

## COMMENTS ON DRAFT GUIDELINES FOR SUBMISSION OF DISTRICT PLANS

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### **GUIDELINES ON THE SUBMISSION OF STATEWIDE AND MULTIPLE DISTRICT PLANS TO THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION INTRODUCTION**

The California Citizens Redistricting Commission is soliciting information from a wide range of sources to assist in its development of district maps for the California congressional delegation, the state Assembly and state Senate, and the state Board of Equalization. In addition to conducting input hearings and receiving testimony from members of the public on local and regional interests, the Commission is providing opportunities for individuals and groups to submit statewide and multiple district plans to inform the Commission's work.

The Commission has allocated two days of public hearings – May 24 in Northern California, and May 26 in Southern California – to provide the public with opportunities to present statewide and regional plans. Plans will be considered by the Commission even if they are not formally presented at a public hearing, but developers of these plans are strongly encouraged to participate in the hearing process to provide highlights of their plans and to be available to answer questions posed by the Commission and its staff and consultants.

This document provides guidance to the public regarding the submission of statewide and multiple district maps and reports. The guidance is not intended to constrain the type of data that the Commission will accept and consider, but is instead intended to offer information to members of the public that will assist them in producing plans that will be useful and informative to the Commission.

#### **I. GENERAL GUIDELINES AND CRITERIA**

Statewide and multiple district plans should contain a map or set of maps accompanied by a report that provides a description of the proposed district boundaries and the justifications for those boundaries. The accompanying report should confirm that the proposed districts are consistent with the legal requirements of the California Constitution (as amended by the Voters First Act and the Voters First Act for Congress). These requirements include the following criteria, which are listed in rank order:

1. districts should comply with the federal constitution, including population equality requirements
2. districts should comply with the federal Voting Rights Act of 1965
3. districts should be geographically contiguous
4. districts should respect the geographic integrity of any city, county, city and county, local neighborhood, or local community of interest to the extent possible without violating any preceding requirements
5. districts should be drawn to encourage geographic compactness, to the extent practicable without conflicting with any preceding requirements
6. districts should be nested (each Senate district is composed of two whole, complete, adjacent Assembly districts; each Board of Equalization district is composed of 10 whole, complete,

adjacent Senate districts), to the extent practicable without conflicting with any preceding requirements

The Commission is prohibited from considering the place of residence of any incumbent or political candidate in the creation of a map; nor can the Commission draw districts for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

The California Constitution provides that districts for Congress, Senate, Assembly and Board of Equalization shall be numbered consecutively commencing at the northern boundary of the state and ending at the southern boundary.

Recommendations for complying with the Commission's criteria are described in more detail below.

#### A. POPULATION EQUALITY

Statewide and multiple district plans submitted to the Commission should rely on the most recent Census data in order to comply with federal constitutional requirements. These include the results of 2010 Census, which are available in the P.L. 94-171 dataset published by the Bureau of the Census and are also available at the California Statewide Database (<http://swdb.berkeley.edu>).

Based on 2010 Census data, the ideal population sizes for single-member districts are the following:

Congressional (53 Districts): 702,905  
State Assembly (80 Districts): 465,674  
State Senate (40 Districts): 931,349  
State Board of Equalization (4 Districts): 9,313,489

Plans submitted to the Commission should contain a listing of the population size of each proposed district, as well as the district's percentage deviation from the ideal population size. Any statewide maps should provide the plan's maximum population deviation (i.e., the sum of (1) the percentage deviation of the most populated district from the ideal population size and (2) the percentage deviation of the least populated district from the ideal population size). Plans should also describe the justifications for the deviations.

Both the California Constitution and federal case law require that Congressional districts shall achieve population equality as nearly as practicable.

State Assembly, Senate, and Board of Equalization districts are required under the California Constitution to have reasonably equal population, except where deviation is required to comply with the federal Voting Rights Act or is otherwise allowable by law. Federal case law has generally permitted up to a ten percent (10%) maximum population deviation for state districts; however, larger deviations have been upheld by the courts with sufficient legal justification, while smaller deviations have been disallowed in some cases. Developers of plans should consult the applicable case law to determine whether any population deviations contained in their proposed plans comply with federal constitutional requirements.

Statewide plans should account for all geography and population of the state. Regional plans should account for all relevant geography and population.

## B. FEDERAL VOTING RIGHTS ACT

The federal Voting Rights Act of 1965 contains two provisions that apply to the California redistricting process: section 5 and section 2. Section 5 applies to districts that contain all or part of the following counties: Kings, Merced, Monterey, and Yuba. All maps produced by the Commission must be submitted for “preclearance” and receive approval by the federal government in order to satisfy section 5. Section 2 applies statewide and prohibits districting that is either intentionally discriminatory or results in discrimination on the basis of race, color, or membership in a protected language minority group (American Indian, Asian American, Alaskan Natives, or of Spanish heritage).

Section 5. The counties of Kings, Merced, Monterey, and Yuba are subject to section 5 preclearance requirements for any changes affecting the electoral process in their counties, including any new congressional, state legislative, and Board of Equalization districts. Plans submitted to the Commission that affect all or part of a section 5 county should have neither the purpose of discriminating against minority voters nor the effect of discriminating against minority voters by causing a “retrogression” in the ability of minority voters to elect their preferred candidate of choice.

Section 5’s retrogression requirement is satisfied if a proposed district does not make minority voters worse off than their current situation under an appropriate benchmark. That benchmark is the most recent legally enforceable redistricting plan (congressional and state plans enacted in 2001). Plans submitted to the Commission should attempt to comply with the Act so that minority voters in section 5 counties are no worse off in the proposed districts than their current position within the state’s existing districts.

Additional guidance on the requirements of the Commission to comply with section 5 is available at [http://www.justice.gov/crt/about/vot/Policy\\_Guidance.php](http://www.justice.gov/crt/about/vot/Policy_Guidance.php)

[Proposed plans that affect all or part of a section 5 county should describe how they comply with section 5.](#)

Section 2. The Commission is prohibited under section 2 from enacting plans that have the purpose or the effect of discriminating ~~discriminate~~ on the basis of race, color, or membership in a protected language minority group. The Commission seeks to comply with section 2 primarily by preventing minority vote dilution, which can arise in a number of ways, including the fragmentation of minority group populations between districts (“cracking”) and the overconcentration of minority group populations into a suboptimal number of districts (“packing”).

Under federal case law, the creation of “majority-minority” districts provides a remedy for minority vote dilution, and the Commission will attempt to draw majority-minority districts where necessary to prevent violations of section 2. Developers of plans should be cognizant of potential minority vote dilution issues and should consider the drawing of majority-minority districts to comply with section 2. Plans which propose that one or more majority-minority districts should be created to comply with section 2 should offer both district boundaries and any supporting information that will be useful to the Commission for determining whether the district is required in order to comply with the Act. This does not mean that a proposed plan must contain the quantum of evidence typically required in a section 2 lawsuit. However, the Commission encourages developers of plans to provide any relevant documentation that is consistent with In their consideration of what is required by

section 2, developers of plans should look to the factors set forth in the U.S. Supreme Court’s ruling in *Thornburg v. Gingles*, ~~including evidence related to~~ which include the following:

- whether the minority group is sufficiently large and geographically compact to form a majority in a single-member district;
- whether the minority group is politically cohesive; and
- whether the majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate

Federal case law suggests that whether a majority-minority ~~population district can be drawn~~ under the first *Gingles* factor should be judged on the basis of voting age population (VAP) or citizen voting-age population (CVAP); therefore, plans proposing majority-minority districts should provide both VAP and CVAP data tabulated by race and ethnicity. CVAP data are available in the American Community Survey dataset and a Census Bureau special tabulation, and VAP data are available in the P.L. 94-171 dataset.<sup>1</sup>

The Commission ~~also~~ encourages but does not require the inclusion of citations or copies of reports that may help document racially polarized voting relevant to the proposed districts. In addition, developers of plans are encouraged but not required to provide any data pertaining to section 2’s totality of circumstances test, including the “Senate factors” documenting discrimination relevant to the proposed districts.<sup>2</sup>

Proposed plans should describe how they comply with section 2.

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<sup>1</sup> Developers of plans should also refer to the OMB-issued Bulletin No. 00–02 (“Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Enforcement”) for guidance on allocating multiple-race response data to address the first *Gingles* factor.

<sup>2</sup> The “1982 Senate Report Factors,” which the federal courts have held to be probative in determining whether there has been a violation of section 2, include the following:

- the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of a minority group to register, to vote, or otherwise to participate in the democratic process;
- the extent to which voting in the state or political subdivision has been racially polarized;
- the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against a minority group;
- if applicable, whether the members of a minority group have been denied access to the candidate slating process in the state or political subdivision;
- the extent to which members of a minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process;
- whether political campaigns have been characterized by overt or subtle racial appeals;
- the extent to which members of a minority group have been elected to public office in the state or political subdivision;
- whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of a specific minority group; and
- whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

[Comments: The above suggested changes to the Section 2 portion are to avoid the unintended consequence of members of the public being wary of drawing majority-minority districts, for fear of being asked to provide information beyond their means.]

### C. CONTIGUITY

Proposed districts should comply with the requirement under the California Constitution that districts be geographically contiguous. In practical terms, contiguity requires that all parts of a district be connected at some point with the rest of the district; in other words, one can travel from any location within the district to another location within the district without having to cross a district boundary. Geographic units within a district, such as islands, can be separated by water, but these units will be contiguous if travel by water is possible within the district. Proposed plans should identify and provide justifications for any districts that are non-contiguous.

### D. MAINTAINING LOCAL GOVERNMENT BOUNDARIES, LOCAL NEIGHBORHOODS, AND LOCAL COMMUNITIES OF INTEREST

The California Constitution requires the Commission to respect the geographic integrity of any city, county, city and county, local neighborhood, or local community of interest to the extent possible without violating any preceding requirements. The Commission's interpretation of this requirement does not contemplate any rank ordering of these entities; in other words, the Commission will attempt to respect the geographic integrity of cities, counties, the City and County of San Francisco, local neighborhoods, and local communities of interest equivalently. Proposed plans submitted to the Commission should indicate (1) where any of these listed entities are maintained in districts and (2) if identified, where any of these entities are divided among districts, along with any justifications for those decisions; for neighborhoods and communities of interest, developers of plans should provide this information to the best of their ability. [Comment: Developers of plans should be encouraged to account for how their proposed plans accommodate neighborhoods and communities of interest, but given the large volume of public testimony received by the Commission, the submission guidelines should acknowledge that members of the public face limitations on their ability to do this comprehensively.]

Plans that attempt to preserve the integrity of any cities, counties, or the City and County of San Francisco should rely on commonly accepted boundaries to maintain these entities within districts. The most recent geographic data are available through the Census Bureau's 2010 TIGER/Line Shapefiles dataset. Plans that divide cities, counties, or the City and County of San Francisco should provide population counts for the split areas.

Plans that attempt to preserve the integrity of a local neighborhood should indicate the geographic boundaries of that neighborhood, as well as the general characteristics of the neighborhood. Developers of plans are also encouraged to document how any relevant demographic data support the preservation of neighborhood boundaries.

The California Constitution requires that a local community of interest be a contiguous population which shares common social and economic interests that should be included within a single district for purposes of effective and fair representation. However, the Commission cannot consider communities of interests that are based on relationships with political parties, incumbents, or political candidates. The Constitution also provides a non-exclusive list of examples of shared interests,

including interests that are urban, rural, industrial, agricultural, based on shared living standards, based on common transportation, based on similar work opportunities, or based on access to the same communication media.

Proposed plans may assert additional types of local communities of interest, as long as the population is contiguous and there are both social and economic interests shared within the community of interest. Plans that attempt to preserve the integrity of a local community of interest should indicate the geographic boundaries of the community of interest and should also describe the basis for the community of interest. Developers of plans are also encouraged to document how any relevant social and economic data support the preservation of a particular community of interest.

## E. COMPACTNESS

Where practicable and where doing so does not conflict with any previous criteria, the Commission will draw districts that encourage geographic compactness. Compactness is defined in the California Constitution to require that nearby areas of population not be bypassed for more distant populations. Proposed plans should attempt to create compact districts consistent with this definition (where practicable and where doing so does not conflict with any previous criteria), and plans that contain districts which are non-compact should identify those districts and the justifications for their boundaries. Plans are not required to provide any additional data based on commonly employed mathematical or geometric tests of compactness, but a compactness report, such as a population polygon measure, may be submitted in the proposed plan.

## F. NESTING

The California Constitution requires that where practicable and where doing so does not conflict with previous criteria, the Commission shall draw Senate districts composed of two whole, complete, and adjacent Assembly districts, and shall draw Board of Equalization districts composed of 10 whole, complete, and adjacent Senate districts. Plans containing nested districts should indicate the areas of nesting and provide a list of the Assembly districts contained within Senate districts and of the Senate districts contained within Board of Equalization districts.

## II. SUBMISSION FORMAT

The Commission strongly encourages developers of plans to submit copies of their plans well in advance of the May 24 and May 26 hearings. The following guidelines should be followed in submitting statewide or multiple district plans:

- An electronic version of the plan(s) contained on a CD, DVD, or USB drive should be submitted. Maps should be submitted in PDF format or in a commonly used graphics file format. Accompanying reports should be submitted in PDF or Microsoft Word format. Block equivalency files compatible with the Maptitude for Redistricting software package should be submitted along with the maps and accompanying reports. Equivalency files may be submitted in .dat, .dbf, or .txt format. Additional .shp files may also be included.
- Printed copies of maps and accompanying reports are not required, but may be included in the submissions.

All materials should be sent to the following address:

ATTN: Statewide/Regional Plan Submissions  
California Citizens Redistricting Commission  
1130 K Street, Suite 101  
Sacramento, CA 95814

### III. GUIDELINES FOR PRESENTATION AT PUBLIC HEARINGS

Public hearings for the presentation of statewide and regional plans have been scheduled for May 24 in \_\_\_\_\_ and May 26 in Northridge. Individuals or groups planning to offer highlights of their plans at one of the public hearings should present a request to the Commission no later than seventy-two (72) hours prior to a public hearing. The request should identify the name of the individual or group presenting the plan, the types of plans being submitted (congressional, state legislative, and/or Board of Equalization; statewide versus partial), and the amount of time requested to present highlights to the Commission, subject to the limitations set out below. Requests should be sent to: <INSERT E-MAIL>

The Commission will provide no more than twenty-five (25) minutes for representatives to provide highlights of their proposed plans and to answer questions from the Commission and its staff and consultants. Depending on the number of submissions and requests to testify at the public hearings, this allocation of time may be reduced, but in no case will it be less than fifteen (15) minutes. Presenters should provide key highlights of the plans and are urged to budget sufficient time within their total time allocation for questions and answers. [Comment: Some individuals or groups will present plans for multiple levels of government. These individuals or groups will need more time than 25 minutes to present their plans. Also, individuals or groups who present statewide plans will need more time to make presentations than individuals or groups submitting regional plans. The commission's guidelines should provide that those submitting plans for multiple levels of government, and those submitting statewide plans, are allotted additional time to make presentations.]

Presenters who wish to use PowerPoint or any other presentation software to highlight their plans should submit an electronic copy of their presentation at least 48 hours prior to the public hearing. Presentations should be sent to <INSERT E-MAIL>.