

New Mortgage Rules Jeopardize Access to Credit

On behalf of the 7,000 community banks represented by the Independent Community Bankers of America (ICBA), as you convene a hearing on “The Semi-Annual Report of the Consumer Financial Protection Bureau,” we appreciate the opportunity to submit this statement for the record setting forth our views on the impact of recent CFPB rules related to mortgage lending.

Reform of CFPB mortgage lending rules is a key plank of ICBA’s Plan for Prosperity: A Regulatory Relief Agenda to Empower Local Communities (the “PFP”). The PFP reforms, which are designed to keep community banks in the business of mortgage lending, include:

- “Qualified mortgage” safe harbor status for loans originated and held in portfolio for the life of the loan by banks with less than \$10 billion in assets, including balloon mortgages in rural and non-rural areas, without regard to their pricing.
- The “risk retention/qualified residential mortgage (QRM)” should provide that any “qualified mortgage” under the CFPB’s “ability to repay” rule is also a QRM and thereby exempt from the new risk retention requirement. In this regard, ICBA strongly supports the CFPB’s re-proposed rule. No down payment should be required for QRM status.
- Exempting banks with assets below \$10 billion from escrow requirements for loans held in portfolio.
- Increasing the “small servicer” exemption threshold to 20,000 loans (up from 5,000).
- Making critical changes to the CFPB’s draft rules under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA).

While ICBA supports the CFPB’s May 29 amendments to the QM rule which make accommodations for community banks, they do not go far enough to preserve access to credit for community bank customers.

Balloon Mortgages Play Essential Role in Rural Communities

Community banks are responsible mortgage lenders that did not participate in the abuses that contributed to the financial crisis. Community banks help borrowers in rural communities where non-traditional loans such as balloon mortgages are prevalent due to the unique nature of rural properties. These loans are not eligible to be sold into the secondary market and are kept in portfolio, which gives community banks a vested interest in the quality of these loans and allows them to work out a solution directly with the borrower if repayment problems arise.

QM Rule Does Not Adequately Protect Community Bank Balloon Mortgages

While the CFPB’s QM rule allows balloon loans made by small creditors that operate predominantly in rural or underserved areas to be qualified mortgages, the Bureau’s definition of

“rural” is far too narrow and designates entire counties as either rural or non-rural, which is inherently inaccurate. As a result, too many communities are denied rural status and unnecessarily cut off from access to credit. When a balloon loan does not receive QM safe harbor protection, the lender is exposed to undue litigation risk. Many community banks are not willing to assume that risk and will exit the mortgage lending business particularly in rural markets. The CFPB’s recent amendment to the QM rule provides a two-year transition period during which balloon loans made by “non-rural” lenders can obtain QM status as the CFPB studies whether the definition of “rural” or “underserved” needs to be changed, as strongly advocated by ICBA.

Attached to this statement is a state-by-state map of rural county designations. Members of this committee may be surprised at the rural county designations within their own states and concerned that many areas of the state are not covered. Also attached is ICBA’s recent Community Bank Qualified Mortgage Survey, which underscores the significance of balloon loans to community bank customers and the failure of the CFPB’s definition of “rural” to protect these loans.

A Clean Fix is Needed

ICBA’s Plan for Prosperity solution to this new regulatory threat is simple, straightforward, and will preserve the community bank lending model: Safe harbor QM status for community bank loans held in portfolio, including balloon loans in rural and non-rural areas and without regard to their pricing. When a community bank holds a loan in portfolio it holds 100 percent of the credit risk and has every incentive to ensure it understands the borrower’s financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. Withholding safe harbor status for loans held in portfolio, and exposing the lender to litigation risk, will not make the loans safer, nor will it make underwriting more conservative. It will merely deter community banks from making such loans in the many counties that do not meet the definition of rural.

By the same token, community bank loans held in portfolio should be exempt from new escrow requirements for higher priced mortgages. Again, portfolio lenders have every incentive to protect their collateral by ensuring the borrower can make tax and insurance payments. For low volume lenders in particular, an escrow requirement is expensive and impractical and, again, will only deter lending to borrowers who have no other options.

To preserve the role of community banks in mortgage servicing, where consolidation has clearly harmed borrowers, the Plan for Prosperity would raise the CFPB’s small servicer exemption threshold from 5,000 loans to 20,000. Community banks above the 5,000 loan threshold have a proven record of strong, personalized servicing and no record of abusive practices. To put the 20,000 threshold in perspective, consider that the five largest servicers service an average

portfolio of 6.8 million loans and employ as many as 10,000 people each in servicing alone.

With regard to the CFPB's RESPA-TILA rules, ICBA recommends the following changes:

- **CFPB should drop the property address as a required item in the initial loan estimate for purchase transactions.** HUD intended the current Good Faith Estimate (GFE) to be used as a tool for borrowers to shop and compare mortgage loan offers between lenders. This works relatively well for refinance loans, however, it does not work for purchase transactions. In order to issue a GFE, the lender must have the address of the property to be financed. We recommend that "property address" become an optional application item for the initial Loan Estimate for *purchase* transactions. This would enable the borrower to shop for a mortgage loan, compare costs and make an informed decision based on a Loan Estimate that is regulated.
- **CFPB should maintain the current 10 percent tolerance for changes in required third party settlement costs.** The CFPB is considering eliminating the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. The elimination of the 10 percent tolerance will cause prices for services to increase from the outset, in order to compensate for unforeseen developments that may occur during the processing of the loan. The current 10 percent tolerance works well, and unless the CFPB has documented evidence of abuse, ICBA believes changing the tolerance is unnecessary and would result in higher settlement costs overall.

Introduced Legislation

ICBA is very pleased that the relief discussed above (with the exception of RESPA-TILA) has been included in four bills introduced by members of this committee:

- The Protecting American Taxpayers and Homeowners Act (H.R. 2767), introduced by Chairman Jeb Hensarling and Representative Scott Garrett, would (i) delay implementation of the CFPB's ability-to-repay rules for one additional year and provide QM status to any mortgage originated and held in portfolio; (ii) exempt from any escrow requirements any mortgage held in portfolio by the originator; (iii) exempt servicers that service 20,000 or fewer mortgages from certain new servicing rules; and (iv) repeal the risk retention/QRM requirement.
- The CLEAR Relief Act (H.R. 1750), introduced by Representative Blaine Luetkemeyer, a former community banker, would (i) accord QM status to mortgages originated and held in portfolio for at least three years by a lender with less than \$10 billion in assets; (ii) exempt from any escrow requirements any first lien mortgage held by a lender with less than \$10 billion in assets; and (iii) exempt servicers that service 20,000 or fewer mortgages from certain new servicing rules.
- The Portfolio Lending and Mortgage Access Act of 2013 (H.R. 2673), sponsored by Rep. Andy Barr (R-KY), would accord QM status to any residential mortgage loan held in the

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originator's portfolio.

- The CFPB Rural Designation Petition and Correction Act (H.R. 2672), also sponsored by Rep. Barr, would create a process in which individuals could petition the CFPB in order to have the rural status of a county reassessed. This process would help to more accurately identify rural counties and to ensure individuals in those communities have their mortgage needs met.

We are grateful to the sponsors of the above bills.

Thank you again for the opportunity to submit this statement for the record. ICBA looks forward to working with this committee to reform CFPB mortgage rules in order to preserve community bank mortgage lending.

Attachments

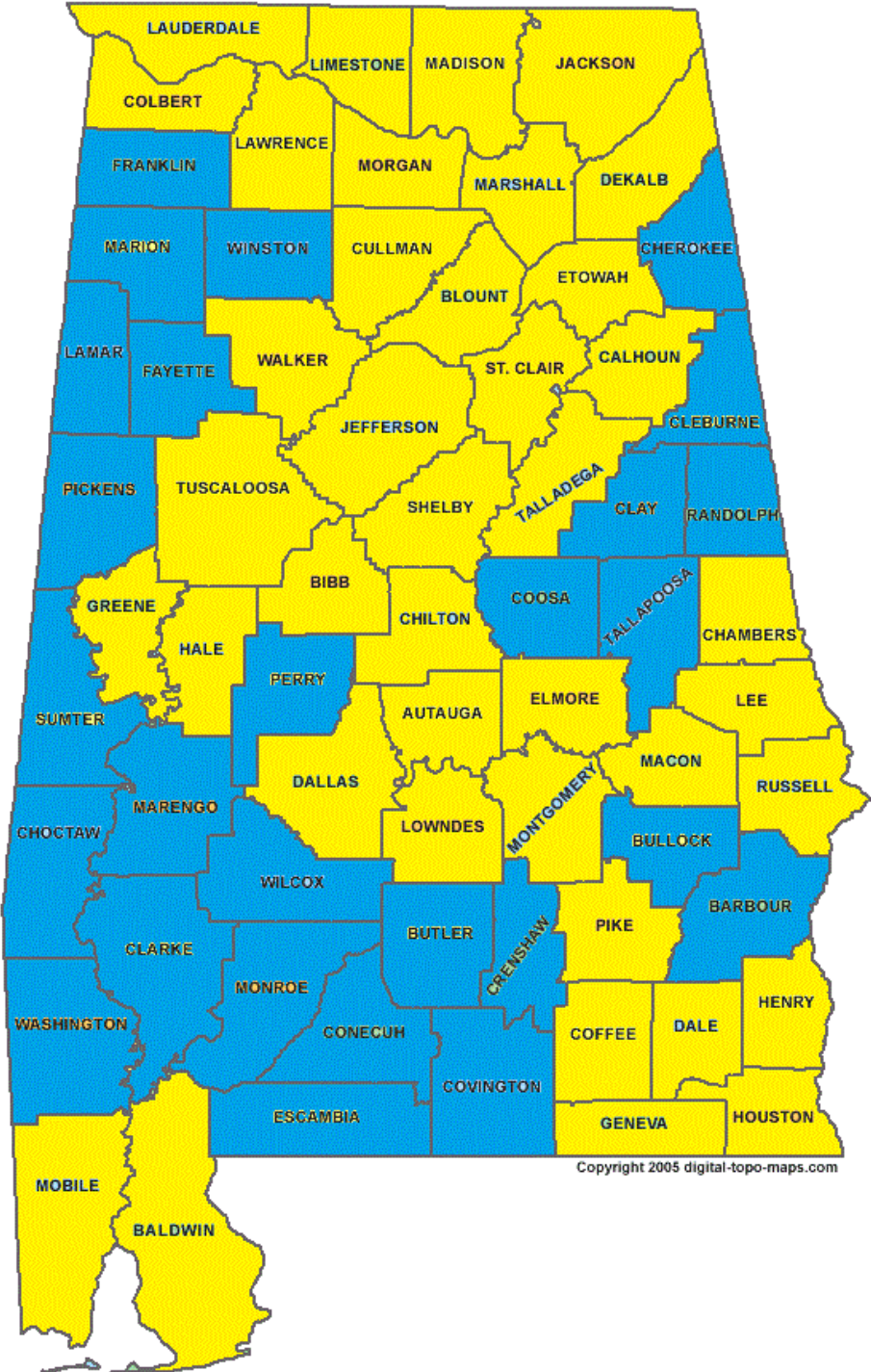
- **State-By-State Rural County Designation Maps** (blue counties are rural; yellow are non-rural)

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State-by-State Impact of CFPB “Rural” Definition

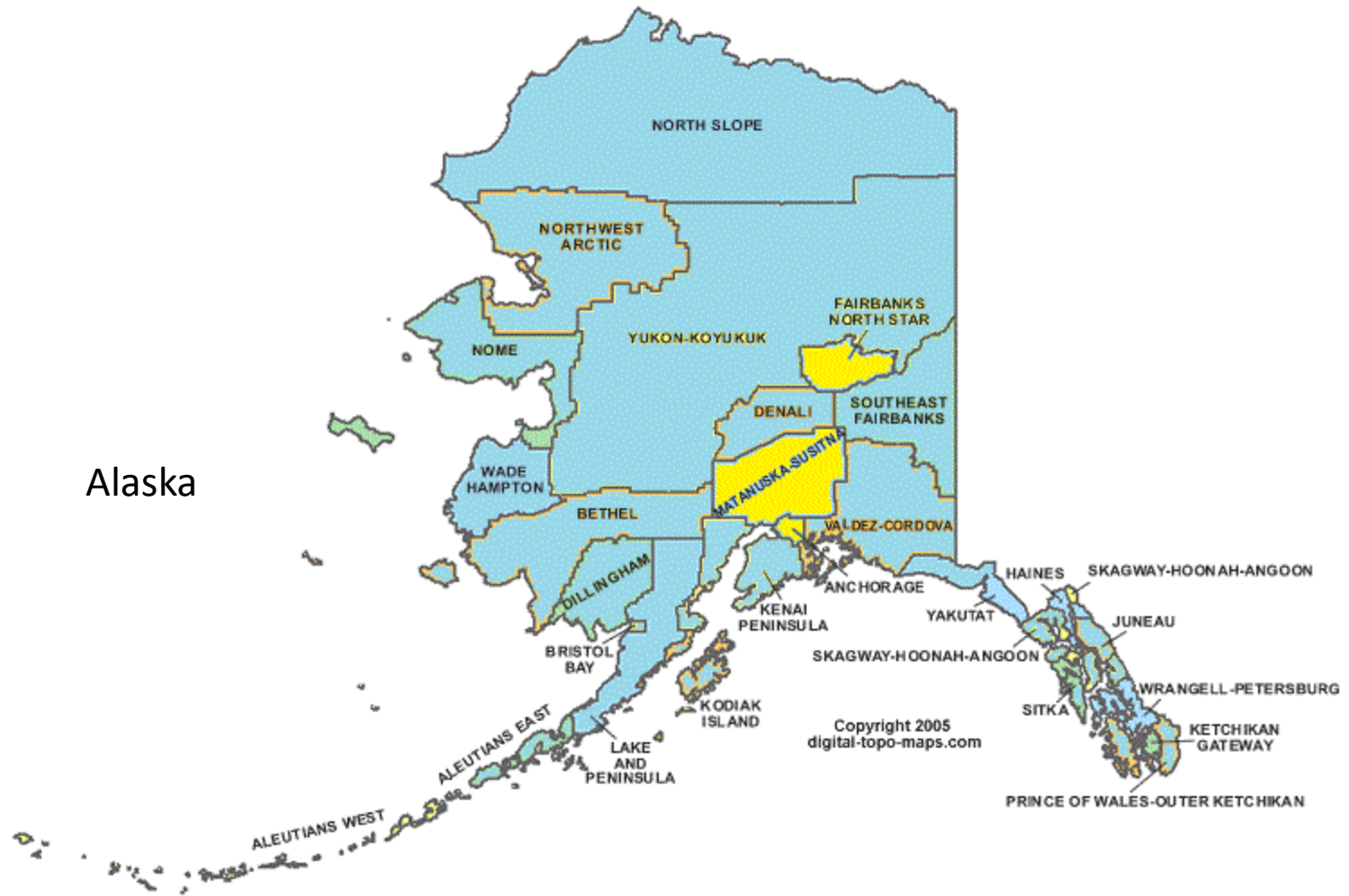
Rural (blue) and Non-Rural (yellow)
Counties Under the Consumer Financial
Protection Bureau’s Final “Ability to
Repay” Rule

Alabama

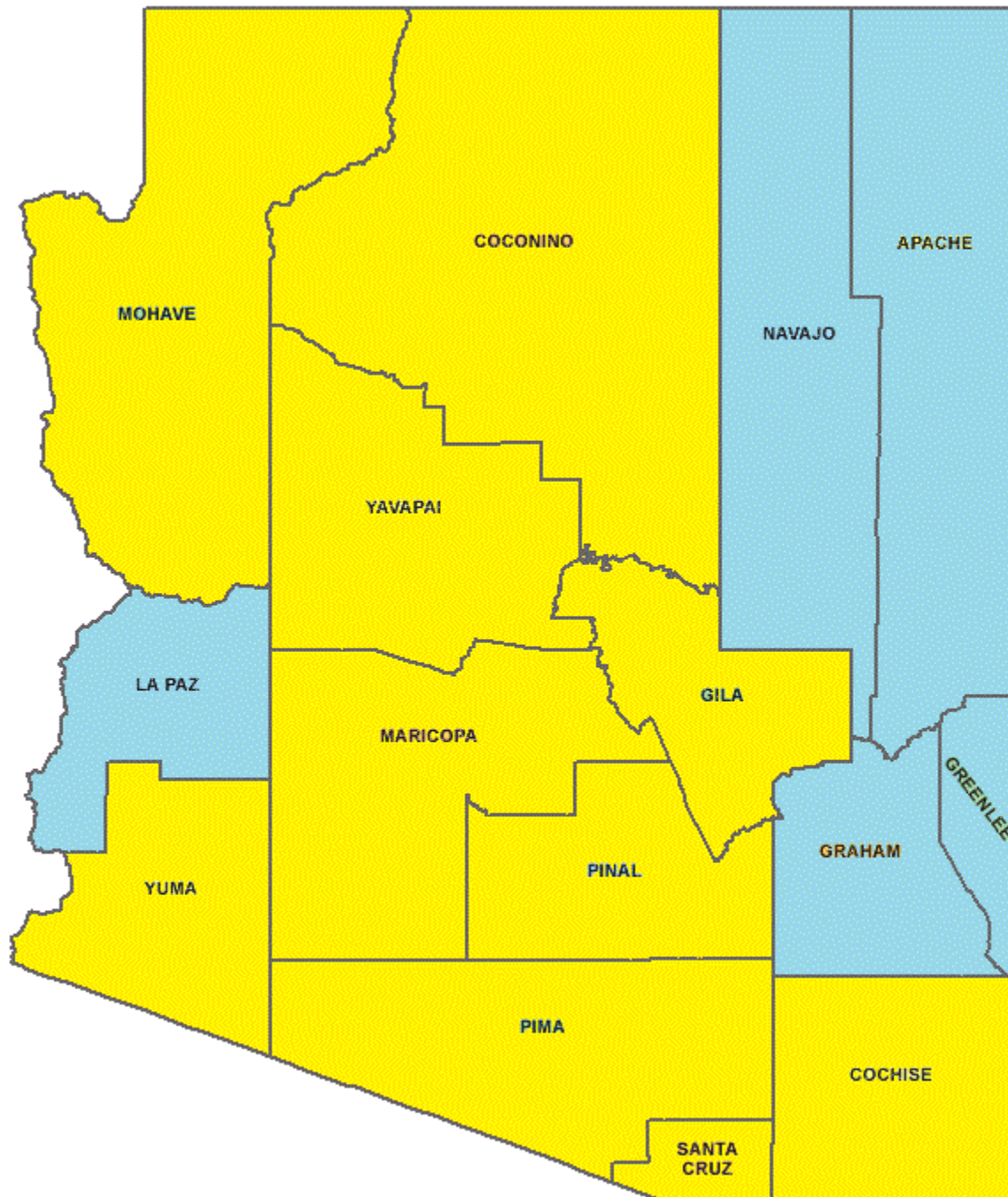


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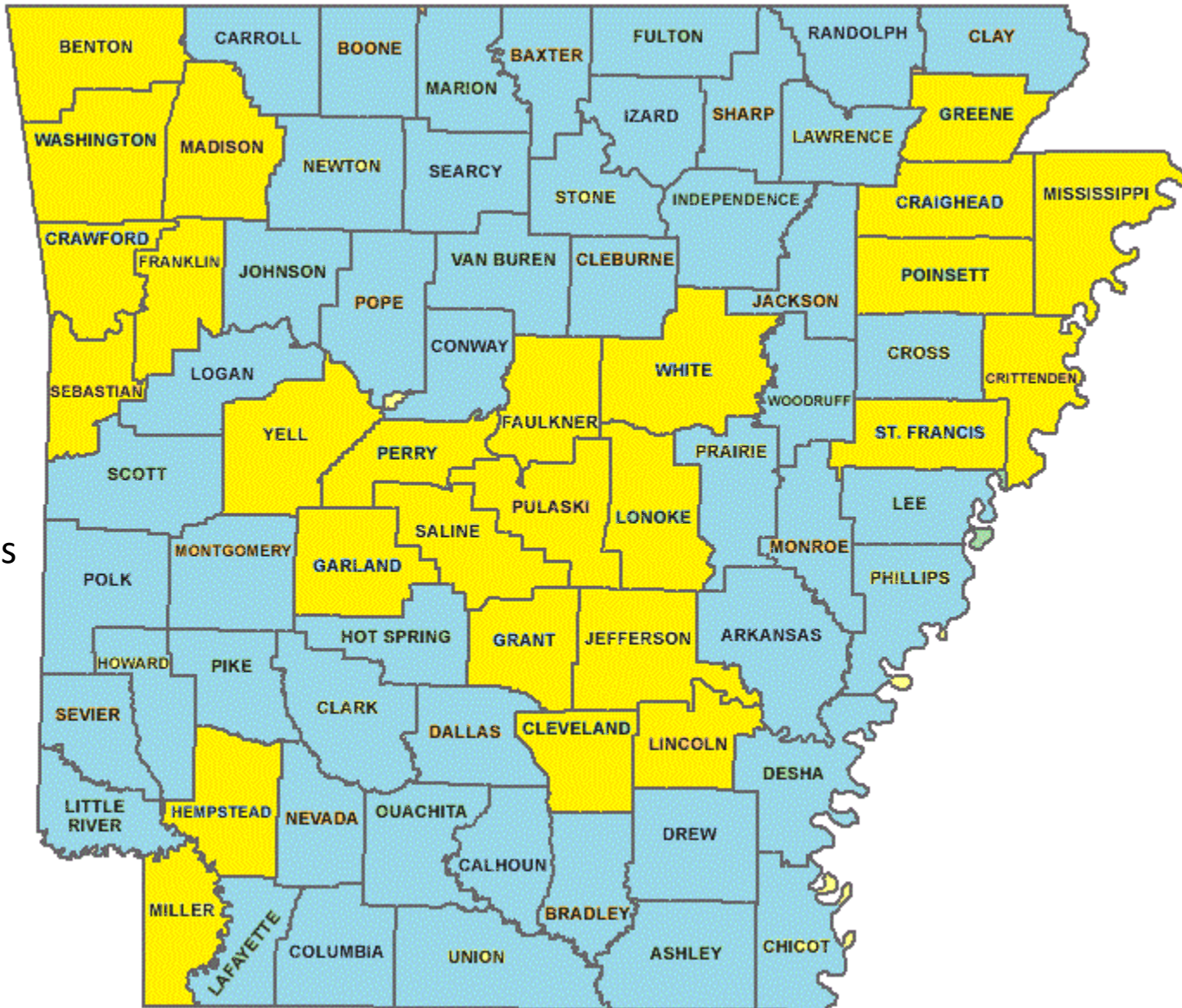
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Arizona



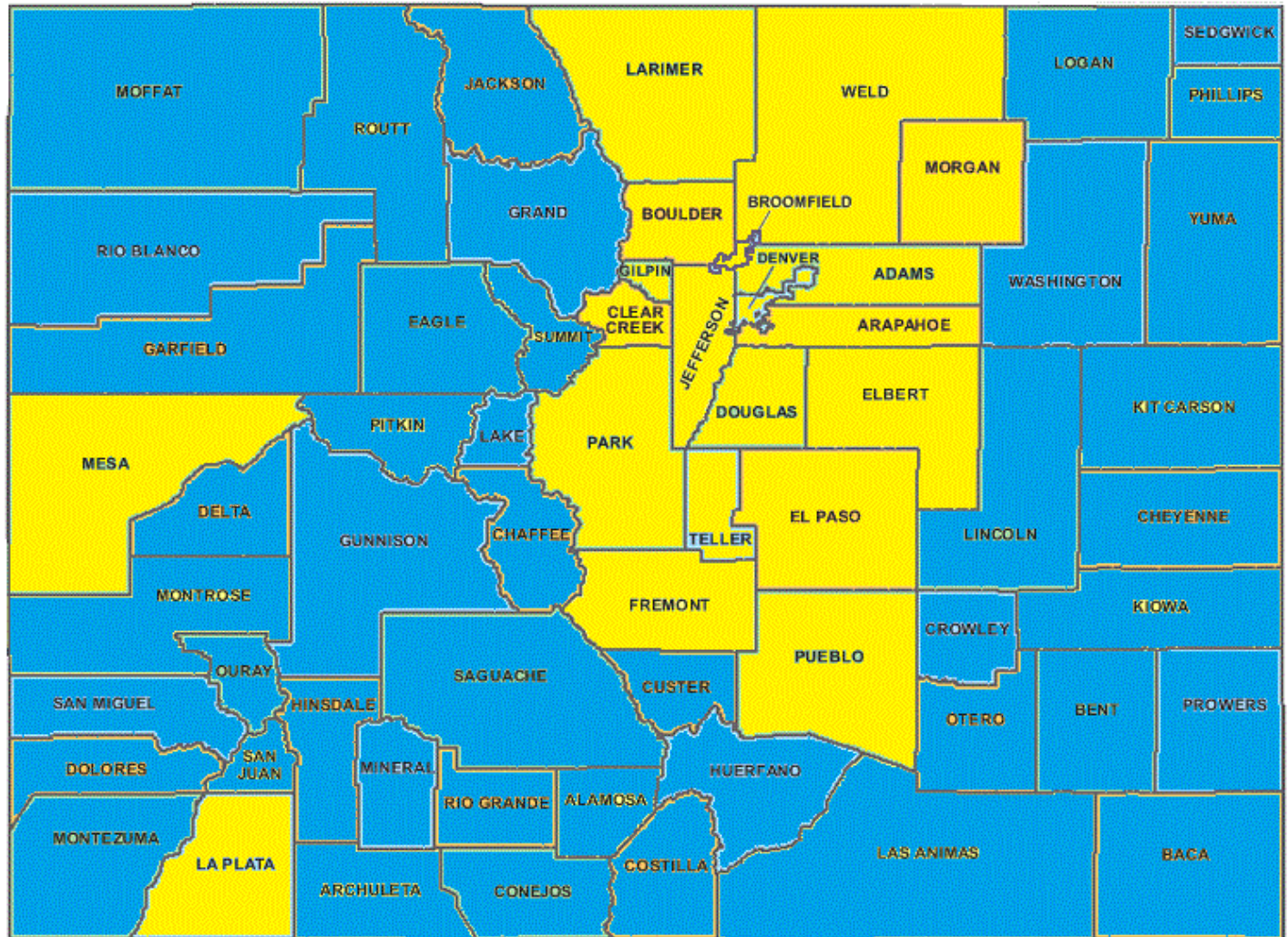
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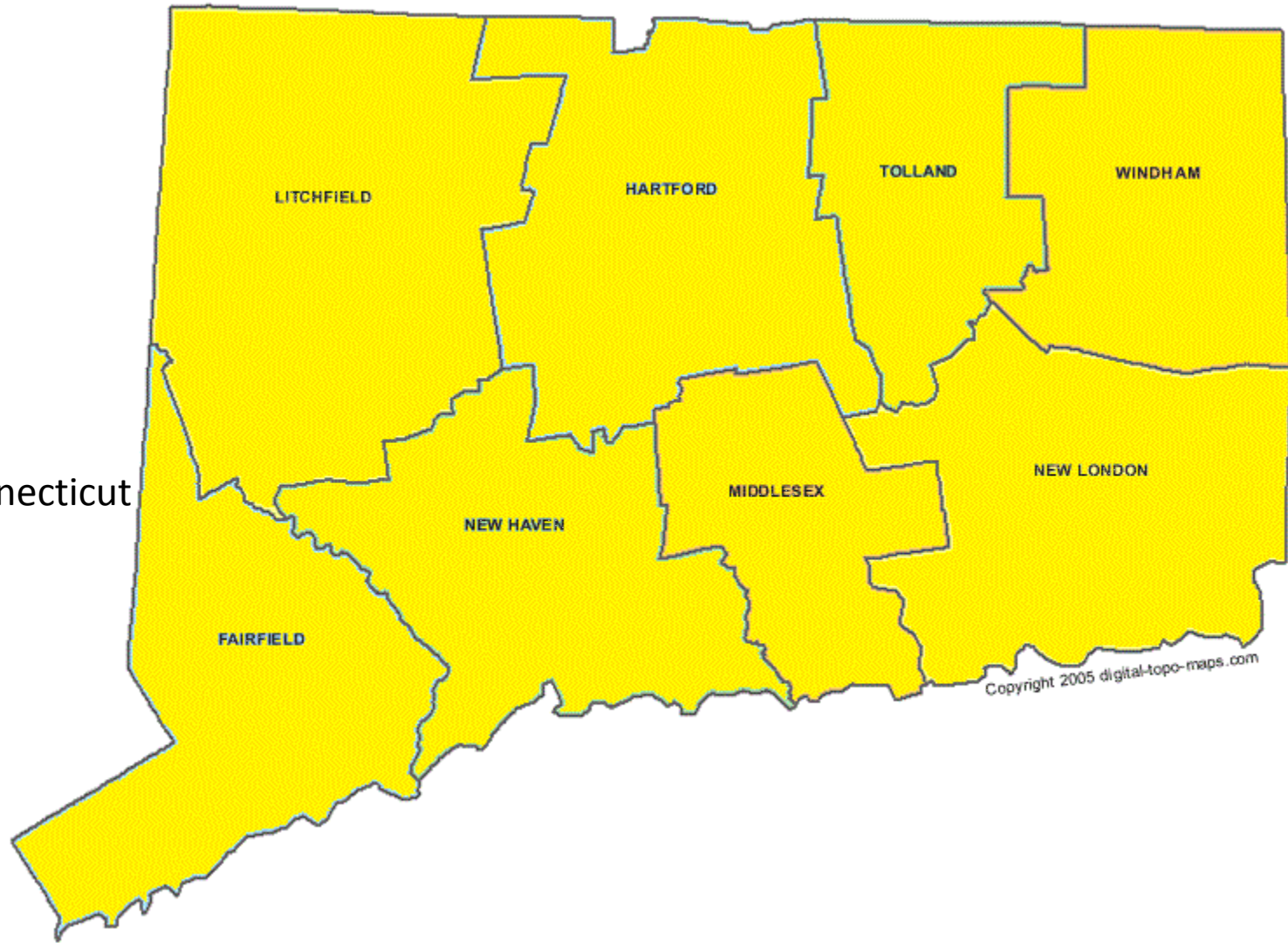
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Colorado

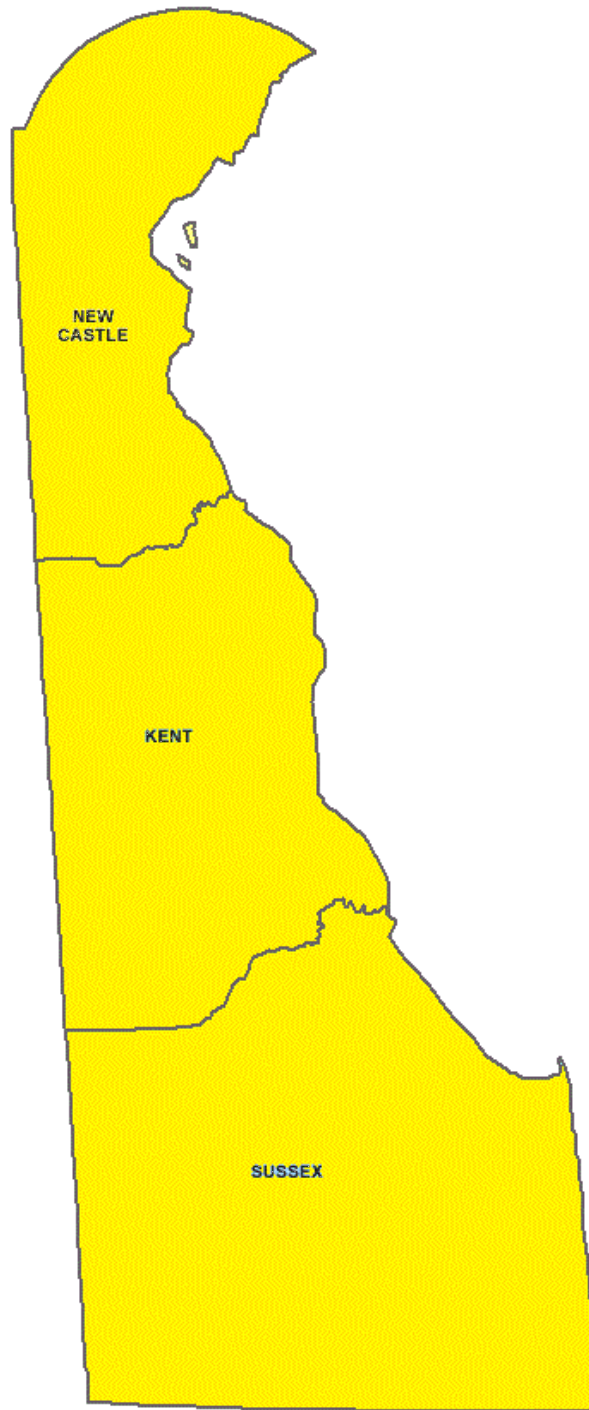


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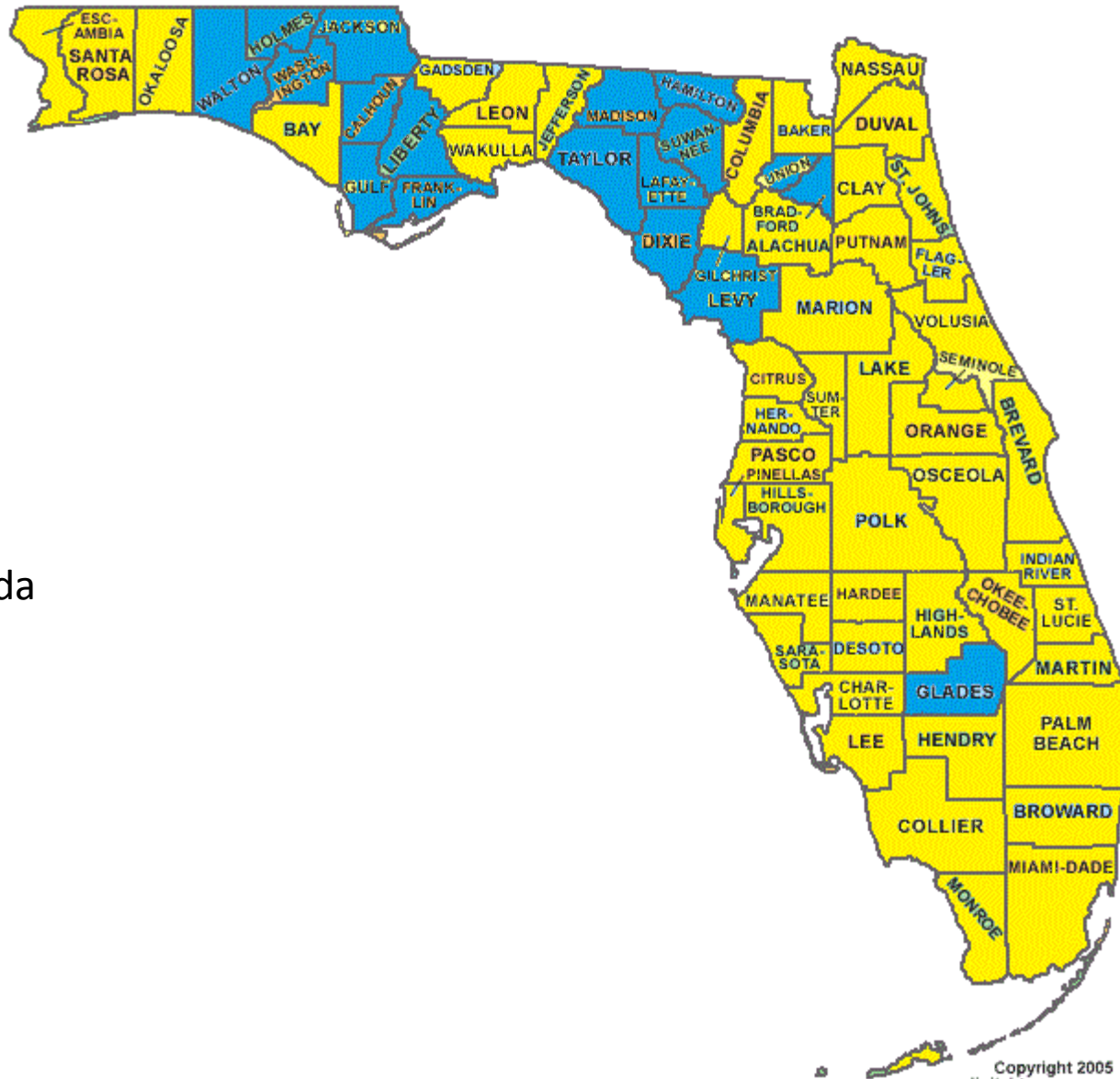


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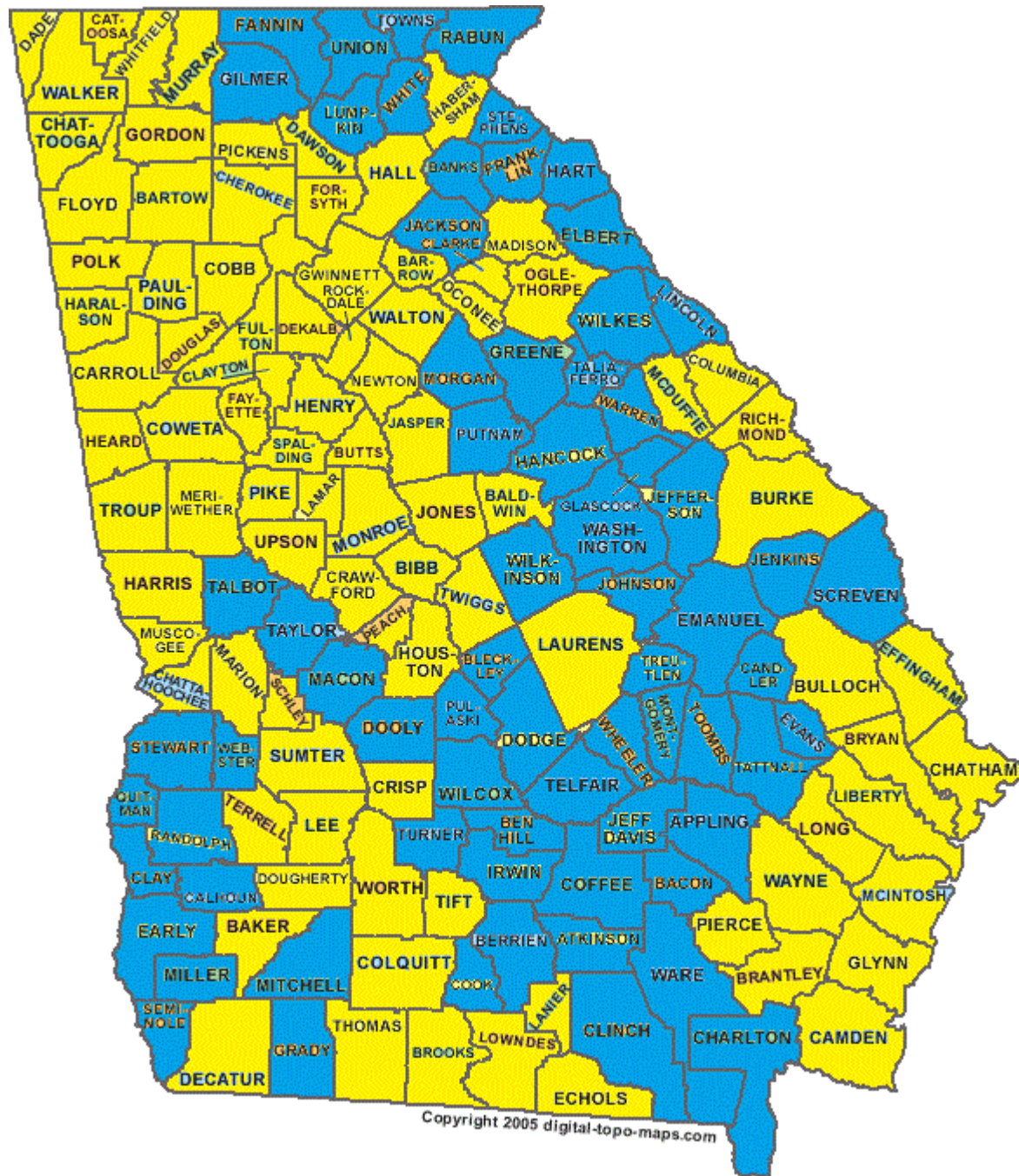
Delaware



Florida



Georgia





KAUAI

e



HONOLULU



KALAWAO

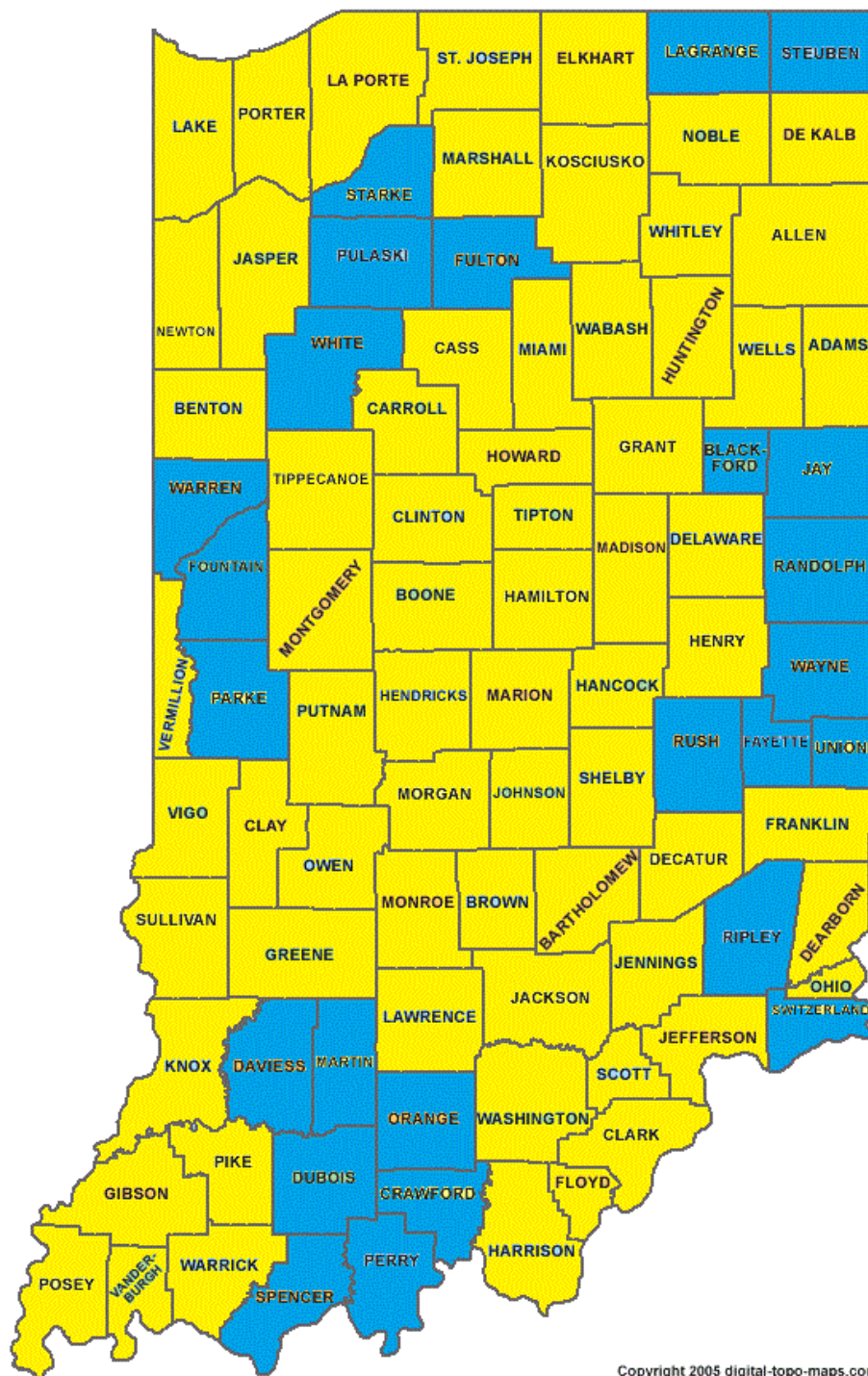
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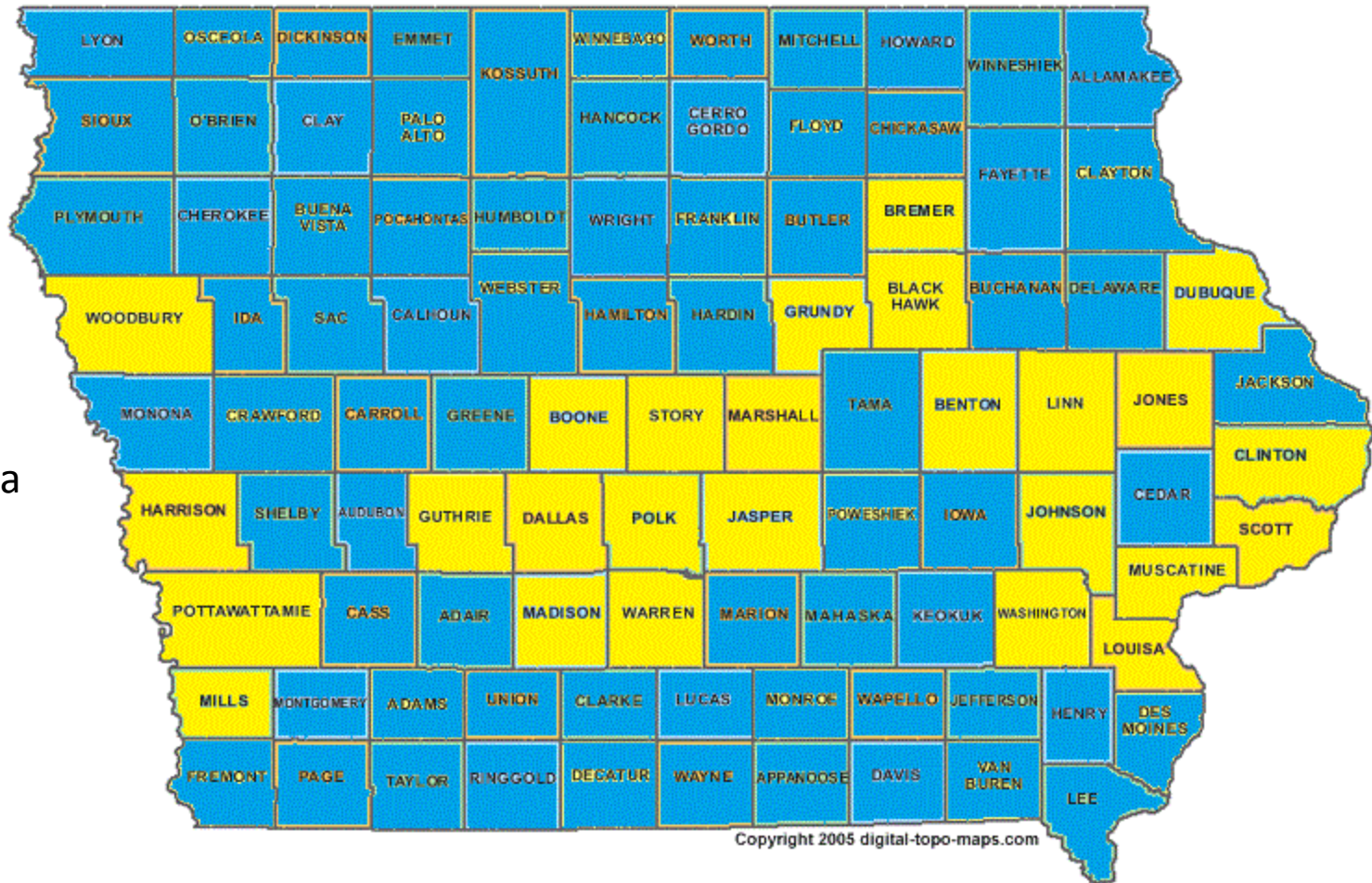
HAWAII

Hawaii

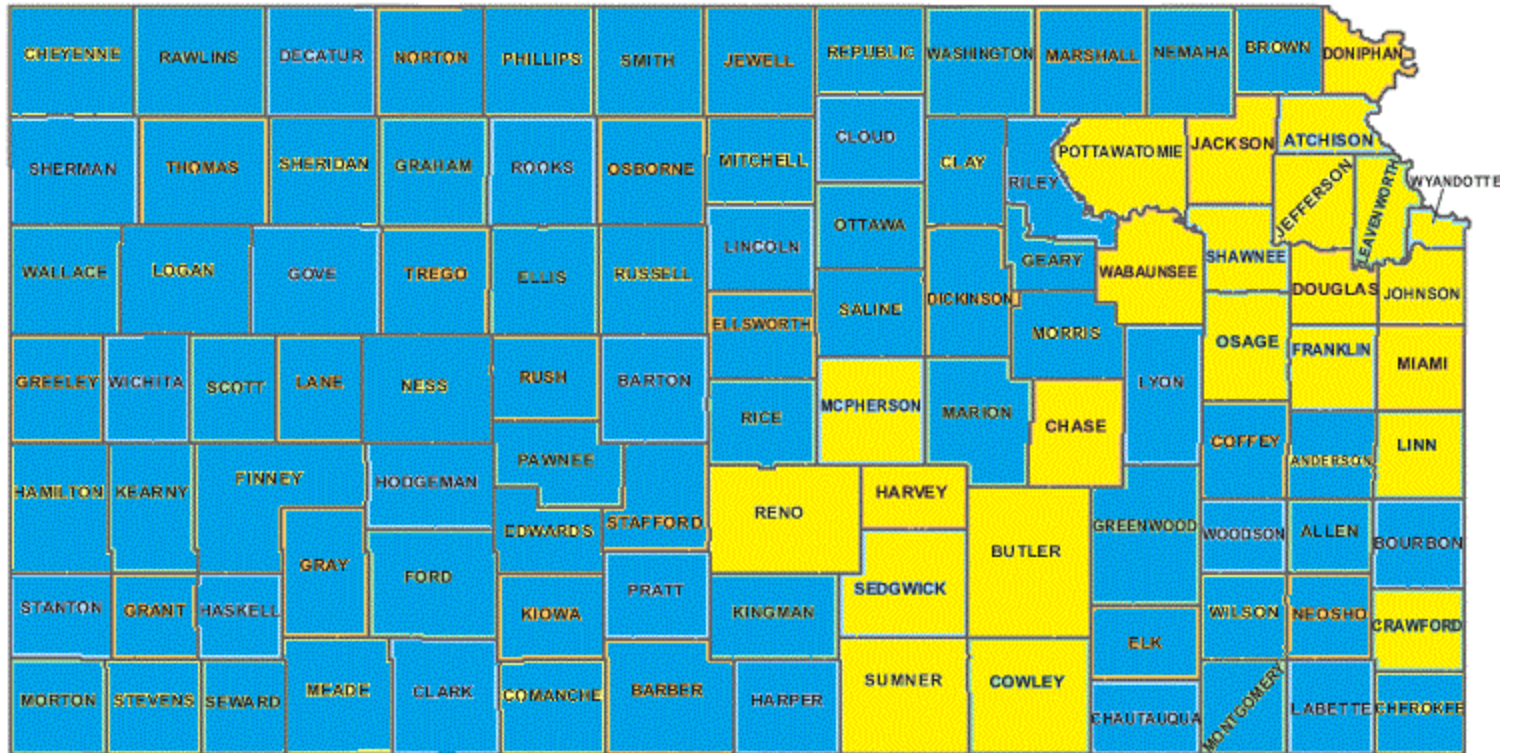
Indiana



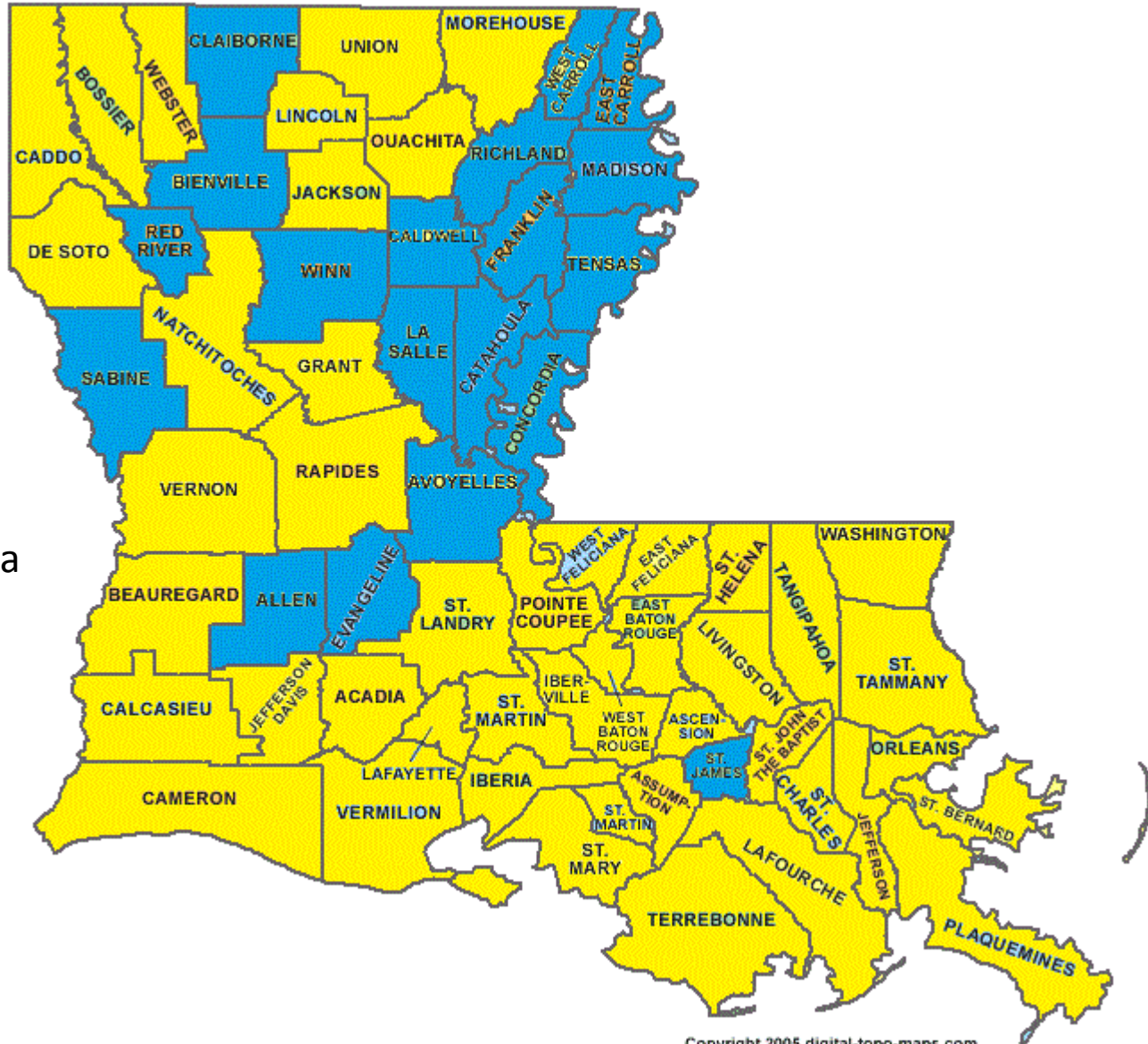
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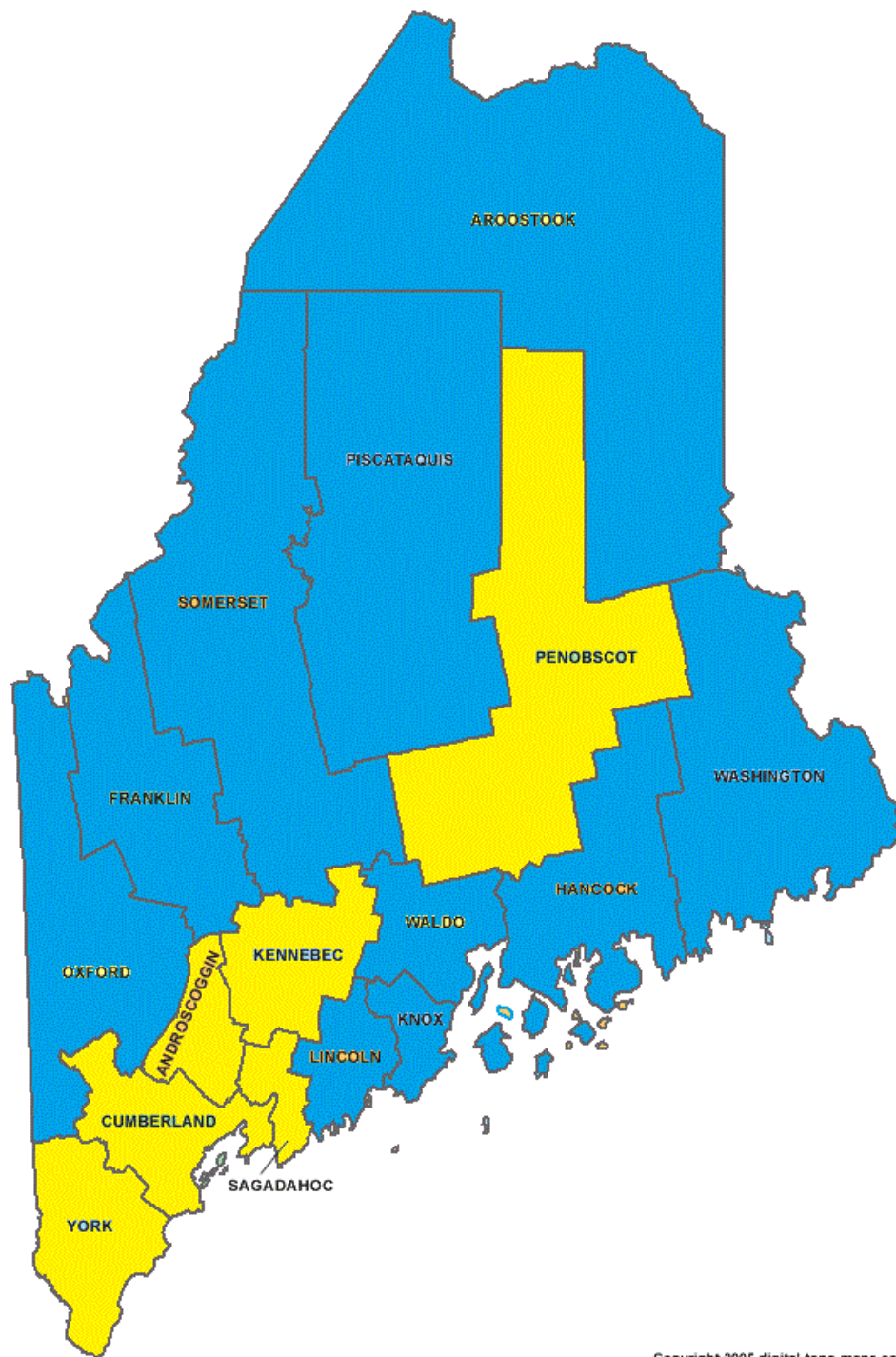
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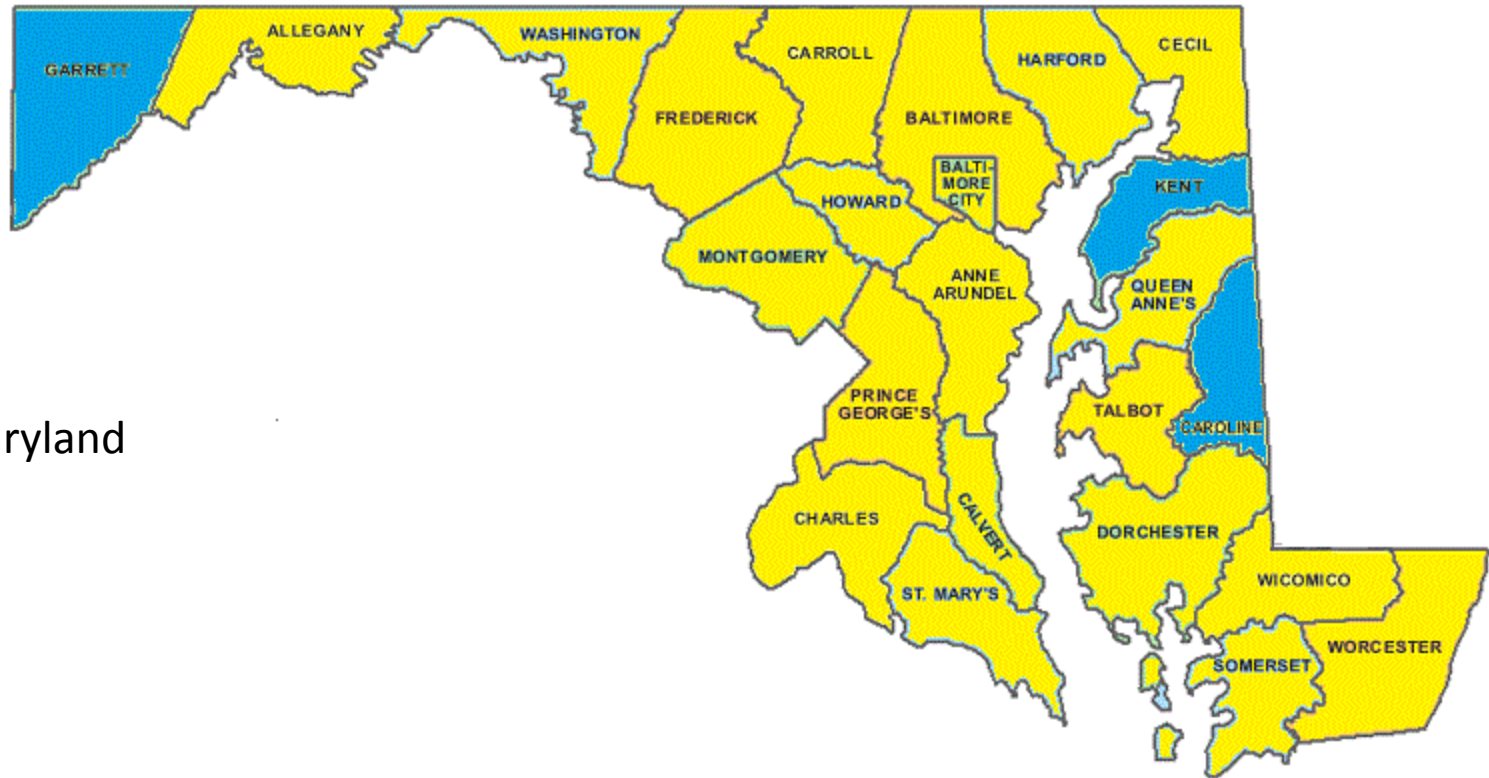
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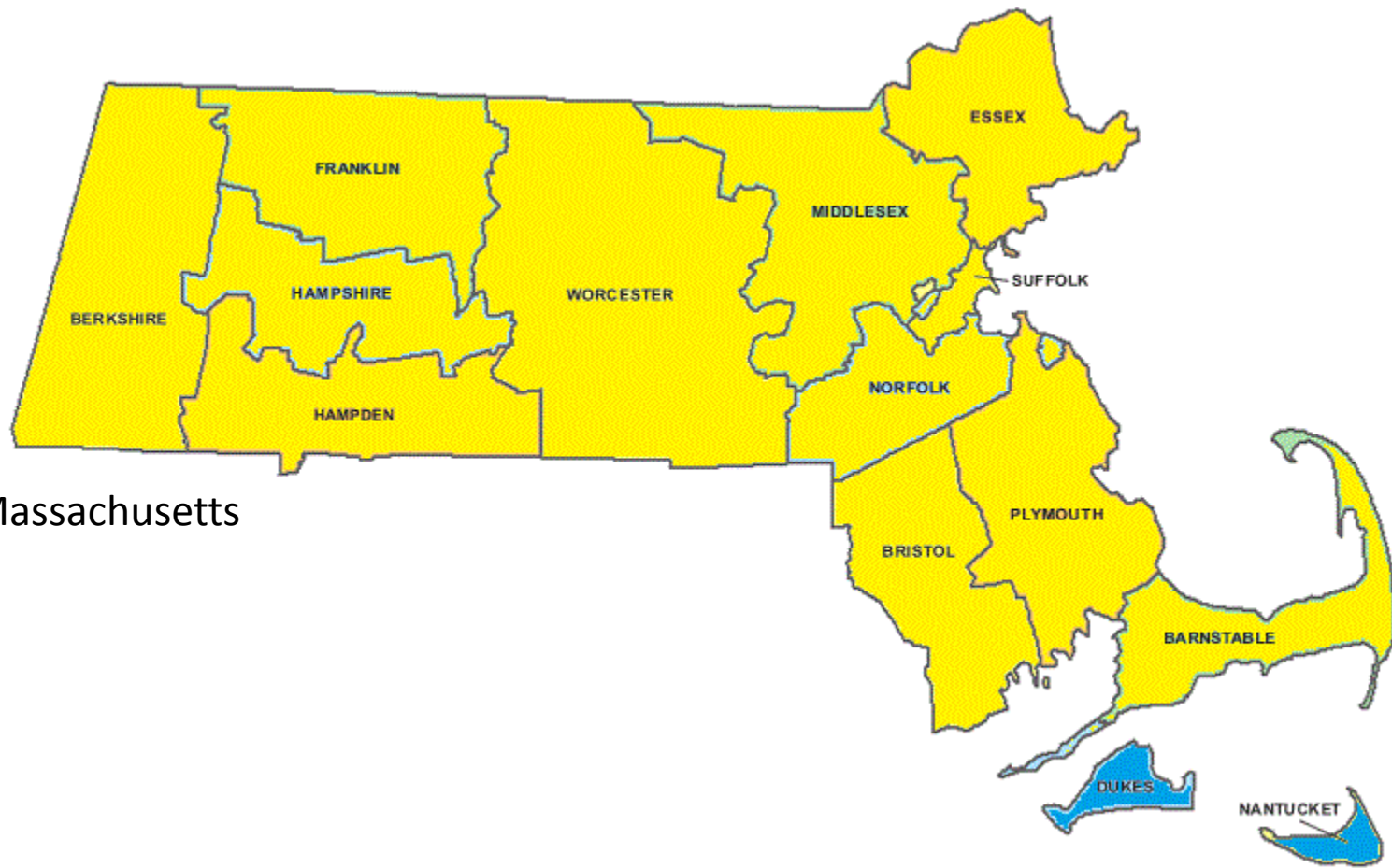
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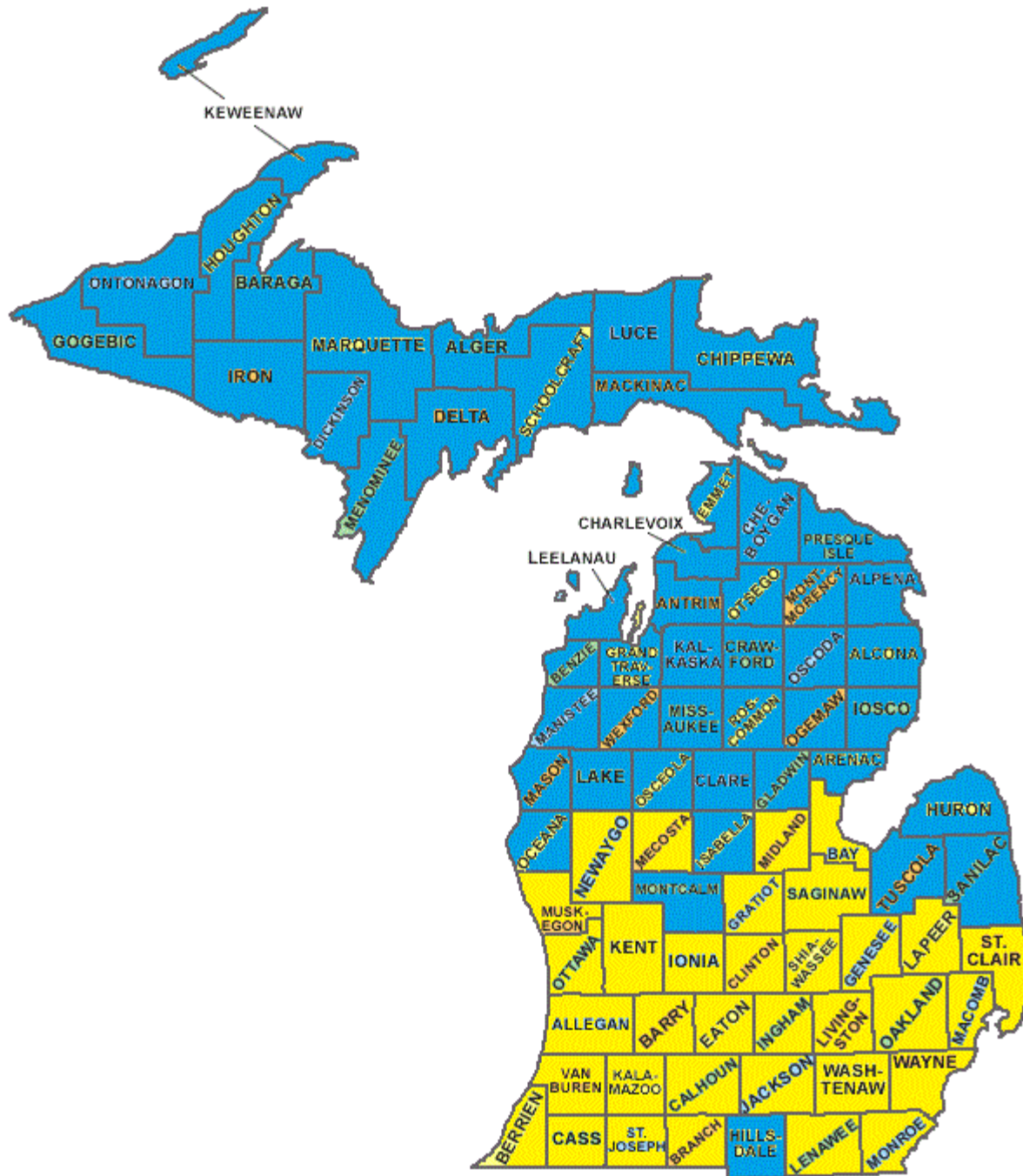
Maryland



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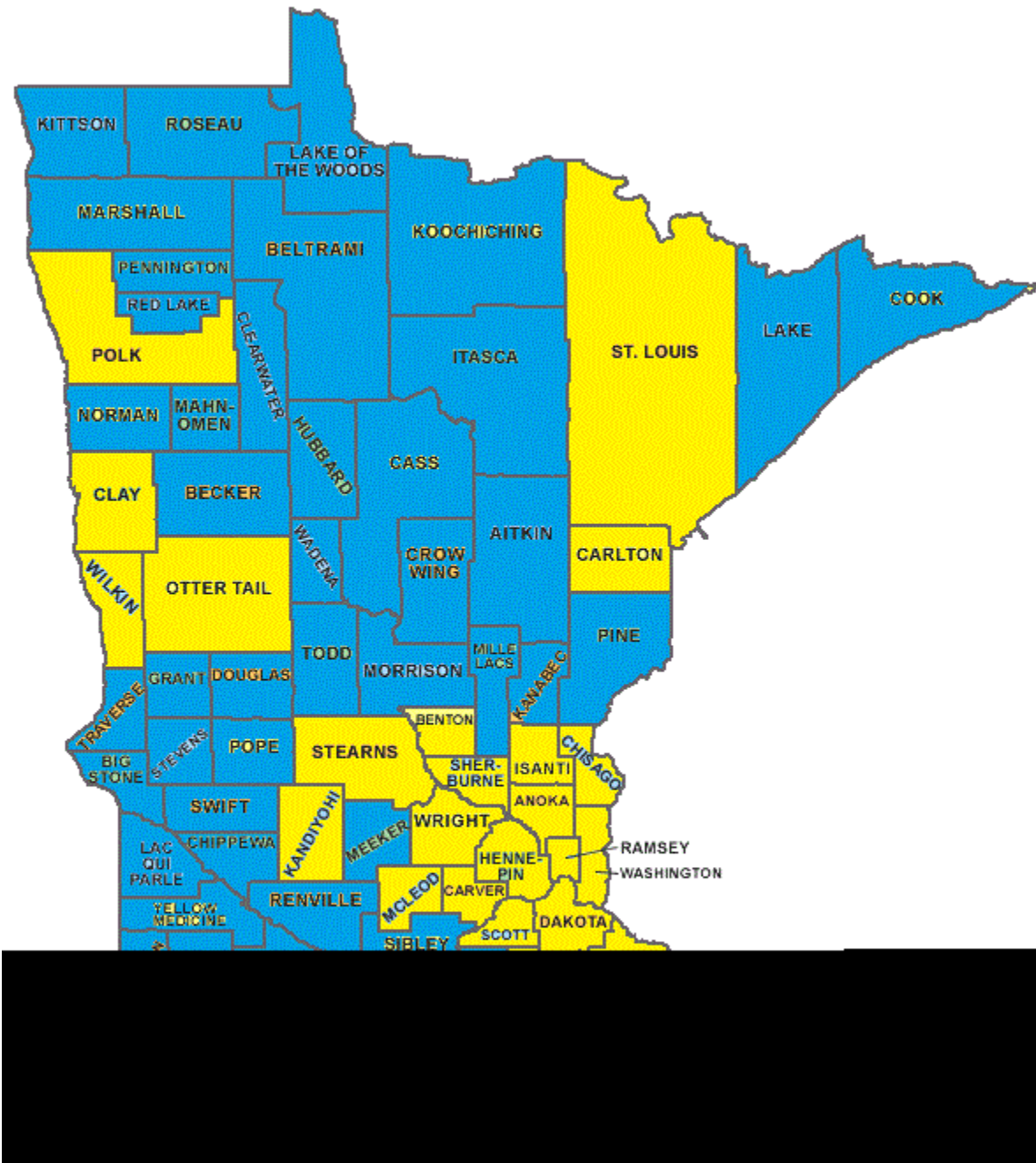


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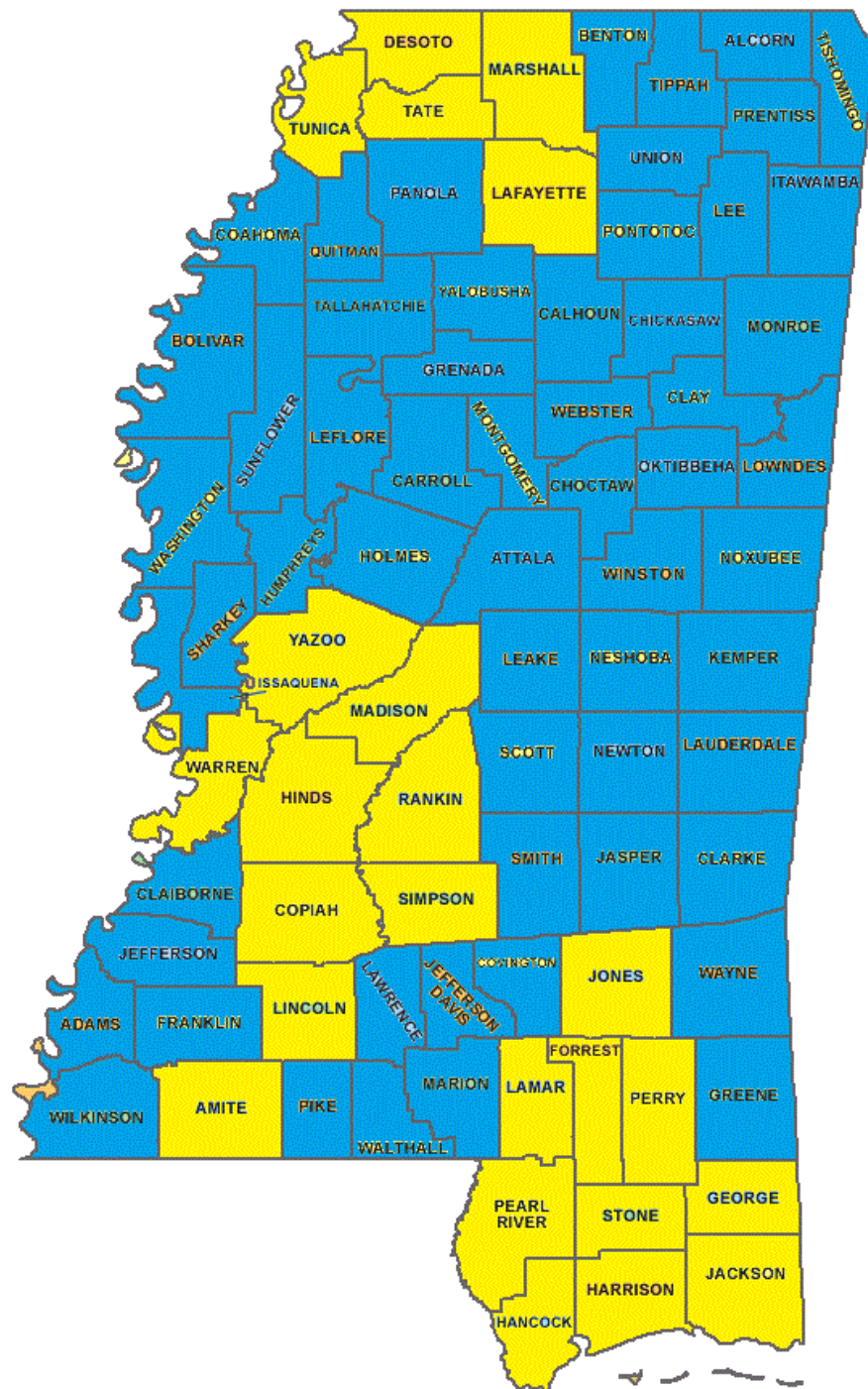


Michigan

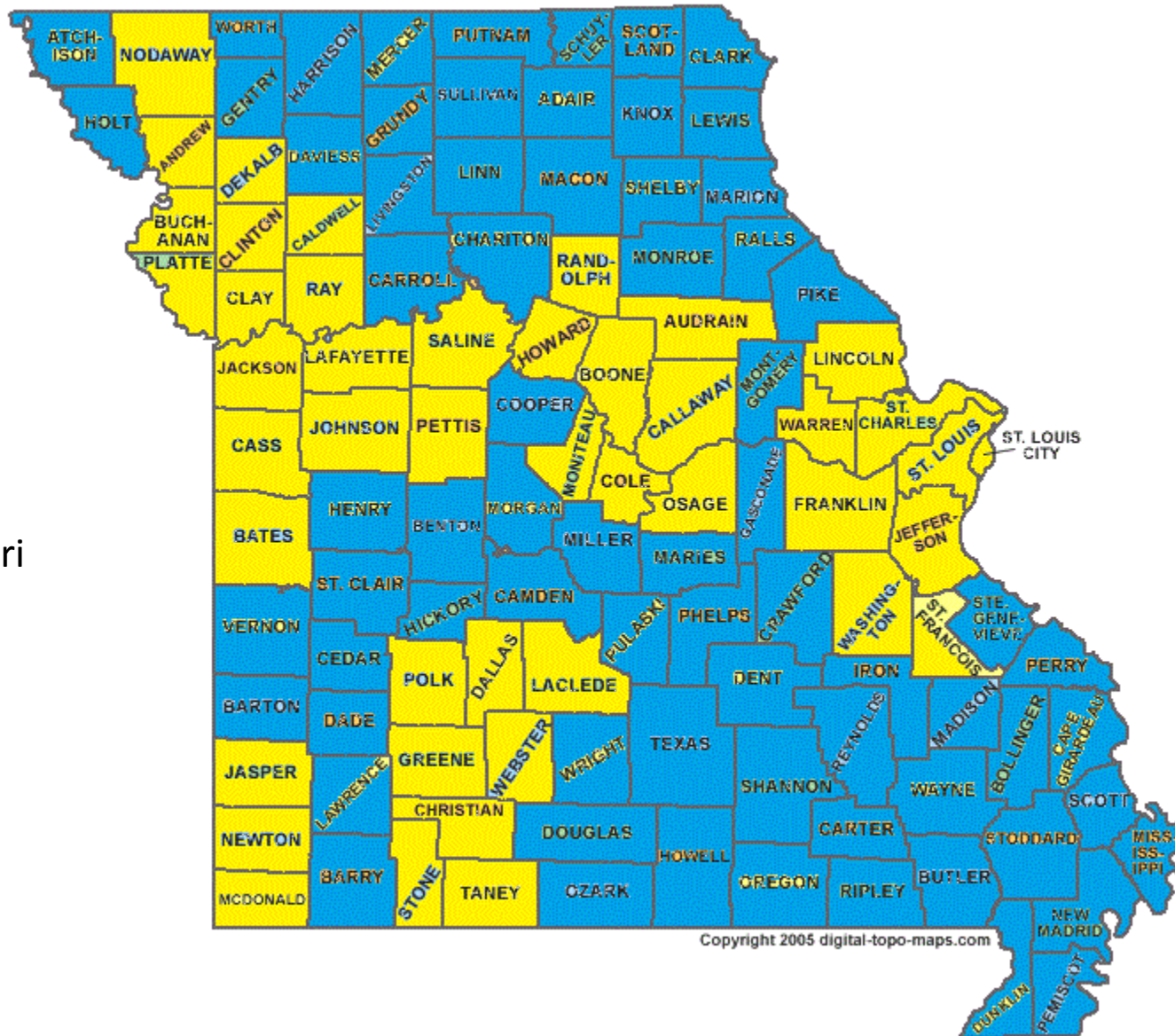
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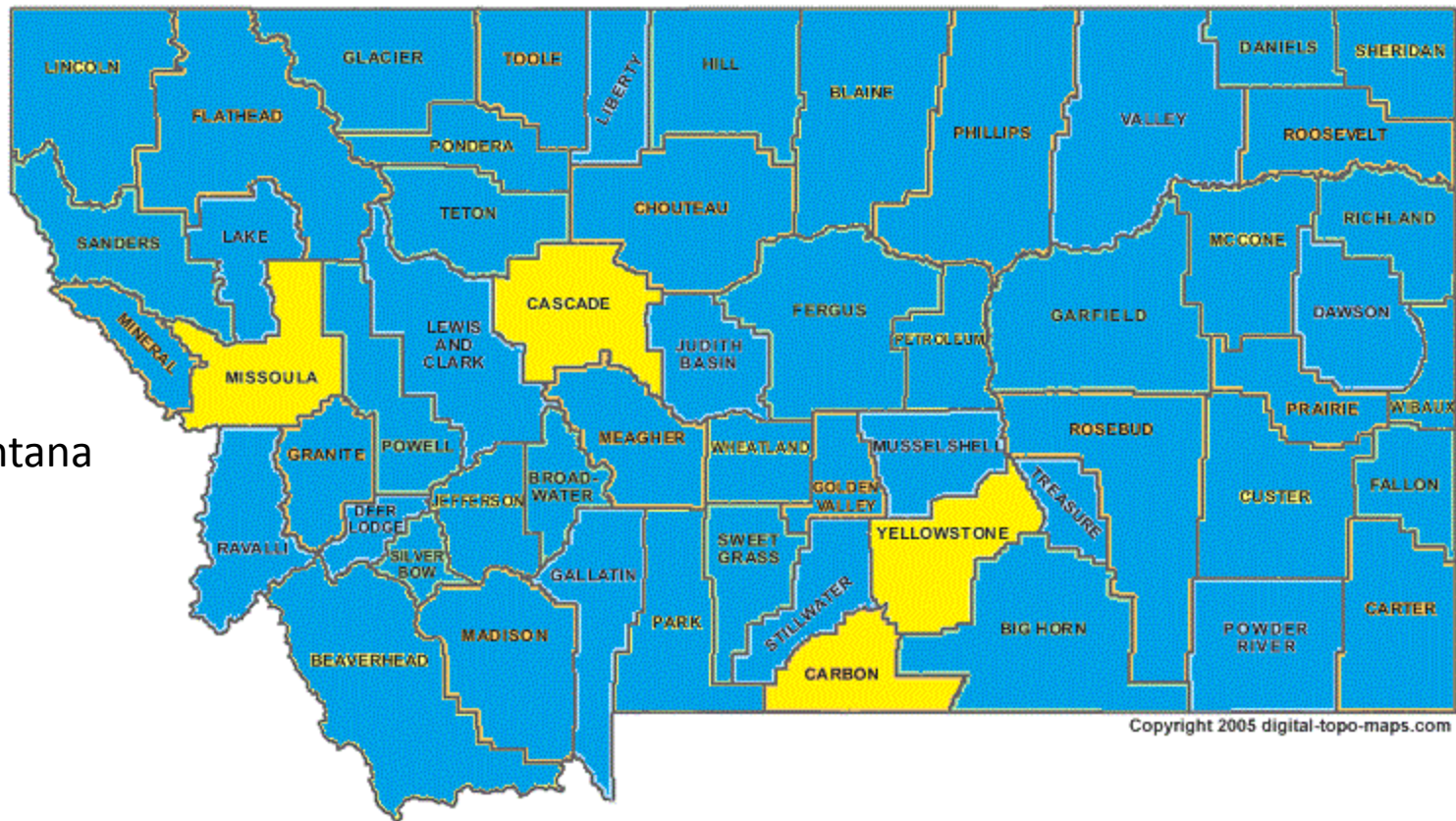
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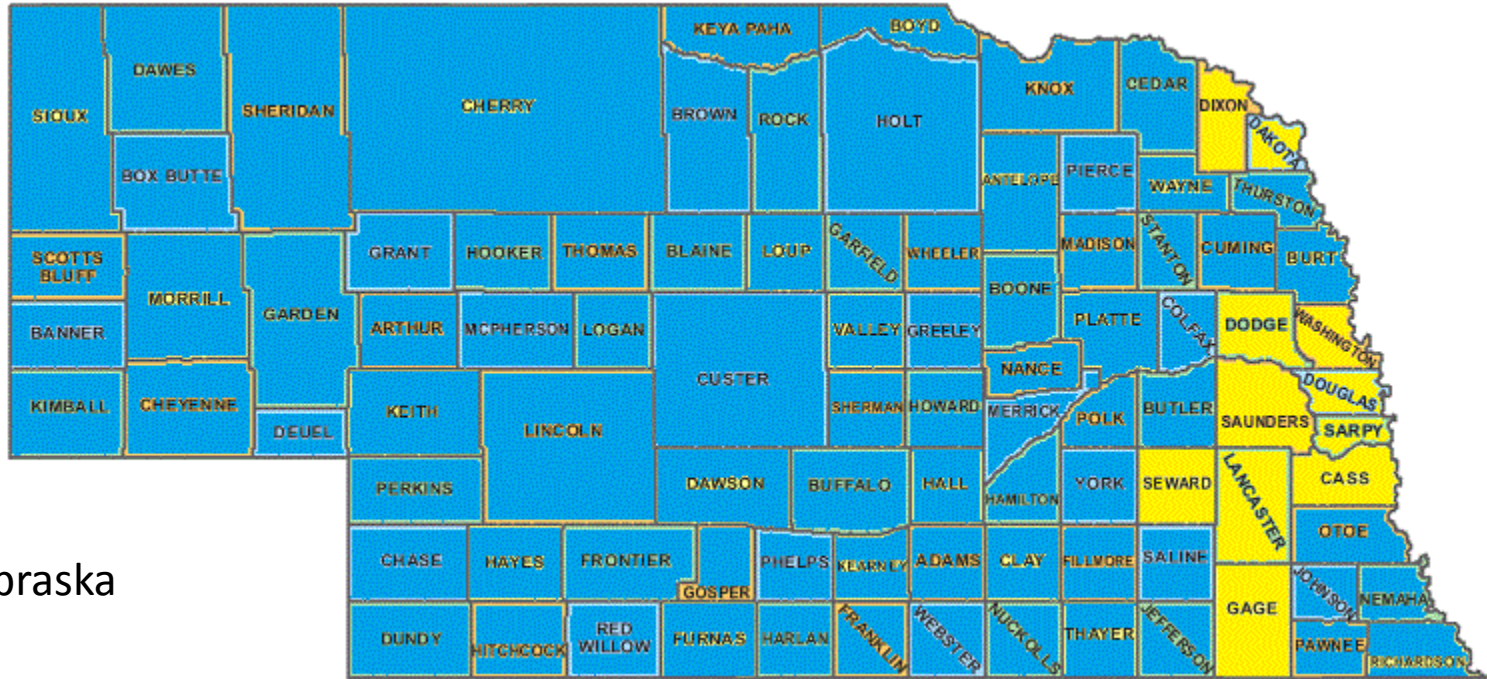
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Montana

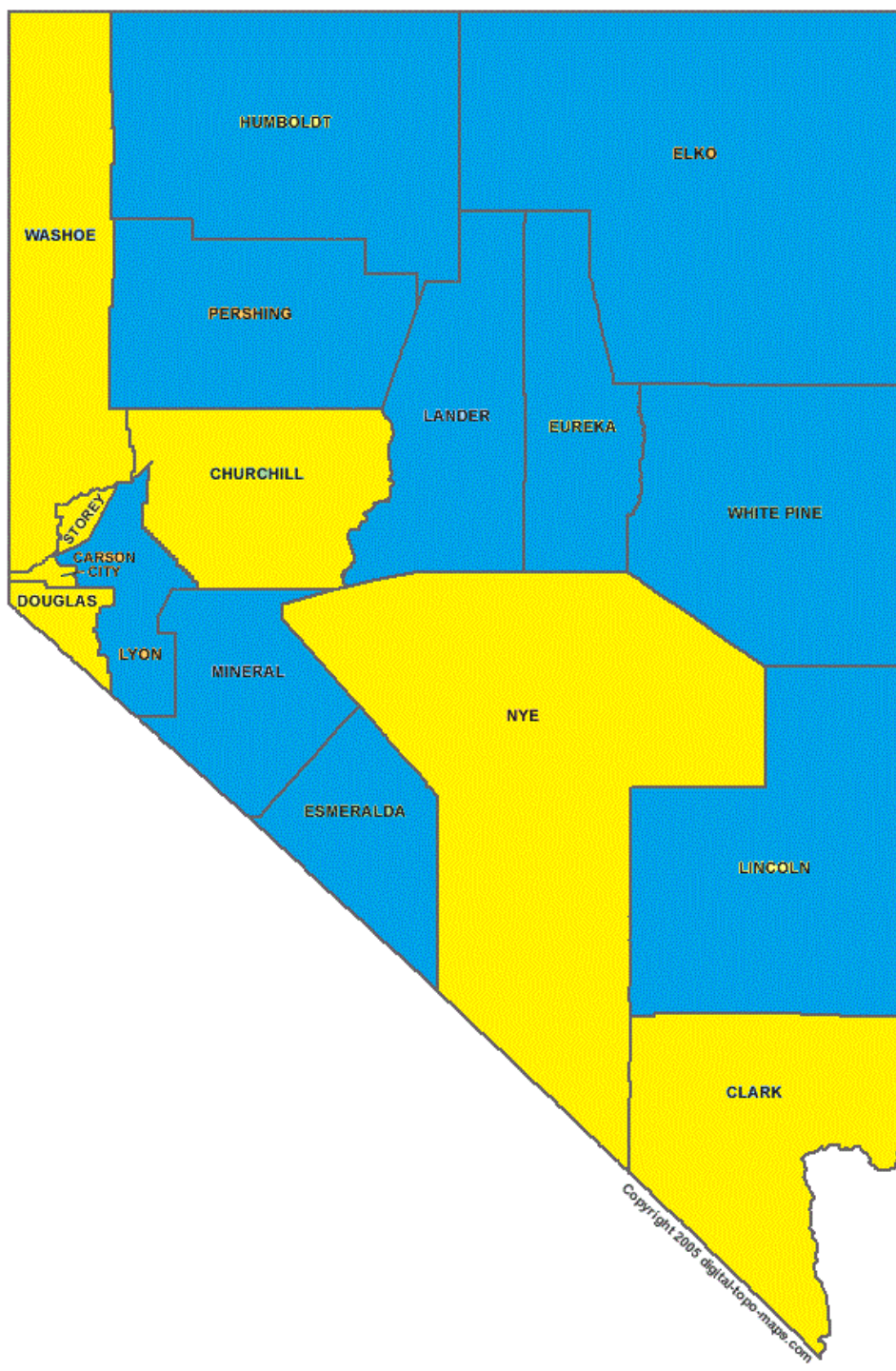


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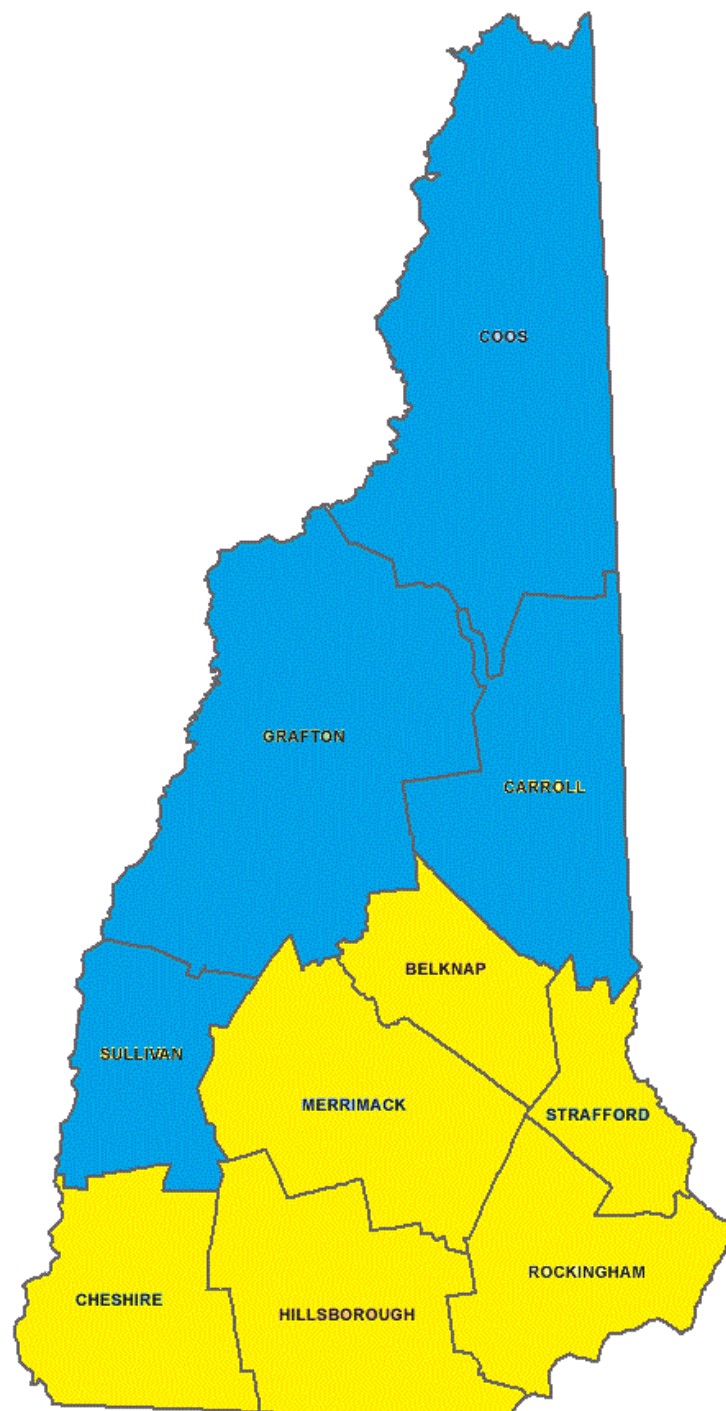


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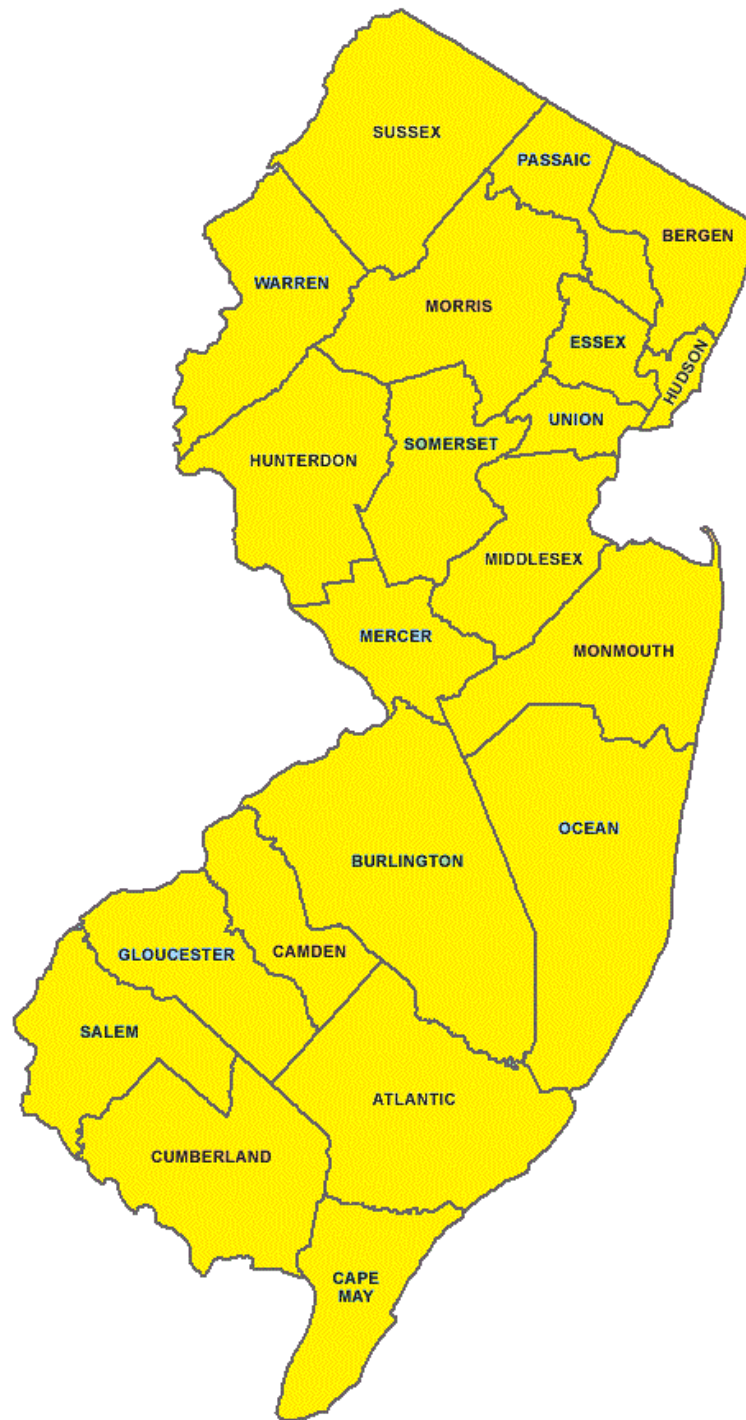
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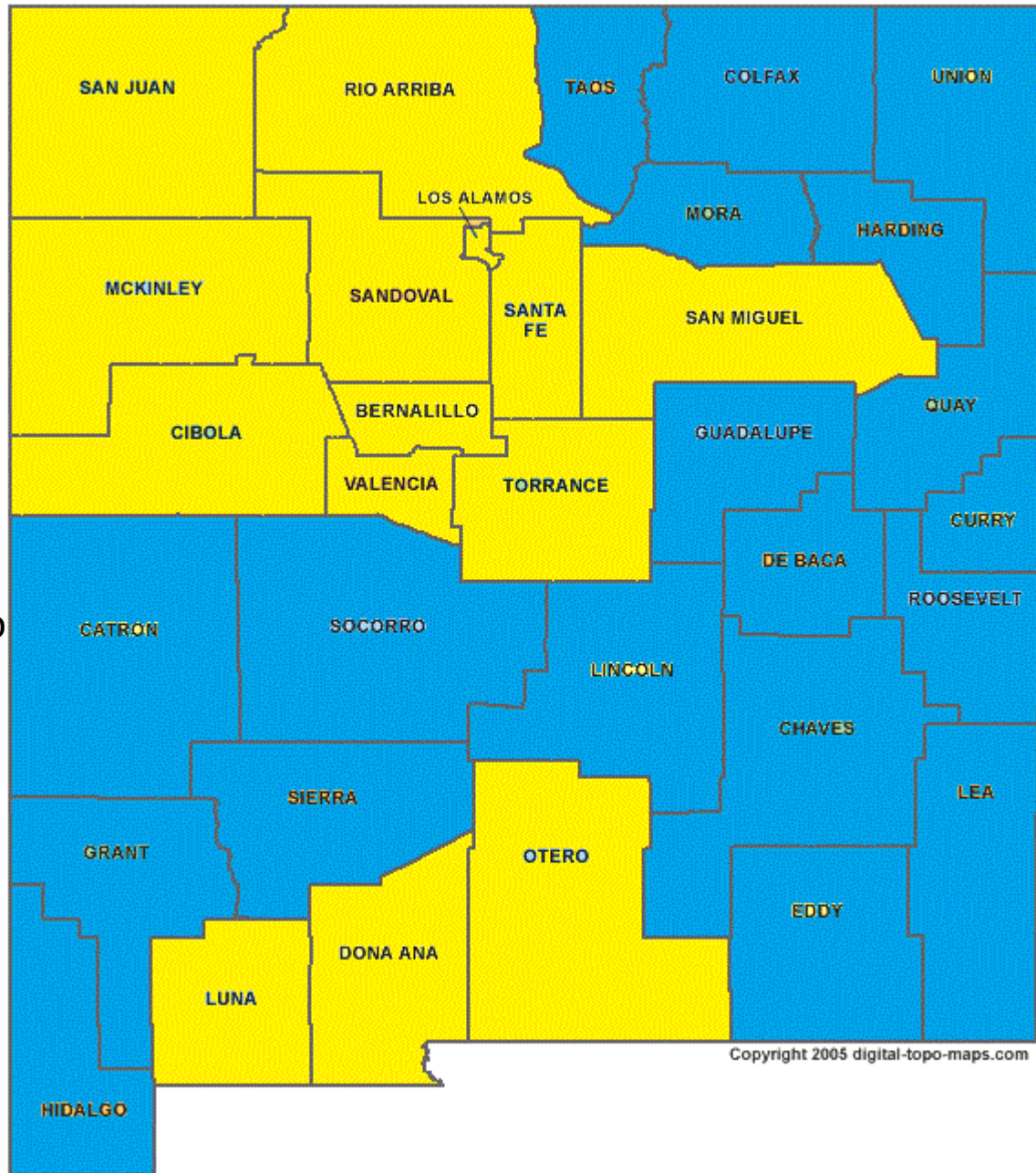
New Hampshire



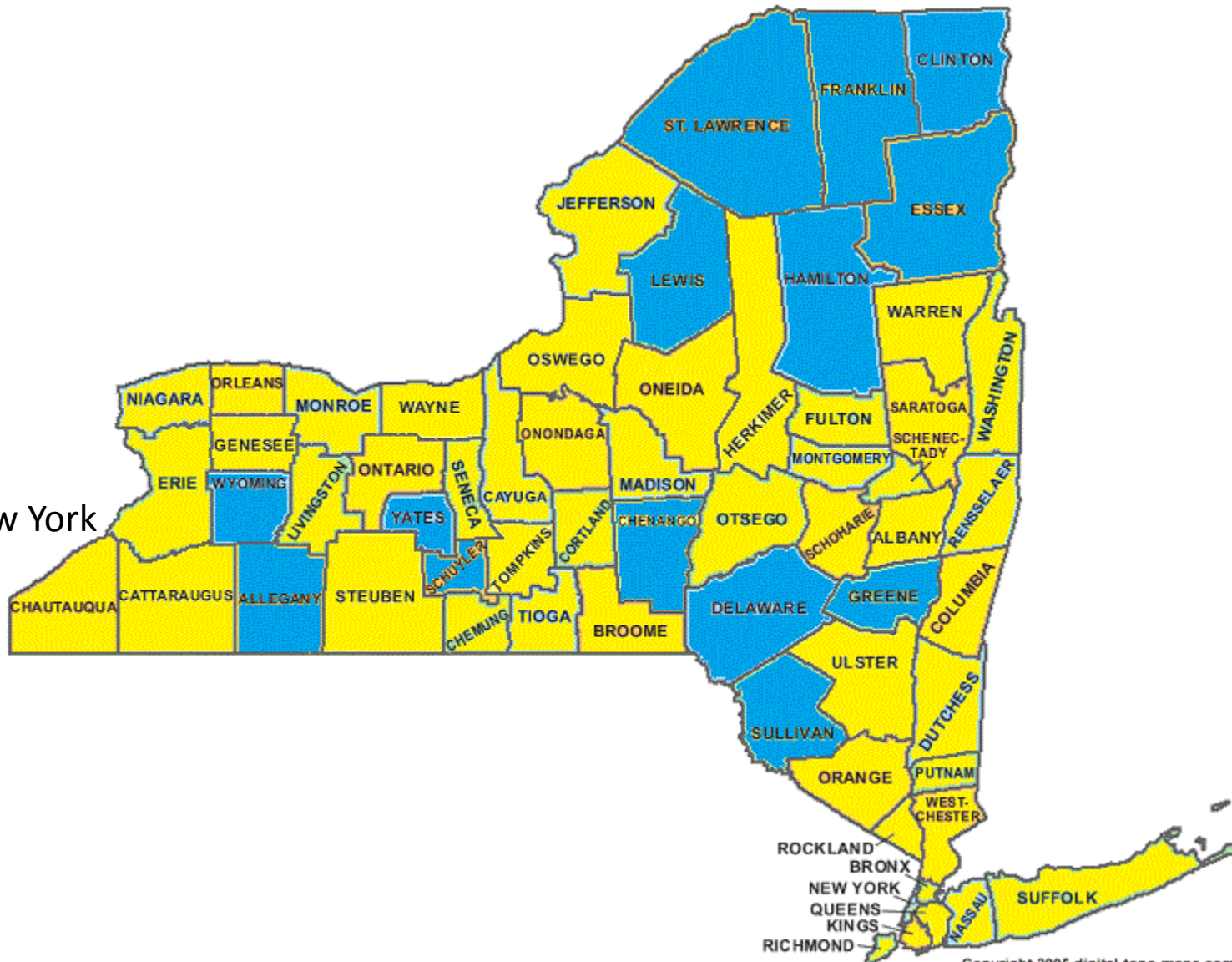
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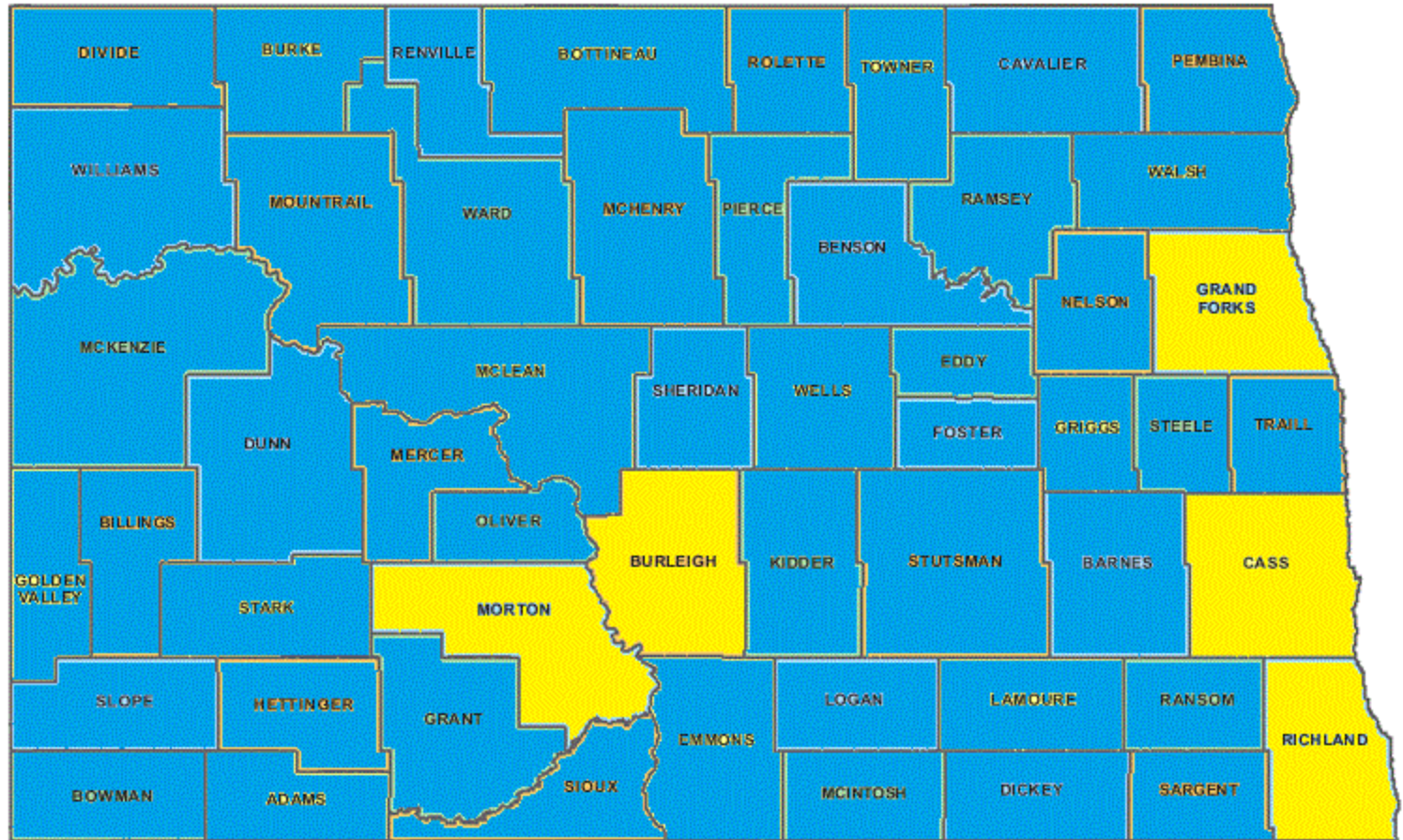
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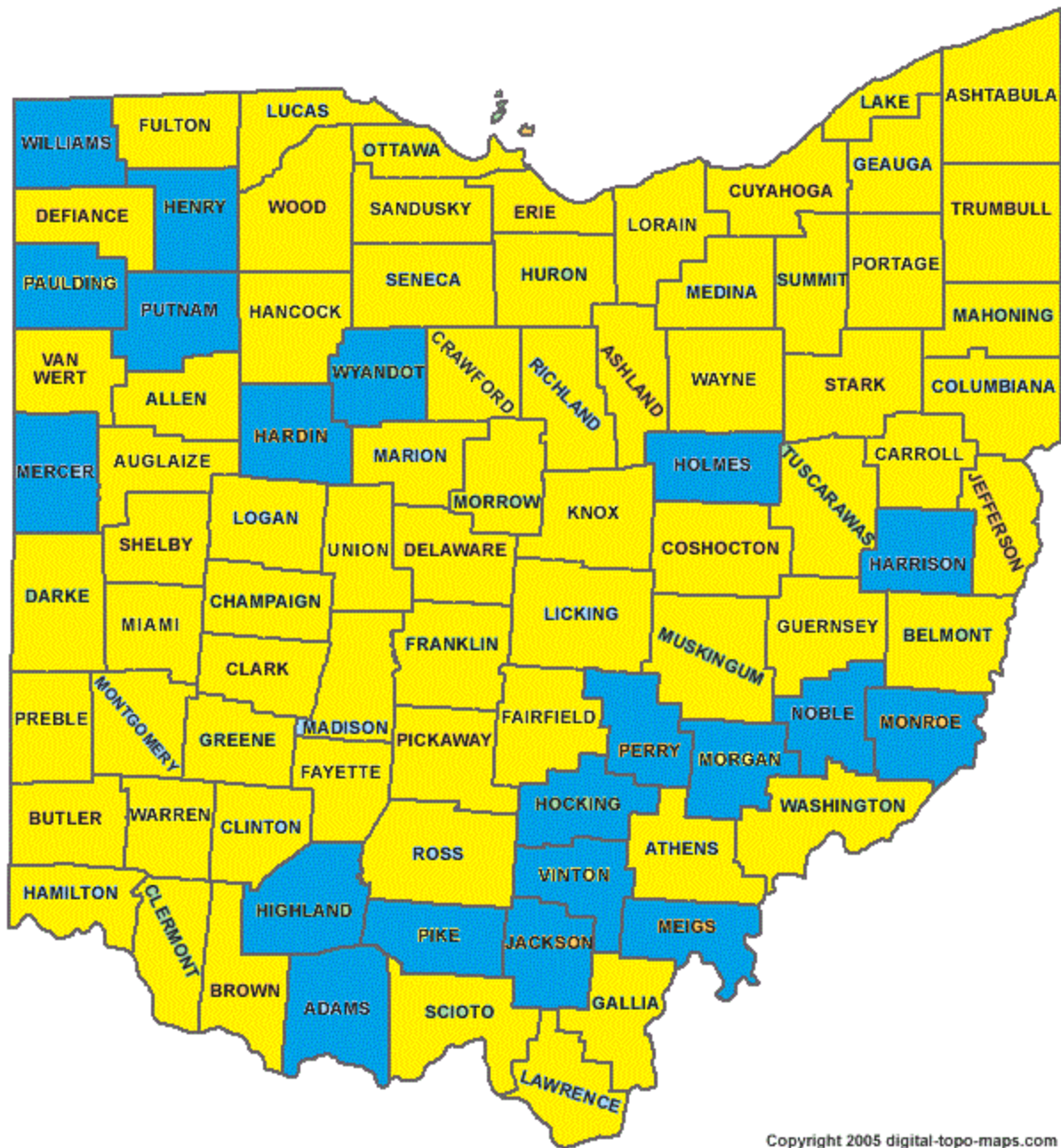
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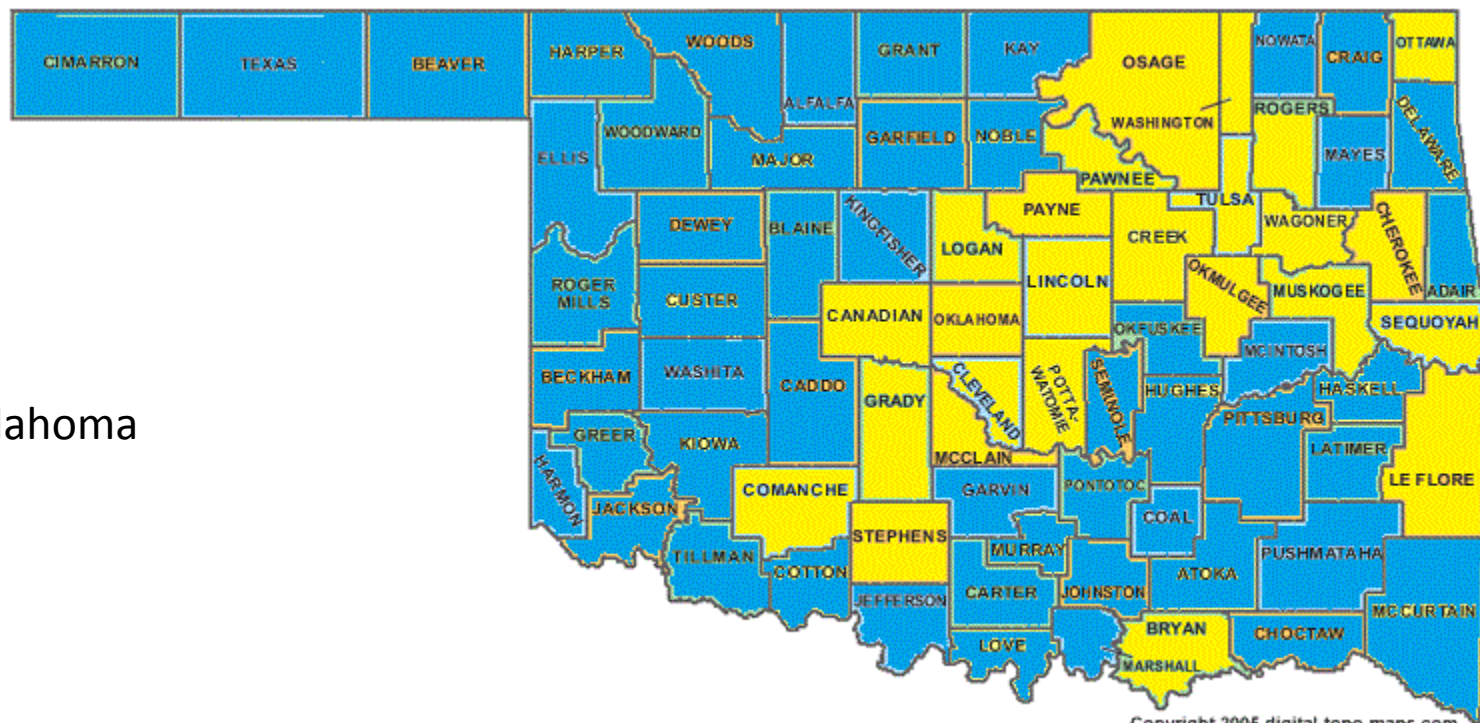
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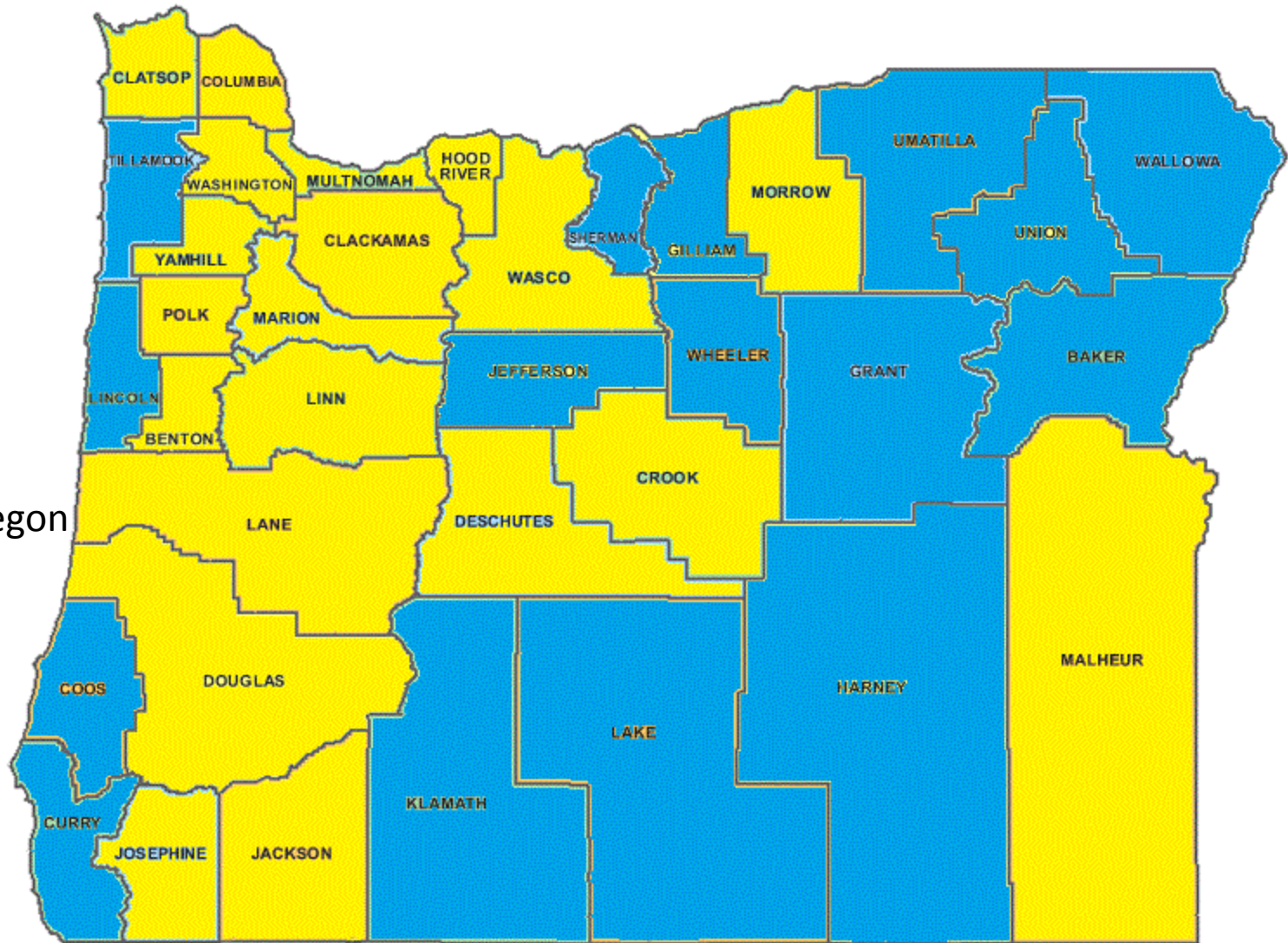
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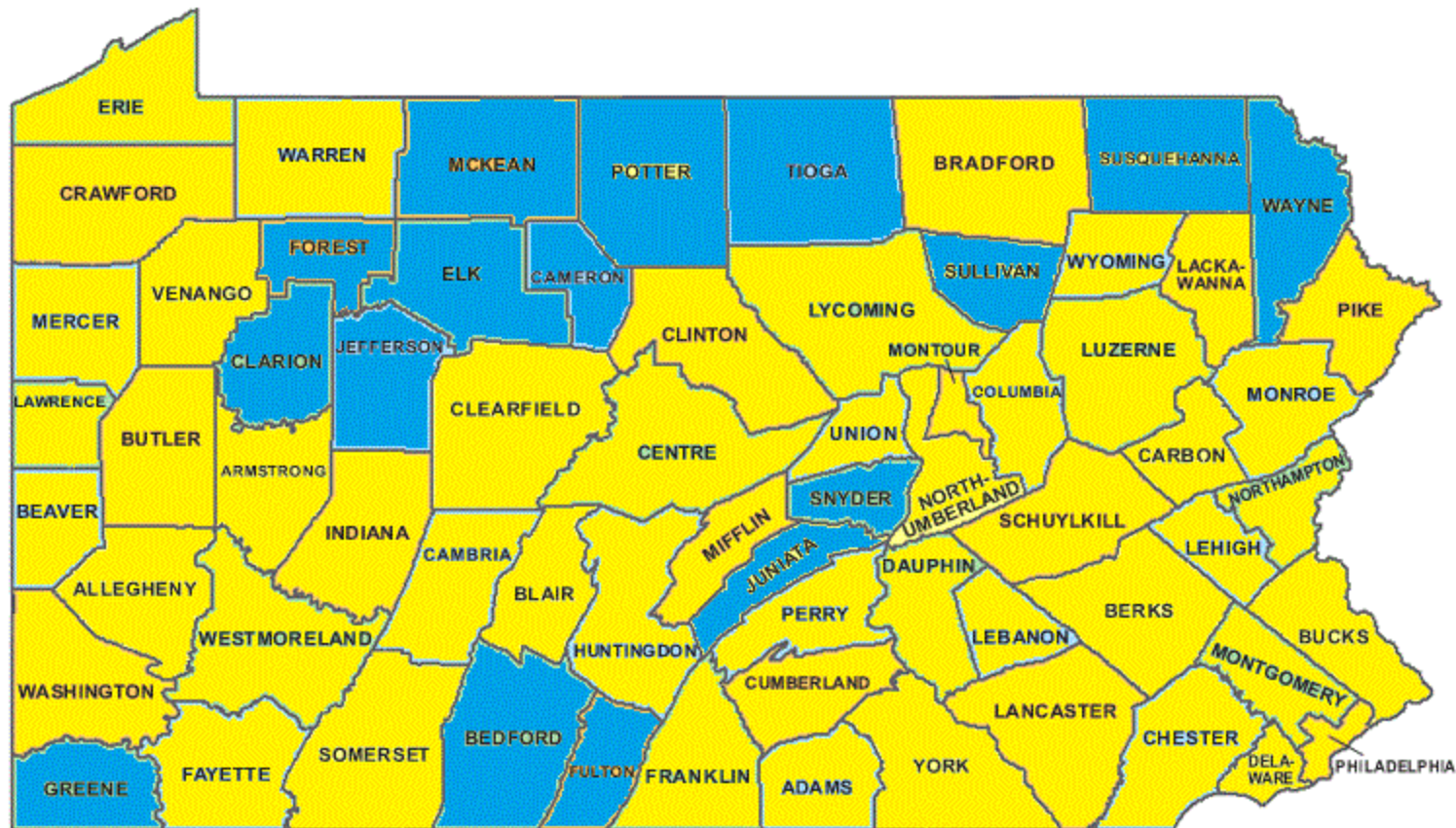
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Oregon



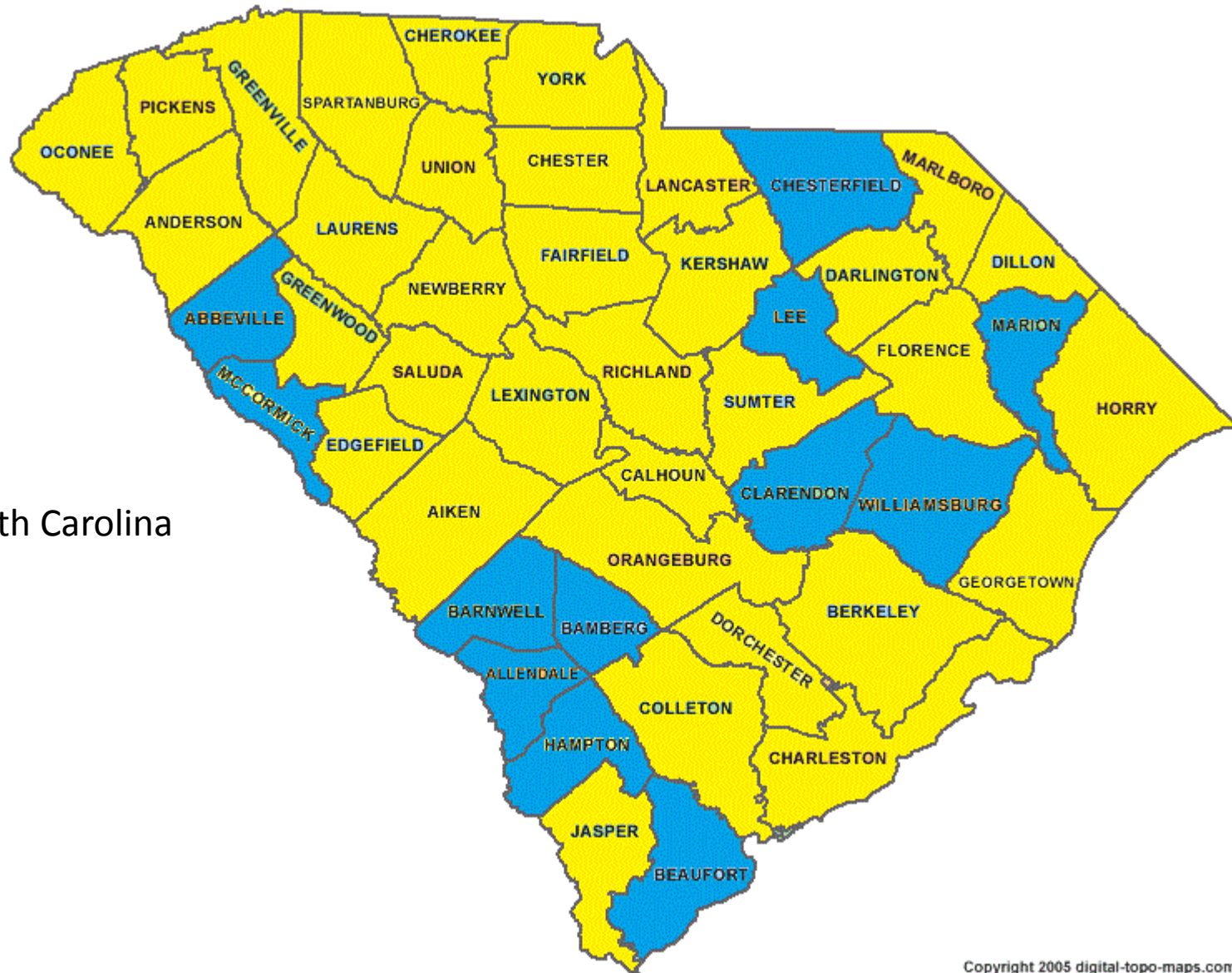
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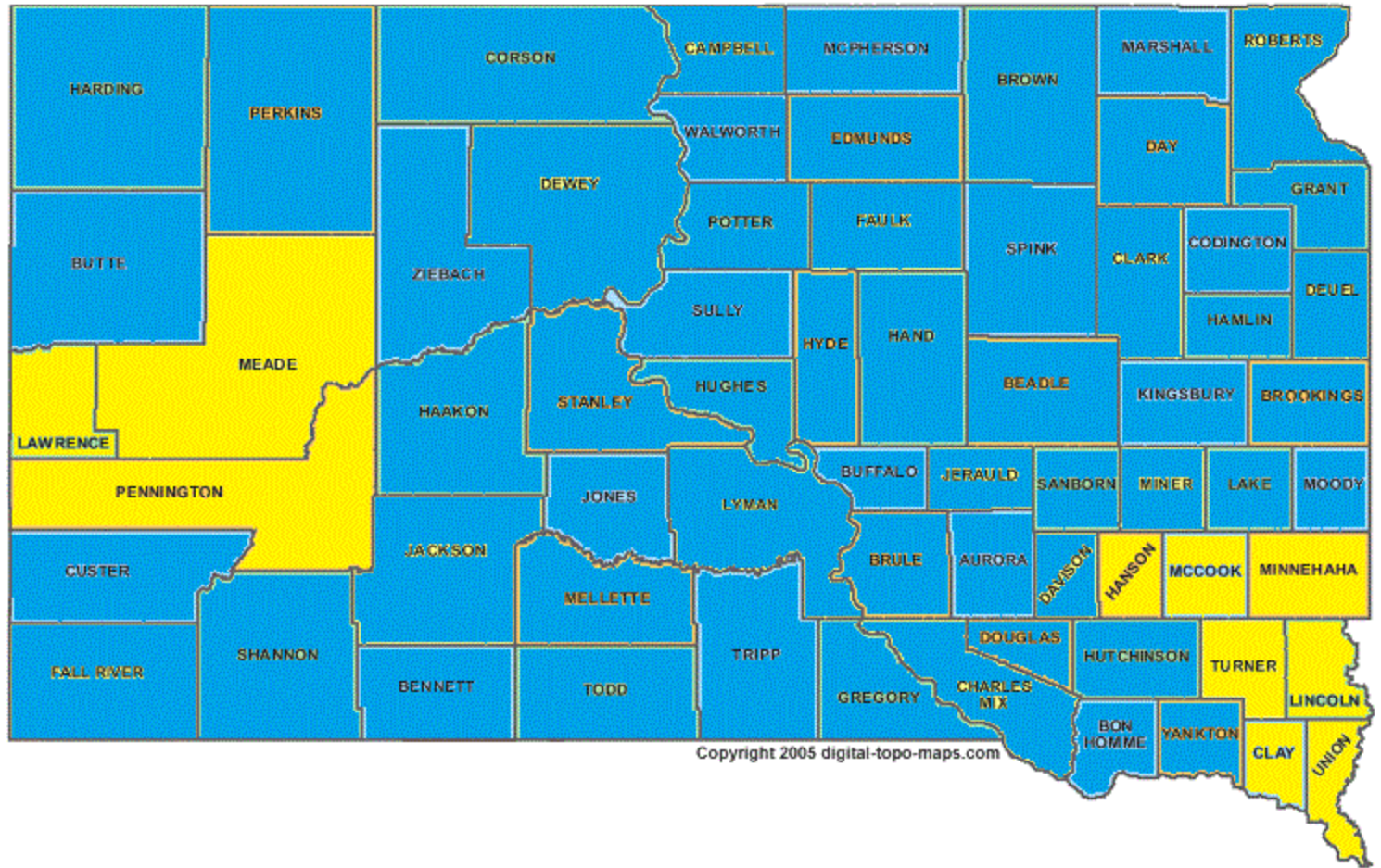
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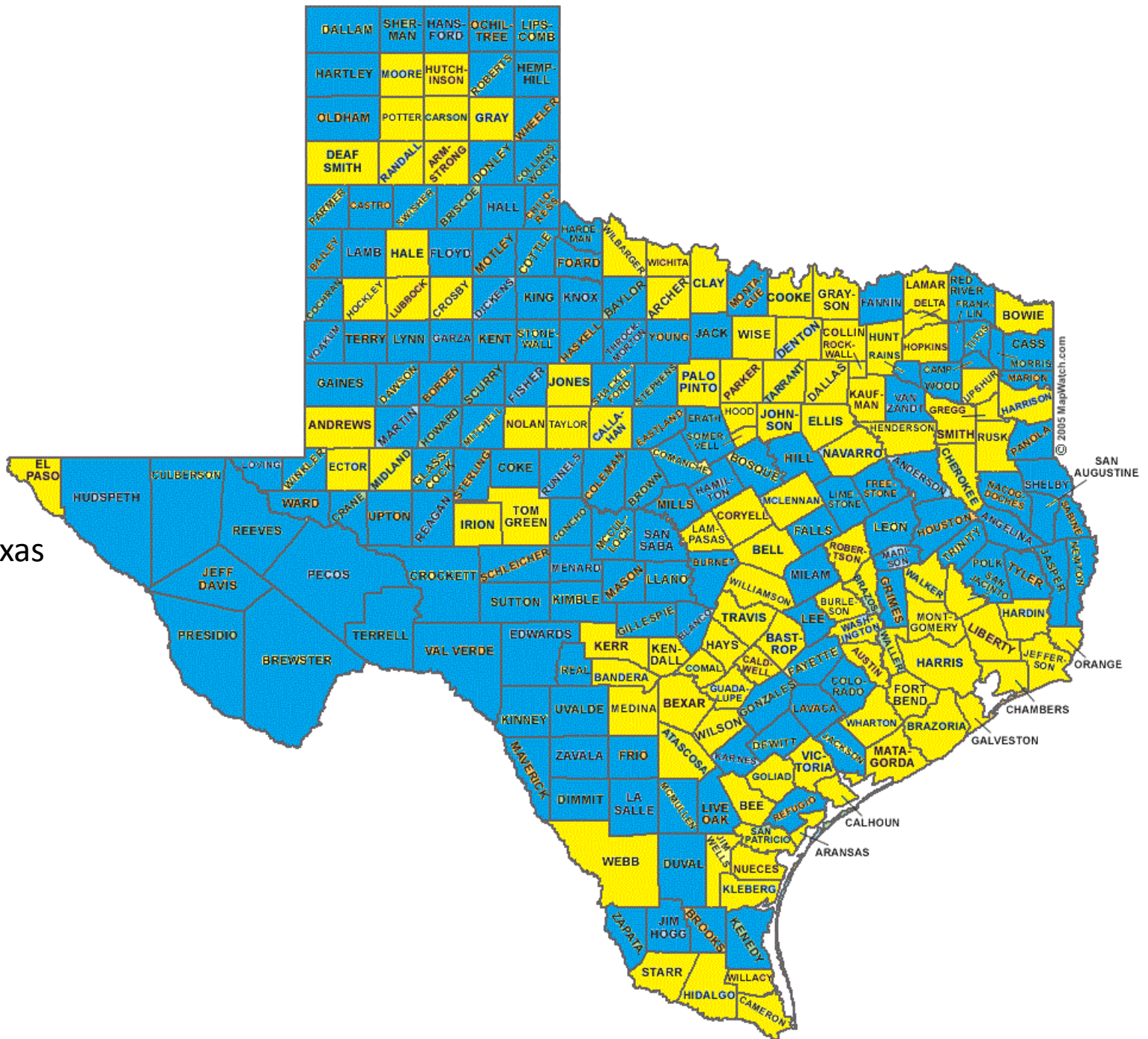
South Carolina



South Dakota

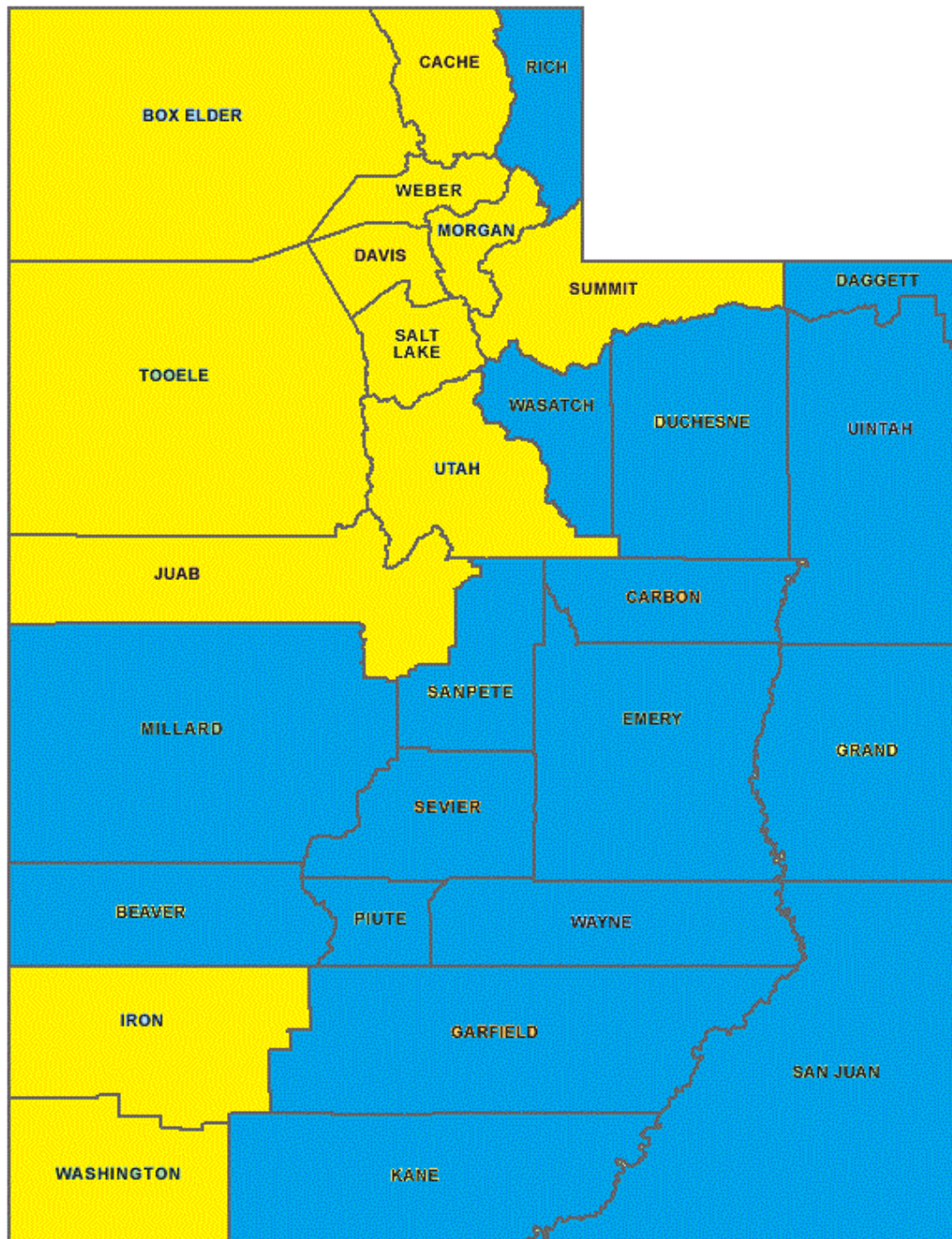


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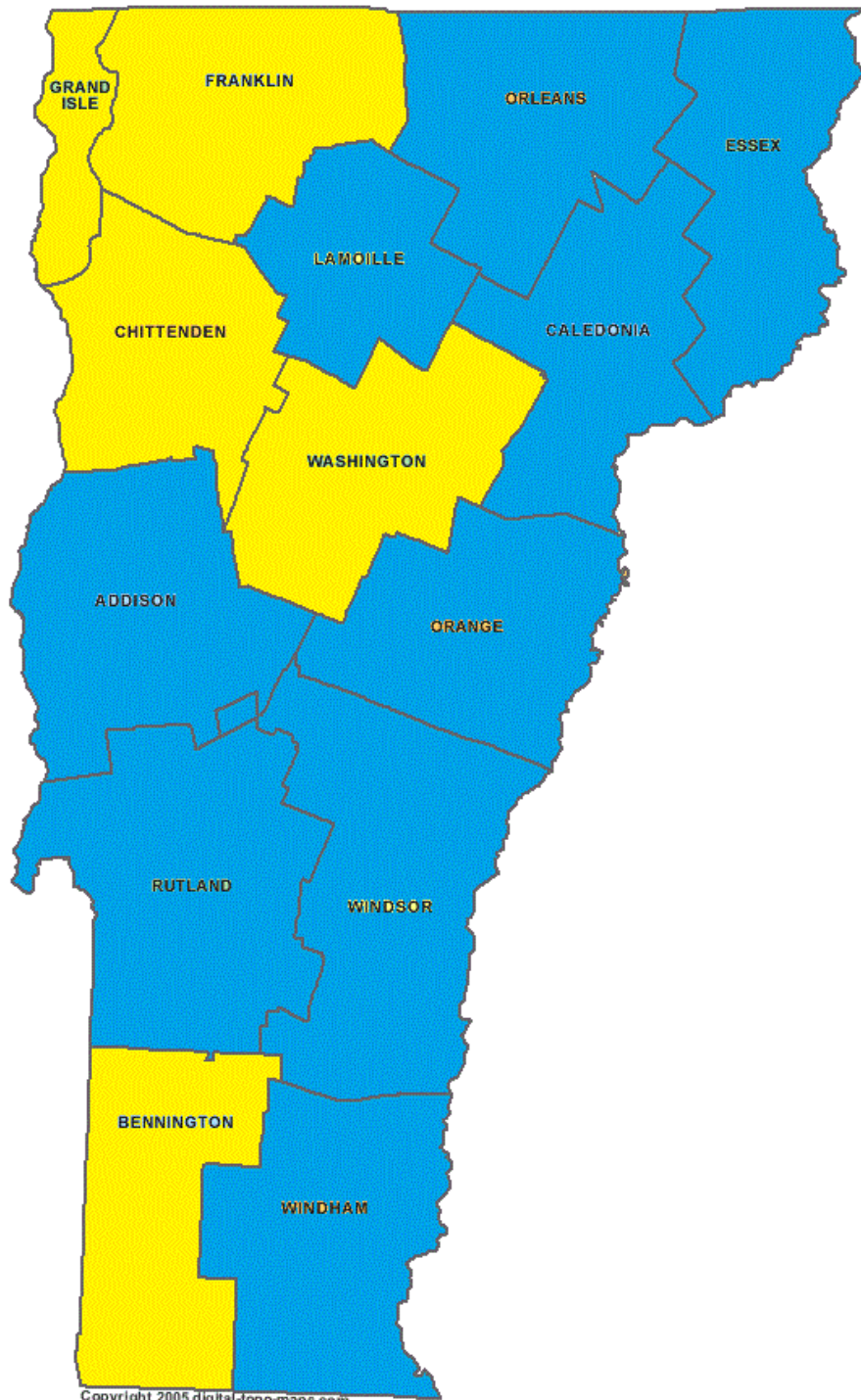


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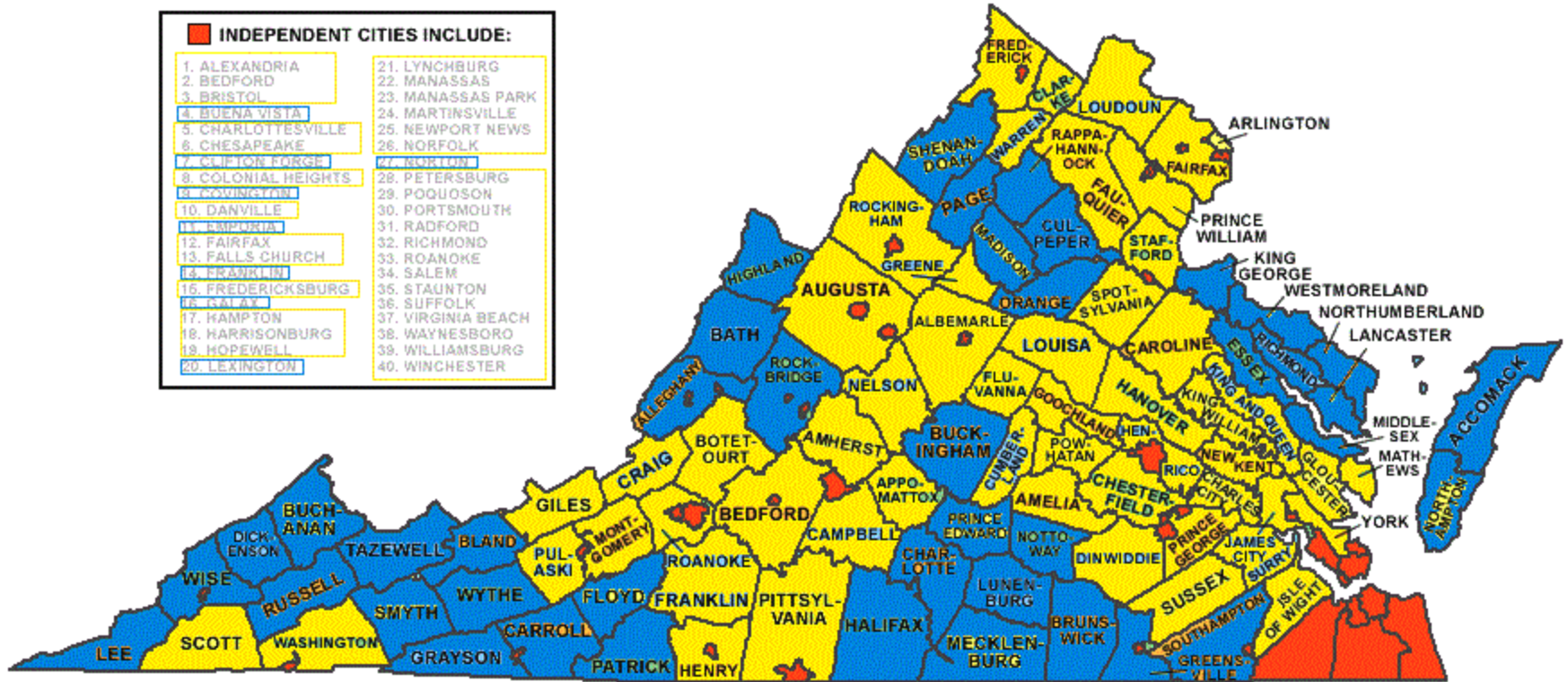
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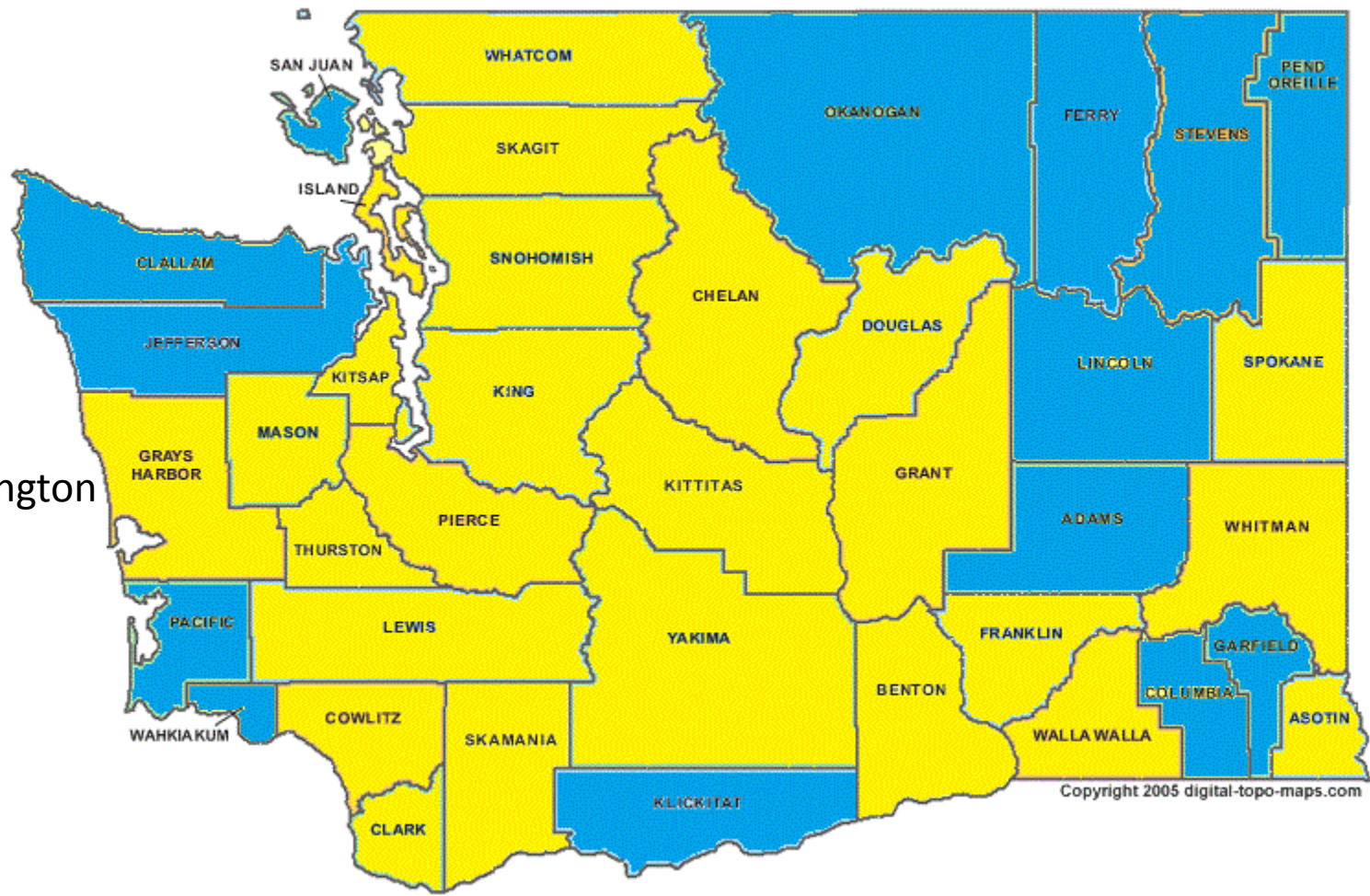
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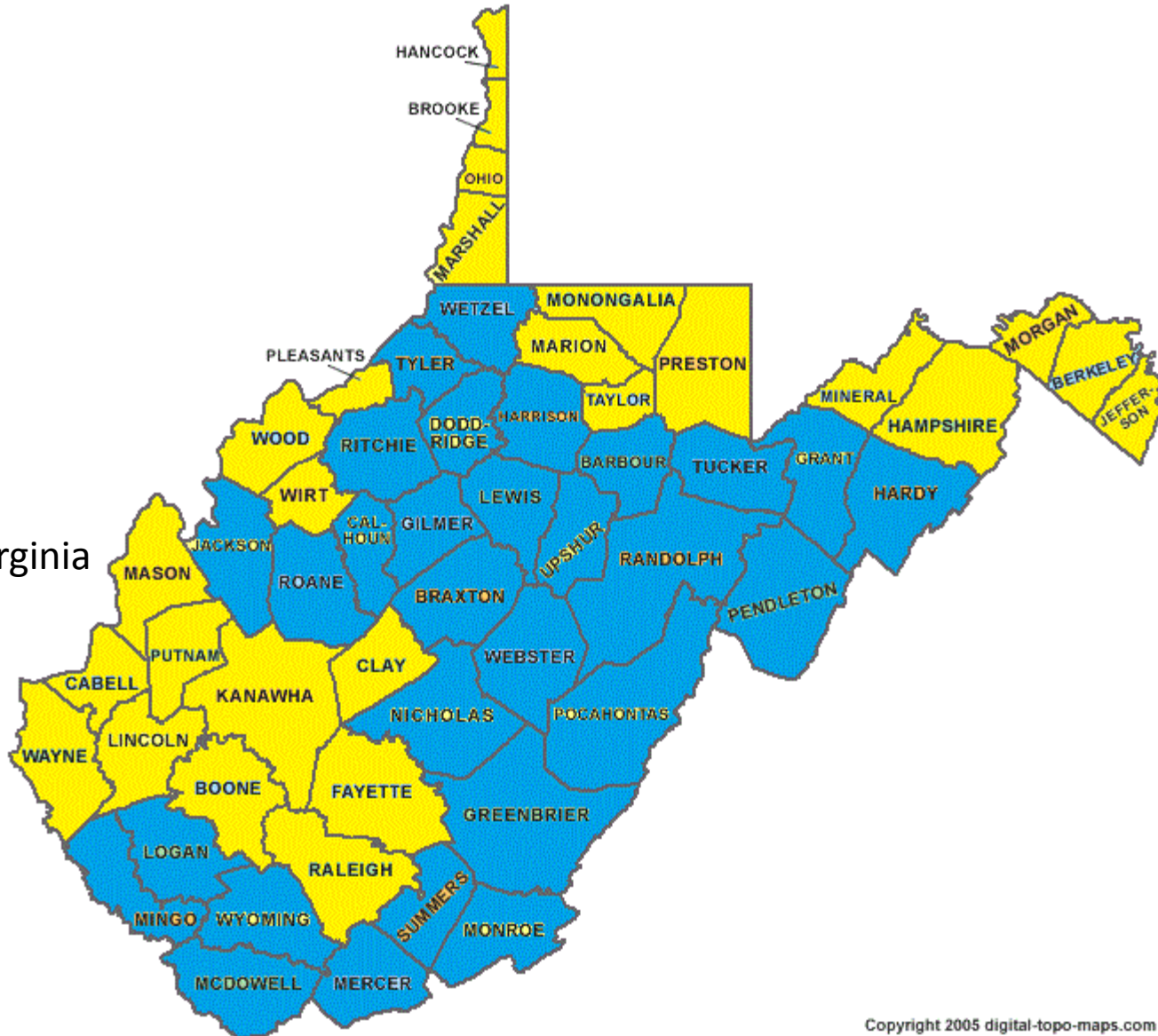
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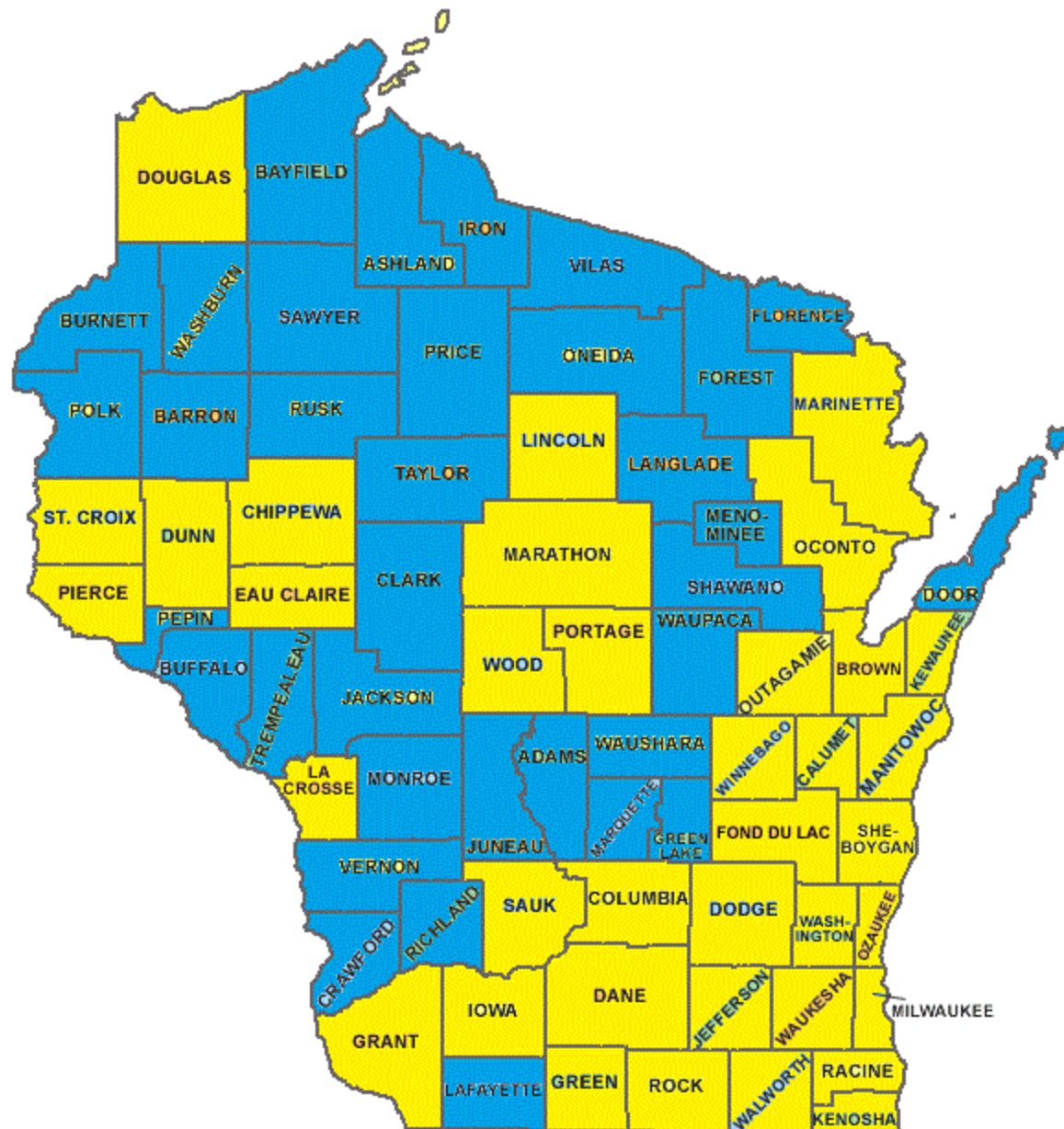
Washington



West Virginia



Wisconsin



Wyoming

