The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The columns are white with detailed capitals and fluted shafts. The entire slide is framed by a dark brown border.

## *2010 Voter Registrars Association of Virginia*

# REDISTRICTING IN 2011

- Mary Spain, Senior Attorney, Division of Legislative Services
- Jack Austin, Manager, Special Projects, Division of Legislative Services

August 2, 2010  
Staunton, VA

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# REDISTRICTING IN 2011 LEGAL REQUIREMENTS AND BACKGROUND

Mary Spain

Senior Attorney, Division of Legislative Services

# WHY REDISTRRICT IN 2011

## Federal, State, and Local Law Requirements

### ▪ Federal Constitutional Law – One Person, One Vote

➤ One Person, One Vote applies to local districts. *Avery v. Midland County*, 390 U.S. 474 (1968). The equal population requirement.

### ▪ Federal Census 2010 – New Population Numbers

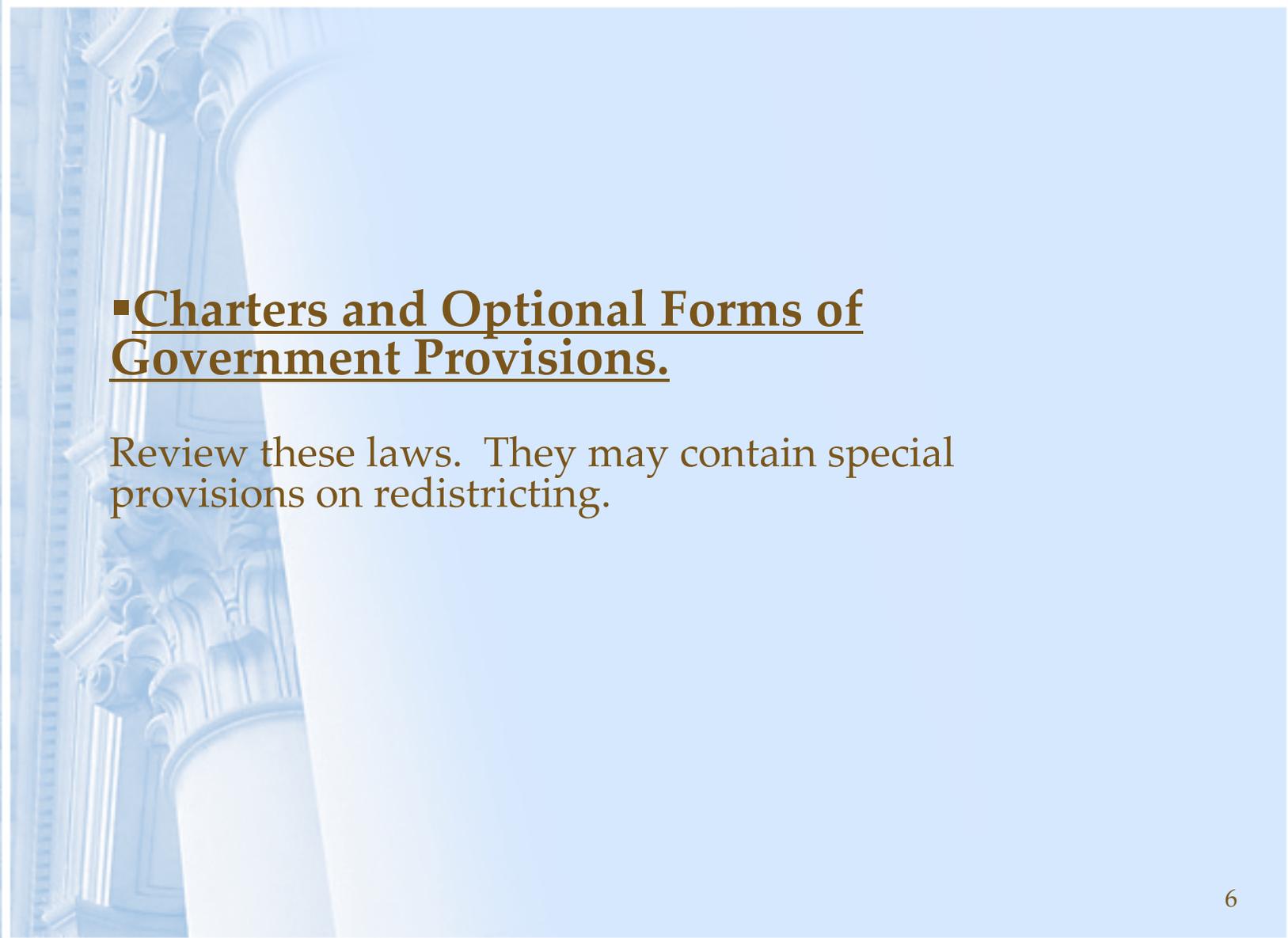
▪ **Virginia Constitution, Article VII, Section 5.**

- Requires counties, cities, and towns that elect governing body members from districts to reapportion or redistrict after each census in 1971 and each tenth year thereafter – in 2011.
- Districts must be “composed of compact and contiguous territory” and provide for “representation in proportion to the population of the district.”

▪ **Code of Virginia, §§ 24.2-304.1 through 24.2-313.**

Review all of these Code sections. They restate the constitutional requirements and other pertinent provisions. For example:

- The 2010 Census data must be used to redistrict.
- The redistricting must be enacted by ordinance 60 days before the next general election for the governing body. Proper notice is required.
- The goal is to be ready for the next regular election for the office. The 2011 November election in all counties.
- Members in office complete their terms.
- Special provisions may apply to prison populations.
- Precincts must be adjusted so that the precincts are wholly contained in the governing body districts.
- There are precinct size and accessibility requirements.

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▪ **Charters and Optional Forms of Government Provisions.**

Review these laws. They may contain special provisions on redistricting.

## General Background Information

- Guide to Local Redistricting for 2001  
<http://dlsgis.state.va.us/Ref/redist01.pdf>
- Guide to Local Redistricting for 2011  
Will be available on the DLS website in 2010.  
<http://dls.state.va.us/publications.htm>
- National Conference of State Legislatures –  
Redistricting Law 2010  
Available at \$95.00 per copy.  
<http://www.ncsl.org/?tabid=19225>

## Background continued

- Legislative Services – Redistricting Virginia 2001

<http://dlsgis.state.va.us/>

- Legislative Services – There will be a new website later in 2010 for the 2011 redistricting.

<http://dls.state.va.us/>

- Other sources – SBE, planning districts, VACO, VML, local government attorneys.

## Legal Requirements -- Equal Population

- One Person, One Vote. Balanced Population. Exact equality is not required at the local level.
- Find the ideal population per district. Total population divided by number of districts. 10,000 total population divided by 5 districts equals 2,000 population per ideal district.
- Case law generally allows some deviation – roughly 5 % plus or minus. A range from 1,900 to 2,100 per district. A smaller deviation range is prudent.
- Use the 2010 Census data for total population.

## Equal Population continued

- The Guide to Local Redistricting for 2001 gives more detail on calculating population deviations and the calculations for multimember districts and combinations of at large and single or multimember district.
- As a general rule, localities and their governing bodies should draw districts with the goal of substantial population equality and a deviation range of less than +5% to -5%.

## Equal Population continued

- In one case since the 2000 Census, a federal district court ruled that an Illinois county redistricting plan with a 9.3% overall deviation range was unconstitutional because plaintiffs showed that the plan was drawn with no effort to draw “districts. . .as nearly of equal population as practicable.” *Hulme v. Madison County*, 188 F. Supp. 2d 1041 (S.C. Ill, 2001).
- If there are a number of more balanced plans offered by interested parties, the locality may need to have justifications for deviations even if they fall within the 10% overall range.
- See, also, *Larios v. Cox*, 300 F.Supp.2d 1320, aff’d 542 U.S. 947 (2004). Federal district court struck down Georgia state legislative plans with less than 10% deviation range.

## The Voting Rights Act

- Section 2 – All states and localities must comply with this Section.
  - It prohibits the enactment of a voting procedure or redistricting plan that denies or abridges the right to vote on account of race, color, or status as a member of language minority group.
  - Plaintiffs must sue and prove their case based on the “totality of circumstances.” The three-prong Gingles test applies.
  - Influence districts. *Bartlett v. Strickland*, No. 07-689 (U.S. Mar. 9, 2009).

## The Voting Rights Act continued

- Section 5 – This section applies to certain states and localities and requires that election changes, including redistricting plans be “precleared” before being implemented.
- The test under Section 5 is called the “non-retrogression” standard. A protected class should not lose voting strength under a new plan.
- A number of Virginia localities have “bailed out” from Section 5 coverage: the cities of Fairfax, Harrisonburg, Salem, and Winchester; the counties of Amherst, Augusta, Botetourt, Essex, Frederick, Greene, Middlesex, Page, Pulaski, Roanoke, Rockingham, Shenandoah, Warren, and Washington.

## The Voting Rights Act continued

- The preclearance requirement is particularly important for counties that have regularly scheduled elections for the governing body on November 8, 2011, and for the General Assembly. Preclearance takes time – usually 60 days. The tight timetable for redistricting must be kept in mind at all stages of the process. The period at issue runs from receipt of the 2010 Census data to the November 2011 filing and election schedule.
- Most general registrars and local government attorneys are familiar with the preclearance process and the documentation required for a submission.
- See, 28 C.F.R. Part 51, Section 5 -- DOJ Guidelines.

## The Voting Rights Act continued

- The following describes parts of the submission process based on several provisions in 28 CFR Part 51.

**Note:** It is important that local counsel and officials review the Department of Justice regulations in full before redistricting begins.

**Required contents of submission.** Contents range from basic information (a copy of the ordinance) to explanatory information (impact of change on minority group members) to background information (preclearance of prior districts and any pending litigation).

For redistricting ordinances, there are special requirements for district maps and information on total and voting age populations before and after the submitted redistricting. One approach is to prepare the submission with the regulations at hand and to address each item listed in the regulations.

## Compactness and Contiguity

▪ Compactness. The Virginia Supreme Court in *Jamerson v. Womack*, 244 Va.506 (1992) interpreted the constitutional compactness standard to allow broad discretion to General Assembly.

The Court recognized that the legislature needed “wide discretion [in making] its value judgement of the relative degree of compactness required when reconciling the multiple concerns of apportionment.”

## Compactness and Contiguity continued

- Contiguity. A district should be one block of territory and not two discrete pieces of geography.

The Virginia courts in the *Jamerson* litigation also addressed the contiguity requirement. The lower court held that the fact that two parts of Senate District 18 were linked solely by water (Buggs Island Lake) did not violate the constitutional contiguity requirement.



## Other Legal Issues or Factors

- Communities of interest. Neighborhoods.
- Preservation of the core of old districts.
- Incumbency.
- Political data.
- Precinct considerations.
- Staggered terms.

## The 2011 Redistricting Crunch

- The General Assembly will redraw House of Delegates and Senate districts between February and June. It will use the precincts shown on the census maps – the precincts frozen February 1, 2009. It may split these precincts when drawing lines. There will be no time to check on new local district and precinct lines.
- Counties and will redraw their districts and their precincts between February and June. They will revise precincts to match their governing body districts. There will be little time to check on new legislative district lines.

## The 2011 Redistricting Crunch continued

- Both the General Assembly and the counties will be trying to complete redistricting (and the Section 5 preclearance process) in time for candidate filings and nominations before the November 2011 election.
- It is inevitable that the new General Assembly legislative lines will split the new county precincts.
- Legislation was offered in the 2010 Session (SB 463) to delay the June 14, 2011, primary but did not pass. Watch for legislation on this issue in the 2011 Session.

## The 2011 Redistricting Crunch continued

- Counties should make every possible effort to review legislative district lines as they become public to check on split precincts.
- Cities and towns should wait until later in 2011 to review legislative district lines as they redraw districts and precincts. They may be able to minimize precinct splits in 2011 and 2012.
- Efforts to eliminate precinct splits will follow in 2012.
- A possible timetable for 2011: Mid-February receive 2010 Census data; March and April develop plans and hold hearings; May prepare submissions; August or September primaries; November election.

## The 2011 Redistricting Crunch continued

- Preparations now for redistricting:
  - Identify local participants: gis personnel, local attorney, governing body members, school board members, public and minority interest groups.
  - Budget considerations.
  - Review of submission requirements.
  - Notice of hearings, precinct and district changes.

# THE 2010 CENSUS AND REDISTRICTING

Jack Austin

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Division of Legislative Services

Virginia Liaison, Census Redistricting Data  
Program

## THE 2010 CENSUS SCHEDULE

- **April 1, 2010**

- Official Census Day

- **December 31, 2010**

- Census Bureau reports official population of each state to President for apportioning 435 seats in House of Representatives

## THE 2010 CENSUS SCHEDULE, continued

### ▪ January 2011

➤ States informed of number of congressional seats for next decade - Virginia most likely to stay at 11

### ▪ April 1, 2011

➤ Deadline for Census Bureau to report detailed population figures (“PL 94-171 data”) needed to redistrict congressional, state legislative, and local election districts (county boards and municipal councils)

## CENSUS REDISTRICTING DATA PROGRAM

### ▪ PL 94-171 (1975)

- Census Bureau must provide each state with small area data for redistricting
- Examples: census blocks, voting precincts
- Census Bureau must work with states to identify and provide geographical boundaries for these small areas
- Five Steps or “Phases” in the Redistricting Data Program
- Only first three relevant to actual redistricting

## PHASE 1 2005-07: STATE LEGISLATIVE DISTRICT PROJECT

- Virginia electronically provided Census Bureau Senate and House of Delegates district boundaries
- [Congressional lines were provided in 2001 and updated every two years since]
- Lines are the official boundary lines in case of conflict with your local precinct maps and ordinances
- 2010 census will report population data for each district

## PHASE 2 2008-10: VOTING DISTRICT/BLOCK BOUNDARY SUGGESTION PROJECT

- Virginia provides current (February 1, 2009) precinct boundaries to Census Bureau
- Legislative Services recently completed this step

## PHASE 2 2008-10: VOTING DISTRICT/BLOCK BOUNDARY SUGGESTION PROJECT, continued

- General Assembly will use the precincts as they appear on Census maps when it redraws lines in 2011
- All but a few are “true” precincts
- True Precinct = boundary lines match local ordinances, maps, and equivalency files

## PHASE 3 2011: CENSUS DATA DELIVERY

- No later than April 1, 2011 for detailed population data
- Virginia data released March 8 in 2001
- As of now, Census Bureau indicates Virginia data will be released earlier this time – early February 2011
- Geographic products (maps) available before population data – probably at some time during October of 2010

## MAP AND DATA SOURCES

- Census expects users to download maps and data from its internet site/DVD versions likely available shortly thereafter
- “Maps” are digital files and raw population data will be voluminous (e.g. over 250 fields of race by age groups)

## MAP AND DATA SOURCES, continued

- Fast – Download map and data files from Census Bureau web site
- Not as fast – order DVD from Census Bureau
- Possible Alternatives
  - Local Planning District Commission might assist
  - Outside Redistricting Consultant may provide
  - General Assembly Redistricting Web Site
    - County and precinct-level totals
    - No block-level data – link to Census Bureau site
    - No Census maps – link to Census Bureau site

# DLS REDISTRICTING WEB SITE

(<http://dlsgis.state.va.us/>)

Virginia **DIVISION of LEGISLATIVE SERVICES**

- Homepage
- Census 2000 Data
- Redistricting Data
- Counties/Cities
- Precincts
- Congressional House
- Senate
- News
- Hearings
- Criteria
- Publications
- About the Data
- DOJ Submission
- Redistricting Cases
- District Boundary Descriptions
- District Maps
- Email
- What is GIS?

## Redistricting Virginia



Welcome to the Virginia Division of Legislative Services (DLS) redistricting homepage. This web site uses various [data formats](#) to provide Virginia legislators and the public with information on legislative districts and plans that were proposed during the 2001 redistricting session.

This site is best viewed with a computer monitor set to at least 1024x768 resolution and supporting at least 65,000 colors.

You are visitor number

2 3 3 1 4 6

## TYPES OF CENSUS GEOGRAPHY

- Two “threads” – census geography and political geography
- Census geography is the system used to collect and aggregate census data for general purposes
- Census geography and data are used by planners, businesses, etc
- Political geography is the system used to report redistricting data
- Both start with the smallest census unit – the block

## CENSUS GEOGRAPHY

### ▪ **Census Block**

- Smallest level of census geography for which population reported
- Usually bounded by physical features, although non-visible political geography lines sometimes may be included
- Can range from 0 population to a thousand or more
- About 150,000 census blocks in Virginia for 2000

## CENSUS GEOGRAPHY, continued

- **Census Block Group**

- Aggregation of a number of census blocks

- **Census Tract**

- Aggregation of several census block groups
- Average population included has been around 4,000
- Most population, housing, economic and other data and estimates are reported by tract between censuses

- **County or City**

## POLITICAL GEOGRAPHY

- **Census Block**

- **Voting District(VTD)**

- Census terminology for voter precinct
- Precinct lines cannot split census blocks

- **Minor Civil Division (MCD)**

- Census terminology for county election or magisterial districts, city districts or wards
- Locality provides MCD lines through Census Bureau's Boundary and Annexation Survey (BAS)

## DETAILED POPULATION DATA

- Total Population

- Includes every individual, not citizens only
- Generally, counted where located on April 1, 2010

- Total Population 18 and Over

- Often referred to as Voting Age Population (VAP)

## DETAILED POPULATION DATA, continued

- Census Bureau counts an individual by the place of “usual residence”
- “Usual residence” is defined as the place where the individual lives and sleeps “most of the time”
- Individuals in group quarters/institutional settings generally counted as resident of those quarters, e.g., college students, inmates in correctional facilities, residents of nursing homes
- Special rules for military

## DETAILED RACIAL/ETHNIC DATA

### ▪ Race

- Census questionnaire will offer six broad categories
  - White
  - Black
  - American Indian-Alaska Native (Tribe can be identified)
  - Asian (several specific choices)
  - Pacific Islander (several specific choices)
  - Other Race
  
- Responder can check any or all of them as applicable

## DETAILED RACIAL/ETHNIC DATA, continued

### ▪ Hispanic or Latino

- Census will ask respondents whether they are Hispanic, Latino, or Spanish origin (several options)
- PL 94-171 data will break the non-Hispanic population by the several race categories
- Hispanic by race can then be calculated by user

## DETAILED RACIAL/ETHNIC DATA, continued

### ▪ Result

- 63 race categories or fields in PL 94-171 data
- Produced for total population and for population age 18 and over = 126
- Repeated for non-Hispanic or Latino, total and voting age population = 252

## DETAILED RACIAL/ETHNIC DATA, continued

### ▪ Managing the Data

- Need to collapse categories for redistricting
- Federal OMB issued guidelines in 2000 (OMB Bulletin No. 00-02) that are still in effect
- General Assembly basically followed these guidelines
  - 7 race classifications
  - 4 Hispanic categories
- Anticipate similar or identical arrangement for 2011

# UNDERSTAND PRECINCTS AND REDISTRICTING PROCESS

## ▪ State Level Redistricting

- Census (PL 94-171) precincts – precincts frozen in 2009 – will be the official version
  - References in redistricting bills or Code of Virginia
  - Lines or boundaries of precincts
- Local version of precincts should match the census version – see “True Precincts” earlier
- Check when the time comes – know the actual lines the General Assembly used

## UNDERSTAND PRECINCTS AND REDISTRICTING PROCESS, continued

### ▪ Timing Problems

- General Assembly and localities redistricting at same time
- General Assembly using 2009 frozen precincts, localities changing them at same time
- Redistricting data cannot be changed to reflect local 2011 precinct changes
- Alert your delegation –may be able to take new precincts into account if locality is being split

## UNDERSTAND PRECINCTS AND REDISTRICTING PROCESS, continued

### ▪ Aftermath – Split Precincts

#### ➤ The General Assembly

- Intentionally split one of your precincts
  - Unintentionally split one of your new or revised precincts
- #### ➤ There was a “disconnect” somewhere – e.g., you split a census block – leaving precinct “fragments”

## UNDERSTAND PRECINCTS AND REDISTRICTING PROCESS, conclusion

### ▪ Solutions?

- You likely will have to administer split precinct elections for primary and general election in 2011
- In the past, General Assembly has enacted “technical correction” bills in following sessions to correct as many split precinct problems as it can