THE CALIFORNIA INSTITUTE
FOR JOBS, ECONOMY AND EDUCATION

June 8, 2011

BY EMAIL: votersfirstact@crc.ca.gov

Honorable Commissioners
California Redistricting Commission
1130 K Street, Suite 200
Sacramento, CA 95814

Dear Commissioners:

On behalf of the California Institute for Jobs, Economy and Education ("the Institute"), this is to comment on several issues that arose during the Commission's meetings on May 26-27, 2011 and several points concerning the "visualization maps" that have been released prior to the projected release of the Commission's "tentative maps" on June 10, 2011.

1. Racially Polarized Voting Studies

The Commission has yet to retain an expert to evaluate "racially polarized voting" issues. Evaluation of such issues is relevant to determining whether the Commission is required to draw districts that comply with section 2 of the Voting Rights Act, in conformance with the requirements of Article XXI, section 2(d)(2) of the California Constitution. This determination is one aspect of reaching a legally defensible conclusion and findings as to whether any plan drawn by the Commission is susceptible to evidentiary challenges under parts 2 and 3 of the tests established by *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

The Commissioners have asserted without any evidentiary justification that no "racially polarized voting" exists that would affect the drawing of districts in south central Los Angeles County that have been represented by African American legislators and members of Congress, and have so reflected this in the "visualization maps" released this past week. We understand at yesterday's hearing that the Commission's counsel advised Commissioners that the testimony alone from affected communities about the absence of "racially polarized voting" would be a significant factor allowing the Commission to reach such a conclusion.

On the other hand, the Commissioners have asserted that there may be evidence of "racially polarized voting" that affects the drawing of legislative and Congressional districts in the San Gabriel Valley of Los Angeles County and in central Orange County that affect Latino and Asian Pacific Islander populations in that county. However, the only evidence presented thus far is that of CAPAFR concerning current AD 49, and it appears that no evidence has been submitted concerning central Orange County. Just as the court in *Cano v. Davis*[1] in 2002 concluded that it could not rely in 2002 upon the findings of a sister district court made ten years earlier in *Garza v. County of Los Angeles*[2] that "racially polarized voting" was present in Los Angeles county in 1991, the Commission is at hazard in 2011 relying upon *Cano v. Davis'* 2002 conclusions that "racially polarized voting" was no longer present in the districts in question in 2001 (SD 28 and CD 27). This is particularly true where the Commission's focus has been on 'visualizations' for draft districts other than in southern Los Angeles County and the San Fernando Valley.

The burden of proving that "racially polarized voting" does or does not exist and that factual evidence, not opinion, exists to support such a determination rests with the Commission. If the Commission errs in concluding vote dilution need not be corrected by drawing appropriate section 2 districts, or may be avoided by drawing section 2 districts where evidence does not require them, it faces greater risk of legal challenge for violating other Article XXI section 2(d) requirements.

2. Commission Maps for Section 5 Districts and Supporting Data

The Commission's maps to be released on June 10, 2011 should comply with section 5 and the data and legal assumptions used in drawing these districts should be made public as well. While the comments of the line drawers to Commissioners over the past few meetings have indicated that the proposed districts will comply with section 5, neither the Commission's counsel nor its line drawing experts have indicated what standard they assert the Commission is obliged to use to comply with section 5. The Institute's plans demonstrated that the proposed section 5 districts' CVAP percentages were non-"retrogressive" compared with the corresponding, current districts. Does the Commission believe that CVAP is the measure to use to compare for "retrogressive" effect, and if not, why not? The Institute urges the Commission to reconsider draft maps for section 5 districts and to provide the data used to justify non-"retrogressive" effects.

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[1] 211 F.Supp.2d 1208 (C.D. Cal. 2002)
[2] 918 F.2d 763 (9th Cir. 1990)

3. Other Comments on Visualization Maps

A. Excessive Population Deviations in Draft Maps

As of Tuesday, June 7, 2011 certain districts still contained population deviations higher than 2 percent. Despite the resolution adopted by the Commission on May 27, 2011 that it was striving to attain population deviations of less than 1% and no more than 2% for legislative districts, the Institute is greatly concerned that the release of "draft" maps with population deviations of this magnitude will only exacerbate the difficult trade-offs the Commission will face in rounds 2 and 3 of public input. As you have now experienced with the outcry from local communities of interest from Fremont and Marin County, intensity is heightened at the very time you will be faced with making precise adjustments to more fully meet the exacting requirements of the California Constitution.

B. "Sharing the Pain" Concept Aggravates Jurisdiction Division Problems

The concept of "sharing the pain" is legally suspect and unreasonable, when multiple cities are split in the same set of maps rather than looking for population from counties and cities already split. This is contrary to the Article XXI, section 2(d)(4) criteria of keeping counties, cities and "communities of interest" together. The Constitution doesn't say avoid division of cities, counties and communities of interest unless you have to split one city or county and then split them all to share the pain. The theory can make sense when applied across the sets of maps for Assembly, Senate, Congress and the Board of Equalization. Of course, the nesting the two Assembly districts would be an obvious way to ameliorate or reconcile such dilemmas. For instance, if Fremont is split in between two Assembly districts, then it should not be split in the Senate and could be kept undivided if the two Assembly districts are nested in a single Senate district.

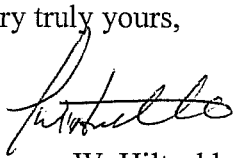
C. "Fingers and Toes" Problem

Finally, the Institute strongly believes that with respect to the issues of compactness, the Commission should not "cut off fingers and toes" of city boundaries because the edges are not smooth or even. These are city boundaries. Compactness and contiguity are functional concepts, as you were instructed by Gibson, Dunn & Crutcher in its legal memorandum and reminded by Gibson Dunn & Crutcher attorney Dan Kolkey on Tuesday, June 7, 2011, and are specifically defined as not bypassing nearby population to reach more distant populations. A disciplined evaluation of the visualizations presented thus far leads the Institute to conclude that the draft maps exhibit many instances in which the Commission has bypassed nearby populations to reach more distant populations by "cutting off" city boundaries and joining the severed portions with other jurisdictions. In some cases the action has been intentional as a result of public testimony.

In other cases it has been accomplished because of specific peccadilloes of individual commissioners. This is no more appropriate than incumbents drawing districts to favor their re-elections.

Thank you for the opportunity to submit written comments. The Institute's legal and technical representatives will present this information and other comments at the Commission's June 9, 2011 meeting in Sacramento.

Very truly yours,



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