

Open Work Session

Charter Section 201. Compositions and Districts: Redistricting Committee

April 6, 2021

Mr. Paul Wilber, County Attorney, and Mr. Anthony Gutierrez, Director of Board of Elections, came before Council. Mr. Wilber said, as Council knows, every ten years they have a census, and when they have a census, it is time to redraw election districts so the population will be equal in each of those districts. He said he thinks Mr. Gutierrez can speak to what he knows about the information the County will receive on the census as far as the timeline, and then he will talk about how they can deal with that.

Mr. Gutierrez said, in a regular, non-pandemic election cycle they like to have the final district data by October or November at the very latest, but obviously there are challenges regarding the pandemic, and they also know that the 2022 election is going to be irregular for several others reasons. He explained, first, as mentioned, there are different stories about when the data from the federal government will come out, which should have come to them on April 1, and there is speculation it is coming out at the end of September or October. He clarified, obviously they hope it is much earlier, but they need to be prepared for later than that. He said, discussing things with Mr. Wilber and Mr. McKenzie, they would like to have their final data ready by November 1, but they probably could make December 1 work in an efficient, accurate way. He said, again, the 2022 election year will be irregular and the State Board of Elections is automating the process for redistricting this year, but, as with any new process, there could be issues, so things do not always happen 100 percent accurately. He said, even in a regular cycle there are always anomalies that need to be chased down, such as which side of a street a house is on, etc. He said this automated process is not yet in place, as they are waiting for it to be implemented by the State.

Mr. Gutierrez said, for 2022 the State is procuring the next generation of electronic pollbooks, but, again, they will not see those pieces of equipment until late this year as far as a tentative schedule, which means their staff will have a lot of tasks ahead right after the beginning of the year in January 2022. He explained, they will need to train themselves on the equipment, test it, and learn how to train the election judges, which makes their training even more extensive next spring, so, as it stands now, they will not have a lot of time after the February 22 filing deadline. He said the State Board starts providing them with the reports a couple weeks after that to start proofing to lockdown the database for ballot production to begin for the June 2022 primary election. He said, as for the timeline, again, their preference would very much be November 1, but they could certainly work with December 1 to give them as much time as possible this year to get as much work done and proofing, proofing, proofing. He said accuracy, obviously, is the key to ensuring that voters do not get the wrong ballots because they accidentally put them in the wrong district for whatever reason, and that is where their proofing comes in. He explained, the more passes they have, the less tired they are, and the less distracted they are, so if they could do those things in December and January versus February and March when they are trying to do several other things, they have a much better and much more accurate product.

Mr. Wilber said the Charter requires a Redistricting Committee, and that is where Council comes into the picture. He said Mrs. Hurley was able to pull up the Resolutions from ten years ago and at that time there was a seven-person Redistricting Committee appointed by the County Council, so he thinks that is the job Council has. He then suggested that the sooner Council creates that Committee the better, and then they can meet with the Committee and at least educate them about their job. He clarified, this gets a little tricky with the compressed timeframe they are working with because, as Mr. Gutierrez said, he

would like to have the redistricting information completed by November 1, and perhaps he could work with December 1, but they may not get the census data until September or October. He then requested that Council appoint their Redistricting Committee with people who can work rapidly day after day to get this job done because time is tight, and it could be a matter of days or weeks to get the job done.

Mr. Wilber said he talked to Mrs. Hurley about the timeline because the Committee will give a redistricting plan to Council, and Council will decide if they want to adopt it. He said there are 70 days from the time it is presented to when it would be effective, so it looks like the December 7 meeting is when Council will hopefully be adopting a redistricting plan so it has cleared that 70-day limit and is effective before February 22 when candidates have to put their candidacy paperwork in. He said, it is tight, and what could completely throw this out of whack is if the census data does not arrive until November, so there is a potential scenario that they just cannot get the job done for this next election in 2022. He said in 2010 he thinks the Committee received the information in 2011, and he thinks they were actually created in 2012, but they did not have an election until 2014, so it was a much more expanded timeframe to get this done. He said he thinks they need a Committee ready to go with the hope that the data comes in so they can do their job quickly and bring it back to the Council.

Mr. Dodd asked Mrs. Hurley how the Committee was chosen previously, to which Mrs. Hurley responded, she is not sure. Mr. Holloway said each Councilmember picked one person unless they did not want to pick somebody or could not pick someone, and then another Councilmember picked two.

Mr. Dodd said Council can form a Committee, but they will not know if they have anything to do, to which Mr. Wilber responded, they can educate the Committee. He said Mr. McKenzie, Mr. Gutierrez and himself can have the Committee ready, but then the Committee will sit until they have the census data.

Mr. Holloway asked, worst case scenario, if they do not get the numbers until December or later, would they extend it another four years before redistricting, to which Mr. Wilber responded, yes, as he thinks they have plenty of time to redistrict. Mr. Holloway asked if they would do it in two years, to which Mr. Wilber responded, he has not researched this, but his gut reaction is he does not think it would be wise to hold a primary election on old district lines and then a general election on new district lines.

Mr. Dodd said they are cutting it close for candidates with the deadline of February 22, especially if someone lives near a border and they think their house may be in a new district. Mr. Wilber responded, Mr. McKenzie has an excellent computer program, so once he has the data, it locates where people actually are house by house, so the Committee will have that to work with to level out the population.

Mr. Cannon asked Mr. McKenzie to give Council a brief overview from his perspective as far as how he sees this developing. Mr. McKenzie came to the podium and said the data could come to them very late in the year, and the first thing he will have to do is validate the data. He explained, a lot of times there are errors in the data, so they need to find out where they are. He said, in the last go around there were people allocated as living in the Kmart Shopping Center, or in the median strips on the highway, so they will need to find out where those errors are and see what they can do to mitigate any impacts they may have. He said, once they do that, he will do a preliminary analysis based on the data to see what the numbers are based on the existing districts. He said they will see that some districts may have to grow much more than other districts, so then with the data he has he can go block by block and figure out how many people are in that block and start moving them around as minimally as possible, which is his recommendation in order to move this project along. He said the last go around they went through and

did a complete rewrite of the districts to kind of even out the lines, but he thinks this time if they keep it to a minimum impact there will be less possibility of error and it will go a lot faster.

Mr. Hastings asked if the federal government releases the census data to all the States all at once, to which Mr. Gutierrez responded, again, in normal times, the census data is April 1 of 1990, 2000, 2010, etc. and the federal government normally releases all of that data all at once on April 1, 1991, 2001, 2011, etc. Mr. McKenzie added, once the initial data comes, there will be another release of data that is used for redistricting. He clarified, the first data release is just for population, and the second release is for redistricting, and that is where they start breaking out the racial classifications of the data, but that comes later after the initial release, which they have not even gotten to yet.

Mr. Dodd asked if Mr. McKenzie said he has to verify the federal data, to which Mr. McKenzie responded, yes because there will be some anomalies. He said, as he said, they had people living in Kmart, so they need to find those things and try to figure out how to deal with it.

Mr. Hastings said he thinks they need to have a group ready to go sooner rather than later, and the original deadline was that they would have the data by now. He said they do not want to get to the point of a real situation where candidates declare and not even know if they are in that district, and that would be a major problem, so they have a compressed timeline. He said the last time he looked at the data he did a rough calculation, but District 2 with its population was around 40 percent larger than District 4, which is rather large. He said he looked at the notes Dr. Bashart shared when he was on the last Committee, and they basically divide up the population and give it a variance of 25 percent, and he does not want to get to the point where his district is rather small and condensed in population size compared to other districts. He then asked if there is a variance difference, to which Mr. McKenzie responded, first he will take the new total population and divide that by five, and that will give them the ideal population for each of the districts. He clarified, it is almost impossible to hit those numbers right on the point, so they allow a 5 percent deviation above or below the ideal population. He said then he will figure out where the populations are with the highest numbers of people and start working around that to try to balance the districts around. He said, as he builds the districts, the population changes, the racial characteristics change, and they have one minority district they have to deal with.

Mr. Dodd asked Council if they think they can find a member to serve by the next meeting, to which Mr. McCain responded, if they are tasked with that, he thinks they can do that. Mr. Dodd said he knows they are cutting it close, and it would be nice if they could find seven members.

Mr. Hastings said he really enjoyed Governor Hogan's plan, and he thinks the nation needs to go in that direction of independent redistricting. He said he does not remember exactly, but basically, if they were to do something based off the Governor's Office, they could have three democrats, three republicans and three unaffiliated, which is roughly what the Governor's Office has done. He said that would take partisan politics out of it to look at it analytically and equally analyze the data. He said he thinks that is where they need to go as a country, and he would love for them to set that example in Wicomico.

Mr. Cannon said the whole time they have been talking about this the only question he has is how they avoid undue influence, or even the perception of undue influence when the Councilmembers pick the individuals who are going to pick the districts. He asked how they can avoid that, and is that what Mr. Hastings is suggesting, and how do they ensure autonomy of that Committee after they are picked, to which Mr. Wilber responded, the Charter is really silent on this. He said it just says the Council will pick a

Redistricting Committee, and that is all it says. Mr. Holloway said the Charter instructs Council to do it, to which Mr. Wilber responded, to follow the Charter, Council picks the Committee and decides how many are on it, and if they want to do it Mr. Hastings' way, that is up to Council. He said, ultimately, the Committee comes back to Council with a plan, and Council is the final adopter of the districts. Mr. Cannon asked if the members of the Committee would be held to some type of accountability where it would be required that they report any type of undue influence they feel may be used to persuade their decisions, to which Mr. Wilber responded, that would be reported and brought to the Ethics Commission. He said anytime there is an allegation of undue influence, that is Ethics Commission territory. Mr. Holloway said they could also do a pledge as they did with the Charter Review Committee.

Mrs. Acle asked if Mr. Wilber would be advising the Committee, to which Mr. Wilber responded, yes, but he thinks it would be a team effort of Mr. McKenzie, Mr. Gutierrez, and himself giving them their charge. Mr. Dodd said they would be doing that with the training, too, to which Mr. Wilber responded, yes, as they need to understand the legal requirements of setting up the districts.

Mr. McCain suggested having a Work Session at the next meeting on how they select the Committee to discuss whether they want to do what was done ten years ago where each Councilmember picks one, or do they adopt the methodology Mr. Hastings mentioned that the Governor recommends, or something else. He said, as Mr. Wilber said, the Charter simply says the Council appoints, so they do not have to do the same thing that was done a decade ago. Mr. Dodd said he can put a Work Session on the Agenda.

Mr. Holloway said the problem with considering Committee members at this point is they really do not know what to tell them they will be doing or when they are going to do it. He said he thinks they need a timeline spelled out pretty clearly first from Mrs. Hurley so they can tell them what is involved. Mr. Dodd responded, he thought Mr. Wilber suggested they get the Committee appointed and then start training them, to which Mr. Wilber responded, that would be his suggestion, and then they are ready whenever the census data shows up. Mr. Holloway said the first question they are going to ask is how much time it is going to take, but they have no direction about that, to which Mr. Wilber responded, if the data shows up at the end of October then they are going to need to meet very regularly to finish this job to bring to Council and ultimately Mr. Gutierrez. Mr. McCain said Council is not going to have any more direction two weeks from now, a month from now, two months from now, or possibly even three months from now, so they might as well get them appointed as soon as they can.

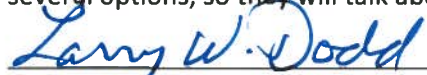
Mr. McCain said there is one interim step, which is they have to decide what method, and then maybe at the following meeting they can do the actual appointments. Mr. Dodd said they can put this down as a Work Session for the next meeting and then keep in mind that they have to move on it pretty quick regardless of what the timeline is going to be because they do not know, but they have to be ready.

Mr. Cannon asked, time restraints aside, is there a job description that anyone is familiar with so they can tell the Committee members what they will be doing, to which Mr. Wilber responded, he is not aware of one, but they could create one. Mr. Cannon suggested something from the last Committee, to which Mrs. Hurley responded, she can check the file, but she has not come across anything. Mr. Cannon said they must have been given a directive, to which Mr. Wilber responded, certainly if someone is considering this, they will want to know what is expected of them. Mr. Cannon said they are going to ask what and when. Mr. McCain suggested Dr. Bashart might have that because he is pretty good with keeping records. Mr. McKenzie said there are minutes on the County website from those meetings as well that Council can look at and see how the meetings were conducted and what was discussed.

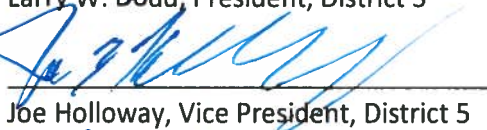
Mr. Hastings said he actually thinks Council did a really good job with the process for the Charter Review Committee, and he feels like they came out with a good group of folks who are active. He said he would love to see Council clean up that process, but he would like to see them go with something like that where they could really feel like they have engaged the public. He said he likes that they put it out to the public to see who was interested, and they got a lot of really wonderful applications from that. He said it would be nice if they could do something like that, and it does not sound like there is an immediate need, so he thinks they could have something put together in the next two months. He said maybe before the next meeting he can grab the Governor's plan and share that to look at ways they can do it. Mr. Dodd said they will talk about that at the next meeting in a Work Session.

Mr. Cannon asked, if they are looking to possibly adopt the Governor's plan, would that require putting another item on the list for the Charter Review Committee because he assumes there would have to be a change to the Charter, to which Mr. Davis responded, it is not in the Charter. Mr. McCain clarified, the Charter just simply says Council appoints a Committee. Mr. Cannon said he does not know if this would involve doing away with that and changing the whole process, to which Mr. Hastings responded, given the way it is written, he does not think so. He clarified, in his mind he imagines three democrats, three republicans, and three unaffiliated, and go through a process for anyone to apply and then look up their affiliation, and then Council can rank them like they did with the Charter Review Committee.

Mr. Dodd said he does not have a problem if each Councilmember chose someone, and there are several options, so they will talk about that at the next Work Session. There was no further discussion.



Larry W. Dodd, President, District 3



Joe Holloway, Vice President, District 5



John T. Cannon, At-Large



William R. McCain, At-Large



Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Laura Hurley, Council Administrator