Subject: AARC Letter re: Counsel and VRA Issues
From: E Teasley <[redacted]
Date: Fri, 8 Jul 2011 07:12:30 -0700
To: [redacted]
CC: "Office, Communications" <[redacted]

Dear Commissioners:

Please find attached a letter from the African American Redistricting Collaborative (AARC) relevant to your July 8 meeting with counsel and line drawing activities. Do not hesitate to contact us if you have questions or require additional information.

Thank you for your attention to this matter.
Erica

--
Erica Teasley Linnick, Esq.
Coordinator
African American Redistricting Collaborative (AARC)
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Los Angeles CA 90044
[redacted] (ph)
[redacted]
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AARC CRC letter 070711.pdf

AARC
AFRICAN AMERICAN
REDISTRICTING
COLLABORATIVE

July 7, 2011

Via electronic mail
California Citizens Redistricting Commission
[redacted]
Sacramento, CA 95814

Dear Commissioners:

We write to express severe dismay and deep concern about troubling developments that we have observed with the Citizens Redistricting Commission's (CRC's) recent activities. Although we held high expectations that the Commission's engagement with the African American Redistricting Collaborative (AARC) and associated groups would lead to a fair and effective set of district maps, we now have serious doubts that the CRC's current path of line drawing will lead to such a conclusion.

Our main source of concern is the guidance supplied by your counsel, which has apparently led to some very disturbing map visualizations at the June 30th and July 2nd meetings**.** From what we gather, these visualizations ignore the hard work by AARC, CAPAFR, and MALDEF to harmonize their interests into mutually agreeable configurations. From what we can tell, the goal evident in these visualizations is to group our target population in South Los Angeles into a smaller number of African American majority districts. In the hope that the CRC will reconsider its recent changes, which are both ill-considered and fundamentally flawed, we want to provide you with some observations and analysis that we urge you to consider very carefully as you deliberate further.

With some regret but with complete resolve, we must report to you our considered view that the CRC has not received the best counsel in crafting districts in Southern Los Angeles County. As we stated in our initial presentation of our maps for this area, South LA is easily the most diverse and legally complicated area in the United States for federal voting rights matters. The three significant non-white groups in Los Angeles have intersecting and overlapping community networks throughout this geographic area, and their distinct patterns of political participation create a paramount need for the most sensitive line drawing and legal analysis. AARC and other groups have argued from the outset that a rudimentary understanding of voting rights law and redistricting is not equal to the task in a setting that demands a sophisticated and nuanced application of governing legal principles.

[redacted]

Unfortunately, the facts show that the voting rights counsel you have selected has failed to provide accurate or helpful answers to assist with these difficult questions. The track record in these proceedings shows that counsel does not possess the skills to address this project. On multiple occasions, AARC and several other citizen-based organizations have found it necessary to submit letters and additional information in order to correct and/or supplement misinformation supplied to the Commission by counsel. Counsel's presentations to the Commission have further complicated and hindered the effort to construct maps that comply with the law and satisfy local concerns, and we would therefore fervently urge you to review the input you have received and take appropriate remedial actions.

We simply can no longer remain silent in the face of so many instances of misstatements about important elements of voting rights law. Time is too short and the stakes are far too high for our community. A brief recount of the critical missteps made by counsel and our efforts to correct them illustrates our point:

1. From the start of this process, there were clear signs that this counsel was not sufficiently prepared to handle the complex legal analysis that this job required. On March 18th and April 11th, AARC and related groups submitted letters to the Commission that articulated our collective belief that this counsel was not among the most prepared of the various candidates applying for the advisory position to address the complexities of redistricting California. Referring to the applicable hiring criteria for the hiring process, we explained that counsel's background and training in this area was not sufficient:

   > **Section 8253(a)(5) of the Government Code explicitly states that the VRA counsel must have extensive experience and expertise in implementation and enforcement of the VRA. While Gibson Dunn has done work to vindicate claims under the California Voting Rights Act challenging at-large elections, the firm lacks experience or expertise in VRA enforcement in the context of redistricting, including enforcement of Sections 2 and 5 of the VRA.**

2. On May 5th, APALC and associated groups found it necessary to clarify counsel's inaccurate and confusing statements about redistricting law to the Commission. Among other problems cited in that letter, the groups specifically pointed out that counsel's presentation and answers to questions left the incorrect impressions (1) that race could not be considered among the factors relevant to drawing districts and (2) that the Commission could ignore community of interest concerns of groups in the absence of public testimony. In both respects, APALC explained that these positions are absolutely incorrect as a matter of law. With respect to the first issue, federal law requires attention to race in order to avoid vote dilution in line drawing; likewise, state law permits a consideration of race insofar as it is relates to asserting a community of interest. On the second issue, nothing in state law requires the CRC to locate public testimony before crafting districts to recognize groups with communities of interest that cross existing local jurisdictions.

3. On May 24th, the League of Women Voters of California (LWV), one of the main sponsors of the Voters FIRST Act, registered their strong disagreement with how the Commission had enumerated criteria and prioritized them in line drawing. These were decisions that resulted from counsel's interpretations and guidance. Specifically, the LWV warned the Commission that de-emphasizing the mandate to show respect for communities of interest in favor of maintaining city and county boundaries was misguided and inconsistent with the statute. As the LWV letter makes clear, the Voters FIRST Act is abundantly clear that these two concerns must be weighted equally by the Commission in the line drawing process.

4. On June 2nd, other sponsors of Proposition 11 issued a letter to the Commission outlining a series of errors in law and fact that counsel's firm had included in the training materials and in oral presentations for the Commission. The clearest example of counsel's inadequate handling of the law is in the opening sections of the training materials they prepared. That section incorrectly restated the relevant redistricting criteria using rather loosely paraphrased statements of the relevant provisions of state and federal law. Most important, the restatement failed to indicate the primacy of the Voting Rights Act relevant to other factors – an especially troubling mistake for a law firm hired for their asserted expertise on this very subject. The sponsors pointed out to the Commission the consequences of these misstatements and urged them to correct the materials.

5. Most recently, on June 23rd, counsel's flawed input was again called into question regarding counsel's understanding and application of the compactness requirement of the Voting Rights Act. According to the consortium of organizations, counsel wrongly advised against some legislative district configurations that MALDEF had favored on the ground that they did not comply with compactness principles under the Voting Rights Act. In order to correct those seriously inaccurate and legally flawed statements, a coalition of groups including AARC signed a letter laying out the important federal cases with which counsel was apparently not even acquainted. Specifically, the Supreme Court's statements in *LULAC vs. Perry* make clear that geographic proximity of a given community is not the dispositive factor for compactness inquiries. Without that correction, the Commission would have surely violated Section 2 of the VRA.

These are not the only problems that we could cite here, but we find these the most relevant because they have already been brought to your attention by a variety of actors in this process. These follies have diverted AARC and similar groups from our formal role in this process – to present our arguments in favor of our preferred plans. Instead, we have often been compelled to devote time to correcting or completing your counsel's poorly drafted materials and misperceptions about existing law. For the communities who depend on our advocacy, these detours from our work stretch our already limited resources and threaten our ability to effectively defend our own preferred maps. It bears noting that the gross mishandling of governing law and misstatements about redistricting doctrine could provide the grounds for a preclearance objection and/or

a stand-alone lawsuit. However, our goal is to alert you of these systemic problems now with the expectation that you will take corrective actions.

As disappointing as these past failings have been, we are most troubled by the latest instance of your counsel's mismanagement on July 1, following a surprising move into executive session. The CRC emerged with a surprising new map visualization that completely departed from the first drafts that reflected public comment and our ideas for districts in South LA. We can only surmise that this radical change occurred at the behest of your counsel, since the results closely comport with his previously expressed desire to group African Americans in a small number of majority districts. On several occasions, for instance, he has maintained that there is no legal foundation for AARC's preferred plan to maintain the existing cores of the effective districts with sub-majority populations at each level of government.

Once more, we emphatically state that this narrow view is exceedingly misguided on the law, and we urge the Commission to very carefully reconsider your counsel's analysis supporting that ill-founded legal conclusion. Those viewpoints amount to, at best, a conflation of concepts in Section 2 that ignore the totality of the circumstances in South LA. At worst, they indicate that the Commission is following advice that will almost surely result in a legal challenge. We would like you to consider the following thoughts in this regard:

> **Racially Polarized Voting:** We understand that the Commission either may soon receive or has already received a requested study from an outside expert on Racially Polarized Voting (RPV) related to at least part of Los Angeles County. The findings from that report have not been released, but we respectfully request that the CRC make the data from the report and the associated findings available for public review and comment as soon as possible. This factor is relevant both to RPV findings in California and federal law.[1] The CRC must provide public access to this report in order for us to comment on the validity of its findings. In particular, we have three main questions: (1) Which specific elections in Los Angeles does this study address? (2) In how many of those elections did the expert conclude that racially polarized voting exists? (3) At which groups was the RPV analysis targeted?
>
> Any study that fails to incorporate elections for all the offices at issue here is fundamentally flawed; similarly, a selective analysis of only certain parts of Los Angeles also is open to serious questions. AARC's review of the RPV expert's prior work strongly suggests to us that he may have focused his analysis on different election levels than the ones most relevant here. For example, in "An Assessment of Racially Polarized Voting For

[1] See, for example, *Thornburg v. Gingles* U.S. 30, 53-54 (1986); California Voting Rights Act, CA Elections Code Sec. 14028. ("One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section").

and Against Latino Candidates in California," Professor Barreto (a co-author) only utilizes election returns other than those for the three types of contests relevant to the lines drawn by the CRC.

Federal courts have quite consistently found that the most probative evidence for RPV analysis is the results of elections related to the lawsuit.[2] As we have asserted in our proposal, the results of contests for the Assembly, Senate and Congress all demonstrate that both African Americans and Latinos in South LA and adjacent areas effectively elect candidates. More than this, the facts in local elections largely follow a pattern of political effectiveness; the mayor of Los Angeles is Latino and several African Americans hold local elected office in this area. Without a widespread pattern in relevant contests showing consistent polarization of the kind that denies minority groups their ability to elect candidates in South LA and adjacent areas, one should have great concerns about any finding that asserts legally cognizable polarization for purposes of a claim that a single-minority majority-minority district is necessary under Section 2.

As the NAACP's May submission to the CRC indicated and our own internal review of the most relevant election outcomes helps to confirm, we find very little evidence of the kind of widespread racially polarized voting necessary to mandate the adoption of majority minority districts for African Americans. The public record shows that the relationship between Latinos and African Americans is more aptly characterized as cooperative than competitive. For instance, the current mayor of Los Angeles (Latino) has received substantial electoral and financial support from the African American community. Likewise, the elected members of the Assembly, State Senate and U.S. Congress (African American) regularly include in their campaign coalitions and they often staff members of the Latino community in important substantive positions.

Due Process Concerns: An even deeper problem with the new mapping visualizations is the manner in which the opportunity to be heard is apparently ignored. Counsel's handling of information in this episode has inexplicably concealed crucial information from the public that is necessary to assess district plans. Our understanding is that any findings from the Baretto RPV report have not yet been publicly released. From monitoring business meeting deliberations, we are not sure that even the Commissioners have seen it. From what we can discern, this information may not be released at all because it has been deemed part of an attorney's work product and therefore privileged.

That assertion strikes us as outrageous and entirely inconsistent with the purpose of a transparent process run by an independent commission. Concealing this information relies upon a misstatement of the existing federal law of privilege as it relates to attorneys.

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[2] See *Garza v. County of Los Angeles*, 918 F. 2d 763 (9th Cir., 1990). In that lawsuit challenging the County's governmental districts, the District Court had relied primarily on the same set of elections as Baretto does in the aforementioned study to find RPV – that of the Supervisor District in question. That information was supplemented with citywide elections.

To the extent that the Commission has requested this report for the purpose of creating districts, then that report should be subject to public review and comment just as any other supporting data submission. Even if the notes and advice that counsel has developed pursuant to that report may be shielded based upon privilege, the analysis of the data itself and the expert's summary findings used to create these districts surely cannot be reasonably deemed solely produced for the purpose of litigation. This record, like any other submission, is directly relevant to the public creation of election districts. There is no way at all to verify any of the expert's choices in conducting his analysis without access to this report. We would likewise have no information at all about any directions that counsel gave the expert in formulating his research design. If the Commission relies upon that report for any later visualization or map, it risks a serious legal challenge under Due Process Clause and associated state open government laws.

Section 2 Packing Issues: Finally, we arrive at yet another of counsel's substantive blunders with voting rights law. Throughout this process, counsel has asserted his view that there is "no legal basis" for federal protection of the districts AARC has proposed in South LA. We cannot more strongly disagree. Once more, we emphatically contend that this view is quite misguided on the law, and we urge the Commission to very carefully reconsider counsel's analysis supporting that legal conclusion. These views amount to, at best, a conflation of the governing concepts in Section 2. At worst, they indicate that the Commission is following advice that would almost surely result in a legal challenge.

In concluding that there is no legal basis in federal law, counsel's apparent mistake is his seemingly narrow conception of the circumstances in which the dilution claim of packing can exist. We find instructive the U.S. Supreme Court's statements on packing that are expressed in the case *Voinovich v. Quilter*.[3] In that case, the Court was confronted with a challenged district plan that established a majority-control district against the wishes of the relevant racial minority group. The Court noted that the traditional case of packing is where a majority population in a district is later over-concentrated with additional voters in order to limit that group's potential efficacy in a second district. The dilutive act is the decision to avoid crafting a second district that might offer the relevant population an opportunity to elect an additional preferred candidate.

It is certainly true that this scenario represents the traditional understanding of "packing." However, what counsel may have missed in that opinion was clear language from the Court that also indicated that the minority group could be illegally "packed" even when they are not an existing majority-control district. Specifically, the Court explained:

> [T]he creation of majority-minority districts, does not invariably minimize or maximize minority voting strength. Instead, it can have either effect or neither. On the one hand, creating majority-black districts necessarily leaves fewer black vot-

[3] 507 U.S. 146 (1993).

> ers and therefore diminishes black-voter influence in predominantly white districts. On the other hand, the creation of majority-black districts can enhance the influence of black voters. Placing black voters in a district in which they constitute a sizeable and therefore "safe" majority ensures that they are able to elect their candidate of choice. Which effect the practice has, if any at all, depends entirely on the facts and circumstances of each case.[4]

As the Court concluded, the crucial factor for determining whether a violation exists is the effect that a particular configuration has on minority political efficacy in the totality of circumstances. In other words, the crucial consideration is how the new configuration (whether creating a larger or smaller racial community in a district) affects the overall political effectiveness of that group in future elections.

This conception suggests that illegal packing may also occur where, as here, a population that demonstrates political effectiveness at a current population level is forcibly grouped into proposed districts that are well in excess of that level. The effects obviously limit their effectiveness to a smaller number of districts than past performance indicates that their population may support. We have shown several times that the totality of the circumstances at each level of government demonstrates our ability to elect candidates without majority groupings. That is, the evidence strongly supports our claim that African Americans are consistently effective in each of the existing districts that we have proposed to maintain.

Significantly, the local politics in South LA are not characterized by deep or enduring patterns of racially polarized voting. AARC's initial report did not cite specific studies and related evidence to establish this point because the facts on the ground make such a showing pointless. We indicated in our earlier report that African Americans in these districts have largely been effective in electing their preferred candidates at virtually every level of state political office. That level of electoral success in South LA would simply not be possible if polarized voting diluted African American political power.

Thus, eliminating current districts that effectively elect candidates of choice creates legal harm. Where African Americans are grouped in a district far in excess of the number associated with their ability to elect a candidate, and contrary to their stated preferences, we think that a viable claim of "packing" (either under Section 2 or under the 14th Amendment) exists. We therefore would very strongly urge the Commission to reject plans to

[4] 507 U.S. at 154-55.

radically alter African American political opportunity in that manner.[5] As we have also explained, we think there is a basis in existing federal case law sufficient to support this position.[6]

The proposal to consolidate this community into a smaller number of districts raises a very strong inference of illegal "packing." We therefore urge you to review our previous submissions for a more complete account of arguments, but we briefly recount the highlights of the substantive case on which we have relied:

Assembly & Senate: These districts were formulated pursuant to the cooperative efforts between AARC and other associated groups to produce a unity map. All of the districts build upon the conceptions represented in our initial presentation to the CRC; importantly, they also remain close to the threshold numbers that past evidence demonstrates allow the African American community to be effective. The four proposed Assembly districts preserve the networks of neighborhoods that have consistently elected candidates of choice. The same is true of the pair of Senate districts, which largely nest the assembly districts. In each case, the configuration of districts satisfies the main goals stated by the Commission and avoids unnecessary packing of voters into any districts.

Congress: the three proposed districts, 33, 35, and 37 each include territory that defines a specific community that has a pattern of political effectiveness. In District 33, we established that the socio-economic mix of the African American community bridged the areas of Culver City and Crenshaw. The profile is enhanced by the overall racial diversity that has permitted the black community to forge durable alliances to elect jointly preferred candidates. District 35 is centered in the neighborhood of Inglewood and links the communities in and around LAX. District 37 is yet another distinct area that has been effective as a zone for African Americans in the southernmost portion of the county. They

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[5] Accordingly, the Commission would be well-advised to consider the possibility of creating one or two influence or cross-over districts using Section 2; we think that some of the districts in our proposal could achieve that end with a minor adjustment (for example, in our proposed AD 48). The argument supporting a Section 2 district of this type would be that the combination of African Americans and Latinos in a district would, taken together, constitute a majority and elect candidates that they prefer. Contrary to the traditional Section 2 electoral setting, in which a non-white group would need evidence of racially polarized voting by a white population, African American and Latinos can make an affirmative claim that their preferences are similar enough to meet the cohesiveness element in *Gingles*. Otherwise, neither group would have a legally defensible district. The advantage of this approach is that it responds to the representational desires of both groups in South LA while maintaining compact district shapes.

[6] This alternative approach is not without some support in federal law. The First Circuit has ruled that a Section 2 claim may be brought in circumstances where the black voting age population is less than 50% but still elects a candidate of choice, while the 4th, and 5th circuits have expressly ruled that Section 2 contains a bright line 50% requirement even though it is nowhere in the language of the Voting Rights Act itself. The 2nd, 9th, 10th and 11th circuits have waffled or ruled only in dicta. The New Jersey State Supreme Court has held that a less than 50% VAP district satisfies Section 2 of the Voting Rights Act.

have established working electoral alliances with diverse communities in a geographic (and port traffic) corridor running from Long Beach northward through Carson and Compton and have effectively worked together in supporting preferred candidates over time.

We are hopeful that the above points provide some clarity for you as you begin your Los Angeles County drawing in earnest. You should find instructive the "Unity Maps" for the Assembly and Southern California Senate districts and our Amended Congressional Plan for South Los Angeles also submitted on June 28. We offer these thoughts and observations in good faith, and we sincerely hope that they are constructive in promoting a serious consideration of all of the ideas that have been presented on the record.

We wish you much success in your upcoming deliberations and remain available for any questions or concerns you may have regarding this or any of our other submissions to you.

Sincerely,

African American Redistricting Collaborative

Subject: redisticting
From: "Drag Dutina" <d.duti[redacted]
Date: Fri, 8 Jul 2011 14:33:02 -0700
To: <[redacted]

Dear Sirs,
Thanks for the changes in your initial Plan.

Dear Commission,
Delighted to see that the new version leaves Fremont as an entity, Thanks!! Drag Dutina

redisticting

Subject: Public Comment: General Comment
From: Jerry Roads <[redacted]
Date: Fri, 8 Jul 2011 19:30:56 +0000
To: [redacted]

From: Jerry Roads <[redacted]
Subject: BOE population way off in new visualization

Message Body:
Your populations are way off in newest BOE maps. east district seems to have 6 million people and LA/orange county district would have 14 million people. I'm I missing something here?

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This mail is sent via contact form on Citizens Redistricting Commission

Subject: Public Comment: General Comment
From: Marisa Hewitt <[redacted]
Date: Fri, 8 Jul 2011 15:42:34 +0000
To: [redacted]

From: Marisa Hewitt <[redacted]
Subject: Keeping communities intact

Message Body:
Dear Commission Members, I would like to suggest in regards to MTCAP/NewCD2, that you strongly consider keeping Glenn Co intact for MTCAP/NewCD2, this fits the COI & VRA criteria with the many Hispanic households in Willows & Orland. Also, I strongly request you retain Truckee in Nevada Co. for MTCAP/NewCD2, meeting COI for Native Americans.

Thank you for your time and consideration.
A concerned citizen

Mrs. Marisa Hewitt

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This mail is sent via contact form on Citizens Redistricting Commission

Subject: Public Comment: 9 - Modoc
From: cheryl fisher <[redacted]
Date: Sat, 9 Jul 2011 00:50:33 +0000
To: [redacted]

From: cheryl fisher <[redacted]
Subject: unsure

Message Body:
I ws told the reason for rezoning was for eliminating prop 13, or to simply spend more money. depending on who is behind the rezoneing effort if it is from the demograts its not good will probably end up costing the public more money well we no longer have any so the joke is on them

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This mail is sent via contact form on Citizens Redistricting Commission

Subject: Public Comment: 2 - Riverside
From: Bob Richmond <[redacted]
Date: Sat, 9 Jul 2011 00:42:45 +0000
To: [redacted]

From: Bob Richmond <[redacted]
Subject: Maps

Message Body:
Good luck, this process is messed up.

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This mail is sent via contact form on Citizens Redistricting Commission