

November 6, 2014

Dear Lieutenant Governor Bolling and Representative Boucher,

I write on behalf of Common Cause, a nonprofit, nonpartisan citizen's lobbying organization promoting open, honest, and accountable government. Thank you for the opportunity to offer written testimony to the Commission on Integrity and Public Confidence in State Government related to redistricting reform in Virginia.

The federal district court's recent rejection of Virginia's congressional map as an unlawful racial gerrymander is the most recent of many examples from across the United States demonstrating the inherent conflict of interest that exists when legislatures draw their own districts and congressional lines. This letter details a suggested solution to create an entity that will draw districts with extensive public input to prioritize the interests of Virginia communities and end the drawing of districts behind closed doors for political advantage.

Common Cause believes that an ideal entity to draw legislative districts would be independent from the legislature in both the selection of its members and throughout the line drawing process. However, we recognize that any reform your commission recommends must pass the Virginia General Assembly. In addition, the federal District Court decision striking down the state's congressional maps means that a redistricting entity must be created in time to meet the April 1, 2015 deadline for submitting a replacement map. Therefore, we offer the following recommendations to reform redistricting in Virginia.

I. Citizen Commission Selection

We recommend the creation of a Citizen Redistricting Commission ("Commission") of seven Virginians tasked with drawing legislative districts following a court decision requiring new maps and after each decennial census. Given the political context, we understand the need to have the following leaders of the Virginia General Assembly appoint one individual each to the Commission.

- Majority Leader of the Senate
- Minority Leader of the Senate
- Speaker of the House of Delegates
- Minority Leader of the House of Delegates

In order to maintain public confidence and ensure impartiality, we strongly recommend the three remaining participants on the Commission be appointed by one or more other nonpartisan entities. This could include the Supreme Court of Virginia, Auditor of Public Accounts, Division of Legislative Services, State Council of Higher Education for Virginia, or another appropriate entity you identify.

II. Qualifications for Participation

Finding qualified and knowledgeable individuals to serve on the Commission is essential to a process resulting in maps that inspire the public's confidence and provide fair representation for all Virginians. The following qualifications should apply to those who sit on the Commission.

- Registered Virginia voter.
- Relevant expertise, including experience using Geographic Information Systems (GIS) or management skills related to running a meeting and group consensus building.
- Demonstrated ability to be objective and impartial.
- Reflective of the state's demographics and diversity.

III. Disqualifications

Rules governing who may sit on the Commission should also protect against conflicts of interest.ⁱ Individuals whose objectivity can be reasonably called into question should be ineligible, including if they:

- Have been a candidate for office in the last 10 years;
- Worked for a political party or campaign in the last 10 years;
- Have been a registered lobbyist in Virginia in the last 10 years;
- Worked for the office of a legislator in the last 10 years;
- Contributed over a certain amount to a political campaign; or
- Work as staff or a consultant to an immediate family member of the governor, statewide office, or a legislator.

Restrictions should also prevent Commission members from personally benefitting from any lines the committee draws. A ban on holding public office, serving as a paid consultant to the redistricted body or one of its members, and becoming a lobbyist in Virginia for a certain period of time would help to achieve this objective.

IV. Criteria for Drawing Lines

Specific and prioritized criteria give clear guidelines for decision makers to draw lines to benefit the rights of citizens rather than specific elected officials or political parties.ⁱⁱ Common Cause recommends the following criteria and the order in which each should be prioritized:

1. Compliance with the **U.S. Constitution. Equal population** as nearly as practicable, except where deviation is required to comply with the federal Voting Rights Act.

2. Compliance with the federal **Voting Rights Act**.
3. **Contiguity**. A district is contiguous if all areas of a district are physically connected. While there will be some natural exceptions to this rule, such as islands that are separated by a body of water from the rest of the district, compliance with the spirit of this rule means more than just connection of two towns by a single lane of a road or of coastal areas only during low tide.
4. Keep **political and neighborhood boundaries as well as communities of interest** intact to the extent possible. One community of interest definition for consideration is the one used by California: “a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.” California also diminishes the opportunity to exploit communities of interest for partisan gain by stating that they “shall not include relationships with political parties, incumbents, or political candidates.”ⁱⁱⁱ
5. **Geographic compactness**. This should be prioritized in order to discourage the drawing of districts using odd shapes to pull distant communities together for the purposes of illegal gerrymandering. However, it should be prioritized after the other listed criteria because of the need to adhere to the federal Voting Rights Act and the possibility that other legitimate factors - ranging from rivers and natural borders, shapes of cities, and dispersal of communities of interest - may require unusually shaped districts.

In addition to the criteria above, the Commission should be expressly prohibited from considering the addresses of incumbents and from drawing lines to benefit or harm a candidate or party. Data the Commission uses to draw maps should exclude candidate addresses.

V. Transparency and Public Participation

Public participation in the process and transparency about decision making are essential elements to a redistricting process that inspires public confidence and results in fairer representation. Important elements include:

- A report in which the Commission explains the basis for the districts it drew.
- Extensive public notice and outreach prior to meetings.
- Public access to the same data and technology the Commission uses to draw districts.
- A ban on external communications outside of public hearings.
- Public meetings held before and after drafts of maps have been completed.



www.commoncause.org

Thank you for the opportunity to submit testimony. If we can be of further assistance, contact Common Cause National Redistricting Coordinator Dan Vicuna at (213) 623-1216 or dvicuna@commoncause.org.

Sincerely,

Kathay Feng
National Redistricting Director
Common Cause

ⁱ See California Government Code § 8252(a)(2) for statutory language on disqualifications:

"The State Auditor shall remove from the applicant pool individuals with conflicts of interest including:

(A) 10 years immediately preceding the date of application, neither the applicant, nor a member of his or her immediate family, may have done any of the following:

(i) Been appointed to, elected to, or have been a candidate for federal or state office.

(ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.

(iii) Served as an elected or appointed member of a political party central committee.

(iv) Been a registered federal, state, or local lobbyist. (v) Served as paid congressional, legislative, or Board of Equalization staff.

(v) Served as paid congressional, legislative, or State Board of Equalization staff.

(vi) Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor.

(B) Staff and consultants to, persons under a contract with, and any person with an immediate family relationship with the Governor, a Member of the Legislature, a member of Congress, or a member of the State Board of Equalization, are not eligible to serve as commission members. As used in this subdivision, a member of a person's "immediate family" is one

with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.”

ii See California Constitution Art. XXI § 2(d) for statutory language detailing criteria:

“(1) Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.

(6) To the extent practicable, and where this does not conflict with the criteria above, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts.

(e) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party...”

iii California Constitution Art. XXI § 2(d)(4).