



RE-DRAWING LINES:

A Public Interest Analysis of California's
2006 Redistricting Reform Proposals

Shakari Byerly
Steve Carbó



Center for Governmental Studies
Solutions for Democracy



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Shakari Byerly

Project Manager, California Governance
Center for Governmental Studies

Steven Carbó

Senior Program Director, Democracy Program
Dēmos

Center for Governmental Studies

Los Angeles, California

Dēmos

New York, New York

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For additional copies of this report or more information, please contact:

Center for Governmental Studies

Tracy Westen, Chief Executive Officer
Robert M. Stern, President
Shakari Byerly, California Governance Project Manager

10951 W. Pico Blvd., Suite 120
Los Angeles, CA 90064-2184
(310) 470-6590
center@cgs.org • www.cgs.org

Dēmos

Miles Rapoport, President
Steven Carbó, Senior Program Director, Democracy Program

Dēmos
220 5th Avenue, 5th Floor
New York, NY 10001
(212) 633-1405
scarbo@demos.org • www.demos.org

Center for Governmental Studies

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Foreword

In February 2005, the Center for Governmental Studies (CGS) and Dēmos published *Drawing Lines: A Public Interest Guide to Real Redistricting Reform*. Based on in-depth research into current redistricting approaches and extensive discussions with public interest organizations across California, *Drawing Lines* recommended that California encourage the creation of more competitive legislative districts and improve minority representation by taking redistricting out of the hands of the legislature and empowering a properly constituted independent redistricting commission to redraw the state's congressional, legislative and State Board of Equalization boundaries. (In June 2005, CGS and Dēmos published an updated report that included a Model Redistricting Law.)

Drawing Lines established overarching goals for redistricting, recommended specific commission characteristics, compared and analyzed several pending California reform measures and critically assessed the ability of those measures to fulfill public interest redistricting goals. The major recommendations of the report included transferring power from the California State Legislature to a State Independent Redistricting Commission and adopting five basic public interest criteria to guide the redistricting process. These criteria included: 1) representation and consideration of minority interests; 2) partisan fairness; 3) balanced adherence to traditional redistricting criteria; 4) transparency and public confidence in the process; and 5) more competitive districts. (*Drawing Lines* is available on the CGS and Dēmos Web sites, www.cgs.org and www.demos.org).

Since the original publication of *Drawing Lines*, California has considered, and is still considering, redistricting reform. A ballot initiative (Proposition 77) sponsored by Ted Costa was rejected by voters in the November 2005 California Special Election. Costa, however, has submitted a new redistricting reform initiative to the State Attorney General for title and summary, which could be circulated and potentially considered by voters in 2008. Senate Constitutional Amendment 3 (SCA 3), introduced in 2005 by Senators Alan Lowenthal (D-Long Beach) and Roy Ashburn (R-Bakersfield), is moving through the legislature with backing from a number of legislative leaders.¹

Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals is based on that earlier work and is designed to inform policy makers, the media, advocates and concerned citizens. This report provides a brief overview of redistricting reform principles and the need for an independent redistricting commission in California. It also reviews California's 2005 reform efforts and provides an overall evaluation of the two current measures. This evaluation recommends public interest improvements that could be made to each of the 2006 proposals and presents a detailed series of charts comparing the major provisions of the measures with ideal public interest provisions.

Shakari Byerly, Project Manager for the California Governance Project at CGS, and Steven Carbó, Senior Program Director for the Democracy Program at Dēmos, authored this report. We would like to thank those who contributed to its development. CGS President Bob Stern and Chief Executive Officer Tracy Westen supervised the study and provided important editing recommendations. Brenda Wright, Managing Attorney at the National Voting Rights Institute, also made contributions to the

¹ In this report, the term "legislative leaders" refers collectively to the President pro Tempore of the State Senate, the minority floor leader of the State Senate, the Speaker of the State Assembly and the minority floor leader of the State Assembly.

text and shared invaluable expertise. Nancy Volpert, CGS Director of External Relations, provided additional editing recommendations and support. Rebecca Schwaner with CGS designed the cover and Joyce Ouchida, CGS Web Manager, designed the report layout. CGS interns Andrew Sternlight and Petros Egziabher provided research and administrative support. We would also like to acknowledge Ari Weisbard and Jeannie Wilkinson who authored the original report.

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Introduction

In recent years, citizens, the media and political experts have expressed growing concern over redistricting—the process of drawing new district lines to determine which residents will be grouped together when electing representatives. This concern has focused on the steady decline in competitiveness in congressional and legislative districts across the country and the recent efforts of several states to redraw legislative districts mid-decade to gain partisan advantage. In addition, most observers agree that there is a fundamental conflict of interest when state legislators exercise the power to redraw the boundaries of their own districts.

The redistricting process, which usually takes place after each decennial census, is by nature politically controversial. Many redistricting plans are met with charges that revised congressional or state legislative districts are too partisan, too friendly to incumbents, uncompetitive and unrepresentative of minority populations. The courts are often pulled into disputes when elected leaders fail to reach consensus or affected electors challenge the constitutionality of redistricting plans. In these instances, the courts ultimately redraw district lines. When elected leaders choose their own constituencies instead of the reverse, it severely limits the power of voters. Although most state legislatures, California included, draw congressional and state legislative districts themselves, alternatives to this method are now being considered by a wide variety of individuals, public officials and public interest groups.

In California, a number of current proposals seek to transfer the legislature's power over redistricting to an independent commission. Proponents argue that a commission will eliminate some of the more egregious redistricting problems, thereby increasing representation, competitiveness and partisan fairness.

Based on extensive research and discussions with public interest and community organizations throughout California, this report concludes that a properly structured independent commission is desirable, and that it should address five basic public interest goals, including: 1) political equality and minority representation; 2) partisan fairness; 3) traditional redistricting criteria; 4) public confidence; and 5) attention to the level of voter choice and government accountability likely to result from final redistricting plans.

When elected leaders choose their own constituencies instead of the reverse, it severely limits the power of voters.

Despite the 2005 defeat of Proposition 77, a reform proposal that sought to create an independent redistricting commission, significant evidence indicates that California voters still favor redistricting reform. Opinion research conducted by the Public Policy Institute of California following the November 2005 Special Election found that 76% of voters believe the current way the governor and the legislature conduct redistricting is in need of change.

Today, a window of opportunity for redistricting reform remains in California. The governor and state legislative leaders have all publicly committed to passing redistricting reform. Senators Alan Lowenthal (D-Long Beach) and Roy Ashburn (R-Bakersfield) have worked together to move SCA 3, a proposal originally introduced in 2005 before the special election, through the legislature. Ted Costa, one of the key sponsors of Proposition 77, has renewed his efforts with a substantially improved proposal that he may submit for qualification in 2008 if the legislature fails to act.

Section 1: The Components of Public Interest Redistricting

The U.S. Constitution requires states to adjust legislative and congressional district lines to keep pace with changes in population. California law grants the legislature the authority to redraw the boundaries of its own districts as well as the boundaries of U.S. Congressional districts and State Board of Equalization districts.

The redrawing of district boundaries significantly affects the political accountability of representatives to their constituents, the degree to which elected bodies fairly represent the demographic profile of the electorate, the relative political power of different populations of voters and the overall level of responsiveness of government to the will of the people. Because redistricting plays a key role in the vitality of our democracy, any procedure governing the process should lead to sound decision-making and be aligned with principles of fairness, transparency, political equality, effective public participation and accountability. Transferring power from the legislature to a properly constituted independent redistricting commission is likely to facilitate these goals.

Under the current redistricting process, a fundamental conflict of interest exists between the interests of legislators and voters. While legislators and legislative leaders serve as duly elected representatives for their current constituents, they also have an inherent interest in designing districts composed of voters more favorable to their re-election and the interests of their political parties, regardless of how population and demographics have shifted over the decade. In contrast to the interest of political incumbents, voters have an interest in district boundaries drawn in a fair and transparent manner to reflect identifiable neighborhoods and communities and to promote the responsiveness of elected officials.

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The drawing of district boundaries for the benefit of political advantage, known as “gerrymandering,” has been a readily identifiable practice since 1812, when Massachusetts Governor Elbridge Gerry, for whom the phrase is named, drafted a salamander-shaped district map to place his opponents in one district. Armed with the

authority to redraw district boundaries, map-drawers may concentrate opponents in a restricted number of districts, known as “packing,” or split populations least disposed to their interests across a range of different districts in an effort to dilute their voting strength, a practice known as “fracturing.” Both practices can distort political representation and minimize voter choice.

Packing and fracturing have been used notoriously to dilute the voting strength of communities of color. Voting discrimination led Congress to pass the Voting Rights Act of 1965 as a means to more specifically protect the voting rights and fair representation of racial and ethnic minorities. Congress has strengthened and extended the provisions of the Voting Rights Act several times. Notably, the expiring provisions were recently reauthorized for an additional twenty-five years. In light of past abuses, any fair redistricting plan must comply not only with the federal Voting Rights Act, but also, in a broader sense, respect the political equality of every citizen, particularly those historically marginalized in the political process. This can be achieved by carefully considering the impact redistricting has on the ability of communities with shared interests to access the political system and elect candidates of their choice.

Packing and fracturing political opponents across legislative districts also enables map-drawers to lock in strategic advantages over a decade, usually the standard length of any redistricting plan. Map-makers can also design a bipartisan protection plan through redistricting, effectively creating legislative districts where incumbents from both major parties are safe from meaningful competition. The precipitous decline in competitiveness, both nationally and statewide across congressional and state legislative districts, has been attributed in part to the creation of “safe seats” in the 2001 redistricting process.² A decline in competition within any particular district substantially dilutes the voting strength of citizens who are either unaffiliated with the dominant party or are within the dominant party but hold less partisan views. Ultimately, partisan gerrymandering and bipartisan protection plans limit the choices voters have in electing representatives responsive to their interests.

Partisan gerrymanders and the creation of safe seats not only limit voter choice but also limit the power of voters to hold their elected leaders accountable. When citizens lose confidence in the power of the ballot box, they disengage from the political process. Bereft of public confidence and support, democracy falters. A reformed redistricting process, conducted by a redistricting commission independent of established political institutions, has the potential to mitigate unfair partisan advantage, maintain a balance of power between partisan interests and elevate the public interest over political concerns.

Transferring authority from the legislature to an independent commission would provide a unique opportunity to conduct redistricting in a manner more squarely focused on the public interest. Based upon extensive research and on-going consultations with public interest and community organizations throughout California, this report concludes that a properly structured independent commission should address and effectively balance at least five basic public interest goals, including:

Political Equality and Minority Representation:³ Political equality refers to the right of every citizen to fair and adequate representation. This includes protecting the representation of citizens with shared electoral interests. In order to preserve political equality, particular attention should be afforded to communities historically underrepresented in the political process and to defined communities of interest.

Partisan Fairness: While both static (geographic and political boundaries) and dynamic (population and changing partisan identification) features make it impossible to ensure that single-member districts result in perfect partisan representation, a neutral, unbiased process would tend to ensure that neither major party would benefit unfairly under an adopted redistricting plan.

² In a 2005 Brookings Institution Briefing (November 15, Washington D.C.), Thomas Mann described the national decline in competitiveness for congressional seats. Mann indicated that the small number of congressional incumbent defeats (4 defeats in 2002, followed by 7 defeats in 2004) is part of a larger trend of steady decline in the level of competitiveness over the course of the 20th century. According to Mann, only two dozen congressional seats, out of 435, now seem to be competitive in 2006.

³ In this report, minority representation is used to reference groups currently protected under the federal Voting Rights Act of 1965, which includes African-American, Hispanic, Asian and Native American populations. However, it is widely acknowledged that use of the term minority in reference to communities of color is no longer as descriptive as in times past. The U.S. Census Bureau has identified California as a “majority-minority” state with only 45% of its population comprised of single race, non-Hispanic, Caucasian Americans. While California is further identified as one of the more ethnically diverse states, this demographic shift represents a national trend in population growth in states with sizeable urban populations.

Traditional Redistricting Criteria: Balanced redistricting criteria form the core of public interest reforms. Commonly used criteria include equal population standards, adherence to the Voting Rights Act and other applicable federal standards, contiguity, compactness and respect for communities of interest. When balanced appropriately, they serve to promote fairness and, in some cases, make it more difficult to enact gerrymanders and bipartisan incumbent-protection plans.

Public Confidence: Redistricting must be undertaken in a manner that gives the public full confidence in the fairness and openness of the process. This includes transparency in the proceedings of the decision-makers. Inspiring public confidence requires strong provisions for solicitation and receipt of public input, open meetings, the publication of data and documentation and accessible public hearings throughout the state.

Transferring authority from the legislature to an independent commission would provide a unique opportunity to conduct redistricting in a manner more squarely focused on the public interest.

Voter Choice and Government Accountability:

An array of political issues, including campaign finance, term limits, budget process and ballot initiative process, influences the choices voters have in electing candidates and the ability of the electorate to hold the government accountable. In the context of redistricting, the level of competition in electoral campaigns is a significant factor as well. While Californians tend to live in pockets of racial and political homogeneity, political demographers and redistricting experts

agree that a higher level of competitiveness can be achieved across legislative districts if competitiveness is retained as a public interest goal.⁴ Competition, however, must be balanced with respect for neighborhoods and communities of interest, particularly in areas where party representation fractures along racial and ethnic lines; and it should not compromise the voting strength of historically underrepresented groups or defined communities of interest.

It is also important to note that competitiveness is not the only redistricting criterion that makes a significant contribution to voter choice and government accountability. Provisions that promote political equality, partisan fairness, transparency, public participation and balanced adherence to traditional redistricting criteria all work to curb the incentives that lead to partisan gerrymanders and the crafting of safe seats for incumbents.

⁴ In “Competition and Redistricting in California: Lessons for Reform,” a 2006 study by the Institute of Governmental Studies at the University of California, Berkeley, Bruce Cain, Karin MacDonald and Iris Hui conclude that an average of 13 congressional and 15 Assembly districts in California could move into the ‘potentially competitive range’ if competition were used as a factor in drawing district boundaries, along with other redistricting criteria above. However, the report further concludes that there is a substantial trade-off between the creation of competitive districts and respect for neighborhoods and communities of interest.

Section 2: California’s 2005 Redistricting Reform Efforts

In 2005, California’s interest in redistricting reform swelled. Driven in large part by Governor Arnold Schwarzenegger’s commitment to a wide range of political reforms, including redistricting, eight separate ballot initiatives proposing redistricting reform were submitted to the Attorney General for title and summary. Four reform proposals were also introduced in the California State Legislature.

Three distinct proposals drew the most attention. Each called for the establishment of an independent redistricting commission. A ballot initiative sponsored by Ted Costa and supported by Governor Schwarzenegger qualified for the November 2005 Special Election ballot as Proposition 77. Primarily in response to the Costa initiative, two separate legislative proposals for reform, SCA 3 (Lowenthal, D-Long Beach)⁵ and ACAX1 3 (McCarthy, R-Bakersfield) became the focus of the legislature.

Proposition 77 called for a commission comprised of three retired judges that would draw district boundaries for both houses of the legislature, the U.S. House of Representatives and the State Board of Equalization. Proposition 77 would have also required an immediate (mid-decade) redistricting of current boundaries and voter approval of the final plan put forward by the commission.

Opponents of Proposition 77 waged a bitter campaign against the proposal, and the voters soundly rejected the measure. The opposition campaign focused on the small size of the commission, arguing that a panel of retired judges would be unlikely to represent the diversity of the state. Opponents also framed the proposal as a

Although voters rejected Proposition 77, opinion research suggests that they still favor redistricting reform.

Republican power play that would create a greater opportunity for backroom politics. This perception was aided by the fact that Governor Schwarzenegger, who called the November Special Election, presented Proposition 77 as part of his reform package.

Indeed, Proposition 77 had several problematic features. Although the initiative did a reasonable job of ensuring partisan fairness and creating a higher level of transparency, it did less well in considering minority interests and the need for a higher degree of competition. It also failed to respect the “once-a-decade” redistricting precedent.

Concern over Proposition 77 and its deficiencies led to varied opinions within the reform community. While several government accountability and civil rights organizations opposed the measure and urged the legislature and the governor to negotiate a compromise bill more closely aligned with

⁵ Senator Lowenthal introduced SCA 3 in December 2004 as a single author. Senator Ashburn was later added as a joint author of the measure.

public interest goals,⁶ other government accountability organizations supported the measure as an improvement over the current process.⁷

Although voters rejected Proposition 77, opinion research suggests that they still favor redistricting reform. A public opinion poll conducted by the Public Policy Institute of California (PPIC) following the special election concluded that voters opposed Proposition 77 principally because they disapproved of the governor's call for a special election and associated the initiative with attempts to shift redistricting in favor of Republicans.⁸ Additional PPIC research conducted in May 2006 found that "nearly two in three residents today say the redistricting process needs major (40%) or minor changes (23%)."⁹ This more recent research also indicates support for an independent redistricting commission across party, regional and racial/ethnic lines.

Separate public opinion research sponsored by the JEHT Foundation and a coalition of government accountability groups, including California Common Cause, the League of Women Voters of California and the Rose Institute at Claremont McKenna College, confirms the PPIC findings. The 2005 JEHT Foundation research found that 66% of California voters support redistricting reform but did not want to support Governor Schwarzenegger's agenda. The more recent polling conducted on behalf of California Common Cause, the League of Women Voters and the Rose Institute found that voters would prefer redistricting conducted by an independent commission rather than the state legislature.¹⁰

Against this backdrop of public support, government accountability and civil rights organizations have continued to urge the legislature to consider redistricting reform. Although the legislature failed to agree on compromise legislation in 2005, they did agree to address the need for reform should Proposition 77 fail. The efforts of Senators Alan Lowenthal and Roy Ashburn, who have continued to push a significantly revised SCA 3 forward, and the renewed efforts of Ted Costa, have kept redistricting reform on the public agenda in 2006 and will potentially propel reform efforts into 2008 in anticipation of the 2011 redistricting process.

⁶ See 2005 Position Paper on Proposition 77 (dated September 7, 2005) sponsored by the Asian Pacific American Legal Center of Southern California, the League of Women Voters of California, and the Mexican American Legal Defense and Educational Fund (http://ca.lwv.org/lwvc/action/redistrict/prop77_positionpaper.pdf).

⁷ National Common Cause supported Proposition 77, and represents an example of the difference in opinion over the merits of the proposition.

⁸ The PPIC poll indicated that sixty percent of voters statewide thought that Governor Schwarzenegger's call for a special election was a "bad idea."

⁹ Baldassarre, Mark. *PPIC Statewide Survey: Special Survey on the California State Budget*. May 2006.

¹⁰ Research results available through California Common Cause.

Section 3: Summary and Analysis of 2006 Redistricting Reform Proposals

Both the Lowenthal-Ashburn proposal (SCA 3) and the new measure submitted by Ted Costa (Costa II) embody significant redistricting reforms. The following summaries and analyses, based on discussions with a number of California public interest organizations and national redistricting experts, seek to strengthen and enhance each of the measures.

| Goal | SCA 3 | Costa II |
|--|-------|-----------|
| Political Equality and Minority Representation | Fair | Poor |
| Partisan Fairness | Good | Fair |
| Transparency and Public Participation | Fair | Very Good |
| Voter Choice and Government Accountability | Good | Good |

A. SCA 3: Summary of Major Provisions

SCA 3 would create an eleven-member State Independent Redistricting Commission and grant it authority to redraw legislative, congressional and State Board of Equalization boundaries. Redistricting would take place in the year following the federal decennial census.

As amended June 13, 2006, SCA 3 also contains the following major provisions:

- The Judicial Council must designate a panel of ten retired appellate court judges, five of whom must be registered with the largest political party and five of whom must be registered with the second largest political party. The panel will in turn establish a pool of fifty qualified persons willing to serve on the commission.
- The panel must make every effort to ensure that the pool of candidates is representative of both genders and California’s “racial, ethnic and cultural diversity.”
- Persons with specified political conflicts of interest are ineligible for service on the commission.
- Each of the four legislative leaders will have an opportunity to strike up to two persons from the opposite major political party from the candidate pool. Each of the legislative leaders will then appoint two candidates to the commission from their own respective political parties (4 Democrats, 4 Republicans). Of the eight appointed commissioners, no two or more may reside in the same county.
- The eight appointed commissioners will then select three additional members registered with neither of the two largest parties to serve on the commission.

- Commissioners are deemed ineligible for public office or registration as lobbyists during the term of appointment and three years thereafter.
- Commissioners are appointed to serve a ten-year term that expires upon the appointment of the first member of the succeeding commission.
- Commission meetings must be conducted in compliance with the Bagley-Keene Open Meeting Act. No less than fourteen days notice is to be given before each meeting.
- *Ex parte* communications are prohibited, except between commissioners and staff.
- All records of the commission are considered public upon request, except records of preliminary drafts, notes and communications between commissioners.
- The commission must publicly display, for at least thirty days, an initial redistricting map that meets prioritized criteria for the purpose of public comment.
- The initial map must create districts of equal population, to the extent practicable. Additionally, the boundaries of the initial map must meet the following criteria, to the extent practicable, in priority order: 1) compliance with the U.S. Constitution and equal population with other districts for the same office; 2) compliance with the Voting Rights Act of 1965; 3) geographic contiguity; 4) respect for communities of interest; 5) respect for visible geographic features, city and county boundaries and undivided census tracts; and 6) geographic compactness.
- Party registration information and voting history are excluded from the first phase of the mapping process but may be used to test compliance in accordance with the specified criteria. The residence of incumbents or candidates may not be identified or considered during the first phase of mapping but may be considered in establishing the boundaries of final maps.
- After the commission has considered public comments and recommendations made by the Senate or Assembly, it conducts a second phase of mapping to establish a final redistricting plan. The final plan must be adopted by a balanced majority, including support from at least one member registered with each of the two major parties (1 Democrat, 1 Republican) and at least one member registered with neither of the major parties.
- The legislature must appropriate funding for the commission in the budget bill.
- The California Supreme Court has original and exclusive jurisdiction in all court proceedings.

B. SCA 3: Public Interest Analysis

Political Equality and Minority Representation

Although SCA 3 includes several provisions that set the context for political equality, the proposal should be revised further to safeguard the interests of minority voters and promote greater sensitivity to communities of interest.

SCA 3 does contain provisions that may create opportunities for minority representation and gender balance on the commission itself, contributing to the consideration of the interests of communities of

color and communities of interest during the redistricting process. The commission is comprised of eleven members, which by virtue of size increases the opportunity for diverse representation among commissioners. The nomination panel must “make every effort to ensure that the pool of candidates is representative of both genders and the state’s racial, ethnic, and cultural diversity” and the commission must adhere to the federal Voting Rights Act. The commission must also respect communities of interest. These provisions, together with strong, well-balanced, traditional redistricting criteria are the building blocks of sound reform.

The commission’s ability to consider the interests of various communities, including those historically underrepresented in the political process, would be enhanced by more detailed requirements for public input, transparency and adherence to redistricting criteria. Requirements for public hearings throughout the redistricting process are particularly important because they create opportunities for citizens to directly address the commission and explain how final plans might impact the quality of their representation.

Additionally, the provisions of SCA 3 may not be strong enough to produce a commission that is racially, ethnically or geographically diverse—a significant concern. While every effort must be made to establish a diverse pool of candidates eligible for appointment, there is no such guarantee that legislative leaders will abide by fair and unbiased criteria in their appointments to the commission. This leaves no reasonable guarantee that the commission itself will reflect, to some extent, the racial, ethnic or cultural diversity of the state or maintain a fair gender balance. Similarly, the provision that no two or more commissioners reside in the same county does not address the issue of regional diversity adequately. Limiting membership to one commissioner per county may also unduly limit other forms of diverse representation and expertise on the commission, particularly as it relates to larger counties.

A provision that requires a reasonable level of ethnic and racial diversity and gender balance on the commission would ensure that historically underrepresented groups and women maintain equal footing with other citizens in the decision-making process. Likewise, a stipulation that prevents any one county’s representation from exceeding its proportion of the state population would be a more appropriate way to address the need for diverse geographic representation and should be combined with a provision requiring a balanced level of both county and statewide geographic diversity.

While every effort must be made to establish a diverse pool of candidates eligible for appointment, there is no such guarantee that legislative leaders will abide by fair and unbiased criteria in their appointments to the commission.

SCA 3 also fails to establish the protection of minority voting strength as a state policy. In the event of a change in federal policy or in judicial interpretations, sole reliance upon the federal Voting Rights Act could leave minority populations vulnerable. SCA 3 would be strengthened by an additional provision that safeguards against the concentration or dispersion of minority populations in a manner that would adversely affect their voting strength.

Partisan Fairness

SCA 3 contains several provisions that promote partisan fairness. The measure provides for partisan balance on the panel of judges that will screen the candidate pool and also provides for equal representation from each of the two major parties on the commission. The presence of

commissioners registered with neither of the two largest parties may also balance partisan tendencies. There is a growing percentage of the electorate that either declines to state party affiliation or registers with a smaller party. The presence of three commissioners from this segment of the electorate may provide greater representation for more politically independent voters. Provisions that promote transparency and public discourse promote partisan fairness as well.

Despite these strengths, the provisions designed to create partisan balance may not effectively guard against bias. Although legislative leaders will likely strike the most objectionable candidates from the opposite party, their authority over the selection process increases the likelihood that appointees will act in a partisan or incumbent-friendly manner to the detriment of public interest goals. Even the provision that grants legislative appointees the authority to select the more independent members may promote undue partisan wrangling. Furthermore, if legislative leaders are given the authority to strike members of the opposite political party, in fairness each leader should also have the opportunity to strike at least one of the members of the candidate pool registered with neither of the two major parties.

Traditional Redistricting Criteria

SCA 3 includes standard traditional redistricting criteria, namely, equal population, compactness, contiguity, communities of interest and respect for city and county boundaries. It also prioritizes each criterion. However, it does not require that the boundaries of final district maps meet the ranked criteria.

The measure also includes several criteria that may not support the electoral interests of citizens. For example, the value of undivided census tracts and geographic features among the criteria is unclear. Census tracts serve as useful units of measurement for the narrow purposes of the federal census, but they do not necessarily represent meaningful social or political divisions within neighborhoods. They may also cut across communities of interest substantially because of their size. A smaller unit of analysis—census blocks for example—may be preferable if a census population unit proves to be necessary. Respect for undivided census tracts may compromise respect for communities of interest and minority representation and should be eliminated or replaced with a smaller unit of analysis. Likewise, geographic features may be insignificant for the purpose of electoral representation independent of an identifiable community of interest. While there is likely no detriment to referencing geographic features among the criteria, it should be ranked below other criteria.

Several of the lesser-ranked criteria may also limit the commission's ability to protect the interests of minority voters and respect communities of interest. While nesting may simplify the administration of elections and provide a measure of standardization, it could infringe upon the ability of minority voters to elect candidates of choice. In order to provide flexibility, the nesting criterion could be left to the commission's discretion.

SCA 3 should also be strengthened by providing the commission guidance in defining traditional terms that have been subject to a broad range of interpretations, each of which is designed to meet a distinct redistricting objective. While legislative language should not be used to restrict the commission's discretion unduly, instructing the commission to develop a set of working definitions for all criteria at the onset of the process would enhance the commission's ability to meet the objectives outlined in the legislation and afford the public greater insight into the commission's decision-making processes.

Specifically, equal population standards should be clarified to reflect the difference between federal standards for congressional and legislative districts. While congressional districts must be as nearly equal to the ideal population as practicable, often within several persons, federal standards allow a maximum deviation of plus or minus five percent between legislative districts of the same type.

Reference to communities of interest may also be subject to a range of interpretations. The courts have defined the term on a case by case basis. In order to serve the public interest, communities of interest should be defined as groups of citizens with shared electoral interests based upon social, racial, ethnic, economic or geographic commonalities. The definition should not reference political parties, incumbents or candidates, which might compromise partisan fairness and electoral choice.

Likewise, formulas used to measure compactness may be unrelated to the adequacy or fairness of representation. The commission should be directed to define the standard and identify its connection to public interest goals.

Public Confidence

SCA 3 should inspire a degree of public confidence. The majority of the commission's meetings, records and data are required to be made public. *Ex parte* communications are prohibited, except between commissioners and staff or legal counsel. This promotes transparency and public accountability. However, there is no explicit requirement for public hearings, a Web site for public dissemination of proposed plans, guidelines for public comment or a final report explaining how the commission's final plan addresses each of the prioritized criteria.

SCA 3 could go further toward increasing transparency and public accountability by requiring hearings around the state at each phase of the redistricting process, including: 1) before a draft map is presented; 2) after a draft map is presented; 3) when major changes are made to any plan proposed by the commission; and 4) after the final map is disclosed. Redistricting software and relevant data should also be made available to the public with the provision that any group or individual member of the public may submit a partial or complete redistricting plan. To ensure meaningful public participation, hearings should be held at accessible locations and at convenient times for working adults.

Voter Choice and Government Accountability

Provisions that address the range of public interest goals also mitigate the incentives that might lead to adoption of a bipartisan protection plan or partisan gerrymander. The presence of three more politically independent commissioners and the balanced vote requirement for an adopted plan should also decrease these incentives.

... competitiveness should be a factor for consideration in districts where doing so would pose no significant detriment to other criteria.

SCA 3 could go further by encouraging the commission to consider the impact final plans might have on the number of competitive districts. While maximizing the number of competitive districts might compromise other goals, competitiveness should be a factor for consideration in districts where doing so would pose no significant detriment to other criteria. Preamble or intent language to this effect would promote competition as a value without placing undue influence upon the commission to compromise the representation of communities of color or other defined communities of interest. It would also complement the existing provision that permits the commission to use voter history information and party registration data in the final stages of the mapping process.

Incentives that encourage the creation of safe seats for any one party or set of incumbents can also be mitigated by requiring a higher level of balanced support for the adoption of a final plan. Increasing the vote requirement to include at least two commissioners from each of the two major parties and two of the three independent commissioners would make it more difficult for any one party to “pick off” one vote to secure support for a plan more favorable to one particular set of interests.

C. Costa II: Summary of Major Provisions

Costa II calls for the establishment of an eleven-member Citizen’s Redistricting Commission that would develop a redistricting plan for legislative, congressional and State Board of Equalization districts. The Costa II proposal employs a process of random selection to choose commissioners from the statewide voter rolls. Additionally, the commission’s final redistricting plans would be presented to the voters for approval. Costa II would require redistricting in the year following the federal census.

More specifically, the measure contains the following provisions:

- The Secretary of State is required to establish a commission of eleven members randomly selected from a pool of persons drawn by lot from the statewide voter registration rolls in accordance with specified qualifications and procedures.
- Persons with specified political conflicts of interest are ineligible to serve on the commission and are screened out of the selection pool.
- If the Secretary of State determines that the selection pool is not reasonably representative of the geographic and demographic diversity of the electorate, the drawing must be redone until a representative selection pool is established.
- After a representative pool of two hundred citizens has been established, legislative leaders have the opportunity to strike up to ten percent of the candidates from the pool.
- The commission must consist of four members registered with each of the two largest political parties (4 Democrats and 4 Republicans) and three members registered with neither of the two largest parties. If the random selection process presents a panel of nominees for the commission with disproportionate representation from any one county relative to that county’s proportion of the population of the state, the Secretary of State must conduct the drawing again until the composition of the panel is balanced appropriately.
- Commissioners must submit a written pledge indicating that they will not seek election or appointment to public office or employment with officeholders during the time the redistricting plan adopted by the commission is in effect.
- Service on the commission is voluntary. Persons unable or unwilling to serve may decline the opportunity.
- A public advisor, selected by the commission from a pool of experts established by the Judicial Council, serves as a non-voting member and chair of the commission. The public advisor also provides the commission with administrative, legal and technical assistance.

- Commission meetings must be conducted in compliance with the Bagley-Keene Open Meeting Act. All proceedings are to be broadcast and recorded.
- The commission as a body, its individual members, staff and consultants are prohibited from the exercise of executive or deliberative privilege.
- All writings and documents prepared by or for the use of the commission and its staff are classified as public records in accordance with the Public Records Act.
- Members of the public may submit proposed plans or amendments to the commission's proposed plan. Redistricting software and data is also to be made available for public use. The commission must hold public hearings before and throughout the drafting process. In addition to public comment on the proposed final plan, the commission must prepare a summary of each written objection or recommendation submitted, together with an explanation of how the commission addressed, or why the commission failed to accommodate, the objection or recommendation.
- Draft and proposed plans must meet the following criteria, in priority order: 1) equal population to the extent practicable (not to exceed a deviation of two percent between districts of the same type for legislative and Board of Equalization districts); 2) compliance with the U.S. Constitution and Voting Rights Act; 3) nesting of both Senate and Assembly districts; 4) geographic contiguity; 5) respect for cities, counties and defined communities of interest to the extent practicable; 6) census block integrity, except where required to satisfy more highly prioritized criteria; 7) geographic compactness to the extent practicable; and 8) maximization of competitive districts except as necessary to comply with more highly prioritized criteria.
- Voter registration, voter history data and information regarding incumbent residences are excluded from consideration, except as required by federal law.
- The voters must approve or reject the final redistricting plan at the next general election. If the final proposed plan is rejected, the redistricting process must be repeated, including the selection of a new commission.
- The legislature must appropriate funding for the commission upon recommendation from Legislative Analyst, which must be one-half the amount expended by the legislature in creating redistricting plans in 2001, adjusted by the California Consumer Price Index.
- The public must approve the commission's final plan at the next regularly scheduled statewide election.

D. Costa II: Public Interest Analysis

Political Equality and Minority Representation

While several Costa II provisions may support political equality, it is unclear whether they are strong enough to safeguard the interests of minority voters or ensure their representation on the commission itself. Likewise, although communities of interest are listed among the prioritized criteria, the narrow definition of the term may limit the commission's flexibility to consider the political impact of demographic and population shifts.

The size of the commission and the selection process are structured to promote diversity. An eleven-member commission may provide an opportunity for a wider range of representation but, in and of itself, provides no assurance that racial and ethnic groups historically under-represented in the political process will be represented. Likewise, although random selection from a diverse candidate pool ensures a non-discriminatory process, it provides no strong assurance that the commission itself will reflect, at a reasonable level, the diversity of the state.

Costa II requires compliance with the Voting Rights Act but fails to establish the protection of minority voting strength as a state policy. In the event of a change in federal policy or in judicial interpretations, sole reliance upon the federal Voting Rights Act could leave minority populations vulnerable. Costa II would be strengthened by an additional provision that safeguards against the concentration or dispersion of minority populations in a manner that would adversely affect their voting strength.

In the event of a change in federal policy or in judicial interpretations, sole reliance upon the federal Voting Rights Act could leave minority populations vulnerable.

Respect for communities of interest is also a key tool in ensuring political equality across different communities. However, the narrow definition outlined in the measure, which requires formal designation by a county, may not be sufficient to protect neighborhoods and communities at the grassroots level from fragmentation. County designations may be established for reasons independent of the shared electoral interests of

residents. The nesting requirement and the competitiveness criterion, depending on population distributions, may also limit the commission's flexibility in this regard.

Partisan Fairness

The provisions of Costa II promote partisan fairness in a number of ways. The legislature has very limited influence over the membership selection process, insulating it from political manipulation. Candidates for selection are screened for conflicts of interest that might inhibit their ability to serve in a fair and impartial manner. Once a nomination pool of qualified candidates is established, legislative leaders may strike candidates from the pool but play no role in the selection process, which is conducted at random from the remaining pool. This provision, which allows legislative leaders limited veto power, will further screen out candidates prone to partisan bias.

Costa II also balances partisan tendencies by requiring equal representation between the two largest parties, counterbalanced by three commissioners affiliated with neither. Additionally, an impartial, non-voting public advisor, with "a high level of experience in the law," serves as chair.

However, the public advisor is likely to play an extremely powerful role on a commission composed of randomly selected citizens unlikely to have any background or experience in the legally and technically complex process of redistricting. Experts who would have the technical and professional background needed to serve in this capacity may themselves have past or current partisan affiliations that could lessen public confidence in the process. Several provisions may provide a check against this concern. The Judicial Council screens and selects three potential candidates. The commission maintains control over the selection, which is made with the super-majority approval of at least nine out of eleven commissioners. However, partisan fairness and neutrality could be enhanced by an increase in the size of the selection pool to at least seven and an opportunity for legislative leaders to strike one candidate each.

In addition, the provision that calls for voter approval of the final plan risks undermining the integrity of the process by providing partisan interests an opportunity to influence the electorate's approval or rejection of the commission's adopted plan.

Traditional Redistricting Criteria

While Costa II includes traditional redistricting criteria, the proposal defines the criteria in a way that, together with their ranked order, may limit the commission's ability to protect minority interests and respect communities of interest.

The nesting requirement, depending upon population patterns, may have an adverse impact on the commission's ability to protect the voting strength of racial and ethnic minorities and comply with the requirements of the Voting Rights Act. This criterion could be eliminated and left to the discretion of the commission.

Likewise, the proposal's definition of communities of interest and compactness may not contribute to more fair and balanced representation. The proposal provides for the consideration of communities of interest on the same level as cities and counties only in cases where a county has designated and set the boundaries of a community prior to the first meeting of the commission. County designations may not necessarily keep pace with shifting demographic patterns over the course of a decade or may not be consistent in any way with the residential patterns of citizens with shared electoral interests. Furthermore, the factors

An enhanced proposal based on the Costa model would be strengthened by a broader definition of communities of interest, grounded in enhancing the electoral representation of citizens with shared interests based upon social, racial/ethnic, economic and geographic commonalities.

used in county-level decision making may vary across the state. It is therefore unclear whether considerations of communities of interest, as defined in the measure, will create opportunities to enhance the quality of legislative representation from a citizen's perspective. Similarly, the compactness criterion as defined in the proposal may hinder the commission's ability to create districts that lead to fair and adequate representation over districts that meet geometric specifications.

An enhanced proposal based on the Costa model would be strengthened by a broader definition of communities of interest, grounded in enhancing the electoral representation of citizens with shared interests based upon social, racial/ethnic, economic and geographic commonalities. The public interest goals would also be better served by a definition of compactness that is tied to the distribution of voters instead of geometric shape or the location of land in and of itself.

Public Confidence

Costa II contains public transparency and accountability provisions that should inspire public confidence in the commission's decision-making processes. Commissioners are selected through a process independent of legislative control, yet legislative leaders are given an opportunity to strike questionable candidates. The commission must comply with the provisions of the Bagley-Keene Open Meeting Act and is prohibited from any claim of executive or deliberative privilege. All documents are deemed public records. Hearings are required over several phases of the redistricting process. Provisions are set for public comment, and members of the public must be given access to redistricting data and software. Live audio and visual broadcasting of the commission's proceedings are also required, along with a report on how objections and recommendations from electors or the

legislature have been taken under consideration. These provisions should serve to promote partisan fairness and public confidence in the integrity of the commission and its processes.

In addition to the comprehensive provisions for transparency and public input, the proposal would be enhanced by providing commissioners with a thorough orientation on redistricting goals and processes. Considering the fact that commissioners will be drawn from a pool of average voters unlikely to have expertise in the field, basic training may contribute to public confidence in the commission and equip commissioners to make informed decisions when balancing criteria.

Voter Choice and Government Accountability

Costa II is likely to produce maps free from partisan or incumbent bias and balanced for competitiveness, which increases government accountability. Despite the qualifications listed in the proposal, these gains may come at the expense of respect for communities of interest and minority voting strength, effectively undermining the ability of some communities to elect candidates of choice.

The proposal lists competitiveness as a criterion, ensuring that adopted plans will create a measure of opportunity for voters to elect candidates from either party in some instances. In addition, provisions that contribute to a range of public interest goals should safeguard against the adoption of partisan gerrymanders and incumbent protection plans.

Requiring the commission to make every effort to develop competitive plans will likely limit the commission's flexibility in other areas. Although the competitiveness criterion comes with a caveat that provides a measure of protection for more highly prioritized criteria, the requirement to maximize the number of competitive districts may produce a problematic trade-off between competition as a goal and the commission's discretion in keeping neighborhoods together and fully considering the interests of minority populations.

Restrictions on voter history and other data may deprive the commission of information necessary to make well informed decisions about the levels of competitiveness in any proposed plan or impacts on various communities. The "wall of separation" between commissioners and staff may be too high for the commission itself to evaluate the competitiveness of districts, placing too much discretion in the hands of the consultants who are afforded direct access to voter registration data and other electoral information to the exclusion of commissioners.

Costa II also requires the commission to establish criteria by which competitiveness may be measured. This may lead to greater transparency in the decision-making processes, but its practical impact on other public interest goals is uncertain.

Section 4: Recommended Public Interest Improvements

A. SCA 3 (as amended June 13, 2006)

Overall, SCA 3 is a significant proposal for meaningful redistricting reform. The measure contains a well-balanced set of redistricting criteria and clear conflict-of-interest provisions. The bill can be enhanced to provide a greater measure of partisan fairness, a more transparent redistricting process and heightened protection of minority interests.

Specific areas of concern and recommendations for improvement, in order of importance, are as follows:

- 1) Prioritized redistricting criteria do not necessarily apply to the final maps adopted by the commission [Section 4(b)(2)]. *Public interest goals will be compromised if the prioritized criteria do not govern every stage of the mapping process. Legislative language should be added to clarify that both proposed maps and final plans must adhere to the criteria outlined in the legislation.*
- 2) Commissioners are appointed directly by legislative leaders from a pool of candidates selected by the Judicial Council [Section 2(b)]. *The selection of commissioners should be insulated from partisan influences. After an initial phase of screening, an independent body should be drawn by lot from a large and diverse applicant pool. Each legislative leader should be given the opportunity to strike at least two candidates of the opposite party (as the language currently states) and one independent¹¹ from the pool, but they should not directly appoint commissioners.*
- 3) Electoral districts must have equal population with other districts of the same type, to the extent practicable [Section 4(b)(2)(A)]. *Federal population equality standards differ substantially for congressional and state legislative districts. While congressional districts must be as nearly equal to the ideal population as practicable, federal standards for legislative districts allow deviations of up to plus or minus five percent of the ideal. The provisions should be modified to identify separately the maximum deviation acceptable for congressional and legislative districts. The population deviation between legislative districts of the same type should not exceed five percent or any stricter standard required by state or federal law. The maximum population deviation between congressional districts should not exceed federal standards.*
- 4) Although the nomination pool must represent the gender, racial, ethnic and cultural diversity of the state, there is no provision requiring the actual commission to also reasonably reflect this diversity [Section 2(a)(4)]. *Racial and ethnic minorities have been, and continue to be, particularly vulnerable to vote dilution and electoral marginalization. Additionally, gender equity promotes fair and balanced decision making. The commission should be created pursuant to clear guidelines that will make it reasonably reflective of the state's diversity,*

¹¹ In the context of this report, the term “independent” is used in reference to candidates or commissioners who are not registered with either of the two largest political parties.

which will safeguard against the exclusion of minority interests and inspire greater public confidence in the fairness of the process.

- 5) Protection of historically marginalized communities hinges upon compliance with the Voting Rights Act of 1965 [Section 4(b)(2)(B)]. *While the Voting Rights Act continues to serve as a cornerstone for the protection of racial and ethnic minorities, it is subject to judicial interpretation, and there is no guarantee that the strength of its provisions will endure in perpetuity. SCA 3 should contain an additional provision that specifically safeguards against the dilution or concentration of minority populations in a manner that adversely affects their voting strength.*
- 6) Redistricting is not limited to once per decade. *The redistricting process should be conducted once per decade to avoid the partisan manipulation or electoral uncertainty that may arise from a more frequent redrawing of district boundaries.*
- 7) No two or more of the eight commissioners appointed by legislative leaders may reside in the same county [Section 1(c)(2)]. *The commission's membership should reflect a reasonable level of geographic diversity but should not unfairly restrict representation from larger counties. This provision should be replaced by one that ensures no single county may have more than one commissioner if it would thereby be overrepresented in relation to that county's proportion of the state population.*
- 8) The legislature has the authority to determine the commission's level of funding [Section (5)(a)]. *A minimum funding allocation will ensure the commission's independence from legislative influence. The legislature should be given authority to increase funding over this minimal level but not to decrease it.*
- 9) The commission's decision-making process is not fully public [Section 4(a)]. *Transparency inspires public confidence and engenders a measure of accountability. In addition to open meetings, the commission should publish a statement explaining how it met redistricting criteria, due when the final plan is adopted.*
- 10) The commission is not required to hold public hearings throughout the redistricting process [Section 4(b)(4)]. *Public hearings are essential for public participation and confidence in the redistricting process. Hearings should occur at four distinct stages of the process: 1) before an initial draft map is proposed; 2) after an initial plan has been drafted; 3) once a final plan has been developed; and 4) if any major changes are made, at least two weeks before the commission adopts the final plan. Hearings should be held at accessible locations and at times convenient for working adults.*
- 11) Although a period of public comment is required once a draft plan is proposed, only the legislature is explicitly allowed to submit plans [Section 4(b)(4)]. *Any elector or group should be able to submit a complete or partial plan to the commission for review and comment. Such plans should be disseminated through the commission's Web site for discussion at public hearings. In addition, the commission should make redistricting data and mapmaking software available to the public at accessible locations and online. The commission should also establish a public schedule of accessible meetings and hearings and deadlines to receive and consider proposed plans submitted by members of the public.*

- 12) While a majority of the commission's records are made public, preliminary drafts, notes and communications between members may be withheld from public inspection [Section 4(a)(4)]. *High levels of transparency promote public confidence in the fairness of the redistricting process. All writings and documents prepared by or for the use of the commission and commission staff should be designated public records after the completion of the redistricting process.*
- 13) Although commissioners are reimbursed for personal expenses, they are not compensated for their services [Section 6(a)]. *Each commissioner should be compensated at the rate of \$250 for each day they are involved in the conduct of the commission's business, adjusted in accordance with the Consumer Price Index for the State of California. This would ease the economic hardship that full-time service on the commission might impose.*
- 14) The rank ordering of traditional redistricting criteria is not supplemented with language that clearly defines terminology subject to broad and varying interpretation (Section 4(a)(2)). *Clear definitions of traditional redistricting terminology will assist the commission in meeting the criteria as outlined in the legislation. For example, the term "communities of interest" has been subject to a number of definitions. Communities of interest should be defined as a group of citizens with shared interests, based upon social, racial, ethnic, economic or geographic commonalities, and without reference to relationships with incumbents, candidates or political parties.*
- 15) The legislation does not include intent language or a preamble outlining key principles behind public interest goals. *While intent language is not binding, a preamble outlining key principles would assist the commission in making decisions and applying criteria in a manner consistent with the intent and purposes of the legislation. These principles should underscore the value of protecting minority voting strength, promoting public input and transparency and curbing incentives that lead to partisan gerrymanders and uncompetitive safe seats for incumbents.*

B. Costa II

Costa II presents a solid foundation upon which to build redistricting reform. Its provisions call for a high degree of public transparency and citizen participation. The proposal could be strengthened by increasing the commission's authority and independence, affording greater flexibility in balancing criteria to meet public interest goals and enhancing the provisions that promote diverse representation on the commission.

Specific areas of concern and recommendations for improvement are listed below in order of importance:

- 1) Implementation of the commission's adopted plan is contingent upon approval by voters [Section 1(q)]. *Voter referendum requirements may be difficult to conduct in a manner that allows the average voter to be fully informed of the complexities of various district maps. A referendum may also create an opportunity for partisan or special interests to influence unfairly public perception of the issues. Additionally, if a plan fails to garner public approval, repeating the entire process to develop a new plan would drain resources, create electoral instability and may further politicize the issues.*

- 2) Communities of interest are prioritized only in cases where a county has designated and set the boundaries of a community prior to the first meeting of the commission [Section 2(f)(4)]. *It is recommended that communities of interest be defined as groups of citizens with shared interests based upon social, racial, ethnic, economic and geographic commonalities, without reference to political parties, incumbents or candidates.*
- 3) Although the Secretary of State must determine that the selection pool is reasonably representative of the geographic and demographic diversity of the state, there is no similar provision for the composition of the commission itself [Section 1(i)]. *Given the vulnerability of racial, ethnic and language minority populations to vote dilution and electoral marginalization, the proposal should require a reasonable level of diversity within the commission to safeguard minority interests during the commission's decision-making processes.*
- 4) Protection of the interests of historically marginalized communities hinges upon compliance with the Voting Rights Act of 1965 [Section 2(c)]. *While the Voting Rights Act continues to serve as a cornerstone for the protection of racial and ethnic minorities, it is subject to judicial interpretation, and there is no guarantee that the strength of its provisions will endure in perpetuity. An additional provision that specifically safeguards against the dilution of minority voting strength would enhance the protection of these groups.*
- 5) Redistricting is not limited to once per decade. *The redistricting process should be conducted once per decade to avoid the partisan manipulation or electoral uncertainty that may arise from a more frequent redrawing of district boundaries.*
- 6) Funding for the commission is subject to appropriation by the legislature and is limited to one-half the amount expended by the legislature in creating plans in 2001, adjusted by the California Consumer Price Index [Section 1(t)]. *Adequate funding, appropriated independent of the legislative process, is a critical component for ensuring the commission's independence and effectiveness. Many of the Costa II provisions exceed the requirements applicable under the 2001 process. It is unlikely that a smaller appropriation would enable the commission to comply effectively with the measure. The commission should receive a fixed allocation in excess of that which was expended during the 2001 redistricting so that it may conduct the process unencumbered by fiscal constraints.*
- 7) Competitiveness is listed as a criterion to be maximized [Section 2(i)]. *While competition plays an important role in ensuring government accountability, it must be balanced with the goal of fair and adequate representation, particularly for communities that have historically faced challenges in gaining such representation. The provision related to competition as a ranked criterion should be modified to state that competitive districts should only be favored where to do so would create "no significant detriment" to more highly prioritized criteria.*
- 8) There are no clear provisions to ensure partisan fairness in the selection of the public advisor [Section 1(o)]. *Although the public advisor serves on the commission in a non-voting capacity, the individual occupying this position is likely to wield a considerable measure of influence on a commission of likely voters with little or no experience in redistricting. To ensure a level of fairness and accountability in the selection and appointment process, the pool of public advisor candidates should be increased to seven, and each legislative leader should be given the opportunity to strike one candidate.*

- 9) The commission is empanelled without any subsequent orientation to the redistricting process [Section 1(k)]. *Commissioners are unlikely to possess experience or familiarity with the redistricting process. A series of seminar sessions on the components of the process would provide an important introduction to their work and the impact their decisions will have on residents of the state.*
- 10) Although there are strong safeguards against the appointment of persons who may have conflicts of interest based upon prior experience, a pledge is the only requirement that guards against the probability that a commissioner may benefit directly from the political boundaries adopted by the commission [Section 1(g)(2)]. *Commissioners should be disqualified from seeking public office for a period of ten years, the standard length of any redistricting plan. They should also be prohibited from registration as a lobbyist for at least three years after their service. These added provisions are the most effective way to safeguard against the violation of their pledge.*

Appendix: Detailed Comparison of Current Proposals

A. Comparative Overview

| | Costa II | SCA 3 | Ideal Plan |
|---|-----------|-----------|------------|
| 1. Are major parties guaranteed equal representation on commission? | Yes | Yes | Yes |
| 2. Is the legislature involved in the selection process? | No | Yes | No |
| 3. Is competitiveness appropriately balanced among other redistricting criteria? | Uncertain | No | Yes |
| 4. Is the commission given the data and instructions necessary to serve the public interest? | Uncertain | Yes | Yes |
| 5. Is Voting Rights Act compliance explicitly required and prioritized? | Yes | Yes | Yes |
| 6. Is the commission likely to reflect California's diversity? | Uncertain | Uncertain | Yes |
| 7. Is protection of the voting strength of historically underrepresented groups directly stated among the redistricting criteria? | No | No | Yes |
| 8. Are all commission meetings required to be open to the public? | Yes | Yes | Yes |
| 9. Are most of the commission's data and documents to be made public? | Yes | Yes | Yes |
| 10. Will the commission's proposals be implemented without requiring an additional legislative or popular vote? | No | Yes | Yes |
| 11. Is the commission likely to receive adequate funding to meet its objectives? | Uncertain | Uncertain | Yes |
| 12. Is mid-decade redistricting prohibited? | No | No | Yes |

B. Redistricting Commission Membership Provisions

| | Costa II | SCA 3 | Ideal Plan |
|---|--|---|--|
| Type of members | Citizens | Citizens | Citizens |
| Number of members | 11 | 11 | 11 (or more) |
| Voting requirement | Super majority of 9 | Balanced majority of 6 | Balanced majority of 6 |
| Disqualifying past experience | In the past 10 years, having (or having a family member who has) been appointed to, elected to or candidate for public office; served as a paid consultant or employee on staff of elected officeholder or candidate for public office; been employed by, or appointed to any position or office by legislature, governor, Congress, or President; served as an officer or elected or appointed member of a political party; employee or independent contractor or any officer, partner or employee thereof, for a political party; or registered as paid lobbyist | In the past 3 years, having been appointed to, elected to, or a candidate for public office; served as a an officer of a political party, a registered paid lobbyist or officer of a candidate's campaign committee; or changed partisan affiliation Ineligible persons: legislative and congressional staff and consultants, persons under contract with the legislature, and any person with a financial or family relationship with the governor, a member of the legislature, a member of Congress, or a member of the Board of Equalization | In the past 10 years, having been appointed to, elected to, or a candidate for public office or office for a political party; performed paid work for a party or candidate's campaign; or changed partisan affiliation In the past 5 years having registered as a lobbyist Ineligible persons: legislative and congressional staff and consultants, persons under contract with the legislature, and any person with a financial or family relationship with the governor, a member of the legislature, a member of Congress, or a member of the Board of Equalization |
| Limitations on future public office | Pledge not to seek future elected public office or future appointment to office or direct employment by officeholders during the time the redistricting plan adopted by the commission is in effect | Ineligible for 3 years after term of service on commission Commissioners serve until the next commission is appointed, effectively 10 years | Ineligible to run in districts created by the commission or to work for those holding such offices while the adopted plan is in effect |
| Limitations on lobbying | No | Yes For 3 years after serving | Yes For 5 years after serving |
| Requires equal commission representation of two largest political parties | Yes | Yes | Yes |

C. Measures of Independence and Compensation

| | Costa II | SCA 3 | Ideal Plan |
|---|---|---|---|
| Nomination and appointment by a body independent of the legislature | Yes | No | Yes |
| Funding | Half the amount expended by the legislature in creating plans in 2001, adjusted by the Consumer Price Index | Decided upon by the legislature by majority vote and based upon recommendation of the Department of Finance | \$15 million, adjusted by the Consumer Price Index, which can be supplemented, but not reduced by the legislature |
| Compensation | \$250 for each day of involvement in conduct of the commission's business Reimbursement for actual and necessary expenses incurred in the conduct of the commission's business | Reimbursement for personal expenses incurred in the conduct of commission's business | \$250 for each day of involvement in conduct of the commission's business Reimbursement for reasonable expenses incurred in the conduct of the commission's business |

D. Appointment Process

| | Costa II | SCA 3 | Ideal Plan |
|---|--|--|---|
| Candidate pool selection process | Random selection from voter rolls administered by Secretary of State | 10 retired judges of the Court of Appeal (chosen by the Judicial Council) establishes a pool of 50 candidates | Judicial Council establishes a pool of 75 qualified candidates |
| Candidate pool composition | 200 electors that have voted in last two general elections, if applicable, and meet eligibility requirements | 19 from each of the two largest parties, 12 not affiliated with either of the two largest parties | 25 candidates registered with each of the two largest parties and 25 not registered with either of the two largest parties |
| Candidate pool diversity requirements | Secretary of State shall ensure that the pool of candidates is reasonably representative of the geographic and demographic diversity of the electorate | Panel of retired judges shall make every effort to ensure that the pool of candidates is representative of both genders and the racial, ethnic, and cultural diversity of the state | Judicial Council shall ensure that the pool of candidates is generally representative of the geographic, gender, racial and ethnic diversity of the state |
| Legislative leaders' procedure for nomination or preemptory challenge of nominees | Each of the 4 legislative leaders may strike up to 10% of the candidate pool | Each of the 4 legislative leaders may strike up to 2 candidates from the opposite party | Each of the 4 legislative leaders may preemptively strike from the pool up to 2 candidates from either major party and up to 2 candidates registered with neither major party |
| Final selection | Secretary of State draws commissioners and a separate panel of 11 alternates at random from candidate pool. The commission and panel of alternates must each consist of 4 commissioners affiliated with each of the two largest parties and 3 commissioners not affiliated with either of the two largest parties | 4 legislative leaders each select two commissioners. The 8 members vote for 3 additional members from the candidate pool who are not registered with either of the political parties already represented. One of these members is to be designated as chair of the commission | 4 commissioners affiliated with each of the two largest parties and 3 commissioners not affiliated with either of the two largest parties are randomly selected from the remaining candidate pool |

E. Redistricting Criteria

| | Costa II | SCA 3 | Ideal Plan |
|---|--|--|---|
| Explicitly prioritizes criteria | Yes | Yes | Yes |
| Guidance provided on defining redistricting criteria | Yes Commission provided some guidance on defining communities of interest, compactness and population equality. Commission directed to adopt a standard by which to measure competitiveness | No | Yes Definition is provided for communities of interest |
| Voting Rights Act compliance explicitly referenced | Yes | Yes | Yes |
| State policy against dilution of minority voting strength | No | No | Yes |
| Population equality standard | Within federal guidelines for congressional districts; within 2% for state district boundaries | To the extent practicable | To the extent practicable, within federal guidelines |
| Nesting required | Yes Two adjacent Assembly districts nested within each Senate District Ten adjacent Senate districts nested within each Board of Equalization district | Yes, to some extent Two Assembly districts nested within each Senate district No nesting of Senate districts within Board of Equalization district | Discretionary, where not inconsistent with more highly prioritized goals |
| Contiguity required | Yes 1 st Priority | Yes 1 st Priority | Yes 1 st Priority |
| Compact districts required | Yes 4 th Priority | Yes 4 th Priority | Yes, where doing so would create no significant detriment to other listed goals 4 th Priority |

E. Redistricting Criteria (continued)

| | Costa II | SCA 3 | Ideal Plan |
|--|---|--|--|
| Requires conforming to geographic and political lines | Yes 2 nd Priority | Yes 3 rd Priority | Yes, where doing so would create no significant detriment to other listed goals 3 rd Priority |
| Respect for communities of interest included among criteria | Yes Narrowly defined to communities that have been designated and the boundaries clearly delineated by a county Included under 2 nd Priority | Yes Undefined 2 nd Priority | Yes Defined to include respect for groups of citizens with shared socio-economic, ethnic, economic and geographic interests 2 nd Priority |
| Respects census blocks | Yes 3 rd Priority | No Respects census tracts—a larger unit of analysis | Discretionary |
| Competition | Best efforts should be made to maximize competitive districts, except where doing so would compromise goals prioritized more highly 5 th Priority | Not included in the provisions of the measure | To be favored where doing so would create no significant detriment to the other listed goals 5 th Priority |
| Availability of partisan registration or voting history data | The commission may employ or contract with staff who may use registration and voter history data, but shall maintain a wall of separation regarding such data between itself and the commission | Party registration and voting history data are excluded from the first stage of the mapping process, but may be used to test maps for compliance with criteria | Voter information can be used to ensure compliance with criteria only |

F. Transparency and Public Accountability Provisions

| | Costa II | SCA 3 | Ideal Plan |
|--|--|---|---|
| Will commission be governed by Bagley Keene Open Meeting Act? | Yes | Yes | Yes |
| Are <i>ex parte</i> communications prohibited? | Yes | Yes, except between commission members and staff | Yes, except between commission members and staff |
| Are transcripts, data and documents required to be publicly available? | Yes | Yes, except preliminary drafts, notes and member-to-member communications | Yes Communications between commissioners and staff should be made public after final plan is proposed |
| Public hearings requirements | Public hearings must take place in several different geographic areas of the state both as part of the process of creating a draft map and in order to present and discuss draft maps; at least 7 days before a draft, a least 5 days on a proposed and final plan | No explicit mention of hearings. The commission must display a draft map to the public for comment, in a manner designed to achieve the widest public dissemination reasonably possible | Accessible public hearings must take place in several different geographic areas of the state and at each stage of the process including: before a draft plan is created, after a initial plan is created, upon any significant changes to a the initial plan and after a final plan is developed |
| Period to receive public comment | Commission establishes and publishes a schedule and establish procedures towards the end of full, fair and robust public consideration and debate on draft and proposed final plans, written comments, and proposed amendments | At least 30 days | Before initial plan is drafted, including submission of partial or full map proposals; at least 2 weeks after the initial plan or after significant changes to significant changes to initial plan; at least 14 days before any final plan is approved |
| Involvement of interest groups in presenting plans | Any elector or group may submit a complete or partial plan | No mention | Any elector or group may submit a complete or partial plan |

G. Procedures for Implementation and Review

| | Costa II | SCA 3 | Ideal Plan |
|--------------------------------------|------------------------|------------------------|------------------------|
| Gubernatorial veto | No | No | No |
| Legislature votes | No | No | No |
| Citizens vote on final plan | Yes | No | No |
| Enactment timetable | After decennial census | After decennial census | After decennial census |
| Appeal directly to the Supreme Court | No | Yes | Yes |

Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals

Re-Drawing Lines reviews the public interest principles behind redistricting and analyzes California's 2006 redistricting reform proposals that call for the establishment of an independent redistricting commission. By transferring power from the state legislature to an independent commission, these reforms strengthen transparency, fairness and public trust in government.

Re-Drawing Lines recommends use of the following public interest criteria:

- **Independence and Partisan Fairness:** Redistricting should be performed by an independent commission of citizens, not legislators, and it should operate free of legislative influence or partisan bias.
- **Political Equality and Minority Representation:** The commission should represent California's diversity in its membership and apply standards for drawing districts that protect the voting strength of historically underrepresented racial and ethnic groups.
- **Transparency and Public Confidence:** The commission should promote public confidence through public hearings, open meetings, accessible data and transparent decision-making.
- **Preservation of Voter Choice and Government Accountability:** Electoral districts should be drawn to promote the right of citizens to hold elected representatives accountable to the public interest. This includes safeguarding against a pattern of uncompetitive safe seats that favor incumbents.

Re-Drawing Lines is a joint research project of the **Center for Governmental Studies** and **Demos: A Network for Ideas and Action**.

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10951 W. Pico Blvd., #120
Los Angeles, CA 90064-2184
(310) 470-6590
center@cgs.org • www.cgs.org



220 5th Avenue, 5th Floor
New York, NY 10001
(212) 633-1405
www.demos.org