

# California Voter Foundation



September 14, 2009

Elaine M. Howle, California State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Attn: Daniel Claypool, Bureau of State Audits, danc@bsa.ca.gov  
Sharon Brumley, Bureau of State Audits, sharonb@bsa.ca.gov

## **Re: Comments on Draft Citizens Redistricting Commission Regulations**

Dear State Auditor Howle:

The California Voter Foundation greatly appreciates the careful attention you and your staff have invested into the development of regulations that will guide the creation of the new Citizens Redistricting Commission, enacted through Proposition 11 passed by California voters last November.

Over the past several months, I have participated in a working group with a number of individuals representing various voting and civil rights organizations that has reviewed the draft regulations. We have suggested a number of changes, both minor and substantive, which are summarized in our joint letter and accompanying appendix.

In addition to those suggestions, on behalf of the California Voter Foundation, I wish to express concerns with how "state office" and "appointed to state office" are defined in the draft regulations (§ 60804 and § 60828) and suggest ways these definitions can be improved in order to maximize the applicant pool and more easily verify which applicants are qualified to serve on the commission.

The "state office" definitions are extremely important because they dictate who is eligible and who is ineligible from applying to serve on the Citizens Redistricting Commission. While most of the Proposition 11 provisions and restrictions are clearly spelled out, the provision in question is one that requires interpretation.

Section 8252 of the measure states that an individual is ineligible for applying to serve on the commission if, within the 10 years immediately preceding the date of application, the applicant, or a member of his or her immediate family has:

*"been appointed to, elected to, or have been a candidate for federal or state office".*

How expansively or narrowly this prohibition is defined is open to interpretation, as is noted in the State Auditor's Memorandum #2. The California Voter Foundation believes that on its face, the language appears to be describing state elective office, since only these types of offices are the kind that someone could be a candidate for or be elected to; and in this interpretation, the idea of appointing someone is taken to mean appointed to fill an elective office vacancy.

However, the State Auditor has interpreted the term "state office" to apply, rather, to "every office, agency, department, division, bureau, board, and commission within the government of the State of California." We believe this interpretation of the definition of "state office" is overly broad and applying

it would do a disservice to the initiative by unnecessarily limiting the number of qualified applicants.

When one considers that this prohibition would apply to not just every current appointee, but anyone ever appointed in the past ten years, along with their immediate family members (as broadly defined by the initiative to include parents, siblings and in-laws), the draft definition would effectively bar potentially hundreds of thousands of people from applying to serve on the commission.

Furthermore, many citizens who serve on boards and commissions do so on a voluntary basis; they may receive some meager per diem or stipend, but for the most part, board and commission appointees are providing volunteer services to the State of California, and are likely to be the very kinds of people who would be interested in serving on the Citizens Compensation Commission.

The philosophical question that the State Auditor needs to consider is whether to create a narrow funnel on the front end of the application process that dramatically restricts applicants in such a fashion in order to effectively preclude any possibility of a political insider or crony from applying and serving on the commission, or whether to have a wide funnel on the front end and rely on other provisions of the initiative to weed out any applicants who have a potential partisan or political agenda?

It is the view of the California Voter Foundation (CVF) that there are many other opportunities in the applicant selection process to review applicants for their ability to be impartial; indeed, it is one of just three qualities that determine whether an applicant is qualified to serve on the commission or not. CVF believes it is better to allow a wide funnel at the beginning of the application process and rely on the work of the Applicant Review Panel, the public comment process, and the legislative strikes process to weed out any applicants with a partisan or political agenda. To place such a narrow funnel on the front end of the application process will do a disservice to the initiative, in that it will wipe out large numbers of potential applicants who otherwise may be highly qualified to serve on the commission, and would be inclined to do so.

Specifically, CVF suggests revising § 60828 to read as follows:

*““State office” means every state elective office within the government of the State of California.”*

Another definition relating to “state office” is the definition for the term “appointed to federal or state office”, for which a definition is also included in the draft regulations and is also open to interpretation, as noted in Memorandum #2. The initiative does not specify to which appointing authority this restriction applies. The State Auditor has drafted regulations that would include all appointments made by the Governor and the Legislature. However, the initiative states several times, and very clearly, that its purpose is to shape political districts free from *legislative* influence. For example, in the Findings and Purpose, under (d) it says:

*“The reform takes redistricting out of the partisan battles of the Legislature”*

Section 3.3 of the initiative, which adds Section 2 to Article XXI of the California Constitution states,

*“The selection process is designed to produce a Citizens Redistricting Commission that is independent from legislative influence...”*

Based on these facts, the California Voter Foundation believes if the definition of state office remains as currently drafted, it should be applied to appointments made by the Legislature and not those made by the

Governor.<sup>1</sup> Or, if you do keep the Governor's appointees on the prohibited list, consider limiting it to only those that require Senate confirmation.

Yet another way the definition for "appointed to state office" could be narrowed is to include only salaried appointments in the restriction. The basis for this approach is simple: someone who has been appointed to a paid, salaried position from a legislator or Board of Equalization member is beholden to their appointee for their livelihood and may be perceived as owing a debt or favor to that person. The advantage of this approach is that it would be easy for the applicant, public and the Applicant Review Panel to verify whether an applicant is indeed qualified to serve, since whether a person is on the State of California payroll is a matter of public record.<sup>2</sup>

Thus, we have suggestions for four ways to narrow the definition of "state office" and "appointed to state office" that would greatly expand the number of people who would be eligible to apply for the new commission:

- 1) define "state office" as "state elective office";
- 2) remove appointments made by the Governor from the list of prohibited appointees;
- 3) include only those appointments made by the Governor that require Senate confirmation; and
- 4) only include salaried appointees in the definition.

One additional suggestion is to change the word limit in § 60847, relating to the Phase II application, from 250 words to 500, as 250 words may unnecessarily restrict applicants' abilities to adequately express their qualifications to serve on the commission.

Thank you for your consideration of these suggestions. Please feel free to contact me at [kimalex@calvoter.org](mailto:kimalex@calvoter.org) or at (916) 441-2494 if you have any questions. And again, thank you to you and your staff for your outstanding work to develop these regulations.

Sincerely,



Kim Alexander  
President

---

<sup>1</sup> CVF does support including appointments made by the Board of Equalization in the list of restricted state office appointees, since the commission will be responsible for drawing Board of Equalization districts and it is an obvious potential conflict-of-interest for a Board of Equalization appointee to draw districts for Board of Equalization seats.

<sup>2</sup> The Sacramento Bee's web site offers a free, public database that allows users to look up the salaries of California public employees, at <http://www.sacbee.com/statepay/>.