



Census Delays and Their Impact on Redistricting

Wendy Underhill, Director, Elections and Redistricting
National Conference of State Legislatures
Wendy.Underhill@NCSL.org or 303-802-6673

February 25, 2021

I am Wendy Underhill, director of elections and redistricting at the National Conference of State Legislatures. On behalf of NCSL, I thank you for the opportunity to present before you today on census delays and what they may mean for states when it comes to redistricting.

Before we begin, I would like to start with just a little bit about NCSL. NCSL is the nation's bipartisan organization serving the needs of legislators and legislative staff throughout the states and territories. While our *structure* is bipartisan, our *work* is nonpartisan.

Our bread-and-butter work is responding to research requests from legislators or legislative staff. We do so in a confidential manner, so if any of you would like to contact me about redistricting, the census or any other topic, please feel free. What we *don't* do is offer advice or take positions on any policy choices that come before a legislature.

Now on to the delays.

As you have heard, the original, pre-COVID-19, deadline for the apportionment data was December 31, 2020. Now the target date is April 30, a delay of 4 months. This is the data that is used to apportion seats in the U.S. House among the states.

The data that is used for redistricting was due to the states by April 1, 2021, and now the Census Bureau has said it will be delivered by September 30, a delay of six months.



I plan to address what the delays mean specifically for redistricting, but before I do that I'd like to comment on the other big reason the census data matters: the distribution of [1.5 trillion](#) dollars in federal spending to states and localities, every year, for a decade. This funding is used for schools, transportation projects, health care and many other functions. Because the funding formulas for these programs are based on the census, states and localities have a significant interest in seeing that the 2020 decennial census provides an accurate count so that they get their fair share of federal funds every year through 2030. For funding purposes, the delays may have little or no impact.

The same is not true for redistricting. The delays put a squeeze on the timeline, meaning the same amount of work will need to be done in a shorter window. In effect, all states need to be ready for federal elections in 2022, so all states feel the squeeze.

There can be other, state-specific, constraints. For instance, some states also have constitutional or statutory deadlines for redistricting. In Pennsylvania, I believe your constitution requires a legislative plan to be prepared by your commission 90 days after the census data arrives (Pa. Const. Art. II, § 17), and that there is no deadline on congressional redistricting other than the practicalities of being ready for the November election.

Before the general election comes the primary, with the earliest slated for March and the latest in September. Before the primary comes the candidate filing period with the most important date being when it begins. Some states also have residency requirements for candidates that may be earlier than the candidate filing period. For instance, in Nebraska, a candidate must have lived in his or her district for a full year before serving, so that means in effect that new districts are needed by November 2021. I do not know if that is the case in Pennsylvania or not.

To meet the deadlines mentioned above, local election officials have work to do between when redistricting is completed and the start of the candidate filing period. Also, federal law dictates that ballots must be sent to military and overseas voters 45 days prior to elections, and it takes time to design and print the ballots. Often precinct lines must be redrawn to fit within the new electoral maps before the ballots can be finalized. All this post-redistricting, pre-primary activity is done to ensure that voters are assigned to the right districts, from the right congressional district all the way down the ballot to the right school district. Your election officials will have the details on how these processes work in Pennsylvania.

At NCSL, we have been searching the states for ideas on how this redistricting cycle may work, given the census delays. I will provide you with several ideas but let me start by saying that there is no easy path and something that works in one state may not work in others.



First, it seems likely that many legislatures will come into special session in October or November specifically to draw and adopt maps. Last decade, a dozen states did so, and we expect more this cycle. Pennsylvania is one of a handful of states that doesn't have a set adjournment date, so this idea may not be applicable in your state.

Second, I've heard of one state that plans to use an interim committee to do much of the work in the fall, with the plan to present maps for legislative consideration at the very beginning of the 2022 session. Again, this may not be applicable in Pennsylvania.

Third, a state could delay filing dates and primary dates. I do not know of any state that plans to go this way yet, but for the states that have March primaries, such as Illinois and Texas, this might be an approach. May primaries, such as Pennsylvania's, are next on the calendar.

Fourth, for states with constitutionally set redistricting deadlines, the state could ask its supreme court in advance for relief. California did this, and relief was granted. That does not solve the general problem of the squeezed timeline, but it does mean that states that choose this option will not be sued for noncompliance with the constitution.

Fifth, states can begin drawing maps with data other than what come from the decennial census, and then use the census data to fine tune the preliminary plans. NCSL is referring to this idea as the "two-step." This option is attractive because it reduces the work that happens after the census data arrives. Idaho expects to use this approach. I've heard of similar ideas from other states but cannot say yet if any other states will adopt this process or not.

A variation on the "two-step" theme would be to actually enact plans based on an alternative data source, and thus meet a state's deadline. These maps would attract lawsuits, but the state would hope to have adopted new versions of the maps based on decennial census data before the cases were heard.

If a state wants to consider the "two-step" approach, the question is likely to be, what alternative data is available? There is data from the American Community Survey, a product released by the U.S. Census Bureau every year on a five-year rolling basis and based on an annual survey. The bureau's annual population estimates, which adjusts census data based on birth and death records, is also an option. The 2020 population estimates will be released in the summer of 2021, I believe. Commercial data sets can be used as well. There may be other sources as well; your state's demographer may have other ideas and be able to analyze these sources for their fitness for use.

Now I'd like to address what states can be doing now, while waiting for the census data.



Some states have a formal back-up mechanism identified to draw maps if the legislature or commission is unable to complete its task on time. In Oregon, the back-up is the secretary of state's office, and in Minnesota it is the state supreme court. If there is no specified back-up plan, then state courts are likely to be the de facto last resort. The delay gives the states time to fully understand how the back-up plan might work, if the entity with primary responsibility for drawing maps cannot get its work done in time.

This waiting time also can be used to gather information. For instance, your state demographer can probably provide a good understanding of how population has shifted, and what that means economically and politically. Also, some states make a practice of asking every incumbent what matters most to them in their district, so even if the final plan can't meet every request, perhaps their highest priority can be met.

I have heard advocacy groups say that the time squeeze hits public input particularly hard. With that in mind, it would be possible for the public to provide input before the maps are drawn, and not just after maps are drawn. Groups or individuals could comment on areas in the state that they believe must be kept together in a district, for instance.

The delays also provide an opportunity for more preparatory work. Are all the needed processes and technology in place, ready to go? Are data sources other than the census data prepared? These other data sources include political data, which is not dependent on the census.

Last, if a state is interested in any last-minute changes to its redistricting processes or criteria, the regular session can be used to attend to that before the state begins redistricting in the fall.

With that, I'll reiterate that there are no easy answers to how redistricting can go this decade. I thank you for your time and am happy to answer questions if I can.