

Virginia Redistricting Commission Subcommittees

Budget and Finance Subcommittee

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General Subject Matter

(1) Develop and recommend Commission budget

(2) Administer procurement process for attorney and consultant(s) and recommend candidates

Citizen Engagement Subcommittee

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Delegate Les R. Adams

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Brandon Christopher Hutchins

Senator Mamie E. Locke

Senator Ryan T. McDougle

Delegate Delores L. McQuinn

General Subject Matter:

(1) Develop and recommend advertising plan for meetings and public hearings

(2) Develop and recommend public hearing schedule

REDISTRICTING 101

Presentation to the Virginia Redistricting Commission

April 26, 2021

Meg Lamb, Division of Legislative Services

REDISTRICTING 101

- Basic Principles of Redistricting
- The Census and Redistricting
- Legal Standards and Criteria
- Preparations for the 2021 Redistricting

WHAT IS REDISTRICTING?

Redistricting is the process of redrawing the boundaries of districts that elect representatives who serve specific geographic areas.

Redistricting occurs every 10 years in the year following the United States decennial census.

Redistricting is governed by federal and state constitutional and statutory laws.

Redistricting is the responsibility of state and local governments.

BASIC PRINCIPLES OF REDISTRICTING

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Redistricting must be done every 10 years in the year ending in one.

Prior to the 1960s, many states did not redraw their election district boundaries on a regular basis despite the occurrence of shifts in population, which often led to districts with wide variations in population numbers. Due to a series of rulings by the U.S. Supreme Court in this matter, states must redistrict every 10 years following the United States decennial census.

Article II, Section 6 of the Constitution of Virginia specifically requires the Commonwealth to be reapportioned into electoral districts in the year 2021 and every 10 years thereafter.

BASIC PRINCIPLES OF REDISTRICTING

Districts must be drawn using census data.

The United States decennial census is the primary data source on population, age, and race used in redistricting.

While there is no federal requirement that census data be used for redistricting, the Code of Virginia requires the Virginia Redistricting Commission to use “the population data provided by the United States Bureau of the Census, as adjusted by the Division of Legislative Services” when redrawing the boundaries of congressional and state legislative districts. Local governments are also required to use this data for redistricting.

BASIC PRINCIPLES OF REDISTRICTING

Districts must be equal in population.

The same U.S. Supreme Court cases that require districts be redrawn every 10 years also require those districts to be equal in population. This is the “one-person, one-vote” principle.

For congressional districts, this means that the population of one congressional district must be essentially equal to another.

For state Senate and House of Delegates districts, the standard is not as strict, instead requiring “substantially” equal populations in like districts.

BASIC PRINCIPLES OF REDISTRICTING

Districts cannot be drawn to discriminate based on race.

One of the most complicated and, as a result, frequently litigated areas of redistricting law relates to race-based redistricting.

Generally, the **Equal Protection Clause** of the Fourteenth Amendment to the Constitution of the United States has been interpreted as prohibiting districts from being drawn to segregate citizens into districts based on race.

In addition, the **Voting Rights Act of 1965**, as amended, prohibits districts from being drawn in such a way that the result is a denial or abridgement of the right to vote on account of race, color, or status as a member of a language minority group.

THE CENSUS AND REDISTRICTING

THE CENSUS AND REDISTRICTING

There are two basic pieces of information needed to redraw election district lines: population data and maps.

The Census Bureau provides both.

THE CENSUS AND REDISTRICTING

- Article I, Section 2, Clause 4 of the Constitution of the United States requires an “actual Enumeration” of all people in the United States.
- This enumeration is then used to determine the number of seats each state will have in the United States House of Representatives for the upcoming decade.

POPULATION DATA

- Public Law 94-171 is a federal law that requires the Census Bureau to provide the data needed for redistricting to the states in order to establish congressional, state legislative, and local election districts.
- This data gives total and voting age population counts and Hispanic and racial data for each geographic unit.
 - Questions about race and ethnicity are included in the decennial census in order to gather data necessary to facilitate enforcement of the Voting Rights Act.
 - The U.S. Office of Management and Budget standards specify five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. These standards also provide two categories for data on ethnicity: Hispanic or Latino and Not Hispanic or Latino.

POPULATION DATA

Who is counted where?

As a general rule, people are counted at their usual residence, the place where they live and sleep most of the time. Persons who live in “group quarters” are counted at that facility, and persons who do not have a usual residence are counted where they are on Census Day, or April 1, 2020.

The Census Bureau has detailed guidance for determining where people should be counted

CENSUS GEOGRAPHY AND MAPS

The Census Bureau reports a state's population data using certain geographic units. Each geographic unit has population data assigned to it.

The geographic units used are a combination of legal or administrative geography and Bureau-defined geography.

Geographic Units

- Counties, cities, and towns – the primary legal subdivisions of Virginia
- Voting tabulation districts or VTDs – precincts and wards
- Census tract – a combination of census block groups
- Census block group – a combination of census blocks
- Census block – the smallest entity for which Census Bureau collects and tabulates decennial census data

CENSUS GEOGRAPHY AND MAPS

TIGER/Line Shapefiles

- A shapefile is a geospatial data format for use in geographic information system (GIS) software.
- The TIGER/Line Shapefiles are the fully supported core geographic product from the Census Bureau. They are extracts of selected geographic and cartographic information from the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) database.
- These shapefiles include polygon boundaries of geographic areas and features, but they do not contain any demographic data from the decennial census. Instead, the shapefiles contain a standard geographic identifier for each geographic entity that links to the geographic identifier in the census data.
- To use these shapefiles, a user must have mapping or GIS software that can import the TIGER/Line Shapefiles. The shapefiles are not provided by the Census Bureau in any vendor-specific format. With the appropriate software, a user can produce maps ranging in detail from a neighborhood street map to a map of the United States.

GETTING THE GEOGRAPHY RIGHT

Boundary and Annexation Survey

- Conducted annually by the Census Bureau to collect information about select legally defined geographic areas
- Used to update information about legal boundaries and names of all governmental units in the United States
- Provides local governments the opportunity to review the Census Bureau's boundary data to ensure that the Bureau has the correct legal boundary, name, and status information of the various geographic areas
- The legal boundaries collected through the BAS are used by the Census Bureau to tabulate data for the decennial census

2020 Census Redistricting Data Program

- Conducted by the Census Bureau in the run-up to the decennial redistricting
- Provides opportunities for state and local governments to review and submit changes to various geographic and governmental area boundaries
- Phase 1: the Block Boundary Suggestion Project
 - Provided states the opportunity to submit suggested legal boundary updates as well as updates to other geographic areas
- Phase 2: the Voting District Project
 - Provided states the opportunity to submit their voting districts for inclusion on the P.L. 94-171 Redistricting Data, in addition to allowing states to submit suggested legal boundary updates as well as updates to other geographic areas

LEGAL STANDARDS AND CRITERIA

LEGAL STANDARDS AND CRITERIA

- Equal population
- Contiguity and compactness
- Race and redistricting
- Other statutory criteria

EQUAL POPULATION

- ***Congressional Districts***

- The equal population requirement for congressional districts is based on Article I, Section 2 of the Constitution of the United States and is a **strict standard of equality**. The U.S. Supreme Court first articulated the “one-person, one-vote” principle in *Wesberry v. Sanders*.

- ***State Legislative Districts***

- The equal population requirement for state legislative districts is based on the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and requires “**substantial equality**” among legislative districts. The U.S. Supreme Court distinguished the population standards for state legislative districts from congressional districts in *Reynolds v. Sims*.

“SUBSTANTIAL EQUALITY” AND PERMITTED DEVIATIONS

How much deviation is permitted?

- U.S. Supreme Court has said

*States must draw congressional districts with populations as close to perfect equality as possible. But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. **When the maximum population deviation between the largest and smallest district is less than 10 percent, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule.** Maximum deviations above 10 percent are presumptively impermissible.*

- State law limits permitted deviation for state legislative districts to no more than five percent.

CONTIGUITY AND COMPACTNESS

- Article II, Section 6 of the Constitution of Virginia requires every electoral district to be composed of contiguous and compact territory.
- Subdivision 6 of § 24.2-304.04 requires districts to be composed of contiguous territory, “with no district contiguous only by connections by water running downstream or upriver, and political boundaries may be considered.”
- Subdivision 7 of § 24.2-304.04 requires districts to be composed of compact territory and to be drawn “employing one or more standard numerical measures of individual and average district compactness, both statewide and district by district.”

RACE AND REDISTRICTING

- The Equal Protection Clause of the 14th Amendment of the US Constitution
- The Voting Rights Act of 1965, as amended
- State-specific laws
 - Article II, Section 6 of the Constitution of Virginia
 - Section 24.2-304.04 of the Code of Virginia

THE EQUAL PROTECTION CLAUSE

The Equal Protection Clause states, in relevant part, that no state shall deny to any person within its jurisdiction the equal protection of the laws. In the context of redistricting, this means a state cannot, without sufficient justification, separate its citizens into different voting districts on the basis of race. To do so would be an impermissible racial gerrymander.

EPC: PROVING A RACIAL GERRYMANDER

- To challenge a race-based redistricting plan as an impermissible racial gerrymander, an individual must have standing. This requires the plaintiff to be a resident of the challenged district.
- Race may be considered, but race cannot predominate.
- If a plaintiff is able to show that race predominated in the drawing of a district, the plan is then subjected to a strict scrutiny analysis, meaning the defendant must demonstrate that the plan was narrowly tailored to achieve a compelling state interest.
 - Can be demonstrated by a showing that mapmakers had a “strong basis in evidence” supporting the decision to make race-based choices
 - State’s actions are not required to be “actually necessary” for statutory compliance; the legislature just has to have had “good reasons” to believe it was required at the time
 - A functional analysis of the specific district is necessary.

THE VOTING RIGHTS ACT OF 1965

- Enacted by Congress in 1965 to give teeth to the 15th Amendment to the US Constitution
- Section 2 of the VRA applies to all jurisdictions
- Section 2 prohibits any state or political subdivision from imposing any voting qualification, standard, practice, or procedure that results in the denial or abridgement of any U.S. citizen's right to vote on account of race, color, or status as a member of a language minority group. In the context of redistricting, Section 2 prohibits **minority vote dilution**.

SECTION 2 OF THE VRA AND MINORITY VOTE DILUTION

- To prove a Section 2 claim:

A violation . . . is established if based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

- This boils down to two primary elements. First, the plaintiffs must prove their minority group is eligible to bring a Section 2 claim. Second, the plaintiffs must prove their votes were diluted under the totality of circumstances test.
- Section 2 claims are dependent on a showing of discriminatory effects; an intent to discriminate does not need to be proven.

SECTION 2 OF THE VRA AND MINORITY VOTE DILUTION

GINGLES PRECONDITIONS

- In *Thornburg v. Gingles*, the U.S. Supreme Court established three factors, or preconditions, that must be proven by plaintiffs as a threshold matter in establishing a preliminary vote dilution claim under Section 2. These preconditions establish whether the plaintiffs are members of a class of citizens protected by Section 2.
 1. The racial or language minority group “is sufficiently numerous and compact to form a majority in a single-member district.”
 2. The minority group is “politically cohesive,” meaning its members tend to vote similarly.
 3. The “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”

TOTALITY OF THE CIRCUMSTANCES TEST

- If plaintiffs are able to prove each of the three *Gingles* factors, the court then examines the “totality of the circumstances” to determine whether the minority group’s opportunity to participate in the electoral process or elect its candidates of choice have been denied or abridged.
- The factors that the court will consider have evolved from several cases and a United States Senate report accompanying the 1982 amendments to Section 2.

RACIALLY POLARIZED VOTING

- **Proof of legally significant racially polarized voting is a crucial element of a Section 2 vote dilution claim.**
- Racially polarized voting, or racial bloc voting, is found where the race of a candidate determines how a voter votes.
- Expert evidence is frequently offered to prove or disprove a history of racially polarized voting and whether the majority votes as a bloc to the detriment of the minority. Evidence on racial bloc voting patterns is directed at proving or disproving the proposition that minority voters vote for minority candidates and white voters vote for white candidates—that racial voting patterns make it more difficult for minority groups to elect the candidates of their choice.
- There are a number of methods used to evaluate racial bloc voting patterns, and they can be complicated. The two most commonly used statistical methods for measuring racially polarized voting are homogeneous precinct analysis and bivariate regression analysis.
- The U.S. Supreme Court has avoided establishing any mathematical formula for determining when racial polarization exists, instead making clear that each challenged district has to be evaluated on its own, with a number of various factors considered

RACE AND REDISTRICTING: STATE-SPECIFIC LAWS

- Article II, Section 6 of the Constitution of Virginia

Every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness, including the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and provisions of the Voting Rights Act of 1965, as amended, and judicial decisions interpreting such laws. Districts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.

RACE AND REDISTRICTING: STATE-SPECIFIC LAWS

- Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness.
- No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group. No district shall be drawn that results in a denial or abridgement of the rights of any racial or language minority group to participate in the political process and to elect representatives of their choice. A violation of this subdivision is established if, on the basis of the totality of the circumstances, it is shown that districts were drawn in such a way that members of a racial or language minority group are dispersed into districts in which they constitute an ineffective minority of voters or are concentrated into districts where they constitute an excessive majority. The extent to which members of a racial or language minority group have been elected to office in the state or the political subdivision is one circumstance that may be considered.
- Districts shall be drawn to give racial and language minorities an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice either alone or in coalition with others.

ADDITIONAL STATUTORY CRITERIA

- Districts shall be drawn to preserve communities of interest. For purposes of this subdivision, a "community of interest" means a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests. A "community of interest" does not include a community based upon political affiliation or relationship with a political party, elected official, or candidate for office.
- A map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party.
- The whole number of persons reported in the most recent federal decennial census by the United States Bureau of the Census shall be the basis for determining district populations, except that no person shall be deemed to have gained or lost a residence by reason of conviction and incarceration in a federal, state, or local correctional facility. Persons incarcerated in a federal, state, or local correctional facility shall be counted in the locality of their address at the time of incarceration, and the Division of Legislative Services shall adjust the census data... for this purpose.

PREPARATIONS FOR REDISTRICTING

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- 2020 Census Redistricting Data Program
- Redistricting Application Software
- Equipment and Work Space
- Joint Reapportionment Committee

2020 CENSUS REDISTRICTING DATA PROGRAM

Phase 1: Block Boundary Suggestion Project

- Conducted through DLS
- Two stages:
 - Initial identification (December 2015 – May 31, 2016)
 - Verification of updates (December 2016 – May 31, 2017)

Phase 2: Voting District Project

- Conducted through DLS
- Three stages:
 - Initial identification (December 2017 – May 31, 2018)
 - Verification of updates 1 (December 2018 – May 31, 2019)
 - Verification of updates 2 (December 2019 – March 31, 2020)

REDISTRICTING APPLICATION SOFTWARE

- Redistricting application software is a specialized computer program that visualizes data stored on an associated database to enable redistricting participants to accurately and efficiently complete and share redistricting plans that meet state requirements.
- Data sets include spatial data (e.g., census blocks, precincts, electoral districts) and associated tabular data (e.g., population, race, and political data).
- Data is visualized on a virtual map. Redistricting participants can select geographical units to create proposed districts and the proposed districts can then be analyzed to determine their individual and comparative characteristics.
- DLS began the procurement process in 2019, first creating a Request for Information to solicit general information about what the current market for redistricting application software could offer and ultimately contracting with CityGate GIS.

EQUIPMENT AND WORK SPACE

- Four Dell Precision Workstation laptops for redistricting staff
- Two Dell Precision Desktop computers with 27” monitors
- Two Ricoh color laser printers for producing standard size maps
- One HP color inkjet 36” plotter printer for large maps
- One Dell PowerEdge server to host redistricting data and a 12 TB back-up device for that server
- Designated office on the 9th floor of the Pocahontas Building

JOINT REAPPORTIONMENT COMMITTEE

- Statutorily responsible for supervising activities required for the tabulation of population for the census and for the timely reception of precinct population data for reapportionment.
 - Prior to the Virginia Redistricting Commission's establishment, this committee was also responsible for performing such other duties and responsibilities and exercising such supervision as may promote the orderly redistricting of congressional, state legislative, and local election districts.
- Committee met in October 2020 and approved the inclusion in base maps of shapefiles containing incumbent legislator addresses