

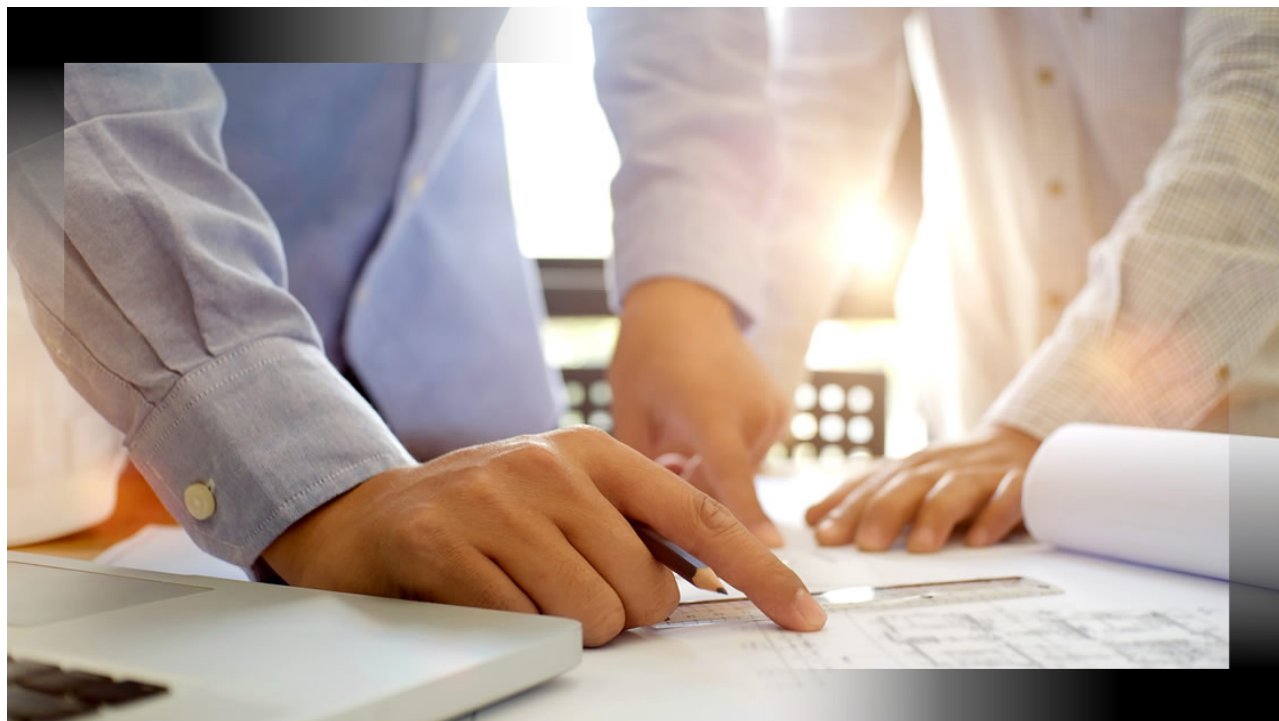
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5 Ways to Handle Census Delays and Redistricting Deadlines

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By Ben Williams

| Jan. 28, 2021 |

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The year 2020 is in the rearview mirror, but the results of the 2020 census are still down the road. As states gear up for redistricting, they face a new and serious problem: figuring out whether they'll get the data they need from the Census Bureau in time to redistrict according to their state laws. Whether the data set at issue is reapportionment data for congress or redistricting data used by states, delays can be expected.

As for the actual data states use to redistrict—the P.L. 94-171 file, in redistricting lingo—it's likely to be delayed beyond July 31. The exact release date is still to be determined, though the bureau announced on NCSL's monthly census update (<https://youtu.be/FXfuUmiEpp4>) that it should have that information in the coming weeks.

These delays pose a unique challenge to the 42 states that have either a statutory or constitutional deadline for drawing their legislative or congressional districts, or both. If the deadlines are in state statutes, legislatures have the power to alter them through normal legislation—not necessarily easy, but not impossible. But if the deadline is in the state constitution, the task becomes harder.

Fortunately, states facing this problem have options. Creative minds in the states are searching for novel ways to thread the needle, and here are five potential routes states could take should they wish:

1. Ask courts for relief.

Redistricters can petition the appropriate state court to seek relief from their statutory or constitutional redistricting deadlines. For example, California (</blog/2020/07/21/california-circumvents-census-calamity.aspx>) successfully pursued this option in mid-2020.

2. Alter the law to circumvent the deadline.

States can either pass new statutes or amend their constitutions to eliminate their redistricting deadlines or create exemptions from those deadlines if the release of census data is delayed. New Jersey (<https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-constitutional-amendment-SCR123-ACR188-english.pdf>), for example, successfully pursued this option, with voters ratifying an amendment to the Garden State's constitution in 2020, and New York is placing a similar amendment before its voters this fall. This option will be tough for states that cannot amend their constitutions before their existing redistricting deadline.

3. Alter filing deadlines or primary election dates.

In states where the true deadline to redistrict is the filing deadline for primary elections, alter those deadlines as much as possible to give redistricters additional time to complete their task. Virginia, one of the handful of states with odd-year legislative elections, has done this in the past when census issues have arisen.

4. Turn redistricting into a two-step process.

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Use the best data available at present to redistrict on schedule, with the understanding that amendments will need to be made once the P.L. data is available. (Not that we know what's a good alternative!) In any case, the decennial census would be used for the second step and would ensure that the state complies with the one person, one vote principle.

5. Pass statutory backup mechanisms to complement existing processes.

States with redistricting deadlines for their primary line-drawing entity (the legislature in most states, a commission in the others) could consider passing new laws creating backup commissions or boards that would be tasked with redistricting if the primary entity fails to complete its task by the statutory or constitutional deadline. That failure could be simply that the required census data wasn't available on time. This camp includes the states with backup redistricting commissions (see NCSL's webpages on congressional (</research/redistricting/redistricting-commissions-congressional-plans.aspx>) and legislative (</research/redistricting/2009-redistricting-commissions-table.aspx>) commissions for more information).

The census and redistricting are core issues for NCSL. The best way to get updates is our redistricting distribution list. Email elections-info@ncsl.org (mailto:elections-info@ncsl.org?subject=Please%20add%20me%20to%20the%20redistricting%20distribution%20list) if you'd like to join.

Ben Williams is a policy specialist in NCSL's Elections and Redistricting Program.

Additional Resources

- [Redistricting Overview \(/default.aspx?tabid=723\)](/default.aspx?tabid=723)
- [2020 Census Resources and Legislation \(/default.aspx?tabid=32137\)](/default.aspx?tabid=32137)

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