

California Bureau of State Audits
MEMORANDUM NUMBER 4

To: Elaine M. Howle, State Auditor

From: Sharon Reilly, Chief Counsel
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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 preceding 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 demographics 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/QTTTable?_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/QTTTable?_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/QTTTable?_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/QTTTable?_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/QTTTable?_bm=n&_lang=en&q_r_name=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/QTTTable?_bm=n&_lang=en&q_r_name=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/QTTTable?_bm=n&_lang=en&q_r_name=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/QTTTable?_bm=n&_lang=en&q_r_name=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/QTTTable?_bm=n&_lang=en&q_r_name=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/QTTTable?_bm=n&_lang=en&q_r_name=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.