

TITLE 2. ADMINISTRATION
DIVISION 10. BUREAU OF STATE AUDITS

CHAPTER 1. REDISTRICTING

SUB-CHAPTER 1. DEFINITIONS

60800 - 60828

§ 60800. Ability to Be Impartial

(a) “Ability to be impartial” means a capacity and willingness to set aside all of the following considerations when serving as a commissioner in order to evaluate information with an open mind and make decisions that are fair to everyone affected:

- (1) Personal interests including personal financial interests.
- (2) Biases for or against any individuals, groups, or geographical areas.
- (3) Support for or opposition to any candidates, political parties, or social or political causes.

(b) An applicant may demonstrate an ability to be impartial through a description of that ability and both of the following:

(1) Having no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision.

(2) Occupational, academic, or life experiences that show an ability to set aside his or her personal interests, political opinions, and group allegiances to achieve a broad objective.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 4 Relating to Identifying the Most Qualified Applicants](#)

§ 60801. Applicant

“Applicant” means a person who has submitted an application to serve on the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60802. Application Materials

“Application materials” means the electronic and other documents collected by the bureau and the panel from applicants and from members of the public commenting on applicants during the application process. Application materials shall include, but need not be limited to, the following:

Applications and supplemental applications.

Supporting materials for an application or a supplemental application, including letters of recommendation.

Written public comments and responses to such comments submitted in accordance with California Code of Regulations, title 2, section 60846.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60803. Application Year

“Application year” means the calendar year 2010 or any year ending in “0” thereafter.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60804. Appointed to Federal or State Office

“Appointed to” a federal or state office means a person has been appointed to a federal or state office by the Governor or any member of the Legislature, or has served in an appointed position at the pleasure of the Governor or a member of the Legislature. A person has been appointed to an office regardless of whether the appointment was subsequently confirmed by the Legislature.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60805. Appreciation for California’s Diverse Demographics and Geography

(a) “Appreciation for California’s diverse demographics and geography” means all of the following:

(1) An understanding that California’s population consists of individuals sharing certain demographic characteristics that may relate to their voting preferences, including race, ethnicity, gender, and level of income.

(2) An understanding that the people of California reside in many different localities with distinct geographic characteristics that may relate to the voting preferences of the residents of those localities, including urban, rural, industrial, agricultural, arid, and temperate.

(3) A recognition that California benefits by having meaningful participation in the electoral process by registered voters of all demographic characteristics and residing in all geographic locations.

(b) An applicant may demonstrate an appreciation for California’s diverse demographics and geography through a description of that appreciation and through occupational, academic, or life experiences that show this appreciation, such as:

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

(2) Studying the voting behavior of Californians in various areas of the state for the purpose of improving the effectiveness of the electoral process.

(3) Traveling throughout the state and meeting with a broad range of individuals in order to build consensus on some issue of statewide concern.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 5 Relating to Diversity](#)

§ 60806. Bona Fide Relationship

“Bona fide relationship established through blood or legal relation” means an existing bona fide relationship between a person and his or her spouse, registered domestic partner, parent, child, sibling, or in-law. A relationship is existing if it has not been terminated by death or dissolution. A relationship is bona fide if it is so substantial in nature that it includes any of the following within the preceding 12 months: cohabitation for a period or periods cumulating 30 days or more; shared ownership of any real or personal property having a cumulative value of \$1,000 or more, or either party to the relationship providing a financial benefit to the other having a cumulative value of \$1,000 or more. A “financial benefit” includes anything of value, whether tangible or intangible, and includes any payment, gift, discount, or rendering of services.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60807. Bureau

“Bureau” means the Bureau of State Audits.

§ 60808. Bureau’s Website

“Bureau’s website” means the official state government website for the Bureau of State Audits or any other website that the State Auditor designates for use during the application process for selecting members of the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60809. Campaign Committee

“Campaign committee of a candidate for elective federal or state office” means the following:

(a) As applied to a candidate for elective federal office, any “authorized committee” of that candidate as defined in section 431(5) of title 2 of the United States Code.

(b) As applied to a candidate for elective state office, any “controlled committee” of the candidate as defined in section 82016 of the Government Code, including any controlled ballot measure committee.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60810. Commissioner

“Commissioner” means a member of the Citizens Redistricting Commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60811. Conflict of Interest

“Conflict of interest” means having engaged in any of the activities or having had any of the relationships specified in subdivision (a)(2) of section 8252 of the Government Code that require disqualification from serving as either a member of the commission or a member of the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60812. Congressional, State, or Local Candidate For Elective Public Office

“Congressional, state, or local candidate for elective public office” means the following:

(a) A congressional candidate for elective public office means any candidate for the office of Senator or Representative in the Congress of the United States elected from California.

(b) A state candidate for elective public office means any candidate for “elective state office” in California, as defined in section 82024 of the Government Code.

(c) A local candidate for elective public office means any candidate for a regional, county, municipal, district, or judicial office in California that is filled by an election.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60813. Consultant

“Consultant,” means any person who has entered into an agreement to provide consulting services to a political party, campaign committee, the Governor, a member of the Legislature, a member of Congress elected from California, or a member of the State Board of Equalization, either directly or through a business entity in which the person holds at least a ten percent ownership interest. “Consulting services” means expert advice or personal services related to conducting campaign activities or to holding congressional or state office.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60814. Diversity

“Diversity” means the variety in the racial, ethnic, geographic, economic, and gender characteristics of the population of California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

[Go to: Memorandum Number 5 Relating to Diversity](#)

§ 60815. Federal Office

“Federal office” means the office of Senator or Representative in the Congress of the United States elected from California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60816. In-law

“In-law” means the father, mother, or sibling of a person’s spouse or registered domestic partner.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60817. Legislative Leader

“Legislative leader” means the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, or the Minority Floor Leader of the Assembly.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

§ 60818. Most Qualified Applicants

“Most qualified applicants” means those applicants who satisfy all of the following requirements:

(a) Are registered voters in the State of California who by the time of their appointment will have been continuously registered with the same political party or with no political party for at least five years.

(b) Have voted in at least two of the past three statewide general elections.

(c) Do not have a conflict of interest.

(d) In the judgment of the panel are more suited to serving on the commission than other applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography.

[Note: Authority cited: *Section 2, Article XXI, California Constitution; Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 4 Relating to Identifying the Most Qualified Applicants](#)

§ 60819. Paid Congressional, Legislative, or Board of Equalization Staff

“Paid congressional, legislative, or Board of Equalization staff” means any person who is employed by, and receiving compensation from the Congress of the United States to provide services to a member elected from California, the Legislature, or the State Board of Equalization.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60820. Paid Consultant

“Paid consultant” means a person who, pursuant to a contract, provides expert advice or personal services related to conducting campaign activities or holding office, and who receives compensation for providing such advice or services.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60821. Political Party

“Political party” means a political party that is operating in California by making expenditures to support candidates for elective public office in the state.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60822. Political Party Central Committee

“Political party central committee” means the designated body within a political party operating in California that directs the activities of the party throughout the state or within a particular county, such as a state central committee or a county central committee.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

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§ 60823. Qualified Independent Auditor

(a) “Qualified independent auditor” means an independent auditor currently employed by the State who satisfies all of the following requirements:

(1) Currently holds an active license issued by the California Board of Accountancy.

(2) By the time of selection to serve on the panel will have acquired at least ten years of experience practicing the skills of an independent auditor.

(3) Does not have a conflict of interest as defined in subdivision (a) of section 8252 of the Government Code.

(4) Is willing to serve as a member of the panel.

(b) As used in this section:

(1) “Independent auditor currently employed by the State” means an auditor who is currently employed as a permanent employee of the Bureau of State Audits, which, as provided in section 8543 of the Government Code, is independent of the executive branch and legislative control.

(2) “Experience practicing the skills of an independent auditor” means experience acquired while working as an auditor for the Bureau of State Audits, for its predecessor, the California Auditor General, or for some other agency of state government provided that such other agency conducted audits of departments that were external to itself although under its oversight authority.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60824. Randomly Draw

“Randomly draw” means to select by the following process for random drawing.

(a) At least ten days prior to any random drawing, the bureau shall provide notice to the public regarding the time and place of the drawing by posting a notice on the bureau’s website and by any other means deemed appropriate by the State Auditor.

(b) Prior to the drawing, the members of the pool from which the drawing will be made shall be divided into three subpools according to the party affiliation of the members of the pool. One subpool shall consist of members registered with the largest political party in California based on registration, another subpool shall consist of members registered with the second largest political party in California based on registration, and a third subpool shall consist of members not registered with either of the two largest political parties in California based on registration. The names of the members of each subpool shall be recorded on a list, and each member shall be assigned a unique identifying number that also shall be recorded on the list.

(c) On the day of the drawing, the following procedures shall be followed:

(1) The drawing shall be open to the public.

(2) The drawing shall begin with the preparation of the balls that will be used for the drawing. All of the balls used for the drawing shall be of uniform composition, weight, size, shape, and texture. The balls shall be prepared by dividing them into three separate groups that correspond in number with each of the three subpools. The balls for each of the subpools shall be affixed with a label. The label shall have written on it the identifying number assigned to a member of that subpool, so each of the balls will bear the identifying number for a different member of the subpool. The balls for each subpool shall be kept together and segregated for use in three separate subpool drawings.

(3) The balls for each subpool drawing shall be placed in a bingo cage. The cage shall be rotated vigorously to ensure that the balls are thoroughly mixed. The cage will drop a number of balls equal to the number of persons who must be drawn from the subpool, including any persons who are to serve as alternates. The number and name of the persons drawn during each subpool drawing shall be announced and duly recorded.

(4) After each subpool drawing, the bingo cage shall be emptied to allow the bingo cage to be used for the next subpool drawing until all of the subpool drawings are completed.

(d) At the conclusion of the drawing, the names of all those selected during each subpool drawing shall be posted on the bureau's website and otherwise announced to the public as deemed appropriate by the State Auditor.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60825. Registered Federal, State or Local Lobbyist

“Registered federal, state, or local lobbyist” means a person registered as a lobbyist with the United States Senate, the United States House of Representatives, the California Secretary of State, or any political subdivision of the State of California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60826. Relevant Analytical Skills

(a) “Relevant analytical skills” means the learned abilities that a commissioner may need to successfully complete the work of the commission.

(b) Abilities related to performing the following tasks shall be considered relevant analytical skills: gathering and comprehending information that bears upon redistricting; evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts; applying the appropriate legal standards to drawing district boundaries; and working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon.

(c) The following are examples of relevant analytical skills grouped according to the tasks listed in subdivision (b):

(1) Gathering and comprehending information that bears upon redistricting:

(A) An ability to read and understand dense and technical written materials, including maps and complicated statistical information.

(B) An ability to participate effectively in public hearings regarding redistricting by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.

(2) Evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts:

(A) Basic mathematical skills.

(B) Familiarity with using computers and working with sophisticated software.

(C) An ability to assess the credibility of information, distinguish facts from opinions, distinguish relevant facts from irrelevant facts, and assess the relative strength of competing arguments.

(D) An ability to resolve complex problems, particularly those involving factual ambiguities.

(3) Applying the appropriate legal standards to drawing district boundaries:

(A) An ability to understand the legal principles that govern redistricting as communicated through written materials and advice provided by the commission’s legal counsel.

(B) An appreciation for the importance of applying proper legal standards to redistricting decisions.

(4) Working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon:

(A) Effective communication skills including basic writing skills and strong oral communication skills.

(B) An ability to interact effectively with other commissioners to build consensus on proposed decisions through reasoned discussion and negotiation.

(d) An applicant may demonstrate his or her possession of relevant analytical skills through a description of those skills and through occupational, academic, or life experiences such as:

(1) Compiling information from a variety of sources, including statistical reports, expert opinions, and members of the public to develop an understanding of an issue or problem.

(2) Assessing the value of information received from various sources to determine how much weight should be given to certain information versus other information when making a decision concerning an issue.

(3) Receiving expert advice, particularly of a legal nature, and applying that advice to decisions.

(4) Participating in group decision-making as a member of a commission, board, grand jury, task force, or other collection of individuals whose mission was to produce a report, plan, or other work product addressing some issue or problem.

[Go to: Memorandum Number 4 Relating to Identifying the Most Qualified Applicants](#)

§ 60827. Staff

“Staff” as used in subdivision (a)(2)(b) of section 8252 of the Government Code means any person directly employed, with or without compensation, by the Governor, a member of the Legislature, a member of the Congress of the United States elected from California, or a member of the State Board of Equalization.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

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§ 60828. State Office

“State office” means every office, agency, department, division, bureau, board, and commission within the government of the State of California.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 2 Relating to Conflicts of Interest](#)

§ 60830. Selection of Panel Members and Alternate Panel Members

(a) The State Auditor shall randomly draw the members of the panel from a pool consisting of all qualified independent auditors as defined in California Code of Regulations, title 2, section 60822.

(b) The random drawing shall be conducted in the manner prescribed by California Code of Regulations, title 2, section 60824.

(c) Immediately after drawing a member of the panel from any of the subpools that have been established based on party affiliation, the State Auditor may randomly draw an alternate panel member from the same subpool to serve in the event that the panel member's position on the panel becomes vacant.

(d) If any position on the panel becomes vacant, and the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60831. Information About Prospective and Selected Panel Members

The bureau shall post on the bureau's website the following information about prospective and selected members of the panel:

(a) At least 10 days prior to any random drawing of members of the panel, the bureau shall post the names, party affiliations, and relevant qualifications of the qualified independent auditors who will constitute the pool from which the members will be drawn. This information shall remain posted until the random drawing is concluded.

(b) As soon as practicable following any random drawing of members of the panel, the bureau shall post the names, party affiliations, and relevant qualifications of the qualified independent auditors who were selected to serve as members and alternate members of the panel. This information shall remain posted until the first eight members of the commission have been randomly drawn by the State Auditor.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60832. Duties of Panel Members

While serving on the panel, the members of the panel shall comply with all of the following requirements:

(a) Perform the work of the panel in a manner that is consistent with the statutes and regulations governing the panel's work.

(b) Refrain from engaging in any conduct described in section 19572 of the Government Code that would be cause for employee discipline.

(c) Conduct the work of the panel in a manner that is impartial and that reinforces public confidence in the integrity of the panel's work.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 3 Relating to Applicant Review Panel

§ 60833. Removal of Panel Members

(a) The State Auditor shall have the authority to remove from the panel any member that the State Auditor determines can no longer serve as a member of the panel due to any of the following:

(1) Resignation from the panel.

(2) Failing to satisfy any of the requirements for being a Qualified Independent Auditor as described in California Code of Regulations, title 2, section 60823.

(3) Failing to perform the duties of a panel member as described in California Code of Regulations, title 2, section 60833.

(b) Upon the removal of any member of the panel, the State Auditor shall replace the panel member with an alternate panel member drawn from the same subpool. If the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 3 Relating to Applicant Review Panel

§ 60834. Panel Administration

(a) The bureau shall provide the panel with administrative, technical, and clerical support as needed by the panel to carry out its responsibilities under the Act. This support shall include, but not be limited to, the provision of office equipment, facilities, and staff sufficient to perform the following tasks:

(1) Process applications.

(2) Collect information concerning applicants.

(3) Schedule meetings.

(4) Maintain files.

(5) Make travel arrangements.

(6) Communicate with the public regarding panel decisions.

(b) The bureau shall provide the panel with legal counsel. To the extent permitted by law, all work performed by the bureau's legal counsel and all communications between the bureau's legal counsel and the panel shall be confidential and protected from disclosure by any applicable privileges.

(c) The bureau shall retain the records concerning the application process, including correspondence, applicant lists, applications and supporting materials, public comments and responses, and video recordings for a period of at least 12 years.

(d) If a position on the panel becomes vacant, the bureau shall provide the person filling the vacancy with all of the documents that were provided to the outgoing panel member.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60835. Panel Meetings

(a) The panel shall meet in Sacramento.

(b) The panel shall elect a panel chair during its first meeting. The chair shall preside over all panel meetings. A majority of the panel members may replace the chair or appoint an acting chair to serve in the chair's absence.

(c) Two members of the panel constitutes a quorum.

(d) The panel is subject to the provisions of the Bagley-Keene Opening Meeting Act (commencing with section 11120 of the Government Code). Consistent with that act, panel members may independently review applications prior to any public meeting.

(e) All deliberations by members of the panel regarding applicants shall take place in open session.

(f) Except in instances where it conflicts with state law, the panel shall conduct the meetings of the panel in accordance with the most recent edition of Robert's Rules of Order.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 3 Relating to Applicant Review Panel](#)

§ 60836. Panel Voting

Panel decisions relating to the removal of an applicant from an applicant pool, or the reconsideration of a decision to remove an applicant from an applicant pool, shall be by a unanimous vote of all three panel members. All other panel decisions may be made by majority vote.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 3 Relating to Applicant Review Panel

SUB-CHAPTER 3. CITIZENS REDISTRICTING COMMISSION

60840 – 60855

ARTICLE 1. APPLICATION PROCESS

§ 60840. Outreach Program

(a) In conjunction with initiating an application process for selecting the members of the commission, the bureau shall conduct an outreach program to alert the public to the application process and to encourage the submission of applications by a diverse pool of qualified applicants. The bureau's outreach program shall, at a minimum, include all of the following:

(1) Posting a calendar on the bureau's website indicating the key dates and deadlines for the application process, including, when established, the period during which the bureau will accept applications.

(2) Producing outreach materials regarding the role of the commission, the eligibility and qualifications requirements for serving as a commissioner, and the process for selecting commissioners.

(3) Identifying community partners and requesting that they assist in recruiting qualified applicants.

(4) Creating and distributing public service announcements and print advertisements regarding the application process for placement in both regional and ethnic media.

(5) Upon posting an electronic application form on the bureau's website, widely publicizing both the availability of the application and the deadline for its submission.

(b) The breadth and scope of the bureau's outreach program is dependent on the funding that is available for the program.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 7 Relating to the Application Process

§ 60841. Overview of the Application Process

The application process shall consist of five phases.

(a) During Phase I, applicants shall be required to complete and submit an initial application form, as described in section 60843, to determine their eligibility to become members of the initial applicant pool.

(b) During Phase II, applicants shall be required to complete and submit a supplemental application form and supporting materials, as described in section 60847, for an evaluation of their relative qualifications. From this pool of applicants, the panel shall reduce the applicant pool to a pool of not more than 120 applicants, who shall proceed to Phase III of the application process.

(c) During Phase III, the panel shall interview the applicants remaining in the applicant pool, as described in section 60849, and reduce the applicant pool to 60 of the most qualified applicants, who shall proceed to Phase IV of the application process.

(d) During Phase IV, a list of the names of the 60 applicants remaining in the applicant pool shall be submitted to the Legislature, where, as described in section 60852, not more than 24 names shall be removed from the list the legislative leaders.

(e) During Phase V, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to remove applicants. The eight applicants whose names are drawn by the State Auditor shall become members of the commission, and they shall select a final six commissioners from the remaining pool of applicants.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 7 Relating to the Application Process](#)

§ 60842. General Requirements Applicable to Every Phase of the Application Process

All of the following requirements apply to each phase of the application process:

(a) Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall fill out and submit all applications electronically using the bureau's website. The bureau shall neither make available nor accept paper applications, and all application materials, except letters of recommendation, shall be submitted to the bureau electronically.

(b) All deadlines established by the bureau and the panel, including deadlines for the submission of application materials are final. Application materials not timely received or deemed incomplete by the bureau or the panel shall not be considered.

(c) The bureau or the panel may inquire about or seek additional information from an applicant during any phase of the application process.

(d) The bureau or the panel may exclude or remove from an applicant pool any applicant who does any of the following:

(1) Submits more than one Phase I or Phase II application.

(2) Submits an incomplete application.

(3) Fails to timely submit supporting materials, including letters of recommendation.

(4) Fails to comply with deadlines established by the bureau or the panel.

(5) Fails to timely respond to inquiries, or to provide additional information as requested by the bureau or the panel.

(e) All applications shall include a certification by the applicant that he or she has provided true and correct information.

(f) All application materials collected and maintained by the bureau are public records. To enhance the transparency of the application process, the bureau shall post application materials on the bureau's website, except that it may decline to post any material, or specific information contained in any material, that bureau staff determines to be either of the following:

(1) Personal in nature, such as addresses, telephone numbers, or so private in nature that it would be inappropriate for public disclosure.

(2) Offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.

(g) All information provided by or about an applicant through an application, public comment, or by any other means may be subject to investigation and verification by the bureau or the panel.

(h) Except as provided in California Code of Regulations, title 2, section 60851, an applicant may not seek reconsideration of any decision by the bureau or the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: [Memorandum Number 6 Relating to Electronic Applications](#)

Go to: [Memorandum Number 7 Relating to the Application Process](#)

§ 60843. Phase I Application

(a) On or before January 1 of the application year, the bureau shall initiate Phase I of the application process by posting an initial application form on the bureau's website. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities

Act (42 U.S.C. § 12101, et seq.), applicants shall complete the application electronically and submit it using the bureau's website.

(b) The Phase I application period shall extend a minimum of 60 days.

(c) The initial application form shall solicit information from the applicant to determine his or her eligibility to become a member of the initial applicant pool. The information the bureau shall seek via the initial application includes, but need not be limited to, all of the following:

(1) Contact information for the applicant, including electronic mail address, residential address, and telephone numbers.

(2) The applicant's race, ethnicity, gender, and economic status.

(3) The applicant's voter registration status and party affiliation.

(4) Whether the applicant will be able to satisfy the eligibility requirements for commission membership set forth in subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(5) Whether the applicant has a conflict of interest.

(d) The applicant shall certify that the information he or she provides on the initial application is true and correct.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

Go to: Memorandum Number 6 Relating to Electronic Applications

Go to: Memorandum Number 7 Relating to the Application Process

§ 60844. Phase I Application Review

(a) The bureau shall review each application that is submitted during the Phase I application period and exclude from the initial applicant pool any applicant who has not complied with the application process or is not eligible to serve on the commission due to any of the following:

(1) Submitting more than one application.

(2) Submitting an incomplete or untimely application.

(3) Not satisfying the eligibility requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(4) Having a conflict of interest.

(b) Applicants not excluded as provided in subdivision (a) shall be placed in the initial applicant pool and invited by the bureau to participate in Phase II of the application process.

(c) Applicants excluded from the initial applicant pool shall be notified by the bureau and advised of the grounds.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

[Go to: Memorandum Number 7 Relating to the Application Process](#)

§ 60845. Publication of Names of Applicants in Initial Applicant Pool

(a) Having excluded from the initial applicant pool those applicants who, based on their initial application, were not eligible to serve as members of the commission because of an inability to satisfy the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution, or due to a conflict of interest, the bureau shall post on the bureau's website a list of the names of the applicants who have been placed in the initial applicant pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

[Go to: Memorandum Number 7 Relating to the Application Process](#)

§ 60846. Written Public Comments and Responses

(a) Beginning on the date that the names of the successful Phase I applicants are posted on the bureau's website, and continuing throughout the remainder of the application process until the panel selects 60 of the most qualified applicants, the bureau shall provide opportunities for the public to submit written comments regarding the applicants being considered. The bureau shall post a form for submitting written comments on the bureau's website. The public may submit comments electronically or by facsimile, United States mail, or other common carrier.

(b) The panel may only consider written comments that it receives regarding applicants who have been placed in a pool of applicants for the panel's evaluation and have not been removed. To be considered by the panel, a written comment must satisfy all of the following requirements:

(1) The bureau received the written comment prior to the deadline established by the bureau for receiving written comments concerning the applicants being considered during the current phase of the application process.

(2) The comment contains specific facts related to an applicant's eligibility and qualifications to serve as a member of the commission or is related to the accuracy of any statement made by the applicant as part of the application process.

(3) The information that is contained in the comment appears sufficiently credible to warrant consideration.

(4) The name and contact information for the person providing the comment is included in the comment.

(5) The comment contains a certification by the person providing the comment that the information included in the comment is true and correct and based on the author's personal knowledge.

(c) Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall post on the bureau's website all written comments that may be considered by the panel pursuant to subdivision (b) of this section, including the name of the person providing the comment.

(d) The bureau shall send a copy of any written comments received about an applicant to the applicant, with a notice stating how the applicant may submit a written response and the deadline for submitting the response.

(e) Written comments and responses about an applicant submitted during any phase of the application process shall be included in the applicant's application materials and may be considered by the panel during all subsequent phases of the application process during which the applicant remains in a pool of applicants for the panel's evaluation. Comments and responses received after the deadline for receiving comments during a particular phase of the application process may be considered by the panel during a subsequent phase provided the applicant remains in a pool of applicants for the panel's evaluation.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

Go to: [Memorandum Number 7 Relating to the Application Process](#)

§ 60847. Phase II Application

(a) In Phase II of the application process, the bureau shall direct the members of the initial applicant pool to submit a supplemental application with supporting materials. The bureau shall post supplemental application forms on the bureau's website for use by the members of the applicant pool. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall complete the supplemental application forms and supporting materials electronically and submit them using the bureau's website. Notwithstanding this requirement, applicants may submit letters of recommendation by facsimile, United States mail, or other common carrier as an alternative to submitting the letters through the bureau's website.

(b) The supplemental application, with supporting materials, shall consist of, but need not be limited to, all of the following:

(1) Questions designed to elicit information from the applicant describing his or her qualifications to serve on the commission, including essay questions to be answered in 250 words or less.

(2) Questions designed to elicit information about the applicant, including:

(i) Former names, former residences, and criminal history.

(ii) Educational and employment history.

(iii) Involvements with, and financial contributions to, professional, social, political, and community organizations and causes.

(iv) Financial interests.

(3) Questions about an applicant's immediate family members.

(4) A request for three letters of recommendation from individuals or organizations.

(c) The bureau shall remove from the initial applicant pool any applicants who fail to submit a completed supplemental application with supporting materials by the deadline established by the bureau.

(d) The bureau shall transmit a copy of every complete and timely received supplemental application with supporting materials to the panel. Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall also post the supplemental application with supporting materials on the bureau's website.

(e) After posting the supplemental applications with supporting materials on its website, the bureau shall establish a deadline for the receipt of written public comments during Phase II of the application process.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

[Go to: Memorandum Number 6 Relating to Electronic Applications](#)

[Go to: Memorandum Number 7 Relating to the Application Process](#)

§ 60848. Phase II Application Review

(a) During Phase II, the panel shall review the application materials submitted regarding each applicant remaining in the applicant pool, for the purpose of determining which applicants shall be removed from the pool to leave no more than 120 of the most qualified applicants who will be invited to participate in Phase III of the application process.

(b) The maximum of 120 most qualified applicants who will be invited to participate in Phase III of the application process shall consist of the following three subpools:

(1) 40 applicants who are registered with the largest political party in California.

(2) 40 applicants who are registered with the second largest political party in California.

(3) 40 applicants who are not registered with either of the two largest political parties in California.

(c) At the panel's request, the State Auditor may assign staff to assist the members of the panel with their review of the application materials. This assistance may include, but need not be

limited to, preparing summaries of applicants' qualifications and making recommendations to the panel members regarding the relative qualifications of the applicants.

(d) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(e) In reducing the applicant pool to not more than 120 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(f) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase III of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase III of the application process.

(g) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase III of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

Go to: Memorandum Number 4 Relating to Identifying the Most Qualified Applicants

Go to: Memorandum Number 5 Relating to Diversity

Go to: Memorandum Number 7 Relating to the Application Process

§ 60849. Phase III Interviews

(a) In Phase III of the application process, the panel shall direct the applicants remaining in the applicant pool to participate in public interviews conducted by the panel in Sacramento.

(b) The bureau shall schedule the interviews at the convenience of the panel, providing at least 5 days notice to the applicants of the date, time, and location of the interviews. The bureau shall reimburse applicants for the reasonable and necessary travel expenses that they incur to attend an interview, including the following:

(1) Airfare at the commercial carrier coach fare rate, supported by a receipt.

(2) Other transportation expenses, supported by a receipt.

(3) Living expenses not to exceed the maximum reimbursement rates for nonrepresented state employees claimed and computed in accordance with the Department of Personnel Administration regulations in effect on the date the expenses are incurred.

(c) During the interviews, questions may only be posed by members of the panel, panel staff, and legal counsel for the panel. The questioning may concern anything that is relevant to an applicant's eligibility and qualifications to serve on the commission.

(d) The panel shall record all of the interviews that it conducts and post the recordings on the bureau's website.

(e) The bureau shall establish a deadline for the receipt of written public comments during Phase III of the application process. The deadline shall be set for a date following the conclusion of all of the interviews.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

Go to: [Memorandum Number 7 Relating to the Application Process](#)

§ 60850. Phase III Applicant Review

(a) During Phase III, the panel shall review the applicants who participated in interviews by the panel, along with all of the application materials submitted regarding those applicants, for the purpose of determining which applicants shall be removed from the applicant pool to leave 60 of the most qualified applicants who will participate in Phase IV of the application process.

(b) The 60 most qualified applicants who will participate in Phase IV of the application process shall consist of the following three subpools:

(1) 20 applicants who are registered with the largest political party in California.

(2) 20 applicants who are registered with the second largest political party in California.

(3) 20 applicants who are not registered with either of the two largest political parties in California.

(c) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(d) In reducing the applicant pool to 60 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(e) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase IV of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase IV of the application process.

(f) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase IV of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

Go to: Memorandum Number 4 Relating to Identifying the Most Qualified Applicants

Go to: Memorandum Number 5 Relating to Diversity

Go to: Memorandum Number 7 Relating to the Application Process

§ 60851. Reconsideration

(a) An applicant who is excluded or removed from an applicant pool, by either the bureau or the panel, based on any of the following grounds, may seek timely reconsideration of the decision by the entity making the decision:

(1) Conflict of interest.

(2) Failing to satisfy the eligibility requirements for serving as a member of the commission, as set forth in subdivision (a)(3) of section 2 of Article XXI of the California Constitution.

(3) Failing to comply with a procedural requirement of the application process.

(b) All other decisions by the bureau and the panel, including decisions to exclude or remove applicants from an applicant pool, except for the decisions described in subdivision (a) of this section, are final at the time the decisions are made, and an applicant has no right to seek reconsideration of those decisions by either the bureau or the panel.

(c) An applicant seeking reconsideration of a decision described in subdivision (a) of this section shall submit to the bureau a written request for reconsideration that complies with all of the following requirements:

(1) Be received by the bureau within 10 days after the date that the bureau issued a notice to the applicant that he or she was being excluded or removed from an applicant pool for any of the reasons stated in subdivision (a) of this section.

(2) Include a statement of facts, with supporting evidence, establishing by a preponderance of evidence that the applicant was excluded or removed from an applicant pool erroneously.

(3) Contains a certification that the facts alleged in the request for reconsideration are true and correct.

(d) All requests for reconsideration that do not satisfy the requirements of subdivision (c) of this section shall be summarily denied by the bureau or the panel. Upon the bureau or the panel denying a request for reconsideration of a decision described in subdivision (a) of this section, or upon the period for filing such a request expiring without a request being received, whichever occurs first, the decision shall become final and the applicant will have no further right to seek reconsideration of the decision.

(e) If the bureau or the panel determines that an applicant has, in a written request for reconsideration, established by a preponderance of evidence that he or she was erroneously excluded or removed from an applicant pool for one of the reasons stated in subdivision (a) of this section, the bureau or the panel shall place the applicant in that applicant pool and the applicant shall participate in the application process in the same manner as if the applicant had not been excluded or removed.

(f) Notwithstanding subdivisions (b) and (d) of this section, at any time during the application process, the panel may, solely at its own discretion, reconsider and correct a past decision of the panel or the bureau during the application process due to gross error or other compelling circumstances.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution*; *Section 8252, Government Code*.]

[Go to: Memorandum Number 7 Relating to the Application Process](#)

§ 60852. Phase IV: Applicant Name Striking Process

(a) During Phase IV of the application process, the panel shall present to the Legislature a list containing the names of 60 of the most qualified applicants identified by the panel during Phase III of the application process for legislative leaders to exercise their right to strike up to 24 names from the list.

(b) On or before October 1 of the application year, the panel shall present to the Secretary of the Senate and the Chief Clerk of the Assembly, by hand-carried letter, the list containing the names of 60 of the most qualified applicants divided into three subpools of twenty each, based on their party affiliation and nonaffiliation. The bureau shall also make available to the legislative leaders the application materials and recorded interviews of each of the applicants on the list.

(c) On or before November 15 of the application year, the State Auditor shall accept from the Secretary of the Senate and the Chief Clerk of the Assembly a joint presentation of the list of names described in subdivision (a) of this section with no more than a total of eight names stricken by the legislative leaders from each of the subpools. Time permitting prior to the expiration of the November 15 deadline, if the Secretary of the Senate and the Chief Clerk of the Assembly jointly present a list of names to the State Auditor that does not retain at least twelve names in each subpool, the State Auditor shall return the list to the Secretary of the Senate and the Chief Clerk of the Assembly for correction.

(d) An applicant whose name has been stricken from a subpool by a legislative leader shall be removed from the selection process and may not serve as a member of the commission. An applicant removed from the selection process because his or her name was stricken from a subpool by a legislative leader may not appeal or seek reconsideration of the removal from the bureau or the panel.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

Go to: Memorandum Number 7 Relating to the Application Process

§ 60853. Phase V: Random Drawing of First Eight Commissioners

(a) During Phase V of the application process, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to strike the names of up to 24 applicants from the pool of 60 of the most qualified applicants identified by the panel. The State Auditor shall conduct the random drawing on or before November 20 of the application year in the manner prescribed by California Code of Regulations, title 2, section 60824.

(b) Notwithstanding subdivision (a) of this section, the State Auditor shall randomly draw the names of 8 applicants from the names of all the applicants in the pool of 60 most qualified applicants identified by the panel, rather than from a reduced collection of names, if the Secretary of the Senate and the Chief Clerk of the Assembly do not jointly present, by November 15 of the application year, a list containing the names of no fewer than 12 applicants in each of the three subpools that comprise the list.

(c) The eight applicants whose names are drawn by the State Auditor shall become members of the commission.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 2, Article XXI, California Constitution; Section 8252, Government Code*.]

Go to: Memorandum Number 7 Relating to the Application Process

§ 60854. Transmission of Remaining Application Materials to Secretary of State

After the State Auditor randomly draws the names of the first eight commissioners, the bureau shall provide the eight commissioners and the Secretary of State with the application materials and recorded interviews of each of the applicants remaining in the applicant pool.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Section 8252, Government Code*.]

Go to: Memorandum Number 7 Relating to the Application Process

§ 60855. Commission Vacancies

(a) If a vacancy occurs on the commission before it completes its redistricting function, and the commission is unable to fill the vacancy with an applicant from the same subpool of applicants that the vacating commissioner was drawn or selected from, as it existed on November 20 of the application year, the commission shall provide written notification to the State Auditor. Upon receiving the written notice, the State Auditor shall, as soon as practicable, reconvene a panel to create a new subpool consisting of twenty of the most qualified applicants having the same party affiliation or nonaffiliation as the vacating commissioner. In creating the new subpool, the panel shall attempt to fill the subpool with applicants who participated in the most recent application process, according to the following order:

(1) Applicants who participated in interviews during Phase III of the application process.

(2) Applicants who submitted supplemental applications with supporting materials during Phase II of the application process.

(b) If a vacancy occurs on the commission after it completes its redistricting function, and the commission determines that it needs to fill the vacancy but is unable to fill it with an applicant from the same subpool of applicants that the vacating commissioner was drawn or selected from, as it existed on November 20 of the application year, the commission shall provide written notification to the State Auditor. Upon receiving the written notice, the State Auditor shall, as soon as practicable, reconvene a panel to create a new subpool consisting of twenty of the most qualified applicants having the same party affiliation or nonaffiliation as the vacating commissioner. In creating the new subpool, the panel shall attempt to fill the subpool with applicants who participated in the most recent application process in the manner specified by paragraphs (1) and (2) of subdivision (a) of this section.

(c) “Completes its redistricting function,” for the purposes of this section, means approving three final maps that separately set forth the district boundary lines for the Senate, Assembly, and State Board of Equalization districts and certifying the three final maps to the Secretary of State.

(d) Upon creating a new subpool of applicants, the panel shall submit the names of the applicants in the subpool to the commission and the Secretary of State with the application materials and recorded interviews of each of the applicants.

[Note: Authority cited: *Section 8546, Government Code*. Reference: *Sections 8252, 8252.5 Government Code*.]

Go to: Memorandum Number 7 Relating to the Application Process

California Bureau of State Audits
MEMORANDUM NUMBER 1

To: Elaine M. Howle, State Auditor

From: Janis Burnett, Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Overview of Proposed Regulations Related to the Voters FIRST Act

Date: July 31, 2009

Introduction

The Voters FIRST Act (the “Act”)¹ approved by the voters at the November 4, 2008 general election as Proposition 11, requires the State Auditor to initiate an application process for the Citizens Redistricting Commission (the “commission”) on a decennial basis. The commission, composed of fourteen members, is responsible for redrawing district lines for the State Senate, Assembly, and Board of Equalization based on decennial census information. To serve as a member of the commission, an applicant must be a registered California voter who has voted in two of the last three statewide general elections and has been continuously registered with the same political party, or no political party, for at least five years immediately prior to selection. Additionally, an applicant cannot have a conflict of interest as defined by the Act.

The Act requires the State Auditor to select an Applicant Review Panel (the “panel”) that will review the applications of persons wishing to serve on the commission. The State Auditor selects the panel by randomly drawing the names of three auditors from a pool of qualified independent auditors who are licensed by the State Board of Accountancy and have 10 or more years of experience working as an independent auditor.

Under the Act, the panel evaluates all of the applications submitted by applicants who meet the Act’s eligibility requirements, and based on that evaluation identifies a pool of 60 of the most qualified applicants. This pool of 60 applicants must consist of three subpools of 20 applicants each, with one subpool comprised of applicants registered with the state’s largest political party, another subpool comprised of applicants registered with the state’s second largest political party, and a third subpool comprised of applicants not registered with either of the state’s two largest political parties. The panel sends a list of the names of the 60 applicants to specified leaders in the Legislature who may strike the names of not more than eight applicants from each of the subpools. The legislative leaders are then required to return the remaining names to the State Auditor, who randomly draws from the remaining names in each of the subpools the names of three applicants registered with the largest political party, three applicants registered with the second largest political party, and two applicants not registered with either of the two largest

¹ The Voters FIRST Act is contained in Article XXI of the California Constitution and California Government Code, sections 8251 through 8253.6.

political parties. These applicants become the first eight members of the commission, and they select an additional six applicants to serve on the commission from those remaining in the three subpools.

Proposed Regulations

The Act provides few specifics regarding the application process, the work of the panel, and the selection of commissioners by the State Auditor.² To implement the provisions of the Act in a way that provides guidance and clarity to potential applicants and to the general public, the Bureau of State Audits (the “bureau”) proposes a set of regulations to guide the process. The regulations adopted by the bureau to implement the Act will be located in title 2, division 10, of the California Code of Regulations. As an overview, the proposed regulations will implement provisions of the Act related to the following subject areas:

- The creation and operation of the panel.
- The institution of a comprehensive outreach program designed to increase voter awareness of the opportunity to serve on the commission and to increase the likelihood that the pool of applicants will reflect the state’s diversity.
- The establishment of an application process.
- The method for screening applicants to ascertain whether they meet the eligibility requirements for serving on the commission.
- The process for evaluating applicants to identify a pool of 60 of the most qualified applicants who will be finalists for selection to the commission.
- The procedure for transmitting a list of the names of the 60 finalists to specified legislative leaders, who may strike up to 24 names from the list.
- The process for randomly drawing eight applicants to serve as the first eight members of the commission.

The proposed regulations are organized into three subchapters as follows:

- Subchapter 1, which includes proposed regulations 60800 to 60828, sets forth definitions that provide further clarity on various words and phrases used in the Act and the regulations, including definitions related to the following:
 - Ability to be impartial.
 - Appreciation for California’s diverse demographics and geography.
 - Conflicts of interest.
 - Diversity.

² In crafting these regulations we received expert advice and assistance from the Center for State and Local Government Law at Hastings Law School, include advice and assistance from Professors Michael Salerno and David Jung. In addition, in crafting the regulations pertaining to the qualifications of commissioners, we consulted with redistricting expert, Timothy Hodson, Ph.D Director of Center for California Studies at California State University, Sacramento.

- Most qualified applicants.
 - Qualified independent auditor.
 - Randomly draw.
 - Relevant analytical skills.
- Subchapter 2, which includes proposed regulations 60830-60836, provides, among other things, further clarification and guidance on:
 - Formation of the panel, including selection and removal of panel members.
 - The duties of panel members.
 - Panel administration.
 - Panel meetings and voting.
- Subchapter 3, which includes proposed regulations 60840-60855, provides, among other things, further clarification and guidance on:
 - Outreach to potential applicants.
 - The general requirements of the application process and the particular requirements for each of the five phases of the application process.
 - The publication of the names of the applicants in the applicant pool.
 - Opportunities for the public to submit comments about the applicants.
 - Requests for reconsideration of bureau and panel decisions.
 - The applicant name-striking process.
 - Random drawing of the first eight commissioners.
 - Filling commission vacancies.

Conclusion

As the Act provides few specifics regarding the application process, the work of the panel, and the selection of commissioners by the State Auditor, the bureau is proposing a set of regulations to guide the bureau's implementation of the Act and to provide guidance and clarity to potential applicants and the general public. This memorandum is the first of a series of seven. The remaining six memoranda will explain in greater detail why we believe the regulations described above are necessary.

California Bureau of State Audits
MEMORANDUM NUMBER 2

To: Elaine M. Howle, State Auditor

From: Steven Benito Russo, Senior Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60804, 60806, 60809, 60811, 60812, 60813, 60815, 60816, 60819, 60820, 60821, 60822, 60825, 60827, and 60828: Conflicts of Interest

Date: July 31, 2009

Introduction

The Voters FIRST Act (the “Act”)¹ provides for the creation of the Citizens Redistricting Commission (the “commission”) that will redraw the boundaries of California’s legislative and Board of Equalization districts based on decennial census information. It also provides for the creation of the Applicant Review Panel (the “panel”) that will select 60 individuals who will comprise a final pool of applicants from which the members of the commission shall be chosen. In outlining the process that must be undertaken to select the members of the commission and the panel, the Act identifies certain activities and relationships that the Act describes as constituting conflicts of interest that automatically disqualify an individual from serving on the commission or on the panel. However, many of the terms used to describe what constitutes a conflict of interest are ambiguous. In addition, depending on how broadly the terms are interpreted, they may serve as a basis for challenging the validity of certain provisions of the Act on grounds that they create unconstitutional barriers to serving as a member. We propose the regulations discussed in this memorandum to alleviate the ambiguity of the terms highlighted in this memorandum that pertain to conflicts of interest and provide interpretations of these terms supporting the constitutionality of the Act’s provisions.

Background

Government Code, section 8252² describes in very broad terms the processes for selecting the members of the commission and for selecting the members of the panel. In setting forth these processes, section 8252, subdivision (a)(2) requires the disqualification of anyone applying to serve on the commission who has any of the conflicts of interest described in that subdivision from the applicant pool. Similarly, section 8252, subdivision (b) provides that no one selected to serve on the panel may have any of the conflicts of interest that are listed in subdivision (a)(2).

¹ The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

² All statutory references in this memorandum are to Government Code section 8252.

In setting forth what constitutes a conflict of interest for a prospective member of the commission or the panel, section 8252, subdivision (a)(2) provides a list of conflicts in two separate subparagraphs. Subparagraph (A) lists a series of conflicts arising from an individual or a member of his or her immediate family having engaged in certain specified activities within the preceding 10 years. Subparagraph (B) lists a series of conflicts arising from the individual having certain specified relationships with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization.

More specifically, subparagraph (A) provides that an individual has a disqualifying conflict of interest if that individual or a member of his or her immediate family has done any of the following:

- Been appointed to, been elected to, or been a candidate for federal or state office.
- Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
- Served as an elected or appointed member of a political party central committee.
- Been a registered federal, state, or local lobbyist.
- Served as paid congressional, legislative, or Board of Equalization staff.
- Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year.

Subparagraph (B) provides that an individual has a disqualifying conflict of interest if that individual is serving as staff or as a consultant to, is under a contract with, or has an immediate family relationship with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Subparagraph (B) defines the term “immediate family” as used throughout subdivision (a) as a person with whom the individual has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.

While the two subparagraphs provide general direction in their mandate that people having engaged in certain activities or having certain relationships must be disqualified from selection to or service on the commission or the panel, the terms used in these subparagraphs require a significant amount of interpretation to apply them to particular situations. For example, the mandatory disqualification of anyone who has been appointed to a federal or state office leaves open questions about what constitutes an “appointment” and what constitutes a “state or federal office” as these terms have no universally accepted meaning. The term “appointed” could be interpreted narrowly to only include being appointed by the Governor and confirmed by the Senate, as occurs when certain high ranking officials are appointed to their positions (see, for example, Gov. C, § 1322), or broadly to include being appointed by any appointing authority, as occurs when individuals are appointed to fill rank and file civil service positions (Gov. C. § 18500, et seq.) Similarly, the term “state office” could be interpreted narrowly to include only state elective office, or broadly to include every position in state government.

The meaning of the term “bona fide relationship” is especially open to a range of interpretations, as the Act provides no guidance regarding how this term should be interpreted, and there are no California statutes or regulations interpreting the term. However, understanding what constitutes a bona fide relationship established through blood or legal relation is essential to applying the conflict of interest provisions of the Act. Only persons with whom an individual has a bona fide relationship can be considered immediate family members of the individual, and thus cause the individual to have a disqualifying conflict of interest based on their actions. Thus, if we interpret the term narrowly, it means very few people – only those persons in a very close relationship with the individual can cause that individual to have a disqualifying conflict of interest. But if we interpret the term broadly, it means a wide range of people – even persons who have very little contact with the individual yet who are somehow related by blood or marriage – can cause the individual to have a disqualifying conflict of interest.

Resolving the ambiguity of these terms through the adoption of regulations is therefore essential to the mechanics of putting the Act into effect, as otherwise there is no clarity regarding who the State Auditor must disqualify as having an impermissible conflict of interest. In addition, the choices made through the adoption of these clarifying regulations regarding how the conflict of interest provisions are to be applied carry very important implications for the constitutionality of the Act. As the conflict of interest provisions necessarily create barriers to service on the panel and the commission, which are public offices, we must take care to ensure that whatever barriers are created are consistent with federal and state constitutional standards.

It is a well-established principle of federal and state law that the right to participate in political activity, which includes the right to hold public office, is a fundamental right.³ So any restriction on that right is subject to strict scrutiny review by the courts and must be justified by a compelling state interest and be narrowly tailored to avoid being overbroad. As the California Supreme Court declared in *Bagley v. Washington Township Hospital District*, (1966) 65 Cal. 2d 499, a court will consider a restriction on the right to hold public office overbroad unless the restriction has a clear relationship to the compelling interest that is being furthered by the restriction and that interest outweighs the negative impact of the restriction.

One aspect of interpreting the conflict of interest provisions that requires particular attention is an interpretation of those provisions that defines as a conflict of interest activities and relationships with individuals who have engaged in activities outside of California. Such activities are obvious candidates for examination as to whether they are so related to the task of redistricting that they result in an inability to perform the duties of a commissioner or a panel member with the necessary degree of impartiality. As the California Supreme Court noted in *Fort v. Civil Service Commission*, (1964) 61 Cal. 2d 331, at 338:

“ . . . [T]he more remote the connection between a particular activity and the performance of official duty the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service. It is thus at least questionable whether restrictions

³ See *Davis v. Grossmont Unif. School Dist.*, (1991) 930 F.2d 1930; *Edelstein v. City and County of San Francisco*, (2002) 29 Cal. 4th 164.

relating to issues and candidates in jurisdictions other than the employing entity can be justified even so far as concerns partisan activities.”

Accordingly, an interpretation of the conflict of interest provisions that, wherever possible, limits the disqualifying activities or relationships to activities and relationships that involve candidates, officials, and political parties in California, rather than some other jurisdiction, best the constitutionality of the Act.

Another aspect of interpreting the conflict of interest provisions that requires particular attention is the interpretation of those provisions that set the parameters for what constitutes an immediate family relationship. This is a very important area of interpretation as a person wanting to serve on the commission or the panel can be disqualified from serving, not just based on his or her own activities, but based on the activities of his or her immediate family members. Thus, an interpretation of the conflict of interest provisions that, wherever possible, limits the scope of who may be considered an immediate family member to those persons who are so intimately involved with a prospective commissioner or panelist that they would be in a position to exert undue influence over the prospective commissioner or panelist best supports the constitutionality of the Act.

With these general principles in mind, we propose fifteen regulations to provide greater clarity to the conflict of interest provisions of the Act.

Proposed Regulations

Proposed Regulation 60804. Appointment to Federal or State Office

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for federal or state office. As noted earlier in this memorandum, the term “appointed” could be construed either narrowly to only include being appointed by the governor, or broadly to include being appointed by any appointing authority. How the term is interpreted is therefore very significant, as the interpretation dictates how much of a barrier subdivision (a)(2)(A) imposes to serving on the panel or the commission.

In determining what meaning to attach to the term “appointed” and other terms used in the Act, we have been guided by California Constitution, Article XXI, section 2, subdivision (c)(1), which declares that the process for selecting commissioners “is designed to produce a Citizens Redistricting Commission that is independent from legislative influence.” We have also been guided by the language of the uncoded findings and declaration of purpose for the Act found in section 2 of the Act as it appeared in the Official Voter Information Guide for the November 4, 2008 General Election. Subdivision (b) of that section makes it clear that one of the purposes of the Act is to prevent politicians from influencing the redistricting process such that districts are drawn to serve the politicians’ interests rather than the interests of the communities they serve. These statements regarding the intent of the Act dictate that the terms used in the conflict of

interest provisions of the Act be interpreted in a manner that requires the disqualification of anyone who is so connected with the partisan politics of California, either by his or her own activities, or by the activities of his or her immediate family members, that the person's ability to make decisions unaffected by the interests of the state's partisan political leadership is either compromised or has the appearance of being compromised. However, these statements also make clear that to remain true to the purposes of the Act, the terms used need not be interpreted so broadly as to bar anyone else from serving on the panel or the commission, and to do so would risk making the application of the conflict of interest provisions overbroad.

Accordingly, we are proposing to define "appointed" as only including being appointed to a federal or state office by the Governor or any member of the Legislature. Any person, who during the 10 year period prior to applying to serve on the panel or the commission has been appointed, or has had a member of his or her immediate family appointed to a position by the Governor or a member of the Legislature, is connected to the partisan politics of California in a manner that is distinguishable from the connection of most Californians. Moreover, that person may be, or is at least shrouded with the appearance of being, beholden to those who will be most affected by redistricting. Thus, defining the term "appointed" in this manner is consistent with the purposes of the Act. Any broader interpretation of the term to include appointments by other authorities at the federal or state level would have much less of a connection to the integrity of the redistricting process, and could therefore be viewed as overbroad.

The regulation declares that subsequent confirmation of an appointment is not necessary for the appointment to create a conflict of interest because it is the appointment itself that creates the actual or apparent lack of independence from legislative or gubernatorial influence, regardless of whether the appointment is confirmed or even requires confirmation. Similarly, the term "appointed" is defined as including not only being placed in a position by the Governor or a member of the Legislature, but also serving in a position at the pleasure of the Governor or a member of the Legislature, within the 10 year period. This is because, from the standpoint of independence, having been allowed to serve in an appointed position at the pleasure of an official is no different from being named to the position by that official.

Proposed Regulation 60806. Bona Fide Relationship

As noted earlier in this memorandum, section 8252 declares that a person can have a disqualifying conflict of interest based on a member of his or her immediate family engaging in any of the activities listed in subdivision (a)(2)(A) of that section or based on having an immediate family relationship with the officials listed in subdivision (a)(2)(B), specifically the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Section 8252 contains a provision that defines the term "immediate family" as it is used throughout subdivision (a) as anyone with whom the person has a "bona fide relationship established through blood or legal relation," including parents, children, siblings, and in-laws.

While section 8252 is quite express in naming particular family relationships as being included within the scope of the term "immediate family," it is silent regarding the meaning of the term "bona fide relationship." While the term "bona fide" is generally regarded as meaning genuine

or sincere,⁴ there is no common meaning for the term as applied to family relationships. Yet, as noted earlier, the meaning given to the term “bona fide relationship” has a significant impact on how broadly the disqualification provisions will be applied, and on the number of persons who will be disqualified from serving on the commission.

Looking again to the purposes of the Act, as referenced in the discussion of the previous regulation, the definition of bona fide relationship needs to be broad enough to include family relationships that are so substantial in nature that a panel or commission member having such a relationship is likely to be vulnerable to influence from the other party to the relationship. However, the definition also has to be restrictive enough to exclude family relationships that have no particular qualities about them, aside from their mere existence, suggesting the other party to the relationship would be able to exert influence over a prospective panelist or commission member.

With these principles in mind, we propose a definition for bona fide relationship that contains three key elements. First, the regulation adds spouse and domestic partner to the list of family members who constitute the members of a person’s immediate family, which by the express language of section 8252 already includes parents, children, siblings, and in-laws. We propose this addition because spouses and domestic partners are at least as likely to be able to exert influence over a panelist or commissioner as anyone else on the list.

Second, the regulation requires that for a relationship to be bona fide it must be an existing relationship, rather than one that has been terminated by death or dissolution. The idea behind this element of the regulation is the obvious one that deceased family members can no longer be a source of influence, and family members estranged by dissolution, particularly in-laws, are unlikely to be a significant source of influence.

Third, the regulation requires that, for a relationship to be bona fide, it has to have specific characteristics about it that demonstrate a prospective panelist or commissioner is particularly likely to be influenced by the interests of the other party. The characteristics cited are any of the following occurring within the preceding 12 months:

- Cohabitation for a period or periods cumulating 30 days or more;
- Shared ownership of any real or personal property having a cumulative value of \$1,000 or more; or
- Either party to the relationship providing a financial benefit to the other having a cumulative value of \$1,000 or more.

We propose the first characteristic because cohabitation is a strong indicator of being in a substantial relationship with another person where one party to the relationship has significant influence over the other. This naturally flows from: (1) ample opportunity for one party to try to influence the other, (2) the likelihood that the fortunes of one party generally impact the fortunes of the other, and (3) the strong motivation for cohabitants to do what is necessary to maintain a cordial and cooperative relationship with each other by acquiescing to the other person’s wishes.

⁴ See Merriam-Webster’s Collegiate Dictionary 130 (10th ed. 2001).

We propose the second and third characteristics because these types of economic connections also demonstrate that the relationship between the parties is substantial in nature, as it entails a sharing of financial resources. Moreover, in the case of a prospective panel or commission member receiving financial benefits from the other party, the panelist or commission member will, at a minimum, be perceived as beholden to the other party and therefore particularly vulnerable to being influenced.

In determining whether a bona fide relationship exists, the regulation only looks to the characteristics of the relationship over the preceding 12 months, as that is most indicative of the nature of the relationship at the time a person will be serving as a panelist or commissioner. It does not include cohabitation for less than 30 cumulative days during a 12 month period, as lesser periods of cohabitation, such as occasional weekend visits, are not as indicative of a substantial relationship as longer periods of cohabitation. Further, the regulation does not include the joint ownership of property valued at less than \$1,000 or the imparting of a financial benefit cumulating less than \$1,000 during 12 months because such lesser financial connections are not as indicative of a substantial relationship between the parties. However, the regulation includes the imparting of financial benefits that are both tangible and intangible, including the rendering of services.

In proposing this definition of bona fide relationship, we are well aware that in trying to prevent the conflict of interest provisions from being overbroad, certain family relationships will not constitute a conflict of interest for a prospective panel or commission member even though the specific facts of the relationship may indicate the prospective member may be susceptible to legislative influence due to the relationship. For example, a prospective commission member having a brother who is a member of the Legislature would not have a disqualifying conflict of interest as a result of that relationship under circumstances in which the relationship has not included the requisite amount of cohabitation, joint property ownership, or exchange of financial benefits required to make the relationship a bona fide relationship. If the brothers are truly estranged, the relationship may have no impact on the ability of the prospective commissioner to perform the duties of a commissioner so it would be fair that the relationship does not constitute a conflict of interest. In contrast, if the brothers are not estranged, and the prospective commissioner is indeed loyal to the interests of the Legislator due to the family connection, the prospective commissioner would not be a good candidate to serve. The fact that the relationship does not constitute a conflict of interest should not be a problem, however, because even when a conflict of interest does not exist, the panel still has the authority and the duty to exclude from the pool of 60 of the most qualified applicants anyone who lacks the ability to be impartial in performing the duties of a commissioner. Regulation 60800 includes in the definition of “ability to be impartial” a requirement that a prospective commissioner has “no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision.” Thus the panel, with its ability to evaluate applicants individually to determine whether they have the ability to be impartial, will be well poised to keep from the commission any applicant who is subject to legislative influence due to a family relationship, or any other kind of relationship.

Proposed Regulation 60809. Campaign Committee

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective federal or state office. The term "campaign committee" is somewhat ambiguous, in that a candidate for federal or state office may be associated with a number of different kinds of committees that differ in purpose and may differ in the degree of control that the candidate has over their operation. The apparent purpose of the conflict of interest provisions of the Act is to disqualify from service on the panel or the commission anyone who is so connected with the partisan political leadership of California that the person is likely to be influenced by their interests. Thus, it is important to ensure that the term "campaign committee" includes those committees that are controlled by candidates for federal or state office, but need not include any other kinds of committees. Accordingly, this regulation defines a campaign committee as a committee that is controlled by a candidate under either federal or California law. Thus, when referring to a candidate for federal office, we propose defining the term "campaign committee" as an authorized committee of the candidate as defined by federal law, and when referring to a candidate for federal office, the term is defined as a controlled committee of the candidate as defined in California law. A controlled committee under California law includes any ballot measure committee controlled by a candidate.

Proposed Regulation 60811. Conflict of Interest

Section 8252, subdivision (a)(2) requires the removal of persons having a conflict of interest from the pool of applicants applying to serve on the commission. The paragraph declares that a conflict of interest includes the activities and relationships that are listed in the provisions of subparagraphs (A) and (B) that follow. Paragraph (2) therefore leaves open the possibility that a person may have a conflict of interest on some other basis than what is listed in subparagraphs (A) and (B).

In the interest of providing greater certainty to prospective applicants for the commission, bureau staff, and the public regarding what constitutes a conflict of interest that precludes service on the commission (and service on the panel, as the same conflict of interest provisions are applied to applicants to serve on the panel by section 8252, subdivision (b)), this regulation provides that a conflict of interest is limited to those activities and relationships that are listed in section 8252, subdivision (a)(2).

Proposed Regulation 60812. Congressional, State, or Local Candidate For Elective Office

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, contributed \$2,000 or more to any congressional, state, or local candidate for elective public office in any year. The scope of this provision is inherently ambiguous, as it does not indicate whether it is intended to include contributions to any

congressional, state, and local candidate anywhere in the United States, or it is intended to apply more narrowly to just those candidates with a connection to California.

In attempting to resolve the ambiguity of subdivision (a)(2)(A) through a regulation, we are mindful that the subdivision needs to be interpreted in a way that does not make it overbroad, while still achieving the purposes of the conflict of interest provisions of the Act. Regarding the issue of overbreadth, it is apparent that the subdivision cannot be interpreted to bar anyone from serving on the panel or the commission simply because the person contributed \$2,000 or more to a candidate in another state who has no interest in or connection with redistricting in California or even with California politics. As noted earlier in this memorandum, the California Supreme Court has opined that restrictions on holding office must be narrowly tailored to avoid being overbroad in their restrictions, and any restrictions related to activities in jurisdictions outside of California are suspect, even when they involve partisan activities. (*Fort v. Civil Service Commission*, supra, 61 Cal. 2d at 338.)

While the subdivision, therefore, cannot be interpreted to apply to contributions to candidates throughout the United States, it is consistent with the purposes of the Act to apply the subdivision to contributions made to congressional, state, and local candidates elected in California. The making of such substantial contributions to California candidates is indicative of a person having political interests and loyalties beyond those of the average citizen. Prospective panel and commission members having such heightened political interests and loyalties, or having immediate family members with those heightened political interests and loyalties, may be more susceptible than others to be influenced by what will benefit or harm particular politicians and political parties, and therefore may not be able to perform their duties in an impartial manner.

Accordingly, we propose defining a congressional candidate for elective public office to mean a candidate for Congress elected from California; defining a state candidate for elective public office to mean a candidate for elective state office in California; and a local candidate for elective public office to mean a candidate for a regional, county, municipal, district, or judicial office in California.

Proposed Regulation 60813. Consultant

Under section 8252, subdivision (a)(2)(B), a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person is a consultant to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. In its use of the term “consultant” the subdivision is somewhat unclear in its application, as the term “consultant” has no generally accepted meaning. The subdivision is also unclear as to whether it applies to consultants for any member of Congress, or just those members of Congress with a connection to California.

This regulation aims to resolve the ambiguity regarding the meaning of “consultant” by defining the term broadly to include any person who has entered into an agreement to provide consulting services. The person may have entered into the agreement either directly as a party to the agreement, or indirectly through a business entity in which the person holds at least a 10 percent

ownership interest. Thus the person cannot escape a conflict by having entered into the agreement through a business entity in which the person holds a substantial ownership interest. The regulation then defines “consulting services” as expert advice or personal services related to conducting campaign activities or holding congressional or state office, as opposed to providing consulting services that are non-political in nature. This addresses concerns about overbreadth discussed earlier in this memorandum.

The regulation then aims at resolving the ambiguity regarding which consultants to the members of Congress are covered by subdivision (a)(2)(B), by declaring that the subdivision only applies to consultants for members of Congress who are elected from California.

Proposed Regulation 60815. Federal Office

Two conflict of interest provisions of the Act include the term “federal office.” As noted in the earlier discussion of proposed regulation 60804, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for federal office. Additionally, as noted in the discussion of proposed regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a disqualifying conflict of interest if during that same 10 year period the person or a member of his or her immediate family served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective federal office. The use of the term “federal office” in these two conflict of interest provisions carries the same ambiguity identified in other provisions of the Act making reference to federal activities: whether the term includes all federal offices or just those that are connected to California politics.

To address the same concerns about overbreadth discussed earlier in this memorandum, particularly in the discussion of regulation 60812, we propose narrowly defining the term “federal office” as only a congressional office elected from California.

Proposed Regulation 60816. In-law

In its definition of the term “immediate family” section 8252, subdivision (a)(2)(B) includes “in-laws” as one of the relations that may be part of a person’s immediate family. Proposed regulation 60806, in providing greater clarity to the term “bona fide relationship established through blood or legal relation”, also uses of the term “in-law.” While the term is unambiguous in being a reference to persons who are relatives by marriage, it is nonetheless ambiguous in its scope, as the term could be interpreted narrowly to only include the closest of in-laws, such as parents in-law and siblings in-law, or broadly to include cousins in-law, second cousins in-law, and so forth.

Keeping in mind the need to avoid the dangers associated with interpreting the conflict of interest provisions of the Act too broadly, and keeping in mind the ability of the panel to reject applicants for the commission who lack impartiality due to family connections of any kind, we propose giving the term a very narrow meaning. We propose defining the term “in-law” as only

including the father, mother, or sibling of a person's spouse or registered domestic partner. The regulation treats marriage and registered domestic partnership as equivalent sources of in-law relationships, as Family Code, section 297.5 requires that registered domestic partners be treated the same as spouses under California law.

Proposed Regulation 60819. Paid Congressional, Legislative, or Board of Equalization Staff

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as paid congressional, legislative, or State Board of Equalization staff. This provision lacks clarity regarding whether it includes service for any member of Congress elected anywhere in the country and for any legislator elected anywhere in the country, or only includes service to members of Congress and legislators who are connected with California politics. The provision is also rather unclear as to what it means by "paid staff."

Consistent with other regulations aimed at keeping the conflict of interest provisions of the Act from being overbroad, particularly regulation 60812, this regulation interprets serving as "congressional staff" to only include providing services to a member of Congress elected from California and interprets serving as "legislative staff" to only include providing services to a member of the California Legislature.

Regarding the meaning of "paid staff", this proposed regulation defines the term in a manner that makes it synonymous with "paid employee" of the Congress, California Legislature, or State Board of Equalization. Such an interpretation gives Section 8252, subdivision (a)(2)(A) a meaning that is distinct from subdivision (a)(2)(B) of that section, which identifies a conflict of interest as arising from being a consultant to or under contract with a member of Congress, the Legislature, or the State Board of Equalization. This interpretation is also consistent with the Act's goal of keeping off the panel and the commission anyone who may be particularly susceptible to influence as a consequence of being a current or recent employee of Congress, the Legislature, or the State Board of Equalization or of having an immediate family member with that kind of current or recent employment relationship.

Proposed Regulation 60820. Paid Consultant

As noted in the discussion of regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as a paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office. The same subdivision also makes it a disqualifying conflict of interest for a person to have served as a paid consultant for a political party or to have an immediate family member who has served as a paid consultant for a political party during the 10-year period. As the term "paid consultant" may be subject to different interpretations, this regulation seeks to eliminate

any controversy as to the meaning of the term by defining it simply as providing consulting services pursuant to a contract and in return for compensation.

Proposed Regulation 60821. Political Party

In making service as a paid consultant to a political party a disqualifying conflict of interest, as explained in the discussion of regulations 60809 and 60820, section 8252(a)(2)(A) leaves open a question as to whether serving as a paid consultant for a political party operating anywhere in the world is sufficient to trigger a conflict of interest, or the political party in question must be one operating in California for the consulting services to trigger a conflict of interest. If the former interpretation is chosen, such that serving as a paid consultant for a political party operating exclusively in another state or country would trigger a conflict of interest, there is danger that the conflict of interest exclusion from service on the panel or commission would be considered overbroad, due to a lack of connection with California politics. Accordingly, we are proposing through this regulation that the term “political party” be defined as a political party operating in California. To be considered operating in California, we propose that the party must be making expenditures to support candidates for elective public office in the state. Any other activities, such as collecting contributions for candidates in other states, does not entail nearly as strong of a connection to California politics.

Proposed Regulation 60822. Political Party Central Committee

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as an elected or appointed member of a political party central committee. As with other terms contained in the conflict of interest provisions of the Act, the term “political party central committee” suffers from ambiguity as to whether it refers to political party central committees operating anywhere in the country, or just those operating in California. Out of a concern for overbreadth, and consistent with other regulations, including proposed regulation 60821, we are proposing to define “political party central committee” in a manner that limits the scope of its reference to the state and county central committees of political parties operating in California.

Proposed Regulation 60825. Registered Federal, State, or Local Lobbyist

Under section 8252 subdivision (a)(2)(A), a person has a disqualifying conflict of interest if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been a registered federal, state, or local lobbyist. Although the term “registered federal lobbyist” is quite clear to anyone familiar with the registration process for federal lobbyists, and therefore not subject to much interpretation, the terms “registered state lobbyist” and “registered local lobbyist” are somewhat ambiguous and subject to interpretation, as it is unclear whether the terms refer to state and local lobbyists everywhere in the country, or just those connected with California. To address concerns about overbreadth that would come with assigning these terms a nationwide scope, we propose

defining “registered state lobbyist” and “registered local lobbyist” as lobbyists registered in California.

Proposed Regulation 60827. Staff

In addition to appearing in section 8252, subdivision (a)(2)(A), as part of the term “paid congressional, legislative, or Board of Equalization staff,” the term “staff” is also used in subdivision (a)(2)(B) of that section in declaring that a person has a conflict of interest if the person is serving as staff to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. As noted concerning the term “paid staff” in the discussion of regulation 60819, the term “staff” is subject to some degree of interpretation. Moreover, whatever meaning is given to the term should, for the sake of simplicity and avoidance of confusion, be consistent with the meaning given to the term “paid staff” in regulation 60819, while taking into account that as used in subdivision (a)(2)(B), the term “staff” does not include any reference to being paid. We propose defining “staff”, consistent with regulation 60819, as a person employed by the Governor, a member of the Legislature, a member of the Congress of the United States elected from California, or a member of the State Board of Equalization, while specifying that the employment need not include compensation for the employee.

Proposed Regulation 60828. State Office

Finally, just as the conflict of interest provisions of the Act include two references to the term “federal office”, each of those references is accompanied by a reference to “state office.” As noted in the earlier discussion of proposed regulation 60804, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for state office. Additionally, as noted in the discussion of proposed regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a disqualifying conflict of interest if during that same 10 year period the person or a member of his or her immediate family served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective state office. The use of the term “state office” in these two conflict of interest provisions carries the same ambiguity identified in other provisions of the Act as to whether the term includes all state offices anywhere in the country or just those that are connected to California politics.

To address the same concerns about overbreadth discussed repeatedly in this memorandum, particularly in the discussion of regulation 60812, we propose defining the term “state office” so that it only means a California state office, and includes every office, agency, department, division, bureau, board, and commission within the government of the State of California.

Conclusion

Through the regulations being proposed to interpret the conflict of interest provisions of the Act, we have tried to achieve a delicate balance between giving effect to the intent of the voters in approving the Act and interpreting the terms that the Act uses in manner that is both practical and bolsters its constitutionality.

California Bureau of State Audits
MEMORANDUM NUMBER 3

To: Elaine M. Howle, State Auditor

From: Janis Burnett, Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60823, 60824, 60830, 60831, 60832, 60833, 60834, 60835
and 60836: Applicant Review Panel

Date: July 31, 2009

Introduction

The Voters FIRST Act (the “Act”)¹ approved by the voters in the November 4, 2008 general election as Proposition 11 requires the State Auditor to initiate an application process for the Citizens Redistricting Commission (the “commission”) on a decennial basis. The commission, composed of fourteen members, is responsible for redrawing district lines for the Senate, Assembly, and State Board of Equalization based on decennial census information and census information for each year ending in zero thereafter. The Act requires the State Auditor to create an Applicant Review Panel (the “panel”) of three qualified independent auditors who have been practicing as independent auditors for at least 10 years prior to appointment and who are employed by the State and licensed by the California Board of Accountancy at the time of the drawing. The panel will review the applications of persons wishing to serve on the commission. Under the Act, the panel evaluates all of the applications submitted by eligible applicants, and based on that evaluation, identifies a pool of 60 of the most qualified applicants.

As the Act provides few specifics about the operation of the panel, the bureau is proposing the following regulations to address the selection and removal of panel members and to specify certain aspects of the panel’s internal administration. The regulations clearly and concisely identify the process for staffing and structuring the panel. These regulations are necessary to ensure that the Proposition 11 is properly implemented, and that the panel is properly constituted and capable of carrying out its statutory responsibilities.

Proposed Regulations

Proposed Regulation 60823. Qualified Independent Auditor

The proposed regulation defines a “qualified independent auditor” as an auditor currently employed as a permanent employee of the Bureau of State Audits (the “bureau”). As what qualifies an auditor as being independent is not specified in the Act, this regulation is necessary

¹ The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code sections 8251 through 8253.6. Unless indicated otherwise, all statutory references are to the Government Code.

to provide clarity to prospective applicants and the general public regarding the meaning of this term as it is used in the Act and in the proposed regulations.

In contemplating the interpretation that we should adopt for the term “qualified independent auditor,” we considered specific language in the Act stating that “this reform will make the redistricting process open so it cannot be controlled by the party in power” and that “the reform takes redistricting out of the partisan battles of the Legislature....”² To give meaning to the statute that best supports the purposes of the Act, we determined that we should place particular emphasis on the word “independent.” Although many state agencies employ auditors, the bureau is unique given that as a matter of state law it is independent of the executive branch and legislative control.³ In addition, as the state's independent external auditor, the bureau provides nonpartisan assessments of California government's financial and operational activities. We also considered California's civil service rules and the practical considerations of using auditors employed by other agencies. Of greatest concern is that auditors from other agencies would still remain under the control of those agencies and, therefore, the independence contemplated by the Act would be lost.⁴ However, the proposed regulation includes a provision allowing an auditor currently employed by the bureau to include experience acquired outside the bureau towards the experience requirement established by the Act as long as that experience was acquired under an agency that conducted audits of departments that were external to itself although under its oversight authority. Based on the bureau's unique independence, its staff of auditors being experienced in nonpartisan assessments, and the limitations presented by California's civil service rules, we determined that this regulation is necessary to institute an application process consistent with the purposes of the Act.

Proposed Regulation 60824. Randomly Draw

This proposed regulation provides a definition for “randomly draw” as the term is used in section 8252. The Act requires two random drawings to occur. The first is for the State Auditor to select the members of the panel.⁵ The second is for the selection of the first eight commissioners.⁶ As the Act is silent as to how the State Auditor should administer the random drawings, this regulation would provide clarity regarding that process.

We propose to use numbered balls and a bingo cage to perform the random drawings. The numbers on the balls would be assigned to the applicants in a subpool, so that each ball would bear a unique identifying number for each applicant. The balls would then be placed in a bingo cage, rotated vigorously and then the cage would drop the number of balls needed to fill the available positions on either the panel or the commission. The applicants with identifying numbers that correlate to the numbered balls selected would then be announced as either

² Uncodified Findings and Purposes of the Act, § 2(c)-(d).

³ § 8543 states that “[i]n order to be free of organizational impairments to independence, the bureau shall be independent of the executive branch and legislative control.”

⁴ 2 CCR § 426.

⁵ § 8252(b).

⁶ § 8252(f).

members of the panel or the commission. As the Act requires an open redistricting process that invites public participation⁷, we recommend making the random drawings open to the public.

In making the determination to perform the random drawings in the manner described above, we surveyed California law and found that there were few references to random selections or random drawings. The selection process most similar to the random drawings required by the Act calls for the Secretary of State to conduct a drawing of letters of the alphabet known as the “randomized alphabet.” The process for creating a randomized alphabet system is prescribed in Elections Code section 13112. It requires each letter of the alphabet to be written on a separate piece of paper, and then the paper is folded and inserted into a capsule. Each capsule is required to be of a uniform weight, size, color, shape and texture as well as opaque. The capsules are to be placed into a container and shaken vigorously to mix them thoroughly. After the capsules are mixed, the container is opened and the capsules are removed one at a time. Each capsule is opened and the letter on the piece of paper read aloud and written down in the order in which it is selected. The resulting random order of letters constitutes the randomized alphabet that shall be used in determining the order of the names of candidates for office on election ballots.

In a discussion with staff from the Elections Division of the Secretary of State’s office, we learned that the procedure has been altered. Instead of using capsules, the staff use 26 film canisters, similar to the canisters used to package 35 mm film, with the letters of the alphabet printed on the inside of the canister caps. All other aspects of the procedure are the same. The substitution of film canisters simplifies the procedure and eliminates the potential for errors when filling the capsules with pieces of paper.

With no other guidelines for conducting a random drawing, we considered the use of balls inside a bingo cage, as it is similar to the process the Secretary of State has adopted. We then consulted a statistician to determine whether this process constitutes a random drawing as stated in the Act. According to Geetha Ramachandran, PhD, Professor of Statistics, California State University, Sacramento, this is a valid process for a random drawing. Based on the bureau’s review of other random drawings under state law and the opinion of our statistician, we are proposing that the random drawings required by the Act be conducted by using numbered balls and a bingo cage.

Proposed Regulation 60830. Selection of Panel Members and Alternate Panel Members

The Act is silent as to the process for randomly drawing panel members and the applicants who will serve as the first eight members of the commission. Proposed regulation section 60824 sets forth a general process for random drawing. This regulation provides additional specifics regarding random drawing as it relates to the selection of panel members. It also provides for the selection of alternate members of the panel. The Act is silent as to the process for replacing a panel member. However, given the expected duration for service on the panel, circumstances may arise that result in the resignation or need for removal of a panel member. Since the panel must complete its review and selection of applicants by the statutory deadline, selecting alternate panel members concurrently with the selection of panel members will minimize disruption of the panel’s work if a new appointment is needed.

⁷ The Act, § 2 (d)-(e), (uncodified Findings and Purpose); Cal. Const, Art. XXI, § 2, subd. (b)(1), (2), (3), & (6); § 8253(a).

Proposed Regulation 60831. Information About Prospective and Selected Panel Members

This regulation would require the bureau to post the names, party affiliations and relevant qualifications of prospective and selected panel members. As stated in the discussion of the last regulation, the Act requires an open redistricting process that invites public participation.⁸ We have interpreted the Act's strong theme of transparency as applying to the process for selection of commissioners, and this interpretation has been bolstered by and echoed in comments the bureau has received from interested persons. Providing public information regarding the panel will give greater transparency to the process for selecting members of the commission.

Proposed Regulation 60832. Duties of Panel Members

The Act provides only a limited amount of detail on the duties of the panel. To further the transparency goals of the Act and to assist with the administration of the panel, this regulation establishes specific duties for members of the panel.

Proposed Regulation 60833. Removal of Panel Members

The Act is silent as to both the grounds and process for the removal of a panel member. However, given the expected duration for service on the panel, circumstances may arise that result in the resignation or need for removal of a panel member. This regulation will minimize the potential for disruption of the panel's work by specifying a process for the removal of a panel member.

Proposed Regulation 60834. Panel Administration

The Act is silent on staffing for the panel and, although the Act provides that the bureau receive funding for implementation of the Act, the panel is not provided with its own funding source. This regulation clarifies that the bureau will provide administrative and legal support to the panel.

Proposed Regulation 60835. Panel Meetings

The Act does not provide any specific requirements for panel meetings. To further the transparency goals of the Act and to assist with the administration of the panel, the proposed regulation provides guidance to applicants and the general public on the location and procedures that the panel will follow during panel meetings.

Proposed Regulation 60836. Panel Voting

The Act does not address voting procedures for the panel. This proposed regulation provides guidance to applicants and the general public on the voting procedures that the panel will follow during panel meetings. Although each of the panel members is selected based on party

⁸ See the Act, § 2(d)-(e) (uncodified Findings and Purpose); Cal. Const., Art XXI, § 2, subd. (b)(1), (2), (3), & (6); § 8253.

affiliation, the integrity of the selection process dictates that the process should be structured to avoid even the appearance that any of the selection decisions are politically motivated. Accordingly, this regulation provides that any decision or reconsideration of a decision regarding the removal of an applicant from an applicant pool must be by a unanimous vote of the three panel members. Other decisions of the panel may be made by majority vote. This regulation is necessary to further the integrity and transparency goals of the Act and to assist with the administration of the panel.

Conclusion

As the Act provides few specifics regarding the selection of the panel, removal of panel members and the internal administration of the panel, we are proposing the regulations discussed in this memorandum to direct the operation of the panel in a manner that is consistent with the purposes of the Act.

California Bureau of State Audits
MEMORANDUM NUMBER 4

To: Elaine M. Howle, State Auditor

From: Sharon Reilly, Chief Counsel
Steven Benito Russo, Senior Staff Counsel

Subject: Proposed Regulations 60800, 60805, 60818, 60826, 60848, and 60850: Identifying the Most Qualified Applicants

Date: July 31, 2009

Introduction

A central element of the Voters FIRST Act (the “Act”)¹ is the creation of the Citizens Redistricting Commission (the “commission”) that will redraw the boundaries of California’s legislative and Board of Equalization districts based on decennial information. The Act sets forth a process by which the members of the commission shall be selected from those who submit applications to serve on the commission. Key to that process is the work of the Applicant Review Panel (the “panel”), which will review the applications and reduce the pool of applicants from an initial applicant pool, consisting of all applicants who satisfy the basic eligibility requirements for serving on the commission, to a pool of 60 of the most qualified applicants from which the members of the commission will be chosen. The Act requires the panel to select the pool of 60 of the most qualified applicants based on the extent to which they possess of the following qualifications:

- Ability to be impartial;
- Appreciation for California’s diverse demographics and geography; and
- Relevant analytical skills.

These broadly stated qualifications provide important guidance to the panel, prospective applicants for the commission, and the public. However, the qualifications still require substantial interpretation for the panel to employ them as criteria for selecting a pool of 60 of the most qualified applicants. Most notably, we need to interpret the qualifications so that the panel may understand them, not just as abstract concepts, but as specific abilities that an applicant may need to serve as an effective member of the commission. We also need to interpret the qualifications in a manner that will enable the members of the panel to recognize the extent to which an applicant possesses the qualifications. Finally, we need to incorporate the panel’s consideration of the qualifications into the application process, so that it is clear when and how

¹ The Voters FIRST Act is contained in California Constitution, Article XXI and Government Code sections 8251 through 8253.6. Unless otherwise indicated, statutory references are to the Government Code.

the panel will examine the qualifications to pare down the applicant pool to just 60 of the most qualified applicants.

We therefore propose several regulations that are designed to provide more definition to the qualifications for serving on the commission as set forth in the Act and to specify the manner in which the qualifications fit into the panel's process for evaluating applicants.

Background

The Work of the Commission Members

In determining how to provide more definition to the qualifications for serving on the commission, we are mindful of the kind of work that the commission members must perform as part of the redistricting process. The commission members' role begins with an analysis of data provided by the United States census. The United States Constitution requires a census of everyone living in the United States every ten years.² In April of each year ending in 1, the census data is provided to states so that they may, through a process known as redistricting, redraw congressional, legislative, and other voting districts so that the districts will conform with the shifts in population that have occurred since the last census.³

The Act requires the commission to use this census data to draw new district lines for California Senate, Assembly, and Board of Equalization districts.⁴ In drawing those lines, the commission members must do all of the following:

- (1) Conduct an open and transparent process enabling full public consideration of and comment on the drawing of the district lines;
- (2) Draw district lines according to the redistricting criteria set forth in the Act; and
- (3) Conduct themselves with integrity and fairness.⁵

The Act also requires each commission member to perform his or her redistricting responsibilities "in a manner that is *impartial* and that reinforces public confidence in the integrity of the redistricting process."⁶

Under the Act, the commission members must establish single member districts for the Senate, Assembly, and State Board of Equalization through a mapping process.⁷ The commission must satisfy all of the following requirements when drafting the maps:

² U.S. Const., art. I, § 2.

³ 13 U.S.C. § 141.

⁴ Cal. Const., art. XXI, § 2(a).

⁵ Cal. Const., art. XXI, § 2(b).

⁶ Cal. Const., art. XXI, § 2(c)(6), *italics added*.

⁷ Cal. Const., art. XXI, § 2(d).

- (1) Districts must comply with the United States Constitution. Unless a deviation is required by the federal Voting Rights Act (VRA),⁸ or is otherwise allowed by law, each Senate, Assembly, and State Board of Equalization district must have a population that is reasonably equal to that of the other districts created for the same office.⁹
- (2) Districts must comply with the VRA.¹⁰
- (3) Districts must be geographically contiguous.¹¹
- (4) The geographic integrity of any city, county, city and county, neighborhood, or community of interest must be respected to the extent possible without violating the requirements of (1), (2), or (3) above.¹²
- (5) To the extent practicable, and when it does not conflict with the requirements listed in (1) through (4), above, districts must be drawn to encourage geographical compactness so that nearby areas of populations are not bypassed for more distant populations.¹³
- (6) To the extent practicable, and when it does not conflict with the requirements in (1) through (5) above, each Senate district must be comprised of two whole, complete, and adjacent Assembly districts, and each State Board of Equalization district must be comprised of 10 whole, complete, and adjacent Senate districts.¹⁴

By September 15 of 2011 and in each year ending in one thereafter, the commission must produce a total of three final maps: one for the Senate, one for the Assembly, and one for the State Board of Equalization.¹⁵ The three final maps must be approved by the affirmative vote of at least nine members of the commission, consisting of three members registered with California's largest political party, three members registered with California's second largest political party, and three members not registered with either of California's two largest political parties.¹⁶

⁸ 42 U.S.C. § 1971 et. seq.

⁹ Cal. Const. art. XXI, § 2(d)(1).

¹⁰ Cal. Const. art. XXI, § 2(d)(2).

¹¹ Cal. Const. art. XXI, § 2(d)(3).

¹² For the purposes of the act, "communities of interest" do not include relationships with political parties, incumbents, or political candidates. Cal. Const., art. XXI, § 2(d)(4).

¹³ Cal. Const., § 2(d)(5).

¹⁴ Cal. Const., art. XXI, § 2(d)(6).

¹⁵ Cal. Const., art. XXI, § 2(g)

¹⁶ Cal. Const., art. XXI, § 2(c)(5).

Relating the Qualifications to the Work of the Commission

Viewed in light of the work the commission members must perform, the qualifications they should possess to perform their duties come into clearer focus. Specifically, in making decisions about where to draw district lines, the commission members make decisions that affect the political fortunes of politicians, political parties, and various groups of individuals whose ability to be successful in future elections is strongly dependent on how many voters supporting their positions are included within a district's boundaries. It is essential that the members of the commission be able to put aside their personal interests and loyalties to particular groups, and make redistricting decisions with an open mind, with the purpose of achieving a fair result for everyone affected.

Further, in making redistricting decisions that respect the integrity of communities of interest, commission members must recognize that California's population has very diverse demographic characteristics, and that those characteristics can link people together into a community of interest that must be taken into account when making redistricting decisions. Similarly, commission members need to recognize that California is also a very diverse state geographically, and that the geographic characteristics of the places where people reside can also link them together into communities of interest that must be taken into account when making redistricting decisions. Moreover the redistricting decisions that the commission members make must embrace this diversity to provide a meaningful voice to California's diverse communities to the greatest extent possible.

Perhaps most importantly, as redistricting is a rather complicated process, to make redistricting decisions that are factually sound and in compliance with legal requirements, the commission members need to possess analytical skills that bear upon redistricting, such as analyzing census data, receiving information from affected communities, crafting compact districts that comply with the VRA, as well as work in cooperation with fellow commission members to achieve agreement on decisions.

How Qualifications May Be Demonstrated

Just as important as providing greater clarity to the qualifications is identifying how an applicant may demonstrate the extent to which he or she possesses those qualifications. Thus, any regulations that further define the qualifications should also include direction regarding how possession of the qualifications may be shown during the course of the application process. To do that, the regulations need to point to the kinds of experiences and achievements that may indicate the degree to which a person possesses the qualifications. However, we must take care to ensure that applicants may demonstrate their qualifications not just through academic achievement or occupational experience, but through life experiences of any kind.

Evaluating Qualifications During the Application Process

Finally, in addition to the need to clarify the qualifications for serving on the commission and how those qualifications may be recognized, we need to specify by regulation when and how during the application process the applicants' qualifications will be evaluated. We can

accomplish this through relatively simple provisions within the regulations setting forth the mechanics of the application process. This specificity is necessary to provide guidance to the panel and fair notice to the applicants regarding how the evaluative process will operate.

With these general considerations in mind, we propose six regulations to clarify the qualifications the panel will consider in determining which candidates shall be included in the pool of 60 of the most qualified applicants, as well as how those qualifications shall be demonstrated and evaluated during the application process.

Proposed Regulations

Proposed Regulation 60818. Most Qualified Applicants

Section 8252, subdivision (d) makes it the ultimate goal of the panel to select, from all of those who apply to become members of the commission, 60 of the most qualified applicants to be placed in an applicant pool from which the members of the commission will be chosen. The subdivision then goes on to state that the panel must make this selection “on the basis of relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography.” In its use of the term “most qualified applicants,” the subdivision directs that the panel evaluate the applicants in relation to each other. In other words, the panel is not merely to select applicants possessing some level of the listed qualifications, but is to select the applicants who have the best qualifications, that is, the applicants who most possess relevant analytical skills, an ability to be impartial, and an appreciation for California’s diverse demographics and geography.

However, even before the commission begins evaluating the qualifications of the applicants, and continuing throughout the application process, the bureau and the panel are required by the Act to eliminate from consideration any applicants who fail to satisfy the eligibility requirements for serving on the commission, as set forth in the California Constitution, Article XXI, section 2, subdivision(c)(3)¹⁷ or who have a conflict of interest, as set forth in section 8252, subdivision (a)(2).

This proposed regulation is intended to express, in a single place, that to be recognized by the panel as a most qualified applicant, an applicant must satisfy the constitutionally imposed eligibility requirements, not have a conflict of interest, and be judged by the panel as possessing the qualifications for serving on the panel to a degree that exceeds other applicants that the panel judges not to be as qualified.

Proposed Regulation 60800. Ability to Be Impartial

The Act places a strong emphasis on the need for members of the commission to perform their duties in an impartial manner. In addition to requiring that a commission member have the “ability to be impartial,” the Act also requires the commission members to conduct themselves

¹⁷ This subdivision establishes two eligibility requirements: (1) the individual must have been continuously registered in California with the same political party or unaffiliated party for at least the past five years immediately preceeding his or her appointment and (2) the individual voted in two out of the last three elections.

with “integrity and fairness”¹⁸ and to apply Article XXI of the California Constitution “in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.”¹⁹ To this end, the regulation will identify characteristics that reflect an ability to be impartial and how an applicant may demonstrate that he or she is impartial.

In this regulation, we propose to define “ability to be impartial” in such a manner as to clarify the abilities one must have to perform the duties of a commission member in an impartial manner.

California law does not define the term “impartial.” However, “impartial” and “impartiality” are terms that are widely used in the American legal system. Moreover, the integrity of the legal system is dependent on the ability of judges, courts, juries, and other dispute mechanisms to be impartial. Thus we looked to how that term is defined in this context in crafting this regulation.

The concept of “impartiality” as it relates to judges and courts has played an important role in at least seven decisions issued by the United State Supreme Court. In the most recent case, the court considered three distinct concepts of impartiality.²⁰ First the court looked at the traditional meaning of “impartiality” as “[n]ot partial; esp., not favoring one more than another; treating all alike; unbiased; equitable; fair; just.”²¹ Next the court considered “impartiality” as meaning “lack of preconception in favor of or against a particular *legal view*.”²² Finally, the court considered “impartiality” as meaning “openmindedness.”²³

California law specifies eleven grounds for disqualifying a judge from presiding over a case that go to the ability to be impartial. Among those grounds are instances in which a judge has a financial interest in the subject matter of the proceeding or in a party to the proceeding and where the judge has a personal relationship that could influence the judge.²⁴ Further the California Judicial Council has recommended that with respect to judges, “impartial,” “impartiality,” and “impartially” be defined as an “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge” The California Code of Judicial Ethics also has various canons that go to the concept of impartiality.²⁵

The concept of impartiality is also important to the jury system employed by both federal and state courts. The Sixth Amendment to the United States Constitution requires that defendants in criminal proceedings be afforded an “impartial” jury. California law gives guidance to judges in selecting “a fair and impartial jury in civil jury trials.”²⁶ The California Judicial Council has defined “impartial” to mean “[w]ithout bias, prejudice, or other preconception. The members of a jury should have no opinion about or vested interest in a case at the start of the trial and should

¹⁸ Cal. Const., art. XXI, § 2(b)(3).

¹⁹ Cal. Const., art. XXI, § 2(c)(6).

²⁰ *Republican Party of Minnesota v. White*, (2002) 536 U.S. 765.

²¹ *Id.*, at p. 776, citing Webster’s New International Dictionary (2d ed. 1950) at p.1247.

²² *Id.* at p. 776-777 (emphasis in original).

²³ *Id.*

²⁴ Cal. Code Civ. Proc., § 170.1(a).

²⁵ www.countinfo.ca.gov/supreme/documents/ca_code_judicialethics.pdf.

²⁶ Cal. Code Civ. Proc., §§ 222.5, 223, and 225.

base its verdict only on competent legal evidence presented during the trial.”²⁷ The California Judicial Council has developed model juror questionnaires.²⁸ The questions are designed to determine which individuals can be “fair and impartial jurors.” California judges also give instructions to juries at various points in the trial that go to impartiality. For example, a judge may advise a jury to keep an open mind throughout the trial and to not let bias, sympathy, prejudice, or public opinion influence their decisions.²⁹

With this background in mind, we turn to what “ability to be impartial” means in the context of redistricting as described in the Act. As discussed previously, commission members must review large amounts of information as well as receive public testimony from individuals and communities. In doing so, we believe that a commission member must have the capacity or willingness to set certain considerations aside to evaluate the information he or she is receiving with an open mind and to make decisions that are fair.

Drawing on the standards applied to judges and juries, we believe that a commission member must be able to set aside personal interests, including personal relationships as well as personal financial interests. If those interests influence a commission member, he or she is not impartial.

Under section 2 of the VRA,³⁰ the process leading to an election must be equally open to participation by members of all racial or language minority groups. Thus, a commission member must also be able to set aside any preconceived notions or biases for or against any individuals, groups, or geographical areas, and work to ensure that the election process is open to all.

Finally, in its “findings and purpose” section, the Act states the following:

“The independent Citizens Redistricting Commission will draw districts based on strict, nonpartisan rules designed to ensure fair representation. The reform takes redistricting out of the partisan battles of the Legislature and guarantees redistricting will be debated in the open with public meetings, and all minutes will be posted publicly on the Internet. . . . In the current process, politicians are choosing their voters instead of voters having a real choice.”³¹

We believe that this language reflects the intent of the voters to form a commission that is able to take political considerations out of the debate. Further, as discussed above, commission members must be able to understand and apply complicated legal principles to their task. A commission member must be able to set aside any personal beliefs he or she may have about the policy choices underlying those laws to perform his or her duties properly and fairly. Thus, a commission member, in evaluating information and making decisions, must set aside support for or opposition to any candidates, political parties, or social or political causes.

²⁷ Judicial Council, Jury Info, Glossary, www.courtinfo.ca.gov/jury/glossary.htm

²⁸ Judicial Council of Cal., Form MC-001.

²⁹ Judicial Council of Cal., 1 Criminal Jury Instructions (CALCRIM) §§ 101 & 200 (2008).

³⁰ 42 U.S.C. § 1973

³¹ Voters FIRST Act, § 2(d)-(e).

Based on the above, we concluded that to be impartial the commission members must have the capacity and willingness to set aside the following:

- (1) Personal interests, including personal financial interests.
- (2) Biases for or against any individuals, groups, or geographic areas.
- (3) Support for or opposition to any candidates, political parties, or social or political causes.

As with other regulations discussed in this memorandum, we have included a subdivision that provides information about how applicants may demonstrate the ability to be impartial. For this regulation, we believe that an applicant may demonstrate an ability to be impartial by describing that ability in his or her application or during the course of an interview, and by offering evidence of that ability that consists of both of the following:

- (1) The applicant has no personal family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision.
- (2) The applicant has occupational, academic, or life experiences that show an ability to set aside his or her personal interests, political opinions, and group allegiances to achieve a broad objective.

Proposed Regulation 60805. Appreciation for California's Diverse Demographics and Geography

In this regulation, we are defining "appreciation for California's diverse demographics and geography" in such a manner as to clarify the nature and quality of California's demographic and geographic composition. To this end, the regulation will identify characteristics that reflect an appreciation of California's diversity of demography and geography.

The term "demographic" is widely understood to mean "a statistic characterizing human populations (or segments of human populations broken down by age or sex or income etc.)."³² The term "geography" refers to the scientific study of the Earth's surfaces, including man-made political subdivisions.³³ Thus, California's diverse demographics and geography refers to the state's human population, as broken down into identifiable segments, as well as the state's varied physical characteristics, including cities and counties.

As explained in the background section of this memorandum, the Act requires commission members to apply specific criteria when drawing the district lines. Some of those criteria relate to demographics, including compliance with the VRA and the requirement that the geographic

³² "demographic." *WordNet® 3.0*. Princeton University. 13 Apr. 2009. <Dictionary.com <http://dictionary.reference.com/browse/demographic>>.

³³ "geography." *WordNet® 3.0*. Princeton University. 13 Apr. 2009. <Dictionary.com <http://dictionary.reference.com/browse/geography>>.

integrity of a community of interest be respected. Other criteria pertain specifically to geography, including the requirements that the districts be geographically contiguous, that the geographic integrity of any city, county, city and county, or neighborhood be respected, and that the districts be drawn to encourage geographic compactness.

Thus, for an applicant to demonstrate that he or she has “an appreciation for California’s diverse demographics and geography,” he or she should have an understanding of California’s demographic characteristics, that California has various localities with distinct geographic characteristics, and that California benefits from meaningful participation in the electoral process by registered voters of all demographic characteristics and who reside in all geographic locations.

Demography

In the context of demographic statistics, identifiable segments are created on the basis of both mutable and immutable characteristics. Demography encompasses such statistical variations as age, race, sex, ethnicity, income, and education. Race and sex are immutable characteristics over which an individual has no control, while factors such as income and education level may change over the course of an individual’s life. The nature of a characteristic as static or fluid will not affect whether it may be considered in a demographic accounting.

The United States census reports demographic data on a decennial basis. The most recent census, taken in 2000, reports information in the following categories: age, sex, race, household composition, employment status, occupation, industry, income, poverty status, educational attainment, marital status, and place of birth, among others.³⁴ This census data is the most accessible and accurate portrait of California’s population, and provides adequate information to allow one to comfortably classify residents into groups based on the aforementioned factors. Thus, California’s diverse demographics are represented by a description of demographic data reported by the most recent census. The following statistics are illustrative of California’s diverse demographics, as of the last census, which occurred in 2000³⁵:

- (1) California’s total population numbers approximately 33,871,648; 50.2% of Californians are female, while 49.8% are male.³⁶

³⁴ Data from the 2000 U.S. Census is available online at:

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US06,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US06,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF3_U_DP3&ds_name=DEC_2000_SF3_U&geo_id=04000US06

³⁵ We note, however, that the statistics have likely changed and those changes will be captured and reflected in the 2010 census.

³⁶ Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US06

- (2) Almost two-thirds of Californians are 20-64 years of age; youths under age 19 comprise almost one-third of the population, while residents over age 65 make up approximately one-tenth.³⁷
- (3) Whites are the largest racial group in California, comprising 59.5% of the population. Of Whites, 32.5% are Latino/Hispanic, the majority of whom are Mexican. Asians, predominately Chinese and Filipino, comprise the second-most populous racial group in California at almost eleven percent of the total population. Blacks or African-Americans make up 6.7%.³⁸
- (4) Almost one-quarter of Californians do not possess a high school education; another one-fifth only have a high school diploma. Approximately one-quarter of residents have completed some college but lack a degree, while less than 20% have a Bachelor's degree.³⁹
- (5) One-fifth of Californians between 20 and 64 years of age have a disability.⁴⁰
- (6) Almost three-fourths of Californians were born in the United States; more than half of whom were born in California.⁴¹ The majority of residents speak only English at home; however, approximately 25% of households speak Spanish at home, while slightly less than 10% speak an Asian/Pacific Islander language in the home.⁴²
- (7) Of residents over the age of 16, 62.4% are in the civilian labor force. The majority of workers are privately employed, but 14.7% are government workers, and 8.5% are self-employed.
- (8) California's three largest industries are: (1) educational, health and social services; (2) manufacturing; and (3) professional, scientific, management, administrative and waste management services.

³⁷ Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US06

³⁸ Data from the 2000 U.S. Census (terms describing race as used in census),

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US06

³⁹ Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US06

⁴⁰ Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US06

⁴¹ Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US06

⁴² Data from the 2000 U.S. Census,

http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qname=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US06

- (9) The median household income is \$47,493, while 10.6% of families live below the poverty line.⁴³

Geography

“Geography” means the scientific study of the Earth’s surfaces, both natural and man-made.⁴⁴ As the third largest physical territory in the United States, it is no surprise that California possesses a diverse and varied geography. California is known for its extensive coastline, rugged mountain ranges, fertile valleys, unique lakes, and multiple deserts.⁴⁵ For instance, California is home to both the highest peak and the lowest point below sea level in the continental United States (Mt. Whitney and Death Valley, respectively). An appreciation for California’s geography requires knowledge and understanding of California’s location within the U.S., its deserts and numerous mountain ranges, its many bodies of water, and the climate zones created by its geography. An appreciation for California’s geography also requires knowledge and understanding of California’s political subdivision, including its 58 counties and 480 cities. Of those counties, Los Angeles is the largest; not surprisingly, the city of Los Angeles is also the largest city in California.

The following statistics are illustrative of California’s geography:

- (1) At 155,959 square miles, California is the third largest state.⁴⁶ It stretches 825 miles long between its northwest and southeast corners.⁴⁷ California has 1,200 miles of coastline along the Pacific Ocean.⁴⁸ The state is commonly divided into Northern and Southern California; its geographic center is 38 miles east of Madera. California is bordered by Oregon to the north, Nevada and Arizona to the east, Mexico to the south, and the Pacific Ocean to the west.⁴⁹

⁴³ Data from the 2000 U.S. Census, http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&q_r_name=DEC_2000_SF3_U_DP3&ds_name=DEC_2000_SF3_U&geo_id=04000US06

⁴⁴ “geography.” *WordNet® 3.0*. Princeton University. 13 Apr. 2009. <Dictionary.com <http://dictionary.reference.com/browse/geography>>.

⁴⁵ For a description of California’s physical features, see: Listing of Notable Physical Features: http://geography.sierra.cc.ca.us/Booth/California/other/cal_features1.htm; A Brief Overview of California’s Geography: <http://www.learncalifornia.org/doc.asp?ID=222>; A Series of Topographical Maps: <http://geology.com/state-map/california.shtml>; The San Andreas Fault: <http://www.sjsu.edu/depts/geography/resource/calgeog/index.html>; California’s coastal geography: <http://ceres.ca.gov/ceres/calweb/coastal/geography.html>; California’s National Parks: <http://www.nps.gov/state/ca/>; Description of coastline: http://www.blm.gov/pgdata/content/ca/en/prog/blm_special_areas/nm/ccnm.html; California’s climate: <http://www.wrcc.dri.edu/narratives/CALIFORNIA.htm>

⁴⁶ California Department of Finance, http://www.dof.ca.gov/HTML/FS_DATA/stat-abs/sec_A.htm

⁴⁷ U.S. Library of Congress, American Memory, <http://memory.loc.gov/ammem/cbhtml/cbgeog.html>

⁴⁸ U.S. Library of Congress, American Memory, <http://memory.loc.gov/ammem/cbhtml/cbgeog.html>; Bureau of Land Management, http://www.blm.gov/pgdata/content/ca/en/prog/blm_special_areas/nm/ccnm.html

⁴⁹ U.S. Library of Congress, American Memory, <http://memory.loc.gov/ammem/cbhtml/cbgeog.html>

- (2) California is comprised of numerous mountain ranges and valleys, including the Coastal Ranges, home to the redwood forests and the San Andreas Fault; the Sierra Nevadas, stretching 430 miles from north to south in the eastern part of the state and home to both Mt. Whitney, the highest point in the contiguous United States, and Yosemite National Park; the Central Valley, where the San Joaquin and Sacramento rivers converge to create an extensive delta and fertile farmland; and the Los Angeles Ranges, one of the few ranges in the U.S. that run east to west, creating a natural demarcation between the northern and southern portions of the state.⁵⁰
- (3) California has three major regions of desert: the Great Basin, where Death Valley, the lowest point in the United States, is located; high desert, home to the Mojave Desert at 3,500 feet above sea level; and low desert, where the Colorado Desert and the Salton Sea are located.⁵¹
- (4) Notable lakes in California include Lake Tahoe, Mono Lake, and Owens Lake.⁵²
- (5) There are 58 counties in California.⁵³ Los Angeles County is the most populous, with almost 10,365,000 residents, while Alpine County, with about 1,200 residents, is the least populous.⁵⁴ San Bernardino County covers the greatest square mileage, while San Francisco County has the smallest physical footprint.⁵⁵
- (6) California has 480 cities.⁵⁶ Los Angeles, San Diego, San Jose, San Francisco, Long Beach, Fresno, Sacramento, Oakland, Santa Ana, and Anaheim are the ten most populous cities in the state.⁵⁷

Thus, to have an appreciation for “California’s diverse demographics and geography,” a commission member should understand that California’s populations consists of individuals who share certain demographic characteristics that may relate to their voting preferences. Those characteristics may include, but are not limited to, race, ethnicity, gender, and level of income. A commission member should also have an understanding that the people of California reside in many different localities having distinct geographic characteristics that may relate to the voting preferences of the residents. Those localities include, but are not limited to, areas that are urban,

⁵⁰ Learn California, <http://www.learncalifornia.org/doc.asp?ID=222>; San Jose State University, Geography Department, <http://www.sjsu.edu/depts/geography/resource/calgeog/index.html>; National Park Service, <http://www.nps.gov/state/ca/>

⁵¹ Learn California, <http://www.learncalifornia.org/doc.asp?ID=222>

⁵² Sierra College, Geography Department, http://geography.sierra.cc.ca.us/Booth/California/other/cal_features1.htm

⁵³ California State Association of Counties, <http://www.counties.org/default.asp?id=77>

⁵⁴ California State Association of Counties, <http://www.csac.counties.org/images/users/1/2008population.pdf>

⁵⁵ California State Association of Counties, <http://www.csac.counties.org/default.asp?id=398>

⁵⁶ League of California Cities, http://www.cacities.org/index.jsp?displaytype=§ion=allabout&zone=locc&sub_sec=allabout_cities

⁵⁷ League of California Cities, http://www.cacities.org/index.jsp?displaytype=§ion=allabout&zone=locc&sub_sec=allabout_cities

rural, industrial, agricultural, arid, and temperate. Further a commission member should recognize that California benefits by having meaningful participation in the electoral process by registered voters of all demographic characteristics and who reside in all geographic locations.

In identifying 60 of the most qualified applicants, the panel will need to look for experiences that demonstrate an applicant has an appreciation for California's diverse demographics and geography. An applicant may demonstrate this through a description of his or her appreciation for California's diverse demographics and geography in his or her application or during the course of an interview, and through occupational, academic, and life experiences that show this appreciation. Those experiences may include, but need not be limited to:

- (1) Working on a project of statewide or local concern that affected Californians of different backgrounds and from different areas, yet achieved a result that was acceptable to those Californians.
- (2) Studying voting behavior of Californians in various areas of the state for the purpose of improving the electoral process.
- (3) Traveling throughout the state and meeting with a broad range of individuals to build consensus on some issue of statewide concern.

As noted earlier in this memorandum, the commission must comply with the VRA when drawing district boundaries. Because the goal of the VRA is to ensure that all citizens have an opportunity to participate in the electoral process, regardless of ethnicity or race, an appreciation for California's diverse demographics and geography is essential to drawing district lines that comply with the VRA.

Proposed Regulation 60826. Relevant Analytical Skills

In this regulation, we propose to define "relevant analytical skills" in such a manner as to clarify the abilities one must have to effectively perform the duties of a commission member.

In the social sciences, the following abilities are identified as "analytical skills:"

- Approaching problems in a systematic and rigorous manner;
- Applying analytical and logical thinking to gathering and analyzing necessary information;
- Assessing and processing information efficiently;
- Differentiating between facts and assumptions;
- Formulating meaningful and relevant questions, probing for consistency and inconsistency and the validity of arguments;

- Identifying the causes and consequences of a complex problem while recognizing and discarding extraneous factors; and
- Developing criteria for evaluating alternatives, balancing competing arguments, and conflicting information.

Not all of these analytical skills are relevant to the work of a commission member. The commission members' central task is to redraw the lines through a mapping process.⁵⁸ As described in the background section of this memorandum, commission members will need to work with census data to redraw district lines. While in years past, maps were redrawn by hand, with today's technology, maps are drawn using sophisticated software. In fact, the Act requires the Legislature to provide the commission with access to redistricting data and software and to ensure that a complete and accurate database is available to the commission.⁵⁹ Using that data, the commission members will need to apply the criteria described in the background section when working with staff to redraw district boundaries. The regulation therefore focuses on analytical skills that will enable commission members to complete the work of redistricting.

In addition to having the skills necessary to participate effectively in the mapping process, a commission member must have the skills necessary to work cooperatively with other commission members and the public. The Act requires commission members to make decisions in a manner that ensures full public participation as described in the background section.⁶⁰ The commission members must solicit public input through an open hearing process before the maps are drawn,⁶¹ and coordinate with the Legislature in holding concurrent hearings.⁶²

The activities of the commission can be grouped into four key tasks, each of which requires specific analytical skills:

- (1) Gathering and comprehending information that bears upon redistricting;
- (2) Using the information the commission has gathered to make sound decisions about district boundaries;
- (3) Applying the appropriate legal standards to drawing district boundaries; and
- (4) Working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon.

⁵⁸ Cal. Const., art. XXI, § 2(g).

⁵⁹ Cal. Const., art. XXI, § 1(d); § 8253(b).

⁶⁰ § 8253(a)(7).

⁶¹ Ibid.

⁶² § 8252(f).

Gathering Information that Bears Upon Redistricting

As explained in the background section of the Act, a commission member must respect the geographic integrity of any city, county, or city and county, neighborhood, or community of interest in drawing district boundaries. While the Act does not require applicants to have preexisting knowledge of these subjects, applicants must be willing and able to collect, compare, and understand the relevant information. Further, the Act contemplates broad public participation in every phase of the commission's work, requiring the commission to hold public hearings and allow for full public consideration and comment on the drawing of the district lines. A commission member must also gather and analyze information from these public comments⁶³

Thus, to gather and comprehend information that bears on redistricting, commission members should be able to:

- (1) Read and understand dense and technical written materials, including maps and complicated statistical information.
- (2) Participate effectively in public hearings by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.

Using the information the commission has gathered to make sound decisions about district boundaries.

Commission members must evaluate the validity and significance of information the commission has gathered to make sound decisions about the appropriate placement of communities in districts. Subject to the criteria described in the background section of this memorandum, the commission members must draw maps for districts that are roughly equal in population, contiguous, compact and that keep communities of interest together. Commission members will have to sort through complex census data and demographic information. The Act contemplates that the commission members will use redistricting software and data in the redistricting process, and that they will arrive at bipartisan, politically independent decisions.⁶⁴

To do so commission members should possess the following skills:

- (1) Basic mathematical skills;
- (2) Familiarity with using computers and sophisticated software;
- (3) The ability to assess the credibility of information, distinguish between facts and assumptions or opinions; distinguish relevant facts from irrelevant facts, and assess the relative strength of competing arguments; and

⁶³ Cal. Const., art. XXI, § 2 (b)(1). Also see § 8253(a)(7).

⁶⁴ Cal. Const., art XXI, § 1(d), § 2 (c)(5). Also see § 8252(g) & § 8253(b).

- (4) The ability to resolve complex problems, particularly those involving factual ambiguities.

Applying the Appropriate Legal Standards to Drawing District Boundaries

Redistricting involves many complicated legal issues. As discussed earlier, the VRA codifies and effectuates the United States Constitution's 15th Amendment guarantee that, throughout the nation, no person shall be denied the right to vote on account of race or color. Thus, the VRA must be considered in any redistricting discussion.

Section 5 of the federal Voting Rights Act requires some states to obtain federal preclearance for changes in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."⁶⁵ A jurisdiction is required to obtain preclearance if the federal Department of Justice (the "DOJ") has determined the jurisdiction employed a "test or device" as a qualification to register to vote on November 1, 1964, November 1, 1968, or November 1, 1972.⁶⁶ California has four jurisdictions that require preclearance: Kings County; Merced County; Monterey County; and Yuba County.⁶⁷ Among other things, the DOJ lists redistricting as a change that requires preclearance.⁶⁸ Those states and localities required to obtain preclearance must either obtain a declaratory judgment from the United States District Court for the District of Columbia approving the change or have the change approved by the DOJ through an administrative procedure.⁶⁹

The commission must comply with the VRA's requirements when drawing maps.⁷⁰ In drawing the maps, the Act requires that districts be "reasonably equal" in population except as otherwise required by the VRA or allowable by law.⁷¹ While section 5 preclearance is a specific requirement for certain states and jurisdictions, section 2 of the VRA applies to all states.⁷² The VRA prohibits "voting qualification[s] or prerequisite[s] to voting or standard[s], practice[s], or procedure[s] . . . which result in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or status as a member of a language minority group]."⁷³ A section 2 violation occurs if:

[B]ased on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial or language minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.⁷⁴

⁶⁵ 42 U.S.C. § 1973c (a)

⁶⁶ 42 U.S.C. § 1973c (a), § 1973b (a)-(c).

⁶⁷ 28 C.F.R. Part 51-4, Appendix.

⁶⁸ 28 C.F.R. § 51.13.

⁶⁹ 42 U.S.C. § 1973c (a); 28 C.F.R. § 51.10; *See generally* 28 C.F.R. Part 51.

⁷⁰ Cal. Const., art. XXI, § 2(d)(2).

⁷¹ Cal. Const., art. § 2(d)(1).

⁷² 42 U.S.C. § 1973c (a).

⁷³ 42 U.S.C. § 1973.

⁷⁴ 42 U.S.C. § 1973(b).

Because districts precleared by the DOJ under section 5 are still subject to the requirements of section 2,⁷⁵ the commissioners will need to be mindful of the impact of both those sections on how they make redistricting decisions.

In addition to understanding the requirements of the VRA, there are also various federal and state constitutional principles that the commissioners will need to take into account, including the criteria for drawing the lines, as described in the background. Further, the commission will be responsible for implementing the various statutory responsibilities placed on it by the Act.

Thus, in applying the appropriate legal standards for drawing district boundaries, commission members should be able to:

- (1) Understand the legal principles that govern redistricting as communicated through written materials and legal counsel's advice.
- (2) Appreciate the importance of applying proper legal standards to redistricting decisions.

Working Effectively as a Member of a Group to Make Redistricting Decisions that are Factually and Legally Defensible and that the Commission Can Agree Upon

The ability to facilitate collaborative decision-making is also relevant, because the commission must be able to analyze problems and reach well considered and broadly supported decisions. Final maps may only be approved if at least nine commission members – including three who are registered with the State's largest political party, three who are registered with the second largest political party and three commission members who are not registered with either of those two parties – agree. Also, because the Act subjects the commission to the Bagley-Keene Open Meeting Act, its deliberations will be public. Finally, the Act requires the commission to support the approved final three maps with a written report. Working effectively as a member of a group to make redistricting decisions that are factually and legally defensible and that the commission can agree upon is critical to the commission's success. Thus, commission members should have the following abilities:

- (1) Effective communication skills including basic writing skills and strong oral communication skills.
- (2) The ability to reason and negotiate effectively with other commission members to build consensus on proposed decisions.

Demonstrating the Possession of Relevant Analytical Skills

The regulations also consider ways in which applicants can demonstrate that they have the relevant analytical skills. The Act does not require individuals to possess specific knowledge or

⁷⁵ Redistricting Law (2010 (Draft) Nat'l Conference of State Legs. 109 (Dec. 2008), http://www.senate.mn/departments/scr/redist/Red2010/Redistricting_Law_2010.pdf.

experience. However, prior experience may demonstrate that a candidate possesses the relevant analytical skills. Thus, an applicant to serve on the commission may demonstrate that he or she possesses relevant analytical skills by describing those skills in his or her application or during the course of an interview, and through occupational, academic, and life experiences that involved the use of those skills. Such experiences may include, but need not be limited to:

- (1) Compiling information from many sources, including statistical reports, expert opinions, and comments by members of the public, in order to develop an understanding of an issue.
- (2) Assessing the value of information received from various sources to determine how much weight should be given to certain information versus other information when making a decision.
- (3) Using expert advice, particularly legal advice, to make a decision.
- (4) Participating in group decision-making as a member of a group whose mission was to produce a report, plan, or other work product addressing an issue.

Proposed Regulation 60848. Phase II Application Review

As described in greater detail in the Memorandum to the State Auditor, dated July 31, 2009, regarding the application process (Memorandum Number 7), the application process is divided into five phases. During two of the phases, Phase II and Phase III, the panel will evaluate applicants, and based on that evaluation, reduce the pool of applicants to a smaller pool of most qualified applicants who will be allowed to participate in the next phase of the process. During Phase II, the panel is to evaluate all of the applicants in the initial applicant pool, consisting of all applicants certifying that they satisfy the eligibility requirements for serving on the commission and do not have a conflict of interest. Based on that evaluation the panel is to reduce the applicant pool to not more than 120 of the most qualified applicants who will be invited to participate in the next phase of the process.

This regulation incorporates the evaluation of applicants' qualifications into the panel's evaluation of the applicants during Phase II. It provides that in reducing the applicant pool to not more than 120 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

Proposed Regulation 60850. Phase III Applicant Review

During Phase III of the application process, the panel is to interview the applicants who remain in the applicant pool, perform a further evaluation of the applicants, and based on that evaluation reduce the applicant pool to 60 of the most qualified applicants. This regulation incorporates the evaluation of applicants' qualifications into the panel's evaluation of the applicants during Phase III. It provides that in reducing the applicant pool to 60 of the most qualified applicants, the

panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

Conclusion

Through the proposed regulations discussed in this memorandum, we attempt to convert the qualifications stated in the Act to specific criteria that may be used by the panel to select the members of the commission. We are also incorporating the evaluation of applicants' qualifications into the application process so that it fits with other regulations implementing the application process. The result, we believe, is a clearer and more smoothly functioning application process that is consistent with the intent of the voters in approving the Act.

California Bureau of State Audits
MEMORANDUM NUMBER 5

To: Elaine M. Howle, State Auditor

From: Sharon Reilly, Chief Counsel
Steven Benito Russo, Senior Staff Counsel

Subject: Proposed Regulations 60814, 60848, and 60805: Diversity

Date: July 31, 2009

Introduction

In providing for the creation of the Citizens Redistricting Commission (the “commission”) to redraw the boundaries of California’s legislative and Board of Equalization districts, the Voters FIRST Act (the “Act”) ¹ declares that the process for selecting the members of the commission “is designed to produce a Citizens Redistricting Commission that is independent from legislative influence and reasonably representative of the state’s diversity.”² While this may be a fundamental purpose of the Act, the Act is silent as to how diversity will be achieved through the selection process. Moreover, while the Act mentions diversity in the constitutional provision just quoted, and in another statutory provision of the Act that lists diversity as including certain elements,³ the Act does not include a comprehensive definition for what diversity means for the purpose of selecting the members of the commission.

Accordingly, it falls to the Bureau of State Audits (the “bureau”) as part of its responsibility to initiate an application process for the selection of commission members, and through its authority to adopt regulations, to provide clarity to the term “diversity” and to specify the means by which diversity is to be promoted during the process for selecting commission members. The purpose of this memorandum is to discuss the issue of diversity as it relates to the selection of commission members and to explain the regulations that the bureau is proposing to both define diversity and include a consideration of diversity in the selection process.

Background

At the heart of the process for selecting the members of the commission is the work of the Applicant Review Panel (the “panel”), whose job is to review the applications submitted by members of the public wishing to serve on the commission and reduce the pool of applicants from an initial applicant pool, consisting of all applicants who satisfy the basic eligibility requirements for serving on the commission, to a pool of 60 of the most qualified applicants from which the members of the commission will be chosen. After the panel identifies the pool of

¹ The Voters FIRST Act is contained in Article XXI of the California Constitution and sections 8251 through 8253.6 of the Government Code. All statutory references are to the Government Code.

² Cal. Const. Art. XXI, § (2)(c)(1).

³ § 8252(g).

60 of the most qualified applicants, the panel is required to send a list of the names of the 60 applicants to specified leaders in the Legislature who may strike the names of up to 24 applicants. The legislative leaders are then required to return the remaining names to the State Auditor, who randomly draws from the remaining names the names of eight applicants who become the first eight members of the commission. Those eight commission members then select an additional six applicants to serve on the commission from those remaining in the pool of 60 of the most qualified applicants created by the panel.⁴

The Act requires the panel to select the pool of 60 of the most qualified applicants based on the extent to which they possess the following qualifications:

- Ability to be impartial;
- Appreciation for California's diverse demographics and geography; and
- Relevant analytical skills.⁵

Absent from the above stated selection criteria is any mention of using diversity as a basis for selecting the pool of 60 of the most qualified applicants. However, there are two important indications that the Act contemplates that the diversity of the pool will be taken into consideration by the panel in selecting the members of the pool. The first indicator is the constitutional provision, cited in the introduction to this memorandum, that declares the selection of a commission that "is reasonably representative of the state's diversity" is a fundamental purpose of the Act. The other indicator is found in section 8252, subdivision (g), which describes the manner in which the first eight members of the commission will select the other six members from the pool of 60 of the most qualified applicants assembled by the panel. Subdivision (g) states that the six members "shall be chosen to ensure the commission reflects this State's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity." The only way applicants can be chosen from the pool of 60 to ensure the commission reflects California's diversity is if that pool is a diverse pool. So the panel has some duty, in addition to selecting applicants for the pool based on their qualifications, to select applicants with an eye toward assembling a pool whose membership is diverse.

Finally, the need to have a commission that reflects California's diversity was emphasized at the interested persons meetings we held throughout the state earlier this year, and in the written public comments we have received.

Upon concluding that the panel must consider diversity in selecting the pool of 60 most qualified applicants, two issues come forward: (1) what kind of diversity should the panel seek to achieve in the composition of the pool and (2) how may the panel use diversity as a basis for selecting the members of the pool within the confines of the law?

Regarding the kind of diversity the panel should seek to achieve in the pool of 60, section 8252, subdivision (g) lists certain characteristics of diversity that must be included, but suggests that diversity may include other characteristics as well. Under that subdivision, the diversity the panel shall seek must include racial, ethnic, geographic, and gender diversity. Of course,

⁴ § 8252(d) – (f).

⁵ § 8252(d).

diversity may include any of a host of other characteristics, including, age, income level, education level, sexual orientation, religion, disabilities, and so on. In selecting any other characteristic of diversity to be considered by the panel, in addition to the characteristics listed in subdivision (g), two factors should be kept in mind. 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 how the panel may use diversity as a basis for selecting the members of the pool of 60 most qualified applicants, care must be taken to avoid running afoul of the constitutional prohibitions against racial, ethnic, and gender discrimination. Without question, the panel cannot reserve a particular number of positions in the pool for applicants belonging to a specific racial or ethnic group, as the United States Supreme Court has declared this to be “a form of racial balancing” that the Court described as “patently unconstitutional.”⁶ The Act itself recognizes this limitation in discussing how the first eight commissioners are to choose the other six with a goal of ensuring the commission reflects California’s diversity. In section 8252, subdivision (g), the Act declares that in selecting applicants to ensure diversity “it is not intended that formulas or specific ratios be applied for this purpose.” However, while racial and ethnic quotas would not be permissible, the United States Supreme Court has supported the use of diversity as one factor among others in determining who to appoint to a public position in to ensure that public institutions are open and available to all segments of American society, including people of all races and ethnicities.⁷

With the above considerations in mind, we are proposing the following three regulations to define the diversity that the panel shall seek to obtain as it pares down the pool of applicants wishing to serve on the commission to a pool of 60 of the most qualified applicants, and to incorporate into the panel’s selection process the manner in which it will consider diversity in arriving at that pool of 60.

Proposed Regulations

Proposed Regulation 60814. Diversity

In this regulation, we have defined diversity as the variety in the racial, ethnic, geographic, economic, and gender characteristics of the population of California. This definition largely just

⁶ *Grutter v. Bollinger* (2003) 539 U.S. 306, 333.

⁷ *Id* at pp. 333-343.

incorporates the list of characteristics included in Government Code section 8252, subdivision (g). However, it adds the characteristic of economic diversity. Economic diversity was added based on comments that we received during the interested persons meetings that we held earlier this year. Many members of the public expressed concern about the membership of the commission being dominated by persons in professional occupations with higher levels of income, such that the commission would not be representative of most Californians. Moreover, economic status bears upon redistricting, in that the economic status of the residents of an area is a factor that may be considered in determining whether the residents of the area constitute a community of interest that needs to be reflected in the area's redistricting. We therefore included economic diversity as a factor for the panel to consider in assessing diversity.

We look forward to additional comments from the public on the issue of how diversity should be defined, as we evaluate whether the definition should be expanded or contracted in any way.

Proposed Regulation 60848. Phase II Application Review

As described in greater detail in the bureau's separate memorandum regarding the application process, the application process is divided into five phases. During two of the phases, Phase II and Phase III, the panel will evaluate applicants, and based on that evaluation, reduce the pool of applicants to a smaller pool of most qualified applicants who will be allowed to participate in the next phase of the process. During Phase II, the panel must evaluate all of the applicants in the initial applicant pool, consisting of all applicants certifying that they satisfy the eligibility requirements for serving on the commission and who do not have a conflict of interest. Based on that evaluation, the panel must reduce the applicant pool to not more than 120 of the most qualified applicants who will be invited to participate in the next phase of the process.

Subdivision (f) of this regulation incorporates diversity as a consideration for the panel in determining which applicants shall remain in the pool of 120 applicants who will be invited to participate in the next phase of the application process. Obviously, if the pool of 120 applicants is not diverse, the smaller pool of 60 applicants selected from this pool cannot be diverse. The way that the regulation is crafted, the panel is to consider diversity in conjunction with qualifications when determining who belongs in the pool of 120. The regulation goes on to reinforce, however, that formulas or specific ratios may not be used to identify which applicants shall be included in the 120 member pool.

Proposed Regulation 60850. Phase III Application Review

During Phase III of the application process, the panel must interview the applicants who remain in the applicant pool, perform a further evaluation of the applicants, and based on that evaluation reduce the applicant pool to 60 of the most qualified applicants. Subdivision (e) of this regulation incorporates diversity as a consideration for the panel in determining which applicants will be identified as 60 of the most qualified applicants. So the panel is to consider diversity in conjunction with qualifications when determining who belongs in the pool of 60. The regulation goes on to reinforce, however, that formulas or specific ratios may not be used to identify which applicants shall be included in the 60 member pool.

Conclusion

Through the proposed regulations discussed in this memorandum, we are furthering the intent of the Act that the process for selecting the members of the commission is designed to be reasonably representative of California's diversity. Although questions of diversity and how to achieve it can sometimes be contentious, we believe that we have fairly blended together the intent of the voters, the comments that we received from the public, and the constitutional requirements that govern the issue.

California Bureau of State Audits
MEMORANDUM NUMBER 6

To: Elaine M. Howle, California State Auditor

From: Janis Burnett, Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60842(a), 60843(a) and 60847(a): Electronic Applications

Date: July 31, 2009

Introduction

The Voters FIRST Act (the “Act”)¹ requires the State Auditor to implement an application process to select members of the Citizens Redistricting Commission (the “commission”) that will redraw the boundaries of California’s legislative and Board of Equalization districts based on decennial census information. Under express terms of the Act, the application process must be open to all registered California voters in a manner that promotes a diverse and qualified applicant pool.” The Act requires the State Auditor to initiate the application process by January 1, 2010 (and each year thereafter ending in zero), establish the Applicant Review Panel (the “panel”) that will evaluate the applications to identify a pool of 60 of the most qualified applicants, submit the names of the those 60 applicants to specified legislative leaders who may strike up to 24 of the names, and conclude the application process no later than November 20, 2010 (and each year thereafter ending in zero), by randomly drawing the names of the first eight members of the commission from those that remain in the pool of 60.

As part of implementing the application process, the State Auditor must make a number of decisions about the details of the process that are not addressed in the Act. Some of the more important details are the design of the application materials and the format of those materials. A particularly significant detail, and the one that is the subject of this memorandum, is the extent to which the application materials will be available and transmitted in an electronic format rather than a paper format. For the reasons set forth in this memorandum, including the overall efficiency of the application process, we believe that, except where the law requires otherwise,² all application materials should be produced and transmitted in an electronic format. Consistent with that view, we are proposing regulations that specify the application materials shall be produced and transmitted in an electronic format.

¹ The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

² As discussed later in this memorandum, we recognize that in some individual cases, the reasonable accommodation requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) may require some limited use of paper applications.

Background

The Act provides that any registered voter who has voted in at least two out of the last three statewide general elections, has been registered for the preceding five years with the same political party or unaffiliated with any political party, and does not have a conflict of interest as described in the Act is eligible to be a commission member. In an attempt to anticipate how many applications the bureau may receive, bureau staff consulted with Professor of Statistics, Geetha Ramachandran, PhD, California State University, Sacramento. As this is a new process without prior data points to rely on, Dr. Ramachandran opined that the bureau could receive as few as one application and as many as seventeen million applications. Seventeen million is the approximate number of registered voters in the state.³

The Act, as mentioned earlier, also requires the State Auditor to initiate an application process that “promotes a diverse and qualified applicant pool.” We believe this provision requires the State Auditor to undertake outreach efforts to encourage members of the public to submit applications, and the public comments that we received during the bureau’s interested persons meetings held earlier this year support that view. These outreach efforts will be designed to create a more diverse and qualified applicant pool by increasing awareness of the application process. We hope and believe that these efforts will lead to a large number of applicants for the panel to consider.

In addition, for the State Auditor’s staff at the Bureau of State Audits (the “bureau”) and for the panel to properly evaluate the eligibility and qualifications of the applicants, the application materials will have to obtain a considerable amount of information from each applicant. An applicant will need to show that he or she satisfies the voting requirements for serving as a commission member and is free from any disqualifying conflict of interest. Further, to aid the panel in its selection of applicants, an applicant will need to submit information related to the applicant’s qualifications, including specific information regarding his or her relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography. Applicants will also be required to submit additional materials in support of their applications, including letters of recommendation, for the panel’s review.

Moreover, as the application process is intended to be as transparent and open to the public as possible, we plan to post the application materials received from each applicant on a dedicated website, and to allow the public to submit written comments about each applicant’s application. This will require bureau staff to devote significant effort to ensuring that materials are promptly and properly posted.

The Act establishes several statutory deadlines that the State Auditor, the panel and the commission must meet to perform their duties. More specifically, section 8252, subdivision (c) requires the State Auditor to publicize the names of applicants who do not have conflicts by August 1, 2010 and each year thereafter ending in zero. Section 8252, subdivision (e) requires the panel to submit the 60 names to legislative leaders not later

³ <http://www.sos.ca.gov/admin/press-releases/2008/DB08-104.pdf>.

than October 1, 2010, and each year ending in the number zero thereafter. The legislative leaders must exercise their strike no later than November 15, 2010, and each year ending in zero thereafter.⁴ Section 8252, subdivision (d) requires the State Auditor to randomly draw 8 names from the names returned from legislative leadership not later than November 20, 2010, and each year ending in the number zero thereafter. These deadlines are essential to ensuring that the commission is up and running in time for the United States Census data that the commission will use for redistricting. Census data should be available no later than April of the year following the year the census is conducted, so for the 2010 United States Census, data should be available in April of 2011. Under California Constitution, Article XXI section 2, subdivision (g), the commission must approve three final maps that separately set forth the district boundaries for the Senate, Assembly, and Board of Equalization no later than September 15, 2011, and in each year ending in the number one thereafter. Thus, in crafting the proposed regulations relating to the application review and selection process we were mindful that we needed a process that assists meeting those deadlines.

Thus, for the application process to be completed by the statutory deadline, once the application process begins, it must proceed at a rather rapid pace, with the applicants and bureau staff having very limited amounts of time to do what they must do as the process moves along. Specifically, as explained in the Memorandum to the State Auditor date July 31, 2009, relating to the application process (Memorandum Number 7), applicants will be required to submit application materials, including an initial application, a supplemental application, supporting materials, and letters of recommendation within rigid deadlines. Bureau staff will have to make initial application forms available to potential applicants, screen the initial applications that have been submitted, post the applications on the bureau's website, invite eligible applicants to submit supplemental application forms and supporting materials, make the supplemental application forms available to applicants, post the supplemental application materials on the bureau's website, collect written comments from the public about the applicants, afford the applicants an opportunity to provide written responses to the public comments, post the comments and responses on the bureau's website, and deliver the application materials to the panel members, all within a period of approximately 120 days, so that the panel will have adequate time to review the applications.

Taking into account all of the considerations discussed above, we face the significant likelihood of having to process a large number of applications, containing a large amount of information, within a short amount of time. To do that, and still perform its other duties of conducting audits and investigations, we need to utilize the most efficient methods at its disposal for receiving and processing the application materials it receives. Thus we recommend crafting the application process so that it requires application materials to be completed and transmitted electronically because that will allow the us to achieve that efficiency for the reasons stated below.

⁴ § 8252(e).

Electronic Applications Promote Efficiency

By creating application forms in an electronic format, posting the forms on the bureau's website, and setting up the forms so that they are to be completed and submitted through the bureau's website, voters will be able to apply to serve on the commission as soon as the forms are available, 24 hours per day, seven days per week, throughout the application periods. No time is lost while applicants wait to receive forms by mail or the bureau waits to receive the completed forms and other materials from the applicants. In addition, due to the instantaneous speed of electronic communication, this should avoid many of the disputes that can arise regarding whether an application has been submitted by a particular deadline.

Applications in an electronic format are much easier to organize, store, and otherwise process than applications in a paper format. They therefore require much less handling by bureau staff members, and the information on the applications may be transferred to databases and organized with far less of an expenditure of staff time and much less of a likelihood that information will be lost or garbled through human error associated with transferring information.

Having the applications in an electronic format will also be a tremendous boost to the ability of bureau staff to promptly post application materials on the bureau's website. Application materials in a paper format would have to be transferred to an electronic format to be posted, taking up significant staff resources, and inevitably delaying the posting of the materials. With the materials existing in an electronic format when they are received, that problem is eliminated.

Additional Considerations

We considered whether requiring applicants to submit an electronic application would exclude potential applicants from the application process. As part of our consideration of that issue, we contacted Stacey Aldrich, Acting State Librarian, to assess the availability of computers for use by applicants at local libraries. The information she provided indicated that every local library provides public access to computers. Potential applicants who do not have a computer at home would therefore be able to submit application materials at a library. To inform potential applicants about this option, we would publicize information about public access to computers during the application periods. Given the availability of public access computers in every local community, we believe that requiring an electronic application would not present access issues for able-bodied applicants.

In addition, we consulted with a redistricting expert, Dr. Timothy A. Hodson, Ph.D, Executive Director of the California State University Center for California Studies, regarding the analytical skills required for redistricting. The redistricting expert highlighted the importance of computers to the redistricting process and identified the ability to work with sophisticated software as a relevant analytical skill for redistricting. We also noted that the Act contains a specific requirement that the Legislature "take all

steps necessary to ensure that a complete and accurate computerized database is available for redistricting and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing [district] maps.”⁵ Based on the opinions of the redistricting expert and the language of the Act, we believe that a certain level of comfort with computers and computer software is essential to serving as an effective commissioner, so requiring the use of a computer to submit application materials is not likely to exclude from the application process any viable candidates for the commission.

Finally, bureau staff considered the environmental consequences of a paper application process and reviewed information regarding the State’s policies on the use of paper.⁶ The California Integrated Waste Management Board’s website offers many suggestions about how to reduce the use of paper.⁷ Among those suggestions is reducing the use of paper by using electronic communications.⁸ After considering the environmental concerns, in addition to the other concerns and considerations discussed above, we determined that requiring electronic applications is the best approach to addressing the issues raised in this memorandum.

Reasonable Accommodation

We recognize that reasonable accommodations may be required under the Americans with Disabilities Act of 1990 (“the ADA”)⁹ for applicants who, because of a disability, are unable to complete and submit an application online. The bureau will therefore respond to requests for paper applications as a reasonable accommodation of a disability on a case-by-case basis.

Proposed Regulations

To implement our recommendation that application materials must be submitted in an electronic format, we are proposing the following regulations:

Proposed Regulation 60842. General Requirements Applicable to Every Phase of the Application Process

This regulation sets forth requirements that are common throughout the different phases of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all applications must be submitted in the electronic format prescribed by the bureau.

⁵ § 8253(b).

⁶ <http://www.ciwmb.ca.gov/WPIE/Paper/default.htm>

⁷ <http://www.ciwmb.ca.gov/BizWaste/OfficePaper/QuickTip.htm>

⁸ Id.

⁹ 42 U.S.C. §§ 12101, et. seq.

Proposed Regulation 60843. Phase I Application

This regulation provides guidance regarding the content of and process for submitting the application that is to be submitted during Phase I of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all applications submitted during Phase I of the application process must be submitted in the electronic format prescribed by the bureau. However, the regulation allows a limited exception for the submission of letters of recommendation, as the format of such letters may be beyond an applicant's control.

Proposed Regulation 60847. Phase II Application

Similar to the preceding regulation, this regulation provides guidance regarding the content of and process for submitting the supplemental application that is to be submitted during Phase II of the application process. Subdivision (a) of the regulation establishes that in the absence of circumstances requiring a reasonable accommodation under the ADA, all supplemental applications and supporting materials submitted during Phase II of the application process must be submitted in the electronic format prescribed by the bureau. However, the regulation allows a limited exception for the submission of letters of recommendation, as the format of such letters may be beyond an applicant's control.

Conclusion

Given the large number of applications we may receive, the amount of information that must be included in the applications, and the limited time that we have to process the applications, requiring the submission of application materials in an electronic format is necessary to the successful functioning of the application process and is consistent with the intent of the Act.

California Bureau of State Audits
MEMORANDUM NUMBER 7

To: Elaine M. Howle, California State Auditor

From: Stephanie Ramirez Ridgeway, Senior Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60840, 60841, 60842, 60843, 60844, 60845, 60846, 60847, 60848, 60849, 60850, 60851, 60852, 60853, 60854 and 60855: The Application Process

Date: July 31, 2009

Introduction

The Voters FIRST Act, approved by the voters at the November 4, 2008 general election as Proposition 11 (the Act), requires the State Auditor to create the Citizens Redistricting Commission (the “commission”). The commission, composed of fourteen citizens, is responsible for redrawing district lines for the California Senate, Assembly, and State Board of Equalization. The Act, which added Article XXI, section 2 to the California Constitution, and sections 8251 through 8253.6 to the Government Code,¹ requires the State Auditor to initiate an application process and create the Applicant Review Panel (the “panel”) to review the qualifications of applicants who apply to serve on the commission. The State Auditor forms the panel by randomly drawing names from a pool of qualified independent auditors who are licensed by the board of accountancy and who have 10 or more years of experience working as an independent auditor. Government Code section 8252 places certain responsibilities on the Bureau of State Audits (the “bureau”) and the panel with regard to the application review and selection process. However, the Act provides little guidance on how the application review and selection process should work. Thus, these proposed regulations establish the parameters for the application review and selection process.

Background

Under California Constitution, Article XXI, section 2, subdivision (c)(3) and section 8252, subdivision (a)(2), registered voters who possess the following qualifications are eligible to apply to serve as a commissioner:

- Have voted in two out of the last three elections.
- Have not changed party affiliation in the past five years.
- Do not have a conflict-of-interest.

Section 8252 requires the bureau to establish an application and selection process, but provides little guidance on how that should function. As part of the selection process, section 8252, subdivision (d) requires the panel to narrow the pool of applicants to 60 of the most qualified

¹ All statutory references are to the Government Code.

applicants, with 20 belonging to the state's largest political party, 20 belonging to the state's second largest political party, and 20 belonging to neither of those parties. Subdivision (d) directs that "[t]hese subpools shall be created on the basis of relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography."² In addition, the Act addresses diversity of the commission twice, with little guidance as to how the panel should consider diversity in making its selections. California Constitution, Article XXI, section 2, subdivision (c) states "[t]he selection process is designed to produce a Citizens Redistricting Commission that is ... reasonably representative of the state's diversity."³ We more fully address diversity in the Memorandum to the State Auditor dated July 31, 2009, regarding diversity (Memorandum Number 5).

Once the panel narrows the applicant pool to 60, section 8252, subdivision (e) requires the panel to send the names of the 60 applicants to legislative leaders, as defined in proposed regulation 60817, who may strike no more than 8 names from each of the three subpools. The remaining 36 names are then returned to the State Auditor, who randomly selects 3 applicants who are registered with the largest political party, 3 applicants who are registered with the second largest political party, and 2 applicants from the subpool of applicants who are not registered with either of the two largest parties.

The Act provides very little guidance about what the application should include and what the application process itself should entail. Moreover, while section 8253.6, subdivision (a) contemplates broad outreach, and California Constitution, Article XXI, section (2), subdivision (c) anticipates a commission that is reasonably representative of the state's diversity, the Act provides no guidance on how outreach should occur.

Thus, the proposed regulations provide detailed information about how individuals may apply to serve on the commission and how the commissioners will ultimately be selected. The proposed regulations also provide an outreach plan. The proposed regulations further provide detailed information to the bureau and the panel about the various steps that must be followed in processing the applications. Very generally, we have determined that the process should include the following:

- Developing the applications and making them available to applicants.
- Conducting comprehensive outreach so that voters are aware of the opportunity to serve on the commission and that the applicant pool may be reasonably representative of the state's diversity.
- Establishing application timelines and the processes for reviewing the applications and interviewing applicants.
- Screening applicants to ascertain whether they meet the eligibility requirements of the Act.
- Creating an initial applicant pool.

² These qualifications are fully discussed in the Memorandum to the State Auditor, dated July 31, 2009, regarding identifying the most qualified applicants (Memorandum Number 4).

³ Cal. Const., Article XXI, § 2.

- Narrowing the applicant pool on the basis of relevant analytical skills, an appreciation for the state's diverse demographics and geography, and the ability to be impartial.
- Transmitting the names of 60 of the most qualified applicants to the legislative leadership, who may strike up to 24 names.
- After legislative leadership has exercised their strikes, randomly selecting eight commissioners (3 from the largest political party, 3 from the second largest political party, and 2 who are not affiliated with either party) from those remaining in the pool of 60 most qualified applicants.

Once the State Auditor randomly draws the first eight commissioners, section 8252, subdivision (g) requires the newly selected commissioners to select the final six commissioners.

In crafting the proposed application process, we were mindful of the Act's overarching theme of transparency and openness. More specifically, section 2, subdivisions (c) and (d) of the Act, which sets forth the Act's findings and purposes, provides that "[t]his reform will make the redistricting process open so it cannot be controlled by the party in power" and "[e]very aspect of this process will be open to scrutiny by the public and the press." In addition, California Constitution Article XXI, section 2, subdivision (b)(1) requires the commission to "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines." Finally, section 8252, subdivision (c) requires the State Auditor, after removing applicants who have a conflict of interest, to publicize the names of the applicants that are entered into the initial applicant pool. Thus, the proposed regulations carry the theme of openness and transparency throughout the application process.

The proposed regulations also take into account the possibility of a very large applicant pool. As explained more fully in the Memorandum to the State Auditor, dated July 31, 2009, relating to electronic applications (Memorandum Number 6), our statistical expert has advised us that the potential applicant pool ranges into the millions. While we think it is unlikely that we would receive applications into the millions, we believe that the initial applicant pool may number into the thousands. Unfortunately, without any prior experience with this process, we cannot reasonably predict the size of the applicant pool.

Finally, the Act establishes several statutory deadlines that the State Auditor, the panel, and the commission must meet to perform their duties. More specifically, section 8252, subdivision (c) requires the State Auditor to publicize the names of applicants who do not have conflicts by August 1, 2010 and in each year ending in zero thereafter. Section 8252, subdivision (e) requires the panel to submit the names of those that they have identified as 60 of the most qualified applicants to the Legislature not later than October 1, 2010, and each year ending in the number zero thereafter. The legislative leaders must exercise their strikes no later than November 15, 2010, and each year ending in zero thereafter. Section 8252, subdivision (f) requires the State Auditor to randomly draw 8 names from the pools of names returned from legislative leadership not later than November 20, 2010, and each year ending in the number zero thereafter. These deadlines are essential to ensuring that the commission is established in time to receive the decennial United States Census data that the commission will use for redistricting. That data should be available no later than April of 2011, and in each year ending in eleven thereafter. Under California Constitution, Article XXI, section 2, subdivision (g), the commission must approve three final maps that separately set forth the district boundaries for the Senate,

Assembly, and State Board of Equalization not later than September 15, 2011, and each year ending in the number eleven thereafter. Thus, in crafting the proposed regulations relating to the application process we were mindful that these deadlines place practical limitations on the process.

Proposed Regulations.

Proposed Section 60840. Outreach Program

This proposed regulation specifies the outreach program the bureau must undertake prior to and during the initial application period. Section 8253.6 requires the Legislature to appropriate sufficient funds to meet the estimated expenses of the bureau, the commission and the Secretary of State in implementing the Act, including, but not limited to “adequate funding for a statewide outreach program to solicit broad public participation in the redistricting process.” The Act, however, does not set forth what constitutes “a statewide outreach program to solicit broad public participation.”

As part of its regulatory process, in early 2009, the bureau conducted interested persons meetings throughout the state. At each of several meetings, and in other public comments received by the bureau, the public encouraged the bureau to undertake an outreach program designed to reach as broad an applicant base as possible. Moreover, as discussed in the background section, the Act aims for the creation of a commission that is reasonably representative of the state’s diversity. Thus, we recognize that the bureau’s outreach efforts, in addition to reaching individuals who are qualified to serve on the commission, must also be directed toward creating a pool of qualified applicants that is reasonably representative of the state’s diversity. Accordingly, we recommend that the bureau, subject to the availability of funding, undertake an outreach program that will reach qualified applicants of diverse backgrounds.

Because the Act is silent as to what constitutes a sufficient outreach program, and because there exists keen public interest in the bureau’s outreach plans, we propose this regulation to inform the public about the outreach efforts the bureau intends to undertake to gather a diverse pool of qualified applicants.

Proposed Section 60841. Overview of the Application Process

As indicated earlier, the Act requires an application and selection process but provides few specifics about how that process should work and provides no guidance about how to conduct it. During the bureau’s interested persons meetings and in other public communications received by bureau, the public offered suggestions relating to various aspects of the application process including, but not limited to, the type of application the bureau should use, the timelines relating to the application period, the process for selecting the most qualified applicants, the need to interview applicants, and the need for the public to watch the panel conduct its interviews and deliberations. In crafting these regulations, we carefully considered the public’s input.

We are proposing regulations to establish the application process, including the framework for obtaining applications, and the method the panel will use to select the most qualified applicants from which the commissioners will be chosen. To organize the application process, we are

proposing that it be structured as a five-phase process. Each phase of the application process is described below.

This proposed regulation provides an overview of the different phases of the application process. It also provides the public, the bureau, and the panel with a general understanding of the application process that we are recommending.

Proposed Section 60842. General Requirements Applicable to Every Phase of the Application Process.

As discussed earlier, the Act provides very little guidance regarding the actual application process. In designing the application process, we determined that some requirements would apply to each phase of the application process. We propose to address them in one regulation.

Unless an applicant has a disability that prevents the applicant from completing an electronic application, the proposed regulations require submission of electronic applications. We make this proposal based on the many practical concerns related to the potentially large size of the applicant pool and the statutory deadlines explained in the background section. The reasoning behind this recommendation is set forth in the Memorandum to the State Auditor, dated July 31, 2009, relating to electronic applications (Memorandum Number 6).

In addition to requiring electronic submissions for everything except letters of recommendation, this regulation proposes requirements necessary to successfully implement the application process within the Act's statutory deadlines. We are proposing that all deadlines be final. Therefore, applicants must timely submit and complete applications, comments, applicant responses to comments, letters of recommendation and other materials relating to the selection process. Moreover, the proposed regulation would permit the bureau to remove from consideration applicants who submit more than one application at any phase of the application process from the applicant pool. Additionally, the proposed regulation requires the bureau to remove from consideration applicants who fail to timely respond to inquiries or provide additional information.

The proposed regulations require each applicant to certify that the information provided in the application is true and correct. In addition, materials submitted during the application process are public records and the bureau may post them on the bureau's website. To protect the integrity of the application process, the proposed regulations permit the bureau and panel to investigate and verify information provided by or about an applicant. Lastly, as the bureau should avoid serving as a vehicle for publicizing certain offensive or harassing material, this proposed regulation would permit the bureau to refrain from posting such materials on its website.

Proposed Section 60843. Phase I Application.

Because the Act does not set forth a detailed application process, the proposed regulations create one. This proposed regulation sets forth the specific requirements for Phase I of the application process. We propose an application process that includes an initial application designed to

determine whether an applicant meets the minimum qualifications set forth in the California Constitution, Article XXI, section 2, subdivision (c)(2)-(3), which requires an applicant to have voted in two of the last three statewide general elections and maintained the same party affiliation during the past five years. Also this initial phase would determine whether an applicant has any conflicts of interest, as defined in section 8252, subdivision (a)(2), and more fully discussed in the Memorandum to the State Auditor dated July 31, 2009, regarding conflicts of interest (Memorandum Number 2).

The proposed Phase I application elicits from the applicant specific information that the bureau will use to verify that the applicant meets the minimum qualifications for service. The proposed regulations establish an application period of a minimum of 60 days, which, in conjunction with the broad outreach contemplated in proposed regulation 60840, should result in the receipt of applications from a large number of diverse and qualified applicants.

Proposed Section 60844. Phase I Application Review.

The Act does not specify how the applications should be reviewed to determine whether an applicant meets the basic eligibility requirements set forth in California Constitution, Article XXI, section 2, subdivision(c)(2)-(3). However, section 8252, subdivision (a)(2) requires the State Auditor to remove from the applicant pool individuals with conflicts of interest. This proposed regulation would provide the public, the bureau, and the panel with guidance on how the bureau will screen applications during Phase I. We propose that during this phase the bureau screen the applications for disqualifying conflicts of interest and whether the applicant meets the requirements of California Constitution, Article XXI, section 2, subdivision (c)(2)-(3). At the end of this phase, the proposed regulation would require the bureau to invite applicants who are not excluded to participate in Phase II of the application process. The proposed regulation also requires the bureau to notify applicants who are excluded from the applicant pool and advise them of the grounds for their exclusion. This proposed regulation provides the bureau and the public with clarity on how the bureau will screen Phase I applications.

Proposed Section 60845. Publication of Names in the Initial Application Phase.

This regulation provides for the publication of the names of applicants in the applicant pool at the completion of Phase 1. Section 8252, subdivision (c) requires the State Auditor to publicize, no later than August 1 in 2010 and each year ending in zero thereafter, the names of those applicants remaining in the pool of applicants after the bureau screens applicants for ineligibility and impermissible conflicts of interest. However, the Act does not specify the means of publication. This proposed regulation addresses the publication of the names of those who remain in the pool at the end of Phase I on the bureau's website, as defined by the proposed regulation 60808. By publicizing the names, this proposed regulation furthers the Act's transparency goals discussed in the background section as well as the express language of the Act. Moreover, by posting the names on the bureau's website, the information is made simultaneously available to all interested persons across the state and encourages the prompt submission of public comments.

Proposed Section 60846. Written Public Comments and Responses.

This proposed regulation specifies the process for submitting written public comments and applicant responses to public comments. As explained above, the Act requires an open redistricting process that invites public participation, but does not specifically address how that public comment and participation will occur. We anticipate that, by publicizing the names of the applicants under proposed Regulation 60845, we will receive valuable public comments identifying conflicts of interest and providing other important information concerning applicants.

To satisfy public concern and the Act's overarching theme of transparency, this proposed regulation would inform members of the public about how they may submit written comments about applicants as well as provide a mechanism for applicants to respond to written comments. This proposed regulation would permit the public to submit written comments electronically, via United States mail, or facsimile. In addition, the proposed regulations require the bureau to post on its website, as defined by proposed Regulation 60808, all written comments that the panel may consider.

The proposed regulation establishes certain requirements for the written comments to encourage truthful and accurate comments. Also, to ensure that the process adheres to the statutory deadlines established by the Act, the proposed regulation imposes deadlines for submitting comments and responses to comments. Accordingly, this proposed regulation specifies that the panel will not consider untimely comments.

Proposed Section 60847. Phase II Application.

This proposed regulation specifies the process for submitting supplemental applications during Phase II of the application process. It also describes the supplemental applications and supporting materials that applicants invited to participate in Phase II would be required to submit. We propose a supplemental application that is rather detailed and involves answering a number of essay questions and other requests for information related to an applicant's qualifications. We also propose requiring applicants to submit three letters of recommendation. Additionally, while applicants are required to submit the supplemental application and all other supporting materials electronically, this proposed regulation permits applicants to submit their letters of recommendation either electronically or via the U.S. postal service, common carrier, or facsimile.

Proposed Section 60848. Phase II Application Review.

This regulation specifies the process for reviewing the supplemental applications submitted during Phase III of the application process.

As explained earlier, the potential applicant pool ranges into the millions and we have no way of accurately predicting the size of the applicant pool. Moreover, the Act does not address how the panel should reduce the potentially very large applicant pool to a pool of 60 of the most qualified applicants. Thus, this proposed regulation establishes the method by which the panel would review all Phase II applications. Further, in conjunction with proposed regulation 60835, the

panel would deliberate in open session until the panel could agree on a list of no more than 120 applicants (40 who are registered with the state's largest political party, 40 who are registered with state's second largest political party, and 40 applicants not registered with either party). The panel would then interview those 120 applicants during Phase III. Keeping in mind the size of the potential applicant pool, this regulation permits the panel to request the State Auditor to assign staff to the members of the panel to assist with their review of the application materials.

Consistent with section 8252, subdivision (d), the proposed regulation directs the panel to evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography. In addition, consistent with California Constitution, Article XXI, section 2, subdivision (c)(1), the proposed regulation directs the panel to consider whether the composition of the pool of applicants to participate in Phase III is reflective of the state's diversity. In doing so, the proposed regulation would prohibit the panel from using formulas or specific ratios to identify and select applicants to participate in Phase III. The rationale behind this recommendation is more fully discussed in Memorandum Number 5.

Consistent with Act's overarching theme of transparency, the proposed regulation requires the bureau to post the names of those individuals selected to participate in phase III on the bureau's website, as defined by proposed Regulation Section 60808. This will facilitate further public participation and comment in the selection process.

Proposed Section 60849. Phase III: Interviews.

This proposed regulation describes the interview process, including the scheduling of interviews. Additionally, the proposed regulation requires the bureau to pay the reasonable travel expenses incurred by applicants who must travel to participate in the interviews. To further the Act's emphasis on an open redistricting process that invites public participation, the proposed regulation would require the panel to record the interviews and would require the bureau to post the recordings on its website. Further, pursuant to proposed Regulation 60835, the interviews would take place in public. To facilitate effective and timely interviews, the proposed regulation would restrict the individuals who may ask interview questions to members of the panel, panel staff, and panel legal counsel.

Proposed Section 60850. Phase III Applicant Review.

During Phase III, the proposed regulations require the panel to identify 60 of the most qualified applicants who will participate in Phase IV of the application process. As required by Section 8252, subdivision (d), the proposed regulations direct the panel to select 20 applicants who are registered with the state's largest political party, 20 applicants who are registered with the state's second largest political party, and 20 applicants who are not registered with either of the two largest political parties. Consistent with section 8252, subdivision (d), the proposed regulation further directs the panel to evaluate applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography. In addition, consistent with California Constitution, Article XXI, section 2, subdivision (c)(1), the proposed regulation directs the panel to consider whether the composition of the pool of applicants to

participate in Phase III is reflective of the state's diversity. In doing so, the proposed regulation would prohibit the panel from using formulas or specific ratios in selecting applicants to participate in Phase III. The rationale behind this proposal is more fully discussed in Memorandum Number 5.

Proposed Section 60851. Reconsideration.

While the Act requires an application process, it does not address whether excluded applicants should receive reconsideration. This proposed regulation specifies the limited circumstances under which an applicant may seek reconsideration of a bureau or panel decision. We considered several options regarding reconsideration. We determined granting an applicant the right to seek reconsideration of every decision could significantly slow the selection process and exhaust bureau resources, but also recognized that compelling circumstances or instances of human error on the part of bureau or panel may justify reconsideration of certain decisions. Accordingly, to ensure that the Act's statutory deadlines are met, this proposed regulation seeks to limit reconsideration while providing a mechanism for the reconsideration of certain disqualifying decisions. However, to obtain reconsideration, this proposed regulation would require an applicant to establish by a preponderance of the evidence that he or she was erroneously removed from the applicant pool. It also establishes the panel's ability to exercise its sole discretion to reconsider and correct a past panel or bureau decision during the application process where gross error has occurred or compelling circumstances exist.

Proposed Section 60852. Phase IV Applicant Name Striking Process.

While the Act specifies that legislative leaders, as defined in proposed Regulation Section 60817, will have an opportunity to strike a limited number of names forwarded to the Legislature by the panel, it does not describe how the panel shall present those names to the Legislature. To provide guidance to the panel, legislative leaders, and the public on this process, this proposed regulation requires the panel to transmit the names of 60 of the most qualified applicants to legislative leadership via hand-carried letter.

Additionally, the Act does not address what the State Auditor should do if the list returned by legislative leadership does not contain at least 12 names from each subpool. This regulation would require the State Auditor to return the list to the legislative leadership.

Proposed Section 60853. Random Drawing of First Eight Commissioners.

The Act does not set forth the method by which State Auditor must randomly draw the names of the first eight commissioners, nor does it address what the State Auditor should do if the Legislature does not return a list of at least 36 names to the State Auditor by November 15 of the application year. This regulation, together with proposed Regulation 60824 (which specifies how the names will be randomly drawn and is discussed more fully in the Memorandum to the State Auditor dated July 31, 2009, relating to the Applicant Review Panel, (Memorandum Number 3), clarifies those ambiguities. The dates contained in this proposed regulation are consistent with the dates established for transmitting the names to the legislative leadership and the random drawing of names contained in section 8252, subdivisions (e) and (f).

Proposed Section 60854. Transmission of Remaining Application Materials to Secretary of State.

Section 8253, subdivision (a)(5) requires the Secretary of State to provide support functions to the commission until its staff and office are fully functional. Section 8252, subdivision (g) requires the first eight commissioners to select the final six commissioners based on the diversity of the commission, relevant analytical skills and the ability to be impartial. Section 8252.5, subdivision (b) requires the commission to fill vacancies using the same pool of applicants remaining as of November 20 of the year that the panel establishes the pool. While the Act does not specify that the bureau or panel provide its application materials to the Secretary of State, we recognize that neither the commission nor the Secretary of State could fulfill its duties without copies of the application materials of the remaining applicants. Thus, this proposed regulation provides a mechanism and deadline by which the panel will transmit those materials to the first eight commissioners and the Secretary of State.

Proposed Section 60855. Commission Vacancies.

This proposed regulation specifies the State Auditor's role in filling commission vacancies. Section 8252.5 requires that vacancies be filled, within 30 days after a vacancy occurs, from the pool of applicants of the same voter registration category as the vacating member was selected from. If none of those remaining applicants are available for service, "the State Auditor shall fill the vacancy from a new pool created for the same voter registration category in accordance with Section 8252." While the Act is specific in requiring the State Auditor to create a new pool, it does not specify whether the State Auditor must solicit new applicants. Moreover, it does not differentiate between vacancies that occur while the panel is creating new district maps versus vacancies that occur years after the panel has completed the redistricting process. Thus, the plain language of the Act is ambiguous and, therefore, could be construed in a manner that creates an absurd result. For example, if a vacancy occurs in 2018 (eight years after the first commission is created), just before the State Auditor commences a selection process for the year 2020 commission, the Act could be construed to require the State Auditor to commence a lengthy application and selection process to fill a vacancy with a commissioner who may only serve a few months and who would not actually participate in any redistricting. In our view, commencing a new application and selection process for a commissioner under those circumstances would constitute a waste of state resources. The proposed regulation seeks to avoid an absurd result and preserves state resources by differentiating between vacancies that occur during the mapmaking process and those occurring after the commission has completed its redistricting work. Moreover, we believe this interpretation is consistent with the Act because the Act does not prohibit the State Auditor from creating a "new pool" of applicants from the applications already reviewed by the panel.

For these reasons, we recommend requiring the State Auditor to fill vacancies only at the commission's written request. If the commission has not yet certified the three final maps to the Secretary of State and is unable to fill a vacancy using the remaining pool of applicants, the proposed regulation would require the commission to notify the State Auditor in writing. As soon as practicable, the State Auditor would seek to fill the vacancy, convening a new panel that would first reconsider the applicants whose names remained in the pool at the completion of

Phase II. If the panel cannot fill the vacancy using the applicants whose names remained in the pool at the completion of Phase II, the panel would next consider those applicants who remained in the pool at the completion of Phase I. This process would enable the State Auditor to fill the vacancy from the same voter subcategory and with applicants who were similarly situated to the remaining commission members without expending significant state funds. Moreover, this regulation would leave the decision to fill a vacancy after the commission has completed its redistricting function to the discretion of the remaining commission members.

Conclusion

Because the Act lacks specifics about the application submission and review process, these proposed regulations provide much needed clarity regarding the application process. The proposed regulations are intended to create a well-ordered process that meets the goals of the Act as they relate to forming a qualified and diverse commission. The result, we believe, is a clearer and more smoothly functioning application process that is consistent with the intent of the voters in approving the Act.