

A BILL

To replace the federally mandated use of single-seat winner-take-all elections for the election of members of the House of Representatives with the use of fair representation voting in multi-seat districts which shall be constructed through independent commissions, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of*
2 *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 “Fair
6 Representation Act”.

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

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

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

23 **SEC. 2. USE OF MULTI MEMBER DISTRICTS AND LIMIT ON**
24 **CONGRESSIONAL REDISTRICTING AFTER AN**
25 **APPORTIONMENT.**

1 The Act entitled “An Act for the relief of Doctor Ricardo
 2 Vallejo Samala and to provide for congressional redistricting”,
 3 approved December 14, 1967 (2 U.S.C. 2c), is amended by
 4 striking “In each state” and all that follows and inserting the
 5 following:

6 (a) In each State entitled in the One Hundred Eighth
 7 Congress or in any Congress thereafter to more than five
 8 representatives in Congress under an appointment made
 9 pursuant to the provisions of sections 22(a) of the Act of June
 10 18, 1929 (ch.28; 46, Stat. 26), such State shall establish a number
 11 of districts that is less than the number of Representatives to
 12 which the state is entitled; that State may determine, by statute,
 13 the number of districts established and the number of
 14 Representatives elected from each district, provided that no
 15 multi member district shall elect fewer than three
 16 Representatives; and that state shall use a system that meets the
 17 following criteria:

18 (1) The system upholds majority rule and meets the
 19 constitutional standard that each voter should have equal
 20 voting power;

21 (2) The system ensures the election of any candidate who
 22 receives a number of votes that is the fewest number of votes
 23 that can be obtained by no more than the number of
 24 candidates to be elected. This victory threshold is
 25 determined as being one more than the total number of valid
 26 votes cast for House candidates in the district divided by the
 27 sum of one and the number of seats, or

$$28 \quad \frac{\text{valid votes cast}}{\text{seats} + 1} + 1 \text{ vote}$$

29 (3) If that state determines which candidates will appear
 30 on the general election ballot by one or more primary

1 elections, each primary election shall ensure that any
 2 candidate is nominated or advanced to the general election if
 3 that candidate receives a number of votes that is the fewest
 4 number of votes that can be obtained by no more than the
 5 number of candidates to be nominated or advanced to the
 6 general election from that primary election. This nomination
 7 threshold is determined as being one more than the total
 8 number of valid votes cast in that primary election divided
 9 by the sum of one and the number of candidates to be
 10 nominated or advanced to the general election, or

$$11 \quad \frac{\text{valid votes cast}}{\text{nominees} + 1} + 1 \text{ vote}$$

12 (b) In each State entitled in the One Hundred Eighth
 13 Congress or in any Congress thereafter to more than one but
 14 fewer than six representatives in Congress under an appointment
 15 made pursuant to the provisions of sections 22(a) of the Act of
 16 June 18, 1929 (ch.28; 46, Stat. 26), such State shall elect all
 17 Representatives from a single multi member district, and that
 18 state shall use a system that meets the criteria described in
 19 section 2(a)(1)–(3) of this Act.

20 (c) A state which has been redistricted in the manner
 21 provided by law after an apportionment under section 22(a) of
 22 the Act entitled ‘An Act to provide for the fifteenth and
 23 subsequent decennial censuses and to provide for an
 24 apportionment of Representatives in Congress’, approved June
 25 18, 1929 (2 U.S.C. 2a), may not be redistricted again until after
 26 the next apportionment of Representatives under such section,
 27 unless a court requires the State to conduct such subsequent
 28 redistricting to comply with the Constitution or to enforce the
 29 Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

30 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**
 31 **THROUGH PLAN OF INDEPENDENT STATE**

1 **COMMISSION OR PLAN OF HIGHEST STATE**
2 **COURT.**

3 (a) **USE OF PLAN REQUIRED.**—

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

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

10 (B) if the plan developed by such commission is not
11 enacted into law, the redistricting plan selected by the
12 highest court in the State or developed by a United States
13 district court, in accordance with section 5.

14 (2) **OTHER CRITERIA AND PROCEDURES PERMITTED.**—

15 Nothing in this Act or the amendments made by this Act may
16 be construed to prohibit a State from conducting
17 Congressional redistricting in accordance with such criteria
18 and procedures as the State considers appropriate, to the
19 extent that such criteria and procedures are consistent with
20 the applicable requirements of this Act and the amendments
21 made by this Act.

22 (b) **CONFORMING AMENDMENT.**—Section 22(c) of the Act
23 entitled “An Act to provide for the fifteenth and subsequent
24 decennial censuses and to provide for an apportionment of
25 Representatives in Congress”, approved June 18, 1929 (2 U.S.C.
26 2a(c)), is amended by striking “in the manner provided by the
27 law thereof” and inserting: “in the manner provided by the Fair
28 Representation Act”.

29 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

30 (a) **ADMINISTRATIVE MATTERS.**—

1 (1) APPOINTMENT OF MEMBERS.—Each State electing
2 representatives from more than one district shall establish an
3 independent redistricting commission composed of—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (C) the individual certifies that he or she will not run
28 as a candidate for the office of Representative in the
29 Congress until after the next apportionment of
30 Representatives under section 22(a) of the Act entitled
31 “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,
3 1929 (2 U.S.C. 2a).

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

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

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

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

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

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

27 (B) The site contains the most recent available
28 information from the Bureau of the Census on voting-
29 age population, voter registration, and voting in the
30 State, including precinct-level and census tract-level data

1 with respect to such information, as well as detailed
 2 maps reflecting such information.

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

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

12 (b) DEVELOPMENT OF REDISTRICTING PLAN.—

13 (1) CRITERIA.—The independent redistricting
 14 commission of a State shall develop a redistricting plan for
 15 the State in accordance with the following criteria:

16 (A) Adherence to the “one person, one vote”
 17 standard and other requirements imposed under the
 18 Constitution of the United States.

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

21 (C) To the greatest extent practicable, the main-
 22 tenance of the geographic continuity of the political
 23 subdivisions of the State which are included in the same
 24 Congressional district, in the following order of priority:

25 (i) The continuity of counties or parishes.

26 (ii) The continuity of municipalities.

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

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

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

7 (2) FACTORS PROHIBITED FROM CONSIDERATION.—In
8 developing the redistricting plan for the State, the
9 independent redistricting commission may not take into
10 consideration any of the following factors, except to the
11 extent necessary to comply with the Voting Rights Act of
12 1965:

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

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

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

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

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

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

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

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

18 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

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

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

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

30 (B) reject the plan.

31 (3) ENACTMENT OF PLAN.—

1 (A) IN GENERAL.—A redistricting plan developed by
2 the commission shall be considered to be enacted into
3 law only if the plan is forwarded to the chief executive
4 of the State pursuant to paragraph (2)(A) and—

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

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

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

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

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

20 (d) REQUIRING MAJORITY APPROVAL FOR ACTIONS.—The
21 independent redistricting commission of a State may not submit
22 a redistricting plan to the State legislature, or take any other
23 action, without the approval of at least a majority of its members
24 given at a meeting at which at least a majority of its members
25 are present.

26 (e) TERMINATION.—

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

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

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

8 (a) STATE COURT.—

9 (1) SUBMISSION AND SELECTION OF PLAN.—If a
10 redistricting plan developed by the independent redistricting
11 commission of a State is not enacted into law under section
12 4(c)(3) by the first November 1 which occurs after the chief
13 executive of the State receives the State apportionment
14 notice, the commission may submit redistricting plans
15 developed by the commission in accordance with section 4
16 to the highest court of the State, which may select and
17 publish one of the submitted plans to serve as the
18 redistricting plan for the State.

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

22 (b) FEDERAL COURT.—

23 (1) Failure of state court to select plan.—

24 (A) NOTICE TO COURT IF PLAN NOT SELECTED BY
25 STATE COURT.—If a State court to whom redistricting
26 plans have been submitted under subsection (a) does not
27 select a plan to serve as the redistricting plan for the State
28 under such subsection on or before the first December 1
29 which occurs after the chief executive of the State
30 receives the State apportionment notice, the State shall

1 file a notice with the United States district court for the
2 district in which the capital of the State is located.

3 (B) DEVELOPMENT AND SELECTION OF PLAN BY
4 FEDERAL COURT.—Not later than 30 days after receiving
5 a notice from a State under subparagraph (A), the court
6 shall develop and publish a final redistricting plan for the
7 State.

8 (2) FAILURE OF STATE TO ESTABLISH COMMISSION.—

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

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

15 and

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

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

29 (3) CRITERIA.—It is the sense of Congress that, in
30 developing a redistricting plan for a State under this
31 subsection, the district court should adhere to the same terms

1 and conditions that applied to the development of the plan of
2 the commission under section 4(b).

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

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

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

16 (1) the deadline for the establishment of the independent
17 redistricting commission and the appointment of the
18 commission's chair (as described in section 4(a)(5)) shall be
19 the expiration of the 30-day period which begins on the date
20 of the final order of the Federal court to conduct the
21 redistricting;

22 (2) the deadline for the submission of redistricting plans
23 to the legislature by the commission, and the date of the
24 termination of the commission (as described in section
25 4(c)(1) and section 4(e)) shall be the expiration of the 150-
26 day period which begins on the date of the final order of the
27 Federal court to conduct the redistricting;

28 (3) the deadline for the selection and publication of the
29 plan by the highest court of the State (as described in section
30 5(a)) shall be the expiration of the 180-day period which

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

3 (4) the deadline for the selection and publication of the
4 plan by the district court of the United States (as described
5 in section 5(b)) shall be the expiration of the 210-day period
6 which begins on the date of the final order of the Federal
7 court to conduct the redistricting.

8 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT**
9 **REDISTRICTING.**

10 (a) AUTHORIZATION OF PAYMENTS.—Subject to subsection
11 (d), not later than 30 days after a State receives a State
12 apportionment notice, the Election Assistance Commission shall
13 make a payment to the State in an amount equal to the product
14 of—

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

17 (2) \$150,000.

18 (b) USE OF FUNDS.—A State shall use the payment made
19 under this section to establish and operate the State's
20 independent redistricting commission, to implement the State
21 redistricting plan, and to otherwise carry out Congressional
22 redistricting in the State.

23 (c) NO PAYMENT TO STATES WITH SINGLE DISTRICT.—The
24 Election Assistance Commission shall not make a payment
25 under this section to any State which will elect all
26 Representatives from a single district.

27 (d) REQUIRING ESTABLISHMENT OF COMMISSION AS
28 CONDITION OF PAYMENT.—The Election Assistance
29 Commission may not make a payment to a State under this
30 section until the State certifies to the Commission that the State
31 has established an independent redistricting commission, and

1 that a chair of the commission has been appointed, in accordance
2 with section 4.

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

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

7 In this Act, the “State apportionment notice” means, with
8 respect to a State, the notice sent to the State from the Clerk of
9 the House of Representatives under section 22(b) of the Act
10 entitled “An Act to provide for the fifteenth and subsequent
11 decennial censuses and to provide for an apportionment of
12 Representatives in Congress”, approved June 18, 1929 (2 U.S.C.
13 2a), of the number of Representatives to which the State is
14 entitled.

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

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

21 **SEC. 10. EFFECTIVE DATE.**

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