

The Virginia **NEWS LETTER**

Gerrymandering's Long History In Virginia: Will This Decade Mark The End?

By Kenneth S. Stroupe, Jr.

As most readers are probably aware, the term “gerrymandering” originated in the earliest years of the nation when one of the original signers of the Declaration of Independence, Gov. Eldridge Gerry of Massachusetts, proposed a controversial plan for redrawing the voting districts of his state. With members of his Democratic-Republican Party in the legislature, the governor and his allies during his 1810-11 term drew the boundaries in a way to minimize the voting strength of their opponents in the Federalist Party. Among the new districts was one that was shaped especially odd, resembling a salamander.

Playing off of the unusual shape of the district and the governor’s last name, a newspaper reporter at the time coined the phrase “gerrymander,” and it has remained in the lexicon of American politics. It is a shorthand description for the manipulative practice whereby politicians craft districts aimed at producing election results the politicians prefer over those that voters might otherwise deliver at the ballot box.

But Gerry was by no means the first to gerrymander. Well before this, in 1779, Patrick Henry had drawn Virginia’s 5th Congressional District in a clear attempt to favor his party over that of



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James Madison in the first congressional elections under the newly ratified federal Constitution. Henry’s attempt was unsuccessful, as Madison was elected to Congress and later President of the United States. Ironically, through a fine twist of history, Eldridge Gerry served as vice president under Madison.

Gerrymandering has marked the entire history of the American Republic and it remains as a part of the political landscape today. Yet, thanks to ever-changing shifts in demographics and the often-willful nature of voters, the practice of gerrymandering has not always proven successful in achieving the politicians’ desired electoral outcomes. As unseemly as the practice is, are there other damaging effects beyond attempting to manipulate the winner of one election or another? Does gerrymandering have any other real impact on the everyday lives of citizens?

This article attempts to move closer to an answer by providing contemporary examples of gerrymandering and its effects in Virginia. It examines state legislative districts in Virginia over the last three decades with particular attention to the present configuration. By overlaying district boundary lines with data from the Virginia State Board of Elections, this article attempts to gauge



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how the creation of non-competitive districts for state legislative elections (a significant indicator of gerrymandering) has impacted voter participation in Virginia.

Practical Implications

If elections are the political portrait of American democracy, then the canvas on which that portrait is painted is the collection of political districts wherein each election is conducted. In 2010 a new U.S. census will be conducted. While the decennial counting process and subsequent redistricting may seem little more than some dull, obligatory exercise of government bureaucracy, the effects are far from mundane. As populations vary from one decade to the next, election districts (and subsequent political alignments) at the local, state and national levels are altered to reflect changes. Boring to watch perhaps, but at its most basic level this process is nothing less than the distribution of power affecting each and every voter.

Unfortunately, this political change-of-order occurs largely outside the view of the public. Furthermore, since most of the processes are legislatively driven, there are limited opportunities for public participation and public influence. While it is at least somewhat likely that the average person can identify his or her congressional district and representative, familiarity with state legislative districts is another matter. Very few people could outline, even generally, the boundaries of these districts. Fewer still could name the communities of that same electoral district.

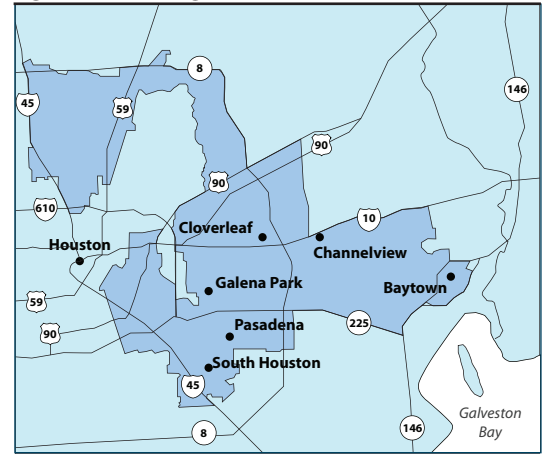
While one may have some measure of confidence that his or her individual vote is counted in an election, the manner in which voting districts are configured matters a great deal in influencing the outcome of the election. Said differently, where one votes matters almost as much as whether one votes. How, where, when, and by whom election district boundary lines are drawn affects not only the weight and influence of one's individual vote, but also the extent to which the collective votes of one's neighborhood, city, or county actually matter in influencing the outcomes of elections.

Scope of the Problem

Examples of the political manipulation of electoral boundary lines exist all across the nation. Such cases of gerrymandering are not always obvious, but often the physical shape of a district begs the question of whether manipulation was

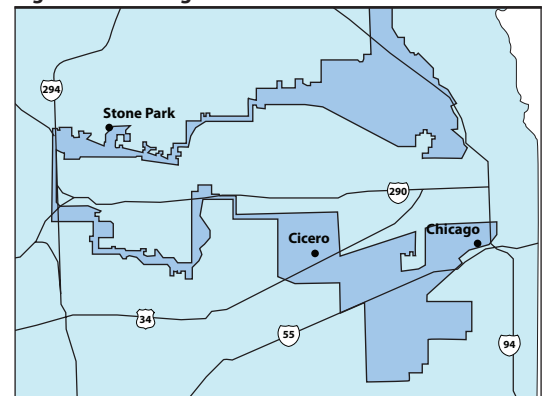
involved in the process.¹ Consider, for example, the 29th Congressional District of Texas. It is shaped something like a lobster with giant pincers on two sides of the city of Houston as shown in **Figure 1**.

Figure 1: 29th Congressional District of Texas



As another example, a pair of bizarrely shaped claws forms the 4th Congressional District of Illinois, pulling in Chicago from a nearby stretch of Cook County as shown in **Figure 2**.

Figure 2: 4th Congressional District of Illinois



The Virginia Legacy Endures

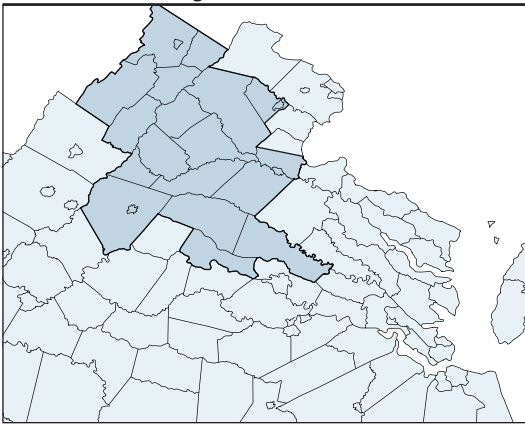
One of the more noteworthy examples of partisan gerrymandering of congressional district boundary lines in Virginia during the modern era occurred during the redistricting process that followed the 1990 census. (In this instance Democrats were the perpetrators, but a later section in this article shows Republicans performed

¹ While physical shape may indicate fairness or a lack thereof, an odd shape alone does not constitute gerrymandering. Similarly, a "regularly" shaped district is also not always an indicator of a lack of gerrymandering. For a more extensive discussion on the role of algorithms and redistricting see, for example: "Of the Algorithms, by the Algorithms, for the Algorithms." *Slate* (January 13, 2009). <http://www.slate.com/id/2208216/> (2/09/2009).

While one may have some measure of confidence that his or her individual vote is counted in an election, the manner in which voting districts are configured matters a great deal in influencing the outcome of the election.

similarly in 2001 after gaining the majority.) In a special election in 1991 to choose a replacement for retiring 7th District Congressman D. French Slaughter, George Allen, a Republican member of the House of Delegates at the time, ran for the seat and defeated his Democratic opponent, Kay Slaughter. The district boundary lines at the time of the special election are shown in **Figure 3**.

Figure 3: 7th Congressional District of Virginia Prior to 1991 Redistricting



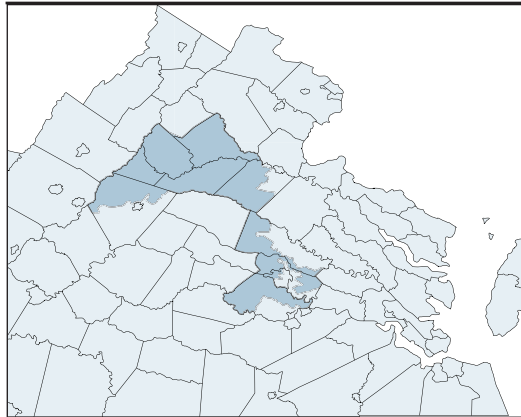
In 1991 the Democratic Party controlled both chambers of the General Assembly, as had been the case for nearly a century. A week after Allen won the special election, the General Assembly released its plan to redistrict the state.

Every redistricting plan results in a change of the status quo, but the scale of the revisions of 1991 surprised many. Virginia's population increase resulted in one additional Congressional seat for the commonwealth, raising the total to eleven. Among the new district configurations was Virginia's first-ever, majority-minority Congressional District consisting of portions of Richmond, Norfolk, Newport News, Hopewell, Petersburg, Portsmouth and Suffolk as well as parts of several rural counties in Virginia's Northern Neck region.

Nearly as dramatic as the creation of a new district, was the manner in which the state legislature carved up the former 7th Congressional District and divided the parts. The 7th District was divided so strangely that it was virtually impossible to mask the partisan manipulation behind it. Not only was Allen's home placed in a district held by a long-time incumbent and fellow Republican, Fredericksburg and parts of Hanover County that had strongly supported Allen were redistricted to the 1st Congressional District, held by Republican Herb Bateman. The city of Charlottesville, where one of Allen's

congressional district offices had been located, along with the southern and eastern sections of Albemarle County which had constituted a significant base for him during earlier elections to the House of Delegates, were placed in the 5th District of Democratic incumbent Rep. L.F. Payne. Oddly, most of Allen's rural constituents who resided in the Shenandoah Valley would now find themselves in the 10th Congressional District along with populous Fairfax County and other suburban counties of northern Virginia represented by longtime Republican incumbent Frank Wolf. The revised boundaries of the 7th District are shown in **Figure 4**.

Figure 4: 7th Congressional District of Virginia After the 1991 Redistricting



If the goal for Allen was to continue representing constituents of his former 7th District within the newly configured districts while also not having to run for reelection against a more senior incumbent, then his options were limited. He could have moved into a district (the 5th for example) and run against a popular incumbent Democratic congressman and probably would have lost. He could have moved into a different district held by a popular Republican incumbent (the 10th) and probably would have lost. He could continue living where he was and seek reelection against the very popular Republican incumbent, Tom Bliley, with whom he had been paired in the same district. One final option was to move into the neighboring 6th Congressional District. In 1992 conservative Democratic Congressman James (Jim) Olin announced his retirement, which meant the 6th District would be an open-seat election. Allen's problem here was that despite the fact that the 6th District counties of Rockingham and Augusta had multiple borders all along the old 7th District, and despite the traditionally-conservative leanings of the old 6th District, the General Assembly crafted the new 6th so that

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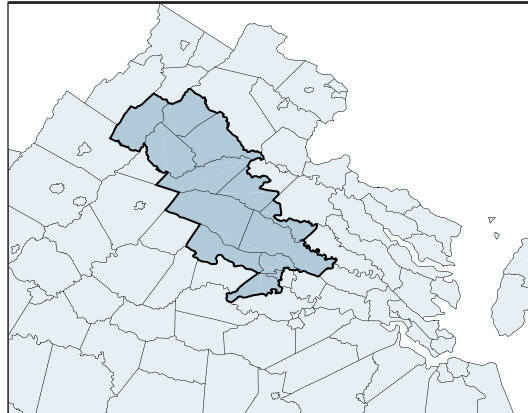
In the 1986 case of Davis v. Brandemer, the U.S. Supreme Court hinted that political gerrymandering could be a reason for not upholding redistricting plans, if such plans violated the Equal Protection Clause of the Constitution.

it contained no part of the district that he had formerly represented.

With no obvious avenues for continuing his brief career in the House of Representatives, Allen did not seek reelection to Congress. Instead, as the law of unintended consequences would have it, he successfully campaigned for governor in 1993.

A decade later in the redistricting session that followed the 2000 census, the General Assembly again altered the boundaries of the 7th Congressional District, moving back into it jurisdictions such as the rural counties of Page, Madison and Louisa as well as the suburban Richmond counties of Hanover and Goochland. Over the course of 1991–2001, many other residents of this area of the state also resided in at least two different Congressional districts. In fact, over this ten-year period there were some residents of this area who never moved from their homes, but over this timespan resided in three different Congressional Districts. The boundaries of the 7th District following the 2001 redistricting are shown in **Figure 5**.

Figure 5: 7th Congressional District of Virginia After the 2001 Redistricting



Signs of Gerrymandering Among State Legislative Districts

The same redistricting plan of 1991 that gerrymandered Allen out of a seat in the U.S. Congress greatly impacted the state legislature as well, and in a lopsidedly partisan manner. In the final plan, 39 percent of all Republican incumbents in the state House of Delegates found themselves paired together within the newly drawn district boundary lines. A Republican incumbent was also placed in the same district with the sole Independent in the House at the time, who had made the unfortunate political mistake of caucusing with the Republicans. The state Senate would not emerge unscathed either. One of the General Assembly's most

peculiar creations affected a significant portion of Southwest Virginia. Their efforts were aimed at removing Republican state senator William Wampler who had been elected in 1988 by the narrowest of margins (32 votes) to represent the 39th Senatorial District. Prior to the 1991 redistricting, the 39th Senatorial District included the counties of Scott and Washington, the city of Bristol, and parts of Russell and Smyth counties. After redistricting, the 39th Senatorial District was shifted far to the east so that Wampler no longer resided within its bounds. Instead, Wampler's home would become part of the new 40th Senatorial District, which included nearly all of the Democratic-leaning counties and cities along the farthest southwest tip of the state.² At the time the new boundary lines were drawn it was also home to longtime Democratic incumbent Senator John Buchanan. Unfortunately, Senator Buchanan had suffered from ill health for some time and died in the spring of 1991. But the new 40th was also drawn to fully include the boundaries of the 2nd House of Delegates district, a seat that was held by Democrat Jack Kennedy, who had long been rumored to be a potential candidate for Senator Buchanan's seat. Upon Senator Buchanan's death, Gov. Douglas Wilder called a special election for the summer of 1991. Kennedy won, thus ensuring that if Wampler were to run in the general election, he would have to do so in a freshly gerrymandered district, most of which he had never represented, and he would have to run against an incumbent senator. Against all odds, Wampler campaigned vigorously in the new 40th district and managed to win the November election by more than 3,000 votes. He remains in the state Senate today.

In the 1986 case of *Davis v. Brandemer*, the U.S. Supreme Court hinted that political gerrymandering could be a reason for not upholding redistricting plans, if such plans violated the Equal Protection Clause of the Constitution. This ruling became the basis for a legal challenge to the 1991 state legislative boundary lines. However, the case, *Republican Party of Virginia v. Wilder*, ultimately failed because it did not adequately demonstrate the discriminatory effect required by the *Brandemer* ruling.³

If these examples suggest that in Virginia gerrymandering is practiced only by the

² The 40th Senatorial District during the 1990s included the counties of Dickenson, Lee, Scott, Washington (part) and Wise along with the cities of Norton and Bristol.

³ See Virginia Senate, "Virginia Redistricting Cases: the 1990s," <http://www.senate.virginia.gov/departments/scr/redist/redsum/VAsum.htm> (1/5/2009).

Democratic Party, it is only because for most of the Twentieth Century the Republican Party had never been in a majority position in the General Assembly. That changed in the late 1990s when the Republican Party achieved a modern-era zenith by winning all three statewide offices, and shortly after controlled a majority in both chambers of the state legislature. This was just in time for the redistricting that would follow the 2000 census and a real chance for the leaders of the new majority-party to signal a change in Virginia politics.

Following completion of the census, as required by law, the General Assembly adopted a set of criteria as the baseline for drawing new legislative and congressional districts. The legislation was adopted in 2001 and including the following broad, noble-sounding guidelines:

I. Population Equality. The population of each legislative district would be as nearly equal to the population of every other district as possible. Deviations in state House and Senate districts would be within plus-or-minus 2 percent.

II. Voting Rights Act. As required by federal law, the districts would be drawn to comply with the Voting Rights Act, which bans unwarranted retrogression or dilution of racial or ethnic minority voting strength.

III. Contiguity and Compactness. Districts would be drawn so that each was comprised of contiguous territory (which could include bodies of water) and include adjoining insular territory within each district. The districts would also be as compact as practicable based on state court rulings.

IV. Single-Member Districts. All districts would be single-member districts, meaning that not more than one person could be elected simultaneously to the same office to represent the constituents within each respective district.

V. Communities of Interest. “Legislative consideration” would be given to a host of factors that “can create or contribute to communities of interest.”⁴ The legislation

specifically named the following: economic factors, social factors, cultural factors, geographic features, governmental jurisdictions and service delivery areas, political beliefs, voting trends and incumbency considerations. Interestingly, this section of the legislation also issued a caution: “The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process *best carried out by elected representatives of the people.*” (Emphasis added by the author.) “Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest.”⁵

VI. Priority. Finally, the General Assembly noted that each of the criteria would be considered, but if a conflict arose, population equality among districts and compliance with federal and state constitutional requirements and the Voting Rights Act of 1965 would be given priority.

Not surprisingly, the change many had hoped would be a hallmark of the new leadership did not come to fruition. In practice, as had been the case in the past, these noble criteria were once again manipulated to favor the party in power. Where redistricting reform is concerned, Virginia’s record seems to abide by the old adage that the more things change, the more they remain the same.

Following the public release of the General Assembly’s new maps and redistricting plan of 2001, hundreds of citizens from across the commonwealth attended public hearings to complain about the new boundary lines drawn by the Republican-controlled legislature. There were complaints of gerrymandering and/or racial dilution in numerous jurisdictions.⁶ Still, even today the Virginia Division of Legislative Services lists at least three redistricting court cases that have been winding through the state and federal court systems since June 2001.⁷

⁵ *Ibid.*

⁶ See for example: “Plans Provoke Complaints Elections Committees Hear From Detractors,” *Richmond Times-Dispatch* (April 10, 2001) p. A-1

⁷ *West v. Gilmore*, Circuit Court for the City of Salem, Case No.: 01-84, filed June 26, 2001. On appeal, *Warner v. West* and finally *Wilkins v. West*, Supreme Court of Virginia, Case No.: 021003. *Hall v. Warner*, Circuit Court for the City of Petersburg, Case No.: CH02-100, filed April 17, 2002. *Hall v. Commonwealth of Virginia*, United States District Court, Eastern District Virginia, Case No.: 03-CV-151, filed

If these examples suggest that in Virginia gerrymandering is practiced only by the Democratic Party, it is only because for most of the Twentieth Century the Republican Party had never been in a majority position in the General Assembly until the end of the 1990s.

⁴ See House Committee on Privileges and Elections Committee Resolution No. 1, adopted April 3, 2001. Senate Committee on Privileges and Elections Committee Resolution No. 1, adopted April 3, 2001. House Committee on Privileges and Elections Committee Resolution No. 2, adopted July 9, 2001, and Senate Committee on Privileges and Elections Committee Resolution No. 2, adopted July 9, 2001. Virginia Division of Legislative Services; <http://dlsgis.state.va.us/> (10/22/2008).

It seems likely that gerrymandering is a major reason for the observed political apathy and lack of competition in 21st Century legislative elections in Virginia.

A 2007 editorial in the *Richmond Times-Dispatch* noted, "... no sooner did the GOP gain its belated Assembly edge than—abracadabra—it discovered the joys of the gerrymander. Republican maps after the 2000 Census distorted legislative elections as cynically as the maps drawn by Democrats. And Democrats returned the compliment by complaining that Republicans had the nerve to do to Democrats what Democrats had done to Republicans."⁸

Among the more peculiar creations by the General Assembly this time was Senate District 25. The earmuff-shaped district stretches well over one hundred miles from Bath and Allegany counties along the western border of the state to Nelson and Albemarle counties on the eastern side. The two larger regions are connected by a narrow band, which snakes through the southern and eastern parts of Rockbridge County.

Negative Effects of Gerrymandering in Virginia

There is a growing body of research across the country linking gerrymandering to a host of effects, none of which bodes well for democracy. Among them are (a) reduction in two-party competition, (b) protection of incumbents, (c) partisan bias, (d) less competitive elections, (e) reduced voter turnout, (f) voter apathy, (g) polarization, (h) gridlock and (i) lack of accountability in government.⁹ The vexing problem researchers

February 20, 2003. Fourth Circuit Case No. 03-2113.

⁸ "Lame Excuse," *Richmond Times-Dispatch* editorial (June 9, 2007).

⁹ See for example: Andrew Gelman and Gary King, "Enhancing Democracy Through Legislative Redistricting," *American Political Science Review*, Vol. 88, No. 3 (September 1994), pp. 541-59. Alan I. Abramowitz, "Partisan Redistricting and the 1982 Congressional Elections," *Journal of Politics*, Vol. 45, No. 3 (August 1983), pp. 767-70. Richard Born, "Partisan Intentions and Election Day Realities in the Congressional Redistricting Process," *American Political Science Review* (1985) 79:305-19. Charles S. Bullock "Redistricting and Congressional Stability, 1962-72," *Journal of Politics*, Vol. 37, No. 2 (May, 1975), pp. 569-75. Bruce E. Cain, "Assessing the Partisan Effects of Redistricting," *American Political Science Review*, Vol. 79, No. 2 (June 1985), pp. 320-33. Janet Campagna and Bernard Grofman, "Party Control and Partisan Bias in 1980s Congressional Redistricting," *Journal of Politics*, Vol. 52, No. 4 (November 1990), pp. 1242-57. Richard G. Niemi and Simon Jackman, "Bias and Responsiveness in State Legislative Districting," *Legislative Studies Quarterly*, Vol. 16, No. 2 (May 1991), pp. 183-202. Richard G. Niemi and Laura R. Winsky, "The Persistence of Partisan Redistricting Effects in Congressional Elections in the 1970s and 1980s," *Journal of Politics*, Vol. 54, No. 2 (May, 1992), pp. 565-572. Owen Guillermo and Bernard Grofman. "Optimal Partisan Gerrymandering." *Political Geography Quarterly* (1988)

encounter is in pairing these symptoms with the disease itself. Rarely would an elected official admit to having deliberately manipulated election boundary lines for partisan gain. So instead the best observers can do is look for telltale signs, like a peculiar shape, as an indication of the practice. But if the results of gerrymandering were limited simply to an oddly shaped district here or there, or of pitting one incumbent politician against another, the practice might not be of any great concern to the average person. It is when this veiled practice appears to be simultaneous with voter apathy and lack of participation that it becomes particularly troublesome.

A review of elections of the past decade for House and Senate seats in the Virginia General Assembly reveals a surprising level of non-competitive legislative elections around the state and a staggering number of seats where there was just one candidate running for the seat. Of even greater concern are the effects on voter behavior that appear to stem, at least in part, from the political stagnation of these elections. What cannot be answered by this research are the specific motives that generated the current state legislative boundary lines. Whether district boundary lines for state legislative elections were crafted with either, or both, incumbent protection and/or reduced two-party competition as a goal is not clear. What is obvious is that arbitrarily shifting people from one political district to another creates transient political conditions that hamper viable, district-wide, political-community networks that might be capable of building voter interest and/or achieving long-term influence on district-level politics and policy. It seems likely that gerrymandering is a major reason for the observed political apathy and lack of competition in 21st Century legislative elections in Virginia. Moreover, the evidence clearly suggests that the current method of crafting state legislative districts is doing very little to foster competition or generate voter interest and participation in state legislative elections.

Non-Competitive Elections

Over the last decade the number of seats won with 55 percent of the vote or less is shockingly low for both the House of Delegates and the Senate of Virginia. (The figure of 55 percent or less is a widely used benchmark of a competitive race.) In the four elections held during this decade for the 100-member House of Delegates,

7:5-22 and Edward R. Tufte, "The Relationship between Seats and Votes in Two-Party Systems," *American Political Science Review*, Vol. 67, No. 2 (June 1973), pp. 540-54.

the highest number of competitive elections for any given year was just 14 for the House of Delegates in 2001 (Table 1). Of the two elections held for the 40-member state Senate this decade, the highest number of competitive elections was only 8 in 2007.

Table 1: Competitive Legislative Seats Over the Last Decade

Election Year	Number of Seats Won in Competitive Races	
	House of Delegates (100 seats)	Senate (40 Seats)
2001	14	a
2003	9	3
2005	12	a
2007	11	8

Source: Table compilations derived by author using election data from the Virginia State Board of Elections.

^a The Senate was not up for election in 2001 and 2005.

Lack of Party Competition

It is not unreasonable to expect that elections within a democratic society would provide voters with a selection of at least two viable candidates for an office, but that has not been the case for most of Virginia's recent elections to the state legislature. In fact, as Table 2 demonstrates, in every legislative election cycle for the General

Table 2: "No Contest" Races for the General Assembly in Recent Legislative Elections

Election Year	Number of "No Contest" Seats ^a	
	House of Delegates (100 Seats)	Senate (40 seats)
2001	49	b
2003	69	22
2005	61	b
2007	68	23

Source: Table compilations derived by author using election data from the Virginia State Board of Elections.

^a Seats were counted as "no contest" because either there was no opponent or only marginal third-party opposition. Races were counted as "no contest" if a race did not field both a Republican and a Democratic candidate for office, unless a third-party candidate won the general election. Among the few instances where a third-party candidate won an election, the race was counted as "no contest" if there was opposition from no more than one of either of the major political parties and where the winning candidate received more than 55 percent of the vote in the general election. (See House Districts 19 and 59 from 2003 for example). House District 68 in 2005 was counted as "no contest" because both the Independent candidate and the only major-party candidate in that race each received greater than 45 percent of the vote. House District 68 in 2007 fielded a Republican candidate against two Independent candidates, and was counted as a contested race because collectively, the two third-party candidates received more than 45 percent of the vote and the incumbent was a third-party candidate (Independent Katherine Waddell) who was defeated by the Republican candidate.

^b The Senate was not up for election in 2001 and 2005.

Assembly this decade, at least half—and sometimes as many as two-thirds—of the seats for the House of Delegates were "no contest" elections, meaning that the election was either completely uncontested (a majority of the cases here) or there was only marginal third-party competition. Similarly, for the two Senate elections held this decade, more than half the seats were ones where voters had no real choice of candidates.

Low Voter Turnout

Perhaps the worst news from all this is that this decade's dismal levels of competition in state legislative elections and the lack of options for voters at the ballot box appear to have negatively affected voter participation in these elections. During the two state legislative elections this decade where both the House of Delegates and the Senate of Virginia were on the ballot simultaneously, voter turnout was dramatically lower—seven to twelve percentage points depending on the particular election—in districts where voters had no options compared to those where there was a viable contested race (Table 3).¹⁰

Attempts at Reform in Other States

In recent years, a number of states have undertaken various efforts to reform the process of redistricting, often at the urging of citizen interest groups. Many states have crafted alternative solutions that, if not immune from political influence, are at least further removed from the political arena. At the federal level, at least four separate pieces of legislation were introduced during the 110th Congress. Aimed at requiring states to conduct redistricting through independent commissions, none of these bills saw any significant levels of co-sponsorship.¹¹ As of February 2009

¹⁰ To avoid distortion of voter turnout during a gubernatorial election year, turnout statistics for the House of Delegates races of 2001 and 2005 were not calculated. Turnout statistics from the State Board of Elections for Districts coded by the author as No Contest for House Districts in the 2003 election included the following districts: House Districts 1-4, 7, 10-14, 18-20, 22-25, 27-30, 33, 34, 36, 38-42, 46, 49-51, 53-55, 57-59, 61-63, 66-80, 82-85, 87, 89-91, 93, 94, 97, 98. No Contest Senate Districts 2003: 1, 4, 5, 8-16, 19, 21, 25, 26, 28, 30, 33, 35, 38, 40. No Contest House Districts 2007: 2-4, 8, 10-12, 15, 17-20, 22-27, 29, 30, 36-39, 41-44, 46-49, 53-55, 57-66, 70, 71, 73-77, 79-81, 84, 85, 89-95, 97-100. No Contest Senate Districts 2007: 2-5, 7-10, 12, 14, 16, 18, 19, 21, 23, 25, 30-32, 35, 36, 38, 40.

¹¹ Online databases available from the Library of Congress record legislation by Reps. Tanner (D-TN) and Lofgren (D-CA) as well as Senator Tim Johnson (D-SD). Rep. Tanner's legislation (H.R. 543) was the first such bill to be introduced in the 110th Congress and, of the four pieces of similar or related legislation introduced throughout

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Over the last two years a number of prominent organizations and a growing, bipartisan list of political leaders are lending public support to redistricting reform in Virginia.

Table 3: Average Turnout of Registered Voters in Legislative Districts with Contested Races vs. Districts with “No Contest” for the Seat, 2003 and 2007

Election and Chamber	Turnout Among Districts with Contested Elections	Turnout Among Districts with “No Contest” Elections	Percentage Point Difference
2003 election			
House of Delegates	32.24%	22.73%	9.51
Senate	31.57%	21.57%	10.00
2007 election			
House of Delegates	32.23%	25.01%	7.22
Senate	35.12%	22.61%	12.51

Source: Table compilations derived by author using election data from the Virginia State Board of Elections

Note: To avoid distortion of voter turnout during a gubernatorial election year, turnout statistics for the House of Delegates races of 2001 and 2005 were not calculated. Turnout statistics from the State Board of Elections for Districts coded by the author as “no contest” for House Districts in the 2003 election included the following districts: House Districts 1-4, 7, 10-14, 18-20, 22-25, 27-30, 33, 34, 36, 38-42, 46, 49-51, 53-55, 57-59, 61-63, 66-80, 82-85, 87, 89-91, 93, 94, 97, 98. “No contest” Senate Districts 2003: 1, 4, 5, 8-16, 19, 21, 25, 26, 28, 30, 33, 35, 38, 40. “No contest” House Districts 2007: 2-4, 8, 10-12, 15, 17-20, 22-27, 29, 30, 36-39, 41-44, 46-49, 53-55, 57-66, 70, 71, 73-77, 79-81, 84, 85, 89-95, 97-100. “No contest” Senate Districts 2007: 2-5, 7-10, 12, 14, 16, 18, 19, 21, 23, 25, 30-32, 35, 36, 38, 40.

no similar legislation had been introduced in the newly convened 111th Congress. Reform efforts that have been adopted to date at the state level have also focused on the creation of independent commissions, with variations appearing mainly in the manner of appointing members to these commissions. Twelve states have created commissions with primary responsibility for drawing a plan, two have established advisory commissions and five have created back-up commissions that would take over redistricting responsibility should the state legislature fail to come up with a plan.¹² In November 2008, California joined the growing number of states that are attempting to reform redistricting when, by referendum, voters approved a ballot proposal to remove redistricting from the legislature and give it to a 14-member panel. The vote followed earlier legislative proposals that would have allowed retired California judges to redraw legislative district boundary lines.

the 110th Congress, Tanner’s received the highest level of co-sponsorships (34) by other Members of Congress. No co-sponsors in the Senate are listed for Senator Johnson’s bill. For additional information see: <http://www.thomas.gov> (2/3/09)

12 States that have created a commission with primary responsibility for drawing a plan are Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Missouri, Montana, New Jersey, Ohio, Pennsylvania and Washington. States that have created advisory commissions are Maine and Vermont. Those states creating back-up commissions are Connecticut, Illinois, Mississippi, Oklahoma and Texas. Source: National Conference of State Legislatures, Redistricting Law 2010—Draft (December 2008). http://www.senate.mn/departments/scr/redist/Red2010/Redistricting_Law_2010.pdf (1/26/2009).

Virginia Reform Options

Over the last two years a number of prominent organizations and a growing, bipartisan list of political leaders including Senator Mark Warner (D), former governors George Allen (R) and Linwood Holton (R), current Lt. Gov. Bill Bolling (R), and former Lt. Gov. Don Beyer Jr. (D) are lending public support to redistricting reform in Virginia. Many of these officials have signed on as leaders of a relatively new organization known as the Virginia Redistricting Coalition which is attempting to build grassroots support across the state for redistricting reform.¹³

In his 2008 State of the Commonwealth address, Gov. Tim Kaine called on the General Assembly to change the process of redistricting in Virginia. “Our legislative districts should be drawn with the people, not the politicians, first in mind. “It is time to create a bipartisan system for redistricting. With different parties in the majority in each house, now is the perfect time to make this necessary change.”¹⁴

A state constitutional amendment aimed at reform was introduced by State Senator Creigh Deeds (D) during the 2008 General Assembly session and surprised many when it passed the Senate last year.¹⁵ The legislation would

13 A list of supporting individuals and organizations can be accessed online at: <http://www.fixthelines.org/> (2/3/09)

14 For the full text of Governor Kaine’s 2008 Address to the Joint Assembly see: <http://www.governor.virginia.gov/MediaRelations/Speeches/2008/SOTC.cfm> (2/18/09)

15 Numerous journalists reported on the legislation during the 2008 session of the General Assembly. See for example: Sandhya Somashekhar, “Legislative Redistricting Bill Squelched in the House,” *Washington Post* (February 16, 2008) <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/15/AR2008021503490.html> (1/26/2008).

have established the Virginia Redistricting Commission, which would have been responsible for redrawing congressional and General Assembly district boundaries after each decennial census. The 13 members of the commission would be appointed in 2010 as follows: two each by the President pro tempore of the Senate, Speaker of the House of Delegates, minority leader in each house and the state chairman of each of the two political parties receiving the most votes in the prior gubernatorial election. Under the proposal, the 12 partisan members would then choose the last member by a majority vote. If no agreement could be reached on the final member, the two names receiving the most votes would be submitted to the state Supreme Court to select the last member. Unfortunately, the reform legislation was never released from committee in the House of Delegates.

Legislation similar to what was adopted in the Senate last year was introduced again in the 2009 session and again this year the legislation passed overwhelmingly in the Senate by a 39-0 vote.¹⁶ If adopted, the legislation would establish a seven-member temporary commission to prepare redistricting plans in 2011 and each tenth year thereafter for the House of Delegates, state Senate, and congressional districts. Appointments to the commission would be made one each by the four majority and minority party leaders of the House and Senate and by the state chairmen of the two major political parties. Those six appointees would appoint the seventh member and chairman for the commission. If they could not agree, they would submit the names of the two persons receiving the most votes to the Supreme Court for the Court to select the chairman. The commission would prepare plans and submit them as bills to the General Assembly. The General Assembly would then proceed to act on the bills in the usual manner. SB926 provides for commission comments on plans as they change in the legislative process. It also spells out the standards and process to be followed by the commission in preparing plans, including limitations on the use of political data and opportunities for public comment on the plans. But even before the Senate had passed the bill, the House of Delegates had already signaled its lack of support by killing similar versions in committee.¹⁷

¹⁶ SB 926 Bipartisan Redistricting Commission. <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=091&ctyp=bil&val=sb926> (2/18/2009).

¹⁷ At the time of publication, the General Assembly's Legislative Information Services lists six other similar pieces of legislation that were introduced during the 2009 General Assembly session. Each was aimed at reforming one aspect

At the time of publication, Gov. Kaine was attempting to generate public pressure on the House of Delegates to join the Senate in passing a redistricting reform measure in time for the 2011 session, but chances appear bleak for any new laws in 2009.

Clearly time is running out for passage of a constitutional amendment that will affect the next round of redistricting in Virginia. Any amendment to the state constitution must be passed in two legislative sessions, with the second vote on passage occurring during the Assembly's "first regular session held after the next general election of members of the House of Delegates."¹⁸ Thereafter, it must still be submitted to the voters in a referendum. Legislative action must begin almost immediately for it to bear on the 2011 process. Presently there are no indications of any significant support among the legislature for this avenue.

Nevertheless, to those who may be nervous about something as seemingly radical as amending the state constitution, remember that Virginia has rewritten its entire constitution six different times over the last two centuries. On average, Virginia has had a new state constitution every forty years. While most adherents of democracy also revere the rule of law, the fact is there is nothing sacred about the present document. It was adopted in 1971 with a specific mechanism for altering it in future years.

The good news for those who support reform is that a constitutional amendment is not essential for changing how district boundary lines are crafted in Virginia. Nothing is preventing the General Assembly from empanelling a body of objective advisors at any time to assist them with the process. Since Virginia is one of only two states where judges are selected by the legislature, one sensible option that may also assuage concerns of those who support reform but oppose a constitutional amendment is for the General Assembly to enlist the advice and assistance of a distinguished panel of current and/or another of the state's current redistricting process, and at least three were in the form of amendments to the state constitution. HB 1685 Creation of Bipartisan Redistricting Commission; HB 1793 Creation of a Citizen Advisory Redistricting Board; HB 2538 Creation of the Virginia Advisory Redistricting Commission; HJ 702 Constitutional Amendment Establishing a Redistricting Commission; SJ 281 Constitutional Amendment Establishing a Redistricting Commission; and SJ 312 Constitutional Amendment Establishing Redistricting Commission. For the latest information and bill tracking services consult the Legislative Information Services website at <http://leg1.state.va.us/lis.htm> (2/3/09).

¹⁸ Constitution of Virginia, Article XII, Section 1.

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or former judges and justices from the ranks of the state judicial system. Since each of these individuals was thoroughly screened by them in the past, such a panel would be familiar and trusted source for the legislative branch. While this option would not bind any future actions, and its recommendations would have no force of law, it would mark a good-faith effort with the voters of the commonwealth toward building long-term reform of the current process.

Unlike other legislative matters, redistricting reform is not one that is conveniently “set aside” until next year. We only conduct a census once every decade. To delay or further postpone action will mean that not one year but another ten years will pass without reform. This is regrettable, particularly when evidence suggests that the current process is doing virtually nothing in the way of fostering voter participation in state legislative elections or even enhancing civic engagement generally among the public. Indeed, it may even be responsible for suppressing one of the greatest exercises of liberty possessed by our citizens.

We are often reminded that change happens slowly in Virginia. But even by Virginia standards, when one considers how long this egregious practice has been with us, a wait of two hundred years seems long enough. It is time the “Cradle of Democracy” became the “Graveyard of Gerrymandering.”

Postscript

On February 17, 2009 members of the House Privileges and Elections subcommittee voted along party lines to PBI (pass by indefinitely) the redistricting reform legislation adopted by the Senate. Killing the legislation by subcommittee vote in the House was not news, as it had occurred many times in the past. For the first time in 2009 revised procedures permitted a recorded subcommittee vote. Subcommittee members who opposed the legislation were: Dels. Cosgrove (R-78th District), Jones (R-76th District), Landes (R-25th District) and Frederick (R-52nd District). Subcommittee members who supported the legislation were: Dels. Dance (D-63rd District) and Englin (D-45th District). Among the four legislative districts of the subcommittee members who opposed the legislation, their combined average voter turnout for the most recent election held for the House of Delegates was just 23 percent.

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