

January 12, 2011

TO: California Redistricting Commission (Staff)

FROM: Brian Lawson

RE: Public Comments on Launching the Commission

Frontload the Front End

1. A Calendar with a Budget
2. Hiring Counsel
3. Relations with the State Legislature and the Governor
4. Pre-process the Geographic Information
5. The power of your "No" vote

Front Loading the Front End

1. A Calendar with a Budget
 - (a) A calendar by itself is good, a calendar with a budget is better. It is relatively easy to identify target dates for various milestones. A really useful calendar will include estimates of how much different actions will cost so that you can realistically plan what you can and cannot accomplish. Best of all it will allow you to do "process checks" as time progresses.
 - (b) You know one date: August 15th is the date by which you must approve each map or the California Supreme Court takes over responsibility for drawing maps not approved by that date. Because you must make the map available for 14 days before you vote on it, Monday August 1st is your drop dead date. You should probably plan to give yourself some leeway – so perhaps July 15 or 20 would be a good target date. Perhaps you might set an earlier target for an easier map (such as the Board of Equalization).
 - (c) There are other dates you should also consider. When does the Secretary of State need to have maps to be able to carry out the currently planned February 2012 primary? How fast will the US Department of Justice be able to preclear your plan? How fast can you turn around a new map and have it precleared if an initial map is rejected?

- (d) With regard to the budget, when the commission is most likely to be in need of money (June and July), the legislature and governor are likely to be in the thick of budget negotiations (not that they aren't already!). If you believe you will need additional money, make a strong case for it and ask soon. The amount of money you needed is small (\$1–2 million) compared to the size of the budget (about \$85 billion) – just 1/85,000th of the budget; but given the way the budget is being fought over nothing can be taken for granted.
- (e) In the best of all possible worlds it would be helpful to have a “legal contingency fund” so that you are prepared in case you are sued. That way you will not be at the mercy of a group which sues or threatens to sue (also you will not be at the mercy of the legislature's response to your need for money to contest a suit).
- (f) Consider and prepare for worst case scenarios. Will you be able to quickly replace a commissioner if they have to resign (maybe make sure you have a few people from the remaining 22 people who were not chosen who are ready to go – like alternate jurors)? What will you do if one of your key executive people resigns under the strain of the job (keep the application files of people you do not hire)? You cannot prepare for every contingency, but you can sketch out some preliminary responses.

2. Hiring counsel

- (a) Counsel will give you recommendations about what to do and what not to do. Counsel will likely have a greater impact on the maps than any one commissioner. This person will oversee the submission of the maps to the US Department of Justice for preclearance; without pre-clearance the maps cannot be used. This person will work very long hours for less money than they were making now. This person will be in the center of a pressure cooker 24/7 from February to August and potentially well beyond that.
- (b) You should ask people who apply for this job why they are interested in a job where they will make less money than they are now and have more work and more stress.
- (c) You might also ask them how they would handle law suits from a financial perspective. The most leverage you will have over this person is before they are hired. Once they are hired they will be directing you in many areas.

3. Relations with the State Legislature and the Governor

- (a) As mentioned above you may have the need for additional funding. Any additional funding must be approved by the Legislature and the Governor. Therefore you should remain on good terms and keep the Legislature and Governor informed of your progress.
- (b) According to proposition 8, enacted as subdivision (b) of section 8253 of California Government Code the State Legislature is required to work with the Commission to assure that a Statewide Database of information for redistricting is available. This is an important part of the process. Hopefully the Commission and State Legislature can coordinate to expedite this as soon as possible. This database is useful, not just for the Commission, but for everyone interested in the redistricting of California.

4. Pre-process the Geographic Information

- (a) Even before you receive population figures you can begin pre-processing the census geography into contiguous cities. In their training session Ms. Mac Donald and Ms. Boyle from the Statewide Database mentioned that they were already working on this with funding from the Irvine Foundation. The sooner you can get this information standardized and ready to use the better.
- (b) I would recommend that you adopt new geographic regions of approximately equal population for scheduling hearings. The seven regions used to this point have dramatically different populations. Redistricting requires equal population. The initial Supreme Court cases in the 1960's pointed to California's wildly unequal Senate districts as one of the reasons for "entering the political thicket" of redistricting. It would be a shame to repeat that error 50 years later. You might start with the current Board of Equalization districts which, in 2000, divided the state into four regions with exactly the same population. Obviously there has been some change since then, but if you use county-level information this will probably give you a decent first approximation. You could refine this with the Census' 2009 American Community Survey estimates for county populations.

5. The power of your "No" vote

- (a) Because of the super-majority voting system required for major votes a No vote has much more impact than a Yes vote. You should vote your conscience, that is what you have to guide yourself and you should not give that up, but keep in mind that a No vote is a strong statement.
 - i. If three members from Democratic pool vote No and the other eleven members vote Yes, the motion fails.
 - ii. If three members from Republican pool vote No and the other eleven members vote Yes, the motion fails.
 - iii. If just two members from the decline-to-state pool vote No and the other twelve members vote Yes the motion fails.

If you are on the Yes side you may be tempted to try to coerce your colleagues voting No to switch their vote. In many cases it may be better to listen and engage with your colleagues, to find out what their concerns are, to see if there is a way to accommodate them (without, of course, compromising your own principles), rather than to pressure them into voting Yes. The rules you are using require a very high degree of agreement among the 14 commissioners.

- (b) Also, for these reasons it seems to me that groups that can determine the outcome (three or more Democrats, three or more Republicans and two or more decline-to-state members) should be covered by the Bagely-Keene Act the same way a majority is. Because the super-majority voting procedure makes these three groups able to influence the outcome it seems to me that it would be in the spirit of the Voter's First Act that these three groups should not coordinate outside of a public meeting.