A year from now redistricting will be full steam ahead, with the focus on where the boundaries for legislative and congressional districts will be set for the next 10 years. When the 2020 census data is released to the states, no later than March 31, 2021, it’s go-time for redistricters.

This year, state legislatures are revving their engines, preparing and practicing for the real deal coming next year. Lawmakers are considering their software choices, gathering data, training personnel and figuring out how the public can have its voice heard during this most political of government actions. Here’s what legislators need to keep in mind for the big job ahead.
States Are in Charge

The states—not Congress—unequivocally drive the redistricting bus. It’s in Article 1, Section 4 of the Constitution: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” The Constitution doesn’t say how redistricting is to be done, but it’s clear on who is to do it.

Although legislative redistricting is outside their purview, members of Congress have introduced bills to influence congressional map-drawing. Last year, for example, HR 1, the For the People Act, called for commissions to do congressional redistricting. The bill made its way through the House quickly but is unlikely to be taken up by the Senate this year.

Lawmakers Take the Lead

Legislatures are the traditional entities to do redistricting—and they’ll continue to do so in the next cycle. Lawmakers will vote on congressional maps in 41 states and on legislative maps in 36. The other states have commissions with primary responsibility for line-drawing. But even in many of those, the legislature has a role in selecting commissioners.

The Census Data Matters

Article 1, Section 3 of the Constitution calls for an “actual Enumeration” of the people living in the U.S. every 10 years. The data generated by that enumeration, or census, is used in many ways, including to distribute more than $1 trillion in federal funds to the states annually through a variety of programs.

From a redistricting standpoint, the census block—the smallest geographic level—is the equivalent of a single-hump Lego. The tussling associated with redistricting is over how to build those census blocks into districts. For the coming census, bipartisan support from the states for the Census Bureau’s work has burgeoned. Forty-seven

Ohio’s Unique Process

Ohio created a hybrid model for congressional redistricting. The legislature gets first crack at drawing the map. If the chambers can’t approve it with strong bipartisan support, a commission draws a new version. If the commission also fails to get bipartisan approval, lawmakers step in again, with a lower bar for bipartisanship. If that effort fails? The legislature can draw the maps with a simple majority—but must start over again just four years later.

Data Analysis

Software vendors and data consultants increasingly are helping lawmakers during and after redistricting. “Ensembles” of thousands (or millions) of computer-generated maps may be used by redistricters themselves—or by outsiders—to compare proposed boundary changes. Ensemble analyses may show up in courts, though it’s too early to know whether they will be determinative.

3 Conditions to Avoid

In Thornburg v. Gingles, the U.S. Supreme Court named three conditions redistricting plans must exhibit for minorities to claim possible vote dilution.

• The group must be “sufficiently numerous and compact to form a majority in a single-member district.”

• The group must be politically cohesive in that they tend to vote the same way.

• The majority votes as a bloc often enough to enable it to usually defeat the minority’s preferred candidate.

—Wendy Underhill
states have created statewide complete count committees to assist the federal government in counting people, and 28 states have dedicated funding to this mission.

4 Equal Population Is Principle No. 1

The U.S. Supreme Court has ruled that newly drawn districts must contain the same number of people, making the phrase “one person, one vote” part of our vernacular. Before the 1960s, some states hadn’t redrawn their electoral maps in decades. In one state, for example, the largest Senate district was 41 times the size of the smallest. All states are now required to redistrict every 10 years to rebalance district populations.

The standards for equality vary. For Congress, the law has been interpreted to mean that districts must be equal almost to a single person, with a few caveats. For legislative redistricting, there’s more flexibility; still, states aim for equality and must have legally sound explanations for variations.

5 Nondiscrimination Is No. 2

Shortly after the Supreme Court defined the equal population requirement, Congress passed the Voting Rights Act, in 1965. It clarified that nothing related to elections, including redistricting, could lead to discrimination based on race or minority language. That requirement, along with the equal protection clause of the 14th Amendment, which prohibits race from being the predominant reason for creating a district or map, forces states to pay neither too much, nor too little, attention to race.

6 States Are Free to Set Standards

Beyond equal population and attention to race, state legislatures are free to set whatever standards, criteria, priorities, principles or guidelines they’d like when it comes to redistricting. All states require that legislative districts be contiguous, and 40 also require that they be compact, though “compactness” is rarely defined or mathematically measured. Some states explicitly try to preserve preexisting districts, or identify and preserve “communities of interest,” another rarely defined term of art. These communities could be anything from a group of rice farmers to homeowners dealing with noise pollution from a nearby airport.

In the last couple decades, there have been several attempts to address the influence of politics in redistricting. States have tried requiring that districts be competitive, meaning they have a relatively even partisan balance, or that they mirror the partisan split of voters in the state. Others require that maps neither favor nor disfavor one party or candidate. Arizona, California, Iowa, Montana and Nebraska prohibit political data from being used in the process at all. State standards often conflict with one another, however. It can be difficult to draw competitive districts without using political data, for example. It can also be hard to draw compact districts while keeping communities of interest together—especially if geography naturally disperses them.

7 The U.S. Supreme Court Rules

First comes the census, then redistricting. Next comes litigation. The Supreme Court has ruled on redistricting in all but 10 years since 1962, when the first landmark redistricting case was decided.

In recent years, the court has also ruled on what legislative documents or communications are privileged and therefore can’t be brought as evidence in a case. In short: There’s less privilege, or confidentiality, than many observers had thought.

Challenges to both the accuracy of census data (based on potential undercounts) and the use of citizenship data (which will be provided for the first time in this cycle, based on administrative records) may prove fertile new ground for litigation.

8 State Courts Are Active, Too

State courts have been just as active on redistricting as their federal counterparts, with venue-shopping not uncommon. They’ll be even busier, most pundits say, in the coming decade.

That’s because in Rucho v. Common Cause last year, the U.S. Supreme Court declared that questions of excessive partisanship in redistricting should be handled by the states, not the federal courts. The justices expressly noted that state constitutions often have broader protections than the federal charter. Indeed, 30 state constitutions have an implicit free-elections clause of some kind.

It’s often difficult to tell where partisanship ends and racial discrimination begins, making it unclear whether plaintiffs will choose the hyper-partisanship path
to state courts or the race-discrimination path to federal court.

Population Numbers Are Vital

Redistricting is an attorneys’ game, but it’s not theirs alone. It’s also a game for statisticians, a la “Moneyball,” Michael Lewis’ 2003 numbers-crunching classic. Data drives the process, and as computing power increases, the need for high-powered math maven does, too.

Population numbers come from the Census Bureau, along with data on race, age and housing type. States also gather geographical data, such as existing political boundaries and precinct lines. In most states, results from general elections, primaries and key special elections all inform the process. For all these sources of data, time is the third dimension. Demographic, geographic and election results data that goes back a decade or so gives redistricters the clearest picture.

Commercially available data, such as who shops at Neiman Marcus versus who shops at Dollar General, can be gathered and put to work. In other words, a spreadsheet won’t do the trick. Sophisticated databases are being built or updated in every state capital this year.

Redistricting Embodies Power

Redistricting might seem administrative in nature, but it’s really about the redistribution of political power. How the lines are drawn affects who gets elected, and who gets elected determines who does redistricting.

The 2020 election will determine many of the people who will have a say in redistricting when it kicks off next spring. Nearly 6,000 legislators will be elected in November—and more than 5,000 of them will be redistricters the year after, ready or not. What about you? Are you ready?

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