

Redistricting in Virginia: the Current Scene

By Olga Hernandez, with Therese Martin

A Little Background

“... Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2011 and every ten years thereafter. ... The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served....”
Virginia Constitution, Article II, Section 6.

Although the language in Virginia’s 1970 Constitution newly included reapportionment and redistricting provisions and requirements of federal laws and court decisions of the 1960s, redistricting itself has a long history as a political issue in Virginia as well as in the U.S. In fact, it is as old as the U.S. itself. Virginia’s revered first governor, Patrick Henry, opposed the new U.S. Constitution and sought to punish its author, James Madison, by drawing district lines to disadvantage Madison’s congressional election. It failed, and Madison beat James Monroe for a seat in the House of Representatives.

But the practice of drawing electoral district lines to the advantage of the artist has flourished. Probably the most well-known instance was in 1812, when Massachusetts Governor Elbridge Gerry signed a redistricting bill to benefit his political party. One of the districts looked like a salamander, which led the *Boston Gazette* newspaper to add claws and wings, and print a cartoon naming it a “Gerrymander,” using the Massachusetts governor’s name. Thus the governor became the namesake of the practice, which has stuck and become even more famous two centuries later. In a bit of trivia, Gerry became President Madison’s second Vice President and died in office in 1814.

Today the practice is alive but not well for voters. It is a bipartisan activity that those empowered partake in. The practice generally allows the elected officials to pick their voters, instead of voters selecting their representatives. Jurisdictional boundaries are drawn so safely for one party or the other that opposing an incumbent is almost impossible. It is mostly an incumbent protection plan, and absent death, retirement, or challenge from a more extreme member of the same party in a primary, most officials do not lose in a general election. This makes the primaries the more consequential election if, in fact, they are the means the parties use to select their candidates. The numbers who actually choose their legislators become even smaller if

candidates are selected by a party convention or similar process.

One of the difficulties reflected in Virginia’s Constitutional provision is the speed at which the redistricting must occur. Before “one man, one vote” became the law of the land, Virginia’s practice of holding the majority of its state and local elections in the “odd” – non-federal election years -- had little practical effect on redistricting. This is no longer the case. Today it must use the up-to-date numbers, and the resulting districts must be within the percentage population deviations established by the courts. Because Virginia is one of small handful of states having significant election activity in the years (those ending in a “1”) when the decennial Census numbers are issued, it usually is first in line to get the results. Even so, the entire redistricting process must be compressed into a couple of months, which affects the transparency of and public input into the process.

[*Note:* For an interesting discussion of the reason for Virginia’s “odd year” elections, see: http://www.richmond.com/news/virginia/government-politics/jeff-schapiro/article_88d60bd4-40c3-526a-8450-351d11c8ccff.html]

Virginia’s Third Congressional District Case (*Page et al v. Virginia State Board of Elections et al*)

Virginia’s Third Congressional District boundaries were created after the 1990 Census when the Justice Department ordered the Commonwealth to create at least one minority majority district. Congressman Bobby Scott has held the office ever since. The current case was filed by Democratic voters alleging that racial preference was predominantly used to draw the boundaries. The U.S. Supreme Court recently decided a similar case, and the U.S. Court of Appeals for the Fourth Circuit twice confirmed their decision that the Virginia General Assembly used race to draw the Third Congressional districts with at least a 55

percent African American population. The U.S. Court of Appeals for the Fourth Circuit set a date of April 1 for the redistricting to be done, the Republicans appealed and the court again confirmed the decision and set a deadline of September 1, 2015.

The issue is that the current district was drawn to include as many minority voters as possible (packed) in such high margin as to diminish the possibility of a minority having the opportunity to be elected in another district. The issue was also visited in the mid 1990s, when a lawsuit was filed by Republicans. The court at that time ruled the district was indeed gerrymandered along racial lines, thus the 1998 map redrawn by the General Assembly. You can see both parties take advantage of the power to draw the boundaries and protect their incumbents.

Figure 1 shows the historical boundaries of the district. They are not connected because they cross bodies of water. This photo is courtesy of the Virginia Public Access Project (VPAP).

Virginia's Democratic governor, Terry McAuliffe, called the Assembly into special session on August 17 to try to meet the court's September 1 deadline. He requested a meeting with the Republican leadership, who rebuffed his request and are again

appealing the Third District case to the U.S. Supreme Court. The House of Delegates wanted to delay dealing with the redrawing until after the November 2015 election when the entire General Assembly is on the ballot. The Virginia Senate is controlled by Republicans by a margin of one, and House of Delegate is in their firm control. The House did not submit a map prior to the special session; they planned to wait until close to the September 1st deadline to prevent the governor from having time to amend it and hoped the Supreme Court might take their case. A couple of Democratic Senators did submit maps, including one of the entries that won a college-mapping contest in 2011.

In the meantime, the special session did convene, but the Assembly was distracted by a recess appointment by the governor to the Virginia Supreme Court. The judicial

candidate had been recommended by a Republican legislator and is deemed well qualified by both parties. But the governor did not consult specifically with the Speaker of the House or Senate Majority Leader about the appointment. Protocol was apparently breached and egos wounded. Members spent hours dealing with the judicial issue while the redistricting issue lay on the side. When they finally started debating the merits and the House Privileges and Elections (P&E) Committee began to hear testimony, the State Senate abruptly adjourned, catching many off guard. One retiring Republican Senator voted with the Democrats to adjourn, thus breaking the tie in the Senate. The House claims to still be in session but they are not meeting in Richmond. This move was a strategy of the Democratic administration, which believed it could not negotiate new boundaries with the Republicans in control of the Assembly. The governor would probably have vetoed whatever they passed.

Because the Assembly failed to deal with redistricting, it is now back to the court. On September 3, the U.S. District

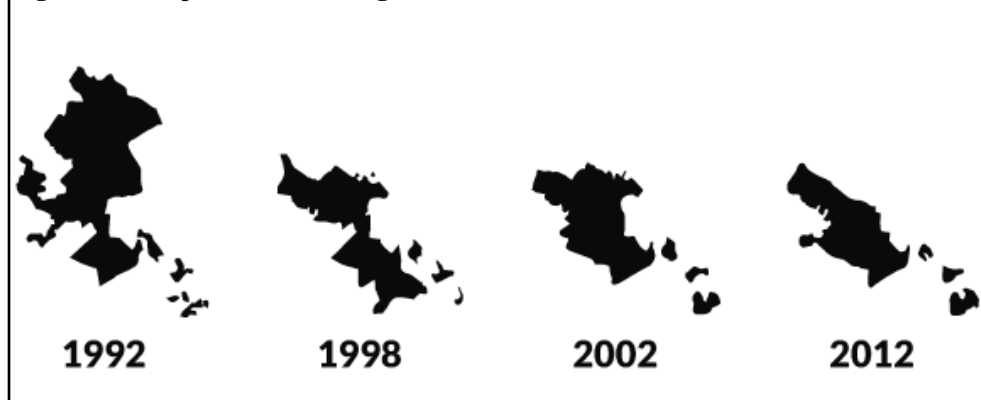
Court ordered that a Special Master be appointed to carry out actions on its behalf and gave the parties just one day to submit names of candidates for the position. It set a September

18 deadline for submitting proposed boundaries and October 2 for comments on the proposals. According to a *Richmond Times Dispatch* report, non-parties in the case have been invited to submit proposals to make for a more inclusive and open process.

There is data that court redrawn maps tend to be fairer, we'll see what happens. The court may take a look at those previously submitted as they redraw the lines. Other maps may have been suggested by other people. But regardless, one or all of the surrounding districts, the Second, held by Scott Rigell (R), the Fourth, held by Randy Forbes (R) or the Seventh, held by Dave Brat (R), will be affected.

After the special session, the LWV-VA wrote an op-ed suggesting the some of the college students' winning maps be considered and again supporting the use of a commission.

Figure 1 – Shape of the 3rd Congressional District Over the Years



It was published in the *Reston Now* and *Fauquier Now* online paper news outlets (in early September). http://www.fauquiernow.com/index.php/fauquier_news/entry/fauquier-time-to-reform-virginias-redistricting-process-2015#.VeBBxHQeHkI.email

Virginia House of Delegates Court case (*Bethune-Hill et al v. Virginia State Board of Elections et al*)

A similar case filed in federal court was heard in early July. In this case, the plaintiffs, a group of voters in 12 Virginia House districts, which include much of Richmond, Chesapeake, Norfolk and Portsmouth, allege that by packing 55 percent of African Americans into one district, the Republican majority has diminished their influence in the surrounding districts or the other 88 districts of the House of Delegates. One delegate involved in the redistricting process in 2011 testified that the committee considered race among other factors in drawing the 12 minority majority districts mostly in the central-southeastern section of the state. Delegate Chris Jones, then head of the P&E Committee and now chair of Appropriations testified that many delegates came to him to alter and solidify their districts, and that it was a partisan effort.

Although the suit says the districts “are bizarrely shaped . . . split political subdivisions with impunity” and were “drawn with race as their predominant purpose,” Republicans counter that the efforts were political rather than racial and were “based on publicly-stated legal criteria.”

The House’s court challenge has been paid for with taxpayer dollars, so far costing over \$250,000 and counting. As of the end of August the ruling had not been announced but is expected any time and probably will not affect the November 2015 election. No matter the ruling, someone will appeal. If the court rules for the plaintiffs the House may have to run races during the 2016 presidential election, when turnout is the highest. Stay tuned.

The 2015 U.S. Supreme Court

As with many redistricting efforts in Virginia and around the country after each decennial Census, the maps drawn after 2010 have been challenged in court. For example, Florida is also redistricting due to court decisions. Court cases take time to meander thru the appeals process. This decade is no different.

Two cases decided this past session are favorable to the issues in Virginia.

Alabama Democratic Conference v. Alabama, linked with Alabama Legislative Black Caucus v.

Alabama

In March, the U.S. Supreme Court announced its decision in these linked cases remanding the case back to Alabama to comply with the Voting Rights Act and not “pack” African American voters into a few districts. Sound familiar? It is similar to the issues in Virginia’s Third Congressional District case and House of Delegate cases now in court hands.

Arizona State Legislature v. Arizona Independent Redistricting Commission

In late June, the Supreme Court ruled in the Arizona case that commissions were allowed to draw boundaries. Arizona as well as California set up commissions via citizen ballot initiative, a tool Virginia does not have. The process was challenged by the state legislature, but the Arizona Independent Redistricting Commission won the case, giving redistricting commissions legitimacy. This favors the efforts of OneVirginia2021 to empanel a commission with the authority to draw the districts.

Of note: Maryland’s Governor Larry Hogan, a Republican, has empaneled a commission to look at that states’ redistricting issues. The LWV of Maryland has been working hard on this effort and its executive director was named to the seven-member panel.

OneVirginia2021: Virginians for Fair Redistricting

As the LWV-VA did prior to the last decennial redistricting, it has joined with other citizen and nonpartisan groups in a coalition to advocate for a transparent and nonpartisan redistricting process. The bipartisan OneVirginia2021 coalition is working to change the redistricting process altogether. Its “Mission is to advocate for 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.” Many of the supporters of this coalition also worked with the *Fix the Lines* group earlier in the decade. It is well organized and is a 501c3 organization to educate the public. It also has a 501c4 arm when it takes a stand on candidates in regard to their position on redistricting reform and commissions. In the past June primaries, the group focused on and helped defeat two legislators of opposite parties on their stance regarding reform. The LWV-VA had no connection to the support or opposition of any candidates and issued a new release stating so.

LWV-VA Clarifies Relationship With OneVirginia2012

The League of Women Voters of Virginia issued the

following statement, from President Anne Sterling

“Despite my organization’s strong support for OneVirginia2021, Virginians for Fair Redistricting, I wish to make clear that the League of Women Voters of Virginia dissociates itself from all candidate endorsements. Today’s action by OneVirginia2021, supporting two candidates for the General Assembly, cannot be endorsed by LWV of Virginia or by any local LWV in the Commonwealth.

“A bedrock principle of the League of Women Voters is non-partisanship. We do not support or oppose candidates at any level, for any reason.

“The League of Women Voters will continue to participate in OneVirginia2021 activities aimed at educating the public about the need for redistricting reform. We must publicly step away, however, from the coalition’s actions where they pertain to any candidates for office.

“I am asking my colleagues at every level of the League of Women Voters to cooperate in disseminating this statement.”

As the group’s name suggests, its aim is to work for a better system by the next redistricting year. It supports a commission of bipartisan non-legislators to draw the lines but is open to ideas that will accomplish a better way.

LWV-VA Involvement in Redistricting Reform

Other than supporting efforts to implement the “one man-one vote” requirements of the 1960-70s, the LWV-VA efforts with regard to redistricting were chiefly in the area of Voters Service. With the era’s many changes, including elimination of the poll tax, 18-year old voting, and Voting Rights Act implementation, the Virginia and its local Leagues were hard-pressed to keep voters informed. The situation changed as a result of the state’s redistricting attempts following the 1980 Census.

As it attempted to move from multi-member districts (*the Fairfax area’s 10 members of the House of Delegates at that time were split into two 5-member districts split by a line drawn along Routes 236/50*), the General Assembly’s blatant political and racial gerrymandered redistricting plans of 1981 failed to win approval of both the Department of Justice and the courts—several times. One practical effect was that members of the General Assembly had to run for election three years in a row. The situation was the impetus for the LWV-VA to adopt a redistricting study program and adopt its first positions on this issue in 1985. Similarly, the blatant politically gerrymandered districts that resulted

following the 2000 Census led the LWVFA to conduct its own informational study and convince the LWV-VA members to update its study and position in mid-decade as a prelude to the state’s anticipated 2011 redistricting.

In 2009-11, with heightened member interest and involvement, the LWV-VA worked as part of the *Fix-the-Lines* coalition that lobbied for a better redistricting process. During the campaign of 2009, League leaders met with then-candidate Bob McDonnell and asked him to commit to appoint a redistricting commission. On January 10, 2011, as governor, he did so by signing Executive Order 31; however, it did not give the commission any real power. The Independent Bipartisan Advisory Commission, headed by Political Science professor Dr. Robert Holsworth of Virginia Commonwealth University, had 11 prominent citizen members. They met, held hearings around the state (at which the League testified), and showed that the process can be better. They produced a report <http://cnu.edu/redistrictingcommission/eo-31.asp> and produced potential maps for congressional, state Senate and House of Delegate districts. These options were not taken up by the General Assembly.

In parallel, the *Fix-the-Lines* coalition supported the Virginia College and University Redistricting Competition, sponsored by the Christopher Newport University’s Wason Center for Public Policy and the Public Mapping Project. The student competition was an incentive to draw better boundaries that met the stipulations of the Virginia Constitution. Students were tasked to develop maps “composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district” [In accord with the Constitution of Virginia]. The LWV-VA hosted a reception to view the maps and announce the winners at the Library of Virginia. Dr. Thomas Mann of the [Brookings Institution](http://www.brookings.edu/) and Norman Orenstein of the [American Enterprise Institute](http://www.americanenterprise.org/) were judges. Those results were also ignored by the General Assembly.

We did our best to show the General Assembly a better way.

The current Virginia redistricting cases remain unsettled as of this writing. We don’t know how the judges will redraw the Third Congressional District or if the U.S. Supreme Court will take that case. What will the ruling be on the House of Delegates case heard in federal court in July? We also don’t have details of a proposed district “compactness” lawsuit by OneVirginia2021. What we do have is the power to tell those on the ballot November 3 that we want a better system. Contact your Senator and Delegate and ask what their position is. They need to know citizens want this reform

and that we object to them picking their voters. But, in this off-year election, we citizens need to show up and vote. By the time we meet in October more decisions may have been made by the court or the legislators. Leaguers need to continue to be vigilant and speak up at every opportunity.

[Editor's Note: Because this situation is so fluid, there are likely to be changes by the time this VOTER is printed. Updates will be distributed at the October briefing and posted on the LWVFA website.]