineteen states permit considering partisan politics in any form for state maps, while seventeen do so for congressional maps.⁶⁵ No matter how complex their redistricting scheme, no state *bans* the consideration of compactness and subdivision preservation. All legislatures can choose to consider the importance of community lines and compactness, and the majority of state legislatures must.

The use of these criteria has a significant practical effect. Take for example the following two maps. Figure 1 shows North Carolina’s

60. Because Kim and Chen do not specify on a state-by-state level, it is necessary to look elsewhere for criteria overlap. See *Criteria for Congressional Districts*, LOY. L. SCH.: ALL ABOUT REDISTRICTING, <https://redistricting.lla.edu/redistricting-101/where-are-the-lines-drawn/criteria-for-congressional-districts> [https://perma.cc/TJ53-R2RD]; *Criteria for State Legislative Districts*, LOY. L. SCH.: ALL ABOUT REDISTRICTING, <https://redistricting.lla.edu/redistricting-101/where-are-the-lines-drawn/criteria-for-state-legislative-districts> [https://perma.cc/HNC2-5PYA].

61. See sources cited *supra* note 60.

62. This total does not include states with only one congressional district. Of these twenty-two states, seventeen have no required congressional criteria beyond equal population and the VRA. Put another way, of the twenty-eight states with additional criteria for congressional districts, a significant percentage use political boundaries as one. See *Criteria for Congressional Districts*, *supra* note 60; Kim & Chen, *supra* note 2, at 184–85. Because these sources have slightly different tabulations for criteria use, it is difficult to define the exact percentage that use neither here.

63. Kim & Chen, *supra* note 2, at 149.

64. *Where Are the Lines Drawn?*, LOY. L. SCH.: ALL ABOUT REDISTRICTING, <https://redistricting.lla.edu/redistricting-101/where-are-the-lines-drawn/> [https://perma.cc/MH5M-SXFJ].

65. *Id.*

enacted state house map from 2022 and Figure 2 shows that same map with the county lines. Looking at the maps, two things become clear: how closely the state house districts (the lighter red line) mirror the county lines (the blue and purple lines) in the rural parts of the state and how the state house districts for urban parts of the state such as Charlotte and Raleigh are all packed tightly into their respective county lines.

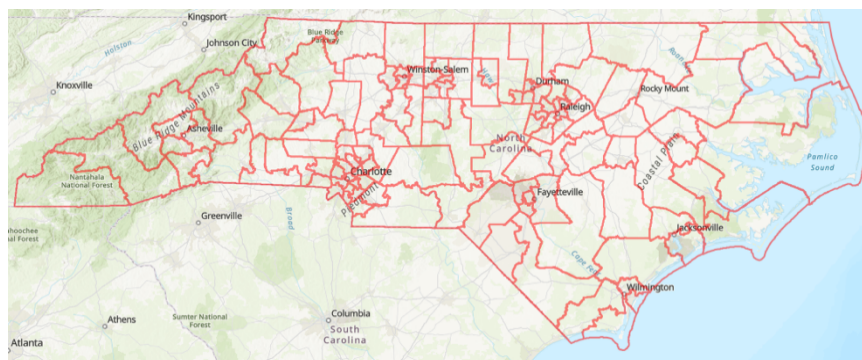


Figure 1. North Carolina State House Map⁶⁶

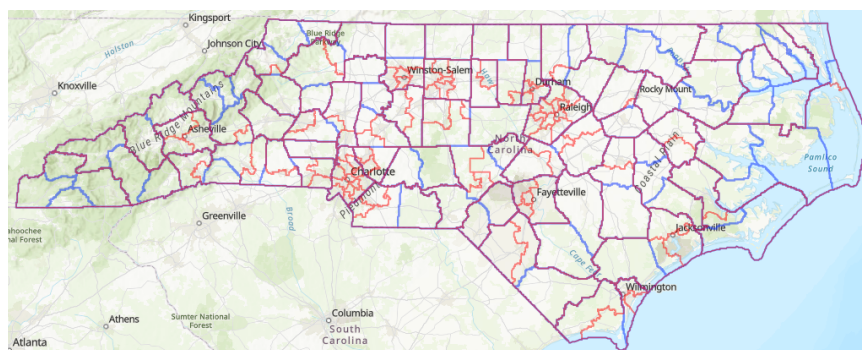


Figure 2. North Carolina State House Map with County Lines Overlayed⁶⁷

Figures 3 and 4 show the same phenomenon for the state senate maps (which have fewer districts). Now that there are fewer districts, the packing of urban districts within a given county and the mirroring of rural counties with state senate districts is even clearer. Rural counties are collected to form districts (the blue lines in Figure 4 indicate a county within a district), while only high-density urban communities are “split”

66. *North Carolina House District Plan*, N.C. GEN. ASSEMB. (2022), <https://www.ncleg.gov/Redistricting/DistrictPlanMap/H2022E> [https://perma.cc/HB8Z-XFRU].

67. *Id.* (with county lines layer added).

to ensure their districts are compact (the light red lines in Figure 4 indicates a district within a county).

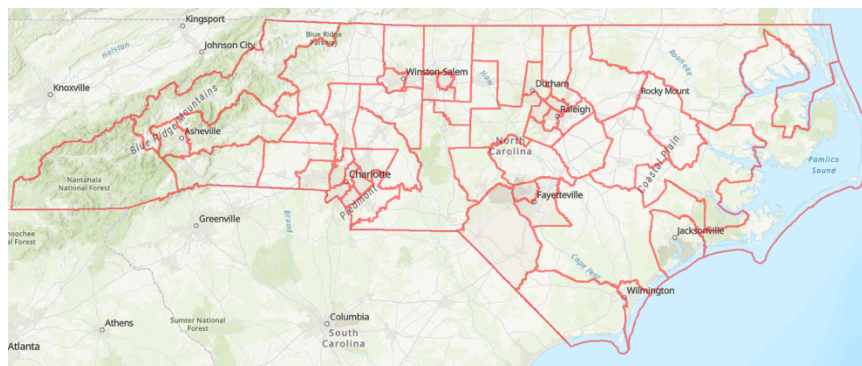


Figure 3. North Carolina State Senate Map⁶⁸

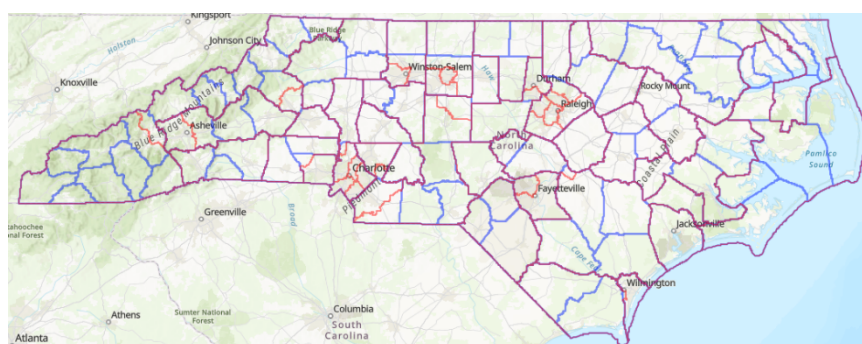


Figure 4. North Carolina State Senate Map with County Lines Overlaid⁶⁹

It is notable that these maps are the product of months of litigation that ended with the North Carolina Supreme Court requiring map-drawers to consider partisan fairness.⁷⁰ For the state house map, there was a court-ordered redraw with a bipartisan compromise on the new map, while for the state senate map, court-appointed masters accepted a

68. *North Carolina Senate District Plan*, N.C. GEN. ASSEMB. (2022), <https://www.ncleg.gov/Redistricting/DistrictPlanMap/S2022E> [<https://perma.cc/QNN6-URCY>].

69. *Id.* (with county lines layer added).

70. *See Harper v. Hall*, 868 S.E.2d 499, 509 (N.C. 2022) (“Partisan gerrymandering creates the same harm as malapportionment, which has previously been held to violate the state constitution: some peoples’ votes have more power than others. But a legislative body can only reflect the will of the people if it is elected from districts that provide one person’s vote with substantially the same power as every other person’s vote.”).

Republican-redrawn map.⁷¹ In these maps, the importance of partisan fairness is at its zenith due to the Supreme Court's ruling and the close oversight of the subsequent map-drawing process. And yet, it is impossible to ignore the role that compactness and subdivision preservation play even in an instance like this one.

As the compromise in North Carolina and the court-approved maps indicates, no group writ large seems to be considering abandoning these criteria—neither reformers or traditionalists, academics or policy entrepreneurs, nor judges or legislatures.⁷² The Center for American Progress has championed the preservation of neighborhood lines, while Common Cause has also celebrated compactness.⁷³ Though there was tremendous conservative pushback against H.R. 1, none of it focused on the use of subdivision preservation, while authors at conservative think tanks such as the Cato Institute have endorsed compactness as a criterion.⁷⁴ Looking further back, in 1989, the first Bush Administration pushed for a legislative bill that would reform redistricting using compactness and “preserve existing community lines.”⁷⁵ And just as policy organizations and political actors have pushed for the use of these, academics, too, have accepted them.⁷⁶ To be clear, academics often disagree over whether they are the *best* way to solve partisan gerrymandering.⁷⁷ But nearly all legal academics seem to agree that these criteria are acceptable.⁷⁸ Amidst this political and intellectual consensus,

71. *North Carolina State Legislative Districts*, BALLOTPEdia, https://ballotpedia.org/North_Carolina_state_legislative_districts [https://perma.cc/M6G7-QEBB].

72. *But see* Paul A. Diller, *Toward Fairer Representation in State Legislatures*, 33 STAN. L. & POL'Y REV. 135, 141–42 (2022) (arguing for a move toward multi-member districts in light of some of the concerns discussed here as well other critiques).

73. *See* Liz Kennedy, Billy Corriher & Danielle Root, *Redistricting and Representation: Drawing Fair Election Districts Instead of Manipulated Maps*, CTR. FOR AM. PROGRESS (Dec. 5, 2016), <https://www.americanprogress.org/article/redistricting-and-representation/> (arguing for the preservation of neighborhoods); COMMON CAUSE, HOLDING POWER ACCOUNTABLE 7 (2020), <https://www.commoncause.org/wp-content/uploads/2020/09/CC-Activist-Handbook-on-Redistricting-Reform-9.3.20.pdf> [https://perma.cc/B58S-DUHA] (advocating for the use of compactness as a criterion).

74. Walter Olson, *Why Redistricting Reform Goes off the Rails*, CATO INST. (June 30, 2020), <https://www.cato.org/commentary/why-redistricting-reform-goes-rails>.

75. Ann Devroy, *Bush To Propose Outlawing Gerrymandering*, WASH. POST (June 27, 1989), <https://www.washingtonpost.com/archive/politics/1989/06/28/bush-to-propose-outlawing-gerrymandering/0ff3b1bb-88f4-4947-8ea6-ac4835a54b21/>.

76. *See supra* notes 10–14 and accompanying text.

77. *See* Hisam Sabouni & Cameron Shelton, *State Legislative Redistricting: The Effectiveness of Traditional Districting Principles in the 2010 Wave*, 20 ELECTION L.J. 198, 208 (2021) (arguing that subdivision preservation and compactness are not as effective as other criteria at constraining gerrymandering).

78. *See supra* notes 10–14 and accompanying text. *But see supra* note 7 (discussing the work of Chen and Rodden).

no one seems willing to challenge the notion that they should factor into redistricting.⁷⁹

II. THE CRITERIA'S NORMATIVE FLAWS

These criteria must be challenged, however. Their inherent flaws are so deep and wide-ranging that they call into question whether redistricting ought to represent the types of communities these criteria protect—whether, normatively, their use is desirable regardless of their (negative) practical effects. This Part begins with the most flawed criteria, municipal subdivision preservation, before turning to county lines and compactness.

A. The Exclusionary Nature of Cities

The processes by which cities (as well as towns) are born and change pose a fundamental challenge to their worth in redistricting because exclusion is often inherent in the process. Economic policy at the local level frequently compounds and expands inequality and bias. As a result, preserving municipal lines allows and even forces the redistricting and electoral process to perpetuate harm and formalize manipulation.

1. Captured Boundaries

The core problem with using municipal boundaries in redistricting is that citizens create cities and town lines that are often intentionally exclusionary and deeply segregated. These lines are not neutral outside of election law—and therefore should not be treated as such in redistricting. Indeed, one need only look at the classic case of *Gomillion v. Lightfoot*⁸⁰—where white Alabamians redrew city lines into a twenty-eight-sided shape to exclude almost all Black voters from the city (and voting block)⁸¹—to see how communities try to shape who is, and is not, in their subdivision.

79. The challenges to these criteria that do exist are far less direct and multifaceted than the ones here. Diller, for example, focuses little on their normative and empirical flaws, though he does note how cities are currently harmed by the redistricting system. Likewise, his solution is far different from the one here. Chen and Rodden, as well as Nagle, show the empirical effects in two states and do not challenge the normative elements that this Article does. *See supra* notes 7, 72 and accompanying text.

80. 364 U.S. 339 (1960).

81. *See id.* at 341 (detailing how the local act which altered the shape of the city from a square to a twenty-eight-sided figure and had as its effect the removal from the city of all but “four or five of its 400 Negro voters”).

Even absent such extreme circumstances, cities exclude through legal processes at their creation and during their growth. They suffer from the “boundary problem” as they inherently exclude a certain set of people from the political process when creating their boundaries.⁸² Specifically, the tools of annexation, incorporation, and secession allow residents to choose their neighbors. Through annexation, a large city can target a community that benefits them in some way—often against the will of that pre-existing community—and absorb that community into their borders. The famous case of *Hunter v. City of Pittsburgh*,⁸³ in which the Supreme Court declared that localities possess no independent sovereignty from the state, is about this very dynamic.⁸⁴ Pittsburgh wanted Allegheny’s resources and so annexed it.⁸⁵ Of course, its selection of Allegheny over other surrounding communities may have hurt other communities that would have benefitted from falling within Pittsburgh’s boundaries.⁸⁶ Pittsburgh made a choice about who and what it wanted within its lines, a sign of how manipulable this process can be. Houston, meanwhile, has grown “667 square miles in 175 years.”⁸⁷ Indeed, one local government analyst compared annexation to a “sugar high” for cities due to the fast increase in resources it offers them.⁸⁸ Frequently, however, the reverse happens, where voters in wealthy communities will find ways to veto their annexation because they

82. David Schleicher, *The Boundary Problem and the Changing Case Against Deference in Election Law Cases: Lessons from Local Government Law*, 15 ELECTION L.J. 247, 249 (2016) (“Most modern election law cases pose problems that are much like one of the oldest problems in political theory and international law—the so-called ‘boundary problem.’ . . . Before a geographically bounded group of voters can decide its own boundaries, membership in the group must itself be determined, and any such choice will exclude some people who claim an interest in the decision. The group of deciders cannot be determined democratically, as a vote to decide who may decide would face the same problem.” (footnote omitted)).

83. 207 U.S. 161 (1907).

84. *Id.* at 178–79.

85. *Id.* at 171–72.

86. *See id.* at 165–66 (explaining Allegheny’s improvements and Pittsburgh’s subsequent annexation of it).

87. *See* CITY OF HOUS. PLAN. & DEV. DEP’T, ANNEXATIONS IN HOUSTON: OR HOW WE GREW TO 667 SQUARE MILES IN 175 YEARS, https://www.houstontx.gov/planning/Annexation/docs_pdfs/HoustonAnnexationHistory.pdf [<https://perma.cc/2J4U-4XJR>].

88. *See* Connor Nielsen & Will Creasy, *The Dollars and Sense of Annexation*, STRONG TOWNS (Aug. 6, 2018), <https://www.strongtowns.org/journal/2018/8/3/the-dollars-and-sense-of-annexation> [<https://perma.cc/B47X-3FUH>] (quoting Chuck Marohn as writing, “[a]nnexation — the act of bringing property outside of the city limits into the municipal boundaries—is rarely more than an economic sugar high for a city, one with long-term consequences that are nearly always negative”).

explicitly do not want to share their resources.⁸⁹ In 1873, Brookline famously rejected Boston's efforts to annex it after wealthy Bostonians moved to Brookline and did not want to share the suburb's resources with the city.⁹⁰

Secession has also become a way to shrink a community and in the process exclude those with fewer means. In one wealthy, white part of East Baton Rouge Parish, Louisiana, there were recently three secession votes in six years to create a new school district before the community finally succeeded.⁹¹ This secession was the fourth time a wealthy community had left East Baton Rouge district in just sixteen years.⁹² East Baton Rouge is not an aberration. One study found that secession has explicitly racial and class effects in the school realm. White students end up in smaller, wealthier districts after secession, and Black students remain in larger, now even poorer districts after secessions occur.⁹³ Community line drawing and secession tell a clear story of resource hoarding.

89. See *Why American Cities Are So Weirdly Shaped*, ECONOMIST (Dec. 22, 2018), <https://www.economist.com/united-states/2018/12/22/why-american-cities-are-so-weirdly-shaped> (explaining that “[t]hose in already rich suburbs fret about sharing their taxes with the poorer core city and merging of school districts. Municipalities avoid annexing poor neighbourhoods because they cost more to service than they provide in revenue”).

90. See William P. Marchione, *Annexation Spurned: Brookline's 1873 Rejection of Boston*, BRIGHTON ALSTON HIST. SOC'Y, <https://www.bahistory.org/HistoryAnnexBrookline.html> [<https://perma.cc/G967-ET2H>] (explaining how the influx of wealthy Bostonians to Brookline facilitated its rejection of Boston's later annexation efforts).

For more on the relationship between annexation and incorporation, see Kadie Martin, Note, *Raising the Stakes for New Towns: State Tools To Curb Exclusionary Municipal Incorporation*, 62 B.C. L. REV. 1715 (2021), which examines how incorporation and annexation law inform one another. See also Robert D. Zeinemann, *Overlooked Linkages Between Municipal Incorporation and Annexation Laws: An In-Depth Look at Wisconsin's Experience*, 39 URB. LAW. 257, 264 (2007) (explaining that “the annexation of large tracts of territory from the jurisdictions of towns is often a driving factor in attempts to incorporate towns, which in turn seek to secure, *inter alia*, their boundaries and tax base”).

91. See Martin, *supra* note 90, at 1716–17.

92. See Beth Hawkins, *With a Wealthy, Mostly White Suburb's Vote To Withdraw, East Baton Rouge Schools a Step Closer to Fourth School Secession*, 74 (Oct. 14, 2019), <https://www.the74million.org/with-a-wealthy-mostly-white-suburbs-vote-to-withdraw-east-baton-rouge-schools-a-step-closer-to-fourth-school-secession> [<https://perma.cc/3S6G-TCPG>].

93. See Kendra Taylor, Erica Frankenberg & Genevieve Siegel-Hawley, *Racial Segregation in the Southern Schools, School Districts, and Counties Where Districts Have Seceded*, AERA OPEN, July-Sept. 2019, at 1, 1 (showing that “school district secession is restructuring school segregation in the counties where secession is occurring, with segregation increasingly occurring because students attend different school districts”).

This story of exclusion through line drawing becomes even clearer when looking at “unincorporated communities”—parts of urban spaces that fall outside any formal lines. As Michelle Wilde Anderson explains:

[A]cross the country are Bottoms of another, less familiar type. On the outskirts of small cities and incorporated suburbs across the country, hundreds of high-poverty neighborhoods of color lack rudimentary services like sewage systems, drainage, and streetlights. Integrated economically with city populations but excluded from participatory rights in city government, these unincorporated urban areas bear disproportionate numbers of landfills, municipal utility plants, and freeways that benefit urban populations but threaten local health and depress land values.⁹⁴

Across the country, these communities are disproportionately Black. In the Mississippi Delta, for example, “in twenty of the twenty-two municipalities with a sizable fringe population (at least one-half as large as the municipal population), more African-Americans lived in that fringe than inside the city.”⁹⁵ Line-drawing processes determine who gets better schools and cleaner water.⁹⁶ And, in our current system, they also decide who gets formal political power at higher levels of government despite how brazenly well-resourced communities use them to segregate themselves.

2. Economic and Social Exclusion

The economic and social policies cities and suburbs use to continuously shape their populations compound the problems of exclusionary line drawing. Zoning laws notoriously prevent poorer residents from moving into a given neighborhood.⁹⁷ These policies are

94. See Michelle Wilde Anderson, *Mapped Out of Local Democracy*, STAN. L. REV. 931, 931 (2010).

95. *Id.* at 937.

96. See Daniel T. Lichter, Domenico Parisi, Steven Michael Grice & Michael Taquino, *Municipal Underbounding: Annexation and Racial Exclusion in Southern Small Towns*, 72 RURAL SOCIO. 47, 47 (2007) (“[P]redominately white communities were much less likely to annex black populations, even when we controlled for the size of the black fringe population at risk of annexation. Such results provide evidence of racial exclusion in small southern towns.”).

97. See, e.g., David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1672–73 (2013) (explaining how city land use and zoning has severely limited who can live there in recent years); see also M. NOLAN GRAY, *ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT 2* (2022) (arguing that zoning “heavily restrict[s]” the availability of housing and who lives where).

not a coincidence; people who own property in a community use zoning to strengthen their home values.⁹⁸

Unsurprisingly, given America's history of racism and the ways that race and class remain deeply intertwined as a result, the net effect of these policies is to segregate on racial lines. Jonathan Rothwell and Douglas Massey find that "anti-density zoning increases Black residential segregation in U.S. metropolitan areas by reducing the quantity of affordable housing in White jurisdictions."⁹⁹ Monica Bell also observes that policing allows suburbs to enforce segregation, while others find that local governments use takings power to further policies that benefit the wealthy.¹⁰⁰ Zoning and policing allow wealthy municipalities to segregate themselves beyond the line-drawing process.¹⁰¹

Not only do today's economic policies shape who can and does live in a municipality, the historical effects of redlining also remain powerful in cities ranging from Chicago to St. Louis. Indeed, *FiveThirtyEight* data recently found that "there are 90% more Black Chicagoans nowadays in redlined communities compared to the surrounding area."¹⁰² Alexander Sahn shows that in response to the Great Migration, white communities made their zoning laws more restrictive to exclude Black homeowners.¹⁰³

98. See William A. Fischel, *The Rise of the Homeowners: How the Growth Machine Was Subverted by OPEC and Earth Day*, in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY 13, 17 (Lee Anne Fennell & Benjamin J. Keys eds., 2017) ("Homeowners had since the 1910s cared about keeping footloose industry and apartment houses separate from their neighborhoods, but they lacked the organizational ability to forestall community and regional growth that would threaten the upward growth of their home values in the 1970s. The unprecedented rise in housing prices gave homeowners additional reasons to care about public land use decisions."). Fischel thinks that homeowner control of politics is good, however. See WILLIAM A. FISCHEL, THE HOMEOWNER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 3-4 (2001).

99. Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFFS. REV. 779, 779 (2009). But see John Infranca, *Differentiating Exclusionary Tendencies*, 72 FLA. L. REV. 1271, 1271-72 (2020) (arguing that not all local government policies that exclude should raise equal concerns).

100. See Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 652-53 (2020) (arguing policing serves as a mechanism of segregation enforcement).

101. For a discussion of how racism infuses much of local government policymaking, see generally Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994).

102. Justin Kaufmann, *Chicago Redlining: Then and Now*, AXIOS: CHI. (Feb. 17, 2022) (citing Ryan Best & Elena Mejía, *The Lasting Legacy of Redlining*, FIVETHIRTYEIGHT (Feb. 9, 2022, 6:00 AM), <https://web.archive.org/web/20240518000412/https://projects.fivethirtyeight.com/redlining/>), <https://www.axios.com/local/chicago/2022/02/17/chicago-redlining-then-and-now>.

103. Alexander Sahn, *Racial Diversity and Exclusionary Zoning: Evidence from the Great Migration* 1 (Jan. 18, 2021) (unpublished manuscript), https://youngamericans.berkeley.edu/wp-content/uploads/2021/02/Sahn_BIFYA_

Economic history still shapes our political present when states require municipal subdivision preservation in redistricting.¹⁰⁴ The exclusionary policy choices of previous generations continue to influence the political possibilities of voters of color today.

As powerful as zoning is, municipal governments possess other tools to keep potential constituents from moving into their communities. Specifically, they use taxation and its influence on school district clientele to shape who lives where. Wealthy voters want localities with high-caliber schools, as the East Baton Rouge secession story exemplifies.¹⁰⁵ But high-quality schools also create another dynamic that keeps people out: They drive up local property values and, therefore, taxes.¹⁰⁶ This local property tax cycle is pernicious. A well-regarded school district brings wealthy people into a locality, which then taxes their property significantly to ensure that schools remains well-funded and to protect the value of both the homes and schools in the district.¹⁰⁷ Bronxville and Mount Vernon in Westchester County, New York, neighbor each other, but their populations are remarkably different, in no small part because of schools as a commodity and the taxation cycle they create.¹⁰⁸ Indeed,

Working-Paper.pdf [https://perma.cc/9L6Z-UZ8Y] (“I characterize for the first time the extent of exclusionary zoning in the United States: across over 100 of the largest cities in the country, the median city allows multi-family housing to be built on only 12% of residential land. Then, leveraging exogenous factors for Black migration to Northern cities from 1940 to 1970, I show that increasing racial diversity causes cities to zone less land for multi-family housing.”).

104. For more on how past economic policy, and the failure to remedy it, continues to shape communities today, see Nikole Hannah-Jones, *Living Apart: How the Government Betrayed a Landmark Civil Rights Law*, PROPUBLICA, <https://www.propublica.org/article/living-apart-how-the-government-betrayed-a-landmark-civil-rights-law> [https://perma.cc/K9TY-8T8U] (July 8, 2015).

105. See *supra* notes 91–93 and accompanying text.

106. See Paramita Dhar & Stephen L. Ross, *School District Quality and Property Values: Examining Differences Along School District Boundaries*, 71 J. URB. ECON. 18, 18 (2012) (finding “significant effects of test scores on property values”).

107. See Alana Semuels, *Good School, Rich School; Bad School, Poor School*, ATLANTIC (Aug. 25, 2016), <https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333/> [https://perma.cc/6Y4V-W7SJ] (discussing school funding litigation in Connecticut and explaining how the property tax came to perpetuate inequality among American schools); see also Erika K. Wilson, *Monopolizing Whiteness*, 134 HARV. L. REV. 2382, 2387 (2021) (arguing that racial segregation is so significant in scope due to “social closure,” a process through which “policies surrounding school district boundary lines facilitate social closure and allow predominantly white school districts to monopolize high-quality schools”).

108. Compare *QuickFacts: Mount Vernon, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/mountvernoncitynewyork/LFE046222> (last visited Mar. 8, 2025), with *QuickFacts: Bronxville, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/bronxvillevillagenewyork/PST045223> (last visited Mar. 8, 2025) (showing that the median house price in Bronxville is almost double that in Mount Vernon and that the median income in Bronxville is more

what happens when school funding is equalized is telling: Parents start integrating across local governments more.¹⁰⁹ Zoning and tax, then, allow for local governments to further the exclusion that is often inherent in their line drawing.

3. Captured Entities

Because of inequities like the ones discussed above and the fundamental manipulation that comes with local government creation, Richard Briffault argues that the greatest question when it comes to local government is where the lines are drawn.¹¹⁰ Suburbs often end up with much of the wealth and power that could belong to cities if the lines were drawn differently—and people who may want to move to these suburbs cannot afford to because of exclusionary zoning and tax policy.¹¹¹ Suburbs often trap wealth in and keep people out. The use of their lines in map drawing therefore threatens to do the same. And yet the election law literature and state legislative practice ignores this perspective.¹¹²

St. Louis exemplifies the myriad reasons that municipal lines undermine the principles of non-manipulability and community that animate the defense of their status as neutral for redistricting.¹¹³ In *Mapping Decline*, Colin Gordon details how economic policy and municipal line-drawing combined to segregate Black citizens of the city (and destroy their economic options).¹¹⁴ St. Louis County has hundreds

than 2.5 times higher than in Mount Vernon). Thank you to Daniel Hemel for sharing this illustrative example.

109. See Zachary D. Liscow, *The Efficiency of Equity in Local Government Finance*, 92 N.Y.U. L. REV. 1828, 1828 (2017) (finding that “more centralized financing has encouraged people to move back to central cities”).

110. See Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 351 (1990) (“[L]ocal power is merely the power to bargain and persuade, to make concessions, provide incentives and reduce or eliminate local taxes or restrictions; it is not the power to compel people or businesses to move into or remain in the jurisdiction. Cities compete with suburbs in better economic shape and with fewer social needs for the same attractive businesses and residents. Cities may have autonomy in law, but their economic and political power in practice is shaped by private investment decisions.”).

111. See *id.* at 352–56.

112. See *supra* notes 10–14; *supra* Table 1; *supra* notes 65–70 and accompanying text (discussing *Harper v. Hall*).

113. Thank you to Will Kreuger for his comments inspiring this section on St. Louis as the prime example of county line manipulation and for his assistance in finding the sources cited here in support of my argument.

114. See COLIN GORDON, *MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY* 9, 10 (2008) (arguing “[l]ocal land use controls and their underlying racial logic virtually ensured that the emerging suburbs would be more isolated, more homogeneous, more defensive of their advantages, and more leery of the central cities

of municipalities, many of which have carved out their lines to protect their resources from the city and its voters.¹¹⁵ Once incorporated, these municipalities do not need to share their tax base with the nearby city, and then, with local powers, zone and tax to make entering their community remarkably difficult.¹¹⁶ People self-sort, creating a political Tieboutian effect that they can use policy to calcify.¹¹⁷ The city of Ladue, for example, only permits “single family dwellings” in all of its zoning areas;¹¹⁸ Ladue is 85.9% white and less than 1% Black in a county that is 25% Black.¹¹⁹ The creation of new municipalities is so widespread in St. Louis County that Champ is a town of ten people—eight of whom are white.¹²⁰ Meanwhile, the town of St. Ann incorporated explicitly to avoid having to build public housing in its community.¹²¹

The segregation and demographics of Ladue, St. Ann, and Champ are not unique in St. Louis County. White residents left the immediate city while Black residents remained over the course of decades. Between 1940 and 2000, the relative size of Black population in St. Louis grew from 13% to 51%.¹²² Meanwhile, across St. Louis County, more than 70% of white citizens in 2000 lived in census tracts that were 95% white or more.¹²³ The suburbs segregated the city and its citizens via the tools of line drawing and economic policy.

they had left behind” and explaining “[t]he city of St. Louis is but one of *hundreds* of local political units” because of line drawing tools in Missouri).

115. *Id.* at 10.

116. *Id.* at 8–10.

117. Charles M. Tiebout, *A Pure Local Theory of Expenditures*, 64 J. POL. ECON. 416, 417–18 (1956) (arguing that people will sort themselves among self-government options based on package preferences). *See generally* Bill Bishop & Robert Cushing, *The Big Sort: Migration, Community, and Politics in the United States of “Those People,”* in RED, BLUE, AND PURPLE AMERICA: THE FUTURE OF ELECTION DEMOGRAPHICS 50, 53–54, 57 (Ruy Teixeira ed., 2008) (arguing that the country has experienced a macro-political sorting).

118. *See* Ladue, Mo., Ordinance 1175, § 3 (Nov. 21, 1938) (amended 2024) (explaining that only single-family homes are allowed in all residential areas in Ladue).

119. *Compare QuickFacts: Ladue, Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/laduecitymissouri> (last visited Mar. 8, 2025), *with QuickFacts: St. Louis County, Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/stlouiscountymissouri,US/> (last visited Mar. 8, 2025).

120. *Champ, Missouri*, U.S. CENSUS BUREAU, https://data.census.gov/profile/Champ_village,_Missouri?g=160XX00US2913078 (last visited Mar. 30, 2025).

121. *See* E. TERRENCE JONES, FRAGMENTED BY DESIGN: WHY ST. LOUIS HAS SO MANY GOVERNMENTS 30–31 (2000) (explaining how St. Ann incorporated to avoid a proposed affordable housing project).

122. *See* GORDON, *supra* note 114, at 11.

123. *Id.* at 31, 35.

This harm is bad enough. But Missouri requires the preservation and elevation of the city of St. Louis's lines in statewide elections.¹²⁴ In practice, this requirement means that St. Louis's Black residents, who have not necessarily lived in their subdivision of choice, have their political representation determined for them based on that exclusion. The exclusionary lines in this instance—and in many states broadly—matter more to the process than fairness to the voters.

The clear racial and class motivations that underlie the drawing of municipal lines, and the economically and racially exclusionary nature and policies of the communities those lines create, mean that bottom-up subdivisions do not live up to defenses put forth for their use in redistricting. They clearly are manipulable. Municipal boundaries may reflect communities' desires, but those desires are frequently to exclude. The lines cannot be treated as reflective of a community's true interest because the community would look quite different without these policies. As far as they constrain the legislature drawing the map, they only ensure map-drawers secure the interests of people who have captured and controlled the democratic process. Election law's silence on municipal lines' non-neutral origins does not obscure the truth: Their preservation is the paradigmatic case of something that appears neutral on its face being a danger to fairness and equality.¹²⁵

B. The Crisis of County Lines

Although county lines do not suffer from the constant capture of self-interested groups that municipal lines do, they pose a different and, in some ways, more significant threat to the redistricting process. State legislatures control county lines, meaning they can directly manipulate them for political gain. Many lines today are also products of historical top-down segregation such that they bring the worst of our political past into our political present.

124. See, e.g., HOUSE INDEP. BIPARTISAN CITIZENS COMM'N, MISSOURI HOUSE DISTRICTS (2022), https://oa.mo.gov/sites/default/files/2021-22_HIBCC_Statewide_0.pdf [<https://perma.cc/684W-N8V6>].

125. See Haney-López, *supra* note 21, at 1784 (“[W]e should understand it as unified under what might best be termed ‘intentional blindness.’ Combining the names of the two doctrines, this portmanteau expresses the marrow of the Court’s racial jurisprudence—which seems intentionally blind to racial context, including the persistence of racial discrimination against non-Whites, and the desire of democratic majorities to remedy this lingering stain on American justice.”).

1. Manipulable by Nature

Rather than further Justices Warren, Stevens, and Powell's hope that subdivisions offer a neutral metric to measure whether gerrymandering has occurred, county preservation potentially undermines it due to the lines' manipulable nature.¹²⁶ Specifically, the state government determines the county lines and, come redistricting, uses them to determine legislative and congressional districts.¹²⁷ A legislature could group citizens arbitrarily within a county and then treat those decisions as a neutral barometer for districts. In the worst case, this double-mapping—legislatures creating counties and then using those county lines for their benefit during redistricting—could threaten the fairness of elections. Legislatures could contort counties in such a way that they create the partisan breakdown that they want.¹²⁸ Then, when the time for redistricting comes, these legislatures could claim they simply wanted to keep the county together. Legislatures in this case get to claim a fair process to constituents while still achieving a map that benefits them.¹²⁹

However tempting it may be to ignore this flaw on the ground that county lines do not change much in the modern era, that fact does not alleviate the above concern. The threat alone undermines the illusion of neutrality. And, in recent times, relevant county changes have occurred. In Virginia, the General Assembly changed a significant number of county boundaries in the last several decades.¹³⁰ Colorado also created Broomfield County in the early 2000s, the largest new county in years.¹³¹ Alaska has also created several county equivalents and changed a number

126. See *supra* notes 32–40 and accompanying text.

127. LYNN A. BAKER & CLAYTON P. GILLETTE, *LOCAL GOVERNMENT LAW: CASES AND MATERIALS* 47 (4th ed. 2010) (explaining that county governments are formal administrative arms of the state).

128. To see how much counties are at the whim of their state legislators, see Anne King Gregorie, *Legislators Usurp Counties*, 37 NAT'L MUN. REV. 361 (1948) (explaining how the state's political delegation from some counties had returned and usurped the county government).

129. Cf. *supra* notes 4, 21 (discussing Justice Kagan's dissent in *Rucho*).

130. In the 2000s, the Virginia General Assembly made three county-boundary changes affecting several thousand voters and eliminated one county from the map, while in 2013, the city of Bedford joined the county of the same name, adding more than six thousand voters. In general, Virginia seems to undergo county redraws with some frequency, as there were a significant number of county changes in the 1970s and 1980s as well. See *Substantial Changes to Counties and County Equivalent Entities: 1970-Present*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/technical-documentation/county-changes.2010.html> (Oct. 8, 2021).

131. *Id.* Broomfield County contained almost forty thousand voters at its creation and took away more than twenty thousand voters from Boulder County, more than fifteen thousand from Adams County, and several thousand from other surrounding counties. *Id.*

of boundaries since the 2000 census,¹³² while Florida undertook a redraw of a few county lines in the 1990s.¹³³ Maryland's and New Mexico's respective county maps underwent changes in the 1980s and 1990s.¹³⁴ Of these states, three have been some of the most intensely contested states in the country over the last several decades, while Maryland created some of the country's most egregious political gerrymanders in the last several decades.¹³⁵ These county redraws presented a significant possibility for a legislature to create outcomes that favored it while claiming political neutrality.¹³⁶

Indeed, the legislative defendants, fighting to protect their partisan gerrymander in North Carolina in 2022, acknowledged this reality in their brief, an indication that manipulating county lines may be the next gerrymandering tool. There, they wrote: "It is . . . difficult to see how Plaintiffs-Appellants can plausibly contend that political considerations are forbidden in legislative redistricting but not in fixing county boundaries."¹³⁷ Legislatures recognize the power of county lines and their preservation, and scholars and policy must respond accordingly.

2. Relics of Nefarious History

Rather than undermine the argument against the use of county lines, the relative infrequency of county creation and change highlights another reason this criterion is not neutral: The lines often reflect the clearly nefarious decisions of previous legislatures. This point directly contradicts the broad consensus established in the redistricting literature that county lines' historically deep roots make them neutral and desirable.¹³⁸

The reality is that using county lines today perpetuates the worst parts of this nation's history. Many county maps date back to the

132. *Id.* Alaska's county-equivalent lines are rather fluid, as there have been eight new counties and numerous significant boundary changes since 2000. *Id.*

133. *Id.*

134. *Id.*

135. *See, e.g.,* Peter Miller, *Maryland's Extreme Gerrymander*, BRENNAN CTR. FOR JUST. (Mar. 7, 2019), <https://www.brennancenter.org/our-work/research-reports/marylands-extreme-gerrymander> [<https://perma.cc/T794-Q6AH>].

136. There is no research indicating that these county lines were drawn with nefarious purposes, and the research into the county line drawing process is, in general, rather lacking in detail and depth. This makes it difficult to say more than to put out the fact that county lines do, in fact, change. They change in significant places and those changes do present an opportunity for legislatures to benefit, intentionally or not.

137. Legislative Defendants-Appellees' Brief at 42, *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (No. 413PA21).

138. *See, e.g.,* Hirsch, *supra* note 11, at 15.

nineteenth century.¹³⁹ A long-dead legislature created county maps in almost every state, and these legislatures had different desires and political considerations than voters and their representatives today.¹⁴⁰ This concern is especially salient because those maps were often drawn for racist reasons. In the South, legislatures drew county lines in such a way to ensure that working a separate-but-equal school system was financially feasible. William Fischel explains that Southern legislatures had to reach “far[] into the countryside” to get enough white students to operate a segregated white school.¹⁴¹ Meanwhile, Max Krochmal explains that in South Texas, redrawing county lines enabled the white farmers there to “buil[d] a series of feudal fiefdoms” where their Tejano farmers had few rights and where the white farmers had vast amounts of wealth.¹⁴² North Carolina’s nineteenth-century political leaders changed county lines to undermine the voting power for Black North Carolinians over their chosen representatives’ objections.¹⁴³ County maps were not neutral or objective when they were created. It seems odd to treat them as such today, especially given that segregation from previous eras remains prevalent in America.¹⁴⁴ In *Reynolds v. Sims*, Justice Warren

139. To get a sense of how most county lines were created in the 1800s (or even earlier), see Atlas of Historical County Boundaries Project (@AtlasHCBP), *US Historical County/State Boundaries*, YOUTUBE (July 13, 2012), <https://www.youtube.com/watch?v=QEdDU3ho1oE>.

140. Perhaps no case better captures the way the state legislatures who oversee counties have changed than *Hunter v. Underwood*, when the Supreme Court threw out Alabama’s moral turpitude standard for disenfranchising felons because the history of the legislation was so self-evidently laced with white supremacy that the law could not stand. 471 U.S. 222, 227, 229–30 (1985). In other words, county lines were often drawn by legislatures who intentionally disenfranchised Black voters and intentionally segregated them.

141. WILLIAM A. FISCHER, MAKING THE GRADE: THE ECONOMIC EVOLUTION OF AMERICAN SCHOOLS 111–12 (2009).

142. MAX KROCHMAL, BLUE TEXAS: THE MAKING OF A MULTIRACIAL DEMOCRATIC COALITION IN THE CIVIL RIGHTS ERA 12 (2016).

143. See Lucas Kelley, *The Historical Origins of the 1871 Nash-Edgcombe County Line*, DIGIT. ROCKY MOUNTAIN MILLS, <https://web.archive.org/web/20241202193626/https://rockymountmill.prospect.unc.edu/mill-history/narrative/moving-the-county-line/>.

144. The ways states operationalize counties can exacerbate the normative problems county preservation presents as a neutral criterion. Whole county criterion, like North Carolina’s, requires states to keep counties together. This provision, in practice, means that if a county is larger than a legislative or congressional district, the entire seat in question would need to be created in that county. This requirement highlights the undemocratic nature of county lines. For example, keeping all voters in Wake County, North Carolina, in a set legislative district (or a few of them) together, is an explicit acknowledgement that county lines of yesteryear are electoral destiny today. The basis of that destiny is nothing more than a map that an old legislature likely thought was beneficial to itself at that time, often with the intent of harming a particular group. In the second scenario, where counties can be combined like chess pieces, county maps become

declared that “[c]itizens, not history . . . cast votes.”¹⁴⁵ The preservation of county lines hinders that aspiration.¹⁴⁶

Throughout their opinions, judges also miss that the perceived neutrality of county lines is precisely what politicians like about using them.¹⁴⁷ The ability of politicians to manipulate criteria necessarily demands other reforms, such as independent commissions.¹⁴⁸ But county lines would still pose a problem, even if independent commissions were used everywhere: They would give state legislatures a backdoor way to alter maps.

C. Compactness’s Inadequacies

Because compactness has no formal legal role outside of the redistricting process, its intrinsic flaws (and theoretical strengths) as a criterion are fewer. However, the goals once genuinely advanced by compact districts are less relevant in the twenty-first century. Indeed, the criterion also possesses a familiar deficiency: the potential to honor segregation and even empower segregated communities.

1. A Criterion Out of Time

The current commitment to compactness in redistricting stems from historical reality.¹⁴⁹ Before digital and telecommunication technology

a tool easily used to manipulate the process. *See North Carolina*, GERRYMANDERING PROJECT, <https://gerrymander.princeton.edu/reforms/NC> [<https://perma.cc/SJ7N-TH3G>]; *supra* notes 66–70 and accompanying text and figures.

145. *Reynolds v. Sims*, 377 U.S. 533, 580 (1964).

146. In *Alexander v. South Carolina State Conference of the NAACP*, the Supreme Court held that state legislatures deserve a presumption of good faith, meaning that voting to affirm county lines might rid them of this bias as a formal matter. 144 S. Ct. 1221, 1235–36 (2024). But the argument here is not a doctrinal one, rather, one focused on whether counties’ histories deserve formal representation, regardless of present legislatures’ action. And, in light of the political benefits some legislatures derive from these counties’ lines impact on maps today, *see* discussion *infra* Section III, there is little reason to attribute a recodification of county lines much weight.

147. *See, e.g.*, Legislative Defendants-Appellees’ Brief, *supra* note 137, at 87 (explaining that, in North Carolina, “[this] rule is fortified by strict county-grouping limitations governing legislative districts, which also curb political discretion in redistricting”).

148. For why independent redistricting commissions may be a critical reform, *see, for example*, Hirsch, *supra* note 11, at 5–6. For more on the need for partisan fairness as an explicit consideration in gerrymandering, *see* MOON DUCHIN, GERRYMANDERING METRICS: HOW TO MEASURE? WHAT’S THE BASELINE? (2018), <https://arxiv.org/pdf/1801.02064> [<https://perma.cc/WDN7-B9FQ>].

149. *See* HIRSCH & ORTIZ, *supra* note 13, at 19–20 (explaining the roots of compactness).

was widespread and physical transportation so easy, smaller districts allowed representatives to engage with their districts more effectively and facilitated voter-to-voter interaction. Elected officials could provide stronger representation for their constituents' needs through easier dialogue.¹⁵⁰ For example, the stage line in California in 1858 was 2,800 miles long. It would take a driver more than twenty-five days to traverse even traveling non-stop without sleep.¹⁵¹ A small district in this environment could facilitate more communication and engagement than a larger one.

Technological change, however, has undermined the intrinsic value of compactness. Today, a representative could travel from Fort Yuma to San Francisco, the farthest distance on the stage line, in mere hours—and they can reach voters through a television or digital communications platform in seconds. Voters, too, can reach each other much more easily. They can drive miles in minutes and communicate via the phone or the internet instantaneously. How easily traversable a district is matters little today.

One might argue that instead of saving time today, compact districts save money for candidates because they can focus on media purchases in fewer media markets when districts are compact. For congressional races, this benefit seems negligible given how much money candidates can and do raise today. For state representative races, the benefit of a compact district financially would be more meaningful. And yet, arguing that saving on advertising costs should triumph over concerns about segregated districts and political bias discussed *infra* would allow money to dictate districting practices in the most explicit of ways.

2. A Risk To Segregate

The non-results-oriented argument scholars often make in compactness's favor is that it keeps people in community together and who therefore have shared interests in districts together.¹⁵² But, for that very reason, the use of compactness risks smuggling in the problems of municipal lines into elections through a back door—and may even exacerbate them.

150. *Id.*

151. *Stagecoach History: Stage Lines to California*, CAL. ST. PARKS, https://www.parks.ca.gov/?page_id=25066 [<https://perma.cc/Z99D-RZUJ>].

152. See Gardner, *One Person*, *supra* note 4, at 1246–47 (arguing that communities that live together still have shared interests worth representing).

As established above, cities and suburbs often use various policy tools to shape who lives within them.¹⁵³ The net effect of these policies is to push poorer voters, who are often voters of color, into the urban core or exurban periphery of metropolitan areas.¹⁵⁴ This means that using compactness inherently keeps voters of similar socioeconomic status in districts together. The segregation that municipalities facilitate will live on under an unrelated moniker.

Exacerbating this issue is that even within municipalities, socioeconomic and racial segregation increasingly exists at the neighborhood level. Stephen Menendian, Samir Gambhir, and Arthur Gailles recently found that “[o]ut of every metropolitan region in the United States with more than 200,000 residents, 81 percent (169 out of 209) were more segregated as of 2019 than they were in 1990.”¹⁵⁵ Only 2 of the 113 largest cities examined qualify as “integrated.”¹⁵⁶ As noted above, redlining of the past also continues to dictate the specific parts of cities in which many Americans live.¹⁵⁷

The use of compactness, then, not only may allow the formal segregation that municipalities create to shape elections, but also to allow the deeper, subtler informal segregation that grips existing communities to do the same. Election processes committed to neutrality and equality must abandon compactness, too, then.

III. THE POLITICAL REALITY OF THE TWENTY-FIRST CENTURY

Not only should scholars and policymakers consider abandoning these criteria on normative grounds because they honor segregation and exclusion, but they should also do so on political and practical grounds. Just like the criteria are not facially neutral, they are also not neutral in fact. They perpetuate a systemic bias toward rural voters that prevents elections from being fair and instantiate political sorting in such a way that makes elections less competitive.

To understand why, this Part first establishes what distinguishes the politics of the twenty-first century from that of previous eras: Polarization exists along geographic lines. It then explains how this

153. See *supra* Section II.A.1 (discussing the power of lines); Section II.B.1 (discussing the power of local economic policy).

154. See Briffault, *supra* note 110, at 453; Anderson, *supra* note 94, at 933.

155. Stephen Menendian, Samir Gambhir & Arthur Gailles, *The Roots of Structural Racism: Twenty-First Century Racial Residential Segregation in the United States*, BERKELEY: OTHERING & BELONGING INST. (emphasis omitted), <https://belonging.berkeley.edu/roots-structural-racism> [https://perma.cc/T9GC-DLJA] (June 30, 2021).

156. *Id.*

157. See *supra* notes 101–03 and accompanying text.

polarization ensures that elections that use subdivision preservation and compactness struggle to be fair or competitive and why this concern is particularly salient in state legislative elections.

A. The Rise of Geographic Polarization

As has been well-documented, recent decades have seen a monumental rise in polarization in the United States.¹⁵⁸ Critically for redistricting law, this polarization has taken on a particular shape: Democrats live in cities and nearby suburbs, while Republicans live in rural counties. This divide is intense and widespread. As three political scientists recently explained:

Since the late 1990s . . . rural Americans nationwide have increasingly supported the Republican Party, while urbanites have persisted in their allegiance to the Democratic Party. The growing rural-urban divide has become mapped onto American polarization in ways that are fostering tribalism.¹⁵⁹

Indeed, Pew Research Center found in 2018 that in urban counties, 61% of voters defined themselves as Democrats, while 31% defined themselves as Republicans.¹⁶⁰ In contrast, 54% of voters in rural counties defined themselves as Republicans, while only 38% defined themselves as Democrats.¹⁶¹ This is a sharp increase: Just twenty years prior, 45% of voters in rural counties were Democrat and 44% were Republican,

158. See, e.g., Drew Desilver, *The Polarization in Today's Congress Has Roots that Go Back Decades*, PEW RSCH. CTR. (Mar. 10, 2022), <https://www.pewresearch.org/fact-tank/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades> [https://perma.cc/TT95-MAT7] (“[O]n average, Democrats and Republicans are farther apart ideologically today than at any time in the past 50 years.”); Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, *Cross-Country Trends in Affective Polarization 2* (Nat’l Bureau of Econ. Rsch., Working Paper, Paper No. 26669, 2021), https://www.nber.org/system/files/working_papers/w26669/w26669.pdf [https://perma.cc/7MKF-5M5P] (measuring “trends in affective polarization since the 1980s, focusing on twelve OECD countries” and finding that “the US exhibited the largest increase in affective polarization over this period”).

159. Trevor Brown, Suzanne Mettler & Samantha Puzzi, *When Rural and Urban Become “Us” Versus “Them”: How a Growing Divide Is Reshaping American Politics*, 19 FORUM 365, 365 (2021).

160. PEW RSCH. CTR., WIDE GENDER GAP, GROWING EDUCATIONAL DIVIDE IN VOTERS’ PARTY IDENTIFICATION 22 (2018), <https://www.pewresearch.org/politics/2018/03/20/1-trends-in-party-affiliation-among-demographic-groups> [https://perma.cc/E5XQ-Y5B3].

161. *Id.*

while 55% of voters in urban counties were Democrat and 37% were Republican.¹⁶²

Several trends, past and present, indicate that this geographic polarization will be durable. First, this shift has happened over some time. It is not just a one-election-cycle problem.¹⁶³ Indeed, Democrats have dominated big-city mayoral elections for years, an indication of this trend's relevance.¹⁶⁴ And as multiple scholars have documented, rural voters now possess a distinct political identity, one that is overwhelmingly conservative.¹⁶⁵ Perhaps just as critically, geographic polarization appears to be a global phenomenon related to economic and social trends. Jonathan Rodden explains that liberal parties dominate big cities in many democracies while suffering losses in rural regions.¹⁶⁶ People's preferences on a significant number of issues correlate directly with population density.¹⁶⁷ Geographic polarization also maps onto the other form of polarization defining American politics: the "diploma divide."¹⁶⁸ Voters in urban areas tend to have higher

162. *Id.*

163. See *Explaining the Urban-Rural Political Divide*, NISKANEN CTR. (July 17, 2019), <https://www.niskanenctr.org/explaining-the-urban-rural-political-divide> (discussing JONATHAN A. RODDEN, *WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE* (2019)). But see Nicholas O. Stephanopoulos, *The Causes and Consequences of Gerrymandering*, 59 WM. & MARY L. REV. 2115, 2119 (2018) (arguing that this polarization is more modest).

164. See, e.g., *List of Current Mayors of the Top 100 Cities in the United States*, BALLOTPEDIA, https://ballotpedia.org/List_of_current_mayors_of_the_top_100_cities_in_the_United_States [<https://perma.cc/24HG-XBJG>].

165. See TOM SCHALLER & PAUL WALDMAN, *WHITE RURAL RAGE: THE THREAT TO AMERICAN DEMOCRACY* 5 (2024) ("[T]oday most of rural America is gripped by a right-wing politics that is angry when it should be constructive and passive when it should be engaged. To many of the most cynical and malevolent characters in the political world, this is all part of the plan: Keep rural Americans bitter, and they'll be an easily manipulated force of destruction when democracy doesn't produce the proper results. The worse rural Americans feel, the better this plan works."); NICHOLAS F. JACOBS & DANIEL M. SHEA, *THE RURAL VOTER: THE POLITICS OF PLACE AND THE DISUNITING OF AMERICA* 3–4, 12–13 (2024) (explaining rural voters possess a distinct voting identity).

166. See *Explaining the Urban-Rural Political Divide*, *supra* note 163; see also Ernest Calvo & Jonathan Rodden, *The Achilles Heel of Plurality Systems: Geography and Representation in Multiparty Democracies*, 59 AM. J. POL. SCI. 789, 792–93 (2015) (explaining that special sorting of voters hurts different parties in distinct ways, namely that large parties are hurt by their voters being packed close together, indicating that such a party in the United States, like the Democrats, would be negatively affected).

167. *Explaining the Urban-Rural Political Divide*, *supra* note 163.

168. Doug Sosnik, Opinion, *The 'Diploma Divide' Is the New Fault Line in American Politics*, N.Y. TIMES (Apr. 17, 2023), <https://www.nytimes.com/2023/04/17/opinion/education-american-politics.html>; see also Richard Florida, *The Talent Divide in Urban and Rural Areas*, BLOOMBERG (Oct. 31, 2018, 10:58 AM), <https://www.bloomberg.com/news/articles/2018-10-31/the-place-of-college-grads-in-the-urban-rural-divide> (capturing the degree divide between geographies).

educational attainment—both of which make them more likely to be Democrats than rural voters. The density-partisanship relationship is also not as broad as urban versus rural. Even within suburbs, the more populated and closer to the urban core, the more likely voters are to be Democrats.¹⁶⁹ Finally, people today are more committed partisans than ever. Voters rarely split their tickets and are more consistent in their party alignment across elections.¹⁷⁰ All of these trends indicate rural-urban polarization is deeply rooted and multifaceted, so much so that redistricting law must account for it. Political geography is powerful enough to define elections.¹⁷¹

That said, there are signs that Democrats' grip on cities has decreased during the Donald Trump era.¹⁷² However, it is not clear yet whether this trend will hold post-Trump. Additionally, Democrats' growing support in inner-ring suburbs means that their political support remains packed, and Republicans' strength in rural communities shows no sign of slippage. That is all to say that the changes to political

169. See Dante J. Scala & Kenneth M. Johnson, *Political Polarization Along the Rural-Urban Continuum? The Geography of the Presidential Vote, 2000–2016*, ANNALS AM. ACAD. POL. & SOC. SCI., July 2017, at 162, 178; see also Jack Weisman, *Shift in the Suburbs: An Analysis of Changing Vote Patterns in American Suburbs, 2000–2018*, at 21 (2019) (B.A. thesis, University of Pennsylvania), <https://repository.upenn.edu/server/api/core/bitstreams/6bb67f7b-d335-4a94-9593-5d859626ed8f/content> [<https://perma.cc/Q6WT-T54R>] (arguing that the “proximity” to the urban core correlated with whether suburban voters voted for Democrats or Republicans); Emily Badger, *How Suburbs Change: More Density Means More Democrats*, WASH. POST (May 2, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/05/02/how-suburbs-change-more-density-means-more-democrats> (showing that denser suburbs are more likely to vote for Democrats).

170. See Philip Bump, *2020 Saw the Least Split-Ticket House Voting in Decades*, WASH. POST (Feb. 19, 2021), <https://www.washingtonpost.com/politics/2021/02/19/2020-saw-least-split-ticket-house-voting-decades>.

171. Indeed, urban-rural polarization may even grow stronger. People may increasingly sort themselves and live in places intentionally based on the politics of a given place. Meanwhile, it is possible that the outlier voters in urban and rural counties continue to assimilate to their communities' views. See, e.g., James G. Gimpel & Iris S. Hui, *Seeking Politically Compatible Neighbors? The Role of Neighborhood Partisan Composition in Residential Sorting*, 48 POL. GEOGRAPHY 130, 130–32 (2015) (explaining how neighbor politics affect perception of home value); see also Gregory J. Martin & Steven W. Webster, *Does Residential Sorting Explain Geographic Polarization?*, 8 POL. SCI. RSCH. & METHODS 215, 215 (2020) (arguing that self-sorting is not the driver of geographic polarization, but rather, “location must have some influence on political preference”). But see Stephanopoulos, *Election Law for the New Electorate*, *supra* note 7, at 3 (showing how Hispanic voters have become more Republican in recent years, which may affect some effects of geographical polarization).

172. See Stephanopoulos, *Election Law for the New Electorate*, *supra* note 7, at 62.

geography and polarization do not indicate that its importance is on the verge of receding.

B. The Dangers of Compactness and Subdivision Preservation

The evidence that political subdivision preservation and compactness create a near insurmountable bias in the wake of geographic polarization is clear and damning. Chen and Rodden explain that “in many states, Democrats are inefficiently concentrated in large cities and smaller industrial agglomerations such that they can expect to win fewer than 50% of the seats when they win 50% of the votes.”¹⁷³ Why? Because redistricting principles that favor keeping communities that live close to one another in districts inherently pack urban—and therefore Democratic—voters. Chen and Rodden detail their core findings as follows:

[O]ur simulation results offer insight into the likely effect of various redistricting reforms, such as Amendments 5 and 6 in Florida, that attempt to mandate the seemingly objective districting criteria of compactness, contiguity, and respect for municipal boundaries. Our simulation method mimics the type of districting process mandated by such reforms. Our results suggest that in Florida, New York, Pennsylvania, and other urbanized states with substantial rural peripheries, such reforms are likely to lock in a powerful source of pro-Republican electoral bias ¹⁷⁴

At a minimum, map drawers must actively and directly address this bias to overcome it; passive acceptance of their role makes creating fair maps nearly impossible. Numerous studies beyond Chen and Rodden have found that these “traditional” or so called “neutral” redistricting principles are just biased mechanisms for drawing maps. As Lani Guinier put it succinctly when discussing the impact of redistricting on minorities: “It is districting in general—not race-conscious districting in particular—that is the problem.”¹⁷⁵ In terms of partisan effects, Paul Diller explains:

The phenomenon of “unintentional gerrymandering,” whereby urban-favored Democratic legislative candidates waste comparatively more votes in their districts than do Republicans

173. Chen & Rodden, *supra* note 7, at 239–40.

174. *Id.* at 266.

175. LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 121 (1994).

in suburban-to-rural districts, puts urban voters' political preferences at a structural disadvantage that is almost impossible to "correct" even with intentional, pro-Democratic gerrymandering.¹⁷⁶

And Justice Scalia himself recognized as much in *Vieth v. Jubelirer*:¹⁷⁷

Consider, for example, a legislature that draws district lines with no objectives in mind except compactness and respect for the lines of political subdivisions. Under that system, political groups that tend to cluster (as is the case with Democratic voters in cities) would be systematically affected by what might be called a "natural" packing effect.¹⁷⁸

These tools have a natural packing effect that pushes urban voters into tighter spaces and, therefore, fewer districts. Democrats deliver big victories in a handful of places while having no chance in much of a given state. These criteria are not neutral: They distort maps such that one type of voter has an advantage over another, based on nothing other than where they happen to live.

Pennsylvania provides a paradigmatic case of the perils of using these traditional criteria. In his study of the state's previous plan, John Nagle found that the only way to create a fair map would be to discard the traditional criteria of compactness and subdivision preservation.¹⁷⁹ The reason accords exactly with the analysis here: Those criteria basically ensured that Philadelphians—the state's urban core—were not properly represented.¹⁸⁰ He explains in discussing the Democratic preference among different statewide plans: "This region elected three Democrats in three heavily packed districts under the unconstitutional 2011 plan. It has a D preference of 3.95 seats under the SCOPA plan. The D preference in my . . . plans is 4.99 seats. This gain is due to splitting Philadelphia more than the traditional criteria allow."¹⁸¹ Put simply, these criteria required that Philadelphians forgo more than one-

176. Paul A. Diller, *Reorienting Home Rule: Part I—The Urban Disadvantage in National and State Lawmaking*, 77 LA. L. REV. 287, 291 (2016).

177. 541 U.S. 267 (2004).

178. *Id.* at 289–90.

179. Nagle, *What Criteria Should Be Used*, *supra* note 7, at 63 ("For fairer maps, it appears to be necessary to 'anti-gerrymander' by relaxing the traditional criteria to overcome the political geography in Pennsylvania which apparently makes a Democratic gerrymander practically impossible.").

180. *Id.* at 69.

181. *Id.*

quarter of their proper representation because they happen to live in a large urban environment.

This problem does not exist in just one state. It exists in every state that has a strong urban core and a rural periphery—which is to say, almost every highly populated state in the country.¹⁸² Texas, California, New York, Florida, Pennsylvania, and North Carolina are all large enough that the use of these criteria in one or two of them alone can dictate which party controls the House. When compactness and subdivision preservation are treated as neutral criteria, one type of voter in the current alignment—a rural voter—has more power than another—an urban voter. This preference also creates partisan bias in favor of Republicans because of geographic polarization. And because scholars, judges, and legislatures treat these criteria as “neutral,”¹⁸³ the criteria can serve as a defense against claims that one group did not receive equal representation. Indeed, they even allow mapmakers to actively conceal gerrymanders depending on the geographic makeup of a state.¹⁸⁴

Not every state has this issue since the spatial distribution of voters varies across states in ways that affect these criteria’s power. More generally, the worst effects of geographic sorting on the fairness of electoral outcomes may have subsided.¹⁸⁵ But there are two types of states

182. John F. Nagle, Examples that Illustrate How Compactness and Respect for Political Boundaries Can Lead to Partisan Bias When Redistricting 1 (unpublished manuscript), <https://lipid.phys.cmu.edu/nagle/Publications/2014NagleUnsubmitted.pdf> [<https://perma.cc/P3JP-TR6J>] (“One set of examples shows less bias for less compact districting, supporting the comment of Grofman and King that compactness is not a reliable proxy to achieve partisan fairness. All examples indicate that respect for political boundaries increases partisan bias, well known as unintentional gerrymandering.”); see also Christopher T. Kenny, Cory McCartan, Tyler Simko, Shiro Kuriwaki & Kosuke Imai, *Widespread Partisan Gerrymandering Mostly Cancels Nationally, but Reduces Electoral Competition*, 120 PNAS e221732210, at 1, 1 (2023) (arguing that, on net, geography disadvantages Democrats by eight seats).

But see Nicholas Goedert, Robert Hildebrand, Laurel Travis & Matt Pierson, *Asymmetries in Potential for Partisan Gerrymandering*, 49 LEGIS. STUD. Q. 551, 577–79 (2024) (finding that Republican bias exists in low-density, rather than high-density, states). However, even these findings likely support the general argument of this Article: that these criteria instantiate certain political biases. It would simply reverse the party that is harmed by the combination of political geography and geographic redistricting criteria from the Democratic Party to the Republican Party, further indication that voters and reformers on both sides of the aisle should be equally wary of subdivision preservation and compactness.

183. See *supra* notes 1–4 and accompanying text.

184. See Goedert, Hildebrand, Travis & Pearson, *supra* note 182, at 551 (explaining that compactness allows for hidden gerrymanders).

185. See *supra* notes 7, 182 (discussing recent studies finding that the nationwide effect of natural packing may have lessened in recent years); RODDEN, *supra* note 163, at 254 (noting the possibility of changes in political geography that may alter electoral outcomes).

in which the urban-rural divide strongly influences districts. Nicholas Eubank and Jonathan Rodden show that “Republicans benefit from a superior spatial distribution of support relative to the Democrats in a wide cross-section of states, but this is especially true in Democratic states and in hotly contested swing states.”¹⁸⁶ This phenomenon means that where Democrats dominate, Republicans receive some protection from their geography. Meanwhile, in the most contested places, Republicans have a built-in advantage. These two advantages alone make it harder for Democrats to win the House and risk leaving purple states with deeply unequal state legislatures.¹⁸⁷

Changing who draws the maps may not alleviate the damage these purportedly neutral criteria do to urban-rural and partisan fairness, either. In fact, according to at least one study, independent commissions are more likely than partisan map-drawers to make their districts compact. Why? Because of a belief in neutrality.¹⁸⁸ There is a widespread notion that compactness and subdivision preservation are a fair metric, so drawing maps that are compact makes them less objectionable.¹⁸⁹ If even independent commissions—the ultimate effort to remove politics from mapmaking—exacerbate the structural inequities these criteria create, their danger to the fairness of American elections is truly fundamental.

For those scholars who believe election reform should focus on creating competition—close races—within districts and states than ensuring fair outcomes that reflect the political demography of the state,¹⁹⁰ these criteria also pose a challenge: They make elections less

186. Eubank & Rodden, *supra* note 22, at 88.

187. But in some states, the distribution of Republicans combined with the use of (some of) these criteria harms Republicans, too. See Moon Duchin, Taissa Gladkova, Eugene Henninger-Voss, Ben Klingensmith, Heather Newman & Hannah Wheelen, *Locating the Representational Baseline: Republicans in Massachusetts*, 18 ELECTION L.J. 388, 388, 392 (2019) (“[T]he strength of the findings here, which show that in fenced-out elections the most Republican-favoring collection of precincts falls far short of ideal district size, all but guarantees that under actual current districting practices (contiguity, reasonable compactness, and under 1.5% of precincts split) the fence-out would remain in force.”).

188. Curiel, *Partisan Polygons*, *supra* note 16, at iii (“At the same time, courts and independent commissions draw more compact districts, due to their belief compact districts constrain gerrymandering.”).

189. *Id.*

190. See Heather K. Evans, Michael J. Ensley & Edward G. Carmines, *The Enduring Effects of Competitive Elections*, 24 J. ELECTIONS PUB. OP. & PARTIES 455, 455 (2014) (“Analyzing a survey of citizens conducted one year after the 2006 congressional elections that includes an oversample of respondents from competitive House races, we examine whether exposure to a competitive House campaign affects voters’ political knowledge and political interest as well as their consumption of political news. We find that competitive elections have positive effects that endure for at least a year beyond the

competitive. Take North Carolina, for example. Only one county of the state's one hundred counties falls within a 55–45 partisan competitiveness range.¹⁹¹ Even expanding a notion of competitiveness, fewer than one in five fall within a 40–60 competitiveness range.¹⁹² It is difficult to overstate how devastating this reality is for competitive districts in a world that prioritizes keeping counties (and the communities within them) together. If no county is competitive, it is difficult for the districts they comprise to be competitive. Gimpel and Harbridge-Yong show that this problem extends beyond North Carolina. Pennsylvania, too, suffers from a serious (though less severe) lack of competitive counties.¹⁹³ And as political analysts David Wasserman and Amy Walter explain, this problem now exists nationwide:

In 1988 . . . less than half of all Americans (42%) lived in a county that voted for one presidential candidate or the other by at least 60%. In other words, a majority of Americans lived in a place where one party or the other was not dominant. By 2020, almost 60% of [Americans] lived in a county that voted overwhelmingly for one party or the other.¹⁹⁴

The problem of extremely biased counties is growing, too. Walter writes, “[a]t the beginning of this century, 13% lived in a deep red or blue county,” meaning the county gave 70% or more of its vote to one party, but “[n]ow, almost 30% of us do.”¹⁹⁵ Instead of breaking down

campaign season, reinforcing the idea that political competition plays a robust role in American representative democracy.”); *see also* KEENA LIPSITZ, COMPETITIVE ELECTIONS AND THE AMERICAN VOTER 2 (2011) (arguing that to improve American elections, we must make them more competitive); Richard H. Pildes, *Create More Competitive Elections To Limit Extremism*, REALCLEARPOLITICS (Apr. 29, 2021), https://www.realclearpolitics.com/articles/2021/04/29/create_more_competitive_district_s_to_limit_extremism_145672.html (arguing for competition to undo extremism).

191. *Conflicting Goals of Redistricting*, *supra* note 8, at 463 (“By the 2000s, only one county (New Hanover) fell within the 45–55 percent margin of closeness, and it remained the only one into the next decade. In recent years, only 18 of the state’s 100 counties have fallen within the wider 40–60 percent margin of competitiveness.”).

192. *Id.*

193. *Id.* (“[In Pennsylvania, the] number of counties that fell outside this competitive range for the 1990s averaged just 10 of the 67, or 15 percent. For the 2000s decade, including elections from 2000 to 2008, the number falling outside this range of outcomes more than doubled to 22, or 33 percent. By the 2010s, so far averaging these statewide elections from 2010 to 2016, the number of counties falling outside the competitive range reached 28, or 42 percent.”).

194. Walter, *supra* note 23 (citing Wasserman’s data compilation).

195. *Id.*

the self-sorting of counties, the current redistricting criteria risks perpetuating it to the point that elections become uncompetitive.¹⁹⁶

The problem of self-sorting goes deeper than the county level. Because of how intense and granular geographic polarization is, any effort to prioritize keeping together people who live in the same neighborhoods, subdivisions, or streets will keep the parties sorted. Jacob Brown and Ryan Enos have found that partisan sorting has reached such astronomical levels that “[a] large proportion of voters live with virtually no exposure to voters from the other party in their residential environment.”¹⁹⁷ They continue: “Such high levels of partisan isolation can be found across a range of places and densities and are distinct from racial and ethnic segregation. Moreover, Democrats and Republicans living in the same city, or even the same neighborhood, are segregated by party.”¹⁹⁸ Their findings show why abandoning only subdivision preservation is not sufficient to make elections competitive. Because people live apart from another at any scale of geography, any prioritization of compactness likely undermines competitiveness as well.

Indeed, critical to arguments that these criteria undermine partisan fairness less than they did previously is that Republicans now also have packed themselves into certain communities (largely rural ones).¹⁹⁹ If this trend holds and strengthens, it may well be over time that these criteria are even more devastating for competitiveness than they are for partisan fairness. Their effect on elections would still be powerful and pervasive. The 2024 election indicates as much: only eight percent of congressional elections and seven percent of state legislature elections “were decided by five points or fewer” according to *The New York Times*.²⁰⁰ And in North Carolina, one of the states that Harbridge-Yong and Gimpel analyzed for self-sorting, there was only one congressional district determined by fewer than fourteen points in 2024.²⁰¹

One final consequence of geographic polarization and the use of these criteria is that more extreme candidates are more likely to win than

196. See *Conflicting Goals of Redistricting*, *supra* note 8, at 463 (explaining how the addition of any of Pennsylvania’s most lopsided rural counties would “almost certainly tilt it toward the Republicans, and their sheer geographic distance from Democratic centers of population suggest that in the districting process they will more than likely be joined with other, similar Republican counties”).

197. Jacob R. Brown & Ryan D. Enos, *The Measurement of Partisan Sorting for 180 Million Voters*, 5 NATURE HUM. BEHAV. 998, 998 (2021).

198. *Id.*

199. See, e.g., Stephanopoulos, *Election Law for the New Electorate*, *supra* note 7, at 46.

200. Nick Corasaniti & Michael Wines, *How Redistricting Helped Republicans Win the House*, N.Y. TIMES (Jan. 26, 2025), <https://www.nytimes.com/2025/01/26/us/politics/2024-elections-congress-state-redistricting.html>.

201. *Id.*; see also *Conflicting Goals of Redistricting*, *supra* note 8.

they otherwise would. When politicians do not need to run to the center in a competitive cross-party election, they will focus on fending off a primary challenge from the extreme wing of their party.²⁰² Because most states have one-party primaries, and because often the most motivated voters turn out in primaries, an ideologically homogenous district that makes general elections non-competitive removes the only check on candidate's incentives to play to the other side.²⁰³ And that is the case today: David Wasserman writes that self-sorting "has made primaries the only race that matters in most seats."²⁰⁴ In particular, he explains the urban-rural divide "has driven most of the competitive decline."²⁰⁵ In other words, geographic polarization has rendered general elections meaningless in many districts, a fact that is at least partly responsible for increased extremism. Subdivision preservation and compactness help keep voters sorted and, therefore, elevate the role of primaries and the possibilities for extreme candidates.

As the above indicates, election law will struggle to address increased partisan bias, decreased competition, and extremism without abandoning the subdivisions people live in and their proximity to one another as redistricting tools. These criteria rigidly pack urban voters into tight spaces such that they have limited influence statewide.²⁰⁶ The resulting districts are also so politically homogenous that a significant number are not competitive enough to discourage extremism.²⁰⁷ These criteria are not pre-political or neutral. Even if the current tide of partisan geographic polarization recedes, current political geography shows that

202. For example, Richard Pildes explains:

[I]n safe seats, by contrast, incumbents' main threat comes from being "primaried." Given the make-up of primary voters, that threat mostly comes from the ideological poles of their party. As the authors of a recent book titled "Rejecting Compromise: Legislators' Fear of Primary Voters" find: "Legislators believe that primary voters are much more likely to punish them for compromising than general election voters or donors." . . . When the major competitive threat that safe-seat incumbents face is from the ideological wings of their party, little incentive exists to appeal to the center of the political spectrum. Primary voters in safe-seat districts also have less incentive to compromise and back moderate candidates because the party's candidate will win the general election regardless of where they fall along the party's ideological spectrum; In turn, moderates are less likely to run in the first place, because they know they can't survive the primary electorate. The overwhelming dominance of safe seats in Congress contributes significantly to a Congress that is much more polarized than are citizens themselves.

Pildes, *supra* note 190.

203. *Id.*

204. Wasserman, *supra* note 8.

205. *Id.*

206. *See supra* notes 173–87 and accompanying text.

207. *See supra* note 8 and accompanying text.

these criteria's usefulness for constraining legislatures and facilitating representative elections *depends upon* the politics of a given moment. Redistricting criteria should be responsive to politics, rather than beholden to it.

Of course, there is an irony for liberals. Urban liberals often employ municipal lines and local economic policy to exclude such that the unequal and exclusive lines they create contribute to their own political defeat.²⁰⁸ But this fact does not hide the fundamental truth for election law. Whereas redistricting criteria need to be flexible and responsive for elections to be representative in the twenty-first century, subdivision preservation and compactness are rigid to the point that they fundamentally distort elections.

C. The Special Problem of State Legislatures

The use of subdivision preservation and compactness for state legislative maps poses a unique danger for an institutional reason: Legislatures can perpetuate bias within these districts with ease. Because most states have state legislatures draw districts,²⁰⁹ the composition of the state legislature in the decennial years matters for how the maps will turn out for the entire following decade. A rural bias created due to compactness and subdivision preservation in 2011 meant that in 2021, state legislatures drawing maps likely overrepresented Republicans.²¹⁰ This dynamic means the map for this cycle was likely tilted toward Republicans, too, since these legislatures likely draw maps to favor their own parties. When 2031 comes, the state legislature will likely be as or even more biased than previously. The next map will again protect rural political interests in the name of these criteria.²¹¹ This concern is

208. See David Schleicher, *Constitutional Law for NIMBYs: A Review of "Principles of Home Rule for the 21st Century" by the National League of Cities*, 81 OHIO ST. L.J. 883, 887 (2020) (explaining the high societal costs that liberal urban environments often create through their policies).

209. See *Who Draws the Lines?*, LOY. L. SCH.: ALL ABOUT REDISTRICTING, <https://redistricting.ils.edu/redistricting-101/who-draws-the-lines/> [<https://perma.cc/EK9P-QZ9U>] (showing that only nine states use independent commissions to draw maps).

210. It is also worth considering how these criteria may further enable and be compounded by what Robert Yablon has described as "gerrylaundersing," in which legislatures use old maps to entrench current candidates. If old maps bias rural voters (which they almost certainly do), it is likely that gerrylaundersing on net is another means of protecting those voters' interests and partisan bias. See Robert Yablon, *Gerrylaundersing*, 97 N.Y.U. L. REV. 985, 987 (2022).

211. For a general discussion of how this cycle affects state politics and in particular how cities are treated, see Richard C. Schragger, *Localism All the Way Up: Federalism, State-City Conflict, and the Urban-Rural Divide*, 2021 WIS. L. REV. 1283, 1283 ("[S]tate hostility to local policymaking has become its own epidemic, with states preempting, suing, fining, and attacking local officials over a range of policies."); see

particularly salient given that more than three dozen states use compactness and/or subdivision preservation for state legislatures, while thirty-three use municipal preservation—more than the number of states that do for congressional maps.²¹²

These criteria have their widest acceptance among states in the elections they pose the greatest danger to fairness and competitiveness, state legislative elections. One party, using the geographic bias of one decade, can entrench itself while cloaking itself in so-called neutral criteria.

D. Twenty-First Century Politics and Problems

It is worth stressing how different this moment is from the last redistricting revolution of the 1960s. Then, the Warren Court recognized that unequal districts based upon outdated criteria threatened the legitimacy of elections.²¹³ But the thinking of that era—which embraced subdivision preservation and compactness among other policies—now hinders our own. Michael Kang argues that modern election law developed during the bipartisanship of the Cold War era, when institutions and norms constrained the parties from using election law to seek maximal gain.²¹⁴ Today, however, he explains that gerrymandering is more effective and more intense, people are more polarized, and parties no longer need to moderate to win more seats.²¹⁵ And yet, election law still operates under old political assumptions.

Although Kang does not mention geographic polarization, it may be the single most important change of recent decades for the relevancy of redistricting criteria. Democrats and Republicans live in fundamentally distinct environments today.²¹⁶ This political arrangement likely requires

also Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1167 (2018) (“The recent spate of preemptive state legislation reveals the deep roots of constitutional anti-urbanism. Those roots are the subject of this Article, which argues that anti-urbanism is an enduring feature of American federalism. Cities *qua* cities are not represented in state or national legislatures. So too, the equal representation of states in the Senate privileges rural voters over urban ones. And the mere existence of states competing for power limits the possibilities for decentralizing power to cities.”).

212. See *supra* Table 1.

213. See generally Grant M. Hayden, *The False Promise of One Person, One Vote*, 102 MICH. L. REV. 213 (2003) (explaining that the Warren Court understood itself, and others have understood it, to have been trying to legitimate voting and elections).

214. See Michael S. Kang, *Hyperpartisan Gerrymandering*, 61 B.C. L. REV. 1379, 1383–84 (explaining how courts came to be involved in election law during a low point in polarization, a phenomenon that leaves election law poorly set up to deal with the hyper-partisanship of this era).

215. *Id.* at 1384–86, 1436–37.

216. See *supra* Section III.A.

different criteria. Why? Because the current criteria favor rural voters over urban voters. These criteria also make elections less competitive because they do not account for this era's intense self-sorting, a failure that risks the proliferation of extreme candidates. State legislatures accentuate the risk associated with these criteria due to their control over the redistricting process.

Even trends that suggest geographic polarization is changing do not redeem these criteria.²¹⁷ Redistricting criteria need to be malleable amidst political changes to protect against structural bias; elections need rules that work across political eras and decades' worth of time. Recent redistricting has shown that these rules are not always fair to one party or another—that geography dictates the level of bias they create for maps. Indeed, even now, they still have a critical effect on fairness and competitiveness.²¹⁸

In fact, new data that indicates that rural districts are now equally as Republican as urban districts are Democrat does not rescue elections from these criteria's flaws.²¹⁹ Equal levels of homogeneity in urban and rural districts may mean these criteria no longer bias one party over the other.²²⁰ However, the fact that these criteria may no longer undermine how fair elections are likely comes at a cost: because they pack voters in, and because districts everywhere may now be homogenous, these criteria may have an make elections even less competitive than previously.

The results of the 2024 election may be an indication of this trend: although there was a Democratic bias in congressional races, a sign that

217. See Stephanopoulos, *Election Law for the New Electorate*, *supra* note 7, at 39–41.

218. See *supra* notes 7–8, 22 and accompanying text; see also Thomas B. Edsall, Opinion, *The Ground Is Shifting Under Trump and Biden*, N.Y. TIMES (June 26, 2024), <https://www.nytimes.com/2024/06/26/opinion/democrats-republicans-coalitions-electorate.html> (quoting Jonathan Rodden as saying: “[I]n the most recent round of redistricting, anyone who attempted to draw fair districts in Wisconsin, Ohio, Michigan or Pennsylvania can attest that ignoring partisanship and focusing only on compactness and respect for county and municipal boundaries would typically result in pro-Republican maps. In these highly competitive states, it is only possible to achieve partisan fairness by actively trying. One must do things like split Milwaukee into two congressional districts or strategically connect college towns when drawing Ohio Senate districts. Even after such efforts, sometimes the most pro-Democratic maps under consideration still demonstrated slight pro-Republican bias.”).

219. In 2024, “rural and exurban areas backed Republicans to an even greater extent. Districts there are now about as blood-red — i.e., as inefficient — as their deep-blue counterparts in cities.” Nicholas O. Stephanopoulos, Eric McGhee & Christopher Warshaw, Opinion, *The House’s Republican Edge Is Gone. But the Gerrymander Lives.*, WASH. POST. (Mar. 3, 2025), <https://www.washingtonpost.com/opinions/interactive/2025/house-gerrymandering-bias-republicans-democrats/>.

220. *Id.* (arguing that geographic bias’ impact on electoral results has declined).

perhaps the impact these criteria have on the fairness of outcomes is lessening,²²¹ competitive races were near non-existent nationwide,²²² a signal that geographic sorting and these criteria (among other factors) may now combine to undermine the competitiveness of American elections. These criteria's pervasive negative effects on electoral outcomes likely cannot be stopped in the short and medium term, only shifted to different redistricting concerns.²²³

IV. THE ALTERNATIVE

The individual and collective flaws of subdivision preservation and compactness naturally raise the question: What is next for election law? This Part shows that it is possible (and desirable) to preserve the aim of reform-minded thinkers to have elections and maps that reflect both voters' partisan and nonpartisan interests. In addition to ending the consideration of compactness and subdivision preservation (while maintaining the federal requirements of the Voting Rights Act and equal population), states should focus on partisan fairness and a geographically and conceptually robust idea of communities of interest.

A. Partisan Consideration as a Less Partisan Approach

Freed from the constraints of compactness and political subdivision preservation, partisan fairness as a criterion would accomplish its purpose: ensuring legislatures and congressional delegations accurately reflect the state's political makeup, rather than its geographic distribution of voters.²²⁴

There is a robust debate in the political science and legal literature on the best way to measure and implement a partisan fairness criterion. Some methods analyze how many seats each party would win with equal shares of elections, while others analyze the number of wasted votes each party had to identify if each party has the representative it deserved.²²⁵

221. *Id.*

222. *See supra* notes 200–05 and accompanying text.

223. Of course, if voter distribution changes in such a way that political sorting altogether erodes, that would lessen the practical concerns about these criteria. But that occurrence would not change that future elections could be affected, nor would it change their significant normative weaknesses.

224. *See, e.g.,* Stephanopoulos & McGhee, *supra* note 19 and accompanying text.

225. *See id.* at 834–35 (defining “partisan bias” and “efficiency gap” metrics respectively); *see also* Bernard Grofman, *Tests for Unconstitutional Partisan Gerrymandering in a Post-Gill World*, 18 ELECTION L.J. 93, 93 (2019) (outlining many different approaches to identifying and preventing partisan gerrymandering). *But see*

For the purposes of this Article, it is not necessary to determine which is best. The critical point made here is that partisan fairness—ensuring that elections create an accurate (or close to accurate) representation of the voters’ respective partisan interests—should be a first-order principle in redistricting law. A partisan fairness requirement would not only help ensure that maps reflect a roughly accurate distribution of political power, but doing so would also protect voters’ partisan and nonpartisan identities as well as subdivision preservation and compactness do.

Every election confirms the importance of explicitly committing to creating fair maps. In the wake of the 2022 midterm election, political analyst and data expert David Wasserman declared that “redistricting was destiny.”²²⁶ Take Florida, where Wasserman explained that the partisan design of the map—which did not account for fairness—meant “an additional four seats in that state, converting the delegation from 16–11, in Republican’s favor, to 20–8.”²²⁷ Or look at Texas, which received an “F” from the Princeton Gerrymandering Report Card because it was so biased.²²⁸ There, Democrats won 43.9% of votes in the governor’s race, but just thirteen out of thirty-eight seats in the House.²²⁹ Nationally, Democrats lost the House by nine seats.²³⁰ Together, Florida and Texas determined who won. Indeed, a decade ago, the results were even more about the combination of geography and redistricting: Democrats won the popular vote in 2012 but lost the House by twenty-six representatives.²³¹ The North Carolina Supreme Court’s reversal of that state’s congressional map—which flipped three Democratic seats Republican—proved to be the difference in the battle for the House in 2024.²³² By contrast, maps that explicitly try to represent the parties

Duchin, Gladkova, Henninger-Voss, Klingensmith, Newman & Wheelen, *supra* note 187 (showing why exact proportionality is not possible in the United States).

226. Scott Simon, *How Redistricting Affected the Outcome of the Elections*, NPR (Nov. 12, 2022, 7:58 AM), <https://www.npr.org/2022/11/12/1136267788/how-redistricting-affected-the-outcome-of-the-elections>.

227. *Id.*

228. *Texas 2021 Final Congressional Plan C2193 - Enacted*, PRINCETON: GERRYMANDERING PROJECT, <https://gerrymander.princeton.edu/redistricting-report-card/?planId=recL5EF85h0ILukMA> [<https://perma.cc/K2ZV-EU88>] (Dec. 16, 2023).

229. *Texas Election Results*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-texas.html> (Dec. 14, 2022).

230. *U.S. House Election Results: Republicans Win*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-house.html> (Jan. 10, 2023).

231. Michael Macagnone, *Redistricting Helps Republicans in Close Fight for House Control*, ROLL CALL (Nov. 15, 2022, 5:00 AM), <https://rollcall.com/2022/11/15/redistricting-helps-republicans-in-close-fight-for-house-control/> [<https://perma.cc/M2YT-PSQV>].

232. Corasaniti & Wines, *supra* note 200.

accurately would mean that voters' ideological preferences, rather than map-drawers', determine outcomes.

A partisan fairness requirement has other benefits that compactness and subdivision preservation do not. The first is that it could prevent the hidden gerrymandering described in the previous section, when politicians gerrymander for their gain but defend their maps based on seemingly neutral criteria. To see how easy this bait-and-switch is to do, one need only look at North Carolina, where Republicans in the 2024 cycle claimed that their maps preserved subdivisions in 2022 and in doing so reflected voters' desires to justify a court-ruled partisan gerrymander.²³³ In some ways, hidden gerrymandering is more concerning than outright manipulation because politicians can claim neutrality while getting their desired outcomes. They do not even have to acknowledge their bias to their voters. They get the best of both worlds: victory and seeming objectivity.

Preventing this phenomenon is especially critical given state-level judicial review. As Kim and Chen detail, "judges could reject a politically inconvenient districting rule by claiming that it contradicts their sincerely-held beliefs regarding traditional redistricting criteria."²³⁴ The increased intensity of state judicial elections only exacerbates this concern.²³⁵ Multiple actors within the political system can hide behind traditional redistricting criteria when a clear partisan gerrymander has occurred.²³⁶ Replacing these criteria with an explicit commitment to partisan fairness would ensure states end up with fair maps, rather than judicially enabled and neutral criteria-facilitated gerrymanders.

The second reason to pivot from compactness and subdivision preservation to a focus on partisan fairness is that doing so would allow people's chosen political identities to be properly represented in the redistricting process.²³⁷ Currently, Justices Powell, Warren, and Stevens's idea dominates, that subdivisions—the people who live around

233. Lynn Bonner, *Members of the Public Say Their Testimony Was Distorted in Senate Redistricting Process*, NC NEWSLINE (Nov. 4, 2021, 1:21 PM), <https://ncnewsline.com/2021/11/04/members-of-the-public-say-their-testimony-was-distorted-in-senate-redistricting-process/>.

234. Kim & Chen, *supra* note 2, at 129–30.

235. See James Piltch, *North Carolina Is a Warning*, ATLANTIC (July 3, 2022), <https://www.theatlantic.com/ideas/archive/2022/07/north-carolina-democracy-doom-loop/661464> [<https://perma.cc/A6TE-VHBD>].

236. See Sam D. Hayes, *Competing Criteria: Rethinking Congressional Redistricting and Representation*, 77 POL. RSCH. Q. 1431 (2024) (finding that state judiciaries facilitate geographic group representation).

237. See James A. Gardner, *How To Do Things with Boundaries: Redistricting and the Construction of Politics*, 11 ELECTION L.J. 399, 399 (2012) (arguing that in federal politics, but not state, political identity should be the primary consideration).

us—are a political community worthy of representation in and of itself.²³⁸ However, people now make their political identity central to their identity and communities. Parties are no longer simply affiliation groups that people vote with most of the time; now voter identity is so intense that people see their party as reflecting their values.²³⁹ From the cars they drive to the frequency with which people attend church, the parties reflect (and perhaps dictate) voters' preferences for different ways of living and sets of values.²⁴⁰ To deny the importance of people's political identity rejects how they conceive of themselves and one another and how, ideally, those identities can be and hopefully are fluid.

Finally, a partisan fairness requirement instead of geographic requirements would end the current's system preference for certain individual voters' identities and power over others. Why should people in one subdivision get more power than another simply because of how close or far they live to other people? And why should a rural voter have more power than an urban one? A Republican more than a Democrat?²⁴¹ The problem impacts voters in both parties. A Republican in an urban setting and a Democrat in a rural setting almost certainly have no political power.²⁴² Removing compactness and political subdivisions from consideration and instead explicitly acknowledging the politics at work through a partisan fairness measure will honor identities and political affiliations equally across parties and across geographies

1. A Potential Boost for Competitiveness, Too

A partisan fairness criterion in place of the geographic criteria would not only make elections more representative of the country's political

238. See *supra* notes 32–40 and accompanying text; cf. Edward B. Foley, *Self-Districting: The Ultimate Antidote to Gerrymandering*, 111 KY. L.J. 693, 694–95 (2022–2023) (arguing that because of changes in politics and redistricting, voters ought to be able to choose their districts based on the identity or community that resonates with them).

239. See generally LILLIANA MASON, *UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY* (2018) (arguing that political parties now shape Americans' identities in complete and complex ways).

240. See, e.g., GREGORY A. SMITH ET AL., PEW RSCH. CTR., *DECLINE OF CHRISTIANITY IN THE U.S. HAS SLOWED, MAY HAVE LEVELED OFF: FINDINGS FROM THE 2023–24 RELIGIOUS LANDSCAPE STUDY* 229 (2025), https://www.pewresearch.org/wp-content/uploads/sites/20/2025/02/PR_2025.02.26_religious-landscape-study_report.pdf [<https://perma.cc/E5QN-MUGW>] (capturing a persistent difference between Republicans and Democrats in religious engagement); MARC HETHERINGTON & JONATHAN WEILER, *PRIUS OR PICKUP? HOW THE ANSWERS TO FOUR SIMPLE QUESTIONS EXPLAIN AMERICA'S GREAT DIVIDE* 4–6 (2018).

241. See *supra* notes 7, 22 and accompanying text (discussing the findings of Chen and Rodden, as well as Eubank and Rodden).

242. See Wasserman, *supra* note 8.

makeup, but it could also make elections more structurally sound in other ways. Namely, it may increase competitiveness—how tightly contested races are—and decrease extremism.

This argument admittedly, to some degree, speculative. However, as Richard Pildes has explained, the increased homogeneity of districts is one reason that competition is difficult to achieve.²⁴³ Indeed, counties, cities, and towns have become more politically homogenous over time,²⁴⁴ so much so that David Wasserman attributes the lack of competition today primarily to geographic isolation rather than gerrymandering.²⁴⁵ Hidden in the background of these arguments is that subdivision preservation and compactness ensure voters can remain with their geographic community when they vote. Political isolation becomes internalized to elections through these criteria. As one study found, “tradeoffs between compactness and competitiveness are larger in a state more clustered by party.”²⁴⁶ And again, “institutional” changes like independent commissions cannot address this issue. That same study found that commissions “consistently refuse to trade compactness for . . . competitiveness.”²⁴⁷ Political geography and partisan sorting become intractable using these criteria, thereby making competition more difficult to achieve.

Historically, the focus in the academic literature has been on whether to pursue competitiveness or fairness as the end goal of structural reform.²⁴⁸ In some ways, this Article has taken a “side” with its proposal to adopt a partisan fairness criterion. However, the trade-off need not be so explicit. A commitment to the structural soundness of politics in election law can further both fairness and competitiveness at once. How? By abandoning the geography-based criteria that makes both desirable ends much harder.

This commitment to competitiveness and fairness together in opposition to geography rather than one another is more urgent than ever. Fewer than one in ten districts is competitive,²⁴⁹ and “within states,

243. Pildes, *supra* note 190 (“[G]iven the extent to which voters have sorted themselves geographically along partisan lines, creating competitive districts would in some areas might not be possible or would require unusually shaped districts.”).

244. See *Conflicting Goals of Redistricting*, *supra* note 8, at 451–52.

245. See *supra* note 8 and accompanying text.

246. Levitt, *supra* note 16, at xv–xvi.

247. *Id.*

248. See, e.g., *supra* notes 19–20 and accompanying text. But see NICHOLAS STEPHANOPOULOS, *ALIGNING ELECTION LAW* (2024) (arguing that election law should try to create alignment between voters’ and their elected representatives’ preferences).

249. See Lee Drutman, *What We Lose When We Lose Competitive Congressional Districts*, FIVETHIRTYEIGHT (June 23, 2022, 6:00 AM), <https://fivethirtyeight.com/features/what-we-lose-when-we-lose-competitive-congressional-districts/> [https://perma.cc/7M3A-HTST].

partisan sorting has increased approximately five fold between its nadir in 1976 and the . . . presidential election in 2016.”²⁵⁰ This trend may intensify even more as people increasingly choose where they move based on political preference and the makeup of possible communities.²⁵¹ As noted previously, the 2024 election was a warning sign that competitiveness in this era of geographic polarization may be nearly impossible to achieve without a meaningful change in strategy from states and reformers.²⁵²

Critically, other structural changes to redistricting may not yield pro-competitive results that one might anticipate (and hope).²⁵³ And a reliance on state courts—something many reformers and academics have sought post-*Rucho*—may only exacerbate the role geography and its consequences for competition play in politics.²⁵⁴

These institutional and demographic realities necessitate creative efforts to create a greater number of competitive elections. The replacement of the traditional criteria with a partisan fairness criterion is just that. The elimination of the former will lessen the role geographic self-sorting plays in creating non-competitive districts while a renewed emphasis on partisan fairness within the state will inevitably force more consideration about statewide political makeup than the current criteria allow. Competition as a value and aspiration is more compatible with partisan fairness as a criterion than with subdivision preservation and compactness. The approach here may not be the one that a competitiveness advocate would choose. However, it is clearly preferable to the current system.

250. Ethan Kaplan, Jörg L. Spenkuch & Rebecca Sullivan, *Partisan Spatial Sorting in the United States: A Theoretical and Empirical Overview*, J. PUB. ECON., July 2022, at 1, 2 (emphasis omitted).

251. Ronda Kysen & Ethan Singer, *Millions of Movers Reveal American Polarization in Action*, N.Y. TIMES (Oct. 30, 2024), <https://www.nytimes.com/interactive/2024/10/30/upshot/voters-moving-polarization.html> (“Across all movers, Republicans chose neighborhoods Donald J. Trump won by an average of 19 percentage points in 2020, while Democrats chose neighborhoods President Biden won by the opposite margin (also 19 points). In total, movers started in neighborhoods 31 percentage points apart; they ended in neighborhoods 38 points apart. Across the country, the result is a widening gap between blue neighborhoods and red ones.”).

252. See Corasaniti & Wines, *supra* note 200.

253. See John A. Henderson, Brian T. Hamel & Aaron M. Goldzimer, *Gerrymandering Incumbency: Does Nonpartisan Redistricting Increase Electoral Competition?*, 80 J. POL. 1011, 1011 (2018). *But see* Jamie L. Carson & Michael H. Crespin, *The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races*, 4 ST. POL. & POL’Y. Q. 455, 455 (2004).

254. See *supra* note 234–35 and accompanying text.

Further, it is indisputable that the most extreme representatives tend to come from “safe districts.”²⁵⁵ The lack of political heterogeneity in districts—which compactness and subdivision preservation facilitate—help make this extremism possible because a lack of geographic and political variance enables candidates to focus only on the primary, rather than the general election.²⁵⁶ Therefore, many candidates need only worry about one type of voter: rural Republicans or urban Democrats.

Although addressing extremism requires fixes beyond redistricting criteria, beginning with the primary system itself,²⁵⁷ replacing subdivision preservation and compactness with partisan fairness metrics can help. Candidates in deep blue urban centers and bright red rural regions could no longer rely on political geography to insulate them from their state’s broader voter base. They could not play to the extreme desires of just a handful of counties or cities or a handful of individuals within those counties and cities that are likely to participate in a primary. Instead, they would more likely face voters from a wider swath of life in the general election at the very least. The turn away from political geography could recenter the general election in hundreds if not thousands of congressional and state legislature races across the country. Many more candidates would at least need to consider voters other than the base that exists in particular geographic regions. This accountability and competition might serve as one check on extremist candidates.

B. Redefined and Expanded Communities of Interest

Any approach to redistricting that replaces subdivision preservation and compactness must account for the normative and empirical arguments made in their favor. A more robust commitment to physically expansive communities of interest would preserve the benefits attributed

255. See, e.g., Alexander Kustov, Maikol Cerda, Akhil Rajan, Frances Rosenbluth & Ian Shapiro, *The Rise of Safe Seats and Party Indiscipline in the U.S. Congress 2* (June 25, 2021) (unpublished manuscript), <https://jackson.yale.edu/wp-content/uploads/2022/08/Kustov-et-al.-2021.pdf> [https://perma.cc/3M53-UXF4] (demonstrating “that representatives from safer districts—and especially those from the GOP—have more ideologically extreme and divergent preferences across multiple alternative measures” and “us[ing] redistricting as a plausible source of exogenous variation in electoral competition [to corroborate] that seat safety causes ideological extremism”).

256. See *supra* notes 190–201 and accompanying text.

257. See, e.g., Richard H. Pildes, *How To Keep Extremists Out of Power*, N.Y. TIMES (Feb. 25, 2021), <https://www.nytimes.com/2021/02/25/opinion/elections-politics-extremists.html> (arguing that that lessening extremism requires reforming the primary system); see also NICK TROIANO, *THE PRIMARY SOLUTION: RESCUING OUR DEMOCRACY FROM THE FRINGES* 78–79, 143 (2024) (arguing that nonpartisan primaries are the best possible fix for growing extremism).

to these criteria without their negative impacts on electoral fairness and competition.

Justice Warren expressed the nonpartisan commitment to subdivision preservation in *Reynolds*, which Justices Stevens and Powell (among others) later echoed²⁵⁸: that subdivisions and people who live close to one another in and of themselves have political interests worthy of representation in higher levels of government.²⁵⁹ Part III explained that this normative commitment is misguided for each of these criteria. Municipal lines perpetuate bias and exclusion, county lines are manipulable and relics of history, and compactness risks codifying segregation without any normative benefits.

But as Nicholas Stephanopoulos explains, “homogenizing criteria” like these that pack people together who have similar interests or backgrounds can increase voter knowledge, engagement, and satisfaction.²⁶⁰ Elections obviously benefit from an engaged electorate, and it is preferable for voters to feel satisfied with their representatives. People also possess nonpartisan identities that elections should represent, which these criteria do well. But as Wasserman’s as well Gimpel and Harbridge-Yong’s work indicates, these criteria over time undermine the competitiveness of districts, and as Chen and Rodden show, they undermine the fairness of elections writ large.²⁶¹ There is, therefore, a significant tension at the core of homogenous districts. Even as they increase voter satisfaction, they undermine the structural soundness of elections, thereby risking elections that are neither fair nor competitive in the long run such that voters may well be dissatisfied. The question, then, is whether it is possible to replicate some of the short-term benefits of homogenous districts while enhancing the long-term health of elections.

The solution to this challenge is a robust notion of, and commitment to, communities of interest. Communities of interest is a notoriously fickle term that at times encompasses political subdivisions.²⁶² However,

258. See *supra* notes 32–43 and accompanying text (discussing the Justices’ respective opinions).

259. See Daryl R. DeFord, Nicholas Eubank & Jonathan Rodden, *Partisan Dislocation: A Precinct-Level Measure of Representation and Gerrymandering*, 30 POL. ANALYSIS 403, 403 (2021) (“For those who see value in a system of political representation based on small geographic districts, much of the value lies in allowing neighbors who live in the same community, and hence share common interests and concerns, to be represented by a single politician.”).

260. See Stephanopoulos, *Our Electoral Exceptionalism*, *supra* note 14, at 823–28 (explaining the benefits of homogenizing criteria).

261. See *supra* note 8 and accompanying text.

262. See JUSTIN LEVITT, BRENNAN CTR. FOR JUST., COMMUNITIES OF INTEREST (2010), [https://www.brennancenter.org/sites/default/files/analysis/6%20Communities%](https://www.brennancenter.org/sites/default/files/analysis/6%20Communities%20of%20Interest.pdf)

there are ways to define a community of interest in a meaningful and clear fashion that ensure people's economic and social communities receive proper representation without sacrificing partisan representativeness and competitiveness statewide.

Process-wise, political scientists Michael Li and Yuriy Rudensky note how California's Independent Redistricting Commission solicits significant public input to identify a meaningful community of interest. The baseline definition of a community of interest in the state is a "contiguous population which shares social and economic interests."²⁶³ Then, to identify specific communities, California turns to voters themselves. Li and Rudensky explain:

[T]he structured inquiry developed by California's independent redistricting commission is instructive of what map drawers found helpful. In both handouts and oral statements, the commission asked participants in the public testimony phase to provide: (a) the geographic boundaries for the neighborhood or asserted community of interest, (b) a description of the shared interests, and (c) an explanation of why it should be kept together.²⁶⁴

A shared interest would ideally be something that unites people beyond boundaries. Nicholas Stephanopoulos's definition of a "territorial community" provides a further sense of the substantive requirements for these communities: "(1) a geographically defined group of people who (2) share similar social, cultural, and economic interests and (3) believe they are part of the same coherent entity."²⁶⁵

California's and Stephanopoulos's approach, now adopted in Alaska,²⁶⁶ provide a foundation for this criterion. However, three changes are necessary to prevent the issues discussed above from continuing to pervade elections, just under a different name.

First, subdivisions should not count as independent communities of interest for the political and normative reasons previously described

20of%20Interest.pdf [https://perma.cc/AGB8-CDME] (capturing the many ways states define communities of interest).

263. Michael Li & Yuriy Rudensky, *Rethinking the Redistricting Toolbox*, 62 How. L.J. 713, 732 (2019) (quoting CAL. ELEC. CODE § 21552(a)(4) (2024)); see also Karin Mac Donald & Bruce E. Cain, *Community of Interest Methodology and Public Testimony*, 3 UC IRVINE L. REV. 609, 611 (2013) (explaining that public input is necessary for defining communities of interest, but a process for filtering through it effectively is essential).

264. Li & Rudensky, *supra* note 263, at 733–74.

265. Stephanopoulos, *Territorial Community*, *supra* note 14, at 1430.

266. See *In re 2021 Redistricting Cases*, 528 P.3d 40, 88 (Alaska 2023) (adopting Stephanopoulos's definition).

(unless they can prove themselves free from the negative effects described in Parts II and III). Second, legislatures should prioritize non-compact communities (within which some political subdivisions might be preserved as part of the larger community). Brown and Enos's research establishes that prioritizing neighborhoods as a community would pack voters much in the same way compactness and subdivisions do now.²⁶⁷ In contrast, a community of interest that spans large swathes of the state would facilitate larger districts that are more likely to unpack urban communities, creating electoral maps that are more likely to be fair and competitive. As noted in the Introduction, this Article takes no stance on whether districts and, therefore, these communities of interest need to be contiguous.²⁶⁸ Third, and relatedly, states should preserve communities of interest only as far as is practicable. Namely, their preservation should never triumph over partisan fairness. This order of priorities ensures proper representation of voters' explicit political interests.²⁶⁹

The Supreme Court's recent opinion in *Allen v. Milligan*²⁷⁰ provides guidance for the types of communities this criterion should not encompass. In rejecting the preservation of the Gulf Coast region in a singular district in Alabama, the Supreme Court noted that the effort to preserve such a small community appeared to be about political advantage.²⁷¹ These types of communities—small and manipulable—are precisely the type of communities that states need to forgo for optimal fairness. On the other hand, the Alaska Supreme Court opinion in *In re 2021 Redistricting Cases*²⁷² adopted the definitions described above, without the caveat of trying to create large, diverse communities of interest free from neighborhood lines.²⁷³ If instituted elsewhere, its approach would potentially instantiate compactness and subdivision preservation by another name.

267. See *supra* notes 197–98 and accompanying text.

268. See *supra* note 24.

269. This argument is similar in spirit to Stephanopoulos's in "The Territorial Community" but entirely different in approach. Whereas he begins with the political lines and argues that communities can and ought to be smaller, I urge here to think of communities as geographically and politically expansive as possible, even as we both look for a way to have communities be formally represented. See Stephanopoulos, *The Territorial Community*, *supra* note 14, at 1384–85.

270. 143 S. Ct. 1487 (2023).

271. *Id.* at 1505 (noting that one of the state's witnesses "justified keeping the Gulf Coast together 'simply' to preserve 'political advantage[]': 'You start splitting counties,' he testified, 'and that county loses its influence. That's why I don't want Mobile County to be split'" and rejecting this reasoning (alteration in original)).

272. 528 P.3d 40 (Alaska 2023).

273. See *id.* at 89 (looking at neighboring communities and asking whether they were one or two communities of interest).

Hypothetical communities of interest that satisfy the definition offered above provide examples of how this criterion could work. Consider the Great Lakes, natural bodies that serve as economic drivers of and natural resource providers for communities that span many miles. Rather than silo the towns along it into their subdivisions, a community of interest could consist of a certain area of the lake that provides water (or entertainment). The economic interest that unites people rather than lines that isolate them would define districts and voters' political engagement. In Illinois and Michigan, this approach would mean districts around Lake Michigan could become more politically heterogeneous. Chicago would not be isolated from but instead would be in districts—and political conversation—with neighboring suburbs and towns of all kinds.²⁷⁴ For smaller inland lakes that fit within one state's lines, the community is even clearer: Every town that surrounds the lake on all sides could create a community of interest because all have a social and economic interest in the lake's maintenance and care.

These examples are few out of many. Wind farm regions or solar farm regions could be communities of interest because, surely, people there will care about economic policies that have relevance to these technologies. Or take the Long Island Rail Road. There are 126 stations along the rail, all of which surely care about the upkeep of the trains and railways and the location of stations.²⁷⁵ They have a shared economic interest, and a shared social one, too—to be on the LIRR is to be a part of Long Island writ-large. Or consider the Texas oil fields. These regions have common interests that expand beyond county lines, given the way these communities share an economic and social life that this industry creates.²⁷⁶ To deny these communities in New York and Texas (and similar ones all over the country) representation because they do not fit neatly into town or county lines or because they are not packed closely together makes little sense.

This approach to communities of interest would have significant benefits. As Li and Rudensky stress, it could allow minority groups to define communities that help their representation and accurately reflect

274. It is possible that within this community of interest some political subdivisions would be preserved in their entirety. In this instance, such preservation should be accepted but should not be treated as any independent goal (*i.e.*, the community of interest should not receive any credit for its preservation of the subdivision).

275. *Long Island Rail Road*, MTA, <https://new.mta.info/agency/long-island-rail-road> [<https://perma.cc/JKM4-5XUE>] (also noting that it serves roughly 200,000 customers each weekday).

276. *See, e.g.*, Russell Gold, *A New Texas Oil Boom Is Coming, Finally*, TEXASMONTHLY (Apr. 26, 2022), <https://www.texasmonthly.com/news-politics/new-texas-oil-boom> (discussing some of the shared concerns in the region).

their role in society.²⁷⁷ This potential to provide minority representation is particularly important in light of the potential rollback of the VRA.²⁷⁸ Likewise, given that compactness tends to constrain Black political power,²⁷⁹ this switch from subdivisions and compactness as key criteria to communities of interest and partisan fairness is essential in a world in which section 2 of the VRA may have decreased influence.

The process of creating communities of interest could also benefit elections. The democratic involvement in defining communities may maintain or even amplify the empirical benefits attributed to compactness and subdivision preservation. If people are choosing their community of interest rather than the current criteria implicitly defining it for them, then voters will have an incentive to engage politically on behalf of that community. It is important to note that there could be barriers to low-income and underrepresented voters participating in this process equally. This likelihood would require states to do outreach on the front end and to pay attention to which communities of interest are recognized on the back end to ensure fairness in the process. This effort would pay dividends, however. Research bears out that communities of interest come with the greatest benefits of the electorate of the homogenizing criteria.²⁸⁰

By recognizing that the nonpartisan communities worthy of representation may no longer be city lines or county lines, or voters who live closely to one another, this reform can modernize election law. It also may independently restrain efforts to partisan gerrymander.²⁸¹ Communities of interest permit policymakers to preserve the community-based effects that subdivision preservation and compactness create. And they do so without perpetuating exclusion, creating political bias, or making elections uncompetitive the way that subdivision lines and compactness do.

277. See Li & Rudensky, *supra* note 263, at 732 (explaining that “[i]f traditional race-based remedies are becoming harder to use, an important alternative could be the protections for communities of interest that a growing number of states are adding to their state constitutions”).

278. See *Allen v. Milligan*, 143 S. Ct. 1487, 1517–19 (2023) (Kavanaugh, J., concurring) (indicating that Justice Kavanaugh may be open to a frontal challenge to section 2 of the Voting Rights Act).

279. See Jason Barabas & Jennifer Jerit, *Redistricting Principles and Racial Representation*, 4 ST. POL. & POL’Y Q. 415, 416 (2002) (explaining that “[c]ompactness rules are associated with reduced minority influence”).

280. See Stephanopoulos, *Our Electoral Exceptionalism*, *supra* note 14, at 827.

281. See Sabouni & Shelton, *supra* note 77, at 208 (arguing that communities of interest are a more effective tool for constraining gerrymandering than political subdivisions and compactness).

C. A Potential Compromise

Given that abandoning the neutral criteria would present a significant departure from most states' current practice, it is necessary to consider possible intervening steps or compromise positions for pragmatic reasons and out of respect for these criteria's other merits. Practically-speaking, there has been no movement to eradicate these criteria to date and removing them whole cloth would require officials to reconsider the meaning and nature of districts and redistricting overnight. This Article is the first to urge the abandoning of these criteria while preserving the practice of single districts.²⁸² In light of this fact, and the intellectual puzzles and commitments described in the Introduction, this Article does not anticipate immediate, widespread acceptance of its recommendations.

Further, these criteria make elections easier for administrators and less confusing for voters.²⁸³ Assigning voters to polling locations when their state legislative district and congressional district do not share common municipal or county lines would present logistical challenges, particularly given the central role that counties play in administering elections.²⁸⁴ For a voter, not voting with people near them or in relation to their local government units might cause confusion about what their district is and why. These geographic criteria offer a high degree of "cognizability" for voters: they make it easy for voters to understand their district's bounds and why their district exists as it does.²⁸⁵

With that being said, districts often span thousands of square miles already.²⁸⁶ And in many counties, multiple ballots are needed for different precincts as there are different state legislative races (and

282. See, e.g., Diller, *supra* note 72 (arguing for multimember districts); GUINIER, *supra* note 175 (arguing that redistricting writ large should be abandoned).

283. See, e.g., Curiel, *supra* note 10 and accompanying text.

284. Benjamin Plener Cover & Daniel Niven, *Geographic Gerrymandering*, 16 HARV. L. & POL'Y REV. 159, 188 n.128 (2021) ("As described by the National Association of Counties: 'In the United States, the nation's 3,069 counties traditionally administer and fund elections at the local level, including overseeing polling places and coordinating poll workers for federal, state and local elections.'").

285. *Id.* at 177–80.

286. Arizona's First Congressional District, Alaska's At-Large Congressional District, and California's Eighth Congressional District are just a few examples of the many enormous districts in the country.

congressional races) within the same county.²⁸⁷ In other words, counties and voters already navigate a significant amount of geographic complexity in the electoral process. Thus, the change for voters and administrators from abandoning the geographic criteria would not be as drastic as it might seem at first glance. As such, concerns about administration and cognizability at most necessitate a balanced approach to reform.

The best way to undermine the power of the non-neutral criteria while preserving some of their practical benefits would be to abandon municipal lines and compactness while preserving county lines. Municipal lines, as noted in Section II.A, reflect the most noxious of American politics. They are also often smaller, meaning their packing effects are more profound than county lines (particularly in congressional races). Compactness, meanwhile, allows for present-day segregation to influence districts and accentuates the anti-fairness, anti-competitiveness of districts in this geographically polarized moment. The continued employment of county lines would, in contrast, allow fewer changes to administration of elections and permit only the largest (and often most diversifying of these criteria) to influence redistricting.

Even the preservation of county lines, however, should be conditional: states should only use the criterion if doing so does not make districts less competitive. As this Article has noted, the geographic criteria undermine both competitiveness and fairness. The proposal here argues for including a fairness requirement, in part because a commitment to fairness is more compatible with furthering competitiveness than the current geographically focused criteria are. As such, any compromise should seek to further *both* competitiveness and fairness. Here, that would mean adopting a partisan fairness criterion and only using county lines when doing so does not make elections less competitive.

This solution is not perfect. However, the status quo is far more concerning. This middle ground approach would at least mitigate the worst of the geographic criteria's partisan effects and nonpartisan representation while preserving some of their benefits regarding election administration and community cognizability.

287. For example, Philadelphia County has upwards of twenty state house seats, seven state senate seats, and three congressional seats. *Philadelphia County Legislators*, PA. GEN. ASSEMB., <https://www.palegis.us/find-my-legislator/by-county?county=PHILADELPHIA> [https://perma.cc/2AKM-GJ6X]; *2022 U.S. Congressional Districts*, COMMONWEALTH PA., <https://www.pa.gov/agencies/vote/resources/redistricting/pennsylvania-redistricting-us-congress.html> [https://perma.cc/Z2BK-S55W].

CONCLUSION

This Article began with two puzzles in the redistricting literature. Despite scholarship showing the exclusionary and segregated nature of subdivision lines (and, by extension, compactness), no one has challenged their worthiness as redistricting criteria. Likewise, although scholars have shown their empirical flaws repeatedly, no one has made the argument for their abandonment. This Article sought to flesh out the arguments against these criteria that flow from these puzzles. In doing so, it showed that redistricting faces a fundamental challenge: two traditional criteria—political subdivision preservation and compactness—are far from neutral in the politics they honor and outcomes they create. It showed that these criteria honor exclusion and segregation past and present and risk manipulation. It then exposed a fundamental tension between their use and the pursuit of partisan fairness and competition. As such, this Article argued it may be necessary to abandon these redistricting requirements in favor of an explicit focus on partisan fairness and an expanded idea of communities of interest.

In the shorter term, there are two practical consequences of the arguments here. The first, as noted in the Introduction, is that reform-minded entities would be wise to be skeptical of their use. Independent commissioners appear especially drawn to their apparent neutrality, but they should be more willing to abandon them. Likewise, reformers advocating for policy change in state legislatures and bringing cases in state courts should hesitate before invoking subdivision preservation and compactness. Rather than making our elections nonpartisan, they may instantiate partisan bias, lessen competition, and perpetuate extremism. The criteria undermine the very purpose of reform.

On a deeper level, the arguments made here raise questions about who qualifies as a “good” (or “neutral”) actor in redistricting law. For decades, courts and reformers have seen those who “split” cities as bad line drawers at best and nefarious actors at worst.²⁸⁸ Meanwhile, those who preserved these lines and kept communities together have received little pushback.

The arguments here suggest the opposite is true. Those who divide cities and counties may in fact break up communities that are not worthy of protection. Not only that, but these actors may also protect the fairness and competitiveness of elections. In contrast, those who preserve lines and pack voters in cities artificially limit voters’ political power and honor segregated, exclusionary communities.

288. See, e.g., Hirsch, *supra* note 11, at 15 (“Keeping counties whole is always better than dividing them, and dividing them into fewer parts is always better than dividing them into more parts.”).

If nothing else comes from the arguments made here, then at a minimum, a shift in deciding which communities deserve partisan and nonpartisan representation and on what grounds is in order. And a reconsideration of mapmakers' decisions is, too.