



REDISTRICTING IN 2011 LEGAL REQUIREMENTS AND BACKGROUND

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WHAT IS REDISTRICTING?

Two interrelated concepts:

- **Reapportionment—Reallocating a fixed numbers of seats in a legislative body**
 - U.S. House, 2 U.S.C. §§ 2a, 2b,—”Method of Equal Proportions”
 - Mathematical—nonpartisan
- **Redistricting—Redrawing the lines or boundaries of a legislative district**
 - Balancing of many factors (constitution, Voting Rights Act, incumbency, etc.)

WHY REDISTRICT IN 2011

Address population shifts

- **Between the states (apportionment of Congressional seats)**
- **Within the state (relative growth is the key)**
 - Slower growth or population loss—district must expand
 - Faster growth—district must shrink

WHY REDISTRICT IN 2011

State and Federal Law Mandate Redistricting

Federal Law Requirements

- **U.S. Constitution Article I, Section 2**

Requires a decennial census for purposes of apportioning seats in the House of Representatives among the states

State Law Requirements

▪ **Virginia Constitution, Article II, Section 6**

General Assembly required to establish electoral districts for

- U.S. House
- General Assembly Members

and reapportion and redistrict such districts in 2011 and each tenth year thereafter

Electoral districts must:

- Be “composed of contiguous and compact territory”
- Provide for “representation in proportion to the population of the district” (As nearly as is practicable)

State Law Requirements

▪ **Virginia Constitution, Article VII, Section 5**

Requires counties, cities, and towns that elect governing body members from districts likewise to reapportion or redistrict every ten years

Local redistricting subject to same requirements that districts must be “composed of contiguous and compact territory” and provide for “representation in proportion to the population of the district”

State Law Requirements

▪ **Code of Virginia, §§ 24.2-304.1 through 24.2-313**

Contain various provisions governing state and local redistricting, including:

- Restating the constitutional requirements
 - Requiring use of Census data (actual enumeration) to redistrict
 - Prison populations may be excluded if they exceed 12% of the population of a city, county, or town where the jail or prison is located
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- **Some charters also contain redistricting requirements**

Legal Requirements -- Equal Population

■ **One Person, One Vote—Congress**

Westberry v. Sanders, 376 U.S. 1 (1964)

- Article I, Section 2, of the U.S. Constitution requires equal population standard for congressional districts
- Strictly interpreted—districts to be as equal in population as practicable

Legal Requirements -- Equal Population

▪ **One Person, One Vote—State Legislative Districts**

Reynolds v. Sims, 377 U.S. 533 (1964)

- Requirement based on Equal Protection Clause of the 14th Amendment
- Supreme Court does not require strict mathematical equity for legislative districts.
- Courts have allowed deviation from strict equality—roughly 5 % plus or minus (*White v. Regester*, 412 U.S. 755 (1973) upholding Texas plan with a population differential of 9.9%)

Legal Requirements -- Equal Population

▪Challenges to Plans within deviation range of 10%

- Minor deviations (within 10%) do not create a prima facie violation of Equal Protection (*Brown v. Thomson*, 462 U.S. 835 (1983))
- However, being within this range does not guarantee that the plan will be upheld; deviation must be justified
- Burden is on the challenger to show equal protection violation
- Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004) (mem.)—Ga. legislative redistricting plan with a 9.98% overall deviation range unconstitutional; Plan underpopulated rural and urban districts and districts with Democratic incumbents; Regional protectionism and incumbent protection did not justify plan where principles were not applied in a neutral and consistent manner
- Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. (D. Md. 1994)—Deviations within 10% range, while not prima facie unconstitutional, can be set aside if “the deviation is the result of an unconstitutional or irrational state purpose”

Legal Requirements -- Equal Population

- **Plans outside 10% range may be upheld if a “rational state policy” exists**
 - *Mahan v. Howell*, 410 U.S. 315 (1973)—
Virginia plan with a 16.4% overall deviation range was upheld where it advanced “the rational state policy of respecting boundaries of political subdivisions”

The Voting Rights Act

- Section 2 – All states and localities must comply with this Section
 - It prohibits the enactment of a voting procedure or redistricting plan that denies or abridges the right to vote on account of race, color, or status as a member of language minority group
- Section 5 – This section applies to certain states and localities and requires that election changes, including redistricting plans be “precleared” before being implemented
 - The test under Section 5 is called the “non-retrogression” standard. A protected class should not lose voting strength under a new plan
 - A number of Virginia localities have “bailed out” from Section 5 coverage

Compactness and Contiguity

▪ Compactness

Jamerson v. Womack, 244 Va. 506 (1992)—The Virginia Supreme Court interpreted the constitutional compactness standard to allow broad discretion to General Assembly

The Court recognized that the legislature needed “wide discretion [in making] its value judgment of the relative degree of compactness required when reconciling the multiple concerns of apportionment”

Compactness and Contiguity

▪Contiguity

Wilkins v. West, 264 Va. 447 (2002)—A district should be one block of territory and not two discrete pieces of geography, but there is no *per se* test of contiguity absent “an intervening land mass totally severing two sections” of a district. Each district must be examined separately

A district containing part of Newport News and Hampton and one precinct each in Portsmouth and Suffolk was contiguous even though separated by water. Contiguity does not solely rest on physical access between all points in a district

Balancing of Redistricting Factors

In redistricting, “the General Assembly is required to satisfy a number of state and federal constitutional and statutory provisions To do this requires the General Assembly to exercise its discretion in reconciling these often competing criteria.” *Wilkins* at 462

Other Redistricting Factors That May Be Considered

- Communities of interest. Neighborhoods
- Preservation of the core of old districts
- Incumbency
- Political data
- Precinct considerations
- Staggered terms

Senate & House 2001 Redistricting Criteria

In 2001, prior to redistricting, the House & Senate Privileges & Elections Committees adopted criteria to guide the process and set forth how to balance the competing factors and laws

Similar criteria will likely be adopted prior to the 2011 redistricting

Senate & House 2001 Redistricting Criteria

I. Population of each district shall be as nearly equal as practicable

- Plus-or-minus 2% deviation for General Assembly districts
- No deviation for Congressional districts

Senate & House 2001 Redistricting Criteria

II. Compliance with Voting Rights Act

- Criteria cannot be construed to require any redistricting contrary to the Act

III. Contiguity and Compactness

- Contiguity by water is sufficient

Senate & House 2001 Redistricting Criteria

IV. All single-member districts

V. Communities of Interest

- Factors to consider—economic, social and cultural factors, geographic features, governmental jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations.

Senate & House 2001 Redistricting Criteria

IV. In the event of a conflict between criteria, priority given to population equality, compliance with U.S. and state constitutions, and compliance with the Voting Rights Act

- Deviation from criteria permitted to prevent a violation of federal or state law, but deviation may be no more than is necessary

The 2011 Redistricting Crunch

The 2010 Census Schedule

▪ April 1, 2010

➤ Official Census Day

▪ December 31, 2010

➤ Census Bureau reports official population of each state to President for apportioning 435 seats in House of Representatives

▪ January 2011

➤ States informed of number of congressional seats for next decade - Virginia most likely to stay at 11

▪ April 1, 2011

➤ Deadline for Census Bureau to report detailed population figures (“PL 94-171 data”) needed to redistrict congressional, state legislative, and local election districts

The 2011 Redistricting Crunch

- In 2001, the General Assembly adjourned its Regular Session without acting on redistricting, but convened a special session on the date of adjournment and recessed until April
 - Census data received March 7, 2001
 - Redistricting plans prepared and public hearings held in March and April, 2001
 - House and Senate redistricting plans passed April 18, 2001, and signed by Governor on April 23, 2001. Special session recessed until July
 - Both plans were precleared by July 10, 2001.
 - Congressional redistricting plans passed July 10, 2001, and signed by Governor on July 20, 2001
 - A similar schedule is likely in 2011

The 2011 Redistricting Crunch

- Both the General Assembly and the localities will be trying to complete redistricting (and the Section 5 preclearance process) in time for candidate filings and nominations before the November 2011 election
- The General Assembly will redraw House of Delegates and Senate districts between March and June. It will use the local precincts shown on the Census maps (frozen as of February 1, 2009). It may split these precincts when drawing lines

General Background Information

Guide to Local Redistricting for 2001

<http://dlsgis.state.va.us/Ref/redist01.pdf>

Guide to Local Redistricting for 2011

Will be available on the DLS website in 2010.

<http://dls.state.va.us/publications.htm>

How to Draw Redistricting Plans That Will Stand Up in Court

<http://www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/Draw.pdf>