

From: **Brian Lawson** [REDACTED]  
Date: Wed, Mar 23, 2011 at 4:05 AM  
Subject: Questions Ideas for Thursday  
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Dear Citizens Redistricting Commission and Staff:

It might be useful to ask both presenters (Karin Mac Donald and Anna Henderson) the following questions on Thursday:

1) Is citizenship voting age population (CVAP) sufficiently detailed information for drawing districts or does the commission need more detailed information to draw districts that will likely pass DOJ criteria for preclearance?

2) Do the presenters think that the commission should carry out a study of polarized voting in California – if so when? What is a reasonable cost for such a study, if needed?

3) With respect to redistricting how does the California Voting Rights Act relate to the Federal Voting Rights Act?

**Is Citizenship Voting Age Population (CVAP) enough to determine Retrogressive Effect?**

In the notice published by the Civil Rights Division of the US Department of Justice in the Federal Register on February 9, 2011 as "Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act" the following description is given of the data needed to determine retrogressive effect (p. 7471):

"In determining whether the ability to elect exists in the

benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change."

As a non-lawyer, it seems to me that this requires going beyond simply determining the Citizenship Voting Age Population (i.e. people 18 and over) of protected groups. The language above suggests that in most cases the justice department is interested in actual estimates of voting behavior, not just counts of individuals of a certain age. This suggests that counts of CVAP of protected groups alone will not be enough to determine the electoral behavior of protected groups.

### **Is a Racially Polarized Voting Study Necessary?**

Still the DOJ Guidance does say that "census data alone may not provide sufficient indicia of electoral behavior." The word "may" suggests there are instances when the Justice Department would accept the Census Bureau's American Community Estimates of CVAP as sufficient to estimate the retrogressive effect of a map. If that is the case, then the commission may not need a full blown racially polarized voting study of California and could get by with just the ACS estimates of CVAP. I would think the commission would be interested in the presenters' opinions as to whether or not or under what conditions CVAP alone would satisfy DOJ.

### **The Difference between the California VRA and the Federal VRA**

The California VRA (CVRA) and the Federal VRA (FVRA) are very different.

The purpose of the CVRA is to make it easier to challenge "at-large" voting systems and replace them with district voting

systems.


This is very different from section 2 and section 5 of the FVRA which are the heart of the legal issues the commission will be confronting.

Given the way in which Gibson Dunn offered to charge for their services ("We recognize that this project is an important public service opportunity, and, for that reason, we are willing to proceed on an alternative, mixed hourly and fixed fee basis.") it would seem appropriate that the commission could ask that any activities on the part of Gibson Dunn to bring themselves up to speed on the parts of the FVRA which specifically deal with redistricting would not be charged or would be included in a small flat fee. One activity which Gibson Dunn could take to get up to speed on the FVRA would be to follow the presentation on Thursday about the FVRA.

I hope you find these comments helpful.

Sincerely,

Brian Lawson

  
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