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Via electronic submission

Christopher Coates, Esq.
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Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., N.W.
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Dear Mr. Coates:

This is a submission under Section 5 of the Voting Rights Act on behalf of California State Auditor, Elaine M. Howle, of regulations governing selection of the Independent Citizens Redistricting Commission established by the Voters FIRST Act, also known as Proposition 11.1 That Act changed the procedures for redistricting of state legislative

1 We note that it does not appear that the instant regulations constitute “changes affecting voting” within the meaning of section 5, and this submission does not waive that point. The Voter FIRST Act itself changed the authority to redraw districts for elections of the California Assembly, Senate and Board of Equalization, from an elected body, the Legislature, to an appointed body, the Citizens Redistricting Commission. The Voter FIRST Act also set mandatory standards for drawing districts by the Commission, including compliance with the Voting Rights Act. The Act also set the number of members of the Committee and the process and general standards for their selection, including a ban on candidates for office from serving on the Committee. As noted above, all of these changes have been precleared.

The regulations submitted here are entirely directed at appointed rather than elected officials, and simply define certain aspects of the process and qualifications of selecting certain part-time appointed government officials. Redistricting plans adopted by the Commission clearly will be subject to section 5 review in the covered counties, and these regulations intersect voting only in that they assiduously ensure that all Commissioners must comply with the Voting Rights Act, *i.e.*, they will perform their duties just as any other appointee. It thus appears that these regulations effect not “changes in rules governing voting” but rather “changes in the routine organization and functioning of government.” *Presley v. Etowah County*, 502 U.S. 491, 504 (1992). As Justice Kennedy noted,

It is a routine part of governmental administration for appointive positions to be created or eliminated and for their powers to be altered. Each time this occurs the relative balance of authority is altered in some way. The making or unmaking of an appointive post often will result in the erosion or accretion of the powers of some official responsible to the electorate, but it does

and State Board of Equalization districts for the State of California. These regulations were adopted on October 19, 2009 by State Auditor Howle pursuant to the authority and mandate of the Voters FIRST Act. The provisions of the Voter FIRST Act were precleared on March 2, 2009, and we incorporate that submission file (No. 2008-5888) by reference. These submitted regulations set forth details of certain aspects of the application and selection process for selecting certain part-time appointed government officials. A copy of the regulations is attached as Attachment A. These regulations have not been enforced, and are not the subject of any pending litigation. They will affect the entire State of California.

We respectfully request expedited consideration of this submission and a final determination by December 14, 2009, so that the application period for members of the Citizens Redistricting Commission can begin on the following day. Under these regulations, the Bureau of State Audits is required “[o]n or before January 1 of the application year, ...to initiate Phase I of the application process by posting an initial application form on the bureau’s website”. To provide adequate time to process an application pool that could easily range in to the thousands, the bureau has designated December 15, 2009 as the first date on which the bureau will accept applications. Thus, it is critical that the State receive a response by December 15, 2009; any delay beyond December 15, 2009 will result in cascading interference with statutory deadlines.

We note in this regard that the regulations are limited to details of the process for selecting members of the Citizens Redistricting Commission. They do not purport to change the substantive requirements of the Voter FIRST Act; nor do the regulations change the substantive standards for redistricting set by the Voter FIRST Act, including the non-retrogression mandate of Section 5 and the mandate for equal opportunity under Section 2 of the Act. Rather, the regulations supplement the Voters FIRST Act’s contents and provide the necessary mechanics for its mandates to be achieved in a timely manner and according to the schedule set forth in the Act. The regulations also add definition and transparency to each stage of the process for selecting members of the Citizens Redistricting Commission, so that members of the public can apply to be appointed Commissioners and otherwise participate effectively in the selection process, as contemplated by the Act. As mandated by the Voters FIRST Act, the selection process is aggressively non-political and free of favoritism: applicants are considered based on qualifications closely linked to the task of redistricting, and to their responsibility to draw district lines fairly, and with appreciation for the racial, ethnic and geographic diversity

not follow that those changes are covered by § 5. By requiring preclearance of changes with respect to voting, Congress did not mean to subject such routine matters of governance to federal supervision. Were the rule otherwise, neither state nor local governments could exercise power in a responsible manner within a federal system.

Id. at 507. The instant regulations fall within Justice Kennedy’s description and, in our view, are not subject to Section 5 review. Nonetheless, submission of these regulations is being made contingently, not only out of an abundance of caution, but in the interests of full transparency and promoting certainty for citizens of the State of California.

of California. 2 The regulations strengthen and reinforce the Act's requirements to ensure diversity of membership and to exclude persons with racial and ethnic bias, or persons who are unwilling to follow the mandates of the Voting Rights Act and the Constitution in drawing district lines. The regulations thus will have no adverse effect on the voting rights of minority citizens of California; rather, they will help ensure that the Commissioners adhere closely to their mandate to draw districts that comply fully with the Voting Rights Act. To the extent that they remotely touch on voting, the changes effected by the regulations thus would be ameliorative rather than retrogressive in terms of minority participation.

To assist the Department in expediting its consideration, we are eager to answer any questions, and will do so promptly. In addition, we are including extensive materials to assist your review. Attachment B is a section-by-section description of the regulations that explains how each regulation supplements the Voter FIRST Act. The submitted regulations themselves (Attachment A) include one or more marginal electronic links to memoranda explaining the background of nearly all of the regulations and the rationale for its contents. Memoranda which deal with the draft regulations are also attached as Attachment F and those which address the September 14 comments received from the public are attached as Attachment J. The initial draft regulations themselves are Attachment E, and Attachment I provides a redline version showing the changes between the draft and final regulations.

In addition, extensive public hearings have been held in the process of developing these final regulations. We have attached transcripts of public hearings and copies of comments received during two rounds of public hearings. Six public hearings were held in early 2009, and these helped shape the initial draft regulations. These draft regulations were made public and a hearing was held on September 14, 2009, at which time individuals and organizations offered additional helpful comments. We include herewith transcripts of public hearings held prior to the drafting of proposed regulations (Attachment C-1 through C-6); public comments and questions received by the Auditor prior to the September 14 hearing (Attachment D); materials received at or in conjunction with the September 14 public hearing (Attachment H); and a transcript of the September 14 hearing (Attachment G).

These materials include the comments of members and representatives of minority communities concerning the regulations, as discussed below.

2 According to the 2000 Census, California had a population of 33,871,648 persons, of whom 32.4% were Hispanic, 10.9% were Asian American, and 6.7% were black. The 2005-2007 American Community Survey three-year analysis indicates that the state population by then had increased to 36,264,467 persons, of whom 35.7% were Hispanic, 12.3% were Asian American, and 6.3% were African American. California also is geographically large with remarkably diverse regions often lying in close proximity to each other, with varying governmental interests.

I. Background

A. The Voters FIRST Act (Proposition 11)

As the Department is aware, the Voters FIRST Act established an elaborate procedure designed to exclude partisan political considerations from the process of drawing districts for elections of the California Assembly, Senate and Board of Equalization. Among other things, the Act charges the State Auditor with certain responsibilities respecting the selection of the Commissioners through a multi-step process of random selection among qualified applicants. The Auditor was selected for this responsibility because that office is uniquely independent and non-partisan. The first step is the selection of an Applicant Review Panel consisting of three independent certified auditors with 10 years of independent audit experience. The Panel is selected by a random drawing of eligible auditors.

Once in place, the three qualified independent auditors review the applications of individuals interested in serving on the Citizens Redistricting Commission. The Act sets rigorous mandatory standards for the Commissioners: during the past 10 years, neither the applicant nor members of her/his immediate family can have (1) run for or been appointed to elective office; (2) served as an office, employee or paid consultant to any political party or candidate's campaign committee; (3) served as a member of a political party central committee; (4) been a registered lobbyist; (5) served as paid congressional, legislative or Board of Equalization staff; (6) contributed \$2000 or more to any candidate for office in any year. Also ineligible to serve on the Commission are staff and consultants to and family members of the Governor, a Member of Congress, a member of the Legislature, or a member of the state Board of Equalization.

Applicants who meet these qualifications will be considered by the Review Panel, which must select 60 of the most qualified applicants, based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse economics and geography. Twenty of the 60 must be members of the largest political party in the state, and 20 must be members of the second largest political party. The remaining 20 cannot be registered with either of the two largest parties.

These three sub-pools of 20 names are sent to the Legislature, where majority and minority party legislative leaders of the Assembly and Senate can, collectively, strike a total of eight of the 20 names in each sub-pool. The State Auditor then must randomly draw three names from the sub-pools of each party, and two names from the remaining pool.

These eight persons will serve on the Commission and will select the remaining two additional Commissioners from among the remaining sub-pools. Each of these final six Commissioners must receive five votes from the original eight Commissioners, with at least two votes coming from members from each political party and one vote from an independent/smaller party Commissioner. As noted above, the voting changes occasioned by Proposition 11 and the process of selecting Commissioners described therein have previously been precleared by the United States Attorney General.

B. Structure of the Regulations

The regulations will implement provisions of the Voters FIRST 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.

Much of the content of the regulations is purely mechanical, and explains how people and paper will flow through the process. Other parts are more substantive. Generally, issues regarding the regulations fall into categories which are addressed in detail in a series of memoranda that accompanied the initial draft of regulations (Attachment F.) These include:

Overview, Memorandum 1
 Conflicts of Interest, Memorandum 2
 Applicant Review Panel, Memorandum 3
 Qualifications, Memorandum 4
 Diversity, Memorandum 5
 Electronic Applications, Memorandum 6
 Applicant review process, Memorandum 7

The proposed regulations are organized into three subchapters as follows:

- Subchapter 1, which includes proposed regulations 60800 to 60829, 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.
- 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.

The specific regulations are explained in a section by section analysis we have prepared and is set out in Attachment B.

II. The Regulations

A. Developing the Regulations

As noted above, the regulations do not change the provisions of the Voters FIRST Act, but simply provide necessary details and mechanics that flesh out the provisions of the Act. In doing so, the regulations were guided by the understanding of the paramount

importance of racial fairness in the Commission's work product. Each redistricting plan drawn by the Commissioners will have to undergo scrutiny under Section 5 of the Voting Rights Act, during which state authorities bear the burden of establishing that each plan is free of any racially discriminatory purpose or effect. Under Prop 11, districts must also be drawn that comply with other provisions of the Voting rights Act. The regulations have been shaped in significant part by the comments of minority advocacy groups, as detailed below, and contain extensive guarantees that the Commission that will perform its job well in regard to protecting the rights of minority voters.

The Act has imposed on the Auditor a delicate balancing task. The Act is designed to exclude individuals with political ties from the redistricting process. At the same time, the process must be open and transparent, and the exclusions must not be so great as unnecessarily to bar unbiased California citizens from participation. The task of redistricting in a state as large and diverse as California requires a high level of analytical and other skills, but the Commission charged with this responsibility should include a cross-section of Californians, and not be the exclusive preserve of professionals.

The regulations balance the various competing interest by maintaining the rigor demanded by the Voters FIRST Act, while assiduously avoiding over-breadth of exclusion. By their nature, the restrictions on participation in the Citizens Redistricting Commission, which already have been precleared, disqualify a substantial number of skilled, interested and highly motivated persons from serving on the Commission due to their partisan and other connections. The regulations are drawn to encourage those who are eligible to participate by informing citizens of the opportunity to serve and the qualifications necessary for selection.

Above all of these considerations is the paramount duty of the Commissioners to draw districting plans that comply with federal law, including the one-person, one-vote requirement, and Sections 2 and 5 of the Voting Rights Act. Accordingly, the regulations emphasize that each of the 14 Commissioners, regardless of her or his race, ethnicity, gender, economic status, or geographic background must understand the Voting Rights Act, appreciate its importance, and follow its requirements.

B. Draft Regulations

As noted above, the draft regulations were shaped by public comments and the final regulations have been adjusted to address concerns raised by the public, including those of minority individuals and organizations. Comments from minority advocacy groups during the six initial hearings (Attachment D) had a major role in shaping the first draft of the regulations. The most detailed comments came from the National Association of Latino Elected Officials Educational Fund ("NALEO") and the Asian-Pacific American Legal Center ("APALC"), both of which had opposed Proposition 11.

Suggestions by NALEO and/or APALC that shaped the draft regulations, at times well beyond the two groups' specific requests, include:

Consideration of diversity at every stage of the selection of Commissioners, so that the Panel members are to consider not just an applicant's appreciation for diversity, as mandated by the Voters FIRST Act, but actual diversity, and to consider diversity in each sub-pool (§§60848, 60850).

Construing conflict of interest provisions narrowly, to limit conflicts to those directly connected with California elections, candidates and elected officials (§§60804, 6812-13, 6081, 6025, 60828), to exempt those with more remote relationships to political activity (§§ 60806, 60812, 60821) and to differentiate active advocacy from working for a party or a campaign committee controlled by a candidate (§ 60809).

Defining the necessary analytical skills and the ability to be impartial (§§60800, 60826).

Providing applicants who are disqualified with the reasons for their disqualification, and give them a right to appeal to correct any human error in processing the application (§ 60851).

Providing an opportunity for the public to comment on the qualifications of applicants (§ 60845). The regulations go further to facilitate such comments by requiring that all application materials must be posted on the bureau's website (§ 60845).

Making information regarding Panel members public (§ 60831); the regulations go on to make all Panel meetings public (§60835), including Panel deliberations (§ 60848) and the actual interviews of the top 120 applicants (§ 60849).

Like NALEO and APALC, the NAACP, which had supported Proposition 11, requested that the regulations provide for outreach to encourage minority citizens to apply for positions on the Commission. The regulations provide for such outreach (§ 60840), and also provide a detailed description of the application process to assist individuals in submitting complete applications (§§60841-6).

C. Final Regulations

Additional changes were made in response to comments from members of minority advocacy organizations in response to comments at the September 14, 200 hearing. Of course, the regulations also are responsive to a large number of additional helpful and thoughtful comments from other members of the public that do not purport to relate to issues under the Voting Rights Act. See, for example, the detailed comments submitted by California Forward, a consortium that includes a number of minority advocacy groups, and those of the LGBT consortium. Many of these helpful comments related to matters well outside issues affecting race or ethnicity, and the Auditor's response is addressed in Memorandum No. 8, Revisions To Proposed Regulations Implementing the Voters First Act (Attachment J), and/or is apparent in the redline version of the regulations, Attachment I.

Again, NALEO and APALC provided detailed comments in a joint letter in which the Mexican American Legal Defense and Education Fund (“MALDEF”) joined, and also separately in the hearing itself. Specifically, these groups had six suggestions which are set forth below in italics. Many of these issues were also raised by other groups and individuals. The Auditor’s responsive action follows each suggestion.

(1) The regulations should clarify that contributions in excess of \$2,000 made by candidates who self-finance their campaigns for local elected office do not constitute a “conflict of interest” that in and of itself will prevent their service on the commission.

Regulation § 60814(a)(3) adopts this suggestion.

(2) The proposed definition of “Appointed to Federal or State Office” in § 60804 potentially excludes a significant number of individuals who are unlikely to be beholden or perceived to be beholden to their appointing authority; accordingly, § 60804 should be revised to avoid over-breadth. (This suggestion was joined by others, including the William C. Velasquez Institute.)

Regulation § 60804 avoids overbreadth by excluding individuals appointed at the federal level, or those appointed by persons other than the Governor and the legislators and Board of Equalization members whose electoral districts the Commission is required to redraw, *i.e.*, persons with a unique special interest in the Commission’s duties. We note that the groups making this request did not suggest that the individuals who might be excluded are disproportionately minority, or that such individuals are especially objective and willing and able to follow the requirements of federal law in drawing districting plans. Indeed, the fact of appointment to prestigious advisory boards and commissions can create, at minimum, an appearance of favoritism.

(3) In § 60800(a)(3) of the proposed regulations, the reference to an individual’s capacity to put aside support for or opposition to “social or political causes” as an indicator of impartiality is too vague, and creates significant potential for qualified applicants without meaningful conflicts to be removed from the applicant pool.

Under § 60800’s definition of “ability to be impartial,” the Applicant Review Panel could reject an individual’s application because of his or her support for or opposition to “social or political causes.” The regulations do not define this phrase, and it could be interpreted broadly to apply to virtually any type of social or political activity such as supporting immigrants’ or workers’ rights. We are concerned that this vague phrase gives far too much unguided discretion to the Applicant Review Panel to disqualify capable applicants simply on the basis of past or present social or political work that in no way will impair their ability to act impartially on the commission. (This suggestion was joined by a number of other groups, including the William C. Velasquez Institute.)

Regulation § 60804 incorporates this suggestion. The section specifically states that:

“Ability to be impartial” means that although an applicant may have strong views, and may have participated in social or political causes, the applicant has the capacity and willingness, while serving as a member of the commission, to set aside his or her personal views ... when serving as a commissioner in order to evaluate information with an open mind and make decisions that are fair to everyone affected, including the establishment of legislative and State Board of Equalization districts that are in compliance with the United States Constitution, the Voting Rights Act of 1965 ... and the criteria set forth in subdivision (d) of section 2 of Article XXI of the California Constitution.

Section 60804 as adopted thus makes clear that individuals will not be excluded based on their advocacy of social or political causes so long as they can, for the purposes of their service, submerge such advocacy to the requirement that they draw a plan that complies with the Voting Rights Act and meets other legal requirements. The Section retains some language relating to social and political causes because, in some circumstances, such adherence may indicate bias. As noted in Memorandum No. 8, Revisions To Proposed Regulations Implementing the Voters First Act (Attachment J), there are, for example, a significant number of “hate groups” in California, and participation in such groups would suggest an unwillingness to adhere to the requirements of the Voting Rights Act.

(4) The proposed regulations should be revised to specify a minimum period of time during which applicants may submit Phase II supplemental applications and supporting materials, and such minimum period of time should be long enough to accommodate applicants and organizations conducting outreach efforts.

We recommend that applicants have a minimum of 35 days to submit supplemental applications and supporting materials.

Section 60847(b) incorporates this suggestion and allows for a minimum period of 30 days for applicants to complete the supplemental application. As noted in Memorandum No. 8, Revisions To Proposed Regulations Implementing the Voters First Act (Attachment J), applicants actually will be able to begin work on the supplemental application well before the 30 (or more) day period begins.

(5) Generally speaking, the proposed regulations should be revised to include a greater emphasis on the federal Voting Rights Act and the important role it plays in ensuring that historically underrepresented diverse communities have an equal opportunity to participate in the electoral process and elect candidates of their choice. (This suggestion was joined by a number of groups, including the William C. Velasquez Institute, the Legislative Tri-Caucus (the Black, Hispanic and Asian Caucuses acting together), and a joint letter from Speaker Karen Baker and Senate President pro Tempore Darrell Steinberg.)

The groups suggested that in Section 60805 of the proposed regulations, the definition of “appreciation for California’s diverse demographics and geography” be expanded to include an understanding that racial and ethnic minority communities have historically faced an uphill battle in gaining fair representation, an understanding of how the placement of district boundaries affects whether such communities have equal electoral opportunities, and a general awareness of the role of the Voting Rights Act in ensuring equal electoral opportunities for such communities. (This suggestion also was made by the William C. Velasquez Institute.)

Section 60805(a)(3) incorporates this suggestion.

The groups also suggested that Section 60834 of the proposed regulations, which specifies the support that the Bureau will provide to the Applicant Review Panel, include a provision which explicitly provides that the Applicant Review Panel will receive training on the Voting Rights Act and the issues of minority vote dilution it addresses.

Section 60832 incorporates this suggestion.

(6) The regulations providing for the random draw of eight applicants should be revised to avoid a situation that contravenes the intent of Proposition 11 that the commission selection process produce a commission that is reasonably representative of the state’s diversity. The groups recommended that the Bureau revise Section 60853 of the proposed regulations “to require the State Auditor to conduct a second drawing of the eight randomly selected commissioners in the event that all eight commissioners selected in the first drawing are of the same race or ethnicity.”

Such a revision was not possible or, indeed, necessary. The Act specifies that the drawing for the Commissioners be a random drawing, and it does not appear that a series of drawings is consistent with the letter and spirit of the Voters FIRST Act. In the highly unlikely event that such an anomalous result were to occur, moreover, the first eight Commissioners would be obliged to use the remaining six appointments to achieve diversity of membership, so that 43 percent of the Commissioners would be selected from groups not represented in the first round. The regulations thus ensure substantial minority representation: it is certain that the Commission will be diverse. The Voters FIRST Act eschews specific formulas or ratios for any group. Most important in terms of the impact of the regulations on ultimate compliance with the Voting Rights Act, all of the Commissioners, regardless of their race, ethnicity, gender, economic status or geographic area would have to be individuals who must draw a plan that complies with the Voting Rights Act. That is, no matter which individuals are chosen as Commissioners, they will be persons who are obliged to draw district lines that do not regress or otherwise discriminate against minority voters.

A number of additional comments came from other important groups. The Legislative Tri-Caucus, consisting of Chairs of the Black Caucus, the Latino Caucus and the Asian Pacific Islander Caucus of the California Legislature requested that regulations be modified to place less emphasis in “analytical skills” on an applicant’s technical expertise and familiarity with complex software, and in this they were joined by other groups, including the California Forward Working Group, the William Velasquez Institute, the Los Angeles County Federation of Labor, and the California Labor Federation.

These concerns were fully addressed in changes to § 60827 (formerly numbered 60826).

California Forward, the Los Angeles County Federation of Labor and the William C. Velasquez Institute were among groups urging that the requirement in § 60847 that applicants provide their “criminal history” was overbroad, and that section was modified to request only identification of felony convictions. Other concerns also were addressed, including the adoption of the use of a “reasonable person” standard in the definition of Impartiality (§ 60800). The Auditor also adopted an Institute suggestion that Panel members be prohibited from discussing applicants outside of public hearings.

In some cases, there were conflicting requests. Some groups, notably APALC, sought to remove “economic status” as a factor in diversity, fearing that the inclusion of this factor might make it more difficult for the Panel to achieve other types of diversity on the Commission, notably racial and economic diversity. Other groups, including the William C. Velasquez Institute, the Los Angeles County Federation of Labor, and the California Labor Federation pushed for inclusion of economic status as means of including traditionally under-represented populations and ensuring that the Commission not be composed exclusively of affluent professionals. The Auditor determined that the inclusion of economic diversity would be supportive of, rather than competitive with, minority participation, and retained that factor, and also made a change requested by the William C. Velasquez Institute § 60805 (Diversity) from “level of income” to “economic status.”

D. The Final Regulations

As adjusted, the regulations systematically bolster the protection of minority voting rights already contained in the Voters FIRST Act. As set forth in the September 14, 2009 hearing transcript, the Auditor received praise from minority group advocates for her work during this process. For example, Rosalind Gold of NALEO noted:

I want to echo the sentiments of many of the people who have come up in thanking you all for the thought and the care that you put into coming up with these regulations. We think the proposal is very much a great step in the right direction of creating a transparent, efficient, and accessible application process, one that ensures that you'll have qualified folks on the commission and one that enhances the opportunity to make sure that commission is diverse.

And Sam Walton of the NAACP observed:

I'd like to start by first saying the work that the Bureau has done to date has been very, very, impressive. And I believe the process as being on the website has made it open and accessible to individuals and it's been very useful for our organization. So I'd like to commend you on that.

These comments are cited not to suggest that these two individuals (or any of the representatives of the various groups) embrace each and every one of the regulations as finalized, but merely to highlight for your office that the Auditor and her staff worked hard to provide widespread access and participation in the regulation drafting process. It is also worth noting that the above-referenced comments were made prior to the last round of changes which, as set forth above, adopted major changes proposed by several of the minority groups. No group has suggested that any regulation would be retrogressive in terms of minority participation, or a step backwards from the requirements of the Voters FIRST Act.

As these materials demonstrate, the proposed regulations are free from any racially discriminatory purpose or effect. Indeed, at every step the regulations reinforce the protections for minority voters that already were present in the Voters FIRST Act, including the requirement that all Commissioners be individuals who understand, appreciate and are willing to comply with the requirement that any product of the Commission comply fully with all provisions of the Voting Rights Act.

We look forward to your response to this letter. Please contact me if you have any questions concerning this matter.

Sincerely,

/s/ J. Gerald Hebert

J. Gerald Hebert

Attorney at Law

Attachments

- A Regulations
- B Section by Section Analysis
- C Transcripts of Initial Public Hearing Transcripts
 - C-1 January 26, 2009 Hearing
 - C-2 February 9, 2009 Hearing
 - C-3 February 19, 2009 Hearing
 - C-4 February 23, 2009 Hearing
 - C-5 February 27, 2009 Hearing
 - C-6 March 3, 2009 Hearing
- D Initial Written Comments
- E Initial Draft Regulations (July 31, 2009)
- F Voters FIRST Act (Prop 11)(previously precleared)
- G Transcript of September 14, 2009 Hearing
- H September 14 Written Comments
- I Redline of Changes to Draft Regulations
- J Memoranda Supporting Proposed Regulations (July 31, 2009)
- K Memorandum No. 8 Explaining Changes to Proposed Regulations (September 28, 2009)
- L Final Statement of Reasons for the Regulations
- M Favorable Comments Received About Regulations and Process
- N Media Lists Showing Broad Public Communications Outreach