

115TH CONGRESS
1ST SESSION

H. R. 712

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2017

Mr. COOPER (for himself, Mr. PETERSON, Ms. SINEMA, Mr. COSTA, Mr. SCHRADER, Mrs. MURPHY of Florida, Mr. QUIGLEY, and Mr. O'HALLERAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL**
2 **AUTHORITY.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “John Tanner Fairness and Independence in Redistricting
5 Act”.

6 (b) **FINDING.**—Congress finds that it has the author-
7 ity to establish the terms and conditions States must fol-
8 low in carrying out Congressional redistricting after an
9 apportionment of Members of the House of Representa-
10 tives because—

11 (1) the authority granted to Congress under ar-
12 ticle I, section 4 of the Constitution of the United
13 States gives Congress the power to enact laws gov-
14 erning the time, place, and manner of elections for
15 Members of the House of Representatives; and

16 (2) the authority granted to Congress under
17 section 5 of the fourteenth amendment to the Con-
18 stitution gives Congress the power to enact laws to
19 enforce section 2 of such amendment, which requires
20 Representatives to be apportioned among the several
21 States according to their number.

22 **SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER**
23 **AN APPORTIONMENT.**

24 The Act entitled “An Act for the relief of Doctor Ri-
25 cardo Vallejo Samala and to provide for congressional re-
26 districting”, approved December 14, 1967 (2 U.S.C. 2e),

1 is amended by adding at the end the following: “A State
2 which has been redistricted in the manner provided by law
3 after an apportionment under section 22(a) of the Act en-
4 titled ‘An Act to provide for the fifteenth and subsequent
5 decennial censuses and to provide for an apportionment
6 of Representatives in Congress’, approved June 18, 1929
7 (2 U.S.C. 2a), may not be redistricted again until after
8 the next apportionment of Representatives under such sec-
9 tion, unless a court requires the State to conduct such
10 subsequent redistricting to comply with the Constitution
11 or to enforce the Voting Rights Act of 1965 (52 U.S.C.
12 10301 et seq.).”.

13 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**
14 **THROUGH PLAN OF INDEPENDENT STATE**
15 **COMMISSION OR PLAN OF HIGHEST STATE**
16 **COURT.**

17 (a) USE OF PLAN REQUIRED.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, any Congressional redistricting con-
20 ducted by a State shall be conducted in accordance
21 with—

22 (A) the redistricting plan developed by the
23 independent redistricting commission estab-
24 lished in the State, in accordance with section
25 4; or

1 (B) if the plan developed by such commis-
2 sion is not enacted into law, the redistricting
3 plan selected by the highest court in the State
4 or developed by a United States district court,
5 in accordance with section 5.

6 (2) TREATMENT OF COMMISSIONS ESTAB-
7 LISHED PURSUANT TO LAWS ENACTED PRIOR TO EN-
8 ACTMENT.—If Congressional redistricting in a State
9 is conducted in accordance with a redistricting plan
10 developed by a commission which was established in
11 the State pursuant to a law enacted prior to the
12 date of the enactment of this Act, the redistricting
13 shall be deemed to meet the requirement of subpara-
14 graph (A) of paragraph (1).

15 (3) OTHER CRITERIA AND PROCEDURES PER-
16 MITTED.—Nothing in this Act or the amendments
17 made by this Act may be construed to prohibit a
18 State from conducting Congressional redistricting in
19 accordance with such criteria and procedures as the
20 State considers appropriate, to the extent that such
21 criteria and procedures are consistent with the appli-
22 cable requirements of this Act and the amendments
23 made by this Act.

24 (b) CONFORMING AMENDMENT.—Section 22(c) of
25 the Act entitled “An Act to provide for the fifteenth and

1 subsequent decennial censuses and to provide for an ap-
2 portionment of Representatives in Congress”, approved
3 June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking
4 “in the manner provided by the law thereof” and insert-
5 ing: “in the manner provided by the John Tanner Fair-
6 ness and Independence in Redistricting Act”.

7 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

8 (a) ADMINISTRATIVE MATTERS.—

9 (1) APPOINTMENT OF MEMBERS.—Each State
10 shall establish an independent redistricting commis-
11 sion composed of—

12 (A) a chair, who shall be appointed by ma-
13 jority vote of the other members of the commis-
14 sion; and

15 (B) an equal number of members (but not
16 fewer than 1) from each of the following cat-
17 egories:

18 (i) Members appointed by a member
19 of the upper house of the State legislature
20 who represents the political party with the
21 greatest number of seats in that house.

22 (ii) Members appointed by a member
23 of the upper house of the State legislature
24 who represents the political party with the

1 second greatest number of seats in that
2 house.

3 (iii) Members appointed by a member
4 of the lower house of the State legislature
5 who represents the political party with the
6 greatest number of seats in that house.

7 (iv) Members appointed by a member
8 of the lower house of the State legislature
9 who represents the political party with the
10 second greatest number of seats in that
11 house.

12 (2) SPECIAL RULE FOR STATES WITH UNICAM-
13 ERAL LEGISLATURE.—In the case of a State with a
14 unicameral legislature, the independent redistricting
15 commission established under this subsection shall
16 be composed of—

17 (A) a chair, who shall be appointed by ma-
18 jority vote of the other members of the commis-
19 sion; and

20 (B) an equal number of members (but not
21 fewer than 2) from each of the following cat-
22 egories:

23 (i) Members appointed by a member
24 of the legislature who shall be selected by
25 the chair of the Government Affairs Com-

1 mittee of the legislature to represent the
2 State political party whose candidate for
3 chief executive of the State received the
4 greatest number of votes on average in the
5 3 most recent general elections for that of-
6 fice.

7 (ii) Members appointed by a member
8 of the legislature who shall be selected by
9 the chair of the Government Affairs Com-
10 mittee of the legislature to represent the
11 State political party whose candidate for
12 chief executive of the State received the
13 second greatest number of votes on aver-
14 age in the 3 most recent general elections
15 for that office.

16 (3) ELIGIBILITY.—An individual is eligible to
17 serve as a member of an independent redistricting
18 commission if—

19 (A) as of the date of appointment, the in-
20 dividual is registered to vote in elections for
21 Federal office held in the State, and was reg-
22 istered to vote in the 2 most recent general
23 elections for Federal office held in the State;

24 (B) the individual did not hold public office
25 or run as a candidate for election for public of-

1 fice, or serve as an employee of a political party
2 or candidate for election for public office, at
3 any time during the 4-year period ending on the
4 December 31 preceding the date of appoint-
5 ment; and

6 (C) the individual certifies that he or she
7 will not run as a candidate for the office of
8 Representative in the Congress until after the
9 next apportionment of Representatives under
10 section 22(a) of the Act entitled “An Act to
11 provide for the fifteenth and subsequent decen-
12 nial censuses and to provide for an apportion-
13 ment of Representatives in Congress”, approved
14 June 18, 1929 (2 U.S.C. 2a).

15 (4) VACANCY.—A vacancy in the commission
16 shall be filled in the manner in which the original
17 appointment was made.

18 (5) DEADLINE.—Each State shall establish a
19 commission under this section, and the members of
20 the commission shall appoint the commission’s chair,
21 not later than the first February 1 which occurs
22 after the chief executive of a State receives the State
23 apportionment notice.

24 (6) APPOINTMENT OF CHAIR REQUIRED PRIOR
25 TO DEVELOPMENT OF REDISTRICTING PLAN.—The

1 commission may not take any action to develop a re-
2 districting plan for the State under subsection (b)
3 until the appointment of the commission's chair in
4 accordance with paragraph (1)(E).

5 (7) REQUIRING ALL MEETINGS TO BE OPEN TO
6 PUBLIC.—The commission shall hold each of its
7 meetings in public.

8 (8) INTERNET SITE.—As soon as practicable
9 after establishing the commission, the State shall es-
10 tablish and maintain a public Internet site for the
11 commission which meets the following requirements:

12 (A) The site is updated continuously to
13 provide advance notice of commission meetings
14 and to otherwise provide timely information on
15 the activities of the commission.

16 (B) The site contains the most recent
17 available information from the Bureau of the
18 Census on voting-age population, voter registra-
19 tion, and voting in the State, including pre-
20 cinct-level and census tract-level data with re-
21 spect to such information, as well as detailed
22 maps reflecting such information.

23 (C) The site includes interactive software
24 to enable any individual to design a redis-
25 tricting plan for the State on the basis of the

1 information described in subparagraph (B), in
2 accordance with the criteria described in sub-
3 section (b)(1).

4 (D) The site permits any individual to sub-
5 mit a proposed redistricting plan to the com-
6 mission, and to submit questions, comments,
7 and other information with respect to the com-
8 mission’s activities.

9 (b) DEVELOPMENT OF REDISTRICTING PLAN.—

10 (1) CRITERIA.—The independent redistricting
11 commission of a State shall develop a redistricting
12 plan for the State in accordance with the following
13 criteria:

14 (A) Adherence to the “one person, one
15 vote” standard and other requirements imposed
16 under the Constitution of the United States.

17 (B) To the greatest extent mathematically
18 possible, ensuring that the population of each
19 Congressional district in the State does not
20 vary from the population of any other Congres-
21 sional district in the State (as determined on
22 the basis of the total count of persons of the
23 most recent decennial census conducted by the
24 Bureau of the Census).

1 (C) Consistency with any applicable re-
2 quirements of the Voting Rights Act of 1965
3 and other Federal laws.

4 (D) To the greatest extent practicable, the
5 maintenance of the geographic continuity of the
6 political subdivisions of the State which are in-
7 cluded in the same Congressional district, in the
8 following order of priority:

9 (i) The continuity of counties or par-
10 ishes.

11 (ii) The continuity of municipalities.

12 (iii) The continuity of neighborhoods
13 (as determined on the basis of census
14 tracts or other relevant information).

15 (E) To the greatest extent practicable,
16 maintaining compact districts (in accordance
17 with such standards as the commission may es-
18 tablish).

19 (F) Ensuring that districts are contiguous
20 (except to the extent necessary to include any
21 area which is surrounded by a body of water).

22 (2) FACTORS PROHIBITED FROM CONSIDER-
23 ATION.—In developing the redistricting plan for the
24 State, the independent redistricting commission may
25 not take into consideration any of the following fac-

1 tors, except to the extent necessary to comply with
2 the Voting Rights Act of 1965:

3 (A) The voting history of the population of
4 a Congressional district, except that the com-
5 mission may take such history into consider-
6 ation to the extent necessary to comply with
7 any State law which requires the establishment
8 of competitive Congressional districts.

9 (B) The political party affiliation of the
10 population of a district.

11 (C) The residence of incumbent Members
12 of the House of Representatives in the State.

13 (3) SOLICITATION OF PUBLIC INPUT IN DEVEL-
14 OPMENT OF PLANS.—The commission shall solicit
15 and take into consideration comments from the pub-
16 lic in developing the redistricting plan for the State
17 by holding meetings in representative geographic re-
18 gions of the State at which members of the public
19 may provide such input, and by otherwise soliciting
20 input from the public (including redistricting plans
21 developed by members of the public) through the
22 commission Internet site and other methods.

23 (4) PUBLIC NOTICE OF PLANS PRIOR TO SUB-
24 MISSION TO LEGISLATURE.—Not fewer than 7 days
25 prior to submitting a redistricting plan to the legis-

1 lature of the State under subsection (c)(1), the com-
2 mission shall post on the commission Internet site
3 and cause to have published in newspapers of gen-
4 eral circulation throughout the State a notice con-
5 taining the following information:

6 (A) A detailed version of the plan, includ-
7 ing a map showing each Congressional district
8 established under the plan and the voting age
9 population by race of each such district.

10 (B) A statement providing specific infor-
11 mation on how the adoption of the plan would
12 serve the public interest.

13 (C) Any dissenting statements of any
14 members of the commission who did not ap-
15 prove of the submission of the plan to the legis-
16 lature.

17 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

18 (1) IN GENERAL.—At any time prior to the
19 first November 1 which occurs after the chief execu-
20 tive of the State receives the State apportionment
21 notice, the commission may submit redistricting
22 plans developed by the commission under this sec-
23 tion to the legislature of the State.

1 (2) CONSIDERATION OF PLAN BY LEGISLA-
2 TURE.—After receiving any redistricting plan under
3 paragraph (1), the legislature of a State may—

4 (A) approve the plan as submitted by the
5 commission without amendment and forward
6 the plan to the chief executive of the State; or

7 (B) reject the plan.

8 (3) ENACTMENT OF PLAN.—

9 (A) IN GENERAL.—A redistricting plan de-
10 veloped by the commission shall be considered
11 to be enacted into law only if the plan is for-
12 warded to the chief executive of the State pur-
13 suant to paragraph (2)(A) and—

14 (i) the chief executive approves the
15 plan as forwarded by the legislature with-
16 out amendment; or

17 (ii) the chief executive vetoes the plan
18 and the legislature overrides the veto in ac-
19 cordance with the applicable law of the
20 State, except that at no time may the plan
21 be amended.

22 (B) SPECIAL RULE.—In the case of a
23 State in which the chief executive is prohibited
24 under State law from acting on a redistricting
25 plan, a redistricting plan developed by the com-

1 mission shall be considered to be enacted into
2 law if—

3 (i) the plan is submitted to the legisla-
4 ture of the State; and

5 (ii) the legislature approves the plan
6 as submitted by the commission without
7 amendment.

8 (d) REQUIRING MAJORITY APPROVAL FOR AC-
9 TIONS.—The independent redistricting commission of a
10 State may not submit a redistricting plan to the State leg-
11 islature, or take any other action, without the approval
12 of at least a majority of its members given at a meeting
13 at which at least a majority of its members are present.

14 (e) TERMINATION.—

15 (1) IN GENERAL.—The independent redis-
16 tricting commission of a State shall terminate on the
17 day after the date of the first regularly scheduled
18 general election for Federal office which occurs after
19 the chief executive of the State receives the State
20 apportionment notice.

21 (2) PRESERVATION OF RECORDS.—The State
22 shall ensure that the records of the independent re-
23 districting commission are retained in the appro-
24 priate State archive in such manner as may be nec-
25 essary to enable the State to respond to any civil ac-

1 tion brought with respect to Congressional redistricting in the State.

3 **SEC. 5. SELECTION OF PLAN BY COURTS.**

4 (a) STATE COURT.—

5 (1) SUBMISSION AND SELECTION OF PLAN.—If
6 a redistricting plan developed by the independent redistricting commission of a State is not enacted into
7 law under section 4(c)(3) by the first November 1
8 which occurs after the chief executive of the State
9 receives the State apportionment notice, the commission may submit redistricting plans developed by the
10 commission in accordance with section 4 to the highest court of the State, which may select and publish
11 one of the submitted plans to serve as the redistricting plan for the State.

12 (2) NO MODIFICATION OF PLAN PERMITTED.—
13 The highest court of a State may not modify any redistricting plan submitted under this subsection.

14 (b) FEDERAL COURT.—

15 (1) FAILURE OF STATE COURT TO SELECT
16 PLAN.—

17 (A) NOTICE TO COURT IF PLAN NOT SELECTED BY STATE COURT.—If a State court to
18 whom redistricting plans have been submitted
19 under subsection (a) does not select a plan to

1 serve as the redistricting plan for the State
2 under such subsection on or before the first De-
3 cember 1 which occurs after the chief executive
4 of the State receives the State apportionment
5 notice, the State shall file a notice with the
6 United States district court for the district in
7 which the capital of the State is located.

8 (B) DEVELOPMENT AND SELECTION OF
9 PLAN BY FEDERAL COURT.—Not later than 30
10 days after receiving a notice from a State under
11 subparagraph (A), the court shall develop and
12 publish a final redistricting plan for the State.

13 (2) FAILURE OF STATE TO ESTABLISH COMMIS-
14 SION.—

15 (A) IN GENERAL.—If a State does not es-
16 tablish an independent redistricting commission
17 under section 4 by the first September 1 which
18 occurs after the chief executive of the State re-
19 ceives the State apportionment notice—

20 (i) the State may not establish the
21 commission; and

22 (ii) the United States district court
23 for the district in which the capital of the
24 State is located shall develop and publish
25 a final redistricting plan for the State not

1 later than the first December 1 which oc-
2 curs after the chief executive of the State
3 receives the State apportionment notice.

4 (B) DETERMINATION OF FAILURE TO ES-
5 TABLISH COMMISSION.—For purposes of sub-
6 paragraph (A), a State shall be considered to
7 have failed to establish an independent redistricting
8 commission by the date referred to in
9 such subparagraph if a chair of the commission
10 has not been appointed on or before such date.

11 (3) CRITERIA.—It is the sense of Congress
12 that, in developing a redistricting plan for a State
13 under this subsection, the district court should ad-
14 here to the same terms and conditions that applied
15 to the development of the plan of the commission
16 under section 4(b).

17 (c) ACCESS TO INFORMATION AND RECORDS OF
18 COMMISSION.—A court which is required to select, pub-
19 lish, or develop a redistricting plan for a State under this
20 section shall have access to any information, data, soft-
21 ware, or other records and material used by the inde-
22 pendent redistricting commission of the State in carrying
23 out its duties under this Act.

1 **SEC. 6. SPECIAL RULE FOR REDISTRICTING CONDUCTED**
2 **UNDER ORDER OF FEDERAL COURT.**

3 If a Federal court requires a State to conduct redis-
4 tricting subsequent to an apportionment of Representa-
5 tives in the State in order to comply with the Constitution
6 or to enforce the Voting Rights Act of 1965, sections 4
7 and 5 shall apply with respect to the redistricting, except
8 that—

9 (1) the deadline for the establishment of the
10 independent redistricting commission and the ap-
11 pointment of the commission's chair (as described in
12 section 4(a)(5)) shall be the expiration of the 30-day
13 period which begins on the date of the final order of
14 the Federal court to conduct the redistricting;

15 (2) the deadline for the submission of redis-
16 tricting plans to the legislature by the commission,
17 and the date of the termination of the commission
18 (as described in section 4(c)(1) and section 4(e))
19 shall be the expiration of the 150-day period which
20 begins on the date of the final order of the Federal
21 court to conduct the redistricting;

22 (3) the deadline for the selection and publica-
23 tion of the plan by the highest court of the State (as
24 described in section 5(a)) shall be the expiration of
25 the 180-day period which begins on the date of the

1 final order of the Federal court to conduct the redistricting; and

2
3 (4) the deadline for the selection and publication of the plan by the district court of the United States (as described in section 5(b)) shall be the expiration of the 210-day period which begins on the date of the final order of the Federal court to conduct the redistricting.

9 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT REDISTRICTING.**

10
11 (a) **AUTHORIZATION OF PAYMENTS.**—Subject to subsection (d), not later than 30 days after a State receives a State apportionment notice, the Election Assistance Commission shall make a payment to the State in an amount equal to the product of—

12
13 (1) the number of Representatives to which the State is entitled, as provided under the notice; and

14
15 (2) \$150,000.

16
17 (b) **USE OF FUNDS.**—A State shall use the payment made under this section to establish and operate the State’s independent redistricting commission, to implement the State redistricting plan, and to otherwise carry out Congressional redistricting in the State.

18
19 (c) **NO PAYMENT TO STATES WITH SINGLE MEMBER.**—The Election Assistance Commission shall not

1 make a payment under this section to any State which
2 is not entitled to more than one Representative under its
3 State apportionment notice.

4 (d) REQUIRING ESTABLISHMENT OF COMMISSION AS
5 CONDITION OF PAYMENT.—The Election Assistance Com-
6 mission may not make a payment to a State under this
7 section until the State certifies to the Commission that
8 the State has established an independent redistricting
9 commission, and that a chair of the commission has been
10 appointed, in accordance with section 4.

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated such sums as may be
13 necessary for payments under this section.

14 **SEC. 8. STATE APPORTIONMENT NOTICE DEFINED.**

15 In this Act, the “State apportionment notice” means,
16 with respect to a State, the notice sent to the State from
17 the Clerk of the House of Representatives under section
18 22(b) of the Act entitled “An Act to provide for the fif-
19 teenth and subsequent decennial censuses and to provide
20 for an apportionment of Representatives in Congress”, ap-
21 proved June 18, 1929 (2 U.S.C. 2a), of the number of
22 Representatives to which the State is entitled.

1 **SEC. 9. NO EFFECT ON ELECTIONS FOR STATE AND LOCAL**
2 **OFFICE.**

3 Nothing in this Act or in any amendment made by
4 this Act may be construed to affect the manner in which
5 a State carries out elections for State or local office, in-
6 cluding the process by which a State establishes the dis-
7 tricts used in such elections.

8 **SEC. 10. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act shall
10 apply with respect to any Congressional redistricting
11 which occurs after the regular decennial census conducted
12 during 2020.

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