
REDISTRICTING: 10 THINGS TO KNOW

OREGON STATE LEGISLATURE

JANUARY 25, 2021

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WHAT DOES NCSL DO?

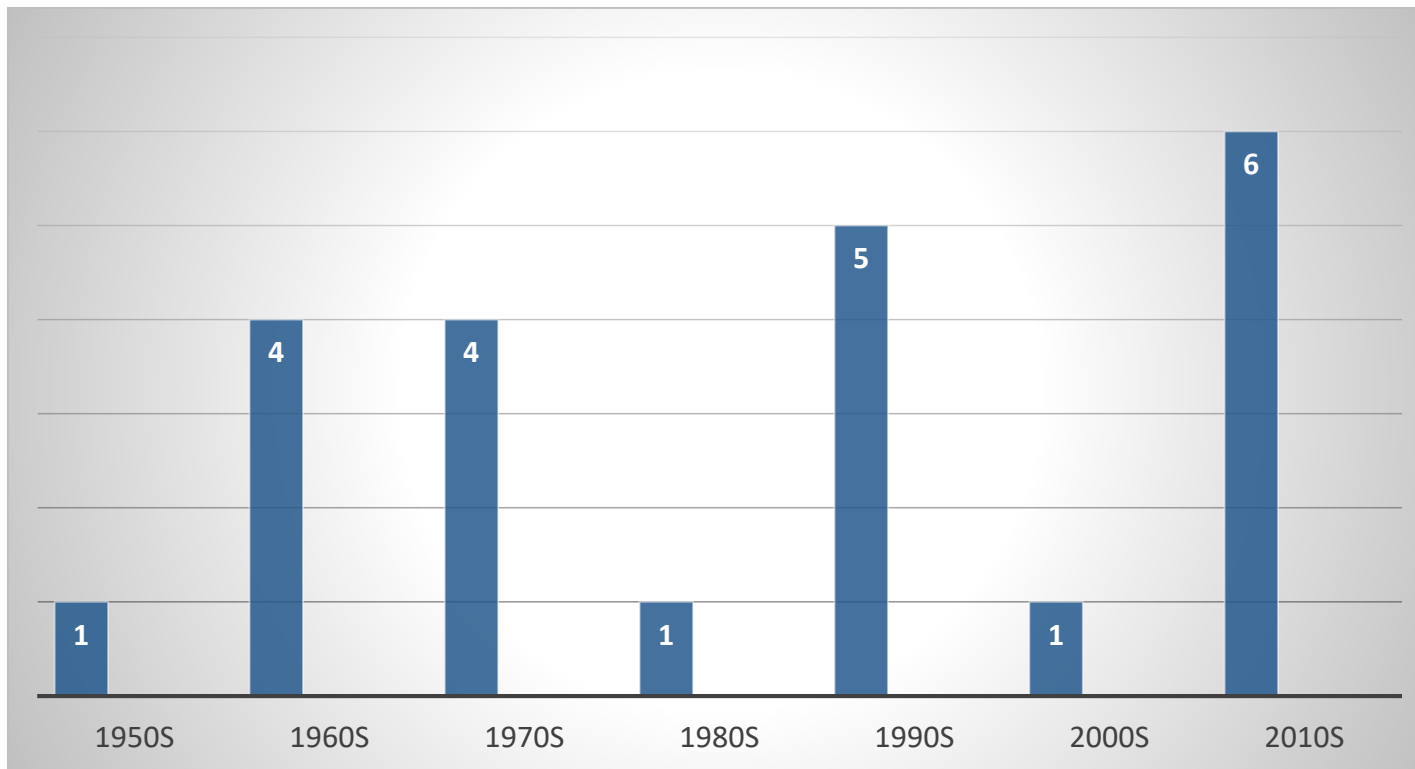
- Serves 7,383 legislators and 25,000 legislative staff
- Provides non-partisan research & analysis
- Links legislators with each other and experts
- Speaks on behalf of legislatures in D.C.



1. STATES ARE IN CHARGE OF REDISTRICTING



COMMISSIONS ADOPTED EACH DECADE



1950s: AR

1960s: MO, NJ, PA, NJ

1970s: CO, ID, IA, MT

1980s: WA

1990s: AK, HI, ID, NJ, AZ

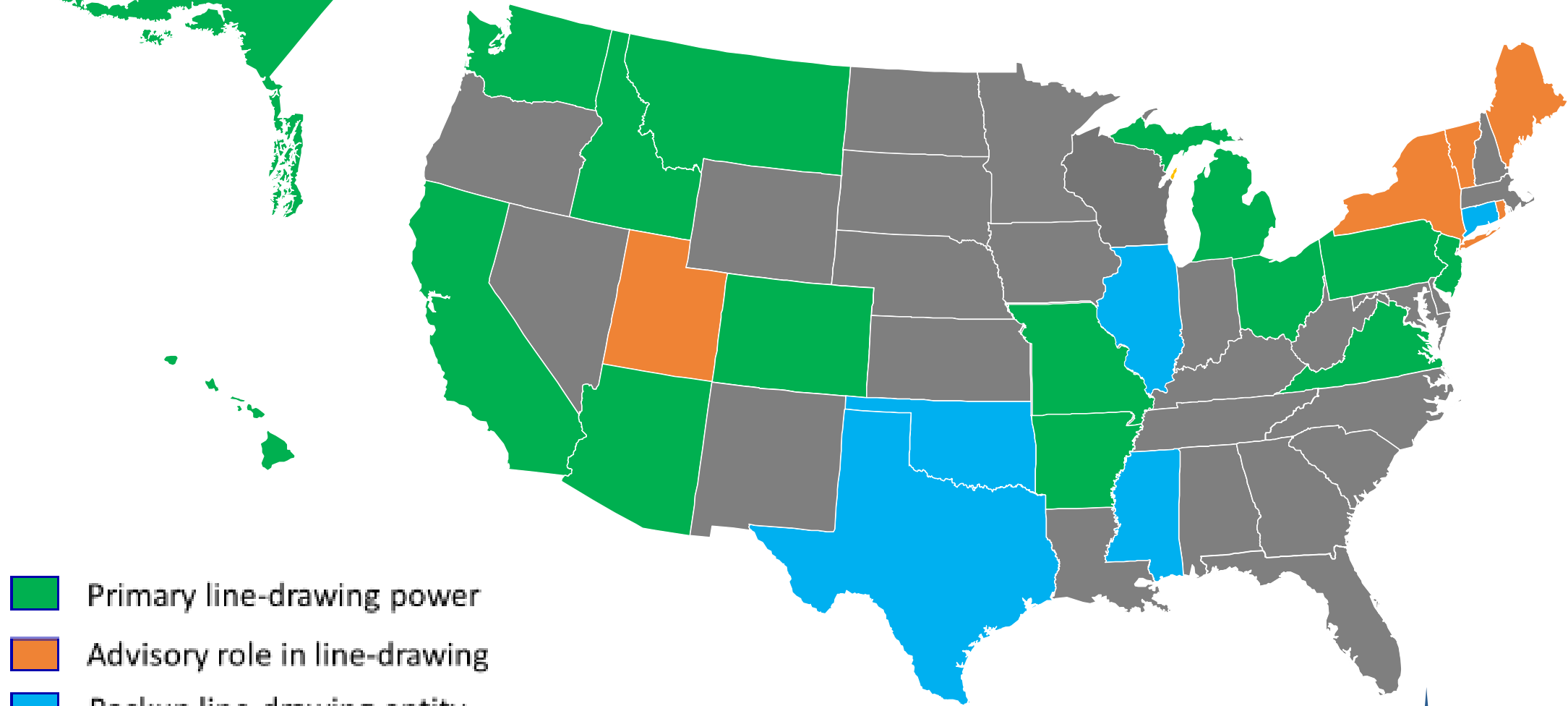
2000s: CA

2010s: CO, MI, NY*, OH,
UT*, VA



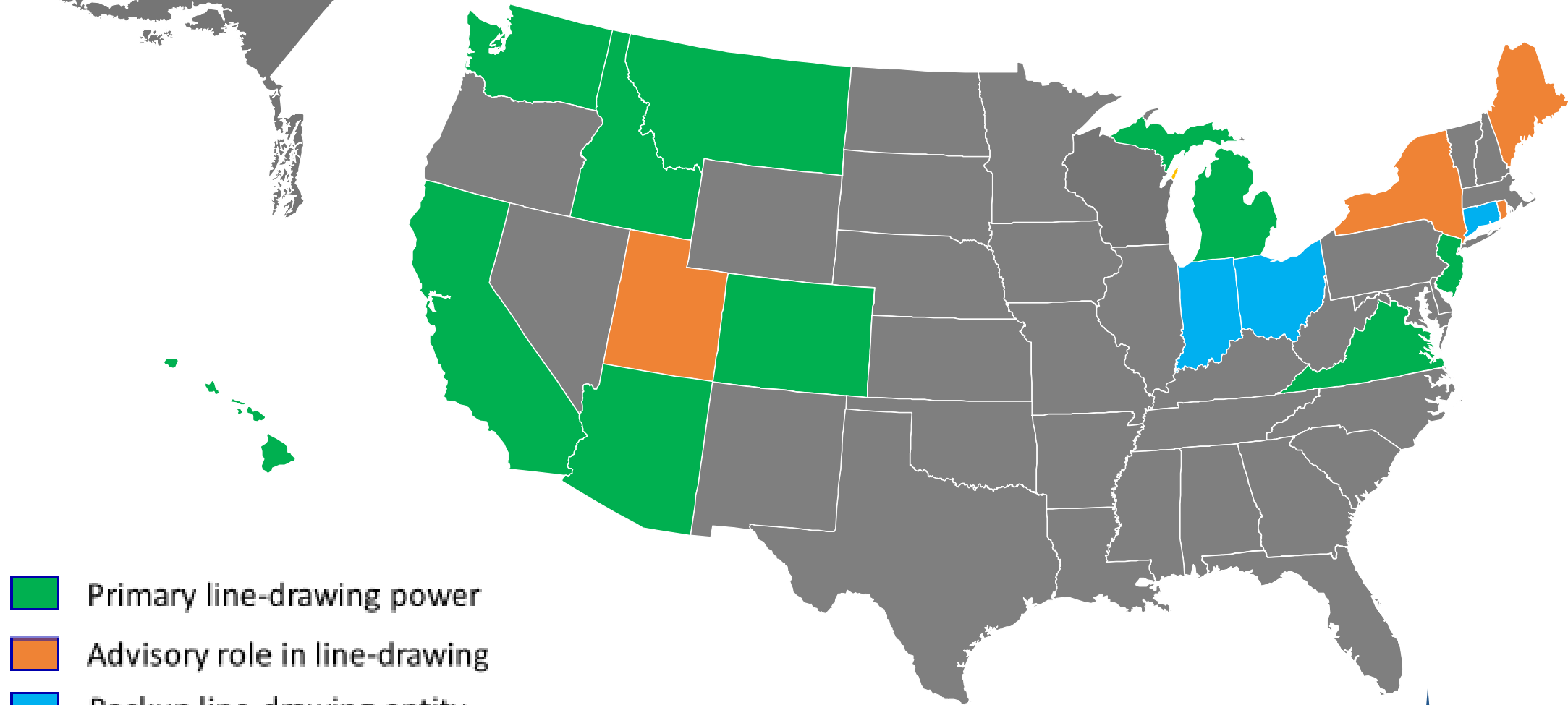
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Commissions: Legislative



- Primary line-drawing power
- Advisory role in line-drawing
- Backup line-drawing entity

Commissions: Congressional



-  Primary line-drawing power
-  Advisory role in line-drawing
-  Backup line-drawing entity

DECISIONS FOR COMMISSION CREATION

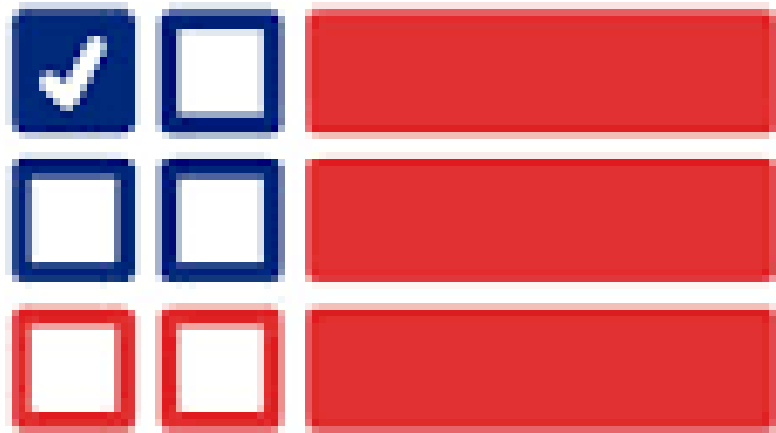
- Size
- Who appoints members (and how)
- Qualifications for members
- Legislative, congressional or both kinds of redistricting?
- What constitutes passage—a simple majority? Is bipartisan support required?
- Start and end dates
- Primary responsibility, advisory or back-up?



IOWA IS UNIQUE

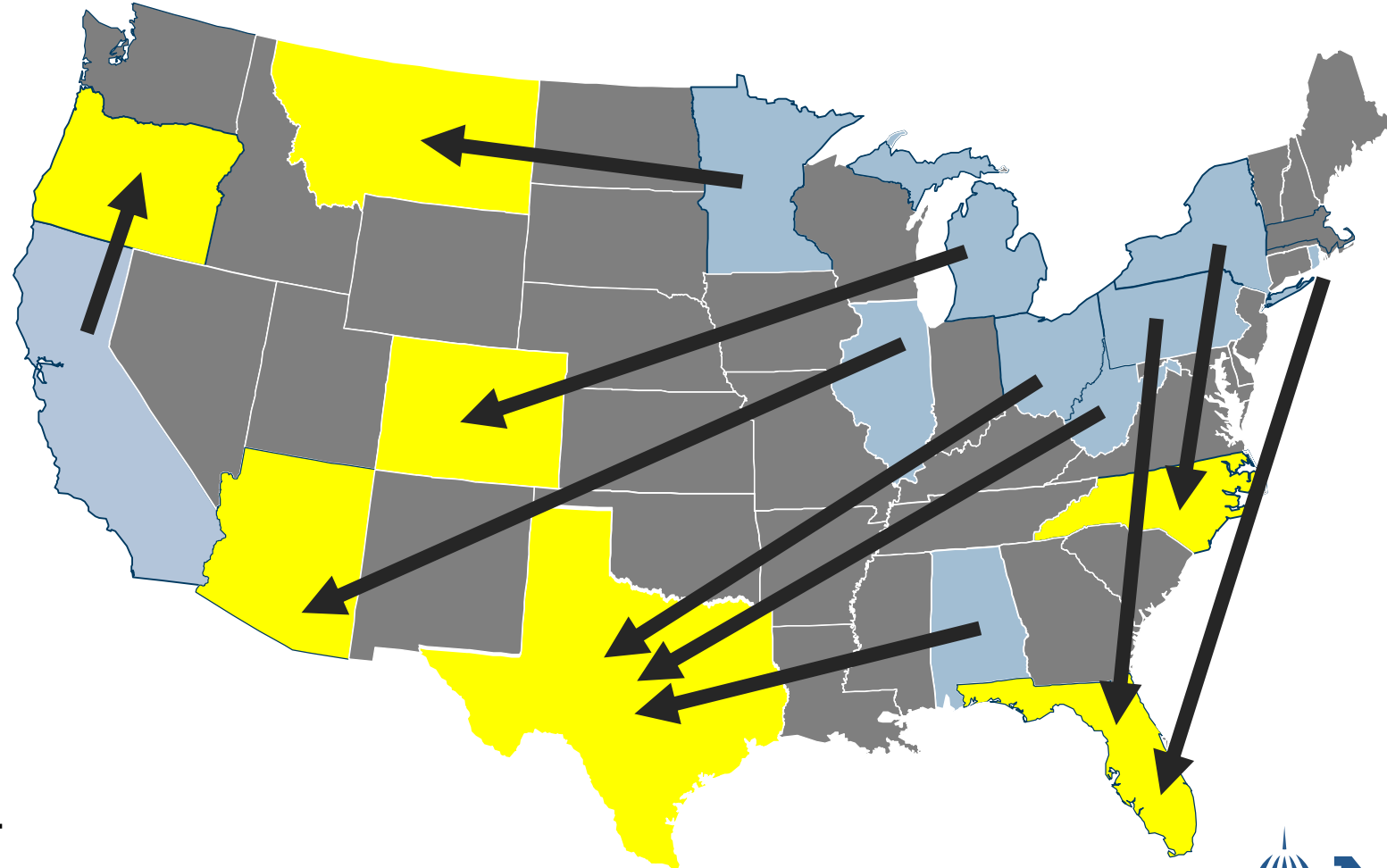
- Nonpartisan staff draw maps
- Don't use political data (e.g., incumbent addresses, election results)
- Legislature gives staff-drawn plans an up-or-down vote
- Since 1970s, the legislature has always adopted a staff-drawn map for legislative and congressional districts

2. THE CENSUS MATTERS – A LOT



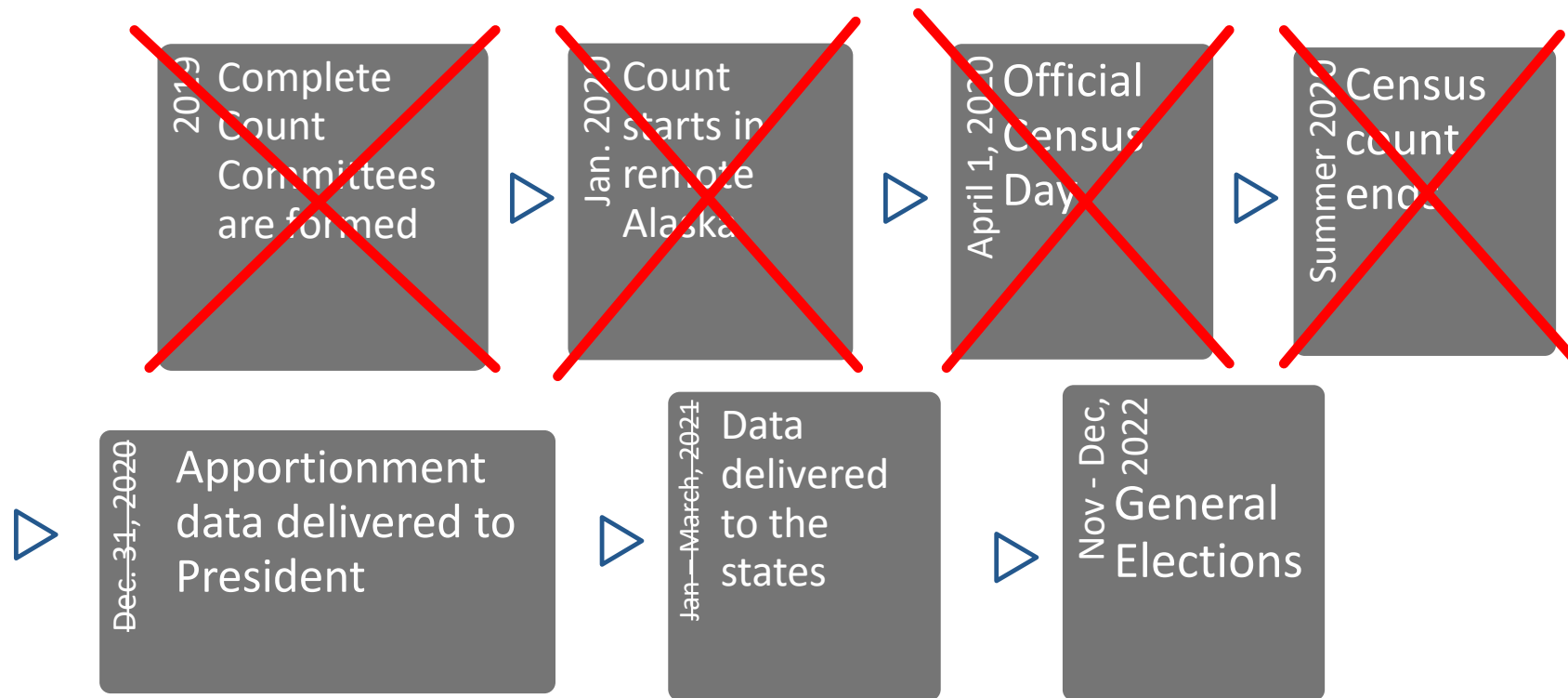
**CENSUS
COUNTS 2020**

Reapportionment 2020




Source: Pew Research Center

CENSUS TIMELINE



DATA QUALITY—NEVER PERFECT, ALWAYS IMPROVING

Figure 3: For 2020, the Bureau Has Various Plans to Resolve Multiple, Missing, Incomplete, and Conflicting Responses after Data Collection

DATA QUALITY ISSUE	MULTIPLE	MISSING	INCOMPLETE	CONFLICTING
DESCRIPTION	 <p>More than one response is received for the same address.</p>	 <p>No response is obtained from a household even following in-person follow-up.</p>	 <p>A household response is obtained, but not all questions have been answered.</p>	 <p>Information provided as part of a household response conflicts with other information in the same response.</p>
PLANNED RESOLUTION	Determine who should be counted at the address using the Bureau's Primary Selection Algorithm, a longstanding automated routine.	Determine whether an address exists, is occupied or vacant, and how many people live there using a statistical technique the Bureau refers to as count imputation, which draws data from similar nearby households.	Fill in missing answers and resolve conflicting answers using a technique the Bureau refers to as edit and characteristic imputation, which draws data from the same household response, prior census and other administrative records, or similar nearby households.	
KEY CHANGE FROM 2010	Updated based on Bureau's review of various response scenarios and data from past censuses and census tests.	Enhanced by use of administrative records.		

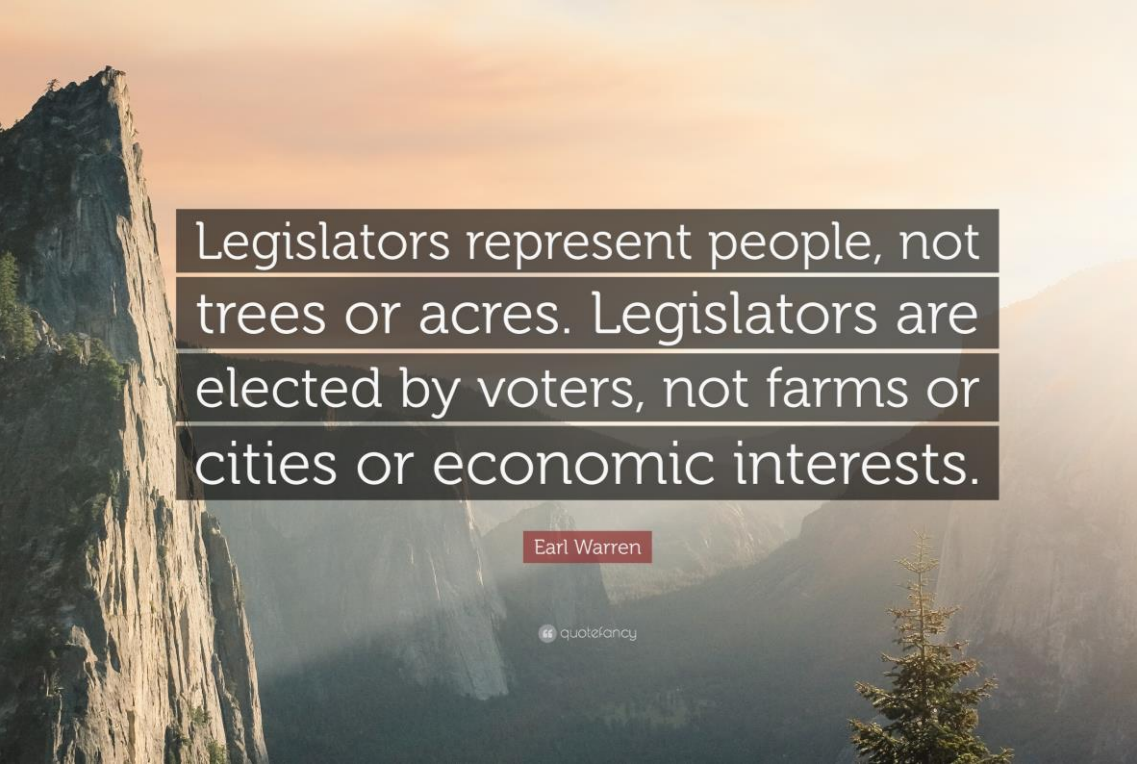
Source: GAO analysis of U.S. Census Bureau documentation. | GAO-20-282

- **Data completeness** - See GAO Report, Changes Planned to Improve Data Quality (GAO – 20 – 282)
- **Differential privacy** – See NCSL's webpage, Differential Privacy for Census Data Explained

3. EQUAL POPULATION IS THE FIRST PRINCIPLE

ONE PERSON
ONE VOTE

ONE PERSON, ONE VOTE



Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.

Earl Warren

quoteancy


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



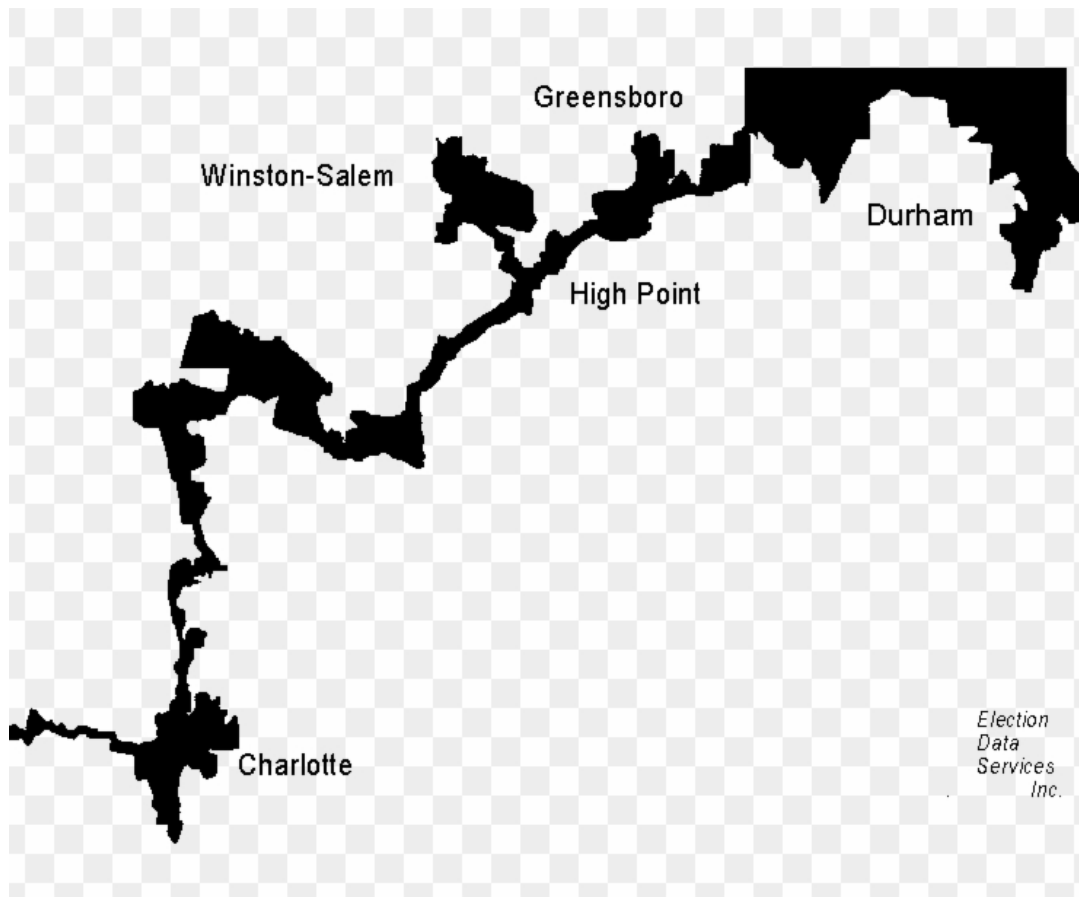
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4. CONFLICTING RACE PRINCIPLES MUST BE RECONCILED

THE **VOTING** RIGHTS ACT OF **1965**

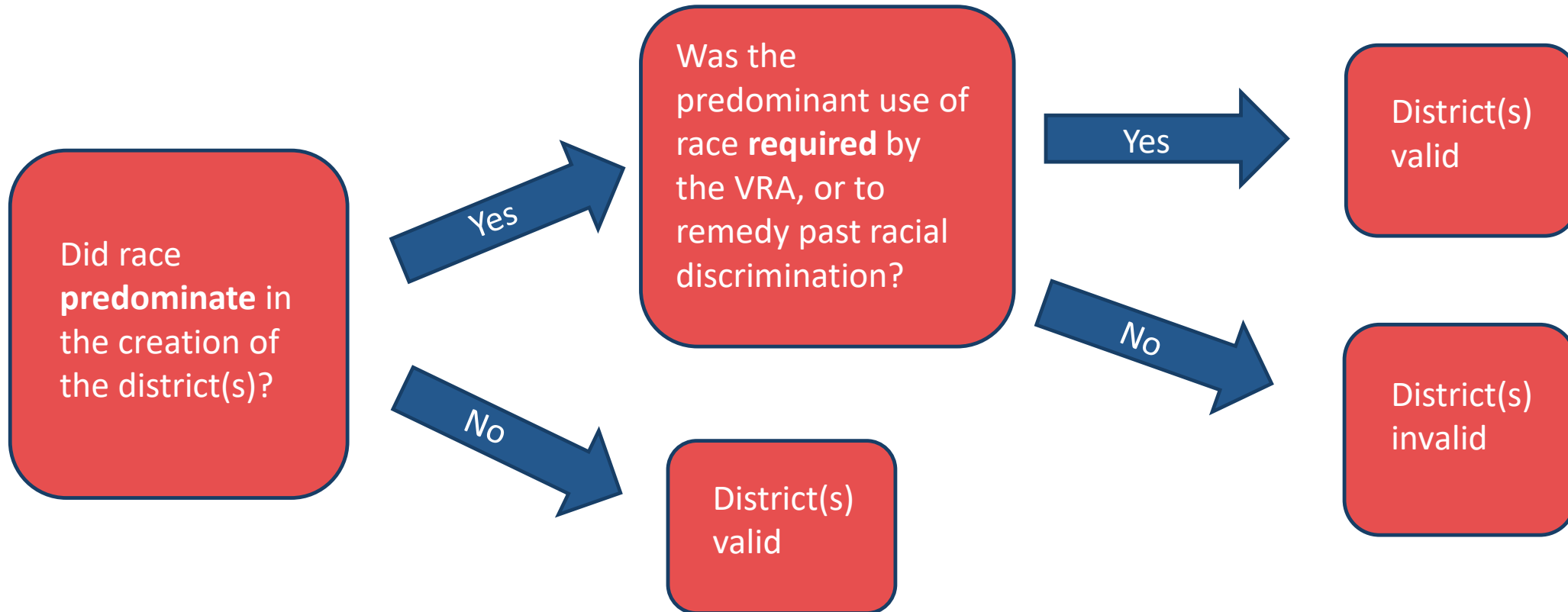


RACIAL GERRYMANDERING: DOCTRINE



- 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

RACIAL GERRYMANDERING: ANALYSIS



VOTING RIGHTS ACT: 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



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VOTING RIGHTS ACT: SECTION 2

- Applies nationwide
- Prohibits vote dilution
- Requires litigation (not prophylactic)
- Burden of Proof: discriminatory effect
 - Plaintiffs do not need to prove discriminatory intent



VOTING RIGHTS ACT: 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

5. STATE CRITERIA FOR REDISTRICTING ARE NOT STATIC

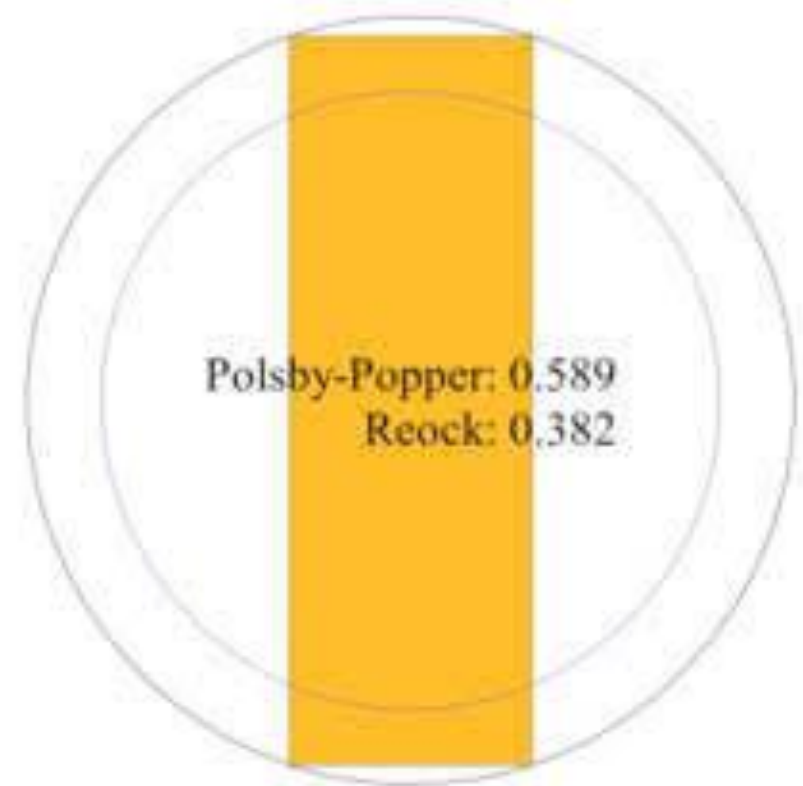


COMPACTNESS

- Common traditional principle (40 states)
- Two common ways to measure:

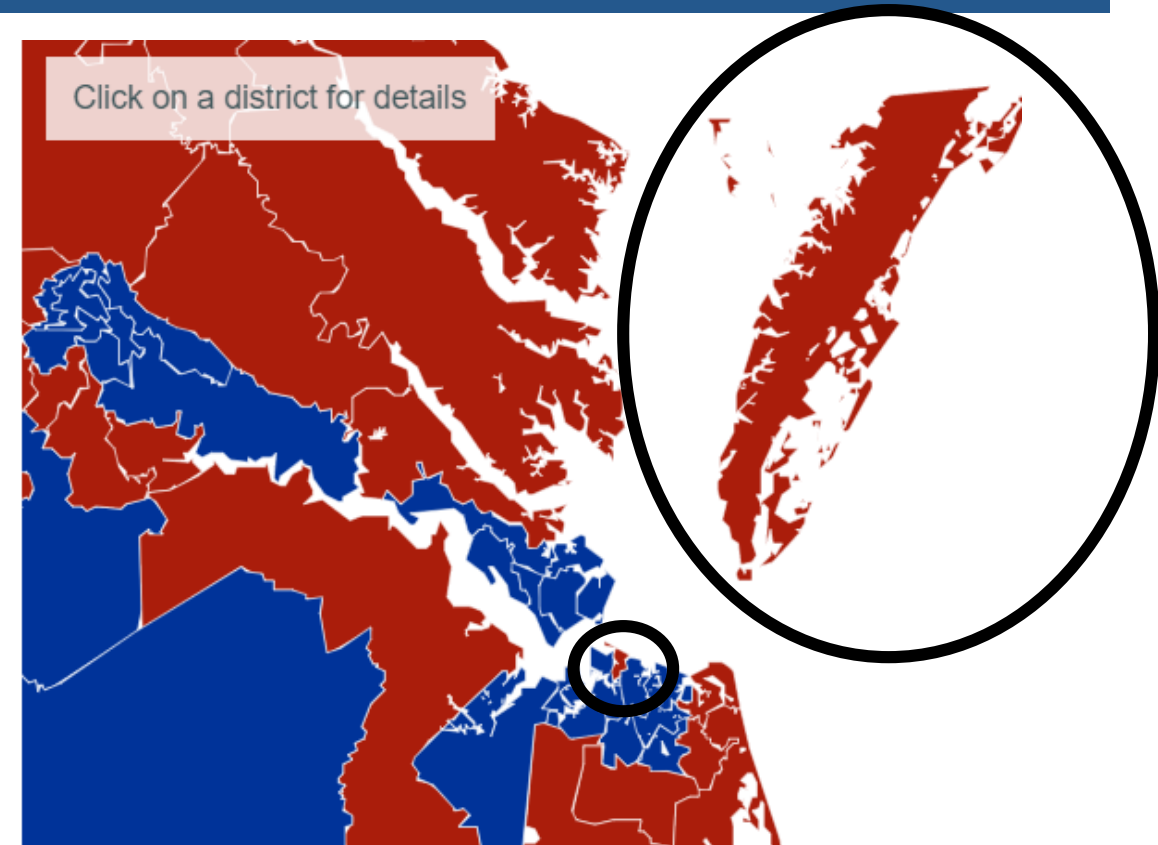
- Polsby-Popper :
$$\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$$

- Reock :
$$\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$$



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



PRESERVING POLITICAL SUBDIVISIONS

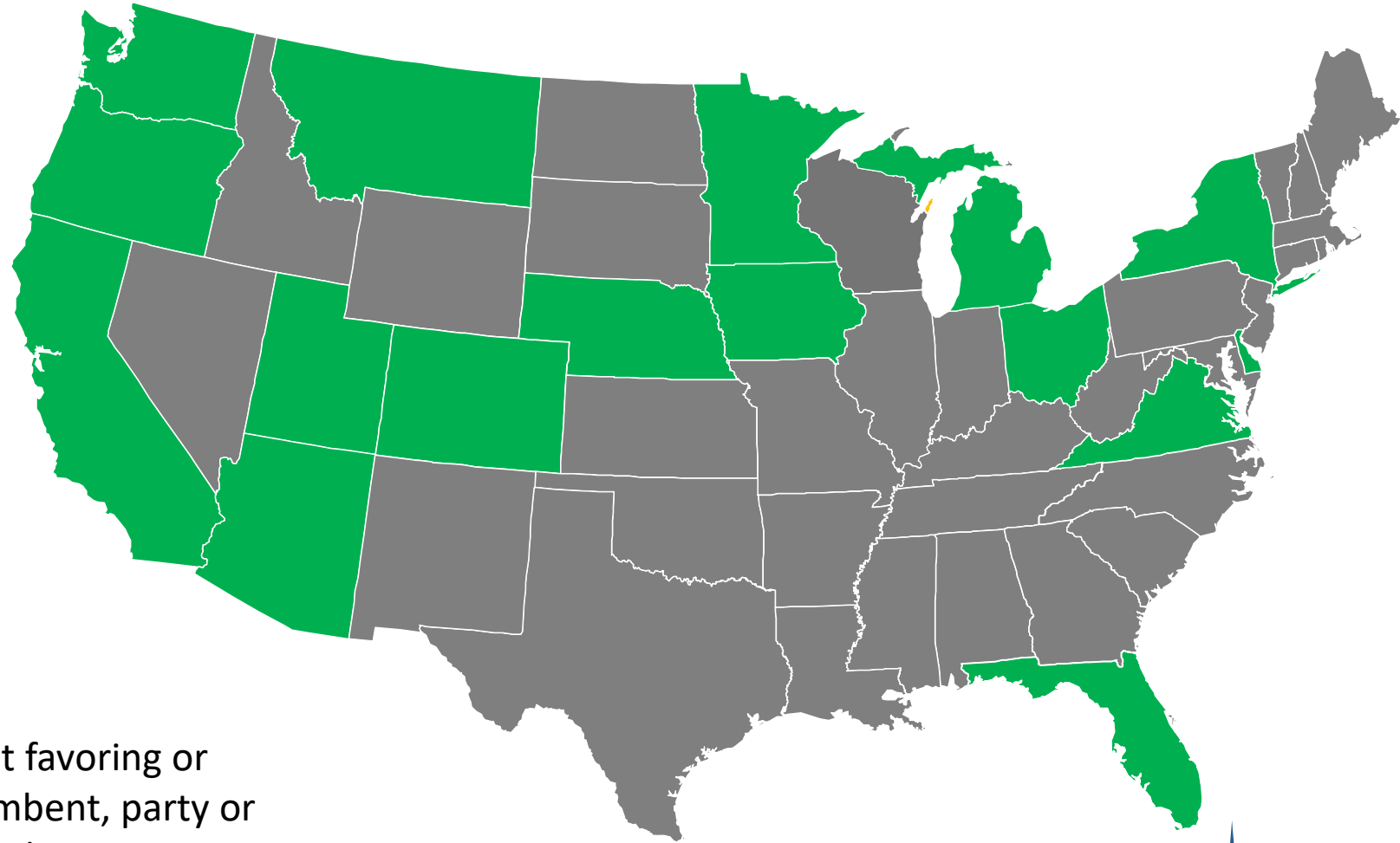
General Idea: keep counties and/or cities whole wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

- Also groups of counties, legislative districts, cities, school districts and other jurisdictions should be kept whole (when possible)
- This is measurable, and courts like fewer “splits”

PRESERVING COMMUNITIES OF INTEREST

- 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”





17 states prohibit favoring or disfavoring an incumbent, party or person when redistricting

OTHER PRINCIPLES

- Preserving Cores of Prior Districts (11 states)
- Avoid Pairing Incumbents (11 states)
- Prohibition on using partisan data (5 states)
- Seeking Competitiveness (4 states)
- Proportionality (1 state—Ohio)
- Symmetry (0 states—repealed by Missouri in 2020)

BALANCING CRITERIA RULES: FACTORS TO CONSIDER



- Supremacy Clause
- Are state criteria ranked?
- Check state court precedents

6. COURTS ARE ALWAYS BUSY WITH REDISTRICTING



~~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...)

PARTISAN GERRYMANDERING CLAIMS LIVE ON?

THE WALL STREET JOURNAL

Supreme Court Denies Bid to Keep GOP-Friendly Districts in Pennsylvania

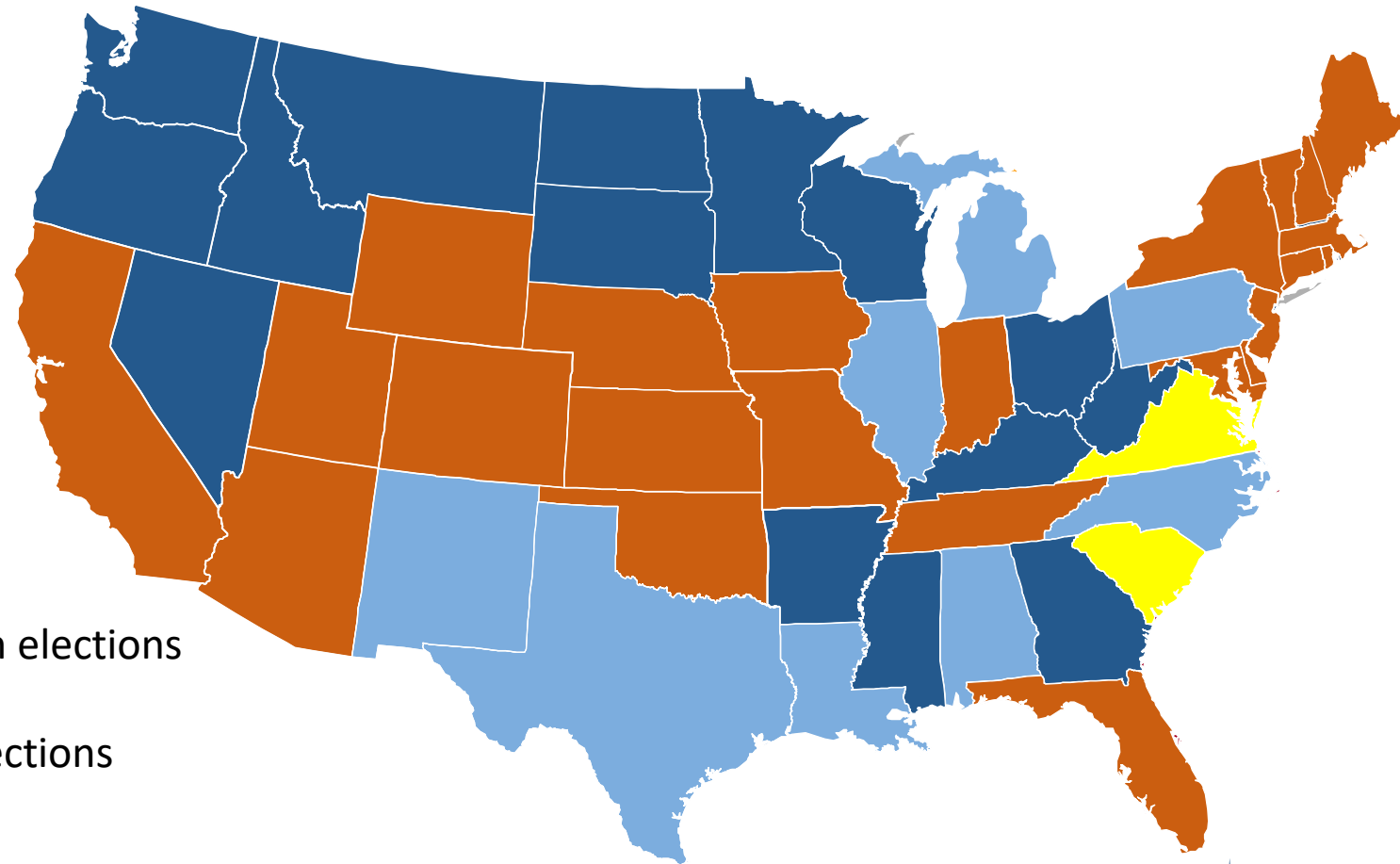
Democrats gain potential midterm-election advantage after court declines to block a ruling that state districts were unlawfully gerrymandered



- 30 state constitutions require elections to be some combination of free, equal and fair
- Oregon Constitution Art. II, Section 1: “All elections shall be free and equal.”
- PA and NC courts read this clause to include prohibition on partisan gerrymandering

State Courts are Just as Active

(How State Supreme Court Justices are Selected)



Dark Blue: selected in nonpartisan elections

Light Blue: selected in partisan elections

Yellow: elected by the legislature

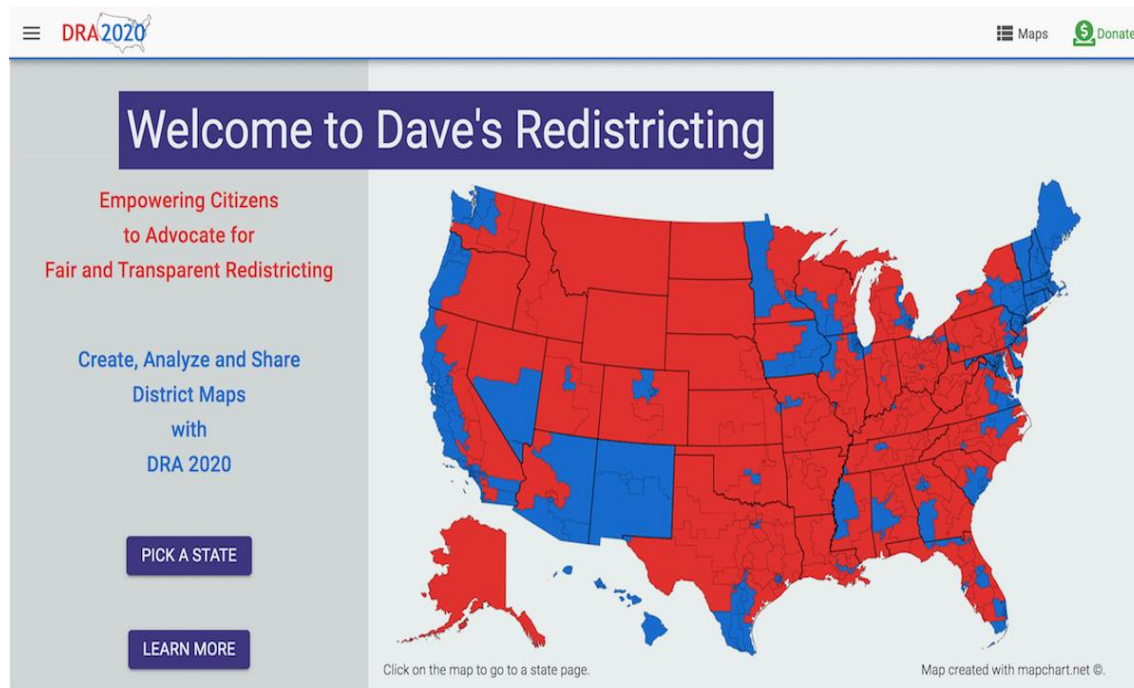
Burnt orange: appointed

7. DATA MATTERS

- What data to use?
- How to account for incarcerated people?
- How to hand the data to your election officials?



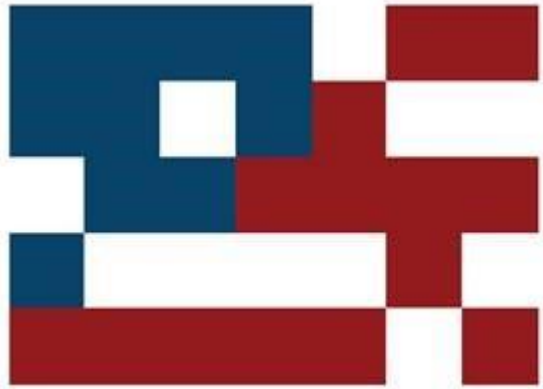
8. THE PUBLIC WANTS TO (AND WILL) PARTICIPATE



9. REDISTRICTING DOES INVOLVE POLITICS



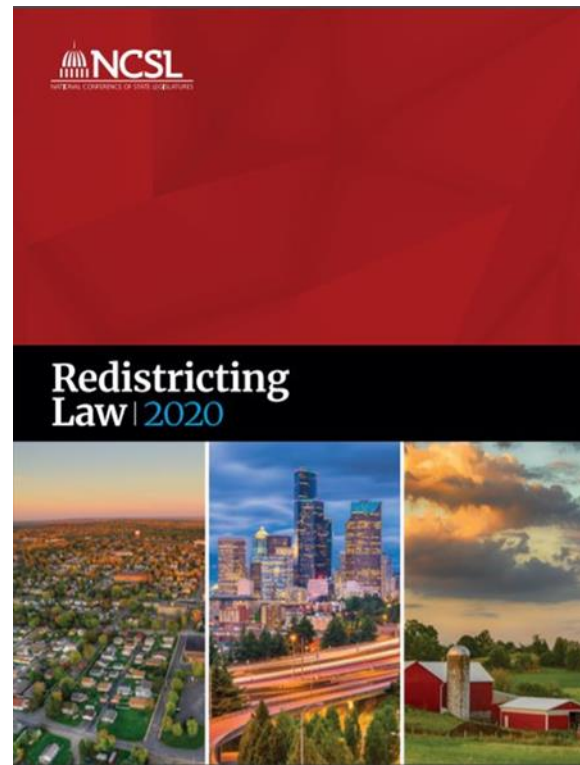
10. NCSL RESOURCES



Redistricting Seminars

Final Seminar: Summer 2021

More information forthcoming



NCSL Web Resources

*Into The Thicket:
A Redistricting Starter Kit*

*Redistricting Systems:
A 50-State Overview*

*2020 Census Delays and the
Impact on Redistricting*



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