

Charles T. Munger, Jr.

January 23, 2009

Representatives from the Bureau of State Audits
Public Meeting of January 26, 2009
Department of Health Services
East End Complex
1500 Capitol Mall
Sacramento, CA 95814

Honorable Members of the Bureau of State Audits,

My first recommendation is that you don't take advice from anyone who won't give their advice on the public record and sign their name. You should also take any advice from anyone who strongly supported or strongly opposed Proposition with a large grain of salt.

I, Charles T. Munger, Jr, am the donor ^{who make} with the largest individual contribution to the passage of Proposition 11. Get out the salt.

My second is that you bear in mind the tremendous trust the public and individuals like me have placed in the probity of your actions. Benjamin Franklin, on returning from the Constitutional Convention, was asked by a woman what he had brought to her state. "A republic, madam---if you can keep it." And we who voted for Proposition 11 and backed it have brought California redistricting reform---if *you* can keep it; if the Bureau of State Audits will withstand the narrow partisan and ideological pressures to which the California legislature, in four separate decades, succumbed; if you will set aside your individual preferences about how the state ought to be run, and instead see that the people who will draw the districts are chosen fairly, so that the people may decide.

This first public hearing is a deeply cheering and hopeful beginning, but it is only a beginning: the Big Four in 2000 began with open hearings and sweeping promises, but retired to the traditional smoke-filled private rooms in the end, where they apportioned the choice parts of the state among their partisans as you and I might carve a roast, and thought they were doing well. I exhort you to do better to set a precedent not only for future of California, but the nation, where state after state groans under a gerrymander, and looks now to California for a sign that it will not always be so.

I enclose some suggested protocols for the State Auditor and the Auditor Review Panel to follow, in order to fulfill the intent of the law; followed by some comment on why the suggested protocols will fulfill that intent. I close with some comments on the specific questions that were noticed as the subject of today's meeting.

Sincerely yours,

Charles T. Munger Jr.

Citations within the initiative supporting the five parts of the proposed protocol for the Audit Review Panel, with comments.

Part (1) Article XXI Sec. 2. (b) [the commission] shall ... conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines...

Comment: None.

Part (2) Sec. 8253.5 (a) (1) The commission shall comply with the Bagley-Keene Open Meeting Act (Article 9 commencing with Section 111 20 of Chapter I of Part I Division 3 of Title 2), or its successor. The commission shall provide not less than 14 days public notice for each meeting, except that meetings held in September in the year ending in the number one may be held with three days' notice.

Comment Sec. 8252(e) reads, "By October 1 in 20 10 and in each year ending in the number zero thereafter, the Applicant Review Panel shall present its pool of recommended applicants to the Secretary of the Senate and the Chief Clerk of the Assembly." To allow for enough meetings for the Applicant Review Panel to complete its business, in the month before (in September of years ending with the digit zero) meetings may be held with but three days notice. This flexibility is taken from the parallel situation with the Citizen's Redistricting Commission, which is required to deliver its maps by September 5 of years ending in 1, and is allowed to call public meetings in September with three days notice instead of the usual 14. Therefore I have given this flexibility to the Applicant Review Panel in its final weeks of work as well; I elected to make the number of weeks four instead of two, because the requirement that possible applicant pools be posted for 14 days requires very frequent meetings in the first two weeks of September, not the last two, if the Panel is to complete its business on time.

Part (3) The relevant text within the initiative reads,

8253(7) The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process. The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display of any map.

Comment. The applications for consideration by the Applicant Review Panel are required to be tendered by no later than August 1, and the Applicant Review Panel is to submit its pool of applicants by October 1, which gives two months for the Panel's work. The Citizen's Redistricting Commission, by contrast, is complete no later than December 31 and is to submit its maps by September 15 of the following year, and so has 9 ½ months to complete its work. Having to post a possible applicant pool for 14 days, amounting to about a quarter of the time that the Applicant Review Panel has to do its work, might seem unduly burdensome; however the Panel is allowed to have meetings with but three days' notice the first two weeks of September, and can therefore complete several proposed pools, receive comment, and then make a final selection among these pools at the end of September.

“The staff of the Bureau of State Audits (bureau), who are under the direction of the State Auditor, understand and respect the importance of their position as the State's independent auditors. The staff of the bureau will conduct their reviews in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of their audits and investigations. Bureau staff will base their findings, conclusions, and recommendations upon reliable evidence and will not allow preconceived notions or personal opinions to influence their work. The staff will strictly adhere to the standards of the auditing profession and exercise the highest standards of ethics. The bureau and the staff will lead by example, holding the organization and themselves to the same or higher standards that they use to evaluate others.”

An applicant pool that is not recommended by a 2 to 1 vote among the auditors is very much in the public interest. Against simply requiring unanimity among the three members of the Applicant Review Panel is the possibility that one auditor may refuse to let any panel go forward unless that auditor's individual preferences are met in every detail. The suggested rule is a compromise, that allows a pool that receives the assent of all three members of the Applicant Review Panel to go forward at once, but requires a repeated vote at a second meeting if it is to go forward on a 2 to 1 vote, to allow for cooling off and reconsideration, reconsideration, and to allow notice for members of the public and the press to weigh in. If a pool must go forward with a 2 to 1 vote after that, so be it: but let us not rush to that result.

Specific matters about which comment from the public was solicited for the meeting of January 26, 2008:

The application process for the selection of members of the Commission as discussed in Article XXI, Section 2(c)(3) of the California Constitution and Section 8252(a)(1) of the California Government Code.

Aside from blanking out personal contact information such as telephone numbers and e-mail addresses, the names and completed applications should be public documents. If the public cannot see the information on which the Applicant Review Panel is basing its decisions, how can inaccurate information be disputed? So consequential politically are the decisions of the Redistricting Commission that some coordinated attempt to slip in "ringers" of one sort or another is only to be expected. Many die-hard Republicans in Democratic districts, and die-hard ^{Democrats} Republicans in Republican districts, already register as independents so that they may vote in the party primary of the party that dominates their district. Similarly it may be expected that people who have known and very decided views on other important matters—such as whether to respect communities of interest over county boundaries, or the reverse—may choose not to volunteer that information on their applications.

The creation of the Applicant Review Panel to screen Commission applicants as discussed in Section 8252(b) of the California Government Code.

The members of the panel are to be selected by a random draw. It is necessary to publish the list of people among whom a random selection is to be made, so that those people and the public can know if someone has unwarrantably being included in the list or left off it. Some time after that, it is necessary to have the actual draw occur in a meeting with a sufficiently large number of disinterested witnesses and that is open to the public. If the draw occurs in private in the Auditor's office, and happens to fall on some auditor who is a personal friend of a legislator, the Auditor will look like he or she has been bought no matter how honest he or she is. Meetings of the State Board of Education are videotaped and the tapes are public documents; it would be wise to tape the draw.

The removal of individuals from the applicant pool based on conflicts of interest identified in the Act as discussed in Section 8252(a)(2) of the California Government Code.

The basic principles should be that individuals should be apprised of what their alleged conflict of interest is, should have a chance to protest, and that the hearing of the protest and the final decision about which names should be forwarded to the Applicant Review Panel should be made in a duly noticed public meeting so the public may see that the standards of what constitutes a conflict of interest are both fair and applied uniformly across all applicants.

The publication of the names in the applicant pool as discussed in Section 8252(c) of the California Government Code.

The publication should certainly include posting on the internet as soon as the pool of 60 is determined, along with information allowing for the sending of information from the public about the individuals in the pool to the four members of the legislature who have the authority to delete some names from the applicant pool before the draw that establishes the first eight who will serve on the Redistricting Commission. In a manner similar to the peremptory challenges given to the prosecution and the defense