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The Poor Reform Prosecutor: So Far from the State Capital, So Close to the Suburbs

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THE POOR REFORM PROSECUTOR: SO FAR FROM THE STATE CAPITAL, SO CLOSE TO THE SUBURBS

*John F. Pfaff**

“Poor Mexico: So Far from God, So Close to the United States.”

— Former Mexican President Porfirio Diaz¹

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INTRODUCTION

One of the most significant developments in the criminal legal system over the past decade or so has been the rise of the “progressive,” or “reform,” prosecutor. As recently as 2010, perhaps only three or four elected district attorneys fit the profile of a reformer, presiding over ~2% of the U.S. population. By 2022, however, there were upwards of 70 such officials, running offices in counties that are home to nearly one in five people in the U.S.. Furthermore, by the end of 2022 at least 50 other counties, many of them among the most populous, had seen unsuccessful campaigns by reformers to unseat more-punitive incumbents. After decades of flying

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1. Allegedly. Perhaps likely. *See also* Roray Campbell, ‘*So far from God, so close to the US’: Mexico’s Troubled Past with its Neighbour*, GUARDIAN (Feb. 1, 2017), <https://www.theguardian.com/us-news/2017/feb/01/donald-trump-us-mexico-relations-history> [<https://perma.cc/95RP-G6ZD>].

below the academic, political, and media radars, local prosecutor elections now often become national news.²

It is inarguably good that politicians and voters are focusing more energy on who we elect as prosecutors. It has become increasingly clear that the ways prosecutors wield their vast and generally unreviewable discretion has played a central role in driving up U.S. prison populations over the past several decades, and in all the other ways our punitive criminal legal system has expanded its control over more and more people.³ And it stands to reason that replacing punitive prosecutors with less punitive ones could help us scale back our exceptional punitiveness.⁴

It is important, however, for reformers to not overstate the extent to which reform prosecutors can be the primary drivers of reversing our 40 to 50 year punitive project. Politics and policy are not always symmetric: that which drives something up does not always have the same power to push things back down. And the more I have studied reform prosecutors over the past decade, the more aware I have become of their limitations.

This concern — that perhaps reformers are putting prosecutors too much at the center of efforts to scale back mass punishment — really struck me in the wake of the Supreme Court’s 2022 decision in *Dobbs v Jackson’s Women’s Health*,⁵ which reversed the abortion-rights protections established in *Roe v Wade*.⁶ Within days of the Court handing down *Dobbs*, which opens the door for states to criminalize those who receive or perform abortions, dozens of prosecutors signed a letter written by Fair and Just Prosecution (“FJP”), an association of reform-minded prosecutors, pledging to not prosecute abortion-related cases should their states recriminalize abortion.⁷ Tellingly, no parallel letter was signed by, say, mayors, police chiefs, sheriffs, or governors (although some such officials obviously quickly spoke out against criminalization on their own). Opponents of the criminalization of abortion immediately turned to prosecutors for assurance.

2. See, e.g., John Pfaff, *What the San Francisco DA Recall Really Tells Us*, SLATE (June 10, 2022) [hereinafter Pfaff, *DA Recall*], <https://slate.com/news-and-politics/2022/06/chesa-boudin-recall-what-it-means-and-what-it-doesnt.html> [https://perma.cc/QX5A-6RUA], which summarizes the problematic attention — much of it poorly reasoned — given to the recall of Chesa Boudin in San Francisco. The results discussed in this Essay provide some early, tentative empirical confirmation of the impressionistic take in the Slate piece.

3. Of course, those who see such punitiveness as a feature, not a bug, should care about the role prosecutors play in advancing that goal.

4. See, e.g., JOHN PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION-AND HOW TO ACHIEVE REAL REFORM* (2017).

5. 142 S.Ct. 2228 (2022).

6. 410 U.S. 113 (1973).

7. See *Joint Statement from Elected Prosecutors*, FAIR & JUST PROSECUTION (June 24, 2022), <https://fairandjustprosecution.org/wp-content/uploads/2022/06/FJP-Post-Dobbs-Abortion-Joint-Statement.pdf> [https://perma.cc/DMQ8-Y72L].

But there are a lot of problems with this focus on prosecutors that quickly become apparent. Some of the issues are structural. Prosecutors, for example, have no direct authority over the police. Even if they refuse to prosecute cases, they can almost never prevent arrests,⁸ and those arrests create permanent criminal records and can result in people spending (harmful) time in the local lockup or county jail before prosecutors dismiss the cases.⁹ They also have limited ability to implement less-punitive, more public-health based responses to violent and anti-social behavior. They can push for more diversion programs, but those only come into play once the person has been pulled into the criminal legal system to start with. And, at least in the bigger offices — which process most cases¹⁰ — reform prosecutors at the top also face the challenge of compelling compliance from often-recalcitrant mid-level tiers of managing assistant district attorneys.¹¹

These are all important limitations, but I want to focus here not on *structural* impediments but on two inter-related *political* ones, limitations that are tied to the geography of prosecution. That prosecutors in the U.S.

8. In Harris County (Houston and its suburbs), but basically nowhere else, the police are required to call into the prosecutor's office to get permission to make warrantless arrests. See Adam M. Gershowitz, *Justice on the Line: Prosecutorial Screening Before Arrest*, 3 WM. & MARY 833 (2019). It is unclear how, exactly, the Harris County District Attorney's office got this power, back in the 1970s, which means it is also unclear how easy it might be to lose that power as well.

9. Police often like to claim that they cannot or will not make arrests for offenses that reform prosecutors have said they will not prosecute. But that is a *choice* police make. Police departments do not report to prosecutors, so as long as the police have probable cause to make the arrest, they are free to do so, whatever the internal charging policies of the prosecutor. And arrests themselves are invasive events that people dislike, undermining the police argument that they refuse to make arrests because there is "no point" to doing so. See, e.g., John Pfaff (@JohnFPfaff), TWITTER (Jan. 8, 2022, 11:48 PM), <https://twitter.com/JohnFPfaff/status/1480038814299131914> [<https://perma.cc/2F2X-77AA>].

10. See U.S. DEP'T OF JUST., 2007 NAT'L CENSUS OF STATE COURT PROSECUTORS: PROSECUTORS IN STATE COURTS, 2007 – STATISTICAL TABLES, at tbls. 1–4 (2007), <https://bjs.ojp.gov/content/pub/pdf/psc07st.pdf> [<https://perma.cc/X6G6-4X8B>]. This is sadly the most recent study on this topic, and it reports that in 2007 the largest ~2% of all offices handled ~25% of all felony arraignments, and the largest ~10% handled ~60% of all felony cases nationwide. These offices are, unsurprisingly, quite large: for the largest 2%, the average number of prosecutors was over 500 (and the median over 400); for the next 8%, the mean was ~130, the median ~110. See *id.* It's likely, given trends in criminal legal practices over the past decade, that the share of cases in the largest districts has fallen, but I would imagine not by much.

11. This is why we regularly see reform district attorneys fire large numbers of senior prosecutors upon assuming office. See, e.g., *Incoming DA Kim OGG Fires 37 Prosecutors*, KHOU 11 (Dec. 16, 2016, 4:12 PM), <https://www.khou.com/article/news/local/incoming-da-kim-ogg-fires-37-prosecutors/285-371902245> [<https://perma.cc/MK4N-PV76>]; Chris Palmer et al., *Krasner Dismisses 31 from Philly DA's Office in Dramatic First-Week Shakeup*, PHILA. INQUIRER (Jan. 5, 2018), <https://www.inquirer.com/philly/news/crime/larry-krasner-philly-da-firing-prosecutors-20180105.html-2> [<https://perma.cc/YSQ2-MEQS>].

are elected is itself peculiar — we are the only country that does this. Yet while there has been some empirical analysis on this unique design in general,¹² the challenges posed by electing them specifically at the *county* level has not gotten as much attention. And counties are . . . peculiar jurisdictions for electing prosecutors. On the one hand, as we will see in Part II below, they are too big. Crime, or at least street crime, tends to be disproportionately concentrated in cities, but most urban counties include both the city and many of its adjacent suburbs.¹³ County-level elections thus give communities that are disproportionately unaffected by crime — and thus by how the prosecutor responds to that crime — a large, arguably *too* large, voice in who that prosecutor is, and likewise dilute the political voice of those who bear the brunt, good or bad, of what prosecutors choose to do. That these suburban communities are generally whiter, richer, and more conservative than the cities they surround only makes this political disconnect all the greater.

On the other hand, counties are in some ways too small and too far (symbolically, if not literally) from the state capital, leaving local reformers at the mercy of increasingly punitive state officials. While the U.S. Constitution provides the states with at least *some* imprecise safeguards against federal usurpation, counties explicitly have no such protection from state-level intervention; some states may *choose* to grant their cities a degree of home-rule, but the threat of preemption is always lurking.¹⁴ Historically, outside of gun control, state governments have generally not wielded their preemption power when it came to criminal legal issues, but that has changed in recent years, especially (but not solely) in Republican-led states with more-liberal cities pushing for broader criminal legal reforms. The calls for police defunding in the wake of George Floyd’s murder in 2020 already prompted a wave of state laws aimed at limiting how cities fund police;¹⁵ the signs of prosecutorial resistance in the wake of *Dobbs* have, in turn,

12. See, e.g., Ronald F. Wright et al., *Election Contestation and Progressive Prosecutors*, 19 OHIO ST. J. CRIM. L. 125 (2021) [hereinafter Wright et al., *Election Contestation and Progressive Prosecutors*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3849590 [<https://perma.cc/BSZ8-5NMY>]; Ronald F. Wright, *How Prosecutor Elections Fail Us*, 6 OHIO ST. J. CRIM. L. 581 (2009) [hereinafter Wright, *How Prosecutor Elections Fail Us*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1339939 [<https://perma.cc/3HEG-LBTW>].

13. See *Consolidated City-Counties*, NAT’L ASS’N CNTYS. (Oct. 27, 2021), <https://www.naco.org/resources/consolidated-city-counties> [<https://perma.cc/H9NF-HLZP>].

14. See *Coleman v. Miller*, 307 U.S. 433, 441 (1939) (summarizing this view, the Supreme Court summarized called local governments “but creatures of the state,” and thus devoid of any sort of Constitutional protection from state-level preemption).

15. See John Pfaff, *The Greatest Threat to Defunding the Police? State Pre-Emption*, APPEAL (Apr. 29, 2021), <https://theappeal.org/defund-the-police-pre-emption/> [<https://perma.cc/A75A-SUKY>].

accelerated nascent state efforts to preempt reform-minded prosecutorial discretion as well.¹⁶

Taken together, these two effects are like a vise pinching reform efforts from two ends. The suburban power likely limits the places where reformers can prevail. It is not surprising, for example, that many reform prosecutor wins have been in places like Philadelphia, Brooklyn, the cities of Baltimore and St. Louis: all cities (or boroughs) that are also the relevant county. None of these races involved suburbs, all of which are in adjacent counties. It is similarly unsurprising that reformers have lost in places like Orange County, CA (which has no core city) or San Diego County, CA (where the core city's population is well under half that of the county as a whole). The suburbs likely impose a clear limit on where reformers can be elected, at least with the current emphasis on racial social justice.¹⁷

Then, once they manage to get elected, reformers need to be cautious about drawing the ire of the state capital, against whom they are mostly defenseless. A good example of this is how Steve Mulroy, the reformer recently elected in Shelby County, TN (Memphis), refused to explicitly say that he would not prosecute abortion cases in the waning post-*Dobbs* days of his campaign, likely in an effort to avoid the attention of state officials in Nashville.¹⁸ This is a serious issue in red(der) states, as we will see in Part III, but it is not confined to them.¹⁹ Early on in her first (partial) term, for

16. See, e.g., Becky Sullivan, *Texas Conservatives Have a Plan to Get Around DAs Who Won't Enforce Abortion Laws*, NPR (July 15, 2022, 5:00 AM), <https://www.npr.org/2022/07/15/1111383520/texas-abortion-laws-prosecutors> [<https://perma.cc/EK2N-F5AB>]; Greg Bluestein, Tia Mitchell & Patricia Murphy, *The Jolt: An Embattled Athens Prosecutor Fuels 'Accountability' Push*, ATLANTA J. CONST. (Mar. 9, 2023), <https://www.ajc.com/politics/politics-blog/the-jolt-an-embattled-athens-prosecutor-fuels-accountability-push/7IKT33QW4RDHTOBL4RSOTSAQBU/> [<https://perma.cc/GWT7-H3BX>].

17. In 2017, the Marshall Project ran an article about how more-conservative counties were starting to show more interest in improving indigent defense spending — not due to shifting views on racial justice (which is how much of the push for improved public defense is framed), but because of guns. Enough people were losing access to their firearms due to felon-in-possession statutes triggered by felony drug convictions that it appeared to produce something of a backlash against (at least some) punitiveness. See Alysia Santo, *How Conservatives Learned to Love Free Lawyers for the Poor*, MARSHALL PROJECT (Sept. 24, 2017, 8:00 AM), <https://www.themarshallproject.org/2017/09/24/how-conservatives-learned-to-love-free-lawyers-for-the-poor> [<https://perma.cc/E6S2-6D7S>]. Which is to say: the rhetoric of reform need not be constant, and just because more-suburban areas respond less well to framings that work in cities does not mean they are inherently resistant to the broader goal, or that there is no way to cut through the resistance that is there.

18. See Jamiles Lartey, *How Conservatives Are Trying to Shut Down the Progressive Prosecutor Movement*, MARSHALL PROJECT (Aug. 20, 2022), <https://www.themarshallproject.org/2022/08/20/desantis-warren-progressive-prosecutors> [<https://perma.cc/L7AV-5JGK>].

19. See *infra* Part III.

example, Democratic New York governor Kathy Hochul made it clear she knew she had the power to unilaterally remove Manhattan's recently-elected reformer, Alvin Bragg.²⁰

Now, to be clear, my point very much is *not* a nihilistic one. A lot can be accomplished in bluer cities in bluer/purpler states, and even in more conservative states there is still *some* (perhaps a fair amount of) room for officials in more-liberal cities to flex reformist wings. And given how concentrated people — and thus crime, and thus punishment — are, even just a handful of cities can shift national-level trends, and many of our largest cities are in Democratic or divided-government states, where preemption is far less likely (although, as Hochul's words make clear, not impossible). But it is essential to be aware of the limits imposed by suburbs and the threats posed by state governments, none of which can be confronted *legally*: states are not about to redraw prosecutorial jurisdictions, and the current Supreme Court is not going to find urban home rule lurking in the US Constitution. That does not mean there are no solutions, but those solutions will be *political*, not legal.²¹

I. THE RISE OF THE REFORM PROSECUTOR

For much of the past 50 years, as prison populations steadily rose and mass punishment took root, prosecutors managed to fly mostly under the radar, both politically and academically. A study of prosecutor elections in ten states from 1996–2006, for example, found that incumbents running for re-election faced no opposition in primaries or general elections in 85% of their races and won in 95% of them; the jobs were more sinecures than competitive elected positions.²² Academic studies of incarceration and

20. See Hochul to Meet with Bragg, Knows 'Full Well' Her Power to Remove Him: Report, NBC N.Y. (Jan. 27, 2022, 5:13 AM), <https://www.nbcnewyork.com/news/politics/hochul-to-meet-with-bragg-knows-full-well-her-power-to-remove-him-report/3518446/> [https://perma.cc/233U-LSHZ].

21. For example, efforts to give the state Attorney General in Missouri the power to take over cases from the city of St. Louis — a direct effort to undermine reformer Kim Garner — failed when state prosecutors, many of them politically opposed to Garner's policies, united to oppose the legislation. Not that the state legislature is giving up, as it has reintroduced in 2023 variants of the proposals that had failed in earlier years. See Rebecca Rivas, *Missouri Prosecutors Face Losing Jurisdiction Over Violent Crime Cases*, MO. INDEP. (Jan. 23, 2023, 5:55 AM), <https://missouriindependent.com/2023/01/23/missouri-prosecutors-face-losing-jurisdiction-over-violent-crime-cases/> [https://perma.cc/4R82-27NE]. This third effort may have been more promising: shortly before this article went to press, Gardner resigned with the hope that doing so would make legislators abandon these efforts. See Summer Ballentine & Jim Slater, *Embattled 1st Black St. Louis Prosecutor Kim Gardner Resigns*, AP NEWS (May 4, 2023), <https://apnews.com/article/st-louis-prosecutor-kim-gardner-6a1051eec47bf7c2e423c8def86e23e5> [https://perma.cc/WSP2-9D3Q].

22. See Wright, *How Prosecutor Elections Fail Us*, *supra* note 12. This trend has declined over the past decade, as the push for reform prosecutors has turned more of these races

punishment likewise tended to overlook the role of prosecutors.²³ Perhaps most glaringly, the National Research Council's effort in 2014 to provide a definitive account of the drivers of mass incarceration failed to assign any responsibility to prosecutors at all.²⁴

Yet while prosecutors evaded attention, they were playing an outsized role in driving up prison populations, especially during the 1990s and 2000s, as crime and arrests fell but prison admissions kept rising.²⁵ There are likely several reasons why prosecutors were able to expand their power without much notice. Perhaps the simplest issue is that we do not gather data on them the way we do police and prisons, making it easy to gloss over their role.²⁶ It is also true that prosecutors are something of a criminal legal "middleman," lacking the political visibility of either the police (who patrol the streets and make arrests) or judges (who send people to prison).²⁷ And David Sklansky has argued that our expectations of what we want prosecutors to do are sufficiently complex and ambiguous that we are not entirely sure what to ask of them in the first place.²⁸

By the 2010s, however, prosecutors started to come under increasing scrutiny. Michelle Alexander's *The New Jim Crow*, published in 2010, called out prosecutors as the most powerful actors in the criminal legal system (although that part of her book unfortunately received far less

competitive. See Wright et al., *Election Contestation and Progressive Prosecutors*, *supra* note 12.

23. See e.g., PFAFF, *supra* note 4.

24. See generally NAT'L RSCH. COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES (Jeremy Travis et al. eds., 2014). A search for "prosecutor" or "district attorney" immediately reveals that the study does not isolate the contribution of prosecutors to prison growth in any rigorous way.

25. See generally PFAFF, *supra* note 4.

26. One reason why the National Research Council report overlooked the role of prosecutors is that it disaggregated the drivers of prison growth into changes in crimes, arrests per crime, and prison admissions per arrest, as a concession to limitations in the data. But "admissions per arrest" erases the agency of the prosecutor, who decides which arrests face prosecution, and which prosecutions require prison time. See John Pfaff, *The Flawed NRC Report: The Mysterious Case of the Missing Prosecutor, Part I*, PRAWFSBLAWG (May 30, 2014, 11:00 AM), <https://prawfsblawg.blogs.com/prawfsblawg/2014/05/the-flawed-nrc-report-the-mysterious-case-of-the-missing-prosecutor-part-1.html> [<https://perma.cc/W7ZG-DZVT>].

27. Of course, they still had a fairly high level of *cultural* visibility during this time. They were, for example, allegedly one half of the US criminal legal system, per the wildly popular *Law & Order* franchise, which began in 1990 ("Allegedly," because *Law & Order's* (in)famous introductory *chung-chung* narration omits the role of, say, defense attorneys and judges).

28. Sklansky's argument, among other things, is that while police have a singular job of "reduce crime" and judges of "impose the sentence," prosecutors are called on to "do justice," which is sometimes harsher and sometimes more merciful, and thus hard to craft a clear narrative around. David Sklansky, *The Problems with Prosecutors*, 1 ANN. REV. CRIMINOLOGY 451, 455 (2018).

attention than others).²⁹ And by 2012, we started to have solid empirical evidence of the central role prosecutors had played in driving up prison populations in the 1990s and 2000.³⁰

Around the same time, prosecutors started to face increased political attention as well. In 2016 and 2017, for example, the ACLU started an aggressive campaign to inform voters about the power of prosecutors and to mobilize them to take these elections seriously.³¹ In fact, it is easy to peg the birth of the reform prosecutor movement to 2016, when voters in Cook County, Illinois, elected Kim Foxx over the far more punitive Anita Alvarez, and voters in Harris County, Texas, chose Kim Ogg over the incumbent Devon Anderson.³² But change had started, if quietly, even a bit before that. Deciding who counts as a “reform prosecutor” is a fraught — perhaps impossible — task, but one could go back to the elections of John Chisholm in Milwaukee, Wisconsin, in 2006; Sim Gill in Salt Lake, Utah, in 2010; or Tori Verber Salazar in San Joaquin, California, in 2014, for examples of prosecutors who were either elected as or would come to be reformers.

29. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010).

30. John Pfaff, *The Micro and Macro Cause of Prison Growth*, 28 GA. ST. U. L. REV. 1237, 1239, 1248–51 (2013). To be clear, prosecutors surely played a central role in driving up prison populations in the 1970s and 1980s as well. Unfortunately, the data I have used on prosecutorial behavior has a discontinuous break in the early 1990s that makes it hard to analyze the 1970s and 1980s and almost impossible to compare trends in the 1970s–80s to those in the 1990s–2000s. That said, given that crime and arrests were rising during the 1970s and 1980s, whatever role prosecutors played then was likely more attenuated than their role in the 1990s and 2000s.

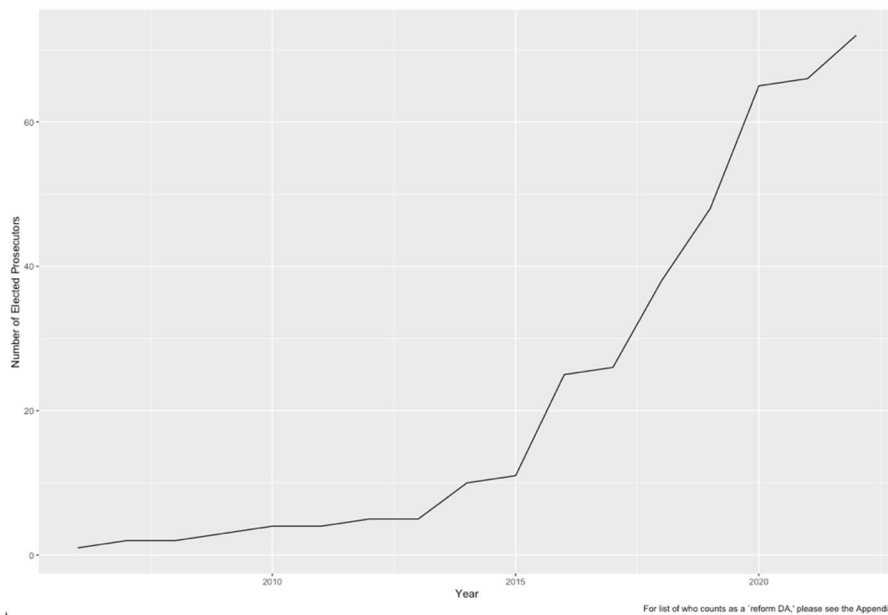
31. See, e.g., Benjamin Wallace-Wells, *The A.C.L.U. is Getting Involved in Elections – and Reinventing Itself for the Trump Era*, NEW YORKER (June 8, 2018), <https://www.newyorker.com/news/news-desk/the-aclu-is-getting-involved-in-elections-and-reinventing-itself-for-the-trump-era> [<https://perma.cc/HW9S-QZZA>].

32. I expect that many reformers may balk at my including Ogg here; if nothing else, she faced primary challenges in 2020 from former prosecutors who claimed she was not “progressive” enough. See, e.g., Michael Barajas, *Reform Candidates Are Trying to Change the Definition of a ‘Progressive Prosecutor’ in Texas*, TEX. OBSERVER (Feb. 7, 2020, 4:27 PM), <https://www.texasobserver.org/kim-ogg-progressive-prosecutor-harris-county/#> [<https://perma.cc/DJ6A-Z4J7>]; Zach Despart & Samantha Ketterer, *Saying Ogg Not Progressive Enough, TOP Endorses Dem Challenger Audia Jones*, HOUS. CHRON. (Jan. 20, 2020), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Saying-Ogg-not-progressive-enough-TOP-endorses-14990286.php> [<https://perma.cc/9EUJ-PLDV>]. And perhaps she shouldn’t count as a reform prosecutor; as I discuss more in the Appendix, classifying people as “reform prosecutors” is actually quite difficult. Regardless of how she has managed the office, however, her campaign in 2016 was certainly *framed* as a reform-minded one, and her victory reflected the electoral success of that message. That said, her subsequent policy choices, and the fact that she had to withstand a primary challenge from a more-progressive opponent in 2020, certainly complicates whether to view Harris County as a place that *currently* has an elected reformer.

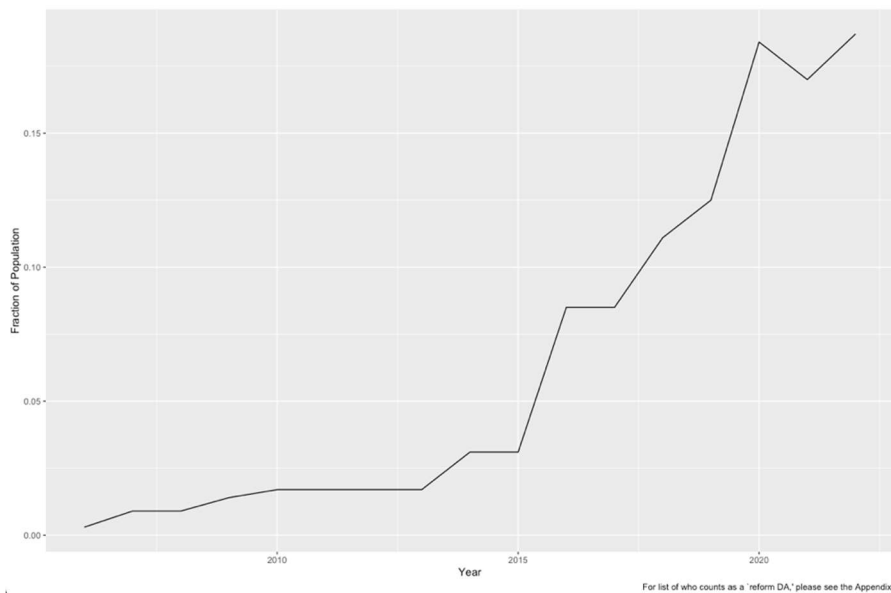
These early reformers, however, received little national attention.³³ That attention came with high-profile battle in 2016 in Cook County between Foxx and Alvarez (galvanized by the media's attention on Alvarez's apparent effort to cover up the police murder of Lacquan McDonald), and then the significant primary win in 2017 by Larry Krasner in Philadelphia. In the (just!) six years since Foxx's election, approximately 70 counties have elected reform-minded prosecutors, with ~60 still in office at the end of 2022; another ~50 counties have seen reformers run campaigns that fell short. Figures 1A and 1B below plots the rising number of reform prosecutors in office, as well as the share of Americans living in the counties that have elected them. Strikingly, a movement that was almost unheard of five or six years ago has come to cover nearly 20% of the US population, including some of the most populous counties in the US, such as Los Angeles and Alameda, California; Cook, Illinois; Kings and New York, New York; and Philadelphia, Pennsylvania.

Reform Prosecutors Trends

Figure 1A: Number of Reform Prosecutors



33. The first reform prosecutor I recall getting much if any national coverage was Scott Colom, elected as prosecutor for the mostly-rural 16th Judicial District in Mississippi in 2015. See Leon Neyfakh, *How to Run Against a Tough-on-Crime DA – and Win*, SLATE (Nov. 25, 2015, 12:25 PM), <https://slate.com/news-and-politics/2015/11/district-attorneys-scott-colom-proves-you-can-run-against-a-tough-on-crime-da-and-win.html> [https://perma.cc/EG5C-YTNZ].

Figure 1B: Percentage Population of Reform Prosecutor

Of course, that 20% claim turns critically on who I count as a “reform prosecutor.” Table A1 in the Appendix provides my complete list of reformers (incumbents, former office holders, and failed candidates), as well as a brief discussion of how I developed the list, which remains very much an on-going work in progress.³⁴ In short, I erred mostly on the side of risking over-inclusion rather than under-inclusion, although not always: for example, I excluded Darcel Clark, the current district attorney of the Bronx, New York, which with a population of ~1.5 million is one of the more populous counties in the US.

This list of reform prosecutors and candidates gives us a chance to start fleshing out the politics of prosecutorial reform a bit more. The results in this section are just broad-stroke impressions; these are early results from a larger, more rigorous empirical project of mine. The patterns seen here, however, seem to tell plausible causal stories, and do so with some clarity.

34. While others have assembled lists of reform prosecutors, I believe mine is the first to include failed candidates as well. Identifying the failures is essential to any effort to understand the electoral politics here, since any study that just looks at the winners falls into the trap of selecting on the dependent variable. If you are unfamiliar with this common but underappreciated statistical pitfall, please see John Pfaff (@JohnFPfaff), TWITTER (May 25, 2022, 9:30 AM), <https://twitter.com/JohnFPfaff/status/1529454877809811458> [<https://perma.cc/GD27-22QJ>].

First, the graphs in Figure 2 make it clear that the push for reform prosecutors is concentrated mostly in larger, more Democratic counties.³⁵ That reform prosecutors are primarily Democratic is particularly unambiguous. While there is a fair amount of variation in county size for both successful and unsuccessful campaigns, few have even tried to run, much less win, in counties that did not vote for Joe Biden in 2020 (with the one notable exception of Sim Gill in Salt Lake County, Utah, who served from 2010-2022).³⁶ For all the talk we have heard over the past decade about “bipartisan criminal legal reform,” prosecutorial reform at least remains a distinctly Democratic-liberal project. As we will see in Part III, this raises serious challenges in Republican-dominated states, which are increasingly willing, if not eager, to use the power of state-level preemption to thwart local efforts at change.

A perhaps more surprising aspect in Figure 2 is that, once we put aside the (excluded) Los Angeles and Cook counties, candidates in the biggest counties have generally *failed*, with successes much more concentrated in the counties with populations under 2 million. As we will see in Part II, this likely reflects the fact that many of these counties are places with sprawling suburbs, which implies that their urban cores make up a relatively small shares of the counties’ overall populations, and thus voters; in at least a few cases, these are also heavily Hispanic counties, which tend to be less enamored of reformers.³⁷ In other words, it is not just large Democratic counties that see successful pushes for reform. It is large Democratic counties where the cities themselves make up a large enough share of the population.

35. Note that Figure 2 excludes Los Angeles and Cook Counties, both of which are currently home to reform prosecutors. I drop them simply because at over 10 million and 5 million people respectively, they skew the graphs in ways that obscure more than they clarify.

36. You can’t miss him: Gill is that one green dot in Figure 2B for the county that was close to 75-25 for Trump.

37. There are ten counties with populations of over 2 million that did not have a reform prosecutor in 2022: Clark, Nevada; Harris, Texas (maybe, it’s tricky, see *supra* note 33 for why, say, Kim Ogg is a taxonomic challenge); Maricopa, Arizona; Miami-Dade, Florida; Orange, California; Queens, New York (another tricky case, given that the incumbent, Melinda Katz, would describe herself as a reformer, and her victory over the more unambiguous reformer, Tiffany Cabán, was decided by around 60 votes after a bitterly litigated recount); Riverside, California; San Bernardino, California; San Diego, California; and Tarrant, Texas. Most of these are counties with large suburban populations. Clark County, for example, has a population of 2.3 million to Las Vegas’s 650,000, and the 1.4 million people in San Diego the city still comprise only 40% of the 3.3 million people living in San Diego the county. Many others have quite large Hispanic populations (and relatively small Black populations as well), which, as we will see in Part 2, can be quite important. Miami-Dade, for example, is ~54% Hispanic in a country that is only 19% Hispanic; San Bernardino and Harris are both almost 30%.

Size and Ideology of Reform Counties

Figure 2A: Counties That Have a Reform DA, 2022



Figure 2B: Counties That Had But Lost a Reform DA, 2022

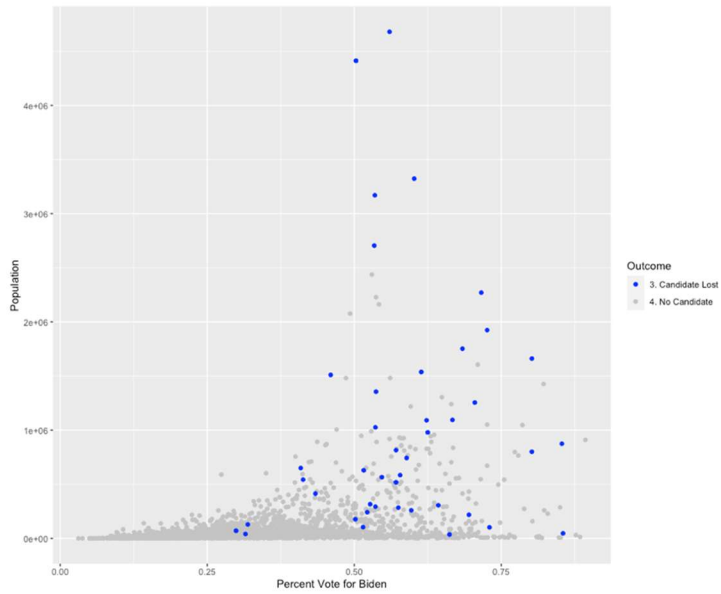
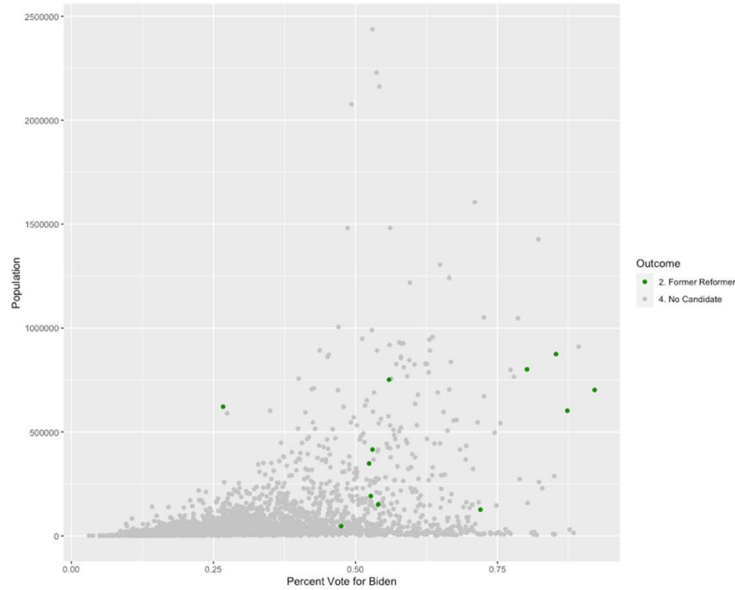


Figure 2C: Counties That Had A Failed Reform Campaign by 2022



It is also easy to see that the racial and ethnic diversity of a county matters as well, as Figures 3 and 4 indicate. Figure 3 plots the outcome of a reform prosecutor's campaign against the percent of the county's population that is non-Hispanic white. It is immediately clear that successful campaigns cluster the most in the 25% to 50% range: counties where non-Hispanic whites make up a minority of the population, although not the counties where the non-Hispanic white population drops below 25% (likely due to the fact that most of these latter counties are relatively small).³⁸ This pushes back strongly against a common conservative attack on reform prosecutors, namely that they represent the political preferences of (white) progressives imposed on Black communities against those latter communities' will. As Part II will make all the more clear, nonwhite communities, Black communities in particular, form reform prosecutors' core base of support. That the unsuccessful candidates appear to be more concentrated in counties

38. The three large-population counties in the 0%-to-25% range that saw failed reform efforts are Honolulu, HI; Miami-Dade, FL (whose large Cuban population is famously quite conservative); and the narrowly-decided Queens, NY. For more on the outcome in Queens, see Vivian Wang, *The Queens D.A. Race Has a Winner. Here's Why It's Still Not Over*, N.Y. TIMES (July 29, 2019), <https://www.nytimes.com/2019/07/29/nyregion/melinda-katz-caban-queens-da.html> [<https://perma.cc/5D2S-ZQFE>].

that are in the 50% to 75% non-Hispanic white range seems consistent with this point as well.

Reform Prosecutor Status in 2022 by Percent Non-Hispanic White

Figure 3A: Counties That Have At Some Point Elected a Reformer

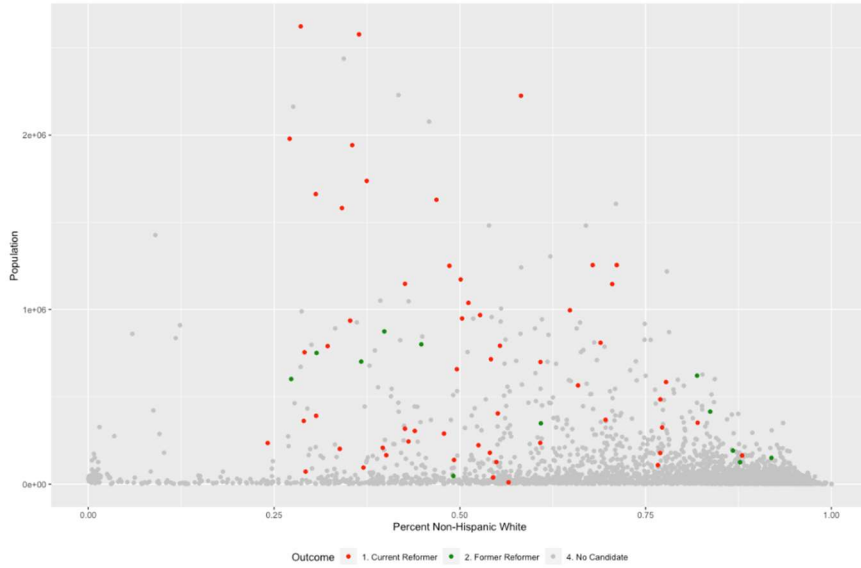
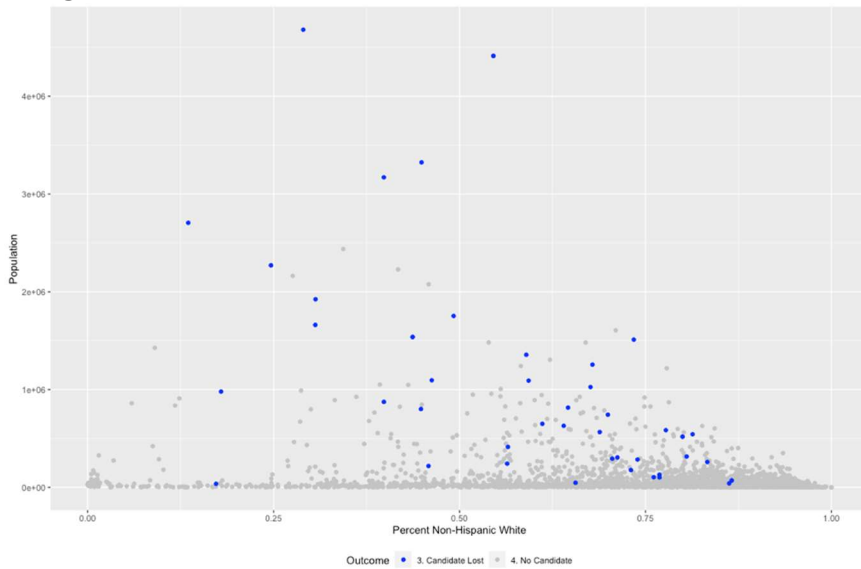


Figure 3B: Counties That Have At Some Point Elected a Reformer

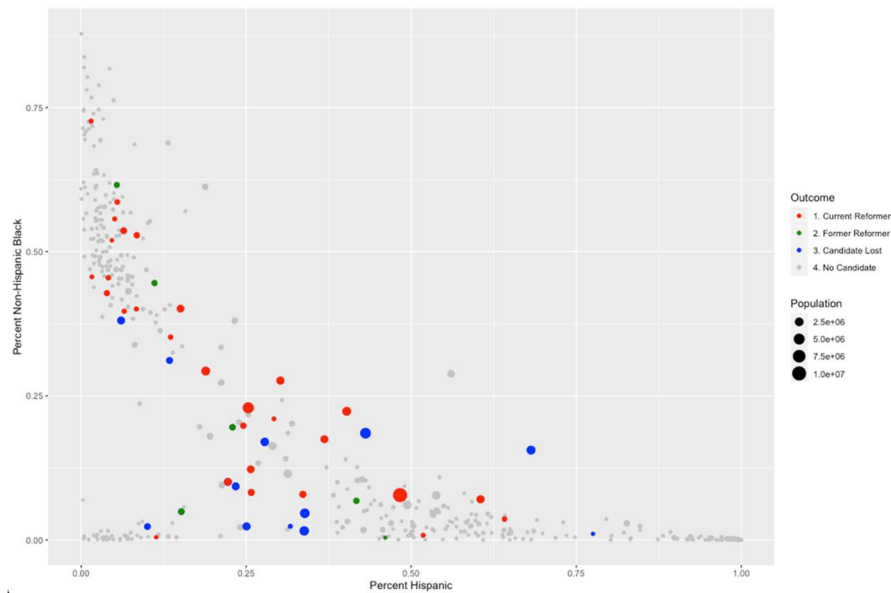


It is important, too, to note the divisions *within* the majority non-white counties where reformers perform the best. Criminal legal reformers (among others) often talk about “communities of color” in a way that suggests a deep commonality between Black, Hispanic, and other racial and ethnic minority communities when it comes to experiences with, and thus attitudes towards, the criminal legal system. This is almost surely incorrect. Figure 4, for example, zeroes in on counties where non-Hispanic whites make up less than 50% of the population, and then plots prosecutorial election outcomes based on the percent of the population that is non-Hispanic Black vs. the percent that is Hispanic (of any race).³⁹ It seems fairly clear that the likelihood of electing a reform prosecutor grows much more with the share of the population that is Black than the share that is Hispanic. This is consistent with the growing (and under-appreciated) divergence between Black and Hispanic experiences with the criminal legal system. The share of police who are Black has fallen in recent years while the share that is Hispanic has risen, Hispanic-white disparities in incarceration are falling much more rapidly than Black-white disparities, and Hispanics reveal much higher levels of trust in the police than Blacks do.⁴⁰ It would be surprising if these shifting attitudes, driven in no small part by diverging experiences, did not translate into different electoral preferences.

39. For most of these counties, a majority of the population is either non-Hispanic Black or Hispanic (thus the clustering along or above the $x + y = 0.50$ line). But there is a cluster of majority-nonwhite counties where non-Hispanic Blacks and Hispanics collectively comprise under half the population — these are counties with sizeable Asian, Hawaiian/Pacific Islander, or Native American populations.

40. In one Gallup poll, 49% of Hispanics expressed “a lot” or “a great deal” of trust in the police, which was nearly double the 27% rate among Black respondents, and fairly close to the 56% rate among white interviewees. See Jeffrey M. Jones, *In U.S., Black Confidence in Police Recovers from 2020 Low*, GALLUP (July 14, 2021), <https://news.gallup.com/poll/352304/black-confidence-police-recovers-2020-low.aspx> [<https://perma.cc/MDW2-QDH5>]; see also Keith Humphreys, *The Rapidly Shifting Hispanic Experience of American Criminal Justices*, SLOW BORING (Aug. 28, 2021), <https://www.slowboring.com/p/hispanic-prison> [<https://perma.cc/5GLU-79SB>].

Figure 4: Reformer Election Outcomes in Majority Nonwhite Counties, 2022



These broad trends, then, set the stage for the two major geographic challenges that reform prosecutors face. Within counties, large suburban population dilute the political voice of those most impacted by prosecutorial decisions, and who are the ones calling for reforms the most. And within states, more-liberal counties lack any sort of protection from more-conservative state officials.

II. SO CLOSE TO THE SUBURBS

The broad patterns in graphs in Figures 2 through 4 tell an intriguing story, but it is always precarious to say much with certainty when looking across thousands of counties at a high level of aggregation. If we zoom in on hyper-local voting patterns within counties themselves, a much sharper story emerges. It is one that reinforces the broad themes in Part I, and one that points to important potential limits on efforts to elect reform prosecutors.

The tl;dr is simply this: the most solid base for reform prosecutors are communities with high levels of gun violence, and Black communities in particular. This is, in fact, why I refer to these prosecutors as “reform” prosecutors instead of “progressive” prosecutors — those who identify as “progressive” voters are disproportionately college-educated whites, and while these voters often support reformers as well, they do not do so as

strongly or as reliably.⁴¹ As the precincts most impacted by violence, Black communities with high levels of gun violence are also the ones most impacted by the day-to-day policies of prosecutors (and, of course, of the police, and judges, and parole, and probation, etc. etc.). This in turn has pushed those who live there to lead the resistance against harsh, punitive policies that impose significant costs for comparatively little gain, and which are often less effective than less-harsh alternatives.⁴² However, as a county grows in size, and especially as it starts to include more suburban areas, the political voices of these communities — which are often already weaker due to the direct and indirect effects on mass punishment on civic engagement — become increasingly diluted.⁴³

Now, to be clear, a sizable suburban votership does not automatically thwart a reform candidate: after all, only ~52% of Cook County’s population lives in the city of Chicago itself, and Kim Foxx has won two elections there now (although, citing remarkable harassment, she recently announced she would not seek a third).⁴⁴ But the suburbs can sometimes be the deciding factor: Philadelphia has a reform prosecutor and Pittsburgh does not essentially because the city of Philadelphia is its own county, while Pittsburgh is a relatively small (~25%) part of Allegheny County. And, perhaps tellingly, the suburbs of Cook County are more racially diverse and lean more Democratic than the average suburb.⁴⁵

41. See Pfaff, *DA Recall*, *supra* note 2.

42. See, e.g., DAVID ROODMAN, OPEN PHILANTHROPY PROJECT, THE IMPACTS OF INCARCERATION ON CRIME (2017), https://www.openphilanthropy.org/files/Focus_Areas/Criminal_Justice_Reform/The_impact_s_of_incarceration_on_crime_10.pdf [<https://perma.cc/4YPS-XVE7>]; ARNOLD VENTURES, JOHN JAY COLL. RSCH. ADVISORY GRP. ON PREVENTING AND REDUCING CMTY. VIOLENCE, REDUCING VIOLENCE WITHOUT POLICE: A REVIEW OF RESEARCH EVIDENCE (2020), https://johnjayrec.nyc/wp-content/uploads/2020/11/AV20201109_rev.pdf [<https://perma.cc/9WNA-TSQ6>].

43. On how criminal justice contact reduces political voice, see, for example, Jonathan Ben-Menachem, *A Police Stop Is Enough to Make Someone Less Likely to Vote*, BOLTS (Feb. 1, 2023), <https://boltsmag.org/a-police-stop-is-enough-to-make-someone-less-likely-to-vote/> [<https://perma.cc/QX3V-SZJR>].

44. Akela Lacy, *Why St. Louis’s Reform DA Kim Gardner Quit*, INTERCEPT (May 6, 2023, 6:15 PM), <https://theintercept.com/2023/05/06/kim-gardner-st-louis-da-resigns-reform/> [<https://perma.cc/2KLW-E9AL>].

45. Suburban Cook County is fairly Democratic — 66% of the people there voted for Biden — though still far more conservative than Chicago, where Biden won 82% of the vote. See COOK COUNTY AND THE CITY OF CHICAGO: GENERAL ELECTION COMBINED SUMMARY (2020), https://www.cookcountyclerkil.gov/sites/default/files/2021-11/CombinedSummary_110320_v1.pdf [<https://perma.cc/6LSY-VHJF>]. Moreover, ~18% of suburban Cook County identifies as Black, which is nearly twice the suburban average of ~11% nationwide. For Cook and Chicago, see *QuickFacts: Cook County, Illinois*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/cookcountyillinois> [<https://perma.cc/3QE3-NA46>] (last visited Apr. 14, 2023); *QuickFacts: Chicago City*,

In this Part, I want to dig a bit deeper in the electoral, demographic, and crime patterns for prosecutor elections in four counties: Cook, IL (Chicago), in 2016; Philadelphia, PA, in 2021; Allegheny, PA (Pittsburgh), in 2019; and San Diego, CA, in 2018. In two of these counties, the reformers won: Kim Foxx defeated Anita Alvarez in Cook County, and Larry Krasner defeated Carlos Vega in Philadelphia in 2021.⁴⁶ And in the other two races, the reformers lost, with incumbent Joe Zappala defeating Tahrir Jenkins in Allegheny, and incumbent Summer Stephan prevailing over Geneviève Jones in San Diego.⁴⁷ These are not randomly chosen but are instead a convenience sample taken from a much larger empirical study I have just begun examining the mechanics of prosecutorial elections. That, of course, means it is possible that the final narrative may differ from the one laid out here, but evidence from several other counties I have looked at seems to track the story I tell about these four, and the results here are consistent with the more macro results given in Figures 2 through 4 above.⁴⁸

Before jumping in, though, I do want to flag one significant gap in the sample here: I do not have an example of a county with a large Hispanic population that elected a reform prosecutor. Such counties exist, especially in Texas, where reformers have won races in counties such as Bexar (~60% Hispanic), Dallas (~40%), Nueces (~65%), and Travis (~33%). As we will see below, in the four counties I consider in depth, majority-Black precincts consistently favor reformers significantly more than majority-Hispanic ones, and reformers generally lose most of the majority-Hispanic precincts. But it

Illinois, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/chicagocityillinois> [<https://perma.cc/2ZMJ-3CJD>] (last visited Apr. 14, 2023). For the national percent, see William H. Frey, *Today's Suburbs are Symbolic of America's Rising Diversity: A 2020 Census Portrait*, BROOKINGS (June 15, 2022), <https://www.brookings.edu/research/todays-suburbs-are-symbolic-of-americas-rising-diversity-a-2020-census-portrait/> [<https://perma.cc/NB8Q-S68V>].

46. I focus on the 2021 Philadelphia election over Krasner's first win in the 2017 primary because the 2017 primary had seven candidates, which makes it much more complicated to map out voter preferences. See *Lawrence Krasner*, BALLOTPEDIA, https://ballotpedia.org/Lawrence_Krasner [<https://perma.cc/Y3X2-AKXP>] (last visited Apr. 8, 2023). In the bigger project I am looking these sorts of multi-candidate races (this was the situation in, say, Manhattan in 2021 as well).

47. See An-Li Herring, *Zappala Cruises to Victory Over Jenkins in DA Race*, 90.5 WESA (May 22, 2019), <https://www.wesa.fm/politics-government/2019-05-22/zappala-cruises-to-victory-over-jenkins-in-da-race> [<https://perma.cc/DRY8-CTH8>]; Greg Moran, *DA Race: Stephan Easily Deafeats Challenger Jones-Wright, Earns Full Term*, SAN DIEGO TRIB. (June 6, 2018), <https://www.sandiegouniontribune.com/news/public-safety/sd-me-elex-da-20180531-story.html> [<https://perma.cc/MSY4-3RL7>].

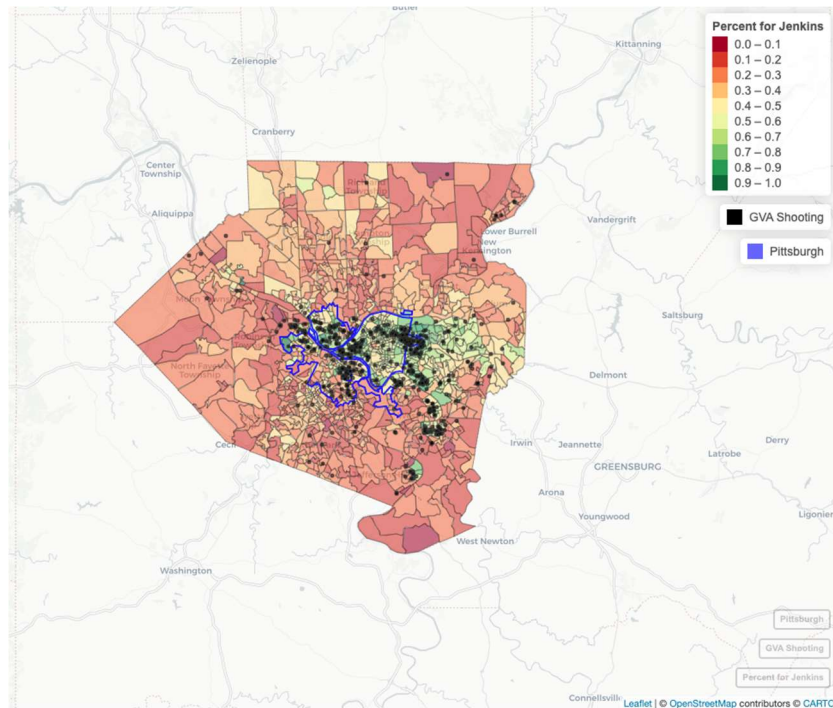
48. John Pfaff (@JohnFPfaff), TWITTER (Oct. 24, 2022, 8:36 AM), <https://twitter.com/JohnFPfaff/status/1584524265352675329> [<https://perma.cc/CXT8-B9UD>].

is clear that reformers can win the Hispanic vote, a point I'll come back to at the end of this section.

Turning back to the four counties listed above, Figure 5 below maps the percent of each voting district that voted for the reformer, with precincts won by the reformer in increasing shades of green, and those by the tougher-on-crime candidate in increasing shades of red. On top of each map I then overlay geocoded non-accidental/non-death-by-suicide gun violence data from the Gun Violence Archive (“GVA”).⁴⁹ I use GVA data in place of police data on violence in part to have a common measure of violence across counties, but also because it is difficult if not impossible to gather such geocoded data from local suburban police departments.⁵⁰

Precinct-Level Votes for Reformers in Four Counties

Figure 5A: Allegheny County, 2018



49. See *Gun Violence Archive General Methodology*, *infra* note 96.

50. The Appendix discusses this data in a bit more detail. A future part of this project will look at how well GVA data tracks police shooting data for those cities with reliable geocoded police data on gun violence.

Figure 5B: Cook County, 2016

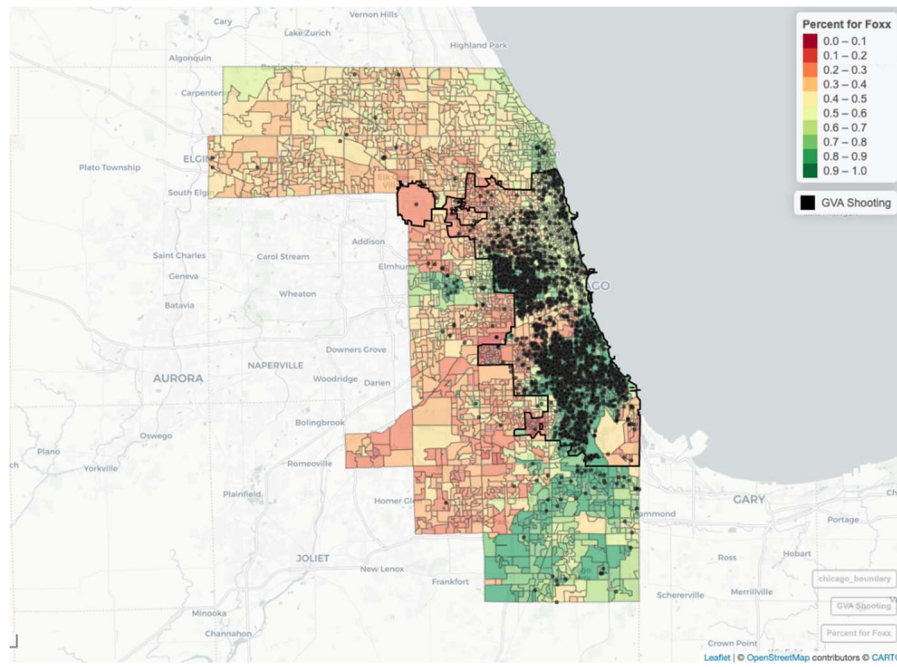


Figure 5C: Philadelphia County, 2021

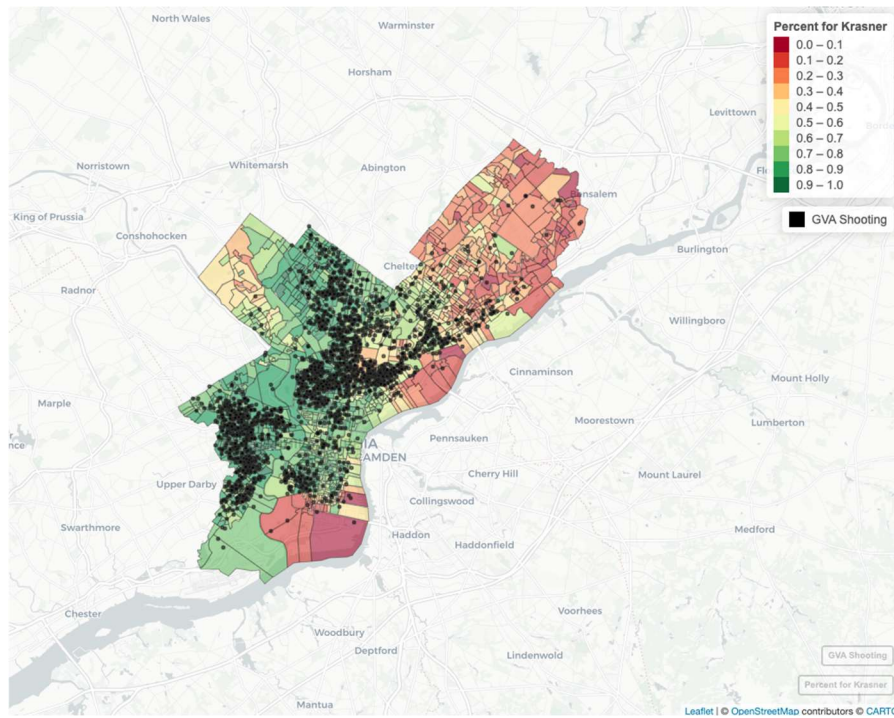
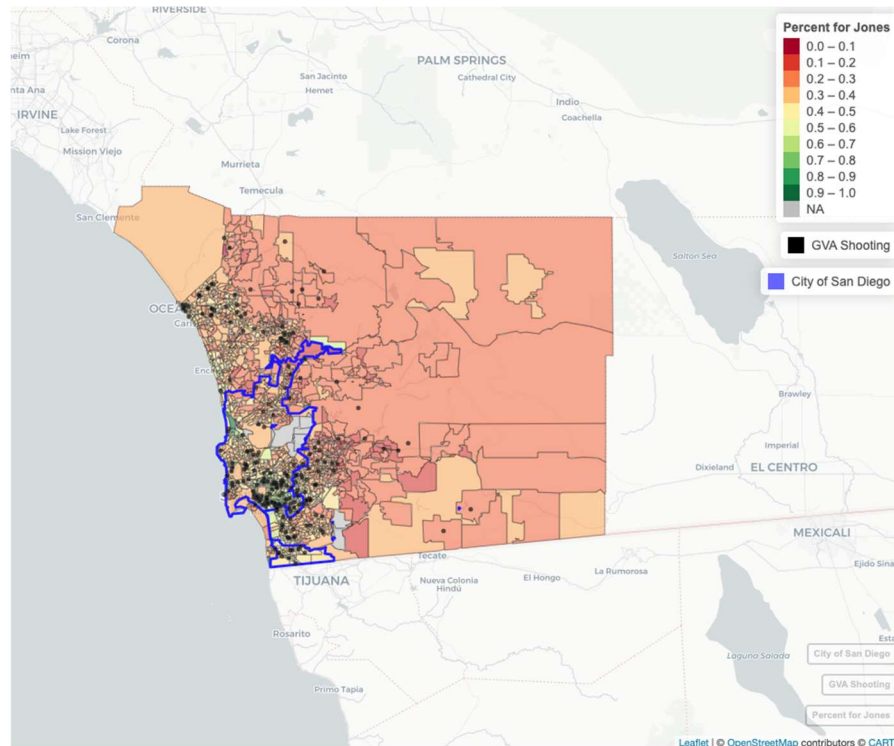


Figure 5D: San Diego County, 2018

The results in Figure 5 are fairly consistent. Across all four counties, the reformers consistently perform the best in the areas with the highest levels of gun violence, and consistently do better within the city limits than in the suburbs (of course excluding Philadelphia, which has no suburbs within its county lines).⁵¹ In some cases, the suburbs can be the deciding factor. In Allegheny, for example, Jenkins *won* the 2018 Democratic primary within Pittsburgh, 19,000 to 15,000, but was ultimately defeated by Zappala due to Zappala's 50,000 to 26,000 margin in the suburbs. And in San Diego, Jones lost in both the city and the suburbs to Stephan, but she lost the city by 14 points, compared to 24 points in the suburbs — and in the areas of the city of San Diego that had at least one shooting incident in the GVA data, Jones nearly defeated Summer, losing by about 1,500 votes (17,160 to 18,827). Even in Cook County, whose suburbs lean Democratic, Foxx might have won both Chicago and its suburbs in 2017, but she won ~62% of the vote in Chicago vs. ~52% in the suburbs.

51. In the Appendix, I reprint these maps alongside versions without the gun violence data, to make it easier to see the underlying voting decisions in higher-crime precincts.

It is important, however, not to overstate what Figure 5 shows. What that Figure makes clear is that communities with high levels of violence are strong supporters of *reform prosecutors*. This does *not* mean that they are the strongest proponents of *all* sorts of criminal legal reform. I would expect that many of these neighborhoods favor strong policing as well, and are thus more likely to vote for mayors who promise this. The conventional coverage of prosecutor races tends to miss this point, instead viewing reform prosecutors and tougher-on-crime mayors as head-to-head opponents.⁵² Many voters in higher-crime communities, however, likely see reform prosecutors and tough-on-crime mayors as “both/and,” not “either/or,” options: they want a strong police presence but less punitive responses to those who are arrested.⁵³ That such voters exist is well-known; if nothing else, they were the subject of James Forman’s 2017 Pulitzer-Prize winning book, *Locking Up Our Own*.

The data also makes it clear that what matters is not just violence, but the racial and ethnic composition of the precincts, echoing the macro-level racial and ethnic results in Part I above. Below, Figure 6 plots the percent of the vote won by the reform candidate in each voting precinct, broken out by the racial or ethnic majority in that precinct; “plurality” refers to precincts with no majority group.⁵⁴ For those counties that include both a city and suburbs,

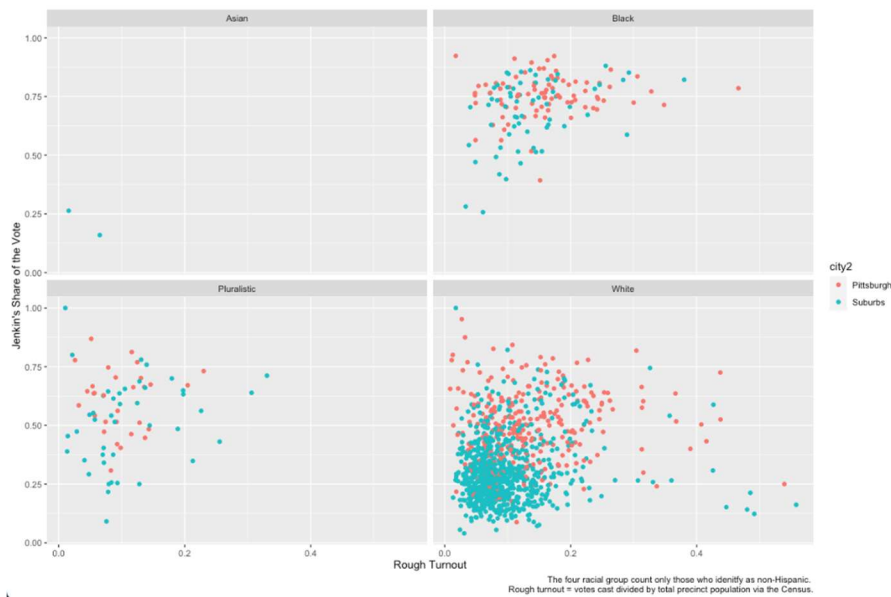
52. See, for example, Amanda Eisenberg, *How Eric Adams Outmaneuvered Manhattan’s Progressive District Attorney*, POLITICO (Feb. 8, 2020), <https://www.politico.com/news/2022/02/08/eric-adams-outmaneuvered-district-attorney-00006296> [<https://perma.cc/YV7R-LTBS>], which opened with the line “New York City Mayor Eric Adams and Manhattan District Attorney Alvin Bragg were elected to their respective positions in November after running on radically different messages about policing.” This is, of course, a deeply misleading frame, and one that likely drives much of the misanalysis: these two men did *not* run on dueling messages about *policing*. Adams ran on a message about *policing*, Bragg about *prosecution*, which is *not* *policing*. And this is not some nit-picky, semantic distinction, given that many voters likely have very different views about detection (police) and enforcement (prosecution).

53. I hope to explore the extent to which views “split” like this in future work, but some preliminary efforts suggest that it will be tough. Prosecutor races are single-issue races, which makes it easy (or at least easier) to link election returns to crime. Mayors, on the other hand, are responsible for a lot more than just policing — although policing is a big part of the job, and likely an even bigger part of the campaign — which makes it tougher to infer what mayoral election returns “mean.”

54. That data come from IPUMS.org, which provides Census tract, block, and block group data; I used the American Community Survey data for 2017–21 here. White, Black, and Asian refer to those who identify as non-Hispanic members of those groups. Hispanic thus refers to those who identify as Hispanic, regardless of race. Precinct demographics are derived from naively pro-rated census block group data. In other words, if 35% of Census Block Group 1, 45% of Census Block Group 2, and 55% of Census Block Group 3 fall within a specific voting precinct, then I calculate, say, the number of non-Hispanic white people in that precinct as 35% of the number in CBG1 plus 45% of the number in CBG2 plus 55% of the number in CBG3. Census blocks groups are small enough, and overlap with voting precincts to a sufficient degree, that such simple approximations should work well enough.

Figure 6 also breaks out the patterns by urban vs. suburban.⁵⁵ The patterns in Figure 6 are quite clear: at least for these cities, prosecutors perform the best in majority-Black precincts, with support much more muted in majority-Hispanic ones. Non-Hispanic, white precincts are harder to pin down — as is clear in places like Philadelphia, white (Democratic) voters are generally quite split, with a more-liberal half that backs reformers, and a more-conservative half that opposes them (and opposes them the most in the districts with the biggest turnout).⁵⁶

Figure 6A: Percent of Vote for Jenkins, Allegheny County, 2019, by Precinct



55. For Cook County, I provide the urban and suburban votes separately in the Appendix. It can be hard to see the patterns on the combined graph given the degree of overlap and the number of voting precincts.

56. Except for San Diego, which provided data on registered voters, the “rough turnout” measure is derived by dividing the total number of votes cast by the total number of people in the district. This, of course, is an imperfect measure, and should be seen as a noisy approximation.

Figure 6B: Percent of Vote for Kim Foxx, Cook County, 2016, by Precinct

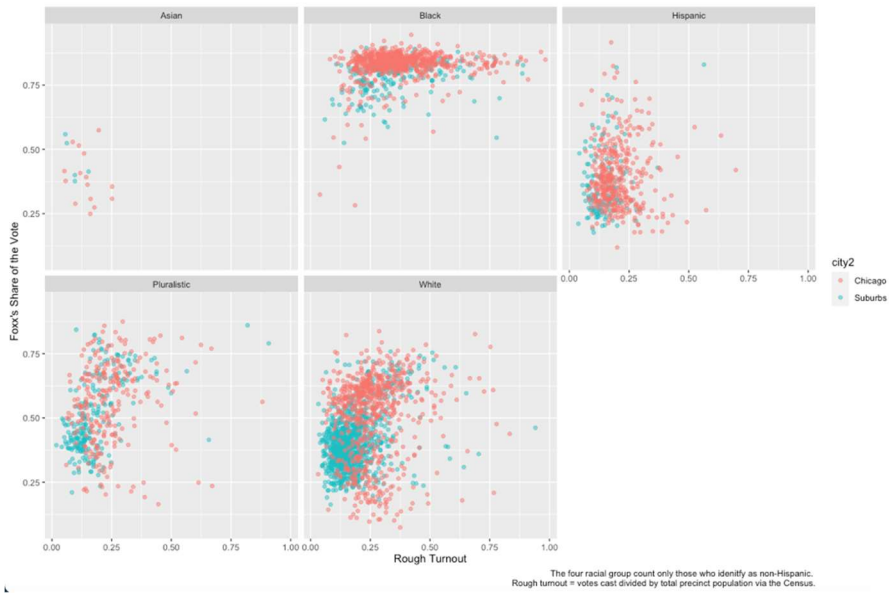


Figure 6C: Percent of Vote for Krasner, Philadelphia, 2021, by Precinct

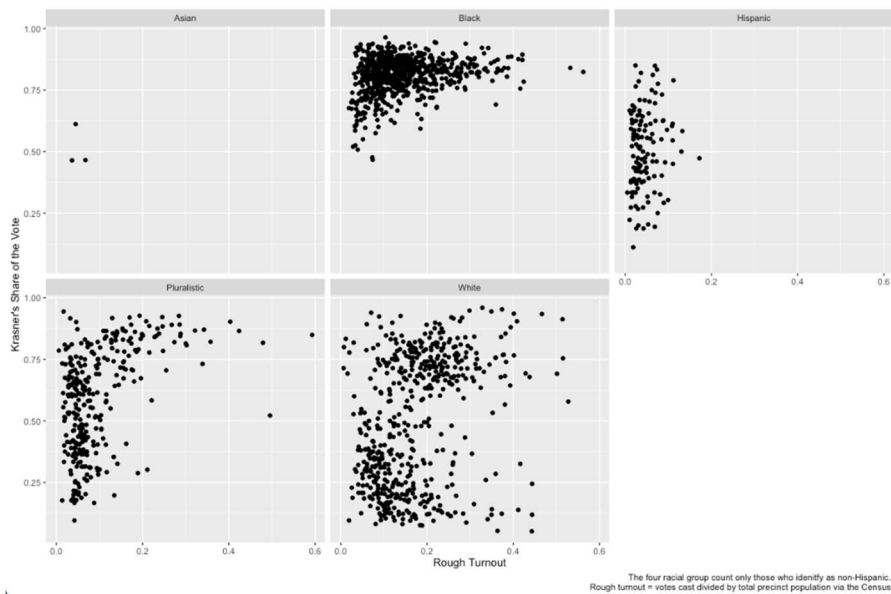
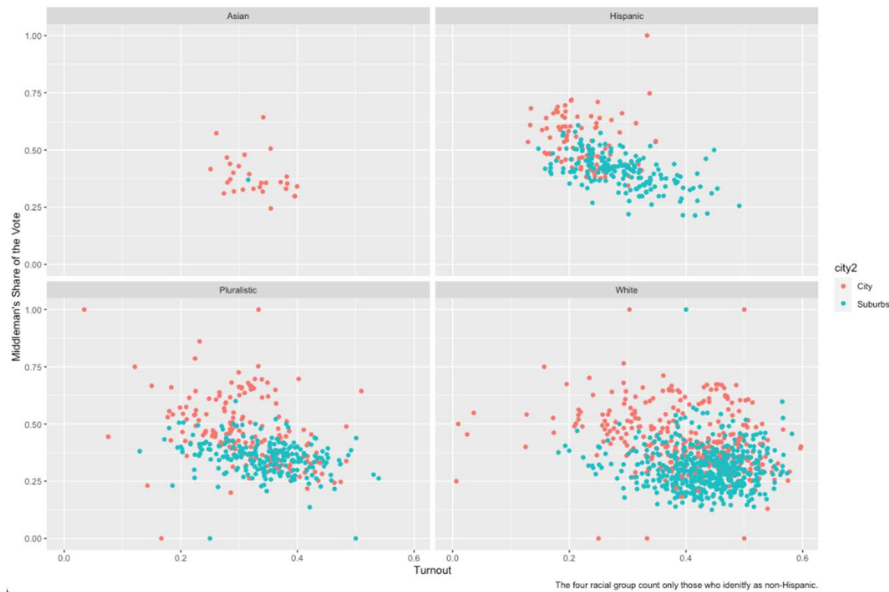


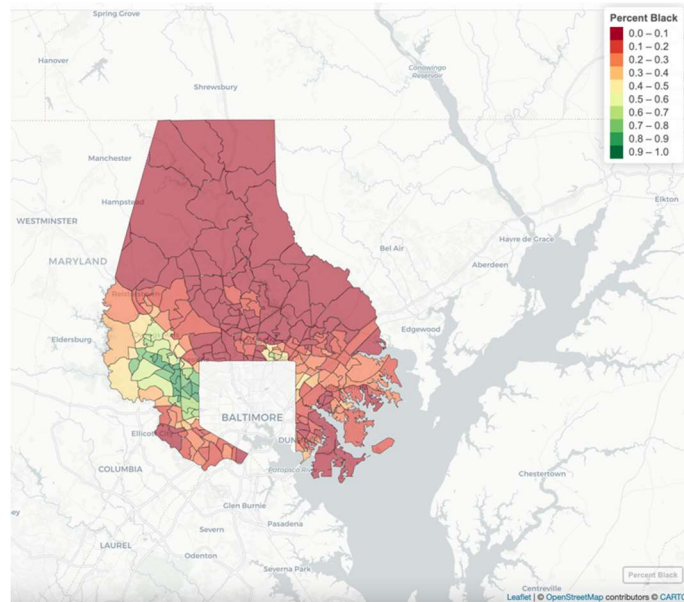
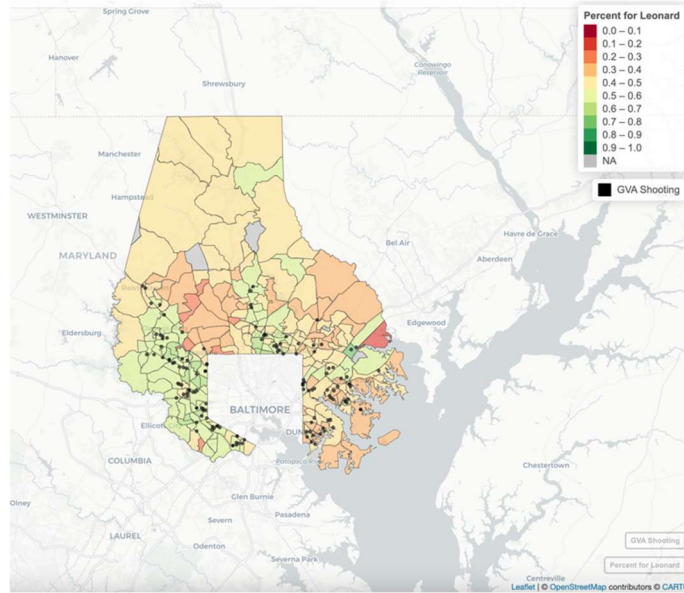
Figure 6D: Percent of Vote for Jones, San Diego County, 2018, by Precinct



Another good example of the important role that race can play comes from Baltimore County, Maryland, immediately outside the City of Baltimore. In 2022, the tougher-on-crime Democratic incumbent Scott Shellenberger held off a primary challenge from a progressive opponent, Robbie Leonard, 51%-49%.⁵⁷ Figure 7 provides two maps of Baltimore County. On the top, the percent of the vote for the reformer, overlaid with gun violence data from the GVA, just as in Figure 5. On the bottom, the percent of each voting precinct that identifies as Black (non-Hispanic or Hispanic). Note that the precincts in the western half of the state with high levels of violence voted for the reformer while those on the Eastern Shore with higher levels of gun violence voted for the incumbent. Tellingly, the western precincts are majority-Black precincts, the Eastern Shore precincts majority white.

57. David Collins, *Scott Shellenberger Wins Democratic Primary in Baltimore County State's Attorney Race*, WBALTV (July 30, 2022), <https://www.wbalTV.com/article/scott-shellenberger-wins-democratic-primary-baltimore-county-states-attorney-2022/40756953#> [<https://perma.cc/5UBH-X4FH>].

Figure 7: Election Results and Racial Composition of Precincts, Baltimore County 2022



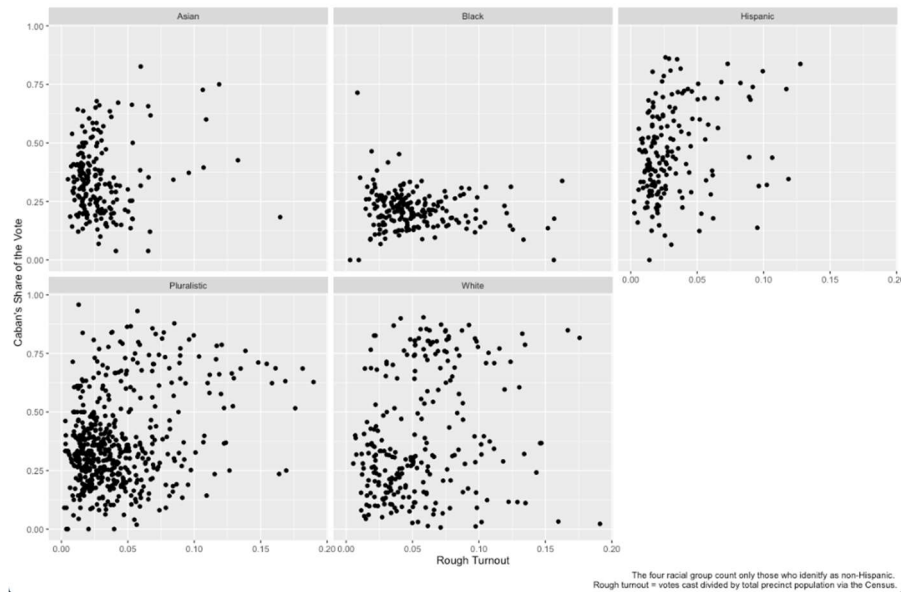
I want to conclude this section by coming back to the limitation I raised at the top, namely that none of the counties I have looked at so far are places

with large Hispanic populations that have elected reformers. And given that such places exist, including major metropolises like Dallas County, Texas, it is clear that the relative wariness of Hispanic voters in the counties I have considered here is not universal. One striking example comes from Queens, New York, where in 2019 the reform candidate, Tiffany Cabán, lost to the more establishment, less-reformy Melinda Katz by a razor-thin ~60 votes.⁵⁸ Interestingly, as Figure 8 makes clear, the racial dynamics in Queens flipped the account I've given so far: majority-Black districts came out solidly for Katz, while Cabán, who is Latina, performed most strongly in majority-Hispanic and majority-non-Hispanic-white districts.⁵⁹ Similarly, it may not be irrelevant that in San Diego, Jones was a Black woman running in a heavily-Hispanic county, and that many of the successful reform candidates in heavily-Hispanic counties are Hispanic themselves.⁶⁰

58. Danielle Muoio Dunn, *Cabán Concedes to Katz in Queens DA Primary Race*, POLITICO (Aug. 6, 2019), <https://www.politico.com/states/new-york/city-hall/story/2019/08/06/caban-concedes-to-katz-in-queens-da-primary-race-1132852> [<https://perma.cc/LHR9-FH2G>].

59. Some of this, it should be noted, likely reflects the idiosyncratic politics of the race, which in many ways became a proxy fight between the establishment Queens Democratic political machine — now led by Rep. Gregory Meeks, after AOC weakened the machine when she defeated Rep. Joseph Crowley in the 2018 Democratic primary, and backing Katz — and the more-progressive wing of the Democratic party (AOC was an early supporter of Cabán). This points to a larger challenge of studying such local races: while broad patterns surely exist, the “local” of “all politics is local” will inject a tremendous amount of statistical noise into things.

60. In Texas, for example, the prosecutors in Bexar (Joe Gonzalez), Nueces (Mark Gonzalez), and Travis (José Garza) are all Hispanic, although the district attorney for Dallas, John Creuzot, is Black.

Figure 8: Percent of Vote for Caban, Queens County, 2019, by Precinct

To be clear, my argument here is not one of simplistic identity politics. It really is important to stress that Blacks and Hispanics have increasingly diverging (aggregate) experiences with the criminal legal system, which is consistent with diverging political goals overall.⁶¹ It would stand to reason that voters would favor candidates who best understand the inescapably-racialized nature of their interactions with the criminal legal system. This, of course, also explains why the most reliable base for tough-on-crime prosecutors often consists of majority-non-Hispanic white districts, since they tend to have the least unpleasant interactions with law enforcement.

III. SO FAR FROM THE STATE CAPITAL⁶²

The main point of Part II is not to say that it is impossible to elect reform prosecutors — Figure 1 refutes it thus — but to identify some important headwinds that reformers face due to having to run at the county level. Once elected, however, reformers now face a different threat: state-level

61. For the general rightward drift of Hispanic voters, see Story Hinckley, *The New Swing Vote: Why More Latino Voters are Joining the GOP*, CHRISTIAN SCI. MONITOR (Oct. 21, 2022), <https://www.csmonitor.com/USA/Politics/2022/1021/The-new-swing-vote-Why-more-Latino-voters-are-joining-the-GOP> [https://perma.cc/QZU5-9G5T].

62. The writer in me apologizes for the fact that Parts II and III reverse Diaz's quote, undermining a clear parallel construction that would have been so much more satisfying.

preemption. The past 10 to 15 years have seen a renewed push by state officials to preempt a whole host of local laws and regulations, but outside of gun control restrictions, few of these preemption laws have targeted criminal legal issues.⁶³ That indifference, however, has come to an end.

So far, the preemption push has primarily targeted local efforts to reform policing; first as a backlash to the protests in 2014 sparked by Michael Brown's murder in Ferguson, Missouri, and then as an even more intense reaction to the protests in 2020 sparked by George Floyd's murder in Minneapolis, Minnesota. As protestors increasingly demanded deep cuts to police budgets, Republican legislators in numerous states passed laws to make it difficult, if not almost impossible, to slash budgets, or at the very least to provide police departments with ways to appeal cuts to more-sympathetic state agencies.⁶⁴ But states have sought to preempt other policing reforms as well. Arizona, for example, recently passed two laws that require that the composition of local civilian police oversight boards must be somewhere between 67% to 100% . . . police officers or graduates of the police academy.⁶⁵

Over the past year or so, however, conservative state legislatures have started to turn their attention towards reform prosecutors.⁶⁶ In the wake of several prosecutors in Texas signing the post-*Dobbs* FJP letter,⁶⁷ for example, Republicans in the state legislature began work on a law that would allow neighboring prosecutors to take over such cases. Another Texas bill would give the Attorney General more power to remove prosecutors viewed

63. For an overview of the “new preemption” in general, see Richard Briffault, *The Challenge of New Preemption*, 70 STAN. L. REV. 1995 (2018). For an overview of recent specific preemption laws, see Nicole DuPuis et al., *City Rights in an Era of Preemption: A State-by-State Analysis*, NAT'L LEAGUE OF CITIES CTR. FOR CITY SOL., <https://www.nlc.org/wp-content/uploads/2017/02/NLC-SML-Preemption-Report-2017-pages.pdf> [<https://perma.cc/TET9-M7A3>] (last visited Apr. 26, 2023). For an overview of gun preemption laws, see *Preemption Watch*, GRASSROOTS CHANGE, <https://grassrootschange.net/preemption-watch/#/category/guns> [<https://perma.cc/Z4FH-VECC>] (last visited Apr. 14, 2023).

64. For a summary of these laws as of 2021, see John Pfaff, *The Greatest Threat to Defunding the Police? State Pre-emption*, APPEAL (Apr. 29, 2021), <https://theappeal.org/defund-the-police-pre-emption/> [<https://perma.cc/ZYT6-LRLB>].

65. See AZ H.B. 2462, 55th Legis., 1st Reg. Sess. (2021); AZ H.B. 2721, 55th Legis., 2d Reg. Sess. (2022); see also Ben McJunkin (@BenMcJunkin) TWITTER (July 19, 2022, 5:39 PM), <https://twitter.com/BenMcJunkin/status/1549509192351891457> [<https://perma.cc/VBT5-FT2D>].

66. For a good overview of the various efforts, both successful and not, see JORGE CAMACHO ET AL., LOC. SOL. SUPPORT CTR., PREEMPTING PROGRESS: STATES TAKE AIM AT LOCAL PROSECUTORS (2023), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/63cf18da2a1300367cfe952/1674516705430/ProsecutorialDiscretion2023.pdf> [<https://perma.cc/R767-PLVZ>].

67. See *supra* note 7 and accompanying text.

as insufficiently aggressive.⁶⁸ And in what is seen as a direct challenge to the newly-elected reform prosecutor in Polk County (Des Moines), Iowa, the Republican governor of Iowa recently introduced a bill that would allow the state attorney general to take any cases they wished away from local prosecutors.⁶⁹ This comes on the heels of another recently-adopted law in Iowa that promises to strip state funding from county prosecutors who issue blanket non-prosecution decrees.⁷⁰

Unfortunately for reformers, they have no legal shield against these sorts of state-level interventions. The U.S. Supreme Court has made it repeatedly clear that nothing in the U.S. Constitution protects local governments from state governments the way things like the Tenth Amendment and the Commerce Clause can, to some degree, thwart federal involvement in state affairs.⁷¹ Some states have adopted what are called “home rule laws,” which grant sub-state governments varying degrees of autonomy, but even these often state that home rule can be overridden by state laws; plus, it often seems that little or nothing prevents states from revoking home rule decrees in the first place.⁷²

Now, to be clear, that does not mean that preemption is inevitable, only that the solution will have to be *political*, not *legal* or *judicial*. For example, the Republican-dominated legislature in Missouri tried twice in 2020 to give the state Attorney General more power to take cases away from the City of

68. The current Texas bill would allow the state Attorney General to take district attorneys to trial if they violate a state ban on categorical declinations. If the local prosecutor loses the trial, they would be removed from office. See Krista M. Torralva, *Texas Republicans Want to Rein in ‘Rogue’ Prosecutors Like Dallas County DA John Creuzot*, DALLAS MORNING NEWS (Jan. 19, 2023), <https://www.dallasnews.com/news/politics/2023/01/19/texas-republicans-want-to-rein-in-rogue-prosecutors-like-dallas-county-da-john-creuzot/> [https://perma.cc/3YBQ-Q7BS]. For the neighboring prosecutor bill, see Sullivan, *supra* note 17.

69. See Erin Murphy & Tom Barton, *Iowa Prosecutors Worry Bill Would Usurp Local Decisions*, GAZETTE (Feb. 20, 2023), <https://www.thegazette.com/state-government/iowa-prosecutors-worry-bill-would-usurp-local-decisions/> [https://perma.cc/3VTS-P7Z3].

70. See CAMACHO ET AL., *supra* note 67. Although there is limited data on prosecutorial budgets, the evidence out there suggests, at least anecdotally, that counties, not states, provide most of the funding for county prosecutor offices. It is thus unclear how big a threat these budget threats pose — but they nonetheless reflect a growing willingness by Republican state governments to experiment with ways to thwart locally-driven reforms.

71. See, e.g., Lauren E. Phillips, *Impending Innovation: State Preemption of Progressive Local Regulations*, 117 COLUM. L. REV. 2225, 2230–31 (2017).

72. For a summary of these home rule laws, see Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 DENV. L. REV. 1337 (2009). Florida’s home rule law, for example, states that city home rule ceases when “expressly preempted to state or county government by the constitution or by general law.” *Id.* at 1388 (emphasis added).

St. Louis, where reformer Kim Garner is the district attorney.⁷³ Both efforts failed when non-progressive prosecutors from outside St. Louis joined with Gardner to resist in, in defense of their own autonomy.⁷⁴ Similar bipartisan state-wide prosecutorial opposition is already brewing in Iowa as well.⁷⁵

Of course, adopting new laws often takes time, so it is important to note that governors and attorneys general also *already have* a lot of ways to intervene in local prosecutions. Here I focus on three ways state officials can involve themselves in local prosecutions: gubernatorial removal, concurrent Attorney General (AG) jurisdiction (which allows the state AG to take applicable cases at their own discretion), and supersession provisions (which allow the state AG to take over cases, but usually only after some other official, such as the governor or someone more local, requests that they do so). Figure 9 summarizes, in broad strokes, the options available across the US; the Appendix discusses these results in a bit more detail.⁷⁶

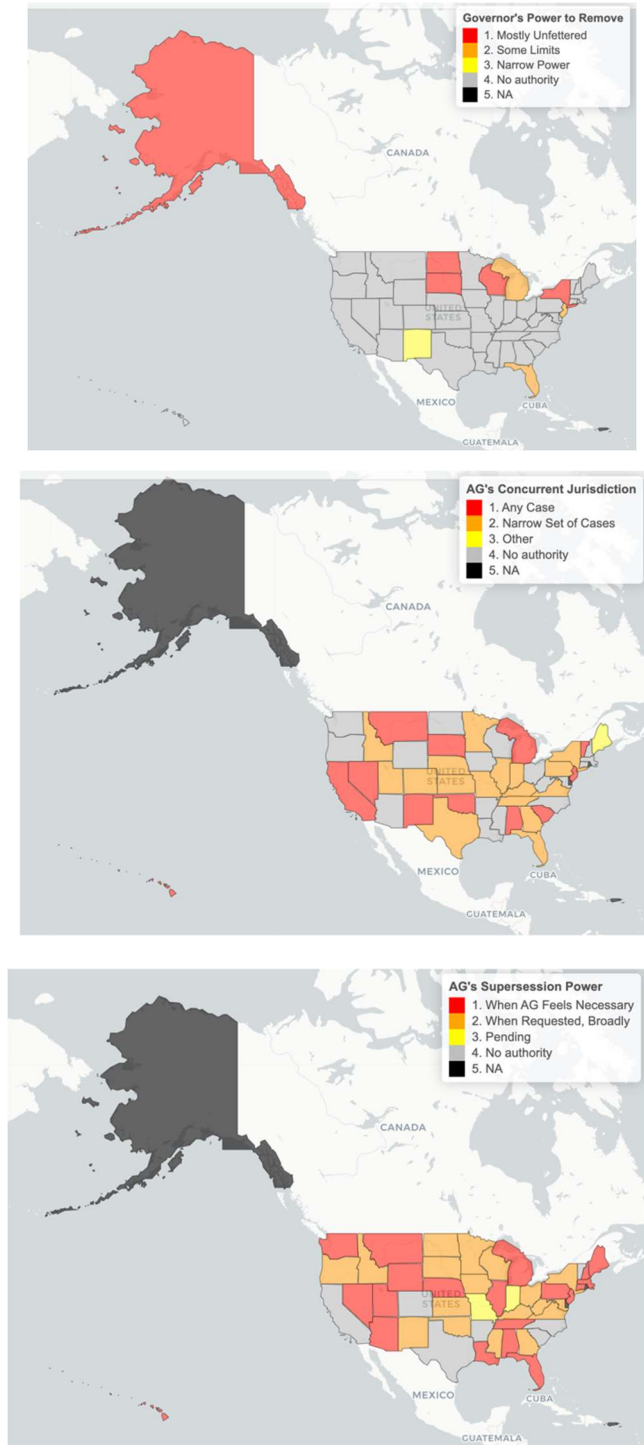
73. See Rebecca Rivas, *Missouri Prosecutors Face Losing Jurisdiction Over Violence Crime Cases*, MO. INDEP. (Jan. 23, 2023, 5:55 AM), <https://missouriindependent.com/2023/01/23/missouri-prosecutors-face-losing-jurisdiction-over-violent-crime-cases/> [<https://perma.cc/JPC2-PCD5>].

74. As noted above, see *supra* note 22, the third effort appears to have been more successful, if perhaps only indirectly (by allegedly pushing Gardner—who was also facing removal efforts from the state AG—to resign).

75. See Murphy & Barton, *supra* note 70.

76. For a list of more granular state options, see Research Memorandum on History of Prosecution Research Project (Current Landscape) (2023) (on file with the Fordham Urban Law Journal) <https://docs.google.com/document/d/1XouoYGA5vMdh8DLlIuoUY9ARn85Zidrtdxl7pA05glY/> [<https://perma.cc/7S8V-UU2S>]. As far as I know, this is the first complete 50-state summary of the various forms of state-level intervention in local prosecutions, although the results for Attorney General supersession drew heavily on the survey provided in Tyler Q. Yeagain, *Discretion Versus Supersession: Calibrating the Power Balance Between Local Prosecutors and Staff Officials*, 68 EMORY L. J. 95 (2018).

Figure 9: State Level Options for Intervening in Local Prosecutions



In a handful of states, governors have the ability to unilaterally remove prosecutors who they view as not doing their job, subject to few if any limits. In most other states with gubernatorial removal, the governors need to provide some sort of reason, but it is not clear how meaningful a restriction this is in practice. In August of 2022, for example, Florida Governor Ron DeSantis suspended Hillsborough (Tampa) State's Attorney Andrew Warren, allegedly for the statutorily required reasons of neglect of duty and incompetence, but almost certainly because Warren was a reform-minded prosecutor who had signed the FJP's *Dobbs* letter.⁷⁷ In a recent opinion upholding the suspension, a federal court judge found that the suspension violated the First Amendment *and* the Florida Constitution, but that he nonetheless lacked the jurisdiction to reinstate Warren.⁷⁸

A far more widely available option is intervention by the Attorney General, whether because they have concurrent jurisdiction over criminal cases, because they can directly take over cases on their own initiative, or because the governor or some other officials can request their involvement. As Figure 9 makes clear, far more states have some form of this power than gubernatorial removal.⁷⁹ The catch here, however, is that state AG offices likely face some significant capacity constraints. It may be possible for these offices to regularly intervene in uncommon but high profile cases, like regularly removing capital cases from a reformer who refuses to seek the death penalty. But they likely lack the staff to significantly interfere with, say, the unrelenting flow of misdemeanor cases — which are the cases that not only make up the vast bulk of our criminal legal system, but which are often the primary focus of policy changes by reform prosecutors.⁸⁰ Of course, a state could expand the size of its AG office to address these limitations, which is exactly what then-Maryland Governor Larry Hogan sought to do in 2022. Hogan proposed assigning 25 assistant AGs to handle

77. See *Joint Statement from Elected Prosecutors*, *supra* note 7 and accompanying text.

78. See *Warren v. DeSantis*, No. 4:22cv00302, 2023 WL 345802, at *21 (N.D. Fla. Jan. 21, 2023); *Judge Dismisses Andrew Warren's Federal Lawsuit Against DeSantis After Suspension*, ABC ACTION NEWS (Jan. 20, 2023, 10:12 AM), <https://www.abcactionnews.com/news/region-hillsborough/judge-dismisses-andrew-warrens-federal-lawsuit-against-desantis-after-suspension> [<https://perma.cc/2DPA-ST5V>].

79. See *supra* Figure 9.

80. While BJS data suggests prosecutors handle something on the order of 1 to 1.5 million felonies per year, one recent study reported that they push through something on the order of 13 million misdemeanor cases. For felonies, see Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006 – Statistical Tables*, BUREAU OF JUST. STAT. (Nov. 22, 2010), <https://bjs.ojp.gov/content/pub/pdf/fssc06st.pdf> [<https://perma.cc/XXX9-FFN4>] (note that 2006 is the most recent data from the BJS on this); and for misdemeanors, see ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME (2018).

local criminal cases in the city of Baltimore, and planned to do so not by reassigning 25 current prosecutors but by hiring 25 more.⁸¹

The challenge here is trying to separate out what constitutes real policy pushes from symbolic saber-rattling and fearmongering. The legislature in Missouri, for example, has been trying for a third time to give the state AG more power over local prosecutions, as part of the Republican legislature's on-going fight with reformer Kim Garner in St. Louis. If the bill passes, will the legislature then increase staffing for the AG to take on more cases, or is the symbolism really the only point?⁸²

It is also likely that state legislatures will increasingly experiment with other ways to thwart reform prosecutors. I expect other states will follow in Iowa's footsteps and start to threaten the local budgets of counties with reform prosecutors; as I pointed out, numerous states have already done this in response to threats to cut police budgets. States may pass more laws like the one recently adopted in Utah, which broadly (but somewhat incoherently) banned prosecutors from downgrading to misdemeanors cases that could be charged as felonies.⁸³ States may make it easier for other local district attorneys, not the state Attorney General, to take over cases in neighboring, less-punitive counties. The Texas legislature, as noted above, has been considering this in response to reformers' reaction to *Dobbs*. In 2017 Florida's then-Governor Rick Scott did this via gubernatorial fiat when he reassigned at least 30 capital homicide cases from the 9th Judicial Circuit (Orange and Osceola Counties) to another local State's Attorney when the 9th Circuit's reform prosecutor, Aramis Ayala, imposed a categorical ban on seeking the death penalty.⁸⁴ Or, as we are also seeing in Texas, states may

81. Kevin Rector & Pamela Wood, *Mosby Says Hogan's Idea to Fund New AG Staff to Fight City Crime is 'Problematic,' Shouldn't be in Budget*, BALT. SUN (Dec. 12, 2019, 7:39 PM), <https://www.baltimoresun.com/politics/bs-md-mosby-reaction-20191213-no17jeyqyzhcx5ph7rh5oth2u-story.html> [https://perma.cc/RGX2-N39V].

82. Rebecca Rivas, *Missouri Republicans Want to Strip Jurisdiction From Local Prosecutors Over Violent Crime Cases*, KCUR (Jan. 24, 2023), <https://www.kcur.org/politics-elections-and-government/2023-01-24/missouri-republicans-want-to-strip-jurisdiction-from-local-prosecutors-over-violent-crime-cases> [https://perma.cc/N5QX-RVVZ].

83. The law states that prosecutors cannot charge defendants with B or C misdemeanors when the "facts support the filing of the charged offense as a felony," but the law provides for no enforcement mechanisms, nor any apparent way to review what the "facts" in fact support, or even what the relevant facts *are*. After all, a reform prosecutor could argue that certain mitigating facts, while not elements of the charged offense, nonetheless are relevant in determining whether "the facts" do in fact "support" a specific charge. UTAH CODE § 78A-7-105 (2022).

84. *See Gov. Rick Scott Wins Legal Battle Against State Attorney Aramis Ayala*, WTSP (Aug. 31, 2017, 9:37 PM), <https://www.wtsp.com/article/news/local/gov-rick-scott-wins-legal-battle-against-state-attorney-aramis-ayala/67-469841835> [https://perma.cc/S3G7-S424].

look for new ways to make it easier for the governor or the attorney general to remove reform prosecutors; as noted above, Georgia is already going down this path.

All of which is to say: there are lots of ways for more-punitive state officials to interfere with local efforts at reform, the list of options appears to be growing, and state officials in Republican-dominated states seem increasingly interested in using them. At times conventional and reform prosecutors band together to thwart these efforts, and some reformers advance their reforms more quietly to avoid attention.⁸⁵ Preemption and supersession are neither inevitable nor unstoppable. However, they pose serious threats to local reforms, and they caution against putting too many reform eggs in the prosecutorial basket, especially in redder states.

CONCLUSION

While the challenges (and, to be fair, possibilities) posed by electing prosecutors have started to receive increasing attention, less focus has been given to the particular issues raised by electing them at the county level. In many ways, the county is a distinctly awkward jurisdiction for those who hope reform-minded prosecutors can play a significant role in reversing our decades-long investment in mass punishment and mass incarceration. The regular inclusion of the suburbs dilutes the political voice of those who most want reforms (and who bear most of the costs of the status quo), while their local-ness leaves them at the mercy of more-conservative state officials.⁸⁶ Neither of these issues is insurmountable, but they do highlight challenges that reformers will likely need to adapt to in the future.

85. A good example of this was the rhetoric in the 2022 gubernatorial race in New York State. The Republican challenger, Lee Zeldin, repeatedly said that he would use his removal powers to fire Manhattan District Attorney Alvin Bragg on his first day in office. See Jonah E. Bromwich, *Running Against Hochul, Lee Zeldin Finds Another Target: Alvin Bragg*, N.Y. TIMES (Oct. 27, 2022), <https://www.nytimes.com/2022/10/27/nyregion/lee-zeldin-alvin-bragg.html> [<https://perma.cc/Z5ES-SD39>]. Interestingly, Zeldin said nothing about Brooklyn's DA, Eric Gonzalez, who is arguably the more aggressive reformer. This is likely because on his first day in office, Bragg issued a memo laying out his reform goals that quickly became a political lightning-rod; Gonzalez has sought much less publicity for his changes. Zeldin, in other words, did not seem to be attacking Bragg out of a genuine desire to undo reforms (because Gonzalez was doing more in a bigger borough), but because Bragg was a high-profile target for scoring political points. This suggests that much of the opposition to reform may be more performative than genuine, and that quieter, less transparent reforms may be able to avoid preemptive threats.

86. To be clear, this is likely the pattern in red and blue states alike — that the major cities are more Democratic-leaning and reform-minded than state officials. But so far the push to roll back reforms has been concentrated just in GOP-led states.

Appendix A

In this Appendix, I want to briefly discuss the list of reform prosecutors used in Part II, the data used to generate the election results, and the state-level preemption and supersession policies discussed in Part III.

A.1. Reform Prosecutors

Table A.1 below provides the current list of reform prosecutors that I have developed so far.⁸⁷ I developed this list from three sources:

1. The list of reform prosecutors given in Table 1 of “Prosecutorial Reform and Crime Rates” by Amanda Agan, Jennifer Doleac, and Anna Harvey (“ADH”).⁸⁸ ADH generated their table from the membership list of an unnamed organization for reform prosecutors, and then scaled it back based on data availability. The prosecutors included this way are labeled as “ADH” in the “Source” column. By design, the ADH list does not include any candidates who ran without ever winning.

2. Contested prosecutorial elections discussed by Bolts Magazine, which provides the most comprehensive coverage of state, county, and local elections available. Bolts’ lists start in 2018.⁸⁹ For each contested race discussed by Bolts, I would review what information was available on each

87. At least for now, the list will be updated here: John Pfaff, *Reform Prosecutor Races* (Jan. 23, 2023) [hereinafter Pfaff, *Reform Prosecutor*], https://docs.google.com/spreadsheets/d/1iSs_8gSOYGzLaxvFLFMdkUNhsqv1at6—FuK4w2Dc5U/edit#gid=0 [https://perma.cc/8LT5-ND86].

88. Amanda Agan et al., *Prosecutorial Reform and Local Crime Rates* (Geo. Mason Univ. Antonin Scalia Law Sch. L. & Econ. Ctr., Working Paper No. 22-011, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3952764 [https://perma.cc/2V7Z-TMTP].

89. See Daniel Nichanian, *A Detailed Election Night Cheat Sheet to the 2018 Elections*, BOLTS (Nov. 2018), <https://boltsmag.org/whats-on-the-ballot/2018-general-election/> [https://perma.cc/PN7V-GD4P]; Daniel Nichanian, *What to Watch in 2019 Primaries*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2019-primaries/> [https://perma.cc/2MTC-Z73D] (last visited Apr. 17, 2023); Daniel Nichanian, *What to Track in November 2019*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2019-general-election/> [https://perma.cc/8QVP-S3U5] (last visited Apr. 17, 2023); Daniel Nichanian, *What to Track in the 2020 Primaries: A Week-By-Week Guide*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2020-primaries/> [https://perma.cc/DB4H-5G6F] (last visited May 18, 2023); Daniel Nichanian, *What to Track Until November 2020*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2020-general-election/> [https://perma.cc/79GT-7WDK] (last visited Apr. 17, 2023); Daniel Nichanian, *What to Track in the 2021 Primaries & Specials? A Week-by-Week Guide*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/what-to-track-in-the-2021-primaries-specials-a-week-by-week-guide/> [https://perma.cc/G8KS-XTDP] (last visited Apr. 17, 2023); Daniel Nichanian, *What to Track in November 2021*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2021-general-election/> [https://perma.cc/4QPG-FL74] (last visited Apr. 17, 2023); Daniel Nichanian, *Your Cheat Sheet to the 2022 General Elections*, BOLTS, <https://boltsmag.org/whats-on-the-ballot/2022-general-election-cheat-sheet/> [https://perma.cc/N4YS-ZUHB] (last visited Apr. 17, 2023).

candidate to determine if any could count as a reform candidate. The prosecutors included this way are labeled as “Bolts” in the “Source” column.

3. My own personal knowledge. These are races I came across in my own research, and they are labeled as “Pfaff” in the “Source” column.⁹⁰

The biggest challenge, of course, is determining who counts as a “reformer,” a taxonomic puzzle that has only grown knottier in recent years as some districts see races involving various *degrees* of reformer.⁹¹ My general approach has been to err on the side of over-inclusiveness, on the grounds that it is easier for people to drop names off the list than to realize they are missing and to try to add them back in. My focus has also been on rhetoric over policy, if only because we generally lack data on whether these reformers are pushing/trying to push through the policies they ran on. I am sure that people will disagree over who I have included and excluded here, which is absolutely how it should be, since what counts as a “reform prosecutor” is a deeply contested, normative issue.

90. See Pfaff, *Reform Prosecutor*, *supra* note 88.

91. For example: do you count the “reformer” as winning or losing in a district in which the moderate reformer defeats both the status quo incumbent and a more-aggressive reformer?

Table A.1

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Henderson	Jefferson	AL	2016 ⁹²	2016 ⁹³	No		Pfaff
Carr	Jefferson	AL	2018	.			Bolts
Davidson	Mobile	AL				2022	Bolts
Rodriguez	Maricopa	AZ				2016	Pfaff
Gunnigle	Maricopa	AZ				2020	Bolts
Conover	Pima	AZ	2019	.			ADH
Price	Alameda	CA	2022	.			Pfaff
Price	Alameda	CA				2018	Pfaff
Hardin	Orange	CA				2022	Pfaff
Phillips	Sacramento	CA				2018	Pfaff
Matthews	Sacramento	CA				2022	Pfaff
Rodriguez	Yolo	CA				2022	Pfaff
Becton	Contra Costa	CA	2017	.			ADH
Gascon	Los Angeles	CA	2020	.			ADH

92. JEFFERSON COUNTY GENERAL ELECTION 2016 (2016), https://www.jccal.org/Sites/Jefferson_County/Documents/Board%20of%20Registrars/GEN2016B-SummaryReport-110816Official.pdf [<https://perma.cc/PUJ9-T9MP>].

93. Kent Faulk, *New Jefferson County District Attorney Indicted for Perjury; Will Face Suspension*, ALABAMA.COM (Jan. 13, 2017), https://www.al.com/news/birmingham/2017/01/new_jefferson_county_district.html [<https://perma.cc/KU56-4LMA>].

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Jones-Wright	San Diego	CA				2018	Pfaff
Boudin	San Francisco	CA	2019	2022	Yes		ADH
Hamasaki	San Francisco	CA				2022	Bolts
Salazar	San Joaquin	CA	2014	2022	Yes		ADH
Khan	Santa Clara	CA				2022	Pfaff
Dougherty	Boulder	CO	2017	.			ADH
McCann	Denver	CO	2016	.			ADH
Payne	Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache Counties	CO	2020	2022	No		ADH
Padden	Arapahoe, Douglas, Elbert, Lincoln	CO				2020	Bolts
King	Jefferson, Gilpin	CO	2020	.			ADH
Lilly	Jefferson, Gilpin	CO				2016	Pfaff
Mcaughlin	Larimer, Jackson	CO	2020	.			Bolts
Racine	Washington	DC	2014	2022	No		Pfaff

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Pryor	Broward	FL	2020	.			ADH
Warren	Hills-borough	FL	2016	2022	Removed		Pfaff
Miller	Pasco, Pinellas	FL				2022	Bolts
Ayala	Orange, Osceola	FL	2016	2020	No		Pfaff
Worrell	Orange, Osceola	FL	2020	.			ADH
Pearson	Miami-Dade	FL				2020	Bolts
Jones	Chatham	GA	2020	.			ADH
Jones	Chattahoochee	GA	2020	.			Bolts
Boston	DeKalb	GA	2016	.			ADH
Gonzalez	Athens-Clarke County	GA	2020	.			Bolts
Williams	Augusta	GA	2020	.			ADH
Esser	Honolulu	HI				2020	Bolts
Kollar	Kaua'i	HI	2012	2021	No		Pfaff
Like	Kaua'i	HI	2021	.			Pfaff
Graham	Polk	IA	2022	.			Pfaff
Foxx	Cook	IL	2016	.			ADH
Wilhelmi	DeKalb	IL				2020	Bolts
Rinehart	Lake	IL	2020	.			Bolts

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Overstreet	Douglas	KS				2020	Bolts
Luttrell	Shawnee	KS				2020	Bolts
Dupree	Wyandotte	KS	2016	.			Bolts
Williams	Orleans	LA	2020	.			Pfaff
Harrington	Berkshire	MA	2018	2022	Yes		ADH
Bradley	Plymouth	MA				2018	Bolts
Hall	Plymouth	MA				2022	Bolts
Rollins	Suffolk	MA	2018	2022	No		ADH
Arroyo	Suffolk	MA				2022	Pfaff
Galibois	Cape and Islands	MA	2022	.			Bolts
Mosby	Baltimore City	MD	2014	2022	Yes		ADH
Braveboy	Prince George	MD	2018	.			ADH
McDonald	Oakland	MI	2020	.			ADH
Savit	Washtenaw	MI	2020	.			Bolts
Burton-Harris	Wayne	MI				2020	Bolts
Moriarity	Hennepin	MN	2022				Pfaff
Haase	Hennepin	MN				2018	Bolts
Gardner	St. Louis City	MO	2016	.			ADH

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Bell	St. Louis County	MO	2018	.			ADH
Owens	Hinds	MS	2019	.			Pfaff
Colom	Lowndes, Oktibbeha, Clay, and Noxubee	MS	2015	.			Pfaff
DeBerry	Durham	NC	2018	.			ADH
Dixon	Pitt	NC	2018	.			Pfaff
Chetson	Wake	NC				2022	Pfaff
Booth	Buncome	NC				2022	Pfaff
Embry	Mecklenburg	NC				2022	Pfaff
Pantos	Douglas	NE				2022	Bolts
Morefeld	Lancaster	NE				2022	Bolts
Conlon	Hillsborough	NH	2016	2020	Yes		Bolts
Davis	Merrimack	NH	2016	2020	Yes		Bolts
Carmack-Altwhies	Santa Fe, Rio Arriba, Los Alamos	NM	2020	.			Bolts
Phelps	Guadalupe, Mora, San Miguel	NM				2020	Bolts
Toporowski	Albany	NY				2020	Bolts

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Berube	Dutchess	NY				2019	Bolts
Thompson	Kings	NY	2014	2016	No		Pfaff
Gonzalez	Kings	NY	2016	.			Pfaff
Mitchell	Monroe	NY				2019	Bolts
Kaminsky	Nassau	NY				2021	Bolts
Caban	Queens	NY				2019	Pfaff
Clegg	Ulster	NY	2019	.			Bolts
Rocah	Westchester	NY	2020	.			ADH
Vance	New York	NY	2009	2021	No		Pfaff
Bragg	New York	NY	2021	.			Pfaff
Kopko	Thompkins	NY				2020	Bolts
Rucker	Hamilton	OH				2020	Bolts
Behenna	Oklahoma	OK	2022	.			Bolts
Proehl-Day	Tulsa	OK				2018	Bolts
Williams	Payne, Logan	OK				2018	Bolts
Hummel	Deschutes	OR	2014	2022	No		Pfaff
Schmidt	Multnomah	OR	2020	.			Bolts
Stoll-steimer	Delaware	PA	2019	.			Bolts
Crystle	Lancaster	PA				2019	Bolts

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Krasner	Philadelphia	PA	2017	.			ADH
Jenkins	Allegheny	PA				2019	Pfaff
Middleman	Allegheny	PA				2019	Bolts
Pogue	Berkeley, Charleston	SC				2020	Bolts
Mulroy	Shelby	TN	2022	.			Pfaff
Gonzalez	Bexar	TX	2018	.			ADH
Creuzot	Dallas	TX	2018	.			ADH
Ogg	Harris	TX	2016	.			ADH
Jones	Harris	TX				2020	Bolts
Gonzalez	Nueces	TX	2016				ADH
Garza	Travis	TX	2020	.			ADH
Middleton	Fort Bend	TX	2018	.			ADH
Higgins	Hays	TX	2022	.			Bolts
Leavitt	Utah	UT	2018	2022	Yes		Pfaff
Gill	Salt Lake City	UT	2010	.			Pfaff
Hingeley	Albemarle	VA	2019	.			ADH
Dehghani-Tafti	Arlington	VA	2019	.			ADH
Miles	Chesterfield	VA	2018	2019	Yes		Bolts

Name	County	State	Year Elected	Year Departed	Defeated	Year of Run	Source
Descano	Fairfax	VA	2019	.			ADH
Szwabowski	Charlottesville	VA				2021	Bolts
Wood	Chesapeake	VA				2021	Bolts
Fatehi	Norfolk	VA	2021	.			Bolts
Morales	Portsmouth	VA	2021	.			Bolts
Biberaj	Loudoun	VA	2019	.			Pfaff
George	Chittenden	VT	2016	.			ADH
Satterberg	King	WA	2007	2022	No		Pfaff
Manion	King	WA	2022				Pfaff
Minjares	Thurston	WA				2018	Bolts
Chisholm	Milwaukee	WI	2006				Pfaff
Damrau	Shawano	WI				2020	Bolts

Notes: “Year Elected” refers to the year elected, not necessarily the year that the person assumed office (which is often on Jan. 1 of the following year). Incumbents who are still in office are indicated by a “.” in the “Year Left” column. “Defeat” indicates whether a reformer no longer in office left because of an electoral defeat (“Yes”) or for some other, unrelated reason (“No”). “Year of Run” applies only to those who ran unsuccessfully.

A.2. Election and Gun Data

The election data has been gathered by my research assistant from local county boards of election. The shooting data comes from the Gun Violence Archive (“GVA”), which provides its data online.⁹⁴ The GVA provides an extensive discussion of how it scours sources beyond just police reports to gather shooting data; in short, it has a team of researchers who rely on ~7,500 police and media sources to gather information on acts of gun violence.⁹⁵ We restricted our queries to non-accidental/non-suicidal shooting events within 18 months of the relevant election. I rely on the GVA, rather than local police department data, both to have a common metric across counties, and simply as a concession to the fact that suburban police departments — of which there can be a large number in just one county — rarely provide the sort of detailed crime data that large, urban departments (sometimes) do. As noted above, I plan in future work to look at the extent to which GVA and police metrics on shooting overlap.

Also, as promised above, I provide here side-by-side versions of the maps in Figure 5, with and without the shooting data. Tragically, the shooting data is sometimes so dense that it is hard to see the underlying vote patterns. I also provide the Cook County racial voting data broken out by Chicago and the suburbs, since the density of voting precincts posed a problem above as well.

94. See *Search Incidents*, GUN VIOLENCE ARCHIVE, <https://www.gunviolencearchive.org/query> [<https://perma.cc/EAA8-TGLN>] (last visited Apr. 24, 2023).

95. For a more extensive discussion, see *Gun Violence Archive General Methodology*, GUN VIOLENCE ARCHIVE (Jan. 3, 2022), <https://www.gunviolencearchive.org/methodology> [<https://perma.cc/6YQ4-QECS>].

Voting Maps With and Without Gun Violence Data

Figure A.2.A: Allegheny County

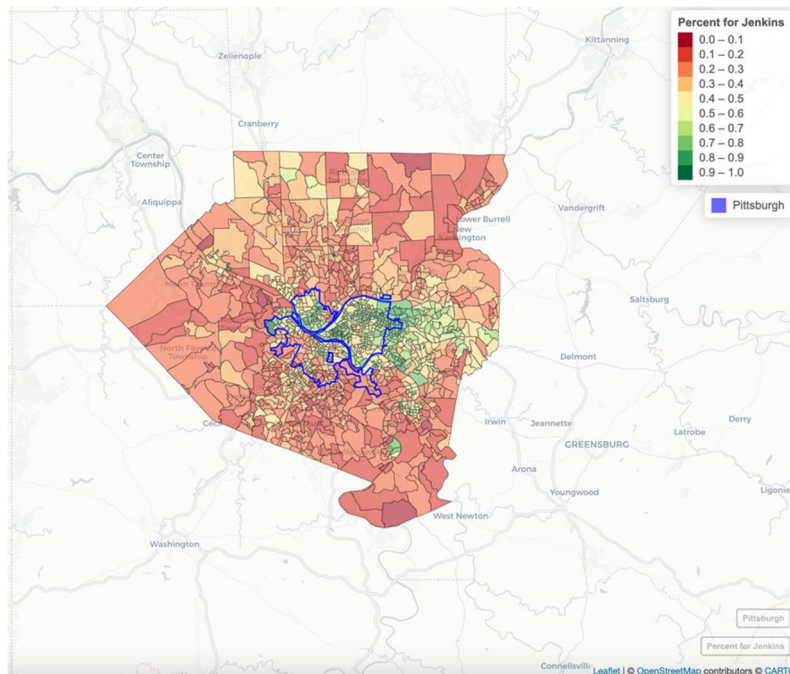
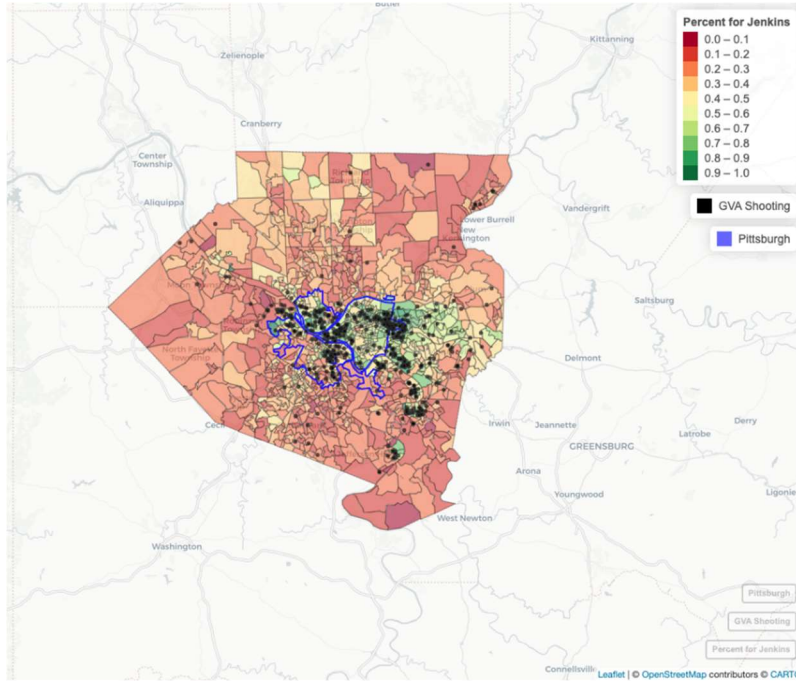


Figure A.2.B: Cook County

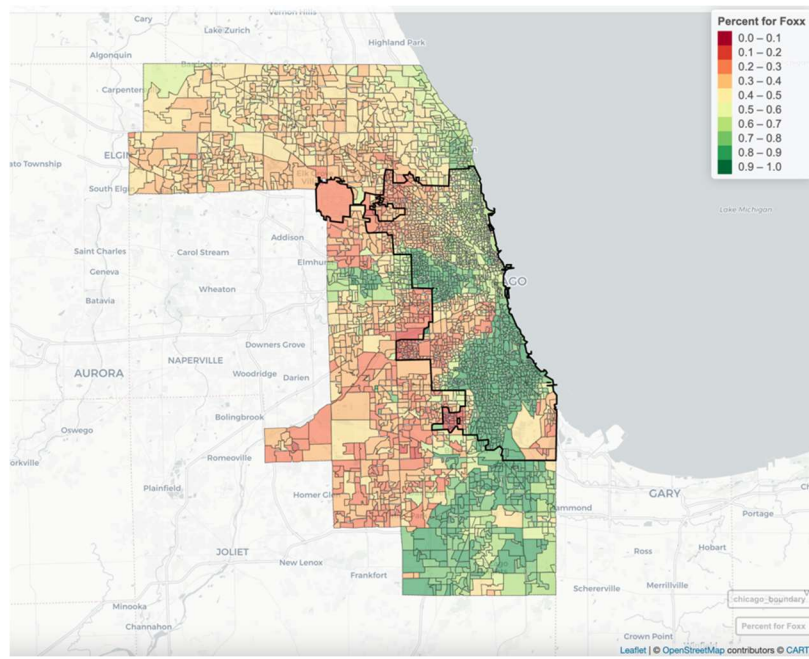
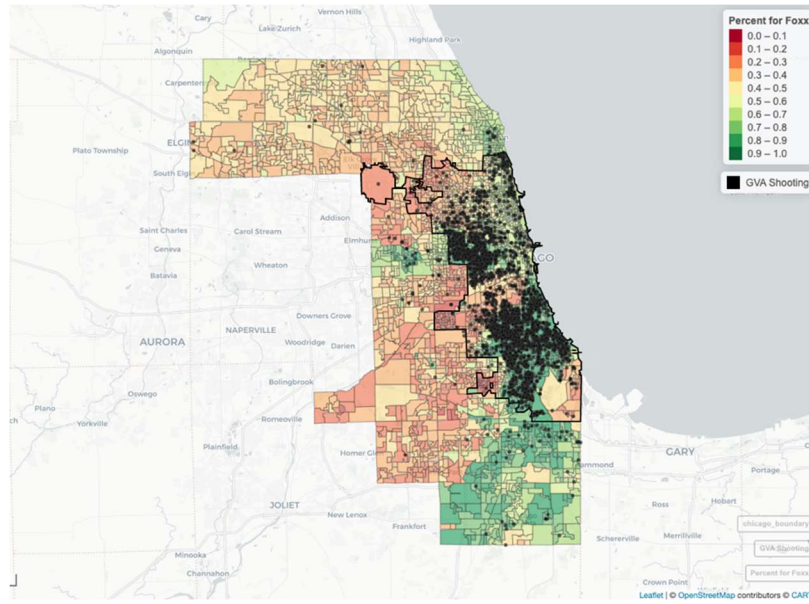


Figure A.2.C: Philadelphia County

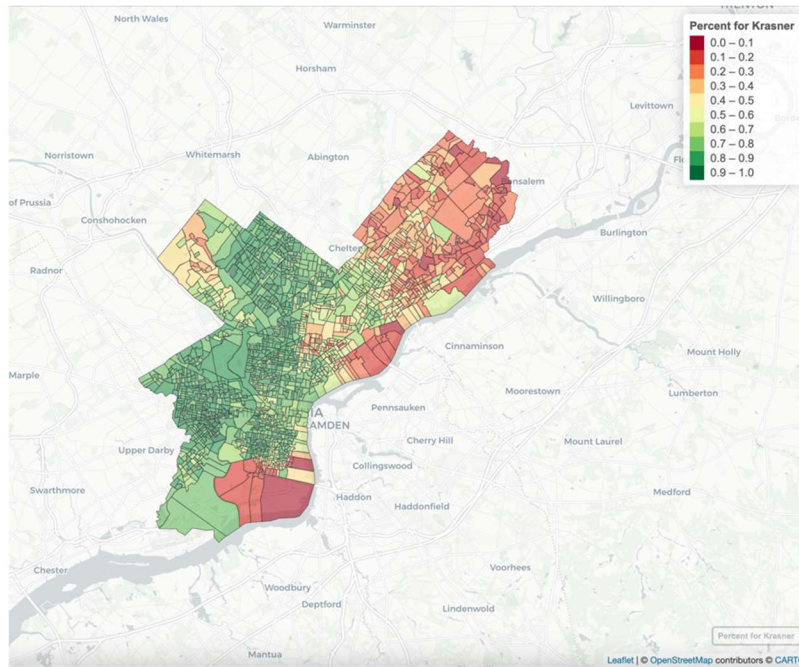
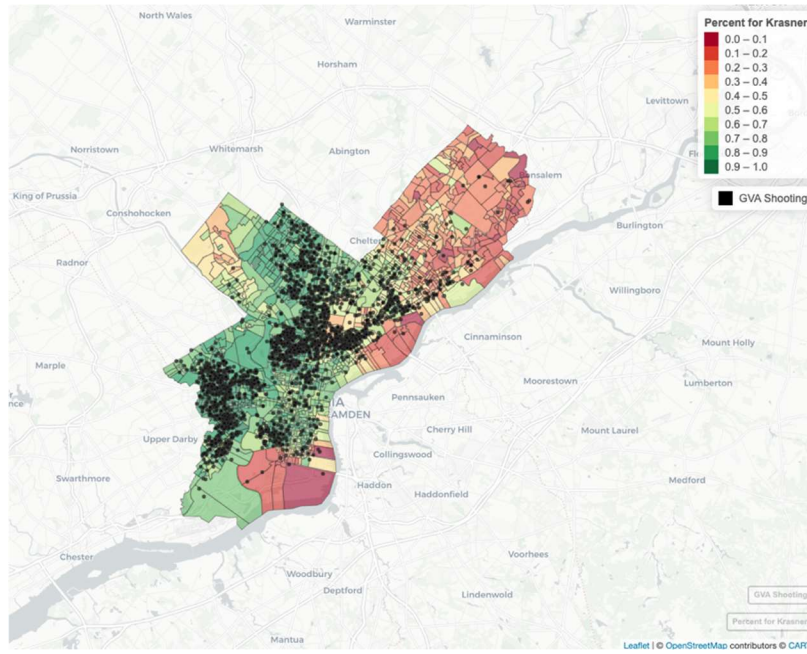
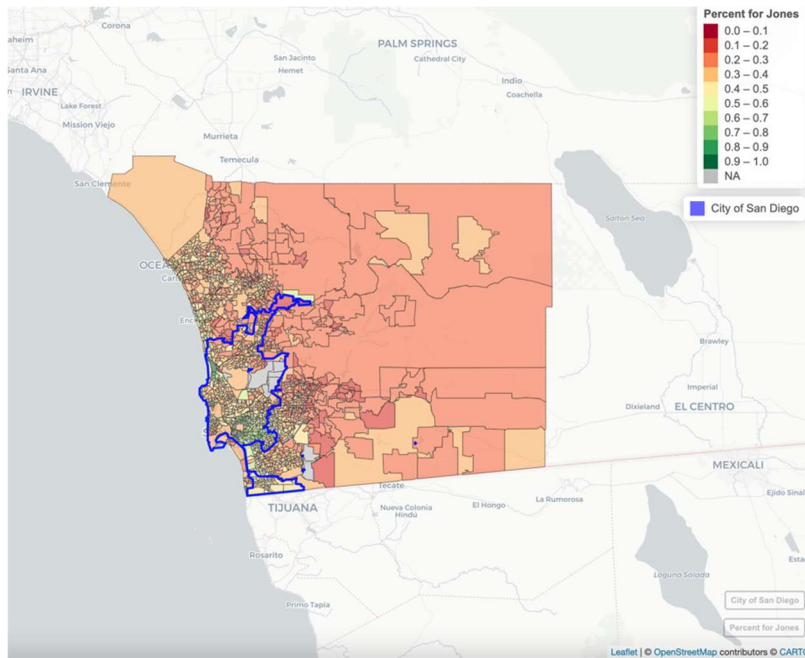
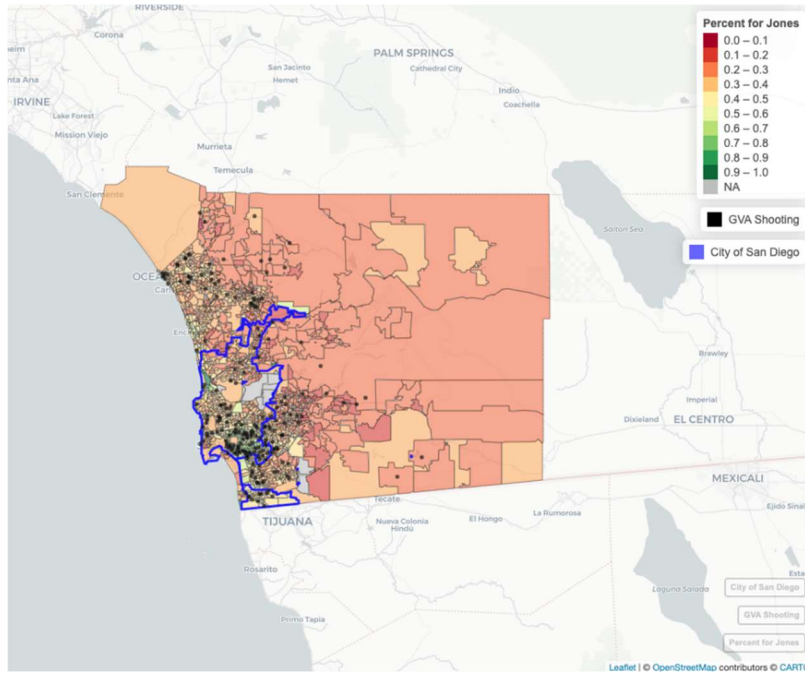


Figure A.2.D: San Diego County



Racial Divide in Cook County Voting, Chicago vs. Suburbs

Figure A.3.A: Percent of Vote for Kim Foxx, Cook County, 2016, by Precinct

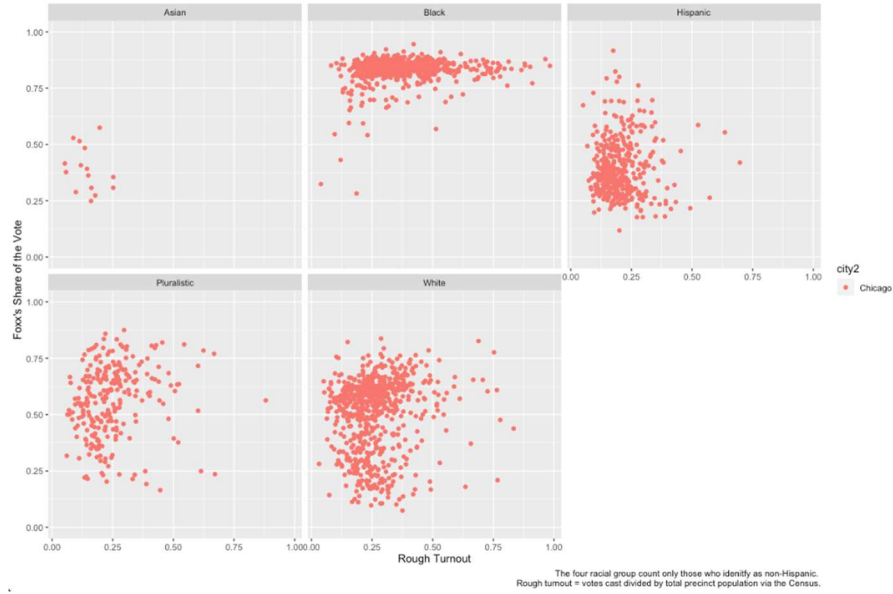


Figure A.3.B: Percent of Vote for Kim Foxx, Cook County, 2016, by Precinct

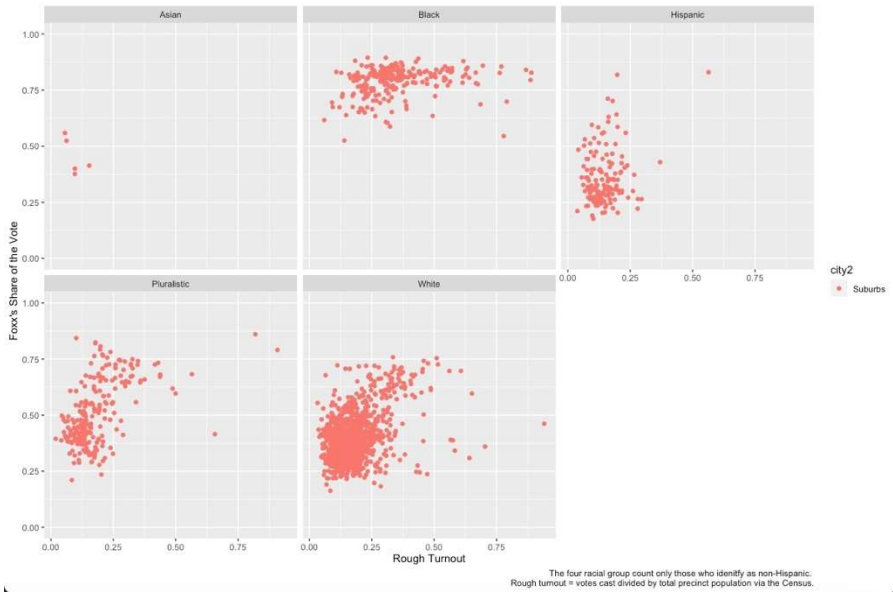


Figure A.4: Removal, Preemption Laws, and Supersession Laws

The complete table of removal, preemption, and supersession laws is too long to include here, but it is available on-line.⁹⁶ Below I provide a simple consolidated summary of the results given in Figure 9 above. The results here come two sources: research conducted by a research assistant looking state by state at the laws on the books, and then a recent paper on supersession laws that provided a fifty-state survey.⁹⁷

Table A.2: Summary of Removal and Intervention Powers, By State

State	Removal	AG Concurrent	AG Supersession
Alabama	0	1	1
Alaska	1	NA	NA
Arizona	0	0	1
Arkansas	0	0	0
California	0	1	0
Colorado	0	2	0
Connecticut	0	0	1
Delaware	0	NA	NA
Florida	2	2	1
Georgia	0	2	2
Hawaii	0	1	1
Idaho	0	3	2
Illinois	0	3	1
Indiana	0	3	3
Iowa	0	0	2
Kansas	0	3	2
Kentucky	0	3	2
Louisiana	0	0	1
Maine	0	3	1
Maryland	0	0	2
Massachusetts	0	0	1
Michigan	2	1	1
Minnesota	0	2	2
Mississippi	0	0	2

96. See Research Memorandum on History of Prosecution Research Project (Current Landscape), *supra* note 77.

97. Yeargain, *supra* note 77, at 110.

State	Removal	AG Concurrent	AG Supersession
Missouri	0	2	3
Montana	0	1	1
Nebraska	0	2	1
Nevada	0	1	1
New Hampshire	0	0	1
New Jersey	2	1	1
New Mexico	3	1	2
New York	1	2	2
North Carolina	0	0	0
North Dakota	1	0	2
Ohio	0	0	2
Oklahoma	0	1	2
Oregon	0	0	2
Pennsylvania	0	2	1
Rhode Island	0	NA	NA
South Carolina	0	1	0
South Dakota	1	1	2
Tennessee	0	2	1
Texas	0	2	0
Utah	0	2	1
Vermont	0	1	0
Virginia	0	2	2
Washington	0	0	1
West Virginia	0	0	2
Wisconsin	1	0	2
Wyoming	0	0	1

Key:

“Removal” refers to the governor’s power to remove a district attorney.

1 = Almost unfettered ability to do so

2 = Broad powers, but some procedural limits

3 = Limited powers of removal

0 = No such authority

“AG Concurrent” refers to the extent to which state AGs have concurrent jurisdiction over criminal cases.

1 = Concurrent jurisdiction over almost all criminal cases

2 = Concurrent jurisdiction over a narrow set of criminal cases

3 = Maine (it has a unique arrangement described in the complete file)

0 = No concurrent jurisdiction

“AG Supersession” refers to the extent to which other actors can invite the AG to intervene

1 = AG can intervene widely on its own motion, but does not officially have concurrent jurisdiction.

2 = Easy for other officials to invite the AG to intervene

3 = Pending bills to give the AG supersession authority

0 = No supersession authority