

Overview/analysis of the *For the People Act's* redistricting rules



Summary: Although the *For the People Act's* 2020 redistricting and post-2020 redistricting procedures differ in minor ways, including in their deadlines, the processes are largely similar. Both ban partisan redistricting, enable independent redistricting commissions, and ensure public input throughout the redistricting process. It's also important to note that nonpartisan commissions need to be in place before redistricting processes officially get underway. We believe this will start as of August 16th, when detailed census data is released. Additional anti-gerrymandering reforms and standards proposed by the *For the People Act*, including a ban on unduly favoring one party over the other, must be in place before new maps are finalized.

OVERLAP BETWEEN 2020 AND POST-2020 REDISTRICTING PROCEDURE

Besides administration dates, parts 1, 3, and 4 of the *For the People Act's* normal redistricting rules (and any amendments to them) are in effect in exactly the same way in 2020 as they are in 2030 and beyond. These sections govern:

- **Part 1 (Requirements for Congressional Redistricting):**
 - **Requiring congressional redistricting to be conducted through plan of independent state commission**
 - Requires independent redistricting procedures for congressional districts
 - **Ban on mid-decade redistricting**
 - Unless a court requires a state to revise its districts for the purpose of complying with the US constitution, state constitution, Voting Rights Act (VRA), or the terms and conditions of this subtitle, states are not allowed to modify districts outside of once a decade.
 - **Criteria for redistricting**
 - Fair districts will:
 - Comply with the Constitution, including requirements about equalizing total population
 - Comply with VRA protections for politically cohesive groups and for protected groups' practical ability to participate in the political process (along with ensuring there isn't vote dilution)
 - Respect communities of interest, neighborhoods, and political subdivisions
 - Not favor or disfavor one party over another
- **Part 3 (Role of Courts in Development of Redistricting Plan):**
 - **Enactment of plan developed by 3-court judge**

- If triggering events occur (see: 2020/post-2020 comparison), the relevant U.S. District Court (in which the state capital is located) will form a 3-judge court to develop and publish the redistricting plan (along the lines of [section 2284, title 28 of the US Code](#)). Publication date should be no later than December 15 of the year in which the triggering event occurs.
- The court must distribute various redistricting plans, hold at least one hearing, and invite feedback before formalizing plans
- Unlike independent redistricting commissions, courts are also authorized to submit an interim redistricting plan in certain scenarios
- **Special rule for redistricting conducted under order of federal court**
 - If a state is ordered to redistrict according to a court order, deadlines may be amended.
- **Part 4 (Administrative and Miscellaneous Provisions):**
 - **Payments to states carrying out redistricting**
 - Once the nonpartisan commission has submitted a selection pool, The Election Assistance Commission shall pay states a lump sum of \$150,000 and additional funds proportional to the amount of representatives they will have in the House of Representatives for redistricting costs (deadline for this is 30 days after a state receives an apportionment notice). Does not apply to states that are single member districts, and states claiming to have functional, existing independent redistricting commissions must prove they meet standards before receiving money.
 - **Civil enforcement**
 - Establishes standards for how private citizens and the Attorney General can file a lawsuit (expedited) against a state improperly applying the redistricting requirements outlined in the *For the People Act*
 - The lawsuit can either be filed in the district court of the state capital or in DC.
 - If the lawsuit is not expected to be resolved within 3 months of the next election for the House of Representatives in the state, the district court shall order the development of an interim congressional redistricting plan and/or order changes to the primary schedule for House of Reps races.
 - **State apportionment notice defined**
 - Establishes the process for sending a notice to each state about redistricting, including the identification of how many seats they are entitled to in the House of Representatives

- **No effect on elections for state and local office**
 - Specifies that the *For the People Act's* redistricting requirements do not apply to state or local districting

DIFFERENCES BETWEEN 2020 AND 2030

NOTE: The *For the People Act's* deadlines for 2020 redistricting will likely be changed when it goes to a vote again (several have already elapsed).

Although there are minor differences between the two redistricting processes, the **most notable change between 2020 and 2030 is the timeline**. This is the general process for 2020 redistricting, with notes in red specifying post-2020 modifications to the redistricting process:

- Unless an existing or planned commission already complies with appropriate standards, the following process must transpire:
 - **States must establish or choose a nonpartisan agency** (in the legislative branch) to begin the commission selection process prior to June 1, 2021 (*Note: after 2020 redistricting, the deadline is October 15 of each year ending in numeral 9*)
 - **The nonpartisan agency must promote, establish, allow for public opinion on, and ultimately present a pool of commission candidates** from a diverse set of backgrounds and skill sets for review and approval by the Select Committee on Redistricting (a committee made of members from the state legislature). The pool must consist of 36 diverse candidates (12D, 12R, 12I).
 - Candidates must be:
 - Registered to vote
 - Registered with one party for a 3 year period (or hasn't been registered with a party, in the case of Independents)
 - Committed to honesty, impartiality, and independence
 - Candidates must not be:
 - An office-holder, a candidate for office, or an immediate family member of either
 - An officer of a political party, an officer/employee/consultant of a political campaign, or an immediate family member of any of those
 - Lobbyist or immediate family member of one
 - Employee of an elected official, contractor with the state government, donor to a candidate for public office or PAC (unless contributes an aggregate to campaigns/PACs that is less than \$1000 for covered periods), or an immediate family member of individuals in the prior categories

- The recipient of a civil money penalty/criminal fine or someone who has been imprisoned for FECA violations
- A foreign agent under FARA or the immediate family member of someone registered as a foreign agent under FARA
- Note: Post-2020, there is a covered period under which disqualifying categories apply to family members (10 year period ending on the date of the member's appointment to the commission, period beginning on the date of the individual's appointment to the commission and ending on August 14 of the next year of the numeral one). In fact, all applicants must confirm that they have not taken and will not take disqualifying action during the covered periods (in addition to the two former categories, this includes the 10 year period beginning after August 14 of the next year ending with the numeral one).
 - Note: Post-2020, applicants must be interviewed (with those interviews distributed publicly)
 - The agency must submit the pool to the Select Committee on Redistricting by July 15, 2021
 - Note: Post-2020, the pool must be submitted by June 15 in each year ending with zero.
- The **Select Committee on Redistricting must approve of the applicant pool** by by August 1, 2021
 - If the Select Committee on Redistricting rejects the pool (or fails to approve one) by August 1st, the redistricting plan for the state will be determined and enacted in accordance with part 3 (3-judge court).
 - Note: Post-2020, the Select Committee on Redistricting must approve the pool no earlier than 15 days and no later than 21 days after receiving it from the nonpartisan agency. If the SCR rejects it, the nonpartisan agency must develop a replacement pool. The replacement pool can include members of the rejected pool so long as at least one of the new members is different. The Select Committee on Redistricting has 21 days after the new pool is submitted to approve or reject and require a new one. Same rules about redrafting apply to the third round of drafting. The Select Committee on Redistricting has around a couple weeks to respond (the bill's language has a typo when establishing the deadline). If the second redraft is rejected, redistricting will be done according to part 3 (courts)
- **Once the applicant pool is approved, the nonpartisan agency can begin nominating members to the commission**
 - The nonpartisan agency must appoint 6 random members of the approved selection pool to the commission by August 5 at the latest (2R, 2D, 2I)

- Failure to establish a nonpartisan agency before the deadline (October 15 of a year ending in numeral 9)
- Failure to appoint a Select Committee on Redistricting by the deadline (January 15 in a year ending with the numeral 0)
- Failure of the SCR to approve a pool by the deadline for the second replacement selection pool (around 2 weeks after nonpartisan commission submits the 2nd option -- the bill's language has a typo when establishing the deadline)
- Failure of the independent redistricting commission to approve a final plan by the deadline (October 1 of the year ending in the numeral one or 8 months after states received final census data (whichever is later))
- Note: the non-2020 deadline for development and publication of the plan is December 15 of the year in which the triggering event occurs

THE DETAILED CENSUS DATA RELEASE IS THE REAL DEADLINE FOR 2020 REDISTRICTING

Two considerations impact the choice of an August 16th deadline:

- Congressional schedule: Nonpartisan commissions need to be in place before redistricting processes officially get underway. We believe this will start as of August 16th, when detailed census data is released. Additional reforms must be in place before those processes are finalized. If necessary, the Senate must extend their time on the Hill beyond the beginning of their August recess ([starting August 9](#)) in order to pass anti-gerrymandering legislation. However, Senators won't hold out forever, and if the legislation doesn't pass before the recess, Congress doesn't come back into session until September 10th.
- State deadlines: Several states have constitutional or statutory deadlines in place for when their districts need to be drawn. Oregon and Ohio have [until late September](#) to finalize their maps; because of the late release of census data, a map-drawing process that often takes several months will be crammed into just over one. States like Maine have [deadlines](#) soon after. An ideal redistricting process allows room for transparency and public input, but that becomes much harder to execute during a time crunch. Putting redistricting guidelines in place before the census data comes out ensures that the process can be appropriately streamlined and effective.

In summation, 2020 redistricting is bound to be complicated already by the delay in 2020 census results. Although some states have timelines that might be able to take a later passage of the *For the People Act* in stride, others with tighter deadlines might struggle. Enactment of the *For the People Act* by August 16th guarantees a smooth transition.