

June 2, 2011

VIA EMAIL

Citizens Redistricting Commission  
901 P Street, Suite 154-A  
Sacramento, CA 95814

**Re: Constitutional criteria for redistricting**

Dear Commissioners,

We commend the Commission for its continued dedication and commitment in administering the redistricting reform mandates ushered in by California voters. Your rigorous schedule of community hearings has demonstrated an attentiveness and respect for the process and for members of the public who themselves have often sacrificed time and expense to actively participate in the process and provide the Commission with their views.

As you weigh the significant volume of public testimony and redistricting plans submitted to the Commission, we felt it important to provide our views on key portions of the redistricting criteria, as enumerated in the California Constitution. As two of the key authors of Proposition 11, we hope that our perspective will help clarify the plain language of those criteria and assist you in applying those redistricting criteria. It is important to note that we do not want to comment on any of the proposed plans or testimony; our comments are focused solely on the proper application of the Constitutional redistricting criteria.

On April 28, 2011, Voting Rights Act counsel, Gibson Dunn presented the Commission with an extensive legal training session about the redistricting criteria governing the mapping process. During the several weeks since that hearing, we have had the opportunity to observe the interaction and questions directed at the public from the Commission. Although we have been reassured by the sophistication and level of questions posed to the members of the public, as well as by many of the responses, we nonetheless felt it necessary to provide some insight into our thinking in the drafting process in light of some inconsistencies between the express language in the Constitution and the guidelines set forth in the Gibson Dunn presentation. We hope that this assists the Commission as it considers issues arising out of the interpretation of the various redistricting criteria.

## **Order of Redistricting Mapping Priorities in the Constitution**

In its handout, "Guidelines for Map Drawing," Gibson Dunn outlined redistricting priorities arranged in an order that differs from the California Constitution<sup>1</sup>:

1. Draw for equal populations;
2. Draw "functionally" contiguous districts;
3. Minimize objective geographic boundaries (regions, cities, counties, neighborhoods) and communities of interest;
4. Focus on Voting Rights Act § 5; and
5. Focus on Voting Rights Act § 2.

Gibson Dunn Handout (hereinafter "Handout"), Tab A, emphasis added.

As you know, the California Constitution lists and ranks the criteria as follows:

(1) Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.

(2) Districts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.

---

<sup>1</sup>

[http://wedrawthelines.ca.gov/downloads/meeting\\_handouts\\_apr2011/handouts\\_20110428\\_gibsondunn.pdf](http://wedrawthelines.ca.gov/downloads/meeting_handouts_apr2011/handouts_20110428_gibsondunn.pdf)

Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.

(6) To the extent practicable, and where this does not conflict with the criteria above, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts.

Cal. Const., art. XXI, §2(d)

Because the “Guidelines for Map Drawing” will be used by the Commission and the public to understand and apply the law and because this document may be used by the courts to understand what the Commission was considering, it is important to ensure that the criteria are presented in the same order as California Constitution.

The difference between the order of the criteria set forth in the guidelines and the constitutional language is significant. As such it is crucial that these Constitutional criteria are considered and utilized by the Commission in its deliberations in *exactly* the same order as mandated.

When drafting this section of the initiative, we deliberately prioritized both the equal population and the Voting Rights Act criteria over all other criteria. Gibson Dunn’s “Guidelines for Map Drawing,” lists criteria in a manner that suggests a prioritization of the contiguity and “geographic boundary” criteria above the Voting Rights Act criterion. This should be corrected.

Further, to the extent that the Handout or the Gibson Dunn presentation on April 28, 2011 conveys that the integrity of cities and counties and other “objective geographic boundaries” should be prioritized before the Voting Rights Act or communities of interest, we recommend this also be corrected. Compliance with the Voting Rights Act is the second priority and must be considered before contiguity and respect for geographic integrity of any city, county, city and county, local neighborhood, or local community of interest.

**Criterion requiring respect for counties, cities, neighborhoods and communities of interest**

We consciously chose to place counties, cities, neighborhoods and communities of interest as the fourth priority and in the same line, without specific instructions as to how the Commission is to consider one relative to another. We intended to give the

Commission discretion to listen to the testimony and decide from that testimony which geography or geographies to use. In crafting this language, we discussed with a very large group of different stakeholders and organizations whether any of these particular geographies should be considered more important than others. There were certainly those who argued passionately that counties should be prioritized over cities, neighborhoods and communities, and others wanted to prioritize communities over cities and cities over counties.

California is incredibly diverse, not only in ethnicity and culture, but also in the geography of how we live. Accordingly, the flexibility we provided to the Commission acknowledges that diversity. As the testimony you have received thus far reflects, in some regions, the economic or environmental or cultural interests of an area might transcend city boundaries. In populous large cities, where the entire population cannot be fit into a single district, communities and neighborhoods might serve as appropriate building blocks for a district and help guide your deliberation about where to split a city or county. In rural and mountainous areas where the population is sparse, people may have greater identification with counties, and “cities” and “neighborhoods” may be a largely irrelevant construct; communities of interest may be based on a very different understanding of identity and interests than one from an urban or suburban area. In many parts of California, small and medium cities may help to serve as building blocks for districts. As you encounter these, or hundreds of other permutations, across the state, the flexibility under the fourth criteria to weigh the relative importance of the different geographies will be critical.

### **“Contiguity” and “compactness”**

In traveling around the state to talk about Proposition 11, we were often asked why compactness was listed as one of the last criteria. As may be reflected in the testimony you have received, if line drawers must comply with the Voting Rights Act or respect counties, cities, communities of interest and neighborhoods, drawing a compact district may not always make sense. Examining the city boundary of the City of Los Angeles, which at its southeastern tip, has a long, narrow tail that connects to the Port of Los Angeles, provides one example of why we listed compactness last. (See Fig. 1.) If one were trying to keep the southeastern portion of Los Angeles intact within a district by simply following city lines, the district would not be compact.<sup>2</sup>

---

<sup>2</sup> We use the City of Los Angeles only as an example and make no recommendation about how the Commission should draw lines in this or any other part of the state.



Figure 1: Boundary of City of Los Angeles

The Constitution's language clearly ranks compactness as a separate criterion from and below contiguity and four other criteria. Indeed, the compactness criterion begins with the proviso: "*To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.*" (Cal. Const., art. XXI, §2(d) (Emphasis added.)

Therefore, the Commission must consider contiguity as a separate and higher-ranked criterion than compactness. Gibson Dunn's assertion - "There is a compactness component to the contiguity criteria" - is incorrect. The firm's handout quotes from the Special Masters' report in *Wilson v. Eu*, 1 Cal. 4th at 725, which in turn cited ballot pamphlet materials that accompanied Proposition 6 in 1980 - to the effect that the term "contiguity" would require that "districts be composed of adjacent territory and not widely separated areas" and that it "would also help deter odd-shaped districts which join distant communities only by corridors along beaches, highways and waterways." Handout, Tab B at 31.<sup>3</sup>

Gibson Dunn's reading of contiguity with a compactness component requires one to import the definition for contiguity that existed before the ranked criteria of Props. 11 and 20 were adopted. However, the ranking of the current criteria was deliberate and should not be supplanted by interpretations of a previous version of the Constitution, which had different criteria and followed a different order. To the extent campaign materials are referenced, they should be limited to the Proposition 11 and 20 materials.<sup>4</sup>

---

<sup>3</sup> Gibson, Dunn incorrectly attributed this language to the nonpartisan Legislative Analyst.

<sup>4</sup> We would be happy to provide these materials to the Commission if it would help clarify this issue.

The simple and commonly accepted definition of contiguity is to keep all parts of a district connected. Elevating compactness to the level of contiguity would make the current Constitution's ranking of criteria meaningless and would have the effect of subjecting the Commission to arguments that other lower ranked criteria could be similarly elevated to supplant higher ranked criteria.

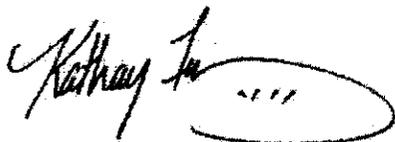
To the extent further definition of contiguity is necessary, the Commission should adopt the traditional definition of contiguity that Gibson Dunn describes as an alternative:

Another definition of contiguity is that the entirety of the district is connected. Example: Arizona and Colorado courts have defined contiguity as "the geographic connection uniting the entirety of a district. . . . A district that is geographically separated is not contiguous." *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*, 211 Ariz. 377, 363 (2006) (citing *Carstens v. Lamm*, 543 F. Supp. 68, 88 (D. Colo. 1982)).

Handout, Tab B at 31.

We hope these comments are useful. Redistricting is a complex process, and we commend Gibson Dunn for its thorough and thoughtful analysis. We believe, however, that if the Commission were to adopt Gibson Dunn's analysis of the legal issues discussed above, it might seriously compromise the legal validity of the Commission's redistricting plans.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathay Feng", with a large, stylized flourish underneath.

Kathay Feng  
Common Cause

A handwritten signature in black ink, appearing to read "Steven J. Reyes", with a large, stylized flourish underneath.

Steven J. Reyes, Esq.  
Kaufman Legal Group APC  
(\*for identification purposes only)

Summary of Public Comments  
 Marin, Sonoma and Napa Counties  
 Through 5:00 pm on May 23, 2011\*

Resident of County	Count	Connect to San Francisco		Keep Marin and Sonoma Together		Include County in North Coast Districts		Connect to East Bay or Solano		Some Combination of Napa-Lake-Sonoma-Mendo-Yolo		Form "Wine Country" Districts	
		OK	No	Yes	No	Yes	No	OK	No	Yes	No	Yes	No
Marin	93	2	67	81		12		21		3			
Written On 5/20	20		13	16		5		2					
Total	113	2	80	97		17		23		3			
Sonoma	35	2	6	11	14	2		1	10			4	4
Written On 5/20	21	1	9	9	6	5		3	6		4	4	4
Total	56	3	15	20	20	7		4	16		4		8
Napa	9		1	3				1	8				7
Written On 5/20	9		2		1			3	9				5
Total	18		3	3	1			4	17				12
Grand Total	187	5	98	120	21	24	0	31	36	4			20

Column totals exceed the count of comments as many submittals covered multiple topics

\* Excluding Santa Rosa video Feed Six testimony that will not connect or load