

VIRGINIA:

GENERAL ASSEMBLY HEARING
SENATE COMMITTEE ON PRIVILEGES AND ELECTIONS
COMMITTEE RESOLUTION

IN RE: SENATE RESOLUTION NO. 5001
SENATE RESOLUTION NO. 502

When heard at:

General Assembly Building
Ninth & Broad Street
Richmond, Virginia 23219

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue - Suite 203
Henrico, Virginia 23230

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A-P-P-E-A-R-A-N-C-E-S

SENATORS OF THE COMMITTEE: Martin, Deeds, Whipple,
Obenshain, Puckett, Edwards, Blevins, McEachin,
Smith, Barker, Northam, Vogel, McWaters & Howell.

Senator Watkins

Staff Legislative Services: Mary Spain, Jack Austin
& David Cotler.

Senate Committee Operations: Hobie Lehman.

1 NOTE: The hearing proceeded at
2 2:21 p.m. Roll was taken and
3 the following was had:

4 MADAM CHAIRMAN: We have three pieces of
5 business to do today. The first is, we have
6 some appointments from the governor that I
7 would hope that we would approve.

8 We also have criteria for our senate
9 redistricting. This will be a P & E
10 resolution. There are two that have been
11 submitted so far.

12 And thirdly, we have criteria for
13 congressional redistricting. And I have
14 introduced a proposal for that.

15 So if we might begin first with the
16 governor's appointment.

17 SENATOR WHIPPLE: Madam chair, I move that
18 we confirm 5,001, these are appointments to the
19 Chesapeake Bay Bridge and Tunnel Commission,
20 two appointments. Aubrey L. Layne, Jr. and J.
21 W. Salm. And an appointment to the State
22 Lottery Board, Albert H. Poole.

23 Is there a second?

24 SENATOR MARTIN: Second.

25 MADAM CHAIRMAN: These appointments

1 recommended confirmed.

2 I just wanted to check with staff that
3 indeed the required paperwork has been
4 submitted.

5 MS. SPAIN: Yes, it has. And the
6 paperwork was nominations and confirmations
7 subcommittee, so the resolution is ready to
8 report.

9 MADAM CHAIRMAN: Okay. Are there any
10 questions or comments on this?

11 All in favor of reporting the appointments
12 say aye.

13

14 NOTE: Various members of the
15 panel said aye.

16

17 Anyone opposed? No response.

18 MADAM CHAIRMAN: Okay. That passes.

19 The next item of business will be criteria
20 for state senate redistricting. As I said, we
21 have two proposals. This will be a privileges
22 and elections committee resolution as it's been
23 in the past. Once it passes us today,
24 hopefully, it will be the criteria against
25 which the various plans which they need to

1 conform to.

2 We have Senator Watkins here he introduced
3 one.

4 And Senator, if you would like to speak to
5 your proposal.

6 SENATOR WATKINS: Thank you, Madam chair,
7 members of the committee.

8 I introduce senate resolution number 502.
9 This resolution is not very dissimilar to
10 resolutions that were introduced and accepted
11 some ten years ago when we looked at
12 redistricting before. There are a couple of
13 noteworthy points of deviations of difference.
14 One of them being with regard to the amount of
15 deviation. This resolution draws down the
16 deviation to one half of 1 percent. That is
17 doable in this day and time.

18 I think that if you look at the criteria
19 that we utilized the congressional plan as I
20 understand it that's coming to us from our
21 friends north of the tunnel is actually down to
22 individual numbers of people which are much
23 much less than even one half of 1 percent.

24 I think it's worthy to note as well that
25 the lesser number of districts that you have

1 the easier it is to draw down that percentage
2 of deviation. I'm not certain, I did not
3 attend the meeting up the hall, but I think
4 that the house adopted a 1 percent deviation up
5 there this afternoon for the district lines
6 with the house plans. I would hope that we can
7 do better than that being one and a half or
8 times smaller we should actually be able to
9 draw it down to lower.

10 SENATOR McEACHIN: Madam chair.

11 MADAM CHAIRMAN: Senator McEachin.

12 SENATOR McEACHIN: Senator Watkins, since
13 I didn't have the privilege of being in this
14 spot ten years ago, could you educate me as to
15 whether or not this was adopted ten years ago;
16 and if not, was it proposed; and if not, why
17 not?

18 SENATOR WATKINS: This resolution?

19 SENATOR McEACHIN: With your population
20 deviation?

21 SENATOR WATKINS: No. That was not the
22 deviation at that time.

23 SENATOR McEACHIN: Was it proposed?

24 SENATOR WATKINS: I do not believe that it
25 was.

1 SENATOR McEACHIN: Can you tell me why it
2 wasn't proposed?

3 SENATOR WATKINS: I have no idea why it
4 was not proposed I was not on the P & E
5 Committee at that time.

6 SENATOR McEACHIN: Different series of
7 questions, Madam Chair.

8 MADAM CHAIRMAN: Senator McEachin.

9 SENATOR McEACHIN: Senator Watkins, since
10 this would be a change in how we draw our
11 districts would it not have to go through DOJ
12 for preclearance?

13 SENATOR WATKINS: I think this entire
14 proceeding here goes to DOJ.

15 SENATOR McEACHIN: But I'm talking about
16 if we were to adopt this particular resolution
17 as versus doing what we have done in the past,
18 would that not require preclearance?

19 SENATOR WATKINS: I think that this would
20 be a part of the submission to DOJ.

21 SENATOR McEACHIN: So it's your opinion
22 that this resolution in and of itself would not
23 have to go to DOJ?

24 SENATOR WATKINS: I do not think so.

25 SENATOR McEACHIN: I differ on that.

1 Thank you, madam chair.

2 SENATOR PUCKETT: Madam chair.

3 MADAM CHAIRMAN: Senator Puckett.

4 SENATOR PUCKETT: Senator Watkins, do you
5 have any idea what this might do to the rural
6 areas of the Commonwealth? It seems to me --
7 and I wasn't a part of what happened in 2001
8 either, but it was extremely difficult at that
9 time to try to meet the 2 percent deviation
10 without splitting communities wide open.

11 In the southwest, for example, I have a
12 town that's split three ways in the voting
13 block, whatever those are called. I'm sure
14 that's not the right word. Census block.
15 Thank you.

16 It seems to me that the tighter you make
17 these deviation the more problem we are going
18 to have in the southwest of splitting up
19 counties. And some people drive a long ways, I
20 can sympathize with people in the cities or,
21 but in the rural areas if you start splitting
22 these things up a lot it seems to me it's going
23 to be very difficult for people who are going
24 to vote.

25 At one time we were 5 percent then we went

1 to 2, which created some problems for us
2 particularly in the rural area. I wondered if
3 you looked at that.

4 SENATOR WATKINS: Senator Puckett, I did.
5 And the one difference that exists today that
6 did not exist ten years ago, and this -- I will
7 say this is the fourth redistricting that I
8 have been to. And when I first got elected in
9 the House of Delegates we had done
10 redistricting that was a plan prepared by the
11 then majority of the House of the Senate in a
12 house that had multiple other districts. As
13 you can well imagine that didn't pass scrutiny.
14 The deviation if I remember correctly was
15 something like 5 or 7 percent, somewhere in
16 that nature.

17 So we had to run for reelection three
18 years in a row because of the court battle.
19 And the party in power at that time didn't want
20 to do away with multi-member districts. As a
21 matter of fact they left them in Norfolk and it
22 got ruled invalid. So we had to go back and do
23 it all over again. And then the governor at
24 that time had just been elected into office was
25 Governor Dalton and he attempted to try to get

1 the same amount of districts.

2 But all of that said, I worked with that
3 and was involved with that at that time.

4 Subsequently, I was in the House and I was on
5 House P & E when we did the next redistricting
6 in '90. I also was involved in redistricting
7 ten years ago. If you remember ten years ago
8 in the Senate of Virginia we didn't have
9 computers. We weren't even allowed to use them
10 because the email was thought to be something
11 that was, had to fall under the Freedom of
12 Information Act. So we did not have the
13 technology at that time that we have today to
14 do this redistricting.

15 MADAM CHAIRMAN: I'm wondering if perhaps
16 you misspoke or if you didn't.

17 SENATOR DEEDS: 2001 we had computers.
18 You guys had the computers.

19 SENATOR WATKINS: We didn't have very good
20 ones did we.

21 SENATOR DEEDS: But they did, you had the
22 computers.

23 SENATOR WATKINS: They did not, the
24 computers I'm talking about we didn't have them
25 available to us at each of our desks and

1 frequent use. We had computers. They were not
2 very good. And there is a little irony to this
3 because it seems like every time that a party
4 is in charge of redistricting they suffer from
5 it. And we have been there too.

6

7 NOTE: Senator Northam has just
8 arrived.

9

10 MADAM CHAIRMAN: Excuse me. I'm sorry.

11 SENATOR PUCKETT: Let John finish then I
12 have another question.

13 SENATOR WATKINS: I just wanted to assure
14 Senator Puckett that in attempting to look at
15 what we need to do here and even with the half
16 percent deviation I am certain that it can be
17 done and that in deed we will split fewer
18 jurisdictions than are currently split around
19 Virginia. And the primary beneficiary of that
20 is going to be the rural parts of the state.

21 SENATOR PUCKETT: Madam chair.

22 MADAM CHAIRMAN: Senator Puckett.

23 SENATOR PUCKETT: I'd certainly like to
24 see that. Because I don't share that belief.

25 It seems to me the tighter you ratchet

1 this thing down the more difficult it is to
2 keep jurisdictions together. Because you've
3 got to go pick from one or another to make
4 everything work a half of a percent. Obviously
5 the best way to do that is increase it then you
6 have an opportunity to keep communities
7 together. If you ratchet this thing down to
8 half of a percent there is going to be, I
9 believe, more. I may be way off, but I believe
10 there is a whole lot more precincts that are
11 going to be split than you would if you had 2
12 percent or 5 percent. But I would certainly
13 like to see those figures, if that's the case.
14 I may be wrong.

15 SENATOR DEEDS: Madam chair.

16 MADAM CHAIRMAN: Senator Deeds.

17 SENATOR DEEDS: I was struck, Senator
18 Watkins, by a statement you made a minute ago
19 about the party that's in the minority suffers
20 every time.

21 SENATOR WATKINS: In the majority suffers.

22 SENATOR DEEDS: If we stick with the
23 criteria that the majority ten years ago
24 adopted of 2 percent deviation, which was down
25 from 5 percent in '91, if we stick with

1 2 percent what's the big deal. If it was good
2 for you in 2001, why isn't it good now?

3 SENATOR WATKINS: If the capability is
4 there to take it to a lower deviation that
5 emphatically underlines the need and the
6 purpose of one man, one vote. The tighter we
7 get it the more important the equal
8 representation becomes.

9 SENATOR McWATERS: Madam chair.

10 MADAM CHAIRMAN: Yes. Senator McWaters.

11 SENATOR McWATERS: I wanted to stay on
12 that discussion for a second just to make sure
13 I understand the math. We are talking about a
14 2 percent deviation which could mean some
15 districts are 4,000 up and some are 4,000 down
16 that are right next to each other right.
17 Versus this, now the House of Representatives
18 is at zero percent; is that correct, 11
19 positions?

20 MADAM CHAIRMAN: That's true.

21 SENATOR McWATERS: We are trying to now
22 down the hall they are shooting for 1 percent
23 as well. Those are the facts, right?

24 Maybe, Senator McEachin, I think you can
25 help me with this history. This issue is going

1 back have we seen a continued movement that
2 we've seen from 5 percent to 2 percent. I
3 don't know historically the house numbers
4 perhaps you or others that have been here
5 longer know how the house numbers have
6 migrated; do we know that?

7 SENATOR McEACHIN: I don't know the answer
8 to that question. I do know that ten years ago
9 the Senate of Virginia adopted a 2 percent
10 deviation. I think the technology was there to
11 do better than that should the Senate chosen to
12 do better than that if you consider less to be
13 better. I am of the firm belief that should we
14 adopt something different than we did in 2001
15 it will have to go to DOJ for preclearance. If
16 it does not go to DOJ for preclearance I think
17 we open ourselves up to a lawsuit and perhaps
18 even having the matter thrown back to us for
19 the simple fact we didn't preclear the
20 percentages that we are using.

21 SENATOR McWATERS: I think our first
22 objective of the committee is to look at the
23 good government I suppose. Our objective is
24 not to pre-think what the DOJ is going to do or
25 presuppose what they are going to do.

1 It's our objective for this committee is
2 to come up with the best redistricting maps we
3 can for the voters in Virginia. So one person,
4 one vote representation.

5 To have these 8,000 swings seems to me in
6 today's technology if the United States House
7 of Representatives can accomplish a zero
8 variance if the House of Delegates can
9 accomplish a 1 percent variance, why can't we
10 be somewhere in the middle of the those two
11 when we have forty districts compared to 100
12 districts. And look at the math and in
13 progression of the math it seems reasonable
14 that for a good governance this half percent
15 makes sense today with the technology that we
16 have.

17 MADAM CHAIRMAN: Senator McEachin.

18 SENATOR McEACHIN: In terms of technology
19 we had the technology ten years ago to do
20 1 percent or half of a percent. I think
21 certainly the computers might have been slower
22 and used different wires and gismos, but
23 certainly they had the ability to do that.

24 Furthermore, I would suggest to you that
25 it is part of our concern to look at what DOJ

1 will do. That is part of our good governance.
2 It is my opinion that, one, if it was good
3 enough ten years ago it's certainly good enough
4 now in terms of the deviation.

5 And two, I think we need to move on with
6 putting together a plan that's good for
7 Virginia, good for the voters of Virginia and
8 serve our common interest of the good
9 governance and not slow things down by having
10 to submit something like this to the Department
11 of Justice.

12 SENATOR McWATERS: Madam chair, if I could
13 continue on that.

14 MADAM CHAIRMAN: Senator McWaters.

15 SENATOR McWATERS: I'm just trying to
16 understand why is good governance better if
17 there is an 8,000 shift versus if we now can,
18 using technology. I understand that ten years
19 ago things were done different in a lot of ways
20 20 years ago more different. But we are here
21 today here to help for a next ten years we are
22 solving the problem for the future not to
23 rectify the future trying to figure out how to
24 get a best governance going forward. We have
25 the technology that 8,000 shifts in these

1 districts which may create lines that are not
2 good government lines that we should do our
3 best with the technology we have to adopt this
4 particular resolution.

5 I'm sorry, madam chair.

6 SENATOR VOGEL: Madam chair.

7 MADAM CHAIRMAN: Senator Vogel.

8 SENATOR VOGEL: This is not in the form of
9 a question to the patron but more in terms of a
10 comment. And I think in response to what the
11 Senator from Henrico had said. That was what
12 was the major difference between redistricting
13 ten years ago and redistricting today.

14 And I think that there is one important
15 issue and that is having consulted with the
16 patron when we were working to come up with the
17 resolution criteria. It wasn't anything weird
18 or strange about going from a 2 percent or half
19 percent. It was merely an effort to
20 accommodate, but states have struggled to
21 accommodate in the last ten years in the last
22 redistricting. And subsequent court cases the
23 Larios case being one of those. The Larios
24 case they had an issue of the much bigger
25 deviation than what we are talking about now.

1 What the court continued to say about
2 their deviation is that they are looking for a
3 small deviation as you can possibly accomplish.
4 And so I just wanted to address that. And that
5 really is the rationale behind bringing that
6 deviation lower.

7 Your comment about going to DOJ really had
8 not occurred to me that might ever be a
9 barrier. My sense would be that the Department
10 of Justice would say that is more reflective of
11 a fair division of districts the closer that
12 they are to a proportion that is consistent of
13 one person one vote the better that would be.
14 In my view I consider that to be a good thing.

15 I think genuinely my motive in working
16 with this I hope this is a process that works
17 through amicably and we are successful. But at
18 the end of the day putting something forward
19 that is more fair and that has a better shot at
20 making its way through. One of the few states
21 where we have elections this year I think it is
22 helpful to be mindful of those considerations
23 and certainly to be mindful about what the
24 courts have said.

25 I just wanted to address that as being one

1 of the significant difference between where
2 states were last time when they drew their
3 lines and where states find themselves now.
4 And they are struggling to make those
5 adjustments from prior redistricting to include
6 criteria that substantially lower that
7 deviation.

8 SENATOR McEACHIN: Madam chair.

9 MADAM CHAIRMAN: Senator McEachin and then
10 Senator Martin.

11 SENATOR McEACHIN: I'd ask Senator Vogel,
12 in the Larios Case, aren't we talking about a
13 deviation higher than 2 percent?

14 SENATOR VOGEL: I believe that is
15 accurate. That deviation was, I believe,
16 5 percent. What the Court said then and that's
17 been upheld in subsequent cases where they
18 said, now you do have new technology where you
19 have the abilities to draw deviations smaller.
20 And they listed a number of criteria that
21 really are not justification communities of
22 interest certainly isn't justification for
23 deviation.

24 I would make one observation. In
25 particular with rural districts. I represent a

1 largely rural district and one of my concerns
2 is with every redistricting rural districts
3 suffer from because they, by definition,
4 populations grow in urban areas around the
5 state. My sense would be if you have a
6 community of interest issue, where you are
7 trying to protect a community if, in fact, you
8 have enough of a population difference that
9 community would warrant representation by two
10 members versus one member I don't see any
11 scenario that would have negative impact or
12 disproportionately negative impact on the rural
13 communities. I wanted to follow-up and make
14 that comment.

15 MADAM CHAIRMAN: Senator Martin.

16 SENATOR MARTIN: The question of counsel
17 either Jack Austin or Mary Spain best suited to
18 answer this trying to get the facts on the
19 table here. I know you are best suited to
20 answer this.

21 In an effort to over the last forty years
22 there has been especially a growing effort to
23 try to make sure we get down as best we can one
24 man, one vote rule. That's what the one man,
25 one vote and to provide equalization among the

1 districts. Gradually we have migrated in those
2 numbers.

3 When I first came here several
4 redistrictings back trying to get far down
5 under 5 percent and then it shrunk from there.
6 What is the history. What have we moved in the
7 last four redistrictings since '81.

8 MS. SPAIN: Since '81, '82 the series of
9 three elections in a row the deviation in that
10 house I think was 23.7 percent. The Mayland
11 case upheld at 16 percent on rational of the
12 Virginia held all of its whole country and City
13 didn't split anything then the 5 percent
14 predominated after we went to single member
15 districts and it was plus or minus 5 percent.

16 Last go round in 2001 house and senate
17 committee criteria took 2 percent on, I think
18 the rational that that protected them against
19 challenges from people with lesser deviation
20 plans it honored one man, one vote. And so we
21 were at the 2 percent, up 2 percent down in the
22 committee resolutions from 2001.

23 SENATOR MARTIN: Just a follow-up.

24 MADAM CHAIRMAN: Senator Martin.

25 SENATOR MARTIN: So we are actually to try

1 to assure one man, one vote to make sure that
2 we have equity in voting strength. We really
3 sought to get as close to zero as possible as
4 close to practical is that what we are trying
5 to do.

6 MS. SPAIN: In 2001 we went to zero
7 population on congressional. I think it was 19
8 people down 23 people up among the
9 congressional always a zero deviation figure
10 showed on the reports in congressional.
11 Technology was there to go to zero ten years
12 ago.

13 MADAM CHAIRMAN: Is it not true though
14 that the Supreme Court has had different
15 standards for congressional and state. My
16 understanding is congressional must be exactly
17 even but the states it seems to be they are
18 permitting a variation a deviation of 5 percent
19 of 5 percent down.

20 MS. SPAIN: There is Supreme Court
21 language indicating the plus or minus 5 percent
22 is not a safe harbor but a prima facie valid
23 deviation. When you get into court and
24 challenged by plans with lower deviation that
25 plus or minus 5 percent may not hold us as in

1 the Larios case.

2 MADAM CHAIRMAN: Senator Martin.

3 SENATOR MARTIN: Continuing with the
4 question, Mary, you are doing fine. In that
5 case, again, it's a trying to make it as
6 equalized as possible, knowing full well it
7 becomes less equal. You wouldn't see that the
8 justice department would be concerned about us
9 doing better than 2 percent would they.

10 MS. SPAIN: I don't think that the Justice
11 Department is concerned with a deviation. They
12 approved the 16 percent plan, they approved the
13 27 percent plan. I think justice looks at
14 their sections or section five
15 non-retrogression and minority voting and
16 strengths issues rather than deviations.

17 SENATOR MARTIN: So in that case it's not
18 going to be an issue of deviation its that
19 question of the minority make-up of those
20 matters just raised not the deviation itself.

21 MS. SPAIN: That's rights. I think
22 deviation at the Justice Departments review is
23 not the primary focus at all.

24 SENATOR MARTIN: This is final. It's an
25 observation I would not expect at the Justice

1 Departments would have a concern that we've
2 done better than 2 percent. The question is
3 what we've done with that whether the criteria
4 we had to resolve that.

5 I would note that the difference between a
6 half percent lets go with the mathematical
7 equivalence. The house is able to do one
8 percent. The mathematical equivalent for the
9 Senate would be point four, being two and a
10 half percent larger. I would call your
11 attention to the fact that the difference here
12 is between 8,000/ 4,000 higher in one district
13 4,000 lower with the swing of 8,000 from one
14 district to another as opposed to 1/4th of that
15 under the Senator's criteria, Senator Watkins
16 1/4th of that a which would be the possibility
17 of a 2,000 swing. 1,000 high/1,000 low. I
18 recognize the concern. And I will stop here.
19 I recognize the concern in rural areas but the
20 truth is I believe that you will find that and
21 I know it can be done, you have quite the
22 division that you think you would have. And
23 also in those larger jurisdictions, for
24 example, Virginia Beach and other such
25 jurisdiction around the state.

1 If you stick with the tighter
2 representation in fact if the jurisdiction is
3 large enough to have that great of an impact
4 where its 8,000 people that are having to be
5 divided its significant enough probably to
6 benefit from having two centers instead of one.

7 MADAM CHAIRMAN: Senator Watkins, we
8 started asking questions and I'm not even sure
9 you were finished with your presentation. Did
10 you have anything more you wanted to say?

11 SENATOR WATKINS: Madam Chair, I think
12 most of the rest is pretty much self
13 explanatory.

14 SENATOR DEEDS: Can I ask a question?

15 Except for that 2 percent half percent
16 deviation, are their differences in this
17 criteria from the 2001 criteria.

18 SENATOR WATKINS: I think that perhaps the
19 only terminology on line, beginning on line 34
20 Voting Rights Act Preclearance is a little more
21 specific to section five of the Voting Rights
22 Act nuance, if you would.

23 MADAM CHAIRMAN: Are there any further
24 questions for Senator Watkins?

25 I think what we will do is then we will

1 look at the proposal I have put forward and
2 then we will ask if the public has any
3 questions -- excuse me, comments on what we are
4 talking about, and then we will have some
5 votes.

6 SENATOR WATKINS: Thank you, Madam Chair.

7 MADAM CHAIRMAN: Thank you Senator.

8 What I have put forward is identical to P
9 & E resolution of ten years ago with one
10 difference and that is we have added under the
11 court cases, the Wilkins versus West case that
12 happened in 2002. So it was subsequent to
13 those redistricting criteria, otherwise it is
14 identical as having been assumed during this
15 discussion. It has the two percent deviation
16 plus or minus two percent. It does highlight
17 the importance of following the Voting Rights
18 Act, makes it a very high priority. Talks
19 about a continuity and compactness it does
20 allow continuity by water as it did ten years
21 ago. It requires single member districts. And
22 it outlines the variety of the community ease
23 of interest. I believe that language is
24 identical to Senator Watkins's language.

25 And it says when the criteria have a need

1 to be prioritized the Voting Rights Act state a
2 constitutional requirements are given priority
3 and that is basically what it is. It is
4 similar to some of us who were here ten years
5 ago.

6 Are their questions on that?

7 Not hearing anything. Is there anybody,
8 anyone in the public who would like to comment
9 on either of these or in the criteria in
10 general?

11 AUDIENCE MEMBER: Good afternoon, members
12 of the committee. I'm Lisa Guthrey. I'm the
13 executive direct of the Virginia League of
14 Conservative Voters. I'm here to talk about
15 our interests in fair redistricting. Our
16 organization has been a member of the
17 redistricting coalition in Virginia for three
18 years. Our coalition brought together faith
19 business conservation and civic organization to
20 promote reform of the Virginia redistricting
21 process.

22 Our coalition made it possible for the
23 student line drawing competition. You may have
24 heard about some of that earlier in the week.
25 They did an outstanding job. Our coalition

1 also ethicated legislation to institute a
2 bipartisan commission. When that legislation
3 failed in the House of Delegates we asked
4 Governor McDonald to advance the commission we
5 are pleased he did and we appreciate the
6 efforts the commission made to hear citizen
7 comments around the state.

8 Why did we advocate for a different
9 approach for 2011. We believe Virginia
10 deserves the following: Number one, fairly
11 drawn districts to create more competitive
12 elections which have a 51 percent higher voted
13 turnout. Virginia needs competitive elections
14 to remain at the forefront of the nation.

15 Number two, districts should reflect our
16 communities. District boundaries should be
17 compact keeping our communities together.

18 Number three, allow transparency and
19 citizen input to instill a greater sense of
20 fairness and accountability in the process.

21 Number four, incumbent protection should
22 not be a ruling factor. Citizens should have a
23 choice to select their elected officials.

24 In addition to these four overall
25 objectives we have some other questions and

1 considerations that I bring to your attention.

2 One, the public, even though this is very
3 much at the forefront of your deliberations the
4 public still for the most part is not aware of
5 this redistricting process, and if they are
6 aware of it and wish to participate that may
7 not understand that the criteria that the
8 government provided for the commission may be
9 different than the criteria at the privileges
10 and elections committee may adopt.

11 In other states citizens have access to
12 the legislative computers and line drawing
13 software themselves. Our citizens may be
14 unaware of the very abbreviated public comment
15 hearing leading up to the special session on
16 April 4th.

17 The governor indicated that he wants
18 districts to be nearly equal to the population
19 there of every other district as practicable.
20 The means the district should have a very small
21 population deviation as you have been
22 discussing.

23 The house plan that they voted on has an
24 overall deviation of 1 percent stricter than
25 the two percent they adopted ten years ago.

1 And the governor indicated that he wants all
2 districts to respect the boundary lines of
3 existing political subdivision where counties
4 and cities divided among multiple districts to
5 be minimal.

6 Some of these criteria and goals seem to
7 contradict one another. We know it's difficult
8 to draw districts that have minimum population
9 deviation and not divide counties and city and
10 also preserve communities of interests.

11 Finally, the governors criteria states
12 that all districts shall be composed of
13 contiguous and compact territory. The state
14 constitution also required that districts be
15 contiguous. 20 years ago the definition
16 required districts crossing water bodies to
17 have at least a tunnel, a road, a bridge or a
18 ferry to connect separate land masses. That
19 requirement was eliminated ten years ago. And
20 we think it makes sense for districts to be
21 connected in a way that residence will be able
22 to travel from one point to another without
23 having to go through an intersecting district
24 or at least be able to get to that other
25 district conveniently.

1 Again, I thank you for your hard work,
2 your deliberation on this. We are under a
3 tight timeline, I recognize, because we have
4 elections this year and many other states do
5 not. But I wish the public had more of an
6 opportunity to participate in this very
7 important aspect for our democracy.

8 Thank you, madam chair.

9 MADAM CHAIRMAN: Thank you, Ms. Guthrey.

10 SENATOR McWATERS: Madam chair, if I could
11 ask Ms. Guthrey some questions.

12 MADAM CHAIRMAN: Are you willing to answer
13 questions?

14 MS. GUTHREY: Certainly.

15 MADAM CHAIRMAN: Senator McWaters.

16 SENATOR McWATERS: Thank you for your
17 presentation. Well done. The student
18 competition it was a competition I guess you
19 called it, right?

20 MS. GUTHREY: Yes.

21 SENATOR McWATERS: Was that done ten years
22 ago?

23 MS. GUTHREY: This was the first time this
24 has been attempted. We had 16 teams from
25 various colleges and universities participate.

1 SENATOR McWATERS: I read about it in the
2 paper and I noticed winning partis UVA, William
3 & Mary and other colleges. It looks like a
4 neat process. So I assume that this computer
5 line drawing technology then wasn't used ten
6 years ago, if the students didn't have the
7 test. My question is if they had the test that
8 Senator Watkins issue of the line drawing
9 technology that can even be done yourself. I
10 tried to draw them but it didn't work to well
11 for me.

12 I have a question and I don't know the
13 answer so it's not a leading question. What
14 was the deviation for the winning student; do
15 you recall?

16 MS. GUTHREY: Keep in mind the students
17 did not keep any of the current districts in
18 mind. They started from scratch many of them
19 and did not consider incumbency at all. With
20 that elimination they were freer to select
21 deviation. And some of them had deviation some
22 of them had zero deviation.

23 SENATOR McWATERS: How about the winners?

24 MS. GUTHREY: I think the winner of the
25 overall congressional had no deviation. I

1 don't remember what the UVA team.

2 SENATOR McWATERS: What about the senate?

3 MS. GUTHREY: I do not recall what their
4 deviation was.

5 SENATOR McWATERS: Thank you.

6 SENATOR WHIPPLE: Madam chair.

7 MADAM CHAIRMAN: Senator Whipple.

8 SENATOR WHIPPLE: First observation and
9 then question. Something I have been proud of
10 over the last several years that the senate has
11 adopted a bill that would require a bipartisan
12 redistricting commission. That's always failed
13 to make it into law. Even people who said that
14 they would support it didn't end up doing that.

15 I'm assuming that and I think I'm correct
16 on this that your group had supported that bill
17 for a bipartisan redistricting commission.

18 MS. GUTHREY: That's correct. We were
19 thrilled to have Lieutenant Governor Bowling,
20 Senator Deeds, Attorney General Cuccinelli, a
21 number of supporters in the senate.
22 Unfortunately we were not able to be successful
23 on the house side and that's why we appealed it
24 to Governor McDonald to create the commission.

25 SENATOR WHIPPLE: The advisory group.

1 MS. GUTHREY: Advisory. And hopefully in
2 another ten years we will continue to work on
3 it.

4 SENATOR WHIPPLE: Thank you.

5 SENATOR McEACHIN: Madam chair.

6 MADAM CHAIRMAN: Senator McEachin.

7 SENATOR McEACHIN: Do you have an opinion
8 or does your group have an opinion as you weigh
9 the options between a deviation as under
10 2 percent and as you compare that to need to
11 keep communities of the interest and
12 subdivisions together? Have you had an
13 opportunity to prioritize whether it's more
14 important to keep the communities together or
15 to lower the deviation.

16 MS. GUTHREY: Our group, the Virginia
17 Redistricting Coalition has not taken a
18 position on that. So obviously we have focused
19 on communities of interest and compact and
20 contiguous more-so than whether we have the
21 magic number of 2 percent, 5 percent,
22 1 percent. We do think that you can't ignore
23 the other just looking at the deviation.
24 You've got to have the other factors taken into
25 consideration.

1 SENATOR McWATERS: Madam chair.

2 MADAM CHAIRMAN: Senator McWaters.

3 SENATOR McWATERS: In your question imply
4 that keeping communities of interest together
5 and in tact somehow required a higher
6 deviation. I'm not sure I would agree with
7 that.

8 SENATOR McEACHIN: Senator, that wasn't
9 implied in my question at all. My question was
10 simply what their groups position was. Had
11 they had an opportunity to prioritize it or
12 not.

13 SENATOR McWATERS: Okay. I just wanted
14 to --

15 SENATOR McEACHIN: -- there was nothing
16 implied in the question.

17 SENATOR McWATERS: Okay. Thank you.

18 MADAM CHAIRMAN: Through the Chair,
19 please.

20 SENATOR MARTIN: Madam chair.

21 MADAM CHAIRMAN: Senator Martin.

22 SENATOR MARTIN: Since it wasn't implied
23 there I suggest that would be a false choice as
24 to having to choose between those two things.
25 That you may not have to choose between a lower

1 deviation and keeping the communities together.

2 MADAM CHAIRMAN: Okay. Yes.

3 A CITIZEN: Madam chairman, members of the
4 Committee. Claire Guthrey on behalf of myself
5 as private citizen today. I wanted to put a
6 couple of things on the record looking backward
7 at history is sometimes not a good thing to do
8 is sometimes it is. I think looking back on
9 '91 is differentiating it for 2001 I would hope
10 this committee would look at and think about in
11 a positive way for a number of reasons.

12 One, I just wanted to, A, point out to the
13 process in '91 was different in that the
14 criteria were available to the public May,
15 before the general assembly session. In other
16 words a year before the time that it was taken
17 place now. In 2001 that time period was
18 truncated as it has been this year to the point
19 where a criteria available to the public less
20 than a week before their decisions are going to
21 be made.

22 In addition on the substantive side of the
23 criteria in addition to changing the standard
24 of equal representation to plus or minus five
25 to plus or minus two. There were several major

1 changes made in 2001 not all of which, I
2 personally believe were not positive in there
3 affect on the citizens of the Commonwealth.

4 The first is that we change the standard
5 for contiguity by water, Ms. Lisa Guthrey
6 pointed out. In '91 the criteria stated the
7 districts shall be composed of contiguous
8 territory which language is in the resolution
9 that you are looking at. But it went on to say
10 that contiguity by water was defined as, quote
11 acceptable to link territory within a district
12 in order to meet the other criteria stated
13 herein. In other words communities provided
14 reasonable opportunity for travel within the
15 district. That limitation of the contiguity by
16 water was abandoned in 2001.

17 I think personally the standard it's now
18 the standard that it is sufficient period
19 without limitation. And I think that's related
20 to unfortunate line drawing as Senator McEachin
21 may remember from his house district
22 particularly.

23 In addition the 2001 criteria abandoned
24 the long standing policy of the Commonwealth
25 against splitting political subdivisions. The

1 '91 criteria and criteria before '91 stated
2 explicitly plans should be drawn to avoid
3 splitting counties, cities and towns to the
4 extent practicable and precincts should serve
5 as a basic building blocks for districts when
6 it is necessary to split any county or city.

7 The 2001 criteria included the language
8 that's reflected in this resolution that says
9 that local government jurisdiction may reflect
10 communities of interest that are not entitled
11 to greater rate than any other identifiable
12 community of interest. I think that was
13 something that -- was not something that moved
14 us forward in a positive direction.

15 And then the 2001 criteria changed the
16 standard self for preserving communities of
17 interest. In '91 previously criteria stated
18 that quote consideration shall be given to
19 preserving communities of interest. The 2001
20 criteria had the language reflected here that
21 says inevitable that some interests advanced
22 more than others by choice of particular
23 configurations and discernment way balances
24 should be left to the elected representative.

25 And, finally, the 2001 criteria eliminated

1 explicit requirements for input from the group.
2 The '91 criteria and criteria before then
3 stated explicitly quote, the committee seeks
4 the participation of minority group members and
5 redistricting process. A minority group member
6 shall be afforded a full and fair opportunity
7 to participate in the process leading to the
8 adoption of a plan. In 2001 that explicit
9 criteria for participation was eliminated to
10 the detriment of the citizens of Virginia.

11 Sometimes when we move forward it isn't
12 always in my view a positive move forward. I
13 hope you think a little bit about what was on
14 the table in '91 and previous years. Maybe
15 there are some traditions that are worth
16 preserving as we move forward in 2011.

17 Thank you.

18 MADAM CHAIRMAN: Yes.

19 A CITIZEN: Madam chair, committee
20 members, my name is Carol Noggle and I am
21 representing the League of Woman Voters of
22 Virginia today. And I really appreciate the
23 opportunity to speak to you about this. I'm
24 not going to speak to the population deviation
25 issue, but I am very concerned about public

1 awareness and public input. So I do appreciate
2 the hearing that will be taking place
3 throughout the state starting next week I
4 believe.

5 But I really believe that had we not had
6 the governors bipartisan commission there would
7 be far less interest from the public. I think
8 awareness has heightened but not enough.

9 One of our goals would be to have more of
10 the public have access to the maps, not only
11 the maps themselves, but the rational for the
12 boundary lines because that explanation, I
13 think, would help a great deal. So when the
14 maps are available if that can be part of it to
15 include a narrative of the rational for the
16 boundaries for all of the senate, house and the
17 congressional districts.

18 And would it be possible that there will
19 be more than one map so there will be
20 comparison, possible, and to provide that
21 opportunity. So I appreciate that and would
22 certainly urge for that's to happen.

23 MADAM CHAIRMAN: Thank you. On your web
24 site, the Division of Legislative Services
25 various proposed maps will be posted. So the

1 public will be able to review those.

2 SENATOR OBENSHAIN: Madam chair.

3 MADAM CHAIRMAN: Senator Obenshain.

4 SENATOR OBENSHAIN: Does the chair wish to
5 let us know when those maps will be posted.

6 MADAM CHAIRMAN: We have been -- we are
7 not sure is the bottom line. We are not sure.
8 We are still working on proposals and any
9 proposal that are introduced will be posted.

10 SENATOR OBENSHAIN: Madam chairman, I
11 appreciate what the lady from the League of
12 Woman Voters said. And I concur in her concern
13 about public awareness. I know we are
14 scheduled to convene in April 4 for purposes of
15 starting and concluding this process. Does the
16 chair expect us to see a map next week?

17 MADAM CHAIRMAN: We are definitely working
18 on it. I have been reflecting back on ten
19 years ago when no one saw the map. No one read
20 proposed criteria until the day we came back
21 into session for the redistricting session. We
22 are working diligently to try and get things
23 prepared before that.

24 And of course now we are doing the
25 criteria ten days earlier.

1 SENATOR OBENSHAIN: So at least the day
2 before?

3 MADAM CHAIRMAN: We are working on it.

4 SENATOR WHIPPLE: Madam chair.

5 MADAM CHAIRMAN: Senator Whipple.

6 SENATOR WHIPPLE: May I just make an
7 observation about the public hearing and
8 congratulate the League of Women Voters for
9 coming to the hearing held last fall. They
10 were quite poorly attended. It is difficult
11 when you do things in advance to get people to
12 focus. So I really congratulate the league who
13 was represented at all of the hearings last
14 fall.

15 MADAM CHAIRMAN: If I may also say we have
16 available a list of public hearings. Staff has
17 made them available. I believe there are eight
18 throughout the state that we will be doing. We
19 are trying to be as convenient as possible to
20 the public under this extraordinarily tight
21 timeframe.

22 SENATOR OBENSHAIN: Madam chair.

23 MADAM CHAIRMAN: Senator Obenshain.

24 SENATOR OBENSHAIN: Madam chairman, do you
25 expect that maps will be available before the

1 public hearing?

2 MADAM CHAIRMAN: We are working on it, as
3 I said before.

4 SENATOR OBENSHAIN: Thank you.

5 MADAM CHAIRMAN: Okay. Now is there
6 anyone else who wished to speak. Okay. We
7 have two -- I'm sorry.

8 A CITIZEN: Madam chair and members, I am
9 Anne Sterling, also of the League of Women
10 Voters of Virginia am very proud to have a
11 colleague lobbying with me. My associate has
12 proved very good at this. I just wanted to add
13 that those of you interested in taking a look
14 at the student maps, they will be available
15 starting sometime today, perhapses by the time
16 you go back to your cars. At the library of
17 Virginia, they agreed to display them for the
18 next week.

19 And we are hoping that a week from today
20 we can display them in the General Assembly
21 Building itself. There are 13 posters that
22 display the winning maps from four different
23 schools. And it turns out we need permission
24 of the house and senate clerks and they in turn
25 must get notes from the presidents of UVA and

1 William & Mary. So it's complicated to get
2 them over here to this building. But we are
3 doing our best. We hope that you will take a
4 look at the student maps.

5 MADAM CHAIRMAN: I'm delighted they are
6 going to be on the web. So regardless of where
7 they are posted they will conveniently be
8 available on your computers.

9 SENATOR EDWARDS: I have a question.

10 MADAM CHAIRMAN: Senator Edwards.

11 SENATOR EDWARDS: Ms. Sterling, could you
12 appear for a question? We heard about the
13 contest and the winners. And I'm curious as to
14 the criteria for determining the winners and
15 who did the judging?

16 A CITIZEN: Well, first of all we
17 distinguished judges from the American
18 Enterprise Institute and the Trucking
19 Institution, Thomas Mann and Norman Hornstein
20 who, I believe, live outside of the
21 Commonwealth, so they were neutral judges. And
22 they came down to deliver their area opinions.

23 SENATOR EDWARDS: And just those two
24 people, do they have to agree?

25 A CITIZEN: They did and apparently they

1 had no trouble agreeing. There were very
2 outstanding maps submitted and the rationals
3 were included as well.

4 It was very interesting in the contest the
5 students were asked to draw two sets of maps.
6 And most of the teams did comply with this.
7 One that would produce competitive districts
8 and the other that would not take
9 competitiveness into consideration at all. And
10 so that's why we have two sets of winners. One
11 competitive and one just done to satisfied the
12 other criteria.

13 Otherwise the criteria were quite close to
14 criteria given by the governor to his
15 bipartisan redistricting commission.

16 SENATOR EDWARDS: Madam chairman.

17 MADAM CHAIRMAN: Senator Edwards.

18 SENATOR EDWARDS: How does the governor's
19 criteria differ from the two proposals we have
20 before us.

21 A CITIZEN: I believe that the most
22 important thing was that he asked that
23 political boundaries be respected entirely.
24 And so it was please do not start from scratch.
25 And the students did in some cases and did not

1 in others.

2 But the requirement that each district
3 must be connected by tunnel or bridge if water
4 is involved was one of the governor's criteria.

5 SENATOR EDWARDS: What about deviation?

6 A CITIZEN: I believe the governor -- I
7 will check, but I'm pretty sure he did not
8 mention deviation. And there -- I will just
9 tell you that in the work sessions of the
10 governor's commission they had very interesting
11 discussions about this. And one former
12 secretary of the State Board of Education
13 suggested that deviation may go up as high as
14 10 percent.

15 She gave the eastern shore of Virginia as
16 an example. She said in many cases they may be
17 happier having more of them share a state
18 senator in order to have someone that
19 represents all of them.

20 And I thought that was the kind of the
21 thing that is interesting to contemplate that
22 people themselves may be happy to have more of
23 them in a district if it gives them one person
24 to refer to and feel they belong to.

25 SENATOR EDWARDS: Thank you.

1 MADAM CHAIRMAN: Thank you. Anyone else?
2 Okay. We have then the two proposed sets
3 of criteria. I'm looking forward to a motion.

4 SENATOR VOGEL: Can I make a comment
5 before we take the motion?

6 MADAM CHAIRMAN: Yes.

7 SENATOR VOGEL: I don't want this
8 deviation discussion to necessarily detract
9 from what is our larger mission which is a
10 good, clean, fair map that keeps and honors the
11 boundaries of district counties and cities and
12 towns. With that said, I did want to make that
13 observation. I think it helps us when we go
14 out into the public and we talk about the
15 effort to draw fair maps.

16 I think all of us here were advocates of
17 the bipartisan commission. We are all clearly
18 generally the same bent there. I think it is a
19 good thing to be able to tell the public we are
20 mindful of that deviation.

21 And I know that Senator Watkins and I had
22 a discussion prior to the conclusion of session
23 about the resolution we would put forward.
24 Looking at the resolution being done last time
25 and understanding that there would probably be

1 one resolution we were not aware of what the
2 alternative proposal might be. But we looked
3 at the 5 percent given what the case law has
4 been and what we believe would generally be a
5 pretty aggressive effort to challenge us on our
6 criteria and challenge us in the map that we
7 draw.

8 And I think that at the end of the day we
9 all benefit by trying to keep the criteria
10 keeping it at a high standard.

11 Thank you, madam chair.

12 MADAM CHAIRMAN: Thank you.

13 Is there a motion?

14 SENATOR OBENSHAIN: Madam chair, I guess I
15 move to recommend reporting Senate resolution
16 number 502.

17 SENATOR VOGEL: Second.

18 SENATOR DEEDS: Madam chair, I make a
19 substitute motion that we adopt the resolution
20 proposed by the Chair. Unnumbered committee
21 resolution.

22 MS. SPAIN: It would be Committee
23 Resolution 1. It's a committee resolution that
24 would take effect immediately as opposed to the
25 senate resolution not effective until it goes

1 to the senate.

2 MADAM CHAIRMAN: So there is a substitute
3 motion. Is there a second?

4 SENATOR McEACHIN: Second.

5 MADAM CHAIRMAN: Substitute motion has
6 been moved and seconded.

7 SENATOR MARTIN: Madam chair.

8 MADAM CHAIRMAN: Senator Martin.

9 SENATOR MARTIN: Could I offer an
10 amendment to this. I would like to make an
11 amendment to the proposal. But I'm aware,
12 since we don't have line numbers. I would like
13 to offer an amendment.

14 SENATOR DEEDS: Madam chair.

15 SENATOR MARTIN: The unnumbered --

16 SENATOR DEEDS: Point of order, madam
17 chair. Can there be an amendment to a
18 substitute motion?

19 MADAM CHAIRMAN: No.

20 SENATOR MARTIN: I would like for the
21 committee, since I was unaware that we were
22 going to go at it this way. I expected to have
23 something in front of me with a line item. I
24 offer an amendment so I paused for too many
25 seconds. I apologize. If you would

1 accommodate me I think we should have an
2 amendment offered to the resolution that you
3 can reject.

4 SENATOR WHIPPLE: Everyone would have to
5 withdraw the motion.

6 MADAM CHAIRMAN: If everyone withdraws
7 their motions we can do that.

8 SENATOR OBENSHAIN: I gladly withdraw my
9 motion.

10 SENATOR DEEDS: I withdraw mine.

11 Madam chair, I move we adopt the
12 resolution, committee resolution one.

13 MADAM CHAIRMAN: Is there a second to
14 adopting the committee resolution one.

15 SENATOR WHIPPLE: Second.

16 MADAM CHAIRMAN: The move is seconded.
17 Now, the amendment.

18 SENATOR MARTIN: I would like to offer an
19 amendment to that, if you could draw my
20 attention to the language that sets up to
21 deviation.

22 SENATOR McEACHIN: Section one.

23 SENATOR MARTIN: In that case, lines 21
24 and 22 of Senate resolution number five, I
25 would like to have inserted as a new deviation

1 paragraph on committee number one.

2 MADAM CHAIRMAN: Just so I understand and
3 staff understands, you want to actually insert
4 the language or do you just want to change it
5 to plus or minus 1/2 percent?

6 SENATOR MARTIN: That's the problem. Just
7 change that to 1/2 percent.

8 MADAM CHAIRMAN: All right. So we have a
9 motion for an amendment to change it to plus or
10 minus 1/2 percent; is there a second?

11 SENATOR VOGEL: Second.

12 MADAM CHAIRMAN: It's been moved and
13 seconded. Is there discretion on this.

14 SENATOR MARTIN: Speaking to it there is a
15 significant difference there. We are
16 technologically we are much more prepared to
17 get this closer to a one man one more vote.

18 SENATOR WHIPPLE: Let's work on one person
19 one vote.

20 SENATOR MARTIN: Sorry about that I was
21 not trying to be sexist. We are
22 technologically much more prepared to do it.
23 Our desire to be there we have a desire and we
24 have the ability to do that. I think it would
25 be wrong to deviation if the house can do

1 1 percent we certainly can do a half of
2 percent.

3 And I would encourage you to support.

4 SENATOR PUCKETT: Madam chair.

5 MADAM CHAIRMAN: Senator Puckett.

6 SENATOR PUCKETT: Speaking to the
7 substitute, there have been a lot of talk about
8 what we can do with technology and everything.
9 No one has produced anything that said this
10 won't split communities, towns, cities,
11 counties. Until I see something that convinces
12 me that it won't split people more than it's
13 already splitted or split. I'm sorry. I'm not
14 going to support it. That's just my position.

15 SENATOR McWATERS: Madam chair.

16 MADAM CHAIRMAN: Senator McWaters.

17 SENATOR McWATERS: In response to that, I
18 think that Virginia Beach is the largest most
19 populated city in the Commonwealth. We have
20 five senators that represent that region.

21 Only three of those, two of those senators
22 actually live in Virginia Beach and are
23 elected, madam chair, by people mostly who live
24 outside of Virginia Beach.

25 And so I live in a district recently

1 elected in a district in a city that is split.
2 So I think this issue of splitting is of
3 concern across rural areas as well as the
4 largest city in the state.

5 So I think that there can be an
6 opportunity to do as the senator has suggested,
7 Madam chair, to put these various maps together
8 under each of the two scenarios. I think it
9 should be our job to look at half percent
10 versus 2 percent. Perhapses we shouldn't vote
11 on this today. Perhaps we should put this vote
12 off until there is an opportunity to do as the
13 senator has suggested to lay these maps down
14 and see if we can have a better government map
15 in this process.

16 SENATOR WHIPPLE: Madam chair.

17 MADAM CHAIRMAN: Senator Whipple.

18 SENATOR WHIPPLE: I oppose the amendment.
19 I think that the one person one vote is a very
20 important one. And I think it's one we believe
21 in. And as we know probably already it's out
22 of date because the census was taken last year.
23 And as you know, now we've got a situation
24 senate hearing comes to mind representing a
25 district that had two hundred thousand people

1 and has I think 350 thousand people in it now.

2 So it's a lot objecting. We know right
3 now but by the end of this decade it's not
4 going to be within a half percent or 2 percent
5 or any other probably percentage because people
6 move to places and things change.

7 Senator Puckett is exactly right. Every
8 time you squeeze the population deviation you
9 make it much more likely you are going to have
10 division. So when you have a slightly higher
11 number it gives you more flexibility to observe
12 some of the other criteria that are also very
13 important.

14 And in addition to that, what it does is
15 establish outside boundary. It doesn't say
16 there might not be something less than that.

17 So I think that it would be, in my view,
18 wrong to constrain ourselves so much on
19 population deviation that it limits our
20 opportunity to observe some of the other
21 criteria.

22 MADAM CHAIRMAN: Thank you.

23 SENATOR SMITH: Madam chair.

24 MADAM CHAIRMAN: Senator Smith.

25 SENATOR SMITH: Speaking to the amendment

1 there is something here that for any of us who
2 have worked with this mapping, and I don't
3 profess to be very computer literate but I
4 found that I could free mapping, a program that
5 was online that in deed someone of my caliber
6 and ability with computer use could draw a line
7 and could draw it. And we are talking about
8 the 2 percent, half of a percent, could draw it
9 within a 1/10th of a percent.

10 And to say otherwise, it strikes a little
11 bit. Professional wrestling when we are
12 watching it on TV and the camera saw the guy
13 pounding him on his head, but no one else. The
14 referee didn't see it.

15 Any way, anyone who has worked with this
16 program knows full well that we can do it and
17 we can do it just as the congressional
18 districts are done. We are kidding everyone to
19 say it can't be done and we just as well admit
20 why we can't do it.

21 Thank you.

22 SENATOR McEACHIN: Madam chair.

23 MADAM CHAIRMAN: Yes. Senator McEachin.

24 SENATOR McEACHIN: I find the discussion
25 interesting. I find the discussion about

1 technology interesting. But the one thing that
2 has not been answered by the members of the
3 other side of the isle is why didn't you do it
4 ten years ago, why do you want to do it today.
5 All of those questions remain unanswered.

6 It's not a matter of trying to say we
7 didn't have the technology, because we did. It
8 may not have been available to college
9 students, it may not have been available to
10 others, but we had that technology then.
11 You-all didn't want to do it then.

12 And it seems less than genuine to suggest
13 that you want to do it now for some other
14 reason.

15 SENATOR McWATERS: Madam chair.

16 MADAM CHAIRMAN: Senator McWaters.

17 SENATOR McWATERS: He said, you-all didn't
18 want to do it then. Well, we-all weren't here.
19 We can't answer that question. It's a good
20 question. And I understand we went from five
21 to two. Am I correct about that, Mary?

22 MS. SPAIN: 5 percent in '91.

23 SENATOR DEEDS: So we went from five 20
24 years ago to two, so that's a reduction. All
25 we are suggesting is follow that line follow

1 that same curve it get's you about the same
2 number. It's not rocket science it's just
3 better government.

4 SENATOR MARTIN: Madam chair.

5 MADAM CHAIRMAN: Yes. I wanted to however
6 to comment, better government also means
7 keeping communities of interest together and
8 that does not follow a deviation line.

9 SENATOR McWATERS: Well, Madam chair, I'm
10 not sure I would agree with that. I think both
11 can be accomplished I think that's been part of
12 our argument here and I raised it earlier with
13 Senator McEachin. I don't think you can say
14 those are contradictory.

15 MADAM CHAIRMAN: I was trying to imply
16 that they are sometimes and can be.

17 Senator Martin.

18 SENATOR MARTIN: On both issues the issues
19 of whether or not speaking to again speaking to
20 both matters speaking to both one is the issue
21 of we didn't want to do it ten years ago. Ten
22 years ago we cut it from five to two.
23 Technologically we thought that was a huge
24 jump. We thought we were tightening down the
25 criteria to where we got it much closer to one

1 person one vote. To suggest that we weren't
2 wanting to do something back then is false,
3 because we thought we were making tremendous
4 strides in doing that.

5 We now know we know it so well we can do a
6 half percent we know it so well that down the
7 hall we down the hall we've got 1 percent which
8 the mathematical equivalent is point four
9 person. And yet you are going to turn around
10 and tell us you don't think it can you be. I
11 happen to know it can be done. And over the
12 next week or so we will see that it can be
13 done. And you will have that opportunity to
14 see that. On this -- so I guess that's
15 sufficient on that.

16 But the fact is that it absolutely can be
17 done. And to suggest that you are having to
18 make a choice between having either split
19 communities or a tighter criteria is false. So
20 on both issues the fact that you have to choose
21 between those two are false. And the fact that
22 we refused to do it ten years ago is also
23 false. Because we, in fact, made a significant
24 improvement by going from five to two percent.

25 SENATOR DEEDS: Madam chair.

1 MADAM CHAIRMAN: Senator Deeds.

2 SENATOR DEEDS: Senator Martin, ten years
3 ago the congressional districts were drawn with
4 no deviation. So you had the ability to draw
5 these districts with no deviation and you chose
6 not to; isn't that correct?

7 SENATOR MARTIN: The last part of your
8 question was what?

9 SENATOR DEEDS: Isn't that correct.

10 SENATOR MARTIN: You are asking me whether
11 or not there was a proposal?

12 SENATOR DEEDS: Senator Martin, what I
13 said was a fact. Ten years ago you drew the
14 districts, your side of the aisle drew the
15 congressional district to zero deviation, you
16 had the ability to draw the senate district to
17 zero deviation and you chose not to; isn't that
18 correct?

19 SENATOR MARTIN: Obviously, that is
20 correct.

21 SENATOR DEEDS: No further questions, Your
22 Honor.

23 SENATOR MARTIN: But I'm not finished
24 answering.

25 MADAM CHAIRMAN: Okay. Let's go through

1 the chair.

2 SENATOR MARTIN: No, Madam chairman, I am
3 responding to that question.

4 MADAM CHAIRMAN: I'm not shutting you off,
5 I'm asking you to please go through the chair.

6 SENATOR MARTIN: Okay. Madam chair,
7 absolutely. That's absolutely correct. We
8 were instructed that we had to be at zero with
9 the congressional and the population is much
10 larger and much easier to attain. The smaller
11 the population the more challenging it is to
12 attain that. That's the reason it's harder for
13 the house to get down to a half percent. We
14 are two and a half times larger.

15 So once again, there was a tremendous
16 stride ten years ago. And yes, we probably
17 could have gotten it tighter but we had gotten
18 be tell like we had gotten it quite a bit
19 tighter than it had ever been before.

20 MADAM CHAIRMAN: Okay. We have a vote in
21 front of us and it's on the amendment to senate
22 committee resolution, P & E Committee
23 Resolution Number 1, to change the percent from
24 plus or minus 2 percent to plus or minus 1/2 of
25 1 percent. All in favor of that please say,

1 aye.

2 (Various committee members
3 respond in the affirmative.)

4

5 MADAM CHAIRMAN: Opposed?

6

7 (Various committee members respond
8 in the negative.)

9

10 MADAM CHAIRMAN: Yes, please call the
11 roll.

12 THE CLERK: Senator Martin.

13 SENATOR MARTIN: Aye.

14 THE CLERK: Senator Deeds.

15 SENATOR DEEDS: No.

16 THE CLERK: Senator Whipple.

17 SENATOR WHIPPLE: No.

18 THE CLERK: Senator Obenshain.

19 SENATOR OBENSHAIN: To the amendment, aye.

20 THE CLERK: Senator Puckett.

21 SENATOR PUCKETT: No.

22 THE CLERK: Senator Edwards.

23 SENATOR EDWARDS: No.

24 THE CLERK: Senator Blevins.

25 SENATOR BLEVINS: Aye.

1 THE CLERK: Senator McEachin.

2 SENATOR McEACHIN: No.

3 THE CLERK: Senator Petersen.

4 Senator Smith.

5 SENATOR SMITH: Aye.

6 THE CLERK: Senator Barker.

7 SENATOR BARKER: No.

8 THE CLERK: Senator Northam.

9 SENATOR NORTHAM: No.

10 THE CLERK: Senator Vogel.

11 SENATOR VOGEL: Aye.

12 THE CLERK: Senator McWaters.

13 SENATOR McWATERS: Aye.

14 THE CLERK: Senator Howell.

15 SENATOR HOWELL: No.

16 THE CLERK: Six ayes, eight nays.

17 MADAM CHAIRMAN: The amendment fails on
18 the vote of six ayes, eight nos.

19 So now we are back to the original motion,
20 which is to approve P & E Committee Resolution
21 Number 1.

22 SENATOR EDWARDS: Move.

23 MADAM CHAIRMAN: It's been moved and
24 seconded.

25 SENATOR OBENSHAIN: Substitute motion to

1 approve Senate Joint Resolution 502.

2 SENATOR MARTIN: Second.

3 MADAM CHAIRMAN: There a substitute
4 motion, if the clerk will call the roll on the
5 substitute motion.

6 THE CLERK: Senator Martin.

7 SENATOR MARTIN: Aye.

8 THE CLERK: Senator Deeds.

9 SENATOR DEEDS: No.

10 THE CLERK: Senator Whipple.

11 SENATOR WHIPPLE: No.

12 THE CLERK: Senator Obenshain.

13 SENATOR OBENSHAIN: Aye.

14 THE CLERK: Senator Puckett.

15 SENATOR PUCKETT: No.

16 THE CLERK: Senator Edwards.

17 SENATOR EDWARDS: No.

18 THE CLERK: Senator Blevins.

19 SENATOR BLEVINS: Aye.

20 THE CLERK: Senator McEachin.

21 SENATOR McEACHIN: No.

22 THE CLERK: Senator Petersen. Senator
23 Smith.

24 SENATOR SMITH: Aye.

25 THE CLERK: Senator Barker.

1 SENATOR BARKER: No.

2 THE CLERK: Senator Northam.

3 SENATOR NORTHAM: No.

4 THE CLERK: Senator Vogel.

5 SENATOR VOGEL: Aye.

6 THE CLERK: Senator McWaters.

7 SENATOR McWATERS: Aye.

8 THE CLERK: Senator Howell.

9 SENATOR HOWELL: No.

10 THE CLERK: Six ayes, eight nays.

11 MADAM CHAIRMAN: The motion fails.

12 We are now at the primary motion, which is
13 to adopt Privileges and Elections Resolution
14 Number 1.

15 Clerk, call the roll.

16 THE CLERK: Senator Martin.

17 SENATOR MARTIN: No.

18 THE CLERK: Senator Deeds.

19 SENATOR DEEDS: Yes.

20 THE CLERK: Senator Whipple.

21 SENATOR WHIPPLE: Aye.

22 THE CLERK: Senator Obenshain.

23 SENATOR OBENSHAIN: No.

24 THE CLERK: Senator Puckett.

25 SENATOR PUCKETT: Aye.

1 THE CLERK: Senator Edwards.

2 SENATOR EDWARDS: Aye.

3 THE CLERK: Senator Blevins.

4 SENATOR BLEVINS: No.

5 THE CLERK: Senator McEachin.

6 SENATOR McEACHIN: Aye.

7 THE CLERK: Senator Petersen.

8 Senator Smith.

9 SENATOR SMITH: No.

10 THE CLERK: Senator Barker.

11 SENATOR BARKER: Aye.

12 THE CLERK: Senator Northam.

13 SENATOR NORTHAM: Aye.

14 THE CLERK: Senator Vogel.

15 SENATOR VOGEL: No.

16 THE CLERK: Senator McWaters.

17 SENATOR McWATERS: No.

18 THE CLERK: Senator Howell.

19 SENATOR HOWELL: Aye.

20 THE CLERK: Eight ayes, six nays.

21 MADAM CHAIRMAN: The resolution passes

22 eight to six.

23 On our agenda we have one remaining item
24 and that is the criteria for the congressional
25 redistricting. And as has been indicated it is

1 identical wording to ten years ago with the
2 update of the one court case that was
3 intervening.

4 Is there any discussion on this?

5 SENATOR McEACHIN: Move to adopt the
6 resolution.

7 SENATOR WHIPPLE: Second.

8 MADAM CHAIRMAN: It's been moved and
9 seconded.

10 SENATOR DEEDS: Madam chair.

11 MADAM CHAIRMAN: Senator Deeds.

12 SENATOR DEEDS: Claire Guthrey are you
13 still out there?

14 MS. GUTHREY: Yes.

15 SENATOR DEEDS: With respect to the
16 congressional criteria would your critique
17 still hold?

18 MS. GUTHREY: Yes.

19 SENATOR DEEDS: These changes were made
20 between '91 and '01.

21 MS. GUTHREY: Yes, sir.

22 SENATOR DEEDS: Just a matter of record.

23 MADAM CHAIRMAN: Is there any discussion
24 on this. All in favor?

25 SENATOR McEACHIN: Madam chair, I don't

1 know that you actually asked the public for
2 comment, for the record.

3 MADAM CHAIRMAN: Thank you very much. Is
4 there anyone in the public who would like to
5 speak to congressional criteria?

6 I don't see anyone. Thank you, Senator
7 McEachin. I really would have remembered in
8 the middle of the night and felt terrible.

9 All in favor of -- Senator Obenshain.

10 SENATOR OBENSHAIN: Madam chair, I would
11 make a motion that we amend this to change the
12 deviation to half a percent.

13 MADAM CHAIRMAN: This is the
14 congressional, which is actually zero. We are
15 not allowed to have any deviation.

16 SENATOR OBENSHAIN: Am I looking at the
17 wrong one?

18 SENATOR WHIPPLE: The law prescribes it
19 has to be zero.

20 SENATOR OBENSHAIN: I was looking at the
21 wrong one. My apologies.

22 MADAM CHAIRMAN: All in favor of the
23 resolution say aye.

24

25 (All respond in the

1 affirmative.)

2

3 MADAM CHAIRMAN: Any opposed?

4

5 (No response.)

6

7 MADAM CHAIRMAN: Okay. Now, before we
8 leave I would like to remind everyone about the
9 eight public hearings coming up starting next
10 Thursday. And then there will be more on
11 Saturday and a final one here in Richmond on
12 the 4th, Monday.

13 We definitely want to hear from people and
14 urge you to come out and tell us your views.
15 With that, if there is no more business, the
16 committee will rise.

17 NOTE: The hearing concluded at
18 3:37 p.m.

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1 COMMONWEALTH OF VIRGINIA,
2 CITY OF RICHMOND:

3

4 I, Sherelle A. Bradley, a Certified Court
5 Reporter and Notary Public for the State of Virginia
6 at Large, do hereby certify that the foregoing
7 hearing of March 25, 2011 was duly taken and sworn
8 to before me at the time and place set out in the
9 caption hereto.

10 Further, that the transcript of the
11 hearing is true and correct to the best of my
12 ability.

13 WITNESS MY HAND this 3rd day of May, 2011.

14

15

Sherelle A. Bradley - Certified Court Reporter
Notary Public for the State of Virginia #337599

17 My commission expires: 09/30/2013.

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