DISCUSSION POINTS FOR POTENTIAL GUIDELINES FOR MAP DRAWING

Nothing herein should be construed to modify the priority of criteria for redistricting as specified in the California Constitution under article XXI, section 2(d).

I. Draw Districts with Equal Populations.

A. *Congressional districts*.

1. Districts must achieve population equality "as nearly as practicable."[1]

2. The Special Masters in 1991 kept maximum deviations to less than 0.5%.[2]

3. In 2001, California congressional districts were drawn with a maximum deviation of 1 person.

B. *State districts*. Districts must achieve "reasonably equal population with other districts … except where deviation is required to comply with the federal Voting Rights Act or allowable by law."[3]

1. Requirements of the Federal Constitution.

a. There is "somewhat more flexibility" with state legislative apportionment, compared with congressional apportionment, in terms of absolute population equality.[4]

---

[1] *Karcher v. Daggett*, 462 U.S. 725, 730 (1983).

[2] The Special Masters found that a maximum deviation of 0.49% conformed with the U.S. Supreme Court's decision in *Karcher*. *Wilson v. Eu*, 1 Cal.4th 707, 755 (1992).

[3] Cal. Const., art. XXI, § 2(d)(1).

[4] *Reynolds v. Sims*, 377 U.S. 533, 578 (1964); *see also Brown v. Thomson*, 462 U.S. 835, 842 (1983).

b. Federal courts generally consider deviations under 10% to be presumptively constitutional, but presumption is rebuttable if deviations are not supported by legitimate factors.[5]

c. Deviations from absolute equality must be supported by consistently applied legitimate policy considerations (*e.g.*, contiguity and compactness), which do *not* include "history alone" or "economic or other sorts of group interests."[6]

2. Requirements of the California Constitution.

a. The California Attorney General has interpreted the California Constitution as requiring that the "'population of Senate and assembly districts should be within 1 percent of the ideal except in unusual circumstances, and in no event should a deviation greater than 2 percent be permitted.'"[7]

b. Accordingly, the Special Masters in 1991 expressly complied with the stricter deviation limits of the California Constitution.[8]

c. Redistricting in 2001 had essentially 0 deviations.[9]

---

[5] *Larios v. Cox*, 300 F. Supp. 1320, 1339–40 (N.D. Ga. 2004), *aff'd* 542 U.S. 947 (2004).

[6] *Reynolds*, 377 U.S. at 579–80; *Brown*, 462 U.S. at 843–44.

[7] *Wilson,* 1 Cal. 4th at 753.

[8] The Special Masters acknowledged that they had selected a maximum deviation that may have been more strict than required by the California Constitution, but this maximum deviation was consistent with the interpretation of the California Attorney General and the approach in *Legislature v. Reinecke*, 10 Cal.3d 396, 411 (1973). *See Wilson*, 1 Cal. 4th at 753.

[9] There appears to have been a maximum deviation of approximately 16 persons in the Assembly Districts, and a maximum deviation of approximately 2 persons in the Senate Districts.

II. Draw Each District to be Geographically Contiguous.[10]

III. Minimize Divisions of Objective Geographic Boundaries and Communities of Interest.

A. *Neighborhoods, Cities, and Counties.*

1. As a preliminary matter, draw the districts so as to *minimize* the division of neighborhoods, cities, and counties.[11]

2. This is only preliminary and will be subject to significant adjustments (i) to comply with the Voting Rights Act and (ii) to provide equal treatment for local communities of interest.

3. However, such a step will eliminate some issues and assure that the resulting districts that constitute majority minority districts and local communities of interest have been formed in accordance with the criteria specified in the California Constitution.

B. *Communities of Interest.*

1. Communities of interest must be "local."[12]

2. Examine the shared social and economic interests of the proposed community of interest.

3. Where the Commission tentatively determines that a geographically compact population constitutes a "local community of interest" as defined by the California Constitution, re-draw the district lines to include that population within a single district.[13]

---

[10] Cal. Const., art. XXI, § 2(d)(3).

[11] Cal. Const., art. XXI, § 2(d)(4).

[12] Cal. Const., art. XXI, § 2(d)(4).

[13] A "community of interest" that bypasses nearby areas of population in order to connect with non-contiguous, more distant populations, would likely not be "local." However, nothing in the California Constitution prevents a single district from including multiple communities of interest that share the same social and economic interests.

4. Q2 should report to the Commission whether creating any community of interest would result in a net increase of divided cities, counties, and communities of interest. The California Constitution requires that we "minimize [the] division to the extent possible."[14] If eliminating the fragmentation of the community of interest requires the fragmentation of another community of interest, city or county, the Commission can decide whether to adhere to the city or county lines or those of one of the communities of interest.

IV. Focus First on Districts Covering Section 5 Counties.

A. Draw the districts that that cover all or part of the four counties subject to preclearance under section 5 of the Voting Rights Act: Kings, Merced, Monterey, and Yuba.

B. The Section 5 districts should be given priority because their creation will impact the adjacent districts. These districts must be designed to qualify for preclearance by the Department of Justice.

C. The districts covering these counties must preserve the current minority voting strength.

1. Because the U.S. Supreme Court has used both the current census data and the census data pursuant to which the existing districts were drawn (that is, the prior decade's census data) to determine voting strength, both data should be used to make certain that new districts do not lead to retrogression in the position of minorities with respect to their effective exercise of the electoral franchise.[15] Q2 should work with VRA counsel to identify the relevant demographic information and to advise the Commission on the exact comparisons to consider.

2. Working with VRA counsel, and in conformity with the criteria in the California Constitution regarding contiguity, minimizing divisions of cities, counties, and communities of interest, and compactness, Q2 should preliminarily draw proposed districts that preserve minority voting strength in those districts. Where there are multiple alternatives, Q2 should identify for the Commission its

---

[14] Cal. Const., art. XXI, § 2(d)(4).

[15] *Georgia v. Ashcroft,* 539 U.S. 461, 477 (2003).

options for preserving the position of racial minorities, and identify the issues the Commission should consider.

3. Once the Section 5 issues are addressed, Q2 should identify for VRA counsel any geographically compact minority groups whose voting age populations equal or exceed 50% of a hypothetical district so that VRA counsel can determine whether section 2 of the VRA requires that the minority group be placed within a single district. Q2 should then work with VRA counsel to identify such areas and identify for the Commission its options.

V. Identify Potential Issues Under Section 2 of the Voting Rights Act.

A. Q2 should identify geographically compact single minority populations, whose voting age populations are equal to or exceed 50% of a hypothetical assembly, senate, or congressional district.[16]

B. Q2 should work with VRA counsel to identify whether fragmenting those populations might result in a section 2 violation.

C. Q2 and VRA counsel should advise the Commission on whether to adjust district lines.

VI. Other Selected Issues.

A. In general, partisan voter registration data should not be used in drawing the first set of maps to avoid violating the State constitutional requirement that

---

[16] This is simply a first step to identify areas of interest. The Ninth Circuit Court of Appeals (the federal appeals court for California) has held that Citizen Voting Age Population ("CVAP"), rather than total population, is the appropriate measure for determining whether an effective majority-minority district can be created. *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989) ("The district court was correct in holding that eligible minority voter population, rather than total minority population, is the appropriate measure of geographical compactness."), *abrogated on other grounds*, *Townsend v. Holman Consulting Corp*., 914 F.2d 1136, 1141 (9th Cir. 1990) (en banc). The U.S. Supreme Court has endorsed the use of CVAP in dicta. *See LULAC v. Perry*, 548 U.S. 399, 429 (2006) (observing that the voting-age citizen population "fits the language of § 2 because only eligible voters affect a group's opportunity to elect candidates"). However, because some have questioned the reliability of CVAP statistics, both CVAP and VAP data should be examined in relevant cases.

districts should not be drawn to favor or discriminate against an incumbent, political candidate, or political party.[17]

B. Adherence to priority of Constitutional criteria.

1. Dealing with non-contiguous portions of a city that have no population, *e.g.*, Santa Rosa.

a. *Question*: "Some cities have incorporated areas that lie outside the main city boundaries, and in some cases these non-contiguous portions are not populated.… The Commission should decide whether such non-contiguous and zero population portions should be drawn into the same district as the city if it means reaching out, which may affect the shape and the compactness of the district, or whether such portions can be 'split' from the main city area."

b. *Answer*.

i. Where maintaining the city intact does not interfere with communities of interest and simply makes the district less compact, then generally speaking, the higher-prioritized constitutional criteria should govern (in this case, keeping cities whole).

ii. If, however, including non-contiguous areas of the city will result in a non-contiguous district, you must again defer to the higher criterion of contiguity (in this case, contiguity).

2. Dealing with contiguous portions of a city that have no population, *e.g.*, Oakland International Airport.

a. *Question*: "some cities contain contiguous areas that are not populated, such as the land occupied by the Oakland International Airport. When there is a non-populated contiguous piece of a city that could be split to allow for another city to be kept whole or where the a city could be split rather than splitting a populated area, should avoiding such splits be prioritized over other criteria?"

b. *Answer*: Where the city could be split rather than splitting another populated area, the answer depends on whether that populated area outside the city is a community of interest, in which case the Commission must make a

---

[17] Cal. Const., art. XXI, § (e).

choice between splitting a city or splitting a community of interest, because the two alternatives occupy the same priority under the California Constitution.

Final Version of Discussion Points for Suggested Guidelines for Initial Redistricting work 101065576_3.DOC