ELECTION LAW — COMPACTNESS — SUPREME COURT OF NEW JERSEY HOLDS THAT JERSEY CITY'S WARD MAP COMPLIES WITH THE STATE'S COMPACTNESS REQUIREMENT. — *Jersey City United Against the New Ward Map v. Jersey City Ward Commission*, 336 A.3d 219 (N.J. 2025).

The compactness requirement has become a rule without a ruler. To curb gerrymandering, many state and local laws require electoral districts to be compact.[1] Yet courts — faced with uncertainty over how to measure compactness and what level of compactness is sufficient — have shied away from developing workable standards to assess and enforce those compactness requirements.[2] Recently, in *Jersey City United Against the New Ward Map v. Jersey City Ward Commission*,[3] the Supreme Court of New Jersey held that Jersey City's ward map complied with the state's compactness requirement for municipal wards.[4] However, by resting on a "bizarre[ness]" standard to assess compactness,[5] the court adopted an approach that provides little guidance to courts and legislators, while overlooking alternatives that would have better implemented the state's compactness requirement and maintained appropriate deference to legislatures.

The Municipal Ward Law[6] (MWL) requires that any map dividing a New Jersey municipality into wards satisfy three criteria: compactness, contiguity, and population equality.[7] After each decennial census, each municipality's ward commission must evaluate whether its map complies with those three requirements and revise the map if necessary.[8] The 2020 Census revealed that there was a fifty-nine percent population deviation between two of Jersey City's wards, "far exceed[ing] the maximum . . . authorized."[9] Accordingly, on January 22, 2022, the City of Jersey City Ward Commission (Commission) adopted a new map of Jersey City's six wards,[10] over some public opposition.[11]

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[1] Michael McDonald, *The Predominance Test: A Judicially Manageable Compactness Standard for Redistricting*, 129 YALE L.J.F. 18, 19, 21–22 (2019). Compactness requirements make it harder to manipulate redistricting for partisan gain or racial advantage. *See id.* at 18.

[2] *See id.* at 19–20. As a result, these requirements are rarely enforced. *See id.* at 20 ("No court has required a district to be redrawn solely for violating a state constitutional compactness requirement since 1981 . . . .").

[3] 336 A.3d 219 (N.J. 2025).

[4] *Id.* at 234.

[5] *Id.*

[6] N.J. STAT. ANN. §§ 40:44-9 to -18 (West 2025).

[7] *Id.* § 40:44-14. To ensure population equality, the MWL requires that no ward differ from another by more than ten percent of the mean ward population. *Id.*

[8] *Id.* § 40:44-13(c).

[9] *Jersey City United*, 336 A.3d at 224.

[10] Jersey City United Against the New Ward Map v. Jersey City Ward Comm'n, 311 A.3d 989, 994 (N.J. Super. Ct. App. Div. 2024).

[11] *Jersey City United*, 336 A.3d at 225.

Two groups of plaintiffs — including residents, community organizations, and a city councilperson — challenged the new map.[12] They contended that the wards were not sufficiently compact for two reasons.[13] First, the wards earned low compactness scores under two common mathematical measures, known as Polsby-Popper[14] and Reock.[15] Second, the wards split longstanding communities of interest.[16] These flaws, they claimed, meant that the map violated the MWL, the New Jersey Civil Rights Act[17] (CRA), and state constitutional rights to free speech, association, and equal protection.[18] They also alleged violations of the Open Public Meetings Act[19] (OPMA) and retaliation against Councilperson Frank Gilmore in violation of the CRA.[20] The Superior Court, however, sided against the plaintiffs.[21] It dismissed their complaints for failure to state a valid claim.[22]

The Appellate Division of the Superior Court affirmed in part and reversed in part.[23] Beginning with the MWL claim, the court held that compactness should be assessed using a "rational basis" test.[24] Accordingly, it reversed for "limited fact-finding" as to the Commission's basis for the map's configuration.[25] Though its holding did not close the door for the plaintiffs, the court emphasized its "limited" role.[26] It refused to consider whether there could be a more compact map and concluded that the plaintiffs could not challenge compactness based on "models" that the Commission did not use, such as Polsby-Popper and Reock.[27] The court also held that a challenge based on the splitting of communities of interest was not cognizable under the MWL.[28] The court then dismissed the plaintiffs' equal protection, free speech and association,

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12 *Jersey City United*, 311 A.3d at 995.

13 *Id.*

14 A ward's Polsby-Popper score is the ratio between its area and the area of a circle with a circumference that equals the perimeter of that ward. *Jersey City United*, 336 A.3d at 226 n.2.

15 *Id.* at 226. A ward's Reock score is the ratio between its area and the area of the smallest circle that encloses the entire ward. *Id.* n.2.

16 *Jersey City United*, 311 A.3d at 995–96; *see also* Amicus Curiae Brief of League of Women Voters of New Jersey at 11–12, *Jersey City United*, 336 A.3d 219 (No. 089292) (identifying several split communities, including "a former industrial community comprised largely of Black working class families," *id.* at 11).

17 N.J. STAT. ANN. §§ 10:6-1 to -2 (West 2025) (providing a cause of action for the deprivation of "substantive rights . . . secured by [state law]," *id.* § 10:6-2(c)).

18 *Jersey City United*, 311 A.3d at 995.

19 N.J. STAT. ANN. §§ 10:4-6 to -21 (West 2025).

20 *Jersey City United*, 311 A.3d at 995–96.

21 *Id.* at 996.

22 *Id.*

23 *Id.* at 1003.

24 *Id.* at 1000.

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

OPMA, and CRA claims.[29] Plaintiffs appealed the rulings on the MWL, equal protection, and CRA claims.[30]

The Supreme Court of New Jersey affirmed in part and reversed in part.[31] Writing for the court, Justice Patterson[32] set the stage by emphasizing its deferential posture: "[R]eapportionment," Justice Patterson explained, "is essentially a political and legislative process."[33] Before addressing the MWL claim head-on, the court summarized its precedent on state compactness requirements: "[C]ompactness is an elusive concept,"[34] it is often less important than population equality,[35] and it can be assessed "by visual inspection."[36]

Next, the court reached two conclusions concerning procedural requirements under the MWL. First, the court held that the Commission was not required to use mathematical measures such as Polsby-Popper or Reock scores when assessing compactness.[37] Second, the court held that the Commission was not required to consider the impact of its map on communities of interest.[38] Justice Patterson reasoned that nothing in the MWL or its legislative history imposed either requirement.[39]

Finally, the court considered the compactness requirement directly.[40] The court held that each of the challenged wards was sufficiently compact.[41] Justice Patterson explained that it was not the court's role to consider whether any more compact map could exist: The court was required simply to assess the map in front of it.[42] Based on a visual inspection, Justice Patterson found that, unlike the horseshoe or shoelace configurations addressed in prior cases, the wards were not "bizarrely shaped."[43] Since the plaintiffs' equal protection and CRA arguments hinged on their compactness argument, those claims fell in turn.[44]

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[29] *Id.* at 1002–03.

[30] *Jersey City United*, 336 A.3d at 228.

[31] *Id.* at 238.

[32] Justice Patterson was joined by Chief Justice Rabner and Justices Pierre-Louis and Fasciale.

[33] *Jersey City United*, 336 A.3d at 229 (quoting Davenport v. Apportionment Comm'n, 319 A.2d 718, 723 (N.J. 1974)).

[34] *Id.* at 231 (quoting *Davenport*, 319 A.2d at 722).

[35] *Id.* at 231–32 (quoting *Davenport*, 319 A.2d at 722).

[36] *Id.* at 232 (citing *Davenport*, 319 A.2d at 722; Jackman v. Bodine, 231 A.2d 193, 200–01 (N.J. 1967)).

[37] *Id.*

[38] *Id.* at 233.

[39] *Id.* at 232–34, 234 n.9.

[40] *Id.* at 234.

[41] *Id.*

[42] *Id.* (quoting N.J. STAT. ANN. § 40:44-14 (West 2025)).

[43] *Id.* (citing Davenport v. Apportionment Comm'n, 319 A.2d 718, 722 (N.J. 1974); Jackman v. Bodine, 231 A.2d 193, 200–01 (N.J. 1967)).

[44] *Id.* at 237–38.

Justice Wainer Apter[45] concurred in part and dissented in part.[46] First, she argued that the plaintiffs alleged sufficient facts to survive a motion to dismiss their MWL claim.[47] She accused the majority of "devalu[ing]" the statute's compactness requirement by deeming it "an elusive concept."[48] She pointed out that the majority's cited precedent concerned not municipal redistricting, but legislative redistricting, for which it is far more challenging to draw compact districts.[49] Next, Justice Wainer Apter argued that the plaintiffs could survive a motion to dismiss because — based on Polsby-Popper, Reock, and a visual inspection — they showed that compactness had "substantially declined" compared to the prior map.[50] Nonetheless, she concurred with the majority's dismissal of the remaining claims.[51]

Leveraging the significant latitude that courts have when faced with judicially unmanageable legal requirements, the *Jersey City United* court should have devised a manageable test that implements the MWL's compactness requirement. Instead, the court adopted a "bizarre[ness]" standard,[52] which is no more manageable than the statutory compactness requirement itself is and provides little guidance to lower courts, legislatures, and municipalities. In the process, the court overlooked several alternative doctrinal approaches that would have more faithfully implemented the statute while addressing administrability concerns and preserving appropriate deference to legislatures.

Where substantive legal requirements are judicially unmanageable, courts often develop manageable standards to implement them. In the context of constitutional adjudication, Professor Richard Fallon distinguishes between the meaning of a constitutional provision and its implementing doctrine.[53] When the Supreme Court "determin[es] that the language of a constitutional provision is not *itself* a judicially manageable standard," the "Court assumes a responsibility to *devise* a

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[45] Justice Wainer Apter was joined by Justices Noriega and Hoffman.

[46] *Jersey City United*, 336 A.3d at 238 (Wainer Apter, J., concurring in part and dissenting in part).

[47] *Id.*

[48] *Id.* at 240.

[49] *Id.* at 240–41 (quoting Davenport v. Apportionment Comm'n, 319 A.2d 718, 722 (N.J. 1974)).

[50] *Id.* at 245; *see id.* at 243–45.

[51] *Id.* at 246.

[52] *Id.* at 234 (majority opinion).

[53] *See, e.g.*, Richard H. Fallon, Jr., *Judicially Manageable Standards and Constitutional Meaning*, 119 HARV. L. REV. 1274, 1283, 1317 (2006). Other scholars have drawn a similar distinction. *See, e.g.*, Mitchell N. Berman, *Constitutional Decision Rules*, 90 VA. L. REV. 1, 8–9 (2004) (distinguishing between "judge-interpreted constitutional meaning" and "judge-created constitutional doctrine" or decision rules, *id.* at 8); Henry P. Monaghan, *The Supreme Court, 1974 Term — Foreword: Constitutional Common Law*, 89 HARV. L. REV. 1, 12–13 (1975) (distinguishing between constitutional interpretation and constitutional common law); Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 HARV. L. REV. 1212, 1213 (1978) (distinguishing between "constitutional norm[s] and [their] enforcement").

judicially manageable standard."[54] Likewise for statutory adjudication: When statutory requirements prove judicially unmanageable, courts devise judicially manageable doctrine to implement them.[55] Whether a legal requirement or doctrinal test is manageable largely turns on whether future courts are likely to apply it consistently and predictably.[56] That determination, in turn, may depend on several variables, including whether there is "relative consensus . . . about the meaning of underlying norms" or whether there are "partisan implications" that are likely to sway judges.[57]

The MWL's requirement that a ward be compact is judicially unmanageable. Before assessing an electoral district for compactness, a court must confront two issues, both of which are unsettled. First, a court must consider how to measure compactness.[58] However, scholars have proposed nearly one hundred measures;[59] even in a single case, courts have considered at least six.[60] Second, a court must consider what level of compactness is sufficient. Compactness is measured on a continuum[61]: Even when assessing compactness visually, a district's compactness is typically evaluated relative to alternatives.[62] But a compactness requirement asks for a binary result, creating a line-drawing problem. And that problem is complicated by the need for courts to determine how compactness should be prioritized relative to other redistricting criteria, such as population balancing. Since there is a lack of consensus on both issues, requiring courts to apply a compactness requirement without further guidance risks producing inconsistent and unpredictable results.[63]

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[54] Fallon, *supra* note 53, at 1296 (emphases added).

[55] Some prominent examples are the judicially created doctrines that implement the Administrative Procedure Act, *see* Gillian E. Metzger, Foreword, *Embracing Administrative Common Law*, 80 GEO. WASH. L. REV. 1293, 1298 (2012) (arguing that "[n]umerous administrative law doctrines are judicially created at their core"), and the Sherman Antitrust Act, *see* Note, *Antitrust Federalism, Preemption, and Judge-Made Law*, 133 HARV. L. REV. 2557, 2569 (2020) (explaining that courts have implemented the Sherman Act's "broad, vague legal standards" by crafting detailed doctrinal standards).

[56] *See* Fallon, *supra* note 53, at 1331. The question of what makes a standard judicially manageable is most visible when courts apply the political question doctrine, because the doctrine often requires courts to explicitly address whether a standard is judicially manageable. *See id.* at 1275, 1280–85 (using a political question doctrine case as a starting point to explore what makes a standard judicially manageable).

[57] *Id.* at 1290.

[58] The MWL does not define compactness, *see* N.J. STAT. ANN. §§ 40:44-9 to -18 (West 2025), like most state compactness requirements, *see* Aaron R. Kaufman et al., *How to Measure Legislative District Compactness If You Only Know It When You See It*, 65 AM. J. POL. SCI. 533, 534 (2021).

[59] Kaufman et al., *supra* note 58, at 533–34.

[60] *See* Rodriguez v. Pataki, 308 F. Supp. 2d 346, 450 (S.D.N.Y. 2004).

[61] *See, e.g.*, Richard G. Niemi et al., *Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering*, 52 J. POL. 1155, 1161–62 tbl. 1 (1990) (presenting a typology of compactness measures, all of which are measured on a continuum).

[62] *See, e.g.*, Kaufman et al., *supra* note 58, at 539–40.

[63] *See* Fallon, *supra* note 53, at 1289–90.

But, in response to the MWL's unmanageable compactness requirement, the *Jersey City United* court applied a standard that was likewise unmanageable. Following precedent, the court assessed compactness by considering whether the wards were "bizarrely shaped."[64] The court did not define "bizarrely shaped," and it explained the standard only by providing two examples: "'horseshoe' and 'shoelace' configurations."[65] Bizarreness could be read to mean highly noncompact. But merely restating the statutory input while gesturing at an ambiguous threshold does little to aid future decisionmaking. Alternatively, bizarreness could be read to mean something other than noncompactness. But the natural alternative — the ordinary meaning of bizarreness — is at least as vague as noncompactness is. In ordinary language, something is bizarre if it is "strikingly out of the ordinary."[66] As scholars have noted for the absurdity doctrine, which also attempts to capture deviation from the ordinary, this requirement is so general that it grants courts "broad . . . discretion"[67] and is unlikely to improve the consistency and predictability of future decisions.

A third possible reading of the court's bizarreness standard also falls short. The most restrictive reading of the court's standard would limit noncompactness to examples identified in prior holdings — that is, boundaries resembling a horseshoe or shoelace. The court offers little guidance on how far a shape's boundaries can deviate from those examples. Even so, this interpretation may be more manageable than directly applying the compactness requirement. However, it poorly tracks compactness: A shape can be highly noncompact without resembling a horseshoe or shoelace — for example, a three-point star familiar from the Mercedes-Benz logo.[68] The core problem with this approach is comparative: Other implementing rules better track compactness, are more manageable, and preserve appropriate deference to the mapmaking body.

The court could have devised a better rule, taking advantage of the flexibility of implementing doctrine, in several different ways. This comment outlines two: one based on mathematical metrics and one based on visual guidance.

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[64] *Jersey City United*, 336 A.3d at 234.

[65] *See id.* (citing Davenport v. Apportionment Comm'n, 319 A.2d 718, 722 (N.J. 1974); Jackman v. Bodine, 231 A.2d 193, 200–01 (N.J. 1967)).

[66] *Bizarre*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/bizarre [https://perma.cc/5FGL-9ENQ].

[67] John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2470 (2003); *see also* Note, *The Compatibility of Substantive Canons and Originalism*, 139 HARV. L. REV. 625, 641 (2025) (arguing that the absurdity doctrine "affords judges unbounded lawmaking authority").

[68] One group of scholars has developed a statistical model that "predict[s] human judgment about . . . compactness." Kaufman et al., *supra* note 58, at 543. That model predicts that a person will rank a shape that resembles a three-point star (roughly depicted in Table 2 at row three, column two, and row three, column three) as one of the most noncompact shapes. *See id.* at 545–46, 545 tbl. 2.

First, a court could take a relative approach based on mathematical metrics. Professor Michael McDonald proposes such a framework, which he calls the "Predominance Test."[69] Under this framework, challengers draw a maximally compact map that complies with all legal requirements.[70] Next, for every challenged district, the court must "identify the nearest equivalent district,"[71] by either area or population.[72] Finally, the court compares the compactness of the challenged district to that of the comparison district by mathematical metric.[73] McDonald proposes a fifty-percent threshold: If the value for the challenged district is less than half the value for the comparison district, then the district violates the compactness requirement.[74] McDonald's is not the only relative approach. Alternatively, a court could consider how the existing map compares to simulated maps.[75] In either case, the relative approach balances administrability[76] with accuracy. It also allows courts to calibrate deference by adjusting either the threshold or the test to require maps to survive comparisons on multiple metrics.

The *Jersey City United* court's reasoning might prevent future New Jersey courts from developing a relative metric. In her majority opinion, Justice Patterson asserted that courts should not consider whether a more compact map could exist.[77] That could be interpreted to bar any approach that involves the consideration of a more compact map, even just as a baseline. In fact, the plaintiffs in *Jersey City United* proposed an alternative map[78] that the majority opinion did not consider.[79] Still, that is not the only interpretation of the majority's argument. As justification, Justice Patterson wrote that the court's only task is to consider the compactness of the existing map.[80] Since a more compact map would merely be a tool in that inquiry, it may be permissible. Moreover, the court's aversion to alternative maps is grounded in deference to the legislature.[81] Since the Predominance Test can preserve deference in other ways, a ban on considering alternative maps might be unnecessary to achieve the court's goal.

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69 *See* McDonald, *supra* note 1, at 20.

70 *Id.* at 24.

71 *Id.*

72 *Id.* at 28.

73 *Id.* at 24.

74 *Id.* at 29.

75 *Cf.* League of Women Voters v. Commonwealth, 178 A.3d 737, 770–72 (Pa. 2018) (discussing expert testimony suggesting comparing the Popper-Polsby and Reock compactness scores of computer-simulated redistricting plans).

76 While this approach does not settle the question of what measure courts should use, it addresses the line-drawing problem by identifying a particular threshold, up to which other redistricting criteria can be prioritized.

77 *Jersey City United*, 336 A.3d at 234.

78 *Id.* at 226.

79 *See id.* at 234.

80 *Id.*

81 *See id.* at 229 (quoting Davenport v. Apportionment Comm'n, 319 A.2d 718, 723 (N.J. 1974)).

Second, a court could take a guided visual approach. To craft a manageable standard, a court should lay out what specific features might make a ward noncompact.[82] A statistical model developed by Professors Aaron Kaufman, Gary King, and Mayya Komisarchik suggests that more compact districts are generally "squarish, with minimal arms, pockets, . . . or jagged edges."[83] Accordingly, a court could explain that a ward is presumptively noncompact if it has either numerous or sizable arms, pockets, or jagged edges. If a ward fails this inquiry, the Ward Commission could rebut that presumption by demonstrating that the problematic visual features were justified by municipal boundaries or other legal requirements.

One might object that implementing doctrines, such as the two proposed approaches, come with a cost: By underenforcing or overenforcing the underlying statutory requirement,[84] they ignore the legislature in favor of the courts. The answer to this objection depends on whether the court selects an implementing doctrine that errs in the direction of underenforcement or overenforcement. If the former, the proposed approaches are already an improvement. The risk of underenforcement is much higher for the court's approach, because the vague bizarreness standard does little to constrain future courts. Moreover, some underenforcement might align with New Jersey precedent. Justice Patterson explained that, since political considerations and redistricting are intertwined, courts must generally take a deferential approach to redistricting cases.[85] Any underenforcement would shift power back to the political bodies entrusted with mapmaking, aligning with the court's deferential posture. If the doctrine is overenforcing, the proposed approaches could be justified by political process concerns. Professor John Hart Ely, a champion of political process theory,[86] argued that courts should intervene in the political process to prevent self-interested legislators from "choking off the channels of political change."[87] Accordingly, overenforcement might be justified to prevent legislators from drawing maps that favor those in power. In short, a court may have good reason to permit some underenforcement or overenforcement.

The court's approach in *Jersey City United* perpetuated a persistent problem: Courts lack workable standards to assess and enforce the many state and local compactness requirements. Yet the court could have

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[82] This approach settles the question of how to measure compactness (visually), but whether it addresses the line-drawing problem depends on the level of detail in the court's description.

[83] Kaufman et al., *supra* note 58, at 544 (emphasis omitted).

[84] *See* Fallon, *supra* note 53, at 1283, 1298–306 (explaining that while implementing tests "reflect the underlying norms," *id.* at 1283, they can underenforce or overenforce the relevant provision).

[85] *See Jersey City United*, 336 A.3d at 229 (quoting *Davenport*, 319 A.2d at 723); *see, e.g.*, *id.* at 234 (applying a "deferential standard of review").

[86] *See* JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 77 (1980).

[87] *Id.* at 103.

taken a different path. At least two alternative approaches better effectuate the statute while ensuring consistent and predictable results. By failing to leverage its latitude to craft implementing doctrine, the *Jersey City United* court failed to provide clear guidance to lower courts, missing an opportunity to be a model for state courts interpreting compactness standards around the country.