

April 8, 2020

The Honorable Ralph S. Northam
Governor of Virginia
Richmond, Virginia 23218

Re: *Next Steps for Redistricting Reform in Virginia*

Dear Governor Northam,

We write to urge you to take gubernatorial action before April 11 to make sure that proposed redistricting reforms on the ballot this fall operate as smoothly as possible in 2021 if approved by voters.

This session, Virginia lawmakers sent a historic constitutional amendment (SJ 18) to voters that, if approved in November, would create the first redistricting commission in the South (the “Commission”). The General Assembly also passed important statutory legislation setting out the rules the commission must follow when drawing maps in 2021 and ending the pernicious practice of prison gerrymandering.

However, several important steps remain to ensure that the Commission, if approved by voters, is in a position to function in 2021. This is because the General Assembly narrowly failed to agree on enabling legislation that would have provided for the selection of citizen commissioners, created a process for public comment, and set out the process that the Supreme Court of Virginia would use for drawing maps in the event of deadlock.

We write this letter to provide a synopsis of what legislation passed last session, what failed to pass, and to offer recommendations of what can be done through executive action to make sure that the Commission is ready and well-positioned to draw maps in 2021.

What passed the Virginia General Assembly?

The most significant of the redistricting reforms passed by the General Assembly is SJ 18. If approved by voters in November 2020, SJ 18 would establish a 16-member bipartisan redistricting commission with eight lawmaker- and eight citizen-members to draw the state's congressional and legislative maps, which would be subject to an up-or-down vote in the General Assembly.

In addition to SJ 18, four redistricting-related bills successfully made it through both legislative chambers and are awaiting gubernatorial action:

- SB 717 is a companion to SJ 18 and establishes strong criteria for drawing congressional and legislative districts in Virginia. It protects the ability of communities of color to elect candidates of choice, bans partisan gerrymandering, and keeps communities of interest whole, among other things. The bill also ends prison gerrymandering by counting people who are incarcerated at their last known address rather than where the prison facility is located.
- HB 1255 establishes criteria and anti-partisan gerrymandering provisions *identical* to those in SB 717. **We strongly recommend that either SB 717 or HB 1255 be signed.**
- SB 740 requires voting precincts not be split by congressional, legislative, or local districts. The bill also gives cities and counties a procedure to set precincts that have fewer voters than the statutory minimum should it be necessary to ensure that voting precincts are not split. **We also recommend that this bill be signed.**
- HB 105 is a technical bill that removes the requirement that the Division of Legislative Services provide written descriptions of congressional and legislative districts to general registrars. **We also recommend that this bill be signed.**

What failed to pass?

A number of redistricting-related proposals failed to get through the legislature. Importantly, these include both the House and Senate versions of essential and necessary enabling legislation for the SJ 18 constitutional amendment.

SB 203 and HB 758 would have filled in important details for the constitutional amendment. Among other things, both bills provided guidelines for the selection of the eight citizen-members, including requisite qualifications, and provisions

prescribing how the Supreme Court of Virginia would have carried out its duty in case of commission or legislative failure.

The bills were nearly identical and are well in line with best practices around the nation. However, while SB 203 passed the Senate and HB 758 passed the House of Delegates, the two chambers were not able to resolve one minor difference before the end of the session regarding the process that the Supreme Court of Virginia will follow for drawing maps in case of a deadlock:

- In HB 758, Section 30-386(B) provided that:

“In enacting such rules and procedures, the Court shall follow the provisions of this section” (with provisions regarding public participation and appointment of special masters following).

- By contrast, in SB 203, the parallel section gave the Supreme Court greater discretion, saying:

“In enacting such rules and procedures, the Court shall give consideration to the provisions of this section.” (with language identical to that in HB 758 following).

What still needs to be done by executive action?

The lack of enabling legislation needs to be remedied as soon as possible.

Under SJ 18, the Commission has a tight 45 days to draw maps once Virginia receives block-level population and demographic data from the U.S. Census Bureau (which it is currently expected to receive by mid-February 2021). To make sure that maps can be drawn and approved in that non-extendable 45-day window, it is essential that the Commission be fully formed and seated by early February 2021. The prerequisite for that is setting up a process so that persons interested in serving as citizen commissioners can apply and be vetted by a screening committee that itself will need to be appointed and convened.

The proposed, but not enacted, enabling legislation would have filled in these gaps, establishing a process for the timely selection of citizen commissioners as well as adding vital details about public participation and how courts draw maps in the event of deadlock.

We recommend that either SB 717 or HB 1255 be signed into law and that whichever bill is not signed as-is be used as the vehicle to add the following provisions from the proposed enabling legislation:

- A deadline for legislative leaders in the General Assembly to appoint the eight legislatively selected commissioners.
- A process for appointing the screening committee that will review and vet applications from persons interested in serving as one of eight citizen commissioners.
- A process and timeframe for the screening committee to receive applications to serve as citizen commissioners and for the selection of citizen commissioners to occur.
- Provisions related to public hearings and transparency.
- Provisions related to the process that the Supreme Court of Virginia should use for enacting a redistricting plan in the event that the Commission deadlocks or maps fail to be ratified by the General Assembly.

Thank you for your consideration and leadership on this issue, particularly at a time of other pressing concerns.

Sincerely,

s/Michael Li

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s/Yurij Rudensky

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