

August 31, 2009

Daniel Claypool
Sharon Brumley
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: Citizen's Redistricting Commission Draft Regulations - Definition of "Diversity" and Phase II Application Process

Dear Mr. Claypool and Ms. Brumley,

On behalf of the Democratic Party of the San Fernando Valley (DP/SFV), an organization representing 25 Democratic clubs in the Los Angeles area, I am submitting comments regarding the draft regulations implementing Prop 11. Specifically, DP/SFV would like to register our concern regarding 1) the draft definition of "diversity" and 2) determination of the ability to be impartial in the Phase II Application Process, and offer constructive amendments. For further perspective on this issue, we urge the Bureau to review the Los Angeles County Democratic Party's submitted statement, which DP/SFV endorses.

Definition of Diversity

Draft Section 60814 reads: "'Diversity' means the variety in the racial, ethnic, geographic, economic and gender characteristics of the population in California." DP/SFV believes this definition should be expanded to include sexual orientation and disabilities.

Memorandum Number 5 sets out the Bureau's criteria for determining which characteristics are important to redistricting as follows:

"First, any characteristic that is selected should be related to redistricting such that having a person or persons with that particular characteristic on the commission will bring a particularly important set of experiences or point of view to the redistricting process. For example, being left-handed might be considered by some to be an element of diversity, but if being left-handed does not bear on redistricting, it is not a worthy basis for selecting commission members. Second, for the panel to select commission members based on a particular characteristic of diversity, the application process for selecting the commission members will have to inquire of applicants about that characteristic, and some prospective applicants may be dissuaded from applying to serve on the commission if they consider such an inquiry to be an invasion of privacy. For example, some prospective applicants may be opposed to responding to a public inquiry about their sexual orientation."

Regarding sexual orientation, it is well known that certain areas of our state have a concentrated population of voters identifying with the Lesbian, Gay, Bisexual, or Transgendered (LGBT) community. These communities may benefit from district lines that preserve their ability to elect representatives responsive to their needs. Therefore, in the dichotomy laid out in Memorandum Number 5, the LGBT community is more akin to an ethnic group than left-handed people in terms of importance to the commission. To ensure members' privacy, we suggest that an optional question be included on the Phase I Application allowing members to disclose their sexual orientation, and that such information would be kept private outside of the panel selecting the applicant pool.

Additionally, DP/SFV believes the commission would benefit from considering whether members belong to California's community of persons with disabilities. Prop 11 reads "The

selection process is designed to produce a Citizens Redistricting Commission that is independent from legislative influence and reasonably representative of this State's diversity." California is home to nearly ten million persons with disabilities as defined by the Americans with Disabilities Act (ADA). While figures for regional concentration are difficult to find, many persons with disabilities live in areas of the state with the easiest access to services and amenities. It is therefore reasonable for the panel to consider whether an applicant's disability might lend an important point of view to the redistricting process.

Thus, DP/SFV recommends adding "sexual orientation" and "disabilities" to the list of diversity characteristics in Section 60814.

Phase II Application Process

DP/SFV is concerned that the Phase II Application process, as drafted, together with the draft definition of "ability to be impartial," is unduly prejudiced against Californians who are members of partisan clubs or organizations.

Draft Section 60847 (iii) requires that Phase II Applicants be questioned regarding their "Involvements with, and financial contributions to, professional, social, political, and community organizations and causes." This information will be used to determine if an applicant has an "ability to be impartial," defined in draft Section 60800 as, in part, "Having no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision."

Taken together, these sections make it highly unlikely that anyone involved with a political or community organization will be deemed "impartial" enough to be among the final 60 qualified applicants.

California is home to tens of thousands of political club members, most of whom have never run for office, donated \$2000 to a political campaign, or engaged in any other activity explicitly deemed a "conflict of interest" by Prop 11. Excluding this population from potential participation on the commission would constitute an infringement of the federally-protected freedom of association. An active engagement in local politics, or other community advocacy, does not by itself signify an inability to base one's decisions on objective criteria.

Furthermore, the draft regulations run contrary to the intent of Prop 11, which specifically set aside ten of fourteen commission seats for members of the state's two largest political parties. The Bureau's interpretation suggests that while party membership is desirable in a committee member, participation in party activism is grounds for exclusion. This favoritism toward party members "in name only" is not justified by the Prop 11 language. Ultimately the draft regulation goes too far in excluding qualified individuals from the final pool.

Therefore DP/SFV respectfully encourages the Bureau to consider removing draft Section 60847 (iii) and draft Section 60800 entirely from the regulations. As an alternate definition of "impartial," DP/SFV suggests an approach analogous to the judicial disqualification rules in Code of Civil Procedure Sections 170.1 and 170.2. Alternatively, the BSA could limit the definition of "ability to be impartial" to a "capacity and willingness to make a decision in accordance with the applicable law and to evaluate information with an open mind free from preconception or bias."

Thank you for your attention to these suggestions. If you have further questions please contact our Political Action Chair Ilene Haber at 818-510-4799.

Sincerely,

Agi Kessler
Chair, DP/SFV