



VACO MEETING -- NOVEMBER 8, 2010

**REDISTRICTING IN 2011
LEGAL REQUIREMENTS AND
BACKGROUND**

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WHAT IS REDISTRICTING?

Two interrelated concepts:

- **Reapportionment -- reallocating a fixed number 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 state or local election 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 or locality (relative growth is the key)**
 - Slower growth or population loss -- district must expand
 - Faster growth -- district must shrink



WHY REDISTRRICT IN 2011

State and Federal Laws 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 Senate and House of Delegates

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 Continued

▪ 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 is 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” (as nearly as is practicable)

State Law Requirements Continued

▪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
- Certain prison populations may be excluded if they exceed 12% of the total population of a city, county, or town where the state adult correctional facility is located

▪Some charters may 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 imposes an equal population standard for congressional districts
- Strictly interpreted -- districts to be as equal in population as practicable

Legal Requirements -- Equal Population Continued

▪ **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 Continued

▪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. The 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

Legal Requirements -- Equal Population Continued

- *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”
- In 2001, a federal district court ruled that an Illinois county redistricting plan with a 9.3% overall deviation range was unconstitutional because plaintiffs showed that the plan was drawn with no effort to draw “districts. . .as nearly of equal population as practicable.” *Hulme v. Madison County*, 188 F. Supp. 2d 1041 (S.C. Ill, 2001).
- If there are a number of more balanced plans offered by interested parties, the locality will need to have justifications for deviations even if they fall within the 10% overall range.

Legal Requirements -- Equal Population Continued

- **Plans outside 10% range may be upheld if a “rational state policy” exists -- rare**
 - *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. See *Drawing the Line 2011*, Number 1, pages 19 through 24.
- Section 5 – This section applies to Virginia and most of its 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: the cities of Fairfax, Harrisonburg, Salem, and Winchester; the counties of Amherst, Augusta, Botetourt, Essex, Frederick, Greene, Middlesex, Page, Pulaski, Roanoke, Rockingham, Shenandoah, Warren, and Washington. Probably too late now to bailout before this redistricting round.

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 Continued

▪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 parts were 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
- In complying with the Voting Rights Act, traditional redistricting factors must be considered with racial data. Race may be considered, but should not predominate.

Other Redistricting Factors That May Be Considered

- Communities of interest, neighborhoods, political boundaries, geography.
- Preservation of the core of old districts
- Incumbency, and political data
- Precinct considerations
- Prison populations
- Staggered terms



Practical Steps – How To Adopt Plans That Will Withstand Challenges

- Preparations should be underway now
- Budget plans
- Identify participants: supervisors, legal counsel, gis personel, electoral board and general registrar, state legislators

Practical Steps Continued

- Identify interested parties: build a contact list to include public interest groups, minority representatives, and the public
- Plan for hearings and access to redistricting plans
- Review Section 5 submission requirements and the redistricting plan submission from 2001
- Become familiar with timing issues. Virginia's General Assembly and counties face a tight timetable to be ready for elections in 2011. Cities may have some leeway.
- Watch for 2011 General Assembly actions such as delaying the June primary and setting criteria to follow in drawing plans.

The 2010 Census Schedule

April 1, 2010

- Official Census Day

▪Late Fall 2010

- Census Bureau releases geography files which should be reviewed

▪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. Geography and data will be available on line

The 2001 Redistricting -- State Timing

- 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 possible 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
- Most cities will have more time and may be able to review state plans since they do not have November 2011 elections

General Background Information

Legislative Services Redistricting Website

<http://dlsgis.state.va.us/>

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>

The NCSL Redistricting website with a number of publications and resources

<http://www.ncsl.org/default.aspx?TabID=746&tabs=1116,115,786>

How to Draw Redistricting Plans That Will Stand Up in Court

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

U.S. Census Bureau, <http://www.census.gov/>