

**Comments on the Proposed Commission Application  
Regarding the Voters FIRST Act**

**September 14, 2009**

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Initial Application

Conflicts of Interest

5. This section reads very awkwardly, and needs to be reformatted and clarified. Add “with you” after Resided.

Supplemental Application

In my comments on the proposed Regulations, I made the following comment:

“The criteria in subsections 60805 (b)(1), (2) and (3) seem to be designed to qualify activists and advocates, contrary to my views expressed in the opening paragraphs of this commentary. If applicants are expected to demonstrate their appreciation for California’s diverse demographics and geography by satisfying any or all of these criteria, the pool of applicants will be severely limited.

“Most otherwise highly qualified citizens will never have worked on a statewide project, studied voting behavior, or done statewide consensus building. There is a very high probability that someone who has engaged in these activities has been an advocate for a cause, and may bring an irreconcilable bias to the Commission.” I then went on to offer substantive changes to this and related sections.

In the same spirit, the essay questions in the proposed application are tilted toward activists rather than discovering the qualifications and skills of “ordinary citizens,” by providing more words for Activities than for demonstrating impartiality (essay question 2), diversity (3) and analytical skills (4).

Certainly 250 words is adequate for the “why” question, but 500 words should be allowed for all the others so that there is adequate information for discovery and to maintain balance.

Thank you for considering these comments.

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I will offer comments on specific sections of the proposed regulations, but first would like to make some important general observations.

*The goal is to have a true "Citizens Commission"*

**In a perfect world, this would be a group of highly qualified people that no one ever heard of.** They would have the relevant analytical skills, ability to be impartial, and an appreciation for California's diverse demographics and geography. With political professionals excluded, this should truly be a "Citizens Commission," as explicitly stated in the Commission's title.

*Beware of known activists and advocates*

**Known persons are more likely to have histories of advocacy.** While not necessarily a bad thing, their participation can potentially discredit the work of the Commission. The Applicant Review Panel resist the temptation to choose people that they know about from experience outside the application process. Public perceptions of identity and bias do matter, even if totally unfounded.

*Applicants should not be screened primarily on advocacy experience*

**Life experience, not advocacy experience, should qualify an applicant.** This gives equal footing to the unknowns. The draft regulations overemphasize advocacy activities and letters of recommendation. People with advocacy experience and easy access to high profile recommenders are more likely to be known quantities, and because of this experience are more likely to have potentially biased points of view.

*The Panel must be wary of applicant "campaigns"*

**The Applicant Review Panel must not be swayed by "campaigns" by prominent activists to gain appointment.** Individuals with limited time and resources may be placed at a disadvantage if such efforts become the norm.

*Impartial and unbiased analytical skills are of primary importance*

**Commission members must understand, interpret and implement the complex layering of multiple criteria to create maps, and not be distracted by peripheral political issues.** The Panel must focus its applicant review on the nitty-gritty work the Commission will do to draw new district lines in accordance with six prioritized criteria. Once impartiality and appreciation for diversity are established, analytical skills become all-important.

Questions in the application documents and later in the interviews must be designed to uncover relevant life, educational and work experience to validate these skills.

The following comments address the above concerns and others in each applicable section of the proposed regulations.

### **§ 60805 Appreciation for California's Diverse Demographics and Geography**

Subsection (a)(2) properly addresses voting preferences based on geography. There is, however, another equally important definition that operates independently of whether a locality is “urban, rural, industrial, agricultural, arid and temperate.”

Neighborhoods and communities of interest are strongly influenced by natural terrain and man-made features. The resulting “sense of place” can often be the overriding factor in defining a community. It is essential to understand how geographic features such as rivers and mountains affect people in what may otherwise seem like contiguous communities. Also, large tracts of non-residential uses, parklands and transportation arteries can have the same effect. Understanding these factors will be critical to the “layering” process in determining district boundaries. Therefore add a new subsection (4):

(4) An understanding of how natural terrain and man-made features affect the goals of having district contiguity, compactness and integrity of communities of interest.

The criteria in subsections 60805 (b)(1), (2) and (3) seem to be designed to qualify activists and advocates, contrary to my views expressed in the opening paragraphs of this commentary. If applicants are expected to demonstrate their appreciation for California's diverse demographics and geography by satisfying any or all of these criteria, the pool of applicants will be severely limited.

Most otherwise highly qualified citizens will never have worked on a statewide project, studied voting behavior, or done statewide consensus building. There is a very high probability that someone who has engaged in these activities has been an advocate for a cause, and may bring an irreconcilable bias to the Commission.

To correct this misplaced emphasis, I recommend deleting the present subsections (2) and (3), modify (1) to emphasize local activity, and reorder the sequence with a new subsection (1) highlighting life experience:

(1) Familiarity with Californians of diverse backgrounds and from various areas of the state, gained from associating with a broad range of individuals in the course of one's life experience.

(2) Working on a project of local, regional or statewide concern affecting Californians of different backgrounds and from different areas, achieving a result acceptable to these different Californians.

To demonstrate an appreciation for the new "sense of place" subsection (a)(4) above, add a new subsection (4) to 60805(b):

(4) Traveling throughout the state developing an understanding of geographically diverse communities and how natural terrain and man-made features affect them.

This example should be added even if 60805(a) is not modified, as it is a particularly critical skill to be demonstrated.

#### **§ 60819 Paid Congressional, Legislative, or Board of Equalization Staff**

Is it really the intent here to limit this definition to the unlikely few that are on the Legislature or State Board of Equalization staffs, but are employed by and receiving their paycheck from the Congress of the United States? We know the intent, but redrafting is in order to clarify this possible misinterpretation.

#### **§ 60824 Randomly Draw**

In (a), ten days notice is too short. Give fifteen days notice.

#### **§ 60826 Relevant Analytical Skills**

As pointed out above, analytical skills are the most important element in determining the qualifications of Commission applicants. Picking up on the discussion about § 60805, I recommend adding this critical requirement to subsection (c)(2):

(E) An ability to understand the influence of natural terrain and man-made features upon appropriate district boundaries.

### **§ 60832 Duties of Panel Members**

I recommend that a statement along these lines should be added:

(d) Refrain from any contact or communication with a Commission applicant outside of official public deliberations of the Panel.

### **§ 60840 Outreach Program**

Please consider my preamble to these comments. Subsection (a)(3), using “community partners” to recruit applicants, runs the risk of encouraging partisan applicants. In my view, nothing is lost by deleting (a)(3), as this subsection could encourage single issue applicants, depending upon the nature of the “partner.”

### **§ 60846 Written Public Comments and Responses**

This section will potentially pose a particularly vexing problem for the Panel. Subsection (a) invites any and all comments, while subsection (b) attempts to screen out those that should not be considered.

Under (a), some applicants with time and resources may undertake “campaigns” to generate volumes of favorable comments. Invoking the rules of (b), how will the Panel decide whether some or all of such a flood of commentary fails to meet the “credible” “specific facts” criteria and should be rejected from consideration? How will the Panel not be influenced by volume, even if most are rejected? Will such rejects be permanently deleted from the files?

### **§ 60849 Phase III Interviews**

The notice for interviews should be at least 15 days in advance so that applicants can make proper arrangements and reschedule commitments (subsection (b).)

Thank you for considering these comments.

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