

From: Angelo Ancheta

Sent: Friday, October 2, 2020 2:39 PM

To: votersfirstact@crc.ca.gov

Subject: Public Comments to 2020 Citizens Redistricting Commission - October 5-7, 2020 Meeting

Commissioners:

I am writing to urge your placing a discussion of federal Voting Rights Act (VRA) compliance on the agenda for one of your upcoming meetings in October or November. Because ensuring that the Commission's maps comply with the VRA will require extensive legal and statistical analyses, as well as important hiring and contracting decisions, I believe the Commission should begin steps soon to develop its overarching strategies and timelines for VRA compliance.

As I and Professor Justin Levitt have each stated at previous CRC meetings, the 2010 Commission lagged in its efforts to train commissioners on the VRA and to implement effective timelines to comply with the law. The 2010 Commission thus missed important opportunities to engage in a more thorough analysis of its districts, and even released initial draft maps without having completed racially polarized voting analyses. The current CRC should avoid making similar errors, and should take advantage of the additional time that it has before the draft and final maps are due.

For your reference, I have attached a copy of Professor Levitt's 2013 law review article on the 2010 Commission and VRA compliance, which offers important insights and recommendations that he has highlighted in previous presentations to the current Commission -- and which I fully endorse.

I suggest that the following topics should be included as part your future discussions:

(1) **Scheduling Additional Training on the VRA.** Although the Commissioners have received information from multiple sources on VRA compliance (Professor Levitt's legal overview, Professor Matt Barreto's training on VRA data analyses, and the presentation by Karin Mac Donald and myself on Census data issues (CVAP)), there are still a number of missing pieces on voting rights law that ought to be covered. Professor Barreto provided a useful overview of the basic legal framework, as well as detailed discussions of particular techniques of ecological regression; nevertheless, the CRC will need a stronger understanding of the law as it reaches decision points on topics such as population deviations, minority population percentages in minority-opportunity districts, and research on cross-minority voting behavior. This training does not need to occur prior to hiring or contracting with a VRA legal specialist, who could conduct such a training after being retained; however, the CRC's decision making on its attorneys and

consultants would certainly be better informed by receiving the training in advance of the hiring/contracting decisions.

(2) **Establishing Oversight Structures.** The 2010 CRC employed a number of committees (the Legal and Technical Committees in particular) that addressed VRA compliance, as well as VRA-specific hiring and contracting recommendations. The current CRC may choose to employ parallel committees and divide various responsibilities. However, an alternative strategy is to have a designated committee on Voting Rights Act compliance that oversees training, legislative monitoring, hiring/contracting, research, compliance, and timelines, but would still be accountable to the full Commission. Because of the importance of this type of committee, I would recommend that more than two Commissioners be designated to serve on such a committee, even though the larger size would trigger additional Bagley-Keene requirements.

(3) **Developing Hiring and Contracting Strategies and Timelines.** Developing strategies and timelines early on is important because the contracting of VRA legal counsel may generate significant controversy, as it did in 2011, when the Legal Committee initially deadlocked over its choice of law firms to recommend to the full commission. (The problem was ultimately resolved when one of the firms voluntarily withdraw its candidacy.) The selection of VRA counsel can be particularly challenging because many of the most experienced law firms may have partisan alignments or may be closely associated with either plaintiffs or defendants in voting rights litigation. I do not believe that any firm or attorney should be automatically disqualified for its prior or current associations. Nor, given the availability of remote communications, should a potential counsel be penalized -- as occurred in 2011 -- for being based outside of California. However, the CRC should engage in a thorough vetting process to ensure that the counsel's future advice will be unbiased and sound. Even then, controversies can still arise and require close monitoring by the CRC: as Professor Levitt's article highlights, the VRA counsel may still provide questionable or incorrect guidance that generates push-back from commissioners and from the public.

In addition, I would suggest that the CRC not make extensive experience with the VRA a requirement for the hiring of the Commission's Chief Counsel. The Chief Counsel position requires a broad knowledge of state and federal law on a wide variety of topics, including Bagley-Keene compliance, state hiring and contracting laws, and statutory interpretation, as well as strong managerial skills. Specialists in VRA compliance are few in number, and, while previous experience with the VRA is certainly desirable, the Chief Counsel should be more of a generalist who is able to supervise the CRC's legal team and advise the commissioners on a wide range of issues.

Contracting with a statistical consultant should also be given close consideration because of the intensive data analyses that are needed to determine minority-opportunity districts (aka majority-minority districts). Should the CRC choose to explore the viability of minority-coalition districts (two or more minority groups in combination), which was not considered in 2011 because of the shortness of time, then a much larger set of analyses will be necessary.

In addition, the current CRC will have to address whether the statistical consultant's analyses should be made fully available to the public. Because the 2010 CRC's VRA counsel opted to treat the statistical consultant as if he were an expert witness in litigation, and thus shielded the analyses from public review, there was limited public input. I would recommend instead that the CRC consider making the consultant's analyses fully public and that the consultant be required to employ open-source statistical packages, such as Professor Barreto's eiCompare package in the R statistical language, to make all analyses fully transparent and replicable.

I am happy to provide additional information or insights from the 2011 redistricting at your request. Thank you for considering these comments.

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