

The Virginia NEWS LETTER

With Overwhelming Support for Nonpartisan Redistricting, Virginians are Studying Ways to Make That Happen

by Benjamin M. Harris and Stephen J. Farnsworth

Introduction

Virginians really do not like politicians creating their own legislative districts, but lawmakers love selecting their own constituents. This once-a-decade process may not receive the sustained public attention generated by the economy, taxes, and health care policies, but the line-drawing exercise of determining districts affects the outcomes in these and many other policy areas. For incumbent lawmakers, the ability to define your own legislative district is a very powerful way to keep yourself in office.

In Virginia, partisan redistricting helps explain the discrepancy between statewide party vote totals and party representation in the House of Delegates.¹ Barack Obama won Virginia's Electoral College votes in 2008 and again in 2012, both the state's U.S. senators and all three state officeholders elected statewide are Democrats, but Republicans control 68 of 100 seats in the House of Delegates.² Most legislative incumbents of both parties hold seats immune from effective challenge from the other major party, giving neither Republicans nor Democrats any electoral incentive to compromise with the other party.³

Virginians have their doubts about self-serving redistricting, to say the least. By a margin of



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74 percent to 15 percent, with the rest undecided, state residents said in a survey last year sponsored by the University of Mary Washington (UMW) that an independent board – not the state legislature – should draw the boundaries of state legislative and congressional districts.⁴

In all parts of the state, a strong majority of the 1,004 Virginians surveyed said they wanted a non-partisan line-drawing authority. Opposition to legislative line-drawing reached a high of 81 percent in Northern Virginia, and more than 70 percent were opposed in the state's northwestern region, the south central region (which includes Richmond), and in Tidewater. The least critical region was the conservative western part of the state, and even there 67 percent opposed legislative control over redistricting and only 21 percent supported it. More than two-thirds of all age groups in the survey turned thumbs-down on the status quo, as did more than two-thirds of men, women, whites, African-Americans, and Hispanics.

Even Republicans, who benefitted in 2011 from aggressive partisan line-drawing nationwide and in Virginia more than Democrats did, objected to giving district-drawing power to the state legislature.



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Among those Virginians polled who said they generally supported the GOP, only 19 percent said they wanted lawmakers to create their own legislative boundaries.

Efforts to reduce politicians’ control over the redistricting process have so far gained little traction. An advisory bipartisan citizens redistricting panel created to assist in the line-drawing exercise of 2011 held hearings and wrote a report, but lawmakers chose to draw their own lines. Governor Bob McDonnell, who had promised redistricting reform as a candidate for governor, approved a line-drawing plan crafted by lawmakers.⁵

In recent months, a new bipartisan group has formed and gained some public attention for aiming to bring redistricting reform to Virginia. It is headed by attorney Leigh Middleditch, a longtime Charlottesville civic leader and cofounder of the University of Virginia-based Sorensen Institute, which promotes ethics in politics and campaigning. Dubbed “OneVirginia2021,” the group hopes to inspire a statewide dialogue regarding gerrymandering and redistricting well in advance of the next redistricting, scheduled seven years from now in 2021.⁶ Other organizations are working on reform as well and several have formed the Virginia Redistricting Coalition.⁷

Gerrymandering is the process of contorting district lines for partisan advantage, and it is widely practiced around the country. As the debate over whether Virginia should move towards less partisan line-drawing heats up, we explore in this paper the historical trends that have led to the creation of nonpartisan redistricting schemes in other states. We study the histories of two states generally considered to have “nonpartisan” redistricting: Iowa and Arizona.⁸ We add California’s relatively new redistricting system to this analysis as well. While California’s jury-like lottery selection system does not ensure a nonpartisan commission, it does further reduce elected officials’ direct control over the drawing of district lines.

Among these three states, there is not a singular and definite set of criteria that a state must meet to be ready for a new redistricting system. But the comparisons do allow us to see what sorts of structural and political factors are more common in states that have undergone redistricting reform. We conclude this paper by comparing the experiences of political reform in these three states to current conditions in the Old Dominion.

Iowa: The Nonpartisan Redistricting Pioneer

The three states we examine here reformed their redistricting systems at different times, under different circumstances, and for different reasons.⁹

Iowa, the first state to adopt a nonpartisan redistricting system, did so in the wake of the 1963 *Reynolds v. Sims* and *Wesberry v. Sanders* U.S. Supreme Court cases, which forced states to draw their districts more carefully than they had in the past. Iowa’s legislature, like all states, had its first chance to draw fairer districts after the 1970 Census. The legislature’s lines were challenged in court, and the Iowa Supreme Court redrew the lines to have more uniform populations in each district. Shortly before the post 1980 Census redistricting, the Iowa legislature created a system of drawing district lines outside of the traditional legislative process.¹⁰ It delegated the duty of drawing state House and Senate lines, as well as congressional lines, to the Legislative Services Agency, a general-purpose research and service bureau made up of unelected, nonpartisan legislative branch employees. The agency is generally not allowed to consider any measure other than population, and it is required when creating the districts to stick as closely as possible to existing county and city borders. Once the agency draws a new map based on new census data, the plan is sent to the legislature for an up-or-down vote, with no changes permitted. If three successive plans proposed by the agency are rejected by the legislature, the members will be allowed to draw their own maps. Fearing a public backlash if lawmakers were to draw the lines themselves, the legislature has always adopted one of the agency’s plans; only the first time did the legislature even reject two successive maps.¹¹

Arizona: Redistricting Reform via Referendum

Arizona’s redistricting system, first used to redistrict after the 2000 Census, has a substantially more controversial history. Using a map submitted by Arizona’s Native American tribes, the U.S. District Court drew the prior congressional district lines after the 1990 Census because the Republican House and Democratic Senate could not agree on a district map. The state legislative districts were contested as well, but after the 1992 election, Republicans were able to take control of the state legislature and pass their map.¹²

A referendum, Proposition 106, was part of the 2000 Arizona ballot and was designed to establish the creatively named Independent Redistricting Commission.¹³ The commission was designed to consist of two Republicans and two Democrats, each chosen by the ranking party member in each of the state legislature’s houses, who then elect an independent chairperson. These five commissioners are selected from a pool of applicants previously narrowed down to ten Republicans, ten

Democrats, and five independents by the state's Commission on Appellate Court Nominees. The commission is required to draw a new redistricting map from scratch once a decade.¹⁴

Voices opposing the referendum were largely Republican state legislators and congressmen, as well as conservative organizations such as the Americans for Tax Reform and the Arizona Chamber of Commerce. Supporters of the referendum included then-Attorney General Janet Napolitano and several mayors as well as the Arizona League of Women Voters.¹⁵ The multiple rejections of past redistricting maps by the U.S. Department of Justice (DOJ) may have served as additional motivation for shifting redistricting power into the hands of a commission. In addition, the 1990s saw a great influx of immigrants from both Mexico and the Midwest, further altering the electoral landscape of the state.¹⁶

So far, Arizona's new commission does not appear to offer much improvement over previous line-drawing efforts, in part because politicians find it hard to let the panel do its job. The state's 2002 elections were conducted under a preliminary map while the commission's draft was repeatedly redrawn due to various technical and legal issues.¹⁷ Another controversy erupted in November 2011, when Republican Governor Jan Brewer and the state Senate impeached the independent chairwoman of the Independent Redistricting Commission, claiming that the commission's map violated the constitution by neglecting map drawing requirements in favor of increasing competitiveness.¹⁸ Shortly afterwards, the Arizona Supreme Court overturned the impeachment because Governor Brewer failed to show sufficient grounds for the chairwoman's dismissal.¹⁹ With the chairwoman reinstated, the commission returned to work, presenting its plan for public review before submitting its final plan to DOJ, which reviews the state's congressional district borders. DOJ approved the submission in April 2012, marking the first time that an Arizona redistricting plan secured federal authorization on its first attempt since the 1965 adoption of the Voting Rights Act.²⁰

California: Legislative Line-drawing by Lottery

The voters of California, the most recent state to adopt a nonpartisan redistricting commission, chose a lottery system for the state's commissioner selection process with the successful passage in 2008 of Proposition 11. The referendum's system involves an Applicant Review Panel comprised of three auditors employed by the state who are charged with paring down a pool of applicants

for the commission to 60 candidates. The panel's selection of the most qualified applicants is required to be "... based on analytic skill, impartiality, and appreciation of California's diversity."²¹ Next party leaders are permitted to remove the most objectionable candidates among the pool of 60, similar to a jury selection process. Once the list has been narrowed down, eight commissioners are drawn at random, and they then select the remaining six commissioners. The final makeup of the California Redistricting Commission must be composed of five Democrats, five Republicans, and four independents.²²

This system was devised after critics lambasted the state legislature's lines following the 2000 Census, with Republican Governor Arnold Schwarzenegger being a leading voice against the partisan gerrymandering of the state by the Democratic legislative majorities in Sacramento. The lines were so effective at protecting incumbents that not a single seat switched parties after the 2004 elections.²³ Indeed, voter support for the California Redistricting Commission followed the submission of a largely Schwarzenegger-sponsored petition.²⁴ Democrats and racial minority interest groups largely opposed Proposition 11,²⁵ claiming that the Commission would infringe on the representation of racial minority Americans because of the color-blind way in which the commission would redistrict.²⁶ While the 2008 amendment only granted the commission the power to draw lines for the state legislature, voters extended the commission's power to establish congressional district boundaries with a 2010 referendum question that passed as well.²⁷ A ballot proposition called Proposition 27 was also on the 2010 ballot, where (if it both got a majority of votes and more support than Proposition 20) it would repeal Proposition 11 and return the redistricting system to its previous state.²⁸ It ultimately failed on both counts.²⁹

Reform Debates in Other States

It is important to note that all reforms are not created equal. Arizona's system, along with more modest efforts in several other states, might be better classified as bipartisan rather than nonpartisan, and does not necessarily solve concerns over bias. Despite some classifications as a nonpartisan body, Arizona's commission is similar to several other states in that its members are specifically appointed by various partisan political leaders. Arkansas and Ohio, as examples, have similar systems to the one in place in Arizona. But lawmakers elsewhere have more control: in those two states, with elected officials such as the governor

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and the attorney general actually sitting on the commission.³⁰

While more than a dozen other states have adopted redistricting commissions, their bipartisan (rather than nonpartisan) nature does not do enough to stop party agents from cooperating to create a pro-incumbent district map. While bipartisan commissions would seem to solve the issue of a dominant party gerrymandering its opponents into irrelevance, they are not more democratic. Agents of the two major parties can (and often do) come together in order to ensure that each party maintains its power and authority in individual districts, maintaining a balance of power that guarantees the interests of incumbents. This bipartisan collusion to protect incumbents of both parties also can be seen in states that have not adopted reforms, where the two legislative chambers are controlled by different parties or where the governor is from a different party than the legislative majorities.

A study by Harry Basehart and John Comer found that redistricting had a modest effect on partisanship and that “... the gains are not permanent and dissipate after two or three elections ...”³¹ Even so, partisan gerrymandering is often blamed for an increasingly toxic political climate in the national seat of government and in many state capitals. The relatively small number of academic studies that have examined this question found that the effects of redistricting are less extreme than they are popularly perceived to be. In one analysis, states with non-legislative redistricting commissions were not more effective at providing a competitive campaign environment than states with legislative redistricting. In other words, states with bipartisan redistricting commissions have extremely similar rates of competitiveness among districts, which indicates that legislative and partisan district maps are not any safer for incumbents than those drawn by bipartisan commissions. An analysis by Seth Maskin, Jonathan Winburn, and Gerald Wright using California as a case study found that partisanship actually increased the most through the 1990s, despite using a court-drawn redistricting map.³²

California’s legislative elections under the current districts, drawn by the Citizens’ Redistricting Commission after the 2010 Census, show a modest increase in competitiveness which the commission chose to measure using the difference in party registration. In other words, election outcomes were closer than in the past (an average of a 28 percentage point victory for incumbents in 2012, as compared to a 39 percentage point average advantage during the preceding decade).³³ Clearly, the new districts are not much more

competitive. Indeed, another California study concluded that the 2012 districts were no more competitive than their 2008 versions.³⁴

Virginia’s Prospects for Change

Virginia’s redistricting history has been marked by controversy. The nearly evenly divided partisan composition of the Senate of Virginia and votes in recent statewide elections indicate a roughly even split in Virginia’s electorate towards Democrats and Republicans, yet Republicans occupy more than two-thirds of the seats in House of Delegates.³⁵ The GOP majority in the House at the time of redistricting in 2011 assured a strong Republican voice in any House district maps that were eventually approved, as the Virginia Constitution requires that maps be established by the General Assembly as a whole. In early 2013, Senate Republicans, frustrated with a 20-20 tie in the upper chamber, were able to pass what effectively amounted to an amendment to the state’s already established senatorial district maps on the day that one of the Democratic state Senators was out of state to attend President Barack Obama’s second inauguration.³⁶ The maneuver met universal condemnation, even from Republican Governor Bob McDonnell.³⁷ The Senate measure subsequently was killed on a procedural ruling by the Speaker of the House of Delegates, also a Republican.³⁸ This failed attempt at re-redistricting demonstrates that single-party control may not necessarily ensure that the maximum pain that can be inflicted will be inflicted on the weaker party.

Indeed, Virginians surveyed last year showed particularly low levels of support for this attempted re-redistricting. Only 15 percent of those surveyed believed that the state legislature should draw the boundaries of state legislative and congressional districts, and more than half of those who were willing to let the state legislature draw district lines objected to the idea of having lawmakers do so more than once a decade.³⁹

In other words, the reform proposals of Sorensen Institute cofounder Leigh Middleditch and others find considerable public support for improving the redistricting process in Virginia.⁴⁰ OneVirginia2021 hopes to inspire a statewide dialogue regarding gerrymandering and redistricting.⁴¹ Other organizations have attempted to instigate redistricting reform, and several have formed the Virginia Redistricting Coalition. Together, these organizations are engaged in trying to convince Virginians and their legislators to decide to reform the state’s redistricting process to increase the public’s voice via more competitive elections.

The road ahead for the reform movement in Virginia is more challenging than it was in California and Arizona, which used voter referendum measures to enact and refine their systems. Citizen referenda by petition are not authorized by the Virginia Constitution. Instead, the state would need the General Assembly's approval to enact reform. Virginia's method of redistricting is codified in Article II, Section 6 of its constitution, where it states that districts of both the U.S. House of Representatives and the General Assembly will be drawn by the General Assembly. As such, any long-lasting changes to Virginia's redistricting system must be passed through constitutional amendment. Short of a constitutional amendment, the only option would be for lawmakers to choose to consult with outside line-drawing experts in a nonbinding way. This of course is not something they have shown much interest in doing in the past. Any amendments to the constitution must be proposed by one of the houses of the General Assembly, passed by both houses, deferred to the next session after a House of Delegates election, passed yet again by the new General Assembly, then added to the ballot of the next election for citizens to approve before the amendment finally would be inserted into the constitution. The General Assembly can take an equally complicated route by calling a constitutional convention by a two-thirds vote that would allow them to hold elections statewide for delegates, who would then vote on revisions to the constitution. These two methods share the same fundamental problem: the process of limiting the General Assembly's control over redistricting remains firmly under the control of its own members.

While the lawmakers in Iowa did take away the redistricting power from themselves, more or less (they do retain the final say over the lines drawn by nonpartisan staff), the current political environment in Virginia also does not seem hospitable to this outcome. For decades, Virginia politicians have unabashedly and openly engaged in gerrymandering. The one-time Democratic majorities were quite aggressive in taking care of themselves; just as the Republican majorities have done lately. To make matters worse for the prospects for reform, Richmond in recent years has rapidly descended into the swamp of deep polarization that afflicts the nation's capital. Throughout the 2014 legislative session and beyond, the Republican House majority and the Democratic governor have refused to compromise on a state budget over an argument on whether to expand the state's Medicaid program to cover several hundred thousand uninsured Virginians.

Greater activist attention to gerrymandering may intensify public opinion on whether Virginia lawmakers should continue to be allowed to draw their own district lines. Research shows that voters support nonpartisan redistricting when they feel that they're no longer represented by their current representatives.⁴² The press certainly complained about the most recent redistricting plan (and its revision), but the public criticism so far has failed to alter the process. In California and Arizona, the influence of outspoken members of the executive branch led to increased pressure for reform. Perhaps a Virginia governor could make an end to gerrymandering a top priority in the future, mirroring the success of California's former governor in pushing for a change in redistricting procedures. But the obstacles are greater in Virginia, as lawmakers who control the contours of their own districts' borders will not give up that authority lightly.

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"...any long-lasting changes to Virginia's redistricting system must be passed through constitutional amendment."

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