Disrobing the Judiciary: The Systematic Stripping of Judicial Power by the Legislature

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NOTES

DISROBBING THE JUDICIARY: THE SYSTEMATIC STRIPPING OF JUDICIAL POWER BY THE LEGISLATURE

Chynna Breann Hibbitts

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1 Communications Editor, KY. L.J., Vol. 108; Staff Editor, KY. L.J., Vol. 107; J.D. expected 2020, University of Kentucky College of Law; B.S. in Communication and Sport Administration, 2017, University of Louisville. A special thank you, to my mom. Without you law school would not have been possible. To Maiya, thank you, for letting mommy pursue her dream of becoming a lawyer. To Professor Steenken, thank you for the numerous hours spent reviewing this note. To Professor Douglas, for inspiring this note and my fascination with election law. To Tyler Green, Judge Tom Smith and Judge Johnny Ray Harris, this note would not exist if you all had not pushed me to find answers. To KLJ and our editors, thank you for allowing me the opportunity to publish with you all and your work on this note.
INTRODUCTION

From a young age, civics and social studies classes teach children the basic principles that the Founding Fathers established for this country—especially the stress placed on the separation of powers. As the country evolves, the steadfastness of checks and balances seemingly remains. There have always been questions of whether the judicial branch is the most or least important of the three branches.\(^2\) In the current political climate, especially after the contentious confirmation process of the newest Supreme Court Justice, Brett Kavanaugh,\(^3\) one could say that the judiciary has become the most important—or at the very least—the last to succumb to political pressures. The judiciary as a whole has attempted to remain neutral but is in a limbo created by many state legislatures when deciding what areas need more or fewer judicial seats in their respective states.\(^4\) Judicial redistricting attempts to rectify issues of judges in specific circuits and districts working a caseload that is much higher than others across the respective state by adding, moving, or removing judgeships.\(^5\) Now, however, it seems the power of the judiciary is being put to the test with states instituting redistricting measures for the judgeships.\(^6\)

To further understand why judicial redistricting is essential, it is helpful to understand the history of redistricting in general. Redistricting is a long-standing way to draw election maps with multiple variables that have both helped and hindered each side of the political aisle.\(^7\) As the country grows, so do the populations of towns and counties.\(^8\) In some jurisdictions there were no shifts within the districts of the numbers of representatives and senators.\(^9\) In the 1960s, however, the Supreme Court held that population disparity of this sort violated the United States Constitution and required “equal population for each legislative district.”\(^10\) The Supreme Court was generally reluctant to rule on political questions before the ruling in *Baker v. Carr*.\(^11\) This ruling established that redistricting was not a political

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\(^2\) See *The Federalist No. 78* (Alexander Hamilton) ("[T]he judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them.").


\(^5\) Id.

\(^6\) Id.


\(^8\) Id.

\(^9\) See id.

\(^10\) Id.

question but one the Court could rule on in any circumstance. Because redistricting had not happened in many states, it created a population imbalance between rural and urban areas causing unequal representation. The 1964 Supreme Court decision in Reynolds v. Sims struck down a malapportioned map requiring that an equal number of “voters should elect an equal number of state representatives.” Equal population meant that the boundaries would have to be adjusted to account for the new population growth, and thus redistricting was born. While the Reynolds case established the equal population requirement, the Court held that “the reapportionment decisions were not intended to apply to judicial elections.”

Judicial redistricting is seemingly forgotten in the grand scheme of the political arena. It happens far less often than Congressional and state map redrawing—with some states electing not to do judicial redistricting at all. The judiciary is generally considered a neutral arbiter and is known for remaining unbiased in their decisions, based on the law rather than politics. Because of the inherent separation of powers, the judicial branch is privy to operate its own affairs, with some checks and balances. Due to this, those outside the judiciary are typically not aware of what the ramifications are if judicial seats are not accurately allocated. This Note takes a more in-depth look at how different states have addressed the judicial redistricting problems when it comes to overworked or underworked judges in their jurisdictions. Further, it addresses the current problem within the Commonwealth of Kentucky regarding its first failed legislative attempt at statewide redistricting and the subsequent elimination of a judicial seat in the second attempt.

Part I of this Note focuses on what judicial redistricting is and why it is vital to the functionality of the three-branch system. It also distinguishes the difference between congressional maps and judicial maps. Part II highlights how other states have approached the issue of judicial redistricting and their remedies, or lack thereof. Part III stresses the redistricting predicament that has taken place in Kentucky. Within that, issues such as separation of powers, overbreadth and vagueness of legislation, the weighted caseload formula itself, and the influence of partisan politics have played a significant role in the implementation of a bill that has been procedurally flawed from its inception. Part IV deals with the prospect of using the bench as a new form of gerrymandering. While the courts are impartial in their application of the law when it pertains to court cases, there is the suggestion that

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12 Altman & McDonald, supra note 11.
13 Id.
15 See Levitt, supra note 7.
16 Graham, supra note 14, at 101.
17 Id. at 101–02.
18 See Wogan, supra note 4 (stating that judicial districts and circuits in Kentucky have not been redrawn in 124 years).
19 See THE FEDERALIST NO. 78, supra note 2.
because judges and justices can be elected or appointed officials, courts are still at
the mercy of the legislature and the partisan politics behind them. Part V focuses on
potential resolutions to the redistricting problem including a uniform case
management system, applying “one person, one vote” to judicial district maps, and
making adjustments to the current weighted caseload system. It will also consider
where to go from here regarding the future of redistricting, and more specifically
how to deal with the procedural problem arising in Kentucky.

I. THE HISTORY OF REDISTRICTING

Redistricting is a “legally required process that occurs every ten years.”22 During
this process, the districts for the United States House of Representatives and state
legislatures are redrawn.23 The districts divide states and the people who live in the
geographical territories.24 A district may encompass the entirety of the jurisdiction
while other jurisdictions are separated into multiple districts.25 When multiple
districts cover one jurisdiction, there must be a way to define where the lines will be
drawn, and the purpose of redistricting is to ensure it is in an efficient and fair way.
Though the purpose of redistricting is seemingly straightforward, its history has
created a lasting negative impact that has been the source of much contention
over time.26 Redistricting has been used for political gain even before the United
States Constitution took effect.27 For example, in 1788 former Governor of Virginia,
Patrick Henry swayed the legislature to redraw the 5th Congressional District so that
James Madison would have to run against James Monroe.28 Although Madison
won,29 it was a testament to the power of redistricting and the political games behind
it.

Though redistricting on its face is not seemingly controversial, it has garnered a
negative reputation over time. In 1812 Governor Elbridge Gerry of Massachusetts
enacted a law that defined the state’s new senatorial districts.30 The law
“consolidated the Federalist Party vote in a few districts,” which “gave
disproportionate representation to Democratic–Republicans.”31 Because the outline

22 Aaron Blake, Redistricting, Explained, WASH. POST (June 1, 2011),
redirect-on&utm_term=.2eccc3675acc9 [https://perma.cc/7W7F-J27P].
23 Id.
24 See supra text accompanying note 7.
25 See Blake, supra note 22.
26 See Gerrymandering, or How Drawing Irregular Lines Can Impact an Election, PBS (June 20,
2017), https://www.pbs.org/newshour/extra/2017/06/gerrymandering-or-how-drawing-irregular-lines-
can-impact-an-election/ [https://perma.cc/8ZAD-7WNE]; see also Gerrymandering and Partisan Politics
in the U.S., PBS (Sept. 26, 2016), https://www.pbs.org/newshour/extra/daily-videos/gerrymandering-and-
partisan-politics-in-the-u-s/ [https://perma.cc/6ADU-EZYZ].
27 Emily Barasch, The Twisted History of Gerrymandering in American Politics, ATLANTIC (Sept. 19,
american-politics/262369/.
28 Id.
29 Id.
30 Id.
31 Id.
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of one of the districts resembled a salamander, a cartoon was drawn combining it and the governor’s name to create what we now know as “gerrymandering.”

Gerrymandering is typically seen as a hindrance to the electoral process because it violates the basic principles—compactness and equality of size—of districting. Gerrymandering infringes on the electoral process by skewing the equal representation of a specific district to favor one political party over another, which is what the Supreme Court has attempted to deter with its decisions.

In 1964, the Supreme Court established how districts should be drawn and how districts should reflect substantial equality of population. This ruling, however, has not truly deterred parties from using this method for political gain. After the Voting Rights Act of 1965 was passed, several states used this opportunity to draw maps where the “majority–minority” districts encompassed a non–white majority, making it much easier for minority voters to have the representation of their choice—opposite of what it had been in the past. While this was used to protect minority voters in places like the Deep South where there had been a history of disenfranchisement, it still perpetuated the use of gerrymandering—albeit in an affirmative way. The “state-sanctioned” gerrymandering—as Section 5 was referred to—required individual states to obtain pre-clearance in order for their maps to be approved by the Department of Justice to avoid partiality for specific voting demographics over another.

Over time, the Supreme Court has wavered some when it comes to gerrymandering and the types of gerrymandering that have been used historically. While the Court is firm in its stance regarding the use of race as a predominant factor in redrawing district lines, use of the safe harbor methods initially put in place to prevent racially motivated gerrymandering—such as Section 5 of the Voting Rights Act of 1965—has been dismantled. In the dissent of Shelby County v. Holder, Justice Ginsburg warned of a backslide once the provision was removed from states that had a tradition of disparaging minority voters. Consequently, all the states that fell under the preclearance provision of Section 5 have initially begun to implement voter or election laws that harm already disenfranchised voters, specifically minorities. Partisan gerrymandering—much like racial gerrymandering—is now

32 Barasch, supra note 27.
33 See id.
34 See id.
35 See Reynolds v. Sims, 377 U.S. 533, 578 (1964); see also Levitt, supra note 7 (discussing the Supreme Court holdings of the 1960s relating to redistricting).
36 Barasch, supra note 27.
37 Id.
38 Id.
41 Id. at 557. To clarify, Section 5 of the Voting Rights Act of 1965 has not itself been dismantled by this case, but rather Section 4(b) that is based on ideas in Section 5 has been dismantled. Id.
42 Id. at 584–85 (Ginsberg, J., dissenting).
43 See id. at 592.
being used as a tool to disparage voters.\textsuperscript{44} By using partisan gerrymandering the congressional and state maps are designed to favor one party or another—instead of using race as a predominant factor—political affiliation is the predominant factor.\textsuperscript{45} Additionally, the Court has also ruled that partisan gerrymandering is a political question, making it non-justiciable.\textsuperscript{46}

Though the process for congressional redistricting—both federally and statewide—is well established,\textsuperscript{47} the process for judicial redistricting is vaguer. Many states do not think about the redistricting of their judicial maps of the circuit and district courts.\textsuperscript{48} For instance, the Commonwealth of Kentucky has not revised judicial boundaries for 124 years.\textsuperscript{49} Since 1893 there have been many changes across the Commonwealth, such as a uniform health-care mandate and Medicaid Expansion aided by the Affordable Care Act,\textsuperscript{50} but the judicial boundaries have not been revised statewide to address the surge in population.\textsuperscript{51} Kentucky, however, is not the only state to face backlash when it comes to judicial redistricting.\textsuperscript{52} Still, it has been one of the only states to pass “piecemeal” legislation by removing only one judgeship in the Commonwealth after the original statewide redistricting attempt failed.\textsuperscript{53}

Judicial redistricting is essential in the overall awareness of access to justice for all. Access to justice allows people “to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.”\textsuperscript{54} Access to justice encourages human rights and fundamental freedoms for all,\textsuperscript{55} and according to the United Nations, access to justice is merely a “basic principle of the rule of law.”\textsuperscript{56} Without it, those who are not as well-versed in the law could fall prey to those who are and in the process may not be able to exercise rights, hold their lawmakers accountable, or potentially be victims to


\textsuperscript{45} Id.

\textsuperscript{46} Baker v. Carr, 369 U.S. 186, 209 (1962); see also Vieth v. Jubelirer, 541 U.S. 267, 309 (2004) (Kennedy, J., concurring) (discussing that the arguments against the courts hearing cases on judicial redistricting are not persuasive enough to bar gerrymandering issues as non-justiciable).

\textsuperscript{47} See Levitt, \textit{supra} note 7.

\textsuperscript{48} See, Wogan, \textit{supra} note 4.

\textsuperscript{49} Id.


\textsuperscript{51} See Wogan, \textit{supra} note 4.

\textsuperscript{52} Id.


discrimination. Some organizations go as far to say that access to justice is a “necessary condition.” In Kentucky, the focus is on helping low- and moderate-income individuals navigate the legal system in civil issues. Chief Justice John D. Minton, Jr. weighed in on the issue stating, “[w]e must work together to resolve issues that threaten the safety, health, financial security and overall well-being of some of our most vulnerable citizens.”

The importance of equal justice and representation spans not only across the Commonwealth but also worldwide.

The notion of having enough judges to handle dockets in their respective jurisdictions should not be an afterthought, but at the forefront of creating a sense of judicial efficiency, trust, and confidence in the legal system. A study done in Kentucky showed that each type of case a court covers requires different processing than other cases. Conversely, despite the need for trust and efficiency, many do not see another option than removing judgeships for the sake of saving taxpayers’ money. The constant tension between needing to redraw the judicial maps versus the effect it will have on communities is why this issue is so difficult to resolve. Because of this, states have made incremental changes rather than a statewide overhaul of the judiciary.

**II. STATES’ ATTEMPTS AT JUDICIAL REDISTRICTING**

While judicial redistricting is not an anomaly by any means, failed attempts have created a logical question—why does it not work? While there is no clear answer to why judicial redistricting does not fare well when there is a statewide overhaul, looking at the judicial proposals of several states gives some indication. Each of these states has made robust attempts at judicial redistricting, with the results seemingly being the same in each instance. To achieve judicial efficiency, politics has pressed its way into a position and branch of government that is known for its neutrality. Overall, there is steady contention with the legislatures that causes the failure of a statewide judicial redistricting proposal. Several states have attempted to redistrict their judgeships to combat the issue. Those legislatures acknowledge that some jurisdictions are being overworked, while others are being underworked—but
there is no general compromise to remedy the problem.\textsuperscript{68} It would appear judiciaries have the most knowledge of how and what needs to change, but with the legislatures controlling the purse strings, it ties the judiciary’s hands, creating an inability to make changes on their own in the interest of justice.

\textit{A. Montana}

Montana has previously made many attempts at judicial redistricting.\textsuperscript{69} The most recent being in 2017—where the independent judicial commission agreed not to move forward with the findings of the weighted caseload assessment.\textsuperscript{70} While the numbers of the weighted caseload assessment suggest there is a need for about 21 new judges across the state, some judges worry that there may not be any place to put the new judges.\textsuperscript{71} This is something to take into consideration because more judges mean more office space, and this would be a cost that the state may not be able to incur at the time. State Representative Nate McConnell addressed the price of adding the judges acknowledging that the cost would be high — funding that he believes the state will not get or appropriate.\textsuperscript{72}

Since Montana last drew its judicial districts in 1929, the state has made only minor adjustments; there has been no statewide redistricting effort.\textsuperscript{73} Montana has not removed any judgeships from their districts, either.\textsuperscript{74} Any changes made were to \textit{add} judges where needed but not to reallocate to other overworked or underworked jurisdictions.\textsuperscript{75} Montana’s weighted caseload assessment has been used for other states as a model to assess the workload of the judges throughout various jurisdictions.\textsuperscript{76} Nevertheless, Montana has been unable to use their method as a comprehensive way to redraw the districts and circuits statewide.\textsuperscript{77}

The weighted caseload assessment is an efficient way to quantify the judicial workload.\textsuperscript{78} While it can give a sense of jurisdictional workload, it is not a foolproof

\begin{itemize}
  \item \textsuperscript{68} See id.
  \item \textsuperscript{69} Id.
  \item \textsuperscript{71} Id.
  \item \textsuperscript{72} Id.
  \item \textsuperscript{73} Id.
  \item \textsuperscript{75} See id.
  \item \textsuperscript{76} See generally \textit{Brian J. Ostrem et al., Nat’l Ctr. for State Courts, Kentucky Judicial Workload Assessment} (2016), https://courts.ky.gov/resources/publications-resources/publications/interimreportjudicialworkload.pdf \[https://perma.cc/SSKA-VL6W\] (explaining the process by which the judicial workload of Kentucky judges was conducted and the results that came from the study).
  \item \textsuperscript{77} See Michels, supra note 70.
  \item \textsuperscript{78} See \textit{Jim Diller, Weighted Caseload Measures & The Quarterly Status Report} 1 (Feb. 13, 2017), https://www.in.gov/judiciary/admin/files/pubs-trial-court-weighted-
method. Many variables are calculated, such as the difference between working a family court case versus a civil case. In Montana, using the method—although the independent commission found that there was a need for judges in certain areas—the state could not justify moving a judgeship from another jurisdiction that would require citizens to drive hours to get to court. The legislature and commission decided to scrape together funds to add the judgeships as not to inconvenience their citizens. Although caseloads are high—by addressing the issue at least somewhat—this will prevent even longer dockets and keep efficiency as low as it can be.

B. Tennessee

Out of all the states, Tennessee has had one of the most challenging times in constructing judicial realignment. In 2009, The Justice Management Institute conducted a study to determine what needed to be done with judicial redistricting within the state. The study found that states do not create specific criteria for judicial redistricting and that there is a variation of practices in how and where cases are heard. The study concluded that there needed to be an accurate way to track workload, but because hearings were held district-wide, it was difficult to determine workload on a county-by-county basis. In 2013, Speaker of the State Senate Ron Ramsey received fourteen proposals for the judicial redistricting initiative for the state. At the time the proposals were discussed, Tennessee had not redrawn their judicial maps since 1984. Despite this, the Tennessee Trial Judges Association responded to the Senate proposals with a letter concerning the cost effect of caseloads and distanced traveled from county to county.

caseload.pdf

[https://perma.cc/L65M-BGHL] (discussing Indiana’s use of the weighted caseload study method in determining the need to judges in each district); see also Determining the Number of Judges, DISTRICT CTS., https://www.auditor.leg.state.mn.us/ped/pedrep/0102ch3.pdf [https://perma.cc/5PAJ-7H3E] (discussing Minnesota’s use of the weighted caseload study method in determining the need for judges in each district).

79 See DILLER, supra note 78.
81 Id.; see also Wogan, supra note 4.
83 Id.
84 Id.
86 Id.
87 See id.
Governor Haslam addressed the issues the Tennessee Trial Judges Association raised in their letter, by signing Public Chapter 974 into law in May 2018.88 This established a task force to evaluate the current judicial districts.89 The task force has eleven members appointed by the House and Senate Speakers, which includes an array of judicial officers including current Chancellors, District Attorneys, a County Clerk, and Public Defenders.90 The task force is also responsible for creating recommendations for a future statewide redistricting plan, with the plan published no later than December 2019.91 The task force is holding three public hearings with a published schedule allowing the general public to be involved in the process.92 Only time will tell how this judicial redistricting process will shake out, but by having members of the legal community involved there will hopefully be a practical resolution.

C. North Carolina

North Carolina’s issues with redistricting span more than just the judiciary.93 The state has been marred with constant litigation over their congressional maps for years,94 so it is not a surprise their judicial maps would be any different. The General Assembly in North Carolina has attempted judicial redistricting several times.95 Currently, due to pending redistricting litigation of their legislative districts, there has been a delay in making any headway on boundaries for trial judges and prosecutors.96

Unlike Montana, North Carolina does not have a definitive system to determine judicial workload and has had trouble getting both chambers of their General Assembly to agree on the issue.97 Because of this, lawmakers attempted to pass fragments of a statewide remapping of the judicial election districts before filing for election.98 The situation in North Carolina has boiled down to a political dispute between the Republican and Democratic Parties.99 Governor Roy Cooper and other
Democrats were opposed to the redistricting because it favors Republican candidates, allowing the candidates to gain “more seats on the bench.” The North Carolina Bar Association weighed in on the redistricting bill as well, suggesting that “any redistricting of Judicial and Prosecutorial Districts should” include “input from the Administrative Office of the Courts, [j]udges, [d]istrict [a]ttorneys, members of the bar, and other stakeholders in the judicial system.” The North Carolina Bar Association continued to urge for a result to increase “efficiency and access to justice” so the citizens of North Carolina could be confident and trust its legal system.

D. Michigan

The state of Michigan has been subject to gerrymandering over several decades as well. Starting in 1998, the state used the weighted caseload method to help allocate funding and resources for the judiciary across the state. Over the next twelve years, Michigan went through a series of processes to determine the best course of action and eliminated thirty-six judgeships throughout the state. This was done in an attempt to free up taxpayer money and ensure the number of judges mirrored appropriate caseloads.

While Michigan has been somewhat successful in their attempts to use the caseload method, they are still not free from political dead-hand control. This particular example does not fall within judicial redistricting, but it opens the curtain to political sway on the judiciary. Michigan’s newest initiative speaks only to congressional and legislative maps, but it is the Michigan Supreme Court decision that is the concern. In 2018, there was a push by grassroots group “Voters Not Politicians” to remove gerrymandering from redistricting. The group initiated a ballot proposition, which passed to create an independent redistricting commission for future maps. In July 2018, the Michigan Supreme Court ruled in a 4–3 decision to add “Prop 2” on the ballot. Justice Elizabeth Clement spoke about how she went against her party to allow the proposition on the ballot. Justice Clement suggested

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100 Id.


102 Id.


104 Id. at 245–46.

105 Id. at 245.


107 Id.

108 Id.

109 Id.
she was intimidated by “outside forces” and shunned by the Republican Party after the decision.\footnote{Id.}

Justice Clement was appointed by Republican Governor Rick Snyder and was up for election for the first time on the November ballot.\footnote{Id.} Clement faced “bullying and intimidation” while the redistricting proposal was still being deliberated.\footnote{Id.} One Justice saw the pressure applied to Clement as “a breach of legal protocols.”\footnote{Id.} The Republican Party went as far as to remove Clement’s name and photo from a door hanger that listed every other statewide Republican candidate.\footnote{Id.} While the issues faced by Justice Clement are not explicitly tied to judicial redistricting, it plays into the role of the party in an attempt to perpetuate the cycle of gerrymandering that has been a harmful influence on the judiciary.

E. Other States

Minnesota, Florida, Nebraska, and Indiana have all used the weighted caseload assessment to evaluate judicial workloads. None of these states, however, have used the method to create a statewide redistricting initiative. Minnesota used its caseload assessment to determine which cases would take longer to adjudicate.\footnote{Id.} They also provided a list of guidelines for the Administrative Office of the Courts to follow to create a more structured and uniform judiciary.\footnote{Id.} Florida established its method in order to certify the need for adding new judges as the state grew in population.\footnote{Id.} Nebraska conducted an assessment for the 2017 calendar year to gauge their judicial workload.\footnote{Id.} Nebraska’s caseload assessment notes, however, that the method does not determine an exact number of judges required for the judicial district.\footnote{Id.} It also suggests that if there are less than full–time equivalent judges, additional assessment should be conducted.\footnote{Id.} Indiana has used the weighted caseload method since 1996.
and evaluates their resources thoroughly every six to seven years.\textsuperscript{121} Indiana also publishes a "Temporary Adjusted Weighted Caseload Report" which accounts for certain variables the courts may face throughout the year.\textsuperscript{122}

While the weighted caseload method is not a bad idea on its own, it is clear that it requires years of proposals and work to make sure judge ships are not added or removed hastily. Many states work for years to create plans that will be successful for the state, the judges, staff, and most importantly, their citizens.

Kentucky conducted one study and based an entire statewide allocation on preliminary data.\textsuperscript{123} Generally, when there is preliminary data involved during this process, quality adjustments are recommended.\textsuperscript{124} It is suggested that those quality adjustments are made by a panel of experienced judges with input from other judges and focus groups.\textsuperscript{125} By jumping the gun on the redistricting process, the Kentucky General Assembly has strained an already embattled judiciary.

III. JUDICIAL REDISTRICTING ISSUE IN KENTUCKY

In the Commonwealth of Kentucky, no case law precedent or statute establishes how judicial maps should be approached and appropriated. Presently, there have been additions of several Circuit Family courts while the legislature removed one Circuit judgeship statewide.\textsuperscript{126} Though the "one person, one vote"\textsuperscript{127} principle does not apply to judicial maps,\textsuperscript{128} the same idea can be used to understand the underlying ramifications of this removal.

During the 2014 regular session of the Kentucky General Assembly, the legislature proposed a directive to the judiciary.\textsuperscript{129} That directive called for a recommended realignment plan for the circuit and district courts statewide.\textsuperscript{130} It reads as follows:

\textbf{Realignment of Circuit and District Judicial Boundaries:} The Administrative Office of the Courts shall develop and implement a weighted caseload system to precisely measure and compare judicial caseloads throughout the Commonwealth on the Circuit Court, Family Court, and District Court levels for the purpose of recommending a plan for the realignment of the circuit and district judicial boundaries. This plan

\begin{itemize}
  \item \textsuperscript{121} \textit{Weighted Caseload Measures,} IN D. JUD. BRANCH, https://www.in.gov/judiciary/iocs/3330.htm [https://perma.cc/5DAW-EX75].
  \item \textsuperscript{122} \textit{Id.}
  \item \textsuperscript{123} \textit{Id.}
  \item \textsuperscript{124} \textit{Id.}
  \item \textsuperscript{125} \textit{Id.}
  \item \textsuperscript{127} \textit{See generally} Reynolds v. Sims, 377 U.S. 533 (1964) (discussing how the Equal Protection Clause requires the seats in a bicameral state legislature to be apportioned on a population basis that equally weighs one vote for every one person residing in a state legislative district); \textit{see also} Tennant v. Jefferson Cty. Comm'n, 567 U.S. 758, 758 (2012); Karcher v. Daggett, 462 U.S. 725, 747 (1983) (Stevens, J., concurring); Lucas v. Forty-Fourth Gen. Assembly of Co., 377 U.S. 713, 741 (1964) (Clark, J., dissenting).
  \item \textsuperscript{128} \textit{Stokes v. Fortson,} 234 F. Supp. 575, 577 (N.D. Ga. 1964); \textit{see also Graham, supra} note 14, at 101.
  \item \textsuperscript{129} \textit{H.B. 238, 2014 Gen. Assemb., Reg. Sess. § 1 (Ky. 2014).}
  \item \textsuperscript{130} \textit{Id.}
shall be submitted to the House and Senate Judiciary Committees by January 15, 2016.  

Chief Justice John D. Minton, Jr. explained that the redistricting would not impact every county or jurisdiction and would not accomplish the goal of a statewide Family Court. The purported reasoning of the Judicial Redistricting Plan was to allocate resources from underworked jurisdictions to those that are overworked. The 2017 proposal of the Kentucky General Assembly would have at most resulted in a lost judge seat for 15 of the 120 counties; Boyd County specifically would have lost two judges but would have also gained a family court judge. The removal of so few circuit judgeships would not equate to the financial solution needed for the additional positions, making their proposal detrimental to the welfare of the Commonwealth. Taxpayers' money is now being spent in jurisdictions that have shown there is no need for the number of judges they have, and that money could be allocated to the jurisdictions that need it the most. If the General Assembly intended to maximize efficiency in the judiciary by reallocating judgeships to overworked areas from underworked jurisdictions, how did this plan fail? Naturally, because political capital is worth more than a fully functional judicial branch.

The Kentucky Constitution gives the General Assembly power “to reduce, rearrange, or increase the judicial districts” upon the certification of necessity by the Supreme Court of Kentucky. What this Amendment does not do is allow the General Assembly to impose directives to the Judiciary to make changes. The judicial branch of the Kentucky state government has exclusive authority to manage its administrative affairs. A “legislative function cannot be so exercised as to interfere unreasonably with the functioning of the courts, and that any unconstitutional intrusion is per se unreasonable.” Although the General Assembly “has a legitimate and necessary right to know” how judiciary funds are being spent, “the authority for and responsibility of determining the necessity and propriety of the expenditures—from that source—rest exclusively with the judicial branch itself.” Therefore, the right of the General Assembly is to fund the judiciary, but not to impose their legislative directives upon the other branches of Kentucky government.

The General Assembly’s inability to pass the bill without proper procedure has potentially usurped and hindered the constitutional power of the judiciary making
the bill as published unconstitutional. In February 2017, the Supreme Court of Kentucky issued a certification of necessity to realign judicial circuits and districts and reallocation of existing judgeships statewide. The certification of necessity allows other branches to exercise power of another—in this instance—it grants permission from the judiciary to the General Assembly to adjust judicial seats as needed. Procedurally and substantively, the certification follows the Kentucky constitutional provisions—which provides the General Assembly can increase or rearrange judicial districts upon a certification of necessity from the Kentucky Supreme Court. Still, the statewide redistricting bill presented to the General Assembly was killed because it failed to pass out of a House committee, rendering the certification of the statewide redistricting null and void. The General Assembly introduced a new bill, HB 348, in 2018, which significantly reduces the changes that were initially proposed in the prior statewide redistricting bill, SB 9. Almost all of the jurisdictions in danger of losing a judgeship were spared except for one. HB 348 was signed into law on April 2, 2018, but without a certification of necessity before the introduction of the bill. Because the certificate of necessity was not entered until June 7, 2018—after HB 348 was already a law—the General Assembly failed to comply with the Kentucky Constitution making the law’s changes to KRS 23A and 24A unconstitutional.

In November 2013, before the directive to redistrict the judgeships across the Commonwealth, Chief Justice Minton testified to the Budget Review Subcommittee on Justice and Judiciary. During this testimony, there was no mention of the need for judicial redistricting, but rather the opposite. Minton’s recommendation to the judicial budget—which he has full authority to restructure by way of the Kentucky Constitution—was authorization to gradually increase judicial salaries over the next several years to bring the compensation of judges in line with surrounding states. In light of recent findings from the State Auditor, Mike Harmon, it appears

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142 See infra Part IV.
143 SUPREME COURT OF KENTUCKY, CERTIFICATION OF NECESSITY REALIGNMENT OF JUDICIAL CIRCUITS AND DISTRICTS AND REALLOCATION OF EXISTING JUDGESHIPS 1 (Feb. 23, 2017) [hereinafter CERTIFICATION OF NECESSITY REALLOCATION].
144 Id.
145 KY. CONST. § 112.
152 See id. at 3.
153 KY. CONST. § 110.
154 Minton Budget Testimony, supra note 151, at 3.
that the judiciary could have facilitated the judicial need and not eliminated any judgeships if funds had been managed and appropriated accordingly.\textsuperscript{155} During the self-imposed audit of the Administrative Office of the Courts, it was found that there were two million dollars in inventory errors, documentation for credit card expenses was missing, and some taxable benefits were not adequately reported.\textsuperscript{156} House Bill 380 mirrors Harmon's suggestions of monetary expenditures in the judicial branch;\textsuperscript{157} though it may not solve the problem, managing the funds more succinctly could open the door to adding more judgeships and appropriating funds accordingly.

The Kentucky judiciary created an independent committee to evaluate a weighted caseload model to determine the workloads of judges across the Commonwealth.\textsuperscript{158} Nonetheless, the weighted caseload formula used to determine the time spent in some instances is flawed. The weighted caseload model of workload analysis only takes into consideration three elements in determining the caseload of each court: (1) The number of case filings opened each year; (2) "[c]ase weights", the average amount of time required to handle each case by the judge; and (3) "[t]he year value" of the amount of time each judge or staff member has casework for one year.\textsuperscript{159} According to the formula, a total "annual workload is calculated by multiplying the annual filings for each case type by the corresponding case weight," summing that workload across all case types, then dividing by the year value.\textsuperscript{160} Conversely, this data is determined on a "four-week period" and does not account for the ebb and flow that courts can experience at times during the year.\textsuperscript{161} It also does not consider caseload increases or decreases for the following years.\textsuperscript{162} This report assumes that the amount of time judges spend on certain types of cases for the selected case study period is the same at all times and gives no deference to potential changes.\textsuperscript{163} The case weight used to determine the numbers is also considered preliminary,\textsuperscript{164} and case weights could vary depending upon the year in which the study is being conducted.\textsuperscript{165} Therefore, the data is based upon relative numbers rather than absolute quantitative methods. Because the numbers are not absolute it gives rise to fluctuation throughout the year; depending on the complexity of a case, a judge may be required to spend


\textsuperscript{156} HARMON, EXAMINATION OF CERTAIN OPERATIONS, supra note 155, at 11–12, 53.

\textsuperscript{157} Harmon, House Bill, supra note 155.

\textsuperscript{158} OSTROM ET AL., supra note 76, at 1.

\textsuperscript{159} Id. at 2.

\textsuperscript{160} Id.

\textsuperscript{161} Id. at 3.

\textsuperscript{162} See id. at 5.

\textsuperscript{163} See id. at 6.

\textsuperscript{164} Id.

\textsuperscript{165} See ADMIN. OFFICE OF THE COURTS, KY. COURT OF JUSTICE, CIRCUIT COURT CASELOAD BY CIRCUIT (2019) [hereinafter AOCY REPORT], https://kycourts.gov/aoc/statisticalreports/Documents/INS01CIR.pdf [https://perma.cc/B9W1-3K5H] (listing the statistics derived from case management database for the Kentucky Court of Justice, including the amount and type of cases heard by each circuit).
more time on one case than another. This in turn would mean the numbers taken during the specified time are not an accurate depiction of judicial time management.

An area of concern during the study submitted to the Kentucky Administrative Office of the Courts (hereinafter, “AOC”) is the varying ways Circuit Court Clerks count the cases that are filed. In one instance, two women were charged with seventy-two felony charges and those counts were added as seventy-two separate cases. The counts alone were misdemeanors, but once aggregated they were elevated to felony counts. Typically, all counts are listed under one felony case number—rather than seventy-two felony cases. The disparities showcase how Circuit Court Clerks are keeping their records statewide; there is no way to assess what the actual caseload of the judges is accurately. Until there is a uniform way to manage how clerks tally the cases, judicial caseloads will vary significantly with inaccurate numbers of case filings.

The language used within the judicial workload assessment remains ambiguous as well. Though the purpose of the judicial workload assessment is to calculate the accuracy of judicial caseloads across the state, it leaves much to be disputed. Throughout the assessment, the caseload averages for each county are formulated to “implied judicial need.” The word implied raises a flag that the findings are not a complete and concrete way of determining the actual workload of circuit and district judges. The assessment only considers a limited amount of time, and if completed within another month of the year could ascertain different results. Until there is an assessment that documents an entire year, minute-by-minute, there may be no entirely accurate way to quantify judicial need, and the needs of every county will seemingly be “implied.”

When the case weights of the original assessment are compared to the current year, there is already a spike in caseload. In 2011, the number of cases filed in the Commonwealth exceeded 114,000 cases; then there was a general decline statewide. Since, a visible upward trend in cases filed has appeared recently. In 2015 saw a general increase of cases filed across the Commonwealth by almost 10,000 total cases. In a recent article President of the Senate, Robert Stivers, says “the legislature has got to reckon with recent demographic changes in the state, starting with the significant loss of jobs—and residents—in Eastern Kentucky. ‘There’s been an outmigration for the past several years, so the caseload has dropped.  

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167 Id.
168 Id.
169 See Ostrom et al., supra note 76, at 1; see also Minton Testimony, supra note 132, at 3.
171 See Ostrom et al., supra note 76, at 3.
172 See AOCY Report, supra note 165.
173 Id.
174 Id.
175 Id.
That’s just the reality.” While jobs have decreased over the last decade, the caseload in individual counties in Eastern Kentucky has increased, as noted by the Administrative Office of the Courts reports. By having timely reviews of caseloads, stressed courts can find ways to lift backlog. An assessment after eight years is too long to wait to reassess once seeing the surge in cases that have taken place the last three years. For example, “the independent workload study showed a reduced need for the district and circuit court judges in Boyd County” and was slated to lose a seat in the original bill. State Senator Robin Webb, a trial attorney herself, stated that “[i]t’s hard to quantify the workload of a judge . . . [i]t’s not an exact science.” Boyd County is not affected in the final bill, but it is an indication that the workload of the judiciary cannot be quantified in a definitive measurement. Though the Supreme Court has stated that every ten years is enough for legislative maps, judicial maps should be reassessed more often because they encompass more variables than population alone. As the caseload method illustrates, many states take into account multiple things when evaluating how, if, and when to prepare for judicial redistricting. Judicial redistricting is also different because crime, cases, and funding are continually shifting and stability is necessary to have an efficient judiciary and access to equal justice for the people the courts serve. As crime increases—such as per the rampant opioid epidemic in Kentucky—more cases come before the court, and having more cases creates backlog. If there are not enough judges to handle those increasing caseloads they take longer to resolve. Judiciaries also have to worry about funding, because the state legislatures control their appropriations and at any point, their budgets can be reduced or increased.

The Interim Report of the Kentucky Judicial Workload Assessment cites to Montana law on the workload assessment using the “weighted caseload” and “clerical weighted workload” models. The state of Montana has contemplated several proposals to address the issue of judicial redistricting similar to that in the state of Kentucky. In Montana, there have been six proposals to address the issue,

176 See Wogan, supra note 4.
178 See OSTROM ET AL., supra note 76, at 1.
179 See AOCY REPORT, supra note 165 (outlining the varying change in case filings over the course of seven years).
180 See generally Reynolds v. Sims, 377 U.S. 533, 583 (1964) (discussing how often legislative districts should be readjusted).
182 See Wogan, supra note 4.
183 See HARMON, EXAMINATION OF CERTAIN OPERATIONS, supra note 155, at 9.
184 See OSTROM ET AL., supra note 76, at 17, n.10.
185 MONTANA REDISTRICTING REPORT, supra note 80, at 1.
DISROBING THE JUDICIARY

and all have been voted down for various reasons. The Montana Judicial Redistricting Commission, after considering the effects on people living in the affected counties and on the judges' caseloads and travel times, contends that the adjustments are "not necessary" or are they "the appropriate way to address" the issue. An eight-year reassessment of the judicial workload is too long to wait to determine whether to add or subtract a judgeship.

Upon evaluation, the legislation itself potentially violates the overbreadth & vagueness statute in the Kentucky Constitution. "In reviewing the standard for vagueness," the Kentucky Supreme Court and the United States Supreme Court:

have followed two general principles . . . [A] statute is impermissibly vague if [(1)] it does not place someone to whom it applies on actual notice as to what conduct is prohibited; and . . . [(2)] if it is written in a manner that encourages arbitrary and discriminatory enforcement.

In the case of judicial redistricting, the language of the HB 348 is written in such a way that it encourages arbitrary and discriminatory enforcement. The bill allows for the General Assembly—at their discretion—to determine which judgeships are needed and those that are not, regardless of what the workload assessments show. Once the Supreme Court of Kentucky has certified the necessity of judicial redistricting, the legislature can effectively substitute a bill nullifying the numbers from the workload assessment and tailor the bill to suit the needs of individual counties.

IV. PARTISAN POLITICS AFFECTING THE JUDICIAL REDISTRICTING PROCESS

In Kentucky, partisan politics has continued to rear its ugly head by not only crippling the legislative process but by overextending its hand by interfering with the judiciary. The General Assembly and Administrative Office of the Courts created a workload assessment in an attempt to alleviate the judicial workload crisis. After the House let a judicial redistricting bill passed by the Senate die in committee, circuits that stood to lose judgeships were spared. This form of politics goes against the principle of the workload assessment because it negates the purpose of having a statewide redistricting bill. In essence, there is no actual need for a workload assessment if the General Assembly will not follow it. It seems counterintuitive to not implement the changes found in the weighted caseload assessment since the legislature urged the judiciary to work towards a statewide redistricting measure in

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190 Id. at 5.
191 Id.
194 See id.
195 See id.
196 See OSTROM ET AL., supra note 76.
197 See Wogan, supra note 4.
2014. The General Assembly, however, would attribute the incremental addition and removal of judgeships to what could be passed across both houses, because—at this point—something is better than nothing.

The reasoning for the workload assessment was to shift resources to the circuit and district courts that needed it the most, however, the districts and circuits that were flagged as having less than 1.4 workloads and 2 or more judges are not having those positions removed by the General Assembly. Many judges across the state express discouragement in the length of time it takes to close a case, and this should be addressed especially in those counties with high workloads per judge. Removing judges from areas where the caseload is steadily increasing with the rise in opioid and other drug use does not solve the problem. For example, Floyd County is the only county that is having a circuit judge position eliminated without reallocation. The workload assessment shows that the Floyd County family court only needs one judge; however, it does not consider that Floyd County’s family court judge also presides over Knott and Magoffin counties. Combining the “implied” judicial need for those three counties places the judicial workload at 1.71, which would suggest the workload of two judges rather than one. By that measure, to balance that workload, retaining the three circuit positions in Floyd County is necessary to comply with the workload assessment. Because the assessment has the numbers delegated to the proposed counties rather than the original counties those cases belong to, it creates a misrepresentation of how much work judges in their current counties are accumulating.

The Kentucky Constitution states that the General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes:

First: To regulate the jurisdiction, or the practice, or the circuits of the courts of justice, or the rights, powers, duties or compensation of the officers thereof; but the practice in circuit courts in continuous session may, by a general law, be made different from the practice of circuit courts held in terms.

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198 Id.; see also OSTROM ET AL., supra note 76.
199 See Wogan, supra note 4.
201 See OSTROM ET AL., supra note 76, at 9–11.
204 PROPOSED KENTUCKY REDISTRICTING PLAN, supra note 200.
205 See id.
206 KY. CONST. § 59.
Specifically, the purpose of this section is to prevent special privileges “to bar favoritism and discrimination and insure equality under law.”\(^{207}\) There is no doubt that need for a Judicial Redistricting Plan in the Commonwealth of Kentucky is high, but the proper procedures must be met to comply with the Kentucky Constitution—which is not the case with this bill.\(^{208}\) Without accurate tracking of cases filed, and full-length documentation of judicial workload, rather than a selected period, there will continue to be inaccuracies within “implied” judicial need statewide. Further, elimination, as set out in the second certificate of necessity, of one circuit position statewide will not provide the resources needed to fund other positions being added. If the Legislature were taking the initiative to implement their statewide redistricting plan, then more than one jurisdiction would have been affected by the removal, and that is not the case.

By failing to pass a comprehensive statewide judicial redistricting bill, the General Assembly did not honestly and earnestly address the issue they proposed in their directive to the judiciary. Many of the districts and circuits that were spared should have been among those that had judgeships removed, but for political influence, statewide redistricting would have passed. Chief Justice Minton stated that he was a “reluctant participant” and, being an elected official himself, realized that this process could affect his future on the court.\(^{209}\) He continued by commenting, “[n]o community wants to be told it’s got to give up a judgeship. There are going to be some who gain and some who lose.”\(^{210}\) While that was seemingly going to be the case with a statewide redistricting plan, it turned out less ideal. This is not the first time the General Assembly has masked their agenda behind a different bill.\(^{211}\) Though it is not related to judicial redistricting, in 2018 the General Assembly passed a pension reform bill under the guise of a sewage bill.\(^{212}\) Both Franklin Circuit Court and the Supreme Court of Kentucky ruled the bill unconstitutional because it failed to meet the procedural requirements to pass a bill.\(^{213}\) As of the 2019 session, the General Assembly attempted to pass a bill that would circumvent the existing judicial process by giving all state government defendants in civil cases the option to have any judge across the Commonwealth, sitting in a different circuit than where the case was originally filed, randomly assigned to hear the case.\(^{214}\) This comes after several

\(^{207}\) Dep’t of Finance v. Dishman, 183 S.W.2d 540, 543 (Ky. 1944).

\(^{208}\) See KY. CONST. § 112, cl. 2–3; id. § 113, cl. 2–3; H.B. 348, 2018 Gen. Assemb., Reg. Sess. (Ky. 2018); CERTIFICATE OF NECESSITY REALLOCATION, supra note 143.

\(^{209}\) See Wogan, supra note 4.

\(^{210}\) Id.


\(^{212}\) Id.

\(^{213}\) Id.

laws have been deemed unconstitutional by the Franklin County Circuit Court, and
some lawmakers feel this is a slight towards the governor and the Republican
Party.\textsuperscript{215} The blatant misuse of political power from the Kentucky General Assembly
to influence decisions of another branch of government goes against the very fabric
the Constitution was based upon.

V. REMEDIES AND POSSIBLE SOLUTIONS

There is no one size fits all remedy for judicial redistricting. Due to the nature of
jurisdiction-specific issues, any solution would need further exploration to
determine what would be most effective while limiting detrimental effects to the
judgeships. Though, some potential solutions could be to create a uniform caseload
management system, applying the "one person, one vote" principle to judicial maps,
or tweak the current judicial weighted caseload method. While none of these would
create a definitive solution, adopting one could have an impact on a more balanced
judiciary without the interference of other branches.

The first potential solution would be for the General Assembly to implement
uniform case data for court clerks across the Commonwealth. Because of case filing
discrepancies from county to county, having a uniform system to label cases would
eliminate inflated dockets and accurately depict judicial workload. Although the
Administrative Office of the Courts has a court system that tracks cases, it is up to
the individual court clerks to input each case and any documents that belong within
them.\textsuperscript{216} Different counties count cases in different ways. For instance, one county
adds each misdemeanor count collectively as multiple felony cases, while Floyd
County aggregates the misdemeanor offenses that meet felony standards and
consider it one felony case.\textsuperscript{217} This would typically not interfere with the judicial
process if each misdemeanor—taken individually—had become a case within the
District Court instead of Circuit Court.\textsuperscript{218} This happened during the time the
weighted caseload study was conducted skewing the numbers, with one county filing
more cases in Circuit Court rather than District Court.\textsuperscript{219}

Creating training for court clerks to understand when to aggregate misdemeanors
into felonies would help the number of cases being placed on dockets be more
uniform—and courts could gauge their caseloads more effectively. The
Administrative Office of the Courts could also step in and give each county a set of
guidelines to follow as they process and input the cases. The guidelines would be
outlined for all courts—District, Circuit and Family—detailing which cases fall
where. Because these cases are input by the clerks there can be some human error,

\begin{itemize}
\item \textsuperscript{215} See Yetter, supra note 214.
\item \textsuperscript{216} See Kentucky eFiling: Frequently Asked Questions and Tips to Improve Your Filings, KY. BAR ASS’N (June
12, 2019), https://cdn.ymaws.com/www.kybar.org/resource/resmgr/2019_convention/materials/kentucky_eFiling-_frequent.pdf [https://perma.cc/AL7F-YE9L]; see also KY.eCourts (Courtnet and eFiling), KY. BAR ASS’N,
\item \textsuperscript{217} Smith Testimony, supra note 166.
\item \textsuperscript{218} See id.
\item \textsuperscript{219} See Kentucky Workload Assessment, supra note 114; see also Smith Testimony, supra note 163.
\end{itemize}
and if the cases were filed in the wrong place, the guidelines would aid in fixing it quickly if a problem arose. Circuit Court Clerks are also elected officials and keeping cases organized should be of high priority, and by keeping the regimented organization of the cases, it would help.

Another remedy would be the implementation of the “one person, one vote” principle. As noted, judicial maps do not follow the “one person, one vote” standard, but no Supreme Court cases say that it is impermissible. In Kentucky, the judges are elected, and it is possible to create judicial boundaries based on the population of each county or district. One drawback to this would be how to place the judges based on the population appropriately. Densely populated urban areas such as Lexington and Louisville would have more judges, but depending on judicial boundaries the travel distance would be higher in the rural communities. Even within counties, current drive time is upwards of forty minutes from some places to the courthouses. Though it is an option, using this method may not be the most effective for the problem at hand. Caseloads can increase quicker than populations and could put a county with a higher incarceration rate at a disadvantage by having fewer people. Allowing this would go against the initiative for access to equal justice, but it is an option, nonetheless.

Lastly, a final resolution is to tweak the current process and utilize the recommendations of the council. Although this would take the most time, by developing a sound plan it would have the most significant impact overall. The weighted caseload method has been proven to be a great preliminary measure for determining judicial need. Other states, however, have shown that it should not be the only factor in determining judicial need. Fixing the current method and adopting other studies to create a comprehensive redistricting plan could lessen the political tensions created by HB 348. Further, by establishing either a non-partisan or bi-partisan independent redistricting commission to conduct the studies and make the necessary recommendations would ensure judgeships are apportioned correctly.

The Kentucky Supreme Court would still provide a certification of necessity to allow the General Assembly permission to move forward with the commission. Kentucky could create a task force like Tennessee that encompasses many judicial officers that would all be affected in the process to work with the commission. The aim of the independent redistricting commission is not only to be free from the political sway but also to safeguard judgeships from being removed without just

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220 See generally Reynolds v. Sims, 377 U.S. 533, 561 (1964) (discussing the viability of the “one person, one vote” standard in judicial mapping).


222 See Directions from Phelps, KY to Pike County Judicial Center, GOOGLE MAPS, maps.google.com (Search Google Maps: Phelps, Kentucky; then Directions from Pike County Judicial Center) (last visited Mar. 19, 2020) [https://perma.cc/JAP3-EX62].

223 See Harmon, House Bill, supra note 155 (articulating the importance of task forces in determining the need of judicial offices).


225 See generally Advisory Task Force, supra note 88 (discussing the effectiveness of a commissioned task force for determining judicial workload needs).
cause. This would help to eliminate piecemeal judgeship removals due to political vendetta.

Keeping—but tweaking—the current weighted caseload method would be the most comprehensive way to determine the judicial workload. First, conduct the caseload time study throughout an entire year. Doing this accounts for all cases being heard, not just a sample. This also shows fluctuation of certain months where caseloads are higher than others. Other states—like Nebraska—already follow the caseload method in this fashion and have had success. Additionally, special judge cases should count towards the county the judge is from and not the county they are serving. Having judges from other jurisdictions serve as special judges takes away from their county and would not accurately depict the time they are putting into other cases. In the preliminary caseload study, special judge cases were not counted at all. Judges who have to travel lose the time to work in their jurisdiction when they would otherwise be in their chambers. Adding that variable to the caseload method would also help with accuracy.

Tweaking the current caseload method, conducting more than one study, and creating an independent redistricting commission to oversee the process would make it much easier to develop a sound redistricting plan. Though all of these potential remedies have their flaws, there is no one way to resolve this issue altogether. For most states, it takes years to come to any compromise as to how to begin the process. It is not something that should be done with haste, as there are many implications with redistricting judicial seats.

VI. Conclusion

There is a reason why judicial redistricting has rarely been touched nationwide. States cannot come to a consensus on how the judgeships should be apportioned and reconcile what the effects of removal would be. Both elected and appointed judges are not beyond the sway of political influence. A study by The Brennan Center for Justice showed that judges and justices are currently elected in twenty–one states, are appointed in twenty–seven states and the District of Columbia, and appointed by the legislature in two other states. Though the judiciary has earned the moniker of “neutral arbiter” they can become beholden to the electors that helped vote them into office or appointed them. In Kentucky, even though a third party handled the workload assessment, it was not up to them to determine which districts and circuits were affected by the legislation. So, what good is a workload assessment for redistricting purposes if it is not going to be followed?

227 See Ostrom et al., supra note 76, at 4.
228 See supra notes 4, 80, 82, 101, 103 and accompanying text.
Why propose a statewide redistricting bill with no intention of passing it? Though some states have flat out refused to accept a redistricting map unless there is a statewide mapping, others are left to the mercy of the legislature and their control of the purse strings.

With Kentucky not being able to come to a statewide agreement on the bill and procedurally mismanaging the second proposal there should not have been any final legislation passed that would alter the current judgeships. Because the bill has been signed into law, it would take a temporary injunction to keep it from going into effect in 2023, or a resolution in the General Assembly to repeal it. It is unlikely that many—if any—members of the General Assembly outside of the newly elected Junior State Representative Ashley Tackett Lafferty and State Senator Johnny Ray Turner for Floyd County would raise the issue because the other judgeships are safe. Now, however, if there were to be a challenge to the constitutionality of the bill, it would need to happen sooner rather than later. Historically, when dealing with congressional and state legislative maps, the more election cycles pass the weaker the argument of harm becomes.

This, however, is not just an issue for the Commonwealth of Kentucky. As noted above, plays for power in the state legislatures of several states reveal how much influence there is within the judiciary. If there is indeed the need for a separation of powers the line is becoming more and more blurred. In the current political climate there is a distrust between politicians and their constituents, and with the legislature’s hand in the judiciary, it will only grow.