

May 5, 2011

Via Electronic Mail
Citizens Redistricting Commission
1130 K Street, Suite 101
Sacramento, CA 95814

RE: Gibson, Dunn & Crutcher Training; Map-Drawing Instruction to Q2 Data and Research

Dear Members of the Citizens Redistricting Commission:

We write to express our views on the application of the Voters First Act's criteria for drawing districts. Our comments below are based on our observations of the training provided to you by Gibson, Dunn & Crutcher at the Commission's business meeting on April 28, 2011, and the Commission's subsequent discussion of line-drawing guidance to be provided to Q2.

1. The Commission's guidance to Q2 should ensure that communities of interest are given equal weight with neighborhoods, cities and counties.

Gibson, Dunn & Crutcher's training document entitled "Discussion Points for Potential Guidelines for Map Drawing" suggests that districts should be drawn first to minimize divisions of neighborhoods, cities and counties, and then should be subsequently adjusted to minimize divisions of communities of interest.

We believe that the drawing of districts in this manner would produce an "anchoring" effect that has the unintended consequence of favoring the preservation of neighborhoods, cities and counties over the preservation of communities of interest. This two-step process creates an unwarranted burden that must be overcome for communities of interest to be kept together: to accommodate communities of interest, Q2 and the commission must justify changes to district lines that were initially drawn to keep cities and counties together. We further believe that this would contravene the purpose of the Voters First Act, which assigns equal importance to communities of interest, neighborhoods, cities and counties.

We understand that on May 1, the Commission provided direction to Q2 to draw districts that keep cities and counties together, in the absence of communities of interest testimony received from the public. We ask the Commission to provide a supplemental instruction to Q2 to the following effect:

In drawing districts in accordance with section 2(d)(4) of the California Constitution, Q2 is directed to consider testimony received about communities of interest and neighborhoods concurrently with its consideration of known neighborhood, city and county boundaries.

Additionally, we understand that Gibson, Dunn & Crutcher's oral presentation to the Commission on April 28 suggests that the Commission has no obligation to recognize and protect communities of interest about which the Commission received no public testimony. This could result in the fragmenting of communities of interest whose members lack the resources or organizational wherewithal to appear before the Commission. On this point, we first suggest that the Commission may want to revisit the instruction given to Q2 on May 1 to draw districts that keep cities and counties together, in the absence of communities of interest testimony received

from the public. Second, we recommend that the Commission undertake some level of analysis to identify areas in which communities of interest testimony seems to be lacking, based on demographic factors and socio-economic interests known to the Commission, and that the Commission consider these identified areas when selecting locations for future public hearings.

2. The Commission should avoid taking a geographically restrictive view of neighborhoods.

The guidance provided orally by Gibson Dunn & Crutcher on April 28 suggests that the Commission should look at single census tracts as indicators of neighborhoods. We believe this represents a geographically narrow view of what may constitute a neighborhood, and also a view that limits the consideration of other indicators of neighborhoods. First, we are unaware of case law or law review articles that provide guidance on the definition of neighborhoods in the redistricting context. Consequently, we believe the scope of what may constitute a neighborhood is a question for the Commission to interpret.

Second, we note that some cities in California have formal designations of neighborhoods and almost all cities have informal but widely used definitions of neighborhoods. We further note that neighborhood residents often have self-defined views of what constitutes their neighborhood that differ from formal administrative boundaries and/or informal but widely used neighborhood boundaries.

Third, we note that in many instances, formally defined, informally defined and self-defined neighborhoods are geographically more expansive than single census tracts. For example, Evergreen in the City of San Jose is a neighborhood widely recognized by city residents and also has formal administrative boundaries such as school district boundaries. Evergreen, which is majority Asian American and Pacific Islander (AAPI), includes 14 whole census tracts and five partial census tracts, using the boundaries of the Evergreen Elementary School District. Another example is the neighborhood of Chinatown in the City of Los Angeles. Chinatown, which has a sizable AAPI population making up two-thirds of the neighborhood, encompasses three whole census tracts and five partial census tracts, using L.A City's Historic Cultural Neighborhood Council boundaries, which are commonly used as indicators of the Chinatown neighborhood boundaries.

From a policy perspective, we believe the Commission should take a sufficiently broad view of neighborhoods that permits it to consider, in addition to census tracts, (i) formal administrative boundaries that local jurisdictions have adopted to define neighborhoods and (ii) testimony from members of the public about informal but widely used neighborhood boundaries and/or self-defined neighborhood boundaries. We ask the Commission to provide an instruction to Q2 to the same effect.

3. The Commission should avoid taking a narrow view of what constitutes permissible consideration of race in the drawing of district lines.

After observing the reaction of several commissioners to Gibson Dunn & Crutcher's presentation on April 28, we would like to ensure that there is no confusion on when race may be considered in the drawing of electoral boundaries. To be clear, race is a legitimate and permissible factor

that line-drawers may use to construct district boundaries. It is permissible for redistricting bodies, as a matter of policy or discretion, to draw boundaries to avoid splitting concentrations of racial minorities even though the minority population is not large enough to constitute a majority of a hypothetical district. See Bartlett v. Strickland, __ U.S. __, 129 S. Ct. 1231 (2009), at 1238 (plurality opinion).

Race can also be a factor considered in the context of other map-drawing criteria. Specifically, race can be one of several factors used to articulate a community of interest; for example a community of interest can be a population whose members are predominantly immigrant, of one racial or ethnic group, and limited English proficient.

Where the Commission faces limitations on its ability to consider race is its ability to draw districts that subordinate traditional districting principles to racial considerations. In that instance and only that instance do the strictures of Shaw v. Reno and its progeny apply. Even in that context, the Commission may consider drawing lines based on race provided that the district lines are narrowly tailored to achieve a compelling state interest.

4. As a matter of process, the Commission should afford adequate opportunities for public input on how it evaluates racially polarized voting for purposes of Section 2 of the Voting Rights Act.

We understand that the Commission is preparing to hire an expert to assist in conducting analyses of racially polarized voting for purposes of Section 2 of the Voting Rights Act. We assume that the Commission will release a Request for Proposals (RFP) to solicit bids from prospective consultants. We ask the Commission to post drafts of the RFP so that members of the public can comment on it, and also to allow the public to weigh in on candidates for the consultant position.

Thank you for your consideration of our comments.

Sincerely,

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