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EDITORIAL

BIPARTISAN REDISTRICTING

*Senator R. Creigh Deeds**

The redistricting of legislative lines, whether for the houses of the General Assembly or Virginia's congressional delegation, is currently riddled with partisan politics.¹ It appears, however, that different political parties will control the two houses of the legislature during the next redistricting process for the first time in our Commonwealth's history.² Whether this is to be the case for the redistricting of 2011 will be decided by future events, but currently Democrats control the State Senate and Republicans have a majority of the House of the Delegates.³ The next Governor will also play a significant role in redistricting.⁴ With no one party in control, now more than ever, both parties can benefit from a move to a bipartisan or nonpartisan redistricting process. More importantly, though, the process must change for the sake of our democracy and the people.⁵

* Member, Virginia Senate since 2001, 25th District, Albemarle County (part), Alleghany County, Bath County, Buckingham County (Part), Nelson County, Rockbridge County (part), Buena Vista, Charlottesville, and Covington. B.A., 1980, Concord College, J.D., 1984, Wake Forest University School of Law. Prior to becoming a member of the Senate, Senator Deeds was a member of the Virginia House of Delegates from 1992 to 2001. He is currently the Democratic nominee for the 2009 Virginia gubernatorial election.

1. See Editorial, *The Unfairness Platform: Virginia Republicans Prefer to Obstruct Redistricting Reform*, WASH. POST, Feb. 2, 2009, at A18.

2. See Tim Craig & Anita Kumar, *Kaine Hails "Balance" in New Political Landscape*, WASH. POST, Nov. 8, 2007, at A1.

3. Tim Craig, *Democrats Strategize on Regaining House Control*, WASH. POST, Mar. 5, 2009, at LZ4; see Legislative Information System, 2009 Session: Members of the General Assembly, <http://leg1.state.va.us/091/mbr/MBR.HTM> (last visited Apr. 2, 2009).

4. See Editorial, *supra* note 1 (noting that redistricting is emerging as an issue in the gubernatorial race); cf. VA. GEN. ASSEMBLY, HOW BILLS BECOME LAWS, http://legis.state.va.us/1_cit_guide/how_bills.html (explaining that the Governor must approve bills before they become official Acts of Assembly).

5. VA. REDISTRICTING COAL., VIRGINIA NEEDS REDISTRICTING REFORM, <http://www.fixthelines.org> (last visited Apr. 2, 2009) (noting the need for a bipartisan solution that will provide fairness in redistricting).

In today's computer-driven world, it is possible to observe the numbers and partisan makeup of each election district with unmatched detail.⁶ Before beginning the redistricting process, both parties are able to know the political preferences of every precinct or ward and even have significant data on the individual household politics in any given jurisdiction.⁷ Districts can be—and historically are—drawn to benefit the incumbent majority party, the incumbent legislator, or the favored candidate of the incumbent party.⁸ In so doing, democracy is thwarted.⁹ As it stands, however, courts have repeatedly held that redistricting to favor one political party over another is perfectly legal.¹⁰

The result of such a system is that the party machinery of both Democrats and Republicans control the democracy, not the voters.¹¹ Incumbents, once elected, are beholden to the party apparatus that nominated them, not to the people who elected them.¹² Districts are drawn in such a way that the legislature is made up of extremely partisan politicians, driven by ideological bend rather than focused on solving problems and producing results.¹³ Legislators can do better.

The issues surrounding the redistricting process are not new to the Virginia legislature.¹⁴ In 2001, the redistricting process, under Republican control, separated Democratic lawmakers from their constituents;¹⁵ an identical separation no doubt occurred to Republican incumbents under the control of Democrats.¹⁶ As the saying commonly

6. See Micah Altman et al., *From Crayons to Computers: The Evolution of Computer Use in Redistricting*, 23 SOC. SCI. COMPUTER REV. 334, 340 (2005).

7. Cf. *id.*

8. See Stephen J. Farnsworth, *Drawing the Lines: How Politicians Select the Voters They Want*, VA. FREE, Mar. 22, 2009, <http://www.vafree.com/uploads/Farnsworth.pdf> (last visited Sept. 26, 2009).

9. See *id.*

10. See *Easley v. Cromartie*, 532 U.S. 234, 248 (2001); see also *Wilkins v. West*, 264 Va. 447, 476, 571 S.E.2d 100, 117 (2002) (referring to the “protection of incumbents” as a traditional redistricting principle).

11. See VA. CONSERVATION NETWORK, LEGISLATIVE PRIORITIES: CITIZEN INVOLVEMENT, BIPARTISAN REDISTRICTING, <http://www.vcnva.org/anx/index.cfm/1,279,0,0,html/Bipartisan-Redistricting> (last visited Apr. 2, 2009); VA. REDISTRICTING COAL., ABOUT REDISTRICTING: THE PROBLEM, <http://www.fixthelines.org/AboutRedistricting/%20TheProblem/tabid/565/Default.aspx> (last visited Apr. 2, 2009).

12. See VA. CONSERVATION NETWORK, *supra* note 11.

13. See *id.*

14. See S.B. 926, Va. Gen. Assembly (Reg. Sess. 2009) (as introduced Jan. 14, 2009); S.J. Res. 281, Va. Gen. Assembly (Reg. Sess. 2009) (as introduced Jan. 14, 2009); S.B. 38, Va. Gen. Assembly (Reg. Sess. 2008) (as introduced Jan. 9, 2008); S.J. Res. 352, Va. Gen. Assembly (Reg. Sess. 2007) (as introduced Jan. 10, 2007).

15. See Editorial, *Hampton Roads Misses Golden Gleam of Growth*, VIRGINIAN-PILOT (Norfolk), Dec. 26, 2001, at B8; Craig Timberg, *Democrats Analyze Tuesday's Virginia Losses: Party Wants to Emulate Warner Strategy*, WASH. POST, Nov. 10, 2001, at B7.

16. See Tyler Whitley, *Party Labeling Seen as Boost for GOP: Ballot Change Takes Effect on*

goes, however, two wrongs do not make a right. Simply put, partisan redistricting does not serve democracy well, regardless of the party in control of the process.

Various legislation proposals introduced in the General Assembly have borrowed features from both New Jersey and Iowa in an effort to put together a plan that will work for Virginia.¹⁷ The legislation focused on creating a bipartisan commission to oversee the redistricting process.¹⁸ Under one legislative proposal, the commission would operate in an extra-legislative process,¹⁹ while in an alternate version, the commission would offer recommendations to the legislature.²⁰ An amendment to the Virginia Constitution would establish the former, and the commission's plan would not be subject to the approval of the legislature.²¹ A change to the Virginia Code would establish the latter, and the commission's recommendation would be subject to amendment by and approval of the General Assembly.²² Both proposed commissions would be bound by criteria similar to those used in the Iowa model.²³ These criteria are simple: it prohibits the consideration of incumbency protection, the address of any incumbent or candidate, or political considerations of any kind.²⁴ In fact, the only demographic allowed to be considered in redistricting is population.²⁵ Virginia is a Voting Rights Act state, so the required consideration of other factors will certainly make the Virginia

Monday, RICH. TIMES-DISPATCH (Va.), Dec. 30, 2000, at B1.

17. *See generally* NAT'L CONFERENCE OF STATE LEGISLATURES, ELECTIONS, CAMPAIGNS, AND REDISTRICTING ISSUES, REDISTRICTING COMMISSIONS AND ALTERNATIVES TO THE LEGISLATURE CONDUCTING REDISTRICTING, http://www.ncsl.org/programs/legismgt/redistrict/com_alter.htm (last visited Apr. 2, 2009) (describing systems in New Jersey and Iowa).

18. *See* S.B. 926, Va. Gen. Assembly (Reg. Sess. 2009), ¶ 1, § 24.2-301.3 (as introduced Jan. 14, 2009); S.J. Res. 281, Va. Gen. Assembly (Reg. Sess. 2009) (as introduced Jan. 14, 2009); S.B. 38, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 24.2-301.3 (as amended Jan. 29, 2008 by the Senate Privileges and Elections Committee); S.J. Res. 5, Va. Gen. Assembly (Reg. Sess. 2008) (as introduced Jan. 9, 2008); S.J. Res. 352, Va. Gen. Assembly (Reg. Sess. 2007) (as introduced Jan. 10, 2007).

19. S.J. Res. 281, Va. Gen. Assembly (Reg. Sess. 2009) (as introduced Jan. 14, 2009).

20. S.B. 926, Va. Gen. Assembly (Reg. Sess. 2009), ¶ 1, § 24.2-301.4(I) (as introduced Jan. 14, 2009).

21. S.J. Res. 281, Va. Gen. Assembly (Reg. Sess. 2009) (as introduced Jan. 14, 2009).

22. S.B. 926, Va. Gen. Assembly (Reg. Sess. 2009), ¶ 1, § 24.2-301.4(H) to -301.4(I) (as introduced Jan. 14, 2009).

23. *See generally* Kelly Buck, *Iowa's Redistricting Process: An Example of the Right Way to Draw Legislative Districts*, CENTRISTS.ORG, July 22, 2004, http://www.centrists.org/pages/2004/07/07_buck_trust.html (last visited Sept. 26, 2009) (describing the history and structure of the Iowa model).

24. *Id.* (The Iowa redistricting process "specifically forbids the use of political affiliation, previous election results, the addresses of incumbents, or any demographic information other than population in creating the redistricting proposals.").

25. *Id.* (noting the four criteria considered by the Iowa legislature during the redistricting process: 1) population equality, 2) contiguity, 3) unity of counties and cities, and 4) compactness).

model work differently,²⁶ but Virginia's long-term political health will be much improved if the legislature reforms the way district lines are drawn.

In the 2009 regular session of the General Assembly, legislation to create a commission that would make recommendations to the legislature passed the Senate unanimously but was defeated in a House of Delegates' subcommittee along party lines in a four-to-two vote.²⁷ The Senate's passage of the bill showed that this is not a partisan issue;²⁸ redistricting reform is about what is best for Virginia.

The calculus of government can change with this legislation. Reform can produce a legislature focused on solving Virginia's problems, allowing for further progress. Such a legislature would not be hamstrung on issues critical to the future of Virginia, such as reforming the vastly underfunded and underperforming state transportation system—an issue that has divided the General Assembly for several gubernatorial administrations.²⁹ Redistricting reform will produce a more moderate General Assembly that reflects the people of Virginia more accurately. The legislature can reform the process and, in doing so, can preserve the best of self-government in the Commonwealth of Virginia.

26. See ANITA S. EARLS ET AL., RENEWTHEVRA.ORG, VOTING RIGHTS IN VIRGINIA 1982–2006 3, 10–12 (2006), available at <http://www.civilrights.org/voting-rights/vra/states/VirginiaVRA.pdf>.

27. See Legislative Information System, Bill Tracking: SB 926, <http://leg1.state.va.us/cgi-bin/lgp504.exe?ses=09&typ=bil&val=sb926> (last visited Apr. 2, 2009).

28. See *id.*

29. Cf. Tim Craig, *Virginia Assembly Wraps: Kaine Cuts Losses*, WASH. POST, Mar. 1, 2009, at C1.