

Redistricting Reform in Virginia Frequently Asked Questions

OneVirginia2021 Fairfax Local Action Group and the League of Women Voters of the Fairfax Area (LWVFA) prepared this document with help from the OneVirginia2021 Foundation. We hope this document serves as a primer for a better understanding of redistricting reform in the Commonwealth, but is not meant to be an official position statement or endorsement of a singular fix to the problem of gerrymandering. We hope you get a lot out of this. Thanks for reading.

The issues surrounding gerrymandering and the call for redistricting reform are increasingly becoming front and center in the national dialogue about our politics. Virginia and New Jersey, because of their off-year elections, redraw districts in 2021. That is a year before the other 48 states do. Since New Jersey has a type of redistricting reform, all eyes are on Virginia to fix its process or to see the results of the latest round of hyper-gerrymandering fueled by increasingly complex algorithms in the hands of partisans.

The recent Virginia gubernatorial and House of Delegate elections increase the chances that both houses of the legislature could move forward on redistricting reform with support from the Governor.

The US Supreme Court, historically hesitant to weigh in on partisan gerrymandering, now has two cases focusing on this issue under consideration, the first originating in Wisconsin (Gill v. Whitford) and the second, accepted on December 8, 2017, originating in Maryland (Benisek v. Lamone).

On February 25th, LWVFA—with OneVirginia2021—will hold a Redistricting Forum. In preparation for this event, here are the answers to frequently asked questions about redistricting reform: what is fair redistricting, and how can it be achieved through state and judicial actions.

Q: Is this reform effort really non-partisan?

We are often asked this questions because there are few truly non-partisan issues in politics. Often, redistricting reform has been advocated by whichever party was out of power.

Virginia, however, is in a unique position because we aren't a Republican or a Democratic gerrymander. Rather, in 2011, Democrats controlled Virginia's Senate and Republicans controlled Virginia's House of Delegates. They both gerrymandered their own chambers (in the House with bi-partisan support) and

passed the others plan in exchange for safe passage of their own plan. It was a bi-partisan gerrymander, also known as an incumbent-protection plan.

So critiquing the current Virginia redistricting is not a criticism of one party or another, but a criticism of the process being self-serving for incumbent politicians. OneVirginia2021 is an organization of people from all across the political spectrum who believe that these voting districts belong to Virginians, not to any party or politician. The LWV has an almost-100 year history of advocating for good government issues such as redistricting reform.

How do you fix this and can the fix genuinely be non-partisan?

There are three major elements needed for redistricting reform: transparency, clear rules for how to draw lines, and map-drawers who aren't the elected politicians running under those maps. Those three elements (discussed in more detail below) will take the process from the hyper-partisan status it is today to a much more technocratic exercise to adjust districts per the new census data every decade.

But no commission or structure is perfect. There are flaws in every model we've studied from around the country. However, all of the reforms are better than our current system in Virginia. In short, let's not let perfect be the enemy of good (or better than we have now). There are a lot of ways to improve the current system.

Here is a more detailed discussion of the three elements:

1. Transparency: Redistricting by members of the legislature is subject to legislative privilege. Proceedings of a commission would be available through Freedom of Information Act requests and hopefully additionally chosen transparency measures. Auditability would make specifics of the decision process transparent. Studies show that public hearings don't bear fruit if they are held after maps are drawn.
2. Criteria:
 - By Federal constitution or court mandate, districts must:
 - Have nearly equal population (no malapportionment)
 - Comply with the Voting Rights Act
 - By Virginia constitutional requirements, districts must:
 - Be contiguous
 - Be compact* (though there is a debate about the possibility that compactness may disadvantage minority groups in voting)
 - Not required, but for good government districts should also:
 - Respect local jurisdictional boundaries
 - Respect communities of interest

- Increase competition by not tailoring district lines to incumbents.

*There is a tension between compactness and respect for communities of interest that needs to be balanced. There is also a tension between preserving political boundaries versus creating competition within districts. The amount of local jurisdictional splitting used to draw districts to make them more competitive should be carefully considered. *Pie slicing* to improve competitiveness can disadvantage other criteria, i.e. communities of interest. *Self-sorting* is the tendency of voters to live in geographic proximity to others who share their political affiliation, but gerrymandering still accounts for much of the difference between the popular vote and greater number of elected officials from one party in power. Recent experience in California indicates that respecting jurisdictional lines and communities of interest leads to more competitive districts.

3. Specify who draws the maps: OneVirginia2021 proposes a seven-member commission composed of:
 - 2 Republican members—picked by the General Assembly—who are not lobbyists, legislators, nor spouses of legislators.
 - 2 Democrat members—picked by the General Assembly—who are not lobbyists, legislators, nor spouses of legislators.
 - 3 independent members:
 - the executive director of the State Bar,
 - the auditor of public accounts appointed by the General Assembly, and
 - the State inspector general appointed by the governor and confirmed by the General Assembly.

It would take 5 votes to get a map passed. If two “no” votes are from members of the same political party, those members can stop the plan and it goes to the courts for resolution. This eliminates the swing-vote problem many commissions have and allows a partisan “emergency brake” if the three independent members are sneaky partisan plans for the other team.

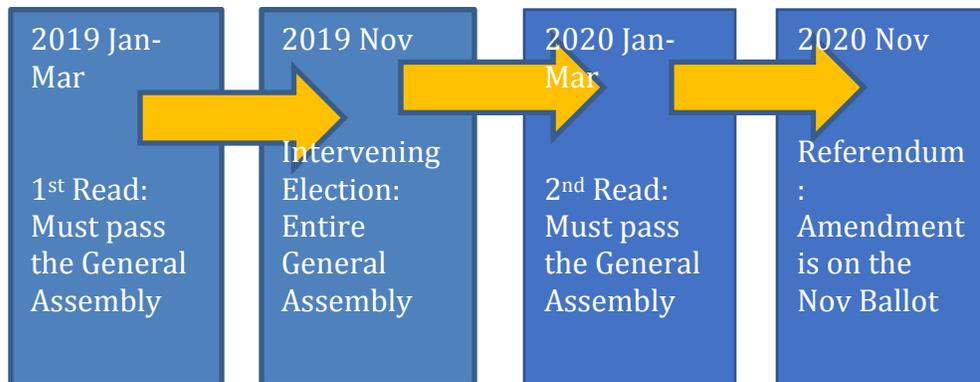
Effectively measuring the above criteria and balancing each are required for an effective system. While there are tradeoffs in any approach, not having politicians draw their own lines and taking the process out of the smoke-filled back room of political deals will dramatically improve the process.

So how do we get a commission?

We have to amend the Virginia constitution. We can't fix the problem by changing the code of Virginia because it cannot "bind the hands of future Legislatures." We

must have a constitutional amendment because it's the only way to control what the General Assembly does.

An amendment must pass the General Assembly twice (in exactly the same text, down to the commas) with an intervening election. Then it goes to the people for a referendum. It requires a simple majority each time to pass in the General Assembly and on the referendum. The governor is not involved. Here is the process in graphic format:



Q: What is the role of the governor in the current approval process for redistricting plans? Can he/she veto plans?

Under the current redistricting provisions, governors can veto redistricting maps but they do not determine the redistricting process.

Q: What presently happens if the Legislature and the governor cannot agree on a plan?

The state Legislature draws the district maps. The governor can appoint an advisory/blue ribbon commission in advance and can veto plans drawn by the legislature. If the legislature and governor can't agree, the Supreme Court of Virginia or a federal court will intervene. The court can consider or reject an advisory commission plan or hire an expert to do the drawing for the court (e.g. using an academic such as Bernard Grothman, who was a court-appointed "Special Master" of Virginia's 2015 redistricting case).

Q: What does the US Supreme Court's review of the Wisconsin gerrymandering case mean for Virginia redistricting reform efforts?

The Supreme Court will consider *efficiency gap measures*--the difference between the number of Democrat and Republican *wasted votes* divided by the total number of votes cast (*wasted votes* are those cast for winning candidates that are beyond the

number needed to win plus all those cast for losing candidates). Independent votes are not properly accounted for in the efficiency gap calculation. Wisconsin has a 13% efficiency gap in favor of one political party, of which 7% is due to residential self-sorting.

WASTED VOTES = Number of votes cast beyond those needed to win;
ALSO, Number of votes cast to losing candidates

DIFFERENCE between Democratic and Republican WASTED VOTES ÷ TOTAL NUMBER
OF VOTES CAST = **EFFICIENCY GAP**

If the Supreme Court rules against gerrymandering, it's just a matter of putting in a good system in place to adhere to the ruling. An anti-gerrymandering ruling won't impact Virginia now but it will for 2021.

Q: What does the US Supreme Court's review of the Maryland gerrymandering case mean?

The focus of this case is on Maryland's 6th Congressional district where seven voters from one political party say that the state's 2011 redistricting violated their First Amendment rights. Justice Anthony Kennedy has written that the First Amendment could be used as a basis of a redistricting lawsuit if plaintiffs could argue that a state law disfavored against some voters based on their political views. In addition to the Wisconsin case, this second gerrymandering case before the US Supreme Court suggests that redistricting reform will feature prominently during this court's term.

Q: What is the status of OneVirginia2021's lawsuit in the Virginia Court System?

Although the March 31st decision went against OneVirginia2021, the judge supported the underlying argument, which allowed the appeal to go forward. Three amicus briefs were filed by various experts, including the League of Women Voters, A.E. Dick Howard (a writer of the Virginia Constitution and current University of Virginia Law professor), and former Virginia attorneys general. The OneVirginia2021 lawsuit claimed that the redistricting plans for 6 Senate districts and 5 House districts did not use measurable nor sufficiently rigorous compactness criteria and therefore violated the Virginia constitutional requirement for compact districts. It also claimed that non-mandatory criteria were prioritized over mandatory.

Two racial bias cases were also filed. The cases claim criteria for compactness should be based on an analysis of each district's unique voting patterns (whether voters vote mostly along racial lines, or across racial lines). These cases opposed applying a rigid and unfair requirement for creating a majority-minority district

with the voting age population being comprised of at least 55% black voters. Virginia had erred in basing its consideration of racial matters in drawing district lines everywhere in the state on data from just one jurisdiction in the southeastern corner of Virginia.

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Q: Given Virginia's recent election results from this November, is redistricting reform really needed?

Yes. Gerrymandering still leads to unfair representation. For example, if it weren't for gerrymandering, Democrats would definitely control the House of Delegates rather than its current division. That's not a statement for Democrats (since a lot of Democrats voted for the current maps), but rather a statement of fact. Democrats were +9 in the recent elections over their Republican counterparts in the House of Delegates. Yet that number will likely generate only 50% of the seats for the House of Delegates. When Republicans won by that same margin of +9 in 2015 it generated 66% of the seats for them. That lack of symmetry is a problem in a representative democracy.

Given the new political climate in Virginia, now is the time to advocate for a nonpartisan model on the books.

Q: How can we best advocate for fair redistricting reform? How can you get involved?

This is one of the League's highest priorities. We have a long history of advocacy in this area. We encourage you and your friends to help us in these efforts and to learn more about this complex and ever-changing topic. Please join LWVFA and OneVirginia2021 at:

Redistricting Forum
Sunday, Feb 25 from 1 – 5 PM
Sherwood Community Center
3740 Old Lee Highway
Fairfax, VA 22030