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H.R.1/S.1 Primer

Jeffrey M. Wice

New York Law School, jeffrey.wice@nyls.edu

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H.R. 1 / S. 1 & Redistricting: A Primer for State Officials

New York Census and Redistricting Institute
New York Law School

Jeffrey M. Wice, Adjunct Professor and Senior Fellow
Nicholas P. Stabile, Fellow

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I. Introduction & Summary

H.R. 1—the For the People Act—mandates significant changes to states’ redistricting processes, beginning with the post-2020 census redistricting in 2021. Under H.R. 1, a state’s redistricting plan must be approved by an independent redistricting commission, and, if not, a federal three-judge court will draw the district lines. [2401(a).]¹

H.R. 1 also requires states to submit the final redistricting plan to the Department of Justice prior to enactment “for administrative review”. [2413(c)(5), Mgr.]

H.R. 1 and S. 1 contain the same substantive requirements, except as noted below.

A state’s Independent Redistricting Commission must have 15 members who are selected after a public application process. Commissioners are divided into three categories:

- (1) five members affiliated with the party with the highest-vote in the last federal election,
- (2) five members affiliated with the party with second-most votes, and
- (3) five members unaffiliated with the above two parties.

To begin the appointment process, each State must designate or create a Nonpartisan Agency, which will choose a representative 36-member Selection Pool from qualified public applicants. Then, a politically-appointed Select Committee must approve that Selection Pool. Upon approval, the first six Commissioners are randomly chosen from the 36-member Selection Pool, with two Commissioners from each of the three categories. Those six Commissioners then appoint the final nine Commissioners. [2411(a).]

In creating and developing the redistricting map, the 15-member Commission must hold at least six public hearings (four in 2021), take public comment, and maintain a website. [2413, Mgr.] Approving a preliminary and final map requires a majority vote of the Commission, including at least one vote from a member in each of the three categories: party with the most votes, party with the second most votes, and unaffiliated. [2411(b).] The redistricting map must comply with federal law, including “by creating any districts where two or more politically cohesive (e.g., racial) groups . . . are able to elect representatives of choice in coalition with one another” under the Voting Rights Act. The map also must provide “racial, ethnic, and language minorities with an equal opportunity” to participate and elect candidates of their choice; and “respect

¹ All cites are to the sections of the law amended by H.R. 1 or by the H.R. 1 Manager’s Amendment (as denoted by Mgr.).

communities of interest, neighborhoods, and political subdivisions to the extent practicable.” Maps cannot “unduly favor or disfavor any political party.” [2413, Mgr.]

A state’s existing redistricting commission may qualify as an independent redistricting commission under H.R. 1 if it meets certain statutory requirements. [2401(c).]

To assist with implementation costs, the federal government will, subject to appropriations, provide each state with funds totalling the product of \$150,000 and the number of U.S. Representatives. As an example, a state with a 10-seat House delegation would receive \$1,500,000. [2431.]

This primer describes in greater detail:

- (1) the three statutorily-mandated entities in the redistricting process,
- (2) the timeline for the redistricting process, both in 2021 and in 2030 and beyond,
- (3) the process for appointing Commissioners and the statutory qualifications for those Commissioners,
- (4) the process for approving the new district maps and the statutory requirements for those maps, and
- (5) H.R. 1’s additional requirements.

II. The Three Statutorily-Mandated Entities & Their Roles

H.R. 1 requires each state to establish three entities:

- (1) the Independent Redistricting Commission,
- (2) a “Nonpartisan Agency” to administer the process of selecting Commissioners, and
- (3) a politically-appointed “Select Committee on Redistricting” to assist with that selection process.

The **Independent Redistricting Commission** must develop and approve the new district map. [2413(d).] It consists of 15 Commissioners, who are members of the public, have applied through the nonpartisan agency, and are appointed as described below. [2411(a).]

The 15 Commissioners are broken into three categories:

- (1) five members of the political party whose candidates received the most votes in the most recent statewide election for federal office (the “majority category”),
- (2) five members of the party who received the second most votes in that election (the “minority category”) and

(3) five members unaffiliated with either of the above two parties (the “unaffiliated category”). [2411(a).]

The first six of the Commissioners (two in each category) are appointed by random selection from the 36-member Selection Pool created by the Nonpartisan Agency. The first six Commissioners then appoint the final nine Commissioners (three in each category). [2411(a).]

If the Commission fails to approve the map by the statutory deadline, then a three-judge federal panel will draw the district lines. [2401(a).]

The **Nonpartisan Agency** administers the process of selecting the Commissioners of the Independent Redistricting Commission. The State may create a new agency or designate an existing agency in the “legislative branch” to serve as the Nonpartisan Agency, as long as the agency is nonpartisan.² [2414(a).] This Agency solicits and accepts applications to serve as Commissioners from the general public, vets those applicants to ensure they meet the statutory qualifications, and creates the 36-person “Selection Pool” of potential Commissioners from qualified applicants. Then, once the Select Committee on Redistricting accepts the Selection Pool, it randomly selects the first six Commissioners (two in each category) from that Selection Pool. [2411.]

The **Select Committee on Redistricting** approves or disapproves the 36-member Selection Pool created by the Nonpartisan Agency. It is a four-member body, with one state legislator appointed by each of the four major party legislative leaders: the majority leader and minority of the upper house, and the majority and minority leader of the lower house.³ [2414(b).] **S. 1 states that “[n]othing in this subsection may be construed to prohibit the leader of any political party in a legislature from appointment to the Select Committee on Redistricting.” H.R. 1 appears to contain this language for the 2021 redistricting but not the 2030+ redistrictings. [2414(b)(5)]**

III. The Timeline for the Redistricting Process

² Under H.R.1, “an agency shall be considered to be nonpartisan if under law the agency— (A) is required to provide services on a nonpartisan basis; (B) is required to maintain impartiality; and (C) is prohibited from advocating for the adoption or rejection of any legislative proposal.” [2414(a)(2).]

³ In a unicameral legislature, the majority leader and the minority leader each appoint two legislators. [2414(b)(3).]

H.R. 1 creates a series of deadlines for the redistricting process, with differing deadlines for the post-2020 census redistricting and the redistrictings in 2030 and beyond. If certain of these deadlines are missed, then a federal three-judge panel creates the new district lines.

Below is a chart of these deadlines, along with the four triggers for the federal three-judge panel.

For 2020	For 2030+	Event
<i>Creating the Entities</i>		
June 1, 2021	October 15, 2029	The State must establish or designate the Nonpartisan Agency . <ul style="list-style-type: none"> • If a State fails to establish or designate the Nonpartisan Agency, then a federal three-judge panel draws the map. [2442, 2421(f).]
June 15, 2021	January 15, 2030	Legislative leaders must appoint the four-member Select Committee on Redistricting . <ul style="list-style-type: none"> • If legislative leaders fail to appoint these members, then a federal three-judge panel draws the map. [2442, 2421(f).]
<i>Appointing Commissioners to the Independent Redistricting Committee</i>		
July 15, 2021	June 15, 2030	The Nonpartisan Agency must submit the initial Selection Pool of 36 individuals for Commissioner—along with a report explaining their selection—to the Select Committee for Redistricting and post on the Agency’s website.
July 15, 2021	June 15, 2030	Public comment period on the initial Selection Pool begins.
July 29, 2021	June 29, 2030	Public comment period on the initial Selection Pool ends.
August 1, 2021	Between June 30 and July 6, 2030 (15 to 21 days after receiving	The Select Committee for Redistricting must accept or reject the initial Selection Pool . <ul style="list-style-type: none"> • In 2021, if the Select Committee rejects the initial Selection Pool, then a federal three-judge panel draws the map. [2442] • In 2030+, the following process:

For 2020	For 2030+	Event
	the Selecton Pool)	<ul style="list-style-type: none"> ○ If the Select Committee rejects the initial Selection Pool, then, by 14 days after that rejection, the Nonpartisan Agency must submit a first replacement pool. ○ By 21 days after receipt, the Select Committee must accept or reject. <ul style="list-style-type: none"> ■ If Select Committee rejects a first replacement pool, then by 14 days after rejection, the Nonpartisan Agency must submit a second replacement pool. ○ By ~14 days after receipt, the Select Committee must accept or reject. <ul style="list-style-type: none"> ■ If the Select Committee rejects the second replacement pool, then a federal three-judge panel draws the map. [2421(f).]
August 5, 2021 (2451)	October 1, 2030.	The Nonpartisan Agency, on 15 days’ notice, must hold a public meeting and appoint the first six Commissioners : two randomly from the majority category, two randomly from the minority category, two randomly from the unaffiliated category. Agency also must designate two alternates, randomly, from each category.
August 15, 2021	November 15, 2030	The six-existing Commission Members, on 15 days’ notice, must hold a public meeting and appoint the final nine Commissioners : three from each category, along with two alternates from each category.
	January 15, 2031	The Nonpartisan Agency must provide training to Commissioners on their role and their obligations under the Voting Rights Act of 1965.
<i>Creating, Publishing, and Approving the Maps by the Commission</i>		
	January 1, 2031	Public comment period begins. The Commission must publish a public website.
Prior to publishing preliminary plan		The Commission must hold at least three public hearings , with 14 days’ notice. (Two public hearings in 2021.)
Commission publishes preliminary plan (with 14 days’ notice), and public comment period begins		

For 2020	For 2030+	Event
No less than 30 days after publishing primary plan		Public comment period on preliminary plan ends
Before publishing final plan		The Commission must hold at least three public hearings , with 14 days' notice. (Two public hearings in 2021.)
14 days before meeting to approve final plan		The Commission must publish the final redistricting plan.
November 15, 2021	October 1, 2031 or 8 months after receipt of apportionment notice	The Commission, on 15 days' notice, must hold a public meeting and vote to approve the final redistricting plan. <ul style="list-style-type: none"> • If the Commission fails to approve the final plan, then a federal three-judge panel draws the map. [2442, 2421(f).]
	December 15, 2030/31	If a federal three-judge panel is drawing the map, the Court must publish the redistricting plan by this date.

IV. Selecting the 15 Commissioners of the Independent Redistricting Commission

Fifteen individuals are selected to serve as Commissioners of the Independent Redistricting Commission, with the Nonpartisan Agency and the Select Committee on Redistricting both playing a role in the selection process. This section describes that selection process and the statutory requirements for Commissioners.

A. Public Application Process & Commissioner Qualifications

Commissioner membership is open to any member of the general public who applies and meets the necessary qualifications.

The Nonpartisan Agency must “take such steps as may be necessary” to ensure the State’s residents across “geographic regions and demographic groups” are aware of the

application process, including through “newspapers, broadcast media, and online sources, including ethnic media.” [2412(b)(5).]

Applicants must submit an application, under penalty of perjury, that contains their name, demographic and financial information, party affiliation, the “reasons the individual desires to serve,” information concerning their ability “to be fair and impartial,” and an assurance that the applicant is committed to carrying out their duties in an “honest, independent, and impartial fashion,” among others. [2412(a).]

H.R. 1 mandates the following requirements for Commissioners and members of the Selection Pool:

1. Commissioners must be registered to vote as of the date of appointment.
2. Commissioners must be continuously registered for 3 years in the same party (or not with a party).
3. Commissioners or immediate family member cannot, for 10 years prior to the date of appointment, have
 - a. held office,
 - b. been a candidate for office,
 - c. served as an officer of a political party or “officer, employee, or paid consultant of a campaign committee of a candidate”,
 - d. been a registered lobbyist under federal, state, or local law,
 - e. been an employee of an elected public officials or a contractor with state government,
 - f. donated more than \$1,000 in the aggregate during the period to any candidate or pac, or
 - g. been agent of foreign principal under federal law.
4. Commissioners cannot have violated the Federal Election Campaign Act of 1971 in the past 10 years prior to the date of appointment. [2412(a).]

B. Choosing the 36-member Selection Pool of Potential Commissioners

Before choosing the 36-member Selection Pool, the Nonpartisan Agency must conduct interviews of applicants under oath to ensure they meet the necessary qualifications. For the 15 individuals appointed to the Commission, the transcripts of the interviews must be released to the public with the agency’s appointment report. [2412(b)(3).]

From qualified applicants, the Nonpartisan Agency chooses an initial Selection Pool of 36 applicants. [2412(b)(1).]

In choosing this initial Selection Pool, the Nonpartisan Agency must:

1. choose 12 members in each of the three categories :
 - members of the political party whose candidates received the most votes in the most recent statewide election for federal office (the “majority category”),
 - members of the party who received the second most votes in that election (the “minority category”) and
 - five members unaffiliated with either of the above two parties (the “unaffiliated category”). [2411(a).]
2. ensure the pool is “representative of the demographic groups . . . and geographic regions of the State” and includes applicants who would “allow racial, ethnic, and language minorities” protected under the Voting Rights Act a “meaningful opportunity to participate”. [2412(b)(2).]
3. “take into consideration the analytical skills of the individuals and their ability to work on an impartial basis.” [2412(b)(2).]

Once the Nonpartisan Agency selects the 36-member Selection Pool, it submits the Pool to the Select Committee on Redistricting, along with a report on “the process by which the pool was developed,” “a description of how the individuals in the pool meet the eligibility criteria,” and “how the pool reflects” the statutory factors. [2412(b)(6).] The Agency must also post this information on its website. The public then has 14 days to comment on the Selection Pool. [2412(b)(7).]

The four-member Select Committee must approve or reject the Selection Pool, by majority vote, between 15 and 21 days after receipt. [2412(b)(8).]

In 2021, if the Select Committee rejects the initial Selection Pool, then a federal three-judge panel draws the map. [2452(b)(7).]

In 2030 and beyond, if the Select Committee rejects the initial Selection Pool, then up to two replacement selection pools are submitted for approval. If both pools are rejected, then a federal three-judge panel draws the map. [2412(c),(d).] Specifically, within 14 days after rejection of the initial Selection Pool, the Nonpartisan Agency must submit a first replacement Selection Pool. That replacement pool must have at least one individual not in the initial Selection Pool. Within 21 days after receipt, the Select Committee accepts or rejects the first replacement Selection Pool. If the Select Committee rejects, the Nonpartisan Agency submits a second replacement Selection Pool. Within ~14 days after receipt, the Select Committee accepts or rejects. If the

Select Committee rejects the second replacement pool, then a federal three-judge panel draws the map. [2412(c), (d).]

C. Appointing the 15 Commissioners

After the 36-member Selection Pool has been approved by the Select Committee, the 15 Commissioners are then appointed from this Pool. The 15 Commissioners are broken into three categories:

1. five members from the majority party category,
2. five members from the minority party category,
3. five members from the unaffiliated party category. [2411(a).]

This appointment process occurs in two stages, with the first six Commissioners appointed by the Nonpartisan Agency and then the remaining nine appointed by the first six Commissioners.

First, the Nonpartisan Agency must hold a public meeting, on 15 days' notice, and appoint the first six Commissioners: two randomly chosen from the majority category, two randomly chosen from minority category, two randomly chosen from the unaffiliated category. The Agency also must designate six alternates, two from each category, also randomly chosen. [2411(a)(1)(A).]

Second, the six-existing Commissioners must then hold a public meeting, on 15 days' notice, and appoint the final nine Commissioners—three from each category—along with two alternates from each category. For this appointment, four (of six) affirmative votes are needed, including one from each of the three categories. In addition, the Commissioners must “ensure the membership is representative of the demographic groups . . . and geographic regions of the State” and provides “racial, ethnic, and language minorities” protected under the Voting Rights Act a “meaningful opportunity to participate”. [2411(a).]

V. Creating and Enacting the Redistricting Plan

After the 15 Commissioners are appointed, the Commission begins its work to create, publish, and approve the redistricting map. This section describes the Commission's work and the statutory requirements for the redistricting map.

A. The Commission's Work

Approving a preliminary or final redistricting plan, entering into contracts, or taking any other action requires a majority vote of the Commission, including at least one vote from a member in each of the three categories. [2411(b).]

The Chair of the Commission is chosen by majority vote of the members, and must be from the unaffiliated category. [2411(b).] Any Commissioner may be removed by a majority of vote of the remaining Commissioners, if “shown by preponderance of the evidence that the member is not eligible to serve”. [2411(5).] The Nonpartisan Agency must provide training to Commissioners on their role and their obligations under the Voting Rights Act of 1965. [2414(a).]

The Commission must hold public meetings, take into consideration public comments, publish notices in all languages required under the Voting Rights Act, and carry out its duties in an “open and transparent manner.” [2413(b).] By January 1 after appointment, it must maintain a public website with a litany of information, and livestream all hearings. Members of the public may submit maps for consideration and which must be posted on the Commission’s website. [2413(b)(2).] The Commission may hire staff and vendors, subject to certain statutory limits and disclosure requirements. [2411(c).]

The Commission must approve and publish a preliminary redistricting plan⁴ and the final redistricting plan. [2413(c), (d).] In total, the Commission must hold at least six public hearings (but only four in 2021) before approving the final redistricting plan. [2413(c), 2453.] When publishing a redistricting plan, the Commission must include a written evaluation measuring the plan “against external metrics which cover [the statutory criteria], including the impact of the plan on the ability of communities of color to elect candidates of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to which the plan preserves or divides communities of interest.” [2413(e).]

Approval of the preliminary and final redistricting plan requires a majority vote of the Commission, including at least one vote from a member in each of the three categories. [2413(c)(4), Mgr.] Moreover, prior to enactment, the Commission must submit the final redistricting plan to the U.S. Department of Justice “for administrative review.” [2413(c)(5), Mgr.] The final redistricting plan is deemed enacted 45 days after the Commission’s vote to approve. [2413(d).]

⁴ The Commission may publish additional preliminary plans, with the attendant public hearings. [2413(c)(6).]

Below is an outline of the Commission's work:

- First Set of Hearings. Before developing a preliminary redistricting plan, the Commission must hold at least three public hearings (two in 2021), on 14 days' notice.
- Publishing Preliminary Plan. Then, with majority vote of the Commission, including at least one vote from a member in each of the three categories, the Commission holds a public hearing, on 14 days' notice, to approve and publish the preliminary redistricting plan, along with "a report that includes the commission's responses to any public comments received."
- Public Comment Period. Public comment must be open for at least thirty days after publishing the preliminary redistricting plan.
- Second Set of Hearings. Before publishing the final plan, the Commission must hold at least three additional public hearings (two in 2021), on 14 days' notice.
- Publishing Final Plan. At least 14 days before the meeting to approve the final redistricting plan, the Commission must publish the final plan, along with all relevant maps; a report providing the background for the plan and the reasons for the final plan, including responses to public comments; and the metrics report (described above).
- Meeting to Approval Final Plan. The Commission then must hold a meeting, on 14 days' notice, to approve the final redistricting plan.
- Submission to DOJ for Review. Prior to enactment, the Commission must submit the final redistricting plan to the U.S. Department of Justice for administrative review.
- Enactment of Final Plan. The final redistricting plan is deemed enacted 45 days after approval by the Commission.

[2413(c), 2453, 2413(c)(5), Mgr., 2413(d)]

B. Requirements for the Redistricting Map

Under H.R. 1, the single-member districts contained in the redistricting plan must meet the following requirements "in order of priority":

- A. Districts shall "comply with the United States Constitution, including the requirement that they equalize total population."
- B. Districts shall comply with the Voting Rights Act, "including by creating any districts where two or more politically cohesive groups protected by such Act are

able to elect representatives of choice in coalition with one another,” and all other applicable federal laws.”

C. Districts shall “be drawn, to the extent that the totality of the circumstances warrant, to ensure the practical ability of a group protected under the [Voting Rights Act] to participate in the political process and to nominate candidates and to elect representatives of choice is not diluted or diminished, regardless of whether or not such protected group constitutes a majority of a district’s citizen voting age population.”

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) [above.]”

[2403(a), Mgr.]

H.R. 1 defines a community of interest “as an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, cultural, geographic or historic identities,” which, “in certain circumstances, [may] 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.” [2413, 2403(a) Mgr.]

H.R. 1 also restricts partisan considerations when drawing the map. Under H.R. 1, the redistricting plan cannot, “when considered on a Statewide basis, be drawn with the intent⁵ or the effect of unduly favoring or disfavoring any political party.” [2403(b), Mgr.]

Determining whether the plan has “the effect of unduly favoring or disfavoring” a political party is “based on the totality of circumstances, including evidence regarding the durability and severity of a plan’s partisan bias.” [2403(b), Mgr.] A redistricting plan “shall be deemed to have the effect of unduly favoring or disfavoring a political party” if two criteria are satisfied:

- (i) “modeling based on relevant historical voting patterns shows that the plan is statistically likely to result in a partisan bias [of more than 1-2 seats depending on delegation size] as determined using quantitative measures of partisan fairness, which may include, but are not limited to, the seats to-votes curve for an enacted plan, the efficiency gap, the declination, partisan asymmetry, and the mean-

⁵ Under H.R. 1, when determining whether a plan is drawn with the intent of unduly favoring or disfavoring a party, “a rebuttable presumption shall exist that a redistricting plan enacted by the legislature of a State was not enacted with [such] intent” if 1/3 members of the minority party in each house supported the plan. [2403(b)(3), Mgr.] H.R. 1, however, also requires that all redistricting occurs via an independent redistricting commission, not the legislature, so this provision may have no effect.

median difference,” *and*

- (ii) “alternative plans, which may include, but are not limited to, those generated by redistricting algorithms, exist that could have complied with the requirements of law[.]” [2403(b), Mgr.]

Moreover, to find a violation based on partisan favoritism, there must be an alternative plan that still complies with the law but does not unduly favor or disfavor a political party. [2403(b), Mgr.]

The plan also cannot take into consideration the “residence” of any member or candidate or a district’s “political party affiliation or voting history,” subject to limited exceptions.⁶ [2403(c), Mgr.] Moreover, incarcerated individuals shall be counted, for the purpose of congressional apportionment, in the “individual’s last place of residence before incarceration.” [2701.]

All requirements under the Voting Rights Act, including any preclearance requirements, still apply even if a state complies with H.R. 1’s redistricting requirements. [1933(b).]

VI. H.R. 1’s Additional Statutory Requirements

H.R. 1 contains the following additional requirements.

H.R. 1 bans redistricting in the middle of a decade, unless court-ordered pursuant to a violation of the federal constitution, a state constitution, the Voting Rights Act, or H.R. 1’s redistricting requirements. [2402.]

To enforce H.R. 1’s requirements, the United States Attorney General, as well as any aggrieved citizen of a state, may bring suit before a federal three-judge panel, with expedited scheduling and direct appeal to the U.S. Supreme Court. [2432(b).] The court may award attorneys fees at its discretion. [2432(c).]

H.R. 1 does not impose additional requirements on states with an existing redistricting commission as long as that commission meets the following requirements:

1. Membership is open to citizens through a “publicly available application process.”

⁶ Consideration of these two factors is only permitted “to the extent necessary to comply with [other statutory criteria and] to enable the redistricting plan to be measured against the [statutorily-defined.] external metrics.” [2403(c).]

2. Commissioners cannot hold office, be a candidate, or serve as “officer, employee, or paid consultant of a campaign committee of a candidate,” for a period of time prior to appointment as established by the state.
3. Commissioners cannot have a “conflict of interest.”
4. The Commissioners have multi-party composition, mirroring the three categories, namely representation from the largest political party, the second largest party, and those unaffiliated with either.
5. The map must be drawn to “minimize divisions of communities of interest” and cannot “favor a political party.”
6. The Commission provides for public hearing and comments before approval of the final map.
7. Approval of the final map requires a majority vote of the Commission, including support of at least one member in each of the three categories: largest party, second largest party, unaffiliated.

[2401(c).]

Iowa is exempt from H.R. 1’s requirements, as long as its redistricting is “carried out in accordance with a plan developed by the Iowa Legislative Services Agency with the assistance of a Temporary Redistricting Advisory Commission” (with no changes to current law). [2401(d).]