

V I R G I N I A

SENATE COMMITTEE

On PRIVILEGES And ELECTIONS

SUBCOMMITTEE ON REDISTRICTING

PUBLIC HEARING

Thursday, November 4, 7:00 P.M.

Herndon Town Council Chambers

765 Lynn Street

Herndon, Virginia

- - - - -

McCOY COURT REPORTING ASSOCIATES
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PANEL MEMBERS

SENATORS:

_____ Janet Howell, Chairperson
_____ 32nd District

Steve Martin
11th District

Harry Blevins
14th District

Chap Peterson
35th District

- - - - -

SPEAKERS:

Edythe Frankal Kelleher

Olga Hernandez,
League of Women Voters

Lester Gabirel

Marion Stillson

Jay Walker

William Thompson

Therese Martin

Baba Freeman

Jerry Welch

Herndon Mayor Steve DeBenedittis

Alex Blakemore

Spike Williams

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P R O C E E D I N G S

The following public hearing took place beginning at 7:05 p.m. with a call to order and welcome.)

THE CHAIRPERSON: This is a Special Subcommittee of the Privileges and Elections Committee. We basically oversee the redistricting process for the Virginia Senate. I chair that committee, and I also chair this special subcommittee.

And I'd like to have my other members who are here this evening introduce themselves. And let's start with Senator Blevins.

SENATOR BLEVINS: My name is Harry Blevins. I represent the 14th Senate District. This comprises most of Chesapeake and a small part of Virginia Beach.

SENATOR MARTIN: I'm Steve Martin. I represent the 11th Senate District, which is most of Chesterfield County and all of the City of Colonial Heights.

And I just want to express my appreciation

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for you folks coming out to both maybe learn a little bit, but also share with us your thoughts.

THE CHAIRPERSON: And I would like to just mention that I represent the Town of Herndon, where we are now, as well as Reston, Great Falls, McLean, part of Tysons and part of Falls Church.

We have, I see in the audience some elected officials, and I'd just like to acknowledge them and welcome them. And if I miss anybody, the lights are in my eyes.

But I see Sheila Olem is here from the town council of Herndon. Grace Wolf is here, also the town council; Bill Tirrell from the Herndon town council. Edythe Frankal is here from the Vienna town council. And Dennis Hutch, who was formerly on the Herndon town council is here.

Have I missed anybody? Yes?

MS. JO-ANN CHASEN: Madam Senator, we have a newly-elected town council representative from Manassas Park, Brian Leeper --

MR. LEEPER: Brian Leeper --

MS. CHASEN: -- sitting right here. He

just got elected so we're very excited.

THE CHAIRPERSON: Well, it's very nice to meet you, and thank you for coming all this way.

I have some introductory remarks that I hope will set the stage for this evening's public hearing. This is our second of four public hearings that we're having throughout the state this year, but once we have more data, we will be having another round of public hearings probably starting in March.

We can't be very specific because we don't know when the census is precisely going to give us the data that will be needed for redistricting.

We've gone to considerable lengths to publicize these meetings. The press has been notified four times. The schedule is on the legislative services redistricting website.

And for the first time in my memory every single person or organization is listed as an interested party for any legislative committee or commission has been emailed. That's over 5,000 people and groups.

The two political parties were also notified. I know the Democrats have sent out more than 20,000 people statewide, and I hope the Republicans have notified their lists as well.

Senate P&E along with House P&E has the primary responsibility for redistricting bills. However, a redistricting plan may be introduced by any member of the General Assembly and the General Assembly and the governor must ultimately enact the bills that establish the new redistricting plans.

We find it's very important to have public input. Redistricting impacts all voters and the General Assembly is answerable to our constituents, to you.

We will accept comments in person, by mail, by email. Significantly, all the comments from these hearings will be posted on our website for public transparency reasons.

As you know, redistricting is the process of redrawing the boundaries of legislative districts. It's conducted every ten years after the national census. It's designed to reflect

population shifts that have taken place since the last census.

Why do we redistrict? Well, we want to, but more importantly we have to. We're required by the U.S. Constitution to redistrict the House of Representatives and the Virginia Constitution to redistrict the Virginia Senate and House.

The General Assembly is responsible for the Virginia Senate and House and for the U.S. House of Representatives. Localities, however, are responsible for redistricting local offices, such as school boards, county supervisors, town councils and the like.

The U.S. Supreme Court has held that the Constitution requires one person, one vote. Districts must be as equal as practicable in population.

Districts with smaller -- excuse me, with slower growth or actual population loss must expand geographically. Districts with faster growth must shrink. If district lines did not change, population shifts would dilute the votes of persons

in districts with more people.

Even though we do not have detailed data from census yet, we know from estimates that Northern Virginia will be gaining about 1.5 or 1.6 new senators, and other areas of the state will be losing representation. This is a zero sum gain. Shifts in any district will impact other districts.

I'd like to give you an example of this from the 2001 redistricting, and I'd like to use my own district as an example, the 32nd Senate District.

In 2001 the census showed that the 32nd District was almost precisely the right size. It was only about 350 votes off of the perfect size. However, Northern Virginia had gained a seat. So in order to accommodate that seat, the 32nd District lost more than 60,000 citizens and gained a different 60,000 citizens. That impacted all the surrounding districts as well.

So any changes that we have will impact all districts. I don't see how that's going to be avoided.

Let me tell you briefly some of the dates that we're looking at. Last April 1st was census day. That was when the population was enumerated by the census department.

We're expecting on December 31st of this year to get an official population count for each of the states. That is highly significant when it comes to congressional redistricting. It will tell us if Virginia is going to gain or lose any congressional representation. We expect to stay at 11. We're at 11 now. We're anticipating we're going to stay at 11.

In February or March detailed population data, the data that we will need to draw the maps will be released to the states. We've been promised that we'll be the first state to get such information, and here's why.

Every state has to redistrict, but Virginia has to do it faster than anyone else, at least for the General Assembly. All General Assembly members in both the House and the Senate will be running in 2011 in new districts drawn

during the redistricting process.

Any redistricting plan enacted by the General Assembly and the Governor must be submitted to the Department of Justice for pre-clearance. This is because Virginia is covered by Section 5 of the Voting Rights Act. In 2001, the Department of Justice review took 59 days. They can take up to 60 days.

Generally primaries, usually held in June, are delayed because of the time it takes to enact the new plans and the Department of Justice review.

In 2001, primaries were held in August. I'm sorry to tell you that we do not know yet when they will be held next year. The Senate passed a bill that specified a specific date, and the House carried the bill over, so we do not at this point know when the primaries are going to be.

We face a lot of complex legal issues. We have to balance many legal requirements. Redistricting plans must comply with U.S. and Virginia constitutions, state law and the Federal

Voting Rights Act of 1965.

The U.S. Constitution requires one person, one vote. The House of Representatives, they mean this quite literally. It has to be strict mathematical equality.

For General Assembly districts, be they House or Senate, some deviation from strict equality is permitted, but courts have never said exactly what that variation can be.

Districts have to be contiguous and compact under the Virginia Constitution, and the Voting Rights Act prohibits redistricting plans that would deny or abridge the right to vote because of race, color or being a language minority.

We anticipate that both the Senate and House Privileges and Election committees will adopt redistricting criteria prior to the creation of any redistricting plan. Part of what we're hoping to hear from you tonight is what kinds of criteria would you like us to include.

We have some handouts that explain some of

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the basic information about redistricting and also explain where to go to get additional information.

On a couple of other topics, for the past three years the Senate has passed nonpartisan redistricting bills. We've passed them overwhelmingly in a bipartisan manner, as I said, for three years.

Each time those bills were sent to the House and they defeated the bills. So we will not be having a nonpartisan redistricting commission, as desirable as you guys think it would be.

We also had hoped to have joint hearings with the House, seeing it would save quite a bit of money for the state and a lot of time for those of you who want to participate. Unfortunately, our invitation for joint hearings was turned down.

But we're here to hear from you, and we value your input. As I mentioned, we will be doing another series of public hearings after we get the data.

Your comments are being transcribed by a

court reporter and will be posted on our legislative services website.

We have two Senate staff here at this here. Mr. Cotter from legislative services. He's got expertise in election law. And Mr. Lehman is with the clerk's office and is helping organize this meeting.

Ms. Hopchas, am I saying that right, is our court reporter. She's down there.

I would ask you to limit your remarks to five minutes if at all possible, but you're very much encouraged to expand them and send them to us, to the website, to the legislative services staff.

If you don't choose to speak and would like to send comments, we welcome those as well, and we will throughout this process over the next six months or so.

So we have a sign-up sheet. I'll go through the sign-up sheet and then, I suppose, if others want to speak, you can add on to another sign-up sheet, and then we can open it for you just

to come up if you decide at the very last minute you have something you'd like to say.

UNIDENTIFIED PARTICIPANT: Sign up now?

THE CHAIRPERSON: You can sign up now, yes. Yes, you may. And there's -- right there. And I'll wait a second so you can add.

While we're waiting for that, I just want to introduce Senator Chap Peterson. Welcome. As you sit down, you might want to just say where your district is.

SENATOR PETERSON: Sure. Where it is currently?

THE CHAIRPERSON: Yes.

(Laughter ensues.)

SENATOR PETERSON: Good evening. My name is Chap Peterson. I'm a lawyer in Fairfax City, and I represent central Fairfax in the state senate, which my district spans from Lake Braddock on the southern border coming up through Fairfax City, the Town of Vienna, Oakton, Tysons Corner and up to Wolftrap. God's country. (Laughter ensues.)

THE CHAIRPERSON: If you remember when I was telling you about how the 32nd District had changed so we could create a new district here in Northern Virginia, Senator Peterson has that district.

Okay. Let's start. Councilwoman Edy the Frankal Kelleher.

MS. KELLEHER: Good evening. I think, Madam Chair, it's indicative of how long you and I have known one another that you introduced me earlier with my maiden name.

THE CHAIRPERSON: I think that's true.

MS. KELLEHER: It's actually the second time that happened to me today, so.

Good evening, Madam Chair, and Members of the Committee. I'm Edith Frankal Kelleher, a council member from the Town of Vienna. I'm speaking tonight on behalf of the mayor and the other council members.

The citizens of Vienna have worked hard to preserve our small-town identity within the sprawling suburbs of Northern Virginia. We

maintain our own police, parks, zoning and public works departments and host many special events throughout the year.

Vienna residents are proud of our cohesive community which inspired Money magazine to name Vienna one of the best places to live in America in 2005.

This cohesiveness and community feeling is facilitated by the fact that one senator and one delegate represent the entire town. Vienna is within the 34th Senate District and is very ably represented by Senator Peterson and the 35th House District.

We believe it is in the best interests of Vienna citizens to remain undivided in our state representation, and that is the entirety of my request to you.

Thank you very much for the opportunity to address you on this important subject. We appreciate your holding this series of public hearings and your commitment to an open redistricting process.

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THE CHAIRPERSON: Thank you very much.

Next is Larry Wallace.

MR. WALLACE: I have nothing to say. I just signed in.

THE CHAIRPERSON: Okay. Well, I see you're from Roanoke. Thank you for coming all this way.

MR. WALLACE: Yes, ma'am.

THE CHAIRPERSON: Olga Hernandez from the League of Woman Voters.

MS. HERNANDEZ: Good evening, Madam Chair and Members of the Privileges and Elections Committee. My name is Olga Hernandez, and I'm president of the League of Women Voters of Virginia.

Thank you for scheduling the hearings early in the process. By hearing citizens' input on the fairness of the redistricting process prior to the lines being drawn, we hope will encourage you to consider what you hear before a final plan is drafted and voted on.

The League, a nonpartisan political

organization, has had a position on redistricting for decades. We are not new to this venture. We come to positions after careful study and input from our membership. Our most recent study on the subject can be found on our website.

The League of Women Voters has a long history of fighting against tax on the basic constitutional right to fair and equal representation guaranteed to all citizens by the Constitution.

The League has worked vigorously in the Commonwealth and across the country to secure representative redistricting plans in their states after each census and are seeking reforms to assure the redistricting process is nonpartisan, equitable and open. Florida and California are examples of reforming the process.

The League believes that voters should choose their representatives and not the other way around. This is the core right of citizens of a free and democratic nation. Thus, the practice of incumbent protection should be done at the ballot

box and not by drawing boundaries so safe that it favors one party or the other. Commitment to the rules of the state constitution of contiguous boundaries, compactness of the district and representation in proportion to the population need to be adhered to and consideration of communities of interest need to be carefully observed.

Make no mistake, we are aware that both major parties have been guilty of partisan protection in the past. That is why we think there is a better way to serve the citizens of the Commonwealth in getting more effective government.

We support a bipartisan commission to draw the lines, but, absent that possibility, we ask you to do your best to have a more equitable process.

We understand that the current sharing of political power in the General Assembly provides the best opportunity for enactment of redistricting reform that we have had in the recent decades, but it troubles us to hear that an agreement has been

reached between the chambers to accept each others' plans, thus protecting incumbents and perpetrating more polarization of our government.

During his campaign, the Governor also voiced support for a more equitable process, but he has not fulfilled that pledge so far. We are trying to get him to do such.

The current system in Virginia only encourages partisan gerrymandering which creates the so politically skewed that the opposition has little chance of unseating an incumbent. This subverts the democratic system because it allows politicians to choose their voters rather than vice-versa.

It limits the vetting of new people with new ideas and solutions to public policy issues that work for the people and not for themselves. This is the idea of having a citizen legislature such as yourselves.

Partisan gerrymandering has severely reduced the number of competitive seats in Virginia. In 2007, the Virginia senate races,

incumbents in 17 of 40 races had no opposition and only nine races were competitive. In the 100 house of delegate races, 57 incumbents had no opposition and only 12 races were competitive.

In the 2009 legislative election, 32 of the 100 members of the General Assembly faced no opposition, and only 12 races were considered competitive.

Voters feel that if their representative is of an opposing party, they have no reason to listen to them as constituents; yet, once elected, they should represent everyone in the district, not just their party.

Prior years' statistics are no better. The lack of contested and competitive districts has contributed to a decreased voter turnout in Virginia. The turnout for statewide and house of delegate elections in '97 was 49.5 percent. In 2001 it was 46 percent. Even in this week's highly publicized election, only 46 percent of the voters turned out, continuing a pattern of slow decline.

Voter turnout for the 2009 general election showed the similar trend. In contrast to the 74.5 percent turnout in 2008 for the presidential election, the turnout for 2009 Virginia legislative election was only 40.4 percent, which was an improvement of the 30.2 percent turnout in the 2007 election, the lowest reported in the state going back to 1976.

One of the most significant effects of partisan gerrymandering in Virginia as elsewhere in the country is the contribution to the increasing polarization of legislative bodies. As quoted in the study, "Does your vote really count," with little reason to fear voters, representatives increasingly cater to party insiders and donors rather than the political center.

Bipartisanship compromised around common sense solution has taken a back seat to party loyalty resulting in historic levels of polarization. This is certainly true of the General Assembly in recent years.

The gerrymandered districts established in

the 2001 redistricting have resulted in the election of candidates who are unwilling to compromise on legislation, the budget and, especially important for this region, transportation issues and funding.

We are encouraged that you are listening early in this process. We ask that you work with the House in good faith and a transparent way as you work through the process.

Input should be taken via web and maps as you've already outlined and should be posted so the public can see and participate in the process. More hearings should be scheduled once the legislation is drafted, as you've indicated you will, and maps are proposed.

Virginia is the cradle of democracy in the United States. Let's again be a beacon of good government and show the nation that we have a better system and we can and will have better government for and by the people.

Thank you.

THE CHAIRPERSON: Thank you.

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We usually don't comment on comments, but I've already mentioned that the Senate does indeed back a bipartisan commission.

But you mentioned that there were rumors of an agreement between the chambers. I can assure you that we would each do our own. I can assure you there's no such agreement. If there were, I would certainly know about it. What is true, though, is traditionally that's the way it's been done.

Next -- yes, Senator Martin.

SENATOR MARTIN: Also this concern, I share the concern for the percentage of voter turnout. We want to maximize that, but, now be careful to notice years go by, percentage might shrink a little bit, and you say, well, that's lower than it's been before because that's dependent upon how well purged the voter roll is.

And we have a very real restrictions on us as to how thoroughly they can be purged when they need to be purged.

By that I mean, people having moved, people have died, stuff like that. Our rules and regs keep us from properly purging those, so sometimes there's a lot of names on the rolls that shouldn't be there.

THE CHAIRPERSON: I noticed while you were speaking, that the Mayor of Herndon came in. Welcome, Mr. Mayor. It's Mayor Steve DeBenedittis. Next is Lester Gabriel.

MR. GABRIEL: Thank you very much, Madam Chairman and Members.

I can echo almost everything that the previous speaker said. I am speaking for myself, but I have run these points past several of my acquaintances in several different Tea Party and patriot groups that I'm affiliated with.

The redistricting process must be done from the point of view of what is good for the citizen, the ultimate sovereign in this state and this nation, and not for the preservation of current elected officials.

Acceptable criteria in my mind for

determining district lines are things that you already talked about. Number one, equal population; number two, compact contiguous districts; and, number three, adherence as much as possible to existing administrative and physical boundaries.

Drawing districts in order to create, quote, "safe districts" for one or both major parties is not an acceptable criteria for redistricting, nor is the drawing of lines in order to put current officeholders and potential candidates into or out of particular districts.

Off-the-shelf computer programs to draw districts solely on the acceptable criteria above are readily available. I've been studying the issue of fair redistricting for over 20 years, and I'm pretty sure of what I'm taking about there. The use of such programs should meet the requirements of lines not be drawn to disadvantage any particular group.

Thank you very much.

THE CHAIRPERSON: Thank you.

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Marion Stillson.

MS. STILLSON: Is this loud enough?

THE CHAIRPERSON: It is for us.

SENATOR MARTIN: Yes.

MS. STILLSON: Madam Chairman, my name is Marion Stillson, and I'm proud to be a constituent of yours.

THE CHAIRPERSON: Proud to have you.

MS. STILLSON: I would just like to repeat what previous people have said about a bipartisan commission: Thank you. I, and I'm speaking just for myself personally this evening, applaud the Senate for your determination to keep the faith to the public interests and try to obtain a bipartisan commission for us. Please continue to do this.

It's not fair that the parties at census time are able to extend their influence for ten years until the next census. What we need is what's done in the public interests, and that will stick with us and do us well for ten years.

Thank you very much.

THE CHAIRPERSON: Thank you.

Jay Walker.

MR. WALKER: Thank you, Senator Howell, for this opportunity to speak tonight. I'll make my comments very brief.

Since the last census, over the last ten years, I think Virginia has become much more politically competitive. And parallel to that it's become tremendously successful economically. I don't think that's a coincidence. I think those two things go hand in hand.

And I am hoping that we not see a backward-looking approach as we enter this next reapportionment. And I hope that your colleagues in the House will give attention to this matter as you have.

Thanks.

THE CHAIRPERSON: Thank you.

We're on the second page. William Thompson.

MR. THOMPSON: Good evening, my name is William Thompson, and kudos to the League of Women Voters. I totally support their position, and I

would hope that -- I know there won't be a redistricting commission this year but support it for 200020 and ask that the legislature create that now so that it can be in place for the future.

Both candidates for governor last year supported a nonpartisan redistricting commission. I'm not sure how much push the Governor gave it in the last session, but I didn't hear anything about it.

I will address here the U.S. Congressional seats. There are uncompetitive districts. There are 11 congressional districts, and, by uncompetitive, I took as my criteria a difference of more than 10 percent difference between the winner and the loser, so 55/45.

Of the 11 districts, eight are uncompetitive. Two of the uncompetitive districts are the bluest of blue, and seven of the eight Republican districts are the reddest of red. So that leaves two red ones -- six of eight, excuse me. Two Republican districts are competitive and one Democratic district is competitive over in

Fairfax.

This leads to pandering to the base being that you don't pay attention to the other party necessarily; you pander to your base. You try to please your base rather than all of the constituents.

I use as an example Olympia Snowe and the healthcare. Now, Olympia, I think is a senator, but she was on the committee that addressed the healthcare bill in the U.S. Senate.

She got what she wanted from that committee and that was a change in the penalty. She ended up voting against it when it came to the full senate because she was pressured by the Republicans to vote against it.

There were more than 200 amendments to that bill, but, since the republicans said they were going to vote no no matter what, it didn't make any difference whether the amendments were accepted or not.

I urge you, when you do the redistricting for the U.S. House and for the legislature here in

Virginia, please try to make these districts as competitive as possible so that we're not pandering to the base but that you have to be competitive to Republicans, Democrats and Independents all to get the number of votes that you need to win.

Thank you.

THE CHAIRPERSON: Thank you.

Therese Martin.

MS. MARTIN: Thank you, Madam Chairman and Members of the P&E staff. I'm Therese Martin of Reston and I'm speaking for myself.

I've been an amateur student of redistricting and gerrymandering issues since the 1960s. When Baker versus Carr made one person, one vote the law of the land, it enabled states such as New York, California and Illinois to finally overturn the rural control of their state legislatures.

Other national legislation and Supreme Court decisions in subsequent years provided the opportunity to eliminate other abuses associated with redistricting, especially those affecting the

voting rights of minorities.

However, there is much more to be done due especially to the eventual consequences that we see today of single-issue politics and computers that enable pinpointing each voter by political party or belief, the current lack of competition at the polls and extreme polarization and gridlock in our legislature.

While we may have one person, one vote mathematically speaking, it does not benefit the voter if he or she has already been chosen by the delegate or the senator or member of the House of Representatives rather than vice-versa.

Although Virginia redistricting must follow the constitutional requirements, one person, one vote, no discrimination against minorities, compact, contiguous, et cetera, it needs to go further and ensure that criteria requiring attention to current jurisdiction lines, communities of interest and competitiveness are followed as well as one that allows no attention to incumbency and past political patterns.

But no matter how redistricting is accomplished, the adoption of the right criteria to be applied is critical as is obtaining citizen input into the process such as you are doing here tonight.

Next year the General Assembly session, redistricting and a compacted primary election calendar will be exceptionally difficult.

And I thank you now for handling that and for all that you do for us. Thank you very much.

THE CHAIRPERSON: Thank you.

Baba Freeman.

MS. FREEMAN: Thank you for the opportunity. I'm Baba Freeman. I live in Reston, and I'm very grateful to all of you for coming tonight.

Please, could you consider asking the Senate to consult a nonpartisan, bipartisan committee in making its recommendations for redistricting?

THE CHAIRPERSON: Thank you.

Sarah Fitzgerald.

MS. FITZGERALD: Thank you. My name is Sarah Fitzgerald. I've been a resident of Virginia for the past 35 years and Falls Church for the past six. I have served on the Virginia League of Women Voters Redistricting Study Committee, but tonight I'm speaking as an individual.

I appreciate the previous comments of Olga and Therese, and just wanted to add a few more thoughts. In recent General Assembly sessions a variety of groups, including the League of Women Voters of Virginia, the Virginia Chamber of Commerce, the Virginia Interfaith Center for Public Policy, the AARP and the League of Conservation Voters has supported the creation of a bipartisan citizens' commission to prepare a redistricting plan because they feel it's good for Virginia from both a political and governance standpoint as well as an economic development standpoint in terms of getting budgets passed on a timely basis every year.

We welcome those from the Tea Party movement who recognize that redistricting reform is

one of the most effective ways that the government can be returned to the people. Or as Olga Hernandez said, create an environment in which the voters choose their representatives rather than representatives choosing their voters.

Redistricting is an extremely important issue but one that is harder to make understandable to the average voter. As a former professional communicator, I wrestled with this a bit.

And one of things we discovered in kind of looking at the maps in Virginia is that if you take the 8th Congressional District, which we're in tonight, which includes Falls Church City, Herndon and Reston, and you flip-flop it, it bears a striking resemblance to the original salamander-shaped Massachusetts district that led to the term "gerrymander" back in 1812.

For the past decade, Democratic Rep, Jim Moran has received at least 60 percent of the vote in every election for this district. And I have my visual here tonight if anyone would like to see it.

Thanks very much for your time and attention to this important issue.

THE CHAIRPERSON: Thank you. If you'd like to leave your visual, that would be fine.

That completes these two sheets. Are there more names on the sheet right there? No? Okay. Would anyone else like to speak this evening?

Yes, ma'am. As you're coming down, I want to thank you for letting us use your wonderful facility here. It's beautiful.

MAYOR DeBENEDITTIS: Senator, you're welcome here anytime. We hope you come back. And you're always welcome in the Town of Herndon, but you're welcome to use our chambers anytime you want to meet with the citizens. I think that's great. So we're here for you.

THE CHAIRPERSON: Thank you.

MAYOR DeBENEDITTIS: And that was the main thing I wanted to tell you really. We haven't discussed as a council redistricting a lot. I mentioned it during our round-table on Tuesday

night at our work session.

And I think the general consensus, and a lot of my colleagues on council are here, is similar to what we've heard tonight. Herndon ought to be one district. But that's the main thing that we wanted to say.

And the Town of Herndon is in the 10th Congressional District or right next to the 8th, but we're actually in the 10th.

THE CHAIRPERSON: Yes. Thank you.

MAYOR DeBENEDITTIS: Thank you.

THE CHAIRPERSON: Thank you very much.

SENATOR MARTIN: Janet, is this yours?

THE CHAIRPERSON: Yes, this is in my senate district, yes.

Anyone else? Well, if you think of someone you would like us to consider, please email us. Can you give, Mr. Cotter or Mr. Lehman, where they should email.

MR. LEHMAN: You can either call Senate Committee Operations at (804) 698-7450. You can also email me. The website for redistricting is dlsgis.state.va.us and

my email address is on there. If you'd like to come up, I have some cards as well if you'd like get one of them.

THE CHAIRPERSON: Also this talking about the website reminds me, you can find it by just going to Division of Legislative Services, but on there is an absolutely excellent about five- or six-page brief that was prepared by Legislative Services, which is a professional, nonpartisan group that serves all legislators. It's called "Drawing the Line," and I'm sure you'll find very interesting information as part of that.

Yes?

MS. CHASEN: Madam, I just wanted to thank you for doing what you're doing, and I just had a question. What happened with the possibility of the nonpartisan group? I'm not as well-educated on the subject matter, so I just was wondering.

THE CHAIRPERSON: Okay. Well, for the last three years the Senate has passed it, as I said, overwhelming numbers, both parties, every region. I think it's fair to say the Senate is

quite committed to such a commission.

But it went to the House delegates, and they defeated it all three years, first in subcommittee and then in full committee of Privileges and Election.

THE CHAIRPERSON: Senator Martin.

SENATOR MARTIN: You might note that even with that legislation, while there isn't a bipartisan commission, the responsibility still would remain constitutionally in the final vote with the General Assembly. It's just that we would be receiving the proposal of that bipartisan committee.

Now, we would still, we can, we can still have a subcommittee of any persons who have been, you know, if the chairman so chose to recommend to us whatever. They can be citizens, but we do receive input from them.

But there isn't going to be a formal -- there isn't going to be a formal body that's created as a commission.

Are you telling me that I do not have

power?

(Several affirmative responses.)

SENATOR MARTIN: Are you telling me now that I do? Okay. I always thought that red meant stop.

(Laughter ensues.)

SENATOR MARTIN: I'll just say that we receive input, and there just is not going to be a legislative body that's created that we would formally hear from. And even if it were, the legislators would still have the constitutional mandate for final passage on it. Okay?

And, Madam Chairman, if I might address another matter further.

I appreciate the desire for competitiveness, and I absolutely do not feel that the lines should be drawn to protect incumbents. As a matter of fact, I happen to live in an area which people tend to vote on the side of the equation that I happen to represent so it happens to be that way.

And I had occasion last redistricting to

even have it stronger than it was. And I personally took two of the most Democratic precincts you could possibly imagine into my district, about 80-plus percent, you probably know exactly where that is, you do, but because there was no way I was going to be that way or act that way.

And so I'm telling you that to say I don't want it to be that way, but we can't control where people live, and we can't control how they choose to vote when they get there.

And there's certain things that control us, such as our boundaries. We can't go beyond the shoreline. We can't go into Tennessee, Kentucky, Maryland or West Virginia. We got to start at the core and work our way in.

And this last election, when you said what a bunch of them weren't that competitive, there were three that flipped sides besides in addition to the one that was very close here in Northern Virginia. So you got to start with those and say, they must be pretty competitive.

And then you've got to recognize that others start at places like the Chesapeake Bay and can't go any further, and they come in until they get filled. And the same thing in Southwest Virginia.

On the edges there can be some manipulation, but the truth is that those districts are going to largely be made up of who chooses to live there.

But when you get into some smaller districts like you've got up here, and where the movement of lines a little bit makes some greater impact, I understand how some might look at that up here and say that, and it could well be, gerrymandering is for the purposes of protecting a particular party.

But you do have to keep in mind that we can't control where people live or how they vote once they're there. And it is going to be our job, I believe -- and I just want to take a moment to say those -- the one that starts at Virginia Beach and comes in comes in where it has to come in.

And the next one starts in your area, in Chesapeake, and it can't go south into North Carolina so it keeps going west along the south of the James River until it has enough people.

And then the one down in Tennessee and Kentucky comes up, comes in a little bit but then comes out south of Roanoke.

And then the one that's in the middle is the 5th, and it does get pushed north. I thought maybe it pushed north maybe a little bit further than it should be, but it gets pushed between where the 4th had to go and where the 9th had to go.

And so that's what you've got around the state. And it's really only on the edges that you're really able to play around with. Thank you.

THE CHAIRPERSON: I just wanted to mention that Senator Martin was my predecessor as Chairman of Privileges and Elections, so the last redistricting he was the chairman.

SENATOR MARTIN: And I might add this is my third redistricting I've been through. And I would love for there to be less politics in it and

more just drawing the lines.

And by the way, you also need to know, and it was mentioned by Chairman Howell a few moments ago, that we also have certain, under the civil rights expectations, our --

What is it?

THE CHAIRPERSON: Section 5.

SENATOR MARTIN: Section 5.

-- Section 5 requirements, and so some of what you see isn't gerrymandering. Some of the worst looking stuff that you see in the state has to do with that. And we're pretty much required to do it. And then everything else has to -- well, the lawyer would argue that, but --

SENATOR PETERSON: We're not required to make it 70 percent.

SENATOR MARTIN: Yeah, now that's true. That is absolutely true. And so but some of that is -- but from that, of course, we have to build.

But thank you very much.

THE CHAIRPERSON: Before we conclude, I

want to mention that one thing that I find extremely encouraging is how technology is going to help us and also can help the public.

One of the things that is going to happen this coming year that has never happened before is that there will be readily available programs for you to design your own districts. A professor at George Mason, I believe his name is Mike McCarthy, and I apologize --

SENATOR MARTIN: McDonald.

THE CHAIRPERSON: McDonald. Thank you. I knew I was close.

-- is going to be putting it up. He will be having competitions within the various colleges and universities in Virginia, but it will be open to everybody. It will be free, and we will be receiving all of the plans that people want to send us.

My theory is the more plans we have, the more things we will consider and we'll come out with the best plan that we can, given time constraints, which will be huge.

Yes.

SENATOR PETERSON: Madam Chair?

THE CHAIRPERSON: Yes, Senator Peterson.

SENATOR PETERSON: Madam Chair, I just wanted to pick up on that. I don't know -- is my mike on? Okay.

If you have an idea or you have a potential plan, my email is chap@fairfaxsenator.com. Feel free to send it to me. I'll look at any plan, even one that eliminates the 34th Senate District.

(Laughter ensues.)

SENATOR PETERSON: I may not have it.

But, you know, as Senator Howell said, there's no master plan either in the Democrat or Republican caucus at this point so it's wide open.

The other thing, the only other point I wanted to make was I'm sort of an amateur historian in Virginia history, and one of the things that's important to me is access to your public officials.

And one of the reasons there's so many

counties in Virginia was the General Assembly made the decision hundreds of years ago that every citizen in Virginia ought to be within a day's carriage ride of a courthouse. And for that reason they created multiple counties, which is why we have so many as compared to other states.

And that to me has shown that we've always put a priority on access to your government. And I don't want to see any plan or anything where someone has no access to their elected representative, whether it's a congressman, congresswoman or someone in the state legislature. So I would put a premium on access, making sure that everyone has access.

That's all I have to say. Thanks.

THE CHAIRPERSON: Thank you, and ditto. I think I saw a -- yes, I did see a hand.

MR. GABRIEL: Maybe you could answer one quick question. Do you expect to get a lot of pressure from the congressmen about their own districts? How does that work?

THE CHAIRPERSON: Yes, I do.

(Laughter ensues.)

THE CHAIRPERSON: I expect to get pressure from just about every elected official in this state that will be enacted.

It will be a bill. It will be just like we do our own, but they will come forward with proposals. They will come from anybody who wants to send them to us, including the congressmen themselves.

And, as I said in my probably too-long opening statement, with the congressional districts the numbers have to be almost precisely identical in every single district.

The Supreme Court is being very rigid about that. I read about a case in another state where there was a 13-vote difference between some districts and the courts disallowed that plan. So that will be a severe restraint. There can be exceptions, but it will be tight.

Yes?

MR. JERRY WELCH: It's kind of a -- someone brought up a fairly good point about the

2nd, 4th, 5th and 9th Congressional Districts, but you totally bypassed the 3rd, which is kind of a monstrosity because it's been gerrymandered by, what, 90 miles of James River bottom to connect wide areas of Norfolk with the City of Richmond.

THE CHAIRPERSON: Are you talking the 3rd Senate District?

SENATOR MARTIN: The 3rd congressional.

THE CHAIRPERSON: The 3rd congressional, okay.

SENATOR MARTIN: Of which I agree completely.

MR. WELCH: Yeah, I mean, that's what -- you know, everybody's sort of spoken about bipartisanship and making it fair, but packing pretty much every black community up and down the James River into one is -- I don't know how they made it past the Department of Justice review in 2001.

But that's what we're talking about there. Don't slam every Democratic area in Fairfax and Arlington and Alexandria into Jim's district and

then everything else downstate.

SENATOR MARTIN: I would agree with that and did not care for the 3rd, the way the 3rd was done.

MR. WELCH: Thank you.

THE CHAIRPERSON: Yes.

MR. ALEX BLAKEMORE: This is just a -- I guess is a question. The handout you all handed out said there's a constitutional, I guess a Virginia constitutional mandate that the districts be compact and contiguous, but doesn't the 10th Congressional District, isn't that completely discontiguous in two parts, or is that not true?

The 8th is really gerrymandered, but.

THE CHAIRPERSON: Let me ask Mr. Cotter, who's our legal expert.

MR. COTTER: Where is it disconnected?

MR. BLAKEMORE: The 11th cuts through a big -- there's like a northern part and a southern part of the 10th and then the 11th.

MR. SPIKE WILLIAMS: It wraps around the 11th.

MR. BLAKEMORE: But there's a connection at the top?

SENATOR PETERSON: It wraps around Fairfax County.

THE CHAIRPERSON: Let me have Mr. Cotter talk to the legal point.

MR. COTTER: In terms of -- I believe that district is connected, but I mean, you can have -- districts can be contiguous over water as well. That has been upheld by the courts.

SENATOR MARTIN: Under water.

MR. COTTER: Well, they're technically under water, but even though they're not connected by land, that would also be sufficient to satisfy the constitutional requirements for a contiguous district.

MR. BLAKEMORE: Okay. So I guess my question was really does that Virginia constitutional rule, that applies to congressional districts as well or just to state districts?

THE CHAIRPERSON: Mr. Cotter?

MR. COTTER: Well, Virginia constitution

only applies to the state districts. It can't apply to federal districts.

However, Supreme Court precedent as well federal law deals with the shape of the congressional districts which cannot -- I mean, they're subject to the same issues there, which is they're not allowed to start traipsing all over the state.

The Virginia constitutional requirements, they're still inherent requirements of contiguousness and compactness for the congressional districts as well.

MR. BLAKEMORE: Okay. Thank you.

THE CHAIRPERSON: Anyone else?

MR. SPIKE WILLIAMS: Yeah, I have one.

THE CHAIRPERSON: Yes.

MR. WILLIAMS: I have one question. If in the process of this reapportionment or redistricting someone who is currently sitting as a senator is districted out of their district, how is it that they would be -- like, for instance, Dave Morrison currently doesn't live in his

district, and if his district were to stay the same, would he then have to not run for that district again?

THE CHAIRPERSON: Actually, factually he does live in his district now. He does live in it. He's in it. He's in it.

MR. WILLIAMS: Oh, that's contrary to my understanding. Okay.

THE CHAIRPERSON: We do not know because we do not have the numbers yet. That's what we'll be waiting for, as to whether or not there will be senators put in the same district.

As I said in the beginning, as we pick up seats, there will be parts of the state that will lose seats.

SENATOR PETERSON: Right. This actually happened in '01. Leslie Byrne, who was a predecessor of mine a couple of iterations back, was redistricted out, and she actually lived outside of the 34th Senate District, which was then based around Fairfax City, and she was our senator, but didn't actually live in the new district, so

essentially there was no senator.

And then you have a similar situation where Madison Marie represented down around Blacksburg, and then when --

Did he retire?

SENATOR MARTIN: Yeah.

SENATOR PETERSON: He retired and that district then went up to Fairfax County and was represented by Jay O'Brian. And then it was right in the middle of a cycle. So, again, you have a situation where Jay O' Brian was at least technically representing part of Blackburg.

MR. WILLIAMS: But in that circumstance, the timing falls -- there was two years left of the term. In this case the term will be up at the time of the redistricting. So there will be a man standing there thinking he represents the district. There will be no incumbent basically. Say the 37th, for example.

THE CHAIRPERSON: We represent the district we were elected in until the new election.

It's not as if you will be unrepresented.

SENATOR MARTIN: I think that his point is whether or not you'll have an incumbent. If that person that represents that district that was numbered by that number moves back into the district, I mean, he is the person that is representing that number, AND ya'll can have a local political argument as to what that means, if you want to.

But I do want to make one other point, though, and that is that they've been given information of two criteria, compactness and contiguousness.

MR. WILLIAMS: How about the third criteria of community interest?

SENATOR MARTIN: -- because that is also a third criteria as well.

THE CHAIRPERSON: Okay. Anyone else?

Well, thank you all very much. This has been livelier than many public hearings, and I greatly appreciate your participation.

(The public hearing concluded at 8:00 p.m.)

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