

Redistricting Reform in Virginia: Why It's Needed, Why We Should Care¹

June 23, 2017
by Virginia Wertman

Democracy in Virginia is threatened by present redistricting policies and practices that put politicians from Virginia's General Assembly in charge of drawing electoral districts following each decennial census. This system has been abused over the years by both major political parties, resulting in electoral boundaries that are “gerrymandered”—that is, giving one political party a majority in as many districts as possible while concentrating the voting strength of other parties or certain demographic groups into as few districts as possible.

As a result of gerrymandering, elections are less competitive, political incumbents are protected, voter participation is discouraged, and the views of voters are not adequately reflected either in election results or in the actions of their elected representatives. While it is difficult to prove unequivocally the direct link from gerrymandering to these outcomes, an increasing amount of research from many states—including Virginia—provides convincing evidence.

Redistricting reform is needed in Virginia to reverse these outcomes. The present process conducted by the General Assembly should be replaced with one led by an impartial, independent commission based on non-partisan, objective criteria. The non-partisan, non-profit organization OneVirginia2021 is taking the lead in Virginia to achieve this goal.

The remainder of this paper identifies the techniques for gerrymandering and the characteristics of gerrymandered districts, provides evidence of the negative effects, and discusses possible reforms. An Annex describes the present redistricting process and governing rules, and lists additional resources.

Techniques for Gerrymandering and Characteristics of Gerrymandered Districts

In Virginia, the General Assembly has wide discretion in shaping electoral districts.² Under the United States Constitution, congressional districts must be equal in population, reflecting the “one person, one vote” standard. Section 2 of the Voting Rights Act of 1965 requires that electoral districts be drawn in ways that do not improperly dilute minorities' voting power. The Virginia Constitution requires that state electoral districts be composed of contiguous and compact territory, and give representation in proportion to population. However, the extent to which Virginia's legislators have met these few requirements in past redistricting exercises has been the subject of numerous court challenges over the years, and the lack of clear standards for concepts such as “compactness” has made challenges difficult to win.³

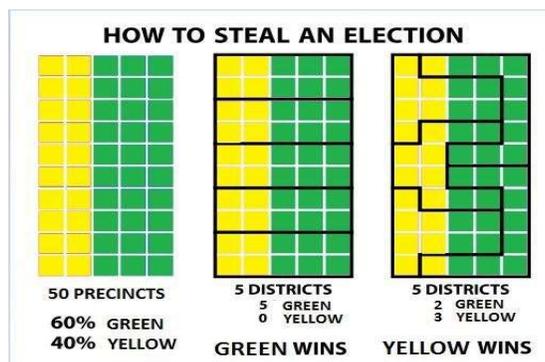
Armed with detailed demographic data and sophisticated software, politicians use a variety of techniques to draw electoral districts that favor one political party over another. By combining historical election data and commercially available data bases, legislators can predict with reasonable

-
- ¹ This paper was inspired by the author's participation in the Williamsburg Indivisible Group. The author has benefited greatly from comments on earlier drafts from her husband, H. Stanley Bolding, from Brian Cannon and Rachael Sharp of OneVirginia2021, and from Anne Brennan and Cathy Neal of the Williamsburg Indivisible Group.
 - ² See the Annex for a longer discussion of Virginia's redistricting process and rules.
 - ³ The section of this paper below, How Can the Present System Be Reformed?, lists examples of recent court challenges.

accuracy a person's likelihood of voting and the party for which the person will vote. With these data in hand, they can employ various techniques to adjust electoral boundaries in ways that virtually guarantee the results they want. These techniques include:

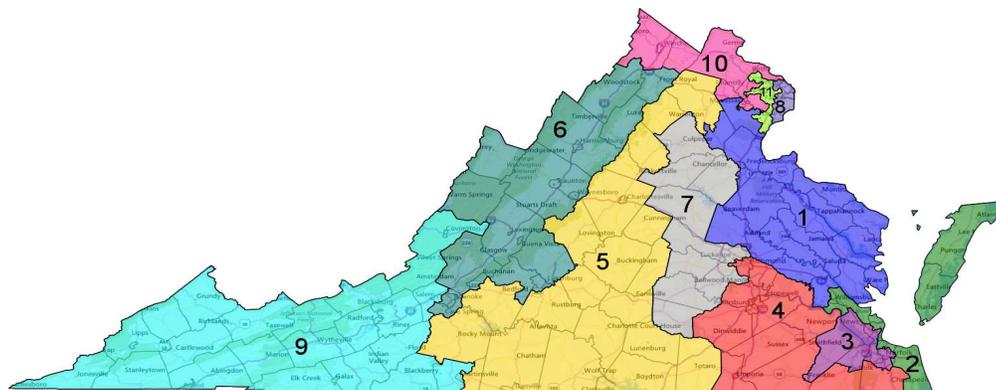
- “cracking,” which splits voters of a particular type among districts to dilute their voting strength;
- “packing,” which concentrates voters of a particular type into a single district to reduce their influence in other districts;
- “hijacking,” which redraws two districts to force two incumbents of the same political party to run against each other in a single district; and
- “kidnapping,” which changes district lines so that an elected official must run in a redrawn district that is less likely to support him/her.

The graphic below shows how these techniques can be used to produce two very different results. The illustration in the middle divides the precincts in a way that is compact but not fair, while the precincts in the illustration on the right are neither compact nor fair.



Source: Steven Nass - https://commons.wikimedia.org/wiki/File:How_to_Steal_an_Election_-_Gerrymandering.svg

The use of these techniques has led Virginia to be ranked as the 5th worst state in the country for district compactness in both its congressional and state legislative districts.⁴ As shown in the map below, a number of Virginia's congressional districts appear to lack compactness—especially the 2nd (southeast), 5th (central), and 11th (northeast, surrounded by the 1st, 8th and 10th). Examples are shown

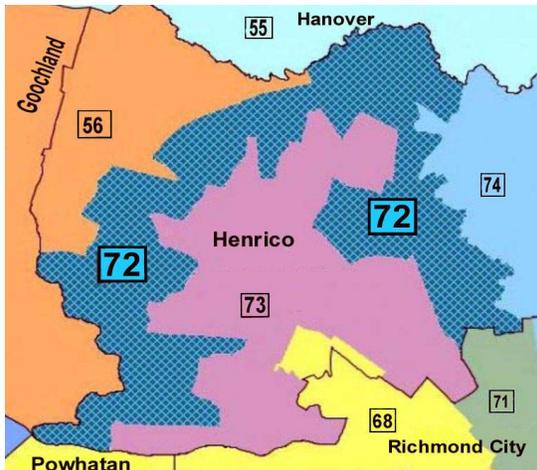


Source: http://images.dailykos.com/images/178619/original/Court_Map_Modification_16_State_View.png

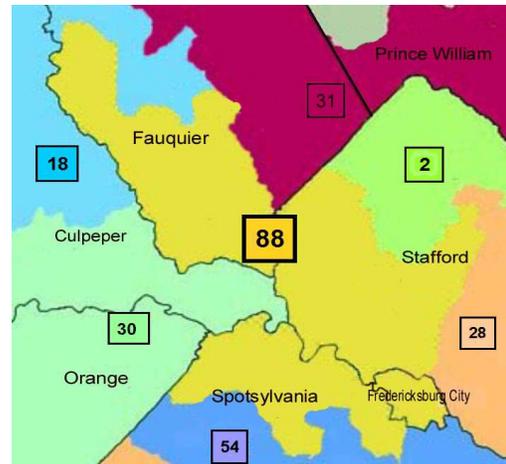
4 Daniel McGlone and Robert Cheatham. *Redrawing the Map on Redistricting 2012 – Addendum*, Azavea, 2012, www.cdn.azavea.com/com.redistrictingthenation/pdfs/Redistricting_The_Nation_Addendum.pdf (accessed June 1, 2017).

below of four state legislative districts that also appear to violate Virginia's compactness requirement: two House of Delegates districts, 72 (in blue on the left) and 88 (in yellow on the right); and two State Senate districts, 28 (in light blue on the left) and 30 (in yellow on the right). These four are among a total of eleven state legislative districts being challenged in court on the basis of compactness.⁵

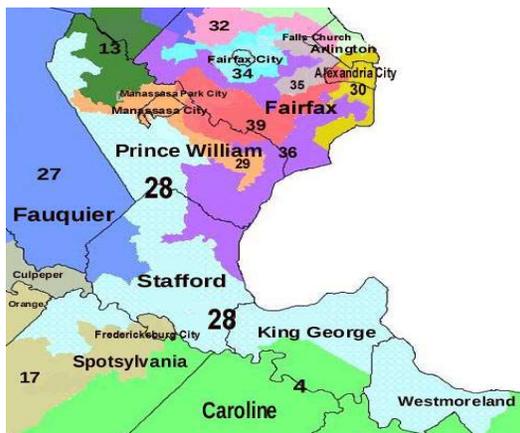
House District 72



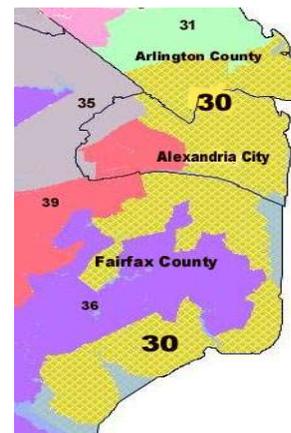
House District 88



Senate District 28



Senate District 30



Another indicator of gerrymandering is the extent to which counties and cities are disproportionately carved up among multiple districts, despite adoption by the General Assembly of the redistricting goal to avoid splitting localities. For example:

- In the House of Delegates, Fairfax County is represented by 17 members—that is, 17 percent of Virginia's Delegates represent about 13.5 percent of the state's 2010 population;⁶

⁵ "Compact," *OneVirginia2021: Virginians for Fair Redistricting*, <http://www.onevirginia2021.org/compact/> (accessed May 23, 2017). The legal challenge (*Vesilind v Virginia State Board of Elections*) is discussed briefly in the section below, "How Can the Present System Be Reformed?"

⁶ Representation data from: "Virginia House of Delegates", *Wikipedia, The Free Encyclopedia*, May 10, 2017, www.en.wikipedia.org/wiki/Virginia_House_of_Delegates (accessed May 25, 2017); population data from: Demographics Research Group, *Virginia Population Estimates*, Data Table, Weldon Cooper Center for Public Service, University of Virginia, January 30, 2017, www.demographics.coopercenter.org/virginia-population-estimates/ (accessed May 25, 2017).

- Virginia Beach, which had about 5.5 percent of the state's population in 2010, is represented by 8 members (8 percent) of the House of Delegates;
- In the state Senate, Fairfax County is represented by 9 different senators—that is, 22 percent of Virginia's state senators represent 13.5 percent of its population;⁷ and
- At the congressional level, 10 of Virginia's counties and 4 of its cities are represented by more than one congressman. Because of the requirement that electoral districts be equal in population, this is understandable for the state's most populous county, Fairfax, where the population in 2010 (almost 1.1 million) exceeded the average district size (about 727 thousand). But one wonders why, out of Virginia's 95 counties, those ranking 21st, 26th, 29th, 35th, and 47th in population (with 2010 populations ranging between about 36 and 92 thousand) would need to be split were it not for gerrymandering.⁸

The Negative Effects of Gerrymandering in Virginia

Virginia's long history of gerrymandering began as early as 1779, and continues today, perpetrated by both major political parties.⁹ Examples include the following:

- In 1779, Patrick Henry drew the 5th Congressional District to favor James Monroe and his own party over James Madison in the first congressional elections;¹⁰
- In 1991, when the Democratic party controlled both chambers of the General Assembly, politicians drew lines so that thirty-nine percent of all Republican incumbents in the House of Delegates were forced to run against each other. They also redrew congressional districts with the goal of ensuring that George Allen, a Republican who had just won a special election for the 7th Congressional District, would not be reelected;¹¹ and
- A decade later, in 2001, Republicans held the governorship and both chambers of the General Assembly for the first time in history. Their redistricting efforts resulted in a dramatic shift in the political balance of the House of Delegates, increasing the Republicans' 52-47 advantage before the election to 64-34 after the 2001 election.¹²

Democracy in Virginia is suffering because gerrymandering allows politicians to pick their voters rather than voters picking their politicians. As a consequence of gerrymandering, both opposition and competition in general elections are limited, voter participation is discouraged, incumbents are protected, and the views of citizens are not accurately reflected.

7 Representation data from: "Senate of Virginia", *Wikipedia, The Free Encyclopedia*, May 10, 2017, www.en.wikipedia.org/wiki/Senate_of_Virginia (accessed May 25, 2017).

8 Distribution of counties across congressional districts from "Registrant Counts by District Type Congressional, October 2016," *2016 Registration Statistics*, Virginia Department of Elections, www.elections.virginia.gov/resultsreports/registration-statistics/2016-registration-statistics/index.html (accessed May 25, 2017).

9 For more complete reviews of Virginia's gerrymandering history see: Kenneth S. Stroupe Jr., "Gerrymandering's Long History In Virginia: Will This Decade Mark the End?," *The Virginia News Letter*, Vol. 85 No. 1, February 2009, Weldon Cooper Center for Public Service, University of Virginia, http://www.coopercenter.org/sites/default/files/publications/van10209_0.pdf (accessed May 29, 2017); and Geoffrey Skelley, "Virginia's Redistricting History: What's Past is Prologue," *Sabato's Crystal Ball*, University of Virginia Center for Politics, June 18, 2015, www.centerforpolitics.org/crystalball/articles/virginias-redistricting-history-whats-past-is-prologue/ (accessed May 25, 2017).

10 Skelley, "Virginia's Redistricting History: What's Past is Prologue."

11 Stroupe, "Gerrymandering's Long History In Virginia: Will This Decade Mark the End?."

12 "Virginia House of Delegates," *Wikipedia, The Free Encyclopedia*, May 10, 2017.

Lack of Opposition and Competition

In recent elections, candidates in as many as 73 percent of the races for seats in the Virginia House of Delegates lacked meaningful opposition. Table 1 below shows it was not unusual for 60 percent of House of Delegates candidates to run completely unopposed in general elections from 2007 through 2015. Opposition was not a factor in an additional dozen or so races in each of these elections where a single major party candidate won a lopsided victory against one or more third party candidates.

Table 1. Opposition and Competition in General Election Races for the House of Delegates

Election Year	No. of Uncontested Seats (of 100)				No. of Races with Only 3 rd Party Opposition ¹	No. of Competitive Races ²	Average Margin of Victory in Contested Races (percentage points)
	Republican	Democrat	Independent	Total			
2007	28	31		59	9	5	16.4
2009	21	9	1 ³	31	14 ³	9	29.2
2011	43	20		63	10	3	27.9
2013	29	16		45	12	10	25.3
2015	40	22		62	9	3	27.1

Source: Table compilations derived by the author using data from the Virginia Department of Elections

1 Races with one candidate from a major party (Republican or Democrat) and one or more candidates from third parties, including Independent, Libertarian, Green, Independent Green, and Constitution.

2 Races with two or more opponents where the winner's percentage of the total vote was 5 or fewer percentage points greater than that of the candidate with the next largest vote.

3 The 2009 elections included 2 incumbents from the Independent party. One ran unopposed and the other, who won, faced opposition from a Democrat and a Constitution party candidate. The latter race is not included in the 14 with 3rd party opposition.

Only 10 percent or less of House of Delegates races have been competitive in the last five general elections (Table 1). Races are judged to be competitive when the winner's percentage of the total vote is within 5 percentage points of that of his/her nearest competitor. Not only are most races not competitive, but also most are won by very large margins—an average of 25 to 29 percentage points from 2009 through 2015.

About half of the candidates in recent state Senate elections lacked meaningful opposition. As shown in Table 2, a large number of candidates either ran unopposed or won lopsided victories against one or more third party candidates.

Table 2. Opposition and Competition in General Election Races for the Virginia Senate

Election Year	No. of Uncontested Seats (of 40)				No. of Races with Only 3 rd Party Opposition ¹	No. of Competitive Races ²	Average Margin of Victory in Contested Races (percentage points)
	Republican	Democrat	Total	% of Total Seats			
2007	8	9	17	42.5	6	6	24.3
2011	11	3	14	35	2	3	18.8
2015	10	7	17	42.5	3	2	22.5

Source: Table compilations derived by the author using data from the Virginia Department of Elections

1 Races with one candidate from a major party (Republican or Democrat) and one or more candidates from third parties, including Independent, Libertarian, Green, Independent Green, and Constitution.

2 Races with two or more opponents where the winner's percentage of the total vote was 5 or fewer percentage points greater than that of the candidate with the next largest vote.

The vast majority of contested Senate races in recent years have also not been competitive.

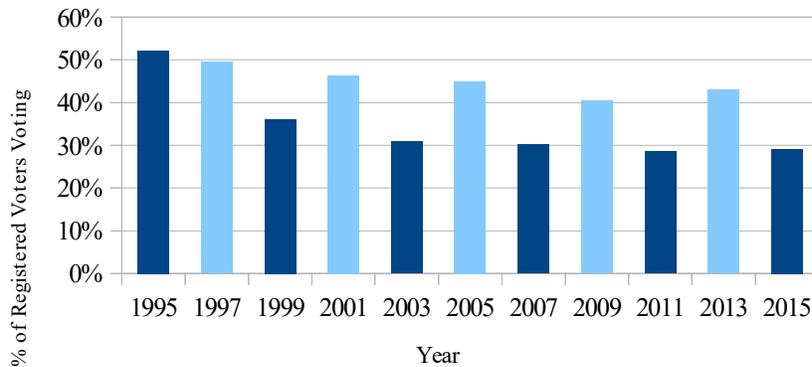
Table 2 shows that only a handful—no more than 15 percent—of the contested Senate races in recent years have been competitive. The average margin of victory in contested Senate races has also been very large—between about 19 and 24 percentage points.

Nor are Virginia's congressional races competitive.¹³ Not one of the general election races for Virginia's eleven House of Representatives seats in 2012, 2014 or 2016 was competitive. In these elections, the average margin of victory ranged between 24 and 28 percentage points. In 2008, only two of the eleven races were competitive, and in 2010, three races were competitive.

Low Voter Participation

The lack of competition contributes significantly to low voter participation in elections. Why vote if an election outcome is largely predetermined? The percentage of registered voters who participated in elections that include only the Virginia Senate and House of Delegates and local offices declined from more than 52 percent in 1995 to only 29 percent in both 2011 and 2015, as shown in the dark blue bars in Chart 1 below. A greater percentage of registered voters typically participate in elections that include statewide offices (governor, lieutenant governor and attorney general), but turnout for these elections has also declined over the years from 50 percent to 40 percent between 1997 and 2009, rising slightly to 43 percent in 2013 as shown in the light blue bars in Chart1.

Chart 1. Virginia Voter Turnout for State and Local Offices 1995 – 2015



Source: Virginia Department of Elections, Summary of Virginia Registration and Turnout Statistics, November General Elections 1976-Present

When candidates are unopposed in an election, voter participation drops markedly. Table 3 below shows that in both 2013 and 2015, voter participation in House of Delegates elections was about 7 percentage points lower in races that were uncontested than in those with two or more candidates. For state Senate races, participation in uncontested races was more than 6 percentage points lower than in contested races in 2015, and about 9 percentage points lower in 2011 (Table 4). Voter participation in races for Virginia's eleven congressional seats shows a similar pattern (Table 5).

¹³ Conclusions are based on analysis by the author of files from the Virginia Department of Elections containing results of the 2008, 2010, 2012, 2014 and 2016 general elections.

Table 3. Percent of Registered Voters Participating in House of Delegates General Elections

Election Year	Average Voter Participation ¹ (%)			Range ² (%)
	Overall	Contested Races	Uncontested Races	
2013	38.6	41.5	35	26.2 – 53.5
2015	25.5	29.5	22.9	9.2 – 42.0

Source: Table compilations derived by the author using data from the Virginia Department of Elections

1 Average participation is determined by calculating the percentage of total registered voters who voted in each electoral district and averaging those percentages across the total number of electoral districts.

2 The range shows the highest and lowest voter participation rates across all districts.

Table 4. Percent of Registered Voters Participating in State Senate General Elections

Election Year	Average Voter Participation ¹ (%)			Range ² (%)
	Overall	Contested Races	Uncontested Races	
2011	26.5	29.7	20.7	9.9 – 39.5
2015	26.2	29.1	22.4	12.2 – 39.7

Source: Table compilations derived by the author using data from the Virginia Department of Elections

1 Average participation is determined by calculating the percentage of total registered voters who voted in each electoral district and averaging those percentages across the total number of electoral districts.

2 The range shows the highest and lowest voter participation rates across all districts.

Table 5. Percent of Registered Voters Participating in Virginia Congressional General Elections

Election Year	Average Voter Participation ¹ (%)			Range ² (%)
	Overall	Contested Races	Uncontested Races	
2014	40.4	41.1	32.6	32.6 – 47.8
2016	67.5	68.4	56.5	56.5 – 73.7

Source: Table compilations derived by the author using data from the Virginia Department of Elections

1 Average participation is determined by calculating the percentage of total registered voters who voted in each electoral district and averaging those percentages across the total number of electoral districts.

2 The range shows the highest and lowest voter participation rates across all districts.

Protection of Incumbents

Incumbents in the Virginia legislature are virtually guaranteed reelection. Table 6 shows that 80 percent or more of incumbents in the Virginia legislature typically win their general election races. When an incumbent is not reelected, the reason is most often that s/he decides not to run; a few are defeated in party primaries, but very rarely is an incumbent defeated in a general election.

Table 6. Number of Incumbents Winning Elections

Election Year	House of Delegates (100 Members)				Senate (40 Members)			
	Republican	Democrat	Independent	Total	Republican	Democrat	Total	% of Total Members
2007	49	39	2	90	15	16	31	77.5
2009	47	31	2	80	na	na	na	na
2011	52	31	1	84	14	18	32	80
2013	56	29	0	85	na	na	na	na
2015	62	26	0	88	16	17	33	82.5

Source: Table compiled by the author from the Virginia Department of Elections “Winners List” reports for each year.

Inadequate Reflection of Citizens' Views

When electoral districts are drawn to favor one political party over another, the voices of all constituents in the district are not heard or counted equally. This is reflected in both election results and the geography of electoral districts.

The lopsided advantage that Republicans now hold in the Virginia House of Delegates and the Virginia congressional delegation are not logical when considered in the context of statewide voting patterns.¹⁴ Republicans controlled redistricting in both 2001 and 2011, allowing them to:

- gain a super-majority of 66 to 34 seats in the Virginia House of Delegates, even though (1) Democratic party candidates won all three statewide offices in 2013, (2) Democrats have held the two U.S. Senate seats from Virginia since 2006, and (3) the Democratic party candidate for U.S. President carried Virginia in 2008, 2012 and 2016; and
- win 7 of Virginia's 11 U.S. House of Representatives seats even though the total vote in Virginia for Democratic congressional candidates in the 2016 general election exceeded the vote for Republican candidates (1.859 million votes vs. 1.843).

The distribution of carved up counties and cities among state and congressional electoral districts diminishes voters' influence.

- Individual voters experience difficulty in having their voices heard in districts that cover a large area and are economically, culturally, and socially diverse. Examples include: Virginia's 9th Congressional District, which includes part or all of 29 counties and cities; the 5th District, which is comprised of part or all of 23 localities; the 1st District, which includes 22 localities; and the 6th District, which includes 19 localities.
- When counties and cities are divided among multiple districts, the political will of these communities is diluted and their unified concerns are difficult to advance. Extreme examples include:
 - Fairfax County, which is represented by 3 Congressmen, 17 Delegates and 9 Senators;

¹⁴ In years past, Democrats have also had lopsided advantages that are difficult to understand. For example, in 1980 Democrats held a 74 to 25 advantage in the House of Delegates even though the Governor was a Republican and Republicans won 9 of the 10 congressional seats in the 1980 election.

- Prince William County, represented by 3 Congressmen, 8 Delegates, and 5 Senators;
- Virginia Beach City, represented by 1 Congressman, 8 Delegates, and 4 Senators;
- Norfolk City, represented by 2 Congressmen, 6 Delegates and 3 Senators; and
- Newport News City, represented by 3 Congressmen, 3 Delegates and 2 Senators.

This situation is best summed up by Kenneth Stroupe Jr. in his 2009 article when he stated that “where one votes matters almost as much as whether one votes.” He continued: “How, where, when, and by whom election district boundary lines are drawn affects not only the weight and influence of one's individual vote, but also the extent to which the collective votes of one's neighborhood, city, or county actually matter in influencing the outcomes of elections.”¹⁵

How Can the Present System Be Reformed?

Reform through legal challenges is slow and difficult. While claims of racial gerrymandering have been adjudicated for many years, the U.S. Supreme Court has never found a redistricting plan to be unconstitutional on the basis of partisan gerrymandering. For the first time in 1986, the Supreme Court ruled that claims of partisan gerrymandering were justiciable (i.e., suitable for the courts to hear and decide on the merits).¹⁶ However, the Court failed to agree on a clear standard for judicial review, making subsequent legal challenges difficult to win (*Davis v. Bandemer*, 478 U.S. 109). Examples of recent legal challenges pertaining to gerrymandering in Virginia include the following:

- In the *Wilkins v. West* decision, the Virginia Supreme Court upheld the 2001 redistricting plan against challenges that compactness and contiguity requirements had been violated;
- The 2001 redistricting plan was also upheld by a federal appeals court that denied a challenge that the plan packed African Americans into the 3rd Congressional District to reduce black influence in the 4th District (*Hall v. Commonwealth of Virginia*);
- In a successful challenge to the 2011 redistricting map (*Page, et al. v. Virginia State Board of Elections, et al*), a federal court ruled that African Americans had been illegally packed into the 3rd Congressional District. A challenge to this ruling was denied by the U.S. Supreme Court, resulting in the federal court redrawing Congressional Districts 1, 2, 3, 4, and 7 prior to the 2016 elections;
- The 2011 redistricting map was also challenged in 2014 in *Bethune-Hill v. Virginia* by voters in 12 legislative districts who claimed unconstitutional packing of African Americans. While the federal district court agreed with the plaintiffs in one district, it found that the design of the other challenged districts was justified because of the need to comply with the Voting Rights Act. On appeal, the U.S. Supreme Court found that the lower court had applied the wrong legal standard when concluding that race had not predominated in the drawing of the 11 challenged districts. It ruled that even if a district otherwise complied with traditional redistricting principles, it could still be found unconstitutional if evidence established that race was the predominant factor in the district's creation. The Supreme Court remanded the case to the trial court to evaluate the districts under this standard, and a hearing for additional evidence has been set for October; and

¹⁵ Stroup, “Gerrymandering's Long History In Virginia: Will This Decade Mark the End.”

¹⁶ League of Women Voters of the Fairfax Area Education Fund, *Does Your Vote Really Count?*, September 2005, www.lwv-va.org/files/redistricting_2005_09_doesyourvotereallycount_pt1_lwvfa.pdf (accessed May 25, 2017).

- In September 2015, Virginia citizens representing five House of Delegates districts and six state Senate districts asked the Richmond Circuit Court to declare that their districts violate the state Constitution's compactness requirement (*Vesilind v. Virginia State Board of Elections*). In March 2017, the request was denied on the basis that the plaintiffs' arguments did not meet the high standard required to void legislative actions. A petition for appeal has been filed but the Virginia Supreme Court has not yet ruled on whether to hear the appeal.

However, two cases before the Supreme Court may result in the establishment of standards that would facilitate challenges to partisan gerrymandering in the future. These are challenges to redistricting maps in both Wisconsin and North Carolina.^{17 18}

- On June 19, 2017, the Court announced that it will hear in its next term the Wisconsin case, *Gill v. Whitford*, which challenges the ruling by a three-judge federal panel that the state's 2011 redistricting plan is so partisan that it violates the Constitution's First Amendment and equal rights protections. That the Supreme Court agreed to hear the Wisconsin case is extremely significant for three reasons: (1) it has been more than a decade since the Court last heard a partisan gerrymandering case (*Vieth v. Jubelirer* in 2004); (2) the plurality opinion at that time was that claims of partisan gerrymandering were nonjusticiable—i.e., there were no discernible and manageable standards for adjudicating political gerrymandering claims;^{19 20} and (3) the Court agreed to hear *Gill v. Whitford* based in part on new work of political scientists who used voting data to calculate the amount of bias against one party or another in the district maps—a formula called the Efficiency Gap.²¹ This work has the potential to provide the first-ever basis for measuring partisan gerrymandering.
- In May 2017, the U.S. Supreme Court found that North Carolina's legislature had improperly considered race when it drew two congressional districts after the 2010 census (*Cooper v. Harris*). The ruling did not change the state's congressional district lines because the legislature had already redrawn those lines after a lower court ruled they were unconstitutional. However, plaintiffs are now arguing (*Harris v. Cooper*) that the new map should also be thrown out because it replaced an unconstitutional racial gerrymander with an unconstitutional partisan gerrymander. Following the denial of the plaintiffs' appeal by a lower court, the plaintiffs have appealed to the U.S. Supreme Court.²² The Justices met in conference on June 15, 2017 to discuss the case but have not yet announced their decision.²³

17 Ariane de Vogue, "Supreme Court's next step on gerrymandering could be its biggest yet," *CNN Politics*, May 30, 2017, <http://www.cnn.com/2017/05/29/politics/supreme-court-partisan-gerrymandering/index.html> (accessed June 8, 2017).

18 For a more complete and exceptionally readable summary of the status of recent redistricting litigation, see Michael Li, Thomas Wolf, and Alexis Farmer, "The State of Redistricting Litigation (June 2017 edition)," Brennan Center for Justice, June 20, 2017, <https://www.brennancenter.org/blog/state-redistricting-litigation> (accessed June 21, 2017).

19 "Vieth v. Jubelirer." Oyez, <https://www.oyez.org/cases/2003/02-1580> (accessed June 21, 2017).

20 Justice Antonin Scalia, for a four-member plurality, wrote that the Court should declare all claims related to political (but not racial) gerrymandering nonjusticiable. Because no court had been able to find an appropriate remedy to political gerrymandering claims in the 18 years since the Court decided *Davis v. Bandemer*, 478 U.S. 109, which had held that such a remedy had not been found yet but might exist, Scalia wrote that it was time to recognize that the solution simply did not exist. (<https://www.oyez.org/cases/2003/02-1580>)

21 Nicholas O. Stephanopoulos and Eric M. McGhee, "Partisan Gerrymandering and the Efficiency Gap," *The University of Chicago Law Review*, Vol. 82, No. 2 (Spring 2015), pp. 831-900, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2457468 (accessed June 21, 2017).

22 Reid Wilson, "High court ruling opens next front in gerrymandering wars," *The Hill*, May 25, 2017, <http://thehill.com/homenews/campaign/335049-high-court-ruling-opens-next-front-in-gerrymandering-wars> (accessed June 21, 2017).

23 See <http://www.scotusblog.com/case-files/cases/harris-v-cooper/> (accessed June 21, 2017).

Reforms Beyond Court-mandated Remedies—Prevention Rather Than Cure

In recent years, a number of reforms to Virginia’s redistricting process have been proposed by members of Virginia's General Assembly, but none have been approved. Some of these proposals have taken the form of bills that retain redistricting powers in the General Assembly but strengthen the process by, for example, discontinuing the ability to split counties, cities and towns into multiple electoral districts. Other proposals have taken the form of constitutional amendments that would transfer authority for redistricting from the General Assembly to a redistricting commission. The size and composition of the proposed commission varies among these proposals, but they generally have in common a number of objectives. These include: respecting boundaries of counties, cities, and towns; ensuring contiguity and compactness by providing a standards for measurement of those criteria; ensuring that redistricting neither favors nor disfavors any political party, incumbent legislator or member of Congress, or any potential candidate; and prohibiting the use of political data (including addresses of incumbent legislators or members of Congress, political affiliations of voters, or previous election results) in redistricting exercises.

Data show that a majority of Virginians agree that redistricting should be the responsibility of an independent commission. By a margin of 74 to 15 percent, state residents surveyed by the University of Mary Washington in 2013 agreed that the Virginia Legislature should no longer be in charge of the redistricting process.²⁴ The Wason Center for Public Policy at Christopher Newport University reported in 2016 that 51 percent of its survey respondents support the creation of an independent redistricting commission, and 54 percent favor prohibiting the use of partisan voting information in redistricting.²⁵ More recently, the organization Public Policy Polling found that nonpartisan redistricting is supported by 57 percent of Virginia voters, with only 9 percent opposed.²⁶

A number of other states have already shifted redistricting responsibilities from the legislature to a board or commission. Thirteen states have a commission with primary responsibility for redistricting. Five other states have advisory commissions that may assist the legislatures with redistricting, and five more states have a back-up commission that will make the decision if the legislature is unable to agree on a plan.²⁷

An assumption that redistricting will be less partisan when undertaken by a commission rather than a legislature is not necessarily valid. Care must be taken to design the board or commission in a way that results in nonpartisan redistricting. According to the League of Women Voters, the track record of commissions is inconsistent, with their plans as likely to be challenged in courts as plans produced by legislatures.²⁸

24 Benjamin M. Harris and Stephen J. Farnsworth, “With Overwhelming Support for Nonpartisan Redistricting, Virginians are Studying Ways to Make that Happen,” *The Virginia News Letter*, Vol. 90 No. 4, June 2014, Weldon Cooper Center for Public Service, University of Virginia, [www.coopercenter.org/sites/default/files/publications/Virginia News Letter 2014 Vol. 90 No 4.pdf](http://www.coopercenter.org/sites/default/files/publications/Virginia%20News%20Letter%202014%20Vol.%2090%20No.%204.pdf), (accessed June 2, 2017).

25 Quentin Kidd, “Voters back hospitals’ bid to expand Medicaid; reject ‘religious freedom’ case not to serve gays; gun control moves voters in swing state Virginia,” February 11, 2016, http://cnu.edu/cpp/pdf/feb_11_2016_report.pdf (accessed June 21, 2017).

26 Public Policy Polling, “Virginians on the Governor's Race, Felon Voting Rights, Sports, and More,” June 17, 2016, <http://www.publicpolicypolling.com/main/2016/06/virginians-on-the-governors-race-felon-voting-rights-sports-and-more.html#more> (accessed June 21, 2017).

27 “Redistricting Commissions: State Legislative Plans,” *National Conference of State Legislatures*, Dec. 7, 2015, www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx (accessed June 8, 2017).

28 League of Women Voters of Virginia Education Fund, *Does Your Vote Really Count? (Part II)*, September 2006, www.lwv-va.org/files/redistricting_part_2_final.pdf (accessed May 25, 2017).

To address the threats to our democracy posed by gerrymandering, OneVirginia2021, a non-partisan redistricting reform organization, has taken the lead in Virginia to advocate for transferring the responsibility for redistricting from the General Assembly to an independent, non-partisan commission. OneVirginia2021 is championing the adoption of an amendment to the Virginia Constitution that will establish an independent, impartial commission to apply a fair and transparent process in drawing political districts after the 2020 census and beyond. The principles guiding OneVirginia2021 efforts are:²⁹

- Districts should be drawn with citizens' interests in mind, encouraging healthy debate and public participation;
- The redistricting process should be:
 - Independent, with reforms that remove conflicts of interest and have an impartial body that is independent from the General Assembly to draw the map;
 - Objective, using non-partisan criteria that ensure district boundaries are drawn on the basis of legal, demographic and commonsense criteria that ignore political interests; and
 - Transparent, with a process open to public inquiry and input so that citizens know the decisions behind the creation of their districts and have the opportunity to make their opinions known in the process.

The time to act is now; in order for reforms mandated by a constitutional amendment to be in place for the 2021 redistricting exercise, action must be taken in the next General Assembly session in 2018. This is because the Code of Virginia (§ 30-19) requires any amendment to the state constitution to be passed in two legislative sessions. The second vote on passage must occur during the Assembly's first regular session held after a general election for the House of Delegates, which would be early January 2020 following the 2019 elections. Alternatively, a constitutional convention could be called by two-thirds of the members of each house, but this seems an unlikely prospect in light of the lack of success of reform proposals in the General Assembly.

Once a proposed constitutional amendment garners the required General Assembly support, it must be submitted to the voters. Only if a majority of Virginia voters agree can the Constitution be modified. If General Assembly approval were obtained in early 2020, a referendum for amending the Constitution could be included on the general election ballot in November 2020, permitting the establishment of an independent commission in time for the 2021 redistricting exercise.

Conclusion

Although a tedious exercise, redistricting is of the utmost importance. The manner in which redistricting is conducted determines voters' choices for candidates to represent them, and thereby ultimately determines the laws by which citizens must abide, and, more broadly, the type of society in which we live. Gerrymandering leads to a lack of competition in elections. This discourages voter participation, leading to further entrenchment of the political status quo. An elected official who does not worry about electoral defeat will likely care less about his/her constituents' views, catering instead to party supporters and donors, and voting in a way that does not reflect the will of the people that s/he represents.

A census is conducted only once a decade. To delay now means another 10 years of eroded democracy.

²⁹ *OneVirginia2021: Virginians for Fair Redistricting*, www.onevirginia2021.org/ (accessed May 21, 2017).

ANNEX: Redistricting in Virginia - A Brief Summary of the Process and Rules

The Constitution of Virginia (Article II, Section 6) empowers the General Assembly to draw electoral districts for the state legislature and for the U.S. House of Representatives following each decennial census. The process is supervised by a Joint Reapportionment Committee of the legislature, comprised of five members of the Committee on Privileges and Elections (P&E) of the House of Delegates and three members of the P&E Committee of the Senate. Members of the Joint Committee are appointed by the chairmen of their respective P&E Committees. (See Code of Virginia, §30-263.) Since the committee chairs represent the majority party in each chamber, the majority party controls the redrawing of electoral district boundaries.

Redistricting proposals developed by the Joint Committee must be approved by the Legislature and the Governor. Proposals developed by the Joint Committee are submitted to the respective P&E Committees for approval, and these committees in turn submit the plans to the full Senate and House of Delegates for approval. The redistricting plan takes the form of legislation, and must be signed by the Governor before it can be implemented.³⁰

Redistricting exercises for counties, cities and towns are conducted by their governing bodies. (See Code of Virginia § 24.2-304.1.) New district lines in each locality must be described in a written ordinance that is approved by the governing body and sent to the Division of Legislative Services (DLS) of the State Board of Elections, which supports the General Assembly in its redistricting efforts. These local plans are then incorporated into the statewide redistricting plan.

The redistricting plan in Virginia is governed by the U.S. Constitution, Virginia's Constitution and certain of its laws, the Voting Rights Act of 1965, and court rulings.

- Article I, Section 2 of the U.S. Constitution requires that U.S. Representatives be apportioned to states according to population. The requirement for proportional representation at the state level stems from U.S. Supreme Court decisions in 1962 and 1964 which resulted in formulation of the “one person, one vote” standard.³¹ As applied to redistricting, this standard requires electoral districts to be roughly equal in population. Over time, the Court has moved toward a standard of strict mathematical equality for the population of congressional districts, but has allowed more variation in the population of state and local legislative districts.
- The Constitution of Virginia, Article II, Section 6, echoes this proportional representation requirement and specifies responsibility for redistricting efforts. It states in part:
- “Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as practicable, representation in proportion to the population of each district.”

³⁰ Until 2013, under Section 5 of the Voting Rights Act of 1965, a plan approved by the Governor had to also be approved by the U.S. Department of Justice before it could be implemented.

³¹ In *Baker v. Carr*, 369 U.S. 186 (1962), the U.S. Supreme Court held that federal courts had the power to review the apportionment of state legislatures. Subsequently, the Court formulated the “one person, one vote” standard, holding that each individual had to be weighted equally in legislative apportionment. This was followed by *Westberry v. Sanders*, 376 U.S. 1 (1964), which required U.S. congressional districts to be roughly equal in population, and then by *Reynolds v. Sims*, 377 U.S. 533 (1964), which applied the “one person, one vote” standard to state legislative bodies.

- The Code of Virginia repeats the requirement for contiguous and compact territory for county and city electoral districts (§ 24.2-304.1) and for state legislative districts (§ 24.2-305).
- The Code (Title 24.2, Chapter 3) also: lays out responsibilities for implementing redistricting plans; establishes requirements for election districts, precincts and polling places, including specifying size requirements for city and county precincts; and establishes effective dates for redistricting measures.
- Redistricting exercises are also subject to Section 2 of the Voting Rights Act of 1965, which prohibits drawing electoral districts in ways that improperly dilute minorities' voting power.

Although the Virginia Constitution requires electoral districts to be made up of contiguous and compact territory, agreement on the definitions of these terms is lacking. For example, compactness could be defined as every point along a district boundary being of equal distance from the center, or as a standard length of a district's perimeter. Contiguity is typically interpreted as meaning that a district must be composed of one geographic area, but there are few standards and courts have ruled that land masses separated by water can still be considered contiguous.³² A number of Virginia's districts appear to violate the compactness requirement and have been subject to legal challenges, as described briefly above (*Wilkins v. West*, and *Vesilund v. Virginia State Board of Elections*).

Similarly, although Courts have recognized a number of additional “traditional redistricting principles,” agreed definitions are lacking, and following such principles is not mandatory in Virginia. For example, many believe that “fairness” and “competitiveness” are appropriate goals for redistricting, but there is little agreement on the meaning of these terms and how to apply them.³³ Also, many would not agree that protecting incumbents is a worthy goal of redistricting, but Virginia has recognized this as a principle in the past and the U.S. Supreme Court has ruled that protecting incumbents can be a legitimate goal (see *Karcher v. Daggett* 462 U.S. 725 (1983)).

In summary, the General Assembly has wide discretion in shaping legislative districts. In Virginia, the P&E Committees in past redistricting exercises have adopted guiding principles that include the compactness and contiguity criteria, as well as other “traditional” redistricting criteria (such as avoiding splitting counties and preserving communities of interest based on economic or cultural factors), but the final redistricting plans often do not reflect the use of those criteria.

Additional redistricting resources:

- https://ballotpedia.org/Redistricting_in_Virginia
- Redistricting in Virginia, League of Women Voters of Virginia at <http://lwv-va.org/redistricting.html>
- <https://en.wikipedia.org/wiki/Gerrymandering>
- “A Citizen's Guide to Redistricting,” Brennan Center for Justice located at <http://www.brennancenter.org/sites/default/files/legacy/CGR%20Reprint%20Single%20Page.pdf>
- What is Gerrymandering, Andrew Prokop, VOX at <https://www.vox.com/cards/gerrymandering-explained>
- Redistricting, National Conference on State Legislators (NCSL) at <http://www.ncsl.org/research/redistricting.aspx>
- All About Redistricting, Loyola Law School, Los Angeles at <http://redistricting.lls.edu/>

³² See for example Virginia's 2nd congressional district. The Virginia Supreme Court ruling is *Wilkins v. West*, Nov. 2002.

³³ League of Women Voters of Virginia Education Fund, *Does Your Vote Really Count? (Part II)*.