

Model food environment laws and sugary drink taxes – experiences of successes and legal challenges in the United States

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Guest Speakers

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Ted Mermin, JD, Executive Director, Center for Consumer Protection and Economic Justice, Univ. of California, Berkeley Law



Agenda

- Setting the context
- Defining the Problem
- Law and Policy Strategies
- Industry Push-Back
- Discussion

ChangeLab Solutions

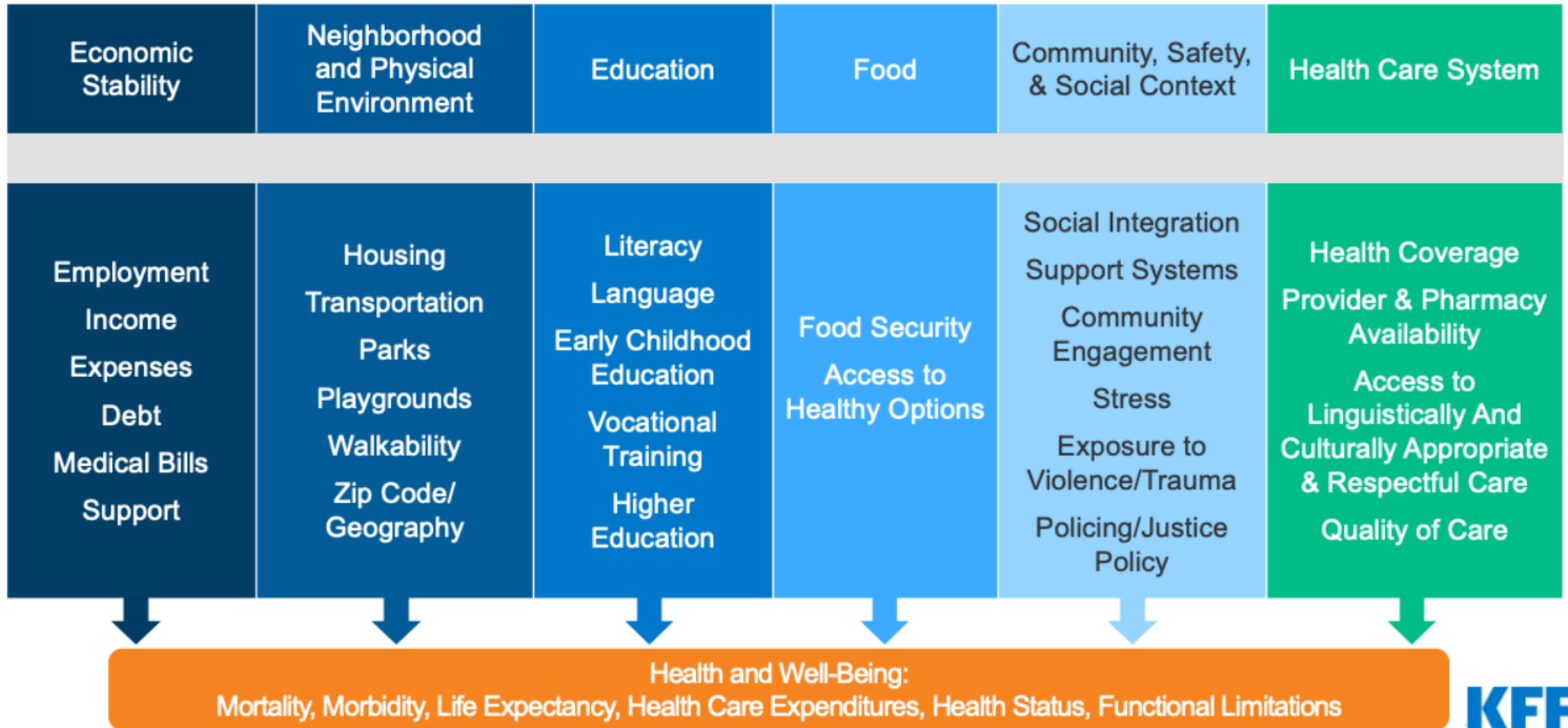


- Multi-disciplinary team of lawyers, urban planners, public health specialists.
- Develop model laws & policies
- Focus on the structural determinants of health, health equity and racial justice
- Funders: Centers for Disease Control, state and local health agencies, broad array of philanthropies and health systems

Blueprint for Changemakers

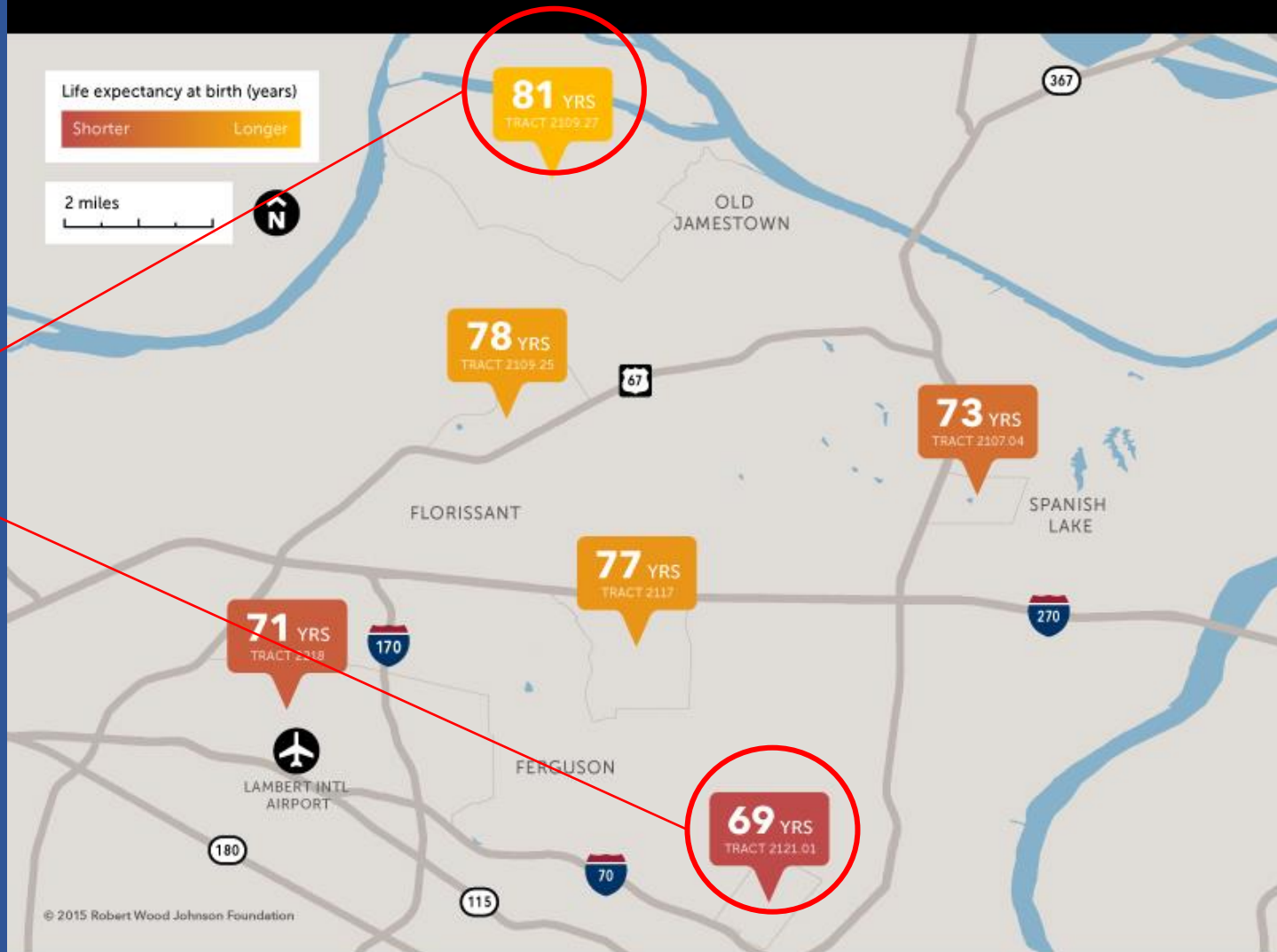
Figure 1

Social Determinants of Health



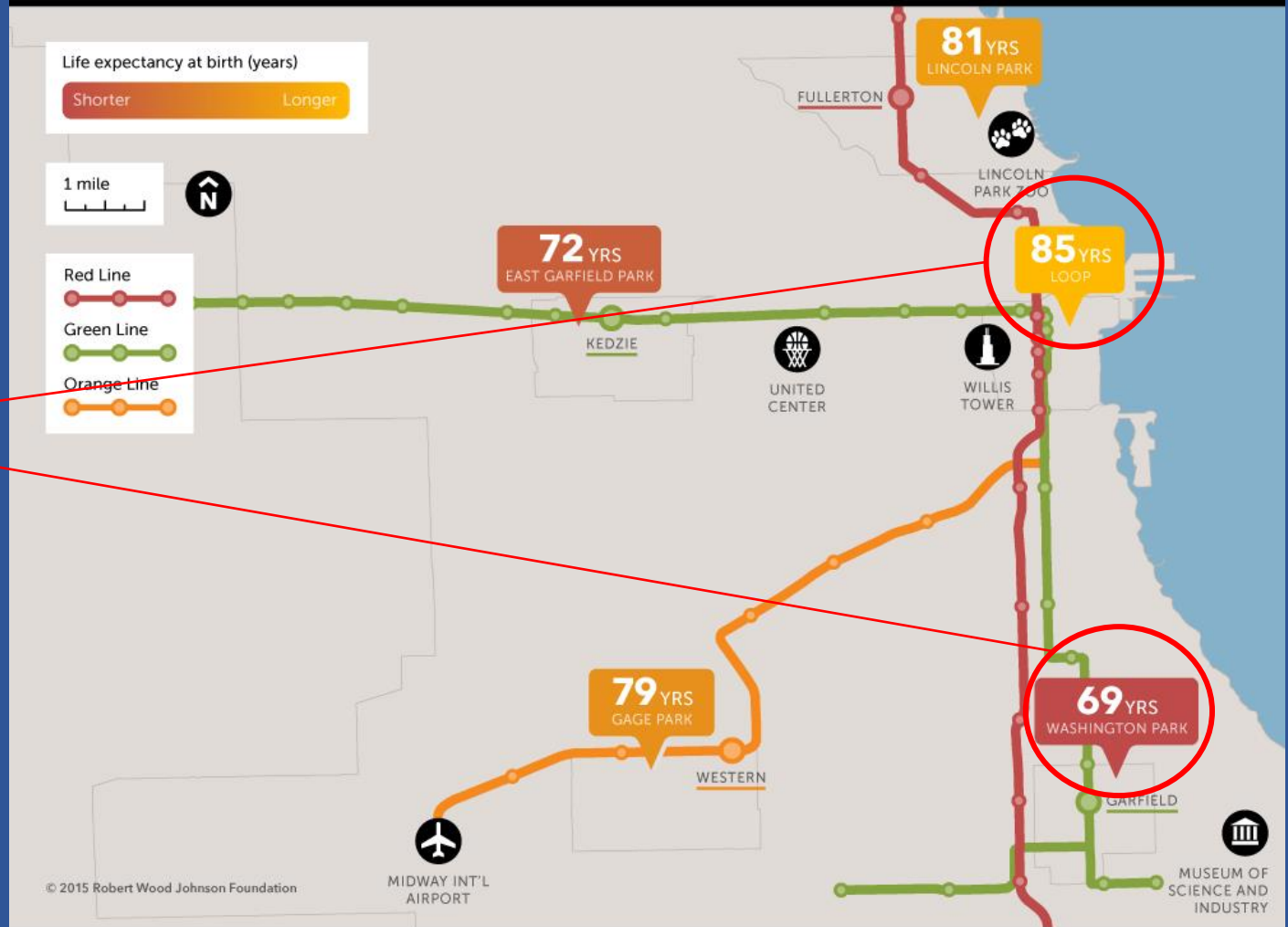
Short Distances to Large Gaps in Health

12 Years



Short Distances to Large Gaps in Health

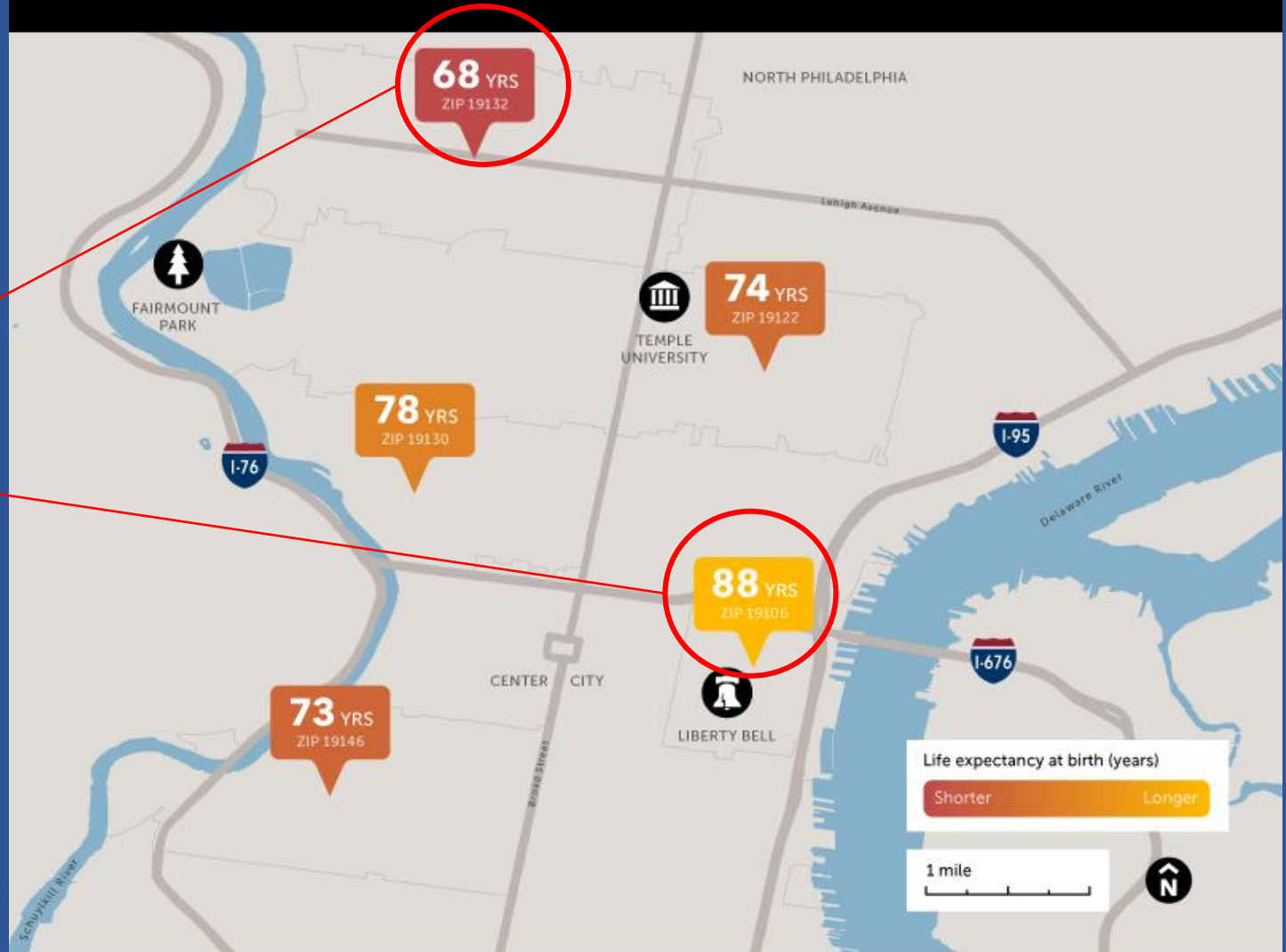
16 Years



Short Distances to Large Gaps in Health

#CloseHealthGaps

20 Years



The Health Impact Model – Example: Tobacco Control

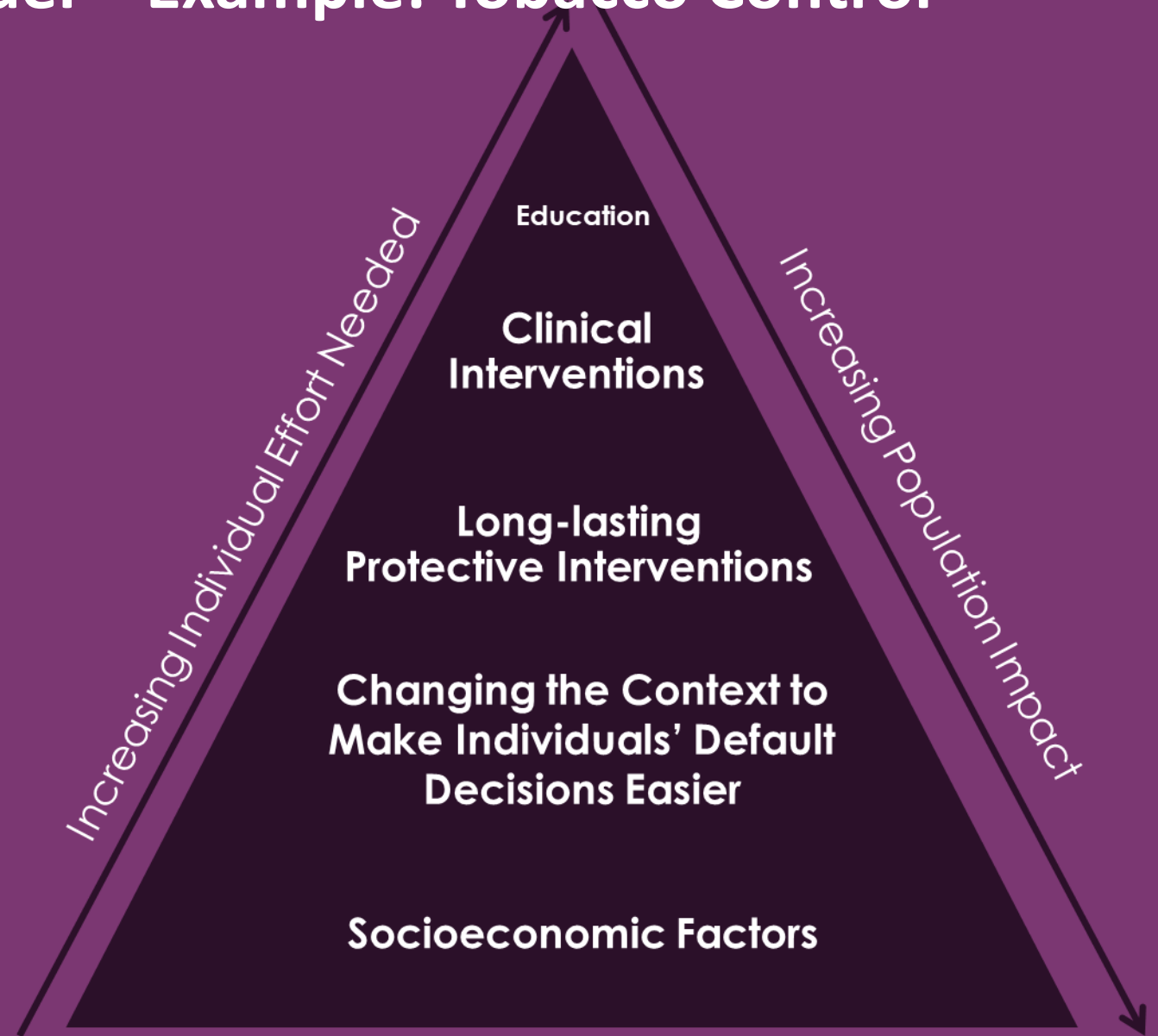
- Stop smoking campaigns, doctors counseling patients

- Inhalers, lung cancer screening, chemotherapy

- Nicotine reduction therapy

- Smokefree environments, tobacco taxes, age restrictions, etc.

- Poverty reduction, quality education, safe housing, livable wages, etc.



Defining the Problem

Obesity-related conditions include heart disease, stroke, type 2 diabetes and certain types of cancer. These are among the leading causes of preventable, premature death in the U.S.

- Centers for Disease Control (2024)

For immediate purposes, replace the loaded term “obesity” with “diet-related diseases.”

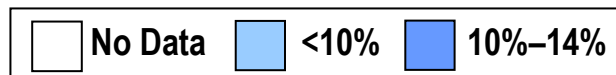
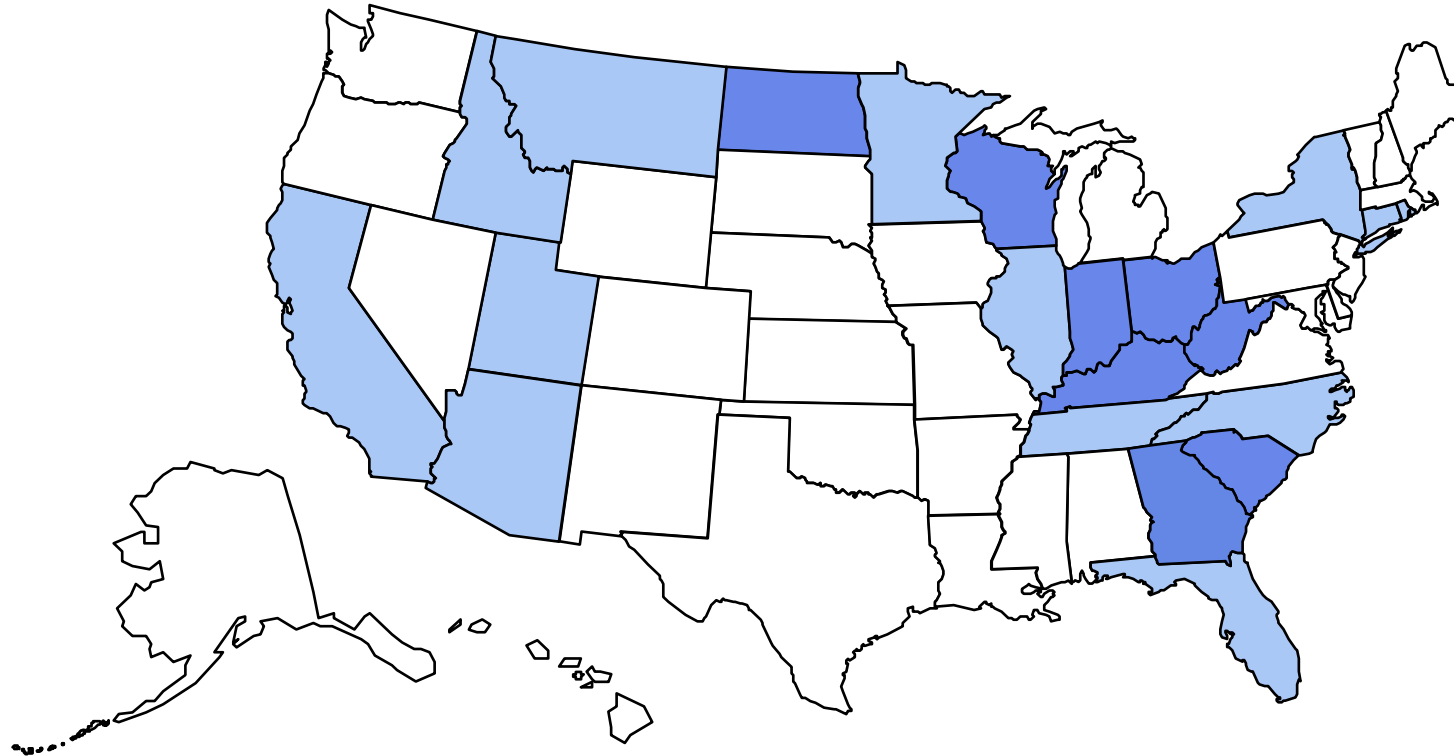
- Marice Ashe (2024)



Obesity Trends* Among U.S. Adults

BRFSS, 1985

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



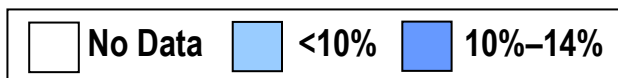
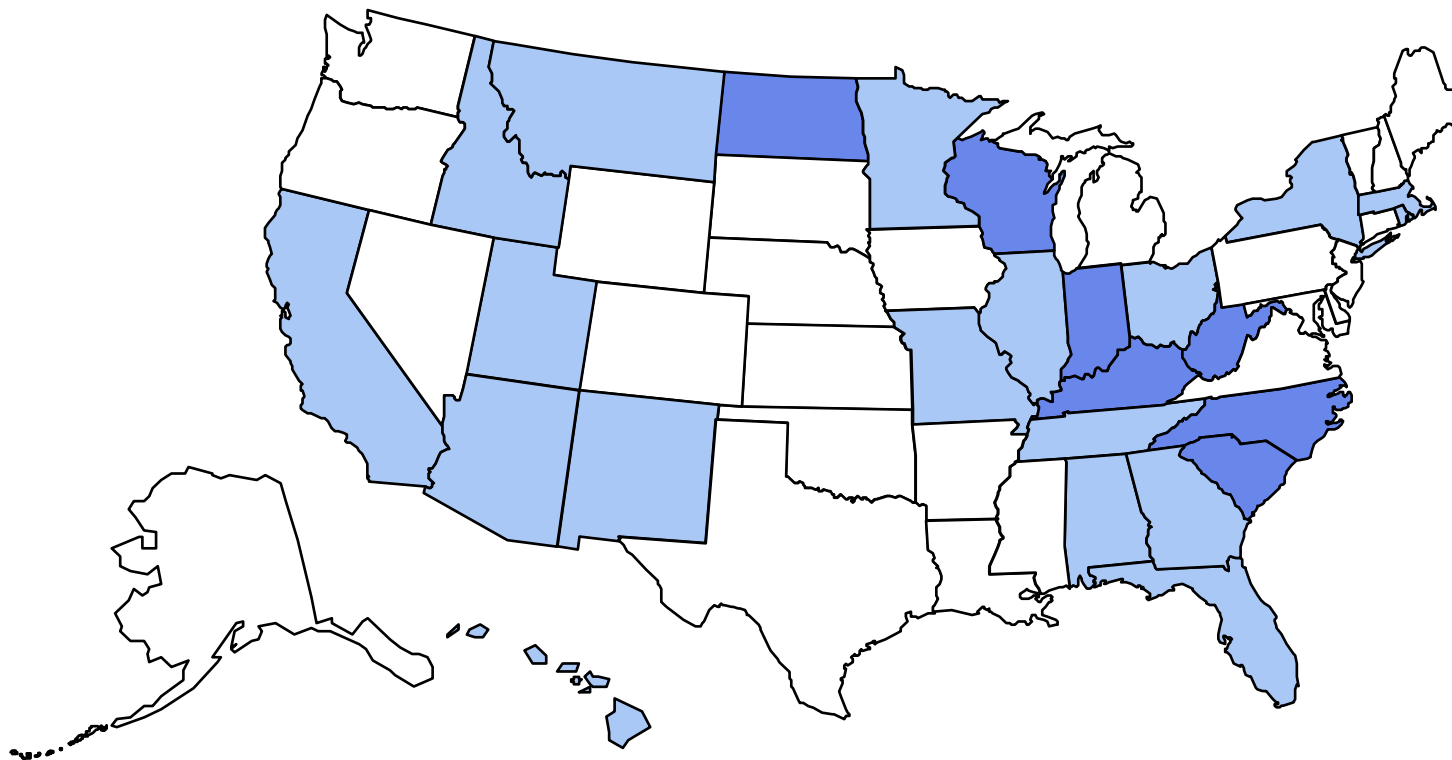
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1986

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



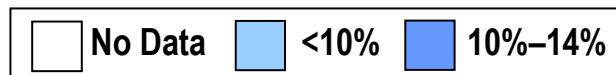
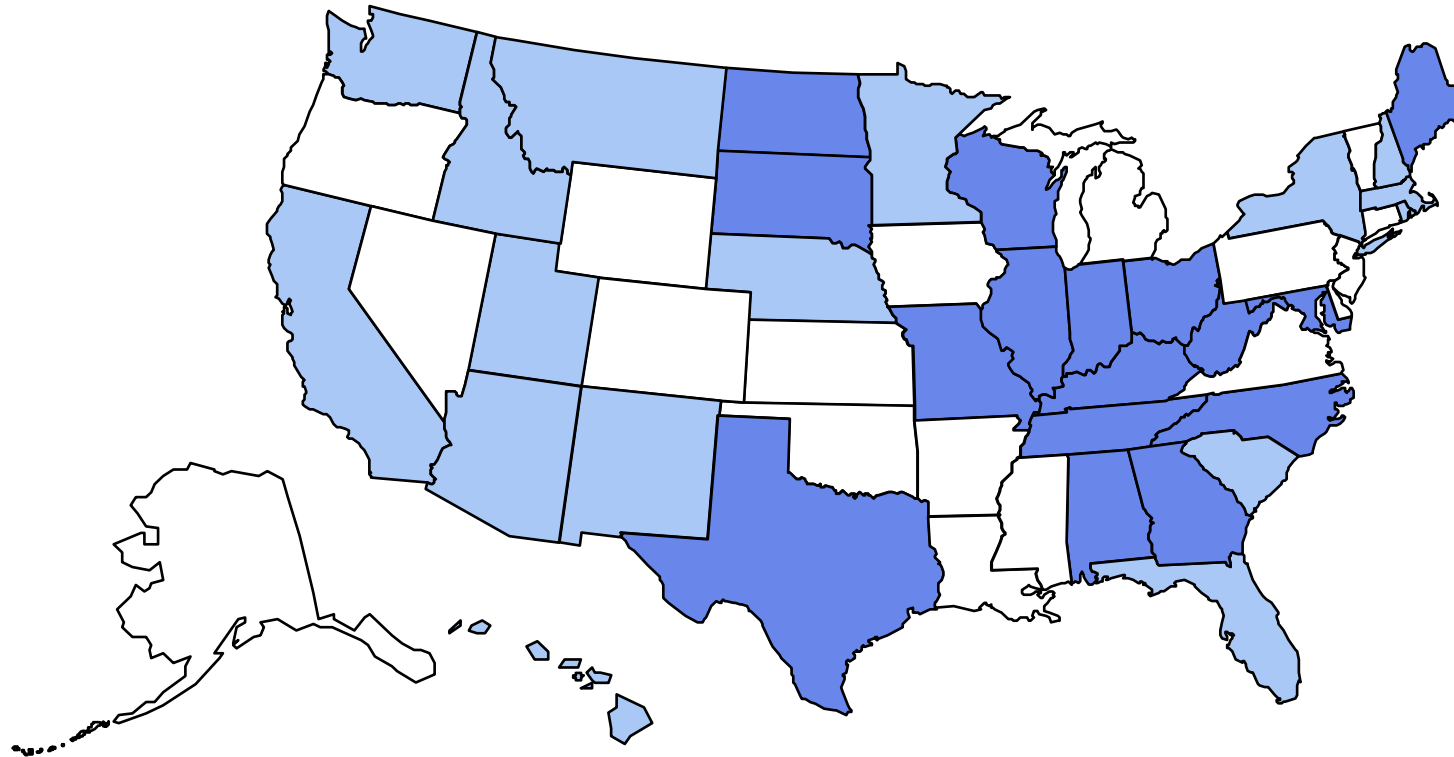
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1987

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



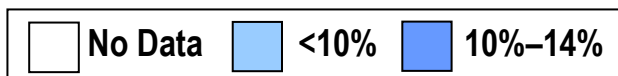
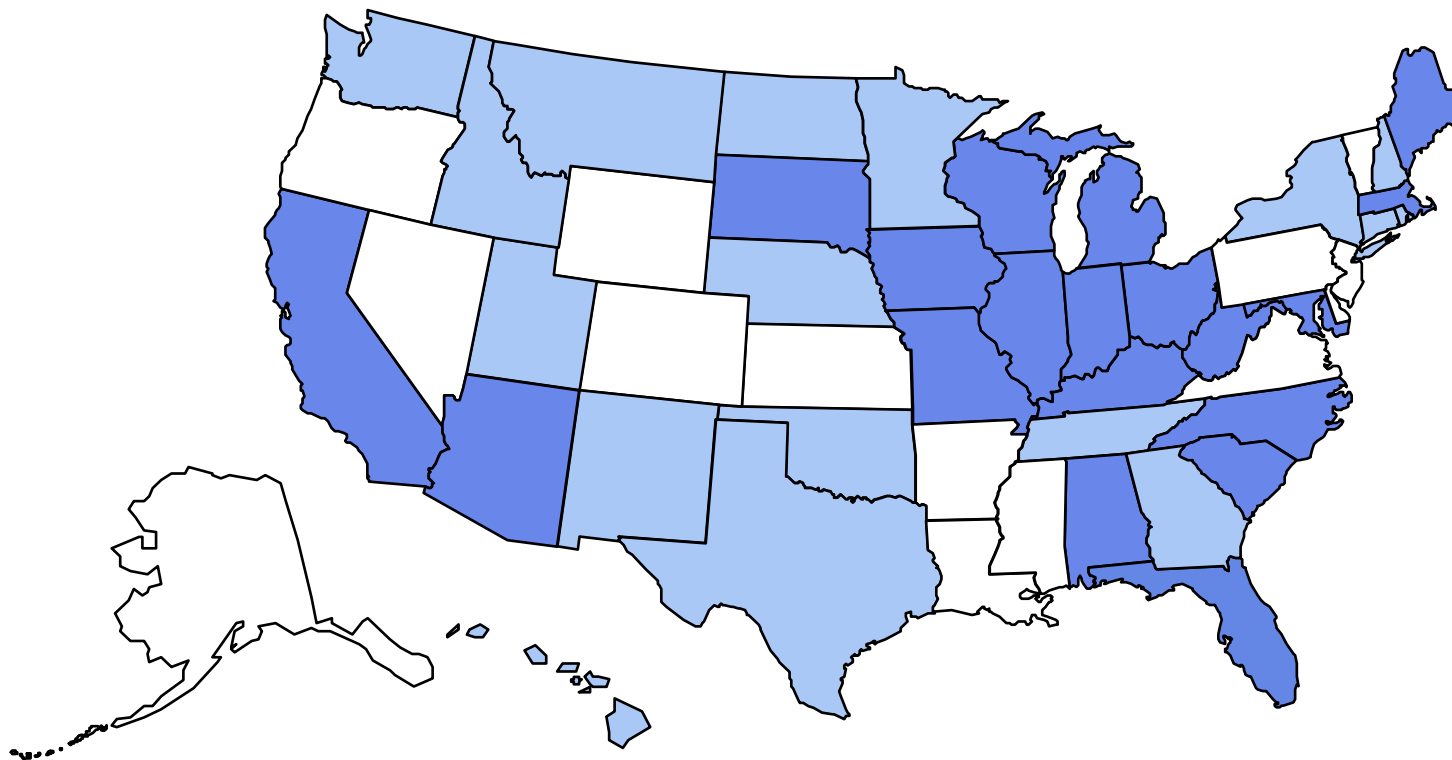
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1988

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



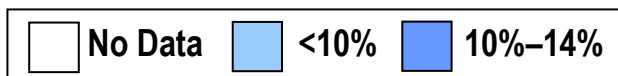
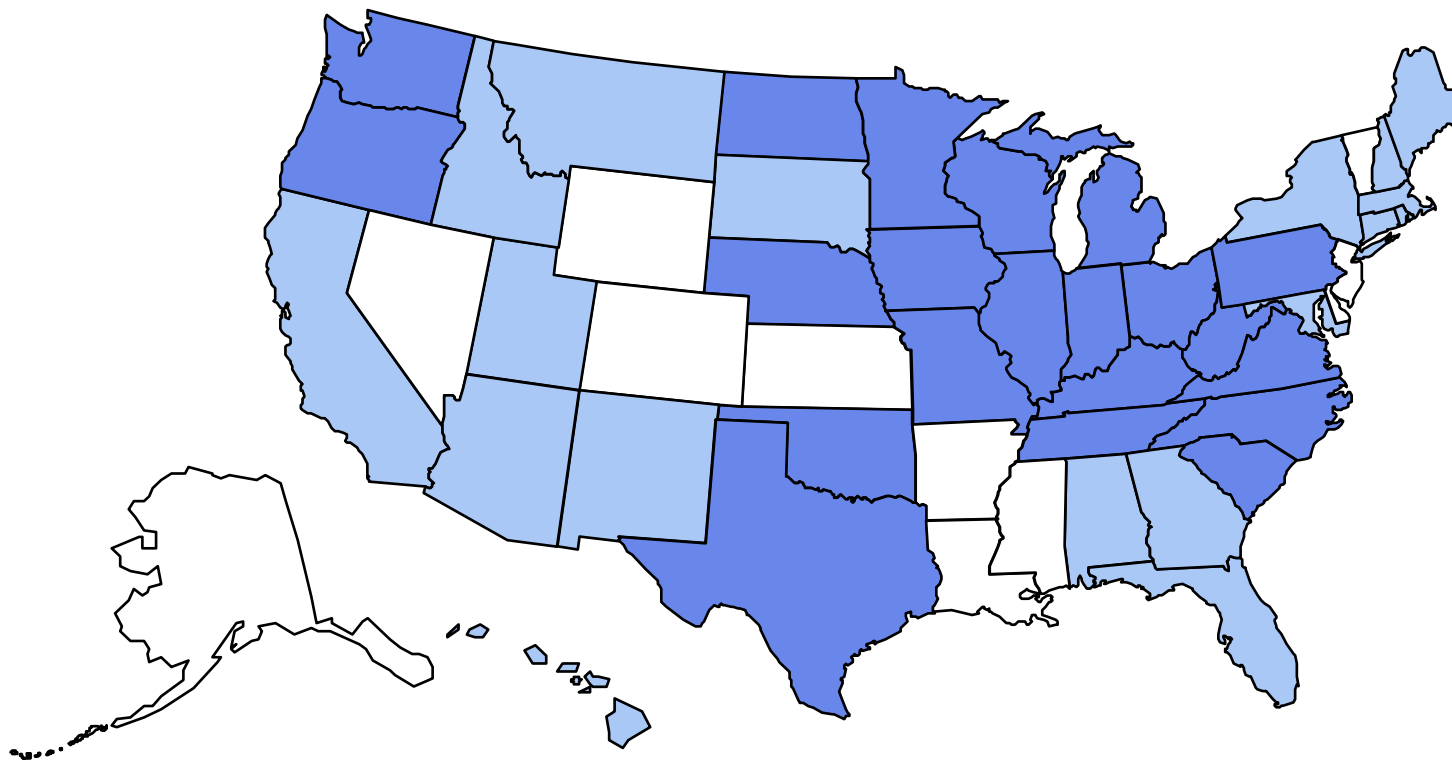
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1989

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



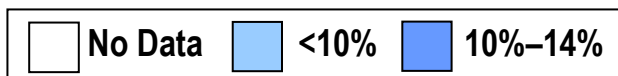
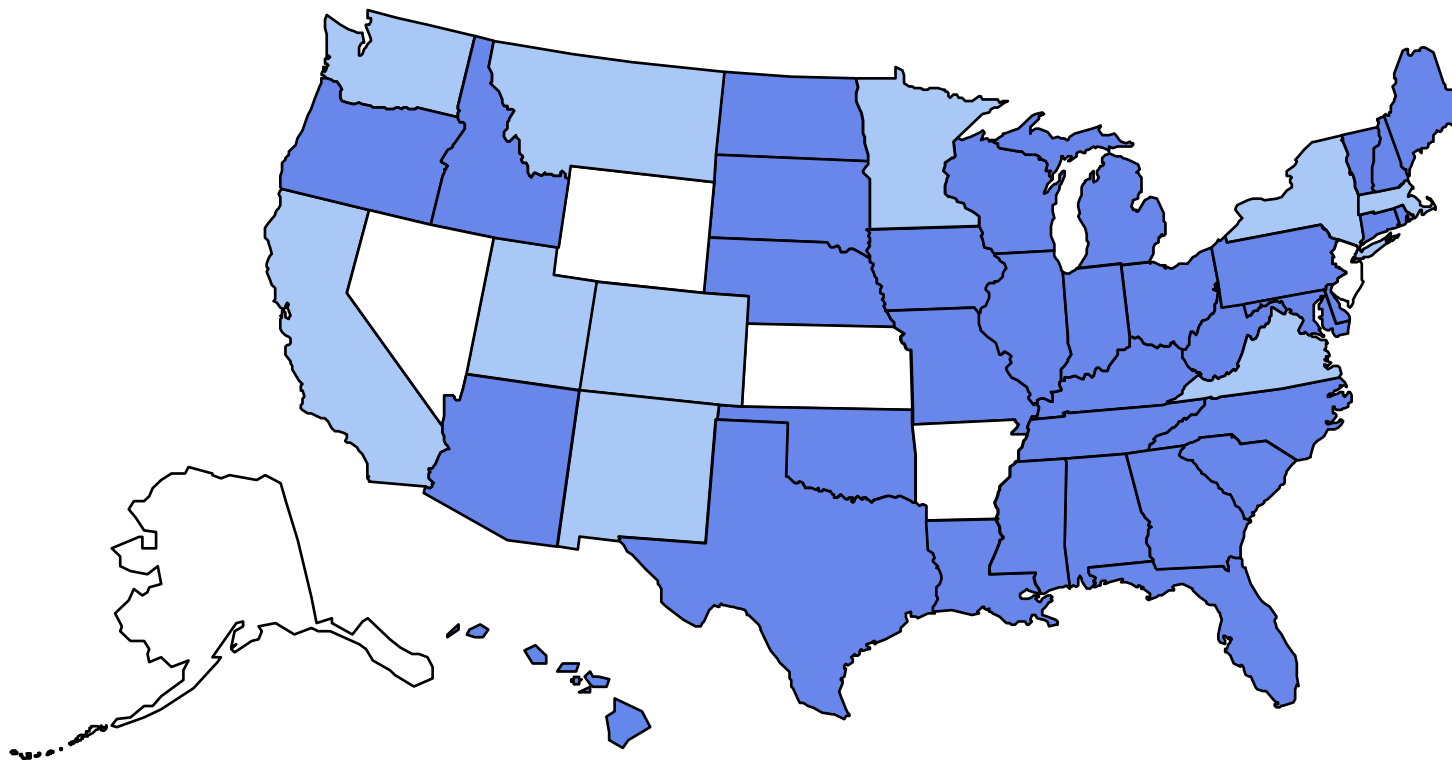
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1990

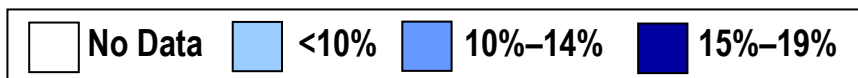
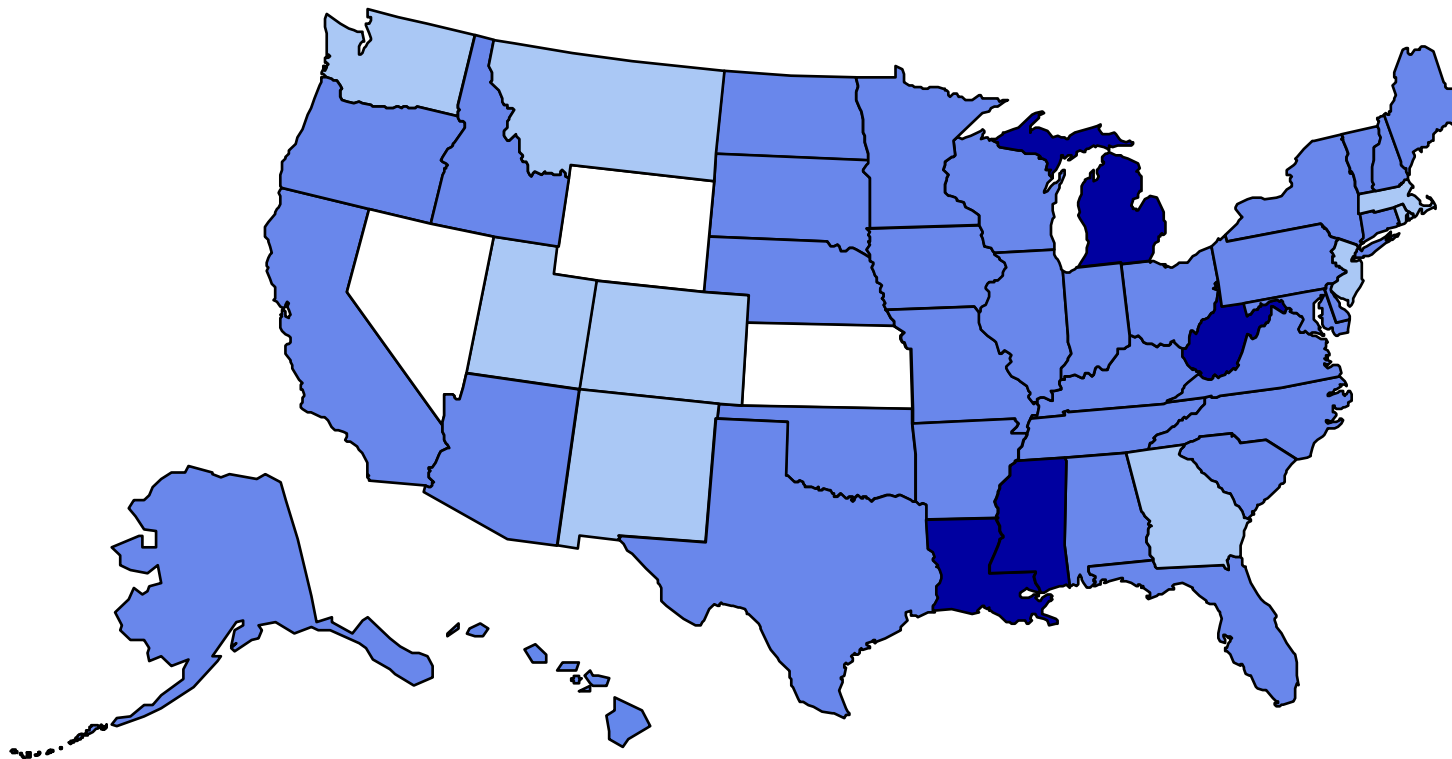
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 1991

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



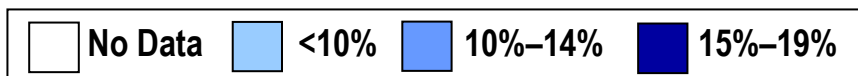
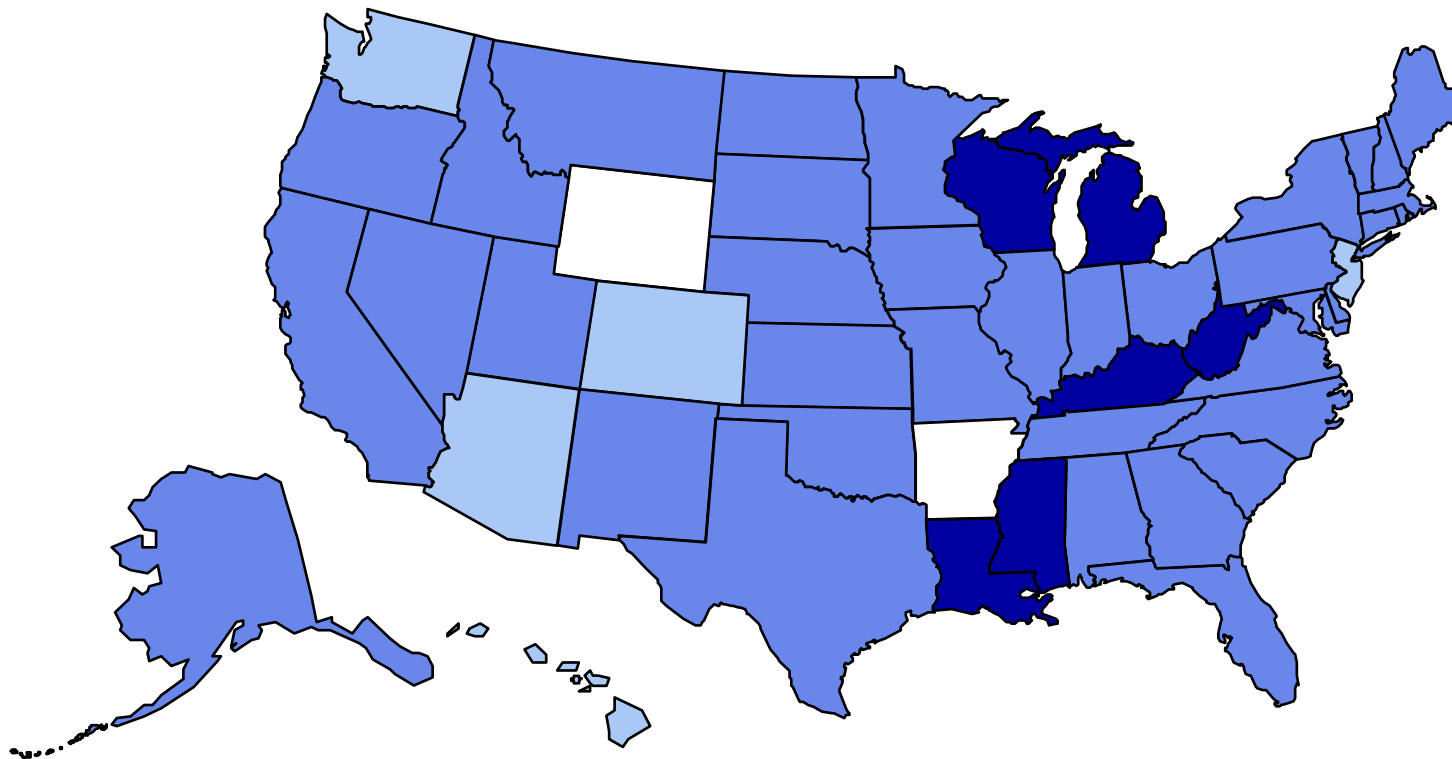
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1992

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



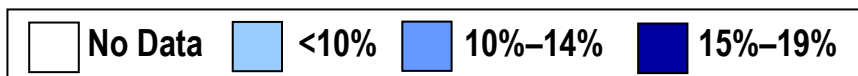
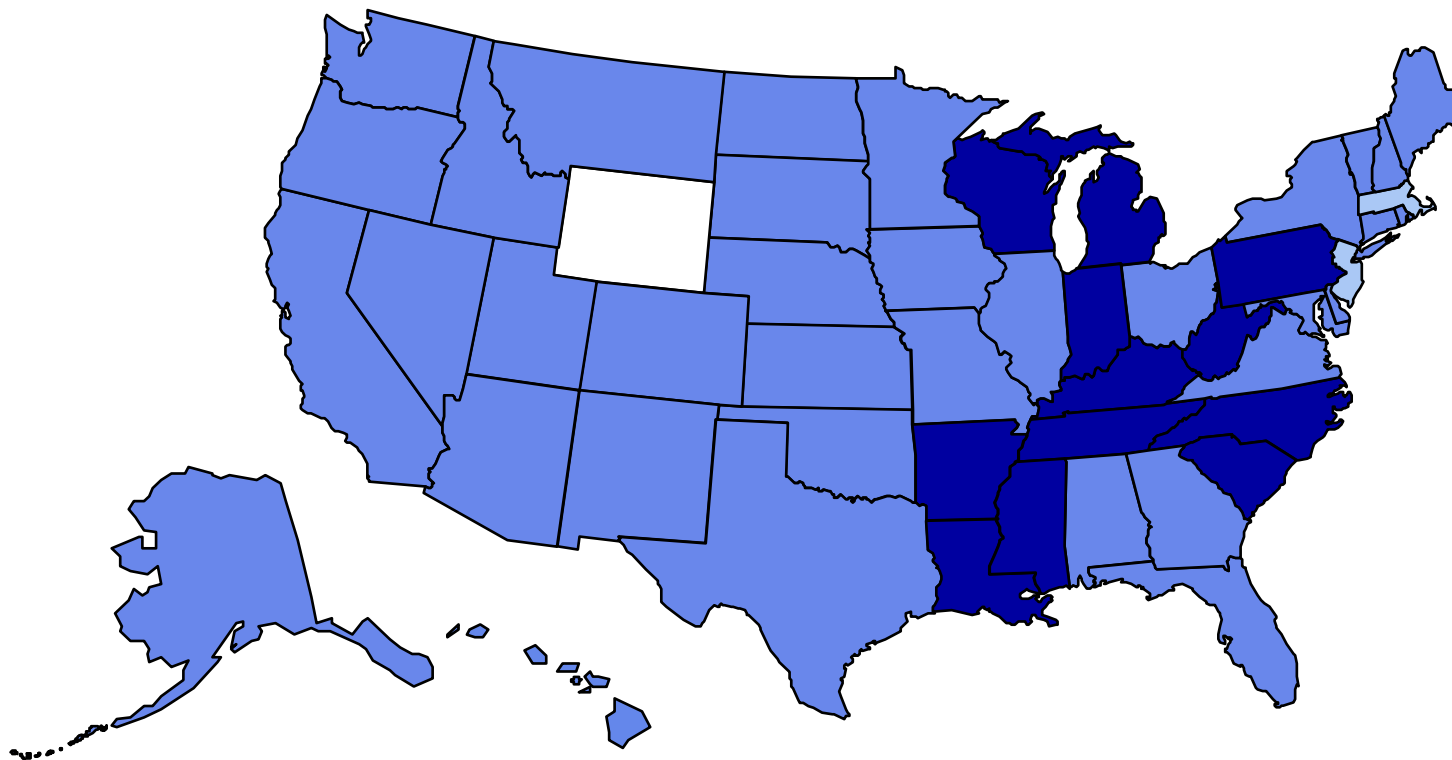
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1993

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



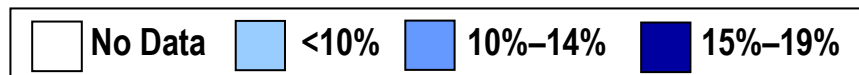
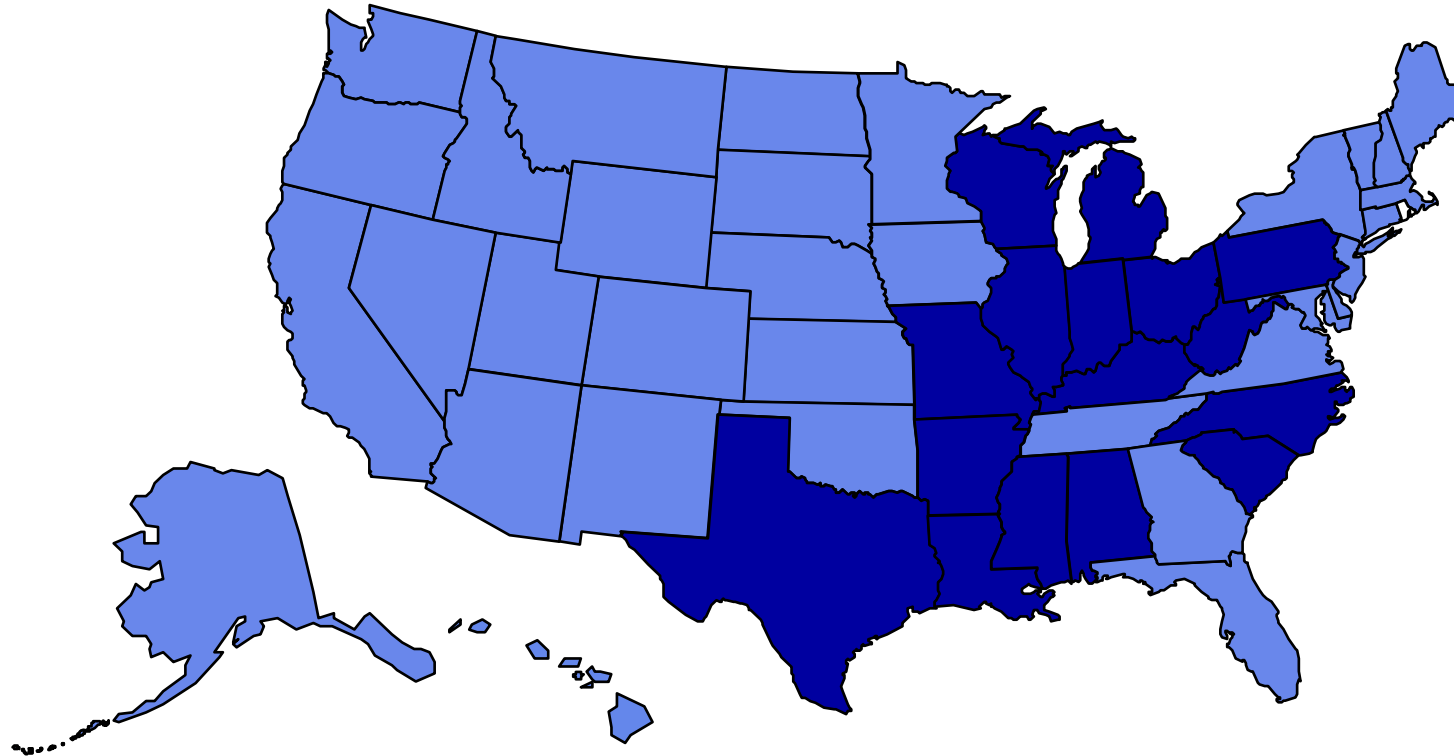
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1994

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



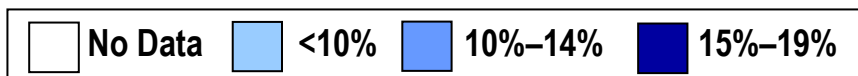
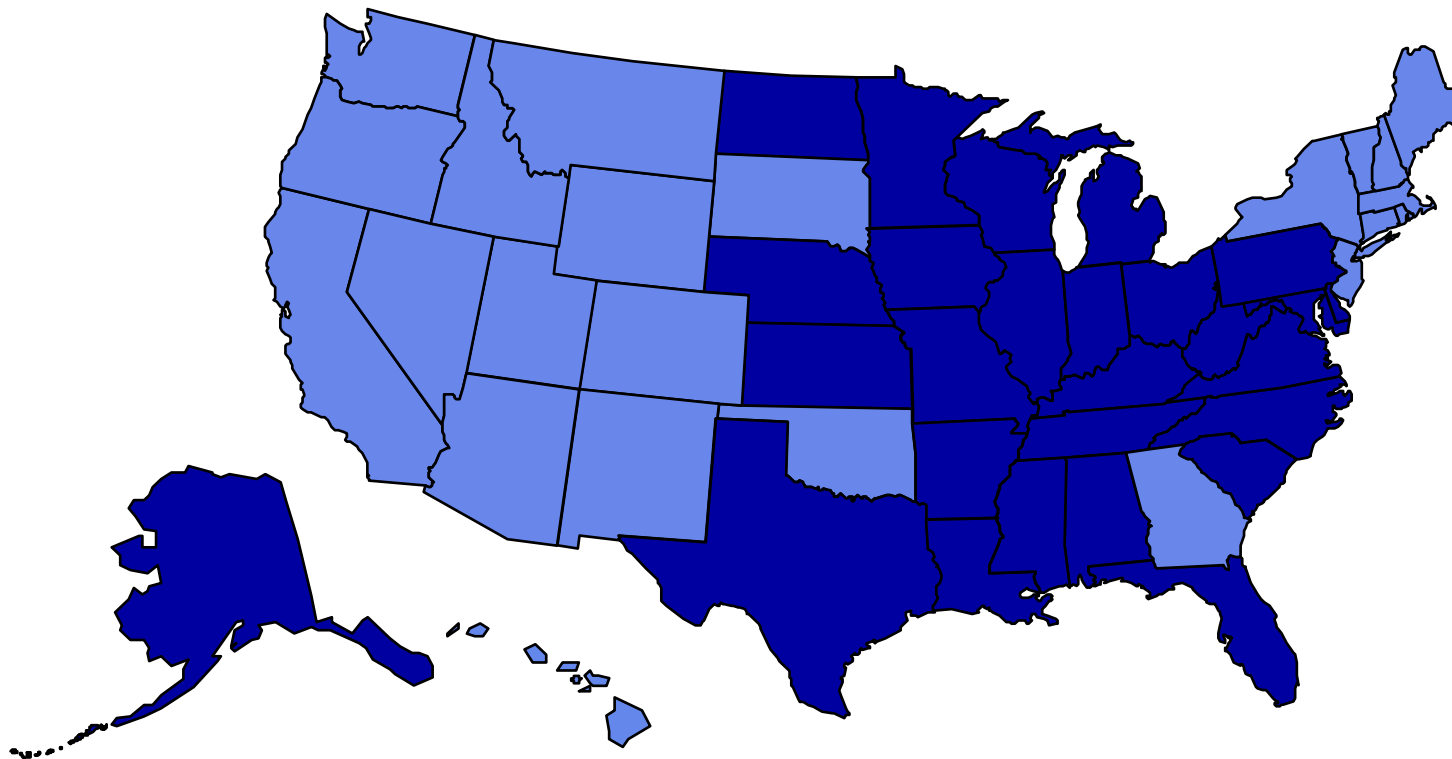
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1995

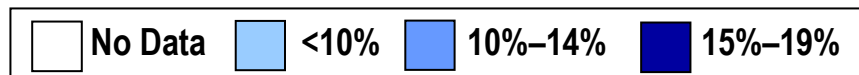
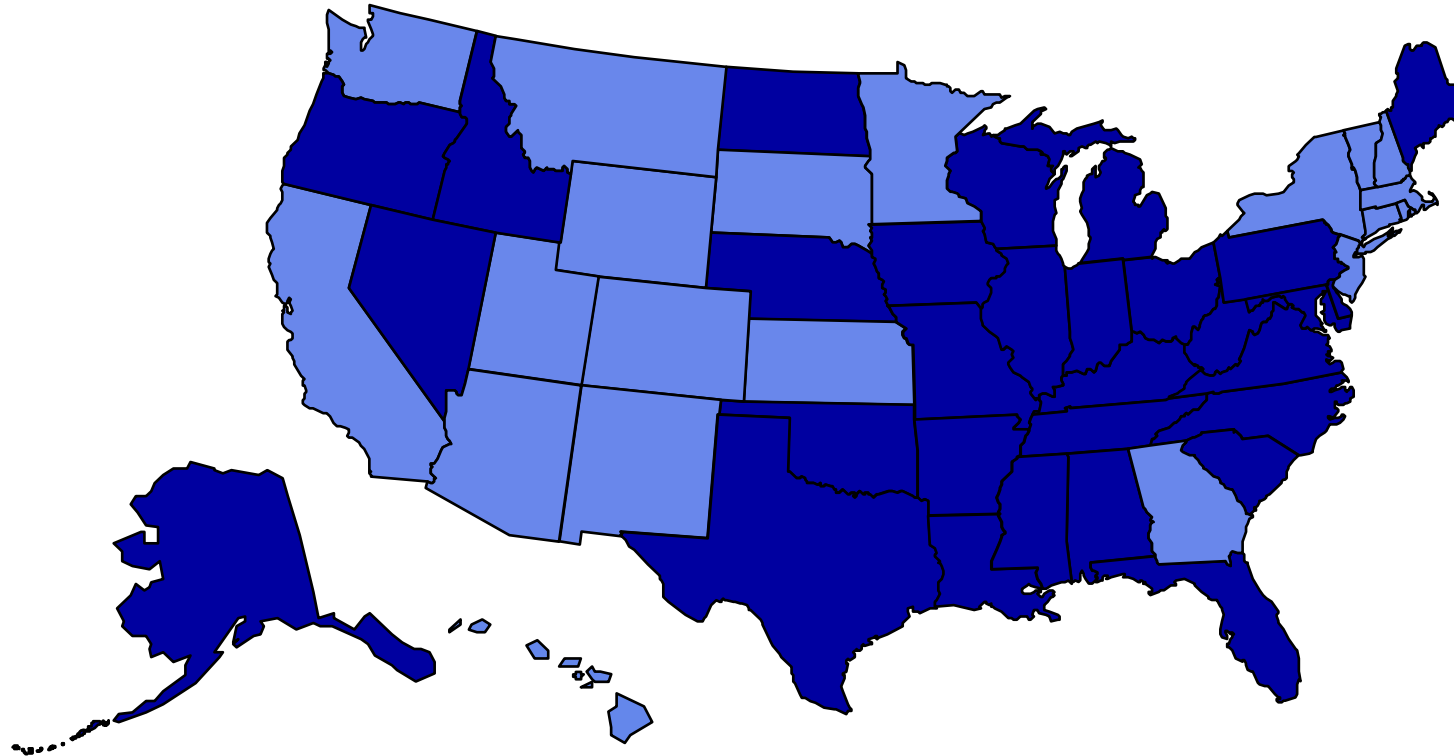
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 1996

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



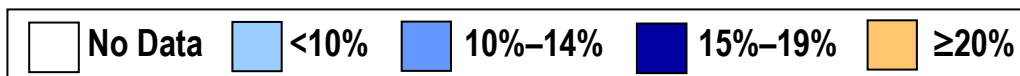
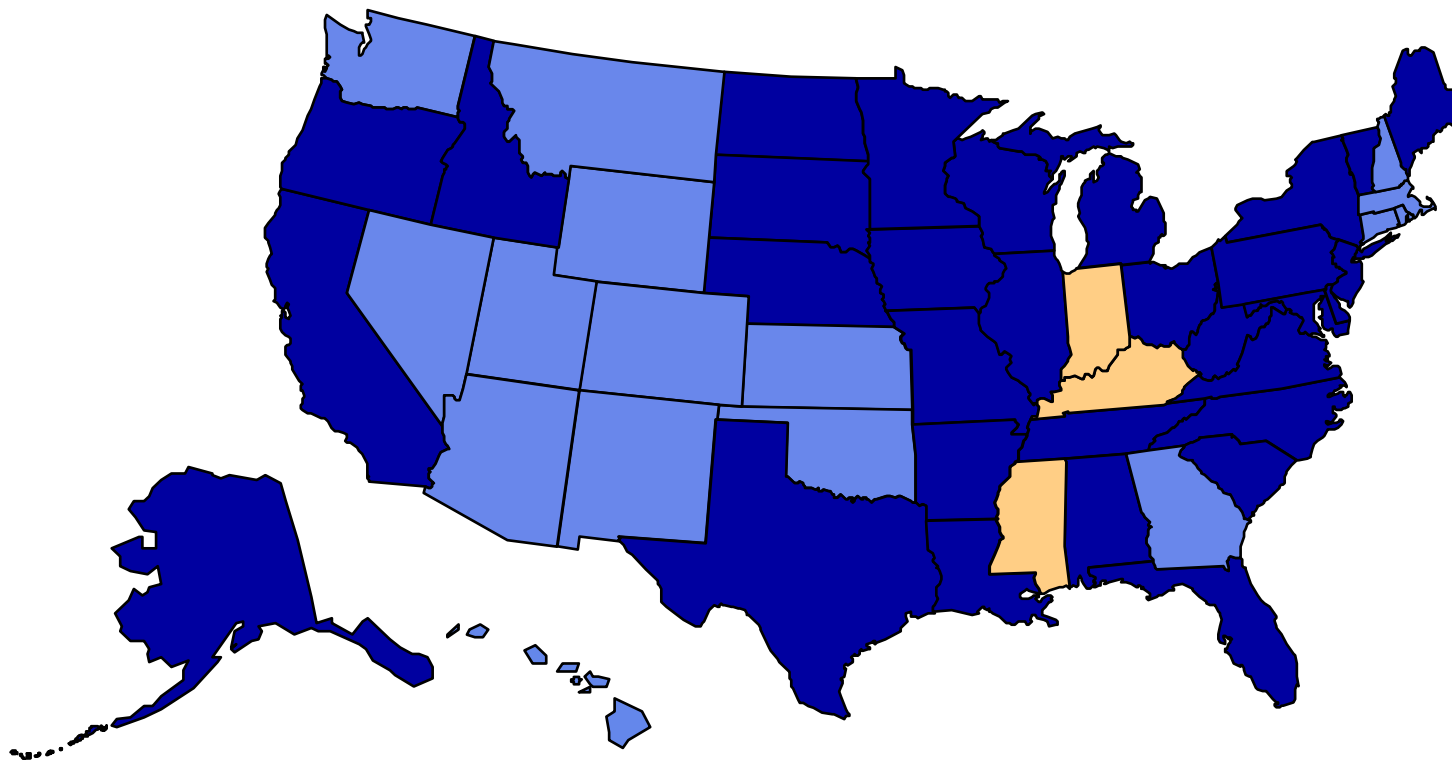
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1997

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



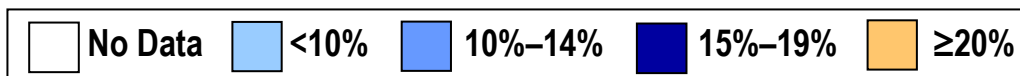
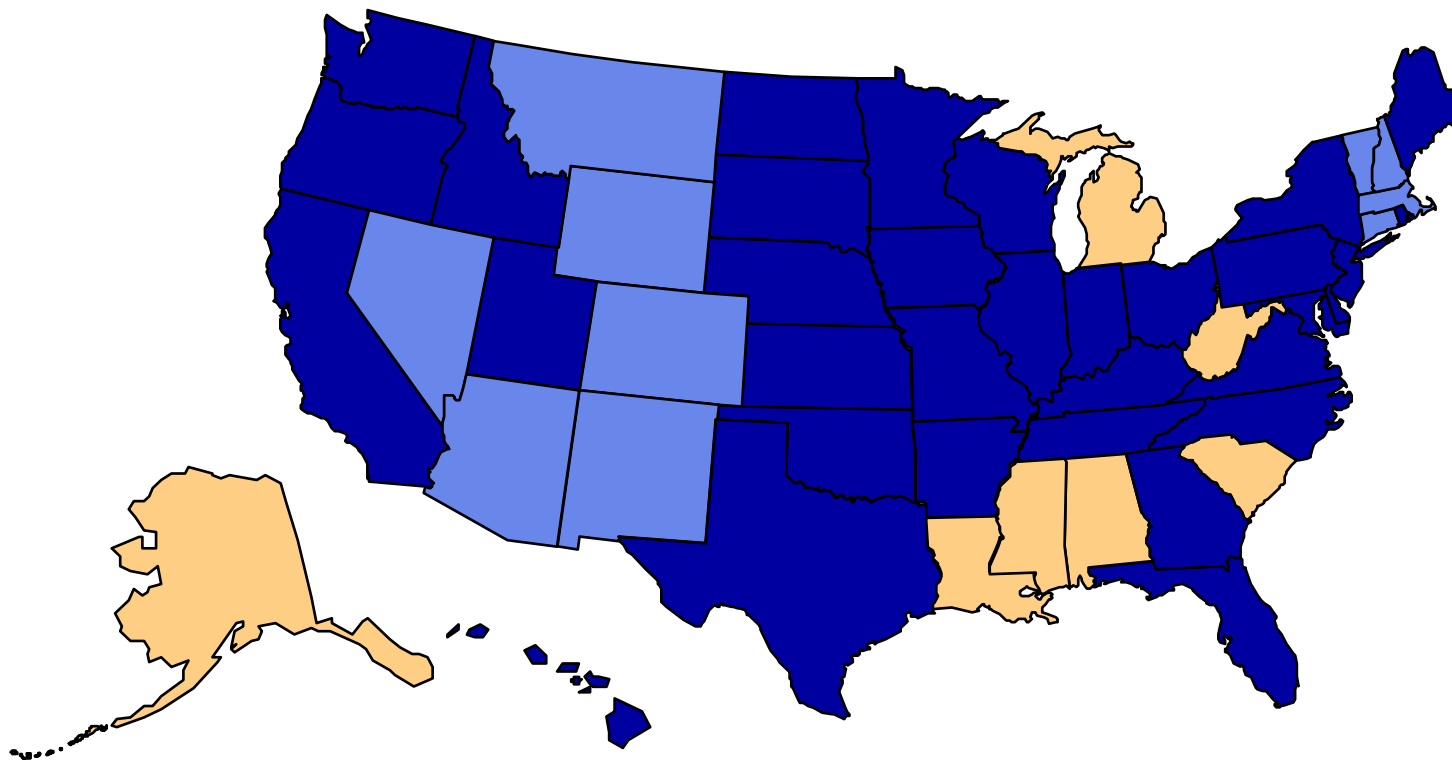
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1998

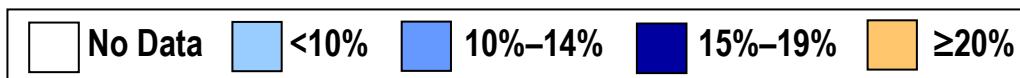
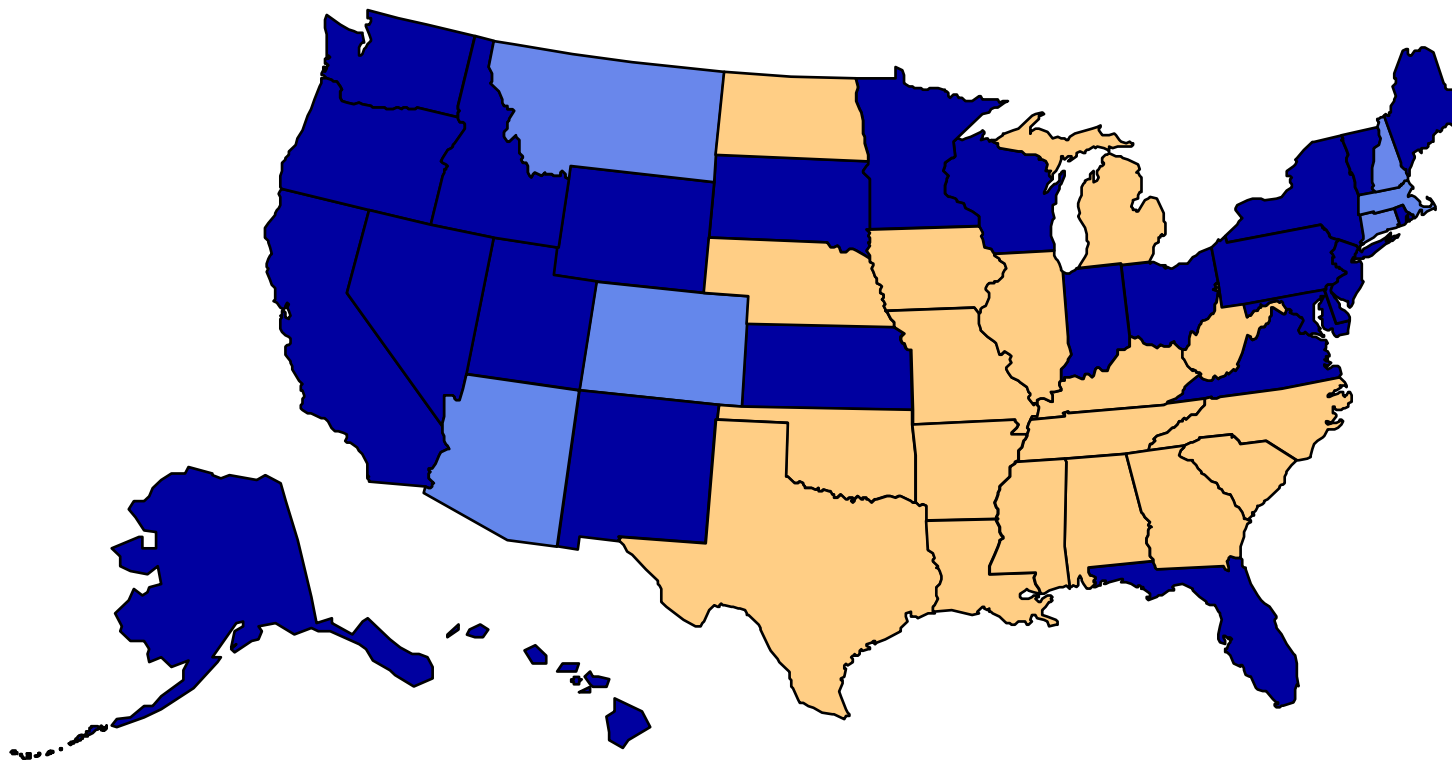
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 1999

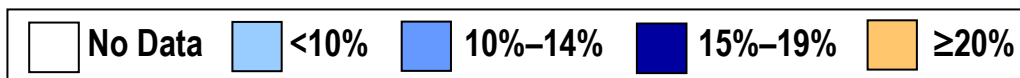
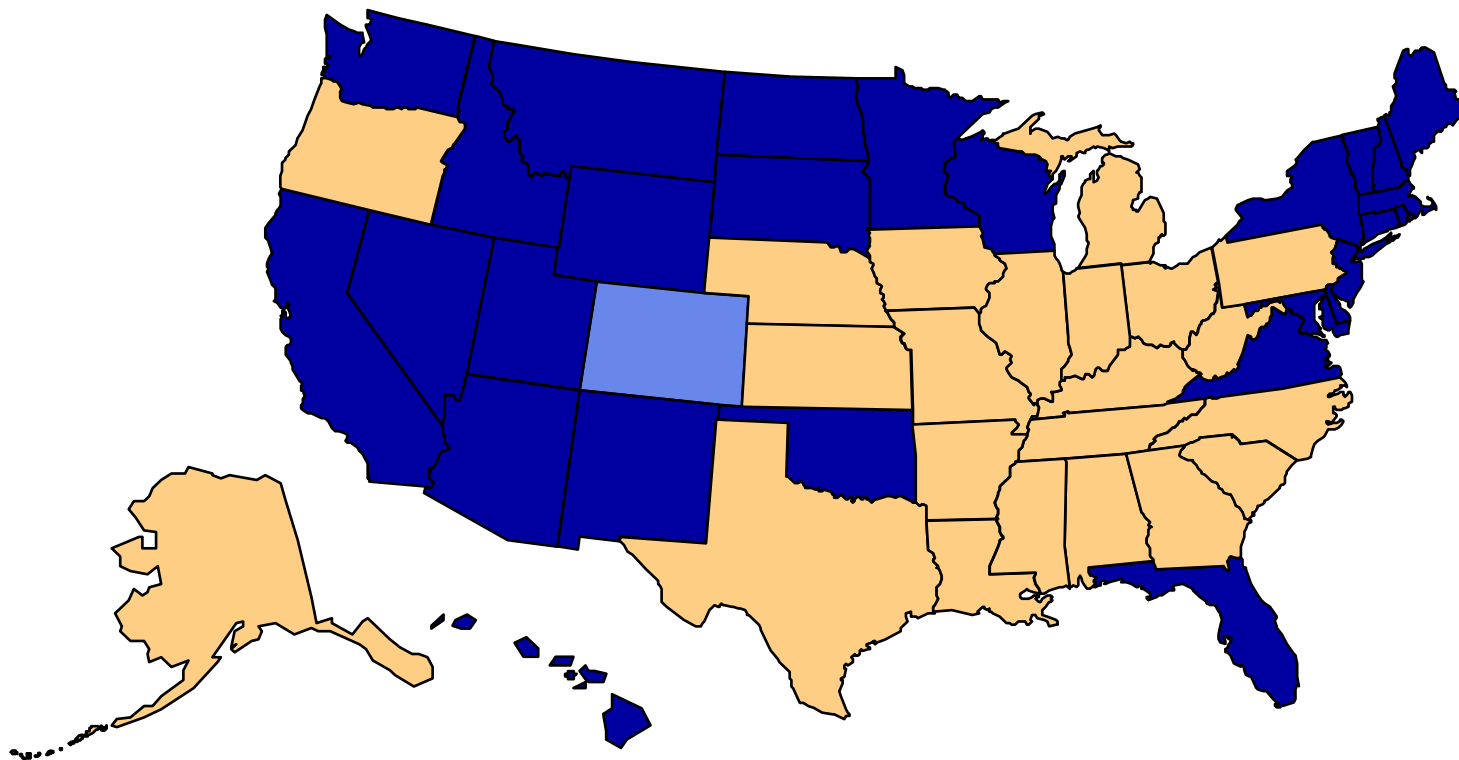
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 2000

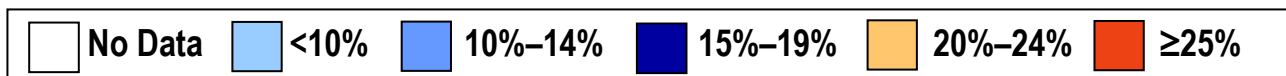
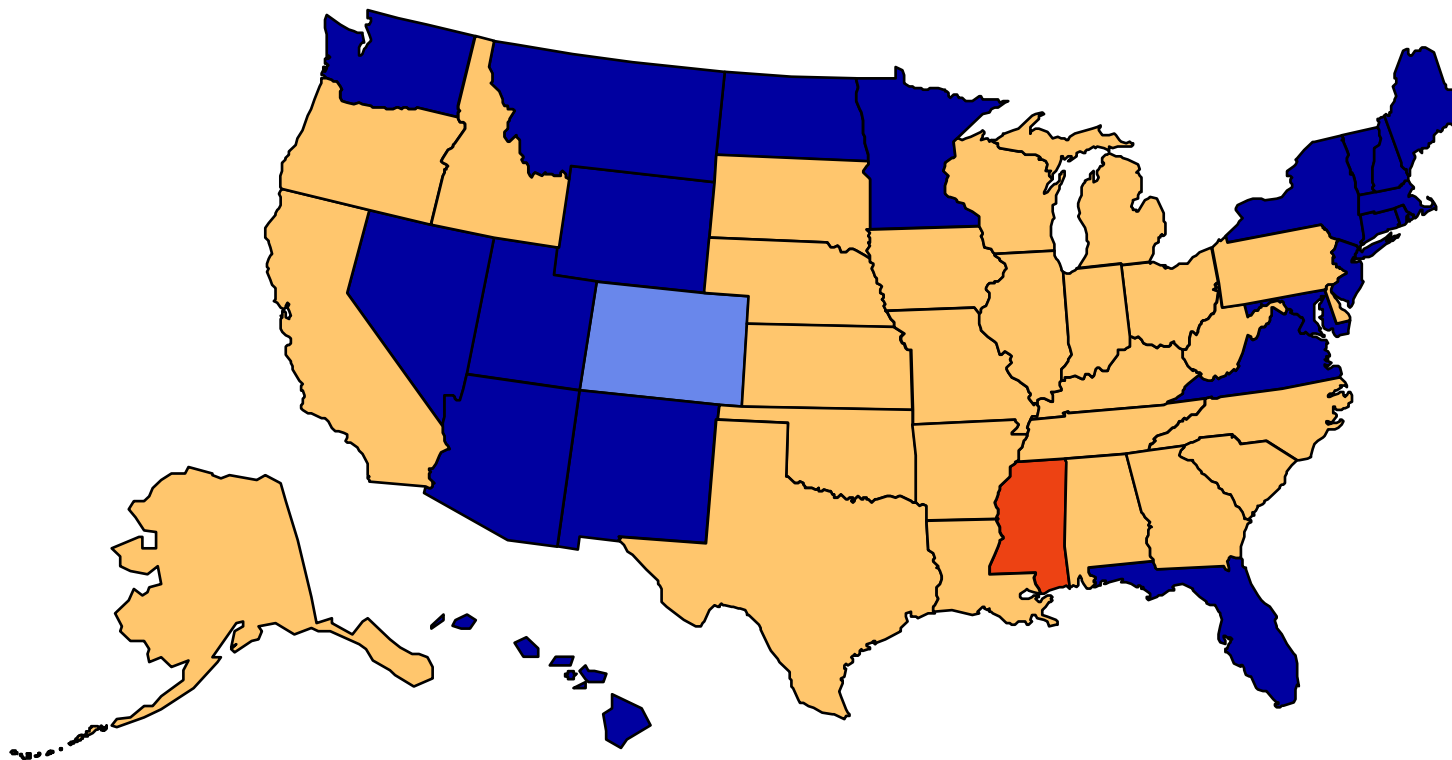
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 2001

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



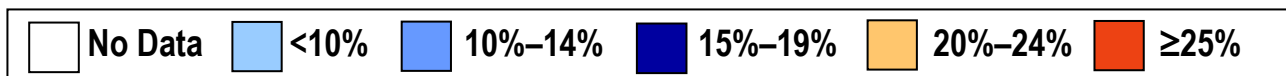
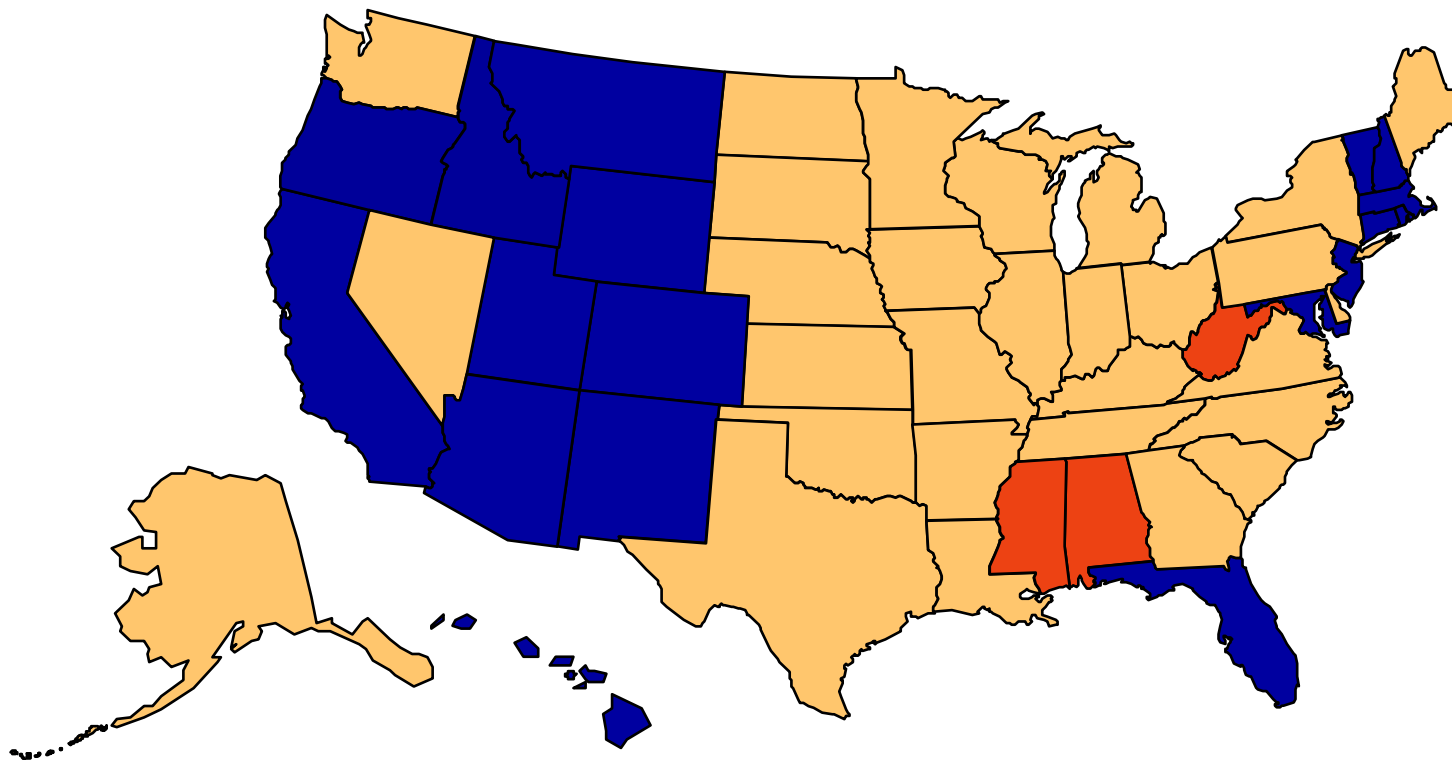
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2002

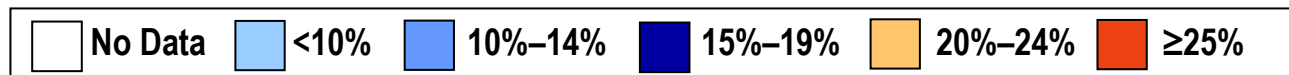
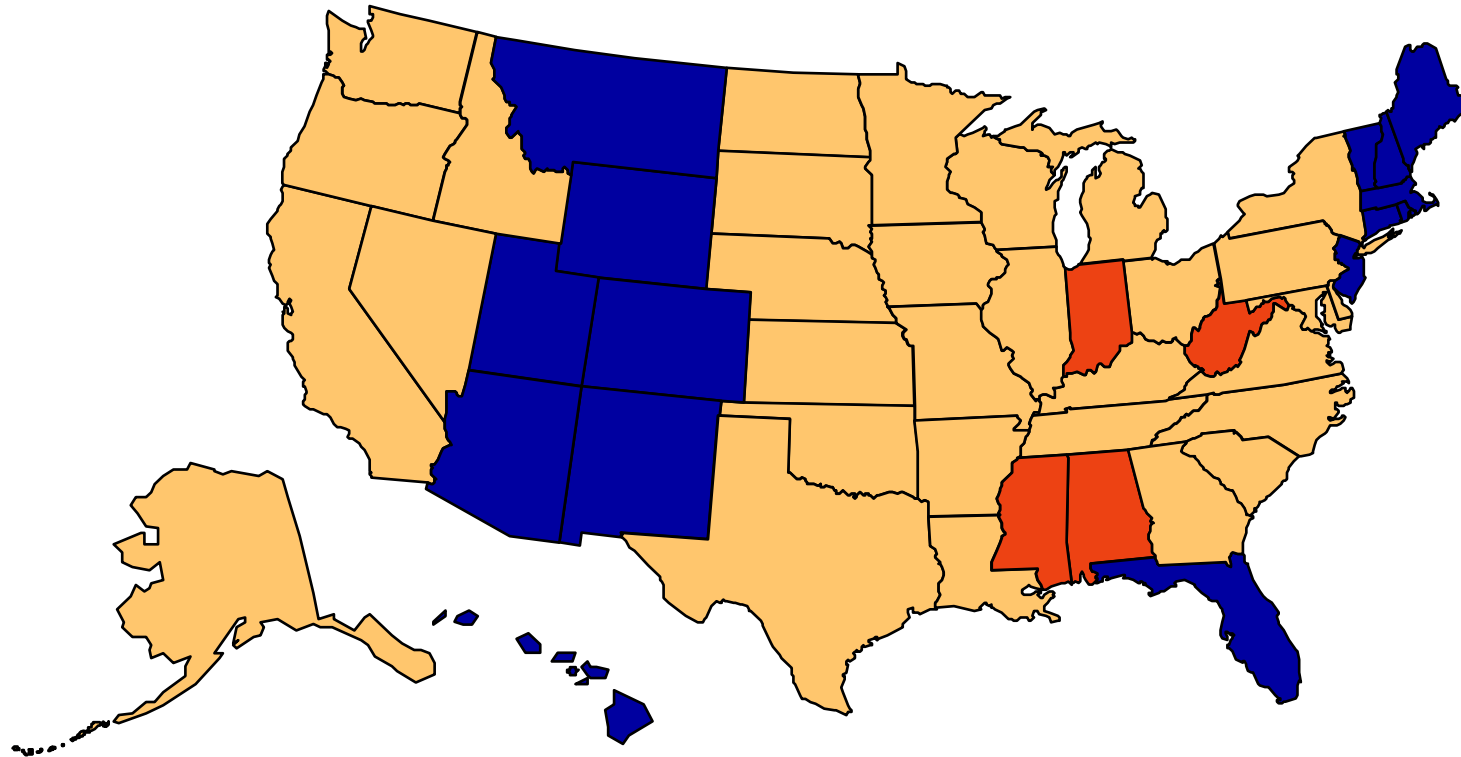
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 2003

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



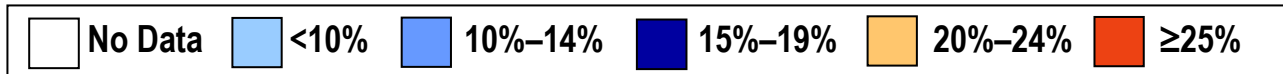
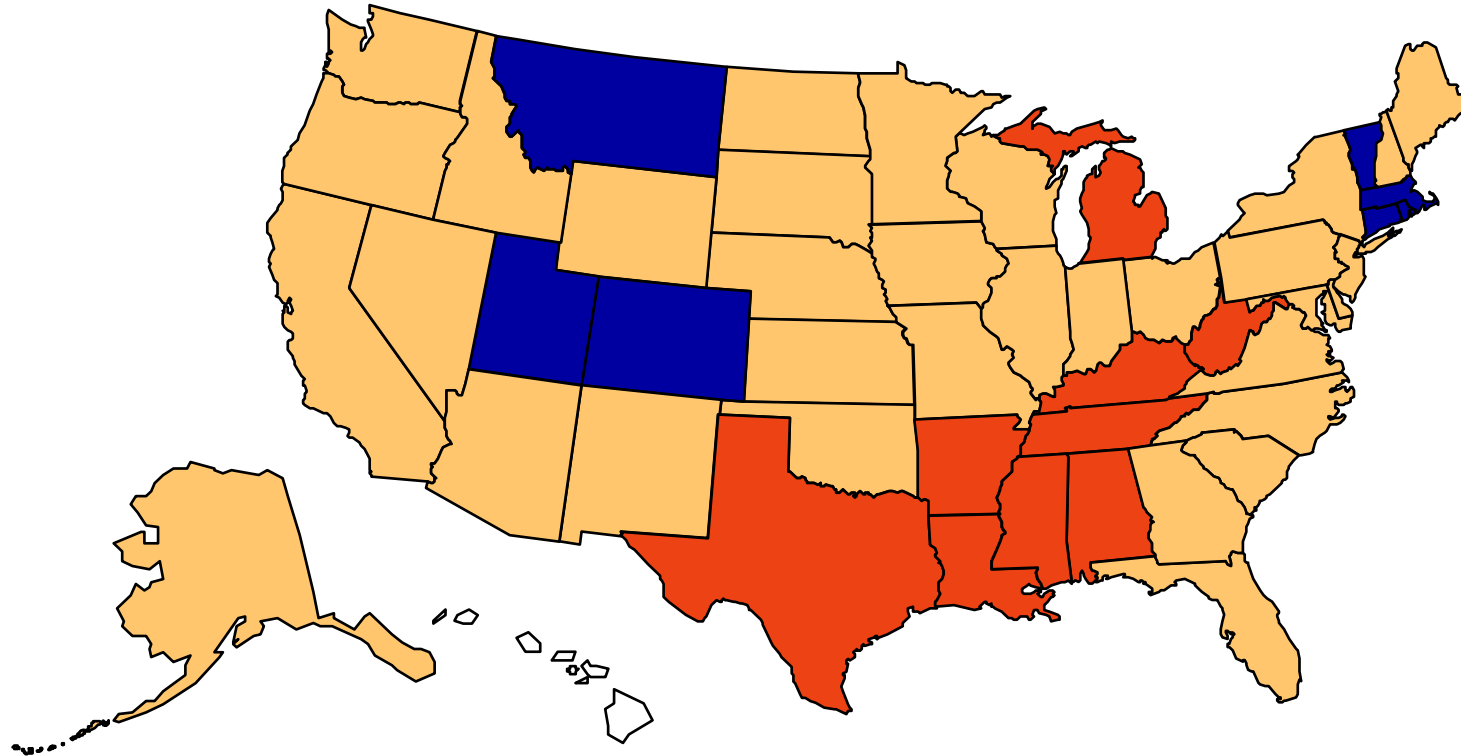
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2004

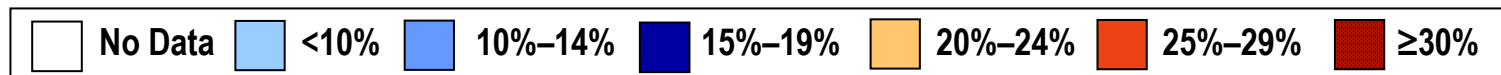
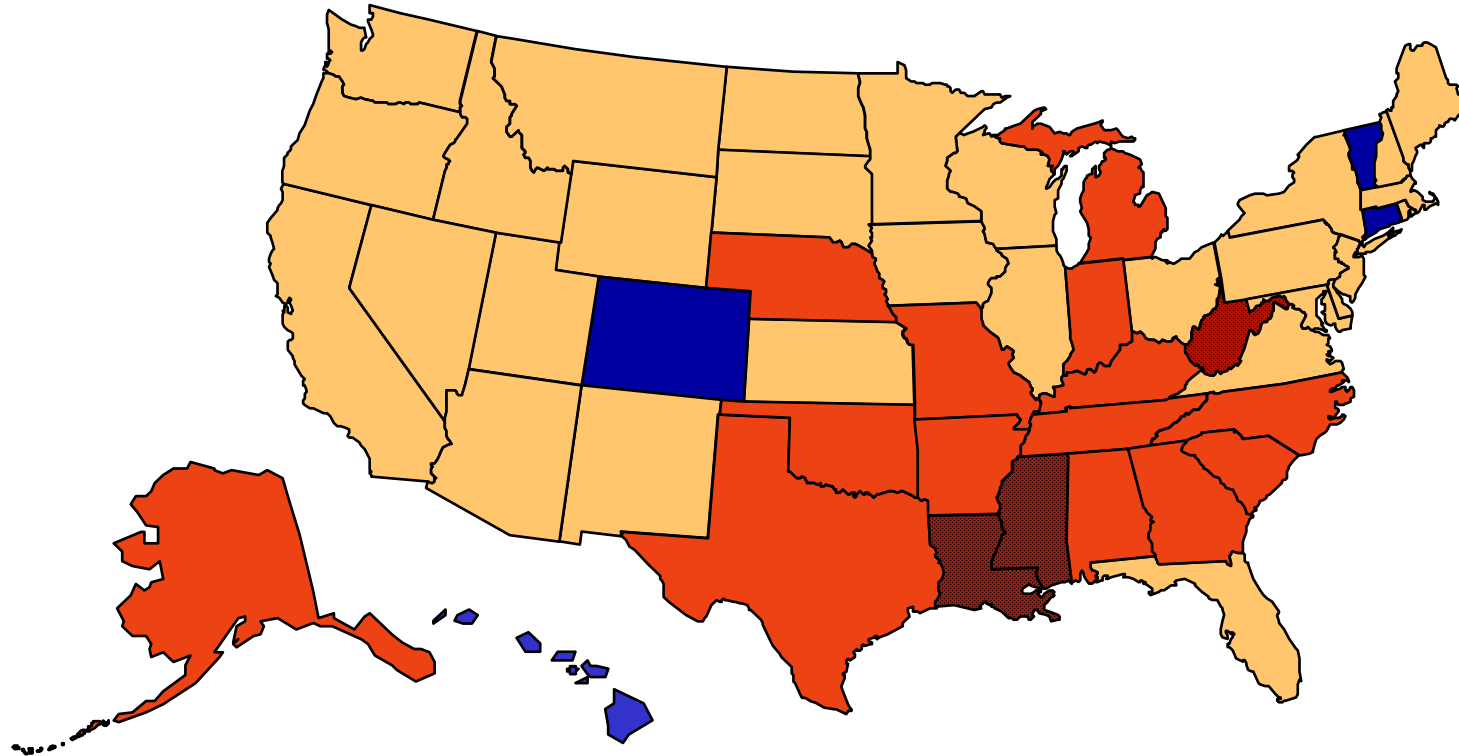
(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



Obesity Trends* Among U.S. Adults

BRFSS, 2005

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



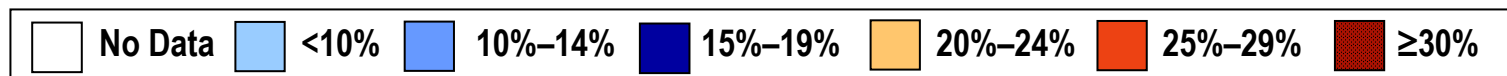
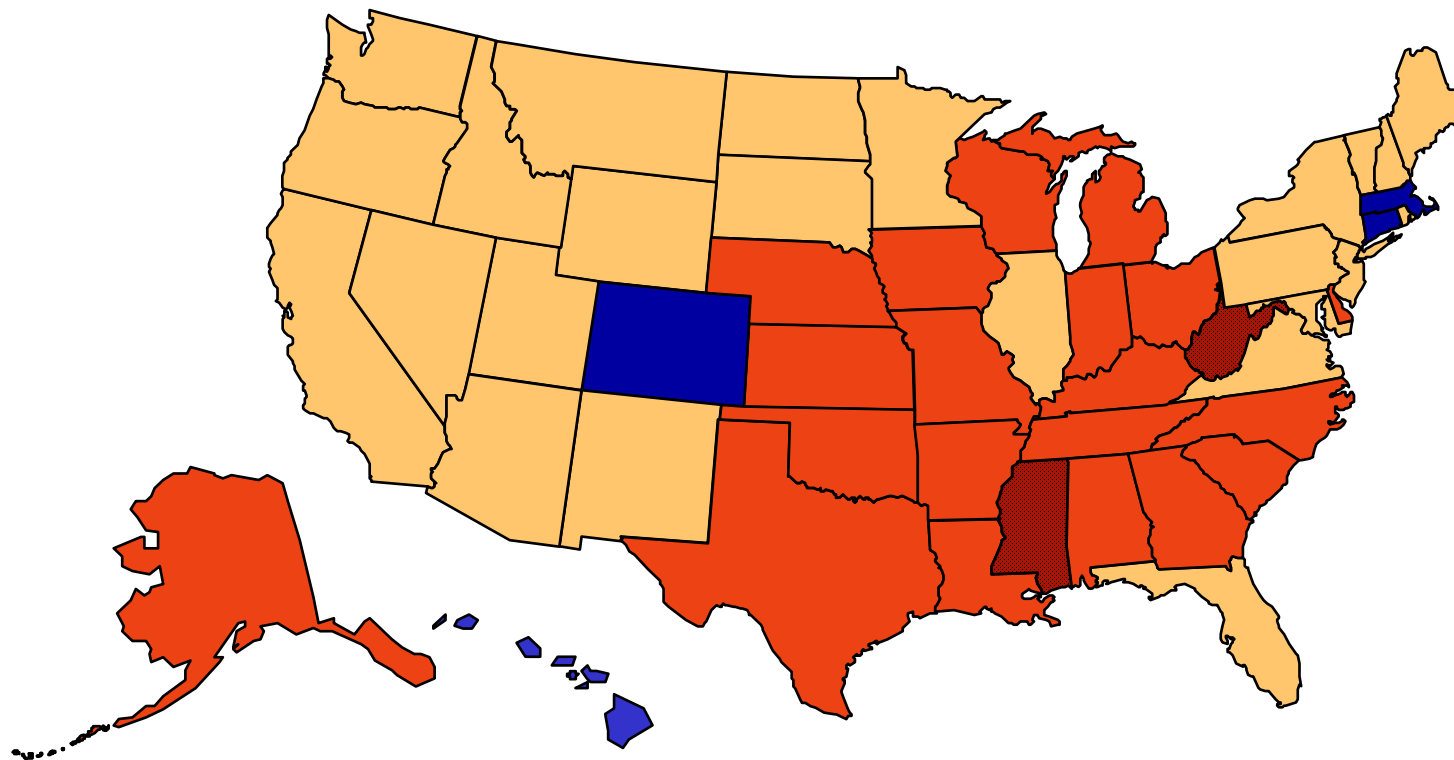
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2006

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



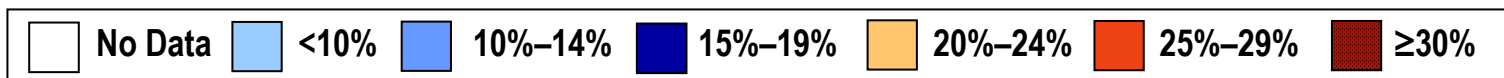
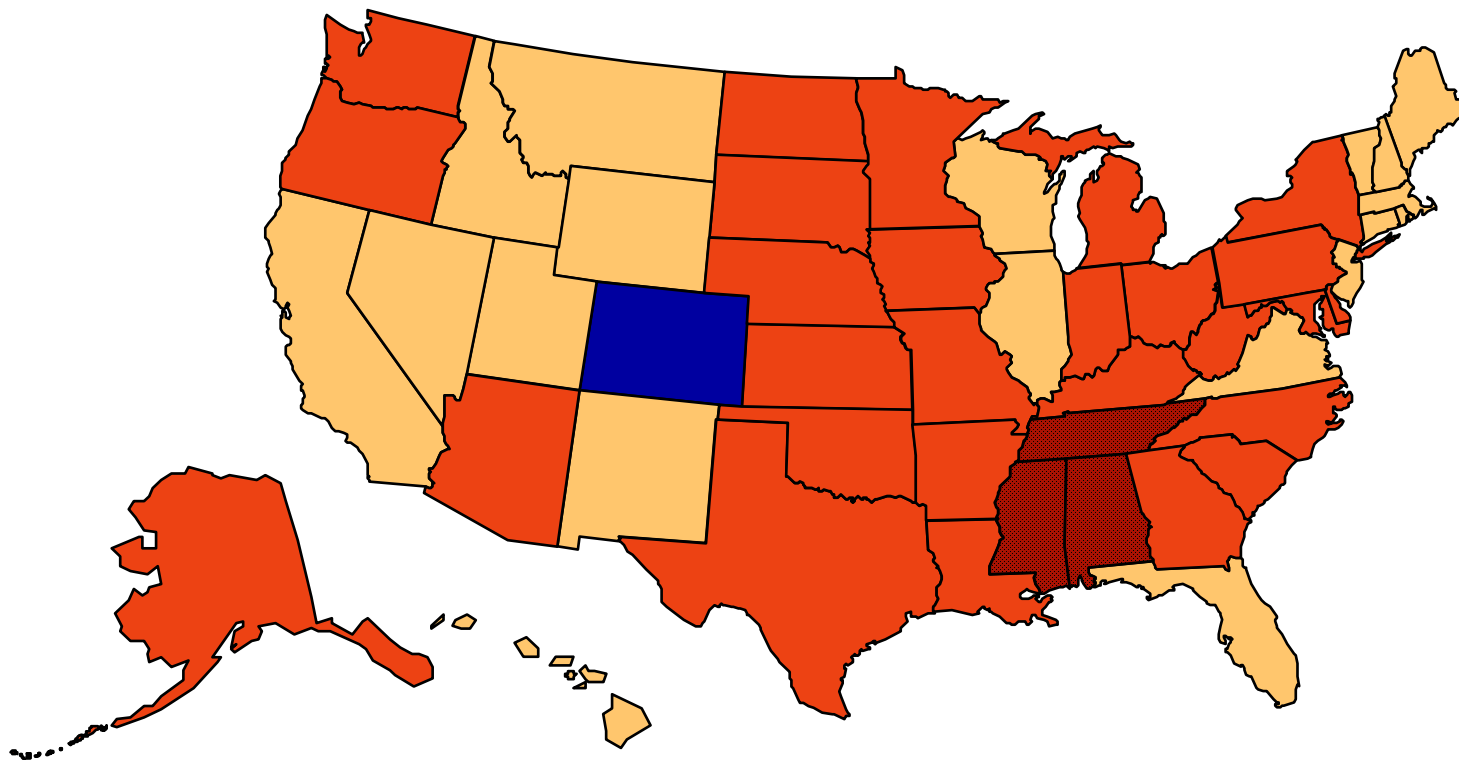
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2007

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



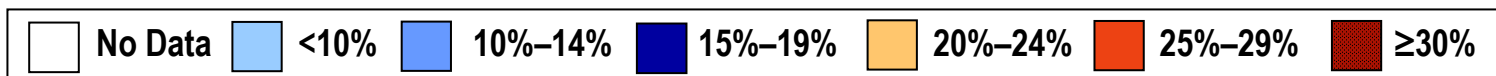
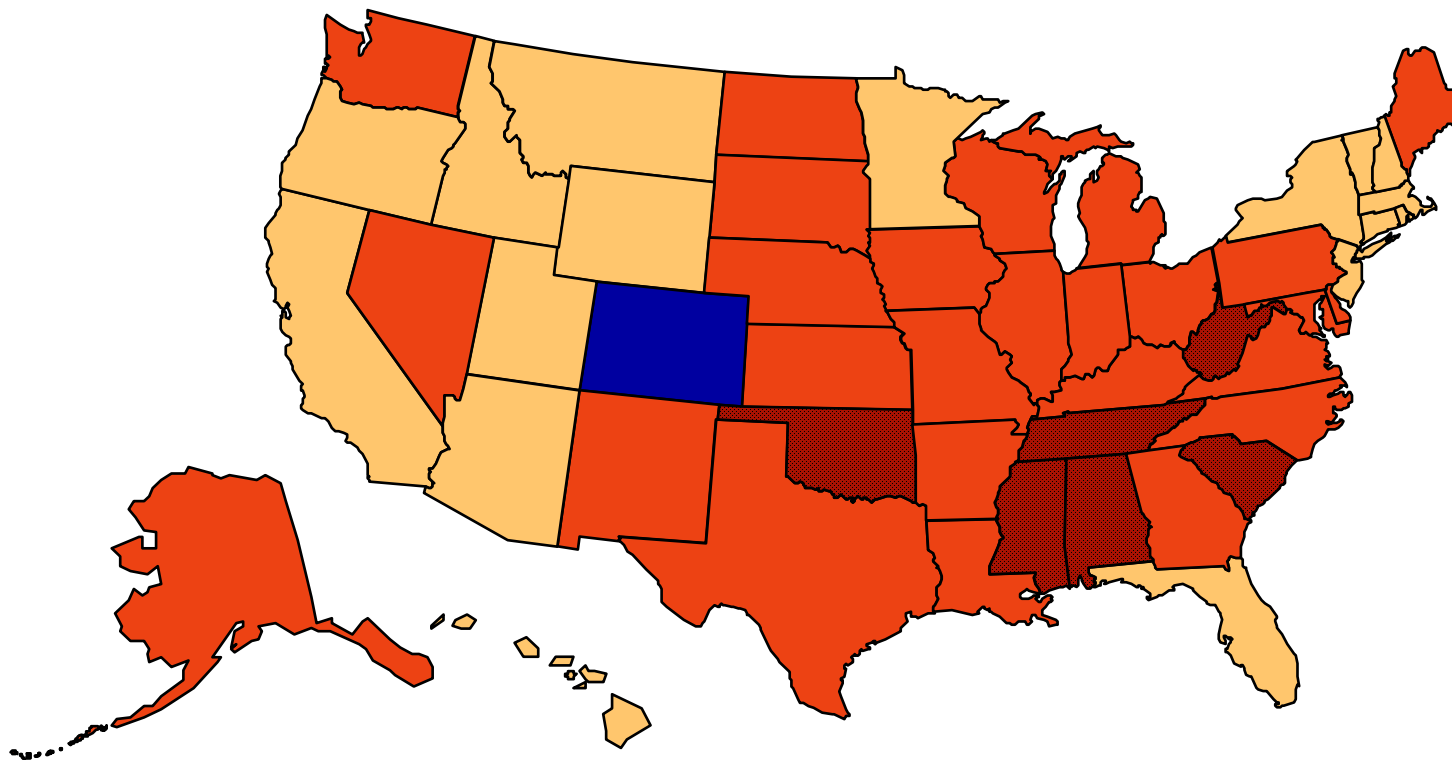
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2008

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



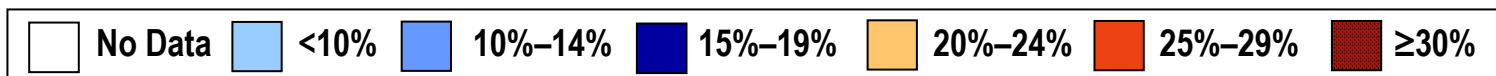
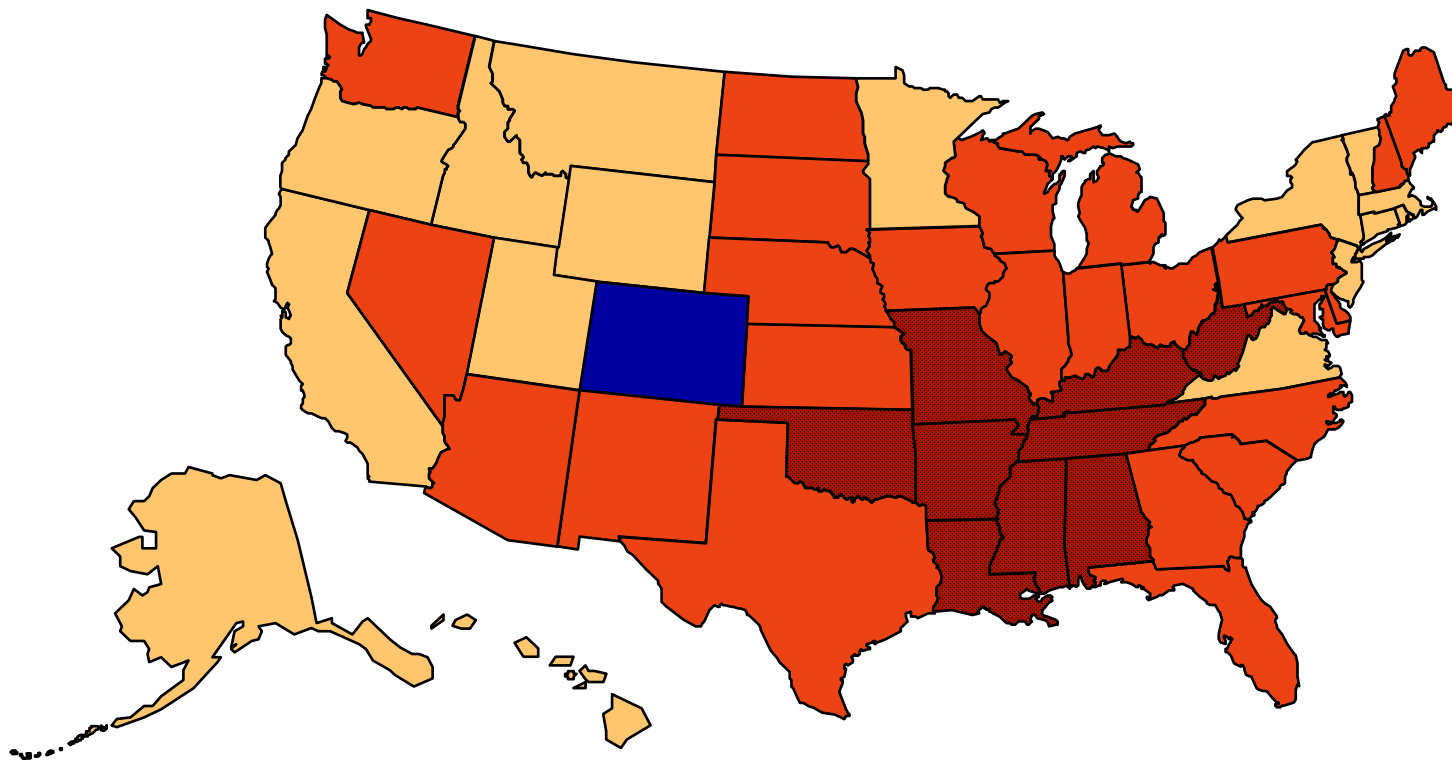
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2009

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



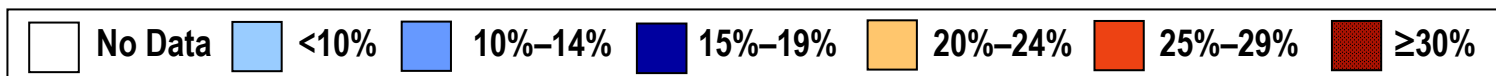
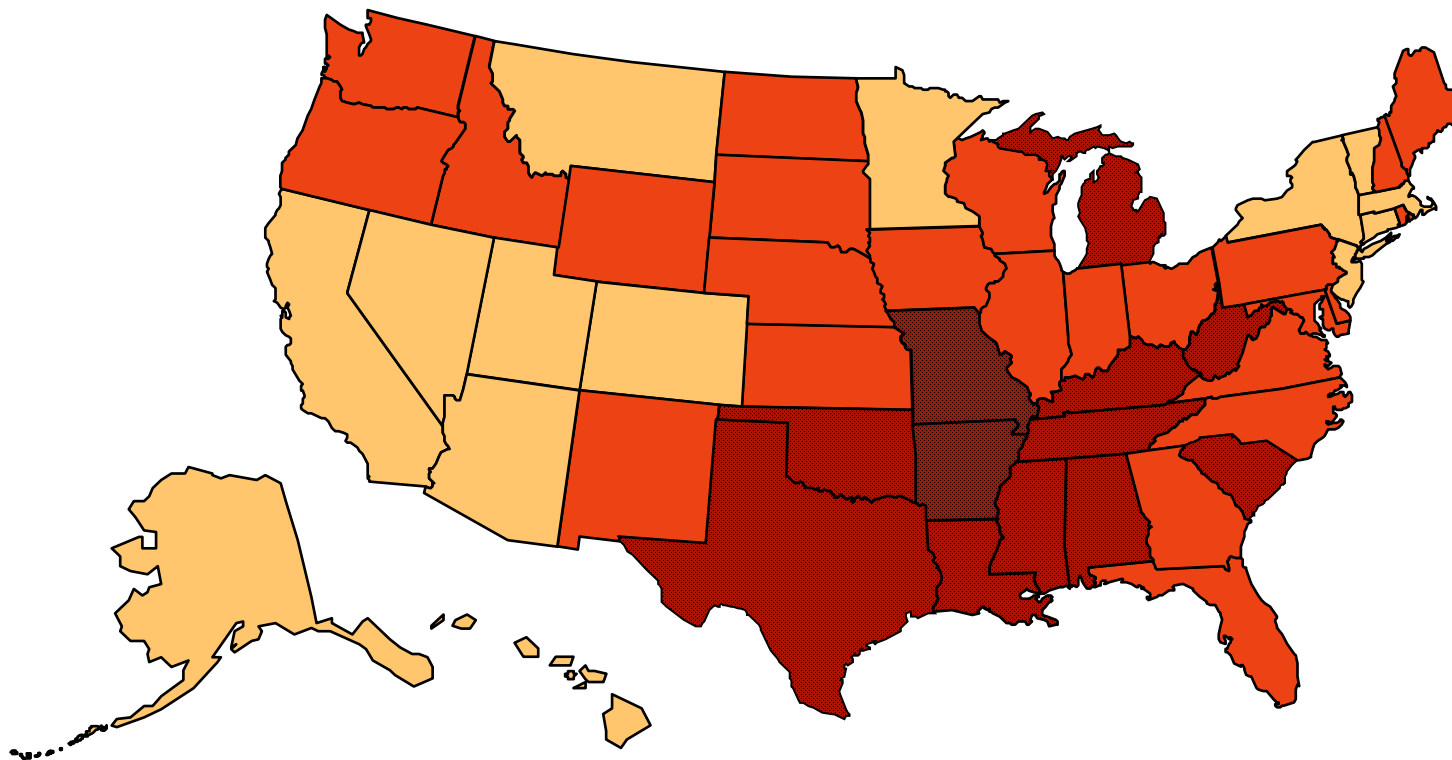
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 2010

(*BMI ≥ 30 , or ~ 30 lbs. overweight for 5' 4" person)



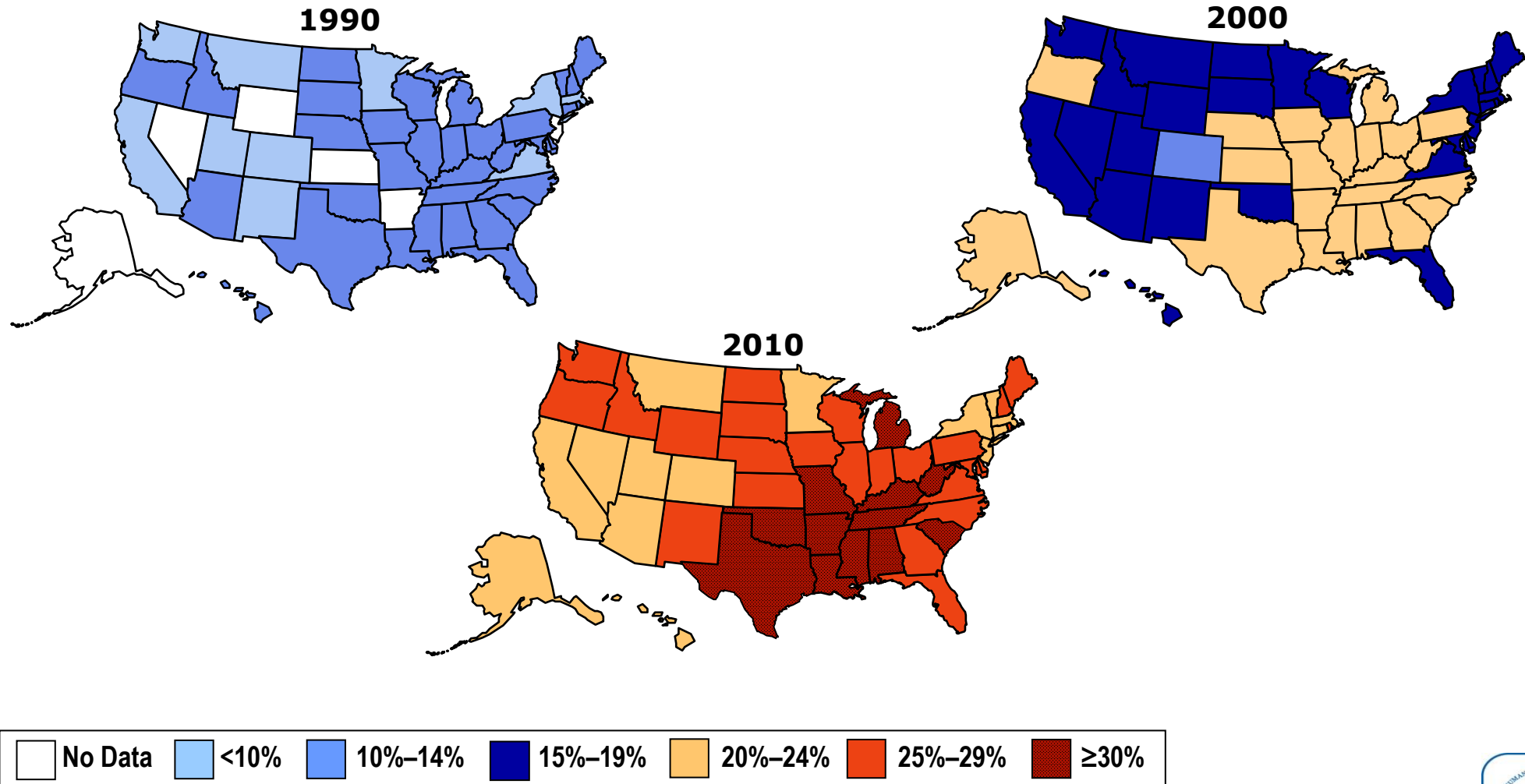
Source: Behavioral Risk Factor Surveillance System, CDC.



Obesity Trends* Among U.S. Adults

BRFSS, 1990, 2000, 2010

(*BMI ≥ 30 , or about 30 lbs. overweight for 5'4" person)

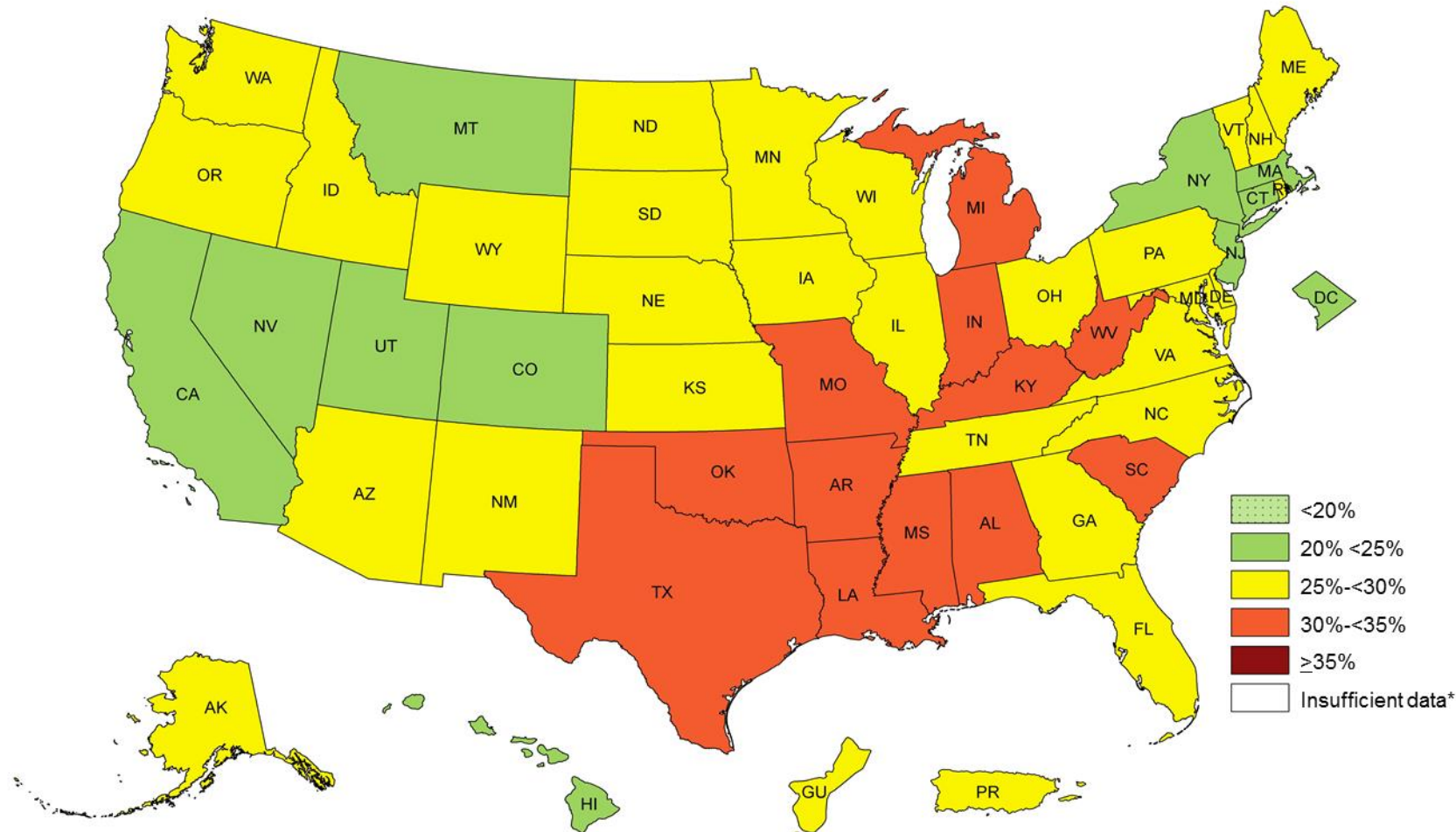


Source: Behavioral Risk Factor Surveillance System, CDC.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2011

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

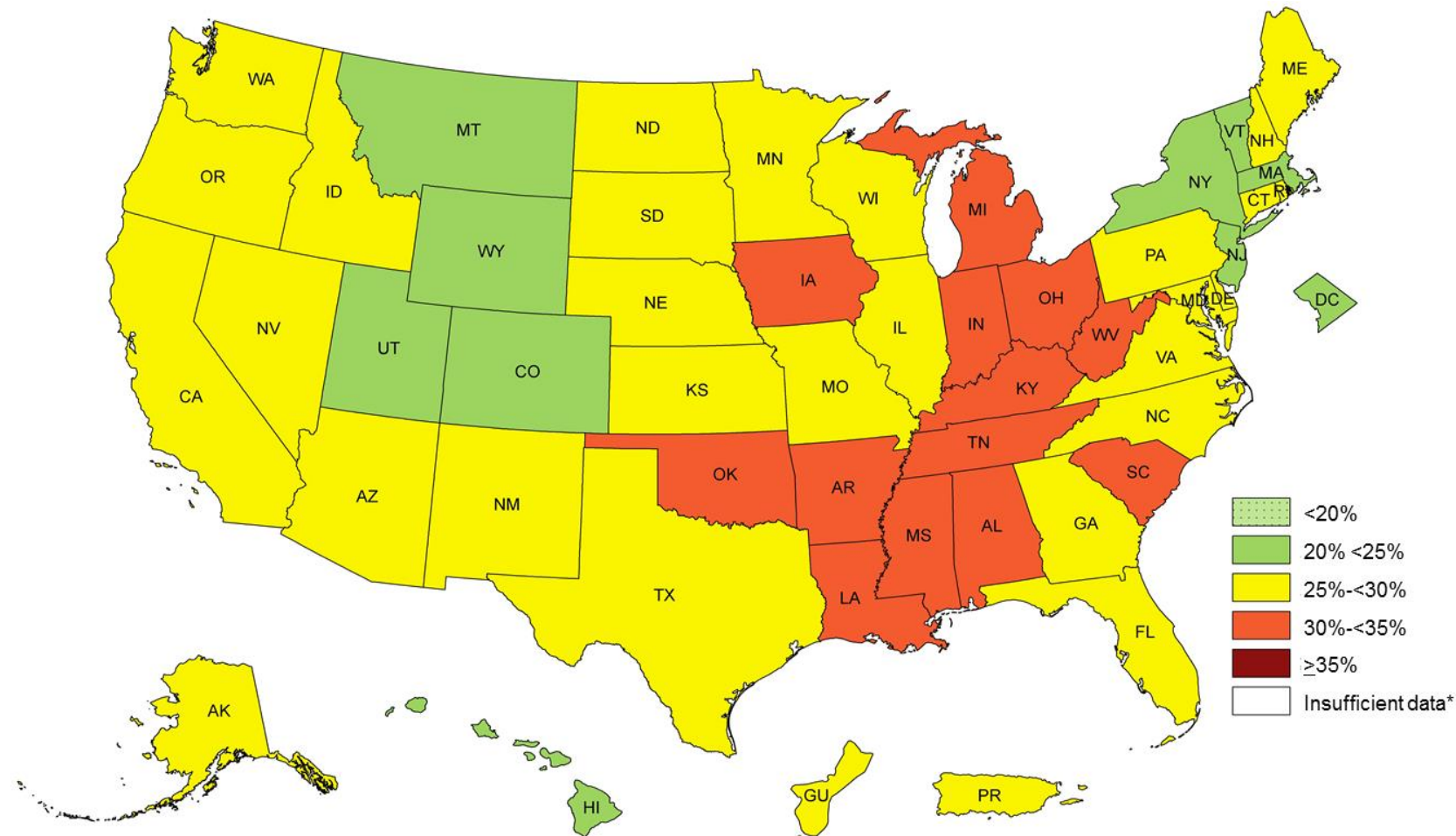


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2012

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

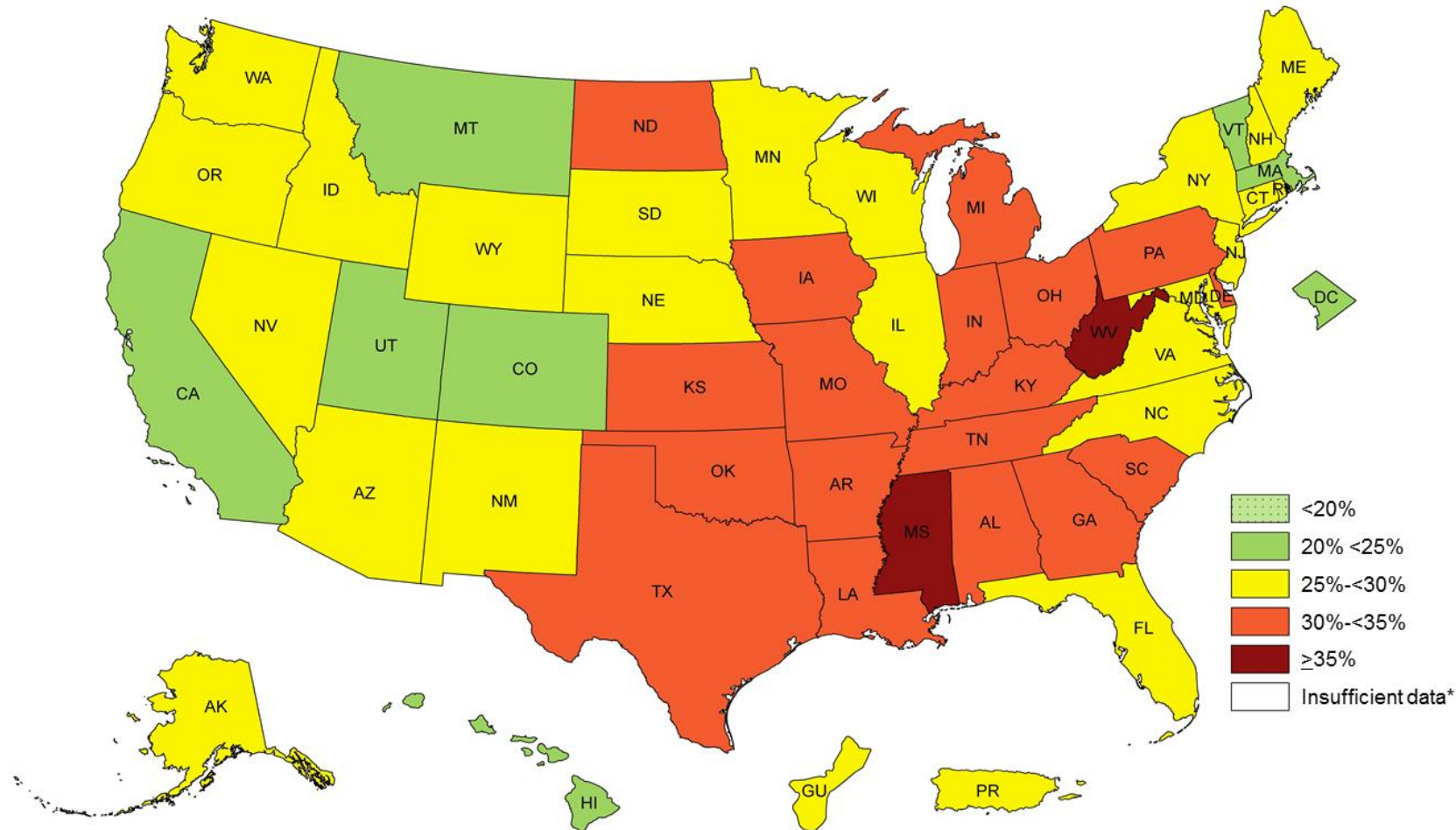


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) $\geq 30\%$, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2013

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

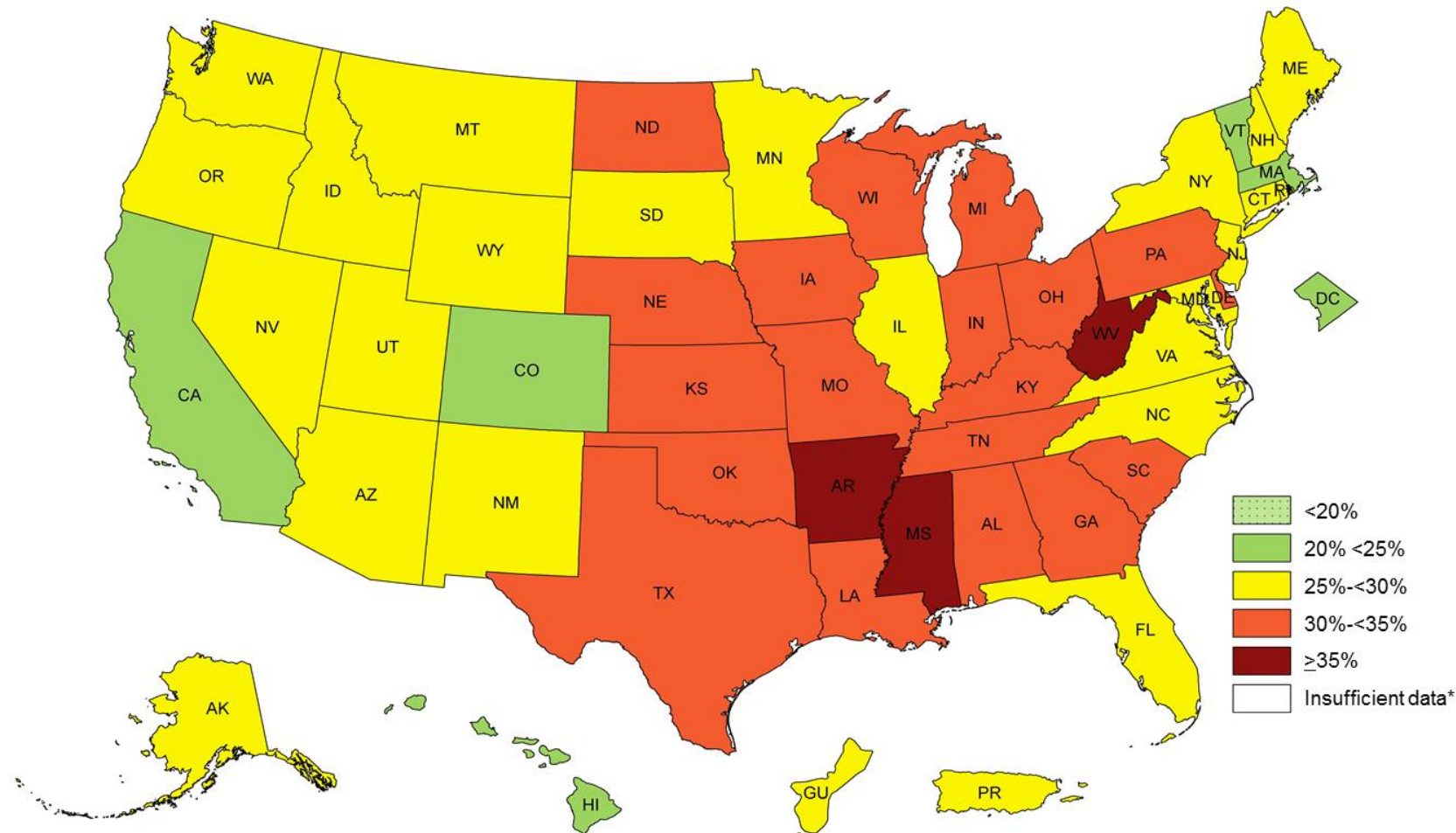


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2014

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

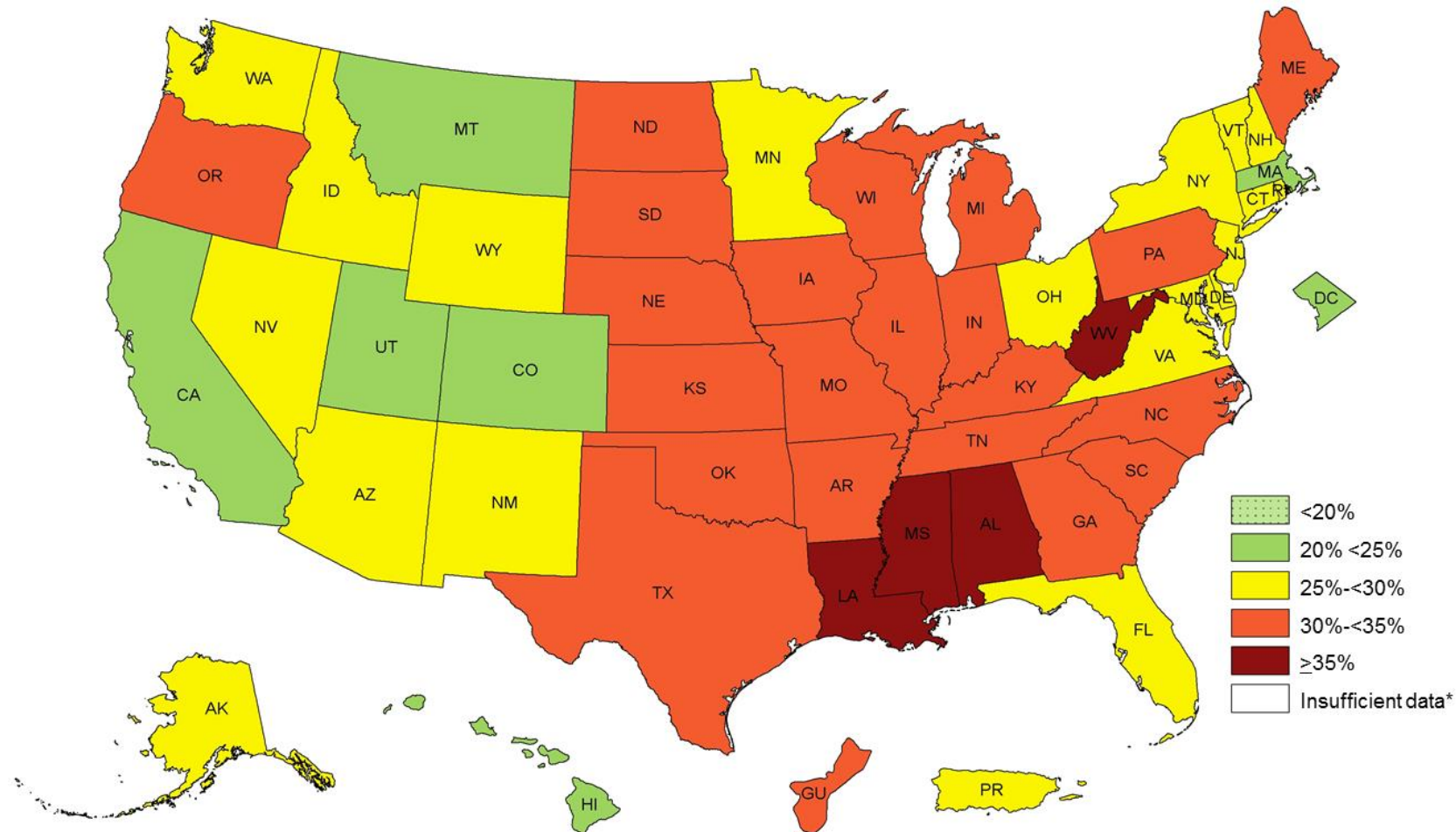


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2015

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

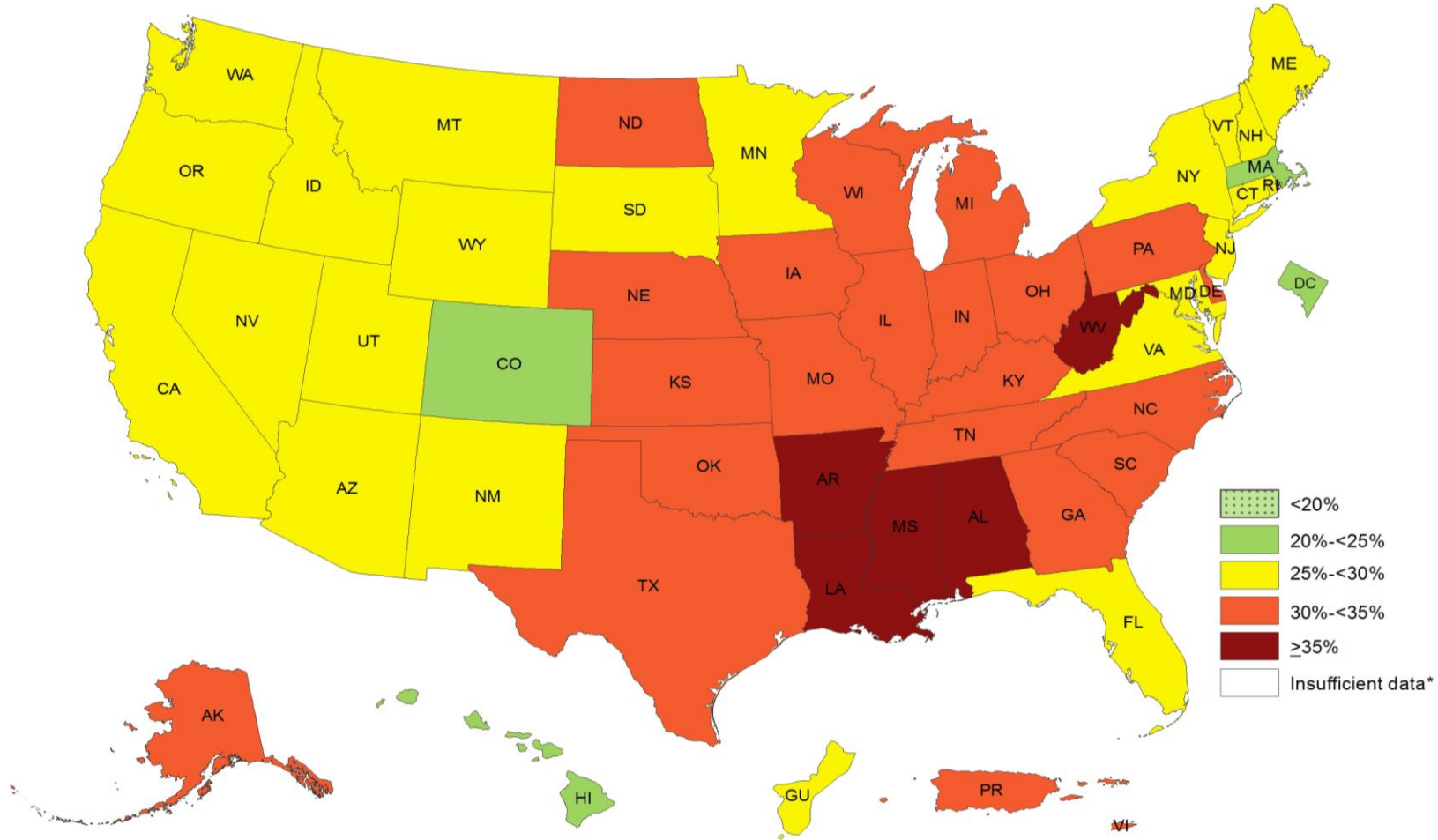


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2016

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

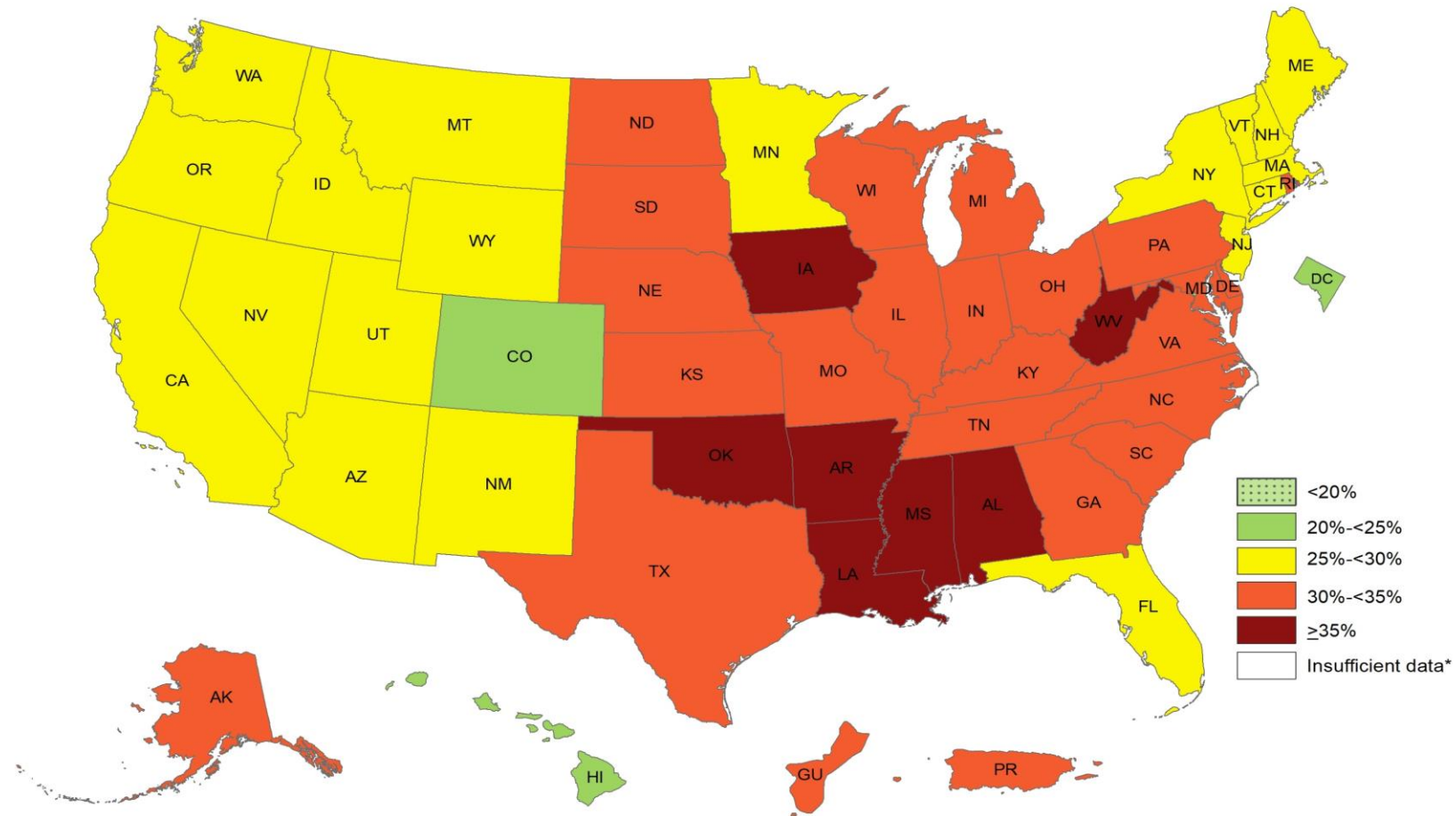


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2017

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

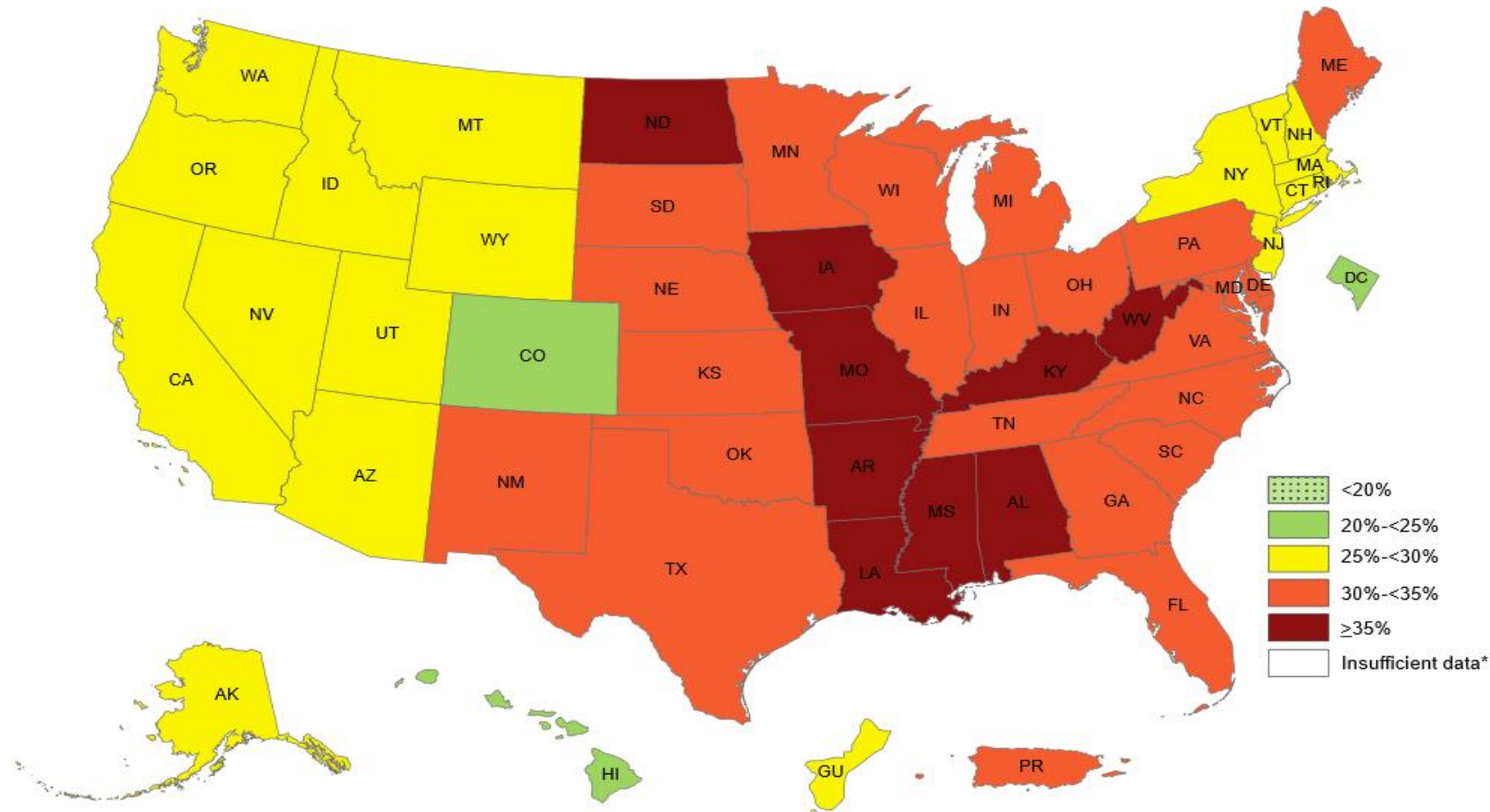


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) $\geq 30\%$, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2018

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

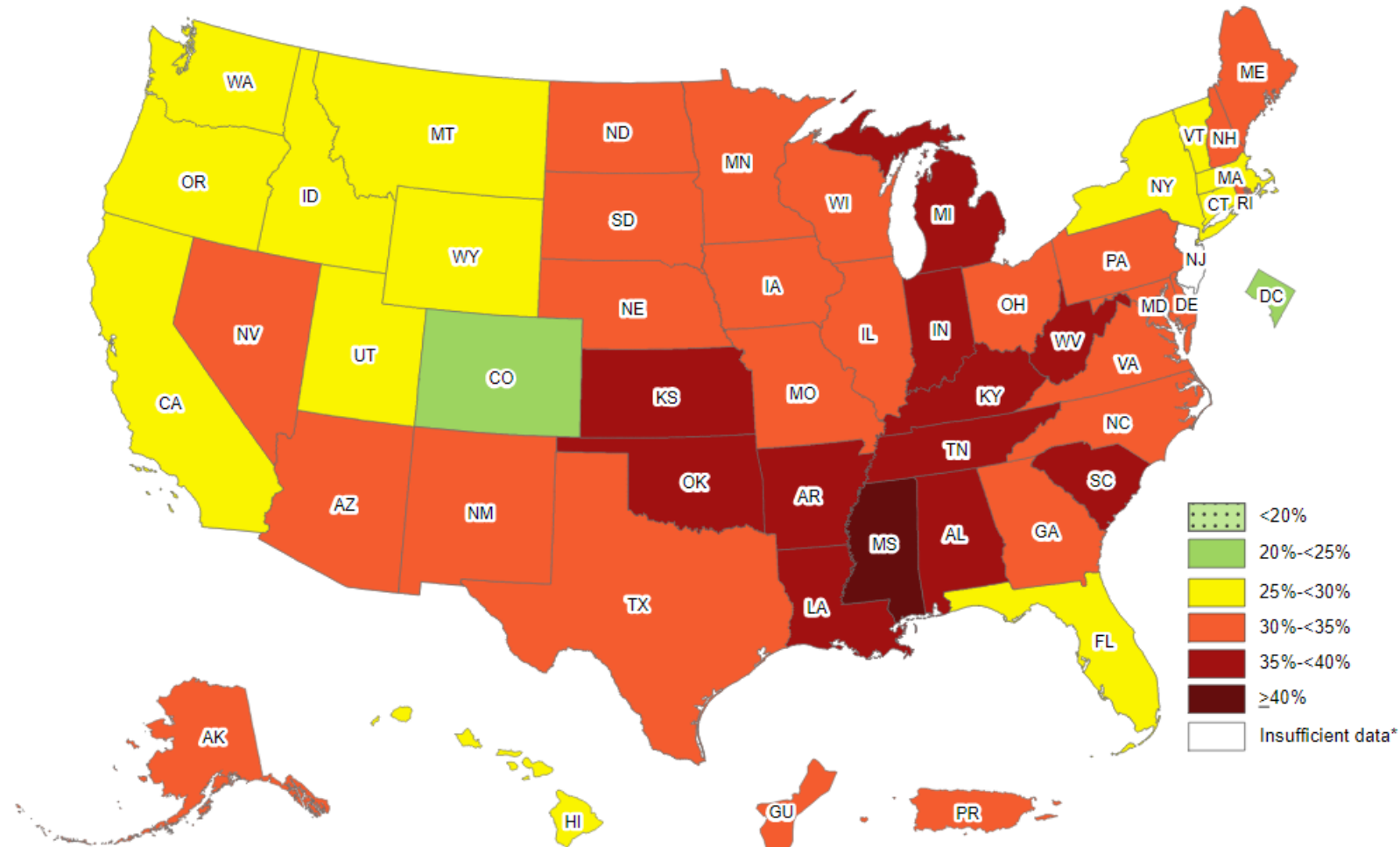


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2019

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be

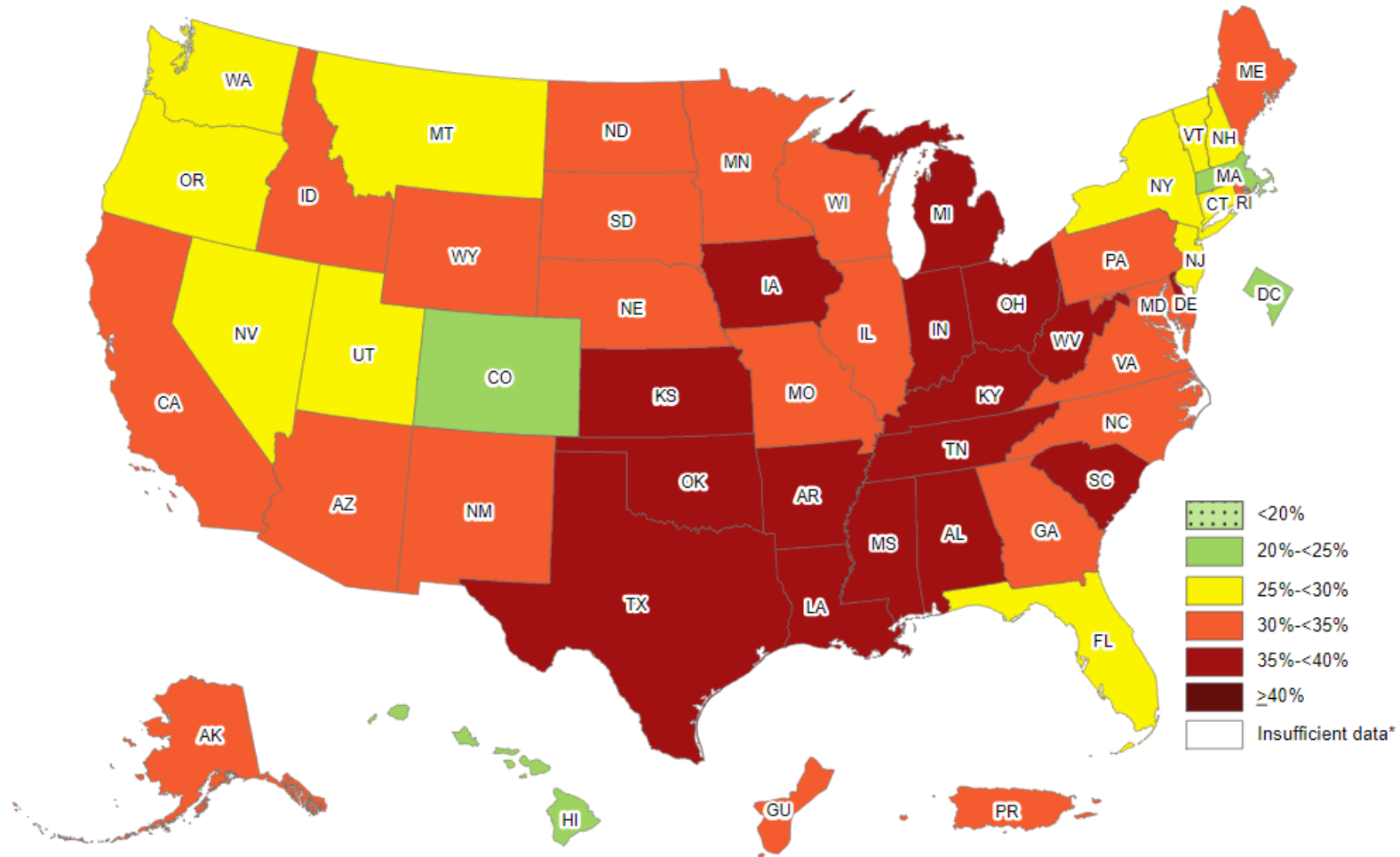


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence[†] of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2020

[†] Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be

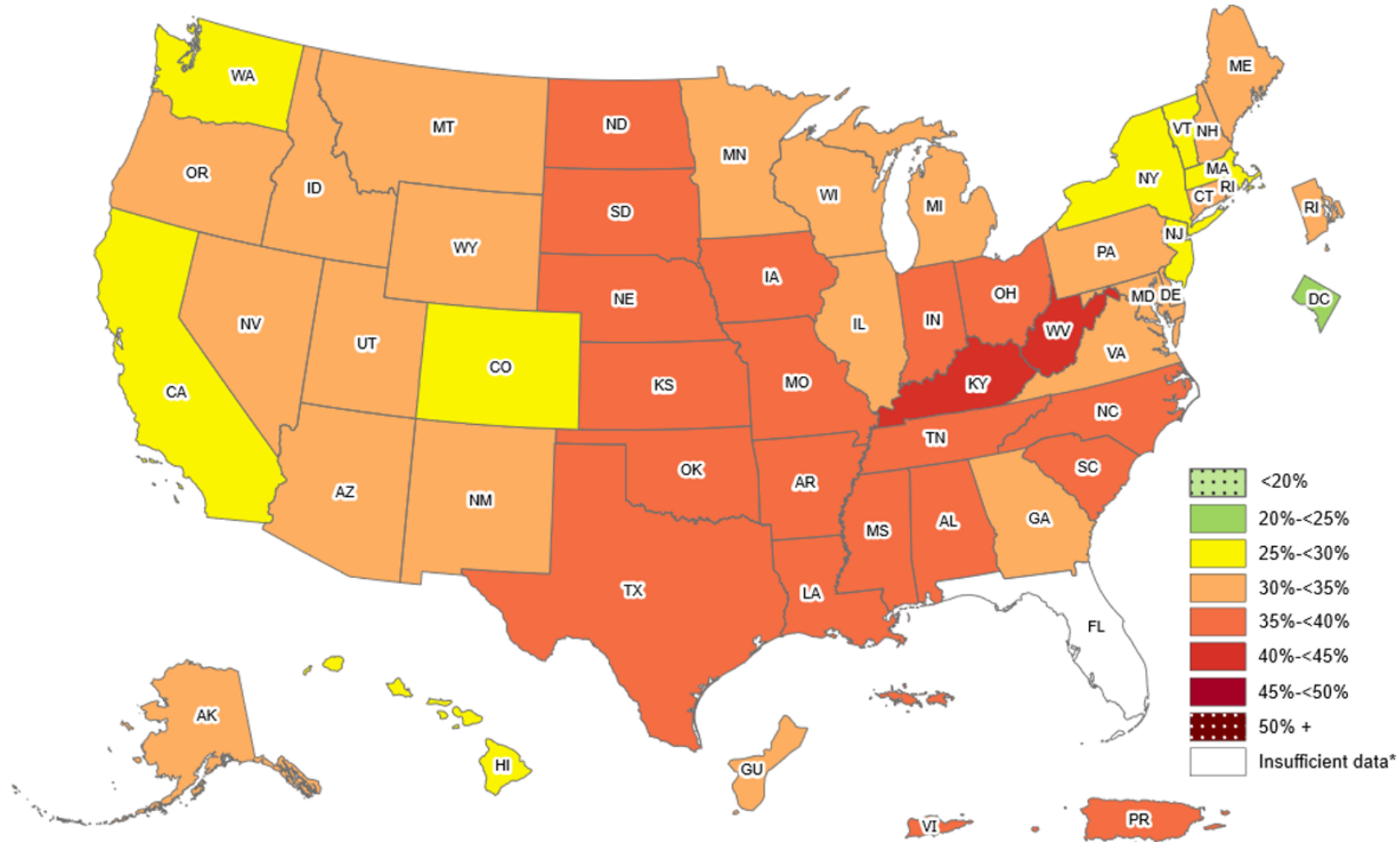


*Sample size <50, the relative standard error (dividing the standard error by the prevalence) ≥30%, or no data in a specific year.



Prevalence¹ of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2021

¹ Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.

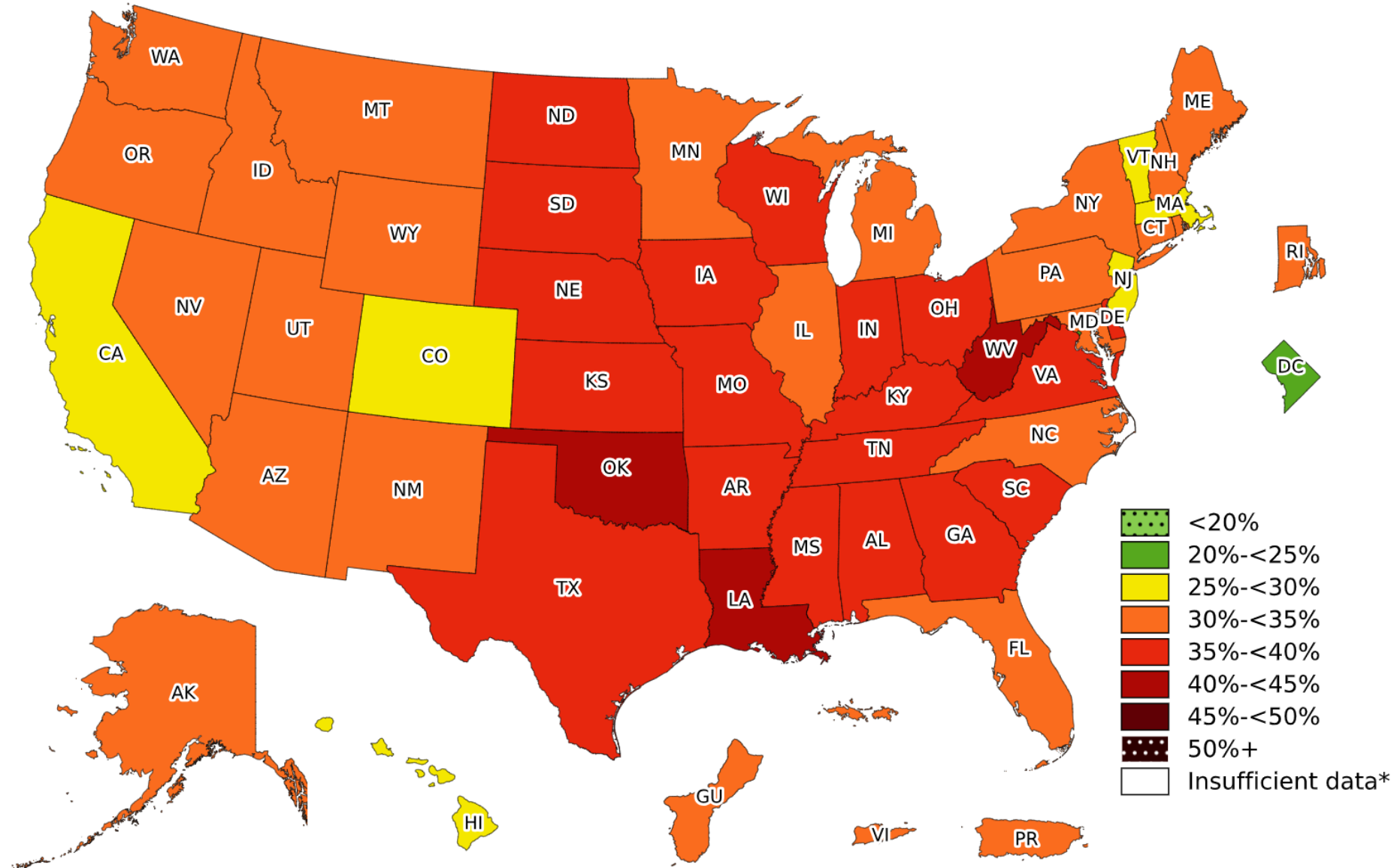


Source

*Sample size <50, the relative standard error (dividing the standard error by the prevalence) $\geq 30\%$, or no data in a specific year.



Prevalence[†] of Obesity Based on Self-Reported Weight and Height Among U.S. Adults by State and Territory, BRFSS, 2022



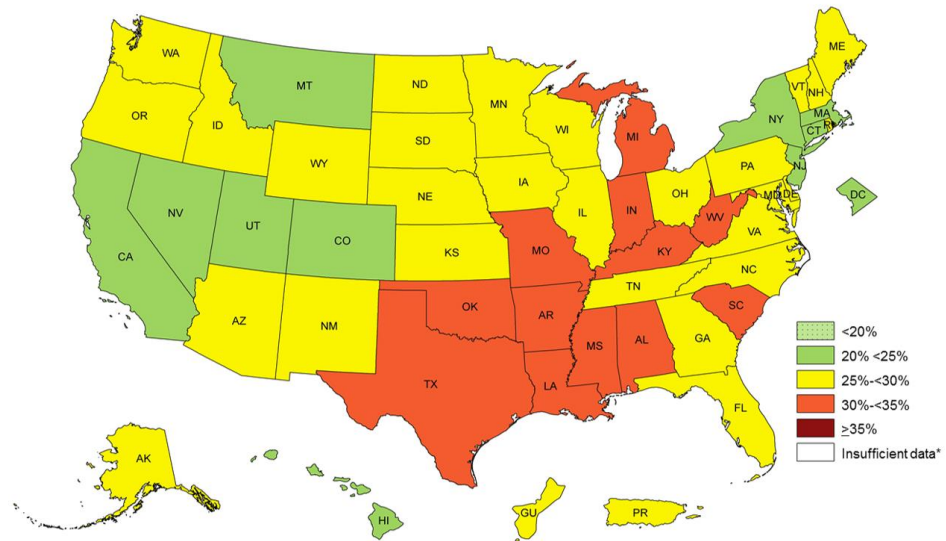
Source



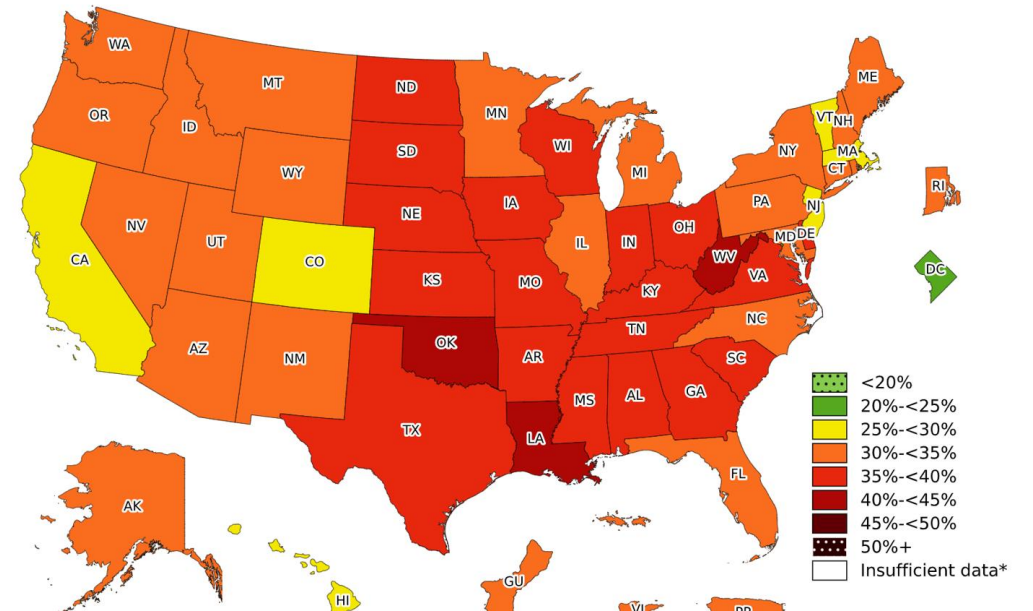
Comparison 2011 to 2022

Prevalence¹ of Self-Reported Obesity Among U.S. Adults by State and Territory, BRFSS, 2011

¹ Prevalence estimates reflect BRFSS methodological changes started in 2011. These estimates should not be compared to prevalence estimates before 2011.



Prevalence[†] of Obesity Based on Self-Reported Weight and Height Among U.S. Adults by State and Territory, BRFSS, 2022



Law and Policy Strategies

Let's Move



Let's Move Active Schools

High
Profile
Leadership



SPECIAL ISSUE: ATHLETES GIVE BACK

JULY 2013 | SIKIDS.COM

Sports Illustrated KIDS

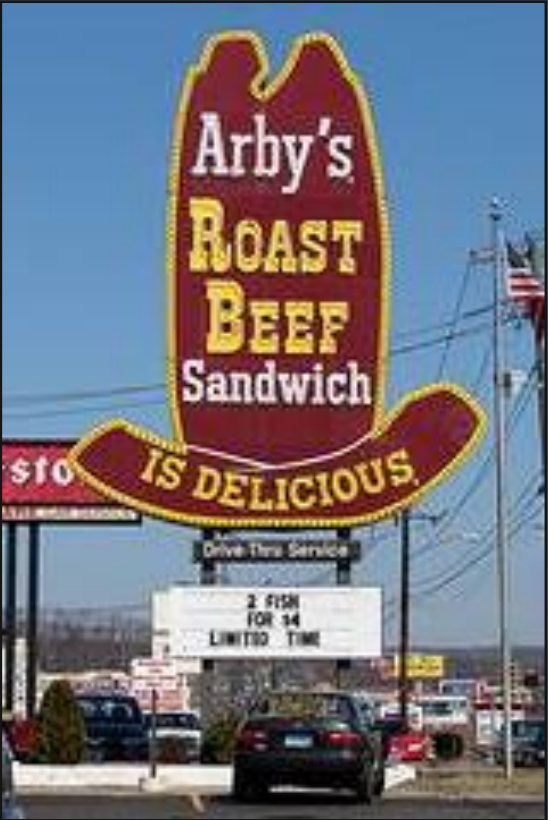
LET'S MOVE!

First Lady Michelle Obama, Quarterback Colin Kaepernick, Tennis Star Serena Williams, Skateboarder Paul Rodriguez, and Olympians Allyson Felix and Gabrielle Douglas Want Kids to Be Fit and Healthy



Active Transportation

Land Use Zoning Controls





Toy Give-Aways

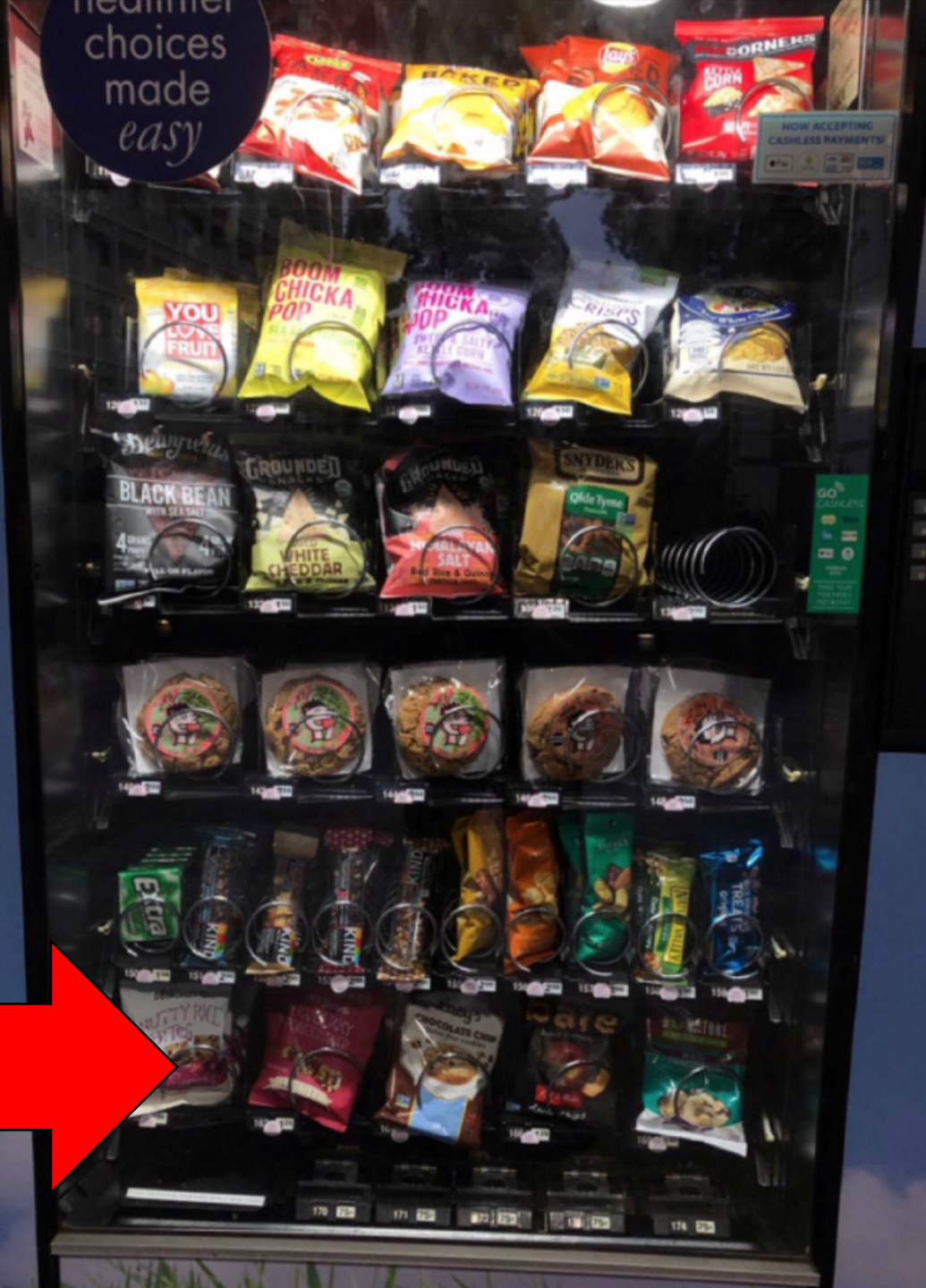
Financial Incentives For Healthy Foods

- WIC
- Farmers Markets
- Corner Stores

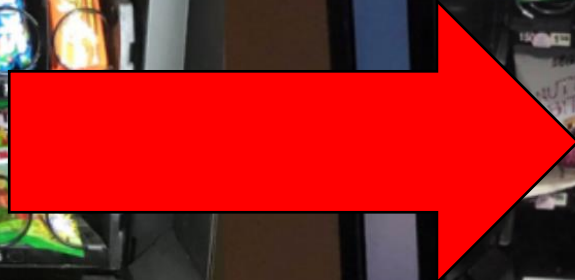


Family Friendly Check-out Aisles





Healthy Vending and Soda-Free Schools





Healthy School Meals

Menu Labeling

Bacon & Chicken Salad Full Size \$5.89 580 Cal. 1/2 Size \$3.89 300 Cal.

Chicken Caesar Full Size \$5.89 710 Cal. 1/2 Size \$3.89 400 Cal.

Sides

Sour Cream & Chive Baked Potato \$0.99 300 Cal.

Bacon & Cheddar Baked Potato \$2.49 470 Cal.

SOUP

Broccoli Ched Chicken Noodle

New England Chicken and F

SALAD

Caesar Greek

Apple and Ch Southwee

Choose any 1/2 Size salad and ADD 1 of these options

Chicken Wrap Small Milkshake

Mini-Bacon cheese burger Small Chili

Small Fries Sour Cream & Chive

2,000 calories a day is used for general nutrition advice, but Additional nutrition information available upon request.

200 cal Cheese

170 cal Cinnamon Twists

350 cal Triple Layer Nachos

170 cal Crunchy Taco

460 cal Cheesy Double Beef Burrito

200 cal Soft Taco

420 cal Big Taste Taco

360 cal Bean Burrito

290 cal Caramel Apple Empanada

89¢ EACH

99¢ EACH

BREAKFAST WRAPS

SPINACH FETA WRAP \$3.25
WITH EGG & ROASTED TOMATO
240 CALORIES

BACON AVOCADO WRAP \$3.25
WITH EGG & AGED CHEDDAR CHEESE
380 CALORIES

oven-toasted

Portion Size Controls

<https://vimeo.com/289884032>



BUT...

2 campaigns

kicked our

butts . . .

WARNING:
Drinking beverages
with added sugar(s)
contributes to obesity,
diabetes, and tooth decay.



Soda
Taxes

YES ON D

Berkeley vs. Big Soda

Paid for by Yes on Measure D, Healthy Child Initiative Ballot Measure Committee.

The sign features a red background with white text and black silhouettes. The word 'YES' is in large, bold, white letters. To its right, the word 'ON' is in white letters inside a black rectangular box. Further right, a large white letter 'D' is enclosed in a white square with a black border. Below the text, there are five black silhouettes of children in various active poses: a girl jumping, a boy jumping, a girl standing with arms raised, a boy running, and a girl running. The sign is mounted on a white border and is placed on a concrete surface.

Evaluation of Changes in Prices and Purchases Following Implementation of Sugar-Sweetened Beverage Taxes Across the US

Scott Kaplan, PhD; Justin S. White, PhD; Kristine A. Madsen, MD; Sanjay Basu, MD, PhD; Sofia B. Villas-Boas, PhD; Dean Schillinger, MD

Findings In this cross-sectional study, SSB taxes in Boulder, Colorado; Philadelphia, Pennsylvania; Oakland, California; San Francisco, California; and Seattle, Washington, were associated with a 33.1% composite increase in SSB prices (92% pass-through of taxes to consumers) and a 33% reduction in purchase volume, without increasing cross-border purchases. The results were sustained in the months following tax implementation.

Meaning The results suggest substantial, consistent declines in SSB purchases across several US cities; insofar as reducing SSB consumption can improve population health, scaling SSB taxes more broadly should be considered.

The Health Impact Model – Diet-Related Disease Prevention

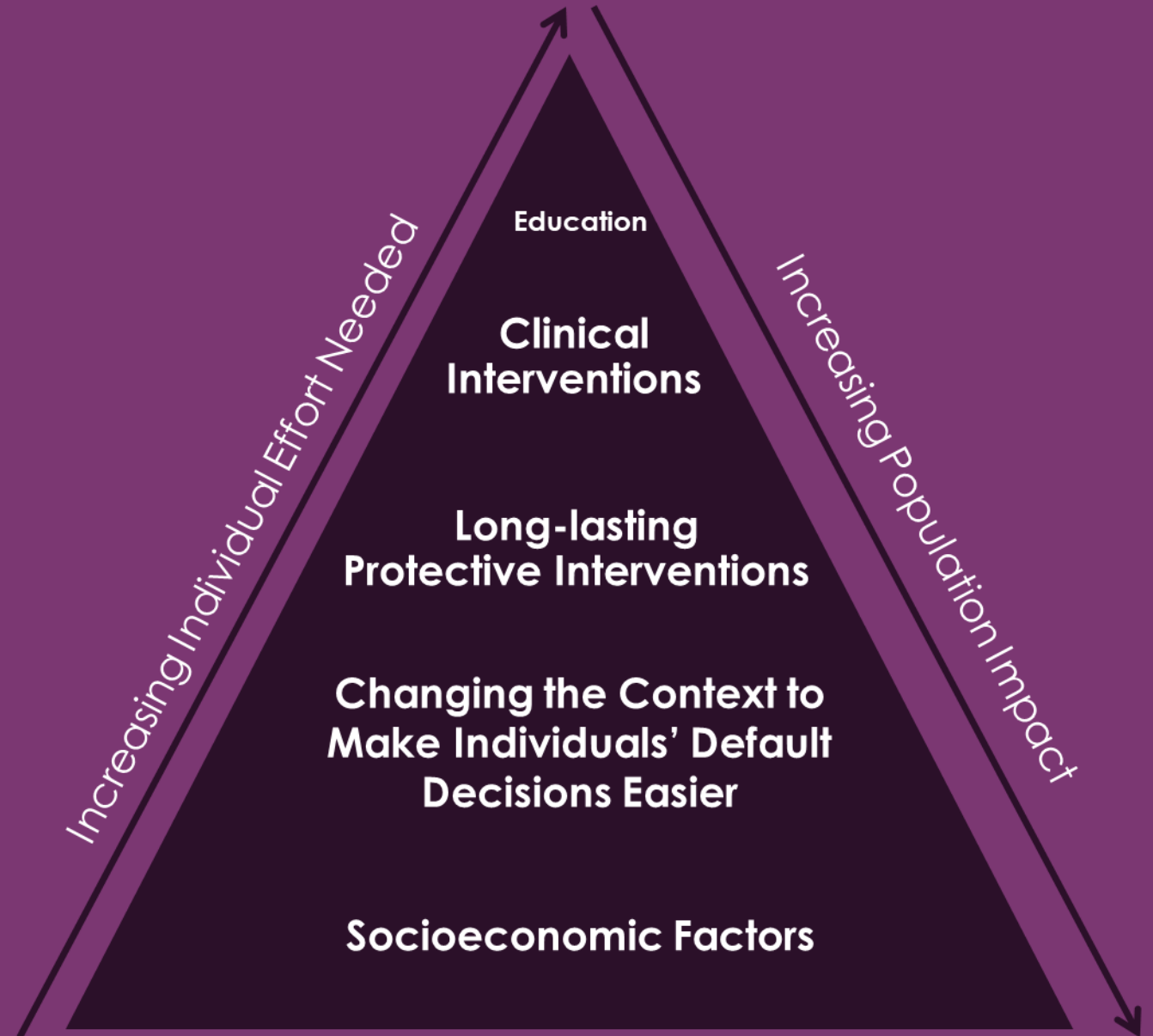
Health education, MyPlate

Bariatric surgery, pharmaceuticals

Physical activity, healthy school meals

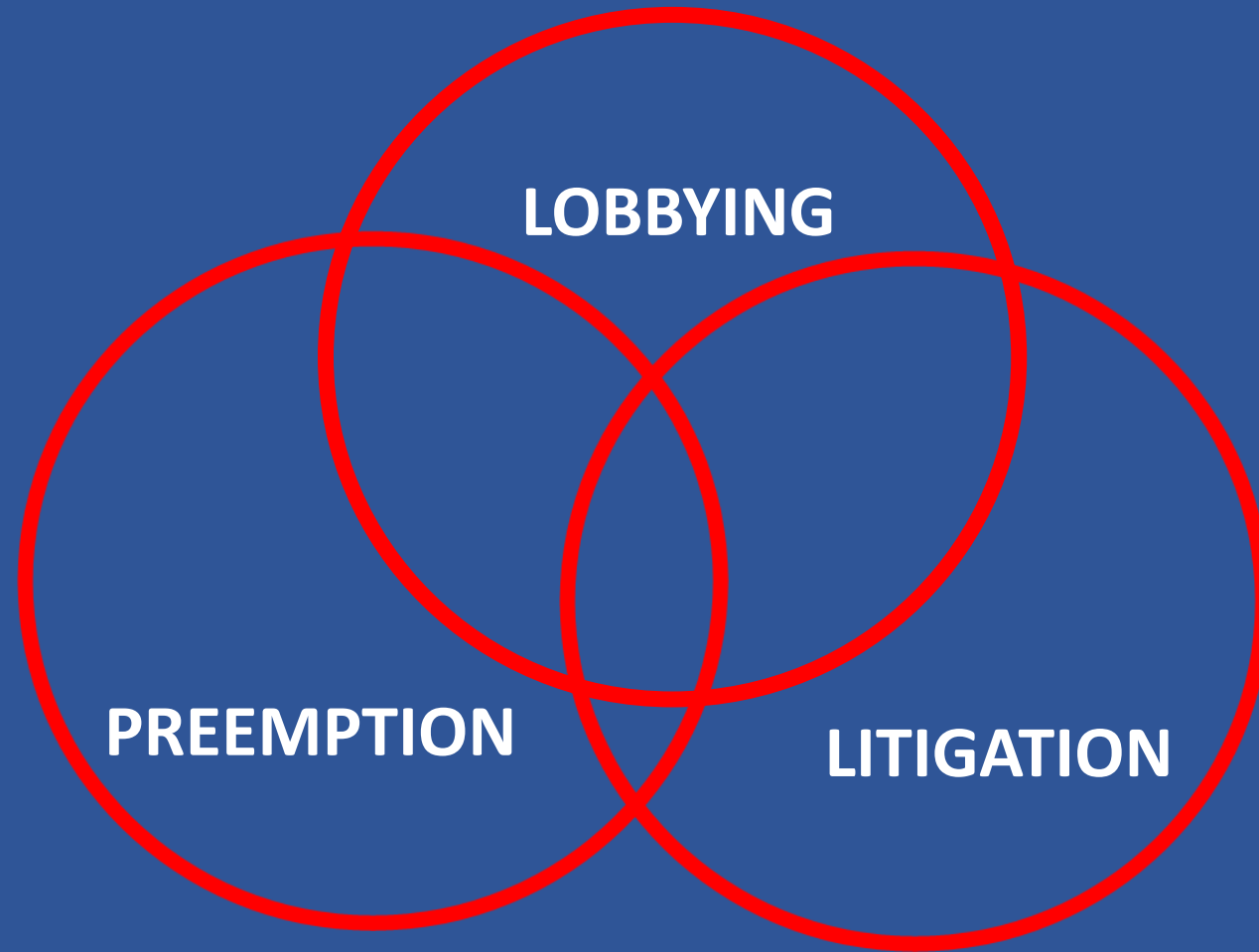
The strategies we just reviewed

Poverty reduction, quality education, safe housing, livable wages, etc.



Industry Push-Back:

Lobbying
Preemption
Litigation

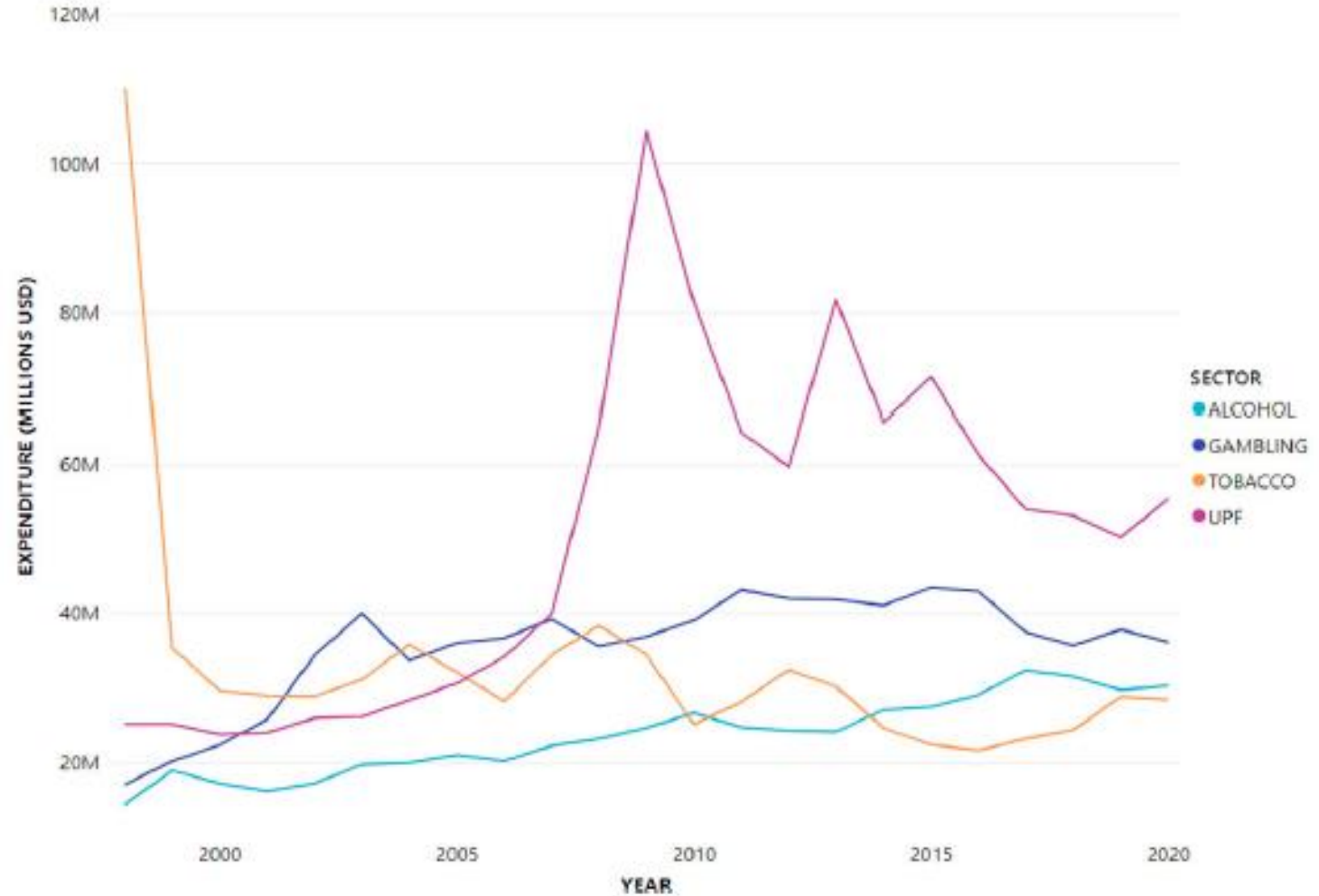


LOBBYING

PREEMPTION

LITIGATION

Figure 1. Lobbying Expenditure by Sector 1998–2020



UPF, ultraprocessed food.

Lobbying

LOTS of Preemption!!

Assembly Bill No. 1838

CHAPTER 61

An act to add and repeal Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

This bill would require the California Department of Tax and Fee Administration to cease to administer and to terminate its contract to administer any sales or use tax ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries for which a court of competent jurisdiction has determined that (1) the tax, fee, or other assessment is in conflict with the prohibition set forth in this bill and is not excepted from that prohibition. The bill would also require the Department of Tax and Fee Administration to enter into a contract with the Secretary of the State to administer the tax, fee, or other assessment. The bill would prohibit local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions. The California Constitution also authorizes a charter city to levy local taxes to raise revenues for local purposes, subject to restrictions imposed by that city's charter or preemption in matters of statewide concern.

Litigation

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

CULTIVA LA SALUD et al.,

Plaintiffs and Respondents,

v.

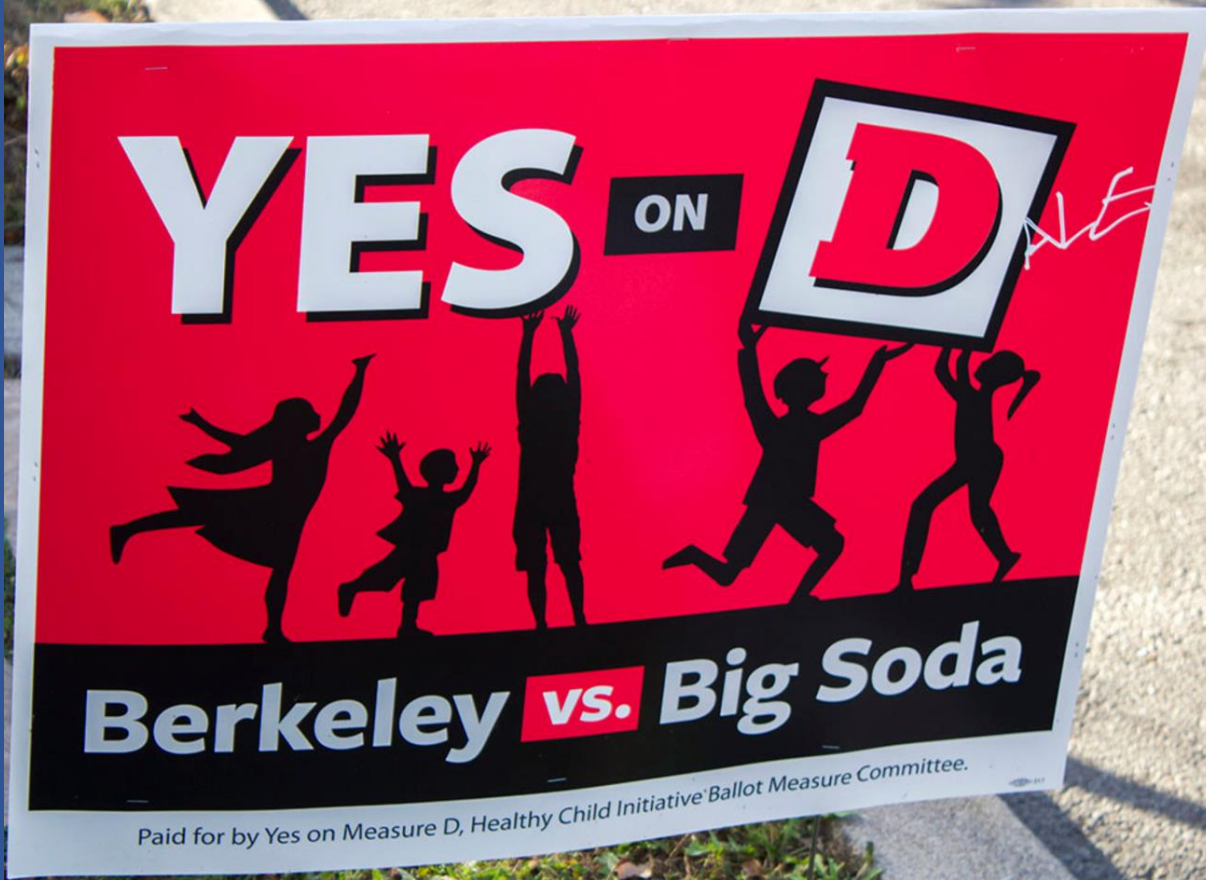
STATE OF CALIFORNIA et al.,

Defendants and Appellants.

C095486

(Super. Ct. No. 34-2020-
80003458-CU-WM-GDS)

Win Some, Lose Some



WARNING:
Drinking beverages
with added sugar(s)
contributes to obesity,
diabetes, and tooth decay.



Discussion