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HOUSE JOINT RESOLUTION NO. 143

Offered January 16, 2020

Proposing an amendment to Section 6 of Article II of the Constitution of Virginia and proposing an amendment to the Constitution of Virginia by adding in Article II a section numbered 6-A, relating to apportionment; criteria for legislative and congressional districts; Virginia Citizens Redistricting Commission.

Patron—Levine

Referred to Committee on Rules

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendments to the Constitution of Virginia be, and the same hereby are, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article II of the Constitution of Virginia and amend the Constitution of Virginia by adding in Article II a section numbered 6-A as follows:

ARTICLE II

FRANCHISE AND OFFICERS

Section 6. Apportionment.

(a) Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the ~~General Assembly~~ *Virginia Citizens Redistricting Commission. The Virginia Citizens Redistricting Commission shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2031 and every ten years thereafter.* Every electoral 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.~~ *The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2011 and every ten years thereafter constituted so as to adhere to the following standards and criteria, in order of priority:*

(1) *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; federal laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness.*

(2) *Districts shall be composed of contiguous territory. Districts divided by water may be deemed contiguous, but connections by water running downstream or upriver are not permissible.*

(3) *No district shall be drawn that results in a denial or abridgment 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 abridgment 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) *Legislative and congressional districts shall have a total population as nearly equal as practicable to the ideal population for such districts. Deviations from equal population may be permitted to achieve other redistricting criteria specified in this subsection, but in no case shall a congressional district have a total population that varies by more than one half of one percent from the ideal congressional district population, nor shall an electoral district for the Senate or the House of Delegates have a total population that varies by more than five percent from the ideal district population for a Senate or House of Delegates district, respectively.*

(5) *Districts shall be drawn to protect existing political boundaries of counties, cities, and towns. To the extent practicable, without violating the criteria in subdivisions (1) through (4), each political subdivision shall be wholly contained within a single electoral district. Where a departure from existing political boundaries is necessary to comply with one or more of the redistricting criteria specified in this subsection, the district lines shall be drawn giving consideration to natural geographic boundaries,*

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59 *such as mountains and rivers; physical boundaries, such as major roads and residential subdivisions;*
60 *and communities of interest. If a departure from existing political boundaries is necessary in order to*
61 *comply with other districting criteria, the district lines shall be drawn utilizing clearly observable*
62 *boundaries, as defined by general law.*

63 *(6) Districts shall be composed of compact territory.*

64 *(7) Districts shall be drawn in such a way as to avoid dividing communities of interest without*
65 *violating the requirements of subdivisions (1) through (6). Districts shall not be drawn to divide*
66 *homogeneous neighborhoods or any geographically defined group of people living in an area who share*
67 *similar social, cultural, and economic interests. A community of interest does not include a community*
68 *based upon political affiliation or relationship with a political party, elected official, or candidate for*
69 *office.*

70 *(8) Districts shall not have irregular or contorted perimeters, unless justified by one or more of the*
71 *redistricting criteria specified in this subsection, including adherence to existing political boundaries or*
72 *natural geographic boundaries.*

73 *(9) While existing precincts may be split among two or more congressional or state legislative*
74 *districts, they should be split as little as possible.*

75 *(b) Every electoral district shall additionally be constituted so as to adhere to the following criterion*
76 *of fairness, as follows:*

77 *(1) Resulting statewide maps of legislative districts for the House of Delegates, the Senate, and the*
78 *United States House of Representatives drawn in accordance with subsection (a) shall be each analyzed*
79 *using a hypothetical election based on the average expected uniformly shifted partisan vote per precinct.*
80 *If, in this hypothetical election, candidates of the two largest political parties do not prevail in an equal*
81 *statewide proportion of districts with a deviation of no more than one seat per party from a tie, the*
82 *districts drawn pursuant to subsection (a) shall be reconstituted until this statistical condition is met.*

83 *(2) An open-source computer algorithm shall determine the average expected uniformly shifted*
84 *partisan vote per precinct.*

85 *(3) The average expected uniformly shifted partisan vote per precinct shall be calculated for the two*
86 *largest parties for every precinct in Virginia as the average in each precinct of the uniformly shifted*
87 *precinct results for all the recent down-ballot statewide elections.*

88 *(4) In determining the uniformly shifted precinct results for subdivision (1), it shall be presumed that*
89 *any precinct split in redistricting gives, in each of its component parts, the same average expected*
90 *partisan vote per precinct as the precinct as a whole had prior to its split.*

91 *(5) The uniformly shifted precinct results for the two top candidates for each recent down-ballot*
92 *election shall be added together to confirm that the uniformly shifted sums result in a statewide tie.*

93 *(6) For purposes of this subsection:*

94 *"Recent down-ballot statewide election" means any general election for Lieutenant Governor or*
95 *Attorney General of Virginia during the ten-year period immediately preceding the decennial*
96 *redistricting.*

97 *"Uniformly shifted precinct results" means the results for every election precinct in Virginia tallied*
98 *for every recent down-ballot statewide election, with the number of votes cast in favor of the winning*
99 *candidate in each precinct shifted downward by the uniform shift percentage for that election and the*
100 *number of votes cast in favor of the second-highest candidate shifted upward by the uniform shift*
101 *percentage for that election.*

102 *"Uniform shift percentage" means half the statewide percentage margin of victory for the winning*
103 *candidate over the candidate with the second-highest vote total calculated for each recent down-ballot*
104 *statewide election.*

105 *(c) Any such decennial reapportionment law shall take effect immediately and not be subject to the*
106 *limitations contained in Article IV, Section 13, of this Constitution.*

107 *(d) The districts delineated in the decennial reapportionment law shall be implemented for the*
108 *November general election for the United States House of Representatives, Senate, or House of*
109 *Delegates, respectively, that is held immediately prior to the expiration of the term being served in the*
110 *year that the reapportionment law is required to be enacted. A member in office at the time that a*
111 *decennial redistricting law is enacted shall complete his term of office and shall continue to represent*
112 *the district from which he was elected for the duration of such term of office so long as he does not*
113 *move his residence from the district from which he was elected. Any vacancy occurring during such*
114 *term shall be filled from the same district that elected the member whose vacancy is being filled.*
115 *Section 6-A. Virginia Citizens Redistricting Commission.*

116 *(a) The Virginia Citizens Redistricting Commission is hereby created for the purpose of establishing*
117 *legislative and congressional districts pursuant to Article II, Section 6 of this Constitution.*

118 *(b) The Commission shall consist of ten members who shall be selected in accordance with the*
119 *provisions of this subsection.*

120 *(1) There shall be a Redistricting Commission Selection Committee consisting of five retired judges*

of the circuit courts of Virginia. The members of the Committee shall be selected as follows:

(A) By November 15 of the year ending in zero, the Chief Justice of the Supreme Court of Virginia shall submit in writing to the Clerks of the House of Delegates and the Senate a list of retired judges of the circuit courts of Virginia who are willing to serve on the Committee. The list of all retired judges willing to serve shall be made available to the public on the date of certification by the Chief Justice and may be modified by any retired judge of a circuit court who wishes to publicly add or remove his name from the list. This list shall be disseminated by the Clerks to the Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, and the leaders in the Senate of the political parties having the highest and next highest number of members in the Senate.

(B) Within five days of the receipt of this list, these members shall each select a name of a judge from the list and notify the Clerk of the House of Delegates or the Senate, as appropriate, of their selections. The four judges selected to serve on the Committee shall be immediately notified by the Clerks of the House of Delegates and the Senate, communicating jointly.

(C) The four judges selected shall select, by a majority vote, a judge from the list prescribed by subdivision (A) to serve as the fifth member of the Committee and to serve as the chair of the Committee.

(2) By December 1 of the year ending in zero, the Committee shall hold a public meeting. At this meeting, the Committee shall adopt a process by which registered voters of the Commonwealth may apply to serve on the Virginia Citizens Redistricting Commission. The Committee shall cause to be advertised throughout the Commonwealth information on the Commission and how interested persons may apply. The application period shall be open for a reasonable amount of time.

Except as provided in subdivision (3) (A), all meetings of the Committee shall be open to the public.

(3) By March 1 of the year ending in one, the Committee shall select, by majority vote, from the list of submitted applications twenty-two candidates for service on the Commission.

(A) The Commission candidates selected shall meet the criteria established by the General Assembly by general law, including criteria for determining whether a voter is affiliated with a political party. In selecting candidates, the Committee shall give consideration to the diversity of the Commonwealth. The Committee may interview any applicant prior to selection, and such interviews shall not be open to the public.

(B) Five Commission candidates shall be voters who affiliate with the political party receiving the highest number of votes for Governor at the immediately preceding gubernatorial election, and five Commission candidates shall be voters who affiliate with the political party receiving the next highest number of votes for Governor at the immediately preceding gubernatorial election. Twelve Commission candidates shall be voters who are not affiliated with either of those political parties.

(C) Upon selection of the Commission candidates, the Committee shall promptly transmit the name, address, and occupation of each Commission candidate to the Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, and the leaders in the Senate of the political parties having the highest and next highest number of members in the Senate. The Committee shall also release the names of the Commission candidates to the public.

(4) Within five days of receipt of the list of twenty-two Commission candidates, the members of the General Assembly receiving the list pursuant to subdivision (3) (C), beginning with the Speaker of the House of Delegates and alternating sequentially by party, shall each strike one Commission candidate affiliated with the opposite political party and two Commission candidates not affiliated with either of the political parties receiving the highest and next highest number of votes for Governor at the immediately preceding gubernatorial election. The strikes shall be made with due consideration to creating a Commission that reflects the diversity of the Commonwealth. All strikes shall be submitted to the Committee chair.

(5) Upon receipt of the strikes made pursuant to subdivision (4), the Committee chair shall finalize the Commission membership. He shall promptly notify the Clerks of the House of Delegates and the Senate of the ten members of the Commission and shall also notify the Commission members so selected.

(6) The final membership shall consist of three Commission members who are affiliated with the political party receiving the highest number of votes for Governor at the immediately preceding gubernatorial election, three Commission members who are affiliated with the political party receiving the next highest number of votes for Governor at the immediately preceding gubernatorial election, and four Commission members who are not affiliated with either of those political parties.

(c) The term of office for each Commission member shall expire upon the selection of the members of the succeeding Commission. If any Commission member cannot, for any reason, complete his term, the Committee shall select as a replacement one of the candidates who had been stricken pursuant to

182 subdivision (b) (4). The replacement shall be affiliated with the same political party if the Commission
183 member whose seat he is filling was affiliated with a political party or shall not be affiliated with any
184 political party if the Commission member whose seat he is filling was not affiliated with either of the
185 political parties receiving the highest and next highest number of votes for Governor at the immediately
186 preceding gubernatorial election.

187 (d) By April 1 of the year ending in one, the Commission shall hold a public meeting. At this
188 meeting, the Commission shall select, by a majority vote, one of the Commission members who is not
189 affiliated with either of the political parties receiving the highest and next highest number of votes for
190 Governor at the immediately preceding gubernatorial election to serve as the chair of the Commission.

191 (e) By June 1 of the year ending in one, the Commission shall certify the establishment of districts
192 for the Senate and the House of Delegates to the State Board of Elections. By July 1 of the year ending
193 in one, the Commission shall certify the establishment of districts for the United States House of
194 Representatives to the State Board of Elections.

195 (1) Final approval or adoption of a redistricting plan shall be by an affirmative vote of seven of the
196 ten Commission members, including at least one vote from each of the political parties receiving the
197 highest and next highest number of votes for Governor at the immediately preceding gubernatorial
198 election. Abstentions shall not be permitted on a vote for final approval or adoption of a redistricting
199 plan.

200 (2) The Commission shall promptly transmit the district plans to the Governor and the Clerks of the
201 House of Delegates and the Senate. Such district plans shall be final and not subject to amendment or
202 veto by the Governor or the General Assembly. The Commission shall also post the district plans on its
203 website maintained pursuant to subsection (f).

204 (3) Districts established pursuant to this section shall constitute the official legislative and
205 congressional districts until the next decennial reapportionment, or as may be required by a court.

206 (f) All meetings of the Commission shall be open to the public. Prior to proposing any redistricting
207 plans and prior to voting on redistricting plans, the Commission shall hold at least three public
208 hearings in different parts of the Commonwealth to receive and consider comments from the public.

209 The Commission shall establish and maintain a website or other equivalent electronic platform. The
210 website shall be available to the general public and shall be used to disseminate information about the
211 Commission's activities. The website shall be capable of receiving comments and proposals by citizens of
212 the Commonwealth. Prior to voting on any proposed redistricting plan, the Commission shall publish the
213 Commission's proposed plans and all submitted comments and citizen proposals on the Commission's
214 website.

215 (g) The General Assembly shall designate by law a state agency to provide logistical and technical
216 support to the Commission, including providing access to computer software capable of processing and
217 drawing legislative and congressional districts, and shall provide such funds sufficient for the operation
218 of the Commission.

219 (h) All records and documents of the Commission, or any individual or group performing delegated
220 functions of or advising the Commission, related to the Commission's work, including internal
221 communications and communications from outside parties, shall be considered public information.