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June 22, 2020

Elaine M. Howell
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E-Mail: ElaineH@auditor.ca.gov

Via U.S. Mail and E-Mail

RE: Citizens Redistricting Commission – Eligibility of Incumbent Commissioners to Apply for Next Commission

Dear Ms. Howle:

Congratulations to you, the members of the Applicant Review Panel, and the counsel and staff of the State Auditor on completing the important work to name the sixty finalists for the 2020 Citizens Redistricting Commission. We look forward to the results of the lottery and the selection of the first eight members of the new Commission.

As you may know, the office of the State Auditor took the position during the recent application period that current members of the Commission were legally ineligible to apply for the next Commission. In other words, commissioners could not serve *consecutive* terms of office, assuming that they were otherwise qualified to apply and that they were successful in passing the multiple stages of review. However, based on your office's interpretation of the law, former commissioners could apply for subsequent commissions, as long as the terms of office were non-consecutive. None of the current commissioners chose to reapply in 2019, so the issue of eligibility became moot for this particular cycle.

The current Commission disagrees with this interpretation of the law, and this letter formalizes our position, which was adopted unanimously at the Commission's meeting of September 20, 2019. For the following reasons, we believe the law places no restrictions on the application of an incumbent commissioner who would otherwise be eligible to apply for the next Commission.

The Voters FIRST Act contains no language in its constitutional or its statutory provisions specifying that incumbent commissioners are ineligible to apply for later commissions. Nor does the Voter FIRST Act contain any language on term limits; the terms of office for commissioners, like other public officials, merely conclude on a particular date or with the satisfaction of a condition – in this case, the naming of the first eight members of the next commission, whose terms begin on the same date.

Commissioner qualifications are clearly and specifically set forth in Section 2 of Article XXI of the California Constitution, which provides, in pertinent part:

(c)(3) Each commission member shall be a voter who has been continuously registered in California with the same political party or unaffiliated with a political party and who has not changed political party affiliation for five or more years immediately preceding the date of his or her appointment. Each commission member shall have voted in two of the last three statewide general elections immediately preceding his or her application.

In addition, the State Auditor is authorized by statute to remove specified categories of voters with conflicts of interest from the applicant pool, Cal. Gov't Code Sec. 8252 (a)(2); however, this does not imply that it can exclude all incumbent commissioners from eligibility.

Imposing an additional restrictive qualification ignores a fundamental maxim of legal construction, namely, the interpretive canon *expressio unius est exclusio alterius*. See, e.g., *Association of California Insurance Companies v. Jones* (2017) 2 Cal.5th 376 (“When the *expressio unius* canon of construction is applicable, it implies that ‘the explicit mention of some things in a text may imply other matters not similarly addressed are excluded.’” (Howard Jarvis Taxpayers Assn. v. Padilla (2016) 62 Cal.4th 486, 514”).

Again, the California Constitution provides that any voter is eligible to serve as a commissioner subject only to two express limitations: (1) he or she must have been “continuously registered in California with the same political party or unaffiliated with a political party and . . . not changed political party affiliation for five or more years immediately preceding the date of his or her appointment”; and (2) the voter “shall have voted in two of the last three statewide general elections immediately preceding his or her application.” There is thus an inherent implication, based on the language of the state constitution, that there are no further limitations on basic eligibility.

We understand that the State Auditor’s interpretation may be relying on Government Code Section 8252, which provides, in pertinent part:

- (2) The State Auditor shall remove from the applicant pool *individuals with conflicts of interest* including:
 - (A) Within the 10 years immediately preceding the date of application, neither the applicant, nor a member of his or her immediate family, may have done any of the following:
 - (i) Been appointed to, elected to, or have been a candidate for federal or state office.
 - (ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
 - (iii) Served as an elected or appointed member of a political party central committee.
 - (iv) Been a registered federal, state, or local lobbyist.
 - (v) Served as paid congressional, legislative, or State Board of Equalization staff.
 - (vi) Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor.
 - (B) Staff and consultants to, persons under a contract with, and any person with an immediate family relationship with the Governor, a Member of the Legislature, a

Member of Congress, or a member of the State Board of Equalization, are not eligible to serve as commission members. As used in this subdivision, a member of a person's "immediate family" is one with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.

Cal. Gov't Code Sec. 8252(a)(2) (emphasis added).

However, these restrictions, each of which is limited to "individuals with conflicts of interest," provide no support for the wholesale removal of existing commissioners from eligibility. There is no basis, express or implied, in the language of section 8252(a)(2) to conclude that every incumbent commissioner has "conflicts of interest" that would justify exclusion from membership in the subsequent commission. While we do recognize that the word "including" in section 8252(a)(2) might, in appropriate cases, warrant the exclusion of an existing commissioner who has some other demonstrable conflict of interest, we see no reason to assume that serving on the prior commission is an *inherent* conflict of interest comparable to those specified in section 8252(a)(2).

At bottom, we are concerned that excluding existing commissioners as applicants for the subsequent commission establishes an unnecessary and unauthorized restriction on applicants, and we urge the State Auditor office's to reconsider and eliminate this restriction in all future selection processes.

Sincerely,

A handwritten signature in black ink, appearing to read "Angelo N. Ancheta". The signature is fluid and cursive, with a long horizontal stroke at the end.

Angelo N. Ancheta
Chair, California Citizens Redistricting Commission