H.R. 1 & Redistricting

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February 8, 2021
The Redistricting Landscape Without H.R. 1
H.R. 1’s Redistricting Reforms Work in Tandem

- Prioritized criteria with enhanced protections for communities of color and ban on extreme partisan gerrymandering
- Transparency and public participation requirements
- Judicial remedy including fast tracking of redistricting cases; abrogates legislative privileges
- Maps drawn by independent commission
  - Selection of commissioners under auspices of independent agency designed by state (H.R. 1 proscribes what qualifies as independent agency)
  - Conflicts rules and qualitative screening
- Pan-partisan support required for approving maps
- No mid-decade redistricting
H.R. 1’s Statutory Partisan Gerrymandering Ban

- Prohibits maps that *unduly favor or disfavor* a political party on a statewide basis.

- **Test for partisan gerrymandering**
  - Looks at *effect*, not intent.
  - Looks at whether map would produce a *durable partisan bias*, using “scientifically accepted measures of partisan fairness” and comparing alternative maps.
  - Does *not* cover district-specific claims or incumbency protection claims.
Measuring Partisan Bias Under H.R. 1

New addendum in current Version of H.R. 1

(B) Determination of favoring or disfavoring.—For purposes of subparagraph (A), the determination of whether a redistricting plan has the effect of unduly favoring or disfavoring a political party shall be based on the totality of circumstances, including, but not limited to, whether the plan results in durable partisan bias as determined by scientifically accepted measures of partisan fairness, or whether there are alternative plans that would have complied with the requirements of law and resulted in less durable levels of partisan bias.

Notwithstanding the previous sentence, no redistricting plan shall be found to be in violation of subparagraph (A) because of application of the criteria set forth in subparagraphs (A), (B), or (C) of paragraph (1).
Mandatory Map Criteria

In order of priority:

● Comply with U.S. Constitution, including drawing districts on basis of total population.

● Comply with Voting Rights Act (and draw opportunity districts where appropriate) and other federal laws.

● Enhanced protections for minority ability to elect districts.

● Respect communities of interest (racial, tribal, socio-economic, etc.) neighborhoods, and political subdivisions to the extent practicable.
H.R. 1’s Protection for Communities of Interest

Borrowed from California, with some tweaks

Slightly changed from 2019 version

(D) Districts shall respect communities of interest, neighborhoods, and political subdivisions to the extent practicable and after compliance with the requirements of subparagraphs (A) through (C). A community of interest is defined as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, cultural, geographic or historic identities. The term communities of interest may, in certain circumstances, include political subdivisions such as counties, municipalities, tribal lands and reservations, or school districts, but shall not include common relationships with political parties or political candidates.
Public Participation and Transparency

- Draft maps and data must be made publicly available on website, in multiple languages.
- Public can submit proposed maps.
- Public can submit comments on preliminary and final maps before votes can be held.
- Open commission meetings streamed live and archived.
- **Requires report analyzing plan on partisan fairness, racial equity, and other criteria before vote.**
Independent Redistricting Commission

- All congressional maps must be drawn by independent commissions (*exclusion for states with current IRCs + Iowa*)
- Closely follows California model
- 15-member commission
  - 5 Democrats, 5 Republicans, 5 independents/third-party members
  - Measures to ensure demographic and geographic diversity
Commission Section Process

● Non-partisan agency screens applicants:
  – Screens for conflicts
  – Assesses skills and qualifications
  – Independently assesses partisan affiliation
  – Public process for developing agency rules

● Non-partisan agency creates 3 applicant pools:
  – 12 Ds, 12 Rs, 12 independents/third-party members
  – Pools must be demographically and geographically representative of the state

● Pools must be accepted by a bipartisan group of legislators
Commission Selection Process, cont’d

● First round:
  – Random selection of 2 Ds, 2 Rs, 2 independents/third-party members from pool

● Second round:
  – Initial 6 members pick the remaining 9 from the pool
  – Non-random picks balance out diversity (demographic and geographic) as necessary

● Result: 5 Ds, 5 Rs, 5 independent/third-party members
Map Approval

● To pass, a plan must win support from:
  – A majority of commissioners (8 of 15)
  – At least 1 R, 1 D, and 1 independent/third-party
  – **NOTE**: If one group votes as a block to approve, then at least 2 commissioners from another group would also have to approve.

● If deadlock:
  – 3-judge federal court in D.C or state capital would draw congressional map
  – Court would follow **same criteria**
DOJ Enforcement & Private Right of Action

- Either Attorney General or any citizen aggrieved by a map can challenge a map. Private citizens can recover attorneys fees.
- Cases would be heard by three-judge panel, with appeals directly to SCOTUS. **Venue**: Either DC or state capital.
- Courts, including SCOTUS, required to expedite cases brought under H.R. 1; appeal periods shortened, etc.
- No legislative privilege
Redistricting Timelines Under H.R. 1 (Currently)

- Effective date currently 2031 for all provisions
- Commission process in current bill takes up to 18 months
  - Up to 9 months to select commission (also will need time to set up agency)
  - 9 months to draw maps, including:
    - Public hearings
    - Period for notice and comment on proposed maps
    - Adoption of final plan
- Deadline for enacting maps is August 15 of year ending in -1.
Fix for 2021-22?
Options

● Option 1:
  — Criteria, transparency/public participation, enhanced judicial remedies now.
  — Commissions continue to take effect in 2031.

● Option 2:
  — Some version of a streamlined commission before the 2022 midterm
  — More fully independent commissions in 2031.
**A Window (But Narrow) to Pass Reforms Because of Census Delays**

<table>
<thead>
<tr>
<th>Census Step</th>
<th>Old Date</th>
<th>New Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apportionment counts delivered to POTUS</td>
<td>Late December 2020</td>
<td>April 30, 2021 or later</td>
</tr>
<tr>
<td>Redistricting data delivered to states</td>
<td>Mid-February to March 31, 2021</td>
<td>July 31, 2021 or later</td>
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Upcoming Election-Related Deadlines

- **Filing deadlines:**
  - **Nov:** IL
  - **Dec:** NC, TX
  - **Jan:** AL, KY, WV
  - **Feb:** IN, MD, NM, OH
  - **Mar:** AR, CO, GA, ID, ME, MS, MO, NH, NE, NV, OR, PA, SC, UT, VA
  - **Apr:** AZ, MI, NJ, NY, OK, TN
Upcoming Election-Related Deadlines

● Congressional primary dates:
  - **Mar:** IL, NC, TX
  - **May:** AL, GA, ID, IN, KY, NE, OH, OR, PA, WV
  - **June:** AR, CO, ME, MD, MS, MT, NV, NJ, NM, NY, OK, SC, UT, VA
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