SJ18'S MINORITY PROTECTIONS

Summary

Legislative debate about the redistricting reform amendment (SJ18) focused on how the amendment only referenced other law and did not itself protect minorities. However, the amendment, on its own and without enabling legislation, protects minority communities through standalone Voting Rights Act language.

What is the current status of the redistricting reform amendment?

On March 5, the Virginia General Assembly passed a constitutional amendment that would create a bipartisan redistricting commission made up of eight citizens and eight legislators (four per chamber, and two per party from each chamber). Next, the amendment will go to the voters on the November 2020 ballot. In the meantime, advocates and opponents will make arguments to sway voters, 70% of whom are in favor of the amendment according to a December 2019 Wason Center poll.

Does the amendment protect minority communities?

Yes, in two ways: (1) incorporating all federal and state laws and court decisions regarding racial and ethnic fairness, including the federal Voting Rights Act (VRA) and Equal Protection Clause; and (2) codifying standalone VRA language into the Virginia Constitution. This standalone language states: "Districts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice."

But what happens if the Supreme Court invalidates parts or all of the federal VRA?

This is a realistic concern following 2013's Shelby County v. Holder, which gutted Section 5's preclearance formula. Under the amendment's first provision, the federal law and judicial decisions would go away, but any state-level law or decisions would remain. Additionally, the amendment's standalone VRA-type language would remain. Thus, passing the amendment creates a lifeline for minority communities if the federal VRA is struck down.

Why does the amendment say "where practicable?" Doesn't that limit the protection?

No, it doesn't. Rather, it would require districts that protect minority communities where such a district makes sense rather than connecting far-flung communities to pack minority voters and limit their influence. Examples of this kind of packing existed as recently as this decade in Virginia's old 3rd congressional and North Carolina's old 12th (which was litigated for about 30 years), both of which were struck down as unconstitutional racial gerrymanders.

I've heard about majority-minority districts to ensure minority representation. Does this require those types of districts?

It doesn't, and for good reason. In areas that satisfy certain criteria, Section 2 of the VRA may require majority-minority districts, where the minority voting age population percentage is above 50%. These districts result in almost assured victory for a minority group's candidate of choice but also lead to a decline in minority influence on a statewide basis. As noted by former Obama DOJ attorney, Professor Justin Levitt, the Virginia amendment has "no artificial 50% cutoff," allowing for the creation of coalition districts with crossover voting with a lower percentage, as shown by the Metric Geometry and Gerrymandering Group.

In short, majority-minority districts create overly safe districts while limiting minority representation on a statewide basis. As shown by the districts redrawn following the Bethune-Hill court case, lowering a district's black voting age population (BVAP) percentage will disperse the votes of minority communities throughout more districts while still providing those communities the ability to elect their candidates of choice. Both PGP's own redrawing of the challenged districts and the remedial map drawn by Prof. Bernard Grofman reduced the artificial 55% BVAP quota created by the General Assembly. This dispersed BVAP resulted in more districts where minority voters had the opportunity to elect their candidates of choice, as suggested by the 2019 House of Delegates election.

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