

113TH CONGRESS  
1ST SESSION

# 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.

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## 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.

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

3 **SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL**  
4 **AUTHORITY.**

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

1 (b) FINDING.—Congress finds that it has the author-  
2 ity to establish the terms and conditions States must fol-  
3 low in carrying out Congressional redistricting after an  
4 apportionment of Members of the House of Representa-  
5 tives because—

6 (1) the authority granted to Congress under ar-  
7 ticle I, section 4 of the Constitution of the United  
8 States gives Congress the power to enact laws gov-  
9 erning the time, place, and manner of elections for  
10 Members of the House of Representatives; and

11 (2) the authority granted to Congress under  
12 section 5 of the fourteenth amendment to the Con-  
13 stitution gives Congress the power to enact laws to  
14 enforce section 2 of such amendment, which requires  
15 Representatives to be apportioned among the several  
16 States according to their number.

17 **SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER**  
18 **AN APPORTIONMENT.**

19 The Act entitled “An Act for the relief of Doctor Ri-  
20 cardo Vallejo Samala and to provide for congressional re-  
21 districting”, approved December 14, 1967 (2 U.S.C. 2e),  
22 is amended by adding at the end the following: “A State  
23 which has been redistricted in the manner provided by law  
24 after an apportionment under section 22(a) of the Act en-  
25 titled ‘An Act to provide for the fifteenth and subsequent

1 decennial censuses and to provide for an apportionment  
2 of Representatives in Congress', approved June 18, 1929  
3 (2 U.S.C. 2a), may not be redistricted again until after  
4 the next apportionment of Representatives under such sec-  
5 tion, unless a court requires the State to conduct such  
6 subsequent redistricting to comply with the Constitution  
7 or to enforce the Voting Rights Act of 1965 (42 U.S.C.  
8 1973 et seq.).”.

9 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**  
10 **THROUGH PLAN OF INDEPENDENT STATE**  
11 **COMMISSION OR PLAN OF HIGHEST STATE**  
12 **COURT.**

13 (a) USE OF PLAN REQUIRED.—

14 (1) IN GENERAL.—Notwithstanding any other  
15 provision of law, any Congressional redistricting con-  
16 ducted by a State shall be conducted in accordance  
17 with—

18 (A) the redistricting plan developed by the  
19 independent redistricting commission estab-  
20 lished in the State, in accordance with section  
21 4; or

22 (B) if the plan developed by such commis-  
23 sion is not enacted into law, the redistricting  
24 plan selected by the highest court in the State

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

3 (2) OTHER CRITERIA AND PROCEDURES PER-  
4 MITTED.—Nothing in this Act or the amendments  
5 made by this Act may be construed to prohibit a  
6 State from conducting Congressional redistricting in  
7 accordance with such criteria and procedures as the  
8 State considers appropriate, to the extent that such  
9 criteria and procedures are consistent with the appli-  
10 cable requirements of this Act and the amendments  
11 made by this Act.

12 (b) CONFORMING AMENDMENT.—Section 22(c) of  
13 the Act entitled “An Act to provide for the fifteenth and  
14 subsequent decennial censuses and to provide for an ap-  
15 portionment of Representatives in Congress”, approved  
16 June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking  
17 “in the manner provided by the law thereof” and insert-  
18 ing: “in the manner provided by the John Tanner Fair-  
19 ness and Independence in Redistricting Act”.

20 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

21 (a) ADMINISTRATIVE MATTERS.—

22 (1) APPOINTMENT OF MEMBERS.—Each State  
23 shall establish an independent redistricting commis-  
24 sion composed of—

1 (A) a chair, who shall be appointed by ma-  
2 jority vote of the other members of the commis-  
3 sion; and

4 (B) an equal number of members (but not  
5 fewer than 1) from each of the following cat-  
6 egories:

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

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

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

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

1           (2) SPECIAL RULE FOR STATES WITH UNICAM-  
2           ERAL LEGISLATURE.—In the case of a State with a  
3           unicameral legislature, the independent redistricting  
4           commission established under this subsection shall  
5           be composed of—

6                   (A) a chair, who shall be appointed by ma-  
7                   jority vote of the other members of the commis-  
8                   sion; and

9                   (B) an equal number of members (but not  
10                  fewer than 2) from each of the following cat-  
11                  egories:

12                           (i) Members appointed by a member  
13                           of the legislature who shall be selected by  
14                           the chair of the Government Affairs Com-  
15                           mittee of the legislature to represent the  
16                           State political party whose candidate for  
17                           chief executive of the State received the  
18                           greatest number of votes on average in the  
19                           3 most recent general elections for that of-  
20                           fice.

21                           (ii) Members appointed by a member  
22                           of the legislature who shall be selected by  
23                           the chair of the Government Affairs Com-  
24                           mittee of the legislature to represent the  
25                           State political party whose candidate for

1 chief executive of the State received the  
2 second greatest number of votes on aver-  
3 age in the 3 most recent general elections  
4 for that office.

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

8 (A) as of the date of appointment, the in-  
9 dividual is registered to vote in elections for  
10 Federal office held in the State, and was reg-  
11 istered to vote in the 2 most recent general  
12 elections for Federal office held in the State;

13 (B) the individual did not hold public office  
14 or run as a candidate for election for public of-  
15 fice, or serve as an employee of a political party  
16 or candidate for election for public office, at  
17 any time during the 4-year period ending on the  
18 December 31 preceding the date of appoint-  
19 ment; and

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

1            nial censuses and to provide for an apportion-  
2            ment of Representatives in Congress”, approved  
3            June 18, 1929 (2 U.S.C. 2a).

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

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

13          (6) APPOINTMENT OF CHAIR REQUIRED PRIOR  
14          TO DEVELOPMENT OF REDISTRICTING PLAN.—The  
15          commission may not take any action to develop a re-  
16          districting plan for the State under subsection (b)  
17          until the appointment of the commission’s chair in  
18          accordance with paragraph (1)(E).

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

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



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

5           (B) The site contains the most recent  
6 available information from the Bureau of the  
7 Census on voting-age population, voter registra-  
8 tion, and voting in the State, including pre-  
9 cinct-level and census tract-level data with re-  
10 spect to such information, as well as detailed  
11 maps reflecting such information.

12           (C) The site includes interactive software  
13 to enable any individual to design a redistricting  
14 plan for the State on the basis of the  
15 information described in subparagraph (B), in  
16 accordance with the criteria described in sub-  
17 section (b)(1).

18           (D) The site permits any individual to sub-  
19 mit a proposed redistricting plan to the com-  
20 mission, and to submit questions, comments,  
21 and other information with respect to the com-  
22 mission's activities.

23           (b) DEVELOPMENT OF REDISTRICTING PLAN.—

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

1 plan for the State in accordance with the following  
2 criteria:

3 (A) Adherence to the “one person, one  
4 vote” standard and other requirements imposed  
5 under the Constitution of the United States.

6 (B) To the greatest extent mathematically  
7 possible, ensuring that the population of each  
8 Congressional district in the State does not  
9 vary from the population of any other Congres-  
10 sional district in the State (as determined on  
11 the basis of the total count of persons of the  
12 most recent decennial census conducted by the  
13 Bureau of the Census).

14 (C) Consistency with any applicable re-  
15 quirements of the Voting Rights Act of 1965  
16 and other Federal laws.

17 (D) To the greatest extent practicable, the  
18 maintenance of the geographic continuity of the  
19 political subdivisions of the State which are in-  
20 cluded in the same Congressional district, in the  
21 following order of priority:

22 (i) The continuity of counties or par-  
23 ishes.

24 (ii) The continuity of municipalities.

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

4 (E) To the greatest extent practicable,  
5 maintaining compact districts (in accordance  
6 with such standards as the commission may es-  
7 tablish).

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

11 (2) FACTORS PROHIBITED FROM CONSIDER-  
12 ATION.—In developing the redistricting plan for the  
13 State, the independent redistricting commission may  
14 not take into consideration any of the following fac-  
15 tors, except to the extent necessary to comply with  
16 the Voting Rights Act of 1965:

17 (A) The voting history of the population of  
18 a Congressional district, except that the com-  
19 mission may take such history into consider-  
20 ation to the extent necessary to comply with  
21 any State law which requires the establishment  
22 of competitive Congressional districts.

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

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

3           (3) SOLICITATION OF PUBLIC INPUT IN DEVEL-  
4           OPMENT OF PLANS.—The commission shall solicit  
5           and take into consideration comments from the pub-  
6           lic in developing the redistricting plan for the State  
7           by holding meetings in representative geographic re-  
8           gions of the State at which members of the public  
9           may provide such input, and by otherwise soliciting  
10          input from the public (including redistricting plans  
11          developed by members of the public) through the  
12          commission Internet site and other methods.

13          (4) PUBLIC NOTICE OF PLANS PRIOR TO SUB-  
14          MISSION TO LEGISLATURE.—Not fewer than 7 days  
15          prior to submitting a redistricting plan to the legis-  
16          lature of the State under subsection (c)(1), the com-  
17          mission shall post on the commission Internet site  
18          and cause to have published in newspapers of gen-  
19          eral circulation throughout the State a notice con-  
20          taining the following information:

21                 (A) A detailed version of the plan, includ-  
22                 ing a map showing each Congressional district  
23                 established under the plan and the voting age  
24                 population by race of each such district.

1 (B) A statement providing specific infor-  
2 mation on how the adoption of the plan would  
3 serve the public interest.

4 (C) Any dissenting statements of any  
5 members of the commission who did not ap-  
6 prove of the submission of the plan to the legis-  
7 lature.

8 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

9 (1) IN GENERAL.—At any time prior to the  
10 first November 1 which occurs after the chief execu-  
11 tive of the State receives the State apportionment  
12 notice, the commission may submit redistricting  
13 plans developed by the commission under this sec-  
14 tion to the legislature of the State.

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

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

21 (B) reject the plan.

22 (3) ENACTMENT OF PLAN.—

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

1           warded to the chief executive of the State pur-  
2           suant to paragraph (2)(A) and—

3                   (i) the chief executive approves the  
4                   plan as forwarded by the legislature with-  
5                   out amendment; or

6                   (ii) the chief executive vetoes the plan  
7                   and the legislature overrides the veto in ac-  
8                   cordance with the applicable law of the  
9                   State, except that at no time may the plan  
10                  be amended.

11                (B) SPECIAL RULE.—In the case of a  
12                State in which the chief executive is prohibited  
13                under State law from acting on a redistricting  
14                plan, a redistricting plan developed by the com-  
15                mission shall be considered to be enacted into  
16                law if—

17                   (i) the plan is submitted to the legisla-  
18                   ture of the State; and

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

22                (d) REQUIRING MAJORITY APPROVAL FOR AC-  
23                TIONS.—The independent redistricting commission of a  
24                State may not submit a redistricting plan to the State leg-  
25                islature, or take any other action, without the approval

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

3 (e) TERMINATION.—

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

10 (2) PRESERVATION OF RECORDS.—The State  
11 shall ensure that the records of the independent re-  
12 districting commission are retained in the appro-  
13 priate State archive in such manner as may be nec-  
14 essary to enable the State to respond to any civil ac-  
15 tion brought with respect to Congressional redistricting  
16 in the State.

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

18 (a) STATE COURT.—

19 (1) SUBMISSION AND SELECTION OF PLAN.—If  
20 a redistricting plan developed by the independent re-  
21 districting commission of a State is not enacted into  
22 law under section 4(c)(3) by the first November 1  
23 which occurs after the chief executive of the State  
24 receives the State apportionment notice, the commis-  
25 sion may submit redistricting plans developed by the

1 commission in accordance with section 4 to the high-  
2 est court of the State, which may select and publish  
3 one of the submitted plans to serve as the redistricting  
4 plan for the State.

5 (2) NO MODIFICATION OF PLAN PERMITTED.—

6 The highest court of a State may not modify any re-  
7 districting plan submitted under this subsection.

8 (b) FEDERAL COURT.—

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

11 (A) NOTICE TO COURT IF PLAN NOT SE-  
12 LECTED BY STATE COURT.—If a State court to  
13 whom redistricting plans have been submitted  
14 under subsection (a) does not select a plan to  
15 serve as the redistricting plan for the State  
16 under such subsection on or before the first De-  
17 cember 1 which occurs after the chief executive  
18 of the State receives the State apportionment  
19 notice, the State shall file a notice with the  
20 United States district court for the district in  
21 which the capital of the State is located.

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



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

3           (2) FAILURE OF STATE TO ESTABLISH COMMIS-  
4           SION.—

5           (A) IN GENERAL.—If a State does not es-  
6           tablish an independent redistricting commission  
7           under section 4 by the first September 1 which  
8           occurs after the chief executive of the State re-  
9           ceives the State apportionment notice—

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

12           (ii) the United States district court  
13           for the district in which the capital of the  
14           State is located shall develop and publish  
15           a final redistricting plan for the State not  
16           later than the first December 1 which oc-  
17           curs after the chief executive of the State  
18           receives the State apportionment notice.

19           (B) DETERMINATION OF FAILURE TO ES-  
20           TABLISH COMMISSION.—For purposes of sub-  
21           paragraph (A), a State shall be considered to  
22           have failed to establish an independent redis-  
23           tricting commission by the date referred to in  
24           such subparagraph if a chair of the commission  
25           has not been appointed on or before such date.

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

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

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

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

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

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

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

10 (3) the deadline for the selection and publica-  
11 tion of the plan by the highest court of the State (as  
12 described in section 5(a)) shall be the expiration of  
13 the 180-day period which begins on the date of the  
14 final order of the Federal court to conduct the redis-  
15 tricting; and

16 (4) the deadline for the selection and publica-  
17 tion of the plan by the district court of the United  
18 States (as described in section 5(b)) shall be the ex-  
19 piration of the 210-day period which begins on the  
20 date of the final order of the Federal court to con-  
21 duct the redistricting.

22 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT REDIS-**  
23 **TRICTING.**

24 (a) **AUTHORIZATION OF PAYMENTS.**—Subject to sub-  
25 section (d), not later than 30 days after a State receives

1 a State apportionment notice, the Election Assistance  
2 Commission shall make a payment to the State in an  
3 amount equal to the product of—

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

6 (2) \$150,000.

7 (b) USE OF FUNDS.—A State shall use the payment  
8 made under this section to establish and operate the  
9 State’s independent redistricting commission, to imple-  
10 ment the State redistricting plan, and to otherwise carry  
11 out Congressional redistricting in the State.

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

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

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

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

5 In this Act, the “State apportionment notice” means,  
6 with respect to a State, the notice sent to the State from  
7 the Clerk of the House of Representatives under section  
8 22(b) of the Act entitled “An Act to provide for the fif-  
9 teenth and subsequent decennial censuses and to provide  
10 for an apportionment of Representatives in Congress”, ap-  
11 proved June 18, 1929 (2 U.S.C. 2a), of the number of  
12 Representatives to which the State is entitled.

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

15 Nothing in this Act or in any amendment made by  
16 this Act may be construed to affect the manner in which  
17 a State carries out elections for State or local office, in-  
18 cluding the process by which a State establishes the dis-  
19 tricts used in such elections.

20 **SEC. 10. EFFECTIVE DATE.**

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

○