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February 16, 2012

Citizens Redistricting Commission
1130 K Street, Suite 101
Sacramento, CA 95814

Dear Members of the Citizens Redistricting Commission:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, I am writing to express our perspectives on statutory amendments to the state's Government Code that the California Citizens Redistricting Commission should present to the California legislature. The Commission's discussion about statutory amendments is providing a valuable opportunity for Commissioners to share their experience and expertise with future Commissions, and to engage in a dialogue about how to build upon the lessons learned in the 2011 redistricting. We greatly appreciate the Commission's hard work in carrying out its 2011 redistricting responsibilities, and we commend the Commission for the serious attention it is giving to articulating recommendations for the future.

The NALEO Educational Fund is the nation's leading non-profit organization that facilitates the full participation of Latinos in the American political process, from citizenship to public service. We were integrally involved in California's 2011 redistricting process, starting with our active engagement in the policy dialogue about redistricting reform that occurred last decade. During the 2010 Commission application and selection process, we conducted a public education initiative that reached more than 1,800 California civic leaders, where we encouraged qualified individuals to apply for the Commission and provided them with technical assistance during the process. During the Commission's 2011 redistricting, we reached at least 3,000 individuals with general information about the redistricting process. In addition, we directly educated over 800 individuals statewide about providing input during the Commission's hearings. We accomplished this by conducting 35 regional trainings and 39 webinars, disseminating 38 e-newsletters and providing several hours of telephone technical assistance.

This letter will set forth the comments we presented at the Commission's February 1 and 2 meetings, and will provide some additional information about issues raised at those meetings. As part of our comments, we will

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elaborate on some topics covered in the letter to the Commission dated January 17, 2012, on which we were a signatory together with a consortium of other civic organizations (hereinafter, the “January 17 consortium letter”). For each of our recommendations, we will indicate whether we believe the Commission should address them through statutory amendments or a formal policy recommendation for future Commissions. In this connection, we urge the Commission to prepare a formal document that sets forth specific policy recommendations based on the experience and expertise gained by the Commission in the 2011 process. Presenting these recommendations in a formal document that represents the consensus of the Commission will provide an influential and valuable resource for future redistrictings.

I. Start the Commission’s redistricting process earlier, which will provide more time for public input and the earlier development of maps that comply with California’s Constitutional criteria.

Statutory amendments: Amend Section 8252 of the Government Code so that process for selecting the Commission starts by August 16 of each year ending in nine, and the date by which the Commission is chosen is changed to August 15 of each year ending in 10. Amend other provisions of Section 8252 regarding the selection process in accordance with the foregoing schedule.

Policy recommendations:

- When developing its first draft map, the Commission should start by drawing the districts required by Section 2 and Section 5 of the Voting Rights Act of 1965 (VRA), and then draw the districts surrounding them.
- When retaining its VRA counsel, the Commission should ensure that the counsel selected has significant and sufficient experience in enforcing the VRA as required under Section 8253(a)(5) of the Government Code.

Discussion: We are pleased to see that the Commission believes that there needs to be statutory amendments to start the redistricting process earlier, and we commend the Commission for considering whether there needs to be a date by which a “best intentions” map will be released. First, as noted in the January 17 consortium letter, an earlier start date would provide more time for the Commission to hire staff and retain consultants; set up its office and website; receive training; develop an outreach and public education plan; gather the data needed for its racially-polarized voting (RPV) analysis, and hold initial public input hearings throughout the state. The Commission could accomplish the foregoing tasks before the decennial Census data is released, allowing it to more fully turn its attention to mapping once that data becomes available. In 2011, the Commission had only a few short months to accomplish many essential responsibilities in a rushed manner.

In addition, we believe that the statutory amendments should also provide a full year for the Commission selection process. This will enable the State Auditor and the Applicant Review

Panel to more effectively prepare for their review of applications and inform the public about the requirements for and responsibilities of Commission service.

In this connection, we urge the Commission to develop a formal policy statement which recommends that future Commissions start their mapping by first drawing the districts required under Section 2 and Section 5 of the VRA, and then draw the surrounding districts. Under Section 2(d) of Article XXI of the California Constitution, compliance with the U.S. Constitution's population equality mandates and the requirements of the VRA are the two highest priorities for the Commission's maps. We believe that our recommendation will help promote a mapping process that ensures compliance with these priorities. To accomplish this, future Commissions will need to complete several steps before releasing a statewide draft maps – they will need to select their mapping consultant, hire their VRA counsel, arrange for a significant amount of the RPV analysis to be completed, and where appropriate, compile information about the “totality of circumstances” factors that relate to whether a Section 2 district must be drawn.

In 2011, because the Commission did not start work until the beginning of the year, we believe the Commission faced significant time constraints in completing all of these steps before releasing its June 10 first draft map. Because of these time constraints, the first draft maps did not appear to reflect a full consideration of VRA issues and raised questions about the extent to which the Commission had taken into account the growth of the Latino community during the previous decade. Starting earlier will enable the Commission to use the mapping of Section 2 and Section 5 districts as its starting point.

In addition, when future Commissions select their VRA counsel, we believe they should give more serious consideration to the requirement in Section 8253(a)(5) of the Government Code which mandates that the Commission's VRA counsel possess “extensive experience and expertise in implementation and enforcement of the Voting Rights Act.” [emphasis added] We believe that experience enforcing the VRA should mean more than just a general knowledge of civil rights or voting rights issues. It should involve experience with bringing, settling or litigating federal VRA claims on behalf of the groups protected by the VRA. Such enforcement experience brings a very specific kind of expertise, because it helps Commissioners understand the nuances of how courts will interpret the VRA, and promotes VRA compliance. We believe that the Commission should have placed greater emphasis on enforcement experience when reviewing applicants for the counsel position, and we recommend that one of the Commission's policy recommendations should note the importance of this experience and expertise in the VRA counsel selection process.

II. Strengthen the Commission's public education and outreach about the redistricting process; reduce barriers to the participation of under-represented communities.

Statutory amendments: Amend Section 8253 of the Government Code to clarify that the Commission's outreach responsibilities should include public education about the redistricting process.

Policy recommendations:

- The Commission's policy recommendations should specifically suggest that the Commission's public education include information about the criteria for the Commission's maps. The recommendations should also urge future Commissions to work closely with groups familiar with the needs of under-represented communities when developing and implementing its outreach and public education activities.
- The Commission's policy recommendations should suggest that future Commissions provide appropriate translation services at their public hearings for members of the public who are still in the process of becoming fully proficient in English.
- The Commission's policy recommendations should emphasize the importance of Commissioners being fair and even-handed when interacting with members of the public during Commission hearings.

Discussion: During the course of the Commission's February 1 and 2 discussions of the Commission's outreach responsibilities, it was noted that Section 8253(a)(7) of the Government Code requires the Commission to conduct "a thorough outreach program" to solicit broad public participation in the redistricting public review process. We are pleased to see the developing consensus among the Commissioners that this language should be amended to require the Commission to conduct a program of public education about the redistricting process in general that is broader than merely providing outreach to promote public input.

We also urge the Commission to develop a policy recommendation that explicitly states the need for public education about the Constitutional criteria for the Commission's maps. As we discussed in the January 17 consortium letter, we believe that ignorance about those criteria contributed to an environment at some hearings where certain members of the public were making misinformed and occasionally hostile comments on the Commission's consideration of the impact of its maps on California's under-represented communities.

In addition, we believe that members of under-represented communities face significant barriers to participation in the redistricting process. Many members of these communities lack knowledge about the process, and are lower-income families with work and family responsibilities which create difficulties for their attendance at hearings. Some are not yet fully proficient in English and some are not fully engaged in the civic life of their communities. For many members of the public, particularly those from under-represented communities, the process of testifying before the Commission can be very intimidating – in our work with community members, some noted that testifying before the Commission was the very first time they had ever made a public statement to a government body, and was a significant step forward in their civic participation experiences. In order for future Commissions to obtain meaningful input from all of the California's diverse communities, it is critical that they work closely with groups who are familiar with these communities' needs as they develop their outreach and public education efforts.

In this connection, we would note that language barriers created obstacles for the participation of some members of the public in the 2011 redistricting process. When members of the public who were not yet fully proficient in English testified in their native language, translation services were provided to enable Commissioners to understand their comments. However, there was no translation provided during public input hearings for members of the public who attended, and those not fully proficient in English could not meaningfully understand the comments of other members of the public or the Commission's deliberations. Thus, we believe that it is critical that future Commissions provide appropriate translation assistance at its public hearings for members of the public who are still in the process of becoming fully proficient in English. An explicit policy recommendation addressing the need for such services will help ensure that all of California's diverse communities can provide meaningful input during the redistricting process.

We also believe that the Commission's policy recommendations in this area should note the need for Commissioners to be even-handed and fair during their questioning of members of the public. Unfair or uncivil questioning by Commissioners can deter some community members from coming forward and make them reluctant to participate in the redistricting process.

III. Provide an express statutory mandate for outreach to potential applicants for service on the Commission.

Statutory amendments: Amend Section 8252 of the Government Code to explicitly require that some public entity conduct an outreach and public education program for potential Commission applicants. If the Commission's amendment places this responsibility with some entity other than the State Auditor, the amendment should also require the entity to work closely with the State Auditor on the development and implementation of the program.

Policy recommendations: The Commission's policy recommendations should urge the entity responsible for outreach to potential Commission applicants to work closely with groups familiar with the needs of under-represented communities when developing and implementing the outreach program.

Discussion:

We are pleased that there appears to be a developing consensus among the Commissioners that there should be an explicit statutory mandate requiring some public entity to conduct outreach to potential Commission applicants. As discussed in the January 17 consortium letter, we believe that such a program is critical to ensure that a diverse group of qualified applicants pursue Commission positions. In this connection, we note that Section 8252(a)(1) of the Government Code requires the State Auditor to initiate an application process "in a manner that promotes a diverse and qualified applicant pool." We believe that the State Auditor essentially interpreted this provision to require it to conduct outreach that targeted members of California's diverse communities. The State Auditor developed regulations mandating an outreach program, and acknowledged the need for such outreach in the Memoranda it developed which accompanied the regulations. Moreover, the January 17 consortium letter also sets forth several other

references in the Voters First Act regarding the importance of diversity within the Commission applicant pool and for the Commission itself.

We also believe that there must be a specific statutory mandate that some public entity conduct the outreach for potential applicants. In 2010, the relatively robust outreach efforts were made possible through the State Auditor's activities, and the work of private organizations, many of whom were funded with generous support from The James Irvine Foundation. However, there is no guarantee that private monies will be available for outreach in future redistrictings. Without an express statutory mandate for outreach conducted by a public entity, it is possible that there might be no outreach whatsoever in future redistrictings.

We understand that some Commissioners have raised questions about whether the State Auditor is the appropriate entity to conduct outreach to potential applicants. We believe that with sufficient funding, more time for planning and implementation, and a commitment to working closely with groups who are familiar with the needs of members of California's under-represented communities, the State Auditor's office can conduct the outreach needed to attract a diverse and qualified group of Commission applicants. However, should the Commission believe that the State Auditor is not the appropriate agency to conduct this outreach, we urge the Commission to identify another public entity to do so. There are several options open to the Commission. It can look at other state agencies to find an agency or office that has experience with public education. It can constitute the current Commission as the entity to oversee this outreach, so long as the entity is able to hire staff to assist with the logistical components of outreach activities. It can also provide some other role for the Commission, such as creating an Advisory Committee to the public entity responsible for the outreach which includes members of the current Commission.

Should the Commission develop a statutory amendment that places responsibility for outreach to potential applicants in the hands of an entity other than the State Auditor, we recommend that the amendment explicitly require that entity to work closely with the State Auditor in developing and implementing its outreach plan. Because the State Auditor implements or assists with much of the selection process, the State Auditor is extremely familiar with the requirements for Commission service. It also has the capability of compiling data about the demographic characteristics of applicants. In addition, it needs up-to-date information about the scope and nature of outreach activities to effectively plan its work in reviewing initial applications and assisting the Applicant Review Panel with its responsibilities. Thus, a close working relationship between the entity conducting outreach and the State Auditor is critical for an effective application outreach program and Commissioner selection process.

We also believe that an effective outreach program that promotes a diverse and qualified applicant pool cannot be accomplished unless the entity conducting the outreach work closely with groups that have experience and expertise in reaching civic leaders in diverse communities. The Commission's policy recommendations should specifically address this issue.

IV. Narrow the circumstances where potential applicants are automatically disqualified from Commission service.

Statutory amendments:

- Amend Section 8252(a)(2)(A)(vi) to eliminate automatic disqualification for individuals who have contributed \$2,000 or more to candidates for local elective office in the last ten years.
- Amend Section 8252(a)(2)(A) to reduce the amount of time the automatic disqualifiers apply from 10 years to six years.

Discussion: During our outreach to potential Commission applicants, we talked to a broad range of Latino civic leaders, including members of Chambers of Commerce and business groups, Latino professionals, academics and researchers, and leaders of community organizations. We found that many of these leaders who were otherwise qualified for Commission service were automatically barred from applying because of their own civic engagement activities (or activities of family members) that did not create any real risk of bias or partiality. In the Latino community, many talented and skilled leaders are also those who are also very involved in the civic life of their communities, or have family members that are similarly involved. We understand the need for impartial and unbiased Commissioners, whose decisions are not influenced by consideration of partisan or political gains. However, the automatic disqualifiers of Section 8252(a)(2) are so broadly drawn, they prevent qualified individuals from applying because of minimal acts of civic engagement that occurred far in the past. In this connection, we would note that because of the breadth of automatic disqualifiers in the Government Code, the State Auditor felt compelled to clarify and narrow many of them through regulations.

In particular, we first urge the Commission to recommend amending Section 8252(a)(2)(A)(vi) to eliminate contributions to a campaign for local elected office as an automatic disqualifier for applicants. Under that section, you cannot serve on the Commission if you have contributed \$2,000 or more to a local candidate in the last ten years. We believe that making contributions to a local candidate does not demonstrate the same kind of potential bias as contributions to a state or federal candidate. Individuals who run for local offices in California generally run in non-partisan races. They are often community members who are just pursuing an opportunity to help in the governance of their local community on issues that affect their families and neighborhoods. For example, we have found that Latino school boardmembers are often parents who want to have more of a voice in their children's education. Similarly, many of the individuals who make contributions to local campaigns are family members or friends of candidates who want to work on issues specific to their local communities, without a partisan bias or a desire to get involved in state or federal politics. These individuals should not be disqualified merely because of this basic act of local civic engagement.

In this connection, we would note that nothing in the Government Code prevents a local elected official from serving on the Commission, if he or she is willing to relinquish that position after Commission service is over. Thus, the automatic disqualifier for local contributions produces an

anomalous result – local elected officials can serve on the Commission, but family members or friends who contributed significant amounts to their campaigns cannot.

Similarly, we urge the Commission to recommend amending Section 8252(a)(2)(A) to reduce the amount of time the automatic disqualifiers cover from 10 years to six years. During our outreach, we found that many otherwise qualified civic leaders could not apply because of their own activities, or those of family members, that occurred far in the past. For example, one potential applicant's daughter had served as a staff member of state legislator for a brief period of time several years ago – her daughter's employment barred her from applying.

As many young Latino civic leaders are charting their career paths, they may work in political positions or engage in political activities for a short period of time in order to gain a breadth of experience that helps them determine their future career goals. Many of these leaders move on to job opportunities and civic engagement in the public or private sector that do not involve any of the partisan activities which would automatically disqualify them from public service under Section 8252(a)(2)(A). These young leaders are among the potential applicants who are most detrimentally affected by the ten-year coverage of Section 8252(a)(2)(A).

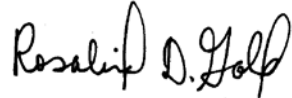
We note that reducing the automatic disqualification coverage of Section 8252(a)(2)(A) would not result in individuals with serious and substantial conflicts-of-interest being permitted to serve on the Commission. Through either statute or regulation, Section 8252(a)(2)(A) could require disclosure of the acts it covers if they occurred in the 10 years preceding an individual's date of application. If such disclosure revealed a serious conflict – for example, several years of employment with a state legislator that ended eight years before the date of application – there are several other safeguards in the application process that are very likely to prevent that individual from serving. For example, the Applicant Review Panel must choose individuals for the sub-pools of those who will be interviewed on the basis of certain qualifications, which include the "ability to be impartial." Under Section 60800 of the State Auditor's regulations governing the Commission selection process, "ability to be impartial" includes a potential applicant's ability to set aside his or her support for candidates or political parties in order to make fair and unbiased decisions as a Commissioner. The State Auditor would be able to use these criteria to reject Commission applicants with significant ties to elected officials, candidates or political parties, even if those relationships occurred more than six years before the date an individual applied. Our statutory amendment recommendation does not diminish the "ability to be impartial" qualification for Commission service, and it would not create any greater risk of biased or partial individuals gaining access to Commission seats. It would merely allow qualified individuals who had engaged in activities which do not create a risk of partiality or bias (or whose relatives had done so) to apply for the Commission and be subject to scrutiny by the Applicant Review Panel.

We understand that the Commission appears to be reluctant to recommend any statutory changes to Section 8252(a)(2)(A) at this time. However, we welcome the comments by some Commissioners suggesting that they would consider narrowing of the Section's coverage, either by reducing the time period or changing the application of the section to potential applicants'

family members. We also commend the Commission for its interest in having a broad discussion of barriers to Commission service, and we hope to actively engage in this dialogue with the Commission, particularly with respect to obstacles that disproportionately affect civic leaders from California's under-represented communities. As noted above, many of the potential applicants we reached cited the automatic disqualifiers as the reason for their failure to apply, and we urge the Commission to examine the impact of these provisions in the context of the discussion of barriers to Commission service.

Thank you for your consideration of our comments on these important issues. If you have any additional questions, please do not hesitate to contact me at [REDACTED] or at [REDACTED]. We look forward to continuing our work together.

Sincerely,

A handwritten signature in cursive script that reads "Rosalind D. Gold". The signature is written in black ink and is positioned above the typed name.

Rosalind Gold

Senior Director of Policy, Research and Advocacy