

## Adventures in Redistricting: A Look at the California Redistricting Commission

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### ABSTRACT

California's Voters FIRST Act created the Citizens Redistricting Commission and with it provided a unique opportunity to observe the implementation of one of the most challenging political processes: the creation of electoral districts by a body of non-elected voters. Despite many predictions and accusations to the contrary, this first-time experiment in participatory democracy experienced remarkably few glitches while achieving a successful outcome. This article provides an overview of the many factors and actors that played significant roles in this reform effort, and provides participant-observations illuminating some strengths and weaknesses of the process.

**T**HE SUCCESSFUL PROCESS OF REDISTRICTING California via the independent Citizen Redistricting Commission (CRC)<sup>1</sup> has prompted other jurisdictions to consider whether a move away from drawing lines by its legislative bodies might be advisable.<sup>2</sup> The CRC's work has been praised

for its transparency<sup>3</sup> and openness to public input,<sup>4</sup> despite multiple lawsuits that unsuccessfully challenged its districts,<sup>5</sup> and an unsuccessful referendum in November 2012 to overturn the state senate plan.<sup>6</sup>

There has already been some scholarship about the 2011 California Redistricting,<sup>7</sup> most of it

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<sup>1</sup>See CALIFORNIA CITIZENS REDISTRICTING COMMISSION, <<http://www.wedrawthelines.ca.gov>>.

<sup>2</sup>See, e.g., *The Ohio Citizens Independent Redistricting Commission: the Scheme to Silence the Power of Your Vote*, <<http://www.ohiolibertycoalition.org/media/pdf/RedistrictingAmendmentHandout.pdf>> (for reform efforts in Ohio), see also *Editorial: Independent Redistricting Commission is the Ticket*, WINSTON-SALEM JOURNAL (Nov. 21, 2011), <<http://www2.journalnow.com/news/opinion/2011/nov/21/wsopin01-editorial-independent-redistricting-commi-ar-1625503/>> (North Carolina).

<sup>3</sup>See, e.g., Vladimir Kogan and Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, CALIF. J. PUB. POL'Y (2012); see also, Zabrae Valentine, *Transparency the Rule in Redistricting Process That Puts Voters First*, California Forward (July 27, 2011), <[\*process-that-puts-voters-first\*> \(remarks by California Forward, one of the sponsors of the Voters FIRST Act, on the CRC's successful implementation and transparent process\).](http://www.cafwd.org/reporting/entry/transparency-the-rule-in-redistricting-</i></p></div><div data-bbox=)

<sup>4</sup>See *League of Women Voters of California Praises Redistricting Commission and Process*, PRWEB (Jun. 9, 2011), <<http://www.prweb.com/releases/2011/6/prweb8551359.htm>> (quoting Janis R. Hirohama, President of the League of Women Voters of California, as saying that "unlike redistricting in the past, this process has been open and transparent—a true citizen-driven process....").

<sup>5</sup>Two legal challenges—to the congressional and state senate plans, respectively—were filed with the California Supreme Court. Both were dismissed on Oct. 26, 2011. A separate legal challenge to the congressional maps filed in federal court was dismissed with prejudice on Feb. 10, 2012.

<sup>6</sup>The official title and summary of Proposition 40, which would have nullified the state senate districts, is available at <<http://vig.cdn.sos.ca.gov/2012/general/pdf/40-title-sum-analysis.pdf>>. Another referendum on the congressional districts was also filed, but not submitted due to a lack of signatures.

<sup>7</sup>See Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer?* 121 YALE L. J. 1808 (2012).

focused on outcomes and issues like compactness,<sup>8</sup> competitiveness,<sup>9</sup> or the partisan makeup of the districts. So far little or no consideration has been given to process-related questions like the following: Can the California process be implemented in other states with equal success? Or was there something unique about this process—perhaps uniquely Californian or uniquely first-time? Was the Commission “lucky” in the people that were selected? Will this process be “scammed” the next time around, now that the regulations<sup>10</sup> and conflict of interest criteria<sup>11</sup> will be known in advance, or will the next Commission be as “pure” as this group was? Would a legislative body have constructed similar districts, given the same constraints that the CRC had to grapple with,<sup>12</sup> or is there something inherently better or worse about citizen (non-legislator) redistricting commissions?

This essay does not delve into the details of California’s new districts, including their effects on partisan, racial, or ethnic politics. Nor does it attempt to answer all of the above questions, which will require more in-depth research and extensive analysis than is

possible here. It does, however, seek to inform the debate over these questions by offering a description of California’s 2011 redistricting effort, along with my own observations and thoughts on this process.

## I. HOW DID WE GET HERE?

Redistricting reform in California has been attempted numerous times, and reform proposals appeared on the ballot four times prior to 2008.<sup>13</sup> In 1993, the legislature took a big step toward opening up the redistricting process by moving its redistricting database to the University of California, Berkeley and making it available to the public.<sup>14</sup> But access to data was not enough to ensure non-legislators a voice in the line-drawing process.<sup>15</sup> California’s 2001 legislative redistricting was generally considered a bipartisan gerrymander that, above all else, protected incumbents<sup>16</sup> and proved that some legislators’ sense of ethnic belonging was quickly replaced with a sense of self-preservation when party and reelection politics are involved.<sup>17</sup> After this experience, good government

<sup>8</sup>See *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Aug. 2011), <[http://igs.berkeley.edu/politics/redistricting\\_california.pdf](http://igs.berkeley.edu/politics/redistricting_california.pdf)>; see also Iris Hui and Jeff Luis, *New Redistricting Plan* (PowerPoint), Univ. Cal. Berkeley, <<http://www.ocf.berkeley.edu/~irishui/New%20Redistricting%20Plan.pdf>> (analyzing compactness and competitiveness).

<sup>9</sup>Eric McGhee and Vladimir Kogan, *California’s 2011 Redistricting: Challenges and Controversy*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Dec. 2011), <[http://igs.berkeley.edu/politics/redistricting\\_california.pdf](http://igs.berkeley.edu/politics/redistricting_california.pdf)>.

<sup>10</sup>CAL. CODE REGS. Tit. 2 div. 10, adopted §§ 60804.1, 60815.1, 60820.1, 60856, 60857, 60858, 60859, 60860, 60861, 60862, 60863, and amended §§ 60841, 60846, 60853, 60855, regarding the Voters FIRST Act.

<sup>11</sup>See *id.* §§ 60843, 60847 for conflict of interest regulations.

<sup>12</sup>The constraints are the ranked criteria and the process that has to be followed. If a legislative body had to operate with the same level of transparency in redistricting, and were charged with complying with criteria in the same order, while also considering the same amount of public input, would the lines have been similar or much different?

<sup>13</sup>Proposition 14 in 1982; Proposition 39 in 1984; Proposition 119 in 1990; and Proposition 77 in 2005.

<sup>14</sup>See *The History of the Statewide Database*, CALIFORNIA STATEWIDE DATABASE, <<http://swdb.berkeley.edu/about.html>>.

<sup>15</sup>Redistricting data have a geographic component to them and thus need geographic information system (GIS) software to be fully evaluated. Redistricting GIS are expensive and not generally available to the public unless purchased. While California succeeded in providing unrestricted access to its

redistricting data, there were few opportunities for members of the public without private access to GIS to use the data for line-drawing, and thus participate in the legislative process. Furthermore, the legislature held few, not well-advertised hearings in 2001 that gave the public an opportunity to weigh in on district plans.

<sup>16</sup>See Dan Walters, *Dems’ Congressional Hopes In Calif. Fade*, DAILY REPUBLIC (July 21, 2012), available at <<http://www.dailyrepublic.com/opinion/statenationalcolumnists/dems-congressional-hopes-in-calif-fade/>> (describing the 2001 redistricting and comparing it to the 2011 process); see also Tony Quinn, *The Bipartisan Redistricting: How It Happened*, CAL-TAX DIGEST, Oct. 2001, available at <<http://www.caltax.org/member/digest/oct2001/10.2001.Quinn-BipartisanRedistricting.08.htm>> (Quinn, a Republican strategist, summarizes the 1991 and 2001 redistrictings); and this 2005 newsletter by the California State University System, summarizing previous redistricting activities and describing the 2001 collaboration of legislators from both major parties to draw a bipartisan, incumbent protection plan: <[http://www.csus.edu/calst/publications/newsletters/Snap\\_Shot\\_Spring\\_05.pdf](http://www.csus.edu/calst/publications/newsletters/Snap_Shot_Spring_05.pdf)>.

<sup>17</sup>See Martha Escutia and Gloria Romero, *MALDEF’s Lawsuit Is Racially Divisive*, L.A. TIMES (Nov. 1, 2001), available at <<http://articles.latimes.com/2001/nov/01/local/me-64038>> (The authors, both state senators, disparage the Mexican American Legal Defense and Educational Fund for filing a lawsuit that challenged redrawn boundaries. The two argued that the suit was racially divisive and unnecessary because MALDEF’s own redistricting plan would jeopardize their current congressional seats for the benefit of a greater proportion of voting Latinos).

groups became reinvigorated and attempted another reform effort. The 2003 recall election provided them with an interesting and powerful ally in the newly elected Governor Schwarzenegger, who promised to change business as usual.<sup>18</sup>

Schwarzenegger's first stab at redistricting reform was in 2005, when he supported ballot proposition 77. Proposition 77 would have forced a mid-decade redistricting (by retired judges) and mandated the construction of competitive districts.<sup>19</sup> The proposition was overwhelmingly rejected by voters,<sup>20</sup> but good government groups led by California Common Cause maintained that redistricting reform could be achieved by developing a version of the initiative that would attract other groups, and perhaps even the legislature, to sign on. This effort was boosted by poll results in the spring of 2006, which showed California's electorate was supportive of moving redistricting away from the legislature to an independent commission.<sup>21</sup> By the summer of 2006, a group of 70 advocates was working on a proposal that became Proposition 11 and appeared on the November 2008 ballot.<sup>22</sup>

Proposition 11—the Voters FIRST Act—was much different from Prop. 77, in that it did not include Prop. 77's major features. First, while Prop. 77 would have moved the redistricting authority for the Assembly, Senate, Congress, and Board of Equalization Districts away from the legislature, the Voters FIRST Act did not include Congress. This deliberate decision was made by the drafters to ensure that members of Congress would not use their considerable funds and influence to defeat the proposition.<sup>23</sup> Second, the retired judges that would have drawn the districts under Prop. 77 were replaced with a citizen commission as decision makers under the Voters FIRST Act. This was due to the intense criticism of the racial and ethnic makeup of the pool of retired judges, who are overwhelmingly older white males and thus not representative of the demographics of the state.<sup>24</sup> Third, mid-decade redistricting was out, partially because of the costs involved, the unavailability of current census data,<sup>25</sup> and because the general consensus was that once every 10 years is enough redistricting for the decade! Fourth, competition as a criterion was eliminated from the Voters FIRST Act for various reasons. Research had shown that only a few seats in California could be drawn to be competitive due to its self-sorting electorate

that had most Democrats concentrated along the coast and most Republicans living inland. Competition as a criterion is also muddled in its application by definitional issues, including which data are most appropriate to use. Furthermore, a potentially competitive district is vulnerable to campaign finance discrepancies, candidate quality, the national political climate, and the sheer fact that electoral mobility changes partisan support in

<sup>18</sup>John Broder, *California's New Governor Is Fighting a Familiar Battle*, N.Y. TIMES (Dec. 8, 2003), available at <<http://www.nytimes.com/2003/12/08/us/california-s-new-governor-is-fighting-a-familiar-battle.html?ref=graydavis>>.

<sup>19</sup>See *We Should Support Schwarzenegger on Prop-77*, DAILY KOS (Oct. 14, 2005 10:25AM), <<http://www.dailykos.com/story/2005/10/14/156743/-We-should-support-Schwarzenegger-on-Prop-77>> (regarding Governor Schwarzenegger's support of Proposition 77); see also *Schwarzenegger Writes \$1.25 Million Check to Redistricting Campaign*, FREE REPUBLIC (Sept. 27, 2005 6:54PM), <<http://www.freerepublic.com/focus/f-news/1492420/posts>>. The ballot summary of Proposition 77 can be found here: <[http://vote2005.sos.ca.gov/voterguide/prop77/title\\_summary.shtml](http://vote2005.sos.ca.gov/voterguide/prop77/title_summary.shtml)>.

<sup>20</sup>59.8% of voters voted No on this proposition and 40.2% voted Yes. California Secretary of State, Special Statewide Election, Nov. 8, 2005, available at <<http://vote2005.sos.ca.gov>Returns/prop/00.htm>>.

<sup>21</sup>Their support was consistent across partisan, geographic, and racial lines and passed by a 3-to-1 margin, with 66% of those polled supporting the independent commission, 21% supporting the legislature, and 13% responding that they didn't know. Additionally, 75% of those polled felt that if the state legislature had to play a role, they would prefer it to be indirect. <[http://www.commoncause.org/atf/cf/%7BF3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/CAL\[1\].REDISTPOLLPOWERPOINT0406.PDF](http://www.commoncause.org/atf/cf/%7BF3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/CAL[1].REDISTPOLLPOWERPOINT0406.PDF)>.

<sup>22</sup>Voter Information Guide, Nov. 4, 2008, California Secretary of State: <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop11-title-sum.htm>>.

<sup>23</sup>See Jim Sanders, *Proposition 11/Redistricting—Congress Left out of Argument over Lines*, SACRAMENTO BEE (Oct. 14, 2009), available at <[http://swdb.berkeley.edu/resources/Redistricting\\_News/california/2008/October/Proposition\\_11\\_Redistricting\\_10\\_14\\_08.htm](http://swdb.berkeley.edu/resources/Redistricting_News/california/2008/October/Proposition_11_Redistricting_10_14_08.htm)> (Sanders quotes then-house minority leader Nancy Pelosi's statement from a 2005 press conference: "I am very committed to defeating Proposition 77 and I am raising money to defeat it." Pelosi did not raise funds to defeat Proposition 11.).

<sup>24</sup>John Wildermuth, *Debate on Prop. 77 over Retired Judges*, SAN FRANCISCO CHRONICLE (Oct. 17, 2005), <<http://www.sfgate.com/politics/article/ELECTION-2005-Debate-on-Prop-77-over-retired-2564684.php>> (stating "The state's 1,000 or so retired judges are mostly elderly, relatively wealthy, white men who, opponents of the redistricting initiative argue, cannot fairly make decisions that will affect everyone in California.").

<sup>25</sup>*Informational Hearing: Proposition 77: Joint Hearing of Senate Elections, Reapportionment and Constitutional Amendments Committee and Assembly Elections and Redistricting*, Cal. Sen. (2005), available at <<http://selc.senate.ca.gov/september262005informationalhearingproposition77>> (testimony by Tim Storey and Karin Mac Donald).

districts over time.<sup>26</sup> Last, but not least, research showed a competition criterion to be in conflict with some traditional redistricting criteria and aspects of the Voting Rights Act.<sup>27</sup>

## II. VOTERS FIRST!

The drafters of the Voters FIRST Act assessed the problems of Prop. 77 and improved upon them. Proposition 11 mandated a process that used ranked criteria in the following order: (1) Equal Population, (2) Compliance with the Voting Rights Act, (3) Contiguity, (4) Respect for City and County Boundaries, Neighborhoods, and Communities of Interest (if possible without violating preceding criteria), (5) Compactness, and (6) Nesting (of the Assembly Districts into Senate Districts and Senate Districts into Board of Equalization Seats).<sup>28</sup> Criteria 5 and 6 were prefaced by the words “To the extent practicable, and where this does not conflict with the criteria above.”

Proposition 11 offered a commissioner selection process that was so complex that the League of Women Voters used a flow chart to explain it to voters.<sup>29</sup> It was designed to weed out those with conflicts of interest and strong partisan affiliation, and find qualified candidates. There was much debate in legislative circles whether strong candidates with any knowledge of redistricting could be found given restrictions that excluded anyone who had, in the preceding 10 years, worked for a campaign or a candidate for federal or state office, or a political party, been elected to a party central committee, or served as a paid consultant to any of these entities. In addition, candidates could not have contributed more than \$2,000 to certain campaigns.<sup>30</sup> These restrictions extended to a potential applicant’s immediate family. Because, in the past, redistricting had been a legislative function on the state level, most, if not all, experienced and potentially interested applicants would be ineligible due to these restrictions by virtue of having worked for either a candidate or a party. Even those who had been involved with redistricting on the local level often had partisan ties that excluded them from eligibility.

The Voters FIRST Act mandated transparency and public inclusiveness. It also incorporated the recourse of a referendum to a commission-drawn plan.<sup>31</sup> While Proposition 11 did not

include competition as a criterion, much of the advertising in support of the Voters FIRST Act claimed that the Commission would be charged with creating competitive districts.<sup>32</sup> The legislature had rock-bottom support levels with only 15% of Californians approving of its job performance.<sup>33</sup> News coverage inundated California’s electorate with reports of how few districts had changed hands since the last redistricting, linking safe districts to a lack of moderates in state government and tying this to the failures to pass timely, working budgets.<sup>34</sup> Thus, the promise of

<sup>26</sup>Bruce Cain, Karin Mac Donald and Iris Hui, *Sorting or Self-Sorting: Competition and Redistricting in California*, in *NEW POLITICAL GEOGRAPHY OF CALIFORNIA* 245–66 (Frederick Douzet, Thad Kousser and Kenneth Miller, eds., Berkeley: Public Policy Press, 2008).

<sup>27</sup>See Bruce Cain, et al., *Competition and Redistricting in California: Lessons for Reform*, INSTITUTE OF GOVERNMENTAL STUDIES, UNIVERSITY OF CALIFORNIA, BERKELEY (Feb. 2006), <[http://swdb.berkeley.edu/redistricting\\_research/Competition\\_&\\_Redistricting.pdf](http://swdb.berkeley.edu/redistricting_research/Competition_&_Redistricting.pdf)>.

<sup>28</sup>CAL. CONST. art. XXI, § 2(d)(1).

<sup>29</sup>See *Vote Yes on Proposition 11—November 2008*, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, <<http://ca.lwv.org/action/prop0811/prop11.html>>.

<sup>30</sup>For a complete list of conflict of interest restrictions, see <<http://ca.lwv.org/lwv/issues/redistricting.html>>.

<sup>31</sup>CAL. CONST. art XXI § 2(b)–(i) (“The Citizens Redistricting Commission (hereinafter the ‘commission’) shall: (1) conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines;” §2(i) “Each certified final map shall be subject to referendum in the same manner that a statute is subject to referendum pursuant to Section 9 of Article II.”).

<sup>32</sup>See *Proposition 11 Commission*, CALCHAMBER, <<http://www.calchamber.com/Headlines/2008/Pages/YesonProp11RadioAdsAiringStatewide.aspx>> (The non-profit business advocacy group CalChamber wrote about its support for Proposition 11 and explained that, among other things, “Proposition 11...will allow the citizens of California, rather than the Legislature, to create competitive legislative districts....”).

<sup>33</sup>This constituent dissatisfaction was linked to the state budget delay and the partisan deadlock that prevented compromise, with 73% of voters disapproving of legislature. This level of dissatisfaction was unmatched for any governor or senator in California’s history. See John Wildermuth, *Legislature’s Approval Rating at a Record Low*, SAN FRANCISCO CHRONICLE (Sept. 12, 2008), <<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/11/MN4U12SF3C.DTL>>.

<sup>34</sup>See *Why Californians Should Support Prop. 11*, San Francisco Chronicle (Sept. 12, 2008), <<http://www.sfgate.com/opinion/article/Why-Californians-should-support-Prop-11-3269666.php>> (describing the lack of competition in California’s elections); see also *Proposition 11: Redistricting, MOBILIZE THE IMMIGRANT VOTE*, <<http://mivcalifornia.org/docs/Res/103>> (explaining that the legislature turned seats into safe districts).

competitive districts was certain to draw some voter support.

The California legislative analyst, who is responsible for assessing the budgetary impact of propositions for the *Voter Information Guide* that is sent to every registered voter in the state, determined that Proposition 11 would not have a significant impact on the state budget.<sup>35</sup> This estimate was based on the funds the legislature had expended for the previous decade's line drawing process.<sup>36</sup> Supporters of the measure rejoiced! Any measure on the ballot that is estimated to incur significant costs has a lesser chance of passing. This is especially true when the issue is something as arcane as redistricting, which most people either do not understand, do not care about, or both. It was abundantly clear to the few redistricting experts in the state that the legislative analyst was wrong in his analysis, and that the process as described would cost far more than was estimated.<sup>37</sup> After all, Proposition 11 mandated an open, transparent process and "a statewide outreach program to solicit broad public participation."<sup>38</sup> The legislature had never implemented any of these costly mandates. Commissioners were supposed to be paid \$300 per day plus expenses; an entire agency needed to be created; staff, consultants, and a legal team had to be hired; and the recruitment and selection process were so involved that they were sure to incur tremendous costs.

Republicans were generally in support of the Voters FIRST Act, because this constitutional amendment would ensure them seats at the redistricting table in an amount disproportionate to their voter registration figures. Pundits have referred to California Republicans as an "endangered species."<sup>39</sup> Party registration figures have been steadily dropping in general in California, as the "No Party" affiliation numbers continue to rise, but Democrats outnumber Republicans significantly. On April 6, 2012, the California Secretary of State showed Democratic registration at 43.5%; Republican at 30.3%; Other Parties at 4.9%; and No Party affiliation at 21.3%. This is in contrast to registration figures in 1996 that showed 47.4% Democrats, 36.8% Republicans, 5.2% Other Parties and 10.6% No Party preference.<sup>40</sup> Yet Proposition 11 allocated the 14 seats on the CRC as follows: five to Democrats, five to Republicans, and four to No-Party affiliation or minor party members, and enshrined this allotment in the California Constitution.<sup>41</sup>

The proposition counted many good-government and advocacy groups as supporters. However, it faced strong opposition from some of their usual allies, including voting rights groups that feared the proposition's failure to require the Commission to be racially and ethnically representative of California's demographics would result in fewer seats at the table for minorities. Supporters like the League of Women Voters tried to combat concerns by asserting that Proposition 11, and later, its counterpart, Proposition 20,<sup>42</sup> would represent "the diversity that is California," but the Mexican American Legal Defense and Educational Fund (MALDEF), the Asian Pacific American Legal Center (APALC) and the National Association for the Advancement of Colored People's (NAACP's)

<sup>35</sup>*Budget Summary*, CALIFORNIA'S OFFICIAL VOTER GUIDE 2008, <<http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop11-title-sum.htm>> ("Potential increase in state redistricting costs once every ten years due to two entities performing redistricting. Any increase in costs probably would not be significant.")

<sup>36</sup>*Id.* at "funding," <<http://voterguide.sos.ca.gov/past/2008/general/analysis/prop11-analysis.htm>>. The legislative analyst clearly compares apples to oranges when evaluating Proposition 11 based on the previous costs, and it is obvious that there was a complete lack of understanding about what the process looked like in the past or what it costs to undertake the list of tasks that are outlined in their own analysis: "The Legislature spent about \$3 million in 2001 from its own budget, which is limited under the California Constitution, to adjust boundaries for all districts. These funds could be used to establish the application review process, communicate with the public, compensate commissioners, and employ legal and other experts in the field of redistricting."

<sup>37</sup>*Id.* at "fiscal effects" (the estimate was \$3 million, what the legislature spent in 2001, adjusted for inflation to \$4 million).

<sup>38</sup>See CAL. GOV'T CODE § 8253.6 (West 2012).

<sup>39</sup>See, e.g., Dan Walters, *California Republicans An Endangered Species*, ORANGE COUNTY REGISTER (Feb. 27, 2012), <<http://www.ocregister.com/articles/republicans-341856-state-california.html>>.

<sup>40</sup>See this report by the California Secretary of State for a full list of figures: <<http://www.sos.ca.gov/elections/ror/ror-pages/60day-presprim-12/hist-reg-stats1.pdf>>.

<sup>41</sup>CAL. CONST. art. XXI § 2 ("The commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with either of the two largest political parties in California based on registration.")

<sup>42</sup>See *Text of Proposition 20, the "Voters FIRST Act for Congress"* (California 2010), BALLOTPEDIA, <[http://ballotpedia.org/wiki/index.php/Text\\_of\\_Proposition\\_20\\_the\\_%22Voters\\_FIRST\\_Act\\_for\\_Congress%22\\_\(California\\_2010\)](http://ballotpedia.org/wiki/index.php/Text_of_Proposition_20_the_%22Voters_FIRST_Act_for_Congress%22_(California_2010))> (Proposition 20 was on the ballot in 2010 and added Congress to the Commission's line-drawing duties).

Legal Defense Fund, among others, were not convinced.<sup>43</sup>

Supporters of Proposition 11 raised over \$16 million in campaign funds, whereas opponents raised \$1.6 million. The initiative passed with 50.9% “yes” votes to 49.1% “no” votes, barely squeaking by with a margin of 197,378 votes.

After Proposition 11 passed in 2008, some of its drafters regrouped and joined forces with new funders that were interested in adding congressional redistricting to the Commission’s tasks. As a result of their efforts, Proposition 20 appeared on the November 2010 ballot. In addition to expanding the scope of the Commission’s work, Proposition 20 also shortened the timeline for the Commission to complete its work, moving the deadline for producing the final maps from September 15, 2011 to August 15, 2011. This proposition also narrowed the definition of what a “community of interest” is for the purposes of redistricting, providing some examples. Supporters raised approximately \$13.5 million to pass the measure, while opponents raised about \$8.15 million—a significant difference from the funds raised to defeat Proposition 11. The measure nevertheless passed decisively with 63.1% of the vote.

Proposition 11 was advertised as a remedy to many ills, and thus expectations were high.<sup>44</sup> But two issues needed to be addressed: first, whether there would be any applicants for the Commission at all, and second, whether they would be qualified.

### III. IF YOU BUILD IT, WILL THEY COME?<sup>45</sup>

The state auditor, who oversees the Bureau of State Audits (BSA), was charged with facilitating the commissioner selection process. This agency operates with relative independence from the legislature and the governor’s office, aside from relying on funding from them. Polls showed that voters trusted the state auditor to handle this task. The BSA usually conducts audits, and this task was completely outside their usual scope of activities. Nonetheless, they were chosen to implement a process about which they knew nothing. They began by drafting regulations to clarify the many issues on which the proposition was silent and created a timeline that set target dates.

While the proposition outlined some items in great detail, such as the ranking of redistricting

criteria, it was open to interpretation on other matters, such as what it meant for the state auditor to “...initiate an application process, open to all registered California voters in a manner that promotes a diverse and qualified applicant pool.”<sup>46</sup>

The auditor interpreted this to mean that they should conduct an active outreach campaign to solicit applicants. However, the entire budget that Proposition 11 allowed for the redistricting process was \$3 million over 3 years.<sup>47</sup> California is a very large, racially and ethnically diverse state in which many different languages are spoken: a comprehensive outreach campaign that targets the diversity of the state can easily cost multiple times this entire budget. The BSA creatively took advantage of California’s *Voter Information Guide*, which is sent to every registered voter in the state for each election, including the statewide Special Election in June of 2009. It placed a half page informational advertisement in the guide hoping that voters would see it and apply. It then hired a national public relations firm to conduct an outreach campaign and sent the legislature a request for \$2.24 million to fund these activities at \$1.36 million and reimburse the BSA for its redistricting-related activities during FY09/10. This would have left the Commission itself with a budget of only \$760,000 to actually conduct the entire redistricting. It also put the BSA into the interesting and unenviable position of having to compete for funding with the agency it was charged to create. The California legislature, which was dealing with a state budget crisis at the time, only agreed to fund \$500,000 and

<sup>43</sup>*Vote No on Propositions 20 and 27*, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, <<http://ca.lwv.org/action/prop1011/prop20-27.html>> (while the League did not endorse Prop. 20, it did support the creation of the Commission in Prop. 11 that was responsible for implementing the later proposition).

<sup>44</sup>*See Proposition 11 Commission*, CALCHAMBER, <<http://www.calchamber.com/Headlines/2008/Pages/YesonProp11RadioAdsAiringStatewide.aspx>> (“Proposition 11 will create a 14-member independent citizens commission to redraw state legislative district lines based on strict non-partisan rules.”).

<sup>45</sup>Kevin Costner in *Field of Dreams* (1989) was infinitely more certain than most of the involved parties in the redistricting process up to this point that interested players would appear who wanted to participate.

<sup>46</sup>CAL. GOV’T CODE § 8252(a)(1) (West 2012).

<sup>47</sup>*See id.* § 8253.6 (West 2012) (“The Legislature shall make the necessary appropriation in the Budget Act, and the appropriation shall be available during the entire three-year period. The appropriation made shall be equal to the greater of three million dollars (\$3,000,000), or the amount expended pursuant to this subdivision in the immediately proceeding [sic] redistricting process....”).

instructed the auditor to finance the remainder from its existing budget.

While the auditor was conducting meetings to solicit input on the selection process and build collaborations with interested groups, parallel efforts by advocacy groups were underway. Their goal was to bring enough applicants from minority groups into the applicant pool so that the selection process would result in a panel that reflected the racial and ethnic demographics of the state.

The application to become a commissioner consisted of two parts. The first was short and designed to weed out those that were ineligible or had conflicts of interest. Those that survived the first round were invited to submit a supplemental application that included four essays, extensive information about themselves and their families, along with letters of recommendation. Applicants were evaluated on three criteria outlined in Proposition 11: (1) relevant analytical skills, (2) the ability to be impartial, and (3) a demonstrated appreciation for California's diverse demographics and geography. These criteria were further explained in the regulations that the auditor developed with help from outside experts.

The selection process called for three independent auditors (one from each major party, and one affiliated with a minor party or no party) to review all supplemental applications and select 120 final applicants (in three pools of 40 for each major party and independent/other strata). These 120 applicants were then invited to participate in in-person interviews,<sup>48</sup> based on which the pools were reduced to 20 applicants for each pool. Once this process was completed, the legislative leadership had an opportunity to strike 24 of the 60 remaining individuals (six each for the minority leaders of each house and six each for the president pro tem of the State Senate and the Speaker of the Assembly). Then a random drawing by the state auditor, using bingo balls, established the first eight commissioners.<sup>49</sup> These eight commissioners then selected an additional six commissioners from the remainder of the final pool. The first eight would later refer to themselves as "the lucky ones" while the final six were called "the chosen ones."<sup>50</sup>

#### IV. A LITTLE HELP FROM YOUR FRIENDS<sup>51</sup>

For minority advocacy groups, the selection process presented many challenges. The populations

they represent include those that speak English as a second language or no English at all, that disproportionately have lower incomes and educational achievement, and whose experiences with the electoral system have frequently left much to be desired. Many of these groups work with minorities that are covered by the Voting Rights Act.

It was clear that an incredible amount of outreach would have to be conducted to reach these specific populations, especially considering the campaign by the BSA did not target them in particular. The challenge was to bring enough qualified minority candidates into the initial pool so that some of them would survive the legislative strikes and the randomization procedure. If the randomization procedure did not result in a first cut at a representative panel, the hope was that enough minority candidates would remain in the final pool from which the lucky ones would choose. What aided in their hope that the lucky ones would do "the right thing" was that part of the regulations that interpreted "California's diversity" as including "racial and ethnic," along with geographic and gender diversity.<sup>52</sup> The regulations were cautious in pointing out that no ratios should be used to select the final six candidates, and they were carefully drafted to avoid an implementation that would run afoul of Proposition 209,<sup>53</sup> enacted in 1996.

<sup>48</sup>See *Interview Schedule for August 2010*, CALIFORNIA CITIZENS REDISTRICTING COMMISSION, <[http://www.wedrawthelines.ca.gov/downloads/interview\\_schedule.pdf](http://www.wedrawthelines.ca.gov/downloads/interview_schedule.pdf)>.

<sup>49</sup>See *Redistricting Reform: State Auditor Selects First Eight Members of Redistricting Commission*, CALIFORNIA TAXPAYERS ASSOCIATION (Nov. 22, 2010), <[http://www.caltax.org/homepage/112210\\_state\\_auditor\\_selects\\_redistricting\\_members.htm](http://www.caltax.org/homepage/112210_state_auditor_selects_redistricting_members.htm)> (listing the first eight commissioners).

<sup>50</sup>See, e.g., Benjamin Bricker, *Reading Between the Lines: Congressional and State Legislative Redistricting Their Reform in Iowa, Arizona and California, and Ideas for Change in New Jersey* 31 (May 2010), available at <[http://www.tpath.org/uploads/Brickner\\_ReadingbetweentheLines.pdf](http://www.tpath.org/uploads/Brickner_ReadingbetweentheLines.pdf)>.

<sup>51</sup>THE BEATLES, SGT. PEPPER'S LONELY HEARTS CLUB BAND, 1967.

<sup>52</sup>See CAL. GOV'T CODE § 8252(g) (West 2012).

<sup>53</sup>CAL. CONST. art. I § 31. The California state auditor had to walk a fine line in trying not to violate certain sections of the Constitution implemented by Proposition 209, prohibiting state government from considering race, sex, and ethnicity in public education, employment, and contracting. The auditor and the Commission were sued by the Pacific Legal Foundation in September of 2011, after the redistricting had concluded, over California Government Code § 8252(g), which provides that considerations for the selection of the final six commissioners shall include racial, ethnic, and gender diversity.

But first, the groups had to identify eligible candidates and convince them to apply. The economic climate in California had taken a toll on the budgets of minority advocacy groups, just as it had on the state budget. None of these groups dealt solely with redistricting issues. Many had worked on census outreach, for which there had been little to no funds available from government sources, and their resources had been depleted. Launching an all-out campaign to educate their constituencies, which include many disadvantaged people, about redistricting and the Commission application process was simply not within their budgets; they needed external funding.

Redistricting is not the easiest of processes to get anyone excited about. It is arcane to most because it has been conducted mostly in secret in the past, it deals with issues that most people would rather forget than be reminded of (like data and statistics), it is heavy on laws, and always seems to be fraught with controversy. The only thing that the average person seems to know about redistricting is the term “gerrymander,” a concept that is almost always misunderstood. When one adds to this the fact that many members of minority groups have had little opportunity to participate in the political process and are therefore largely unsophisticated politically, that more recent immigrants may come from different political systems altogether, and that often their first and primary language is not English, the enormity of the effort to engage these groups becomes obvious.

The James Irvine Foundation stepped in to help. The foundation had participated in the reform process by funding certain activities that aided in the passing of Proposition 11. In particular, it had provided funding to California Forward, a group that was one of the sponsors of the proposition.<sup>54</sup> California Forward had been created by four California civic organizations, including Common Cause.<sup>55</sup> The Irvine Foundation had also funded a working group through California Common Cause (the main sponsor of Proposition 11), which brought together various stakeholder groups to reach a compromise that would lead to either legislation or a ballot initiative. The James Irvine Foundation funded minority advocacy groups and voting rights groups to conduct outreach and education and to encourage their constituencies to apply to the commission. These groups also assisted in filling out applications and helping applicants prepare for the interview process.<sup>56</sup>

One of the most tensely anticipated dates by everyone involved in the implementation of the

Voters FIRST Act was December 15, 2009, the day the application process opened. Would anyone in fact be interested in serving on the commission? Nobody would have guessed that, in the end, there would be over 36,000 applications, of which 24,915 applicants were tentatively deemed to be eligible and asked to participate in round two. 4,547 applicants would return complete supplemental applications, which were then evaluated by the Applicant Review Panel. Ultimately, 120 applicants were selected for interviews that were live-streamed. All applications were available on the BSA website and the public was able to provide comments and feedback. Once the pool was reduced to 60 and sent to the legislature for strikes, the process went dark, and there is no information on why some applicants were struck.

After all the work by the BSA and the various groups that were involved to make the Commission representative, it was interesting that the lucky draw resulted in four Asians (50%), two whites (25%), one Latino (12.5%) and one black (12.5%) being selected. This contrasted with California’s ethnic make-up at the time, which consisted of approximately 12% Asian, 42% white, 37% Latino, and 6% black. The final Commission consists of four Asians (29%), one Pacific Islander (7%), three whites (21%), two blacks (14%), three Latinos (21%), and one American Indian (7%).<sup>57</sup> Interestingly, in

<sup>54</sup>See *California Forward*, THE JAMES IRVINE FOUNDATION, <<http://irvine.org/grantmaking/our-programs/californiademocracy/governancereform/californiaforward>> (describing California Forward as a bipartisan organization created to improve California’s governance and fiscal systems, funded by five foundations: the California Endowment, the James Irvine Foundation, the Evelyn and Walter Haas, Jr. Fund, the William and Flora Hewlett Foundation, and the David and Lucile Packard Foundation).

<sup>55</sup>In addition to California Common Cause, these organizations included the Center for Government Studies, the New California Network, and the Commonwealth Club’s Voices of Reform Project, which had also been funded by the James Irvine Foundation, and whose senior staff became the senior staff at California Forward. See *VoR Background*, VOICES OF REFORM PROJECT, <<http://www.voicesofreform.org/about.php>>.

<sup>56</sup>See *Redistricting Process*, JAMES IRVINE FOUNDATION, <<http://69.89.5.181/grantmaking/our-programs/californiademocracy/governancereform/1052>> (listing some, but not all, of the awards the foundation granted to these organizations).

<sup>57</sup>Each California Redistricting Commission remains in effect until the next Commission is chosen. See CAL. CONST. art. XXI § 2(c)(4) (“The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.”).

the pool that submitted the supplemental application, roughly 72% were white, 9% black, 5% Asian and Pacific Islander, and 9% Latino.

There are eight male and six female commissioners. Five are Republicans, five are Democrats and four are not affiliated with any party. Eight of the commissioners reside in the southern California regions, and the remaining six are distributed throughout the north, with three from the San Francisco Bay Area. Overall, the CRC is economically better off than the average California population, with six commissioners' yearly incomes in the \$125,000–\$200,000 range, one above \$250,000, four between \$75,000 and \$124,999, and three in the \$35,000 to \$75,000 range.<sup>58</sup> The commissioners are also rather well educated, with everyone holding an advanced degree. There are several attorneys, one Ph.D., a law professor, and a former director of the United States Census Bureau.<sup>59</sup> Two of the commissioners have redistricting and voting rights experience. One was the national senior counsel for MALDEF during the last redistricting cycle and was involved with MALDEF's lawsuit against the California legislature. The other is a law professor who represented the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR) before the California Supreme Court in the 1990s. A third commissioner has extensive experience with the data used for redistricting and voting rights assessments, due to his tenure at the Census Bureau.

## V. FROM BUREAU OF STATE AUDITS TO THE SECRETARY OF STATE: THE FIRST HICCUPS

Once the Commission was seated, the Bureau of State Audits concluded its responsibilities, and the Secretary of State's office (SOS) "inherited" the CRC. The SOS was charged with providing administrative assistance until the Commission could be set up as an independent agency. This included setting up a hiring process for Commission staff.

Proposition 11 allowed explicitly for the executive staff to be hired outside of the state civil service guidelines, meaning that usual state hiring practices did not apply to the new agency.<sup>60</sup> This was done for various reasons. First, all staff was to be temporary, and Proposition 11 only called

for funding for three years. Obviously there would be no need to maintain staff on an ongoing basis, because redistricting is a once-a-decade event (at least in California), and once the final lines are approved and lawsuits are resolved, there is literally nothing to do. Second, because redistricting happens once every decade, and it had been a legislative function in the past, there were few, if any, potential applicants in the state pool with the experience to fill these positions that were not "conflicted out." Third, increasing the state pool with potentially more experienced applicants would take too long during the extremely short time available to set up the Commission.

The law allowed for a wide net to be cast in order to find the best candidates. The California Secretary of State's office, however, decided (for reasons unknown) to use the limiting state hiring process after all, and this decision resulted in the first negative feedback for the Commission. State hiring procedures are not transparent or open for public observation. Although the hiring rules are public, the names of the candidates are not made public, and neither are the interviews or any of the information about the candidates. Such information is considered to be related to employment actions, which are conducted outside of the view of the public, so as to protect the privacy of those involved.

Accordingly, the hiring of the executive director was the first action in the entire process that was not open to the kind of public scrutiny that the proposition had envisioned. Immediately there was great worry that this redistricting would resemble those in

<sup>58</sup>Bonnie E. Glaser and Karin Mac Donald, *Implementation of Proposition 11, Step One: Setting the Rules, Soliciting Applications, and Forming a Commission* (Sept. 2011) (unpublished manuscript, on file with the University of California, Berkeley Law School).

<sup>59</sup>Dr. Gabino Aquirre holds a Ph.D in social science/comparative education; the law professor is Angelo Ancheta; the attorneys are Maria Blanco, Jodie Filkins-Weber, Stanley Forbes, and Jeanne Raya; Commissioner Vince Barabba was the director of the U.S. Census Bureau under two administrations. See *Commissioner Biographies*, CALIFORNIA CITIZENS REDISTRICTING COMMISSION, <<http://wedrawthelines.ca.gov/bios.html>>.

<sup>60</sup>See CAL. GOV'T CODE § 8253(5) (West 2012) ("The commission shall establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct.").

the past and be conducted behind closed doors. Observers were highly alarmed that there was no opportunity for public comment on the applicant pool or any of the potential candidates individually.<sup>61</sup> A transparent process, however, had been deemed extremely important, because redistricting had, in the past, been largely conducted in secrecy. This process, then, appeared to follow the very type of process the proposition had been designed to change.

The Commission hired a former member of the state auditor's Proposition 11 implementation team, who had worked as a state auditor for two years—primarily assigned to the team that conducted the selection process. Before that, he had worked as a home appraiser.<sup>62</sup> He had no previous redistricting experience.

Similarly, the public was excluded from the hiring of the Commission's chief counsel and was simply presented with the hired attorney of choice. This attorney had been working for the state's Natural Resources Agency most recently and also had no redistricting experience.

Although the initiative was designed to open up the process, the entire staff selection process was done behind closed doors. The final staff of at least 12 did not include a single person with any redistricting experience.<sup>63</sup> Yet this staff was charged with setting up a process that included drafting an Invitation for Bid (IFB) for the Commission's technical consultant. Predictably, there were immediate problems with the document, which created a wave of accusations of wrongdoing and partisanship. The document specified consultant qualifications requiring the applicant to have redistricted an area similar to the size of the Bay Area MSA (or "metropolitan statistical area"). In redistricting, however, MSAs have no relevance, and using one as a baseline makes no sense. Eventually staff corrected this error, but in the highly partisan environment of redistricting, even the rectification of this technical error was interpreted by Republicans to favor one potential consultant team over another.<sup>64</sup>

Additionally, the IFB was limited to a bid of \$500,000. When asked how this number was arrived at, the executive director explained that it was based on what one of the potential bidders had suggested as a fair amount even though, at a public hearing, this bidder suggested that an amount between \$600,000 to \$1 million would be more appropriate.<sup>65</sup> This same bidder had charged Arizona, a

state one-sixth of the size of California, \$2.4 million for technical consulting in 2001.<sup>66</sup> The extremely low bid amount essentially ensured that none of the national redistricting firms that might otherwise have been interested in bidding on a project of this magnitude would be able to compete, and it limited the pool to firms that had very little overhead.<sup>67</sup> The technical infrastructure needed for a project of this size can easily cost up to \$100,000. For any firm that had to pay employee benefits, overtime (which is significant on redistricting projects), and market rate rents, this project would simply not have penciled out.

Had the MSA error not been corrected in the IFB, the only firms eligible for the bid would have been precisely the larger firms that did not submit bids because of the low contract limit, and the CRC would have had to reopen the bidding process, after changing either the qualifications or the bid amount. This would have taken up time that was simply not available, and even with a two-week IFB-to-proposal deadline turnaround time, the CRC staff was unable to get the technical consultant on board until April 8, 2011—yet, the due-date for the lines was August 15, 2012.

This staff hiring process stood in stark contrast to the Commission's hiring of the technical consulting team and the Voting Rights Act counsel. That process was open to the public, and hundreds of

<sup>61</sup>See Letter from James Mayer et al., to the members of the Citizens Redistricting Commission, *available at* <<http://www.redistrictingca.org/wp-content/uploads/2011/02/022211-LTR-to-Commission-on-transparency-and-public-input-CCC-LWVC-CF.pdf>> (the letter, by Proposition 11 proponents and drafters from California Common Cause, California Forward, and the League of Women Voters, urges the Commission to abide by the same transparent process that the commissioner selection process was subject to in the hiring of staff.).

<sup>62</sup>See *Commission Staff Biographies*, CALIFORNIA CITIZENS REDISTRICTING COMMISSION, <[http://wedrawthelines.ca.gov/commission\\_staff.html](http://wedrawthelines.ca.gov/commission_staff.html)>.

<sup>63</sup>*Id.*

<sup>64</sup>*Business Meeting: Hearing Before the California Citizens Redistricting Commission* 34–42 (Mar. 19, 2011) (testimony of Harmeet Dhillon) <[http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission\\_20110319.pdf](http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission_20110319.pdf)>. Interestingly, the group favored by Republicans to win the contract would not have the contract would not have qualified had the MSA error not been corrected.

<sup>65</sup>Personal conversation with Director Claypool (Mar. 2011).

<sup>66</sup>See *Citizens Redistricting Commission Hearing, Day 2: Hearing Before the California Citizens Redistricting Commission* 585–86 (Feb. 11, 2011) <[http://wedrawthelines.ca.gov/downloads/transcripts/201102/fullcommission\\_20110211.pdf](http://wedrawthelines.ca.gov/downloads/transcripts/201102/fullcommission_20110211.pdf)>.

<sup>67</sup>*Id.* (testimony of Karin Mac Donald).

comments were logged in hearings and on the Commission's website in support of, or against various bidders. There were nine firms that responded to the Request for Information for the Voting Rights Act counsel, and two applied for the technical consultant position. The CRC conducted interviews with the applicants in open hearings, debated their qualifications and applications in public, and selected them by a public vote. The hearings were streamed over the Internet.<sup>68</sup>

During the consultant selection process, it became obvious that many members of the public were quite surprised to hear that there would be a technical consultant at all.<sup>69</sup> The CRC's website address is <wedrawthelines.org>, which was apparently interpreted by some quite literally to mean that the commissioners themselves would use the mapping software to build districts.

From previous statewide redistrictings, technical consultants had also become distrusted and generally had bad reputations as architects of partisan gerrymanders.<sup>70</sup> A story that was repeated over and over was that of Rep. Howard Berman's brother, who had charged some California members of Congress \$20,000 each to draw them good seats.<sup>71</sup> This was in addition to the \$1.36 million fee he received to draw Senate and Congressional lines in 2001.<sup>72</sup>

The two bidders for the technical work were both affiliated with universities. One team, Q2 Data & Research, LLC, was made up of staff of the Statewide Database<sup>73</sup> and the Chief Justice Earl Warren Institute on Law and Social Policy,<sup>74</sup> both at the University of California, Berkeley School of Law, and was bidding through their consulting firm. The other team was a consultant with his own firm, National Demographics Corporation, who was bidding through Claremont McKenna College's Rose Institute.<sup>75</sup> The selection process was extremely contentious. Even before the Invitation for Bid was released, the Commission was bombarded with letters endorsing one or the other team. Accusations were made that each team was biased. The Rose Institute team was accused of being biased toward the Republicans because its principal consultant was a registered Republican, who had a history of working for Republicans, and the Q2 team was accused of being a Democratic front, even though the principal consultant (me) was not registered with a political party and had never worked for Democrats.

The Commission struggled through the selection process and hired the Q2 team after concluding that its bid was responsive while the Rose Institute bid was not.<sup>76</sup>

## VI. GETTING TO WORK

With the consultants finally in place on April 8, 2011, the Commission embarked one day later upon their quest for public input throughout California. In April alone, the Commission held ten input

<sup>68</sup>For full hearing transcripts, see <<http://wedrawthelines.ca.gov/public-comments-march-2011.html>>.

<sup>69</sup>See, e.g., *Business Meeting: Hearing Before the California Citizens Redistricting Commission* 15–16 (Mar. 19, 2011) (testimony of Robert Reichert), <[http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission\\_20110319.pdf](http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission_20110319.pdf)>.

<sup>70</sup>Rep. Howard Berman's brother, Michael Berman, a redistricting consultant, drew a gerrymander that resulted in only one incumbent losing a seat in seeking reelection since 2006. *California Incumbents Safe No More*, POLITICO (Apr. 12, 2011), <<http://www.politico.com/news/stories/0411/52970.html>>.

<sup>71</sup>Rep. Loretta Sanchez explaining that \$20,000 is a good investment when one has to spend upwards of \$2 million every two years for their reelection campaign. *Prop. 27 Would Strangle Redistricting Reform in the Cradle*, ORANGE COUNTY REGISTER (Oct. 8, 2010), <<http://www.ocregister.com/articles/redistricting-265073-commission-prop.html>>.

<sup>72</sup>See *All Bow to Redistrict Architect: Politics Secretive, Single-Minded Michael Berman Holds All the Crucial Cards*, ORANGE COUNTY REGISTER (Aug. 26, 2001), <<http://archive.fairvote.org/redistricting/reports/remanual/canews4.htm>>.

<sup>73</sup>The Statewide Database is the redistricting database for the State of California, <<http://swdb.berkeley.edu>>. As noted at the beginning of this article, I am the director of the Statewide Database and the owner/senior researcher for Q2.

<sup>74</sup>See Warren Institute website at <<http://www.law.berkeley.edu/ewi.htm>>.

<sup>75</sup>See Rose Institute website at <<http://www.claremontmckenna.edu/rose/>>.

<sup>76</sup>The Rose Institute did not provide the required information about their donors and did not make the compulsory disclosures about the donors' political information. See Steven Maviglio, *California Republicans, Rose Institute, and Tony Quinn Dead Wrong on Redistricting*, CALIFORNIA PROGRESS REPORT (Mar. 23, 2011), <<http://www.californiaprogressreport.com/site/california-republicans-rose-institute-and-tony-quinn-dead-wrong-redistricting>>. The commissioners found numerous additional problems with the Rose Institute bid but decided to simply disqualify the bid because it was non-responsive. See also pp. 97–219 of this hearing transcript for discussions about issues with the bid, <[http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission\\_20110319.pdf](http://wedrawthelines.ca.gov/downloads/transcripts/201103/fullcommission_20110319.pdf)>. The entire transcript provides an enlightening read about the acrimonious experience the consultants had during the selection process and the interaction among the commissioners in trying to arrive at their first official and intensely politically scrutinized vote.

hearings in places ranging from Redding, in the rural north of California, to Los Angeles, in the south. By the time the maps were finalized at the end of July, the Commission had traveled thousands of miles to hear from people in 32 different locations during 34 public input meetings. Those were in addition to the many line-drawing and business meetings the Commission held, which were also open for public input.

Designing an outreach plan and setting a schedule is one thing, but the question that hung over the Commission like the Sword of Damocles was “Would people participate or would the Commission sit there alone and talk to itself?” And if people did show up, who would they be? Would they be partisan plants or actual community members providing testimony about their neighborhoods?

The Commission need not have worried. By the time the redistricting had finished, over 2,700 speakers had provided testimony. They seemed to come from all different backgrounds and persuasions, but there were two groups that especially did not see eye-to-eye. On one side was the Tea Party, which asked for color-blind redistricting and urged the Commission not to take race into consideration,<sup>77</sup> and on the other side were Voting Rights Act and minority advocacy groups, who reminded the Commission of the requirement to adhere to the federal Voting Rights Act and testified that race and ethnicity are very much factors that must be taken into account in redistricting.

The timing of the 2011 redistricting coincided with the emergence of the Tea Party movement, and Tea Partiers came out in force in many locations. With their distinct, red-colored t-shirts, they would often form a bright wall along the perimeter of the hearing room. While there was some statewide organizing to encourage Tea Party members to participate in the redistricting process, there was no systematic funding for them. The Tea Party message nevertheless was largely consistent and was perceived by many as anti-immigrant and anti-minority. The way in which the message was communicated varied widely and became quite hostile in many hearings in which a large number of Tea Party activists participated. Hissing and sneering at speakers that supported the Voting Rights Act was not uncommon, and in one hearing, the atmosphere became so hostile that the Commission interrupted the meeting until more security could be brought in.<sup>78</sup>

On the other end were the voting rights and minority advocacy groups that were discussed earlier. As noted above, Irvine Foundation funding allowed these groups to work with minority communities to explain the importance of documenting their communities of interest, and to submit the information to the Commission for consideration. These groups also worked with community members to prepare them on how to give in-person testimony, and provided quantitative data and maps to support the qualitative information that was gathered on the ground.

Through the Redistricting Group at UC Berkeley,<sup>79</sup> the Irvine Foundation also funded “Redistricting Assistance Sites” in six locations throughout California.<sup>80</sup> These were technical assistance centers that were open to the public, equipped with multiple computers with redistricting mapping software, and staffed by a technical consultant who would assist members of the public in developing district plans to submit to the CRC. The sites also provided space for communities to hold meetings to discuss redistricting issues and develop proposals. The sites were promoted at CRC hearings, and all interested parties were encouraged to visit them. This resource was successfully used by people from across the political spectrum, including Republicans. Interestingly, the site at Berkeley Law was especially heavily used by members connected to the Tea Party, and line drawers for the California Conservative Action Group, despite UC Berkeley’s liberal reputation. These activists

<sup>77</sup>*California Tea Partiers Revved up by Redistricting Reform*, NEW AMERICA MEDIA (June 24, 2011) (describing Tea Party members’ views as stated in redistricting hearings throughout California, as they argued for less attention to be paid to minority lines in redistricting and more to keeping cities and communities together), <<http://newamericamedia.org/2011/06/ca-tea-partiers-hijack-redistricting-process.php>>.

<sup>78</sup>This description is based on own observations at the redistricting meeting.

<sup>79</sup>The (currently hibernating) Redistricting Group, <<http://redistrictinggroup.org>>, consists of staff of the Statewide Database, <[www.swdb.berkeley.edu](http://www.swdb.berkeley.edu)>, and the Chief Justice Earl Warren Institute on Law and Social Policy, <<http://www.law.berkeley.edu/ewi.htm>>, at the University of California, Berkeley Law. This project was conceived in early 2009 and funded by the James Irvine Foundation.

<sup>80</sup>Many community organizations assisted in getting the word out about this resource. For example, the Community Coalition of Los Angeles developed this flier: <<http://www.cocosouthla.org/node/645>>. The sites were used, in particular, by groups and individuals who were not connected to the traditional voting rights groups which had their own software capabilities.

received little to no outside funding to participate in the process and would not have had access to the technology necessary to become fully involved without these resources.<sup>81</sup>

The Irvine Foundation, along with the Ford Foundation, also provided funding to the Advancement Project to develop an online mapping resource called ReDrawCA.<sup>82</sup> On their site, anyone with Internet access who did not need technical assistance could try their hand at creating their own districts for submission to the CRC. However, the site was only marginally successful for many reasons, among them being its late implementation which did not allow for much usability testing. Any site that proposes drawing lines for a state as large as California over the Internet will suffer from the inevitable realization that a geography of more than 710,000 census blocks takes considerable time to load, and waiting for those data to process could put manufacturers of sleeping aids out of business.

The financial assistance of the foundations, in particular the James Irvine Foundation, had a dramatic impact on making public participation a reality in the implementation of redistricting reform in California. By the time all, or at least most, was said and done, the Irvine Foundation had granted \$3.3 million to support public participation.

## VII. THE REALITY OF BEING A COMMISSIONER

Applicants to the CRC had been told they would have to make a part-time commitment to serve on the Commission, but in reality, due to the many hearings and the extremely short timeline, most commissioners worked much more than that. Most commissioners attended almost every meeting. In July of 2011 alone, the Commission scheduled hearings on 18 days.<sup>83</sup> Some meetings had hundreds of attendees and lasted late into the night. Outside of the hearings, commissioners reviewed public testimony and written comments that ranged from specific requests for line moves, to definitions of communities of interest and neighborhood boundaries, to explanations for why certain jurisdictions should be combined with others. According to the Commission's final report, there were over 20,000 written comments submitted along with over 2,000 maps,<sup>84</sup> and more than 2,700 speakers pro-

vided testimony in person.<sup>85</sup> Commissioners also had to review and study hundreds of extensive data reports and maps that were prepared by the technical consultants. They had to become familiar with Voting Rights Act assessments and grapple with racially polarized voting analyses. In spite of the bureaucratic setup, all of this had to be accomplished between April and August.

Commissioners also had a grueling travel schedule. While most of the business and line drawing meetings were held in Sacramento, there were 31 other locations they had to visit. Given that the commissioners come from different parts of the state, it meant that someone, usually the majority of the Commission, always had to travel. Common concerns when meetings ran over—which happened frequently—were that planes might be missed or family obligations would not be attended to. The commissioners had difficult choices to make.

The commissioners did all of this in the face of intense public scrutiny and under tremendous pressure to deliver a set of final maps that would be passed by a minimum of three Republicans, three Democrats, and three unaffiliated members of the Commission.<sup>86</sup> It is obvious that negotiations among the commissioners had to take place for the voting to be successful. For example, the Commission decided to designate two commissioners from different party/non-party affiliations to each region of California to read and review the public

<sup>81</sup>Interview with Christopher Bowman, the line-drawer for the California Conservative Action Group (Apr. 2012).

<sup>82</sup>See <[http://www.redrawca.org/index\\_ca.php](http://www.redrawca.org/index_ca.php)>.

<sup>83</sup>The Commission's hearing calendar also lists the locations for the 34 public input hearings that the Commission held in 32 locations throughout the state, <<http://wedrawthelines.ca.gov/hearings.html>>.

<sup>84</sup>The first page of the final report quantifies the various types of public input the Commission received, <[http://wedrawthelines.ca.gov/downloads/meeting\\_handouts\\_082011/crc\\_20110815\\_2final\\_report.pdf](http://wedrawthelines.ca.gov/downloads/meeting_handouts_082011/crc_20110815_2final_report.pdf)>.

<sup>85</sup>The number of speakers that provided testimony in person is more accurate than the amount of written input received. Speakers received a number when checking in for a Commission hearing and a fairly accurate total could be computed. Commission staff, however, had tremendous problems logging and keeping track of written submissions by the public, and research showed that many duplicates were logged. For a further discussion, see Karin Mac Donald and Bruce E. Cain, *Communities of Interest: Methodology and Public Testimony*, \_\_ IRVINE L. REV. \_\_ (forthcoming 2013).

<sup>86</sup>For more complete information regarding these new redistricting requirements, see Proposition 11, <[http://wedrawthelines.ca.gov/downloads/voters\\_first\\_act.pdf](http://wedrawthelines.ca.gov/downloads/voters_first_act.pdf)>.

comments for that specific area and present their findings to the full Commission. The other commissioners would defer to their judgment about the respective area during line drawing sessions. This required that additional time be spent on Commission business, and often it meant that two commissioners that did not see eye to eye had to work together and seek compromise.

As if their assignments had not been difficult enough, the commissioners were not treated kindly by some members of the public and partisan media. Every decision and move they made was scrutinized. When they decided to forego releasing a formal second working draft due to time constraints in favor of releasing almost daily map updates, criticism reached an all-time high.<sup>87</sup> It seemed that most observers were waiting for the process to implode and for the Commission to fail.<sup>88</sup> Republicans in particular seemed to have buyer's remorse, which was evident early on—before a single line had been drawn—and continued throughout the process.<sup>89</sup> After supporting the initiative and providing most of the campaign funds that led to its

passage, they were not happy when their preferred technical consultant was not selected by the Commission.<sup>90</sup> Then they targeted two of the Democratic commissioners, in particular, accusing one of not disclosing contributions,<sup>91</sup> and another of manipulating the other commissioners to agree to an incumbent protection plan that would benefit the Democrats, thus subverting the process.<sup>92</sup> The Republican blogs were full of accusations of wrongdoing by the Commission that were patently untrue.<sup>93</sup> The Commission was also criticized in public hearings during open forums, and it seemed that, try as they might, they could not escape vicious attacks.

The commissioners also had to grapple with the constant demands that came from the Republicans, who wanted the Commission to use a process that had been previously utilized by special masters appointed by the California Supreme Court in the 1971 and 1991 redistrictings.<sup>94</sup> That process had resulted, at least temporarily, in favorable lines for Republicans. These demands, however, failed to recognize that the CRC was precluded from

<sup>87</sup>Much of this criticism came from interest groups that felt left out of the redistricting process and argued that the public had been shortchanged by the Commission's decision not to release a second draft. They asserted that the decision made the process less transparent. See Jean Merl and Patrick McGreevy, *Redistricting Panel Cancels Second Draft of Legislative Maps*, L.A. TIMES (July 12, 2011), <<http://articles.latimes.com/2011/jul/12/local/la-me-redistricting-20110712>>.

<sup>88</sup>Tony Quinn, political commentator and former legislative staffer, wrote a number of pieces disparaging the Commission, see, e.g., *Excluding The Public: The Redistricting Commission Goes Dark* (July 11, 2011), FOX&HOUNDS, <<http://www.foxandhoundsdaily.com/2011/07/9186-excluding-the-public-the-redistricting-commission-goes-dark/>>, only to retract his statements after the maps were released. Instead of the liberally biased lines he had anticipated, Quinn himself did not find any evidence of partisanship in the completed maps. See also Steven Maviglio, *Tony Quinn Admits He's No Redistricting Expert*, CALIFORNIA MAJORITY REPORT (June 8, 2011), <<http://www.camajorityreport.com/index.php?module=articles&func=display&ptid=9&aid=4682>>.

<sup>89</sup>A blog sponsored by the California Conservative Action Group was created during this time and features a number of posts focused on what they perceived to be failures of the new redistricting commission. <<http://www.fairthelines.org/>>. However, this website no longer seems to have any content.

<sup>90</sup>GOP redistricting consultant Tony Quinn was particularly upset when the Rose Institute, an organization whose board of directors Quinn is part of, was not hired by the commission. See *Criticism of Redistricting Widely Off-Base*, SAN JOSE MERCURY NEWS EDITORIAL (Mar. 24, 2011), <[http://swdb.berkeley.edu/resources/Redistricting\\_News/california/2011/March/criticism\\_of\\_03\\_24\\_11.html](http://swdb.berkeley.edu/resources/Redistricting_News/california/2011/March/criticism_of_03_24_11.html)>.

<sup>91</sup>This article focuses on Commissioner Dr. Gabino Aguirre, arguing that he had not fully disclosed campaign contributions, and was tied to partisan groups that were actively participating in the redistricting. John Hrabe, *Gabino Aguirre's Secret Political Past*, CALIFORNIA WATCHDOG (July 15, 2011), <<http://www.calwatchdog.com/2011/07/15/redistricting-commissioner-aguirres-secret-political-past/>>.

<sup>92</sup>Tony Quinn argues in one of his articles that Commissioner Maria Blanco was the most left-leaning of all those on the Commission and was using her position to manipulate other Commission members and influence the outcome of the maps to favor the Democratic party and its incumbents. See *Redistricting Commission Tries to Repeal One Person, One Vote*, FOX&HOUNDS (May 2, 2011), <<http://www.foxandhoundsdaily.com/2011/05/8941-redistricting-commission-tries-repeal-one-person-one-vote/>>.

<sup>93</sup>See, e.g., *Excluding The Public: The Redistricting Commission Goes Dark*, FOX&HOUNDS (July 11, 2011), <<http://www.foxandhoundsdaily.com/2011/07/9186-excluding-the-public-the-redistricting-commission-goes-dark/>>. The false accusations include that the Commission had a Democratic, partisan agenda for certain districts; did not draw the central coast districts but rather that a non-profit environmental organization drew them; and that Republican commissioners were excluded from the process.

<sup>94</sup>See Tony Quinn, *Redistricting: Legal Challenges and a Referendum*, FOX&HOUNDS (Aug. 23, 2011). Quinn wrote another article claiming that unlike the Commission's work, making use of a special master to create the redistricting maps would not automatically result in a two-thirds majority hold in the Senate for Democrats. <<http://www.foxandhoundsdaily.com/2011/08/9352-redistricting-legal-challenges-and-a-referendum/>>.

utilizing the special masters' process by the Voters FIRST Act because both the laws and the criteria had changed since then.<sup>95</sup> The Republicans also wanted the CRC to draw competitive districts,<sup>96</sup> which the Commission was prohibited from doing because the Act specifically precludes the use of partisan data, unless necessary to address questions of minority vote dilution arising under the Voting Rights Act. Due to the way the participation system was set up (i.e., commissioners were not allowed to engage in discussions with the public but rather had to listen to its comments without reacting to them), there was rarely an opportunity for the commissioners to fully explain why they could not do what their critics wanted. Often, public speakers would leave immediately after their testimony and when commissioners did have the opportunity to explain why the demands could not be met, those speakers were not in the room anymore. Some speakers simply did not want to hear explanations and just maintained that they were correct and the Commission was wrong. This often led to frustration by the commissioners who felt like they should be able to

defend themselves but had their hands tied. The constant criticism, intense scrutiny, little sleep, and a monumental task to complete within an incredibly compressed timeframe was probably not what the commissioners had in mind when they applied for their positions!

## VIII. CONCLUSION

Despite all the difficult work the Commission completed, their work was challenged in court and at the ballot box. After their press strategies did not succeed, Republicans filed ultimately unsuccessful claims with the California Supreme Court over its state senate<sup>97</sup> and congressional lines.<sup>98</sup> They also filed the necessary papers to begin signature gathering for a referendum that would nullify the congressional lines.<sup>99</sup> That process failed. Meanwhile, Republicans also funded the successful signature gathering for a referendum on the Senate lines which appeared on the November 2012 ballot.<sup>100</sup> That referendum was not successful.<sup>101</sup>

<sup>95</sup>For example, the Voters FIRST Act has strictly ranked criteria by which the special masters did not have to comply. The interpretation of the Voting Rights Act dramatically changed since the masters drew their last set of lines for California in 1991. See *Shaw v. Reno*, 509 U.S. 630 (1993) (holding that race could not be a predominant criterion in drawing districts had changed the redistricting landscape). See also *Bartlett v. Strickland*, 556 U.S. 1 (2009) (further defining majority-minority requirement under Section 2 of the VRA).

<sup>96</sup>See Timm Herdt, *Political Fallout From Being Nonpolitical*, VENTURA COUNTY STAR (Apr. 2, 2011) (suggesting that the purpose of the Commission was to create competitive districts, though the use of partisan data was something they were explicitly forbidden to employ).

<sup>97</sup>See *Vandermost v. Bowen*, 269 P.3d 446, 452 n.7 (Jan. 27, 2012). *Vandermost's* petition was denied on Oct. 26, 2011. *Id.* at 483. During the signature collection to qualify the Senate Districts for a referendum, *Vandermost v. Bowen II* was filed on Dec. 2, 2011, asking the court to suspend use of the Senate districts in the primary and general elections of 2012 because plaintiffs believed that the referendum would qualify. Plaintiffs also asked for a court master to prepare intermediate districts. *Id.* at 453. The court ruled on Jan. 27, 2012, that the Commission's plan would be used if the referendum qualified because it had been found to be constitutional and was the best option (another alternative aside from a court master constructed one proposed by plaintiffs was the use of the previous, 2001 plan). *Id.* at 483.

<sup>98</sup>*Radanovich v. Bowen* (Sept. 29, 2011) was first filed in the State Supreme Court. *Vandermost*, 269 P.3d at 452. The Commission was accused of violating the State's constitutionally mandated criteria and the Voting Rights Act. See Verified Pet'n for Extraordi-

nary Relief at 19, *Radanovich v. Bowen* (Sept. 29, 2011), available at <[http://www.courtinfo.ca.gov/cms/p11/documents/183120465661927106/Scanned\\_Final\\_Brief.pdf](http://www.courtinfo.ca.gov/cms/p11/documents/183120465661927106/Scanned_Final_Brief.pdf)>. The order that denied the petition is available at <[http://wedrawthelines.ca.gov/downloads/meeting\\_handouts\\_022012/handouts\\_20120210\\_fsc\\_dismissal.pdf](http://wedrawthelines.ca.gov/downloads/meeting_handouts_022012/handouts_20120210_fsc_dismissal.pdf)>. On Nov. 23, 2011, the same case was filed in federal court and dismissed on Feb. 9, 2012 on the grounds that the State Court had already ruled on its merits. *Radanovich v. Bowen*, 2:11-cv-09786-SVW-PJW (C.D. Cal. Feb. 9, 2012) (summary order), available at <[http://wedrawthelines.ca.gov/downloads/meeting\\_handouts\\_102011/handouts\\_20111026\\_csc.pdf](http://wedrawthelines.ca.gov/downloads/meeting_handouts_102011/handouts_20111026_csc.pdf)>.

<sup>99</sup>There was disagreement among Republican ranks as to whether it was worth pursuing the referendum on the congressional lines. Many of the complaints that those in favor of funding the signature drive cited were strictly political, such as districts that placed two GOP incumbents in the same seat. *Republicans Likely to Abandon Referendum on Congressional Maps*, CAPITOL WEEKLY (Sept. 20, 2011), <<http://capitolweekly.net/article.php?xid=100anh7f9dl5mhz>>. A redrawing of congressional districts might not have remedied these complaints because California's constitutional requirements disallow the use of incumbency and candidate information.

<sup>100</sup>A "No" vote on Proposition 40 would have invalidated the Commission's state senate plan and appointed special court masters to draw new lines. <[http://www.lao.ca.gov/ballot/2012/40\\_11\\_2012.aspx](http://www.lao.ca.gov/ballot/2012/40_11_2012.aspx)>.

<sup>101</sup>California Secretary of State, Proposition 40, Redistricting State Senate, available at <<http://vote.sos.ca.gov/returns/maps/ballot-measures/prop/40/>> (semi-official results showing 71.5% voted to uphold Commission's state senate plan, with 28.5% voting to reject it).

When the Commission approved the four statewide plans on August 15, 2011, as provided by the Voters FIRST Act, it was clear that their success was due to many factors.

Most importantly, it took an extremely determined group of people to persist in the face of the political circus that surrounded them and to stay true to the mandate of the Voters FIRST Act. There was a measure of luck involved in their selection. After all, how likely is it that a bingo ball selection process would result in the appointment of a former Census Bureau director, or others as knowledgeable as some of the commissioners in this group? Because the selection criteria and conflict of interest exclusions were not known to potential applicants in sufficient time to “make themselves” eligible, this was likely the “purest” Commission we will ever see in the California redistricting process.

Most observers, and even commissioners, have privately said that they believe this process will be “scammed” by the political parties the next time around, fearing that political parties will develop a pool of highly partisan Commission candidates that will nonetheless appear to be non-partisan under the rules governing the selection process. There are already commissioner- and consultant-hopefuls who have changed their voter registrations to qualify more easily. There is no doubt that the conflict of interest exclusions are changing the political behavior of some future applicants, who, over the next few years, will refrain from donating funds, working for a party or a candidate, or engaging in political actions that have to be reported or could be discovered by the opposition research that will undoubtedly be undertaken. The selection process, this time around, was so transparent that a voter truly committed to becoming part of the commissioner pool next time, will be able to watch the interview videos, study the applications, determine what was successful, and follow that path over the next few years to build a resume that will have a good chance of qualifying them for pool of applicants.

The Commission’s success was also aided by a political climate, in which so many Californians had become discouraged by politics as usual, thus encouraging participation in this reform effort. At the same time, foundation funding played a major role in achieving public participation.

Neither the Commission, nor the state auditor who ran the selection process, had sufficient funds

to engage the public. Both relied heavily on good government and minority advocacy groups to perform work that under Proposition 11 really was the responsibility of the Commission. It is impossible to predict whether foundations will be able or willing to step in again next time to provide infrastructure, outreach, and educational funding for assisting and encouraging public participation.

Given California’s ongoing budget woes, the Commission’s budget may not be sufficient to fully fund an outreach campaign that is at least as extensive, and maybe better, than the one provided with the help of outside collaborators during this redistricting cycle. However, because the proposition cleverly based future funding on the expenditures of the previous redistricting, the California legislature may be required to allocate significantly more funds up front than it did for the process this time around.

Whether Californians would have passed Proposition 11 knowing its price tag is doubtful, especially since the difference between the “Yes” and the “No” votes on the proposition was less than 200,000, out of almost 12 million votes cast. The legislative analyst, when calculating the financial impact of moving the redistricting from the legislature to the Commission had assessed the costs of the process at \$3 million. This assessment was laughed at by most redistricting insiders who knew how expensive transparency and engaging the public in this arcane process could be. In the end, the total cost of the Commission process came to over \$10 million dollars, and that is still rising as the Commission successfully lobbied the legislature for continuing staff support. Almost one third of this amount was spent on the commissioner selection process, rulemaking, and regulations. None of it was spent on groups that educated the public about the process or provided access to software and technical assistance.

Even if the state adequately funds such outreach, it is questionable whether a state-funded outreach process would engage the same groups to assist in these efforts. Foundation funding was specifically aimed at engaging hard-to-reach minority populations. But it is quite possible that a different, less successful approach will be selected if the state funds these activities, because the state is subject to more restrictions than a private foundation. Changing external funding availability could change the face of public participation considerably,

and may result in lines that look quite different next time if minority populations are not engaged to participate fully and make their interests heard.

Mistakes were most certainly made, and only few of them are mentioned in this article. But due to the process being largely open and well documented, there are hopes that the next Commission will learn from them and avoid them. For example, the secretive hiring of Commission staff could be changed, by avoiding the civil service hiring process and simply taking advantage of the proposition's language that provides for open and transparent hiring procedures. Opening up the hiring of staff to a greater pool of applicants may result in more qualified staff for the next commission.

There are additional factors that may impact the next Commission and the process. This first CRC was diverse in part because the statute allows the first eight commissioners to take race and ethnicity into consideration when weighing the state's diversity in selecting the final six commissioners. This section of the statute has been challenged in a lawsuit under Proposition 209,<sup>102</sup> which prohibits the use of race, ethnicity, and sex in public contracting, employment, and education. Should this lawsuit succeed, it will prevent the next first eight commissioners from balancing the face of the CRC by applying these criteria.<sup>103</sup>

The funding for redistricting assistance sites may also become an issue next time around. While some contended that there were not enough redistricting sites and that the available sites were not open long enough, the process was accessible to many members of the public only because of these sites. There are few access points for regular people to learn about redistricting, and the trainings at these sites, along with the availability of software and technical assistance, were crucial. Even though it is likely that online redistricting tools will be much improved for the next redistricting, there will always be members of the public who need the technical assistance that these centers provided in order to draw and submit lines for a plan.

Would it be possible to simplify the demands on the Commission and to reduce the amount of work and the number of hours needed to complete the process successfully? In an article published in the *Yale Law Journal*, Bruce Cain suggests that redistricting competitions might alleviate the burden. According to Cain, redistricting competitions, in which any member of the public could submit a

plan that meets the required criteria, might serve to reduce the Commission's work to the simple task of choosing the plan it likes best from among submitted alternatives.<sup>104</sup> Based on my experience with this Commission and its hands-on approach to line drawing, I do not believe this solution can be implemented. One reason is that it is extremely difficult to compare different statewide plans, because there are infinite ways to draw them. Each map would have to be analyzed to figure out which communities of interest or neighborhoods were split to favor others. This is not only incredibly time-consuming, but also difficult to implement properly, because even a minor change in a selected map can have a significant ripple effect throughout the state and render an entire plan useless. Another reason is that the Commission has interpreted its charge to be the actual drawing of maps, and not that of judging line drawings by others. A further reason is that participants in such redistricting competitions would lack information critical to drawing good maps, because they would be unlikely to have reviewed all of the public submissions and listened to all of the public testimony given along the way.

California is a unique state. It is diverse in every way, including geographically, culturally, politically, and economically. It is covered by Section 5 of the Voting Rights Act in four counties, and subject to potential Section 2 claims in many areas. Dozens if not hundreds of languages are spoken throughout the state, and there are thousands of unique communities of interest.

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<sup>102</sup>CAL. CONST., art. I § 31(a): "The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

<sup>103</sup>The first eight commissioners that were selected via a bingo ball process included only one Latino, making the "Lucky Ones" 13% Latino in a state that had a Latino population of around 37% at the time. The first eight were reminded of this fact by various groups that represent Latinos, including the National Association of Latino Elected and Appointed Officials (NALEO), which urged them to "fulfill their responsibilities under Proposition 11 by remedying the inadequate representation of Latinos." See *CA Redistricting Commission Lacking Latino Voices*, MINORITY NEWS, <[http://www.blackradionetwork.com/ca\\_redistricting\\_commission\\_lacking\\_latino\\_voices](http://www.blackradionetwork.com/ca_redistricting_commission_lacking_latino_voices)>. The final six members selected included two Latinos, one Asian American, one Pacific Islander, one black, and one white commissioner.

<sup>104</sup>Cain, *supra* note 7.

Would the redistricting process that California tested work in another state? The answer is, most likely “yes.” Most states are much more homogeneous, so fewer groups would have to be engaged to make the process successful. Most states are also less populous, so that outreach could be conducted in a smaller area with fewer potentially interested parties. One could thus easily conclude that, if it worked here, it should also work in smaller, less diverse jurisdictions. It may even be possible for a smaller jurisdiction to take the California model and make it a little less complicated, since there may be fewer concerns about the representation of different regions, geographies, and racial groups

and ethnicities on a Commission, and less time would be required to collect data and visit the entire state. California’s adventures in redistricting, trying though they were to those of us involved in the process, may thus serve as a promising example for other states.

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