

STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. SJC-21-4

In re 2021 Apportionment of Maine
House of Representatives, Maine
Senate, U.S. House of Representatives,
and County Commissioners

**ORDER GRANTING IN PART AND
DISMISSING IN PART PETITION
TO EXTEND DEADLINES**

President of the Senate Troy D. Jackson, Senate Minority Leader Jeffrey L. Timberlake, Speaker of the House Ryan M. Fecteau, House Minority Leader Kathleen R. J. Dillingham, and the Apportionment Commission established by the Legislature under Me. Const. art. IV, pt. 3, § 1-A petition for an order of this Court to

- extend the deadlines contained in Me. Const. art. IV, pt. 1, § 3; Me. Const. art. IV, pt. 2, § 2; Me. Const. art. IX, § 24(1), (2); and Me. Const. art. IX, § 25(1)(C), (2) for apportioning legislative, congressional, and county commissioner districts and
- authorize the Commission to exercise all of its constitutional and other legal powers after June 1, 2021.¹

We ordered any responses to the petition to be filed by June 18, 2021; we received none. We then heard oral argument from the petitioners on June 30, 2021.

¹ On June 7, 2021, we granted the Apportionment Commission's motion to join as a petitioner and to amend the petition to include its request for a declaration authorizing it to continue to exercise its powers after June 1, 2021.

The Maine Constitution requires that the Legislature that convenes in 2021 and the Legislature convening every ten years thereafter divide the State into districts for the 151 seats in the Maine House of Representatives and the 31 to 35 seats in the Maine Senate. Me. Const. art. IV, pt. 1, § 2 (House); Me. Const. art. IV, pt. 2, §§ 1, 2 (Senate). In order to do so, the Legislature must determine a “mean population figure” for each district by dividing the number of seats into “the number of inhabitants of the State . . . according to the latest Federal Decennial Census.” Me. Const. art. IV, pt. 1, § 2 (House); Me. Const. art. IV, pt. 2, § 2 (Senate).

The legislative redistricting authority is delegated in the first instance to an Apportionment Commission composed of legislators and members of the public. Me. Const. art. IV, pt. 3, § 1-A. The Apportionment Commission is also responsible for apportioning the congressional districts and the county commissioner districts. Me. Const. art. IX, §§ 24(1), 25(1). As with the Senate and the House, the Apportionment Commission is required to review the congressional and county commissioner districts and reapportion them as necessary based on the Federal Decennial Census population count. Me. Const. art. IX, §§ 24(1), 25(1)(A).

The Maine Constitution requires the Apportionment Commission to submit each initial redistricting plan to the Clerk of the House of

Representatives or, for the Senate districts, the Secretary of the Senate no later than June 1 of the year in which apportionment is required. Me. Const. art. IV, pt. 1, § 3 (House); Me. Const. art. IV, pt. 2, § 2 (Senate); Me. Const. art. IX, § 24(1) (Congress); Me. Const. art. IX, § 25(1)(C) (county commissioners). The Legislature may then enact, by a two-thirds vote, either the Apportionment Commission's plan or a plan of its own by June 11 of the same year with regard to the House, Senate, and congressional districts. Me. Const. art. IV, pt. 1, § 3 (House); Me. Const. art. IV, pt. 2, § 2 (Senate); Me. Const. art. IX, § 24(1) (Congress). In contrast, with regard to the county commissioner districts, the Clerk of the House of Representatives has until January 15, 2022, to submit a legislative document to the Legislature based on the Commission's plan, and the Legislature then has thirty days to act. Me. Const. art. IX, § 25(1)(C).

As to the legislative and congressional districts, if the Legislature fails to act by June 11, the Supreme Judicial Court is required to make the apportionment:

In the event that the Legislature shall fail to make an apportionment by June 11th, the Supreme Judicial Court shall, within 60 days following the period in which the Legislature is required to act but fails to do so, make the apportionment. In making such apportionment, the Supreme Judicial Court shall take into consideration plans and briefs filed by the public with the

court during the first 30 days of the period in which the court is required to apportion.

The Supreme Judicial Court shall have original jurisdiction to hear any challenge to an apportionment law enacted by the Legislature, as registered by any citizen or group thereof. If any challenge is sustained, the Supreme Judicial Court shall make the apportionment.

Me. Const. art. IV, pt. 2, § 2 (Senate).²

As noted, the Maine Constitution requires that the Apportionment Commission and the Legislature use the population data from the latest Federal Decennial Census. Me. Const. art. IV, pt. 1, § 2 (House); Me. Const. art. IV, pt. 2, § 2 (Senate); Me. Const. art. IX, § 24(1) (Congress); Me. Const. art. IX, § 25(1)(A) (county commissioners). Federal law requires the United States Census Bureau to provide states with the apportionment data by April 1, 2021. 13 U.S.C.S. § 141(c) (LEXIS through Pub. L. No. 117-21). The Census Bureau has not done so, attributing the delay to the COVID-19 pandemic. The Census Bureau estimates that the necessary data will be delivered to the State of Maine by August 16, 2021.

² The provision governing the House is identical with the exception of an additional comma that does not change the meaning. Me. Const. art. IV, pt. 1, § 3. The language of the provision governing congressional reapportionment varies a bit more, but the variations are without significance for the purposes of this order. Me. Const. art. IX, § 24(2), (3). The provision governing county commissioner districts is similar, but we lack the jurisdiction to construe that provision unless the Legislature fails to act by its deadline. Me. Const. art. IX, § 25.

The federal government's delay in delivering 2020 census data to the State of Maine prevented the Apportionment Commission from meeting its June 1, 2021, deadline for submitting plans to the Legislature for legislative, congressional, and county commissioner districts. *See* Me. Const. art. IV, pt. 1, § 3; Me. Const. art. IV, pt. 2, § 2; Me. Const. art. IX, §§ 24(1), 25(1)(C). The delay also prevented the Legislature from meeting its June 11, 2021, deadline for adopting the Commission's plans or plans of its own for legislative and congressional districts. *See* Me. Const. art. IV, pt. 1, § 3; Me. Const. art. IV, pt. 2, § 2; Me. Const. art. IX, § 24(1).

The Maine Constitution specifically confers upon the Supreme Judicial Court subject matter jurisdiction over legislative and congressional apportionment if the Legislature has failed to timely act. Me. Const. art. IV, pt. 1, § 3; Me. Const. art. IV, pt. 2, § 2; Me. Const. art. IX, § 24(2). The Legislature failed to enact reapportionment legislation by June 11, 2021, and we are now within the sixty-day time period during which the Maine Constitution requires us to apportion the legislative and congressional districts.³ Taken as a whole, however, the Maine Constitution clearly contemplates that the Court will make the apportionment only after (1) the

³ As noted, the Clerk of the House of Representatives has until January 15, 2022, to present reapportionment legislation for county commissioner districts. Me. Const. art. IX, § 25(1)(C). We have no jurisdiction unless the Legislature fails to act on the proposed legislation within thirty calendar days after that presentation by the Clerk. Me. Const. art. IX, § 25(1)(C), (2).

Commission has had the opportunity to craft a plan based on the population data from the latest Federal Decennial Census, (2) the Legislature has had the opportunity to enact the Commission's plan or its own after consideration of the population data from the latest census, (3) the Legislature has failed to act, and (4) the public has had the opportunity to file meaningful plans and briefs. Because no Census data have been received, none of those steps has occurred, nor can they until the data is received.

Because full compliance with the Maine Constitution is not only difficult but impossible, the petitioners have asked us to enlarge the deadlines. In addressing another constitutional conflict, we recognized that substantive constitutional imperatives should prevail over strict adherence to constitutional procedure. *See Opinion of the Justices*, 70 Me. 570 (1880). There, the justices considered whether someone other than the Governor or council could administer the oath of office as then required by Article 9 of the Maine Constitution if there were no Governor or council or if the Governor and council refused to act. *Id.* at 591-92. The justices opined,

It cannot be presumed that the framers of the constitution had in contemplation that the oath had better not be administered at all, than administered by any other officer than the one designated therein. This is one of the most reliable tests by which to distinguish a directory from a mandatory provision.

Id. at 592.

As in 1880, it cannot now be presumed that adherence to the deadlines in the Maine Constitution should prevail over the substance of appropriate reapportionment, as such adherence would make appropriate reapportionment impossible. Rather, we should seek to preserve the overall intent of the constitutional apportionment process to the greatest extent possible, and that process prioritizes the Apportionment Commission's submission of a plan based on "the latest" Census data to the Legislature, followed by legislative consideration and possible action. Me. Const. art. IV, pt. 1, §§ 2, 3; Me. Const. art. IV, pt. 2, § 2; Me. Const. art. IX, § 25(1)(A); *see* Me. Const. art. IX, § 24(1); *cf. In re 1983 Legis. Apportionment of House, Senate, & Cong. Dists.*, 469 A.2d 819, 827 (Me. 1983) (observing that full compliance with state and federal constitutional apportionment standards was "a practical impossibility" and acknowledging the Legislature's primary role in attempting to harmonize the standards). Indeed, the federal constitution requires no less:

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.

Reynolds v. Sims, 377 U.S. 533, 568 (1964).

Therefore, we conclude that the jurisdictional grant of the apportionment provisions in the Maine Constitution permits us to enlarge our deadlines and, by extension, enlarge the deadlines for the Apportionment Commission and Legislature to engage in their apportionment duties within a specific time.⁴

It is therefore ORDERED that the petition is GRANTED as to the legislative and congressional reapportionments. Based on the time estimates of the United States Census Bureau and the Maine Secretary of State, the following deadlines are established:

Deadline for the Apportionment Commission to submit plans to the Legislature for the legislative and congressional districts:

45 days after the State of Maine's receipt from the Census Bureau of the legacy-format data required by 13 U.S.C.S. § 141(c)

Deadline for the Legislature to enact the Apportionment Commission's plans or plans of its own for the legislative and congressional districts:

10 days after the earlier of

- the Commission's submission to the Legislature of the legislative and congressional redistricting plans or

⁴ Other states have encountered a similar quandary. Those courts that have enlarged state constitutional deadlines to accommodate the delayed release of United States Census data have relied, as we do here, on specific sources of state law. *See, e.g., Legislature of Cal. v. Padilla*, 469 P.3d 405, 408 (Cal. 2020) (exercising jurisdiction based on mandamus authority conferred by the California Constitution); *State ex rel. Kotek v. Fagan*, 484 P.3d 1058 (Ore. 2021) (exercising jurisdiction based on a statute authorizing a writ of mandamus). As a result, those cases are of little assistance here.

- expiration of the above deadline for the Commission to submit the plans

Deadline for the public to file plans and briefs with the Court if the Legislature fails to act:

14 days after the failure of the Legislature to enact an apportionment plan by the established deadline

Deadline for the Court to make apportionment for the legislative and congressional districts if the Legislature fails to act:

35 days after the failure of the Legislature to enact an apportionment plan by the established deadline

It is further ORDERED and DECLARED that, for the Apportionment Commission to complete its legislative and congressional apportionment plans for submission to the Legislature, the Commission has full authority to exercise all of its constitutional and other legal powers after June 1, 2021, up to the deadline established above.

As to the reapportionment plan for county commissioner seats, however, we lack jurisdiction to adjust the Apportionment Commission's deadline,⁵ and we DISMISS the petition to the extent that it requests that we modify that deadline.

⁵ Petitioners argue that we may grant relief from the deadline and authorize the Apportionment Commission to develop and submit a plan for the county commissioner districts after June 1 in the exercise of our general jurisdiction. *See* 4 M.R.S. § 7 (2021). We disagree. We also do not agree that the relief sought is obtainable by a writ of mandamus or writ of prohibition. *See* 14 M.R.S. § 5301 (2021); *Webster v. Ballou*, 108 Me. 522, 524, 81 A. 1009 (1911); *Curtis v. Cornish*, 109 Me. 384, 38788, 84 A. 799 (1912). The matter of the county commissioner apportionment is not before us pursuant to the Maine Constitution, Me. Const. art. IX, § 25(2), and we therefore cannot act on this part of the petition at this time.

Dated: July 19, 2021

FOR THE COURT,*



VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
THOMAS E. HUMPHREY
ANDREW M. HORTON
CATHERINE R. CONNORS
Associate Justices

* This Order was approved after conference of the Court, all Justices concurring therein.