

From: [REDACTED]
To: [Shape California's Future](#)
Subject: Public Comments to 2020 Citizens Redistricting Commission - Transition Issues and Key Documents
Date: Tuesday, July 21, 2020 8:21:43 AM
Attachments: [Opinion in Legislature v Padilla - S262530.PDF](#)
[20160713_crc_handbook_final.pdf](#)
[CRC Letter to State Auditor Re RFP 21-01.pdf](#)
[CRC Letter to State Auditor Re Commissioner Eligibility.pdf](#)

Commissioners:

Congratulations on your being named to the 2020 Citizens Redistricting Commission! You've made it through a lengthy selection process, and you now have the important and challenging task of selecting the remaining members of the Commission. I'm confident that you will be able to build a strong team by selecting a group that complements your skills and knowledge of California and that reflects the diversity of the state, including racial and ethnic diversity.

I am writing because I was the chair of the 2010 Citizens Redistricting Commission during the final months of its term, which concluded on July 2. Along with Lilbert ("Gil") Ontai, who served as the CRC's vice-chair, I worked closely with the CRC's staff of retired annuitants (Patrick McGuire and Cynthia Dines), as well as its legal counsel, Marian Johnston, during the close out of our term. We also assisted the State Auditor's chief counsel and chief of public affairs with the transition process.

There are several items that I am bringing to your attention here because either (1) they were in the process of being resolved or adjudicated during the transition period between the commissions, or (2) they might be omitted or lost in the transition process because of recent changes to the CRC's web site. Several documents on wedrawthelines.ca.gov may be difficult to locate or currently lack active links, but they should be immediately useful for the 2020 CRC's work. I discuss these items below and have attached some of the relevant documents.

Legislature v. Padilla. The 2010 CRC participated in litigation filed in June 2020 by the State Legislature which requested that the California Supreme Court extend the 2020 CRC's deadlines for producing draft and final maps. The litigation arose because the Census Bureau anticipates releasing redistricting-related data from the 2020 Census up to four months later than normal – a timeline that would make it impossible to meet the deadlines set by California law. Marian Johnston represented the 2010 CRC, and former Commissioner Ontai and I submitted declarations supporting the extension of the state deadlines.

On July 17, the state Supreme Court issued a writ extending the deadline for draft maps to November 1, 2021 and the deadline for final maps to December 15, 2021. The Court's opinion also allows the deadlines to be extended further should there be additional Census Bureau delays; however, the Court also urged the 2020 CRC to complete its work sooner if the delays are not as lengthy as the Census Bureau has projected. The Court's opinion is attached. Marian Johnston should be a helpful resource if you have questions about the litigation. Karin Mac Donald at the Statewide Database, which must prepare the census

data for the CRC, can also assist with data issues and setting internal work deadlines.

CRC Handbook. In 2016, the CRC approved a summary report and a compilation of actions and suggestions for future redistricting commissions, also known as the “CRC Handbook.” This document was prepared by former Commissioner Gabino Aguirre and was based on a survey of the commissioners conducted after the final maps had been certified. The Handbook does not try to cover every aspect of the CRC’s work during 2010-12, but instead provides an overview of major CRC processes and offers sets of recommendations for future activities. The Handbook should be useful as you move forward with your own work; you are, however, under no obligation to follow its recommendations.

The Handbook is attached and is also available at <https://wedrawthelines.ca.gov/meeting-handouts-july-2016/> (Note: the PDF file is indeed a final version, even though it has some comments and tracked changes in the margins.)

RFP for Line-Drawing Consultant. On June 15, 2020, the State Auditor released Request for Proposal 21-01, which solicits applications for the 2020 CRC’s line-drawing consultant. While the release of the RFP was no doubt well-intended and designed to help speed the CRC’s work, former Commissioner Ontai and I opposed its release and called for its withdrawal in a letter to the State Auditor dated June 22, 2020.

As the letter makes clear, it is not only the role of the CRC to select its staff and consultants, it is the CRC’s prerogative to set the *criteria* for selection. The RFP was released before any 2020 commissioners were named, and applications will be due only days after the full commission has been seated. Given the newly revised deadlines for the maps and the challenges of conducting an input process during the ongoing public health crisis, I believe that choosing a line-drawing consultant under this timeline is premature. An early selection process is also likely to compromise public input on such an important – and potentially controversial – consultancy position.

I would continue to urge the State Auditor to withdraw the RFP; however, if the RFP is not withdrawn before the full CRC is seated, then I would recommend that the issue be placed on the agenda for the first full CRC meeting. Assuming that the meeting occurs after the due date for applications, the CRC could reject any submitted applications and subsequently prepare and issue a new RFP that has received thorough consideration.

Data Issues. The 2020 CRC should be aware of two ongoing issues related to Census data and the preparation of data sets by the Statewide Database: (1) state prisoner reallocations, and (2) Citizen Voting Age Population (CVAP) data from the Census Bureau’s American Community Survey.

Prisoner Reallocation. The 2020 CRC has been empowered (although not mandated) under state law to adjust its population data sets so that state prisoners are reallocated to their last-known home addresses rather than to their locations of incarceration during the 2020 Census. The Statewide Database was charged by the 2010 CRC to receive residence data from the California Department of Corrections and Rehabilitation and to prepare appropriate data sets for the CRC’s use. Karin Mac Donald at the Statewide Database

should be invited to speak to the CRC on the latest developments and to help the CRC develop strategies for any adjustments once the Census 2020 data become available.

Updated CVAP. Timely Citizen Voting Age Population data is essential to ensure that the CRC's districts comply with section 2 of the federal Voting Rights Act (VRA). Because of the expected delay in the delivery of Census 2020 data, Ms. Mac Donald and I submitted a letter to the Census Bureau in June 2020 requesting that the Census Bureau reauthorize an American Community Survey dataset that would provide a five-year estimate (2015-2019) of CVAP data. The Chief of the Census Redistricting & Voting Rights Data Office notified us on July 17 that these data would be made available. Again, Ms. Mac Donald should be invited to speak to the CRC on the use of CVAP data and the importance of having timely data sets for VRA compliance.

Ash Grant. In 2017, the 2010 CRC was awarded a multi-year grant of \$100,000 to conduct educational activities under the Innovations in American Government Awards Program of the Harvard Kennedy School's Ash Center for Democratic Governance and Innovation. The grant was administered by the State of California for the CRC, but it remained entirely separate from the CRC's normal budget and operations. The bulk of the educational activities were completed before the end of the 2010 CRC's term; however, because of various COVID-19-related restrictions on travel, the grant was not fully completed, and the Ash Center extended the deadline for completion of the grant beyond the 2010 CRC's term of office. Twelve of the fourteen former commissioners have committed to working on the Ash Grant (Angelo Ancheta and Michael Ward are not participating).

Transference of the remaining Ash Center funds (less than \$10,000) to Dainamic Consulting, Inc. (former Commissioner Cynthia Dai's consulting firm) is still pending but should be resolved prior to the seating of the full 2020 CRC. Staff member Cynthia Dines has been working on the transfer, and there should be no need for 2020 CRC action on this grant, although there may be some remaining follow-up for CRC staff to ensure that the funds have been properly transferred.

More information and supporting documents for the grant are available with the CRC's meeting handouts for September to December 2017 at https://wedrawthelines.ca.gov/meeting_handouts/. Activities under the grant are available at <https://wedrawthelines.ca.gov/otherstates/>.

Commissioner Eligibility for Subsequent Commissions. This is not a pressing item, since the application process for the 2030 CRC is years away. The 2010 CRC took the position, in contrast to the State Auditor's position, that sitting commissioners are legally eligible to apply for the next CRC, because there is nothing in state law prohibiting such an application. The issue became moot in the 2020 cycle, since no sitting commissioner chose to apply again. Nevertheless, because the issue may occur in future cycles, the 2010 CRC developed the position and arguments contained in the attached letter.

CRC Web Site. As I mentioned at the outset, a number of links and documents are not currently available on the wedrawthelines.ca.gov web site as it being updated to reflect the new CRC. Nonetheless, all of the 2010 CRC's official documents (including letters and statements) should be made available to the public and should be properly archived.

The 2020 CRC is not obligated to use the same web site or web address, and it may be preferable to create a new site that is more user friendly and takes greater advantage of recent technologies to assist the public with map drawing. I would further recommend that the 2020 CRC have dedicated staffing for web page development and maintenance.

Please feel free to contact me if you have questions regarding these issues or would like additional information regarding the 2010 Commission. Good luck with your work!

Angelo Ancheta
Member, 2010 Citizens Redistricting Commission
San Francisco, California



WeDrawTheLines.ca.gov



California Citizens Redistricting Commission

SUMMARY REPORT AND COMPILATION OF 2010 COMMISSION ACTIONS AND SUGGESTIONS FOR FUTURE CITIZENS REDISTRICTING COMMISSIONS

Commission Membership

Dr. Gabino Aguirre	Stanley Forbes
Angelo Ancheta	Connie Malloy
Vincent P. Barabba	Lilbert "Gil" R. Ontai
Maria Blanco	M. Andre Parvenu
Cynthia Dai	Jeanne Raya
Michelle R. DiGuilio	Michael Ward
Jodie Filkins Webber	Peter Yao

Commission Staff

Christina Shupe

Compiled and Written by
Dr. Gabino Aguirre
April 2016

For more information, contact
California Citizens Redistricting Commission
c/o Christina Shupe
1017 "L" Street
Sacramento, CA 95814
Telephone: 916.709.6303 E-mail: christina.shupe@crc.ca.gov

TABLE OF CONTENTS

I. Introduction	1
II. Recruitment and Selection	3
1. Recruitment and Selection of Commissioners	3
2. Application Process	4
3. Interactions with State Agencies	4
4. Selection of First Eight Commissioners	5
5. Selection of Final Six Commissioners	5
6. Training of the First Eight, and the Final Six, Commissioners	6
III. Setup and Operations	6
1. Commission Setup and Operations	6
2. Commissioner Socialization/Team-Building	7
3. Commission Election of the Chair/Vice Chairperson	7
4. Hiring of the Executive Director	8
5. Hiring of the Staff Attorney/General Counsel	8
6. Hiring of the Public Information Officer	9
7. Hiring of Other Staff	9
8. Hiring of Voting Rights Act (VRA) Attorneys	10
9. Hiring the Mapping/Technical Consultant	10
10. Hiring of the RPV Consultant	11
11. Hiring of Additional Staff Analysts	11
12. Hiring Process and Logistics of Staff Personnel	12
13. Hiring of Staff and Logistics with State Contracting Procedures	12
14. Rotating Chair/Vice Chair Responsibility	13
15. Delegation of Authority	13
16. Establishing and Ensuring Transparency	14
17. Public Communications	14
18. Advisory Committee Structure	14
19. Agendas, Structure, and Process	15
20. Structure and Process of CRC-Administration-Attorney-Consultant Communication and Coordination	15
21. Use of Personal versus Public Equipment	16
22. Per Diem and TEC Reimbursements	16
23. Business Meetings	16
24. Business Locations	17

4. General Counsel–VRA Attorneys Collaboration	28
5. Public Records Act Requests Within Confidentiality	28
6. Working with Legislative Staffers.....	29
7. Negotiations Process with Legislative Staffers and Advocacy	29
8. Timeline for Process	29
VII. Hyperlinked Appendices.....	30

Unknow
Field C

Unknow
Field C

Arman
Delete

Unknow
Field C

Unknow
Field C

Arman
Delete

Unknow
Field C

Unknow
Field C

I. Introduction

In November 2008, the voters approved Proposition 11 and enacted the Voters First Act (the “Act”) to shift the responsibility for drawing Assembly, Senate, and Board of Equalization districts to an independent Commission. In November 2010, the voters approved Proposition 20 and amended the Act to include Congressional redistricting within the Commission’s mandates. The Act’s stated purpose called for an independent Citizens Redistricting Commission (CRC) to draw districts based on strict, nonpartisan rules designed to ensure fair representation. The Act also charged the commissioners with applying the law in a manner that was impartial and reinforced public confidence in the integrity of the redistricting process (Cal Const., art. XXI, § 2, sub. (c)(6)). Consequently, the Act provided that each commissioner was to be prohibited from holding elective public office at the federal, state, county, or city level for a period of ten years from the date of their appointment, and from holding appointive public office for a period of five years. In addition, commissioners would be ineligible for five years from holding any paid position with the Legislature or with any individual legislator, and could not be a registered federal, state, or local lobbyist during this period.

The Citizens Redistricting Commission for the State of California (the “Commission”) completed its task of creating statewide district maps for Assembly, Senate, Board of Equalization, and Congress in accordance with the provisions of Article XXI of the California Constitution. The maps received final approval by the Commission and were certified to the Secretary of State. The Commission was successful in defending its maps in the State Supreme Court, Federal Court, and in Superior Court.

This effort was a historic event in the history of California. The people of California demanded a fair and open process when they adopted Propositions 11 and 20, which amended the California Constitution and created the Commission. A group of 14 citizens, chosen from an applicant pool of more than 36,000, engaged in an extraordinary effort to conduct an open and transparent public process designed to receive input from the people of California about their communities and desires for fair and effective representation at each district level. The amount of public participation was unprecedented. The people participated in the deliberations and debate over where to draw the lines. Through the course of 34 public meetings and 32 locations around the state, more than 2,700 people participated in person, and over 20,000 written comments were submitted. In addition, extensive participation in the form of proposed alternative maps for the state, various regions, or selected districts were received from a variety of individuals and groups.

The result of this effort was a set of statewide district maps for Assembly, Senate, Board of Equalization, and Congress that fully and fairly reflects the input of the people of California. The process was open, transparent, and free of partisanship. There were long and difficult debates, and disagreements among competing communities and interested persons. No person or group

was excluded from full participation in the process. Commissioners did not always agree on all the issues or their resolution. However, commissioners were committed to the mission and valued and respected each other's opinions. Thousands of individuals and many groups provided input and suggestions, and these were considered fairly and impartially. Throughout this process, the Commission was diligent in carefully analyzing and evaluating all contributions and maintained its absolute independence as citizen representatives for all of California. In the end, the full Commission voted overwhelmingly to approve each set of maps.

Based on the 2011 experience, statutory changes have been made to allow the selection process of future citizens redistricting commissions to begin 4.5 months earlier. These statutory changes also provide them a full 12 months to carry out their duties before the August 15 deadline for submittal and approval of maps.

The Commission is proud to have served the people of this great state. It has developed this report detailing the challenges faced and lessons learned, and puts forth suggestions for future redistricting commissions. For the sake of simplicity, this report is organized into five consecutive sections of activity that detail the phased contexts within which the Commission carried out its tasks. These sections are as follows:

- II. Recruitment and Selection
- III. Setup and Operations
- IV. Community Input/Hearings
- V. Mapping
- VI. Post-Mapping/Litigation

As California's first Citizens Redistricting Commission, we literally had to set up, implement and carry out its mission on the fly, akin to "... designing, constructing, and flying the plane after takeoff!" In this regard, this Commission called on and tapped all the myriad talents and expertise of the fourteen individual commissioners in facing a great variety of challenges and for solving problems never before encountered by any other commission. It is noteworthy that all mandates were met within the required timeline. All maps were drawn fairly and transparently, the public was engaged as never before, and all newly drawn districts successfully withstood several legal challenges which sought to overturn them. At all times, the Commission functioned independently of other organizations, and this report reflects such autonomy. At the end of this report, relevant reports, court cases, public comments, and legislative amendments are hyperlinked for public access and reference.

This report is a compilation and summary of actions and strategies utilized in meeting difficult challenges that demanded imaginative and inventive solutions. It represents the experiences of this Commission and an expectation that the "lessons learned" may serve as a useful guide, while

acknowledging that the next Commission will certainly face a different set of circumstances and conditions. Given the diverse and nuanced perspectives on the many issues faced, it represents the collective responses from all fourteen individual commissioners, rather than actions taken by “the Commission.” It offers suggestions for consideration rather than recommendations for action, in the hope they will be helpful to future citizens redistricting commissions.

In the following sections, actions taken by the Commission on each issue are identified as “Commission Action” and other information and suggestions are given as “Commissioner Information/Suggestions.”

II. Recruitment and Selection

1. Recruitment and Selection of Commissioners

This task was assigned to the Bureau of State Audits (BSA) which, in collaboration with a group of nonprofit community-based organizations, carried out an extensive recruitment process which included press releases and public information sessions across the state. Approximately 36,000 California residents submitted applications for the Commission, resulting in a diverse applicant pool. This result was due primarily to the education and outreach activities of various partners from the nonprofit sector, mostly funded by the Irvine Foundation. This involvement by community-based organizations was critical. Concerns have been raised about the continued availability of such funding to continue participation by such partners. In addition, information provided to potential applicants referred to the overall goals of Proposition 11, and did not include any specifics about the process, timelines, individual commitment required, impacts on personal, professional or business interests, or other such factors. Given this dearth of information, the 14 selected commissioners were asked to take a leap of faith to simultaneously design, build, and maintain the organization after takeoff!

The BSA set up a two-part application process. First, it required all applicants to provide basic information to screen for minimum qualifications. Second, a “supplemental application” was put in place which required applicants to complete several essays and provide additional information.

Commission Action: There was no Commission action, since the Commission was in the formative stage and not yet operational.

Commissioner Information/Suggestion(s): This Commission is committed to assisting future redistricting commissions with outreach, to otherwise disseminate information about redistricting and the application process, and to plan and implement a robust and creative social media campaign. Commissioners will be available to speak to interested groups about the process and their experiences.

2. Application Process

This task also was conducted by the BSA. Again, the participation of nonprofit organizations was invaluable in encouraging applicants and providing assistance with the application itself, although the actual application was completed and submitted online. Numerous positive comments were provided regarding the overall process, including the web application form, its multi-stage process, sign-ups for interview slots, and the open deliberation of the Applicant Review Panel during public review of applications, interviews, and selection. The BSA did an excellent job handling the volume of applications and went above and beyond their standard work plan. Coordination of this process by the BSA was excellent.

Commission Action: There was no Commission action, since the Commission was in the formative stage and not yet operational.

Commissioner Information/Suggestion(s): If possible, the next Commission should reduce the number of interviews from five to four per day, to allow for fuller review of applicant materials and to guard against fatigue by the Applicant Review Panel. The application information should clarify the operational meaning and application of “impartiality” by drawing the distinction between advocacy of issues/groups/people/areas versus the ability to be impartial despite being an advocate. Also, divide the section on “appreciation for diversity in demographics and geography” into different sections to capture both an applicant’s experience with diversity in or with communities/people versus knowledge of and experience in the various geographic areas of California. In the “analytical skills” section, ask about applicants’ ability to apply and adjust multiple conflicting criteria over large geographic areas. Although mandated by law, the requirement for providing conflict of interest information for extended family members was considered to have discouraged some potential applicants. Further, the next Commission should consider additional inquiry regarding a candidate’s past involvement in the 2011 redistricting process such as level of involvement either as a commissioner, public participant, or with an organization. Finally, focus on each candidate’s present philosophy of redistricting for 2021 in light of substantial changes and corrections necessary in 2011 due to past gerrymandering.

3. Interactions with State Agencies

The Commission had to work with a variety of state agencies with which most commissioners had limited or no knowledge or experience.

Commission Action: Given the need to work with state agencies primarily based in Sacramento, Commission looked favorably on hiring of staff familiar with these agencies, their functions, and processes.

Commissioner Information/Suggestion(s): The Bureau of State Audits was tasked with recruitment and selection of commissioners, and then the Commission worked with the Secretary of State while it hired staff and dealt with logistics and planning.

Commissioners felt support staff from the BSA Applicant Review Panel and Secretary of State (SOS) were generally responsive and courteous in the initial selection and setup of the structure for the Commission. However, a few commissioners felt the transition from BSA to SOS did not go smoothly, and this led to internal confusion and disruption. This transition occurred when the Commission was just settling in, and it was difficult to ascertain where to go with questions. Commissioners were generally unaware of how state agencies were responsible for assisting the Commission functionally and bureaucratically. In the future, through the negotiated statutory amendments, the BSA will handle the whole transition, and the Secretary of State will no longer be involved. A crash course for Commission members on state hiring rules, contracting, and agency protocols is absolutely necessary.

4. Selection of First Eight Commissioners

The law required the BSA Applicant Review Panel to review all applications and select the first eight commissioners, who would then be responsible for selecting the remaining six.

Commission Action: This was the first task faced by the Commission. All discussions and actions continued to be fully transparent, all agendas were posted in accordance with the Bagley-Keene Open Meeting Act (Bagley-Keene), and deliberations were live-streamed on the Internet.

Commissioner Information/Suggestion(s): There was a full and public discussion of applicants under consideration, and the public selection was conducted by random draw using ping pong balls. However, some commissioners felt this random draw constrained the available choices for the additional six commissioners. Even though random draw was mandated by law, there were concerns that other alternatives should have been considered. Also, although commissioners were to represent the diversity of California interests in assuring and expanding the franchise, there was some concern about the need to clarify the nature of relationships with the various partners involved in the public redistricting process.

5. Selection of Final Six Commissioners

The initial eight commissioners were required to review the remaining applicant pool and carry out a public and transparent process to select the remaining six, to complete the Commission with a total of 14 members.

Commission Action: The selection of the first eight Commissioners was carried out through a lottery system, and the remaining six were vetted and selected through a full consideration of all remaining candidates and their qualifications under the three primary selection criteria. There was overall agreement that the overall process was handled well.

Commissioner Information/Suggestion(s): This selection was carried out with much discussion and debate regarding the various talents and backgrounds of the remaining applicants within the context of the Commission's need to reflect California's

demographics while being able to develop and function as a team to meet its legal mandates. There was some concern regarding the lack of representation from the lesser-populated areas of the state. Even though mandated by law, there was expressed concern regarding the “blind” vetoes by the Legislature and the lack of public disclosure of the reasons why certain applicants had been struck from consideration by each of the two major political parties. Under the statute, each of the two major political parties were able to eliminate candidates from the remaining list through a “blind veto” (i.e., blind to the public) without having to provide any justification or reason for striking them out.

6. Training of the First Eight, and the Final Six, Commissioners

The great majority of commissioners had limited experience and knowledge working within the state bureaucracy or about how the CRC could work successfully within its agency/departmental structure. To address this need, several trainings were scheduled and provided to the CRC.

Commission Action: The Commission received available training within a very tight timeline, even though commissioners had a limited understanding of the types of information and knowledge that would be required as the CRC moved forward in meeting its mandates.

Commissioner Information/Suggestion(s): Training was uneven for both sets of commissioners (sometimes jokingly referred to as the “lucky ones” and the “chosen ones”). The short timeline compressed opportunities for fullness and comprehensiveness; this time period has now been extended through statutory amendment. The lack of adequate training was especially true for the last six commissioners, who were relegated to watching videos of the training the first eight had received. Commissioners recommend advance planning of topics and schedule so all commissioners are appropriately trained; perhaps the first eight should only be trained on the selection process for the final six, with the full training component carried out once the full Commission is seated. This plan should include a strategy for training of any “replacement” commissioners during the ten-year term of the Commission. An additional concern was the constraint on commissioners from educating themselves about general redistricting via available national and regional conferences, workshops and trainings. It should be mentioned that this constraint was imposed on the advice of counsel.

III. Setup and Operations

1. Commission Setup and Operations

Commission Action: Given the short time available, staff did their best to secure adequate facilities, albeit temporary, and to organize operational protocols and processes.

Commissioner Information/Suggestion(s): The next Commission could use the extra time to be thoughtful about the setup phase, which includes hiring staff, identifying

needed resources, conducting public outreach, and map drawing. It should also expand IT and GIS support in-house instead of contracting these functions to outside vendors.

2. Commissioner Socialization/Team-Building

Commission Action: A disparate group of public citizens, now high-profile commissioners, were brought together and expected to function as a team in meeting a most challenging and politically provocative mandate.

Commissioner Information/Suggestion(s): Informal and after-hours gatherings by commissioners for dinner and socializing was critical for team cohesion and mission commitment. It created a culture of listening, collegiality, and respect, which enabled commissioners to deal with tough issues in the glare of the public eye. Future commissions could consider participating in sessions led by consultants and aimed at the development of high-performance teams. Overall, the Commission bonded as a team even though there were differences of opinion on a number of items.

3. Commission Election of the Chair/Vice Chairperson

Once the fourteen commissioners were in place, they needed to establish a leadership process for moving forward.

Commission Action: The first eight commissioners had initially elected a Chair to lead the process during the selection of the remaining six, as mandated by statute. Once the final six were selected, the full Commission decided on a shared governance model, with rotating Chairs and Vice Chairs. The commissioner who served as Vice Chair for the previous meeting became Chair for the next session of business meetings. To maintain fairness of leadership, the Chair and Vice Chair had different party affiliations. Most commissioners volunteered to be part of this process.

Commissioner Information/Suggestion(s): As required by law, commissioners agreed to the immediate election of a Chair, as uncomfortable as this was, given that they were literally strangers and unaware of each other's background and experience. Once commissioners became acquainted, it soon became apparent that as a group they possessed a broad variety of skills which could strengthen and focus the Commission. The notion of a rotating leadership model was actually suggested by a member of the public and was initially opposed by several commissioners and the staff. Nevertheless, a system of rotating leadership was accepted, and every commissioner was given a chance to serve. A few individuals excluded themselves at first, but they eventually inserted themselves into the rotation. The executive director drew up the rotation to ensure that at no time would the Chair and Vice Chair be from the same party. The Commission suggests this system of rotating chairs be considered as a way of sharing responsibility and to guard against one particular individual or faction usurping the process.

4. Hiring of the Executive Director

Once Commission leadership was established, next on the agenda was the hiring of an executive director (ED). The Secretary of State (SOS) was asked to provide the necessary support to publicize this position and recruit applicants.

Commission Action: The Commission collaborated with the SOS to hire an ED. An attorney from SOS assisted the Commission and provided legal advice on the process, and an human resources specialist presented on state hiring guidelines.

Commissioner Information/Suggestion(s): Once the pool of applicants was narrowed down, the full Commission interviewed candidates and selected an individual who was familiar with state government processes and had relationships with most of the state agencies which would be involved. Although a few commissioners felt outreach and recruitment of the executive director should have been more extensive, candidates' knowledge, background, and experience with state agencies were considered critical for the job. Actually, there were four jobs posted by the Secretary of State primarily through state recruitment channels, so one had to either be a state employee or someone familiar with state government to find these job postings. The job postings had stringent conflict-of-interest criteria and this eliminated many potential candidates. Regarding other staff hiring, the CRC timelines did not allow for a traditional recruitment process, so the Commission was forced to conduct short job searches and quick turnaround times. The Commission suggests allocating additional time for it to carry out its tasks, and this should allow for a more deliberate and adequate vetting of candidates.

5. Hiring of the Staff Attorney/General Counsel

The CRC began with an attorney on temporary loan from the SOS and, as mandated by law, it was required to hire its own independent legal counsel. While counsel from SOS was provided during the transition from BSA to becoming fully independent, new counsel was hired to defend the Commission and the final district maps.

Commission Action: The Commission tasked its recently hired executive director with advertising for this position, specifying items related to conflict-of-interest criteria. Given the absence of specifics within the language of Proposition 11, this conflict-of-interest criteria was discussed and debated at length. Once the position description was posted, conflict-of-interest criteria eliminated several potential applicants. The remaining prospects were interviewed by the full Commission, and a candidate from the Sacramento area with extensive state agency experience was selected.

Commissioner Information/Suggestion(s): Future Commissions should broaden the pool of these applicants, recognizing that the strict interpretation of political conflicts of interest might eliminate most if not all viable candidates. It should seek applicants that are proven problem-solvers, have broad experience advising boards and commissions,

and have extensive knowledge and experience with the Voting Rights Act (VRA) and its enforcement. Beginning the hiring process earlier should yield a larger pool.

6. Hiring of the Public Information Officer

A public information officer was necessary to handle all media logistics, advise the Commission on its message, and otherwise manage all public information aspects of its work.

Commission Action: The Commission tasked the executive director with recruitment of qualified applicants and to work with a committee to review applications and put forth recommendations for consideration by the full Commission. As with the general counsel, conflict-of-interest criteria limited the number of qualified candidates. The Commission chose not to hire the ED's first choice and instead hired a Sacramento-based applicant that was considered to be more well-rounded than the others.

Commissioner Information/Suggestion(s): Commissioners felt fortunate to have found someone with broad PR experience that included traditional and social media. However, links with ethnic media were not as strong and future commissions should place more emphasis on those communications channels to enhance participation and engagement from these typically underserved communities. Also, the Commission suggests finding someone who can meet the challenge of coaching 14 different personalities. It should be vigilant in identifying and eliminating candidates who could pursue the limelight for themselves. As part of the interview process, the Commission should ask candidates to develop and present a sample press release on a hypothetical hot redistricting issue.

7. Hiring of Other Staff

Commission Action: The executive director was tasked with recruitment and hiring of other support staff to assist the Commission. As with other positions, all hiring had to be approved by the full Commission. It is worth mentioning that the Commission directly supervises only one employee, the executive director, and he/she in turn supervises and manages the rest of the staff. To clarify, the rest of the staff works for the executive director and all supervision and management lies within his or her purview. There were times when issues of protocol arose when commissioners went directly to staff without notifying the ED, and this led to needless confusion.

Commissioner Information/Suggestion(s): Commissioners felt staff support was highly qualified and responsive to Commission needs. The Commission suggests the next CRC work to ensure key support staff has a working knowledge of state contracting, procurement, and reimbursement procedures, as well as resourcefulness, teamwork, and strong public interaction skills. The use of annuitants was crucial for staying within budget while hiring staff with strong backgrounds for the tasks at hand. The CRC suggests that commissioners should not be involved in the management of subordinate staff. The hierarchy should be clearly delineated and commissioners should know from

day one where to go with a concern, criticism, or suggestion. The governing structure should include a personnel committee, either as a separate committee or as a subgroup under the “Finance and Administration Committee” as was implemented by the 2010 CRC. This body will serve to advise the ED on job descriptions, to inform commissioners about personnel policies and procedures, to liaison between the ED and the Commission, and to conduct appropriate evaluations of higher-level staff in consultation with the ED. The evaluation of the ED is in the hands of the full Commission.

8. Hiring of Voting Rights Act (VRA) Attorneys

The constitution required the hiring of VRA attorneys to advise the Commission in compliance with this Act.

Commission Action: The Legal Advisory Committee took the lead, in concert with the ED, in recruiting and selecting a VRA-qualified attorney/firm to assist and advise the Commission. The Commission ultimately selected two firms with different strengths and skill sets to provide a balanced and tactical team approach to address any and all expected legal challenges.

Commissioner Information/Suggestion(s): Due to the tight timeline, the process for hiring VRA attorneys was severely constrained. The next Commission should begin the process much earlier to allow for a more extensive and thorough recruitment and selection. It should take care to evaluate VRA experience, recognizing that even if applicants have previous partisan representation, that should not be a primary criteria for disqualification. The reality is that most firms will have “political” conflicts of interest and these are very difficult to evaluate given the high profile of the Commission’s work. Ultimately, it should select someone who can be impartial in representing the Commission and that can provide sound legal counsel.

9. Hiring the Mapping/Technical Consultant

The ultimate product of the CRC was the drawing of maps that were VRA-compliant and met all the criteria mandated by Proposition 11. Consultants were hired to fulfill this task.

Commission Action: The Commission directed the ED to post a request for proposals (RFP) and search for qualified firms to carry out this mapping process. Ultimately, a consultant associated with the Statewide Database was selected.

Commissioner Information/Suggestion(s): Due to the application of strict conflict-of-interest criteria to an already small pool, the number of available candidates came down to only two, and both were alleged to have partisanship in their background. Of these two, a firm associated with the Statewide Database was hired, as the other candidate was eliminated for being “non-responsive” to the RFP by failing to disclose key information. The contracted firm performed admirably given the circumstances of rushed hearing and mapping tasks. The CRC suggests an earlier start time to allow the Commission to cast a wider net for applicants, with an eye on selecting firms with little or no connection to

political institutions. Also, the public needs to know up front that this contractor works for the Commission, and that the Commission draws the lines, not the contractor. In the interest of providing clarity and transparency, the Commission should have preliminary discussions with potential applicants regarding the application of conflicts criteria.

10. Hiring of the RPV Consultant

To meet the requirements of the Voting Rights Act, specifically Section 2 and Section 5, data on the actual or potential incidence of racially polarized voting (RPV) within the state had to be collected, analyzed, and interpreted. Therefore, consultants were contracted for these tasks and to render legal advice to assist with the drawing of VRA compliant district maps.

Commission Action: The Commission delegated to the Legal Advisory Committee the tasks of advertising for and recruitment of an RPV consultant and to present a recommendation. The timeline was extremely tight given the date of release of census figures and, as a result, the first set of draft maps were drawn without the benefit of this type of voting analysis.

Commissioner Information/Suggestion(s): Again, it would have been helpful to have started recruiting earlier in the process, perhaps even before the census data were released. As already indicated, the first draft maps were presented without the availability of any RPV data. The next cycle should strive to have at least three viable VRA consultants to select from. Also, if the intention is for these RPV experts to be supervised by the Commission's general counsel for privileged and confidential reasons, then this general counsel also should have broad experience with VRA in order to direct the consultant. Actually, the RPV consultant was a subcontractor of the VRA attorneys. If the RPV consultant's work product is to be disclosed, his work should be available to the Commission to discuss sources and conclusions.

11. Hiring of Additional Staff Analysts

Although a number of excellent staff were hired to manage and conduct the administration and legal compliance of the Commission's work, it was necessary to hire other specialized staff analysts to advise on other areas.

Commission Action: Given the tight timeline and budget, the ED suggested utilizing the state's annuitant pool, which could be tapped for a number of specialized tasks. Even though annuitants provided excellent service, there were areas of need that called for other types of specialized information and/or analysis. However, the Commission's work was moving so fast that recruiting and hiring these staff would not have provided timely benefits. As a result, the Commission was left to conduct individual research and/or to depend on information provided at hearings by the public.

Commissioner Information/Suggestion(s): The CRC relied on its mapping consultants to provide basic demographic information about each part of the state. However, this did not include other sources of data which would have been helpful with local and regional

analyses, especially of communities of interest. The Commission strongly suggests hiring additional staff/analysts to provide comprehensive data on geographic elements/barriers, tax base, employment, socioeconomics, ethnicity and protected classes profiles, income, industries, and other areas as needed and appropriate.

12. Hiring Process and Logistics of Staff Personnel

Given the procedures followed to empanel the Commission, there was limited time for posting positions and then interviewing and hiring staff. This time limitation forced the SOS to hire a few positions, acting on behalf of the CRC, to enable the Commission to transition quickly and to stand on its own. Since this hiring process was carried out through state government channels, it resulted in a state government-based staff which in turn resulted in locating CRC headquarters in Sacramento.

Commission Action: The Commission was supportive of the executive director's recommendations for staff hires. The retired annuitant pool was a great source of experienced part-time staff. A few protocol issues arose when individual commissioners were trying to do the work of the staff or bypassing the executive director and speaking to staff directly. Overall, commissioners felt the ED and support staff carried out their duties admirably given all the time, logistical, and budget challenges that were presented.

Commissioner Information/Suggestion(s): The ED was allowed to hire support staff, although commissioners felt they should be involved in the selection and hiring of general counsel and the communications director. Commissioners suggest setting up a process for regular, closed session feedback sessions for the ED to raise issues and concerns. The next Commission should have full budget oversight with regular reports on expenditures and available funding. There should be a personnel committee to establish and review personnel practices and ensure regulatory compliance.

13. Hiring of Staff and Logistics with State Contracting Procedures

Time limitations provided challenges in developing, posting, and acting on Requests for Proposal/Requests for Information (RFP/RFI) requests, bid proposals, and final contracts. In this regard, state regulations proved onerous and time-consuming.

Commission Action: The Finance and Administration Advisory Committee was involved in the development of RFPs even though other commissioners would have liked to have had more involvement. The Commission was supportive of the ED and his staff as they worked through all challenges related to state contracting procedures. The experience and connections of the ED and support staff with state agencies allowed for the use of various fast-track mechanisms available within the state's standard processes.

Commissioner Information/Suggestion(s): The next Commission will have additional time to more effectively deal with the lengthy and cumbersome RFP and RFI processes. The Commission should be more directly involved with the substance and structure of RFPs and associated timelines. This should be worked through the Finance and

Administration Advisory Committee with feedback and reports back to the full Commission. The Commission should be trained up front on how the state process works.

14. Rotating Chair/Vice Chair Responsibility

The Commission was immediately faced with the task of establishing a leadership structure to guide the fulfillment of its mandates. A system of rotating Chair/Vice Chair was established once the full Commission was empaneled.

Commission Action: This system served the Commission well throughout all the various phases to include data collection, public hearing and outreach, line drawing, litigation, and resolution of all legal challenges. Once its mandates had technically been fulfilled, the Commission began to dismantle its staffing structure, to reduce its facility footprint and to close out its budget. As a result, the Commission was decentralized geographically, and the rotation system was replaced with longer-term and geographically representative leadership. It was agreed to select a Chair and Vice Chair (one from Northern California and one from Southern California) to continue during the balance of the ten-year service commitment. Annual elections would be held to select and elect this leadership.

Commissioner Information/Suggestion(s): This rotation process worked well overall. The next Commission may want to revisit the term of service for Chair and Vice Chair and protocols for chair hand-offs among and between Commission leadership, and ensure this passage of responsibility is not handled exclusively by the ED. The next cycle should establish “job descriptions” and guidelines for these leadership functions.

15. Delegation of Authority

Delegated authority, primarily to the Chair and Vice Chair, was an effective way to move Commission processes forward while still maintaining the ability for the full Commission to make final decisions about redistricting. Keeping delegated authority to two commissioners of different party affiliations was also effective, and worked to keep it as impartial as possible.

Commission Action: The challenges associated with meeting Bagley-Keene requirements and tight timelines led to delegation of authority to two individuals empowered to speak for the Commission on certain time-sensitive tasks. Although this delegation was usually given to the Chair and/or Vice Chair, there were times when other commissioners were entrusted with this responsibility depending on the topic or issue.

Commissioner Information/Suggestion(s): The next Commission should consider implementing delegated authority, although it should clearly define its scope and the maintenance of its multi-partisan/non-partisan nature.

16. Establishing and Ensuring Transparency

Commission Action: The Commission quickly implemented public access to all meetings, as well as videotaped and streaming videos. Given the tight timeline, there were a few instances where agendas were posted late on the website. Due to compliance with Bagley-Keene requirements, standing agendas included broad topic areas and were, therefore, not always specific about items coming up for discussion.

Commissioner Information/Suggestion(s): The process could be improved in regards to timing and posting of meetings (and transcripts) to the website, as well as having increased access and interactive processes for the public. Commissioners suggest posting a five-minute video and/or a one-page executive summary of all actions taken at each meeting. Written transcripts should be posted as soon as practicable, with searchable indexing system capabilities.

17. Public Communications

Overall, the process for public input worked quite well.

Commission Action: The Commission provided opportunities for public comment at all meetings and invited input from the public on specific agenda items as they came up for discussion. It incorporated social media and other online vehicles for information dissemination.

Commissioner Information/Suggestion(s): Regarding upcoming business items, the Commission could post a question, or prompt, and solicit public input which would then be incorporated into their discussion. Training on social media should be provided to all commissioners early on. There needs to be a more intense and focused effort on outreach and engagement with ethnic media. Additional venues and/or extended times for public input at Commission hearings should be provided around the state. There were several hearings with large numbers of participants, and some speakers did not have a chance to present their information because of time constraints. Typically, the amount of time given to each speaker was three minutes, and sometimes it was necessary to whittle this down in order to accommodate the remaining speakers within the time available. This will perhaps be a greater challenge as independent citizen redistricting processes become more well known.

18. Advisory Committee Structure

Commission Action: Commissioners gave the committee structure mixed reviews. Some were concerned that Advisory Committee business ended up being repeated/rehashed at formal full meetings. However, it was generally recognized that, given the circumstances, Advisory Committees were a viable and effective solution for handling the immense workload and complex decisions that had to be made and acted on. One weakness was the scheduling of two or more committees at the same time, which precluded participation by those interested in both.

Commissioner Information/Suggestion(s): Although the committee structure worked well, the next Commission could delegate more administrative tasks to staff and consultants, which would allow commissioners to focus their energies on more substantive issues.

19. Agendas, Structure, and Process

Laying the necessary groundwork, rapid gearing up, ongoing foundational tasks, and a heavy workload did not always allow for clear and specific agendas.

Commission Action: Bagley-Keene posting requirements forced the Commission to work with “standing agendas” which listed general topics under each advisory committee heading. Every effort was made to anticipate and list specific items to be discussed but this was not always possible. Unfortunately, the fluid nature of Commission business called for the discussion of items not specifically identified in the standing agendas, although they were within the purview of the various committees. A great deal happens between two-week periods (the Bagley-Keene 14-day posting requirement), and there were issues that called for an immediate decision or vote in order to get something done in a timely manner. In keeping with its commitment to 14-day postings, meetings were scheduled as a contingency just in case issues arose that required quick action. Consequently, this confused the public regarding meeting days, times or locations, specific agenda items, or whether the Commission was actually going to meet at all! The Commission attempted to keep the public informed as soon as it was clear that a meeting was going to be held and a more specific agenda was posted. This sometimes did not occur until just a few days before the actual meeting.

Commissioner Information/Suggestion(s): Unless there is a waiver to Bagley-Keene, agendas for the next Commission will continue to be a moving target. One suggestion is to establish a clear process for posting and subcommittee reporting. Also, if the next Commission uses standing agendas, these should be as detailed as possible. Since there will be additional time for planning, items of business should be scheduled systematically for consideration.

20. Structure and Process of CRC-Administration-Attorney-Consultant Communication and Coordination

Commission Action: The Commission established a two-commissioner rule on internal communications which limited Commission effectiveness. This rule specified that discussion on Commission business was limited to only two commissioners. Beyond this restriction, any and all communication between the Commission and attorneys and consultants had to go through the executive director, and this curtailed and constrained adequate discussion and thus hampered decision-making.

Commissioner Information/Suggestion(s): The ED should facilitate more direct communication between the entire Commission and attorneys and consultants, and

distribute and post information for review prior to meetings. With the exception of the Chair and Vice Chair, commissioners sometimes received agenda information for first time during Commission meetings or the day before. This required quick processing of complex information by commissioners, and a quick decision or vote was often necessary. The next Commission could focus on more clearly centralizing the flow of information through the Chair or Vice Chair or an Advisory Committee with timely dissemination to all commissioners and the public.

21. Use of Personal versus Public Equipment

Commission Action: The lack of available equipment and the low quality of such equipment forced commissioners to utilize their own computers, smart phones, and Internet resources. This was problematic since this potentially made all commissioner files “discoverable” given the specter of impending lawsuits, and the potential disclosure of personal information and files was unsettling at the very least. Eventually, smartphones and Wi-Fi Internet access units were made available, but most commissioners continued to use their own computers.

Commissioner Information/Suggestion(s): Commissioners should be provided with all equipment necessary to carry out its mandates.

22. Per Diem and TEC Reimbursements

Commission Action: Completed per diem and travel expense claims (TEC) forms were required for reimbursement of personal expenditures by commissioners when conducting Commission business. In an effort to comply with fiduciary responsibilities, the Commission decided to set guidelines for what constituted an official meeting for reimbursement purposes and defined a “day” as a total of six hours of involvement with official Commission business.

Commissioner Information/Suggestion(s): Guidelines regarding allowable and non-allowable items should be established early. To prevent confusion, commissioners should receive training at the beginning of their service. Also, online forms completion should be available, and processing should be centralized with one staff member. Staff should establish firm timelines for form submission so as to monitor budget expenditures. Future commissions should establish guidelines that define what represents an official “meeting” and a “work day” for reimbursement and/or compensation purposes.

23. Business Meetings

By law, all Commission meetings were accessible to the public. These included public hearings, committee meetings, and business meetings.

Commission Action: Business meeting agendas were always packed, with some items requiring immediate deliberation for a vote or decision. It was impossible to predict how much time each agenda item would take, so some items were crunched at the end. On a personal level, attendance at the numerous meetings presented many challenges to

individuals who had their own businesses and employment responsibilities. Admittedly, meetings could have been run more effectively

Commissioner Information/Suggestion(s): Advisory committees should meet the evening before business meetings to maximize effectiveness. Reference materials for agenda items should be provided to commissioners at least 72 hours prior if at all possible. Teleconferences would also reduce transportation, lodging, and related costs and allow greater public participation. Business meetings can also be alternated between the Sacramento/Bay Area in the north and the Los Angeles-metro in the south.

24. Business Locations

The Commission was required to provide public access to all meetings regardless of location, and live-streaming and audio-video requirements called for equipment that was not readily available at some of the preferred venues.

Commission Action: Searching for and securing venues that had the necessary Internet and communications infrastructure was a challenge. The State Capitol and the Sacramento area became the most practical and cost-effective option.

Commissioner Information/Suggestion(s): To provide maximum public access and participation, business meetings also should be scheduled in Southern California, where the bulk of the population resides. For safety reasons, all locations should be Americans with Disability Act (ADA) compliant and have rear exits and restrooms and eating areas reserved exclusively for the Commission. When business meetings were combined with public hearings, the venues were not always appropriate, but this issue can be addressed with more advance planning. Adequate funds should be set aside to ensure adequate facilities are available.

25. Commissioner Seating

The CRC staff generally took responsibility for seating of commissioners at the various meeting locations, with the Chair and Vice Chair having the central seats typically in a straight or curved configuration facing the public. Some venues were lecture hall-type facilities, so some commissioners had their backs to the audience. Also, in an effort to present information to the public, video presentations were sometimes projected on screens located behind commissioners, and this was awkward and ineffective. Commissioners then would have to turn around or access the information online, and this presented its own set of problems.

Commission Action: Regarding seating arrangements, commissioners asked staff to mix up seating order for the sake of fairness and effectiveness.

Commissioner Information/Suggestion(s): Commissioners should be assigned seats randomly. Visual mediums should be in front of Commission seating and not behind or

over the shoulder. Commissioners should have adequate workspace to accommodate computers, notebooks, and other working materials.

26. Commissioner Voting (alphabetical versus random, etc.)

Voting was done either by roll call vote or by consensus. Initially, the order for voting was left up to staff, and going alphabetically was the easiest. Commissioners with last names early in the alphabet were sometimes at a disadvantage if the wishes of the total Commission were not readily discernible.

Commission Action: At times, commissioners asked staff to mix up the voting order, but when agenda discussions became hectic, the alphabetical system was the default.

Commissioner Information/Suggestion(s): Develop a scheme/system for truly random voting.

27. Logistics (e-mails, phone calls, business cards, etc.)

There were many challenges in setting up the Commission; one of these was finding suitable and stable facilities. The Commission was housed temporarily in a state facility so commissioners' business cards did not have a permanent address. Since commissioners are appointed for a ten-year period, this becomes problematic.

Commission Action: Since commissioners were prohibited from private communication with the public on redistricting matters, e-mail services were primarily for internal use. Similarly, direct phone conversations with the public regarding redistricting were prohibited.

Commissioner Information/Suggestion(s): The Commission suggests establishing a permanent location or post office box address that will be stable for the ten-year duration if at all possible. Also, explore the possibility of setting up virtual phone numbers through the Internet.

28. Redistricting Software Training

Commission Action: The training provided to the two separate membership groups of commissioners was different. The first group of eight received training that was wide-ranging and enlightening regarding state demographics, while the second group was provided video links and handouts, and they were expected to catch up on their own. Even then far too much material was left to each commissioner to learn on the fly. As a result, there was a disparity of understanding of some redistricting issues, which at times slowed the process and/or led to needless dissension and debate. Commissioners were advised by counsel against accessing or utilizing any mapping-related software on their own, since this constituted potentially "drawing maps outside of a public meeting." As a result, commissioners had to learn about mapping processes once mapping was actually initiated. This unnecessarily slowed the process, and contributed to a poor first set of draft maps and not being able to put forth a second draft set. Voting Rights Act training

was quite basic, although handbooks were provided to commissioners. Of the areas covered, VRA and application of mandated criteria were two that could have used more attention.

Commissioner Information/Suggestion(s): One suggestion is to provide potential applicants with links to reliable information sources, so they come in with a basic level of understanding. Also, this Commission can serve as a resource for the next cycle. Some form of mapping software training should be provided ahead of the actual mapping process. Tools could be identified ahead of time, and the Commission could get clear direction from counsel on their use and practice. Guidelines could be established for commissioners to attend trainings at conferences on redistricting. Future commissions should perhaps include having experience with GIS as a desirable skill.

29. Voting Rights Act (VRA) Training

Commission Action: Voting Rights Act training was quite basic. It was supplemented by several handbooks which provided more in-depth information, and commissioners had to review those on their own.

Commissioner Information/Suggestion(s): Provision of more extensive training in this area is recommended, perhaps by a law professor partnering with a practicing attorney. This training should be high priority, along with other redistricting and line-drawing training.

30. Audio/Video Assistance (options, cost, alternatives)

Commission Action: The CRC hired audio/video consultants to record and live-stream all business meetings.

Commissioner Information/Suggestion(s): The next Commission should hire at least one tech-savvy staff member who can explore all options for providing full transparency and public access of meetings and materials. The CRC must publish searchable transcripts and index-capable videos within 48 hours of every business meeting. The Commission should explore how technology can make these processes more cost-effective. The consultants hired were terrific!

31. Posting of Business and Input Meetings

Bagley-Keene was a challenge, but commissioners and staff were able to work within its mandates.

Commission Action: In order to meet posting requirements, CRC used standing agendas for all potential meeting days to avoid the problem of missing adequate notice. Once the actual days were determined, the other days were cancelled. This was confusing to the public (and to commissioners) but necessary to ensure that Bagley-Keene requirements were met.

Commissioner Information/Suggestion(s): Fully explore technological options to make posting more efficient and less confusing. Consider limitations within underserved communities who may have limited access to new media. Publish public service announcements and blurbs in Community Events sections of local newspapers, especially regarding public input meetings.

IV. Community Input/Hearings

1. CRC-Public Communication via Website

The Commission conducted a total of 34 public hearings during a ten-week time period. The tight timeline and the combination and intersection of hearings with the mapping phase compressed the time for line drawing, and this proved to be a huge challenge.

Commission Action: The Commission established public comment e-mail accounts that allowed commissioners to check public comments on the go. Coding by geographical region was helpful, especially for those teams working those areas. The volume of public comments that came to the Commission, especially after the first draft maps were posted, quickly became difficult for individual commissioners to effectively monitor.

Commissioner Information/Suggestion(s): The next Commission should endeavor to carefully plan and establish a balance between the input and mapping phases. It should also be aware of potential e-mail spoofing schemes designed to advance a particular point of view benefitting one or more groups. It should be prepared for an anticipated deluge of electronically submitted public comments and materials. It should develop a method for indexing, analyzing, and summarizing public comments. Consider hiring an agency to monitor and organize all public input, provide summary reports to CRC, and also look for ways to increase web interactivity with the public.

2. Public Education Process

Commission Action: Due to short timelines and budget issues, the Commission did not do much in this area and relied on its nonprofit partners to fill the void. Efforts to provide basic information on mission and process at input hearings was attempted, but time limitations rendered it largely ineffective.

Commissioner Information/Suggestion(s): A few areas for education are assistance with explaining applicable criteria, how to provide effective and relevant input, and establishing realistic expectations of what redistricting can and cannot do. The notions of “neighborhood” and communities of interest need to be carefully defined and clearly articulated to the public. There was much ambiguity in testimony that arose because of the vagueness in the communities of interest (COI) definitions used by the CRC and the public. Public education should begin well ahead of the selection of the next Commission. A potential partnership with Census 2020 could be established as a vehicle for accomplishing this. Anticipating a diminished level of support by the nonprofit sector,

the next Commission should allocate funds for public education. There should be a defined focus and outreach targeting unserved and underserved populations.

3. Solicitation of Public Comment

Compliance with Bagley-Keene is a must.

Commission Action: Within budget and time constraints the CRC provided targeted outreach for public comment primarily through traditional media, but with a heavy reliance on nonprofit partners.

Commissioner Information/Suggestion(s): This issue goes hand-in-hand with public education. Use any and all traditional and nontraditional media, social media, community organizations, and business associations to inform the public regarding opportunities to provide input. Provide simple and workable formats for submission of public input/comments. Effective use of low-cost channels such as ethnic and social media will be critical elements moving forward.

4. Working with Community-Based Organizations

Commission Action: Once it became clear that funds were not available for outreach and public education, the CRC had to depend on nonprofit-sector community partners to carry out these functions. Of particular value was the collaboration among community partners in their map presentations, which allowed for more focused and effective suggestions to the Commission on how to address COI, especially in urban areas. The Commission was threatened with litigation by individuals and groups if their suggestions were not implemented. There were some concerns about undue influence of some partners. However, the great majority of commissioners felt these partners provided a needed and indispensable service to the process.

Commissioner Information/Suggestion(s): The next Commission should continue to cultivate relationships with community-based organizations who often speak for members of underserved communities who would not otherwise participate in the input process. However, it is important to treat stakeholders equitably. While organized groups often represent the views of many people, their opinions are not more or less important than those of other individual citizens—each of whom may offer important insights.

5. Formats for Receiving Information

Commission Action: The CRC did not provide adequate education or instructions to the public on formats for providing information. As a result, there was a great variety of documents from hand-drawn maps and written comments to fully documented, graphically organized presentations.

Commissioner Information/Suggestion(s): The next Commission needs to establish guidelines and processes for receiving input for all media formats and for all major spoken languages. A workable indexing system should be established for both

commissioners and the general public. A system of automatic translation would also be terrific. To avoid repetition of the same information by multiple speakers, consider developing a process for “ceding” time by one input speaker to another and establish guidelines that allow this and prevent hijacking of meetings by particular groups. Consider providing standardized electronic templates for comments and for maps that can be easily integrated by mappers. The Commission should decide whether this is the duty of the legislature through its responsibility for the Statewide Database, or whether it will be up to the Commission to work this out.

6. Organizing/Formatting Received Input

Commission Action: This Commission was unable to establish a system for map information, so almost all maps were provided in written form. Given limited time at public hearings, many members of the public were not able to provide their testimony, even though they had waited for hours.

Commissioner Information/Suggestion(s): The next Commission should closely consider population density in determining where to hold hearings across the state. Given Southern California’s larger proportion of residents, coupled with the Commission’s experience of overcrowded Southern California hearings in 2011, it is suggested that a larger number of hearings be held in the southern half of the state in future redistricting cycles. There were a number of requests for hearings in the northernmost areas of the state, as well as in the mountain and desert regions. If resources allow, these locations could be built into the outreach plan.

7. Public Display and Posting of Information

Commission Action: The public was not always clear on how to access the central database.

Commissioner Information/Suggestion(s): The next cycle should set public access as a priority, with consideration of translation into all the major spoken/written languages.

8. Input Meeting Locations

Commission Action: Commission business was primarily located and conducted in Sacramento, except for input hearings around the state. Business meetings and input hearings were held mostly in areas of high population density or strategically and centrally located to ensure the most access. Even then, the public from northern counties and southern desert areas had to drive long distances to participate.

Commissioner Information/Suggestion(s): The next Commission must be aware of time restrictions provided by various venues available for input hearings. It should consider issues of parking, safety and security. Venues should have separate eating areas, separate restroom facilities, and rear exits for commissioner safety.

9. Input Meeting Structure

Commission Action: The Commission was totally open to hearing from any and all individuals and groups at hearings and business meetings.

Commissioner Information/Suggestion(s): The next cycle can consider subdividing areas for discussion into sections so presentations can be more focused. Having a means for technical projections of maps being presented would be beneficial to both commissioners and the public. At the beginning of each meeting, the public should be reminded of acceptable and non-acceptable comments and behaviors. Protocols should be in place to handle any emergencies and/or disruptions that may arise. Breaks and time for lunch or dinner should be scheduled.

10. Times and Length of Meetings

Commission Action: The Commission allowed for comments from as many participants within the allowed meeting times as possible. The CRC provided a diversity of meeting times and days of the week in an attempt to accommodate as large an audience as possible. The three hours allocated for each hearing quickly became inadequate, given the large number of speakers. The Commission decided that input hearings required the attendance of all commissioners, even though there were suggestions for subsets who could represent the full commission, thereby increasing the number of hearings and covering more territory.

Commissioner Information/Suggestion(s): There is a practical limit to how much information a commissioner can take and process, as well as how long she or he can sit and listen. The next Commission should schedule periodic breaks and time for lunch and dinner. It should set a maximum time for each hearing or break it up into two separate days. Meeting times can be varied to accommodate the typical work schedules for key industries in the region. It should consider establishing systems for virtual submission of comments.

11. Locations

Commission Action: The primary location for business meetings and mapping was in Sacramento. Due to tight timelines and budget, staff sought out suitable facilities for meetings/hearings that were provided at little or no cost.

Commissioner Information/Suggestion(s): There were a number of requests for hearings in parts of the state that were under-represented; namely, the northernmost areas of the state and the mountain and desert regions. The next Commission should consider an equal number of meetings between the Sacramento/San Francisco and the Los Angeles metro areas, although the larger population of Southern California argues for a larger share of sessions in the southern part of the state.

12. Eligibility of Speakers

Commission Action: The Commission debated eligibility criteria to identify and determine what constituted an “eligible community organization” for the sake of participation at specific groups-only input sessions; this proved to be largely unnecessary. Although there were seemingly impromptu groups who presented, they were fairly obvious and did not crowd out those that were or seemed bona fide.

Commissioner Information/Suggestion(s): The next Commission may want to discuss and make decisions about the potential manipulation of the input process. This suggestion is not meant to discourage commentary or the mobilization of speakers but simply to point out that it is possible to “stack” testimony or mislead the Commission.

13. Other Comments regarding the Community Input Process

Commission Action: N/A

Commissioner Information/Suggestion(s): The next Commission should plan and implement a comprehensive outreach and public education campaign. For the public hearing phase, the Commission should announce the rules for providing input in advance and explain the rationale for the hearings and process. It ought to provide signage with information on CRC and input formats and find ways to solicit participation from areas that have been traditionally unserved or underserved. It should not defer to groups that threaten, or have the means, to file a lawsuit.

V. Mapping

1. Mapping Process/Format

Commission Action: The Commission was required to conduct all line drawing at sessions fully open and accessible to the public. It hired consultants who were tasked with taking recommendations from the public under the direction of the Commission and bringing changes to the next meeting for review and consideration by the Commission.

Commissioner Information/Suggestion(s): The next Commission needs to understand the complexity of overlapping communities of interest. It should provide mappers enough time to incorporate suggestions from commissioners and the public. Also, it should schedule more regional breakout sessions and more days for actual line drawing work with consultants.

2. Visualizations

Commission Action: As previously mentioned, the public did not fully understand the process and content for provision of their input and how this input was incorporated into map configurations. The Commission directed mappers to incorporate mapping input into sets of visualizations. Members of the public cried foul since this “mapping” would occur off-line and not be accessible to the public. The Commission responded that these were

not actual maps but a simple way to visualize “what if” situations. These visualizations helped both commissioners and the public to see how public input and comments translated onto a map configuration. One drawback was their development in isolation from the surrounding areas and COI. It was one way for the Commission to capture the fast-moving action in regards to line drawing.

Commissioner Information/Suggestion(s): The next Commission should clarify for the public the implementation of ranked criteria, with VRA and equal and numerically similar populations being the highest level for consideration. It also should thoroughly explain the use of visualizations and their purpose as “what if” schemes for evaluating possibilities.

3. Approaches to Mapping (VRA, regional, by district-type, etc.)

Commission Action: The Commission debated several options regarding where to start with line drawing: north to south? metro areas first, then outward into less populated areas? existing districts then modify using mandated criteria? Once the Section 5 districts in the middle of the state were drawn, it became obvious these would be the drivers both going north and south. Starting from the north and going south worked well. In the absence of definitive VRA information, the first set of draft maps was drawn without the benefit of racially polarized voting (RPV) analysis data. As a result, the CRC was immediately criticized for some very obvious errors.

Commissioner Information/Suggestion(s): The VRA district options must be drawn first; these are the first puzzle pieces! This is vitally important, especially in the Section 5 districts and to a lesser degree with Section 2 districts. Perhaps the first “draft map” should include only the VRA districts. (Note: There is a real possibility that the Voting Rights Act, specifically Section 5, may be modified so as to create a different set of circumstances and priorities for redistricting.) Next, it should consider working with the Assembly and Senate districts, since they are so intertwined with an eye on blending as required by the criteria. Also, the Board of Equalization (BOE) map drawing should be given adequate time.

4. Draft Maps (number, timing display options, etc.)

Commission Action: Due to lack of time and the absence of RPV data, the Commission provided only one set of draft maps, even though its intention had been to provide a second set of drafts.

Commissioner Information/Suggestion(s): Given the additional time available, the next Commission could consider providing more than one statewide draft map and set a timeline accordingly. The first map should at a minimum include VRA districts informed by RPV analysis data. These draft maps must be widely published by the media to allow for public consideration and meaningful feedback.

5. Setting Public Expectations

Commission Action: The Commission was eager and excited to hear from the public but quickly realized there was a confusion regarding the application of constitutional criteria.

Commissioner Information/Suggestion(s): The next Commission ought to include information about constitutional criteria in their public education campaign. It should clarify how the CRC must balance competing testimony within constitutional guidelines and mandates.

6. “Live” Sessions

Commission Action: The live sessions were streamed on the Internet in front of live audiences and reflected the final stages of draft maps and “clean up” of areas such as neighborhoods, streets, and small-scale COI that could be done in one sitting. Instructions were provided to mappers for completion while the Commission and the public were in session.

Commissioner Information/Suggestion(s): The next cycle may consider providing periodic summaries for the public, for monitoring and feedback purposes.

7. Time to Review Recommendations

Commission Action: Given the tight timeline to produce appropriate and legally defensible maps, commissioners worked feverishly during the line-drawing phase, and this was very challenging. Map configurations were moving targets, and adequate time for reflection was not always available.

Commissioner Information/Suggestion(s): The next Commission ought to provide a timeline that allows adequate time for review of map drawing, and especially of any sets of draft maps published for the public.

8. Benefits/Disadvantages of a Single Location for Mapping

Commission Action: Given the challenge of finding adequate facilities, the McGeorge School of Law was a saving grace. Being in Sacramento, it was very convenient for the CRC’s Sacramento-based staff. Since this space was dedicated for our purposes, our technical consultants did not have to break down their equipment and set it up again the next day. However, although McGeorge was a good facility, its lecture hall seating arrangement did not allow for face-to-face interaction among commissioners.

Commissioner Information/Suggestion(s): The next cycle could consider finding a Southern California location for some of the mapping activities. Especially at the latter stages of drawing, it should establish one location that is dedicated to mapping and allows equipment to remain set up from day to day.

9. Physical Needs, Length of Sessions, Technological Interactions with Public, etc.

Commission Action: Although consultants did an excellent job with their tasks, the equipment was not always the best. Sometimes, due to the particular facilities layout, and in deference to the public, the screen projections were behind the Commission.

Commissioner Information/Suggestion(s): The next cycle should secure large and colorful screens, as well as powerful projection equipment, for mapping purposes. Mapping software should be accessible by commissioners through their computers so they can follow the action and connect virtually with each other. It should plan for and facilitate acceptance of commentary and input from remote sites. For commissioners, ensure there is sufficient drinking water, healthy snacks, and adequate furniture so they can sit comfortably for long periods of time.

10. Other Comments Regarding the Mapping Process

Commission Action: N/A

Commissioner Information/Suggestion(s): The next Commission ought to balance the CRC's need to move quickly with the public's need to understand the process in order to engage. The VRA counsel should provide timely legal guidance in this area to commissioners so they can better plan an approach to drawing VRA-based districts. It should maintain the system where a particular mapper was in charge of a particular region of the state. Also, there is a need to plan and schedule sufficient time to prevent compression of the process at the end.

VI. Post-Mapping/Litigation

1. Communication Surrounding Litigation

Commission Action: Commissioners were advised to not have any communication or discussion about redistricting matters with the public, the media, community partners, or each other outside of public meetings. Even though each of the two firms hired had their special areas of expertise, communications challenges still arose. The CRC established a system where only two commissioners (with legal experience/background) communicated with these firms.

Commissioner Information/Suggestion(s): The next Commission should have special topic trainings about legal issues, such as communications during litigation. Such training should clarify and establish guidelines on the legalities around communication among more than two commissioners.

2. Representation (multiple versus one legal firm, type of firms, etc.)

Commission Action: Ideally, the Attorney General will defend the CRC and the state against litigation, as this would be the most cost-effective. When the AG declined to

represent the CRC, it was decided to hire two specialty firms as the best way to go, given the legal challenges that confronted the Commission.

Commissioner Information/Suggestion(s): The next Commission should hire specialty firms if necessary to best represent it for the range of expected litigation. Consider mitigating the expense of multiple firms by soliciting pro bono services and/or negotiating terms that minimize billable hours for inter-firm meetings, and clearly specify which firm is the lead for specific issues. The Commission should be involved in directing the activities of all its legal counsel, leaving staff to manage interaction between outside counsel and the Commission.

3. Legal Advisory Committee

Commission Action: The Commission gave delegated authority to two commissioners with legal backgrounds to interface with and provide oversight of legal counsel. This was invaluable as they were able to break down and explain the various legal approaches and arguments both for and against certain positions. They did most of the heavy lifting, and the Commission put its trust in their good judgment.

Commissioner Information/Suggestion(s): Consider cross-training and educating non-lawyers so they can understand the legal considerations and obligations of the Commission.

4. General Counsel–VRA Attorneys Collaboration

Commission Action: Some commissioners felt there was a disconnect between our general counsel and the two legal firms hired to represent us.

Commissioner Information/Suggestion(s): The next Commission must be involved (through a legal Advisory Committee or another mechanism) in directing the actions and legal research being undertaken by legal consultants instead of allowing this to become a staff responsibility. The VRA attorneys must provide timely and accurate legal advice. The role of general counsel regarding his or her responsibility for oversight of special counsel should be clarified. The general counsel should have a background with VRA if at all possible, especially in the enforcement aspects of the law.

5. Public Records Act Requests Within Confidentiality

Commission Action: Commissioners did not always clearly understand the process for compliance with PRA (Public Records Act) requests, especially as related to the disclosure and submittal of personal confidential information unrelated to Commission business that was on computers, smart phones, and personal individual accounts.

Commissioner Information/Suggestion(s): The next Commission should provide training about PRA requests and compliance. It should establish guidelines that set aside immediate compliance of requests until after periods of hectic input hearings and line-drawing/mapping are over.

6. Working with Legislative Staffers

Commission Action: The Commission appointed a two-person ad-hoc committee to work with legislative staffers on the statutory amendment process and to advocate for and represent its interests. A list of relevant issues was identified and discussion of back-and-forth negotiations was held in open session.

Commissioner Information/Suggestion(s): The next Commission should consider establishing earlier contact with legislative staffers and identify potential allies with the legislative leadership. There is also a need for additional training to fully understand the legislative bill processes.

7. Negotiations Process with Legislative Staffers and Advocacy

Commission Action: The two-person Statutory Amendment Ad-hoc Committee took the lead with negotiations of statutory amendments. Even though the Commission had final endorsement authority over all amendments, the legislature still held the power of the purse, and this power was used to whittle away at various CRC recommendations. Information on issues and positions was brought back to the full Commission. There was vigorous debate and consensus items were moved forward. Community partners were also helpful with input and advocacy in support of the Commission.

Commissioner Information/Suggestion(s): Even though the Commission was able to include several key items, the next Commission should rally increased support from community partners and legislative allies to put forth stronger positions. This could be accomplished with a carefully planned and articulated lobbying campaign.

8. Timeline for Process

Commission Action: Even though this Commission was able to get the timeline extended for the next cycle, it will still be a hectic and intense process in accomplishing all its tasks.

Commissioner Information/Suggestion(s): The next Commission should plan for pending litigation and statutory amendment recommendations as the process is unfolding, so as to be prepared for these inevitable challenges. There is an urgent need for an adequate litigation budget, as lack of an adequate funding scheme almost left the Commission without legal representation when it was challenged in the State Supreme Court. All post-map activities should be charted out on a timeline and systematically dealt with ahead of time. Perhaps it should conduct a commissioner survey before developing recommendations for statutory amendments. As the Commission is appointed for a ten-year period, funding is allocated only through the mapping and the post-litigation phase. There is much that can be accomplished during the interim eight to nine years to keep the public informed, conduct evaluations and research on the process, work and collaborate with other government agencies to coordinate activities, and disseminate information on redistricting.

VII. Hyperlinked Appendices

California Citizens Redistricting Commission

<http://wedrawthelines.ca.gov>

Application Process

http://wedrawthelines.ca.gov/application_regulations.html

Bagley-Keene Open Meeting Act 2004

http://ag.ca.gov/publications/bagleykeene2004_ada.pdf

Budgets, Initial and Final

January 21, 2011 Budget

http://wedrawthelines.ca.gov/downloads/crc_public_meeting_20110121_budget.pdf

Report on Actual and Estimated Costs (June 5, 2012)

http://wedrawthelines.ca.gov/downloads/meeting_handouts_201206/handouts_20120605_crc_costreport.pdf

California Constitution, Article XXI, S 2, sub. (c)(6)

http://www.leginfo.ca.gov/.const/.article_21

**This is a duplicate of information provided below under “- Article XXI of CA Constitution”*

Article XXI of California Constitution

http://www.leginfo.ca.gov/.const/.article_21

**This is a duplicate of information provided above under “- Cal Const., art. XXI, S 2, sub. (c)(6)”*

Court Cases

Arizona Legislature v. Arizona Independent Redistricting Commission (2015) 576 U.S. ____;

<http://www.scotusblog.com/case-files/cases/arizona-state-legislature-v-arizona-independent-redistricting-commission/>

Vandermost v. Bowen (2012) 53 Cal. 4th 421; <http://caselaw.findlaw.com/summary/opinion/ca-supreme-court/2012/01/27/257443.html>

Eligibility Criteria

http://wedrawthelines.ca.gov/downloads/eligibility_requirements.pdf

Final Maps

All California Districts: <http://wedrawthelines.ca.gov/maps-final-drafts.html>

California Assembly Districts: <http://wedrawthelines.ca.gov/maps-final-draft-assembly-districts.html>

California Senate Districts: <http://wedrawthelines.ca.gov/maps-final-draft-senate-districts.html>

California Congressional Districts: <http://wedrawthelines.ca.gov/maps-final-draft-congressional-districts.html>

California Board of Equalization Districts: <http://wedrawthelines.ca.gov/maps-final-draft-board-of-equalization-districts.html>

Guidelines on the Submission of Statewide and Multiple District Plans

http://wedrawthelines.ca.gov/downloads/meeting_handouts_may2011/handouts_20110521_groupinputguide.pdf

Hearings (including dates and locations)

<http://wedrawthelines.ca.gov/hearings.html>

Legislative Amendment Process and Recommendations Approved

Ch. 271, Cal. Stats 2012;

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1096&search_keywords=redistricting (amending the Voters FIRST Act and Voters FIRST Act for Congress to shift duties from Secretary of State to State Auditor; to require the California Citizens Redistricting Commission to display the first preliminary maps no later than July 1 of years ending in "1;" subsequent preliminary maps for at least 7 days, and final maps for at least 3 days; and other minor changes)

Ch. 318, Cal. Stats 2012;

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB1986&search_keywords=redistricting (allowing the California Citizens Redistricting Commission to use the last known address of incarcerated persons in carrying out its redistricting activities)

Process for Hiring Contractors

State Administrative Manual

<http://sam.dgs.ca.gov/TOC.aspx>

Citizens Redistricting Commission (CRC) Conflict of Interest Code from March 2011:

http://wedrawthelines.ca.gov/downloads/meeting_handouts_mar2011/CRC_conflict_code_20110323.pdf

The CRC Conflict of Interest Code is regularly updated. The most recent version can be requested from these sources:

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Citizens Redistricting Commission
1017 L Street, PMB 563
Sacramento, CA 95814

Archives
Secretary of State
1020 O Street
Sacramento, CA 95814

Recruitment and Selection Process

<http://wedrawthelines.ca.gov/selection.html>

Statewide and Multiple District Map Presentations: Input Hearing Policies and Procedures

http://wedrawthelines.ca.gov/downloads/meeting_handouts_may2011/handouts_20110521_groupinputpolicy.pdf

Voters FIRST Act (Propositions 11 and 20)

http://wedrawthelines.ca.gov/downloads/voters_first_act.pdf

Voting Rights Act Reports and Information

http://wedrawthelines.ca.gov/downloads/meeting_handouts_072011/handouts_20110714_gdc_memo.pdf

http://wedrawthelines.ca.gov/downloads/meeting_handouts_072011/handouts_20110714_gdc_memo_attachment.pdf

**IN THE SUPREME COURT OF
CALIFORNIA**

LEGISLATURE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ALEX PADILLA, as Secretary of State, etc.,

Respondent.

S262530

July 17, 2020

Justice Kruger authored the opinion of the Court, in which
Chief Justice Cantil-Sakauye and Justices Chin, Corrigan, Liu,
Cuéllar, and Groban concurred.

LEGISLATURE OF THE STATE OF CALIFORNIA v.
PADILLA
S262530

Opinion of the Court by Kruger, J.

Every 10 years, following the federal census, new maps must be drawn establishing the boundaries of the state's congressional, Assembly, Senate, and Board of Equalization districts. California law assigns the task of redistricting to the Citizens Redistricting Commission, which draws new maps based on the federal census data. The law also specifies a series of fixed deadlines for the Commission to solicit public input on its work and finalize updated maps for the next round of elections. As a result of the current COVID-19 pandemic, however, the federal Census Bureau has announced that census data collection and processing will be delayed. Under the Census Bureau's modified timeline, the data required to draw new district maps will not be released to the states in time for the Commission to meet the redistricting deadlines set forth in California law.

In view of the anticipated delay and to ensure that the Commission will be able to perform its redistricting function in time for the 2022 elections, the Legislature has filed an emergency petition for a peremptory writ of mandate seeking relief from the deadlines set by California law. The Secretary of State and the Commission have joined in the Legislature's request. We issued an order notifying the parties of our intent to issue a peremptory writ of mandate in the first instance. (See

Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171.)

We now grant the petition and issue the writ.

I.

At the start of each decade, the federal government conducts a national census. Beginning on April 1 of the census year, the United States Census Bureau collects population and demographic data for the entire country. (13 U.S.C. § 141(a).) Within one year of this date, the Census Bureau must deliver these census data to each state for purposes of drawing new districts for the United States Congress, state legislatures, and other bodies of government. (*Id.*, § 141(c).) At that point, each state begins its redistricting process. The goal of redistricting is to craft new district maps that reflect current population numbers, to ensure compliance with the constitutional one-person, one-vote rule. (See, e.g., *Evenwel v. Abbott* (2016) ___ U.S. ___, ___ [136 S.Ct. 1120, 1123–1124]; Cal. Const., art. XXI, § 2, subd. (d)(1).)

In California, the redistricting process begins with the Legislature preparing a dataset that combines the federal census data with voter registration data and historical statewide election results. (Gov. Code, § 8253, subd. (b).) The Legislature then provides this dataset to the Citizens Redistricting Commission, an independent panel of 14 Californians of different party affiliations that is tasked with drawing new maps for the state’s congressional, Assembly, Senate, and Board of Equalization districts. (Cal. Const., art. XXI, § 2.) The Commission was first created with the passage of Proposition 11 in 2008, which transferred the power to draw Assembly, Senate, and Board of Equalization districts from the Legislature to the newly formed Commission; two years later,

voters passed Proposition 20, which expanded the Commission's responsibilities to include congressional redistricting. Under the California Constitution, as amended by these two initiatives, the Commission must conduct an open and transparent redistricting process that allows public comment on draft maps produced by the Commission. (Cal. Const., art. XXI, § 2, subd. (b); Gov. Code, § 8253.) To carry out these duties, the Commission typically begins its work even before the census data are delivered to the state. As the chair of the previous redistricting commission explains in a declaration submitted to this court, this preliminary work includes arranging public hearings, soliciting public participation, and hiring staff and consultants.

State law sets forth deadlines by which the Commission must release draft maps for public comment and later, approve and certify final maps to the Secretary of State. The Government Code provides that the Commission must release at least one set of draft maps for public comment by July 1 of the year following the census year. (Gov. Code, § 8253, subd. (a)(7) ["Public comment shall be taken for at least 14 days from the date of public display of the first preliminary statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed no later than July 1 in each year ending in the number one."].) The California Constitution provides that the Commission must then approve and certify final maps to the Secretary of State by August 15 of the year following the census year. (Cal. Const., art. XXI, § 2, subd. (g) ["By August 15 in 2011, and in each year ending in the number one thereafter, the commission shall approve four final maps that separately set forth the district boundary lines for the congressional, Senatorial, Assembly, and

State Board of Equalization districts. Upon approval, the commission shall certify the four final maps to the Secretary of State.”].)

The maps are subject to referendum under the ordinary procedures for placing an enactment on the ballot for a popular vote under the Constitution. (Cal. Const., art. XXI, § 2, subd. (i); *id.*, art. II, § 9.) If the Commission does not approve a final map by the requisite votes, or if voters disapprove a map in a referendum election, the Constitution provides that the Secretary of State “shall immediately petition the California Supreme Court for an order directing the appointment of special masters” to adjust district boundaries using the census data. At that point, the court becomes responsible for approving and certifying the special masters’ map to the Secretary of State. (*Id.*, art. XXI, § 2, subd. (j); see also *id.*, § 3, subd. (b)(1).)

This year, the usual order of redistricting operations has been upended by the COVID-19 pandemic, a public health crisis caused by a newly discovered coronavirus that has spread rapidly around the globe, on a scale not seen in a century. In response to the crisis, the Governor of California declared a state of emergency on March 4, and the President of the United States proclaimed a national emergency under federal law on March 13.¹ As infection rates rose across California and the United

¹ Office of Governor Gavin Newsom, Proclamation of a State of Emergency (Mar. 4, 2020) <<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>> (as of July 17, 2020); The White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020) <<https://www.whitehouse.gov/>

States, governments issued stay-at-home orders drastically curtailing daily activities in an attempt to limit the spread of the virus.

On April 13, the United States Secretary of Commerce announced that the Census Bureau had halted its field operations due to the pandemic. The agency adopted a phased approach to resuming the collection of census data in the weeks and months that followed. As a result, the Census Bureau predicted that its delivery of census data to the states would be delayed by up to four months. Because the current March 31, 2021, deadline for releasing federal census data to the states is set by federal statute, the Census Bureau has asked the United States Congress to authorize 120 additional days — i.e., until July 31, 2021 — to deliver the data. To date, the United States House of Representatives has passed one bill authorizing this four-month extension; additional bills containing similar authorizations have been introduced in both houses. (H.R. No. 6800, 116th Cong., 2d Sess., Div. G, tit. II, § 70201, pp. 771–772 (2020) bill passed in House May 15, 2020; H.R. No. 7034, 116th Cong., 2d Sess., § 2, p. 3 (2020) as introduced May 27, 2020; Sen. No. 4048, 116th Cong., 2d Sess. (2020) as introduced June 23, 2020.)

On June 4, the Legislature filed an emergency petition in this court seeking a peremptory writ of mandate that would effectively grant the Commission equivalent four-month extensions to release draft maps for public comment and to

presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak> (as of July 17, 2020). All Internet citations in this opinion are archived by year, docket number, and case name at <<https://www.courts.ca.gov/38324.htm>>.

approve and certify final maps. Specifically, the Legislature seeks a writ extending the date by which the Commission must release draft maps for public comment from July 1, 2021, to November 1, 2021, and requiring the Secretary of State to accept the final Commission redistricting maps by December 15, 2021. The Legislature has no power to change these deadlines by statute: The deadline for the release of the draft maps is set forth in a state statute that the Legislature is prohibited from amending either this year or next, and the deadline for the approval of final maps is specified in the California Constitution. (Gov. Code, § 8251, subd. (c)(5) [the Legislature cannot amend any statute governing the Commission’s work in years that end in 9, 0, or 1]; Cal. Const., art. XXI, § 2, subd. (g).) According to the Legislature, it has filed this emergency petition because, without the requested relief, the Legislature’s only alternative will be to ask voters to enact a constitutional amendment that alters the Commission’s deadlines for purposes of the 2020 redistricting cycle. The Legislature reports that the last day that it can pass a bill placing a constitutional amendment on the November ballot is July 26, 2020.

In response to the Legislature’s petition, we sought preliminary oppositions from the Commission and the Secretary of State. Both filed preliminary responses supporting the Legislature’s request.² Shortly thereafter, we issued a *Palma*

² Pursuant to state statute, the Commission is created by August 15 of each census year. (Gov. Code, § 8252, subd. (g); see also Cal. Const., art. XXI, § 2, subd. (a) [constitutional requirement that the Commission be created by December 31 of each census year].) Because the 2020 Commission had not been formed at the time our orders were filed, the 2010 Commission filed responses.

notice advising the parties that we might issue a peremptory writ of mandate in the first instance extending the time limits for the Commission to release draft and final maps and inviting the Commission and the Secretary of State to file any formal oppositions by June 29. (*Palma v. U.S. Industrial Fasteners, Inc.*, *supra*, 36 Cal.3d 171; see *Lewis v. Superior Court* (1999) 19 Cal.4th 1232.) Both the Commission and the Secretary of State again filed statements supporting the Legislature's request.

In its request, the Legislature invokes our authority to issue an extraordinary writ under article VI, section 10 of the California Constitution, which grants this court original jurisdiction in proceedings for extraordinary mandamus relief. We have previously exercised this jurisdiction to consider and grant appropriate relief when necessary to the orderly functioning of our electoral system, and it is undisputed that we have the same authority here. (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 451–453.) For the reasons explained below, we grant the Legislature's petition and issue a peremptory writ of mandate adjusting the relevant deadlines in accordance with the forecasted delay in the Census Bureau's release of the federal census data necessary to draw the new district maps.³

II.

The first deadline faced by the Commission is the July 1, 2021, deadline for displaying the first preliminary statewide maps for public comment. (Gov. Code, § 8253, subd. (a)(7).) Because of the COVID-19 pandemic, the Census Bureau has announced that it anticipates moving its scheduled deadline for

³ The Legislature's request for judicial notice, which was filed in connection with its emergency petition for a writ of mandate, is granted.

releasing the federal census data needed to draw the maps to July 31, 2021 — nearly a month after the Commission’s statutory deadline for publishing the draft maps. Indeed, as a practical matter, the delay is even more substantial than it might at first seem. The Legislature reports that the Commission cannot begin the process of creating the maps until the Legislature has first built the redistricting database for the Commission to use. (*Id.*, § 8253, subd. (b).) In a declaration submitted with the Legislature’s petition, the director of the database explains that it takes approximately one month to create this database after the state receives the census data. This means that if the census data are not delivered until July 31, 2021, then the earliest the Commission could begin drawing maps would be August 31, 2021 — fully two months after the statutory deadline for the Commission to publicly release the first round of draft maps.

In other words, the Census Bureau’s adjusted timeline for release of the census data will make it impossible for the Commission to meet the statutory July 1 deadline for release of the first preliminary statewide redistricting maps. The Legislature, Secretary of State, and Commission all contend that, given the extraordinary and unforeseen circumstances that have rendered compliance with the deadline impossible, the proper remedy is for this court to extend the deadline and thereby preserve the intended operation of the statutory framework. We agree, and we do so here.

We comprehensively discussed our power to grant the kind of relief the Legislature seeks in *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607 (*Kopp*). In that case, we addressed a challenge to the constitutionality of a suite of voter-enacted statutes that governed the financing of state and local political

campaigns. (*Id.* at p. 614.) After holding certain statutes were unconstitutional as written, we considered whether, instead of invalidating the statutes, we could reform the statutes to preserve them. (*Id.* at p. 615.) We explained that “[u]nder established decisions of this court and the United States Supreme Court, a reviewing court may, in appropriate circumstances, and consistently with the separation of powers doctrine, reform a statute to conform it to constitutional requirements in lieu of simply declaring it unconstitutional and unenforceable. The guiding principle is consistency with the Legislature’s (or, as here, the electorate’s) intent.” (*Ibid.*) “[A] court may reform a statute to satisfy constitutional requirements if it can conclude with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred such a reformed version of the statute to invalidation of the statute.” (*Ibid.*)

In *Kopp*, we concluded that the statutes in question could not be reformed consistent with the intent of the voters in enacting the statutes. (*Id.* at p. 671.) But in the years since, we have applied *Kopp* to reform statutes where it was feasible to do so in a manner that would effectuate the clearly articulated policy judgments of the enactors. (See, e.g., *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 208–209 [reforming statute to remedy a constitutional flaw by providing property owners the right to a jury trial in precondemnation proceedings].)

In *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231 (*Matosantos*), we applied *Kopp* to a situation in which a statute could not be implemented as written because

circumstances had made it impossible for the statute to be carried out in accordance with the deadlines written into it. In *Matosantos*, we had partially stayed the implementation of two statutes pending our review of a challenge to their validity. (*Id.* at p. 274.) After upholding the validity of one of the two statutes, we recognized that several “critical deadlines” in the statute had passed and could no longer be met. (*Ibid.*) “This impossibility,” we said, “ought not to prevent the Legislature’s valid enactment from taking effect.” (*Ibid.*) In situations like these, we explained, the standard from *Kopp* applies for deciding whether a statutory deadline can be reformed: “Reformation is proper when it is feasible to do so in a manner that carries out those policy choices clearly expressed in the original legislation, and when the legislative body would have preferred reform to ineffectuality.” (*Matosantos*, at p. 274; see *id.* at p. 275.) “By exercising the power of reform . . . we may as closely as possible effectuate the Legislature’s intent and allow its valid enactment to have its intended effect.” (*Id.* at p. 274.) In other words, the court has the inherent authority to reform a statute in situations where *impossibility* would have the same effect as invalidity, preventing the statute from being carried out in accordance with its literal terms, but only if the court can do so consistent with the enactors’ intent. In *Matosantos*, we extended several statutory deadlines by the duration of the court’s stay to “retain the relative spacing of events originally intended by the Legislature and simplify compliance for all affected parties.” (*Id.* at p. 275.) This included deadlines that had passed during the stay as well as future deadlines that needed to be adjusted to maintain the sequence of events spelled out in the statute. (*Ibid.*; see also *Briggs v. Brown* (2017) 3 Cal.5th 808, 861–862 [exercising the court’s “inherent power of reformation to revise

the effective date of stayed legislation in order to avoid problems of compliance with statutory deadlines” affected by the stay].)

The situation we confront here is similar. Because the release of the federal census data will be delayed by four months under the Census Bureau’s plan, it will be impossible for the Commission to meet the July 1, 2021, deadline for displaying the first round of draft maps for public comment. (Gov. Code, § 8253, subd. (a)(7).) What we must ask, then, is whether this deadline can be reformed in a manner that closely approximates the framework designed by its enactors, and whether the enactors would have preferred the reform to the effective nullification of the statutory language. (*Matosantos, supra*, 53 Cal.4th at p. 275.) The answer to both questions is yes.

The basic purpose of the deadline set out in Government Code section 8253 is to ensure the timely display of draft redistricting maps to the public so that Californians can voice their views about the proposed district boundaries. The statute was first enacted as part of Proposition 11 — the 2008 ballot initiative that created the Commission, outlined a selection process for its members, and assigned it the responsibility of drawing the boundaries for the State Assembly, Senate, and Board of Equalization districts. (Voter Information Guide, Gen. Elec. (Nov. 4, 2008) analysis of Prop. 11 by Legis. Analyst, pp. 70–71; *id.*, text of Prop. 11, pp. 137–140.) As relevant here, Proposition 11 amended article XXI of the Constitution to specify that the Commission shall “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const., art. XXI, § 2, subd. (b)(1).) This process is described in Government Code section 8253, which guarantees public access to the redistricting process by requiring open meetings, public notice for each

meeting, and procedures for public input on the proposed maps. (Gov. Code, § 8253, subd. (a).) Additionally, the statute directs the Legislature to establish procedures to provide the public with access to redistricting data and mapping software to facilitate participation in the process. (*Id.*, subd. (b).) The framework reflects a policy judgment that the public should have the opportunity to be involved throughout the redistricting process. (*Vandermost v. Bowen*, *supra*, 53 Cal.4th at p. 445 [Cal. Const. and statutes “establish a public redistricting process”].) And public comment is typically robust: In the 2010 redistricting cycle, the Commission held 34 public hearings in 32 cities, reviewed more than 2,000 written submissions, and received input from more than 20,000 entities and individuals.

Of course, for the public to provide feedback on proposed district boundaries, the Commission must first make its work available for public review. As initially passed by the voters in 2008, subdivision (a)(7) of Government Code section 8253 stated, in relevant part: “The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display of any map.” (Voter Information Guide, Gen. Elec. (Nov. 4, 2008), *supra*, text of Prop. 11, p. 140.) In 2012, the Legislature amended this language to read, as relevant here: “Public comment shall be taken for at least 14 days from the date of public display of the *first preliminary* statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed *no later than July 1 in each year ending in the number one*. The commission shall not display any other map for public comment during the 14-day period. . . . Public comment shall be taken for

at least seven days from the date of public display of any subsequent preliminary statewide maps and for at least three days from the date of public display of any final statewide maps.” (Gov. Code, § 8253, subd. (a)(7), as amended by Stats. 2012, ch. 271, § 4, *italics added*.) As an Assembly bill analysis explained, the requirement “guarantee[d] that the public will have the ability and time to review the maps and respond to the Commission” at least six weeks before the August 15 deadline for the final maps set by the California Constitution. (Assem. Com. on Elections & Redistricting, Analysis of Sen. Bill No. 1096 (2011–2012 Reg. Sess.) July 3, 2012, p. 5.) The amendments also limited the 14-day public display requirement to the first set of draft maps released by the Commission, as opposed to all of the draft maps. (*Id.* at pp. 1–2.) The deadline ensured the public would be given adequate time to comment on at least one set of draft maps (and the Commission would have time to respond) before the August 15 deadline.

In short, the July 1 deadline for displaying preliminary maps was chosen to ensure that the public has the opportunity to provide input on the proposed maps before the Commission certifies them as final. But if the Census Bureau does not deliver the federal data until July 31, 2021, as it anticipates, it will be impossible for the Commission to comply with the July 1 deadline. The remedy the Legislature seeks is both temporary and limited in nature: a one-time adjustment of the statutory deadline, for purposes of this redistricting cycle, in accordance with the adjustment to the schedule for releasing the federal census data. By granting this limited remedy, we effectuate the policy judgment underlying the provision and preserve the public’s right to provide input on electoral district maps before those maps are finalized. We consider it clear that the enactors

would have preferred this deadline be adjusted — and the opportunity for public comment on the preliminary maps preserved — to effectively eliminating the public comment process because of extraordinary circumstances that make compliance with the statutory deadline impossible.

This brings us to the second relevant deadline faced by the Commission: the August 15, 2021, deadline for approving and certifying final redistricting maps to the Secretary of State. (Cal. Const., art. XXI, § 2, subd. (g).) If a delay in the federal data makes the July 1 deadline for the draft maps impossible to meet, it stands to reason that the deadline for the final maps, which the Constitution sets at just six weeks later, will be impossible to meet as well. If the census data are sent to the states on July 31, 2021, and the Legislature takes one month to prepare the dataset to be used for redistricting, the Commission cannot begin its work until September 2021 at the earliest — well after the constitutionally prescribed August 15, 2021, deadline. Allowing a period for public comment, as the statutory scheme envisions, will result in even greater delay.

As we explained above, this court's precedent establishes that a court may reform statutory deadlines to effectuate the enactors' clearly articulated policy judgments when it is feasible to do so and when the enacting body clearly would have preferred reformation to invalidation. (*Kopp, supra*, 11 Cal.4th at p. 615; *Matosantos, supra*, 53 Cal.4th at pp. 274–275.) Although the August 15 deadline is set by a constitutional amendment passed by the voters, rather than by statute, we see no reason why the same principles would not permit a one-time adjustment of the deadline given the extraordinary circumstances we confront here.

The August 15 deadline was enacted against the backdrop of the federal deadline that requires the Census Bureau to transmit census data to the states by March 31 of the year following the census. (13 U.S.C. § 141(c).) We presume that the voters who approved the initiatives establishing the Commission and the deadline for the approval of the final redistricting maps were aware of this federal deadline, and that the choice of the August 15 date reflects their judgment about the amount of time that is ordinarily appropriate for an effective redistricting process after the necessary federal census data are released. (See *In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11; Voter Information Guide, Gen. Elec. (Nov. 4, 2008), *supra*, text of Prop. 11, p. 138 [setting the deadline for the Commission’s final maps as Sept. 15 of the year following the census]; Voter Information Guide, Gen. Elec. (Nov. 2, 2010) analysis of Prop. 20 by Legis. Analyst, pp. 18–19; *id.*, text of Prop. 20, p. 96 [changing the deadline for the approval of final maps from Sept. 15 to Aug. 15].)

We consider it clear from the constitutional framework that, confronted with extraordinary pandemic-related federal delay, the enactors of article XXI, section 2, would have preferred shifting the date for approval of the Commission’s final maps to the available alternatives. It is true that the Constitution provides for certain scenarios in which the Commission is unable to approve a final map. In that event, the Secretary of State must petition this court for an order appointing special masters to adjust district boundaries instead. (Cal. Const., art. XXI, § 2, subd. (j).) But by its terms, the Constitution reserves this backstop for situations in which the Commission fails to approve a final map because it cannot muster “the requisite votes” (or voters disapprove of a final map

by referendum). (*Ibid.*) It is not designed to address the situation here, where the Commission will be unable to complete its work by the prescribed deadline because of extraordinary events outside of its control. There are, moreover, strong reasons to believe voters would not have preferred deploying this backstop — and thereby transferring primary responsibility for redistricting from the Commission to this court — to employing the usual redistricting procedures on an adjusted timeline. The voters enacted Propositions 11 and 20 to transfer the responsibility of drawing new district maps from the Legislature to an independent panel of citizens. (Voter Information Guide, Gen. Elec. (Nov. 4, 2008), *supra*, analysis of Prop. 11 by Legis. Analyst, pp. 70–71; see *Wilson v. Eu* (1991) 54 Cal.3d 471, 473.) In so doing, the voters tasked this court with redistricting only as a matter of last resort. (Cal. Const., art. XXI, § 2, subd. (j).) For this court to undertake to draw maps in the first instance would both displace the role voters envisioned for the Commission and preclude opportunities for the public to participate in the process as the voters intended. (See Cal. Const., art. XXI, § 2, subd. (b)(1) [instructing the Commission to “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines . . .”].) Adjusting the August 15 deadline, by contrast, gives effect to the voters’ intent that the Commission play the lead role in drawing new district maps, with input from the public received in a timely manner.

As always, our goal in fashioning such a remedy is to disturb the original language of the provision as little as possible. (*Kopp, supra*, 11 Cal.4th at p. 661.) The Legislature proposes that, for purposes of the 2020 redistricting process, we adjust the deadlines to account for the anticipated federal delay

— here, four months. The Commission and the Secretary of State concur. We agree this adjustment is appropriate. The state law provisions setting forth the deadlines for the Commission to release draft maps and approve final maps were designed to ensure that the Commission can take the necessary steps to prepare for a public redistricting process with some degree of certainty about when those steps will occur. The Commission’s forecasted delay runs the risk of rendering these provisions hollow. As the Legislature and the Secretary of State explain, without clear deadlines, the Commission will be ill equipped to plan and coordinate the public process of drawing new maps. A four-month adjustment of these deadlines addresses this issue while leaving sufficient time for the maps to be finalized in advance of the 2022 primaries.⁴ For these reasons, we agree that a four-month adjustment of the deadlines for the release of the draft maps and the approval of the final maps is appropriate.

We recognize, however, that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data. In the event of further federal delay, we conclude the relevant state deadlines should be shifted accordingly, for the reasons outlined here. Thus, while we today grant a minimum four-month adjustment to the relevant deadlines, we also order that the deadlines be further extended by the length of any additional delay in release of the federal census data beyond four months. In the event that an

⁴ We note that legislation is currently pending to move the March 2022 primary elections to June 2022 in light of the pandemic. (Sen. Bill No. 970 (2019–2020 Reg. Sess.) § 1, p. 2, as introduced Feb. 11, 2020.)

additional extension of time risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court. Conversely, should the federal government release the census data sooner than July 31, 2021, the Commission should make every effort to expedite its process and release the preliminary and final maps in advance of the deadlines set forth in this order.

Finally, we again emphasize that these adjustments to the relevant deadlines are limited to this redistricting cycle and these extraordinary circumstances. It is these circumstances that necessitate the remedy we authorize today: a public health crisis that has compelled declarations of emergency by both the President and the Governor, and that has compelled the federal government to pause the decennial census and seek congressional authorization for an extension of its own deadline. And the remedy we authorize is a narrow one: a one-time adjustment to the deadlines, to enable the relevant constitutional and statutory redistricting provisions otherwise to operate as written and intended.

III.

We grant the Legislature’s petition and issue a peremptory writ of mandate as follows:

- (i) The Commission is directed to release the first preliminary statewide maps for the congressional, State Senatorial, Assembly, and State Board of Equalization districts for public display and comment no later than November 1, 2021, notwithstanding Government Code section 8253, subdivision (a)(7).
- (ii) The Commission is directed to approve and certify the final statewide maps to the Secretary of State by no later than December 15, 2021. If the maps are approved and certified by this date, the Secretary of State shall consider the maps approved and certified consistent with the requirements of article XXI, section 2, subdivision (g) of the California Constitution.

If the federal government transmits the census data to the state later than July 31, 2021, the number of days of additional delay shall be considered to be the “additional federal delay.” In the event additional federal delay occurs, the Commission is directed to release the first preliminary statewide maps by no later than the date following November 1, 2021, that extends the November 1 deadline by the additional federal delay, and to approve and certify the final maps by no later than the date following December 15, 2021, that extends the December 15 deadline by the additional federal delay.

In the event the federal government transmits the census data to the state before July 31, 2021, the Commission should make every effort to expedite its process and release the

preliminary and final maps in advance of the deadlines set forth above.

This decision shall be final upon the filing of this opinion. (Cal. Rules of Court, rule 8.490(b)(2)(A); *Ng v. Superior Court* (1992) 4 Cal.4th 29, 34, fn. 1.)

KRUGER, J.

We Concur:

CANTIL-SAKAUYE, C. J.

CHIN, J.

CORRIGAN, J.

LIU, J.

CUÉLLAR, J.

GROBAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Legislature of the State of California v. Padilla

Unpublished Opinion
Original Appeal
Original Proceeding XXX
Review Granted
Rehearing Granted

Opinion No. S262530
Date Filed: July 17, 2020

Court:
County:
Judge:

Counsel:

Olson Remcho, Robin B. Johansen and Thomas A. Willis for Petitioner.

Xavier Becerra, Attorney General, Thomas S. Patterson, Assistant Attorney General, Anthony R. Hakl and P. Patty Li, Deputy Attorneys General, for Respondent Alex Padilla.

Marian M. Johnston for Respondent Citizens Redistricting Commission.

Nielsen Merksamer Parrinello Gross & Leoni and Marguerite Mary Leoni for Charles Munger, Jr., as Amicus Curiae.

Counsel who argued in Supreme Court (not intended for publication with opinion):

No oral argument.



June 22, 2020

Elaine M. Howell
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
E-Mail: [REDACTED]

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 the first name "Angelo" being more prominent.

Angelo N. Ancheta
Chair, California Citizens Redistricting Commission



June 22, 2020

Elaine M. Howle
California State Auditor
621 Capitol Mall
Sacramento, CA 95814
E-Mail: [REDACTED]

Via U.S. Mail and E-Mail

RE: California State Auditor's RFP No. 21-01

Dear Ms. Howle:

We are writing to express our concerns about Request for Proposal No. 21-01 (Line Drawing and Technical Services for Districting), which was released by the California State Auditor on June 15, 2020. Although we greatly appreciate the work of the State Auditor's office in both the candidate selection process and the transition process for the incoming Commission, we believe that the release of RFP No. 21-01 is ill-timed and usurps a key role for the next Commission in fulfilling its constitutional and statutory duties.

As discussed below, we believe that the release of the RFP is inconsistent with the letter and spirit of the Voters FIRST Act that created the Commission. Given the timing of the RFP process, we also believe that it is being released too early in the redistricting cycle: new commissioners may not be adequately prepared to review candidates for a highly specialized position, and members of the general public may not yet be engaged in state redistricting to participate meaningfully. We do not, however, address the merits of the RFP's specific requirements, since we believe it is the 2020 Commission's prerogative to determine the substantive content of any RFP involving the hiring of key staff and consultants.

RFP No. 21-01 solicits proposals for the primary line-drawing consultant for the 2020 Citizens Redistricting Commission. Based on our experience during the 2011 redistricting cycle, this consultancy is among the most important positions to be filled by the Commission. The line-drawing consultant must be highly qualified and experienced – fluent in the legal requirements of redistricting and the technical aspects of geographic information systems and data collection, and capable of working successfully with experts and repeat players, as well as with individuals and groups having only minimal experience with redistricting. The position requires a close working relationship with the full Commission, its staff, legal counsel, and Voting Rights Act counsel; in addition, the consultant serves as an essential point of interface between the Commission and the Statewide Database, as well as members of the public providing input on the mapping process.

California Government Code section 8253, a key statutory provision of the Voters FIRST Act, states in relevant part: "The commission shall hire commission staff, legal counsel, and

consultants as needed. The commission *shall establish clear criteria for the hiring and removal of these individuals*, communication protocols, and a code of conduct.” Cal. Gov’t Code § 8253(a)(5) (emphasis added).

Section 8253(a)(5) further states that “[t]he State Auditor shall provide support functions to the commission until its staff and office are fully functional.” *Id.* Additionally, the statute requires that “[t]he commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in California.” *Id.*

Taken together, these statutory provisions make clear that it is the Commission’s prerogative to hire the line-drawing consultant and that it alone is responsible for establishing the criteria that must be included in any RFP or similar hiring document dealing with staff, legal counsels, or consultants. The role of the Auditor’s office is to provide support functions until the Commission’s own staff and office are up and running. If the State Auditor’s office were to prepare draft language for an RFP subject to Commission approval, that activity could be properly categorized as a support function. However, it is clear that independently releasing an RFP containing, among other things, a Statement of Work, Contractor Responsibilities and Deliverables, and provisions for Qualifications and Experience goes beyond providing mere support and assumes a role that should be reserved for the full Commission.

Moreover, while regional breakdowns, the schedule of meetings, and the dates for releases of maps remain to be determined by the new Commission, the RFP – informed by the experiences of the Commission during 2011 – attempts to provide likely timeframes, destinations, and numbers of meetings to help guide prospective applicants. Anticipating decisions by the new Commission may be useful for budgeting and resource allocation purposes, but the new Commission may chart an entirely different course for its redistricting tasks, subject to the bounds of the Voters FIRST Act and other applicable laws. We believe the new Commission should be free to develop its own strategies and timelines, and the Commission, not the State Auditor’s office, should be the body to articulate those strategies and timelines in an RFP.

According to its table of Key Action Dates, RFP No. 21-01 was released on June 15, 2020, and proposals are due on August 17, 2020. There is also a Question and Answer period scheduled, with questions due on July 27 and answers to be posted on August 4, 2020. The expectation is that the Commission will engage in a thorough review process during August or September of 2020, including providing adequate opportunities for public comment. The proposal due date falls two days after August 15, 2020, the date by which the full Commission must be seated.

Although we understand the State Auditor’s interests in providing a smooth transition to the new Commission and in helping the Commission achieve an early start in filling key positions, the calendar for the RFP process is problematic for a number of reasons. As we have already noted, the Commission will have had no opportunities to review the content of the RFP, which has already been released; moreover, unless fully seated by July 27, the Commission will have no opportunities to participate in the Question and Answer process.

The new Commission will be under no obligation to complete its review process during August or September; nevertheless, if the current timeline is followed the commissioners will receive a full set of proposals only a few days after having been seated. At that point, it is unlikely that all its members will have received formal training on the applicable laws and technical aspects of redistricting, let alone state hiring and contracting procedures.

Based on the current Commission's experiences during 2010 and 2011, we expect that the new Commission will need to spend a significant amount of its initial time together on creating a leadership structure, strategic plans and timelines, and basic infrastructure. Developing hiring criteria and evaluating contractor proposals, in our opinion, should ideally occur after the commissioners have received full training in the subject matter. If the commissioners themselves lack sufficient knowledge of redistricting law, common practices and procedures, and emerging technologies, then they will be ill-prepared to apply appropriate criteria and to discern between potential consultants who are specialists in the field.

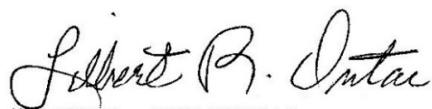
The timing of the RFP process during the Summer of 2020 also poses problems of public participation. The current COVID-19 crisis will no doubt pose ongoing problems for the Commission in obtaining public input, but even under the best of circumstances the Commission should not be expected to engage in significant outreach on the redistricting process by such an early date. Nor should the public be expected to have redistricting already on its calendar. Transparency and public participation remain hallmarks of the Voters FIRST Act, and the hiring process for the line-drawing consultant should be fully accessible to members of the public, even if the subject matter is more technically oriented.

Again, we appreciate your office's exceptional work and professionalism in the candidate selection process and in the transition between the old and new Commissions. Nonetheless, we feel that the new Commission should initiate the RFP process and should adopt its own timeline for selecting the line-drawing consultant. We strongly urge that RFP No. 21-01 be withdrawn and that the new Commission be afforded the opportunity to fulfill its responsibilities under the Voters FIRST Act.

Sincerely,



Angelo N. Ancheta
Chair, California Citizens Redistricting Commission



Lilbert Roy Ontai
Vice Chair, California Citizens Redistricting Commission