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Redistricting: “The decennial Olympics”

Carolina Lumetta

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Walter Olson, a Cato Institute senior fellow, looks at a map of Maryland as he would a jigsaw puzzle. The districts near the edges neatly arrange themselves along state boundaries or the Chesapeake Bay. Some of the state’s eight House districts look more like dragons or broken rakes due to partisan gerrymandering. Olson and the other eight members of the Maryland Redistricting Commission, which he co-chairs, are responsible for redrawing districts as part of the constitutionally mandated apportionment process required across the United States every 10 years.

There’s just one problem: They have no population numbers to work with.

The 2020 census has faced delays and court battles, causing the Census Bureau to breeze nearly six months past the typical reporting time in March. The bureau expects to release raw data by Aug. 16 and finalize tables by Sept. 30. Then it’s off to the races as commissions and state legislatures scramble to draw maps in time for the 2022 primaries.

California’s Supreme Court is matching redistricting deadlines to census delays: if the data is six months late, the new maps will be delayed six months. Michigan’s Supreme Court rejected an extension request, so new districts are due by Nov. 1. New Jersey and Virginia, the only states with legislative elections in 2021, decided to stick with the old maps. Virginia districts as they stand now provide a Republican advantage. Democratic-controlled Illinois approved new maps based on American Community Survey social and economic estimates rather than waiting for the census or a bipartisan commission. The state GOP has filed lawsuits asking courts to throw out the maps. Other states are waiting for Aug. 16 or pushing deadlines.

Without extensions, 33 states face legal requirements to finish redrawing legislative or congressional maps in 2021, leaving them only a few weeks to do what usually takes months. These shortened time frames also cut into campaigns, offering an advantage to incumbents, according to Matthew Brownfield with the Texas political consulting firm Murphy Nasic. Texas’ filing deadline for 2022 primaries falls mid-December, possibly before new district lines exist. Brownfield estimates redistricting holdups could delay new candidate announcements by a quarter whereas incumbents are already fundraising.

The process for legislators redrawing districts follows the same procedure as a bill becoming a law. A state legislature commissions a standing committee or special committee to hold informational hearings and create new maps. They draft a map and then release it to the public. This gives constituents a chance to testify on communities and neighborhoods that they think should be in the same district or divided into separate ones. Olson said that while transparency improves the fairness of redistricting, so much public interaction also eats into their deadlines. Once the committee consolidates public input, the reapportioned district lines go to the state House and Senate floors for debate. After further tweaking, the final maps land on the governor's desk for approval or veto.

Throughout the process, anyone can take the redistricting commission to court if they allege violations of free and fair election clauses. Wendy Underhill, the director of redistricting and elections for the National Conference of State Legislatures, said this gives legislatures an incentive to create maps they can defend in court. Not all constituents trust legislator-led redistricting.

This year, six states opted for similar independent redistricting commissions, including Olson's group. Maryland's governor appointed 9 individuals—a tri-partisan group of three Republicans, three Democrats, and three independents—to draw the maps, hold public hearings, and present a final product directly to him. The governor also added a new caveat for the commission: members must be blind to politics.

“We are not allowed to have part of our deliberations be about how any precinct, town, or county has voted by party,” Olson said. “We are not even allowed to know the residence of any person running for office.”

In the absence of new maps, many states are holding public hearings ahead of actual maps to consider. These hearings sometimes conflict with the political blinders some commissions are supposed to have: “Every time we have a public hearing, someone gets up and begins talking about Democrat and Republican, and all of a sudden the information that we're not supposed to rely on is right in front of our noses,” Olson said.

As technology has advanced, so have partisan redistricting capabilities, according to Michael Li, senior counsel for the Brennan Center for Democracy at the NYU School of Law. More data and emerging software can analyze voting trends and how staunchly someone supports a particular party. Li believes independent commissions are better positioned to avoid playing politics with maps the way that legislatures might: “What was once a dark art has now become a dark science. It's like an every 10-year Olympics that will determine who wins in 2022 and who holds power for the rest of the decade.”

Democrats currently have a slight 2022 advantage: 20 Republican Senate seats are up for election compared to only 14 Democrat positions. All 435 House seats are also on the ballot in 2022, but candidates face uncertain battlegrounds waiting for new district lines.

States are gearing up for a rash of litigation. The National Democratic Redistricting Committee filed lawsuits in three states in April once preliminary census data indicated they would lose

congressional seats. The group wants to give courts more authority in determining district lines, wary of what they call Republican power grabs. The National Republican Redistricting Trust said it is prepared legally to fight any signs of left-leaning map lines.