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H. R. 278

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 15, 2013

Mr. COHEN (for himself, Mr. PETERSON, Mr. BLUMENAUER, Mr. MICHAUD, Mr. LOEBSACK, Mr. DINGELL, and Mr. KIND) introduced the following bill; which was referred to the Committee on the Judiciary

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL AUTHORITY.

(a) SHORT TITLE.—This Act may be cited as the "John Tanner Fairness and Independence in Redistricting Act".

(b) FINDING.—Congress finds that it has the authority to establish the terms and conditions States must follow in carrying out Congressional redistricting after an apportionment of Members of the House of Representatives because—

(1) the authority granted to Congress under article I, section 4 of the Constitution of the United States gives Congress the power to enact laws governing the time, place, and manner of elections for Members of the House of Representatives; and

(2) the authority granted to Congress under section 5 of the fourteenth amendment to the Constitution gives Congress the power to enact laws to enforce section 2 of such amendment, which requires Representatives to be apportioned among the several States according to their number.

SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER AN APPORTIONMENT.

The Act entitled ''An Act for the relief of Doctor Ricardo Vallejo Samala and to provide for congressional redistricting'', approved December 14, 1967 (2 U.S.C. 2c), is amended by adding at the end the following: ''A State which has been redistricted in the manner provided by law after an apportionment under section 22(a) of the Act entitled 'An Act to provide for the fifteenth and subsequent

decennial censuses and to provide for an apportionment of Representatives in Congress', approved June 18, 1929 (2 U.S.C. 2a), may not be redistricted again until after the next apportionment of Representatives under such section, unless a court requires the State to conduct such subsequent redistricting to comply with the Constitution or to enforce the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).''.

SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED THROUGH PLAN OF INDEPENDENT STATE COMMISSION OR PLAN OF HIGHEST STATE COURT.

(a) USE OF PLAN REQUIRED.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any Congressional redistricting conducted by a State shall be conducted in accordance with—

(A) the redistricting plan developed by the independent redistricting commission established in the State, in accordance with section 4; or

(B) if the plan developed by such commission is not enacted into law, the redistricting plan selected by the highest court in the State

or developed by a United States district court, in accordance with section 5.

(2) OTHER CRITERIA AND PROCEDURES PERMITTED.—Nothing in this Act or the amendments made by this Act may be construed to prohibit a State from conducting Congressional redistricting in accordance with such criteria and procedures as the State considers appropriate, to the extent that such criteria and procedures are consistent with the applicable requirements of this Act and the amendments made by this Act.

(b) CONFORMING AMENDMENT.—Section 22(c) of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for an apportionment of Representatives in Congress'', approved June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking ''in the manner provided by the law thereof'' and inserting: ''in the manner provided by the John Tanner Fairness and Independence in Redistricting Act''.

SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.

(a) ADMINISTRATIVE MATTERS.—

(1) APPOINTMENT OF MEMBERS.—Each State shall establish an independent redistricting commission composed of—

(A) a chair, who shall be appointed by majority vote of the other members of the commission; and

(B) an equal number of members (but not fewer than 1) from each of the following categories:

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

(ii) Members appointed by a member of the upper house of the State legislature who represents the political party with the second greatest number of seats in that house.

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

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

(2) SPECIAL RULE FOR STATES WITH UNICAMERAL LEGISLATURE.—In the case of a State with a unicameral legislature, the independent redistricting commission established under this subsection shall be composed of—

(A) a chair, who shall be appointed by majority vote of the other members of the commission; and

(B) an equal number of members (but not fewer than 2) from each of the following categories:

(i) Members appointed by a member of the legislature who shall be selected by the chair of the Government Affairs Committee of the legislature to represent the State political party whose candidate for chief executive of the State received the greatest number of votes on average in the 3 most recent general elections for that office.

(ii) Members appointed by a member of the legislature who shall be selected by the chair of the Government Affairs Committee of the legislature to represent the State political party whose candidate for

chief executive of the State received the second greatest number of votes on average in the 3 most recent general elections for that office.

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

(A) as of the date of appointment, the individual is registered to vote in elections for Federal office held in the State, and was registered to vote in the 2 most recent general elections for Federal office held in the State;

(B) the individual did not hold public office or run as a candidate for election for public office, or serve as an employee of a political party or candidate for election for public office, at any time during the 4-year period ending on the December 31 preceding the date of appointment; and

(C) the individual certifies that he or she will not run as a candidate for the office of Representative in the Congress until after the next apportionment of Representatives under section 22(a) of the Act entitled "An Act to provide for the fifteenth and subsequent decen-

nial censuses and to provide for an apportionment of Representatives in Congress'', approved June 18, 1929 (2 U.S.C. 2a).

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

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

(6) APPOINTMENT OF CHAIR REQUIRED PRIOR TO DEVELOPMENT OF REDISTRICTING PLAN.—The commission may not take any action to develop a redistricting plan for the State under subsection (b) until the appointment of the commission's chair in accordance with paragraph (1)(E).

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

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

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

(B) The site contains the most recent available information from the Bureau of the Census on voting-age population, voter registration, and voting in the State, including precinct-level and census tract-level data with respect to such information, as well as detailed maps reflecting such information.

(C) The site includes interactive software to enable any individual to design a redistricting plan for the State on the basis of the information described in subparagraph (B), in accordance with the criteria described in subsection (b)(1).

(D) The site permits any individual to submit a proposed redistricting plan to the commission, and to submit questions, comments, and other information with respect to the commission's activities.

(b) DEVELOPMENT OF REDISTRICTING PLAN.—

(1) CRITERIA.—The independent redistricting commission of a State shall develop a redistricting

plan for the State in accordance with the following criteria:

(A) Adherence to the ''one person, one vote'' standard and other requirements imposed under the Constitution of the United States.

(B) To the greatest extent mathematically possible, ensuring that the population of each Congressional district in the State does not vary from the population of any other Congressional district in the State (as determined on the basis of the total count of persons of the most recent decennial census conducted by the Bureau of the Census).

(C) Consistency with any applicable requirements of the Voting Rights Act of 1965 and other Federal laws.

(D) To the greatest extent practicable, the maintenance of the geographic continuity of the political subdivisions of the State which are included in the same Congressional district, in the following order of priority:

(i) The continuity of counties or parishes.

(ii) The continuity of municipalities.

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

(E) To the greatest extent practicable, maintaining compact districts (in accordance with such standards as the commission may establish).

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

(2) FACTORS PROHIBITED FROM CONSIDERATION.—In developing the redistricting plan for the State, the independent redistricting commission may not take into consideration any of the following factors, except to the extent necessary to comply with the Voting Rights Act of 1965:

(A) The voting history of the population of a Congressional district, except that the commission may take such history into consideration to the extent necessary to comply with any State law which requires the establishment of competitive Congressional districts.

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

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

(3) SOLICITATION OF PUBLIC INPUT IN DEVELOPMENT OF PLANS.—The commission shall solicit and take into consideration comments from the public in developing the redistricting plan for the State by holding meetings in representative geographic regions of the State at which members of the public may provide such input, and by otherwise soliciting input from the public (including redistricting plans developed by members of the public) through the commission Internet site and other methods.

(4) PUBLIC NOTICE OF PLANS PRIOR TO SUBMISSION TO LEGISLATURE.—Not fewer than 7 days prior to submitting a redistricting plan to the legislature of the State under subsection (c)(1), the commission shall post on the commission Internet site and cause to have published in newspapers of general circulation throughout the State a notice containing the following information:

(A) A detailed version of the plan, including a map showing each Congressional district established under the plan and the voting age population by race of each such district.

(B) A statement providing specific information on how the adoption of the plan would serve the public interest.

(C) Any dissenting statements of any members of the commission who did not approve of the submission of the plan to the legislature.

(c) SUBMISSION OF PLANS TO LEGISLATURE.—

(1) IN GENERAL.—At any time prior to the first November 1 which occurs after the chief executive of the State receives the State apportionment notice, the commission may submit redistricting plans developed by the commission under this section to the legislature of the State.

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

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

(B) reject the plan.

(3) ENACTMENT OF PLAN.—

(A) IN GENERAL.—A redistricting plan developed by the commission shall be considered to be enacted into law only if the plan is for-

warded to the chief executive of the State pursuant to paragraph (2)(A) and—

(i) the chief executive approves the plan as forwarded by the legislature without amendment; or

(ii) the chief executive vetoes the plan and the legislature overrides the veto in accordance with the applicable law of the State, except that at no time may the plan be amended.

(B) SPECIAL RULE.—In the case of a State in which the chief executive is prohibited under State law from acting on a redistricting plan, a redistricting plan developed by the commission shall be considered to be enacted into law if—

(i) the plan is submitted to the legislature of the State; and

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

(d) REQUIRING MAJORITY APPROVAL FOR ACTIONS.—The independent redistricting commission of a State may not submit a redistricting plan to the State legislature, or take any other action, without the approval

of at least a majority of its members given at a meeting at which at least a majority of its members are present.

(e) TERMINATION.—

(1) IN GENERAL.—The independent redistricting commission of a State shall terminate on the day after the date of the first regularly scheduled general election for Federal office which occurs after the chief executive of the State receives the State apportionment notice.

(2) PRESERVATION OF RECORDS.—The State shall ensure that the records of the independent redistricting commission are retained in the appropriate State archive in such manner as may be necessary to enable the State to respond to any civil action brought with respect to Congressional redistricting in the State.

SEC. 5. SELECTION OF PLAN BY COURTS.

(a) STATE COURT.—

(1) SUBMISSION AND SELECTION OF PLAN.—If a redistricting plan developed by the independent redistricting commission of a State is not enacted into law under section 4(c)(3) by the first November 1 which occurs after the chief executive of the State receives the State apportionment notice, the commission may submit redistricting plans developed by the

commission in accordance with section 4 to the highest court of the State, which may select and publish one of the submitted plans to serve as the redistricting plan for the State.

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

(b) FEDERAL COURT.—

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

(A) NOTICE TO COURT IF PLAN NOT SELECTED BY STATE COURT.—If a State court to whom redistricting plans have been submitted under subsection (a) does not select a plan to serve as the redistricting plan for the State under such subsection on or before the first December 1 which occurs after the chief executive of the State receives the State apportionment notice, the State shall file a notice with the United States district court for the district in which the capital of the State is located.

(B) DEVELOPMENT AND SELECTION OF PLAN BY FEDERAL COURT.—Not later than 30 days after receiving a notice from a State under

subparagraph (A), the court shall develop and publish a final redistricting plan for the State.

(2) FAILURE OF STATE TO ESTABLISH COMMISSION.—

(A) IN GENERAL.—If a State does not establish an independent redistricting commission under section 4 by the first September 1 which occurs after the chief executive of the State receives the State apportionment notice—

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

(ii) the United States district court for the district in which the capital of the State is located shall develop and publish a final redistricting plan for the State not later than the first December 1 which occurs after the chief executive of the State receives the State apportionment notice.

(B) DETERMINATION OF FAILURE TO ESTABLISH COMMISSION.—For purposes of subparagraph (A), a State shall be considered to have failed to establish an independent redistricting commission by the date referred to in such subparagraph if a chair of the commission has not been appointed on or before such date.

(3) CRITERIA.—It is the sense of Congress that, in developing a redistricting plan for a State under this subsection, the district court should adhere to the same terms and conditions that applied to the development of the plan of the commission under section 4(b).

(c) ACCESS TO INFORMATION AND RECORDS OF COMMISSION.—A court which is required to select, publish, or develop a redistricting plan for a State under this section shall have access to any information, data, software, or other records and material used by the independent redistricting commission of the State in carrying out its duties under this Act.

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

If a Federal court requires a State to conduct redistricting subsequent to an apportionment of Representatives in the State in order to comply with the Constitution or to enforce the Voting Rights Act of 1965, sections 4 and 5 shall apply with respect to the redistricting, except that—

(1) the deadline for the establishment of the independent redistricting commission and the appointment of the commission's chair (as described in section 4(a)(5)) shall be the expiration of the 30-day

period which begins on the date of the final order of the Federal court to conduct the redistricting;

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

(3) the deadline for the selection and publication of the plan by the highest court of the State (as described in section 5(a)) shall be the expiration of the 180-day period which begins on the date of the final order of the Federal court to conduct the redistricting; and

(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.

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

(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—

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

(2) $150,000.

(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.

(c) NO PAYMENT TO STATES WITH SINGLE MEMBER.—The Election Assistance Commission shall not make a payment under this section to any State which is not entitled to more than one Representative under its State apportionment notice.

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

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

SEC. 8. STATE APPORTIONMENT NOTICE DEFINED.

In this Act, the ''State apportionment notice'' means, with respect to a State, the notice sent to the State from the Clerk of the House of Representatives under section 22(b) of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for an apportionment of Representatives in Congress'', approved June 18, 1929 (2 U.S.C. 2a), of the number of Representatives to which the State is entitled.

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

Nothing in this Act or in any amendment made by this Act may be construed to affect the manner in which a State carries out elections for State or local office, including the process by which a State establishes the districts used in such elections.

SEC. 10. EFFECTIVE DATE.

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

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