

# Potential Litigation Risks

Presented to California Citizens Redistricting Commission

June 30, 2021

By

Strumwasser & Woocher

&

David J. Becker

# Preliminary Points

- Detailed discussion of litigation risks should occur within context of privileged attorney-client communications
- Merely identifying potential risk does not imply meritorious grounds for challenges
- Some potential litigation risks may be beyond the control of the CCRC
- Examples are illustrative and not exclusive

# Litigation Risks Relating to Final Maps

- Most obvious and inevitable legal challenge would be to substance of final maps for Congressional, State Assembly, State Senate, and (less likely) Board of Equalization final district maps
- Voting Rights Act (VRA) challenges
- Equal Protection challenge
  - Population Inequality
  - Race Predominates (*Shaw*)
- Challenges based on state constitutional and statutory redistricting requirements (e.g., contiguity, respecting geographic integrity, communities of interest)
- Non-constitutional or statutory-based challenges (e.g., partisan gerrymander, non-competitive districts)
- State court litigation confined to Supreme Court, but federal court jurisdiction exists for VRA or federal Equal Protection challenges

# Litigation Risks Relating to Redistricting Process

- Challenge to CCRC's compliance with procedural requirements
  - Deadlines and timeline for display and selection of preliminary and final maps
  - Requirements regarding public outreach and hearings
  - Requirements relating to conduct of CCRC's meeting (Bagley-Keene, etc.)
- Challenges to Membership of CCRC
- Challenges to CCRC's Non-Map-Related Actions
  - E.g., contracting or hiring decisions

# Litigation Risks Relating to Data Used for Redistricting

- Challenges to federal census data
  - Undercount
  - Obvious inaccuracies
- Challenges to state database reallocation process
  - Treatment of state and federal inmates

# Litigation Risks Unrelated to CCRC Actions

- Challenge to existence of CCRC itself
- Challenges relating to proposed referendum of any maps