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Redistricting 101

Legal Concepts That Apply to the Work of
California's Citizens Redistricting Commission

Prof. Justin Levitt
August 28, 2019

Redistricting background

- Professor of Law and Associate Dean for Research at Loyola Law School
- Deputy Assistant Attorney General for Civil Rights, U.S. Dep't of Justice
- Counsel at Brennan Center for Justice at NYU School of Law

- Testimony related to redistricting before U.S. Senate and House, U.S. Civil Rights Commission, legislative bodies in 8 states
- Expert witness in California Voting Rights Act litigation
- Amicus participation in 11 SCOTUS redistricting cases
- Author of 15 scholarly publications on redistricting
- Administrator of All About Redistricting website tracking developments
- Informal counsel for legislators and administrators of both major parties and neither (and those whose affiliation I do not know), and of individuals and nonprofits seeking legal compliance
- Training of Applicant Review Panel and first 8 California Commissioners, 2010



Today's conversation

Focus on the laws that Commissioners will need to apply, to let you assess the traits that Commissioners need to have

- Specific to laws governing California districts
- Specific to Congress, State legislature, Board of Equalization (Commission doesn't draw local district lines)
- Legal requirements and concepts, but not legal jargon
- Requirements of California law, not advocacy



Fleshes out the
“relevant analytical skills”
Commissioners need



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- Why ?
- Where ?
- What ?
- When ?

Who, of course, is up to you...



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Redistricting

Drawing (and re-drawing) the lines that determine which voters are represented by each legislative seat



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Why redraw district lines?



- Communities grow and shrink
- People are born, and die, and move
- Areas where there were once roughly the same number of people ... become lopsided



Constitutional mandate to redraw lines

Baker v. Carr, 1962



Districts have to provide roughly equal representation



And so...

1990	Census
1991	Redistricting
2000	Census
2001	Redistricting
2010	Census
2011	Redistricting
2020	Census
2021	Redistricting



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- Why ?
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Who, of course, is up to you...



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Equal representation



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Equal representation

- Federal constitution
- State constitution
- State statute



Equal representation: federal

“Reasonably equal” number of people in each district

Congressional districts

- Art. I, § 2
- “Small” differences OK if for legitimate reason

State districts

- Equal Protection Clause
- < 10% difference OK if for legitimate reason



Calculating equal population

	Population	Deviation
District 1	1,010	+ 1.0 %
District 2	1,035	+ 3.5 %
District 3	980	- 2.0 %
District 4	940	- 6.0 %
District 5	1,005	+ 0.5 %
District 6	990	- 1.0 %
District 7	965	- 3.5 %
District 8	1,020	+ 2.0 %
District 9	1,050	+ 5.0 %
District 10	995	- 0.5 %

Total population 10,000
Average ("ideal") pop. 1,000

Total deviation 11.0%



Equal representation: state

“Reasonably equal” number of people in each district

Congressional districts

- “As nearly as is practicable”

State districts

- Reasonably equal population, “except where deviation is required to comply with the federal Voting Rights Act or allowable by law”



The 2010 Commission struggled here

State districts

- Reasonably equal population, except where deviation is required by Voting Rights Act or allowable by law
- 1973 California Supreme Court set rules for *itself*: $\pm 2\%$. (old California Constitution language now superseded)
- 2010 Commission:
 - $\pm 2\%$
 - $\pm 5\%$, with explanation $> 2\%$
 - as little as possible, up to 5% total
 - 1% total
 - 2% total, with more for Voting Rights Act
 - 2% total (final)



Every decision has tradeoffs

- Maintaining reasonably equal population
- Providing equitable opportunity for minority voting power
- Preserving city / county / neighborhood / community bounds
- Preserving compact districts
- Preserving districts that are nested



Equal representation: upshot

- The law allows the Commission to set a default threshold for population variation, but the standard need not be tiny
- Particularly for state districts, the law requires the Commission to depart from the default to achieve other objectives

“except where deviation is required to comply with the federal Voting Rights Act or allowable by law”



Equal representation: one more thing



Lassen County: 1% African-American, 11% Latino
Lassen prisons: 27% African-American, 35% Latino

27% of total county population



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Equal representation: corrections

Cal. Elec. Code § 21003:

“The Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person as residing at his or her last known place of residence. . . .”



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Equal representation: traits

Commissioners will:

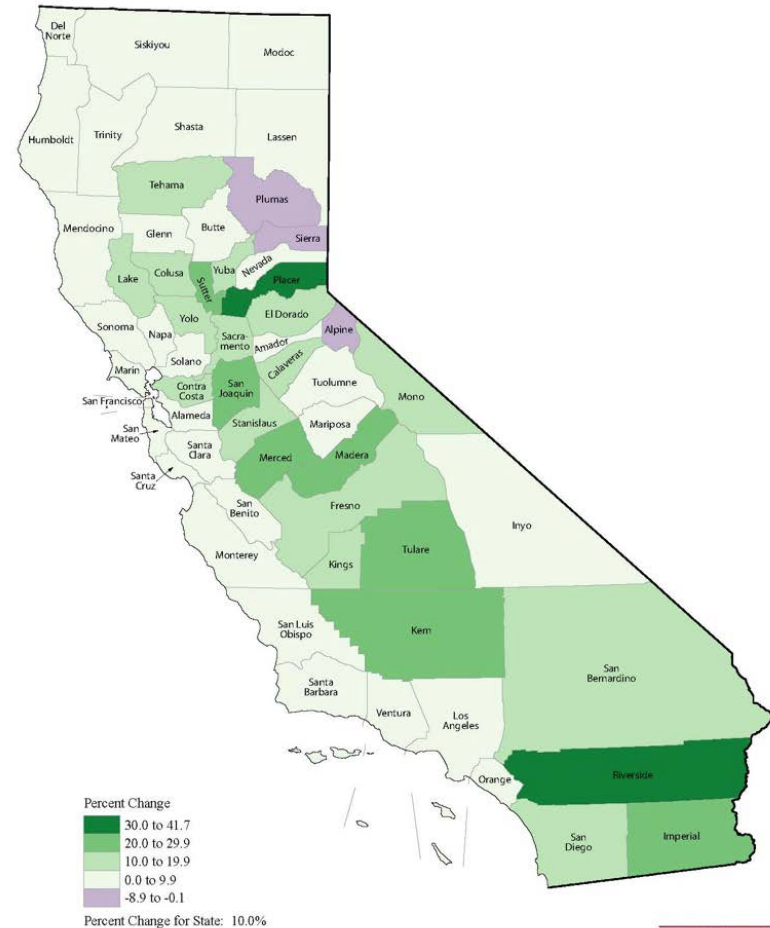
- Need basic numeracy (at least to review staff calculations)
- Need understanding of limits of data
- Need comfort with notion that “cleanest” answer isn’t always best (and may not even be legal)



Equal representation: traits

Nice to understand different ways to present data

CALIFORNIA - 2010 Census Results
Percent Change in Population by County: 2000 to 2010



Race and ethnicity



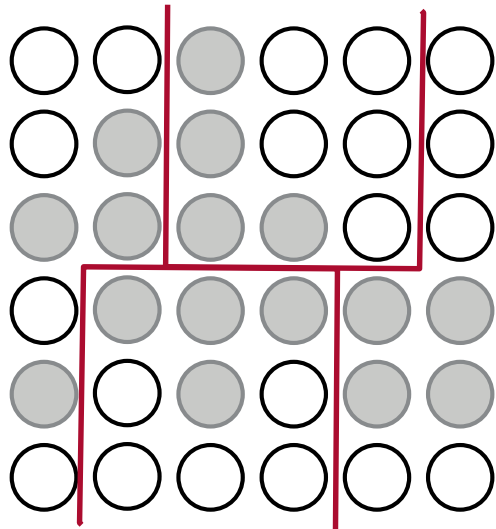
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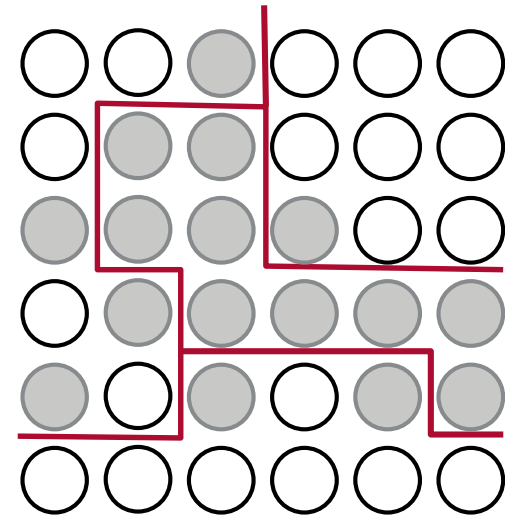
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Rule One

Don't set out to hurt voters based on their race or ethnicity



“Cracking”



“Packing”

- No matter if lines are “pretty”
- No matter the ultimate motive

Rule Two

Comply with the Voting Rights Act

Under certain conditions, jurisdictions may have the federal responsibility to design districts so that they provide equitable electoral opportunity based on race or language minority status.



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Voting Rights Act predicate

- Are there sizable, relatively concentrated minority communities?
- Do the minority communities have distinct electoral preferences?
- Did (or do) underrepresented minorities face discrimination?
- Can we design districts to give minorities a fair shot?



Voting Rights Act predicate

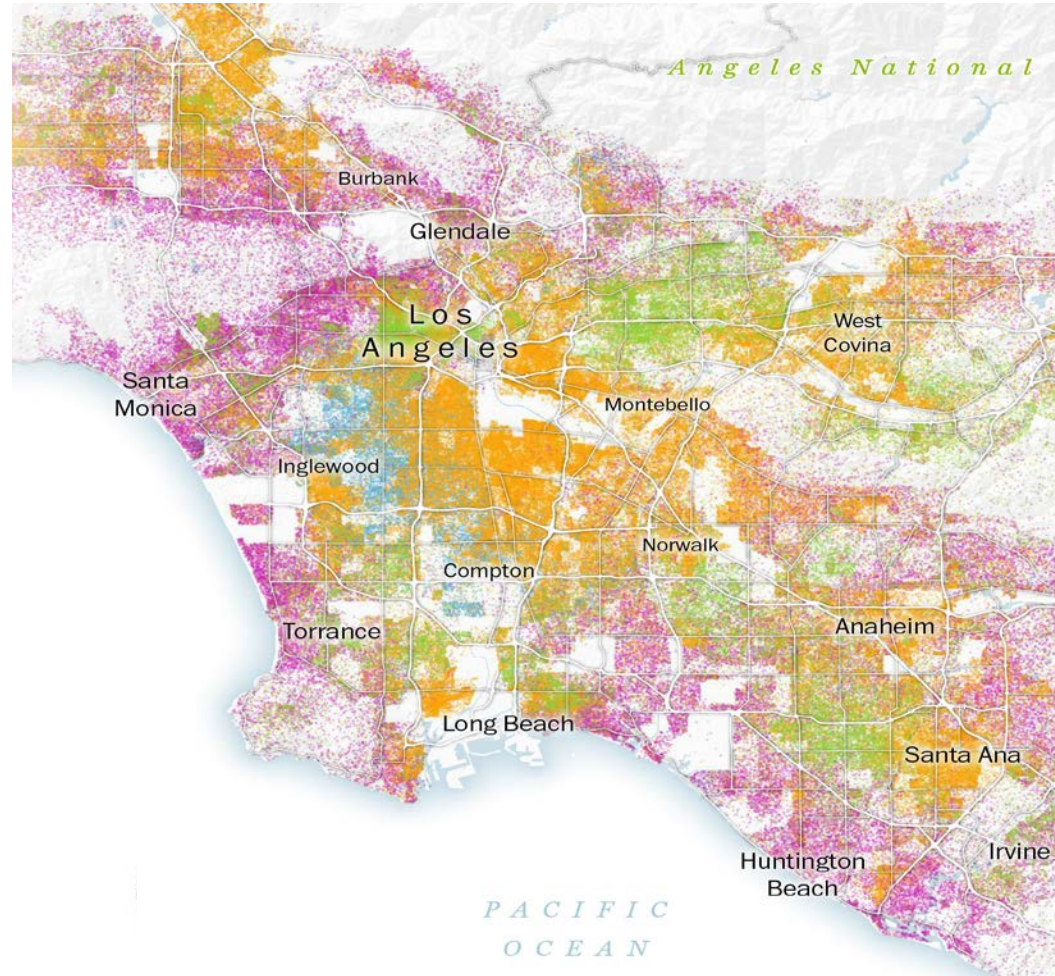
Are there sizable, relatively concentrated minority communities?

- > 50% of the electorate in a district-sized population



Voting Rights Act predicate

Are there sizable, relatively concentrated minority communities?

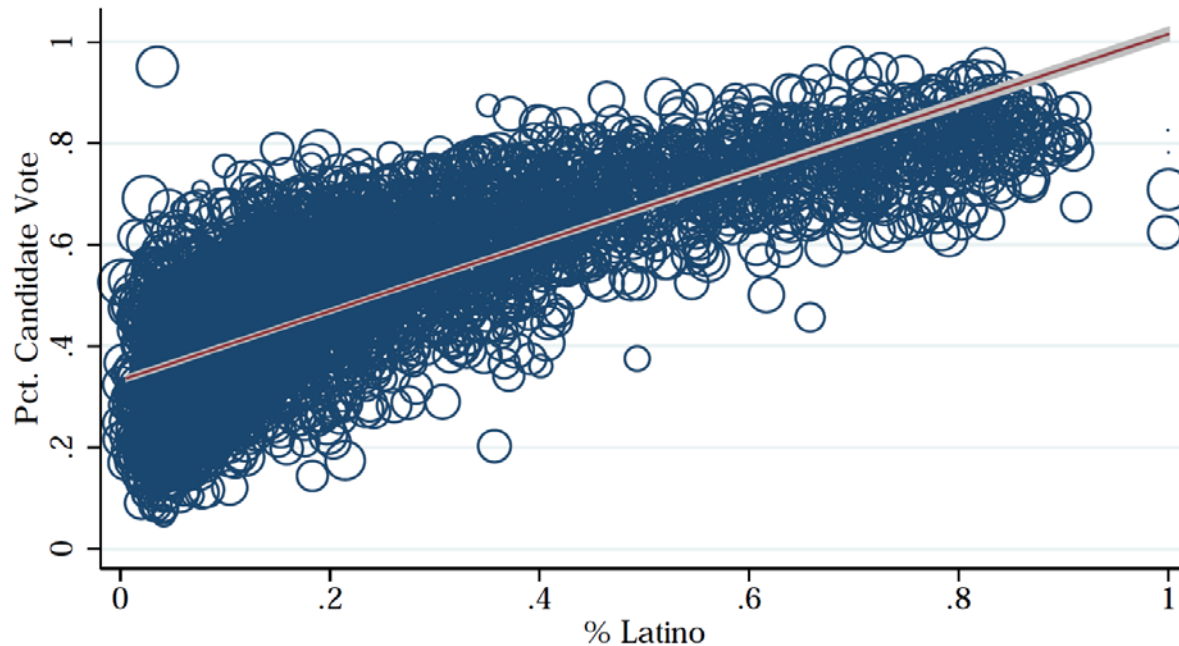


Los Angeles, 2016

NH White
Black
Hispanic
Asian

Voting Rights Act predicate

Do the minority communities have distinct electoral preferences?



Voting Rights Act predicate

Did (or do) underrepresented minorities face discrimination?

- rough overall proportionality in the jurisdiction
- history of voting-related discrimination
- extent of racially polarized voting
- extent of discriminatory voting practices or procedures
- exclusion of minorities from candidate slating
- extent to which minorities bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process
- extent to which minorities have been elected
- extent to which elected officials are unresponsive to the particularized needs of minorities
- etc.



Voting Rights Act responsibility

Can we design districts to give minorities a fair shot?

Iterative process

- Determine approximate localized threshold for electoral effectiveness (not just 50% demographic)
- Seek pockets of population containing communities with effective electoral strength
- Consider other criteria at the same time
- Repeat



The 2010 Commission struggled here too

- Delayed training
- Delayed data acquisition
- Flirted with blinding itself to local voting results
- Gave short shrift to path dependence
- Failed to consider blocs of multiple minorities
- Failed to relax appropriate population constraints
- Conflated electoral assessment with demographics

- **Created unnecessary risk by leaving VRA to final tweaks**



Rule Three

Consider other factors at the same time

Race can only “predominate” if there’s a really good reason



California Voting Rights Act

Only applies to jurisdictions with at-large elections,
not where all candidates are elected from single-
member districts



Considering race & ethnicity: traits

Commissioners will:

- Need ability to hire appropriate experts
- Need ability to assess expert determinations (and ask hard questions)
 - Minority proportion of citizen voting-age population
 - Voting patterns by race in that region
 - Practical opportunity to elect candidates of choice
 - Qualitative and historical context



Considering race & ethnicity: traits

Commissioners will:

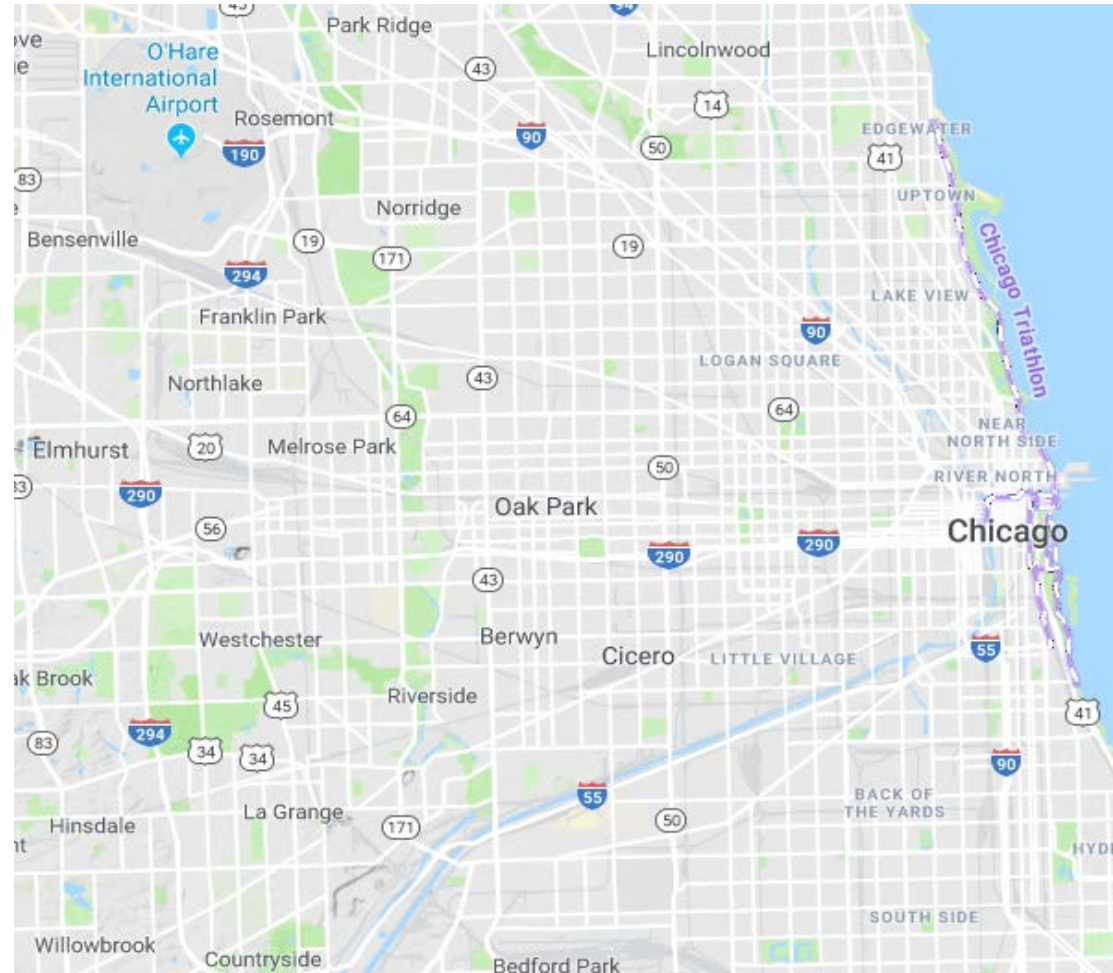
- Need ability to hire appropriate experts
- Need ability to assess expert determinations
- Need to be able to assess mapped indications of minority populations
- Need understanding of limits of data
- Need comfort with notion that “cleanest” answer isn’t always best (and may not even be legal)



Considering race & ethnicity: traits

Commissioners will:

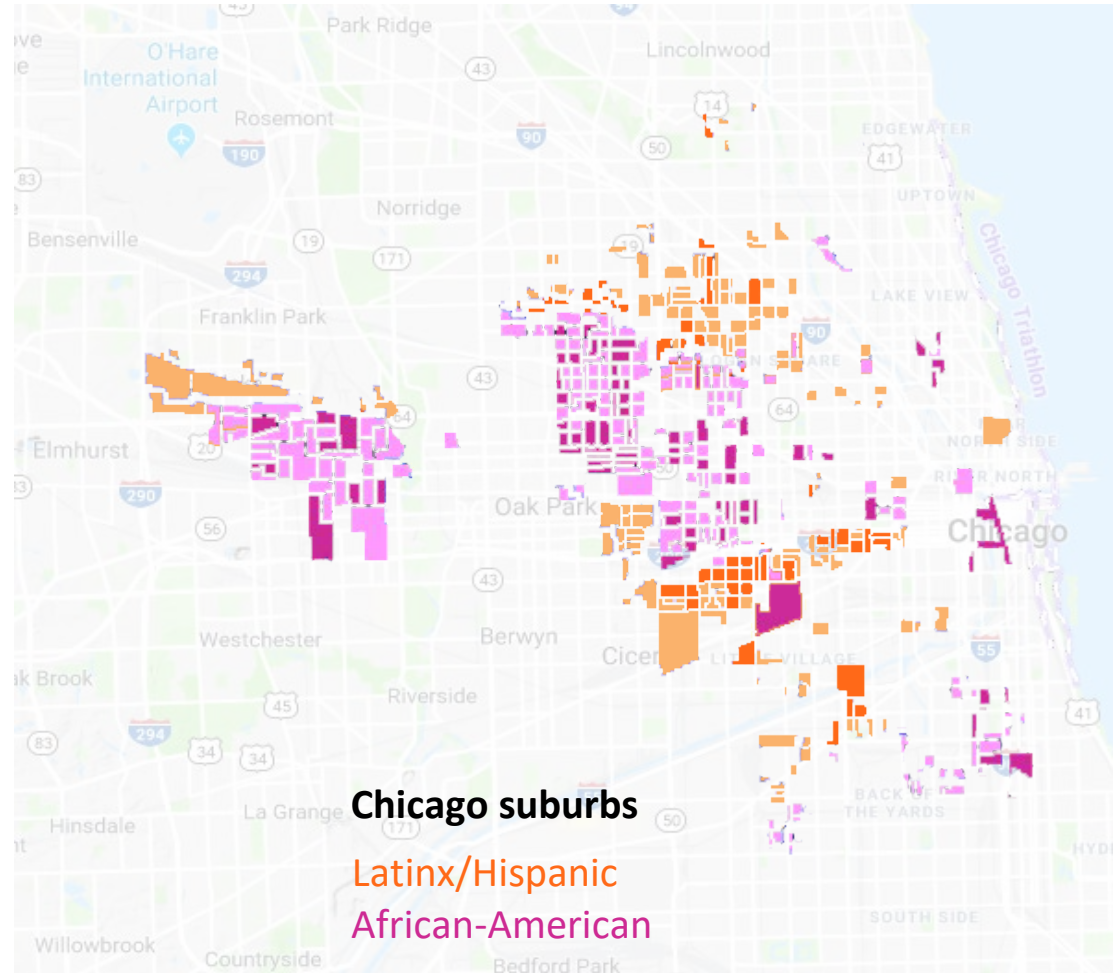
- Need to creatively reconcile rights of multiple minority communities
- Need comfort drawing districts with “strange” shapes



Considering race & ethnicity: traits

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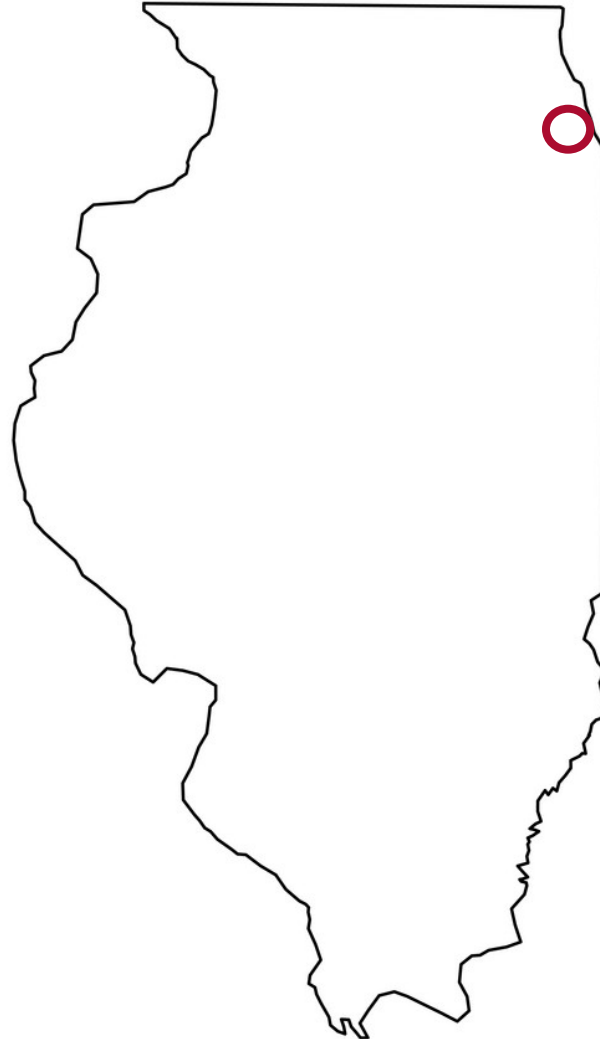
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Considering race & ethnicity: traits

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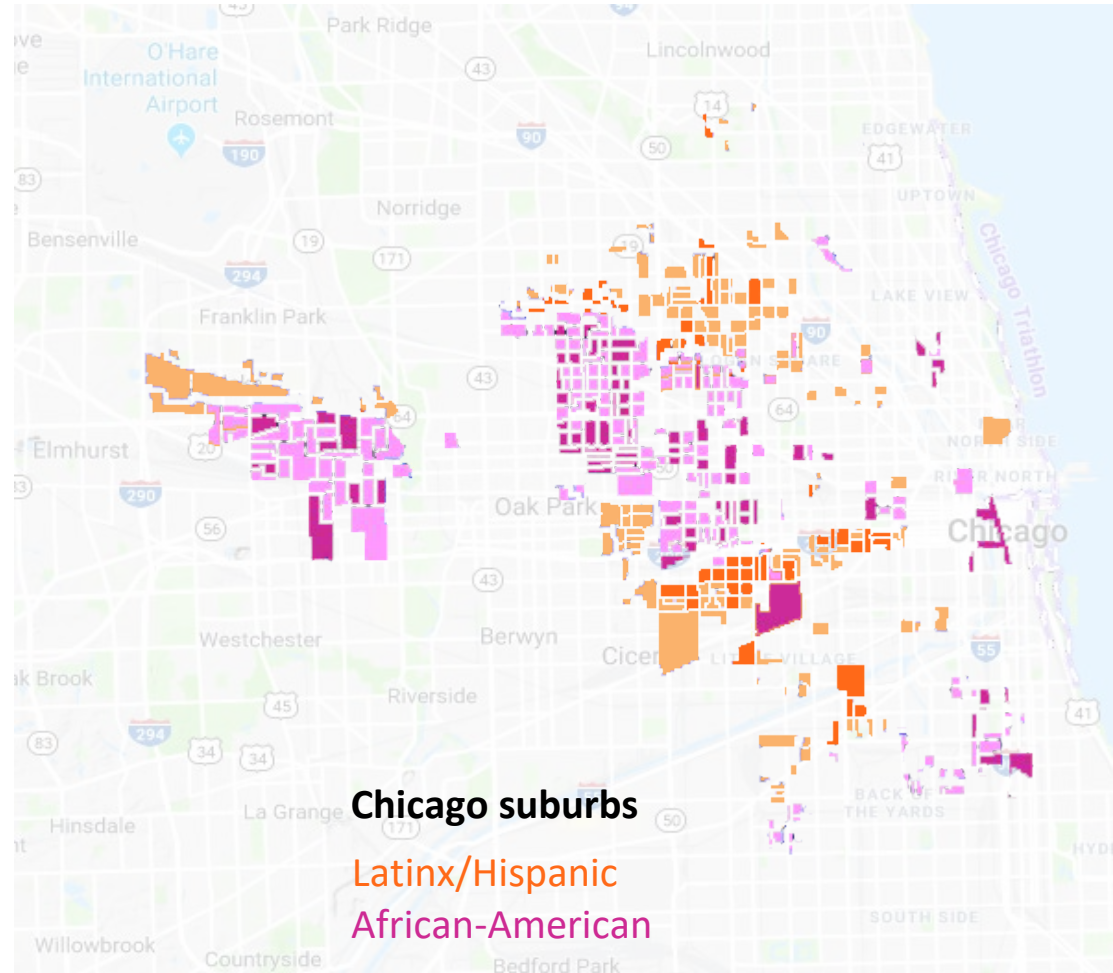
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Considering race & ethnicity: traits

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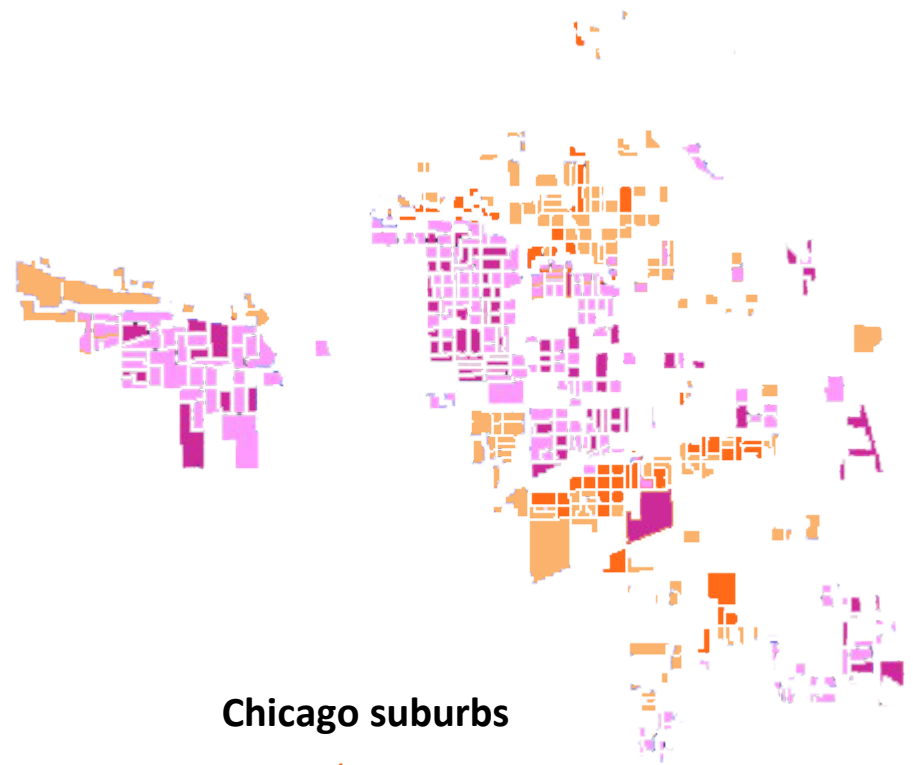
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Considering race & ethnicity: traits

Commissioners will:

- Need to creatively reconcile rights of multiple minority communities
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Chicago suburbs

Latinx/Hispanic

African-American



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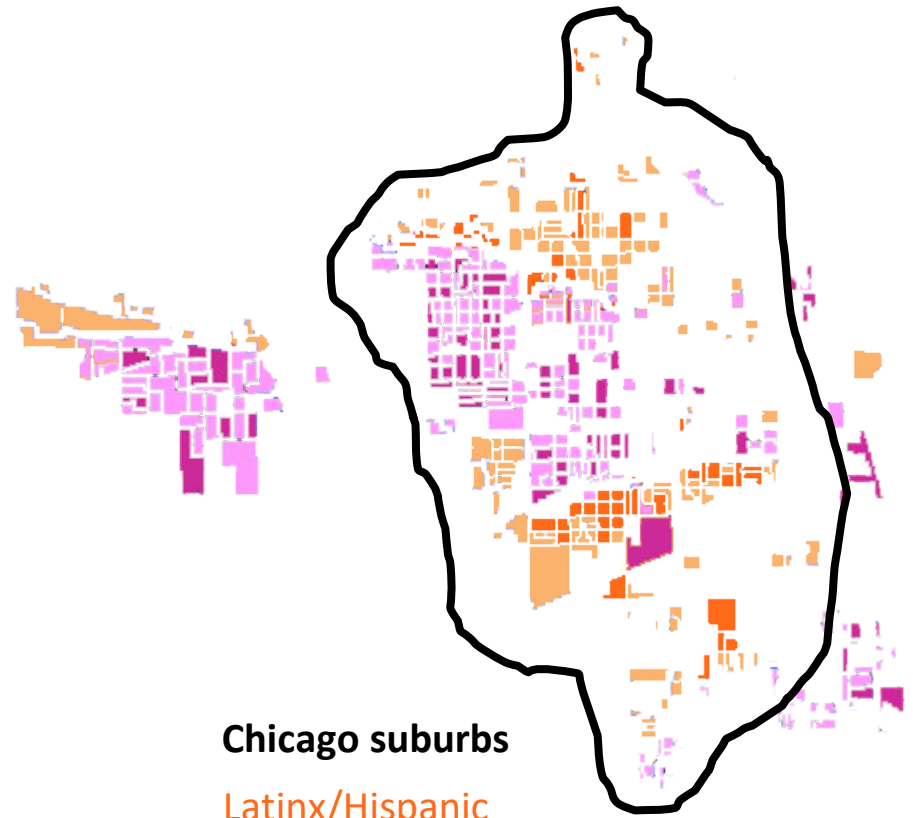
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Considering race & ethnicity: traits

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Chicago suburbs

Latinx/Hispanic

African-American



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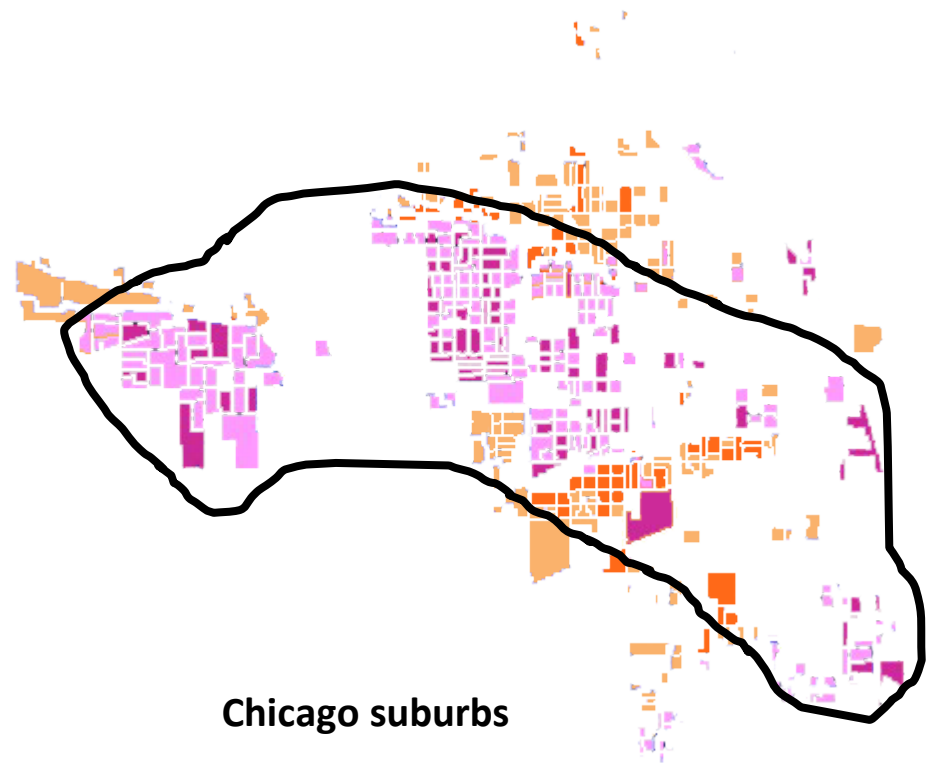
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Considering race & ethnicity: traits

Commissioners will:

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Chicago suburbs

Latinx/Hispanic

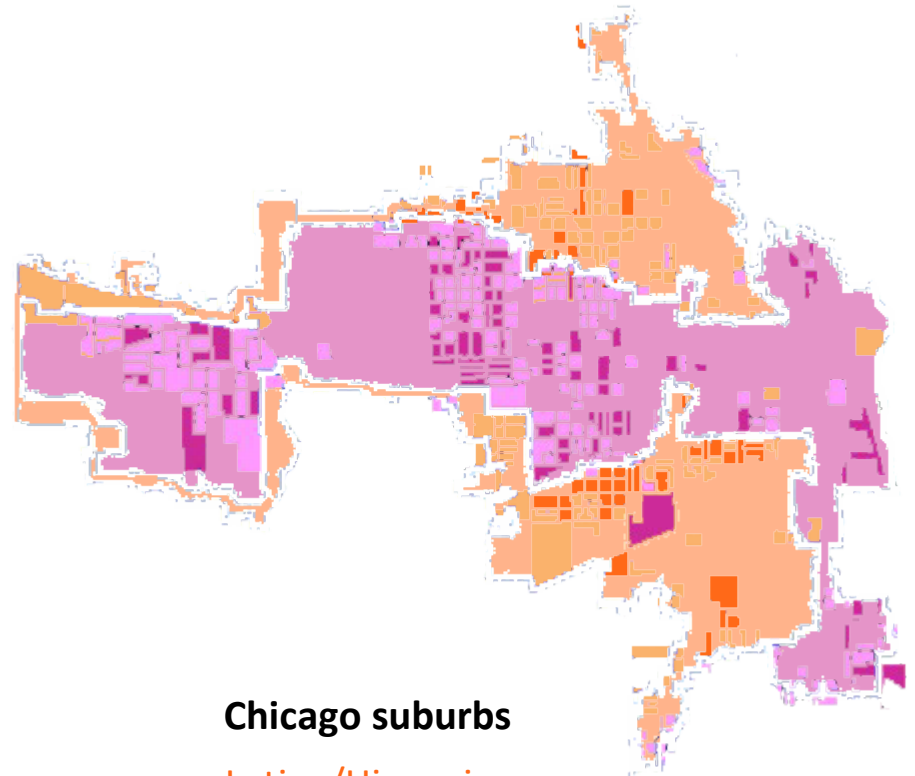
African-American



Considering race & ethnicity: traits

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Chicago suburbs

Latinx/Hispanic

African-American



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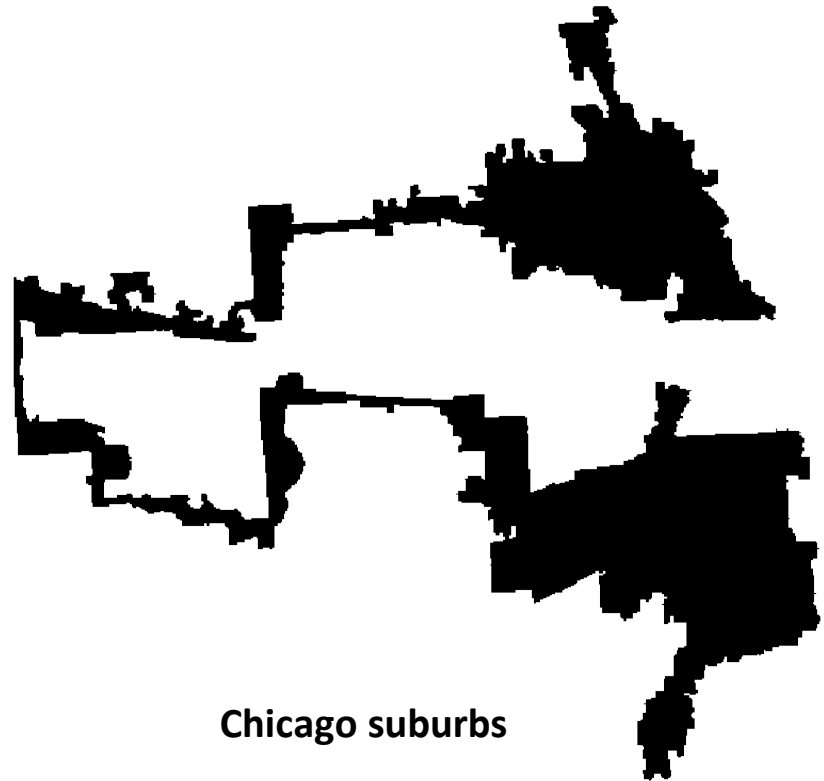
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Considering race & ethnicity: traits

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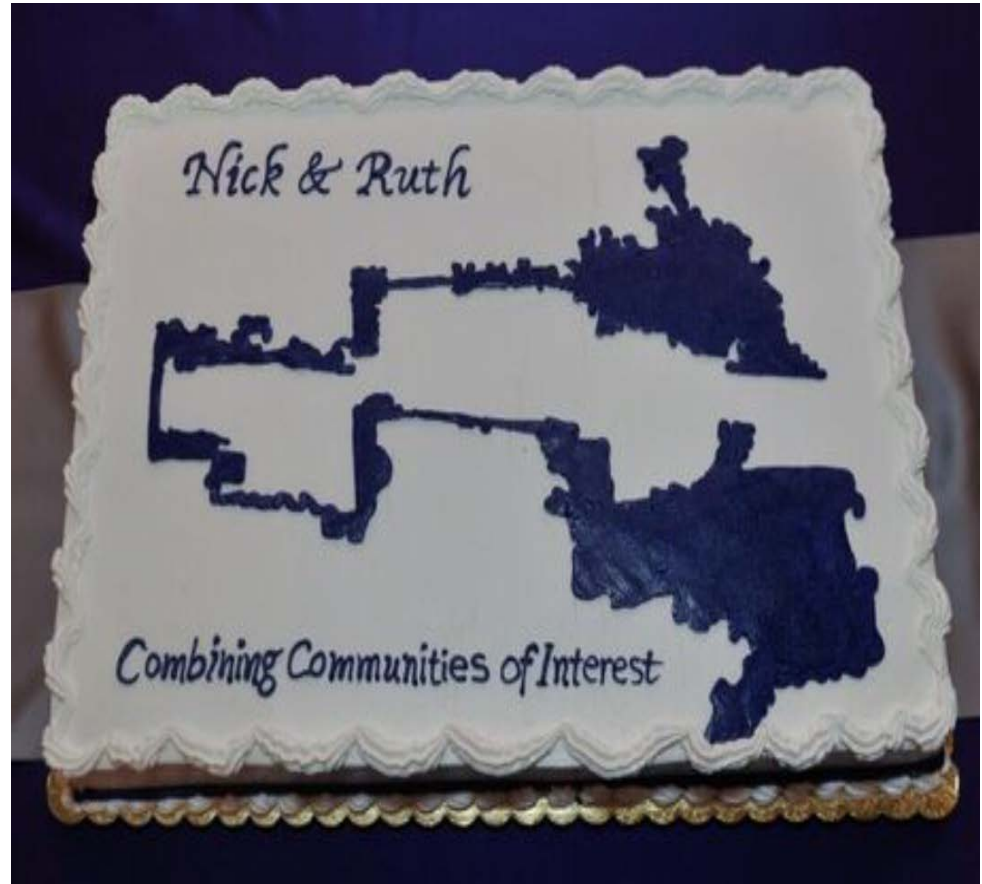
Chicago suburbs



Considering race & ethnicity: traits

Commissioners will:

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Rules in state law



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Where to draw the lines?

- Equal population Federal / state
- Race and ethnicity Federal
- Contiguity State
- Municipal geography State
- Compactness State
- Nesting State
- Candidates & parties State

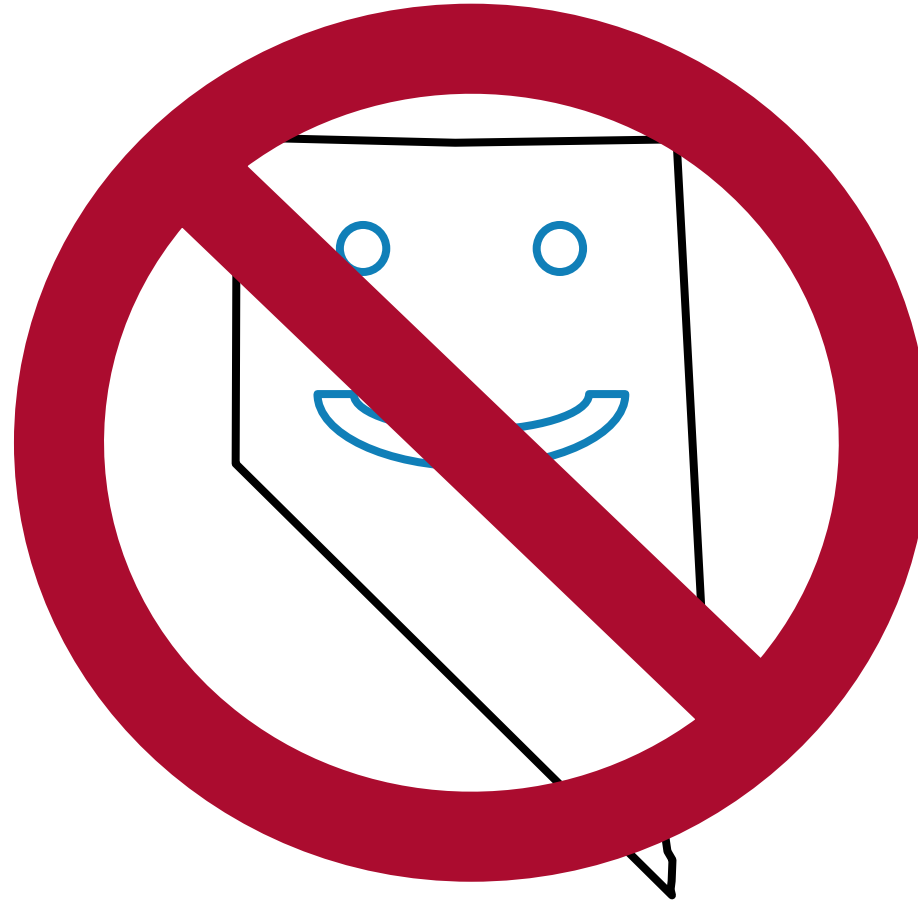


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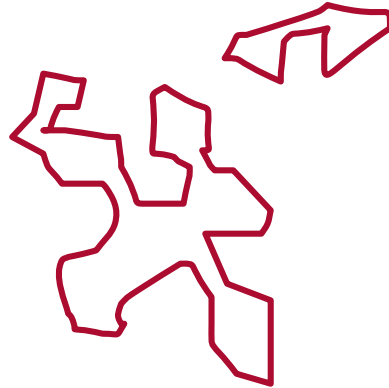


Contiguity

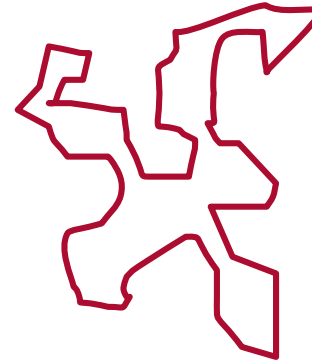


Contiguity

All parts of the district are connected to each other



No

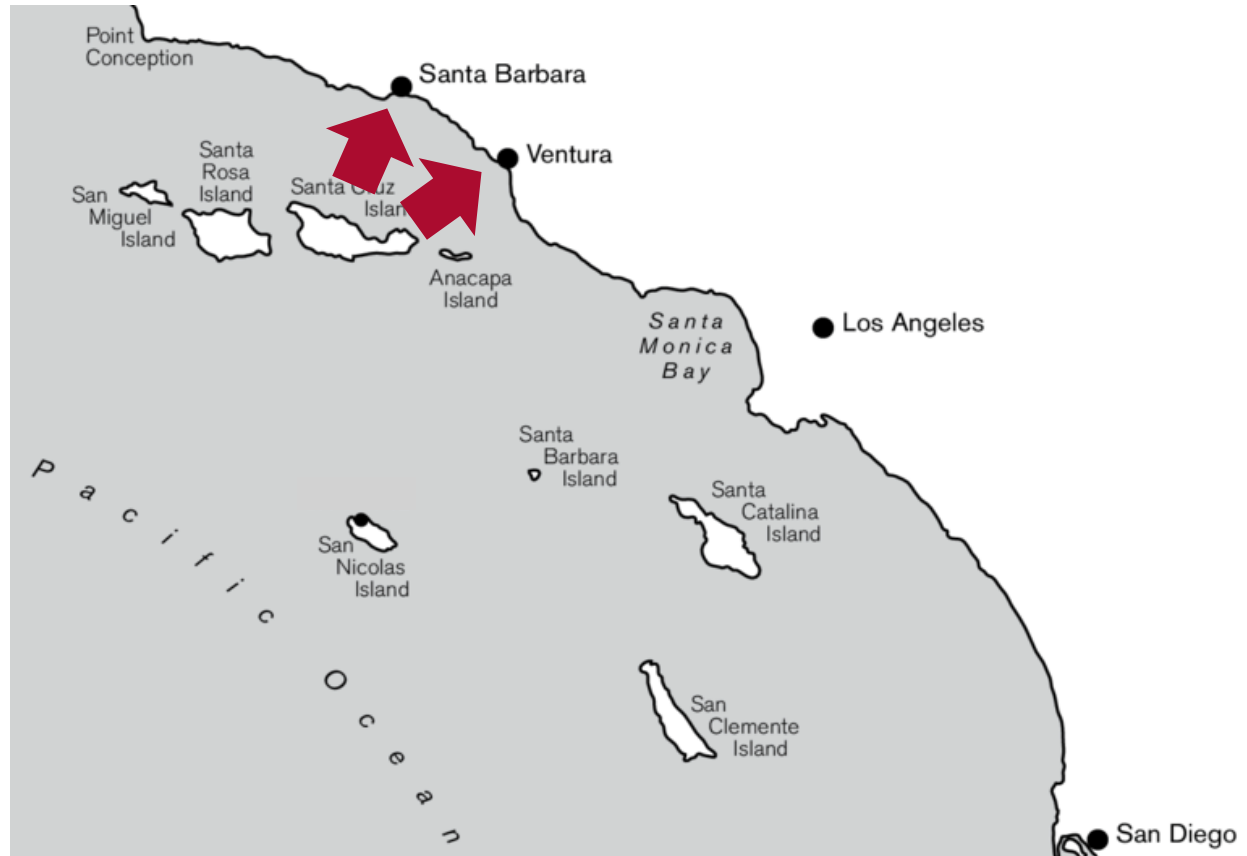


Yes



Contiguity

Islands create special conditions



Contiguity: traits

Commissioners will:

- Need to be careful to ensure that all parts of the state are accounted for



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Where to draw the lines?

- Equal population Federal / state
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Municipal geography

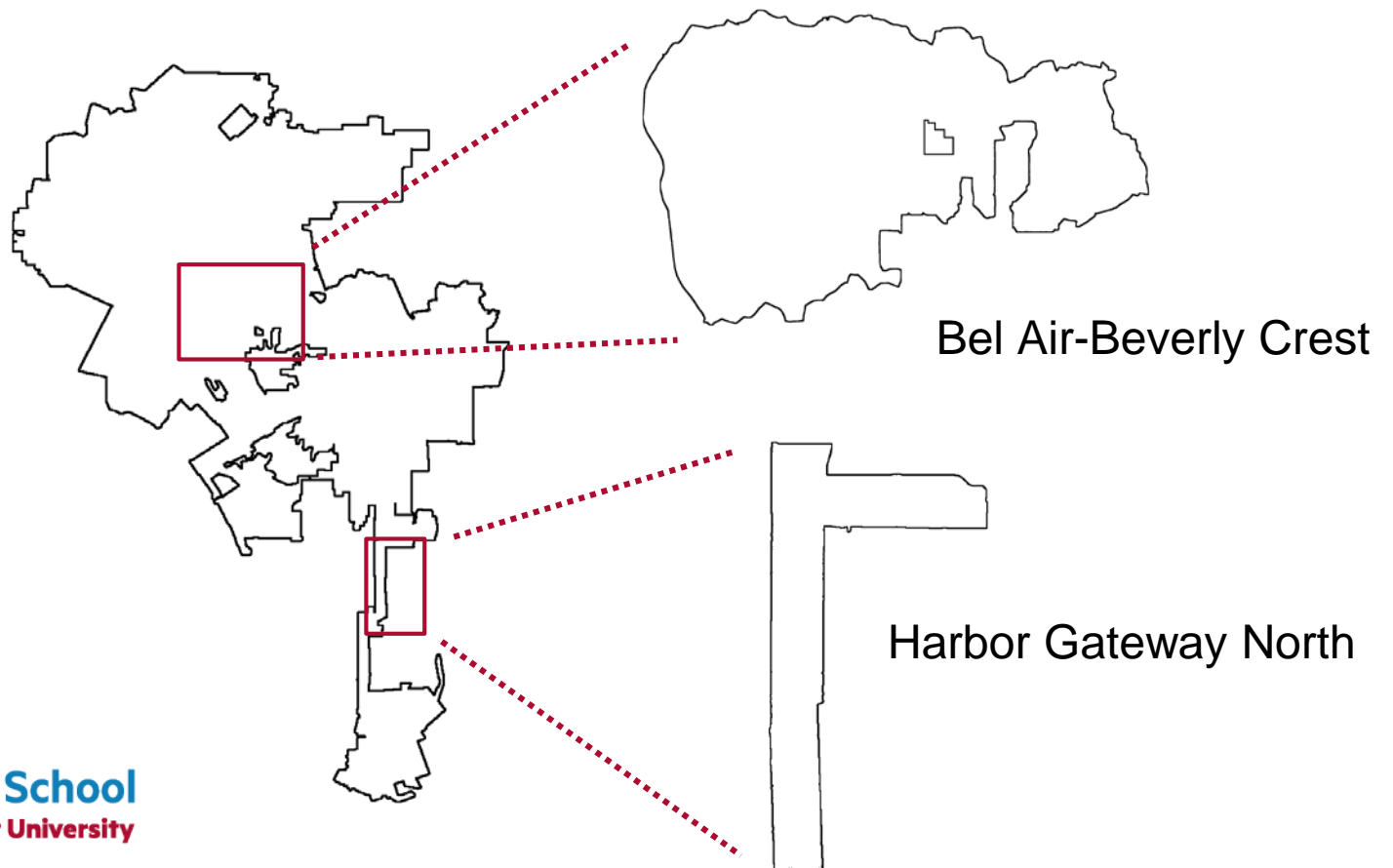
- City
- County
- Neighborhood
- Community of interest

“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”



These lines may be irregular

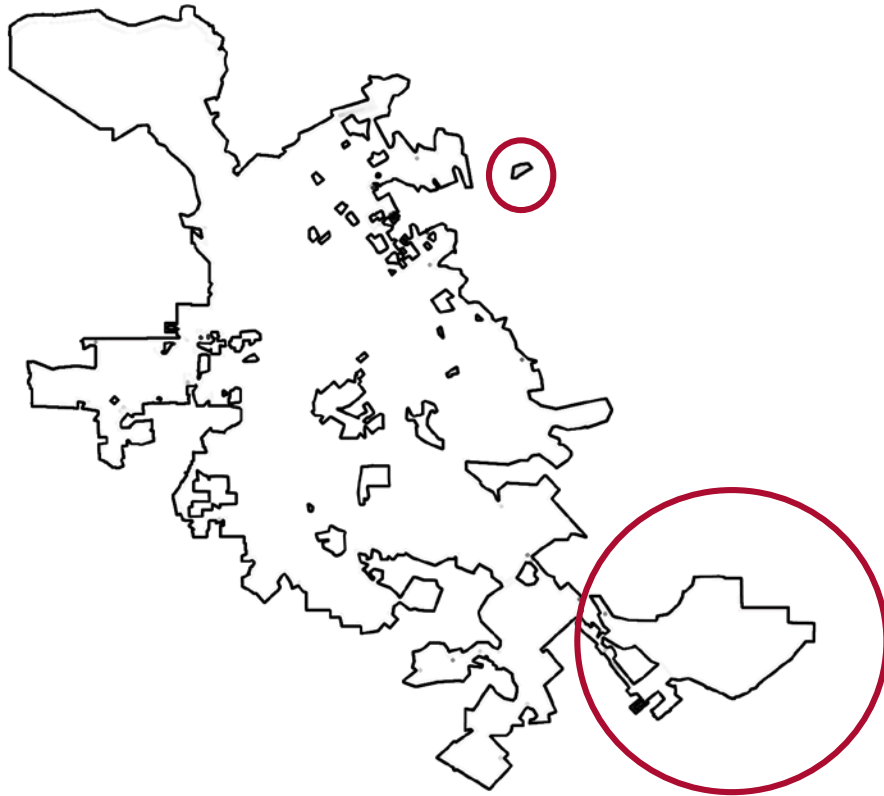
City of Los Angeles



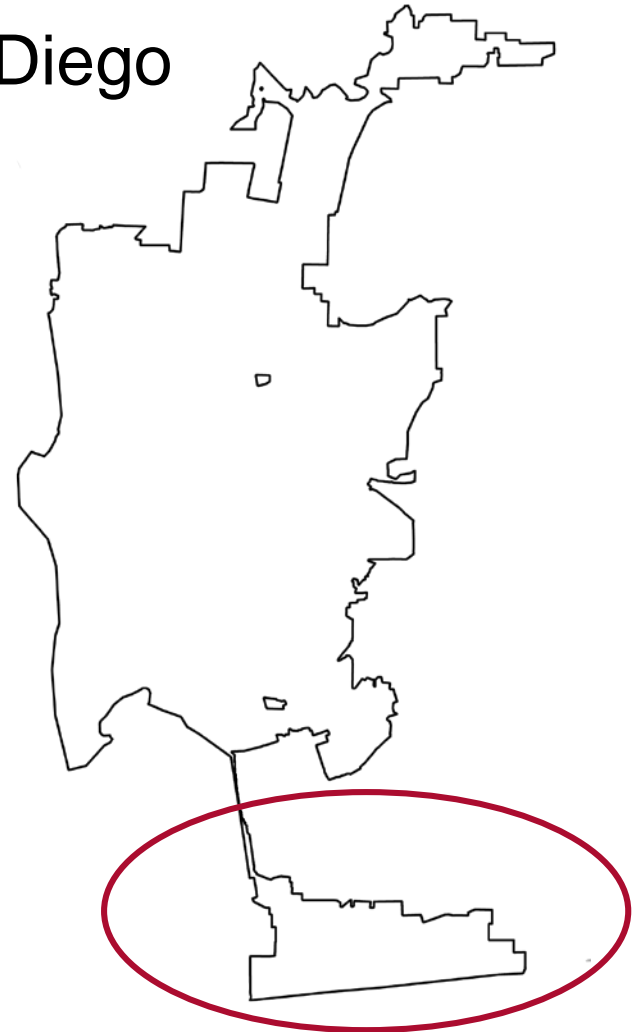
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These lines may be irregular

San Jose



San Diego



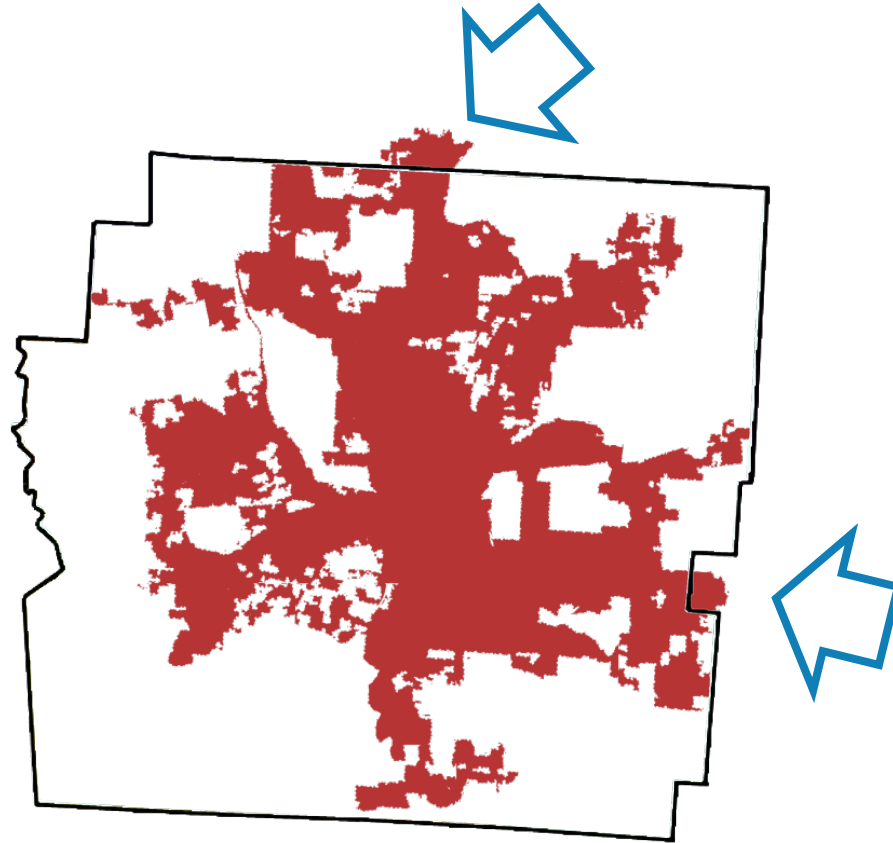
These lines may not be precisely defined

“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”

- Census data
- Hearing testimony (2700 speakers, 22,000 submissions)
- Other submissions to the commission



These lines may conflict



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Municipal geography: traits

Commissioners will:

- Need to be able to distill and assess testimony
- Need to reconcile potential conflicts in testimony, even when there is no “right” or “wrong”
- Need to be comfortable determining borders that are not pre-defined
- Need to be comfortable with “strange” shapes
- Need to reconcile potential conflicts among geographies



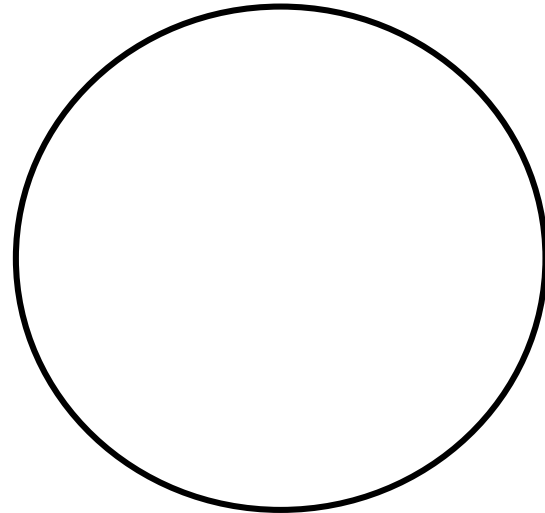
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- Nesting State
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Compactness

Many think of “compactness” in terms of abstract shapes



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But that doesn't fit California law

Compactness

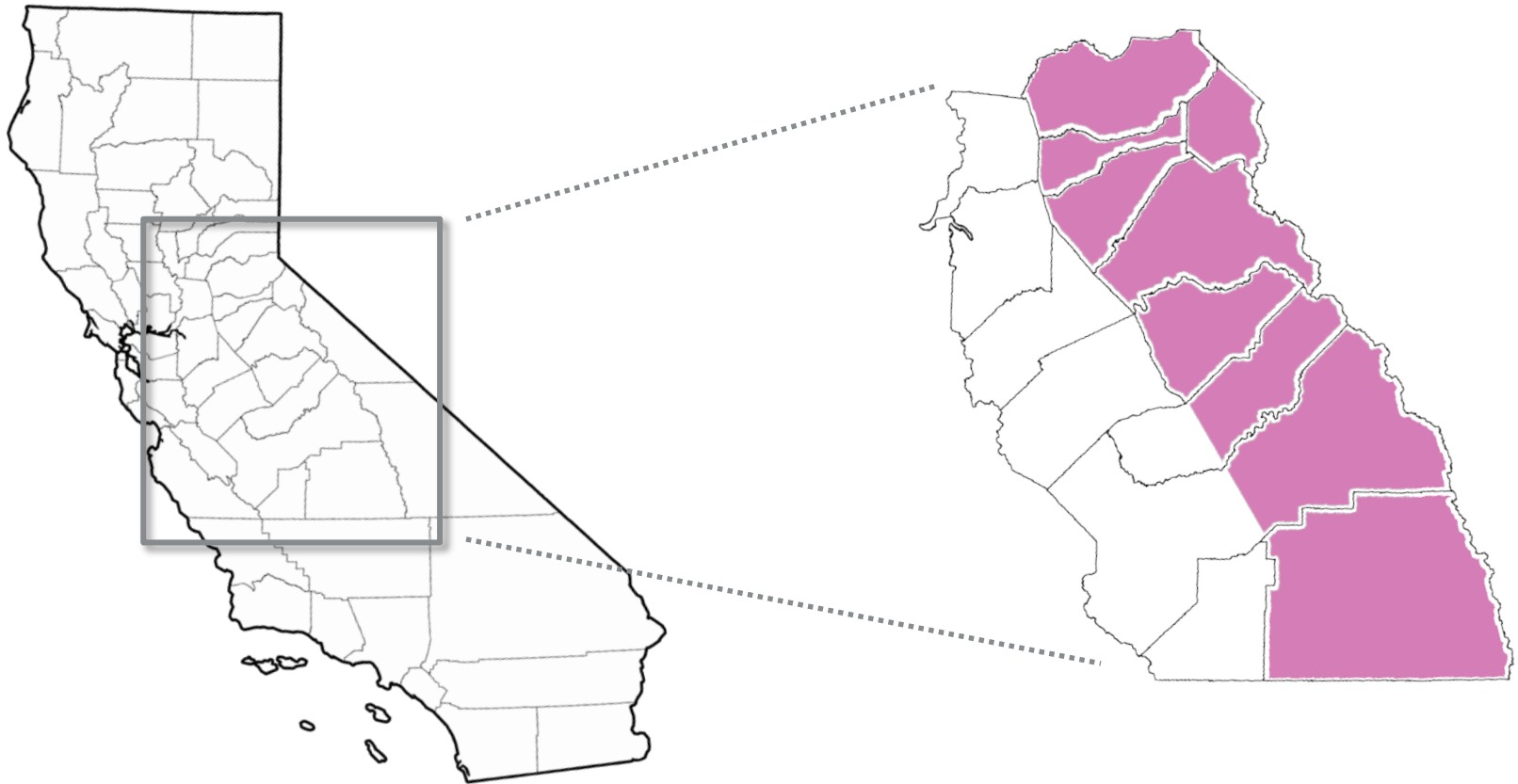
Some think of “compactness” in terms of formulas

- Total perimeter length
- Area v. area of circle with same perimeter (Cox/Polsby-Popper)
- Area v. area of circumscribing circle (Reock)
- Area v. area of circumscribing convex hull (Niemi)
- Diameter of circumscribing circle (Frolov)
- Moment of inertia / distance to center of gravity (Boyce-Clark)
- Significant corners (Kaufman-King)
- Inward-bending v. outward-bending angles (Taylor)
- Shortest path remaining in district (Chambers-Miller)



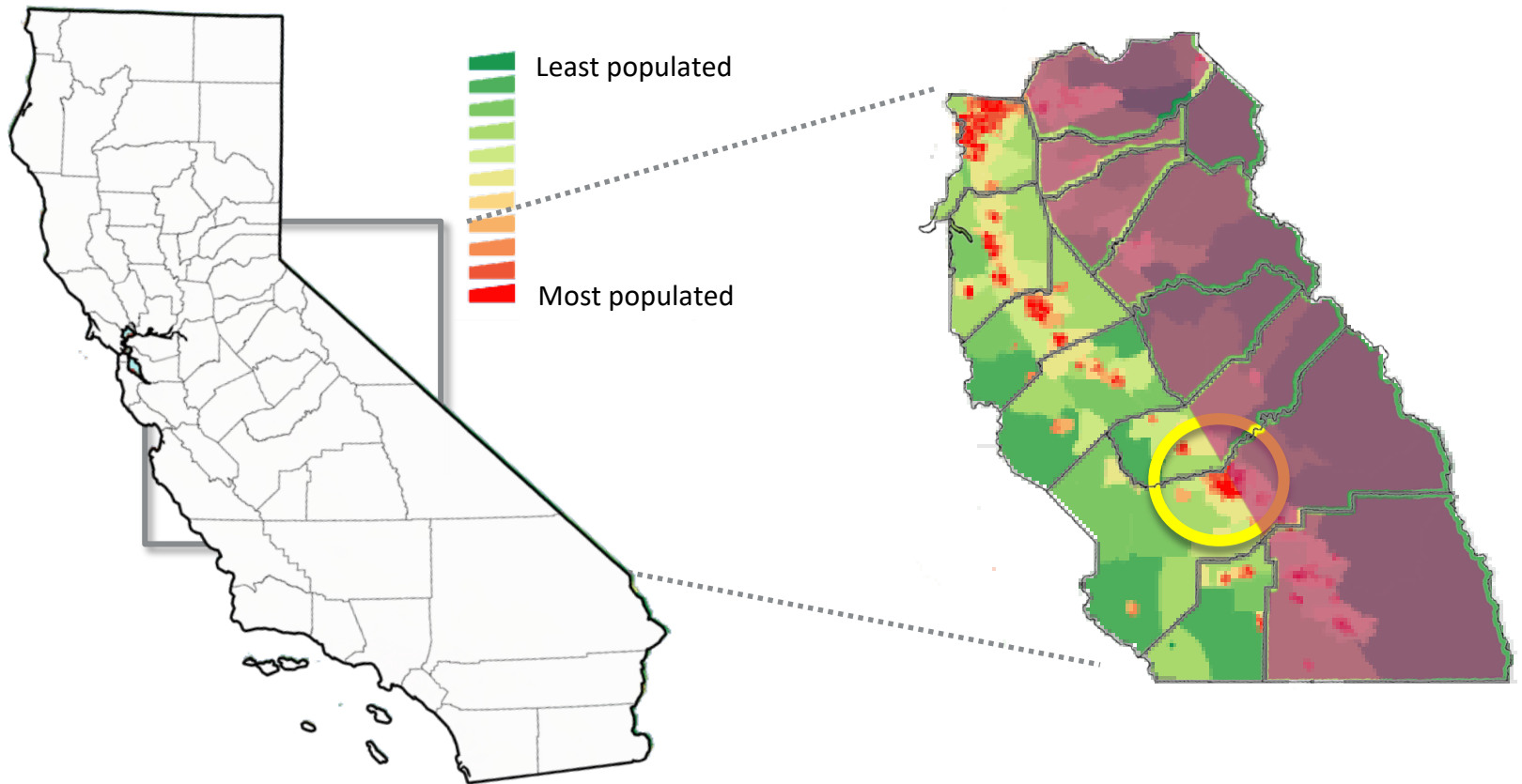
Compactness

California standard: Don't bypass nearby population



Compactness

California standard: Don't bypass nearby population



Compactness: traits

Commissioners will:

- Need to be able to identify population clusters
- Need to be comfortable with “strange” shapes
- Need comfort with notion that “cleanest” answer isn’t always best (and may not even be legal)



Where to draw the lines?

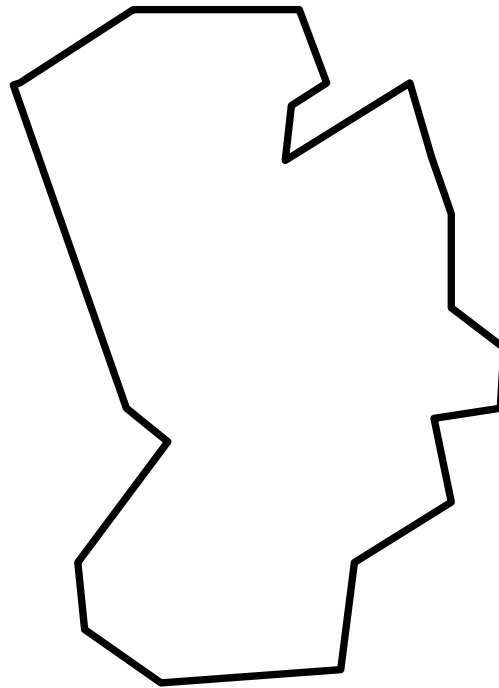
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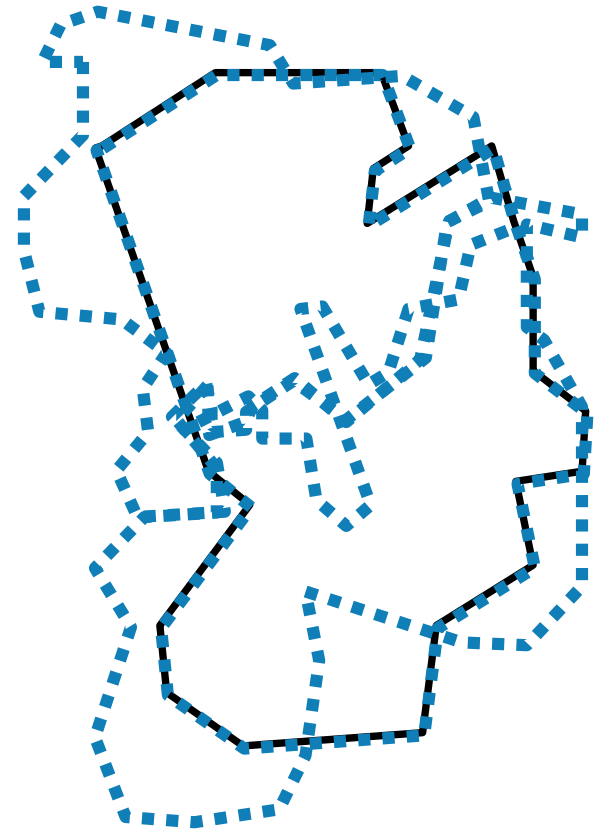
Nesting

Senate ———
Assembly ·····

Not nested

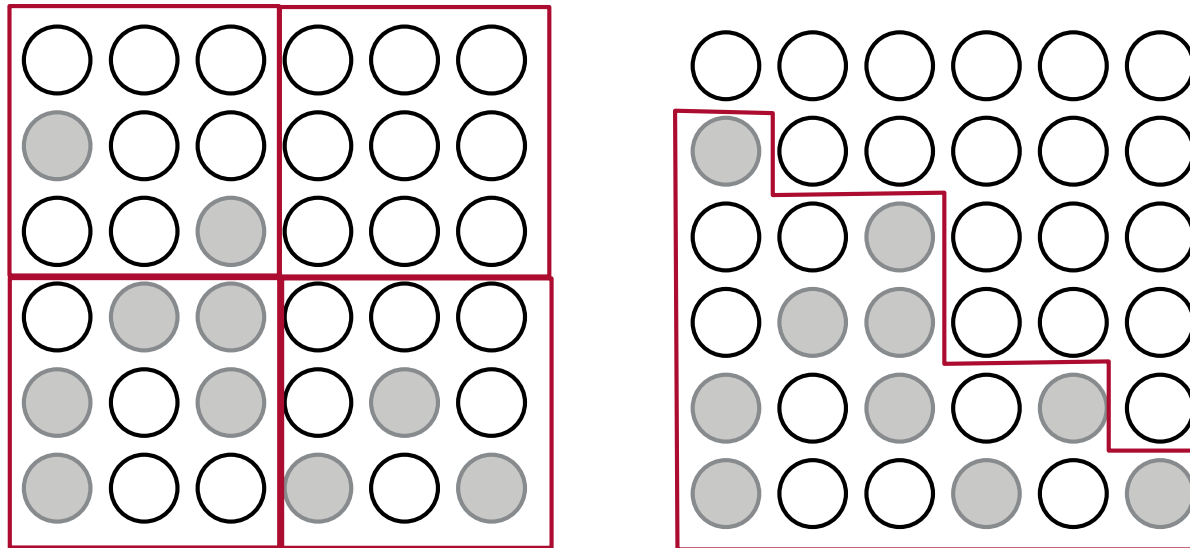


Nested



Nesting

A valid map for state Senate, Assembly, or Board of Equalization can lead to an **invalid** map for one or more of the others



Nesting: traits

Commissioners will:

- Need to be comfortable re-evaluating one valid map if it inevitably produces an invalid map for a different chamber
- Need to be comfortable with deviating from nesting where necessary
- Need comfort with notion that “cleanest” answer isn’t always best (and may not even be legal)



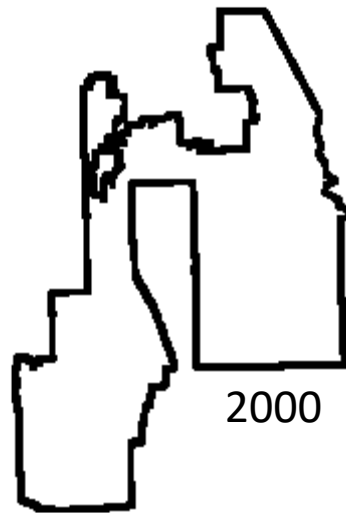
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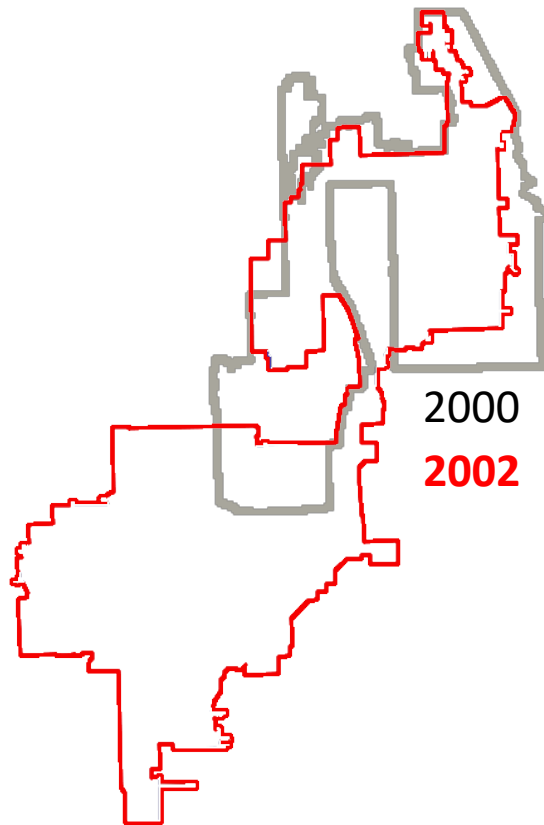
Candidates and parties

- Shall not consider candidate residence



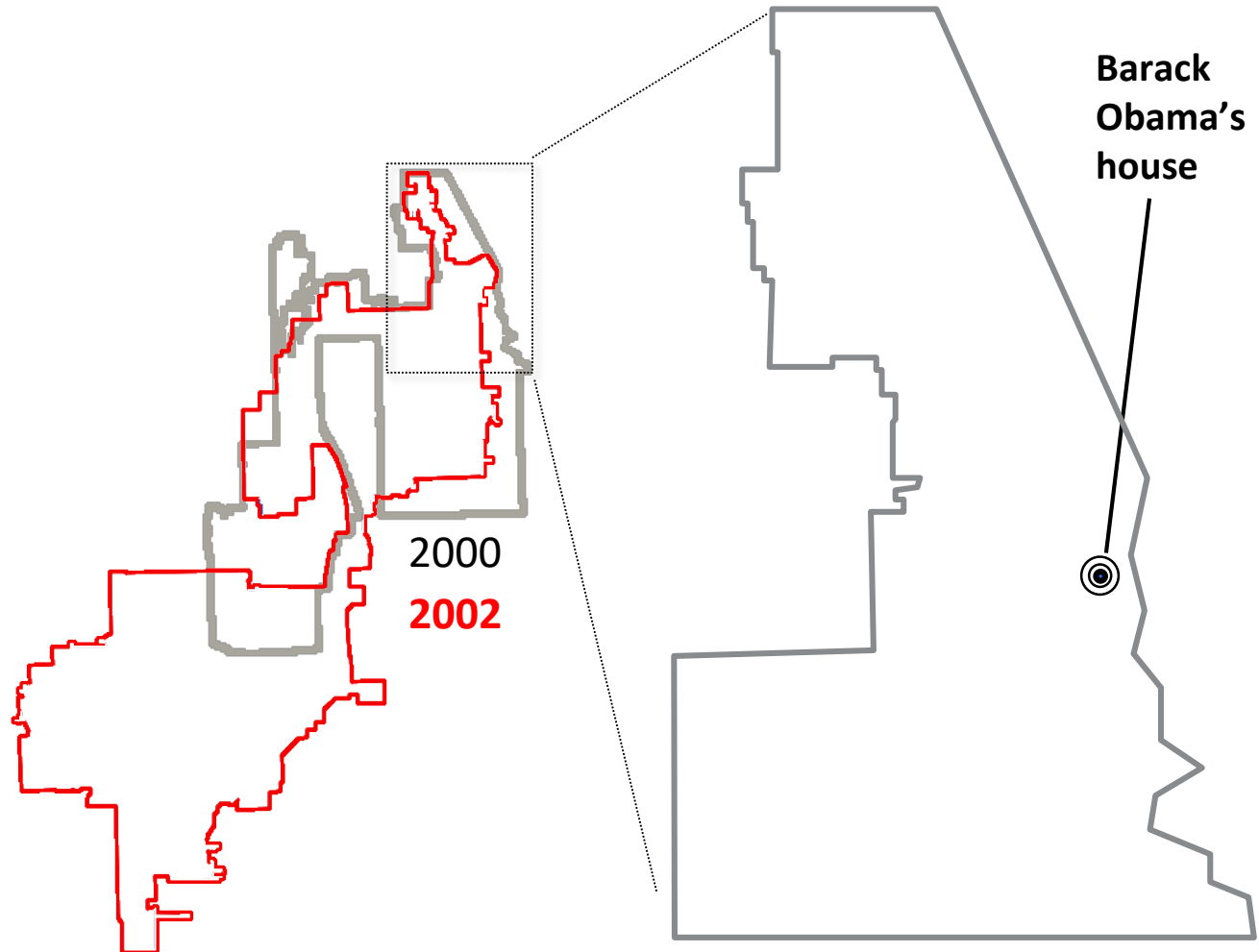
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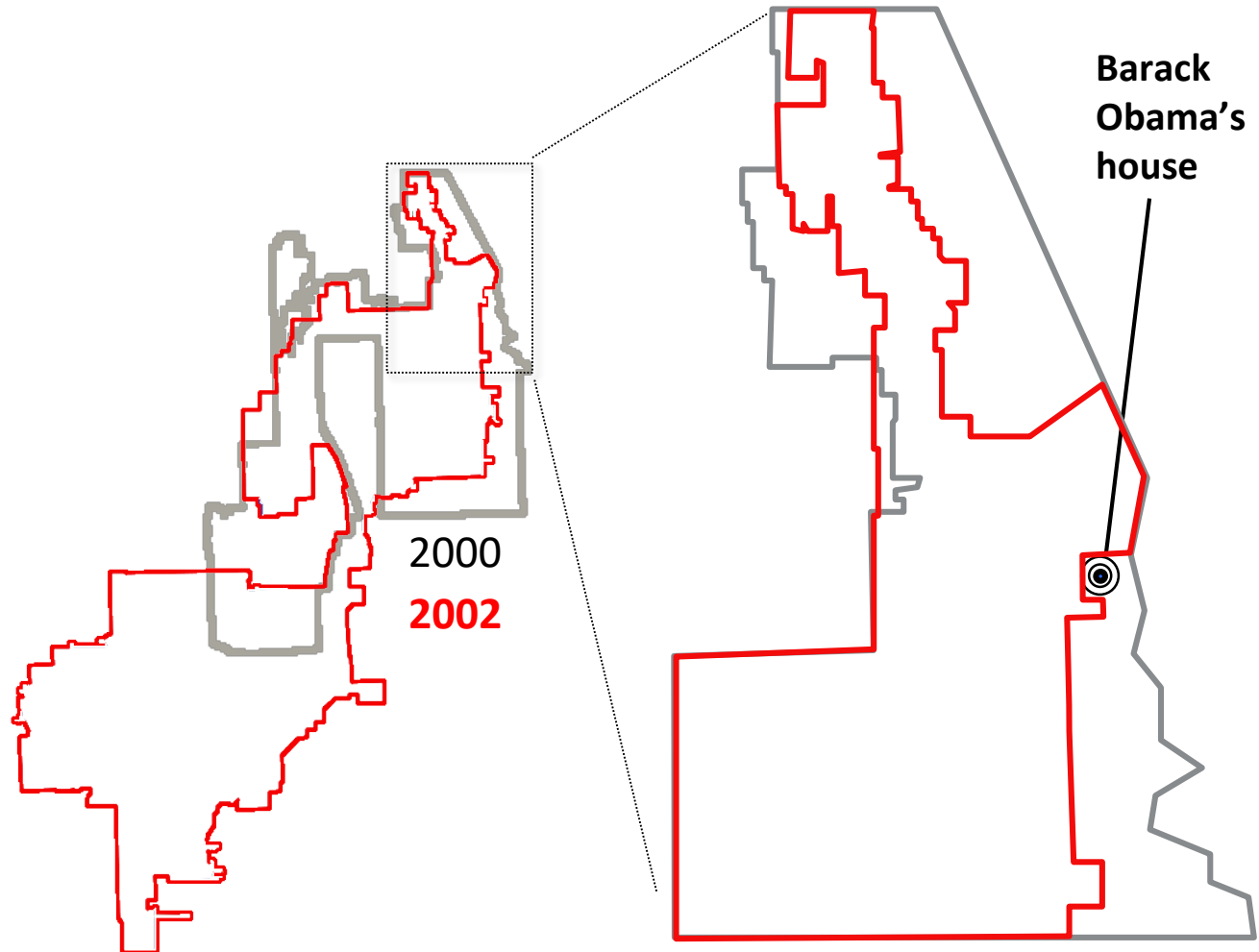
Candidates and parties

- Shall not consider candidate residence



Candidates and parties

- Shall not consider candidate residence



Candidates and parties

- Shall not consider candidate residence

2012: The “__erman” seat



Candidates and parties

- Shall not consider candidate residence
- Shall not be drawn for the purpose of favoring or discriminating against a candidate or party

Not a mandate for districts intentionally drawn to be competitive



Candidates and parties

- Shall not consider candidate residence
- Shall not be drawn for the purpose of favoring or discriminating against a candidate or party

Not a mandate for districts intentionally drawn to be symmetric



Candidates and parties

- Shall not consider candidate residence
- Shall not be drawn for the purpose of favoring or discriminating against a candidate or party

Not a mandate for districts intentionally drawn to achieve a particular score on a quantitative measure of partisanship



Candidates and parties: traits

Commissioners will:

- Need to know that there is information they are not permitted to utilize, and refrain from utilizing that information
- Need to know that personal partisan affiliation is fine, but that districts may not be drawn to favor party
- Need to refrain from adding extra criteria to the detriment of criteria in the law



Where to draw the lines?

- Equal population
- Race and ethnicity
- Contiguity
- Municipal geography
- Compactness
- Nesting
- Candidates & parties



- Quantitative capacity (at least to review consultants)
- Qualitative capacity (to take testimony and review consultants)
- Ability to consider and resolve conflicts
- Ability to be reconsider assumptions (particularly in light of path dependence)



Watch out for natural human tendencies

- Many people prefer clarity to ambiguity
- Some prefer to spend less mental effort on more ambiguous concepts

But in some instances, the law makes ambiguous concepts just as important as clear ones

(e.g., county boundaries v. community boundaries)



Watch out for natural human tendencies

- Facing difficult choices, many people prefer to constrain their own discretion

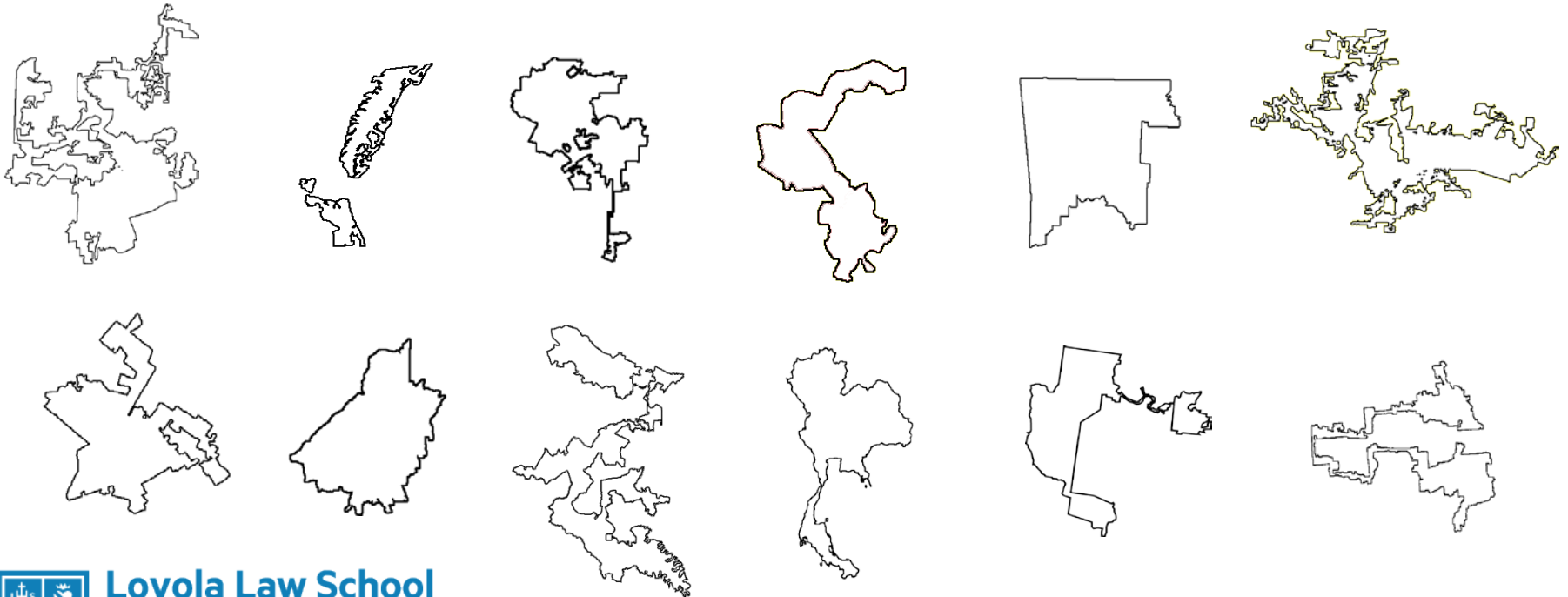
But in some instances, the law intentionally leaves discretion, to further other objectives

(e.g., “reasonably equal” population may allow greater compliance with other criteria than strictly equal population)



Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like



Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like



Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like



97 %



Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like



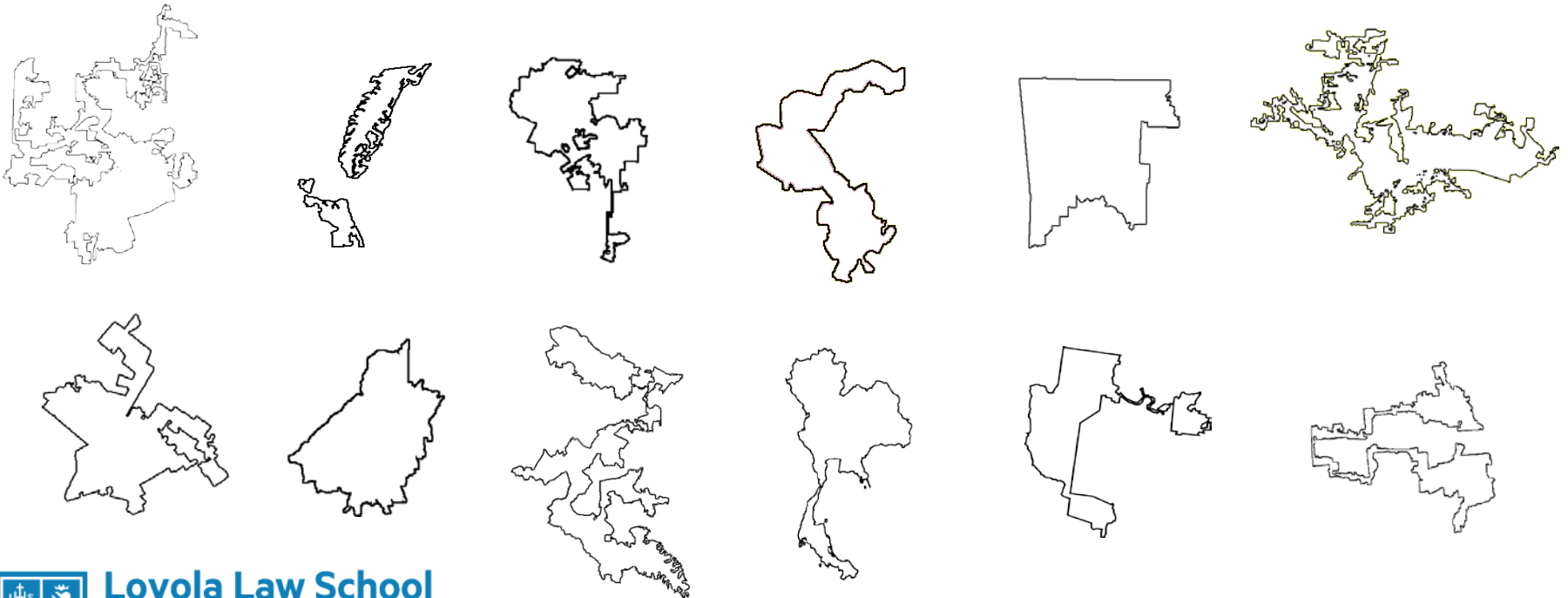
Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like
- But the law asks for a careful balance of factors that doesn’t privilege any one picture of a good district



Watch out for natural human tendencies

- Many people have preconceived notions about what “good” looks like



Watch out for learned human tendencies

- Some people have preconceived notions about what certain redistricting criteria mean
- But in some instances, the law instructs how a factor should be measured, and that instruction is different

(e.g., compactness is not about shape, but about nearby areas of population)



Watch out for learned human tendencies

- Some people have preconceived notions about what certain redistricting criteria mean
- And in other places, the commission as a whole must arrive at a further understanding

(e.g., does “to the extent possible” have the same meaning as “to the extent practicable”)



These tendencies are natural.
They can be overcome.

The screening process should
evaluate ability to overcome them.



Today's conversation

Focus on the laws that Commissioners will need to apply, to let you assess the traits that Commissioners need to have

- Why ?
- Where ?
- **What ?**
- When ?

Who, of course, is up to you...



Loyola Law School
Loyola Marymount University
Los Angeles

Commissioners draw lines

But Commissioners don't just draw lines

- Seek training
- Hire (and supervise) staff, counsel, consultants
- Collect data
- Conduct outreach
- Establish hearing and public review process
- Work with legislature on funding, access to data
- Manage budget
- Make broad policy decisions
- Produce report including defined terms / standards
- Defend litigation



Other tasks: traits

Commissioners will:

- Need to be able to work in a team, with people they've not worked with before
- Need to be able to manage staff and consultants, and divvy up responsibilities, without overdelegation or micromanaging
- Need to be comfortable with some uncertainty (including starting some pieces before all the data are in)



Today's conversation

Focus on the laws that Commissioners will need to apply, to let you assess the traits that Commissioners need to have

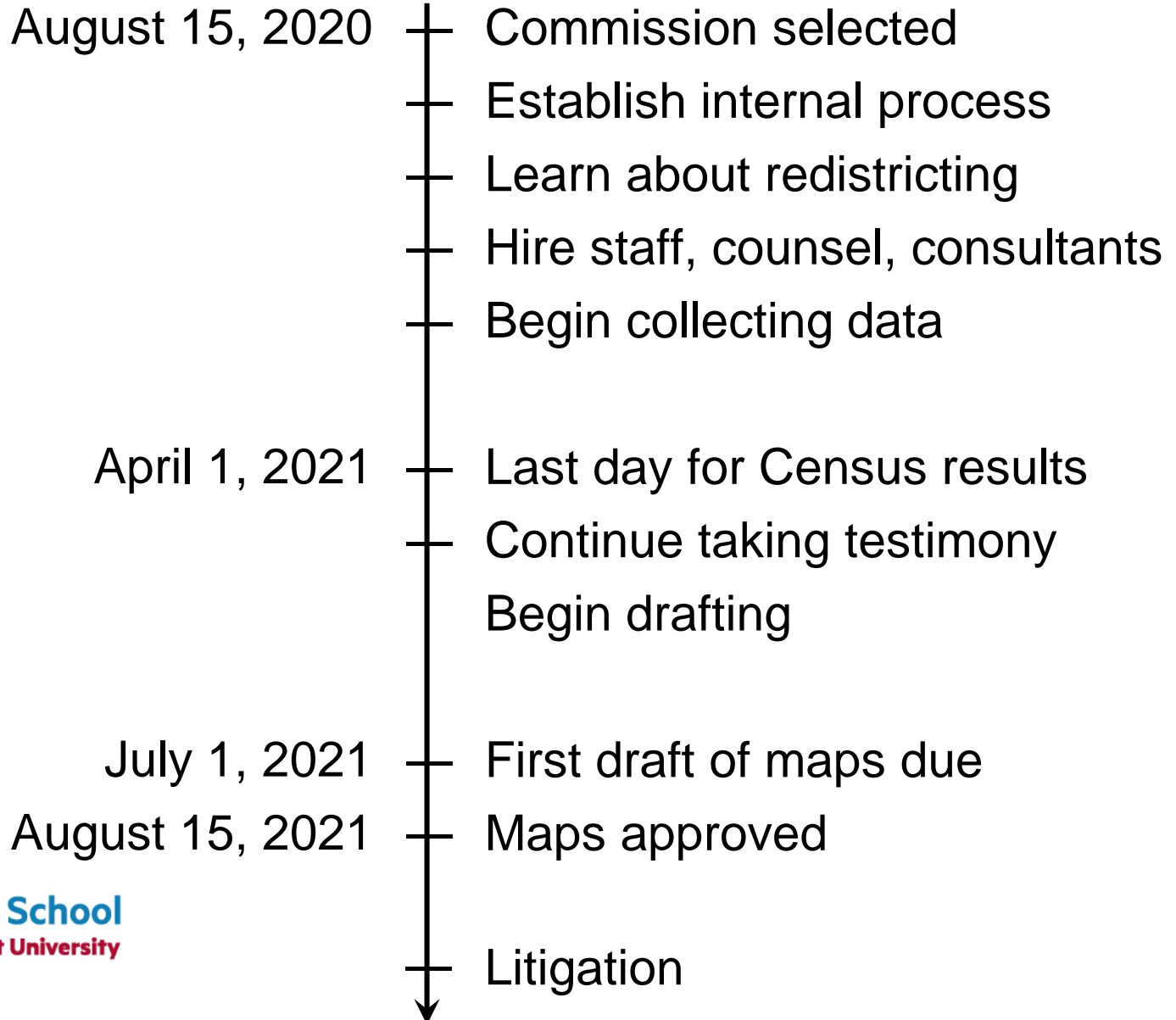
- Why ?
- Where ?
- What ?
- **When ?**

Who, of course, is up to you...



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The timeline is quite short



Good luck!



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Further information

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