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The Case for Districts: Descriptive Rural Representation on State Supreme Courts

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NOTE

THE CASE FOR DISTRICTS: DESCRIPTIVE RURAL REPRESENTATION ON STATE SUPREME COURTS

NATHANIEL M. FOUCH*

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Representation is having a moment. It has been said variously that we have a president who “represents” his base rather than the country as a whole;¹ senators and congressmen who “represent” special interests rather than their constituents;² a Supreme Court that “represents” the ideological views of one party or another;³ and leaders who do not “represent” the

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1. Ronald Brownstein, *Trump Isn’t Even Trying to Convince Voters on the Shutdown*, ATLANTIC (Jan. 17, 2019), <https://www.theatlantic.com/politics/archive/2019/01/trump-ignoring-voter-opinion-his-shutdown-fight/580687>.

2. Cody Nelson, *Minnesota Congresswoman Ignites Debate on Israel and Anti-Semitism*, NPR (Mar. 7, 2019, 12:47 PM), <https://www.npr.org/2019/03/07/700901834/minnesota-congress-woman-ignites-debate-on-israel-and-anti-semitism> (implying that Republican politicians are influenced by political lobbying groups to vote in Israel’s interests); *Democratic Representation: Americans’ Frustration with Whose Voices are Represented in Congress*, ASSOCIATED PRESS-NORC CTR. PUB. AFF. RES., <http://www.apnorc.org/projects/Pages/HTML%20Reports/Democratic-Representation-Americans%E2%80%99-Frustration-with-Whose-Voices-are-Represented-in-Congress.aspx> (last visited Apr. 29, 2019) (“More than 6 in 10 Americans say members of Congress have paid a lot of attention to donors or supporters, while just 3 in 10 say they have paid attention to the majority of people who voted for them.”).

3. Jess Bravin, *Conservative-Dominated Supreme Court Fulfills Nixon-Era Dream*, WALL ST. J. (Oct. 9, 2018, 11:19 AM), <https://www.wsj.com/articles/conservative-dominated-supreme-court-fulfills-nixon-era-dream-1539077401>.

religious, ethnic, or socioeconomic diversity of the population of the United States.⁴ Much of the handwringing associated with supposedly deficient representation boils down to a question of fairness: people wonder whether it is possible to get a fair shake if their leaders do not share their experiences, traits, or worldview. In recent years, this conception of fairness—which relies on representatives resembling their constituencies demographically—has been characterized disparagingly as “identity politics,”⁵ but the core concept is far older than the 2016 presidential election, the US Supreme Court’s decisions on gerrymandering, or even the constitutional amendments which enfranchised different portions of the population.⁶ To understand what representation means and why it is important is to get at the heart of American values—liberty, equality, and republican government—and is essential to identifying who we are and who we want to be as a country.

There are some problematic assumptions underlying certain conceptions of representation, which must be discussed openly in order to nourish a healthy form of representative politics. The idea that a person cannot represent or fairly judge those from whom he is different (racially, socioeconomically, experientially, or otherwise) is wholly contrary to the values of the United States. Yet proponents of this position are not completely without merit for raising the questions; privilege, bias, and misunderstanding are just as much a part of the American experience as the lofty ideals of blind justice and a meritocratic elite.⁷ These broader conversations are beyond the scope of this article, however, which will principally focus on a narrow aspect of descriptive demographic representation on state supreme courts, emphasizing rurality as the relevant variable.

While representation has been debated extensively in the context of executive and legislative politics,⁸ it has only recently begun to be discussed in the realm of the judiciary. Activists and academics across ideological lines have striven to show how state and federal courts at all levels are demographically unrepresentative of the national or regional

4. Claire Hansen, *116th Congress by Party, Race, Gender, and Religion*, U.S. NEWS & WORLD REP. (Jan. 3, 2019, 5:36 PM), <https://www.usnews.com/news/politics/slideshows/116th-congress-by-party-race-gender-and-religion>.

5. Francis Fukuyama, *Against Identity Politics: The New Tribalism and the Crisis of Democracy*, 97 FOREIGN AFF. 90 (2018), <https://www.foreignaffairs.com/articles/americas/2018-08-14/against-identity-politics-tribalism-francis-fukuyama>.

6. In fact, it goes back to the very founding of the United States. See JOHN PHILLIP REID, THE CONCEPT OF REPRESENTATION IN THE AGE OF THE AMERICAN REVOLUTION 43–45 (1989) (see especially the discussion on the relationship between taxation and representation).

7. Stacey Y. Abrams, John Sides, Michael Tesler, Lynn Vavreck, Jennifer A. Richeson, & Francis Fukuyama, *E Pluribus Unum?: The Fight Over Identity Politics*, 98 FOREIGN AFF. 160 (2019), <https://www.foreignaffairs.com/articles/2019-02-01/stacey-abrams-response-to-francis-fukuyama-identity-politics-article> (see especially Abrams).

8. See the debates about the electoral college and gerrymandering congressional districts.

population,⁹ the ideological makeup of the states in which they serve,¹⁰ and the religious makeup of the country,¹¹ to name just a few.¹² The issue of representation in the judiciary has also cropped up with greater frequency in day-to-day politics, including in the media reaction to the 2018 judicial elections in Harris County, Texas (Houston),¹³ Chief Justice Roberts' rare criticism of President Trump's comments about "Obama judges,"¹⁴ and the succeeding criticism of Roberts' own record in this regard.¹⁵

Representation in the judiciary is less straightforward than in a legislative or executive context. The ideal of blind justice, the reality of the often prohibitive costs of the legal education required in most states for appointment or election to the bench, and the urban nature of legal education and the legal profession generally are just some of many issues that lend themselves to a judicial crisis of representation. This crisis is arguably most acute in the context of urban versus rural representation,¹⁶ a demographic factor not discussed as much as race in the context of the judiciary, but nonetheless essential.¹⁷ If the highest courts that shape the common law of the several states are overstocked with cultural urbanites to the detriment of rural representation, the skew in both judicial results and

9. The two most common characteristics examined in this way are race and gender. See Tracey E. George & Albert H. Yoon, *The Gavel Gap: Who Sits in Judgment on State Courts?*, AM. CONST. SOC'Y L. & POL'Y, <http://gavelgap.org/pdf/gavel-gap-report.pdf> (last visited Oct. 28, 2019); Maritza Perez & Ben Hernandez-Stern, *The Federal Judiciary Needs More Latino Judges*, HILL (May 24, 2018, 5:30 PM), <https://thehill.com/opinion/judiciary/389288-the-federal-judiciary-needs-more-latino-judges>; *Foster-Long's Gender Diversity Survey*, in 1 THE AMERICAN BENCH: JUDGES OF THE NATION (Amanda Long ed., 29th ed. 2019). The latter also contains detailed information on judges' educational backgrounds but not sorted in a systematic way.

10. Brian T. Fitzpatrick, *The Ideological Consequences of Selection: A Nationwide Study of the Methods of Selecting Judges*, 70 VAND. L. REV. 1729, 1732 (2017).

11. Lawrence M. Krauss, *Put an Atheist on the Supreme Court*, NEW YORKER (Feb. 19, 2016), <https://www.newyorker.com/news/news-desk/put-an-atheist-on-the-supreme-court>.

12. Although not advocating for descriptive representation per se, Justice Antonin Scalia noted that the US Supreme Court itself is demographically unrepresentative, even as it must make decisions that affect the entire country. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2629 (2015) (Scalia, J., dissenting) ("[T]he Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. . . . Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination. . . .") (citations omitted).

13. Adeel Hassan, *17 Black Women Sweep to Judgeships in Texas County*, N.Y. TIMES (Nov. 9, 2018), <https://www.nytimes.com/2018/11/09/us/black-female-judges-texas-election.html>.

14. Adam Liptak, *Chief Justice Defends Judicial Independence After Trump Attacks 'Obama Judge'*, N.Y. TIMES (Nov. 21, 2018), <https://www.nytimes.com/2018/11/21/us/politics/trump-chief-justice-roberts-rebuke.html>.

15. Garrett Epps, *Will John Roberts Block the Triumph of Legal Conservatism?*, ATLANTIC (Apr. 2, 2019), <https://www.theatlantic.com/ideas/archive/2019/04/john-roberts-isnt-really-moderate/586273> (quoting a memo in which a younger Roberts wrote disparagingly about the possibility of a "Carter-appointed judge" overruling a Reagan appointee to the federal bench).

16. See *infra* § III.

17. See, e.g., George & Yoon, *supra* note 9.

public perception of the courts will lead to a loss of legitimacy as well as decisions that fail to consider the cultural background of litigants.

One of the most critical—yet undervalued—forms of representation is that of rural residents on state supreme courts.¹⁸ Using the US Census Bureau’s definition of rurality, just under 20 percent of US citizens reside in rural areas, which is a sizeable and important number.¹⁹ Yet the legal profession in the United States today is principally an urban one—only 2 percent of small law practices in the United States are located in rural areas.²⁰ The rural and urban populations of this country share great mutual distrust and no shortage of animosity.²¹ Ensuring that some of the justices on a state’s supreme court come from rural as well as urban backgrounds will make the decisions of the courts more legitimate and enable them to make better culturally informed decisions.

The law must apply equally to Americans from both urban and rural areas, yet there is some question as to whether this is possible if all the members of a state’s high court hail from its cities. Can these urbanites understand the culture of the “country”? What about the customs, traditions, and values of the parties arguing before them? Is it possible to properly represent the rural worldview on state supreme courts without some mechanism for selecting justices from rural backgrounds? This paper aims to explore the idea of a descriptively representative judiciary, delve into why rurality matters as a descriptive factor, and examine districts as a mechanism to secure rural judicial representation. In doing so, it should shed some light on one of the most important and under-discussed issues

18. A note here is important: there are several states which use districts at the intermediate level but not the supreme court level (Arizona, Arkansas, California, Florida, Indiana, Michigan, Minnesota (a hybrid of districts aligned with the congressional districts and at-large seats), Missouri, New York, Ohio, Texas (only for civil court), Vermont (election is statewide, but candidates come from districts), Washington, and Wisconsin). Eight states currently utilize districts for supreme court selection: Illinois, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Oklahoma, and South Dakota. *Methods of Judicial Selection*, NAT’L CTR. ST. CTS., http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm (last visited Apr. 30, 2019). This paper, however, focuses on state supreme courts without considering intermediate courts. The reason for this is that though the design of such intermediate systems can be instructive, ultimately, such systems maintain a “statewide safeguard” against regionalism in the form of a presumptive geographically unrepresentative high court. This paper is concerned with increasing representation at the highest level of state courts, and as such, intermediate courts fall outside the purview.

19. Michael Ratcliffe, Charlynn Burd, Kelly Holder & Alison Fields, *Defining Rural at the U.S. Census Bureau*, U.S. CENSUS BUREAU (Dec. 2016), <https://www.census.gov/content/dam/Census/library/publications/2016/acs/acsgeo-1.pdf>.

20. Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 22 (2018).

21. Shayndi Raice & Janet Adamy, *Big Cities’ Success Reflects Deepening Urban-Rural Divide*, WALL ST. J. (Nov. 14, 2018, 6:48 PM), <https://www.wsj.com/articles/big-cities-success-reflects-deepening-urban-rural-divide-1542239287>.

facing the United States today and address a critical gap in the literature on descriptive judicial representation.

I. WHY STATE SUPREME COURTS?

State supreme courts have incredible power to interpret state law. For many issues, they act as the final arbiters, with rulings standing beyond appeal.²² Who occupies these benches matters tremendously for how the law is interpreted. While states vary in how they select those who sit on their high courts, all of the current state supreme court justices are lawyers, and forty-eight states explicitly require justices to be lawyers.²³ However, even within the profession, there exists a wide enough diversity that appropriate representation can still be achieved with the right policies and procedures. By focusing on the recruitment of rural candidates for appointment or election, states can solve their rural judicial representation crisis.

Even as judges must represent the law and justice, they nonetheless ought also to be representative of the people they judge. The French philosopher, Baron de Montesquieu argued that judges ought to be “of the same rank as the accused, or, in other words, his peers.”²⁴ This will tend to increase the public’s confidence in the courts, which is critical to their legitimacy, and has been described as “[a]n essential condition for realizing the judicial role.”²⁵ Yet it is important to avoid pretending that the judiciary is not political.²⁶ Such a legal fiction produces courts out of step with the populace, and laws unrepresentative of the intention of the legislature. By virtue of their role of interpreting the law—made by politicians—judges themselves act as political figures.

Judges are selected in four basic ways: appointment by governors or legislatures, partisan election, nonpartisan election, and “merit” selection by commission.²⁷ There are benefits and drawbacks to each of these various systems; this paper, however, will focus not on any one method, but on a framework into which any of these methods may be inserted. Dividing a state into geographical districts from which state supreme court justices

22. SALMON A. SHOMADE, *DECISION MAKING AND CONTROVERSIES IN STATE SUPREME COURTS* xvii–xviii (2018).

23. Adam Bonica & Maya Sen, *The Politics of Selecting the Bench from the Bar: The Legal Profession and Partisan Incentives to Introduce Ideology into Judicial Selection*, 60 *J.L. & ECON.* 559, 561 (2017).

24. BARON DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 153 (Thomas Nugent trans., Hafner Pub. Co. 1949) (1748).

25. AHARON BARAK, *THE JUDGE IN A DEMOCRACY* 109 (2006).

26. CASS R. SUNSTEIN, DAVID SCHKADE, LISA M. ELLMAN & ANDRES SAWICKI, *ARE JUDGES POLITICAL? AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY* 147 (2006) (“No reasonable person seriously doubts that ideology, understood as moral and political commitments of various sorts, helps to explain judicial votes.”). This is not to take a cynical view, but to recognize that judges are humans, and their reading of the law is colored by their cultures and backgrounds, including where and how they were raised.

27. Fitzpatrick, *supra* note 10, at 1729–30.

may be appointed or elected will inherently increase geographic diversity on the high court's bench—especially where it is dominated by justices from a major metropolitan area in the state. With the right districting system, the courts could increase their rural representation and thus better serve an otherwise marginalized population.

II. DESCRIPTIVE REPRESENTATION AND COURTS

It matters whether judges are demographically representative of the populations they serve. On the one hand, it can be accurately said that just decisions may be reached irrespective of the judges' characteristics.²⁸ On the other, however, symbols matter; demographically representative judges lend the courts legitimacy and can better reflect the values of the communities.²⁹ Whether reflecting the values of the community is a valid judicial goal is a complex question, but it can be answered in the affirmative insofar as the laws are made by the peoples' representatives, so only a judiciary reflective of the people could interpret those laws in an authentically democratic way.

Descriptive representation refers to the extent to which a representative resembles the characteristics of those he represents—that is, “one person represents another by being sufficiently like him.”³⁰ Rather than “acting for” his constituents, this type of representative “stands for” them by virtue of his resemblance of them.³¹ The crux of the argument is that in resembling constituents, a representative lends the appearance of legitimacy to his institution, while simultaneously being more likely to substantively represent them than another would-be representative who lacks the relevant characteristics.³² This dual function of substance and symbolism that some argue for is important to understand because it is ultimately the foundation

28. For example, a unanimous court of white men decided *Brown v. Board of Education of Topeka, Shawnee County, Kansas*, 347 U.S. 483 (1954). However, this can be countered by noting that a court of the same racial and gender makeup decided *Dred Scott v. Sandford*, 60 U.S. 393 (1857) and *Plessy v. Ferguson*, 163 U.S. 537 (1896).

29. Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent “Yes,”* 61 J. POL. 628, 648–52 (1999) [hereinafter Mansbridge, *Should Blacks Represent Blacks and Women Represent Women?*] (while Mansbridge's discussion in this section is on legislative descriptive representation, her points are readily applicable to the judiciary as well).

30. A. Phillips Griffiths & Richard Wollheim, *Symposium: How Can One Person Represent Another?*, 34 PROC. ARISTOTELIAN SOC'Y, SUPPLEMENTARY VOLUMES 187, 188 (1960).

31. HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 61 (1972).

32. That said, this paper will argue that substantive representation is less important than descriptive representation in the context of the judiciary, given the dual representative function of judges to be symbols of both the law and the litigants. The “substance,” too, can be measured in different ways, so that insofar as judicial decision makers account for cultural factors when deciding cases, they can be seen to be “substantively” representing the litigants and not merely symbolizing them.

upon which so many modern assumptions of representation and identity politics rest.³³

There are six basic arguments for descriptive representation on courts: (1) it increases the “democratic legitimacy of the judiciary;” (2) it signals equality of opportunity for those in the represented group who aspire to judicial office; (3) it provides encouragement and mentoring to those coming up the pipeline; (4) the representative has a different perspective that can counter bias and lead to increased fairness in the court’s decision-making; (5) this will also happen behind the scenes, where the representative will educate other judges; and (6) the experiences of the representative will lead to different substantive conclusions.³⁴ Each of these factors are valuable in different ways for bolstering the legitimacy of the courts.

The majority of research on descriptive representation has focused on gender, racial, and ethnic characteristics.³⁵ Yet descriptive representation “can denote not only visible characteristics, such as color of skin or gender, but also shared experiences.”³⁶ Likewise, while research was previously confined to legislative institutions, there is now a growing acknowledgment and expanding body of work devoted to judicial descriptive representation.³⁷ This is critical because, for a long time, representation in the judiciary was taken for granted—with the judicial branch viewed as a non-representative entity by its very nature³⁸—which contributed to an impoverished understanding of the judge’s role in a democratic society.

A common criticism of descriptive representation is that it is ultimately less meaningful than “substantive representation.”³⁹ While this is a fair critique in the legislative realm, where a representative may appear to

33. See generally Mark Lilla, *The End of Identity Liberalism*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html>; Jeff Stein, *Bernie Sanders: “It is Not Good Enough for Someone to Say, ‘I’m a Woman! Vote for Me!’”* VOX (Nov. 21, 2016, 5:30 PM), <https://www.vox.com/policy-and-politics/2016/11/21/13699956/sanders-clinton-democratic-party>.

34. Rosemary Hunter, *More than Just a Different Face? Judicial Diversity and Decision-Making*, 68 CURRENT LEGAL PROBS. 119, 123–24 (2015).

35. See, e.g., Michele L. Swers & Stella M. Rouse, *Descriptive Representation: Understanding the Impact of Identity on Substantive Representation of Group Interests*, in THE OXFORD HANDBOOK OF THE AMERICAN CONGRESS 241 (George C. Edwards III, Frances E. Lee & Eric Schickler eds., 2011).

36. Mansbridge, *supra* note 29, at 629.

37. See, e.g., Nancy Scherer, *Blacks on the Bench*, 119 POL. SCI. Q. 655 (2005).

38. Bonica & Sen, *supra* note 23, at 560.

39. Nancy Scherer & Brett Curry, *Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the U.S. Courts*, 72 J. POL. 90, 91 (2010); Jane Mansbridge, *What Does a Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status*, in CITIZENSHIP IN DIVERSE SOCIETIES 99, 101 (Will Kymlicka & Wayne Norman eds., 2000) [hereinafter Mansbridge, *What Does a Representative Do?*]. See also DAVID LUBLIN, *THE PARADOX OF REPRESENTATION: RACIAL GERRYMANDERING AND MINORITY INTERESTS IN CONGRESS* 99–102 (1997). Although Lublin writes in the context of legislative districting, his discussion of the relationship between descriptive and substantive representation is relevant in the judicial context as well. Nonetheless, the judicial

share similar characteristics to his constituency, yet vote contrary to its interests, this is less of a concern in the judicial realm, where the judge acts as what can be called a “quasi-representative.” The judge, while reflecting the characteristics of the population on which he must pass judgment, ultimately acts for something greater than the mere interests of this population. He must symbolically represent the law, and even justice, while also descriptively representing the people.⁴⁰

Another criticism is that attempts at descriptive representation inevitably yield to a lottery or quota system aimed at creating a representative body that is as reflective as possible of the diversity of society.⁴¹ Accordingly, the overall quality of the representatives would decline as they are selected not merely based on skill, but on extraneous factors. In other words, representatives are chosen not for what they can do, but for who they are. While this is an important critique, it is ultimately countered by advocating not for “microcosmic” representation, but for a “selective” form of descriptive representation.⁴² A concrete quota system of the type necessary to achieve microcosmic descriptive representation is antithetical to the American ethos.⁴³

Another criticism of descriptive representation is its tendency toward essentialism.⁴⁴ It is particularly concerning when a representative is perceived to be capable *only* of representing that group of which he is a member, and by extension—and in the case of the judiciary—having no right to judge anyone outside of his group. This can be curbed, however, by focus-

context is different enough that his conclusions are less well-grounded here than in the legislative context.

40. PITKIN, *supra* note 31, at 117–18 (describing representation from a judicial standpoint as “the substance, or content, or guiding principle of action”). Pitkin discusses the judge as “symbolically” representing “justice” or “the law.” The legitimacy of the courts depends on this being true in a narrow sense or on the basis of popular perception, yet it is also clear that judges are influenced by, and represent other actors or ideas in the process of also representing these more abstract or grand principles. Judges do not exist in a vacuum, and their culture and identity tremendously shape their judicial philosophies in rich and varied ways.

41. Mansbridge, *supra* note 29, at 631.

42. *Id.* at 632 (In this framework, “institutional design gives selected groups greater descriptive representation than they would achieve in existing electoral systems in order to bring the proportions of those groups . . . closer to their percentages in the population.”).

43. See Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 288–89 (1978). Discussions of descriptive representation inevitably draw parallels to those of affirmative action in higher education. Many of the rationales are the same, as are the criticisms. See also Grutter v. Bollinger, 539 U.S. 306, 332 (2003) (“In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.”). Replace “educational institutions” with government, and “training” with representation, and the issues are the same.

44. Mansbridge, *What Does a Representative Do?*, *supra* note 39, at 108 (“Essentialism involves assuming a single or essential trait, or nature, that binds every member of a descriptive group together, giving them common interests that, in the most extreme versions of the idea, transcend the interests that divide them.”).

ing on the mechanism of selection, attempting to understand its effects, and altering it to increase the proportionality of representatives to the population they represent. If this is done in a mechanical and just way, then it should dispel any suspicion of minority selection as undeserved affirmative action, and instead, simply remove barriers toward a more natural selection of representatives.⁴⁵

A selective system can correct for the degree of adverse selection inherent in a given pool, adjusting the odds of who becomes a representative.⁴⁶ Voters may then select representatives that share their values, culture, or background and may “gyroscopically” represent them.⁴⁷ Rather than utilizing a top-down approach and selecting judges from particular groups, which will lend the appearance of impropriety and unfairness to the section,⁴⁸ districting selects the selectors (in an electoral model) and/or the pool of selectees (in an appointment model) in a less direct way.

This paper proposes a hybrid symbolic view of judicial representation, supplemented with a realist interpretation of judicial action.⁴⁹ Using this lens, as many of the more recent studies in this area have done, it is clear that whether judges “look like,” or share characteristics with those who stand before the bench, is important to both the legitimacy of their decisions⁵⁰ and to the types of decisions made.⁵¹ Descriptive representation in the judicial branch will necessarily look different from the same type of representation in legislative bodies—particularly given the extra qualifications judges are required to meet in most states, as well as the fact that there is no uniformity in election or appointment as a selection strategy, and judges must represent both the people and the law.

Numerous studies have shown that while increased descriptive representation leads to increased perception of legitimacy, “ideological congru-

45. Mansbridge, *supra* note 29, at 632.

46. *Id.*

47. Jane Mansbridge, *Rethinking Representation*, 97 AM. POL. SCI. REV. 515, 522 (2003).

48. Scherer & Curry, *supra* note 39, at 101–02. In this study, the authors found that white diffuse support for courts declined when blacks were better represented on the bench. *Id.* While it was a small study which one of the authors has cautioned is “not generalizable to the population writ large,” it is nonetheless an important finding that should be studied further and in greater depth, key as it is to judicial legitimacy. Nancy Scherer, *Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible?*, 105 NW. L. REV. 587, 630, n.220 (2011).

49. Brian Leiter, *American Legal Realism*, in A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 249, 249 (Dennis Patterson ed., 2d ed., 2010) (noting that under a legal realist approach, it is understood that “judges are influenced by more than legal rules; judges and lawyers openly consider the policy or political implications of legal rules and decisions; law texts now routinely consider the economic, political, and historical context of judicial decisions.”).

50. Scherer & Curry, *supra* note 39, at 101.

51. See Adam N. Glynn & Maya Sen, *Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women’s Issues?*, 59 AM. J. POL. SCI. 37, 38–39, 52–53 (2015); Scherer, *supra* note 37, at 669–70.

ence” between a judge and the population remains an important factor.⁵² It is likewise clear that while descriptive representation plays a real role in the level of legitimacy people ascribe to their institutions, there is widespread understanding that no single descriptively representative member of a given body will substantially increase public trust in that body.⁵³ It takes more. Only by radically reshaping the systems by which high court judges are appointed will descriptive representation lead to a meaningful increase in institutional trust in the competence of those bodies.

III. RURALITY MATTERS

While most analysis of descriptive representation has to do with race and gender, rurality, too, needs to be taken into consideration when selecting state supreme court justices.⁵⁴ Rurality is distinguishable from race and gender as a variable in terms of descriptive representation. While race and gender are innate characteristics, rurality reflects an intergenerational choice for a particular way of life, culture, and value system deeply entwined with the American experience. By categorizing people according to characteristics they cannot control, we inherently move away from the American value of equality. By marginalizing people who have chosen to live in rural areas, we as a society make value judgments about how people ought to live, which itself is not conducive to equality.

A person may belong to a racial or gender group, yet not identify with any of the traditional markers associated with that group; he may prefer not to identify as a member of that group at all, but would be labelled regardless if he had certain external characteristics. If he were picked as a “representative” of that group, then despite his lending legitimacy to the institution by way of contributing to racial diversity, he would in no way contribute to the substantive representation of the group. Rurality, on the other hand, is a variable which crosses racial, gender, socioeconomic, and educational lines, and is fundamentally a voluntary marker of identity. In a descriptive representation context, rather than tending toward quotas based on immutable characteristics with dubious claims to substantive representation, rurality

52. Scherer & Curry, *supra* note 39, at 102 (“[B]oth blacks and whites view descriptive racial representation not in isolation, but rather, filtered through an ideological lens.”); Alex Badas & Katelyn E. Stauffer, *Someone Like Me: Descriptive Representation and Support for Supreme Court Nominees*, 71 POL. RES. Q. 127, 136 (2018); Jaclyn Kaslovsky, Jon C. Rogowski & Andrew R. Stone, *Descriptive Representation, Public Opinion, and the Courts 2* (Apr. 19, 2018) (unpublished working paper), <https://scholar.harvard.edu/files/rogowski/files/kaslovsky-rogowski-stone.pdf>.

53. Claudine Gay, *Spirals of Trust? The Effect of Descriptive Representation on the Relationship between Citizens and Their Government*, 46 AM. J. POL. SCI. 717, 731 (2002); See Kaslovsky, Rogowski & Stone, *supra* note 52, at 29.

54. It is important to note that this paper does not present a call per se to redesign judicial selection systems for the sake of descriptive rural representation, but rather notes that *if* descriptive representation is to be taken into account in judicial selection, then rurality as a variable must not be ignored.

offers a fairly consistent variable that can lead to both legitimacy and substantive representation for a large, otherwise marginalized and misunderstood population of Americans.

The United States was long a predominantly rural country; it was only in 1920 that the number of people living in urban areas surpassed those in rural.⁵⁵ Yet a majority of US counties remain rural even as the country's population is increasingly urban.⁵⁶ Despite different measures and definitions⁵⁷ to calculate with greater precision what constitutes rurality, ultimately rurality can be used to describe any place that is not a city.⁵⁸ Given the concentration of wealth—and thus power—found in cities, there has been a strong strain of moralistic anti-urbanism throughout US history, going back at least to Thomas Jefferson, if not further.⁵⁹ The feeling is mutual, as urbanites often mistrust the motives and ideas of rural-dwelling Americans.⁶⁰ Without adequate cultural and social capital like media outlets and major institutions, rural-dwelling Americans are often misunderstood, misrepresented, and maligned by their urban counterparts.⁶¹

A focus on increasing rural representation may seem strange, given the popular mantra that rural voters in fact have an unnatural advantage over urban ones.⁶² Constructions like the US Senate with its two senators per state, regardless of population, or the Electoral College, which incorporates those senators as votes for president, mean that these built-in advantages are real.⁶³ Yet it is important to distinguish that these advantages come at the

55. *Urban and Rural Areas*, U.S. CENSUS BUREAU (July 18, 2017), https://www.census.gov/history/www/programs/geography/urban_and_rural_areas.html.

56. Richard Florida, *The Divides Within, and Between, Urban and Rural America*, CITYLAB (Sept. 18, 2018), <https://www.citylab.com/life/2018/09/the-divides-within-and-between-urban-and-rural-america/569749>.

57. *What is Rural?*, U.S. DEPT. AGRIC. ECON. RES. SERV., <https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/what-is-rural> (last updated Apr. 9, 2019) (“Sometimes population density is the defining concern, in other cases it is geographic isolation Population thresholds used to differentiate rural and urban communities range from 2,500 up to 50,000, depending on the definition.”).

58. *Urban and Rural Areas*, *supra* note 55.

59. STEVEN CONN, *AMERICANS AGAINST THE CITY: ANTI-URBANISM IN THE TWENTIETH CENTURY* 11–12 (2014).

60. Jose A. Del Real & Scott Clement, *Rural Divide*, WASH. POST (June 17, 2017), <https://www.washingtonpost.com/graphics/2017/national/rural-america/>.

61. Katherine J. Cramer, *The Great American Fallout: How Small Towns Came to Resent Cities*, GUARDIAN (June 19, 2017), <https://www.theguardian.com/cities/2017/jun/19/americas-great-fallout-rural-areas-resent-cities-republican-democrat>.

62. *See, e.g.*, Emily Badger, *As American as Apple Pie? The Rural Vote's Disproportionate Slice of Power*, N.Y. TIMES (Nov. 20, 2016), <https://www.nytimes.com/2016/11/21/upshot/as-american-as-apple-pie-the-rural-votes-disproportionate-slice-of-power.html>; *See generally* JONATHAN A. RODDEN, *WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE* (2019).

63. Nestor M. Davidson & Paul A. Diller, *A City-Suburban Coalition Can't Win While the System Favors Rural Voters*, CITYLAB (Nov. 30, 2018), <https://www.citylab.com/perspective/2018/11/representation-rahm-emanuel-urban-rural-suburban-election/577051>.

federal level rather than state, as state level voting for representatives is more directly democratic than at the federal level.⁶⁴

States often have disproportionate balances of power, with the political and cultural centers of the state dominating life to the detriment of the rural areas.⁶⁵ While trial courts tend to be divided into districts, state supreme courts are most often chosen statewide. When lawyers are concentrated in urban areas, as they often are, the pool of lawyers available to fill spots on a state's high court are heavily skewed toward urbanites.⁶⁶ This leads to courts comprised of individuals who often do not understand rural culture or share rural political and social sentiments. This, in turn, produces a disconnect between litigants and judges that can cost courts not only legitimacy but nuanced and just decisions.

Geographic location—and consequently, rurality or urbanity—is a tremendous predictor of ideology among lawyers.⁶⁷ “Areal” background affects the way judges view their roles—as either law interpreters or lawmakers—with rural judges strongly viewing themselves as the former.⁶⁸ If the court of a conservative state is comprised of lawyers from its liberal urban centers (who themselves are already members of a generally liberal profession),⁶⁹ this can produce problems, including judges overstepping their boundaries to misrepresent the intentions of legislators when interpreting the law.⁷⁰ After all, “the judge must reflect the beliefs of society, even if

64. U.S. Supreme Court cases have seen to this where it may not have been the case prior to the second half of the twentieth century. In *Gray v. Sanders*, the Court disestablished weighted voting by counties and declared famously that, “The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.” 372 U.S. 368, 381 (1963). The Court soon after ruled out U.S. Senate-style districts for state legislatures, stating, “the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis,” and more memorably, “Legislators represent people, not trees or acres.” *Reynolds v. Sims*, 377 U.S. 533, 568, 562 (1964).

65. Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers Pay*, N.Y. TIMES (Apr. 8, 2013), <https://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html> (“In South Dakota, 65 percent of the lawyers live in four urban areas. In Georgia, 70 percent are in the Atlanta area. In Arizona, 94 percent are in the two largest counties, and in Texas, 83 percent are around Houston, Dallas, Austin and San Antonio.”).

66. Pruitt, et al., *supra* note 20, at 84 (discussing this problem specifically in the context of Northeastern Minnesota and Northern Wisconsin).

67. Adam Bonica, Adam S. Chilton & Maya Sen, *The Political Ideologies of American Lawyers*, 8 J. LEGAL ANALYSIS 277, 297–98 (2016) (“[R]egression[] results revealed that the congressional district where an attorney lives is an extremely important predictor of that lawyer’s ideology.”). It is important however not to use rural as a byword for political conservatism, as this would diminish the cultural richness and diversity present in rural America and reflected in its citizens and consequently judicial officers.

68. John T. Wold, *Political Orientations, Social Backgrounds, and Role Perceptions of State Supreme Court Judges*, 27 W. POL. Q. 239, 242–44 (1974). “Areal” refers to the geographic distribution from which the judges hail.

69. Bonica, Chilton & Sen, *supra* note 67, at 292.

70. Richard Bellamy & Cristina E. Parau, *Introduction: Democracy, Courts and the Dilemmas of Representation*, 49 J. REPRESENTATIVE DEMOCRACY 255, 261 (2013) (“Judges might be

these are not the judge's own beliefs."⁷¹ Contrary behavior delegitimizes the courts in the eyes of the public, and can be exploited by politicians for short-term political gain to the detriment of the institution.⁷²

Yet irrespective of political differences, the greatest divide between rural and urban America is cultural: religion, values, traditions, and worldviews vary widely between rural and urban Americans.⁷³ These differences can translate into misunderstandings, especially in the context of litigation.⁷⁴ Culture affects all judges. Justice Cardozo recognized this, saying that judges are affected by "forces which they do not recognize and cannot name . . . inherited instincts, traditional beliefs, acquired convictions . . . which, when reasons are nicely balanced, must determine where choice shall fall."⁷⁵ Increased representation by judges from rural backgrounds—in whatever form its implementation occurred—would do more than anything else to correct this issue in the context of the urban-rural divide.

IV. DISTRICTS AS A SOLUTION TO DESCRIPTIVE RURAL REPRESENTATION ON STATE SUPREME COURTS

Having established the importance of descriptive representation to the institutional legitimacy of courts and substantive representation, and having shown that rurality is a unique and neglected characteristic for judges, we will next discuss a potential solution. Districts have long been used to ensure descriptive areal representation. Institutions ranging from the US Congress to the federal court system, to several state supreme and appellate courts, to nearly all state trial courts, utilize some form of districting. The reasons for districting have historically ranged from the difficulty of lengthy travelling to voting booths, to ensuring that certain groups get the opportunity for descriptive representation. While districting does not come without its challenges, when properly implemented, it can serve to correct the processes that maintain an unrepresentative judiciary.

thought to have betrayed the trust placed in them when their decisions reflect their own preferences rather than those of the elected representatives who crafted the laws, constitutions or conventions in question.”).

71. BARAK, *supra* note 25, at 95.

72. Luis Fuentes-Rohwer, *Taking Judicial Legitimacy Seriously*, 93 CHI.-KENT L. REV. 505, 508–10 (2018).

73. *See* Del Real & Clement, *supra* note 60.

74. Unfortunately, there is a dearth of data dealing with urban-rural cultural differences in the context of litigation.

75. BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 12 (1921). For an examination of some of the misunderstandings that can arise in situations where judges lack cultural competence, see Masua Sagiv, *Cultural Bias in Judicial Decision Making*, 35 B.C. J.L. & SOC. JUST. 229 (2015).

Eight states have adopted and enshrined into their constitutions a form of districting for determining state supreme court justices.⁷⁶ Regardless of the method of appointment in each state—partisan or nonpartisan election, appointment, or merit selection—the justices in these states are not selected statewide, but rather from particular districts within the state. This ensures a broad geographic distribution of justices, which increases rural representation in ways healthy for the functioning of state supreme courts as just arbiters for all of the citizens of their states.

Such a system presents a number of questions, including how districts are drawn, why the systems were adopted, whether they do, in fact, meaningfully increase rural representation on the bench, and whether their translation to other states might serve this same purpose. The purpose of this section is to explore these and other questions, and to show that such systems are in fact boons for well-functioning, representative, republican state supreme courts. By being representative of its geographic distribution and cultures, the high court of a state ensures both justice and the public perception of such.

The most obvious place to look at districts is not the most instructive, but can still be helpful as a theoretical model in terms of conceptualizing some of the methods, benefits, and shortcomings of a district system. The US Congress is a large scale district-based system that features rural and urban districts and attempts broadly to be descriptively representative. Being that this body is legislative, however, it lacks the additional requirement that judges have to be symbolically representative of the law, and is thus a poor practical model for our purposes.

United States federal courts, however, provide a ready-made example of descriptive representation on a geographic basis. Their districts are at least contiguous within state boundaries, if not subdivided further within those boundaries.⁷⁷ This ensures that each state has at least one district court, regardless of its population—similar to the US House of Representatives and Senate. And the law requires that “[e]ach district judge, except in the District of Columbia, the Southern District of New York, and the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed.”⁷⁸ While there is no specific provision for judges to reside in their districts *prior to* appointment, it is custom that this be considered in the appointment process.⁷⁹ Interestingly, the Circuit Courts of

76. Illinois, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Oklahoma, and South Dakota. See *Methods of Judicial Selection*, NAT'L CTR. ST. CTS., http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm (last visited Apr. 30, 2019).

77. MITCHEL A. SOLLENBERGER, *JUDICIAL APPOINTMENTS AND DEMOCRATIC CONTROLS* 53 (2011).

78. 28 U.S.C. § 134(b) (2018).

79. Denis Steven Rutkus, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, CONG. RES. SERV. 8 (June 17, 2016), <https://fas.org/sgp/crs/misc/R43762.pdf>.

Appeals do specify residence as a factor in appointment: “Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed *at the time of his appointment* and thereafter while in active service.”⁸⁰

Congress, in creating the Article III courts, clearly accounted for the importance of state residence in judicial legitimacy and decision-making.⁸¹ In fact, this was explicit from the beginning: “colonists began to believe that the individuals who represent their communities in government should know and understand the interests of the people.”⁸² This would only come if the representatives lived among the people. From this type of descriptive areal representation at the federal level, it is only a small step to enact similar districting measures to ensure descriptive rural representation on state supreme courts. Congress’s creation of Article III courts shows that these methods need not be constitutionally enacted, but could be legislative or customary in nature. In any case, it matters less *how* representation occurs, than that it does in fact occur. That said, it should be noted that legitimacy is key, and it is important that the decision makers adopt a process that does not lend the appearance of impropriety or favoring “groups,” while nonetheless attempting to selectively implement descriptive representation.⁸³

States that already use districts for their supreme courts are also, of course, instructive.⁸⁴ Although no two systems are the same and each state’s framework is reflective of the historical circumstances that precipitated the district system’s formation, each, in some way, was designed to decentralize the power of urban factions in the supreme court and to increase geographic representation. Rather than deep-diving into the constitutions of each state to have adopted supreme court districts, it is better to briefly describe some of the motivations of a few of these states.

The first state to adopt supreme court districting was Mississippi, which did so in 1817. This is interesting because the initial districting plan was heavily skewed so as to draw nearly all of the justices from the then-state capital Natchez and its surrounding area⁸⁵—demonstrating that districting can actually be wielded *against* rural representation and is thus in

80. 28 U.S.C. § 44(c) (2018) (emphasis added); Likewise, Courts of Appeals must have representatives from each state within the circuit, which has resulted in the informal practice of holding seats for judges from a given state (e.g., a “Missouri seat” or an “Ohio seat”). “*State Representation*” in *Appointments to Federal Circuit Courts*, CONG. RES. SERV. Summary (Mar. 30, 2011), https://www.everycrsreport.com/files/20110330_RS22510_60c01f3f8a90b5e7734450f0c095411c39bfdcde.pdf.

81. J. WOODFORD HOWARD, COURTS OF APPEALS IN THE FEDERAL JUDICIAL SYSTEM: A STUDY OF THE SECOND, FIFTH, AND DISTRICT OF COLUMBIA CIRCUITS 8 (1981) (“[N]o two Courts of Appeals are alike. Their business tends to reflect the characteristics of each region.”).

82. SOLLENBERGER, *supra* note 77, at 52.

83. Scherer, *supra* note 48, at 628–30.

84. There are eight such states. *Methods of Judicial Selection*, *supra* note 18.

85. JED HANDELSMAN SHUGERMAN, THE PEOPLE’S COURTS: PURSUING JUDICIAL INDEPENDENCE IN AMERICA 66 (2012).

itself merely a value-neutral framework for judicial selection. This geographically unrepresentative setup would not long stand, and in 1832, Mississippi held a constitutional convention, which redrew the supreme court districts to better represent the state's rural citizens.⁸⁶ This effort was successful in wresting control of the state's judiciary from the powerful "Natchez Aristocrats."⁸⁷ Mississippi indeed saw a shift in power and has retained the system today.⁸⁸

Other states followed suit, and each time, questions of representation, balance of power, and decentralization soon emerged. In Kentucky, rural delegates embraced districts as a means to break the disproportionate and unrepresentative hold that urban parties had on the judiciary.⁸⁹ In Illinois, proponents of districting found a creative compromise, such that the most populous county would elect three supreme court districts, while the other four would be elected from equal sized districts comprising the rest of the state.⁹⁰ Nebraska, too, opted for a different system, where the chief justice is selected at-large, while the other justices are picked from districts.⁹¹ These examples show simply that districts need not be a standard system across states, but may be adapted and modified to meet the needs and reflect the values of the state adopting.

Yet there are ample problems in establishing such a system today—or even reforming those existing.⁹² For example, how do we define where someone is from? Many people move as children, then for college, and in the cases of our justices, possibly for law school and a career as well. Does it count more where the justice was born, where he grew up, or where he now lives? This is an important question beyond the scope of this paper. That said, there is some evidence that city residents with rural backgrounds

86. G. ALAN TARR, *WITHOUT FEAR OR FAVOR: JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY IN THE STATES* 42 (2012). Interestingly, Mississippi's 1832 constitution also made it the first state to institute elections for all levels of its courts, including the supreme court.

87. SHUGERMAN, *supra* note 85, at 57.

88. Interestingly, Mississippi also uses its three supreme court districts to select members of the Mississippi Board of Trustees of State Institutions of Higher Learning, which governs higher education in the state. Nicole S. Poulin, *State Education Finance and Governance Profile: Mississippi*, 85 PEABODY J. EDUC. 80, 81 (2010).

89. TARR, *supra* note 86, at 50.

90. ILL. CONST. art. VI, §§ 2–3; the initial compromise, which survives in this modified form, was reached in 1848. JANET CORNELIUS, *A HISTORY OF CONSTITUTION MAKING IN ILLINOIS* 26 (1969).

91. NEB. CONST. art. V, § 5.

92. In the first half of 2019, Oklahoma experienced a fierce debate over whether to redraw its own supreme court districts to be more reflective of the way the population has changed since the first nine districts were established in 1967. See Chris Casteel, *Proposed Supreme Court District Changes Could Mean More Urban Justices*, OKLAHOMAN (Mar. 17, 2019), <https://oklahoman.com/article/5625910/proposed-supreme-court-district-changes-could-mean-more-urban-justices>; Ultimately the changes were approved and the new districts went into effect in early 2020. See 2019 Okla. Sess. Laws ch. 154. This is an example of how districts can be adapted to reflect the changing values of the state while still maintaining its traditions and preserving rural representation.

“tend to retain rural attitudes and behavior characteristics, size of community of origin being a stronger predictor of some attitudes than the size of community of current residence.”⁹³ Regardless, it is a question to be studied moving forward. While there is no perfect solution to the problem of “carpetbaggers,” who might opt to move into a rural district to better their chances of judicial selection, given the distinctiveness of rural culture and the particularity of place which a district system necessitates, it is fair to trust the voters or appointers to make a good faith choice of justices for which they will be held accountable depending on the justice picked. If the purpose of a district system is to increase descriptive rural representation, it is reasonable that the appointments will reflect the purpose.

Another issue with districts in an elective system is that, while citizens (and thus litigants) have a strong say in who one of the justices is, they have no say in the majority of the court which will hear their case.⁹⁴ This is a valid point, but it is important to note that citizens need not have any say in who occupies the state supreme court bench. That does not mean the supreme court ought not to be descriptively representative of the citizens; rather, it means that the identity of the judges who make the decisions ultimately matters less to the legitimacy of the court than the fact that the decision-makers have been selected with reference to factors such as descriptive representation. Indeed there is also at least anecdotal evidence that sitting on the bench with—and thus getting to know very well—justices from diverse backgrounds can impact judicial decision-making.⁹⁵

V. CONCLUSION

There are many questions surrounding districting as a means to increase descriptive rural representation on state supreme courts. Chief among these questions is whether districting has, in fact, effectively increased such representation where it has been tried. Simply put, the data has not yet been collected.⁹⁶ Additional questions include whether constitutional changes are necessary to effectuate districting, or whether a more informal mechanism could be used. Likewise, what influence or deference, if any, do justices receive from their peers in cases that originate in their home district? Is this

93. Norval D. Glenn & Lester Hill, Jr., *Rural-Urban Differences in Attitudes and Behavior in the United States*, 429 ANNALS AM. ACAD. POL. & SOC. SCI. 36, 36 (1977).

94. TARR, *supra* note 86, at 51.

95. See, e.g. Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 STAN. L. REV. 1217 (1992) (Reflecting on the influence of her colleague on the bench Justice Marshall, Justice O'Connor writes, “At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth.”).

96. Studies of the type that could collect this data have already been conducted using other variables, like race and gender, but rurality has not been critically examined. See George & Yoon, *supra* note 9.

problematic or to be encouraged, as courts look to bolster legitimacy? This will be important to answer moving forward, but there is a gap in the literature, which so often focuses narrowly on type of judicial selection (i.e. election, appointment, or selection) over the framework in which the selection is made.

As the U.S. becomes more urban, it is important not to lose touch with our roots as a rural country, nor to marginalize those who have maintained those roots. By ensuring descriptive representation for rural Americans, we can potentially increase the courts' legitimacy in the eyes of rural Americans, and likely also increase substantive fairness through high court decisions which incorporate sensitivity toward rural culture and customs. Whether rural representation on state supreme courts occurs through a districting model or utilizes another mechanism is to be determined as further research is done. But by asking these questions, we can perhaps begin to reverse the growing sense of alienation among rural communities and ensure both symbolic and substantive legal fairness in the state justice systems.