



Presentation to the Kentucky Interim Joint Committee on State Government

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June 15, 2021

How NCSL Strengthens Legislatures



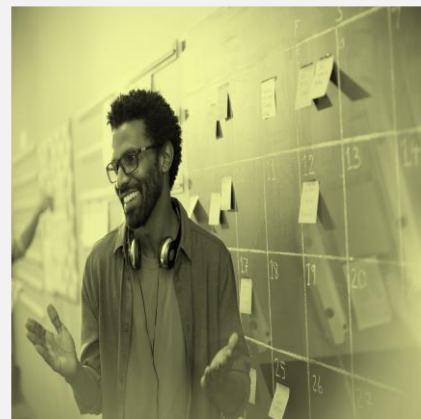
Policy Research

NCSL provides trusted, nonpartisan policy research and analysis



Connections

NCSL links legislators and staff with each other and with experts



Training

NCSL delivers training tailored specifically for legislators and staff



State Voice in D.C.

NCSL represents and advocates on behalf of states on Capitol Hill



Meetings

NCSL meetings facilitate information exchange and policy discussions

Our Outline for Today

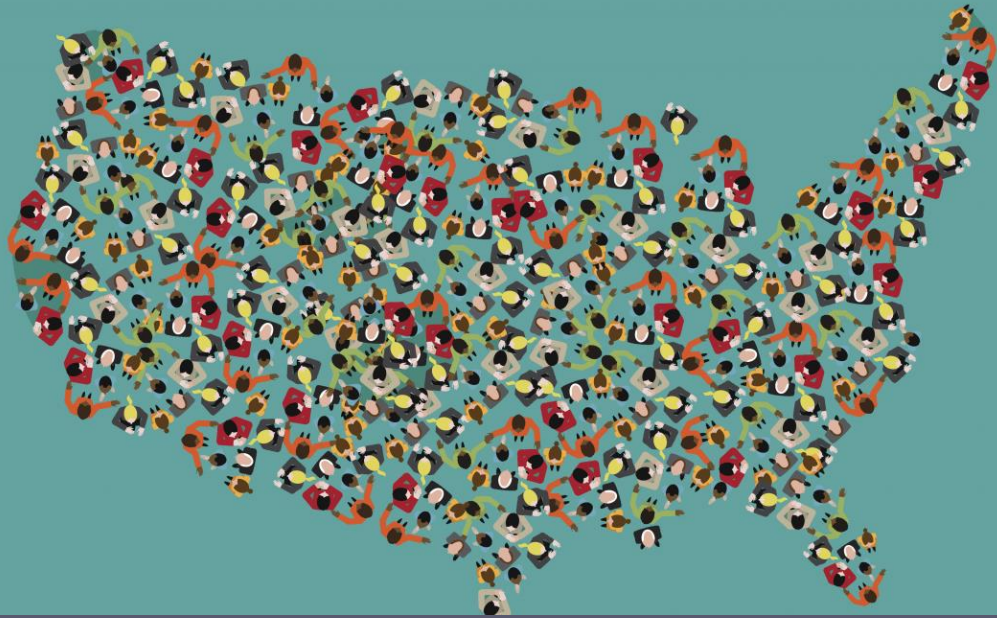
Part I: Census

- **The Census Generally**
 - The Details
 - States' Role
- **Delays**
 - Causes
 - Impacts

Part II: Redistricting

- **Law**
 - Racial Gerrymandering
 - Partisan Gerrymandering
 - One Person, One Vote
 - Voting Rights Act
 - Free and Fair Elections
 - Kentucky Supreme Court guidance
- **Principles**
 - Federal
 - State

2020 U.S. CENSUS



The Census Matters



NATIONAL CONFERENCE OF STATE LEGISLATURES



Funding

\$15.8 billion in federal funds distributed to Kentucky annually



Apportionment

Kentucky's voice in Congress



Redistricting

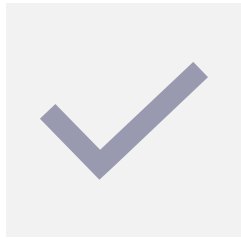
Fulfilling "One Person, One Vote"



Policymaking

Crafting policies for the people of Kentucky

The First Census Data Has Arrived



What we know

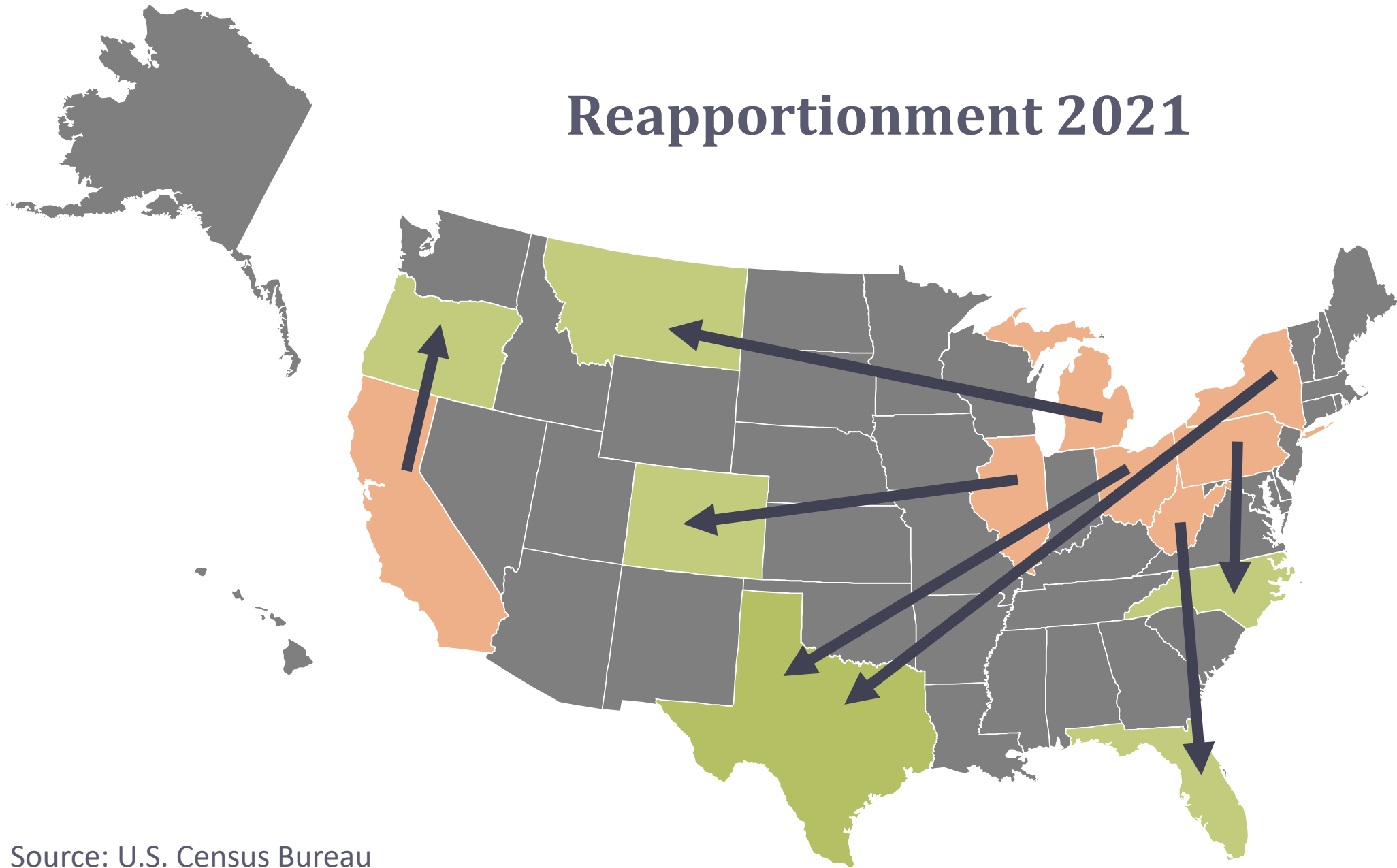
- Total population counts for all 50 U.S. states
- How many seats each state will receive in Congress for the next decade
- Growth trends of prior decades continue: South and West grow at expense of Midwest and Northeast



What we don't know

- Where population growth occurred within states
- Demographic information (age, gender, race, etc.)
- *We should know these by August 16*

Reapportionment 2021



Source: U.S. Census Bureau

- People living in the United States: 331,449,281
- Growth since 2010: 7.4%
- National growth rate is lowest since the Great Depression
- 47/50 states saw population growth this decade
- Only three states saw their populations shrink this decade:
 - Illinois (-0.1%)
 - Mississippi (-0.2%)
 - West Virginia (-3.2%)



2020 Census Takeaways

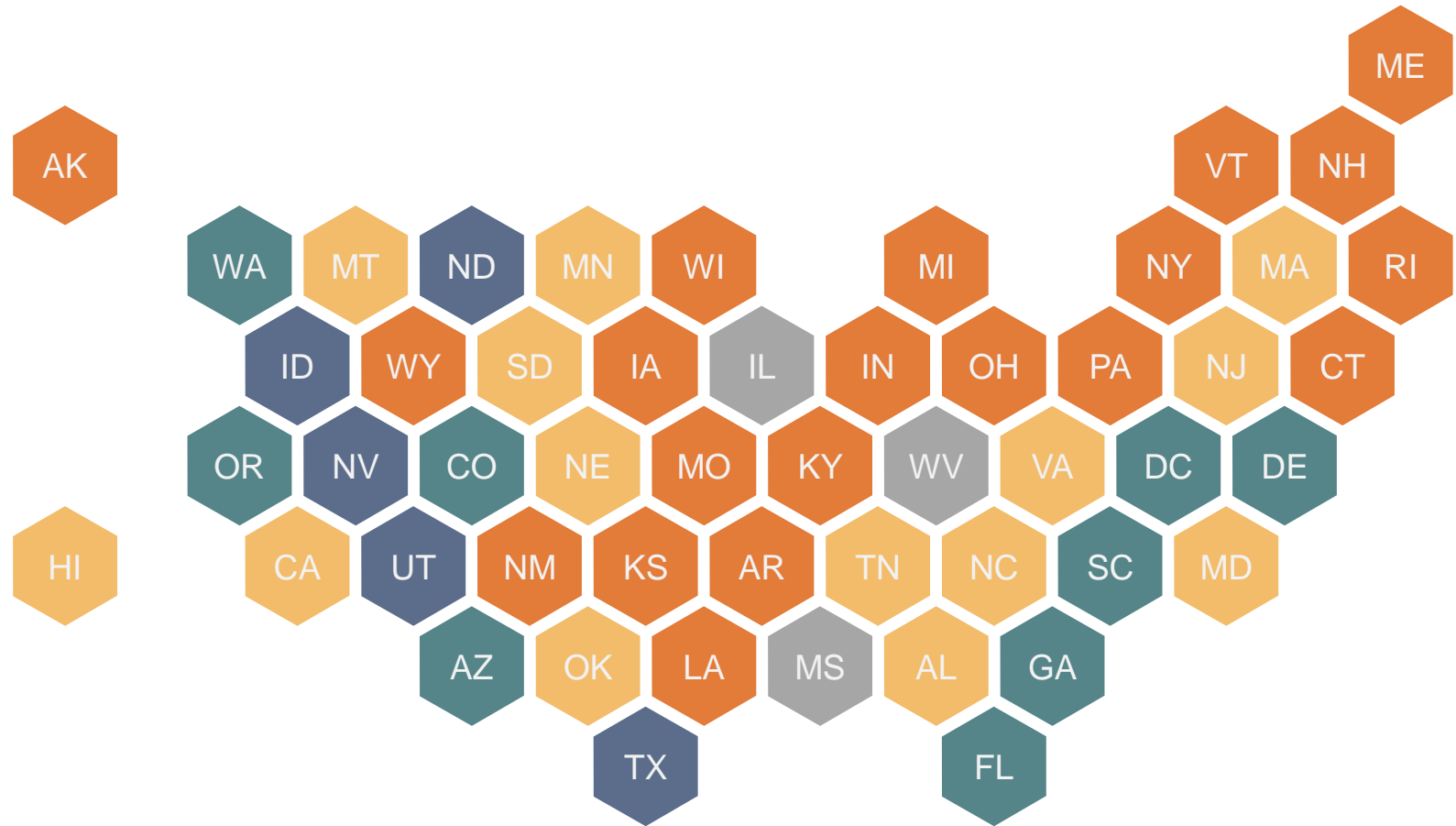
What We Know So Far: Population

2020 Census Results

Population Changes by State

Kentucky grew by 3.7%
between 2010 and 2020

- + > 15% (Very Fast Growth)
- + 10-15% (Fast Growth)
- + 5-10% (Moderate Growth)
- + 0-5% (Slow Growth)
- Population Decrease





Kentucky Redistricting Details

1

Neither gained nor lost a seat in Congress

2

May 17, 2022 primary is tied for 8th earliest in nation

3

Deadline to redistrict is in 2022

4

1 of 17 states not required by state law to use Census data for redistricting

No Two Censuses Have Been Managed Exactly The Same



- In the 1920s, Congress never reapportioned itself
- The 1960 census was the first where the census form was mailed out—but enumerators picked up completed forms from residences
- Legal requirements change—for instance, NCSL helped get P.L. 94-171 enacted in 1975
- This time is unique because of how people were counted, delays and a new disclosure avoidance technique

How People Were Counted in 2020



Online



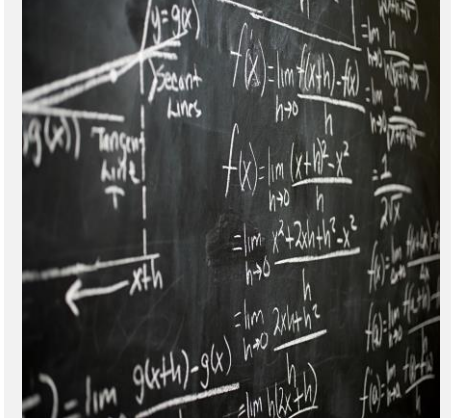
By Mail



By Phone



In-Person



Imputation

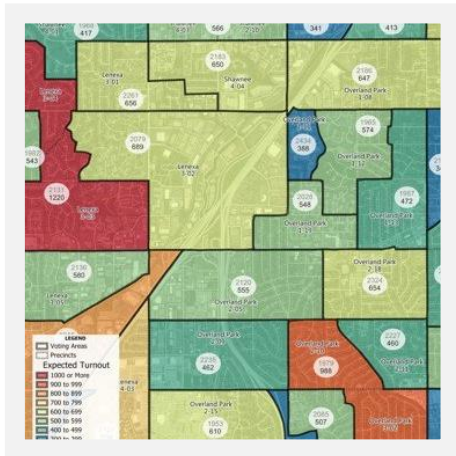
- The pandemic
- Fires
- Floods
- Policy changes



Delays

The Problem With Delays: Less Time to Redistrict

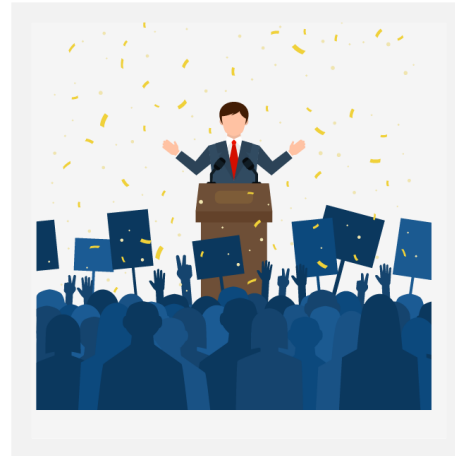
It isn't just drawing new maps



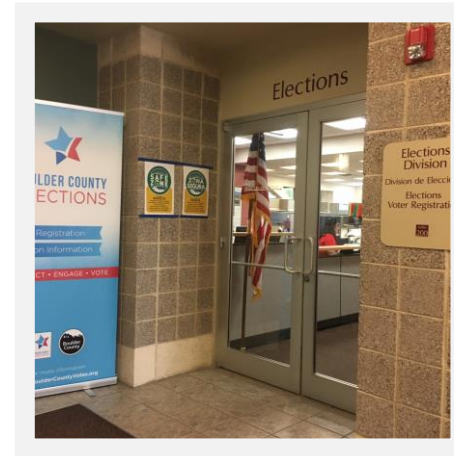
Processing



Filing Deadlines



Residency

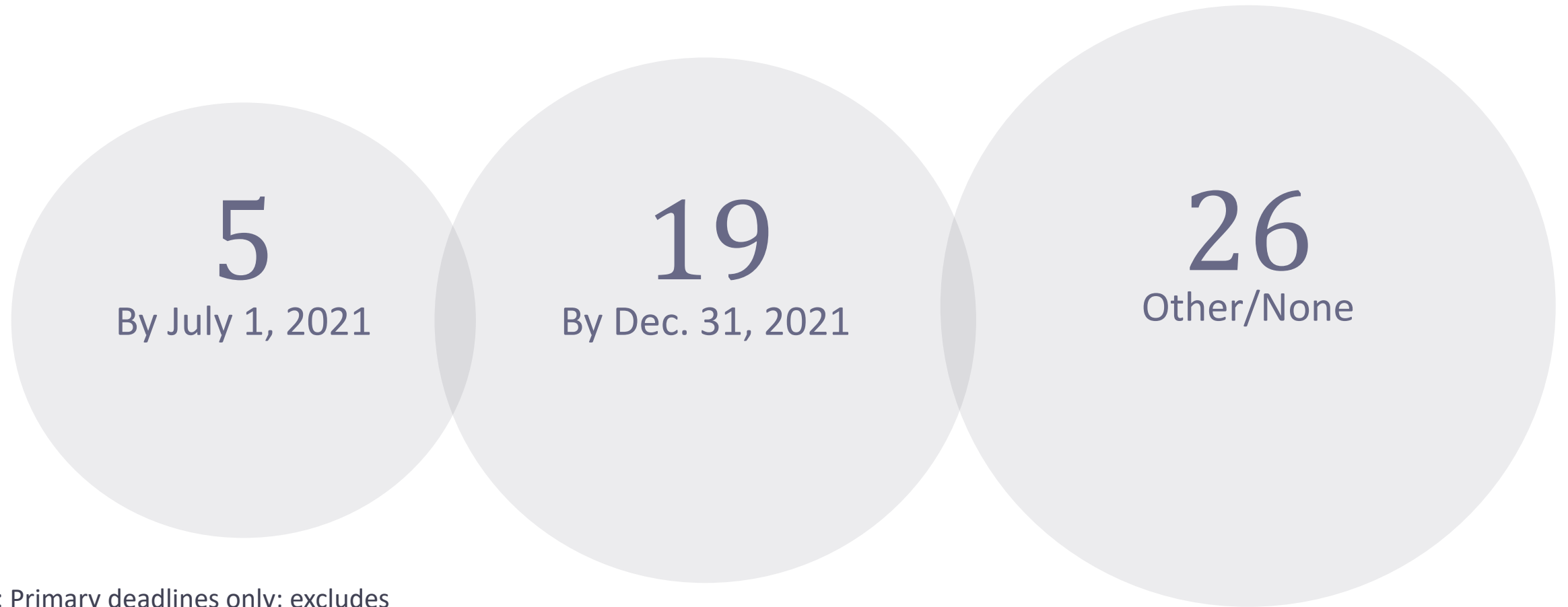


Local Prep



Primaries

State Redistricting Deadlines by Date



Note: Primary deadlines only; excludes deadlines for backup entities

Addressing Delays: Options Available to States?

A Non-Exhaustive List



Ask Courts for Relief



Alter Legal Deadline



Alter Local Elections



The “Two-Step”



Extend Sessions

Addressing Delays: State Actions to Date



Ask Courts for Relief

California
Oregon
Michigan



Alter Legal Deadline

New Jersey
New York (pending)



Alter Local Elections

Wisconsin (pending)
North Carolina



The "Two-Step"

Oklahoma
Illinois



Extend Sessions

Arkansas
Indiana

Census Data Quality



Ohio—on the ground the Census Bureau hasn't met its statutory deadlines (settled)

Alabama—the same, plus it alleges that the use of differential privacy is unconstitutional (opinion possible this week)

Illinois—two separate lawsuits challenging state's use of alternative data for redistricting (GOP; MALDEF)



Lawsuits This Cycle

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- States' Role

○ Delays

- Causes
- Impacts

Part II: Redistricting

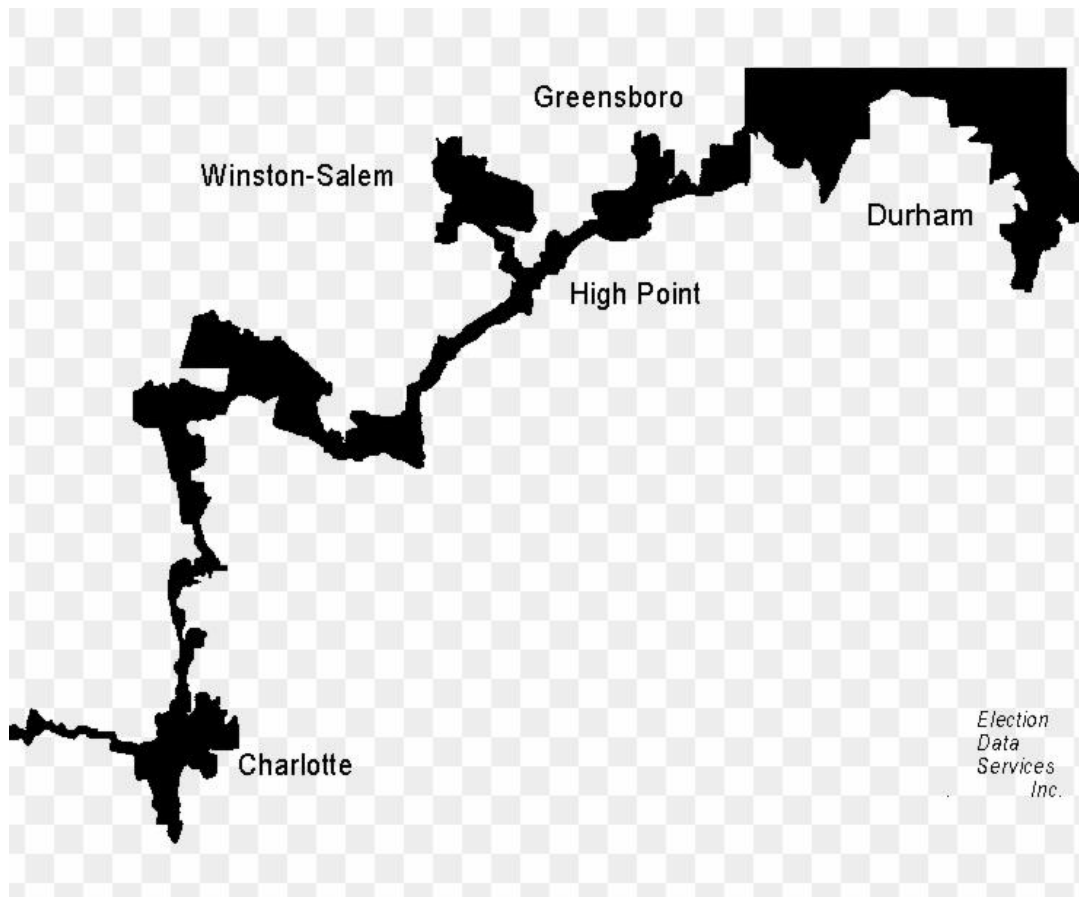
○ Law

- Racial Gerrymandering
- Partisan Gerrymandering
- One Person, One Vote
- Voting Rights Act
- Free and Fair Elections
- Kentucky Supreme Court guidance

○ Principles

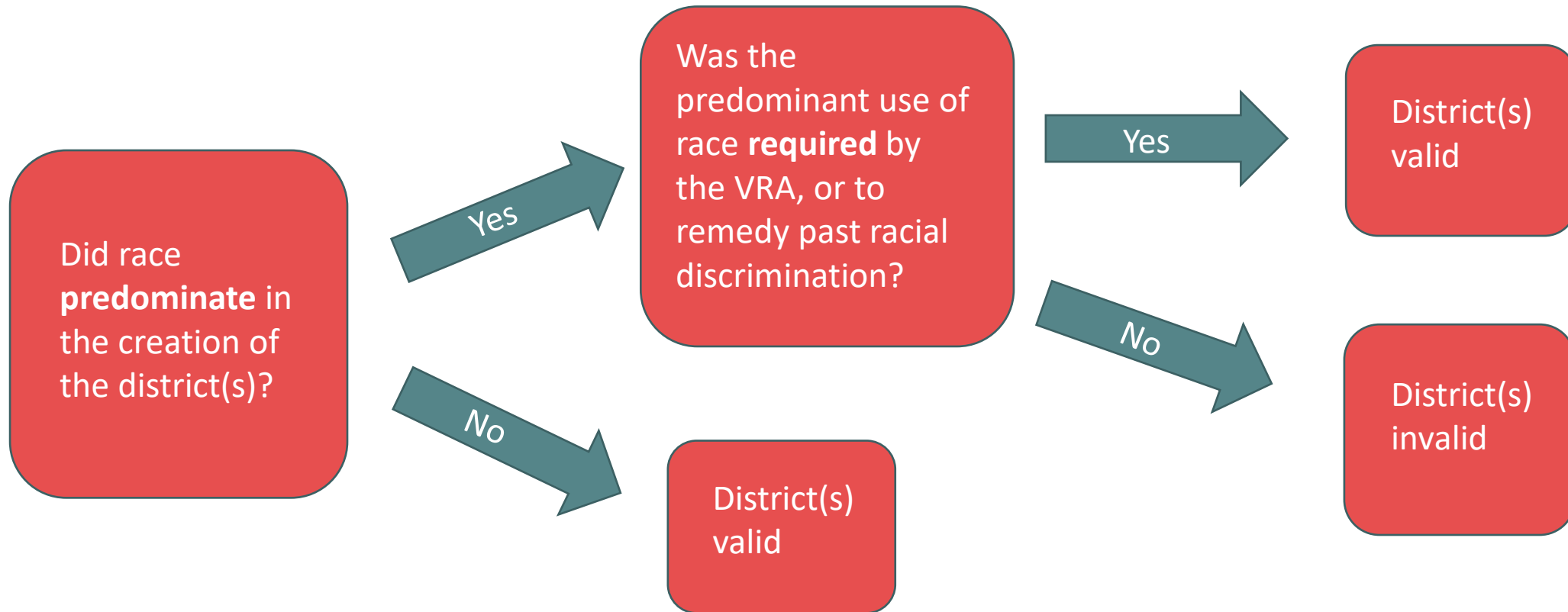
- Federal
- State

Federal Law: Racial Gerrymandering



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
 - 1990s: white plaintiffs suing for lack of compliance with traditional principles
 - 2010s: black plaintiffs suing on vote dilution claims outside scope of Voting Rights Act

Federal Law: Racial Gerrymandering

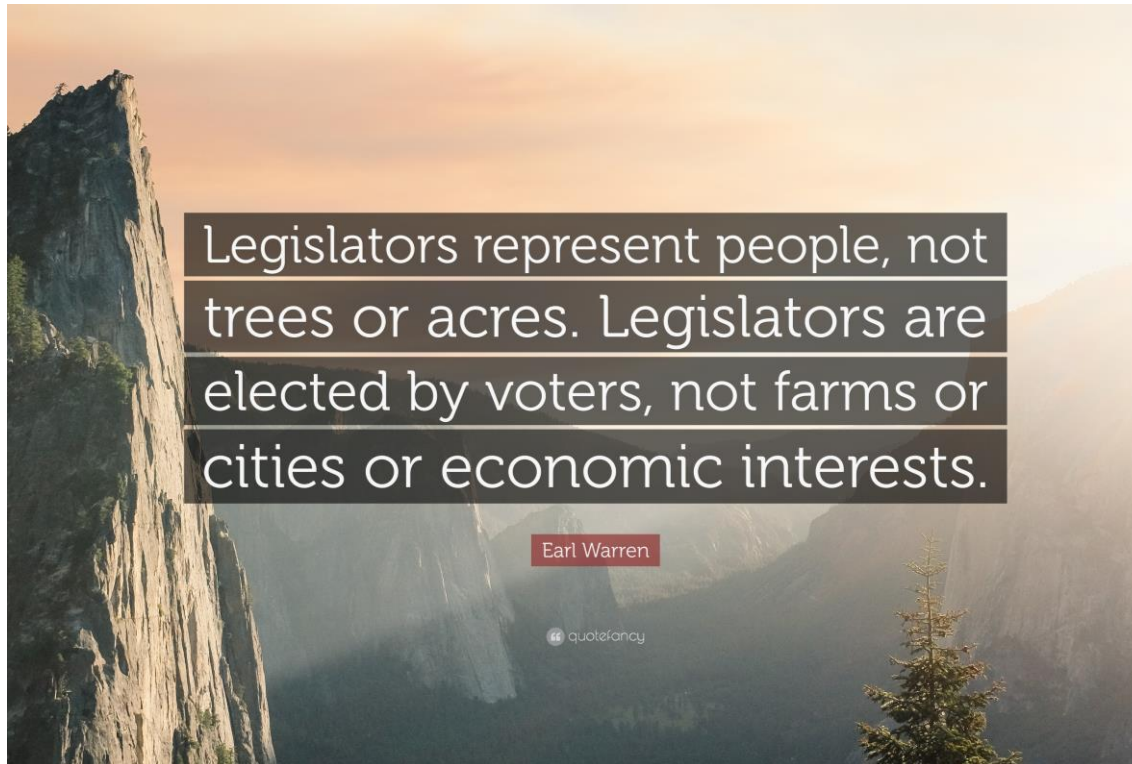


Federal Law: Partisan Gerrymandering



- Major focus at SCOTUS this decade
- Claims based on 1st and 14th Amendments
- No longer judiciable in federal courts
- But theories from these cases have successfully been used in state courts (more to come...)

Federal Law: One Person, One Vote



- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
 - Congressional Districts: *Wesberry v. Sanders* (1964)
 - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
 - Congressional Districts: Exact numerical equality
 - State Legislative Districts: +/- 5% deviation if justified by compliance with traditional criteria

Federal Law: VRA Section 2

- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
 - Plaintiffs do not need to prove discriminatory intent



Federal Law: VRA Section 2

Gingles Preconditions

Sufficiently large and geographically compact to constitute majority

Minority group is **politically cohesive**

White voters act as a bloc to defeat minority group's candidate of choice

Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

Federal Law: Section 5

SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY
GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



POLITICO



The request to stay the ruling from the Pennsylvania state Supreme Court was denied without comment or recorded dissent. | Jacqueline Martin/AP Photo

Supreme Court won't block new Pennsylvania congressional map

By ELENA SCHNEIDER and STEVEN SHEPARD | 03/19/2018 03:51 PM EDT | Updated 03/19/2018

- 30 state constitutions require elections to be some combination of free, equal and fair
- Kentucky Constitution Section 6 : “All elections shall be free and equal.”
- PA and NC courts read this clause to include prohibition on partisan gerrymandering

State Law: Kentucky-Specific Cases

- **KY Constitution Section 33:** Districts shall be “as nearly equal in population as may be without dividing any county, except where a county may include more than one district.”
- *Fischer v. State Bd. of Elections* (1994)
 - Legislative redistricting must not split more counties than necessary to comply with one person, one vote.
- *Legislative Research Comm’n v. Fischer* (2012)
 - Applying the 1994 case, struck down legislative redistricting plans for (i) failing to minimize county splits and (ii) having a population deviation greater than +/- 5% *despite* overall range being 10%



Federal Principles: Single-Member Districts

“In each State entitled . . . to more than one Representative . . . there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative.” – 2 U.S.C. 2a

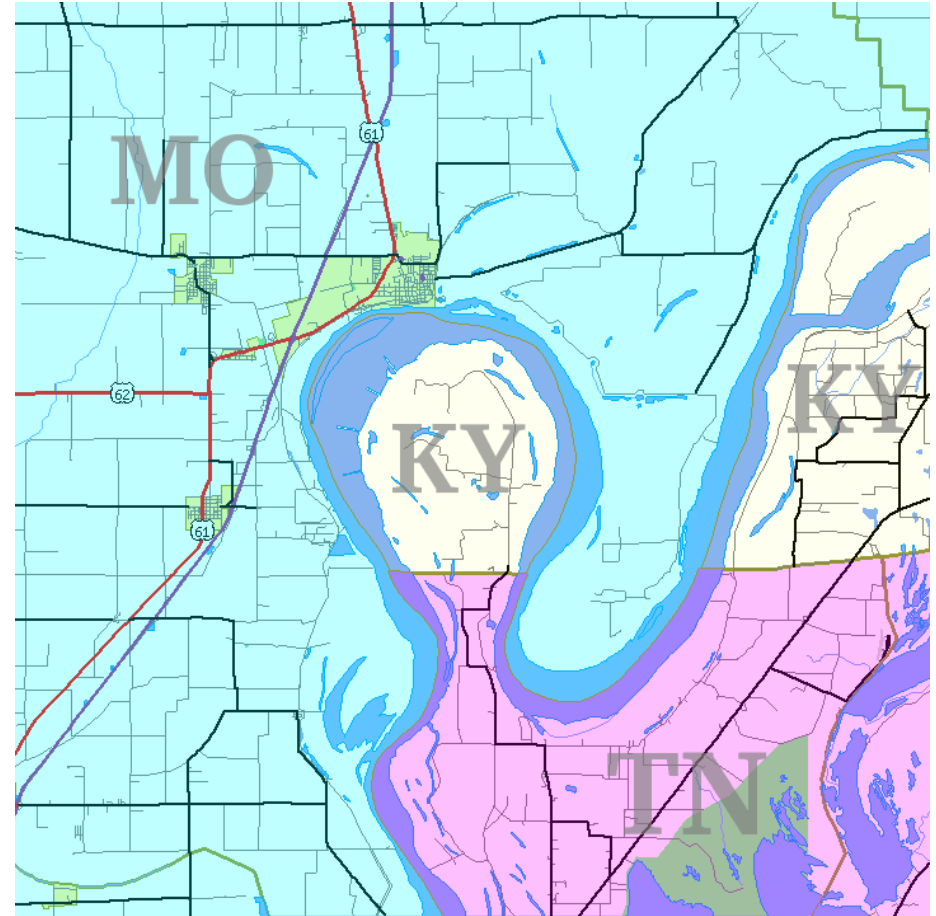
State Principles: Compactness

- Common traditional principle (40 states)
- Two common ways to measure:
 - Polsby-Popper :
$$\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$$
 - Reock :
$$\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$$



State principles: Contiguity

- Most common principle (all 50 states)
- **General Rule:** Must be able to go to every part of the district without leaving it
- Where issues arise:
 - Non-contiguous locality boundaries (usually arises with annexations)
 - Water



State Principles: Preserving Political Subdivisions

General Application

- Common traditional principle (45 states)
- Unless specified, could refer to any type of subdivision
 - County, City, School District, City Council Wards, etc.
- A stand-in for communities of interest or compactness?
- Importance of local political boundaries varies throughout the U.S.

Specific Application: Counties

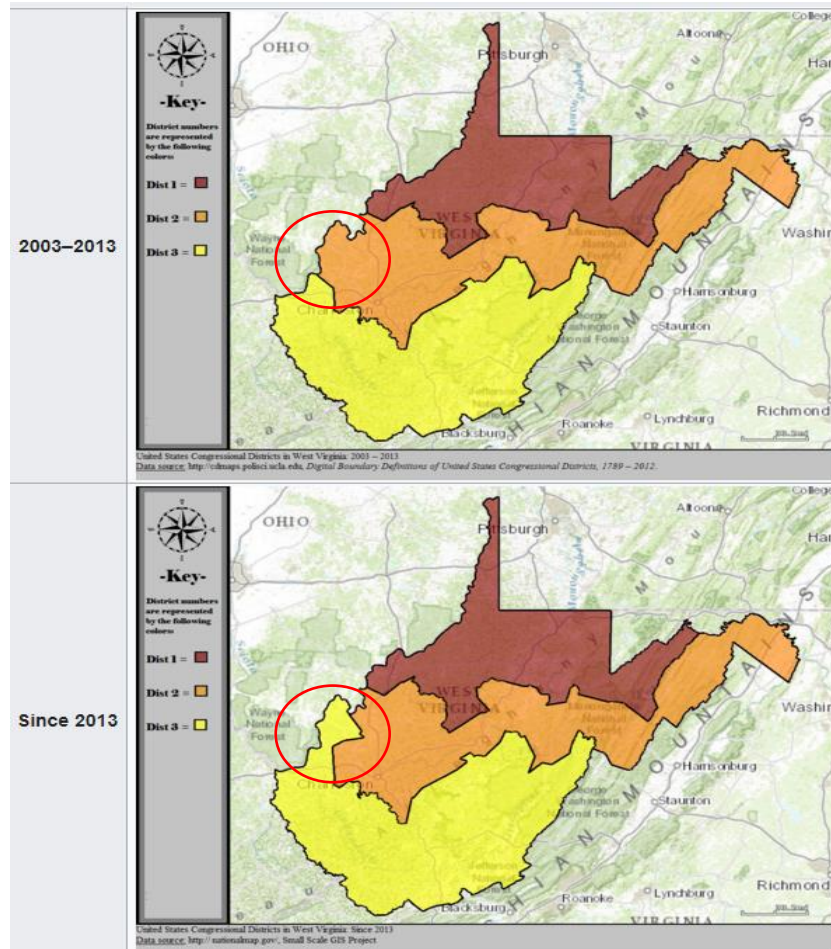
- Sometimes codified (e.g., Idaho)
- Sometimes judicial (e.g., North Carolina)
- **General Idea:** keep counties or groups of counties together wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

State Principles: Preserving Communities of Interest

- Common traditional principle (25 states)
- No agreed-upon definition
- Some states specify
 - **Alaska:** “Each house district shall . . . contain as nearly as practicable a relatively integrated socio-economic area”
 - **Missouri:** “Preserve long-standing communities of interest based on social, cultural, ethnic and economic similarities.”
 - **California:** “Communities of interest shall not include relationships with political parties, incumbents, or political candidates”



State Principles: Preserving Cores of Prior Districts



- Somewhat infrequent traditional principle (10 states)
- Rationale: don't unnecessarily break up peoples' relationships with their representatives
- Usually permitted but not required
- Some states (e.g., Arizona) explicitly reject this principle and draw districts anew each decade

State Principles: Emerging Principles

- Prohibition on favoring or disfavoring an incumbent, candidate or party (17 states)
- Prohibition on using partisan data (5 states)
- Competitiveness (5 states)
- Proportionality (2 states)

Final Thoughts: What Can Your Committee Do Now?

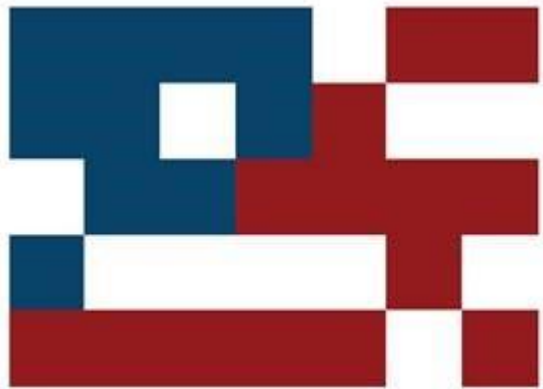
Hold Hearings

Attend NCSL's Redistricting Seminar

Begin Preliminary Data & Maps



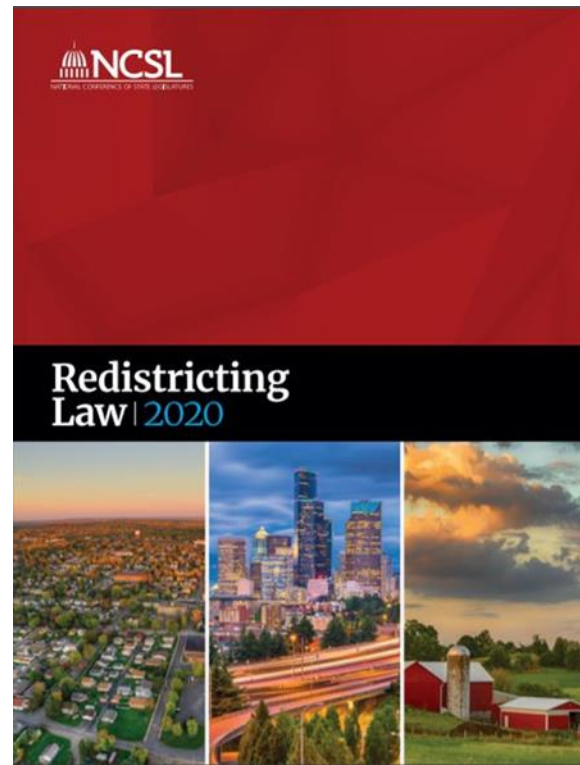
Questions?



Redistricting Seminars

Final Seminar: July 14-16, 2021

[Registration is open!](#)



THANK YOU!

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