

## Barbara Paget

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**From:** Eugene Lee [elee@apalc.org]  
**Sent:** Wednesday, February 18, 2009 7:13 PM  
**To:** Barbara Paget  
**Subject:** APALC comments on Proposition 11 commission selection process  
**Attachments:** APALC Comment Ltr to BSA on Prop 11 200902018.pdf

**Follow Up Flag:** Follow up  
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Dear Ms. Paget,

On behalf of the Asian Pacific American Legal Center (APALC), please find attached our comments on Proposition 11's commission selection process, and in particular the implementation of Proposition 11's provisions relating to the role of the State Auditor and the Applicant Review Panel in the commission selection process.

I also wanted to let you know that APALC is planning to testify at the Bureau of State Audits' hearing in Los Angeles on February 23, 2009.

In the meantime, if you have any questions, please don't hesitate to contact me.

Best regards,  
Eugene Lee

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February 18, 2009

Ms. Barbara Paget  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814  
(Via email)

**RE: Comments on Proposition 11's Commission Selection Process  
Bureau of State Audits Hearing to be Held on February 23, 2009**

Dear Ms. Paget:

On behalf of the Asian Pacific American Legal Center (APALC), I am writing to provide comments on Proposition 11's commission selection process, including the implementation of Proposition 11's provisions relating to the role of the State Auditor and the Applicant Review Panel in the commission selection process. APALC is the leading organization in Southern California dedicated to providing legal services to, and advocating for civil rights on behalf of, Asian American and Pacific Islander communities.

Before we provide our comments, APALC informs you that the State of California cannot implement Proposition 11 until it has been precleared under Section 5 of the Voting Rights Act of 1965. As you know, four counties in California are covered by Section 5's preclearance requirement (Kings, Merced, Monterey and Yuba counties). Because Proposition 11 has not been precleared, it is not law yet. Accordingly, this hearing and the other hearings being conducted by the Bureau of State Audits are premature, and we are participating only because we have no other assurances that the Bureau of State Audits will provide future opportunities for input.

Prior to the November 4, 2008 election, APALC opposed Proposition 11 because of our belief that the measure threatens the ability of minority communities to be kept whole during the redistricting process. Attached is APALC's position paper which outlines our reasons for opposing Proposition 11, including an analysis of how Proposition 11's commission selection process is likely to result in a non-diverse commission, especially when compared with the current diversity of the state legislature. We should also inform you that APALC has joined with four other organizations in submitting a comment letter urging the U.S. Department of Justice to interpose an objection to Proposition 11 on the ground that it will have a retrogressive impact on the ability of minority voters in California's Section 5-covered jurisdictions to participate in the political process.

We believe the flaws in Proposition 11's commission selection process are substantial. Accordingly, the recommendations we offer in this letter, while necessary to increasing the likelihood of having a diverse redistricting commission, will not entirely mitigate the flaws in Proposition 11's commission selection process. Furthermore, implementation of these recommendations will not mitigate the retrogressive impact of any of Proposition 11's provisions. That said, we offer the following recommendations and thank you for your consideration of them.

**1. The State Auditor must conduct substantial work to increase diversity among applicants to the redistricting commission.**

We believe that the State Auditor must engage in broad outreach to diverse communities across the state about Proposition 11's commission selection process. This outreach should cover the importance of the redistricting process, how the selection process will work, the qualifications for redistricting commissioners, the conflict-of-interest provisions, the voter registration and voting history requirements, and other relevant information.

This outreach should consist of several elements, including (1) publicity in ethnic media, (2) partnerships with a wide range of organizations to conduct outreach to their constituents, (3) in-person workshops and presentations, and (4) publicity in online and electronic formats. The State Auditor should also consider providing grants to community organizations whose mission is specifically to serve diverse communities so that these organizations can conduct outreach to their constituencies on the selection process and identify persons who are potentially interested in applying for the commission.

We believe that this work is necessary for the State Auditor to satisfy its statutory obligation to "initiate an application process . . . that promotes a diverse and qualified applicant pool." Furthermore, we believe it is imperative that the State Auditor seek funding that is sufficient to carry out this work.

**2. The Applicant Review Panel should consider the actual diversity of applicants when selecting the 60 members of the final nominee pool as well as the overall diversity of each subpool.**

Under Proposition 11, the Applicant Review Panel is required to select applicants to be part of the final 60-person nominee pool (consisting of three subpools of 20 nominees each) on the basis of three characteristics – "analytical skills, ability to be impartial and appreciation for California's diverse demographics and geography." With regard to the third characteristic – diversity – the State Auditor should interpret the phrase "appreciation for California's diverse demographics and geography" to mean the diversity of the applicant him or herself, rather than an ability to appreciate diversity. While arguably the latter interpretation is left open by Proposition 11's language, the former interpretation is consistent with Proposition 11's statement that the "selection process is designed to produce a Citizens Redistricting Commission that is . . . reasonably representative of this state's diversity."

In addition to considering the actual diversity of applicants when selecting individual applicants to be part of the 60-person nominee pool, the Applicant Review Pool should also consider the overall diversity of each subpool of 20 nominees. In other words, the Applicant Review Pool should strive to achieve overall diversity in each of the three subpools.

3. **The State Auditor should specify the criteria that the Applicant Review Panel will use in determining which applicants are selected to be part of the 60-person nominee pool.**

“Relevant analytical skills”

In addition to diversity, the Applicant Review Panel is required to evaluate applicants on the basis of “relevant analytical skills” and “ability to be impartial.” With regard to “relevant analytical skills,” we believe that there is a specific set of skills and expertise that the redistricting commissioners must have in order to carry out their responsibilities effectively. Notwithstanding the fact that the commissioners will have commission staff who can assist them with their responsibilities, the commissioners are the individuals who ultimately have to make the final line-drawing decisions. It is incumbent that the commissioners have the skills and expertise to understand and evaluate the recommendations made by commission staff. Similarly, the commissioners must be able to understand and evaluate the advice provided by legal counsel hired by the commission.

Because the term “relevant analytical skills” is vague, the State Auditor must articulate the specific criteria that the Applicant Review Panel will use to evaluate whether applicants possess the skills and expertise that are needed to serve as effective commissioners. The State Auditor should select criteria that assess whether applicants would be able to (1) understand analyses, presentations and testimony involving complex demographic, political and geographic data; (2) assess how maps they create or maps submitted to the commission relate to the criteria set forth in Proposition 11, including Voting Rights Act compliance; and (3) understand recommendations and advice provided by commission staff and counsel. The State Auditor should include the criteria it proposes to use to evaluate whether applicants have the “relevant analytical skills” in its proposed regulations on the commission selection process and make them subject to public comment.

“Ability to be impartial”

The term “ability to be impartial” is also vague, and the State Auditor should articulate the specific criteria that the Applicant Review Panel will use to evaluate whether applicants possess the “ability to be impartial.” While we do not at this time have any recommendations for what to include among these criteria, we believe the State Auditor should specify such criteria in its proposed regulations on the selection process and make them subject to public comment.

**4. The State Auditor should construe the conflict-of-interest provisions narrowly.**

Proposition 11 requires the State Auditor to remove individuals with certain conflicts of interest from the applicant pool. Several of the conflict-of-interest provisions are vague or not clearly defined, creating potential for overbreadth or unevenness in how they are applied. The State Auditor should construe terms such as “immediate family” or “persons under a contract with” narrowly and precisely to avoid overbreadth and unevenness in the application of the conflict-of-interest provisions. The State Auditor should also narrowly construe the conflict-of-interest provision relating to service with a political party, campaign committee, or party central committee – for example but not limited to clarifying that working on a campaign as a paid or unpaid volunteer will not in and of itself disqualify an individual.

**5. The State Auditor should provide applicants who are disqualified under the conflict-of-interest provisions or for failure to meet the voter registration or voting behavior requirements with written notice that explains the basis for their disqualification and an opportunity to have the disqualification reviewed.**

In making decisions about disqualification of applicants under Proposition 11’s conflict-of-interest provisions and voter registration and voting history requirements, the State Auditor will need to make fact-based determinations, and in some cases factual inquiries. Some of these determinations and inquiries will be highly technical. To prevent applicants from being disqualified because of factual errors in relevant documentation or inquiries, or erroneous determinations by the State Auditor, the State Auditor should provide disqualified applicants with a written notice that explains the basis for disqualification. The State Auditor should also provide disqualified applicants with an opportunity to have the disqualification decision reviewed for accuracy.

**6. The State Auditor should specify the process for how the eight randomly selected commissioners will select applicants to fill the remaining six slots on the commission.**

Method of Voting

Proposition 11 provides that the first eight commissioners who are randomly selected are to select six individuals from the remaining applicant pool to serve on the commission. There are several ways that the eight commissioners could vote on applicants to fill the remaining six slots. For example, the eight commissioners could take a separate vote to fill each remaining slot one-by-one. Alternatively, the eight commissioners could take one vote on a proposed slate of applicants to fill all six remaining slots at one time.

The manner in which the eight commissioners vote on the remaining six slots is likely to affect their decision-making behavior, which in turn may have an influence on the diversity and expertise of the persons who ultimately are chosen to fill the remaining six slots. To better inform its rulemaking, we recommend that the State Auditor study this issue, including

identifying any research that may be relevant on how different voting processes affect decision-making behavior, prior to initiating the rulemaking process for Proposition 11.

#### Consideration of Diversity

Proposition 11 provides that the six remaining commissioners are to be “chosen to ensure the commission reflects this State’s diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity. However, it is not intended that formulas or specific ratios be applied for this purpose.” The State Auditor should instruct the eight commissioners who make these six selections that while they should not employ formulas or ratios, they should seek to achieve representation from a range of racial and ethnic groups, and that representation from one racial group alone does not reasonably reflect the state’s racial diversity.

- 7. The State Auditor and the Applicant Review Panel must provide an equal playing field for all applicants so that all individuals who wish to participate in the application process can do so regardless of financial or logistical barriers they may face.**

For example, the State Auditor should not require applicants to pay any fees in connection with their application. Additionally, the State Auditor should not require, as part of the official application to serve on the commission, that applicants provide underlying documentation or other proof that they pass the conflict-of-interest requirements or satisfy the voter registration and voting history requirements. Rather, applicants should be allowed to make attestations about such items or to provide answers to questions relating to such items. Also, if the Applicant Review Panel uses an interview process as part of its process for evaluating applicants, it should set up local interview sites across the state rather than requiring applicants to travel to Sacramento.

- 8. The State Auditor should make sure that members of the Applicant Review Panel are provided with compensation and reimbursement of expenses.**

While Proposition 11 is silent on whether the three members of the Applicant Review Panel are to be compensated for their service on the Applicant Review Panel and/or reimbursed for personal expenses they incur, we believe that the State Auditor should provide the Applicant Review Panel members with compensation and reimbursement of personal expenses. Given the substantial influence of the Applicant Review Panel on the make-up of the commission, it is critical to ensure that competent and motivated auditors are willing to serve on the Applicant Review Panel.

- 9. The State Auditor should adopt measures that increase the transparency of the commission selection process.**

The State Auditor should adopt measures to make sure that the work of the Applicant Review Panel is transparent. For example, the State Auditor should prohibit any ex parte

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communications relating to the commission selection process between members of the Applicant Review Panel and members of the public. At the same time, the State Auditor should allow members of the public to submit public comment to the Applicant Review Panel on the qualifications of commission applicants. Also, the State Auditor should require that the Applicant Review Panel conduct deliberations on commission applicants in public, and meetings at which such deliberations take place should be subject to the open meeting requirements of the Bagley-Keene Act.

Additionally, the State Auditor should adopt measures to increase the transparency of the process for selecting the three members of the Applicant Review Panel. For example, the State Auditor should make publicly available a list of all auditors employed by the State of California who meet the definition of "qualified independent auditor" under Proposition 11.

Lastly, the State Auditor should promote transparency in how the legislative leaders exercise their ability to strike applicants from the 60-person nominee pool by requiring the legislative leaders to articulate their reasons for selecting specific applicants to be struck.

**10. The State Auditor should provide multiple opportunities to provide public input on the form of application to be used by persons who are applying to serve on the commission.**

We recommend that there be at least two opportunities for members of the public to comment on the form of application to be used by persons applying for the commission. One suggestion for this is that the State Auditor take public input on its preliminary version of the form of application prior to initiating its rulemaking process to implement Proposition 11, and then take public comment on the form of application as part of the rulemaking process. As part of this, the form of application should be included in the regulations that the State Auditor proposes.

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If you have any questions about our comments, please feel free to contact me by telephone at 213-977-7500 ext. 212 or by email at [elee@apalc.org](mailto:elee@apalc.org).

Truly yours,



Eugene Lee  
Voting Rights Project Director

Attachment:  
APALC Position Paper on Proposition 11



## Attachment A

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### **APALC OPPOSES CALIFORNIA VOTERS FIRST INITIATIVE WHICH WILL APPEAR AS PROP. 11 ON NOVEMBER 4, 2008 BALLOT**

#### **Position Paper Dated July 22, 2008**

The Asian Pacific American Legal Center (APALC) supports the notion of reforming California's redistricting process through the establishment of an independent redistricting commission, a set of fair redistricting criteria, and an open and transparent process. We have supported previous reform proposals. However, we oppose the California Voters FIRST initiative because it takes the wrong approach to achieving reform and would represent a step back from the status quo for communities of color in California. The initiative will appear as Prop. 11 on the November 4, 2008 ballot.

This position paper provides our perspective on redistricting reform, outlines our reasons for opposing Prop. 11, and also offers recommendations for what future reform attempts should look like. Our perspective comes from our work as a nonpartisan, nonprofit civil rights organization that advocates on behalf of Asian and Pacific Islander American (APIA) communities.

#### **I. APALC Perspective on Redistricting Reform**

##### **A. What the Purpose of Redistricting Reform Should Be**

APALC supports redistricting reform primarily as a means of guarding against the dilution of racial and ethnic minority voting power. Having participated in the 1991 and 2001 statewide redistrictings, we saw APIA communities harmed by incumbents acting in their own self-interest at the expense of community voting power. Based on our experience in 1991 and 2001, we believe that some regulation of the redistricting process is warranted as a way of constraining the ability of map-drawers to draw districts for incumbent or partisan advantage. Accordingly, we have supported redistricting reform over the past four years and have been involved in numerous discussions during that time.

Others have supported redistricting reform for good government reasons – as a solution to legislative gridlock in Sacramento. They argue that redistricting reform will make elections more competitive, replace so-called hyper-partisan legislators with moderate legislators, and increase the spirit of cooperation in the legislature. From what we have seen, those arguing this include the proponents and various supporters of Prop. 11.

We disagree. We do not buy into the notion that redistricting reform is the cure for legislative gridlock. Those seeking to address legislative dysfunction should look to proposals that address the budget process and the initiative process as well as proposals that address the influence of

special interest money on politics. Redistricting reform should be first and foremost about ensuring fair representation for historically underrepresented minority communities.

#### B. The Type of Approach That Redistricting Reform Should Take

Beyond differences on what the purpose of redistricting reform should be, we have a different perspective on the type of approach redistricting reform should take. From what we have seen, those espousing good government reasons for wanting reform have generally favored an approach that maximizes constraints on the commission's flexibility to draw lines (which flexibility we believe is necessary to draw lines that protect minority voting power); and that maximizes the degree to which both the legislature and individual discretion are removed from the process of selecting commissioners (which we believe leads to a significant risk of a non-diverse commission).

Proposals embodying this approach, including Prop. 11, generally contain the following provisions: (1) additional redistricting criteria such as nesting that constrain line-drawing flexibility without affirmatively adding protection for minority communities; (2) limitations on what information may be considered by the commission; (3) a commission selection process in which the only role of legislators is to strike applicants from the nominee pool and in which commissioners are selected at random instead of being hand-picked; and (4) a requirement that a vote to pass a redistricting plan includes votes of commissioners from each partisan grouping.

We believe that a more judicious regulatory approach is warranted. The imposition of constraints cannot be done in an overboard fashion, and must preserve the flexibility needed by line-drawers to draw district lines protective of minority voting power. Also, regulation of legislative involvement in the redistricting process does not require legislative involvement to be cut out entirely or commissioners to be randomly selected in order to have an adequately independent commission. Hand-picking of commissioners by legislators or another entity, together with a requirement that commissioners are chosen to reflect diversity, provides a strong mechanism for ensuring diversity in the commission. If a reform proposal provides no other mechanism, then the proposal will negatively impact minority communities by giving them fewer seats at the map-drawing table.

#### II. Ways in Which Prop. 11 Represents a Step Back for Minority Communities

We characterize Prop. 11 as taking as an "everything but the kitchen sink" approach to constraining incumbent- and partisan-based gerrymandering, similar to other good government proposals that aspire to break legislative gridlock. While some supporters of Prop. 11 believe that this approach will also increase protections for minority communities, some of the initiative's provisions which seek to maximize constraints on line-drawing will actually do the opposite. These provisions (1) create a large risk that the line-drawing body will lack diversity; (2) reduce flexibility to draw minority community-favorable districts without adding affirmative protections for minority communities; and (3) make the most likely outcome to be either a stalemate or a deal that comes at the expense of minority communities.

A. Prop. 11 Poses a Significant Risk That Communities of Color Will Have Fewer Seats at the Map-Drawing Table Than They Do Now

In recent years, the legislature has become increasingly representative of California's diverse population. We believe that any reform proposal must not diminish the number of seats that minority communities have at the map-drawing table. Any reform proposal must contain provisions which affirmatively ensure that the legislature's diversity is retained within the replacement commission.

Prop. 11 fails to accomplish this. Prop. 11 poses a significant risk that minority communities would get fewer seats at the map-drawing table than they do now. This is because Prop. 11 does not do enough to ensure either that its pool of 60 nominees is diverse, or that commissioners are chosen from the nominee pool with an eye toward diversity.

During the nominee selection stage – in which three auditors review applicants and choose 60 individuals to constitute the nominee pool from which commissioners are picked – Prop. 11 requires that the 60 nominees have an “appreciation for California’s diverse demographics and geography.” This is not a requirement that the nominees themselves reflect California’s diversity, or even a requirement that the three auditors attempt to constitute a diverse nominee pool. Under a plain meaning reading, this is simply a requirement that nominees be able to “appreciate” that California has a diverse population, and is wholly insufficient to ensure a diverse nominee pool.

During the commission selection stage – in which 14 commissioners are picked from the nominee pool – Prop. 11 provides that the majority of commissioners (8 of 14) are picked at random without any regard to whether the randomly picked commissioners reflect California’s diversity. The fact that these eight commissioners are randomly chosen creates a significant risk of ending up with a non-diverse commission, and Prop. 11 provides no second-chance mechanism to mitigate this risk (such as a “do-over” in the event that the first random draw produces a non-diverse group). This is in contrast to a process of hand-choosing commissioners, such as legislators or another body choosing some of the commissioners, which can serve as a mechanism to affirmatively ensure that the commission is diverse.

In our view, Prop. 11’s selection process creates an unacceptable risk that the commission would be less diverse than the legislature. Prop. 11 cuts off all but a minimal amount of legislative involvement in the commission selection process without providing another means of ensuring diversity in the commission.

B. Prop. 11’s Redistricting Criteria Reduce Flexibility to Draw Districts Which Respect Minority Communities

To best protect minority communities, any reform proposal should include a set of redistricting criteria that prioritizes (1) Voting Rights Act compliance and (2) communities of interest. These two criteria constrain mapmakers’ ability to draw incumbent- or partisan-favored districts at the expense of minority communities by affirmatively requiring mapmakers to protect community voting power.

Other criteria such as keeping counties and cities intact, nesting and compactness can also serve as ways of constraining incumbent- or partisan-based gerrymandering. But these criteria do so by simply reducing mapmakers' flexibility in drawing lines without providing any affirmative protection for minority communities. Moreover, some of these criteria (such as nesting) can actually impair minority representation, as a study by the Institute of Governmental Studies at UC Berkeley indicates. We believe that these criteria should be omitted in any reform proposal.

In our view, Prop. 11's redistricting criteria fall short and do not represent an improvement for minority communities. While Prop. 11 adds communities of interest as a criterion, Prop. 11 dilutes its potency by failing to require line-drawers to prioritize it over geographic integrity of cities and counties. Prop. 11 also adds nesting and compactness as additional criteria which line-drawers must follow but which contribute nothing to keeping minority communities together. We characterize Prop. 11's criteria as reducing line-drawing flexibility to draw minority-favorable districts without adding meaningful protections that benefit minorities.

Moreover, we believe that Prop. 11 would exacerbate the impact of an adverse decision by the U.S. Supreme Court in the pending Bartlett v. Strickland case. In Bartlett, a county in North Carolina which was split between two districts is challenging North Carolina's redistricting plan on the basis that the plan violates the requirement in the North Carolina state constitution that counties be kept whole. While the state argues that it was necessary to split the county in question in order to draw a plan that complies with the Voting Rights Act, the county contends that the district being challenged does not meet the threshold for Voting Rights Act protection.

Civil rights advocates fear an adverse decision in which the Supreme Court establishes a higher threshold which parties must meet in order to show that a district is protected under the Voting Rights Act, in which case the state could no longer justify splitting the county in question on the basis of achieving Voting Rights Act compliance. A higher threshold for Voting Rights Act protection would limit the ability of mapmakers to use Voting Rights Act compliance as a justification for not adhering to other required redistricting criteria. This is because fewer minority-favorable plans could meet the post-Bartlett test for Voting Rights Act claims, and mapmakers would be forced to pass such plans over in favor of plans that maximize compliance with other required criteria.

Prop. 11 would exacerbate the effect of such an adverse decision. By adding additional mandatory criteria such as nesting and compactness, Prop. 11 increases the number of scenarios in which line-drawers must pass over maps that do not meet the post-Bartlett test but still would be beneficial to minority communities because the line-drawers must instead favor maps that maximize compliance with other required criteria.

C. The Most Likely Outcome of Commission Deliberations Is Either a Stalemate or a Deal That Comes at the Expense of Minority Communities, Given the Partisan Make-Up of Prop. 11's Commission and Prop. 11's Partisan Vote Requirement

Prop. 11 requires that the commission be made up of 5 persons affiliated with the largest political party in California, 5 persons affiliated with the second largest political party, and 4 persons affiliated with neither party. Currently and for the foreseeable future, Prop. 11's commission

would consist of 5 Democrats, 5 Republicans and 4 persons affiliated with neither party (which would include both voters who are decline-to-state and voters who are affiliated with third parties).

This mandatory partisan make-up, together with the vote required to pass a map (3 Democrats, 3 Republicans, 3 other), make stalemate the most likely outcome of commission deliberations. This is because a small number of commissioners can block a plan – any 3 of 5 Democrats, any 3 of 5 Republicans, or any 2 of 4 commissioners not affiliated with either party. While it is important to have safeguards against one-sided partisan gerrymanders in which one party runs over another, Prop. 11's vote requirement is not really a safeguard, but rather a set-up for stalemate. This is not good public policy.

Moreover, we are concerned about the consequences of throwing the redistricting process to a group of court-appointed special masters, which is essentially what Prop. 11 would do. Every time the commission fails to reach agreement, which would be more often than not given the likelihood of stalemate that Prop. 11 creates, minority communities would be forced to take their chances with a small group of line-drawers who are not accountable to anyone and whose appointment is not subject to any diversity requirement.

We are also concerned about what kind of map would result in the event that the commission does approve a plan. The difficulty imposed by Prop. 11's rigorous partisan vote requirement on the commission's ability to reach consensus would likely force the commission to place a premium on reaching a deal that manages to satisfy the requisite 3 of 5 Democrats, 3 of 5 Republicans and 3 of 4 persons affiliated with neither party, rather than on protecting minority voting power. Our fear is that the commission's success in meeting Prop. 11's partisan vote requirement will come at the expense of minority communities.

### **III. Recommendations for Future Reform Attempts**

We believe a simpler approach would provide adequate constraints against incumbent- and partisan-based gerrymandering without posing the risks to minority communities that Prop. 11 does. The recommendations below are not meant to be exhaustive, but rather illustrative of the approach that redistricting reform should embrace.

#### **A. Commission Selection Process**

Prop. 11 seeks to completely remove legislative involvement in the commission selection process; the only role that legislators have is to strike applicants from the pool of 60 nominees. We disagree that this is necessary to achieve an adequately independent redistricting commission.

In our view, an adequate level of independence is achieved by a structure in which the legislature does not both select the nominee pool, and also appoint commissioners from the nominee pool. In other words, an acceptable level of independence is achieved if some entity separate from the legislature either selects the nominee pool, or appoints commissioners from the nominee pool.

One example of this approach is SCA 3 (Lowenthal), a legislative proposal we supported in 2006. SCA 3 would have provided for a 11-member commission, 8 members of which are appointed by the legislative leaders from a pool of nominees that was first constituted by an entity independent of the legislature.

More importantly, any reform proposal must provide a strong mechanism for ensuring diversity in the commission. This is best accomplished by a process of some entity hand-choosing commissioners, whether legislators or another body. A random selection of commissioners, particularly one with no second-chance redraw, poses too large of a risk that the commissioners will not be diverse.

#### B. Redistricting Criteria

Any reform proposal should include a streamlined set of criteria that, on the one hand, provides affirmative protections for minority communities by prioritizing Voting Rights Act compliance and communities of interest over other criteria while, on the other hand, omits criteria such as nesting and compactness that merely constrain line-drawers' flexibility without doing anything to protect minority communities. Additionally, any reform proposal should avoid limiting what information the commission can consider in its deliberations, particularly information that is relevant to determining Voting Rights Act compliance.

#### C. Commission Make-Up and Vote Requirement

We believe that a less rigorous partisan vote requirement avoids Prop. 11's stalemate problem while still providing some protection against a partisan gerrymander. One example is the vote requirement in SCA 3, which would have required the vote of 6 of 11 commissioners to approve a plan, with at least 1 of 4 Democrats, 1 of 4 Republicans, and 1 of 3 commissioners affiliated with neither party voting to approve the plan.

### IV. Conclusion

The initiative proponents may argue that while Prop. 11 is far from perfect, it still represents an improvement over the status quo for minority communities. We disagree. We believe that minority communities will likely end up with fewer seats at the map-drawing table, and will be adversely impacted by line-drawers' lack of flexibility to draw districts which respect minority voting power.

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Questions about APALC's position on Prop. 11 should be directed to Eugene Lee, Voting Rights Project Director at APALC, who can be reached at 213-241-0212 or [elee@apalc.org](mailto:elee@apalc.org).