

Does Your Vote Really Count? (Part II)

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I. Introduction

This is the second of a two-part study on the redistricting process in Virginia. Part I was published in September 2005 and addressed a number of issues, including U.S. Supreme Court decisions, types of gerrymandering of election districts, the Voting Rights Act of 1964, and a brief survey of redistricting commissions in some states.

Part II presents results of recent Virginia legislative elections and a more detailed look at redistricting commissions in other states. It also presents information on the Virginia redistricting process and a comprehensive look at criteria that could be considered during the redistricting process.

The Constitution of Virginia, Article II, Section 6, provides, in part, "Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2011 and every ten years thereafter."

II. The Redistricting Process in Virginia

The Constitution of Virginia (see box above) requires reapportionment and redistricting to occur *every ten years* following publication of the national census results. It also states that members of the U.S. House of Representatives and the Virginia Senate and House of Delegates "shall be elected from electoral districts *established* by the General Assembly."

Responsibility for determining congressional and state legislative districts in Virginia lies with the legislature. The Code of Virginia, §30-263, provides for a Joint Reapportionment Committee of the General Assembly (GA) to oversee the redistricting process. The Committee consists of five members of the Committee on Privileges and Elections (P&E) of the House of Delegates and three members of the P&E Committee of the Senate, appointed by the committee

chairmen. The purpose of the Reapportionment Committee is to supervise activities required for the tabulation of the census population data, the timely receipt of precinct population data for reapportionment, and sponsorship of reapportionment and redistricting guidelines. The P&E Committees submit to the House and Senate the proposed redistricting plans for Congress and the Virginia Senate and House of Delegates that they recommend for approval.

Virginia does not have any specific statute that states precisely how congressional and GA redistricting is to be carried out. Rather, every ten years, a legislative resolution of guiding principles is adopted. In contrast, Iowa law dictates a timetable; describes the structure, role and functioning of the nonpartisan group selected to prepare the redistricting plans; defines the criteria; and specifies the approval process.

In practice, the Virginia Division of Legislative Services (DLS) does the staff work, communicating with the Census Bureau and establishing a computerized database of the census population estimates. Public hearings are held early in the process during the regular GA session to receive public comment on the process, potential redistricting criteria, and suggestions for redistricting plans. Following the end of the regular GA session about mid-March, a special session is convened during which delegates and senators receive the official census data, develop criteria, and propose their redistricting bills (plans) to the appropriate P&E Committee. More public hearings are then held. After that, the usual procedure for the reporting and approval of bills is followed. Following signature by the governor, the plans are sent to the Justice Department for pre-clearance, as required by the Voting Rights Act.

III. Redistricting Process Changes

Since the Constitution of Virginia requires only that the legislature *establish* the electoral districts, it would be possible for the legislature to revise the Code of Virginia to delegate to another entity, such as a commission, the responsibility for drafting the redistricting plans for the legislature's approval. The revised Code would have to delineate the process for selection of members of such an entity and detail any special requirements for plan approval. The Virginia Constitution would need to be amended if final approval were granted to an entity other than the legislature.

IV. The Possible Need for Reform

In recent years, a number of political trends have been cause for concern among those who support the ideal of a vibrant American electoral process. Two arguments in favor of reform are the lack of competitiveness and a low voter participation rate in many legislative districts.

Recent races for congressional seats across the nation and for legislative seats in Virginia show a demonstrable lack of competitiveness. Generally, political scientists consider elections decided by ten points or fewer (e.g., a margin of 55 to 45 percent) to be competitive. In 2004, only 27 of the 435 races for the U.S. House of Representatives reached this threshold and only seven House incumbents across the country lost to challengers. In Virginia, only one of the 11 races for a U.S. House seat turned out to be competitive.

In the 2002 congressional election cycle, a full 18 percent of House incumbents had *no* opposition. Five months before the 2006 congressional elections, respected election tracker Charles Cook counted only 35 truly competitive House districts, compared with 100 in 1994.¹

The story was the same—if not worse—for Virginia legislative districts. In 2005, 60 percent of candidates for the Virginia House of Delegates had no significant opposition, only three incumbents lost their seats, and only 12 of the 100 races turned out to be “competitive.” These results continued a trend from 2003, when only four of the 40 races for the Virginia Senate and only nine of the 100 races for the Virginia House were competitive.

“In most [state] House districts, if you win the primary, you are going to Richmond. So instead of worrying about being in the moderate camp, all you really need to do is win your Democratic or Republican primary. The most ideological extreme—10 percent of the electorate—are the ones who make the decisions in these one-sided contests.”

Stephen J. Farnsworth, Associate Professor,
Political Science, University of Mary Washington
The Washington Times, June 5, 2006

This lack of competitiveness may also contribute to a decline in voter turnout as voters perceive that their vote won’t make a difference. In 1997, 49.5 percent of Virginia voters went to the polls to vote for state legislative candidates. By 2005, turnout dropped to 45 percent. And in 2003, without a close statewide contest to encourage voters to go to the polls, turnout plummeted to 31 percent.

Redistricting plans that are perceived as overly partisan are considered to be one factor that may contribute to this lack of

competitiveness, along with the power of incumbents to raise campaign funds and take advantage of certain perquisites of their offices.

These trends play out against a backdrop of increased political polarization, which may both contribute to the lack of competitiveness as well as result from it. If districts are redrawn in such a way that candidates perceive their seats to be “safe,” there will be a natural tendency for them to cater to their party supporters and donors rather than to the political center. And as they do, it would not be surprising for persons of opposing viewpoints to become even more cynical about the political process and to further dismiss the value of their individual votes.

In mid-2006, some commentators pointed to redistricting as a contributor to the GA’s deadlock over budget and transportation issues. The impasse marked the legislature’s fourth special session this decade and the fourth time this decade it failed to produce a budget within its regular 60-day session.²

The National Voter of June 2005 stated, “Redistricting reform is no panacea, but it is a start. . . .” The article presented three options for those “seeking to reduce the partisan and incumbent manipulation of the redistricting process: (1) persuade Congress to adopt additional standards for redistricting by the states, prohibiting more than a single round of congressional redistricting after the decennial apportionment; . . . (2) convince the courts to find gerrymandered plans unconstitutional; . . . and (3) change the process by which states draw legislative maps.”

V. Frequency of Redistricting

One question that has arisen in recent years is how frequently redistricting should occur.

In the recent U.S. Supreme Court case brought by the League of United Latin American Citizens (*LULAC v. Perry*), the Court upheld the Texas legislature’s mid-decade redistricting even though Texas had already redistricted after the 2000 election.³ The Court stated that neither the Constitution nor Congress explicitly prohibited mid-decade redistricting. In Virginia, the state Constitution provides for reapportionment . . . “in the year 2011 and every ten years thereafter.” However, according to Mary Spain, senior DLS attorney, the Constitution does not specifically prohibit redistricting more frequently than that.

Certain areas of Virginia have grown rapidly in recent years, and some have suggested that redistricting more frequently than every ten years would better preserve the principle of one person, one vote.

Mary G. Wilson, LWWUS president, called the Texas decision “extremely disappointing,” saying it would encourage politicians to become serial mapmakers. “We now can expect an even more vicious battle between the political parties as they redraw district lines every two years for partisan gain.”

Los Angeles Times, June 29, 2006

For instance, between the 2000 census and July 1, 2005, the estimated population of Virginia increased by nearly half a million (7 percent), reaching 7.5 million.⁴ Northern Virginia accounts for 60 percent of this growth. Loudoun County heads the list with a phenomenal population increase of 82,700, followed by Prince William County with 74,500 and Fairfax County with 52,400 new residents. Stafford and Spotsylvania Counties each gained close to 25,000 while the Richmond suburban counties of Chesterfield and Henrico gained 26,600 and 21,000, respectively.

But others have raised issues, both political and practical, about more frequent redistricting. Foremost among the concerns raised in the Report of the Redistricting Reform Conference sponsored by The Council for Excellence in Government in June 2005⁵ is the lack of official population figures between the decennial censuses. Without current official population data, what statistics could be used that would be acceptable to a court?

Secondly, at what point during the decade would redistricting be most appropriate? The Constitution of Virginia complicates this question because it specifies that a legislator in office at the time of redistricting shall complete his term of office representing that district as long as his residence remains in that district. Any vacancy during this term would be filled from the same district. Therefore, mid-decade redistricting would go into effect with the next regularly scheduled election.

Another consideration is the administrative and related costs of redistricting more than once between decennial censuses. In addition to the time spent by the DLS and state legislators, the State Board of Elections and local Electoral Boards would be required to change the records of all voters affected by changes in districts and polling places and notify those voters in writing.

VI. The Timing of Redistricting

Because Virginia’s Constitution requires reapportionment in the odd-numbered year following the decennial census and because the Code of Virginia (§24-2.214 and §24-2.215) requires legislators to be elected in those same years, the Virginia redistricting process faces severe time constraints.

For example, Virginia received its official 2000 census figures on March 8, 2001, and the GA began a special redistricting session the next day. Many draft redistricting plans were presented, debated, and amended during the ensuing six weeks. The P&E Committees conducted three joint public hearings and, on April 21, 2001, then-Governor Gilmore signed into law the redistricting bills as passed by the House and Senate. Fortunately, the U.S. Department of Justice cleared the plans within the requisite 60 days. Even so, primaries that year had to be delayed until August.

This extremely compressed timetable raises the question of whether it would make more sense to extend the time allowed for redistricting following the decennial census to no later than June of the years ending in “2” instead of the years ending in “1,” such as in 2012 instead of 2011.

VII. Drawing the Lines

Legislative redistricting, by its very nature, is a highly political and often contentious process. Thirty states now follow the traditional legislative process whereby the state legislature establishes the guidelines and creates the new election districts following the decennial census. The other states use a variety of procedures, some involving the legislature and some using elected state officials, courts, or commissions in some combination. In Virginia, the Constitution gives the GA the authority for “establishing” the lines, but the Code of Virginia could be amended to allow a different entity to draft the redistricting plans.

“The Founders envisioned a system where the people would select the representatives, but what happens now is the elected officials that draw the lines are actually picking the people.”

*Stephen Farnsworth, Associate Professor,
Political Science, University of Mary Washington,
The Washington Times, June 5, 2006*

A. Redistricting Commissions

Since the landmark Supreme Court decisions of the 1960s that established the “one person, one vote” principle, 12 states have shifted responsibility for redistricting state legislative districts from the legislature to a commission. Idaho and Arizona were the most recent states to join this group, using a commission for the first time in the redistricting following the 2000 census. These states (see chart next page) give first and final authority for state legislative redistricting to a group other than the legislature; six do the same for congressional redistricting. Note that these 12 state commissions vary in many ways, such as the appointment process and composition. In most cases, legislative leaders appoint the commission members.

While the commissions detailed in the chart are responsible for the entire procedure, others are advisory groups that submit plans to the legislature for final approval or are only a backup in case the legislature fails to agree on a plan by the deadline. Very few commissions of any sort could be described as strictly non-partisan.

The chart outlines Arizona's unique process for selecting commission members. The state's commission on appellate court appointees creates a pool of 25 nominees, ten from each of the two largest parties and five independents or representatives of other parties. The majority and minority leaders of the two houses then take turns choosing one each from the pool. These four members then choose the chair from a party that is not already represented.

State legislatures appear reluctant to allow *congressional* redistricting to slip out of their control and be turned over to commissions, as only six states follow that model: Arizona, Hawaii, Idaho, Montana, New Jersey, and Washington. A seventh, Indiana, sets up a commission only if the legislature fails to adopt the required plan. Of the six, all except New Jersey use the same commission to draw lines for both congressional and legislative districts. In New Jersey, the commission for drawing state legislative boundaries is composed of ten members. The commission for drawing congressional district lines has 13 members; the chair must be "independent."

The track record of commissions is inconsistent. Most state commissions have produced plans that are as likely to be considered partisan and designed to protect incumbents as the plans prepared by legislatures. Also, the record has shown that the plans produced by commissions are as likely to be challenged in the courts as plans produced by the legislature.⁶ However, Arizona's approach appears to provide for greater independence from the legislature, not only in the composition of the commission but also in the insistence on specific criteria, such as fostering competitive districts.

Distancing line-drawing decisions even a little from those whose political futures will be affected has the potential to increase fairness and competitiveness. However, just as important as creating a commission are such factors as the transparency of the process and the criteria the commissions are required by law to use.

B. Iowa's Solution

Ironically, the one state process that seems more successful in reducing the influence of partisan officials is one that, like Virginia's, requires the legislature to vote on the plan. Iowa's current process came about because a 1970 plan drawn up by its legislature was struck down by the Iowa Supreme Court in 1972 for having too wide a population variation among districts. The plan also was judged as inappropriately

States with Commissions (No. of Members)	Bi-partisan Commission Members	Non-partisan Commission Members	Non-elected Officials Required	Members Selected by Legislative Body	Governor can Veto Plan	Chair Selected by Commission Itself
Alaska (5)	Maybe*	No	Yes	Yes	No	No
Arizona (5)	Pool of nominees is at least 4/5 partisan	Chair from neither major party	No	No (see text for details)	No	Yes
Arkansas (3)	Not likely**	No	No	Yes	No	No
Colorado (11)	Yes	No	No	Judiciary selects 4 of 11	No	No
Hawaii (9)	Yes	No	Yes	Yes	No	Yes
Idaho (6)	Yes	No	Yes	Yes	No	No
Missouri (H 18, S 10)	Yes (both commissions)	No	Yes	Yes	No	No
Montana (5)	Yes	No	Yes	Yes	No	Yes
New Jersey (10)	Yes	No	No	Yes	No	Yes
Ohio (5)	Yes, but favors party in power	No	No	Yes	Yes	No
Pennsylvania (5)	Yes	No	Chair only	Yes	No	Yes
Washington (5)	Yes	No	Yes	Yes	No	Yes, non-voting

SOURCE: Minnesota Legislative Information Service, updated 2000, and Website of FairVote (www.fairvote.org).

*Alaska's commission provides for appointees selected by different elected officials (president of Senate, speaker of House, Chief Justice) with no assurance of bi-partisanship.

**Arkansas' "commission" is the governor, secretary of state, and attorney general.

protecting incumbents. The Iowa League of Women Voters joined in the lawsuit filed against the plan. To demonstrate that a fair plan could be prepared, the League used rented computer time to draw up its own plan, which had a population deviation of only 0.07 percent and did not protect incumbents.

The process that the Iowa legislature put in place in 1980 calls for the state's Legislative Service Bureau (LSB) to draw up a plan using fairly specific constitutional and statutory guidelines that, among other things, do not protect incumbents. The LSB is not allowed to discuss the plan with any legislator during its drafting process. Once the plan is presented, the LSB holds public hearings.

A unique aspect of the process is that the Iowa legislature gets three chances to vote on a plan. The first time it must vote the plan up or down with only technical changes allowed. If it rejects that plan, another version will be presented and then it must vote for either the first or second plan, as submitted. If it rejects the second one, the LSB prepares a third plan that is subject to amendment. According to Jean Lloyd-Jones, former Iowa League president and state legislator, "In the three decades since that process was adopted, the legislature has never gotten to the third plan. They have always taken either the first or second plan. That's because once you start to amend, it is clear that the motive is to protect incumbents, and they know that the LWV and others will challenge the plan in court."⁷

*"The result in Iowa has been good for democracy. . . . Three of Iowa's five congressional seats were hotly contested—as opposed to just one of California's 53."
Roanoke Times Editorial, June 7, 2006*

The Redistricting Reform Conference concluded, however, that the Iowa example might not be easily transferable to other states that have "more combative political cultures, less tradition of professional nonpartisan legislative staffing, more convoluted political-subdivision lines and more Voting Rights Act issues."⁸

VIII. Criteria and Principles to Guide Redistricting Plans

Regardless of the entity that does redistricting, certain "traditional" principles and criteria are generally used to guide the process, to justify plans to constituents and, if necessary, to defend the plans in court. Obviously, equal weight cannot be given to each principle; the resulting district lines reflect the interplay of principles and the relative weight given to each.

A. Constitutional and Voting Rights Act Requirements

Atop nearly every list of principles are the requirements of the U.S. and state Constitutions and the federal Voting Rights

Act (VRA). The "one person, one vote" requirement appears in both the Virginia Constitution and in U.S. Supreme Court decisions since 1964.

"The interaction of this constraint [use of race in redistricting decisions] and the Voting Rights Act is one of the most confusing and hotly contested issues in redistricting. . . . A plan can be invalidated either because it fails to take race sufficiently into account or because it takes race too much into account."

Report of the Redistricting Reform Conference,
June 2005

The VRA requirements have also been fairly well established through court decisions, though they are not as straightforward. Impermissible racial gerrymandering has been defined to include packing minority voters into as few districts as possible ("packing") or breaking up a concentration of such voters so that they had little chance of controlling any one district ("cracking"). Since 1993, in *Shaw v. Reno* and subsequent cases, states have not been required to ignore race altogether in drawing district lines as long as traditional districting principles are not subordinated.

The criteria used by the Virginia legislature in its 2001 redistricting plans required adherence to both of these principles, including compliance with protections against unwarranted dilution of racial voting strength.

B. Compactness and Contiguity

These two concepts are usually discussed together and are redistricting requirements in many state laws and constitutions. Article II, Section 6, of the Constitution of Virginia (see box on page 1), for example, specifies that every electoral district "shall be composed of contiguous and compact territory." In 2001, the GA adopted criteria requiring that districts be "contiguous and compact in accordance with the Constitution of Virginia as interpreted by the Virginia Supreme Court in *Jamerson v. Womack*, 222 VA 506 (1992)."

1. **Compactness.** Because there are varying measures of geographic compactness and the U.S. Supreme Court has never set a compactness standard, there is some ambiguity about this concept. In *Jamerson*, the Virginia Supreme Court stated that the compactness requirement refers to territory and not to communities of interest. (See section D, below.)

There are many ways to determine compactness: when every point along a district's boundary is of equal distance from its center,⁹ has the smallest perimeter,¹⁰ or has a tightly defined area. Iowa law includes two measures of compactness, one based on the squareness of a district and the other comparing

the population center with a district's geographic center.¹¹ Applying these measures is possible only in a state with straight boundaries and few bodies of water within its boundaries—certainly not the case in Virginia.

“Without some requirement of compactness, the boundaries of a district may twist and wind their way across the map in fantastic fashion in order to absorb scattered pockets of partisan support.”

Dr. Ernest Reock, Jr., Rutgers University
quoted in the *Karcher v. Daggett* decision, 1983

While some believe that the ideal shape of a district is neat and geographically compact, others believe that the ideal of compactness persists largely as a matter of political habit and tradition, not because it actually enhances the process of representation. There may be more important goals than compactness, such as enabling sizeable racial and ethnic minorities to have a fair chance of electing officials from their same group.¹²

2. **Contiguity.** According to the George Mason University's United States Election Project, contiguity is the most widely accepted criterion for drawing districts.¹³ But determining what is meant by contiguity can be just as confusing as determining compactness, and the role of geographic features, especially in Virginia, can add to the complexity of such determinations. In her paper prepared for the 2001 Virginia redistricting process, Mary Spain, Virginia DLS senior attorney, stated, “The contiguity requirement means that a district must be composed of one geographic area and not two or more separate pieces.”¹⁴ In the 2002 *Wilkins v. West* decision, the Virginia Supreme Court upheld the redistricting plans for the House and Senate enacted in April 2001, in particular with regard to possible violations of compactness and contiguity.¹⁵

“Article II, Sec. 6 [of the Virginia Constitution] speaks in mandatory terms, stating that electoral districts ‘shall be’ compact and contiguous. This directive, however, does not override all other elements pertinent to designing electoral districts. In making reapportionment and redistricting decisions, the General Assembly is required to satisfy a number of state and federal constitutional and statutory provisions in addition to designing compact and contiguous districts. To do this requires the General Assembly to exercise its discretion in reconciling these often competing criteria.”

Virginia Supreme Court
in *Wilkins v. West*, November 2002

The criteria used in 2001 referred to the need for districts to be comprised of contiguous territory; however, considering Virginia's geography, the court deemed contiguity by water was sufficient. For example, Virginia's 2nd Congressional District includes the state's eastern peninsula plus all or part of the Cities of Virginia Beach, Norfolk, and Hampton on the other side of the Chesapeake Bay. Because of its relatively sparse population, the peninsula had to be combined with a geographically separate area on the mainland.

The issue of contiguity was addressed quite extensively in *Wilkins*, with the Virginia Supreme Court ruling that:

- A district that contained two sections completely severed by another land mass clearly would not meet the constitutional requirement;
- The geography and population of Virginia required some electoral districts to include water, and in certain circumstances land masses separated by water may satisfy the contiguity requirement; and
- Contiguity does *not* require that land masses within a district that are separated by water must provide for every part of the district to be accessible to all other parts of the district without having to travel into a second district.

C. Geographic Considerations

Closely tied to compactness and contiguity are geographic features although, historically, geographic considerations in redistricting have been secondary to—and may compete with—others.¹⁶ Courts have more often addressed geographic features in terms of compactness and contiguity rather than the feature itself. In referring to the criteria used in Virginia's 1991 redistricting, the *Jamerson* decision noted, “Irregular district shapes may be justified because the district line follows a political subdivision boundary or significant geographic feature.”

The history of Virginia and its geographic components provide a good example of how communities of interest, another redistricting criterion, can often be geographically based. At one time, the ability of a representative to serve his district was often determined by the ease of his travel to all parts of his district. However, today electronic communication makes geographic features a less compelling basis for drawing boundaries, especially in the absence of a related community of interest. The legislative criteria used to draw Virginia's district lines in 2001 included the concept of geographic features as one factor in determining communities of interest.

The Redistricting Reform Conference of 2005 found that geographic considerations can help ensure that a district comprises an area that is rationally shaped, physically coherent and practically serviceable by a representative.¹⁷ Of course, when looking at geographic features, those drawing the lines must determine which features are significant.

D. Communities of Interest and Political Jurisdictions

In 2001, the criteria adopted for redrawing GA districts required consideration of communities of interest. The resolutions noted that a community of interest may include economic, social, cultural, and geographic factors as well as "...governmental jurisdictions and service delivery areas, political beliefs, voting trends and incumbency." Although the courts have never really defined "community of interest," it is generally believed that a sensitivity to communities of interest helps ensure that various social and political entities have some representation in the legislature.¹⁸ The concept of community can vary, depending on whether congressional, county government or state legislative districts are being drawn.

How much attention should be paid to city and county boundaries as well as cultural and socioeconomic groups during the redistricting process? Having political or social communities within a legislative district has some importance in Virginia where localities, particularly counties, must rely on legislative permission to levy additional taxes or enact new land use strategies. In such cases, having a legislator represent a specific locality may be more beneficial if the area is not split among several districts. However, the GA criteria said, "...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."

The "one person, one vote" principle often forces divisions across political boundaries and these divisions can be made to favor whatever political party is controlling the redistricting. Indeed, in large jurisdictions having several representatives, it is advantageous to the party in power to disperse the opposing party's adherents into several districts.¹⁹

The recent Texas redistricting decision (*LULAC v. Perry*), which included appeals under the Voting Rights Act, illustrates how a socioeconomic group may have its political clout diluted. The Republican-controlled legislature removed 100,000 Mexican-American residents living in Laredo from the 23rd Congressional District, where a Republican representative was becoming increasingly vulnerable. The remaining Latino population was not large enough to control the result of the election, and consequently, the Republican incumbent was subsequently able to win handily.²⁰ The U.S. Supreme Court ruled that this district had to be redrawn to meet the VRA requirements.

E. Fairness and Competitiveness

While most people agree that both fairness and competitiveness are appropriate goals for redistricting, there is significant disagreement about how to define those terms

and how to apply the definitions to the real-world task of redistricting.

Typically, fairness refers to both major political parties being treated in a roughly symmetrical manner.²¹ Thus, seats in the legislature should be awarded in a pattern that matches the popular vote. If, for example, a party wins 60 percent of the popular vote, then it should be rewarded with a proportionate share of the legislative seats. Some refer to partisan fairness as the opposite of partisan bias (the goal of crafty "gerrymanderers"). The appropriate level of bias in redistricting is none.

Beyond fairness, another principle to consider is competitiveness—the notion that districts are drawn so that shifts in the popular vote are reflected in shifts of the legislature's makeup. Sometimes called responsiveness, this principle is somewhat more controversial. Experts disagree on how much responsiveness is desirable and to what extent it should be factored into redistricting plans.

Ignoring competitiveness and allowing partisan bias can produce undesirable results. As the Redistricting Reform Conference noted in its final report, "If all districts are gerrymandered to be lopsided and noncompetitive, political power shifts from the voters to the mapmakers. And if the voters can never 'throw the bums out,' eventually their legislatures may be filled with them."²²

"Noncompetitive districts lead to entrenched, polarized legislatures."

Kelly Buck, Centrists.org,
Quoted in editorial, *Roanoke Times*, June 7, 2006

The recent string of congressional scandals suggests that the country may already be headed down this road. And, it is noteworthy that the representatives embroiled in recent scandals represent districts that have been considered safe for the incumbent's party.²³

Some people dismiss recent concerns about partisan gerrymandering by noting that our democracy has a long history of such actions. But it is important to note that modern technology—including advanced computers and more sophisticated databases—has made it much easier to draw districts in a partisan manner if one is intent on doing so.²⁴

Several political scientists have examined the popular notion that declining competition has been the result of partisan gerrymanders aimed at protecting the incumbents of both parties. However, some have found that redistricting is not the only reason for diminished competition and that redistricting receives a disproportionate level of blame for reduced competitiveness.²⁵

Concerned with the non-competitive nature of the mid-decade Texas partisan redistricting, the LWVUS filed an *amicus curiae* (“friend of the court”) brief in *LULAC v. Perry*, arguing that the redistricting was unconstitutional because it was carried out solely to achieve partisan advantage, i.e., to solidify the Republican majority in the U.S. House. The U.S. Supreme Court had indicated in the past that gerrymandering can be so egregious that it violates the Constitution’s Equal Protection Clause. But the Court has never defined a test to determine what constitutes such a violation, and it failed to do so in this decision.

F. Incumbency

The U.S. Supreme Court has ruled, in *Karcher v. Daggett*, that the goal of protecting incumbents can be a legitimate one in redistricting, and many states, including Virginia, have chosen to recognize it. In 2001, the GA resolutions emphasized that redistricting is an “... intensely political process best carried out by elected representatives of the people.”²⁶ The problem is that the legislators can draw the lines to ensure that they remain incumbents.

Two arguments can be made for recognizing incumbency as a redistricting criterion: the advantage of seniority and the benefits of experience. Seniority can translate into increased funding and advantageous decisions for a particular district. The benefit of an experienced representative can be important, given the complexity of issues facing legislative bodies. Experience may also diminish the reliance on lobbyists and strengthen the legislature as the branch of government that remains closest to the electorate.

Political polarization and partisan redistricting have resulted in districts that are more strongly Republican or Democrat. Therefore, fewer seats are competitive, which leads to fewer turnovers. This polarization, combined with the value of incumbency during a political campaign, has made challenges to the political status quo all the more difficult. Incumbency provides name recognition, subsidized constituent contact and media opportunities, but the ability of incumbents to raise campaign funds trumps all these advantages. In an era of high-cost campaigning, the incumbency advantage becomes a sizable obstacle to competition.²⁷

IX. Conclusion

The ideal redistricting process is yet to be determined. Several states have instituted a variety of approaches, none of which seems perfect. Some are better because they are more removed from political influence, but even those can result in plans that are contested in courts. The timing and frequency of the process are also important questions that need to be discussed and resolved.

Endnotes

- ¹ VanderHei, Jim, and Babington, Charles, “Technology Sharpens the Incumbents’ Edge; Redistricting Also Complicates Democrats’ Effort to Take Control of the House,” *The Washington Post*, June 7, 2006, p. A1.
- ² McLaughlin, Seth, “Political Middle Lost in Legislature with Redistricting,” *The Washington Times*, June 5, 2006.
- ³ *League of United Latin American Citizens v. Perry*, No. 05-204, June 28, 2006, www.supremecourtus.gov.
- ⁴ O’Connell, Renee, Weldon Cooper Center, email to R. Koman, Jan. 25, 2006.
- ⁵ “The Shape of Representative Democracy,” Report of the Redistricting Reform Conference, Airlie, VA, June 2005, p. 21.
- ⁶ Storey, Tim, “Redistricting Commissions and Alternatives to the Legislature Conducting Redistricting,” National Conference of State Legislatures, 2006, www.ncsl.org.
- ⁷ Lloyd-Jones, Jean, email to Therese Martin, Aug. 8, 2004.
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- ⁹ “Glossary of Terms,” <http://redistricting.state.md.us>; and “Beyond Party Lines: Principles for Redistricting Reform,” The Reform Institute, May 2005.
- ¹⁰ http://www.westmiller.com/fairvote2k/in_prop.htm#Principles.
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- ¹³ United States Election Project, George Mason University, www.elections.gmu.edu.
- ¹⁴ Spain, Mary R., “Process, Population and Law,” Drawing the Lines 2001, Redistricting in Virginia, December 2000, dlsgis.state.va.us.
- ¹⁵ dlsgis.state.va.us, “Redistricting Cases.”
- ¹⁶ www.fairvote.org.
- ¹⁷ Op. cit., “The Shape of Representative Democracy.”
- ¹⁸ Ibid., p. 28.
- ¹⁹ Ibid., pp. 28-30.
- ²⁰ Lane, Charles, “High Court Reviews Texas Redistricting,” *The Washington Post*, March 2, 2006, p. A8.
- ²¹ Op. cit., “The Shape of Representative Democracy,” p. 25.
- ²² Ibid, p. 25.
- ²³ Details on the investigations and members involved are available at www.CQPolitics.com.
- ²⁴ Op. cit., “The Shape of Representative Democracy,” p. 26.
- ²⁵ Abramowitz, Alan, Brad Alexander, and Matthew Gunning, “Incumbency, Redistricting, and the Decline of Competition in U.S. House Elections,” *Journal of Politics* 68(1): 75, 2006. Brunell, Thomas and Bernard Grofman, “Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism in the U.S. House of Representatives, 1962-2002,” 2005. Meetings of the American Political Science Association, Washington, DC, September 2005.
- ²⁶ VA House and Senate Committees on Privileges and Elections, Resolutions No.1, Sec. V, April 3, 2001.
- ²⁷ Abramowitz, Alan I., Brad Alexander, and Matthew Gunning, “Incumbency, Redistricting and the Decline of Competition in U.S. House Elections,” Jan. 2005, www.emergingdemocraticmajorityweblog.com/spsa/spsa.html.