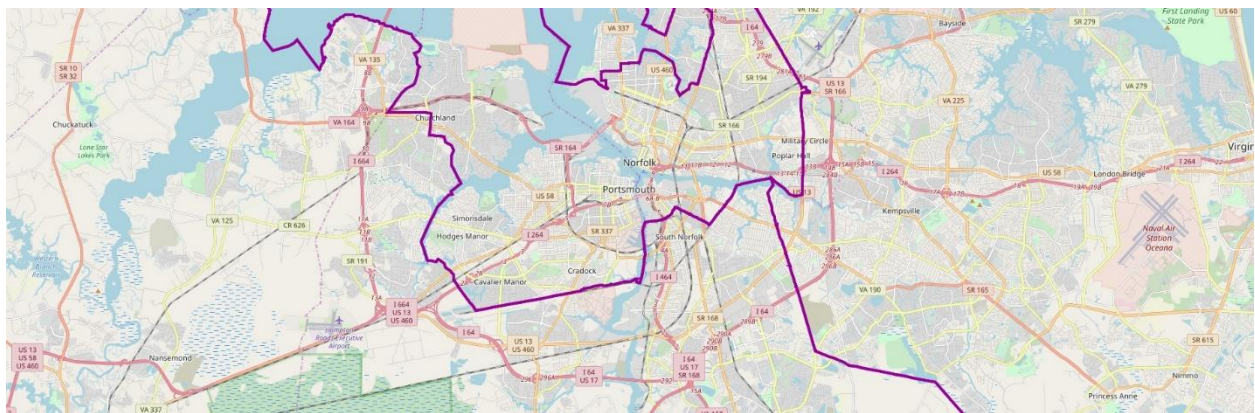


# Guide to Local Redistricting for 2021





# Guide to Local Redistricting for 2021

## **A Few Caveats About This Guide**

This Guide and the information contained in it are not legal advice. The Guide is intended to be informative and provide an overview of the law and the process of redistricting to serve as a starting point for those undertaking redistricting at the local level.

This Guide and its description of the law and schedule for redistricting are current as of the date of publication. However, the law and schedule are always changing in response to new developments. Each locality must pay close attention to developments at the 2021 Regular Session, and any special sessions, of the General Assembly, on the national scene concerning the 2020 census, and in case law.



Published by the Division of Legislative Services  
An agency of the General Assembly of Virginia

© 2020 by the Division of Legislative Services

Amigo R. Wade, *Acting Director*  
Meg Lamb, *Senior Attorney*  
Brooks Braun, *Attorney*  
Lilli Hausenfluck, *Chief Editor*  
Sandy Adkins, *Editor*  
Mark Newton, *Editor*

Publication date: November 3, 2020

For information, please contact:  
Division of Legislative Services  
900 E. Main Street  
Richmond, Virginia 23219  
(804) 698-1800

This publication is available online at  
[dls.virginia.gov/pubs\\_redistricting.html](https://dls.virginia.gov/pubs_redistricting.html)

*For Jack Austin, my mentor and friend.  
He would want you to know that the precincts listed  
in the district descriptions in the Code of Virginia are just a snapshot in time.  
- M.L.*





# Guide to Local Redistricting for 2021

---

## Table of Contents

---

1. Introduction to Redistricting .....	1
1.1. What Is Redistricting?	
1.2. Basic Principles of Redistricting	
1.3. Introduction to the Guide to Local Redistricting for 2021	
2. Local Election Districts.....	5
2.1. Introduction	
2.2. Code of Virginia Requirements for Local Redistricting	
2.3. Elected School Boards	
3. Precincts and Polling Places .....	9
3.1. Introduction	
3.2. Code of Virginia Requirements for Precincts and Polling Places	
3.3. Split Precincts	
3.4. Precinct Boundaries and the Census Bureau’s Voting District Project	
3.5. Polling Places	
4. The 2020 Census.....	13
4.1. Introduction	
4.2. Population Data	
4.3. Census Geography and Maps	
4.4. P.L. 94-171 Data Delivery Delay: Let’s Panic!	
5. Legal Standards Applicable to Local Redistricting .....	19
5.1. Introduction	
5.2. Equal Population	
5.3. Contiguity and Compactness	
5.4. Race and Redistricting	
5.4.1. Equal Protection Clause and Racial Gerrymandering	
5.4.2. Section	
2 of the Voting Rights Act and Minority Vote Dilution	
5.5. Traditional and Emerging Districting Principles	
5.6. Balancing Competing Legal Interests	
6. After Redistricting .....	29
6.1. Preparing for Elections	
6.2. Voting Rights Act Section 5 Preclearance No Longer Required	

Appendix A: Relevant Constitutional Provision..... 31  
    Constitution of Virginia

Appendix B: Relevant Code of Virginia Sections ..... 33  
    Title 2.2. Administration of Government.  
    Title 15.2. Counties, Cities and Towns.  
    Title 22.1. Education.  
    Title 24.2. Elections.  
    Title 30. General Assembly.





# Guide to Local Redistricting for 2021

---

## 1. Introduction to Redistricting

---

### 1.1. What Is Redistricting?

Redistricting is the process of redrawing the boundaries of districts that elect representatives who serve specific geographic areas. Redistricting occurs every 10 years following the United States decennial census and is the responsibility of state and local governments. It is governed by federal and state constitutional and statutory laws.

### 1.2. Basic Principles of Redistricting

While the laws governing redistricting are vast, complex, and ever evolving, here are a few basic principles that guide the process:

***Redistricting must be done every 10 years in the year ending in one.*** Prior to the 1960s, many states did not redraw their election district boundaries on a regular basis despite the occurrence of shifts in population, which often led to districts with wide variations in population numbers. Due to a series of rulings by the U.S. Supreme Court in this matter, states must redistrict every 10 years following the United States decennial census.

***Article VII, Section 5*** of the Constitution of Virginia specifically requires any locality that conducts elections by district to change its district boundaries every 10 years in the year ending in one.

***Districts must be drawn using census data.*** The United States decennial census is the primary data source on population, age, and race used in redistricting. While there is no federal requirement that census data be used for redistricting, § ***24.2-304.1*** of the Code of Virginia requires local governments to use the most recent decennial population figures for such county, city, or town for the purposes of redistricting and reapportioning representation.

During the 2011 cycle, this Code section required the use of those “figures [that were] identical to those from the actual enumeration conducted by the United States Census Bureau (the Census Bureau) for the apportionment of representatives in the United States House of Representatives.” However, the 2020 Regular Session of the General Assembly amended this requirement so that in the 2021 redistricting cycle the data to be used will be the census data as adjusted by the Division of Legislative Services to reflect the reallocation of prison populations. See **Section 4.2** for more about this reallocation process.

***Districts must be equal in population.*** The same U.S. Supreme Court cases that require districts be redrawn every 10 years also require those districts to be equal in population. This is the “one-person, one-vote” principle. For congressional districts, this means that the population of one congressional district must be essentially equal to another. For other districts, the standard is not as strict, instead requiring “substantially” equal populations in like districts. The Constitution of Virginia requires local election districts to use the substantially equal population standard.



***Districts cannot be drawn to discriminate based on race.*** One of the most complicated and, as a result, frequently litigated areas of redistricting law relates to race-based redistricting. See **Section 5.4** for more detail on this issue. Generally, though, the Equal Protection Clause of the ***Fourteenth Amendment*** to the Constitution of the United States has been interpreted as prohibiting districts from being drawn to segregate citizens into districts based on race. This is racial gerrymandering. In addition, the Voting Rights Act of 1965 (P.L. 89-110), as amended, prohibits districts from being drawn in such a way that the result is a denial or abridgement of the right to vote on account of race, color, or status as a member of a language minority group.

A proposed amendment to the Constitution of Virginia will be submitted to the voters at the November 2020 general election and, if approved, ***Article II, Section 6*** will include a requirement for racial and ethnic fairness:

Every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness, including the Equal Protection Clause of the ***Fourteenth Amendment*** to the Constitution of the United States and provisions of the Voting Rights Act of 1965, as amended, and judicial decisions interpreting such laws. Districts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.

This addition to the Constitution of Virginia, if approved at the November 2020 general election, will become effective January 1, 2021.

***Districts must be contiguous and compact.*** ***Article VII, Section 5*** of the Constitution of Virginia requires local election districts to “be composed of contiguous and compact territory.”

### 1.3. Introduction to the Guide to Local Redistricting for 2021

For the four previous redistricting cycles, the Division of Legislative Services has published a Guide to Local Redistricting like this to assist local governing bodies in understanding and preparing for the redistricting process.

While every possible issue and question cannot be predicted or addressed, this Guide provides a thorough introduction to the fundamental aspects and foundational principles of redistricting to equip the localities of Virginia as they begin the redistricting process.

The Guide to Local Redistricting for 2021 is organized into the following sections:

- Section 1. Introduction to Redistricting
- Section 2. Local Election Districts
- Section 3. Precincts and Polling Places
- Section 4. The 2020 Census
- Section 5. Legal Standards Applicable to Local Redistricting
- Section 6. After Redistricting



Additionally, Appendices A and B set out the relevant constitutional and statutory provisions:

- Appendix A. Relevant Constitutional Provision
- Appendix B. Relevant Code of Virginia Sections

### **A Few Caveats About This Guide**

This Guide and the information contained in it are not legal advice. The Guide is intended to be informative and provide an overview of the law and the process of redistricting to serve as a starting point for those undertaking redistricting at the local level.

This Guide and its description of the law and schedule for redistricting are current as of the date of publication. However, the law and schedule are always changing in response to new developments. Each locality must pay close attention to developments at the 2021 Regular Session, and any special sessions, of the General Assembly, on the national scene concerning the 2020 census, and in case law.







# Guide to Local Redistricting for 2021

---

## 2. Local Election Districts

---

### 2.1. Introduction

The Constitution of Virginia requires popular elections for the members of a locality’s governing body. How these elections happen—at large or by district—is left to the governing bodies, but if the members are elected by district, the Constitution of Virginia requires:

1. That a county, city, or town must redistrict in 2021 if it elects any members of its governing body from districts;
2. That the districts must be drawn to comply with the one-person, one-vote standard;
3. That the districts must be contiguous and compact; and
4. That any citizen of a locality can go to court to compel the governing body to redraw its district boundaries if the governing body fails to do so.

For the constitutional language, see *Article VII, Section 5* as set out in full in **Appendix A**.

### 2.2. Code of Virginia Requirements for Local Redistricting

Just as the General Assembly is responsible for the reapportionment and redistricting of congressional and state legislative districts, local governing bodies are responsible for the local election districts. While *Article VII, Section 5* of the Constitution of Virginia sets forth the basic principles of this responsibility, the Code of Virginia expands on it with additional requirements and necessary details for the reapportionment and redistricting of local election districts. All local governing bodies undertaking this important endeavor should understand the following key provisions:

***Reapportionment and redistricting is required every 10 years for certain localities.***

Subsection A of § *24.2-304.1* authorizes local governing bodies to provide by ordinance for single-member districts, multi-member districts, at-large districts, or any combination of such districts. Any locality that does not elect its governing body entirely at large is subject to the provisions of subsection B of § *24.2-304.1*, which repeats the constitutional requirement that any county, city, or town that elects members of its governing body from districts must reapportion and redraw the election district boundaries every 10 years in the year ending in one.

***Local election districts must comply with certain criteria.*** Subsection B of § *24.2-304.1* repeats the constitutional requirement that local election districts be composed of contiguous and compact territory and give, “as nearly as is practicable, representation in proportion to the population of the district or ward.” This is the equal population standard. Section *24.2-305* restates the contiguous and compact requirement and further provides that each election district must have clearly defined and clearly observable boundaries. See the defined term, “clearly observable boundary,” in § *24.2-305* as set out in full in **Appendix B**. For further discussion regarding equal population, contiguity, and compactness, see **Section 5**.



***The most recent decennial population figures for each locality, as adjusted by the Division of Legislative Services, are to be used.*** Subsection C of § [24.2-304.1](#) requires the use of adjusted census data for reapportionment and redistricting purposes. This is a new requirement, the result of legislation enacted by the 2020 Regular Session of the General Assembly. Beginning with the 2021 redistricting, any person incarcerated in a federal, state, or local correctional facility within the Commonwealth is to be counted as a resident of the locality where his address at the time of incarceration is located. Because the Census Bureau counts such persons at the facilities in which they are incarcerated and reports the population as such, this requires the population data received from the census to be adjusted. By law, the Division of Legislative Services is tasked with adjusting this data and making it available within 30 days of receipt of the census data.

***Local decennial redistricting measures take effect immediately but do not cut short the term of any governing body member.*** Subsection B of § [24.2-311](#) provides that ordinances adopted by local governing bodies to accomplish the decennial redistricting required by [Article VII, Section 5](#) of the Constitution of Virginia take effect immediately. It further provides that governing body members in office on the effective date of a decennial redistricting measure are to complete their terms of office. As provided by § [24.2-304.6](#), local officials, including members of school boards or planning commissions, complete their terms of office regardless of loss of residency in their districts due to the redistricting measure.

***Each locality is responsible for determining its obligations from multiple sources.*** It's important for each locality to review the sections of the Code of Virginia set out in full in [Appendix B](#), as there are many requirements and provisions in addition to those addressed in this Guide.

For example, § [24.2-304.3](#) requires a copy of the ordinance adopting the redistricting plan to be recorded in the official minutes of the governing body, along with a description of the boundaries and a map showing the boundaries of the districts. A requirement new for the 2021 redistricting is that a Geographic Information System (GIS) map that shows the district boundaries must be sent to the local elected board, the Secretary of the Commonwealth, the Department of Elections, and the Division of Legislative Services.

Additionally, each city and town should review its charter in order to determine whether it contains provisions related to redistricting. Any county with a charter or an optional form of government should review its charter or the statutes applicable to its form of government for possible special provisions applicable to redistricting.

### 2.3. Elected School Boards

For the localities that have made the switch from appointed to elected school boards, the dates of elections, terms of office, and election districts for school board members will generally mirror those for members of the governing body. As such, most of the counties and cities that elect their governing bodies from districts will be redrawing those district lines for both their governing bodies and their school boards. Section [22.1-57.3](#) provides in pertinent part:

Elections of school board members in a county, city, or town shall be held to coincide with the elections for members of the governing body of the county, city, or town at the regular general election in November or the regular general election in May, as the case may be . . .



. . . The terms of the members of the elected school board for any county, city, or town shall be the same as the terms of the members of the governing body for the county, city, or town. In any locality in which both the school board and the governing body are elected from election districts, as opposed to being elected wholly on an at-large basis, the elections of the school board member and governing body member from each specific district shall be held simultaneously except as otherwise provided . . .

. . . In any case in which school board members are elected from election districts, as opposed to being elected from the county, city, or town at large, the election districts for the school board shall be coterminous with the election districts for the county, city, or town governing body, except as may be specifically provided for the election of school board members in a county, city, or town in which the governing body is elected at large.

Each locality is responsible for determining whether any applicable charter provision, special law, or optional form of government provision applies to the redrawing of elected school board districts during this decennial process of redistricting.









# Guide to Local Redistricting for 2021

---

## 3. Precincts and Polling Places

---

### 3.1. Introduction

While the establishment of election districts is provided for specifically in the Constitution of Virginia, the establishment of precincts is not. However, precincts do show up in the Constitution in a significant way: the qualification of voters.

*Article II, Section 1* of the Constitution of Virginia sets forth the qualifications of voters. One such qualification is to fulfill the residence requirements set forth in that section, which are residency in the Commonwealth and the precinct where one votes. In this way, precincts are a foundational element of democracy.

So what is a precinct? The Code of Virginia defines a “precinct” to be the territory designated by the governing body of a county, city, or town to be served by one polling place.<sup>1</sup> A “polling place” is defined as the structure that contains the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.<sup>2</sup>

Precincts are subject to a number of statutory provisions, present a variety of issues in elections administration, and are a key part of the redistricting process.

### 3.2. Code of Virginia Requirements for Precincts and Polling Places

First, a few basic points from the Code of Virginia about precincts:

***The establishment of precincts is the responsibility of local governing bodies.*** Section *24.2-307* directs the governing body of each county and city to establish by ordinance as many precincts as the governing body deems necessary. These governing bodies are also authorized to increase or decrease the number of precincts and to alter the boundaries of precincts, subject to requirements and restrictions in the Code of Virginia. Section *24.2-308* directs the establishment of one precinct for each town unless the town council establishes more than one precinct by ordinance.

***Precincts must comply with certain criteria.*** Section *24.2-305* requires precincts to “be composed of compact and contiguous territory” and to “have clearly defined and clearly observable boundaries.” See **Section 5** for further discussion regarding contiguity and compactness and see the defined term, “clearly observable boundary,” set out in full in **Appendix B**.

***Precincts are subject to requirements for minimum and maximum numbers of registered voters.***<sup>3</sup> Section *24.2-307* provides that at the time a precinct is established, it cannot have more

---

<sup>1</sup> VA. CODE § *24.2-101*.

<sup>2</sup> *Id.*

<sup>3</sup> For the purposes of this requirement, “registered voter” includes only persons maintained on the Virginia voter registration system with active status. See VA. CODE § *24.2-101*.



than 5,000 registered voters. The general registrar is responsible for notifying the governing body whenever the number of voters who actually voted in a precinct in a presidential election exceeds 4,000, and the governing body must then revise the precinct boundaries. Additionally, § 24.2-307 sets a minimum number of registered voters for precincts. At the time a precinct is established, it can have no fewer than 100 registered voters for a county precinct and no fewer than 500 registered voters for a city precinct.

*Precincts must be wholly contained within certain types of election districts.* Section 24.2-307 requires each county and city precinct to be wholly contained within a single congressional district, state Senate district, House of Delegates district, and election district used for the election of one or more members of the governing body or school board. Section 24.2-308 provides that each town precinct must be wholly contained within any election district used for the election of one or more town council or school board members. See the following **Section 3.3** for more discussion on this “wholly contained” requirement and the issue of split precincts.

### 3.3. Split Precincts

A split precinct is one in which not all voters in the precinct have the same candidates for a particular type of office on their ballots. Split precincts create confusion for voters and headaches for election officials.

The law has long required precincts to be wholly contained within a single local election district. This was easily attainable since the same authority was responsible for establishing both. Precincts split among congressional and state legislative districts, on the other hand, were inevitable. While the General Assembly was drawing the congressional and state legislative districts, using the previous decade’s precincts as the basis for the maps, local governing bodies were making changes to those very precinct lines. When those new precinct boundaries were then laid on top of the congressional and state legislative districts, the result was often a split precinct. The common practice to address these split precincts was by adopting legislation in the following legislative sessions to make technical adjustments to the congressional or state legislative district lines so that the district lines and precinct boundaries aligned. This is no longer viewed to be an option, so other efforts to address the split precinct issue have been made.

The 2020 Regular Session of the General Assembly passed legislation<sup>4</sup> amending § 24.2-307 to require county and city precincts to be wholly contained within a single congressional district, state Senate district, and House of Delegates district, in addition to local election districts. Recognizing the practical realities of how the redistricting process unfolds, the law requires the governing body to establish precincts to be consistent with those election districts adopted by the appropriate authority by June 15 in the year ending in one. However, if congressional or state legislative districts have not been adopted by that date, the governing bodies may use the districts as they existed on June 15 of that year as the basis for establishing the precinct boundaries for the November elections held that year. Precinct boundaries must be established to be consistent with any subsequent changes to the congressional, state Senate, House of Delegates, and local election districts and such new boundaries will apply to future elections.

If the governing body is unable to establish a precinct with the minimum number of registered voters without splitting the precinct, the State Board of Elections may grant a waiver

---

<sup>4</sup> Chapter 1268 of the Acts of Assembly of 2020.



to administer a split precinct or direct the governing body to establish a precinct with fewer than the minimum number of voters.

### 3.4. Precinct Boundaries and the Census Bureau’s Voting District Project

Section *24.2-305* requires precincts to have clearly defined and clearly observable boundaries. This standard was adopted in the 1980s so that (i) precinct boundaries can be readily identified by voters, candidates, and those administering elections and (ii) census population counts can be reported for each individual precinct. The Census Bureau will not give a population count for a precinct unless the boundaries of the precinct meet the Bureau’s standards for census blocks and can be used as the boundaries of a census tabulation block.

In preparing for the 2020 census, Virginia participated in the Voting District Project, Phase II of the 2020 Census Redistricting Data Program.<sup>5</sup> The state worked with the Census Bureau to identify, update, and verify the precinct boundaries of Virginia’s 2,465 active precincts on the census maps. This work was done through the nonpartisan census liaisons with the Division of Legislative Services in consultation with general registrars and other local officials and personnel. The precinct boundaries in place at the end of this project are the precincts used to provide census population counts for use in redistricting.

This project is the reason for the “precinct freeze” enacted every 10 years in preparation for redistricting. The current precinct freeze set out in § *24.2-309.2* prohibits the creation, division, abolishment, or consolidation of any precinct or any change to the boundaries of a precinct between February 1, 2019, and May 15, 2021, except in certain circumstances.

At the conclusion of this precinct freeze, localities should review their precincts. During the nearly 2.5-year period in which the precincts are frozen, population shifts may have occurred, resulting in precincts that are now oversized or undersized, and it may be necessary to increase or decrease the number of precincts in the locality, as permitted by § *24.2-307*.

### 3.5. Polling Places

The requirements for polling places are provided in §§ *24.2-310* and *24.2-310.1*. There must be one polling place for each precinct. The polling place for a county, city, or town precinct must (i) be located in the precinct or within one mile of the precinct boundary, (ii) meet accessibility requirements, and (iii) be located in a public building whenever practicable. It is important to consider the availability of appropriate polling place facilities when drawing local election district and precinct boundaries. For towns holding elections in November, the town uses the county’s polling places.

---

<sup>5</sup> This project provides states the opportunity to submit their voting districts, or precincts, for inclusion in the 2020 Census Redistricting Data Program tabulation, in addition to submitting suggested legal boundary updates and updates to their geographic areas. More information on this project and the Census Redistricting Data Program can be found at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html> [last visited October 19, 2020].







---

## 4. The 2020 Census

---

### 4.1. Introduction

The 2020 census, conducted by the U.S. Department of Commerce through the Census Bureau, is the twenty-fourth census in U.S. history, and it will provide the basis for the reapportionment among the states of the 435 seats in the United States House of Representatives. It will also be used to redraw congressional, state legislative, and local election districts.

#### *Legal Basis*

The decennial census is a constitutional requirement. *Article I, Section 2, Clause 3* of the Constitution of the United States requires an “actual Enumeration” of all people in the United States. This enumeration is then used to determine the number of seats each state will have in the United States House of Representatives for the upcoming decade. Currently, Virginia has 11 seats, and it is predicted that Virginia will hold onto those seats.

Federal law requires that the census data be reported to the states in order for it to be used by the states to establish congressional, state legislative, and local election districts.<sup>6</sup> How that census data is used, however, is left to the states. Subsection C of § *24.2-304.1* of the Code of Virginia requires the use of the census data, as adjusted by the Division of Legislative Services, in the drawing of local election districts.

#### *Developments for the 2020 Census*

Like the 2010 census, the 2020 census is short form, collecting only basic information. The 2020 census is, however, the first to use the Internet as the primary response method.

The 2020 questions regarding race and ethnicity are different from previous years. Multiple Hispanic ethnicities, such as Mexican and Puerto Rican, are collected within the broader category. There is also a write-in option for the White racial and Black racial categories.

Because the census collects protected personal information, the Census Bureau must take steps to protect that data from disclosure in a way that allows individuals and their information to be identified while still providing data that can be used by states to conduct accurate redistricting. The 2020 census will utilize an algorithmic approach to privacy protection called *differential privacy*.<sup>7</sup> Differential privacy allows the Census Bureau to determine a mathematically precise balance between privacy protection and data accuracy and to ensure that that balance will stay constant into the future. The Census Bureau has continued to develop this Disclosure Avoidance System ahead of the release of redistricting data, with a focus on improving the accuracy of population data.

---

<sup>6</sup> P.L. 94-171 (1975).

<sup>7</sup> More information on the Disclosure Avoidance System and the 2020 census can be found at [https://www.census.gov/about/policies/privacy/statistical\\_safeguards/disclosure-avoidance-2020-census.html](https://www.census.gov/about/policies/privacy/statistical_safeguards/disclosure-avoidance-2020-census.html) [last visited October 19, 2020].



In response to the COVID-19 pandemic, the Census Bureau has announced it is seeking permission from Congress to delay its 2020 census data delivery by 120 days. See **Section 4.4** for further discussion concerning this delay and its potential impact on Virginia’s redistricting process.

There are two basic pieces of information needed to redraw election district lines: population data (**Section 4.2**) and maps (**Section 4.3**). The Census Bureau provides both.

## 4.2. Population Data

### *P.L. 94-171 Data*

Public Law 94-171 is the federal law directing the Census Bureau to provide redistricting data needed by the states. P.L. 94-171 data, or redistricting data, is the data the localities will use to redistrict in 2021, just as the General Assembly will use the data to redraw congressional and state legislative districts.<sup>8</sup> This data gives total and voting age population counts and Hispanic and racial data for each geographic unit.

Under federal law, the Census Bureau is required to report this data to the 50 states by April 1, 2021. However, in light of the COVID-19 pandemic and its impact on the 2020 census operations, it is unclear when this data may be received in 2021 (see **Section 4.4** for further discussion).

### *Residence Criteria and Situations*

A perennial question regarding the decennial census is “who is counted where.” As a general rule, people are counted at their usual residence, the place where they live and sleep most of the time. Persons who live in “group quarters” are counted at that facility, and persons who do not have a usual residence are counted where they are on Census Day, or April 1, 2020. The Census Bureau has detailed guidance for determining where people should be counted.<sup>9</sup> A few examples:

- United States military personnel assigned to a United States military vessel with a United States homeport on Census Day are counted at the onshore United States residences where they live and sleep most of the time. If the personnel do not have onshore United States residences, they are counted at their vessel’s homeport.
- Any person incarcerated in a federal, state, or local correctional facility is counted at the facility where he is incarcerated.
- A college student living away from his parent’s or guardian’s home while attending college in the United States, living either on-campus or off-campus, is counted at the on-campus or off-campus residence where he lives and sleeps most of the time.
- A baby born on Census Day is counted at the residence where he will live and sleep most of the time, even if he is still in a hospital on Census Day.

---

<sup>8</sup> As adjusted by the Division of Legislative Services to reflect the reallocation of prison populations; see subsection C of § *24.2-304.1* of the Code of Virginia.

<sup>9</sup> *Federal Register*, Vol. 83, No. 27 (February 8, 2018).

### *Reallocation of Prison Populations*

The 2020 Regular Session of the General Assembly enacted legislation that will adjust the P.L. 94-171 data to reflect the reallocation of the prison populations in the Commonwealth.<sup>10</sup> Any person incarcerated in a federal, state, or local correctional facility whose address at the time of incarceration was located within the Commonwealth will be deemed to reside at such address. Any incarcerated person whose address at the time of incarceration was located outside of the Commonwealth or cannot be determined will be deemed to reside at the location of the facility in which he is incarcerated. The Division of Legislative Services is responsible for adjusting the P.L. 94-171 data to reflect this reallocation based on residency and is required to make the adjusted data available within 30 days of receipt of the P.L. 94-171 data from the Census Bureau.

### *Race and Ethnicity*

Questions about race and ethnicity are included in the decennial census in order to gather data necessary to facilitate enforcement of the Voting Rights Act, which prohibits the enactment of redistricting plans that result in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color or membership in a language minority group.

The U.S. Office of Management and Budget standards<sup>11</sup> specify five minimum categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. It also provides two categories for data on ethnicity: Hispanic or Latino and Not Hispanic or Latino.

### *Total and Voting Age Population*

As in 2011, the Census Bureau will report the total population and the voting age population for each geographic unit.

## 4.3. Census Geography and Maps

### *Geographic Units*

The Census Bureau will report the state's population data using the following geographic units, meaning each geographic unit will have population data assigned to it. The geographic units used are a combination of legal/administrative geography and Bureau-defined geography.

- **Counties, cities, and towns**—the primary legal subdivision of Virginia; the geography of these governmental units is defined by the state and local governments and reported to the Census Bureau. See **Getting the Geography Right** later in this section for further discussion.
- **Voting tabulation districts or VTDs**—precincts and wards; these are defined by the state and local governments and reported to the Census Bureau. Each precinct will be coded with a six-digit number that represents the census locality census code and the Virginia Department of Elections precinct code. See **Getting the Geography Right** later in this section for further discussion.

<sup>10</sup> VA. CODE § 24.2-314.

<sup>11</sup> *Federal Register*, Vol. 62, No. 210 (October 30, 1997).



- **Census tract**—a combination of census block tracts that is a statistical and relatively permanent subdivision of a locality. Census tract boundaries typically follow visible features but may follow governmental unit boundaries. Census tracts always nest within counties and cities.
- **Census block group**—a combination of census blocks that is a subdivision of a census tract. These are defined by the Census Bureau.
- **Census block**—Census blocks are king; they are the smallest entity for which the Census Bureau collects and tabulates decennial census information. The Census Bureau defines census blocks, using only visible or nonvisible boundaries shown on census maps as the blocks' boundaries.

Additionally, the Census Bureau will make population data available by congressional and state legislative districts.

### ***TIGER/Line Shapefiles***

A shapefile is a geospatial data format for use in geographic information system (GIS) software. The TIGER/Line Shapefiles are the fully supported core geographic product from the Census Bureau. They are extracts of selected geographic and cartographic information from the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) database. These shapefiles include polygon boundaries of geographic areas and features, but they do not contain any demographic data from the decennial census. Instead, the shapefiles contain a standard geographic identifier for each geographic entity that links to the geographic identifier in the census data.

To use these shapefiles, a user must have mapping or GIS software that can import the TIGER/Line Shapefiles. The shapefiles are not provided by the Census Bureau in any vendor-specific format. With the appropriate software, a user can produce maps ranging in detail from a neighborhood street map to a map of the United States. To date, many local governments have used the TIGER data in applications requiring digital street maps. Software companies have created products for the personal computer that allow consumers to produce their own detailed maps. Localities will want to work with their planning departments and local planning commissions to use TIGER data.

### ***Getting the Geography Right***

Because redistricting done by both the General Assembly and local governments will use population data assigned by geographic unit, it is vitally important that the geography that the Census Bureau uses reflects what the state and each local government understands it to be. Fortunately, there are opportunities throughout each decade to get the geography right. For the 2021 redistricting cycle, two such opportunities are the Boundary and Annexation Survey and the 2020 Census Redistricting Data Program.

***Boundary and Annexation Survey.*** The Census Bureau conducts the Boundary and Annexation Survey (the BAS) annually to collect information about select legally defined geographic areas.<sup>12</sup> The BAS is used to update information about legal boundaries and names of all governmental units in the United States. It provides local governments the opportunity to

---

<sup>12</sup> More information on the Boundary and Annexation Survey can be found at <https://www.census.gov/programs-surveys/bas.html> [last visited October 19, 2020].





review the Census Bureau’s boundary data to ensure that the Bureau has the correct legal boundary, name, and status information of the various geographic areas. The legal boundaries collected through the BAS are used by the Census Bureau to tabulate data for the decennial census.

Each year, the Census Bureau sends the BAS Annual Response email to key contacts in local government. This includes:

- The government’s highest elected official, such as the mayor or county executive; and
- A GIS staff person, planner, clerk, or other contact.

By responding to the BAS, local governments are able to ensure that the legal boundaries of the various geographic units for which the Census Bureau reports population data are correct. For example, if the Census Bureau uses the boundary between two counties as the boundary of several census blocks and, as a result, several VTDs, it is important that that boundary be what those two counties understand it to be.

***The 2020 Census Redistricting Data Program.*** The first two phases of the 2020 Census Redistricting Data Program<sup>13</sup> also present opportunities for state and local governments to review and submit changes to various geographic and governmental area boundaries. As opposed to the BAS, which is conducted annually, this program is conducted in the run-up to the decennial redistricting.

- Phase 1 was the Block Boundary Suggestion Project. It provided states the opportunity to submit suggested legal boundary updates as well as updates to other geographic areas. Participation in Phase 1 was conducted for Virginia through the Division of Legislative Services in two stages, the first being the initial identification (December 2015 through May 31, 2016) and the second being the verification of updates (December 2016 through May 31, 2017).
- Phase 2 was the Voting District Project. It provided states the opportunity to submit their voting districts for inclusion on the P.L. 94-171 Redistricting Data, in addition to allowing states to submit suggested legal boundary updates as well as updates to other geographic areas. Participation in Phase 2 was conducted for Virginia through the Division of Legislative Services in three stages, the first being an initial identification (December 2017 through May 31, 2018), the second and third being verification of updates (December 2018 through May 31, 2019, and December 2019 through March 31, 2020). During these stages, local government officials were contacted by the Division of Legislative Services to provide shapefiles or GIS maps of the locality’s precinct boundaries and to review any errors or mismatches identified by the Census Bureau.

#### 4.4. P.L. 94-171 Data Delivery Delay: Let’s Panic!

On April 13, 2020, the Census Bureau announced it was delaying its census field operations due to the COVID-19 pandemic and, at the same time, requested from Congress the authority to delay the delivery of census data.

---

<sup>13</sup> More information on the 2020 Census Redistricting Data Program management and each of these two stages can be found at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html#P1> [last visited October 19, 2020].



Under current law, the data used to reapportion the number of congressional seats among the 50 states is required to be delivered to the President of the United States by December 31, 2020, and the data used by the states to redraw congressional and state legislative districts is due to the states no later than March 31, 2021. The Census Bureau's request was for an additional 120 days, delaying delivery of data to the President until April 30, 2021, and delivery of data to the states until July 31, 2021. This delay would obviously have a major impact on Virginia and its ability to redistrict in time for the elections scheduled for November 2021.

However, later in the summer, the Administration requested additional funding to complete the census on time, in lieu of the deadline delay, and on August 3, 2020, the Secretary of Commerce approved a new schedule that would end field operations by September 30, 2020, and the initial data processing stage by December 31, 2020.

A lawsuit was soon filed in a federal district court and that court ordered the 2020 census count to continue through October 31, 2020. The Administration, in response, filed with the U.S. Supreme Court an application for a stay pending an appeal, and on October 13, 2020, the Court granted the stay pending disposition of the appeal in the U.S. Court of Appeals for the Ninth Circuit, meaning the Court granted the Administration's request to discontinue the census count.

This information is current as of the date of publication. For more up-to-date information, please refer to the *Ross v. National Urban League* case page on the SCOTUS blog website<sup>14</sup>.

---

<sup>14</sup> See <https://www.scotusblog.com/case-files/cases/ross-v-national-urban-league/> [last visited November 2, 2020].





# Guide to Local Redistricting for 2021

---

## 5. Legal Standards Applicable to Local Redistricting

---

### 5.1. Introduction

There are a number of legal tests and standards that are used to measure the validity of redistricting plans. The following sections outline and provide a general overview of those standards that should be kept in mind when drawing plans and that will be used to evaluate the plans after the fact.

### 5.2. Equal Population

Equal population is the most fundamental requirement of redistricting for congressional, state legislative, and local election districts, rooted in the Constitution of the United States and the Constitution of Virginia.

#### *Congressional Districts*

The equal population requirement for congressional districts is based on *Article 1, Section 2* of the Constitution of the United States and is a strict standard of equality. The U.S. Supreme Court first articulated the “one-person, one-vote” principle in its ruling in *Wesberry v. Sanders*<sup>15</sup>, determining that the language of *Article 1, Section 2* that says representatives in the United States House of Representatives are to be chosen “by the people of the several States” means that one person’s vote in a congressional district should carry the same weight as another’s.

#### *State Legislative Districts*

The equal population requirement for state legislative districts is based on the Equal Protection Clause of the *Fourteenth Amendment* to the Constitution of the United States and requires “substantial equality” among legislative districts. The U.S. Supreme Court distinguished the population standards for state legislative districts from congressional districts in *Reynolds v. Sims*.<sup>16</sup>

#### *Local Election Districts*

The U.S. Supreme Court has held that the substantially equal population requirement of the Equal Protection Clause applies to local election districts, as well.<sup>17</sup> *Article VII, Section 5* of the Constitution of Virginia also contains an equal population requirement for local election districts, requiring districts to be constituted to give “as nearly as is practicable, representation in proportion to the population of the district.” This requirement is repeated in subsection B of § *24.2-304.1* of the Code of Virginia.

---

<sup>15</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964).

<sup>16</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>17</sup> *Avery v. Midland County*, 390 U.S. 474 (1968).



***Substantial equality and permitted deviations.*** The U.S. Supreme Court has held that local election districts are subject to the substantially equal population standard, meaning the populations of local election districts do not have to be precisely equal. With this standard of substantial equality and permitted deviations, the question is, then, how much deviation is permitted and under what circumstances. Case law answering this question has evolved over the decades and, in 2016, the U.S. Supreme Court provided a clear and concise summation of where the standard stands now:

States must draw congressional districts with populations as close to perfect equality as possible. But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. When the maximum population deviation between the largest and smallest district is less than 10 percent, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10 percent are presumptively impermissible.<sup>18</sup>

Therefore, the answer to the question is that local election districts should have populations that are substantially equal to each other, with a plus or minus five percent deviation from the ideal district population. For example, if the ideal district population is 1,000 persons, a district may have as many as 1,050 persons or as few as 950 persons in it.

Local election district plans with an overall deviation of 10 percent or less are presumptively constitutional, but that does not mean the plans are immune from challenge and invalidation. The U.S. Supreme Court has specifically rejected both (i) regional protectionism, versus protection of political subdivisions, and (ii) incumbent protection when not applied in a consistent and neutral way as rational state policies when invalidating legislative district maps in Georgia that had an overall deviation of less than 10 percent.<sup>19</sup>

On the other hand, local election district plans with an overall deviation of more than 10 percent are presumed to violate the Equal Protection Clause, but that does not mean such plans will not be upheld. In these types of challenges, the local governing body has the burden of proving that there was a rational policy that was advanced by this higher deviation.

### 5.3. Contiguity and Compactness

***Article VII, Section 5*** of the Constitution of Virginia requires local election districts to be composed of contiguous and compact territory. This requirement is repeated in subsection B of § 24.2-304.1 and in § 24.2-305 of the Code of Virginia.

Two cases related to state legislative districts and the identical requirement that they be contiguous and compact<sup>20</sup> provide guidance on what this requirement means for local election

---

<sup>18</sup> *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

<sup>19</sup> *Larios v. Cox*, 542 U.S. 947 (2004).

<sup>20</sup> See VA. CONST. *Art. II, § 6*.



districts. In *Jamerson v. Womack*, the Supreme Court of Virginia held that the constitutional requirement of compactness is limited to spatial restrictions and does not mean that the districts must be compact in content as well.<sup>21</sup> A decade later, in *Wilkins v. West*, the Supreme Court of Virginia found that while a voting district that contains two sections completely severed by another land mass would not satisfy the constitutional requirement of contiguity and compactness, the geography and population of Virginia necessitates that some electoral districts include water.<sup>22</sup> Significantly, the Court held that landmasses separated by water may still meet the contiguity requirement.

### *Compactness Measures*

There are several statistical methods to measure the comparative compactness of districts. These measures may produce different results and are offered by expert witnesses in litigation. The courts have not agreed on one single measure of compactness and have often relied on the appearance of a district—a visual or “eyeball” evaluation.

## 5.4. Race and Redistricting

And then there is the thorniest of issues: race and redistricting. As stated in the introduction to this Guide, this is the most complex area of redistricting law and, as such, is frequently litigated.

There are two primary bodies of law when it comes to race and redistricting, one constitutional and one statutory: the Equal Protection Clause of the *Fourteenth Amendment* to the Constitution of the United States and the Voting Rights Act of 1965, as amended.

Please note: In previous redistricting cycles, Virginia and most of its localities were subject to preclearance under Section 5 of the Voting Rights Act, meaning that any change to an election law, practice, or procedure, and all redistricting plans, had to be submitted for approval by the U.S. Department of Justice or a special U.S. District Court for the District of Columbia. However, in 2013, the U.S. Supreme Court found that the coverage formula used to determine which specific jurisdictions were subject to the preclearance requirement was unconstitutional.<sup>23</sup> As a result of this ruling, the Section 5 preclearance requirement is no longer enforceable.

### 5.4.1. Equal Protection Clause and Racial Gerrymandering

The Equal Protection Clause of the *Fourteenth Amendment* states, in relevant part, that no state shall deny to any person within its jurisdiction the equal protection of the laws. In the context of redistricting, this means a state cannot, without sufficient justification, separate its citizens into different voting districts on the basis of race.<sup>24</sup> To do so would be an impermissible racial gerrymander.

Prior to 1993, the concept of racial gerrymandering surfaced in cases against minority groups. In *Shaw v. Reno*, however, the U.S. Supreme Court held that plaintiffs could challenge a North Carolina congressional plan as an impermissible racial gerrymander under the Equal

<sup>21</sup> *Jamerson v. Womack*, 423 S.E.2d 180 (Va. 1992)

<sup>22</sup> *Wilkins v. West*, 571 S.E.2d 100 (Va. 2002)

<sup>23</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>24</sup> *Bethune-Hill v. Virginia State Board of Elections*, 137 S. Ct. 788 (2017).



Protection Clause.<sup>25</sup> The plaintiffs were residents of the challenged district but did not sue as members of a minority or protected class. Racial gerrymandering took on a completely new meaning.

### *Standing*

To challenge a race-based redistricting plan as an impermissible racial gerrymander, an individual must have standing. This requires the plaintiff to be a resident of the challenged district.

Where a plaintiff resides in a racially gerrymandered district, however, the plaintiff has been denied equal treatment because of the legislature’s reliance on racial criteria, and therefore has standing to challenge the legislature’s action.<sup>26</sup>

An individual who lives outside of a racially gerrymandered district will not have standing unless he is able to present specific supporting evidence that he personally has been subjected to a racial classification.

Once standing has been established, the burden is on the plaintiff to prove a racial gerrymandering claim.

### *Race May Be Considered*

The U.S. Supreme Court has recognized that race may be considered in the redistricting process. The Court has made it clear that it “never has held that race-conscious state decision making is impermissible in all circumstances,” and has recognized that a legislature will always be aware of race when it draws district lines, just as it is aware of other demographic factors, like age and economic status.<sup>27</sup> That race was considered in and of itself does not mean an impermissible racial gerrymander has occurred.

### *Race Cannot Predominate*

Proving a racial gerrymander requires proof that race was the predominant consideration in the drawing of the districts.

A plaintiff pursuing a racial gerrymandering claim must show that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” To do so, the “plaintiff must prove that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.”<sup>28</sup>

In *Bethune-Hill v. Virginia State Board of Elections*, the U.S. Supreme Court cautioned that a plan is not required to conflict with traditional redistricting principles as a threshold issue, but it also stated that a conflict or inconsistency could be persuasive circumstantial evidence in showing racial predomination.<sup>29</sup>

---

<sup>25</sup> *Shaw v. Reno*, 509 U.S. 630 (1993).

<sup>26</sup> *United States v. Hayes*, 515 U.S. 737 (1995).

<sup>27</sup> *Shaw v. Reno*, 509 U.S. 630 (1993).

<sup>28</sup> *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015).

<sup>29</sup> *Bethune-Hill v. Virginia State Board of Elections*, 137 S. Ct. 788 (2017).



In *Alabama Legislative Black Caucus v. Alabama*, the U.S. Supreme Court addressed how equal population requirements factor into a racial gerrymander challenge.

[A]n equal population goal is not one factor among others to be weighed against the use of race to determine whether race “predominates.” Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator’s determination as to how equal population objectives will be met.<sup>30</sup>

Any analysis of whether race was a predominant factor must be made on a district-by-district basis, rather than the state as a whole, and should not be limited to only those parts of a district line that conflict with traditional redistricting principles.

Racial predominance can be proven through circumstantial evidence of a district’s shape and demographics, direct evidence of legislative intent, or a combination of both.

An informative example of direct evidence of legislative intent is highlighted in Virginia’s own *Bethune-Hill*, in which the U.S. Supreme Court found the state had employed a mandatory black voting-age population (BVAP) floor of 55 percent in constructing the challenged districts and that, in doing so, race had predominated over traditional districting factors.<sup>31</sup>

If a plaintiff is able to prove that race was the predominant motive of the legislature in drawing a district, a racial gerrymander has been proven, but that does not mean the district will be invalidated.

### ***Strict Scrutiny, Narrowly Tailored To Achieve a Compelling Governmental Interest***

If a plaintiff shows that race predominated in the drawing of a district, the plan will be subject to a strict scrutiny analysis. This means the defendant (the state) must demonstrate that the plan was narrowly tailored to achieve a compelling interest if the district is to be upheld. This can be demonstrated by a showing that the mapmakers had a “strong basis in evidence” supporting their decision to make race-based choices.<sup>32</sup> This standard does not demand the state’s actions be “actually necessary” for statutory compliance to constitute a compelling state interest; the legislature just must have had “good reasons” to believe such use was required at the time.<sup>33</sup> This means, the U.S. Supreme Court has said, a functional analysis of the specific district is necessary.<sup>34</sup> The U.S. Supreme Court has previously held Virginia performed a sufficient inquiry under this standard when the state legislature’s “primary mapdrawer ‘discussed the [challenged] district with incumbents from other majority-minority districts . . . [and] considered turnout rates, the results of the recent contested primary and general elections,’ and the district’s large prison population.”<sup>35</sup> This analysis contrasts with the North Carolina legislature’s actions during the 2011 redistricting process, where the U.S. Supreme Court determined the state did not perform a sufficient analysis because it could “point to no meaningful legislative inquiry” into

<sup>30</sup> *Alabama* at 1270.

<sup>31</sup> *Bethune-Hill*.

<sup>32</sup> *Alabama* at 1274.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1272.

<sup>35</sup> *Abbott v. Perez*, 138 S. Ct. 2305 (2018). (quoting *Bethune-Hill*).



whether the use of race was required to prevent liability under Section 2 of the Voting Rights Act for a district.<sup>36</sup>

The Supreme Court has never held that compliance with the Voting Rights Act is a sufficiently compelling state interest to satisfy strict scrutiny. Rather, it has consistently “assumed” that compliance with Section 2 (or Section 5) of the Voting Rights Act was a compelling state interest and struck down redistricting plans on narrow tailoring grounds.

#### 5.4.2. Section 2 of the Voting Rights Act and Minority Vote Dilution

The Voting Rights Act was enacted by Congress in 1965 to give teeth to the *Fifteenth Amendment* to the Constitution of the United States, which provides that the right to vote is not to be denied or abridged by the United States or any state on account of race. Unlike Section 5 of the Voting Rights Act, Section 2 applies to all jurisdictions and remains in effect today. It prohibits any state or political subdivision from imposing any voting qualification, standard, practice, or procedure that results in the denial or abridgement of any U.S. citizen’s right to vote on account of race, color, or status as a member of a language minority group. In the context of redistricting, Section 2 prohibits minority vote dilution.

Plaintiffs filing a Section 2 challenge do not need to prove an intent to discriminate; rather, these claims are dependent on a showing of discriminatory *effects*.

Section 2(b) establishes the requirements for proving a Section 2 claim:

A violation . . . is established if based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

These requirements break down into two primary elements. First, the plaintiffs must prove that their minority group is eligible to bring a Section 2 claim. Second, the plaintiffs must prove that their votes were diluted under the totality of circumstances test.

#### *Gingles Preconditions*

In *Thornburg v. Gingles*<sup>37</sup>, the U.S. Supreme Court established three factors, or preconditions, that must be proven by plaintiffs as a threshold matter in establishing a preliminary vote dilution claim under Section 2. These preconditions establish whether the plaintiffs are members of a class of citizens protected by Section 2.

1. The racial or language minority group “is sufficiently numerous and compact to form a majority in a single-member district”;
2. The minority group is “politically cohesive,” meaning its members tend to vote similarly; and

---

<sup>36</sup> *Cooper v. Harris*, 137 S. Ct. 1455, 1471 (2017).

<sup>37</sup> *Thornburg v. Gingles*, 478 U.S. 30 (1986).





3. The “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”

The U.S. Supreme Court has offered some guidance on how these preconditions are to be applied in subsequent cases:

- These preconditions for a vote dilution claim apply to single-member districts, as well as multi-member and at-large districts.<sup>38</sup>
- The majority required by the first precondition means that the minority group be large enough to constitute at least half of the voting-age population in that district.<sup>39</sup>
- The minority group must be “culturally compact.” Connecting two disparate communities of the same race that otherwise constitute separate communities of interest is not sufficient to satisfy the first precondition.<sup>40</sup>

### *Totality of Circumstances Test*

If plaintiffs are able to prove each of the three *Gingles* factors, the court then examines the “totality of the circumstances” to determine whether the minority group’s opportunity to participate in the electoral process or elect its candidates of choice have been denied or abridged. The following factors that the court will consider have evolved from several cases and a United States Senate report accompanying the 1982 amendments to Section 2:

- The extent of the history of official discrimination touching on the minority group participating in the democratic process;
- Racially polarized voting;
- The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions, or other voting practices that enhance the opportunity for discrimination;
- Denial of access to the candidate slating process for members of the group;
- The extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment, and health that hinder effective participation;
- Whether political campaigns have been characterized by racial appeals;
- The extent to which members of the protected class have been elected;
- Whether there is a significant lack of responsiveness by elected officials to the particular needs of the group; and
- Whether the policy underlying the use of the voting qualification, standard, practice, or procedure is tenuous.

### *Racially Polarized Voting*

Proof of legally significant racially polarized voting is a crucial element of a Section 2 vote dilution claim. Racially polarized voting, or racial bloc voting, is found where the race of a

---

<sup>38</sup> *Grove v. Emison*, 507 U.S. 25 (1993).

<sup>39</sup> *Bartlett v. Strickland*, 556 U.S. 1 (2009).

<sup>40</sup> *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006).



candidate determines how a voter votes. Expert evidence is frequently offered to prove or disprove a history of racially polarized voting and whether the majority votes as a bloc to the detriment of the minority. Evidence on racial bloc voting patterns is directed at proving or disproving the proposition that minority voters vote for minority candidates and white voters vote for white candidates—that racial voting patterns make it more difficult for minority groups to elect the candidates of their choice. There are a number of methods used to evaluate racial bloc voting patterns, and they can be complicated. The two most commonly used statistical methods for measuring racially polarized voting are homogeneous precinct analysis and bivariate regression analysis. The U.S. Supreme Court has avoided establishing any mathematical formula for determining when racial polarization exists, instead making clear that each challenged district has to be evaluated on its own, with a number of various factors considered.

### *Majority-Minority Districts.*

The U.S. Supreme Court’s Section 2 cases do not specify an exact percentage required to constitute a majority-minority district as required in a *Gingles* analysis. The courts conduct a fact-specific inquiry and weigh the facts concerning total population, voting age population, and other factors. No single percentage can be said to be the number needed to create a majority-minority district. The U.S. Supreme Court has rejected the proposition that a redistricting plan must “maximize” the number of majority-minority districts in Section 2 cases.<sup>41</sup>

## 5.5. Traditional and Emerging Districting Principles

The U.S. Supreme Court first articulated the concept of “traditional districting principles” in *Shaw v. Reno*, when it specifically recognized contiguity and compactness as traditional principles.<sup>42</sup> In the years that have followed, case law has recognized additional criteria as traditional districting principles. Today, there are six principles or criteria that are considered by the courts as race-neutral, traditional principles:

1. Contiguity;
2. Compactness;
3. Preservation of counties and other political subdivisions;
4. Preservation of communities of interest;
5. Preservation of cores of prior districts; and
6. Protection of incumbents.

There are also a number of emerging criteria being added to the districting landscape in states across the country. Some such criteria include:

- Prohibition on favoring or disfavoring an incumbent, candidate, or political party;
- Prohibition on the use of partisan data; and
- Competitiveness.

---

<sup>41</sup> *Johnson v. De Grandy*, 512 U.S. 997 (1994).

<sup>42</sup> *Shaw v. Reno*, 509 U.S. 630 (1993).



Additionally, the 2020 Regular Session of the General Assembly enacted legislation setting out the standards and criteria to be followed when drawing congressional and state legislative districts. While § *24.2-304.04* of the Code of Virginia does not specifically apply these criteria to local election districts, it merits review and is set out in full in **Appendix A**.

### 5.6. Balancing Competing Legal Interests

The difficult reality of redistricting is that there are a number of legal requirements that are not always compatible and it is only through litigation after the fact that the flaws in how those requirements were balanced are revealed. Traditional districting principles must be considered. Race may be considered but cannot predominate in map drawing. While localities are not subject to the Voting Rights Act Section 5 preclearance this time around, Section 2 does apply. Careful and thorough consideration of multiple factors, evidence-based decision making, and comprehensive records and documentation are keys to a successful redistricting effort at the local level.







# Guide to Local Redistricting for 2021

---

## 6. After Redistricting

---

### 6.1. Preparing for Elections

Once redistricting and any related reprecincting have been completed, the State Board of Elections, working with local registrars, must update the Virginia voter registration system to reflect such changes. Registrars are responsible for updating records to ensure that registered voters are assigned to their proper precincts and election districts. Registrars must notify voters affected by a precinct or district change at least 15 days before the next primary, special, or general election.<sup>43</sup>

The State Board of Elections will work with general registrars to schedule the large volume of work that must be completed to be ready to conduct orderly elections in 2021. Local officials involved in the redistricting process should keep in mind the time and resource requirements of local election officials who are responsible for notifying voters of the effects of the redistricting process.

### 6.2. Voting Rights Act Section 5 Preclearance No Longer Required

In previous redistricting cycles, Virginia and most of its localities were subject to preclearance under Section 5 of the Voting Rights Act, meaning that any change to an election law, practice, or procedure, and all redistricting plans, had to be submitted for approval by the U.S. Department of Justice or a special U.S. District Court for the District of Columbia. However, in 2013, the U.S. Supreme Court found that the coverage formula used to determine which specific jurisdictions were subject to the preclearance requirement was unconstitutional.<sup>44</sup> As a result of this ruling, the Section 5 preclearance requirement is no longer enforceable and, as such, no longer required.

---

<sup>43</sup> VA. CODE § 24.2-306.

<sup>44</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).







# Guide to Local Redistricting for 2021

---

## Appendix A: Relevant Constitutional Provision

---

### Constitution of Virginia

#### *Article VII. Local Government.*

#### **Section 5. County, city, and town governing bodies.**

The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law. If the members are elected by district, the 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. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body. Unless otherwise provided by law, the governing body of each city or town shall be elected on the second Tuesday in June and take office on the first day of the following September. Unless otherwise provided by law, the governing body of each county shall be elected on the Tuesday after the first Monday in November and take office on the first day of the following January.









# Guide to Local Redistricting for 2021

---

## Appendix B: Relevant Code of Virginia Sections

---

### Title 2.2. Administration of Government.

#### *Chapter 5. Department of Law.*

##### **§ 2.2-508. Legal service in certain redistricting proceedings.**

Upon notification by a county, city or town of a pending civil action challenging the legality of its election district boundaries as required by § 24.2-304.5, the Attorney General shall review the papers in the civil action and may represent the interests of the Commonwealth in developing an appropriate remedy that is consistent with requirements of law, including but not limited to *Article VII, Section 5* of the Constitution of Virginia, Chapter 3 (§ 24.2-302.2 et seq.) of Title 24.2, or Chapter 39 (§ 30-263 et seq.) of Title 30.

### Title 15.2. Counties, Cities and Towns.

#### *Chapter 12. General Powers and Procedures of Counties.*

##### *Article 1. Miscellaneous Powers.*

##### **§ 15.2-1211. Boundaries of magisterial and election districts.**

A. County magisterial district boundary lines and names shall be as the governing bodies may establish. Subject to the provisions of § 24.2-304.1, whenever the boundaries of a county have been altered, the governing body shall, as may be necessary, redistrict the county into magisterial districts, change the boundaries of existing districts, change the name of any district, or increase or diminish the number of districts.

B. Whenever redistricting of magisterial or election districts is required as a result of annexation, the governing body of such county shall, within a reasonable time from the effective date of such annexation, not to exceed ninety days, commence the redistricting process which shall be completed within a reasonable time thereafter, not to exceed twelve months.

C. A county may by ordinance provide that the magisterial districts of the county shall remain the same, but that representation on the governing body shall be by election districts, in which event all sections of this Code providing for election or appointment on the basis of magisterial districts shall be construed to provide for election or appointment on the basis of election districts, including appointment to a school board as prescribed by §§ 22.1-36 and 22.1-44.



*Chapter 14. Governing Bodies of Localities.*

*Article 1. General Provisions.*

**§ 15.2-1400. Governing bodies.**

A. The qualified voters of every locality shall elect a governing body for such locality. The date, place, number, term and other details of the election shall be as specified by law, general or special. Qualification for office is provided in Article 4 (§ 15.2-1522 et seq.) of Chapter 15 of Title 15.2.

B. The governing body of every locality shall be composed of not fewer than three nor more than eleven members.

C. Chairmen, mayors, supervisors and councilmen are subject to the prohibitions set forth in §§ 15.2-1534 and 15.2-1535.

D. A governing body may punish or fine a member of the governing body for disorderly behavior.

**§ 15.2-1414. Governing bodies may have a legal enumeration of the population.**

Any locality wishing to have a legal enumeration of the population of the locality, or part thereof, may make application therefor to the circuit court for the locality. When the application is made, the judge shall forthwith divide the locality, or part thereof, into such districts, with well-defined boundaries, as may appear advisable and shall appoint for each of the districts one enumerator. Before entering on their duties, such appointees shall take an oath before a notary public or other officer qualified to administer oaths under the laws of this Commonwealth, for the faithful discharge of their duties. The enumerators shall at once proceed to enumerate the actual bona fide inhabitants of their respective districts. They shall report to the judge the result of their enumeration and a list of the persons enumerated by them within a reasonable time after their appointment, and a copy of the list of persons so enumerated by them shall be furnished by the enumerators to the clerk of the court, who shall receive the list and keep it open to public inspection. Upon evidence produced before him, the judge may add to the list the name of any person improperly omitted and may strike from the list the name of any person improperly listed. If it appears advisable to the judge, he may order that the enumeration for any or all of the districts be retaken under all the provisions of this section by other enumerators, who shall be forthwith appointed by him. The judge shall cause to be tabulated and consolidated the lists and return to the governing body the results thereof, in accordance with the application of the governing body. The judge shall allow each enumerator a reasonable fee for each day actually employed by him in making the enumeration. He shall certify the allowance and costs to the governing body for payment out of the local treasury, and the allowance shall be a legal charge upon the governmental unit requesting the enumeration.



## Title 22.1. Education.

### *Chapter 5. School Boards; Selection, Qualification and Salaries of Members.*

#### *Article 7. Popular Election of School Board.*

##### **§ 22.1-57.3. Election of school board members; election of tie breaker.**

A. If a majority of the qualified voters voting in such referendum vote in favor of changing the method of selecting school board members to direct election by the voters, then the members of the school board shall be elected by popular vote. Elections of school board members in a county, city, or town shall be held to coincide with the elections for members of the governing body of the county, city, or town at the regular general election in November or the regular general election in May, as the case may be.

B. The initial elected board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected from the established county or municipal election districts, at large, or a combination thereof, on the same basis as the school board previously was appointed. If the appointed school board being replaced has not been appointed either on an at-large basis or on the basis of the established county or municipal election districts, or a combination thereof, the members shall be elected at large unless the governing body of the county, city, or town provides for the election of school board members on the basis of the established county or municipal election districts. If the appointed school board being replaced has been appointed at large, the governing body of the county, city, or town may establish school election districts for the election of school board members. The governing body may provide for a locality-wide district, one or more districts comprised of a part of the locality, or any combination thereof, and for the apportionment of one or more school board members to any district.

The terms of the members of the elected school board for any county, city, or town shall be the same as the terms of the members of the governing body for the county, city, or town. In any locality in which both the school board and the governing body are elected from election districts, as opposed to being elected wholly on an at-large basis, the elections of the school board member and governing body member from each specific district shall be held simultaneously except as otherwise provided in §§ [22.1-57.3:1](#), [22.1-57.3:1.1](#), and [22.1-57.3:1.2](#).

At the first election for members of the school board, so many members shall be elected as there are members to be elected at the regular election for the governing body. At each subsequent regular election for members of the governing body, the same number of members of the school board shall be elected as the number of members to be elected at the regular election to the governing body. However, if the number of members on the school board differs from the number of members of the governing body, the number of members elected to the school board at the first and subsequent general election shall be either more or less than the number of governing body members, as appropriate, to the end that the number of members on the initial elected school board is the same as the number of members on the appointed board being replaced.

Except as provided in §§ [22.1-57.3:1](#), [22.1-57.3:1.1](#), and [22.1-57.3:1.2](#), the terms of the members of the school board shall be staggered only if the terms of the members of the governing body are staggered. If there are more, or fewer, members on the school board than on the governing body, the number of members to be elected to the school board at the first and



subsequent election for school board members shall be the number required to establish the staggered term structure so that (i) a majority of the members of the school board is elected at the same time as a majority of the members of the governing body; (ii) if one-half of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected; (iii) if one-half of the governing body is being elected and the school board has an odd number of members, the majority by one member of the school board is elected at the first election and the remainder of the school board is elected at the second election; or (iv) if a majority of the members of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected.

If the school board is elected at large and the terms of the members of the school board are staggered, the school board members to be replaced at the first election shall include all appointed school board members whose appointive terms are scheduled to expire on December 31 or on June 30, as the case may be, next following the first election of county, city or town school board members. If the number of school board members whose appointive terms are so scheduled to expire is zero or less than the number of school board members to be elected at the first election, the appointed school board members to be replaced at the first election shall also include those whose appointive terms are scheduled to expire next subsequent to the date on which the terms of office of the first elected school board members will commence. If the appointive terms of more than one school board member are scheduled to expire simultaneously, but less than all of such members are to be replaced at the first election, then the identity of such school board member or members to be replaced at the first election shall be determined by a drawing held by the county or city electoral board at least ten days prior to the last day for a person to qualify as a candidate for school board member.

In any case in which school board members are elected from election districts, as opposed to being elected from the county, city, or town at large, the election districts for the school board shall be coterminous with the election districts for the county, city, or town governing body, except as may be specifically provided for the election of school board members in a county, city, or town in which the governing body is elected at large.

C. The terms of office for the school board members shall commence on January 1 or July 1, as the case may be, following their election. On December 31 or June 30, as the case may be, following the first election of county, city or town school board members, the terms of office of the members of the school board in office through appointment shall expire and the school board selection commission, if there is one, shall be abolished. If the entire school board is not elected at the first election of school board members, only the terms of the appointed members being replaced shall so expire and the terms of the appointed members being replaced at a subsequent election shall continue or be extended to expire on December 31 or June 30, as appropriate, of the year of the election of the school board members replacing them.

D. Except as otherwise provided herein, a vacancy in the office of any elected school board member shall be filled pursuant to §§ 24.2-226 and 24.2-228. In any county that has adopted the urban county executive form of government and that has adopted an elected school board, any vacancy on the elected school board shall be filled in accordance with the procedures set forth in § 15.2-802, mutatis mutandis. Notwithstanding any provision of law or charter to the contrary, if no candidates file for election to a school board office and no person who is qualified to hold the office is elected by write-in votes, a vacancy shall be deemed to exist in the office as of January



1 or July 1, as the case may be, following the general election. For the purposes of this subsection and Article 6 (§ 24.2-225 et seq.) of Chapter 2 of Title 24.2, local school boards comprised of elected and appointed members shall be deemed elected school boards.

E. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506.

F. For the purposes of this section, the election and term of the mayor or chairman of the board of supervisors shall be deemed to be an election and term of a member of the governing body of the municipality or county, respectively, whether or not the mayor or chairman is deemed to be a member of the governing body for any other purpose.

G. No employee of a school board shall be eligible to serve on the board with whom he is employed.

H. Any elected school board may have a position of tie breaker for the purpose of casting the deciding vote in cases of tie votes of the school board as provided in § 22.1-75. The position of tie breaker, if any, shall be held by a qualified voter who is a resident of the county, city, or town and who shall be elected in the same manner and for the same length of term as members of the school board and at a general election at which members of the school board are elected. A vacancy in the position of tie breaker shall be filled pursuant to §§ 24.2-226 and 24.2-228.

## Title 24.2. Elections.

### *Chapter 1. General Provisions and Administration.*

#### *Article 1. Applicability; Definitions.*

##### **§ 24.2-101. Definitions.**

As used in this title, unless the context requires a different meaning:

"Ballot scanner machine" means the electronic counting machine in which a voter inserts a marked ballot to be scanned and the results tabulated.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.



"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in *Article VII, Section 4* of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Department of Elections" or "Department" means the state agency headed by the Commissioner of Elections.

"Direct recording electronic machine" or "DRE" means the electronic voting machine on which a voter touches areas of a computer screen, or uses other control features, to mark a ballot and his vote is recorded electronically.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § *24.2-106* to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"General registrar" means the person appointed by the electoral board of a county or city pursuant to § *24.2-110* to be responsible for all aspects of voter registration, in addition to other duties prescribed by this title. When performing duties related to the administration of elections, the general registrar is acting in his capacity as the director of elections for the locality in which he serves.

"Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device operated by a voter, is available for verification by the voter at the time the ballot is cast, and is then fed into and scanned by a separate counting machine capable of reading ballots and tabulating results.

"Officer of election" means a person appointed by an electoral board pursuant to § *24.2-115* to serve at a polling place for any election.

"Paper ballot" means a tangible ballot that is marked by a voter and then manually counted.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Person with a disability" means a person with a disability as defined by the Virginians with Disabilities Act (§ *51.5-1* et seq.).

"Polling place" means the structure that contains the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

"Printed ballot" means a tangible ballot that is printed on paper and includes both machine-readable ballots and paper ballots.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) a registered voter. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. Whether a signature should be counted towards satisfying the signature requirement of any petition shall be determined based on the signer of the petition's qualification to vote. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "qualified voter" shall include only persons maintained on the Virginia voter registration system (a) with active status and (b) with inactive status who are qualified to vote for the office for which the petition was circulated.

"Qualified voter in a town" means a person who is a resident within the corporate boundaries of the town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified voter.

"Referendum" means any election held pursuant to law to submit a question to the voters for approval or rejection.

"Registered voter" means any person who is maintained on the Virginia voter registration system. All registered voters shall be maintained on the Virginia voter registration system with active status unless assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For purposes of applying the precinct size requirements of § 24.2-307, calculating election machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306, and determining the number of signatures required for candidate and voter petitions, "registered voter" shall include only persons maintained on the Virginia voter registration system with active status. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "registered voter" shall include only persons maintained on the Virginia voter registration system (i) with active status and (ii) on inactive status who are qualified to vote for the office for which the petition was circulated.

"Registration records" means all official records concerning the registration of qualified voters and shall include all records, lists, applications, and files, whether maintained in books, on cards, on automated data bases, or by any other legally permitted record-keeping method.



"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells.

"Special election" means any election that is held pursuant to law to fill a vacancy in office or to hold a referendum.

"State Board" or "Board" means the State Board of Elections.

"Virginia voter registration system" or "voter registration system" means the automated central record-keeping system for all voters registered within the Commonwealth that is maintained as provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

"Voting system" means the electronic voting and counting machines used at elections. This term includes direct recording electronic machines (DRE) and ballot scanner machines.

### *Article 2. State Board of Elections.*

#### **§ 24.2-103.1. Duties of Department of Elections related to redistricting.**

A. Upon receipt of any ordinance and Geographic Information System (GIS) map sent pursuant to § 24.2-304.3 or 24.2-306, the Department shall promptly review the ordinance and map and compare the boundaries contained within with the information in the voter registration system in order to ensure voters have been assigned to the correct districts. The Department shall notify the locality of any corrections that may be necessary.

B. The Department shall maintain and make available on its official website maps showing the current election district and precinct boundaries of each county and city.

### *Chapter 2. Federal, Commonwealth, and Local Officers.*

#### *Article 5. Constitutional and Local Officers.*

#### **§ 24.2-218. Election and term of county supervisors.**

The qualified voters of each county election district shall elect one or more supervisors at the general election in November 1995, and every four years thereafter for terms of four years, except as provided in § 24.2-219 or as provided by law for those counties having the optional form of government under the provisions of Article 2 (§ 15.2-702 et seq.) of Chapter 7 of Title 15.2.

#### **§ 24.2-219. Alternative for biennial county supervisor elections and staggered terms.**

A. The governing body of any county may by ordinance provide that the county board of supervisors be elected biennially for staggered four-year terms.

In lieu of an ordinance by the board of supervisors, the registered voters of the county may file a petition with the circuit court of the county requesting that a referendum be held on the question of whether the county board of supervisors should be elected biennially for staggered four-year terms. The petition shall be signed by registered voters equal in number to at least ten percent of the number registered in the county on the January 1 preceding its filing.

The court pursuant to §§ 24.2-682 and 24.2-684 shall order the election officials on a day fixed in the order to conduct a referendum on the question. The clerk of the court shall publish





notice of the referendum in a newspaper having general circulation in the county once a week for four consecutive weeks and shall post a copy of the notice at the door of the courthouse of the county. The question on the ballot shall be:

"Shall the members of the county board of supervisors be elected biennially for staggered four-year terms?

Yes

No"

The referendum shall be held and the results certified as provided in § 24.2-684.

B. If a majority of the voters voting in the referendum voted for biennial election of the members of the board of supervisors for staggered four-year terms, or if the governing body has so provided by ordinance, then the terms of supervisors elected at the next general election for supervisors shall be as follows:

1. If the number of supervisors elected in the county is an even number, half of the successful candidates shall be elected for terms of four years and half of the successful candidates shall be elected for terms of two years; or

2. If the number of supervisors in the county is an odd number, the smallest number of candidates which creates a majority of the elected supervisors shall be elected for terms of four years and all other successful candidates shall be elected for terms of two years.

Unless the number of members who volunteer to take two-year terms exactly equals the number of two-year terms to be assigned, the electoral board of the county shall assign the individual terms of members by lot at its meeting on the day following the election and immediately upon certification of the results. However, the electoral board may assign individual terms of members by election district in a drawing at a meeting held prior to the last day for a person to qualify as a candidate, if the governing body of the county so directs by ordinance or resolution adopted at least thirty days prior to the last day for qualification and members are elected by district. In all elections thereafter all successful candidates shall be elected for terms of four years.

In any county where the chairman of the board is elected from the county at large pursuant to § 15.2-503 or § 15.2-802, the provisions of this section shall not affect that office. The chairman of the board shall be elected for a term of four years in 1995 and every four years thereafter.

C. If the representation on the board of supervisors among the election districts is reapportioned, or the number of districts is diminished or the boundaries of the districts are changed, elections shall be held in each new district at the general election next preceding the expiration of the term of the office of the member of the board representing the predecessor district of each new district. If the number of districts is increased, the electoral board shall assign a two-year or four-year term for each new district so as to maintain as equal as practicable the number of members to be elected at each biennial election.

**§ 24.2-220. Reversion to quadrennial elections.**

The governing body of any county, by ordinance, may repeal an ordinance previously adopted to provide for the election of the board of supervisors biennially for staggered four-year terms and provide for the election of the board of supervisors quadrennially for four-year terms.



The qualified voters of the county, by petition and referendum in accordance with the requirements and procedures set forth in § 24.2-219, may repeal an ordinance of the board or a referendum previously adopted which authorized the election of the board of supervisors biennially for four-year terms. The question in the referendum to rescind shall be:

"Shall the members of the county board of supervisors be elected quadrennially for four-year terms?

Yes

No"

If a majority of the voters voting in the referendum voted for quadrennial election of the members of the board of supervisors for four-year terms, or if the governing body has so provided by ordinance, then the successors to those supervisors whose terms expire in 1995 or any fourth year thereafter shall be elected for a four-year term and immediate successors to those supervisors whose terms expire in 1993 or any fourth year thereafter shall be elected for a two-year term and all subsequent successors for a four-year term.

**§ 24.2-221. Time and frequency of referenda on election and term of supervisors.**

A referendum as provided in § 24.2-219 or § 24.2-220 shall be held only in the year preceding the year in which a general election for supervisors is to be held. Once a referendum on either question is held, no further referendum on either question may be held in the county for a period of four years.

**§ 24.2-222. Election and terms of mayor and council for cities and towns.**

The qualified voters of each city and town shall elect a mayor, if so provided by charter, and a council for the terms provided by charter. Except as provided in § 24.2-222.1, and notwithstanding any other provision of law, general or special: (i) any election of mayor or councilmen of a city or town whose charter provides for such elections at two-year or four-year intervals shall take place at the May general election of an even-numbered year and (ii) any election of mayor or councilmen of a city or town whose charter provides for such elections at one-year or three-year intervals shall take place at the general election in May of the years designated by charter. The persons so elected shall enter upon the duties of their offices on July 1 succeeding their election and remain in office until their successors have qualified.

**§ 24.2-222.1. Alternative election of mayor and council at November general election in cities and towns.**

A. Notwithstanding the provisions of § 24.2-222, and notwithstanding any contrary provisions of a city or town charter, the council of a city or town may provide by ordinance that the mayor, if an elected mayor is provided for by charter, and council shall be elected at the November general election date of any cycle as designated in the ordinance, for terms to commence January 1. No such ordinance shall be adopted between January 1 and the May general election date of the year in which city or town elections regularly are scheduled to be held therein.

B. Alternatively, the registered voters of a city or town may file a petition with the circuit court of the city or of the county within which the town is located asking that a referendum be held on the question of whether the city or town should elect the mayor, if an elected mayor is provided for by charter, and council members at the November general election date of any cycle



as designated in the petition. The petition shall be signed by registered voters equal in number to at least ten percent of the number registered in the city or town on the January 1 preceding the filing.

The court, pursuant to § 24.2-684, shall order the election officials on a day fixed in the order to conduct a referendum on the question, provided that no such referendum shall be scheduled between January 1 and the May general election date of the year in which city or town elections regularly are scheduled to be held therein. The clerk of the court shall publish notice of the referendum once a week for the three consecutive weeks prior to the referendum in a newspaper having general circulation in the city or town, and shall post a copy of the notice at the door of the courthouse of the city or county within which the town is located. The question on the ballot shall be:

"Shall the (city or town) change the election date of the mayor (if so provided by charter) and members of council from the May general election to the November general election (in even-numbered or odd-numbered years or as otherwise designated in the petition)?"

If members of the school board in the city or town are elected by the voters, the ballot question also shall state that the change in election date applies to the election of school board members.

The referendum shall be held and the results certified as provided in § 24.2-684. If a majority of the voters voting in the referendum vote in favor of the change, the mayor and council thereafter shall be elected at the November general election date for terms to commence January 1.

C. Except as provided in subsection D, no term of a mayor or member of council shall be shortened in implementing the change to the November election date. Mayors and members of council who were elected at a May general election and whose terms are to expire as of June 30 shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

D. In any city or town that elects its council biennially or quadrennially and that changes to the November general election date in odd-numbered years from the May general election date in even-numbered years, mayors and members of council who were elected at a May general election shall have their term of office shortened by six months but shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

**§ 24.2-223. Election and term of school board members.**

In any county, city or town wherein members of the school board are elected, pursuant to Article 7 (§ 22.1-57.1 et seq.) of Chapter 5 of Title 22.1, elections shall be held to coincide with the election of members of the governing body at the regular general election in November or the regular general election in May, as the case may be. Elected school board members shall serve terms which are the same as those of the governing body, to commence on January 1 following their election or July 1 following their election, as the case may be.

**§ 24.2-224. Local elections not otherwise provided for.**

The election to any public office required to be filled by the qualified voters of any county, city, town, or election district for which an election time is not provided by law shall be held at



the general election immediately preceding the time provided for the term of such office to commence.

*Chapter 3. Election Districts, Precincts, and Polling Places.*

*Article 2. Congressional, Senatorial, and House of Delegates Districts.*

**§ 24.2-304.04. Standards and criteria for congressional and state legislative districts.**

Every congressional and state legislative district shall be constituted so as to adhere to the following criteria:

1. Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts.
2. Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the *Fourteenth Amendment*, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness.
3. No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group. No district shall be drawn that results in a denial or abridgement of the rights of any racial or language minority group to participate in the political process and to elect representatives of their choice. A violation of this subdivision is established if, on the basis of the totality of the circumstances, it is shown that districts were drawn in such a way that members of a racial or language minority group are dispersed into districts in which they constitute an ineffective minority of voters or are concentrated into districts where they constitute an excessive majority. The extent to which members of a racial or language minority group have been elected to office in the state or the political subdivision is one circumstance that may be considered. Nothing in this subdivision shall establish a right to have members of a racial or language minority group elected in numbers equal to their proportion in the population.
4. Districts shall be drawn to give racial and language minorities an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice either alone or in coalition with others.
5. Districts shall be drawn to preserve communities of interest. For purposes of this subdivision, a "community of interest" means a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests. A "community of interest" does not include a community based upon political affiliation or relationship with a political party, elected official, or candidate for office.
6. Districts shall be composed of contiguous territory, with no district contiguous only by connections by water running downstream or upriver, and political boundaries may be considered.
7. Districts shall be composed of compact territory and shall be drawn employing one or more standard numerical measures of individual and average district compactness, both statewide and district by district.



8. A map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party.

9. The whole number of persons reported in the most recent federal decennial census by the United States Bureau of the Census shall be the basis for determining district populations, except that no person shall be deemed to have gained or lost a residence by reason of conviction and incarceration in a federal, state, or local correctional facility. Persons incarcerated in a federal, state, or local correctional facility shall be counted in the locality of their address at the time of incarceration, and the Division of Legislative Services shall adjust the census data pursuant to § *24.2-314* for this purpose.

*Article 2.1. Reapportionment of Local Election Districts.*

**§ 24.2-304.1. At-large and district elections; reapportionment and redistricting of districts or wards; limits.**

A. Except as otherwise specifically limited by general law or special act, the governing body of each county, city, or town may provide by ordinance for the election of its members on any of the following bases: (i) at large from the county, city, or town; (ii) from single-member or multi-member districts or wards, or any combination thereof; or (iii) from any combination of at-large, single-member, and multi-member districts or wards. A change in the basis for electing the members of the governing body shall not constitute a change in the form of county government.

B. If the members are elected from districts or wards and other than entirely at large from the locality, the districts or wards 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 or ward. In 1971 and every 10 years thereafter, the governing body of each such locality shall reapportion the representation among the districts or wards, including, if the governing body deems it appropriate, increasing or diminishing the number of such districts or wards, in order to give, as nearly as is practicable, representation on the basis of population.

C. For the purposes of redistricting and reapportioning representation in 2021 and every 10 years thereafter, the governing body of a county, city, or town shall use the most recent decennial population figures for such county, city, or town from the United States Bureau of the Census, as adjusted by the Division of Legislative Services pursuant to § *24.2-314*. The census data for these redistricting and apportionment purposes will not include any population figure that is not allocated to specific census blocks within the Commonwealth, even though that population may have been included in the apportionment population figures of the Commonwealth for the purpose of allocating United States House of Representatives seats among the states.

D. Notwithstanding any other provision of general law or special act, the governing body of a county, city, or town shall not reapportion the representation in the governing body at any time other than that required following the decennial census, except as (i) provided by law upon a change in the boundaries of the county, city, or town that results in an increase or decrease in the population of the county, city, or town of more than one percent, (ii) the result of a court order, (iii) the result of a change in the form of government, or (iv) the result of an increase or decrease in the number of districts or wards other than at-large districts or wards. The foregoing provisions notwithstanding, the governing body subsequent to the decennial redistricting may adjust district or ward boundaries in order that the boundaries might coincide with state legislative or congressional district boundaries; however, no adjustment shall affect more than



five percent of the population of a ward or district or 250 persons, whichever is lesser. If districts created by a reapportionment enacted subsequent to a decennial reapportionment are invalid under the provisions of this subsection, the immediately preexisting districts shall remain in force and effect until validly reapportioned in accordance with law.

**§ 24.2-304.2. Governing body authorized to expend funds for reapportionment.**

The governing body of each county, city, or town is authorized to expend funds and employ persons as it may deem necessary to carry out the responsibilities relating to reapportionment provided by law.

**§ 24.2-304.3. Recording reapportionment ordinance; notice requirements.**

A copy of the ordinance reapportioning representation in the governing body of a county, city, or town, including a description of the boundaries and a map showing the boundaries of the districts or wards, shall be recorded in the official minutes of the governing body.

The clerk of the county, city, or town shall send a certified copy of the ordinance, including a description of the boundaries and a Geographic Information System (GIS) map showing the boundaries of the districts or wards, to the local electoral board, the Secretary of the Commonwealth, the Department of Elections, and the Division of Legislative Services. Any county, city, or town that does not have GIS capabilities may request the Department of Elections to create on its behalf a GIS map showing the boundaries of the districts or wards as set out in the ordinance, and the Department of Elections shall create such a map.

**§ 24.2-304.4. Mandamus action for failure to reapportion districts or wards.**

Whenever the governing body of any county, city or town fails to perform the duty of reapportioning the representation on the governing body among the districts or wards of the county, city, or town, or fails to change the boundaries of districts or wards, as prescribed by law, mandamus shall lie in favor of any citizen of such county, city, or town, to compel the performance of such duty.

Whenever the governing body of any county, city or town changes the boundaries, or increases or diminishes the number of districts or wards, or reapportions the representation in the governing body as prescribed by law, the action shall not be subject to judicial review, unless it is alleged that the representation is not proportional to the population of the district or ward. If such allegation is made in a bill of complaint filed in the circuit court for the county, city or town, the court shall determine whether the action of the governing body complies with the constitutional requirements for redistricting and reapportionment. Appeals from the court's decision shall be as in any other suit.

**§ 24.2-304.5. Notification of certain civil actions.**

Any county, city, or town made a defendant in any civil action challenging the legality of its election district boundaries shall immediately notify the Attorney General of the pending civil action for review pursuant to § 2.2-508.

**§ 24.2-304.6. Effect of reapportionment on appointments and terms of local officers, school board and planning commission members.**

County, city, or town officers, including members of the school board or planning commission, in office on the effective date of a reapportionment or redistricting ordinance, shall

complete their terms of office, regardless of loss of residency in a particular district due to reapportionment or redistricting.

*Article 3. Requirements for Election Districts, Precincts, and Polling Places.*

**§ 24.2-305. Composition of election districts and precincts.**

A. Each election district and precinct shall be composed of compact and contiguous territory and shall have clearly defined and clearly observable boundaries.

B. A "clearly observable boundary" shall include (i) any named road or street, (ii) any road or highway which is a part of the federal, primary, or secondary state highway system, (iii) any river, stream, or drainage feature shown as a polygon boundary on the TIGER/line files of the United States Bureau of the Census, or (iv) any other natural or constructed or erected permanent physical feature which is shown on an official map issued by the Virginia Department of Transportation, on a United States Geological Survey topographical map, or as a polygon boundary on the TIGER/line files of the United States Bureau of the Census. No property line or subdivision boundary shall be deemed to be a clearly observable boundary unless it is marked by a permanent physical feature that is shown on an official map issued by the Virginia Department of Transportation, on a United States Geological Survey topographical map, or as a polygon boundary on the TIGER/line files of the United States Bureau of the Census.

**§ 24.2-306. Changes not to be enacted within 60 days of general election; notice requirements.**

A. No change in any local election district, precinct, or polling place shall be enacted within 60 days next preceding any general election. Notice shall be published prior to enactment in a newspaper having general circulation in the election district or precinct once a week for two successive weeks. The published notice shall state where descriptions and maps of proposed boundary and polling place changes may be inspected.

B. Notice of any adopted change in any election district, town, precinct, or polling place other than in the location of the office of the general registrar shall be mailed to all registered voters whose election district, town, precinct, or polling place is changed at least 15 days prior to the next general, special, or primary election in which the voters will be voting in the changed election district, town, precinct, or polling place. Notice of a change in the location of the office of the general registrar shall be given by posting on the official website of the county or city, by posting at not less than 10 public places, or by publication once in a newspaper of general circulation in the county or city within not more than 21 days in advance of the change or within seven days following the change.

C. Each county, city, and town shall comply with the applicable requirements of law, including §§ 24.2-304.3 and 30-264, and send copies of enacted changes, including a Geographic Information System (GIS) map showing the new boundaries of the districts or precincts, to the local electoral board, the Department, and the Division of Legislative Services. Any county, city, or town that does not have GIS capabilities may request the Department of Elections to create on its behalf a GIS map showing the boundaries of the new districts or precincts, and the Department of Elections shall create such a map.



**§ 24.2-307. Requirements for county and city precincts.**

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of this chapter.

At the time any precinct is established, it shall have no more than 5,000 registered voters. The general registrar shall notify the governing body whenever the number of voters who voted in a precinct in an election for President of the United States exceeds 4,000. Within six months of receiving the notice, the governing body shall proceed to revise the precinct boundaries, and any newly established or redrawn precinct shall have no more than 5,000 registered voters.

At the time any precinct is established, each precinct in a county shall have no fewer than 100 registered voters and each precinct in a city shall have no fewer than 500 registered voters.

Each precinct shall be wholly contained within a single congressional district, Senate district, House of Delegates district, and election district used for the election of one or more members of the governing body or school board for the county or city. In each year ending in one, the governing body of each county and city shall establish the precinct boundaries to be consistent with any congressional district, Senate district, House of Delegates district, and local election district that was adopted by the appropriate authority by June 15 of that year. If congressional districts, Senate districts, House of Delegates districts, or local election districts have not been adopted by the appropriate authority by June 15 of a year ending in one, the governing body may use the congressional districts, Senate districts, House of Delegates districts, or local election districts as such districts existed on June 15 of that year as the basis for establishing the precinct boundaries to be used for the elections to be held in November of that year. Such governing body shall establish precinct boundaries to be consistent with any subsequent changes to the congressional districts, Senate districts, House of Delegates districts, or local election districts. If a governing body is unable to establish a precinct with the minimum number of registered voters without splitting the precinct between two or more congressional districts, Senate districts, House of Delegates districts, or local election districts, it shall apply to the State Board for a waiver to administer a split precinct. The State Board may grant the waiver or direct the governing body to establish a precinct with fewer than the minimum number of registered voters as permitted by § 24.2-309. A governing body granted a waiver to administer a split precinct or directed to establish a precinct with fewer than the minimum number of registered voters may use such a precinct for any election held that year.

The governing body shall establish by ordinance one polling place for each precinct.

**§ 24.2-308. Requirements for town precincts.**

There shall be one precinct for each town unless the council by ordinance establishes more than one precinct.

Each town precinct shall be wholly contained within any election district used for the election of one or more council or school board members.

The council shall establish by ordinance one polling place for each precinct.





**§ 24.2-309. Establishment of precinct with less than minimum number of voters; conduct of elections where all voters do not have same choice of candidates.**

A precinct may be established with fewer than the minimum number of registered voters required by this article if a larger precinct cannot be established in which all persons are voting at any general election for the same candidates for the governing body and school board of the county or city, House of Delegates, state Senate, and United States House of Representatives. The governing body may select a polling place within one mile of the boundaries of that precinct if a suitable polling place is not available within that precinct.

The State Board shall make regulations setting procedures by which elections may be conducted in precincts in which all voters do not have the same choice of candidates at a general election.

**§ 24.2-309.2. Election precincts; prohibiting precinct changes for specified period of time.**

No county, city, or town shall create, divide, abolish, or consolidate any precincts, or otherwise change the boundaries of any precinct, effective during the period from February 1, 2019, to May 15, 2021, except as (i) provided by law upon a change in the boundaries of the county, city, or town, (ii) the result of a court order, (iii) the result of a change in the form of government, or (iv) the result of an increase or decrease in the number of local election districts other than at-large districts. Any ordinance required to comply with the requirements of § 24.2-307 shall be adopted on or before February 1, 2019.

If a change in the boundaries of a precinct is required pursuant to clause (i), (ii), (iii), or (iv), the county, city, or town shall comply with the applicable requirements of law, including §§ 24.2-304.3 and 30-264, and send copies of the ordered or enacted changes to the State Board of Elections and the Division of Legislative Services.

This section shall not prohibit any county, city, or town from adopting an ordinance revising precinct boundaries after January 1, 2021. However, no revisions in precinct boundaries shall be implemented in the conduct of elections prior to May 15, 2021.

**§ 24.2-310. Requirements for polling places.**

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the general registrar to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and



Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board or the general registrar shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The general registrar shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within 40 feet of any entrance to the polling place. However, and notwithstanding the provisions of clause (i) of subsection A of § 24.2-604, and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond 40 feet of any entrance to the polling place and the area within the structure that is within 40 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § 24.2-604. The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

**§ 24.2-310.1. Polling places; additional requirement.**

The requirement stated in this section shall be in addition to requirements stated in §§ 24.2-307, 24.2-308, and 24.2-310, including the requirement that polling places be located in public buildings whenever practical. No polling place shall be located in a building which serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board has approved the use of the building because no other building meeting the accessibility requirements of this title is available.



*Article 4. Effective Dates of Redistricting Measures.*

**§ 24.2-311. Effective date of decennial redistricting measures; elections following decennial redistricting.**

A. Legislation enacted to accomplish the decennial redistricting of congressional and General Assembly districts required by *Article II, Section 6* of the Constitution of Virginia shall take effect immediately. Members of Congress and the General Assembly in office on the effective date of the decennial redistricting legislation shall complete their terms of office. The elections for their successors shall be held at the November general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the legislation to accomplish the decennial redistricting. However, (i) if the decennial redistricting of congressional districts has not been enacted and approved for implementation pursuant to § 5 of the United States Voting Rights Act of 1965 before January 1 of the year of the election for statewide office, the previously enacted congressional districts shall remain in effect for the purpose of meeting the petition signature requirements set out in §§ *24.2-506, 24.2-521, 24.2-543, and 24.2-545* and (ii) any reference on a petition to the usual primary date of the second Tuesday in June shall not be cause to invalidate the petition even though the date of the primary may be altered by law.

B. Ordinances adopted by local governing bodies to accomplish the decennial redistricting of districts for county, city, and town governing bodies required by *Article VII, Section 5* of the Constitution of Virginia shall take effect immediately. Members of county, city, and town governing bodies in office on the effective date of a decennial redistricting measure shall complete their terms of office. The elections for their successors shall be held at the general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the measures to accomplish the decennial redistricting.

C. If a vacancy in any such office occurs after the effective date of a decennial redistricting measure and a special election is required by law to fill the vacancy, the vacancy shall be filled from the district in the decennial redistricting measure which most closely approximates the district in which the vacancy occurred.

D. If a decennial redistricting measure adopted by a local governing body adds one or more districts and also increases the size of the governing body, an election for the additional governing body member or members to represent the additional district or districts for the full or partial term provided by law shall be held at the next November general election in any county or in any city or town that regularly elects its governing body in November pursuant to § *24.2-222.1*, or at the next May general election in any other city or town, which occurs at least 120 days after the effective date of the redistricting measure.

E. In the event of a conflict between the provisions of a decennial redistricting measure and the provisions of the charter of any locality, the provisions of the redistricting measure shall be deemed to override the charter provisions to the extent required to give effect to the redistricting plan.



**§ 24.2-312. Effective date of other redistricting measures; elections following annexation.**

A. Any redistricting, other than the decennial redistricting, of any county, city, or town shall be effective at midnight December 31 of the year in which the redistricting occurs.

B. Members of county, city, and town governing bodies in office when any such redistricting measure is adopted shall complete their terms of office. The elections for their successors shall be held at the general election next preceding the expiration of the terms of office of the incumbent members and shall be conducted on the basis of the districts set out in the measures to accomplish the redistricting.

C. When a county has been redistricted as a result of annexation and the redistricting occurs in the year of a regularly scheduled November general election for members of the county's board of supervisors, the November general election shall be conducted from the newly established districts so long as the redistricting measure has been adopted prior to March 15 of the year of the election.

D. When a city or town has been redistricted as a result of annexation and the redistricting occurs prior to a regularly scheduled May general election for members of the city's or town's governing body, the May general election shall be conducted from the newly established districts so long as the redistricting measure has been adopted prior to the November 15 immediately preceding the election.

**§ 24.2-313. Rescheduling of certain local elections following the decennial redistricting of districts for the governing body.**

A. Notwithstanding any other provision of law to the contrary, elections for members of the governing body or school board of any county, city, or town that would be held on a regularly scheduled date for a general election, but are delayed because the decennial redistricting plan of such county, city, or town is not precleared by the Attorney General of the United States pursuant to § 5 of the federal Voting Rights Act at least thirty days prior to the general election, shall be held as provided in this section, unless otherwise provided by a court of competent jurisdiction. In the event the Attorney General grants preclearance at least thirty days prior to the general election, the election shall be held as scheduled and shall be conducted from the newly established districts. The provisions of this section shall not apply to any county, city, or town election scheduled to be held entirely on an at-large basis.

B. In each such county, city, or town, such election shall be held on the first Tuesday (i) that is more than sixty days after the Attorney General of the United States issues a letter stating that he interposes no objection to a decennial redistricting plan approved and submitted by the county, city, or town; (ii) that is not the scheduled date of a primary election; and (iii) that is not within the sixty days before or the thirty-five days after a primary or general election.

C. Independent candidates for such rescheduled elections shall qualify in the manner provided by §§ 24.2-505 and 24.2-506, and party nominees shall be nominated and certified at least thirty days before the new election date.

D. All candidates shall file the statements required by §§ 24.2-501 and 24.2-502 at least thirty days before the new election date.



E. Notwithstanding the provisions of subsections C and D, any candidate who qualified to have his name printed on the ballot for the original election date, pursuant to § 24.2-504, shall be automatically qualified to have his name printed on the ballot for the delayed election date and shall not have to refile the required documents, provided that the boundaries of the district in which he is seeking office are the same as when he was originally qualified. In any district in which the boundaries have been changed, candidates shall requalify for the ballot; however, at the request of any candidate who filed as an independent, his original petitions shall be reviewed by the registrar, previously verified signatures of voters who reside in the new district shall be counted toward the number needed to qualify to run in the new district, and the candidate may supplement such petitions when he refiles under § 24.2-505.

F. Notwithstanding any provision of law to the contrary, the term of members of any governing body or school board elected under the provisions of this act shall commence on the first day of the second month following the election and shall terminate on the day on which the term would have expired had the general election been held on its regularly scheduled day.

G. The term of members of any governing body affected by this act that would otherwise expire prior to the commencement of the term of their successors elected pursuant to this section shall be extended until the date that the term of members elected pursuant to this section commences, notwithstanding any provision of law to the contrary.

*Article 5. Population Data.*

**§ 24.2-314. Population data; reallocation of prison populations.**

A. Persons incarcerated in federal correctional facilities and in state and local correctional facilities, as those terms are defined in § 53.1-1, shall be counted and reallocated for redistricting and reapportionment purposes in accordance with the provisions of this section and the following:

1. A person incarcerated in a federal, state, or local correctional facility whose address at the time of incarceration was located within the Commonwealth shall be deemed to reside at such address.
2. A person incarcerated in a federal, state, or local correctional facility whose address at the time of incarceration was located outside of the Commonwealth or whose address at the time of incarceration cannot be determined shall be deemed to reside at the location of the facility in which he is incarcerated.

B. By July 1 of any year in which the decennial census is taken, the Department of Corrections and the State Board of Local and Regional Jails shall provide to the Division of Legislative Services, in a format specified by the Division of Legislative Services, the following information for each person who was incarcerated in a state or local correctional facility on April 1 of that year:

1. A unique identifier, other than his name or offender identification number, assigned by the Department of Corrections or the State Board of Local and Regional Jails for this purpose;
2. His residential street address at the time of incarceration, or other legal residence, if known;
3. His race, his ethnicity as identified by him, and whether he is 18 years of age or older; and



4. The street address of the correctional facility in which he was incarcerated on April 1 of that year.

C. The Division of Legislative Services shall request each agency operating a federal correctional facility in the Commonwealth that incarcerates persons convicted of a criminal offense to provide to the Division of Legislative Services by July 1 of any year in which the decennial census is taken a record containing the information specified in subsection B for each person who was incarcerated in the facility on April 1 of that year. Any person incarcerated in a federal correctional facility for whom a record is not received by the Division of Legislative Services shall be deemed to have an address at the time of incarceration that cannot be determined.

D. The Division of Legislative Services shall prepare adjusted population data, including race and ethnicity data, in a manner that reflects the inclusion of incarcerated persons in the population count of the locality in which he is deemed to reside pursuant to subdivision A 1 or 2.

This adjusted population data shall be used for purposes of redistricting and reapportionment and shall be the basis for congressional, state Senate, House of Delegates, and local government election districts. This adjusted population data shall not be used in the distribution of any federal or state aid.

E. The Division of Legislative Services shall make the adjusted population data available no later than 30 days following receipt of population data from the United States Bureau of the Census pursuant to P.L. 94-171. In making this data available, the Division of Legislative Services shall ensure no information regarding a specific incarcerated person's address at the time of incarceration is made public.

## Title 30. General Assembly.

### *Chapter 39. Joint Reapportionment Committee.*

#### **§ 30-264. Staff to Joint Reapportionment Committee; census liaison.**

A. The Division of Legislative Services (the Division) shall serve as staff to the Joint Reapportionment Committee. The Director of the Division, or his designated representative, shall serve as the state liaison with the United States Bureau of the Census on matters relating to the tabulation of the population for reapportionment purposes pursuant to United States Public Law 94-171. The governing bodies, electoral boards, and registrars of every county and municipality shall cooperate with the Division in the exchange of all statistical and other information pertinent to preparation for the census.

B. The Division shall maintain the current election district and precinct boundaries of each county and city as a part of the General Assembly's computer-assisted mapping and redistricting system. Whenever a county or city governing body adopts an ordinance that changes an election district or precinct boundary, the local governing body shall provide a copy of its ordinance, along with Geographic Information System (GIS) maps and other evidence documenting the boundary, to the Division.

C. The provisions of Article 2 (§ 24.2-302 et seq.) of Chapter 3 of Title 24.2, including the statistical reports referred to in that article, shall be controlling in any legal determination of a district boundary.

