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(Original Signature of Member)

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. TANNER introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To prohibit States from carrying out more than one Congressional redistricting after a decennial census and apportionment, to require States to conduct such redistricting through independent commissions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDING OF CONSTITUTIONAL**  
2 **AUTHORITY.**

3 (a) **SHORT TITLE.**—This Act may be cited as the  
4 “Fairness and Independence in Redistricting Act of  
5 2009”.

6 (b) **FINDING.**—Congress finds that it has the author-  
7 ity to establish the terms and conditions States must fol-  
8 low in carrying out Congressional redistricting after an  
9 apportionment of Members of the House of Representa-  
10 tives because—

11 (1) the authority granted to Congress under ar-  
12 ticle I, section 4 of the Constitution of the United  
13 States gives Congress the power to enact laws gov-  
14 erning the time, place, and manner of elections for  
15 Members of the House of Representatives; and

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

22 **SEC. 2. LIMIT ON CONGRESSIONAL REDISTRICTING AFTER**  
23 **AN APPORTIONMENT.**

24 The Act entitled “An Act for the relief of Doctor Ri-  
25 cardo Vallejo Samala and to provide for congressional re-  
26 districting”, approved December 14, 1967 (2 U.S.C. 2e),

1 is amended by adding at the end the following: “A State  
2 which has been redistricted in the manner provided by law  
3 after an apportionment under section 22(a) of the Act en-  
4 titled ‘An Act to provide for the fifteenth and subsequent  
5 decennial censuses and to provide for an apportionment  
6 of Representatives in Congress’, approved June 18, 1929  
7 (2 U.S.C. 2a), may not be redistricted again until after  
8 the next apportionment of Representatives under such sec-  
9 tion, unless a court requires the State to conduct such  
10 subsequent redistricting to comply with the Constitution  
11 or to enforce the Voting Rights Act of 1965 (42 U.S.C.  
12 1973 et seq.).”.

13 **SEC. 3. REQUIRING REDISTRICTING TO BE CONDUCTED**  
14 **THROUGH PLAN OF INDEPENDENT STATE**  
15 **COMMISSION OR PLAN OF HIGHEST STATE**  
16 **COURT.**

17 (a) USE OF PLAN REQUIRED.—

18 (1) IN GENERAL.—Notwithstanding any other  
19 provision of law, any Congressional redistricting con-  
20 ducted by a State shall be conducted in accordance  
21 with—

22 (A) the redistricting plan developed by the  
23 independent redistricting commission estab-  
24 lished in the State, in accordance with section  
25 4; or

1 (B) if the plan developed by such commis-  
2 sion is not enacted into law, the redistricting  
3 plan selected by the highest court in the State  
4 or developed by a United States district court,  
5 in accordance with section 5.

6 (2) OTHER CRITERIA AND PROCEDURES PER-  
7 MITTED.—Nothing in this Act or the amendments  
8 made by this Act may be construed to prohibit a  
9 State from conducting Congressional redistricting in  
10 accordance with such criteria and procedures as the  
11 State considers appropriate, to the extent that such  
12 criteria and procedures are consistent with the appli-  
13 cable requirements of this Act and the amendments  
14 made by this Act.

15 (b) CONFORMING AMENDMENT.—Section 22(c) of  
16 the Act entitled “An Act to provide for the fifteenth and  
17 subsequent decennial censuses and to provide for an ap-  
18 portionment of Representatives in Congress”, approved  
19 June 18, 1929 (2 U.S.C. 2a(c)), is amended by striking  
20 “in the manner provided by the law thereof” and insert-  
21 ing: “in the manner provided by the Fairness and Inde-  
22 pendence in Redistricting Act of 2009”.

23 **SEC. 4. INDEPENDENT REDISTRICTING COMMISSION.**

24 (a) ADMINISTRATIVE MATTERS.—

1           (1) APPOINTMENT OF MEMBERS.—Each State  
2 shall establish an independent redistricting commis-  
3 sion composed of—

4           (A) a chair, who shall be appointed by ma-  
5 jority vote of the other members of the commis-  
6 sion; and

7           (B) an equal number of members (but not  
8 fewer than 1) from each of the following cat-  
9 egories:

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

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

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

23           (iv) Members appointed by a member  
24 of the lower house of the State legislature  
25 who represents the political party with the

1           second greatest number of seats in that  
2           house.

3           (2) SPECIAL RULE FOR STATES WITH UNICAM-  
4           ERAL LEGISLATURE.—In the case of a State with a  
5           unicameral legislature, the independent redistricting  
6           commission established under this subsection shall  
7           be composed of—

8                   (A) a chair, who shall be appointed by ma-  
9                   jority vote of the other members of the commis-  
10                   sion; and

11                   (B) an equal number of members (but not  
12                   fewer than 2) from each of the following cat-  
13                   egories:

14                           (i) Members appointed by a member  
15                           of the legislature who shall be selected by  
16                           the chair of the Government Affairs Com-  
17                           mittee of the legislature to represent the  
18                           State political party whose candidate for  
19                           chief executive of the State received the  
20                           greatest number of votes on average in the  
21                           3 most recent general elections for that of-  
22                           fice.

23                           (ii) Members appointed by a member  
24                           of the legislature who shall be selected by  
25                           the chair of the Government Affairs Com-

1                   mittee of the legislature to represent the  
2                   State political party whose candidate for  
3                   chief executive of the State received the  
4                   second greatest number of votes on aver-  
5                   age in the 3 most recent general elections  
6                   for that office.

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

10                   (A) as of the date of appointment, the in-  
11                   dividual is registered to vote in elections for  
12                   Federal office held in the State, and was reg-  
13                   istered to vote in the 2 most recent general  
14                   elections for Federal office held in the State;

15                   (B) the individual did not hold public office  
16                   or run as a candidate for election for public of-  
17                   fice, or serve as an employee of a political party  
18                   or candidate for election for public office, at  
19                   any time during the 4-year period ending on the  
20                   December 31 preceding the date of appoint-  
21                   ment; and

22                   (C) the individual certifies that he or she  
23                   will not run as a candidate for the office of  
24                   Representative in the Congress until after the  
25                   next apportionment of Representatives under

1 section 22(a) of the Act entitled “An Act to  
2 provide for the fifteenth and subsequent decen-  
3 nial censuses and to provide for an apportion-  
4 ment of Representatives in Congress”, approved  
5 June 18, 1929 (2 U.S.C. 2a).

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

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

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

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

24 (8) INTERNET SITE.—As soon as practicable  
25 after establishing the commission, the State shall es-



1        establish and maintain a public Internet site for the  
2        commission which meets the following requirements:

3                (A) The site is updated continuously to  
4                provide advance notice of commission meetings  
5                and to otherwise provide timely information on  
6                the activities of the commission.

7                (B) The site contains the most recent  
8                available information from the Bureau of the  
9                Census on voting-age population, voter registra-  
10              tion, and voting in the State, including pre-  
11              cinct-level and census tract-level data with re-  
12              spect to such information, as well as detailed  
13              maps reflecting such information.

14              (C) The site includes interactive software  
15              to enable any individual to design a redis-  
16              tricting plan for the State on the basis of the  
17              information described in subparagraph (B), in  
18              accordance with the criteria described in sub-  
19              section (b)(1).

20              (D) The site permits any individual to sub-  
21              mit a proposed redistricting plan to the com-  
22              mission, and to submit questions, comments,  
23              and other information with respect to the com-  
24              mission's activities.

25              (b) DEVELOPMENT OF REDISTRICTING PLAN.—

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

5                   (A) Adherence to the “one person, one  
6                   vote” standard and other requirements imposed  
7                   under the Constitution of the United States.

8                   (B) To the greatest extent mathematically  
9                   possible, ensuring that the population of each  
10                  Congressional district in the State does not  
11                  vary from the population of any other Congres-  
12                  sional district in the State (as determined on  
13                  the basis of the total count of persons of the  
14                  most recent decennial census conducted by the  
15                  Bureau of the Census).

16                  (C) Consistency with any applicable re-  
17                  quirements of the Voting Rights Act of 1965  
18                  and other Federal laws.

19                  (D) To the greatest extent practicable, the  
20                  maintenance of the geographic continuity of the  
21                  political subdivisions of the State which are in-  
22                  cluded in the same Congressional district, in the  
23                  following order of priority:

24                           (i) The continuity of counties or par-  
25                           ishes.

1 (ii) The continuity of municipalities.

2 (iii) The continuity of neighborhoods  
3 (as determined on the basis of census  
4 tracts or other relevant information).

5 (E) To the greatest extent practicable,  
6 maintaining compact districts (in accordance  
7 with such standards as the commission may es-  
8 tablish).

9 (F) Ensuring that districts are contiguous  
10 (except to the extent necessary to include any  
11 area which is surrounded by a body of water).

12 (2) FACTORS PROHIBITED FROM CONSIDER-  
13 ATION.—In developing the redistricting plan for the  
14 State, the independent redistricting commission may  
15 not take into consideration any of the following fac-  
16 tors, except to the extent necessary to comply with  
17 the Voting Rights Act of 1965:

18 (A) The voting history of the population of  
19 a Congressional district, except that the com-  
20 mission may take such history into consider-  
21 ation to the extent necessary to comply with  
22 any State law which requires the establishment  
23 of competitive Congressional districts.

24 (B) The political party affiliation of the  
25 population of a district.

1 (C) The residence of incumbent Members  
2 of the House of Representatives in the State.

3 (3) SOLICITATION OF PUBLIC INPUT IN DEVEL-  
4 OPMENT OF PLANS.—The commission shall solicit  
5 and take into consideration comments from the pub-  
6 lic in developing the redistricting plan for the State  
7 by holding meetings in representative geographic re-  
8 gions of the State at which members of the public  
9 may provide such input, and by otherwise soliciting  
10 input from the public (including redistricting plans  
11 developed by members of the public) through the  
12 commission Internet site and other methods.

13 (4) PUBLIC NOTICE OF PLANS PRIOR TO SUB-  
14 MISSION TO LEGISLATURE.—Not fewer than 7 days  
15 prior to submitting a redistricting plan to the legis-  
16 lature of the State under subsection (c)(1), the com-  
17 mission shall post on the commission Internet site  
18 and cause to have published in newspapers of gen-  
19 eral circulation throughout the State a notice con-  
20 taining the following information:

21 (A) A detailed version of the plan, includ-  
22 ing a map showing each Congressional district  
23 established under the plan and the voting age  
24 population by race of each such district.

1 (B) A statement providing specific infor-  
2 mation on how the adoption of the plan would  
3 serve the public interest.

4 (C) Any dissenting statements of any  
5 members of the commission who did not ap-  
6 prove of the submission of the plan to the legis-  
7 lature.

8 (c) SUBMISSION OF PLANS TO LEGISLATURE.—

9 (1) IN GENERAL.—At any time prior to the  
10 first November 1 which occurs after the chief execu-  
11 tive of the State receives the State apportionment  
12 notice, the commission may submit redistricting  
13 plans developed by the commission under this sec-  
14 tion to the legislature of the State.

15 (2) CONSIDERATION OF PLAN BY LEGISLA-  
16 TURE.—After receiving any redistricting plan under  
17 paragraph (1), the legislature of a State may—

18 (A) approve the plan as submitted by the  
19 commission without amendment and forward  
20 the plan to the chief executive of the State; or

21 (B) reject the plan.

22 (3) ENACTMENT OF PLAN.—

23 (A) IN GENERAL.—A redistricting plan de-  
24 veloped by the commission shall be considered  
25 to be enacted into law only if the plan is for-

1           warded to the chief executive of the State pur-  
2           suant to paragraph (2)(A) and—

3                   (i) the chief executive approves the  
4                   plan as forwarded by the legislature with-  
5                   out amendment; or

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

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

17                   (i) the plan is submitted to the legisla-  
18                   ture of the State; and

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

22                (d) REQUIRING MAJORITY APPROVAL FOR AC-  
23                TIONS.—The independent redistricting commission of a  
24                State may not submit a redistricting plan to the State leg-  
25                islature, or take any other action, without the approval

1 of at least a majority of its members given at a meeting  
2 at which at least a majority of its members are present.

3 (e) TERMINATION.—

4 (1) IN GENERAL.—The independent redistricting  
5 commission of a State shall terminate on the  
6 day after the date of the first regularly scheduled  
7 general election for Federal office which occurs after  
8 the chief executive of the State receives the State  
9 apportionment notice.

10 (2) PRESERVATION OF RECORDS.—The State  
11 shall ensure that the records of the independent re-  
12 districting commission are retained in the appro-  
13 priate State archive in such manner as may be nec-  
14 essary to enable the State to respond to any civil ac-  
15 tion brought with respect to Congressional redistricting  
16 in the State.

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

18 (a) STATE COURT.—

19 (1) SUBMISSION AND SELECTION OF PLAN.—If  
20 a redistricting plan developed by the independent re-  
21 districting commission of a State is not enacted into  
22 law under section 4(c)(3) by the first November 1  
23 which occurs after the chief executive of the State  
24 receives the State apportionment notice, the commis-  
25 sion may submit redistricting plans developed by the

1 commission in accordance with section 4 to the high-  
2 est court of the State, which may select and publish  
3 one of the submitted plans to serve as the redistricting  
4 plan for the State.

5 (2) NO MODIFICATION OF PLAN PERMITTED.—  
6 The highest court of a State may not modify any re-  
7 districting plan submitted under this subsection.

8 (b) FEDERAL COURT.—

9 (1) FAILURE OF STATE COURT TO SELECT  
10 PLAN.—

11 (A) NOTICE TO COURT IF PLAN NOT SE-  
12 LECTED BY STATE COURT.—If a State court to  
13 whom redistricting plans have been submitted  
14 under subsection (a) does not select a plan to  
15 serve as the redistricting plan for the State  
16 under such subsection on or before the first De-  
17 cember 1 which occurs after the chief executive  
18 of the State receives the State apportionment  
19 notice, the State shall file a notice with the  
20 United States district court for the district in  
21 which the capital of the State is located.

22 (B) DEVELOPMENT AND SELECTION OF  
23 PLAN BY FEDERAL COURT.—Not later than 30  
24 days after receiving a notice from a State under



1           subparagraph (A), the court shall develop and  
2           publish a final redistricting plan for the State.

3           (2) FAILURE OF STATE TO ESTABLISH COMMIS-  
4           SION.—

5                   (A) IN GENERAL.—If a State does not es-  
6           tablish an independent redistricting commission  
7           under section 4 by the first September 1 which  
8           occurs after the chief executive of the State re-  
9           ceives the State apportionment notice—

10                   (i) the State may not establish the  
11           commission; and

12                   (ii) the United States district court  
13           for the district in which the capital of the  
14           State is located shall develop and publish  
15           a final redistricting plan for the State not  
16           later than the first December 1 which oc-  
17           curs after the chief executive of the State  
18           receives the State apportionment notice.

19                   (B) DETERMINATION OF FAILURE TO ES-  
20           TABLISH COMMISSION.—For purposes of sub-  
21           paragraph (A), a State shall be considered to  
22           have failed to establish an independent redis-  
23           tricting commission by the date referred to in  
24           such subparagraph if a chair of the commission  
25           has not been appointed on or before such date.

1           (3) CRITERIA.—It is the sense of Congress  
2           that, in developing a redistricting plan for a State  
3           under this subsection, the district court should ad-  
4           here to the same terms and conditions that applied  
5           to the development of the plan of the commission  
6           under section 4(b).

7           (c) ACCESS TO INFORMATION AND RECORDS OF  
8           COMMISSION.—A court which is required to select, pub-  
9           lish, or develop a redistricting plan for a State under this  
10          section shall have access to any information, data, soft-  
11          ware, or other records and material used by the inde-  
12          pendent redistricting commission of the State in carrying  
13          out its duties under this Act.

14   **SEC. 6. SPECIAL RULE FOR REDISTRICTING CONDUCTED**  
15                           **UNDER ORDER OF FEDERAL COURT.**

16          If a Federal court requires a State to conduct redis-  
17          tricting subsequent to an apportionment of Representa-  
18          tives in the State in order to comply with the Constitution  
19          or to enforce the Voting Rights Act of 1965, sections 4  
20          and 5 shall apply with respect to the redistricting, except  
21          that—

22               (1) the deadline for the establishment of the  
23               independent redistricting commission and the ap-  
24               pointment of the commission's chair (as described in  
25               section 4(a)(5)) shall be the expiration of the 30-day

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

3 (2) the deadline for the submission of redis-  
4 tricting plans to the legislature by the commission,  
5 and the date of the termination of the commission  
6 (as described in section 4(c)(1) and section 4(e))  
7 shall be the expiration of the 150-day period which  
8 begins on the date of the final order of the Federal  
9 court to conduct the redistricting;

10 (3) the deadline for the selection and publica-  
11 tion of the plan by the highest court of the State (as  
12 described in section 5(a)) shall be the expiration of  
13 the 180-day period which begins on the date of the  
14 final order of the Federal court to conduct the redis-  
15 tricting; and

16 (4) the deadline for the selection and publica-  
17 tion of the plan by the district court of the United  
18 States (as described in section 5(b)) shall be the ex-  
19 piration of the 210-day period which begins on the  
20 date of the final order of the Federal court to con-  
21 duct the redistricting.

22 **SEC. 7. PAYMENTS TO STATES FOR CARRYING OUT REDIS-**  
23 **TRICTING.**

24 (a) **AUTHORIZATION OF PAYMENTS.**—Subject to sub-  
25 section (d), not later than 30 days after a State receives

1 a State apportionment notice, the Election Assistance  
2 Commission shall make a payment to the State in an  
3 amount equal to the product of—

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

6 (2) \$150,000.

7 (b) USE OF FUNDS.—A State shall use the payment  
8 made under this section to establish and operate the  
9 State's independent redistricting commission, to imple-  
10 ment the State redistricting plan, and to otherwise carry  
11 out Congressional redistricting in the State.

12 (c) NO PAYMENT TO STATES WITH SINGLE MEM-  
13 BER.—The Election Assistance Commission shall not  
14 make a payment under this section to any State which  
15 is not entitled to more than one Representative under its  
16 State apportionment notice.

17 (d) REQUIRING ESTABLISHMENT OF COMMISSION AS  
18 CONDITION OF PAYMENT.—The Election Assistance Com-  
19 mission may not make a payment to a State under this  
20 section until the State certifies to the Commission that  
21 the State has established an independent redistricting  
22 commission, and that a chair of the commission has been  
23 appointed, in accordance with section 4.

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

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

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

13 **SEC. 9. NO EFFECT ON ELECTIONS FOR STATE AND LOCAL**  
14 **OFFICE.**

15 Nothing in this Act or in any amendment made by  
16 this Act may be construed to affect the manner in which  
17 a State carries out elections for State or local office, in-  
18 cluding the process by which a State establishes the dis-  
19 tricts used in such elections.

20 **SEC. 10. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall  
22 apply with respect to any Congressional redistricting  
23 which occurs after the regular decennial census conducted  
24 during 2010.