

September 14, 2009

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Attn: Daniel Claypool
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RE: Citizens Redistricting Commission Draft Regulations

Dear Ms. Howle:

We, the undersigned, are pleased to be able to comment on the draft regulations issued by your office on July 31, 2009, regarding the Voters First Act. We were impressed by the thoroughness shown by your staff in developing the proposed regulations, and applaud your intent to facilitate the smooth implementation of the Act by filling in some of the details. We also appreciate your willingness to listen to our input and the input of other interested organizations and individuals; that willingness to listen to the public is apparent in your detailed and thoughtful response.

The following is a list of items we would like to bring to your attention. Some of these reflect concerns that we share and suggestions for ways to address those concerns; others are suggestions for clarifying language. For your convenience, also included is an appendix listing the relevant sections of the regulations in numerical order, with our suggested revisions.

Conflicts of Interest

- 1. The proposed definition of ‘State Office’ in § 60828 should be revised for clarity and to reflect previous interpretations of state law, and the proposed definition of ‘Appointed to Federal or State Office’ in § 60804 should be revised to achieve greater consistency with the intent of Proposition 11 and to facilitate the ability of applicants to determine their eligibility for the commission.** The state office definition in § 60828 should be revised to exclude advisory bodies because previous interpretations under California state law make clear that appointees serving on advisory bodies are not state officers. For example, the California Attorney General opined in 1998 that appointees to advisory bodies are not state officers because they do not exercise the state’s sovereign power (see 81 Ops. Cal. Atty. Gen. 310 (determination of whether appointee to advisory body is state officer for purposes of California Tort Claims Act)). Additionally, § 60828 creates ambiguity as to whether appointees to city, county or local district bodies are covered by the state office definition, and should be revised to make clear that such appointees are not covered by the definition. Please see our suggested revisions to § 60828 in the appendix.

§ 60804 should be revised to include appointments by the Board of Equalization in addition to appointments by the Governor and legislative members. This is because the commission will draw Board of Equalization lines, and persons who receive salaried appointments from Board of Equalization members are arguably beholden to those members. Lastly, § 60804 should be revised to provide that the State Auditor will publish on its website a list of appointed federal and state offices covered by § 60804. This will facilitate the ability of potential applicants to determine whether their appointments fall within the scope of exclusions under Proposition 11. Please see our suggested revisions to § 60804 in the appendix.

We also inform you that the signatories to this letter have had a robust discussion about whether the scope of the “Appointed to Federal or State Office” definition in § 60804 should be narrowed, and the extent to which the scope should be narrowed. This discussion has focused in part on whether the definition should cover only appointments to compensated positions, and if so, what types of compensated positions should be covered. The signatories to this letter were unable to come to consensus on this issue, but because it is one of the more significant issues raised by the regulations, we are highlighting it in this letter and letting you know that some of the signatories will provide you with separate comments outlining their respective viewpoints.

2. **The definition of “Most Qualified Applicants” (§ 60818) should be clarified.** Specifically, in the current proposed language, it is not entirely clear that a potential applicant who shifted between a party and “decline to state” during the last five years is not eligible. Please see the appendix for suggested clarifying language.
3. **The definition of “Paid Congressional, Legislative, or Board of Equalization Staff” should be clarified.** The current language appears to assume that all congressional and legislative staff are receiving compensation from the Congress of the United States only. Please see our suggested addition to § 60819 in the appendix.
4. **The definition of “Political Party” (§ 60821) should be clarified.** As currently drafted, the definition includes only those parties that make campaign expenditures to support candidates for elective public office. However, not all qualified political parties in California may actually make campaign expenditures (the Peace and Freedom Party appears to be an example). We therefore are suggesting adding the phrase, "or recognized as qualified by the Secretary of State" to this definition to ensure that it covers all operating, qualified parties regardless of whether they make campaign expenditures.

Identifying Qualified Applicants

5. **§ 60805, as currently proposed, is too narrow and does not cover the full possible range of experience of a potential applicant.** An applicant may appreciate California’s diverse demographics and geography in a manner that does not only relate to individuals’ “voting preferences,” as specified in (a)(1) and (a)(2). Indeed, limiting an “appreciation” to only voting preferences may eliminate applicants who can demonstrate an appreciation of California’s demographics and geography that may be not directly tied to “voting preference.” For example, an applicant may work closely with low-income Latino youth in the Central Valley. His or her work may not specifically demonstrate an understanding that the shared ethnicity or income level of the youth translates into “voting preferences” (since they do not vote). However, this work

may reflect some knowledge about how these particular stakeholders may benefit from shared state/local/federal representation. Please see our suggested revisions to § 60805 in the appendix.

6. **In § 60826, the proposed definition of “Relevant Analytical Skills” is too restrictive with regard to the use of statistical information and software, and does not accurately reflect the skill level a potential commissioner would require.** “Complicated” is a vague term as it refers to statistical information, especially in the context of potential applicants who will not be experts in this field. In redistricting, “complicated statistical information” would be considered the interpretation of a polarized voting analysis. There are few people even among redistricting experts who would be able to understand a polarized voting analysis without the benefit of having a specialized statistical expert explain it. The statistical information that commissioners will be asked to understand on their own is likely related to basic computations such as those derived from census data tables and variables. For similar reasons, we are suggesting to replace the word “dense and technical” with “detailed.”

A similar issue arises from the language “working with sophisticated software.” Generally speaking, the most sophisticated software in redistricting is the use of specialized geographic information systems (GIS). Such programs are only owned by those who professionally engage in redistricting in some fashion. They are very expensive and not widely available. Very few members of the general public would have ever had the opportunity to work with such software, and with most commissions that we are familiar with, the commissioners relied on technicians to work with the software. Therefore, requiring the knowledge of “sophisticated software” thus has an economic implication that may well reflect adversely on the diversity of the commission.

We also believe that the phrase describing the ability to resolve complex problems “involving factual ambiguities” is unclear, and suggest that “involving competing factual claims” be substituted.

Please see in the appendix our suggested revisions to § 60826.

7. **Regarding § 60847 (Phase II Application), “criminal history” is vague and may be too broadly interpreted to include arrests and misdemeanors that occurred at any time in an applicant’s past.** For example, an arrest for civil disobedience may not be the type of criminal history that is relevant to an applicant’s qualifications or fitness to serve on the commission. State employment applications, by way of comparison, usually limit such questions to disclosure of convictions as an adult (excluding traffic violations other than felonies) and define a conviction as a plea, verdict or finding of guilt, regardless of whether a sentence was imposed by the court. Please see our suggested revision to § 60847 in the appendix.
8. **Also regarding § 60847, information required of an applicant should be limited to those questions directly relevant to a determination of whether an applicant is qualified.** Asking for information relating to an applicant’s involvement with professional, social, political and community organizations and causes is understandable, since presumably those experiences can help demonstrate an applicant’s appreciation for diversity or possession of relevant analytical skills. Narrowing the scope of information sought from the applicant may help ensure that information provided is relevant to a determination of whether an applicant is qualified. As such, in our appendix we suggest a revision to § 60847 to only seek information that the applicant

deems relevant to service on the commission and satisfying the qualifications specified in the Voters First Act.

Also, we believe that requiring disclosure of financial contributions made to any of the above organizations and causes may unduly intrude on an applicant's privacy and is not likely to obtain much more relevant information than by excluding it. Additionally, disclosure of financial contributions¹ to organizations and causes would undoubtedly be burdensome, in particular, for those persons who have made several contributions over the relevant time period. Nonprofit organizations, while being required to disclose to the IRS the names and addresses of persons making large donations, are not required to disclose that information to the public – and many organizations, seeking to protect their donors from harassment or undue attention, keep that information confidential. Deleting reference to “financial contributions” will still allow the Applicant Review Panel to obtain relevant information that would allow adequate review of the applicant's qualifications.

9. **Applications should be fact-checked as much possible to verify accuracy and honesty, particularly regarding conflict-of-interest related statements.** We applaud the intent of the Bureau of State Audits (BSA) staff to check accuracy of the applications as much as is possible. To best maximize the time and resources of the Bureau, as well as to minimize inconvenience to applicants and applicants' family members, employers, etc., we also believe it might make the most sense to focus fact-checking activity later in the process, after the size of the applicant pool has been somewhat reduced.

Diversity

10. **The definition of diversity contained in § 60814 should be revised to mirror the statutory language contained in Proposition 11.** During the interested persons meetings conducted by the BSA earlier this year, various stakeholders urged the BSA to make the application process fair to all individuals regardless of economic status, and to remove barriers that could prevent individuals from participating in the application process, such as requiring applicants to travel for interviews at their own expense or requiring them to demonstrate skills or experiences available only to persons with disposable income. We commend the BSA for drafting regulations that, for the most part, take into account this input.

However, we have concern about the unintended consequences that may occur as a result of including economic diversity in the definition of diversity contained in proposed Section 60814. When the Applicant Review Panel is considering the composition of the applicant pool as required by proposed Sections 60848(f) and 60850(e), the panel is likely to face a difficult task in balancing the various aspects of diversity contained in Section 60814's definition of diversity.² The addition of economic diversity to the other forms of diversity listed in Section 60814 will

¹ Notwithstanding the points raised above, the term, “financial contributions” is quite broad and could be expansively interpreted to include everything from financial support of public radio, tickets for fundraising dinners for charities, and donations to homeless shelters, for example.

² We note here that we support the inclusion of Sections 60848(f) and 60850(e) in the proposed regulations. We believe these sections give proper effect to Article XXI, Section 2(c)(1) of the California Constitution.

likely make the panel's task in this regard more difficult, and creates the potential to undermine those other aspects of diversity in the applicant pool.

Rather than the definition of diversity contained in proposed Section 60814, we believe Section 60814's language should mirror the definition of diversity contained in Section 8252(g) of the Government Code. Our suggested revision to Section 60814 is contained in the appendix. We note here that we support the BSA's inclusion of economic diversity within the definition of "appreciation for California's diverse demographics and geography" contained in proposed Section 60805, but believe that economic diversity should not be included in Section 60814's definition of diversity because of the unintended consequences described above.

We also note that we reviewed the transcripts of the interested persons meetings held earlier this year. Only a handful of individuals indicated an interest in the Applicant Review Panel "staying open" to applicants from a variety of occupations and income levels. In fact, we saw a much stronger interest in ensuring that the application process was free of barriers regardless of financial situation than in adding economic diversity as one of the official criteria. We therefore request that "economic" be stricken from the proposed regulation, as we have revised it in the appendix.

The Application Process

11. **The current description of the outreach program in the proposed regulations could be clarified and strengthened.** Although we understand that the scope and breadth of the BSA's outreach program is dependent upon funding, we strongly believe that outreach needs to be not only statewide but reach into local communities. We recognize and applaud the BSA's intent to use community partners to assist with that local outreach, but we also believe that community partners will need some assistance with developing materials and perhaps some expert advice. To that end, we have suggested some additional language for § 60840 in the appendix.
12. **The BSA should ensure that adequate resources are available to persons filling out the application form.** As we recommended previously in our letter dated June 8, 2009, the BSA should provide instructional and resource materials with the application form that help applicants determine their eligibility to serve on the commission, such as links to and instructions for navigating state and federal campaign finance websites. The BSA should also make a telephone hotline available so that potential applicants can call to receive advice on questions of eligibility. We hope that the BSA will articulate a commitment to ensuring the availability of such resources, either in revised regulations or in documents accompanying the application form.
13. **§ 60842 (f) -- The language as currently drafted does not specify clearly enough exactly which information will not be posted on the BSA's website or otherwise publicly available.** It also leaves more than is necessary to the BSA's discretion, which could confuse or cause uncertainty on behalf of some potential applicants. We are concerned that some people may not apply if they are unsure if their personal/private information could be released publicly. In the appendix, we suggest new language for § 60842(f) which clarifies which information will not be released and creates another category which leaves the BSA some discretion as to what type of information not to post or otherwise disclose.
14. **Applicants who unintentionally submit two applications should not be disqualified.** Because the application process is online, it is likely that applicants will need technical assistance; some

may accidentally submit an application more than once. We suggest adding the word “intentionally” in 60842(c)(1) and 60844(a)(1) so that applicants who accidentally submit their application more than once are not disqualified nor led to believe that doing so could disqualify them.

15. **The timeline for the Phase I and II application periods should be posted on the Bureau's website at the beginning of the application process and the BSA should make every possible effort to stick to that schedule.** We are concerned that potential applicants have the opportunity to plan their time accordingly if they are asked to move into the Phase II portion of the application process. We also want to ensure that those time periods are of adequate length to accommodate the maximum number of applicants possible.
16. **§ 60846 should be revised to resolve a timing conflict.** There appears to be a timing conflict between subsection 60846(b)(1) and subsections (a) and (e). The language of (a) and (e) allow information received late in a given phase to be considered in the next phase. But (b)(1) says language received late in a phase cannot be considered at all. The language suggested in our appendix removes the timing reference in (b)(1), leaving in place the timing rules of (a) and (e).
17. **Five days notice for interviews does not provide sufficient time for applicants.** We commend the BSA for ensuring an equal playing field for applicants, regardless of economic status, by reimbursing applicants for their expenses in traveling to Sacramento for interviews. However, we are concerned that a five-day notice for interviews will not provide sufficient time for many applicants to adjust their schedules, and will exclude some applicants from participating in their interviews, especially applicants whose employer policies necessitate that they provide more than five days notice when taking time off, or if they need to find a replacement to cover their time off. Accordingly, in order to further ensure an equal playing field for all applicants, we urge you to revise Section 60849(b) to provide applicants with at least 7 business days notice of their interview time, date and location, as suggested in our appendix.
18. **Videotaped Phase III interviews should not be made public until all the interviews have taken place.** The regulations as currently written do not make it clear if the interviews will be videotaped and posted on a rolling basis, or after all are completed. If the former, those who are interviewed later could possibly view the interviews of those who came before them and enjoy an unfair advantage. In the appendix, we have suggested a revision to § 60849 to clarify this point.

The Applicant Review Panel

19. **Improvements can be made to the definition for “Randomly Draw.”** We applaud the State Auditor’s definition for the “randomly draw” definition and believe that the process as generally described in the regulation will result in a successful random selection process. However, the description can be further improved by adding the word “immediately” at the beginning of 60824(b) to clarify that there will not be a significant gap in time between the assigning of numbers to final applicants and the selection of those applicants. Such a time gap can lead to an actual or perceived opportunity for mischief that can easily be avoided by requiring the assigning of numbers to happen immediately prior to the drawing. It is also important that it not be possible for the person making the random selections to know what numbers specific applicants have been assigned; if numbers are assigned sequentially to an alphabetical list then it will be possible for the selector (and everyone else) to know what numbers specific applicants have been assigned, since

the names of the final pools of applicants will be public. For this reason, we suggest adding the phrase “in random order” in the same section when describing how applicants’ names and numbers will be assigned and recorded.

20. **Add language to the regulations that restates the final process for selecting the first eight commissioners.** In §60853, the draft regulations discuss the “strikeout” process for legislative leaders to remove applicants from the final pool, and also how the Auditor’s office shall proceed if those strikeouts do not happen by the deadlines stated in Proposition 11. However, both 60853(a) and (b) describe these final stages as applying to all applicants as a group rather than applicants comprised of three subpools. To avoid confusion, we suggest adding language to 60853(a) that simply restates the process for making the final selections from the three subpools as it is written in the initiative itself.
21. **§ 60833 (Removal of Panel Members) appears to have a typographical error.** § 60833(a)(3) currently makes a reference to § 60833, and we suggest changing this reference to § 60832.
22. **Each member of the Applicant Review Panel should review each application to ensure a full review and provide the opportunity for redundant evaluation.** As the proposed regulations are unclear on this point, we suggest a revision to § 60848 in the appendix.
23. **§ 60850 wording should be clarified.** As other sections imply, the “top 20” in a given partisan subpool may not be among the “best 60” in the entire pool. Most sections avoid this problem by avoiding references to the “60 most qualified applicants,” such as appear here in 60850(b). The language suggested in our appendix eliminates this problem by referring specifically to “The 60 applicants who will participate in Phase IV ...”
24. **The regulations should be revised to provide that decline-to-state voters will be represented in the non-major party subpool when the applicant pool is reduced to 120 persons in Phase II and 60 persons in Phase III of the application process.** The language of Proposition 11 suggests that so-called “independents” (voters not registered with any political party, also known as “decline-to-state” voters) will have a role on the new redistricting commission.³ Of the approximately 4.2 million Californians currently registered to vote with neither of the two major political parties, 82 percent are registered as “decline to state.”⁴ Accordingly, we believe the regulations should be revised to require the Applicant Review Panel to give some consideration to whether the non-major party applicant pool includes decline-to-state voters when the applicant pool is reduced during Phases II and III. Without such consideration, it is possible that decline-to-state voters may be underrepresented in the non-major party applicant pool, which in turn would increase the likelihood that decline-to-state voters would not be represented on the commission. Please see our suggested revisions to Sections 60848 and 60850 in the appendix.

³ For example, the findings and purpose language of Proposition 11 states that, “This reform . . . will ensure full participation of independent voters. . . [T]his reform requires support from Democrats, Republicans, and independents for approval of new redistricting plans.”

⁴ See California Secretary of State, May 4, 2009 Report of Registration, available at <http://www.sos.ca.gov/elections/ror/ror-pages/15day-stwdsp-09/ror-050409.htm> (last accessed September 8, 2009).

25. **If the State Auditor creates additional phases of the application process during which the applicant pool is reduced, the regulations should provide that when carrying out such additional phase(s), the Applicant Review Panel will follow the same provisions it is required to follow when carrying out the reduction phases already contemplated in the proposed regulations, such as Phases II and III.** For example, we understand the State Auditor may be considering an additional reduction phase during which the Applicant Review Panel will first reduce the applicant pool to 180 persons, prior to reducing the applicant pool to 120 persons during Phase II and further reducing the pool to 60 persons during Phase III. If the State Auditor does include such an additional reduction phase, the Applicant Review Panel should follow the provisions outlined in Sections 60848 (for Phase II) and 60850 (for Phase III) when it is carrying out the additional reduction phase, and the regulations should be revised to reflect this.

We thank you for the opportunity to provide this input. We are happy to answer any questions you may have about our comments and concerns.

Sincerely,

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Appendix to Letter to Elaine Howle of September 14, 2009:
Suggested Changes to Regulations

§ 60804. Appointed to Federal or State Office

“Appointed to” a federal or state office means a person has been appointed to a federal or state office by the Governor or any member of the Legislature or Board of Equalization, or has served in an appointed position at the pleasure of the Governor or a member of the Legislature or Board of Equalization. A person has been appointed to an office regardless of whether the appointment was subsequently confirmed by the Legislature. The State Auditor shall publish and maintain a list on the Bureau’s website of appointed federal and state offices covered by this section.

§ 60805. Appreciation for California’s Diverse Demographics and Geography

(a) “Appreciation for California’s diverse demographics and geography” means all of the following:

(1) An understanding (i) that California’s population consists of individuals sharing certain demographic characteristics, including, but not limited to, race, ethnicity, gender, income level, age, language and level of education, (ii) that these groups of individuals may share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern, and (iii) that these groups of individuals may benefit from common representation. ~~that may relate to their voting preferences, including race, ethnicity, gender, and level of income.~~

(2) An understanding (i) that the people of California reside in many different localities with distinct geographic characteristics ~~that may relate to the voting preferences of the residents of those localities,~~ including urban, rural, industrial, agricultural, arid, and temperate; geographies and climates, (ii) that such persons may share social and economic interests, voting preferences, and similar viewpoints on other issues of mutual concern, and (iii) that such persons may benefit from common representation.

(3) A recognition that California benefits by having meaningful access to and participation in the electoral process by registered voters persons of all demographic characteristics and residing in all geographic locations.

(b) An applicant may demonstrate an appreciation for California’s diverse demographics and geography through a description of that appreciation and through occupational, volunteer, academic, or life experiences that show this appreciation, ~~such as:~~ Examples include, but are not limited to:

(1) Working on a project of statewide or local concern affecting Californians of different backgrounds and or from different areas, ~~achieving a result acceptable to these different Californians.~~

(2) Studying the voting behavior of Californians in various areas of the state for the purpose of improving the effectiveness of the electoral process and improving representation.

(3) Traveling throughout the state and meeting with a broad range of individuals in order to build consensus on some issue of statewide concern.

§ 60814. Diversity

“Diversity” means the variety in the racial, ethnic, geographic, ~~economic~~, and gender characteristics of the population of California.

§ 60818. Most Qualified Applicants

“Most qualified applicants” means those applicants who satisfy all of the following requirements:

(a) Are registered voters in the State of California who by the time of their appointment will have been continuously registered in California with the same political party or continuously registered as unaffiliated with a political party, and who will not have changed political party affiliation during the preceding five years. ~~with no political party for at least five years.~~

(b) Have voted in at least two of the past three statewide general elections.

(c) Do not have a conflict of interest.

(d) In the judgment of the panel are more suited to serving on the commission than other applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California’s diverse demographics and geography.

§ 60819. Paid Congressional, Legislative, or Board of Equalization Staff

“Paid congressional, legislative, or Board of Equalization staff” means any person who is employed by, and receiving compensation from the Congress of the United States or the State of California to provide services to a member elected from California, the Legislature, or the State Board of Equalization.

§ 60821. Political Party

“Political party” means a political party that is operating in California by making expenditures to support candidates for elective public office in the state or recognized as qualified by the Secretary of State.

§ 60824. Randomly Draw

“Randomly draw” means to select by the following process for random drawing.

(a) At least ten days prior to any random drawing, the bureau shall provide notice to the public regarding the time and place of the drawing by posting a notice on the bureau's website and by any other means deemed appropriate by the State Auditor.

(b) Immediately Pprior to the drawing, the members of the pool from which the drawing will be made shall be divided into three subpools according to the party affiliation of the members of the pool. One subpool shall consist of members registered with the largest political party in California based on registration, another subpool shall consist of members registered with the second largest political party in California based on registration, and a third subpool shall consist of members not registered with either of the two largest political parties in California based on registration. The names of the members of each subpool shall be recorded on a list in random order, and each member shall be assigned a unique identifying number that also shall be recorded on the list.

(c) On the day of the drawing, the following procedures shall be followed:

(1) The drawing shall be open to the public.

(2) The drawing shall begin with the preparation of the balls that will be used for the drawing. All of the balls used for the drawing shall be of uniform composition, weight, size, shape, and texture. The balls shall be prepared by dividing them into three separate groups that correspond in number with each of the three subpools. The balls for each of the subpools shall be affixed with a label. The label shall have written on it the identifying number assigned to a member of that subpool, so each of the balls will bear the identifying number for a different member of the subpool. The balls for each subpool shall be kept together and segregated for use in three separate subpool drawings.

(3) The balls for each subpool drawing shall be placed in a bingo cage. The cage shall be rotated vigorously to ensure that the balls are thoroughly mixed. The cage will drop a number of balls equal to the number of persons who must be drawn from the subpool, including any persons who are to serve as alternates. The number and name of the persons drawn during each subpool drawing shall be announced and duly recorded.

(4) After each subpool drawing, the bingo cage shall be emptied to allow the bingo cage to be used for the next subpool drawing until all of the subpool drawings are completed.

(d) At the conclusion of the drawing, the names of all those selected during each subpool drawing shall be posted on the bureau's website and otherwise announced to the public as deemed appropriate by the State Auditor.

§ 60826. Relevant Analytical Skills

(a) "Relevant analytical skills" means the learned abilities that a commissioner may need to successfully complete the work of the commission.

(b) Abilities related to performing the following tasks shall be considered relevant

analytical skills: gathering and comprehending information that bears upon redistricting; evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts; applying the appropriate legal standards to drawing district boundaries; and working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon.

(c) The following are examples of relevant analytical skills grouped according to the tasks listed in subdivision (b):

- (1) Gathering and comprehending information that bears upon redistricting:
 - (A) An ability to read and understand ~~dense and technical~~ detailed written materials, including maps and ~~complicated~~ statistical information.
 - (B) An ability to participate effectively in public hearings regarding redistricting by listening carefully and critically to the testimony of witnesses and formulating concise questions that will elicit relevant information.
- (2) Evaluating the validity and significance of the information gathered by the commission in order to make sound decisions about the proper placement of communities in districts:
 - (A) Basic mathematical skills.
 - (B) Familiarity with using computers ~~and working with sophisticated software~~.
 - (C) An ability to assess the credibility of information, distinguish facts from opinions, distinguish relevant facts from irrelevant facts, and assess the relative strength of competing arguments.
 - (D) An ability to resolve complex problems, including those involving competing factual claims ~~particularly those involving factual ambiguities~~.
- (3) Applying the appropriate legal standards to drawing district boundaries:
 - (A) An ability to understand the legal principles that govern redistricting as communicated through written materials and advice provided by the commission's legal counsel.
 - (B) An appreciation for the importance of applying proper legal standards to redistricting decisions.
- (4) Working effectively as a member of a group to promote redistricting decisions that are factually and legally defensible and that the commission can agree upon:
 - (A) Effective communication skills including basic writing skills and strong oral communication skills.
 - (B) An ability to interact effectively with other commissioners to build consensus on proposed decisions through reasoned discussion and negotiation.

(d) An applicant may demonstrate his or her possession of relevant analytical skills through a description of those skills and through occupational, academic, or life experiences such as:

- (1) Compiling information from a variety of sources, including statistical reports, expert opinions, and members of the public to develop an understanding of an issue or problem.
- (2) Assessing the value of information received from various sources to determine how much weight should be given to certain information versus other information when making a decision concerning an issue.
- (3) Receiving expert advice, particularly of a legal nature, and applying that advice to decisions.
- (4) Participating in group decision-making as a member of a commission, board, grand jury, task force, or other collection of individuals whose mission was to produce a report, plan, or other work product addressing some issue or problem.

§ 60828. State Office

“State office” means every office, agency, department, division, bureau, board, and commission within the government of the State of California, and does not include any advisory body or city, county or local district office, agency, department, division, bureau, board, and commission.

§ 60833. Removal of Panel Members

(a) The State Auditor shall have the authority to remove from the panel any member that the State Auditor determines can no longer serve as a member of the panel due to any of the following:

- (1) Resignation from the panel.
- (2) Failing to satisfy any of the requirements for being a Qualified Independent Auditor as described in California Code of Regulations, title 2, section 60823.
- (3) Failing to perform the duties of a panel member as described in California Code of Regulations, title 2, section ~~60833~~60832.

(b) Upon the removal of any member of the panel, the State Auditor shall replace the panel member with an alternate panel member drawn from the same subpool. If the alternate panel member randomly drawn from the same subpool is not available to fill the position, the State Auditor shall conduct another random drawing as necessary to fill the position.

§ 60840. Outreach Program

(a) In conjunction with initiating an application process for selecting the members of the commission, the bureau shall conduct an outreach program to alert the public to the application process and to encourage the submission of applications by a diverse pool of qualified applicants. The bureau’s outreach program shall, at a minimum, include all of the following:

- (1) Posting a calendar on the bureau’s website indicating the key dates and

deadlines for the application process, including, when established, the period during which the bureau will accept applications.

(2) Producing outreach materials regarding the role of the commission, the eligibility and qualifications requirements for serving as a commissioner, and the process for selecting commissioners.

(3) Identifying community partners, ~~and~~ requesting that they assist in recruiting qualified applicants, and supporting them in that effort with advice and materials.

(4) Creating and distributing public service announcements and print advertisements regarding the application process for placement in ~~both~~ regional, local and ethnic media.

(5) Upon posting an electronic application form on the bureau's website, widely publicizing both the availability of the application and the deadline for its submission.

(b) The breadth and scope of the bureau's outreach program is dependent on the funding that is available for the program.

§ 60842. General Requirements Applicable to Every Phase of the Application Process

All of the following requirements apply to each phase of the application process:

(a) Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall fill out and submit all applications electronically using the bureau's website. The bureau shall neither make available nor accept paper applications, and all application materials, except letters of recommendation, shall be submitted to the bureau electronically.

(b) All deadlines established by the bureau and the panel, including deadlines for the submission of application materials are final. Application materials not timely received or deemed incomplete by the bureau or the panel shall not be considered.

(c) The bureau or the panel may inquire about or seek additional information from an applicant during any phase of the application process.

(d) The bureau or the panel may exclude or remove from an applicant pool any applicant who does any of the following:

(1) Intentionally Submits more than one Phase I or Phase II application.

(2) Submits an incomplete application.

(3) Fails to timely submit supporting materials, including letters of recommendation.

(4) Fails to comply with deadlines established by the bureau or the panel.

(5) Fails to timely respond to inquiries, or to provide additional information as requested by the bureau or the panel.

(e) All applications shall include a certification by the applicant that he or she has provided true and correct information.

(f) All application materials collected and maintained by the bureau are public records. To enhance the transparency of the application process, the bureau shall post application materials on the bureau's website, except that it ~~may decline to post any material, or specific information contained in any material, that bureau staff determines to be either of the following:~~ shall not disclose residence addresses, telephone numbers, email addresses, signatures, birth date information, or the names of applicants' family members, except as provided below.

~~(1) Personal in nature, such as addresses, telephone numbers, or so private in nature that it would be inappropriate for public disclosure.~~

(1) The prohibition on disclosure of residence address shall not include posting or disclosure of an applicant's city, county or zip code.

(2) The prohibition on disclosure of birth date information shall not include posting or disclosure of an applicant's age or year of birth.

(3) Notwithstanding the prohibition of the disclosure of the names of family members, such names shall be posted/published on the website if and only if the applicant is selected for the applicant pool of 120 persons. In no instance shall the names of family members under the age of 18 years old be posted or disclosed.

~~(2) Offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.~~

(g) In addition, the bureau shall protect against the inadvertent disclosure of personal or sensitive information, including, but not limited to, social security information or account numbers.

(h) In addition, the bureau may decline to post or otherwise disclose any material, or specific information contained in any application materials, information that bureau staff determines to be offensive or harassing in nature due to sexual, profane, racist, or otherwise bigoted content.

(i) The application materials are public records subject to the California Public Records Act, (Govt. Code § 6250 et seq.). However, information otherwise prohibited by law from disclosure or that is identified in sections (f)(1) through (f)(3) will be redacted from those records when provided to a member of the public.

(j) All information provided by or about an applicant through an application, public comment, or by any other means may be subject to investigation and verification by the bureau or the panel.

(k) Except as provided in California Code of Regulations, title 2, section 60851, an applicant may not seek reconsideration of any decision by the bureau or the panel.

§ 60844. Phase I Application Review

(a) The bureau shall review each application that is submitted during the Phase I application period and exclude from the initial applicant pool any applicant who has not complied with the application process or is not eligible to serve on the commission due to any of the following:

- (1) Intentionally ~~S~~submitting more than one application.
- (2) Submitting an incomplete or untimely application.
- (3) Not satisfying the eligibility requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.
- (4) Having a conflict of interest.

(b) Applicants not excluded as provided in subdivision (a) shall be placed in the initial applicant pool and invited by the bureau to participate in Phase II of the application process.

(c) Applicants excluded from the initial applicant pool shall be notified by the bureau and advised of the grounds.

§ 60846. Written Public Comments and Responses

(a) Beginning on the date that the names of the successful Phase I applicants are posted on the bureau's website, and continuing throughout the remainder of the application process until the panel selects 60 of the most qualified applicants, the bureau shall provide opportunities for the public to submit written comments regarding the applicants being considered. The bureau shall post a form for submitting written comments on the bureau's website. The public may submit comments electronically or by facsimile, United States mail, or other common carrier.

(b) The panel may only consider written comments that it receives regarding applicants who have been placed in a pool of applicants for the panel's evaluation and have not been removed. To be considered by the panel, a written comment must satisfy all of the following requirements:

- (1) The bureau received the written comment prior to the deadline established by the bureau for receiving written comments concerning the applicants ~~being considered during the current phase of the application process.~~
- (2) The comment contains specific facts related to an applicant's eligibility and qualifications to serve as a member of the commission or is related to the accuracy of any statement made by the applicant as part of the application process.
- (3) The information that is contained in the comment appears sufficiently credible to warrant consideration.
- (4) The name and contact information for the person providing the comment is included in the comment.

(5) The comment contains a certification by the person providing the comment that the information included in the comment is true and correct and based on the author's personal knowledge.

(c) Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall post on the bureau's website all written comments that may be considered by the panel pursuant to subdivision (b) of this section, including the name of the person providing the comment.

(d) The bureau shall send a copy of any written comments received about an applicant to the applicant, with a notice stating how the applicant may submit a written response and the deadline for submitting the response.

(e) Written comments and responses about an applicant submitted during any phase of the application process shall be included in the applicant's application materials and may be considered by the panel during all subsequent phases of the application process during which the applicant remains in a pool of applicants for the panel's evaluation. Comments and responses received after the deadline for receiving comments during a particular phase of the application process may be considered by the panel during a subsequent phase provided the applicant remains in a pool of applicants for the panel's evaluation.

§ 60847. Phase II Application

(a) In Phase II of the application process, the bureau shall direct the members of the initial applicant pool to submit a supplemental application with supporting materials. The bureau shall post supplemental application forms on the bureau's website for use by the members of the applicant pool. Except for individuals qualifying for a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), applicants shall complete the supplemental application forms and supporting materials electronically and submit them using the bureau's website. Notwithstanding this requirement, applicants may submit letters of recommendation by facsimile, United States mail, or other common carrier as an alternative to submitting the letters through the bureau's website.

(b) The supplemental application, with supporting materials, shall consist of, but need not be limited to, all of the following:

(1) Questions designed to elicit information from the applicant describing his or her qualifications to serve on the commission, including essay questions to be answered in 250 words or less.

(2) Questions designed to elicit information about the applicant, including:

(i) Former names, former residences, and criminal history, if any. Criminal history means only convictions and guilty pleas as an adult for felonies before any court.

(ii) Educational and employment history.

(iii) Involvements with, ~~and financial contributions to~~, professional, social, political, and community organizations and causes that demonstrate an applicant's appreciation of California's diverse demographics and geography and possession of analytical skills relevant to service as a commissioner.

(iv) Financial interests.

(3) Questions about an applicant's immediate family members.

(4) A request for three letters of recommendation from individuals or organizations.

(c) The bureau shall remove from the initial applicant pool any applicants who fail to submit a completed supplemental application with supporting materials by the deadline established by the bureau.

(d) The bureau shall transmit a copy of every complete and timely received supplemental application with supporting materials to the panel. Subject to the provisions of California Code of Regulations, title 2, section 60842, subdivision (f), the bureau shall also post the supplemental application with supporting materials on the bureau's website.

(e) After posting the supplemental applications with supporting materials on its website, the bureau shall establish a deadline for the receipt of written public comments during Phase II of the application process.

§ 60848. Phase II Application Review

(a) During Phase II, each member of the panel shall review the application materials submitted regarding each applicant remaining in the applicant pool, for the purpose of determining which applicants shall be removed from the pool to leave no more than 120 of the most qualified applicants who will be invited to participate in Phase III of the application process.

(b) The maximum of 120 most qualified applicants who will be invited to participate in Phase III of the application process shall consist of the following three subpools:

(1) 40 applicants who are registered with the largest political party in California.

(2) 40 applicants who are registered with the second largest political party in California.

(3) 40 applicants who are not registered with either of the two largest political parties in California.

(c) At the panel's request, the State Auditor may assign staff to assist the members of the panel with their review of the application materials. This assistance may include, but need not be limited to, preparing summaries of applicants' qualifications and making recommendations to the panel members regarding the relative qualifications of the applicants.

(d) The panel shall remove from the applicant pool any applicant who the panel

determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(e) In reducing the applicant pool to not more than 120 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(f) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase III of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase III of the application process.

(g) The panel shall also consider whether the composition of the subpool specified in subdivision (b)(3) of this section is reflective of the State's population of voters who are not registered with either of the two largest political parties in California, including voters registered as decline-to-state and voters registered with parties other than the two largest political parties.

(gh) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase III of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

§ 60849. Phase III Interviews

(a) In Phase III of the application process, the panel shall direct the applicants remaining in the applicant pool to participate in public interviews conducted by the panel in Sacramento.

(b) The bureau shall schedule the interviews at the convenience of the panel, providing at least 57 business days notice to the applicants of the date, time, and location of the interviews. The bureau shall reimburse applicants for the reasonable and necessary travel expenses that they incur to attend an interview, including the following:

- (1) Airfare at the commercial carrier coach fare rate, supported by a receipt.
- (2) Other transportation expenses, supported by a receipt.
- (3) Living expenses not to exceed the maximum reimbursement rates for nonrepresented state employees claimed and computed in accordance with the Department of Personnel Administration regulations in effect on the date the expenses are incurred.

(c) During the interviews, questions may only be posed by members of the panel, panel staff, and legal counsel for the panel. The questioning may concern anything that is relevant to an applicant's eligibility and qualifications to serve on the commission.

(d) The panel shall record all of the interviews that it conducts and post the recordings on the bureau's website after the final interview has taken place.

(e) The bureau shall establish a deadline for the receipt of written public comments during Phase III of the application process. The deadline shall be set for a date following the conclusion of all of the interviews.

§ 60850. Phase III Applicant Review

(a) During Phase III, the panel shall review the applicants who participated in interviews by the panel, along with all of the application materials submitted regarding those applicants, for the purpose of determining which applicants shall be removed from the applicant pool to leave 60 of the most qualified applicants who will participate in Phase IV of the application process.

(b) The 60 ~~most qualified~~ applicants who will participate in Phase IV of the application process shall consist of the following three subpools:

- (1) 20 applicants who are registered with the largest political party in California.
- (2) 20 applicants who are registered with the second largest political party in California.
- (3) 20 applicants who are not registered with either of the two largest political parties in California.

(c) The panel shall remove from the applicant pool any applicant who the panel determines has a conflict of interest or does not meet the requirements of subdivision (c)(3) of section 2 of Article XXI of the California Constitution.

(d) In reducing the applicant pool to 60 of the most qualified applicants, the panel shall evaluate the applicants based on their relevant analytical skills, ability to be impartial, and appreciation for California's diverse demographics and geography.

(e) As the application process is intended to produce a commission that is reasonably representative of the State's diversity, as specified in subdivision (c)(1) of section 2 of Article XXI of the California Constitution, the panel shall also consider whether the composition of the pool of applicants to participate in Phase IV of the application process is reflective of the State's diversity. The panel shall not use formulas or specific ratios in identifying which applicants will participate in Phase IV of the application process.

(f) The panel shall also consider whether the composition of the subpool specified in subdivision (b)(3) of this section is reflective of the State's population of voters who are not registered with either of the two largest political parties in California, including voters registered as decline-to-state and voters registered with parties other than the two largest political parties.

(fg) The bureau shall post on the bureau's website a list of the applicants remaining in the applicant pool who will therefore be invited to participate in Phase IV of the application process. The bureau shall also notify the applicants removed from the applicant pool that they have been removed from the pool.

§ 60853. Phase V: Random Drawing of First Eight Commissioners

(a) During Phase V of the application process, the State Auditor shall randomly draw the names of eight applicants from those remaining after the legislative leaders have exercised their right to strike the names of up to 24 applicants from the pool of 60 of the most qualified applicants identified by the panel. The State Auditor shall randomly draw the names of eight applicants from the remaining pool of applicants as follows: three from the remaining subpool of applicants registered with the largest political party in California based on registration, three from the remaining subpool of applicants registered with the second largest political party in California based on registration, and two from the remaining subpool of applicants who are not registered with either of the two largest political parties in California based on registration. The State Auditor shall conduct the random drawing on or before November 20 of the application year in the manner prescribed by California Code of Regulations, title 2, section 60824.

(b) Notwithstanding subdivision (a) of this section, the State Auditor shall randomly draw the names of these 8 applicants from the names of all the applicants in the pool of 60 most qualified applicants identified by the panel, rather than from a reduced collection of names, if the Secretary of the Senate and the Chief Clerk of the Assembly do not jointly present, by November 15 of the application year, a list containing the names of no fewer than 12 applicants in each of the three subpools that comprise the list.

(c) The eight applicants whose names are drawn by the State Auditor shall become members of the commission.