

September 21, 2009

Elaine M. Howle, California State Auditor  
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**RE: Voters First Act: Draft Application for Commissioner**

Dear Ms. Howle:

We, the undersigned, thank you for the opportunity to comment on the draft application. Please see our comments below.

- 1) **The “privacy statement” on p. 2 of the Initial Application and p. 2 of the Supplemental Application should reflect our earlier comments as submitted on September 14.** As the privacy statement has not yet been published, we are unable to comment on it. However, we ask that the statement reflect the suggestions made in point #13 of our letter of September 14, 2009 regarding what information will be posted on the BSA’s website or otherwise publicly available.
- 2) **Suggestions for the “comprehensive statement regarding the specific duties of commissioners” on p. 1 of the Supplemental Application.** Since that statement has not yet been published, we are unable to comment on it. However, we have provided suggestions for language in the attached appendix.
- 3) **The BSA should provide additional information to the applicant that can help support her/him in completing the application.** As we suggested in our letter of June 8, 2009, this information should include links to websites<sup>1</sup> that could help confirm voter registration and political contributions made by the applicant or the applicant’s immediate family members. The information should also include instructions on how to navigate those websites. We also suggest, as we did in our letter of September 14, 2009, that the BSA provide a telephone hotline to assist applicants throughout the application process. There are also some terms on the application that

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<sup>1</sup> The California Secretary of State's website offers a roster of the 58 county election offices and their contact information, at [http://www.sos.ca.gov/elections/elections\\_d.htm](http://www.sos.ca.gov/elections/elections_d.htm). The Secretary of State's Cal-Access website provides public access to searchable databases of state campaign contributions at <http://dbsearch.ss.ca.gov/>; federal contribution data is available from the Federal Election Commission's website at [http://www.fec.gov/finance/disclosure/disclosure\\_data\\_search.shtml](http://www.fec.gov/finance/disclosure/disclosure_data_search.shtml).

could benefit from a “pop-up” or link to clarify a definition or to link to a term more comprehensively defined in the regulations.

- 4) **The online application should be made as user-friendly as possible.** Since this application can only be filled out online, it is important to ensure that the technology is accessible and easy to navigate. We applaud the BSA for structuring the application so that an applicant’s work can be saved at any point and returned to. We also suggest that: (1) an applicant be able to press the “back” button and make changes to previous sections, if necessary, before submitting the final form; (2) an applicant be able to view where she/he is on the application at any point; (3) an applicant be able to “jump” to any section of the application to work on questions in the order of their choice or return to questions more easily; and (4) an applicant be able to upload information onto the application (e.g., to write the essay in a Word document, check for word count, etc. and then upload to that section in the online application). And finally, we suggest that the application technology allow the applicant to see all the questions before proceeding to fill it out online, and that the application instructions include a suggestion to read the whole application first before beginning.
- 5) **The technology for the online application should be tested in advance.** We suggest that the online application be tested to ensure that it is user-friendly and that the online application platform should be stress-tested for volume. The tests should include developing and publishing an inventory of supported web browsers.
- 6) **There should be a mechanism to validate an applicant’s email address.** We agree that the application registration process should include an email validation system. Most websites requiring user registration provide an email validation system to ensure that their system is not “spammed” with false applicants and to ensure that the applicant properly entered his or her email address. The validation process usually requires an applicant, once registered, to click on a validation email automatically sent by the BSA server before the applicant can continue with completion of the application.
- 7) **Password retrieval/change ability.** The system should provide applicants with the ability to change their password at their discretion and to also retrieve their password if they have forgotten it. Most websites requiring user registration provide this as a standard feature. If a registered user has forgotten her/his password, she/he should be able to simply input her/his email address and the password will be emailed to them.
- 8) **There should be a verification sent to the applicant that the online application has been received.**
- 9) **Application should not require submission of a photo.** Although raised by a commenter at the September 14, 2009 hearing, we object to requiring an applicant’s photograph be submitted as part of the application. First, a photo does not provide the Applicant Review Panel with any information relevant to an applicant’s qualifications. Second, it would create additional technological hurdles both for the Bureau and more importantly, for the applicant, that could create unnecessary burdens, especially in light of the minimal benefit received from a photograph.
- 10) **Letters of recommendation/model letters/standard format.** A commenter at the September 14, 2009 hearing requested that the BSA provide sample letters of recommendation or a standard

format. While we do not believe that letter writers should be constrained by sample letters or a standard format, we do believe it is a good idea to provide persons writing letters of recommendation with some guidance as to what issues should be raised in the letter. For example, the letter writers could be encouraged to address the following: character, integrity, and motivations of the applicant; how the applicant has demonstrated impartiality, appreciation of California's diverse demographics and geography, and possession of relevant analytical skills to serve as a Commissioner. Certain basic information and limits should be included, including a two page limit, telephone contact information for the recommender, and the length and nature of the recommender's relationship with the applicant.

- 11) **Don't ask applicants to provide information about economic status (p. 3 of the Initial Application).** We refer you to point #10 in our letter of September 14, 2009. If, as we suggest, economic diversity is not included in the definition of diversity in Section 60814 in the proposed regulations, we do not think the BSA needs to require the applicant to provide information about household income. We also believe that asking for that information may prove unduly intrusive to the applicant.
- 12) **Don't ask applicants for a social security number or tax ID.** Although a commenter at the September 14, 2009 hearing suggested that the BSA ask applicants to provide that information, we do not think that having that information would necessarily be useful to the Applicant Review Panel (especially in light of our point #11 above) and are concerned that asking for that information may prove unduly intrusive to the applicant.
- 13) **Conflicts of Interest.** Regarding subsections (a) through (g) of question 5 of the Initial Application, it would be helpful for the applicant to know that some of these terms (e.g., "paid consultant,") have been defined in the regulations. It might be appropriate to have a "pop-up" explanation or link to the regulations here.
- 14) **In the instructions for the Phase II application, please include a statement that lets people know that some questions (e.g., re: immediate family members) are being asked to verify information gathered in Phase I.**
- 15) **Specific points regarding the Initial Application:**
  - a) p. 1: Include a field to capture prefix and suffix.
  - b) p. 2: Replace "Physical Address" with "Residence Address."
  - c) p. 3: Regarding the "racial or ethnic background" categories, we suggest "Hispanic or Latino" instead of just "Hispanic," and that "Filipino" be included in the "Asian" category, so as to conform more closely with standard practice.
  - d) p. 4: The term "American Independent Party" could benefit from a "pop-up" providing more explanation, as some might confuse being registered with the American Independent Party with being an independent voter. Similarly, "Decline to State/Not Registered with a Political Party" could be clarified by reminding people that that term is not the same as being a member of the "American Independent Party."
  - e) p. 4: Add "Check all that apply" to Question 4.

- f) p. 4: The definition of “immediate family members” in Question 5 could be clarified with a “pop-up” that provides an example (e.g., “my daughter does not reside with me but I did give her a gift of \$1,500 for home repairs. She qualifies as a member of my immediate family.”)
- g) p. 4: Regarding Question 5, we suggest, as we did in the proposed application submitted with our letter of June 8, 2009, that the set of questions be asked twice: once as they relate to the applicant and once as they relate to members of the applicant’s immediate family. For the second set of questions, we suggest they begin with a statement like “the following questions only relate to members of the immediate family as defined in bold ...,” and that the definition of immediate family be moved to that section.
- h) p. 4: Question 5(g) could be clarified by a “pop-up.” We suggest the following language: “Federal, state, and local campaign finance laws govern how campaign contributions are reported and attributed to donors. For example, a campaign contribution from a joint checking account may be attributed only to the sole signer, or, if signed by more than one person, may be automatically apportioned among them in equal amounts. If you are unsure, please contact the FEC at \_\_\_\_\_, the FPPC at \_\_\_\_\_, or the Bureau of State Audits hotline for more information.”
- i) p. 5: “California” spelled wrong in Question 5(b).

**16) Specific points regarding the Supplemental Application:**

- a) p. 1: Add “please type in your initials in caps” after initial box, to clarify.
- b) p. 1: We think the word limit for the essays should be extended to 500 words.
- c) p. 3: Question 4 – “relevant” is misspelled.
- d) p. 3: Regarding the questions about education and employment history, we suggest that it be made clear that an applicant can fill in the box and enter multiple times if more than one school was attended, or if she/he had more than one job.
- e) p. 3: After the Education box, add “if no diploma or certificate was obtained, please state the number of years attended.”
- f) p. 3: Add a bullet under “Employment History” that states, “As an alternative to a job, you may write in “retired,” “volunteer,” or “other,” and can describe in more detail under the “Activities” question which follows.” (See also comments in 16 (h) below.)
- g) p. 4: Is there a word limit for the box “Description of Duties Performed?”
- h) p. 4: "Activities": Rename this from "Activities" to "Any other relevant information" and instruct applicants to provide any other information they consider relevant but that is not otherwise requested in the application. It is likely that most activities will already be mentioned in the preceding essay questions, and there is no section of the application where the applicant can enter information he/she considers relevant but which does not fit nicely into the application questions. If the "Activities" section is retained in its current form, in the

“Activities” instructions, add “It might be useful to include information about amount of time engaged in activities, level of responsibility or role, titles held, etc.”

- i) p. 4: Re: “Criminal History,” please see point #7 in our letter of September 14, 2009.
- j) p. 5: Delete question about financial contributions (please see point #8 in our letter of September 14, 2009).
- k) p. 5: Insert “any of” after “every member of your family that falls into” in the instructions for “Immediate Family Information.”
- l) p. 6: “Recommendation” is spelled wrong.
- m) p. 6: Insert “postmarked or electronically submitted by” before “on or before April 2.”
- n) p. 6: In the absence of any explanation for inclusion of this requirement, and due to its limited value in enhancing the ability to assess an applicant’s qualifications and/or conflicts of interest, we do not recommend asking interviewees to submit a Form 700 Statement of Economic Interest. The Form 700 requires disclosure of income, gifts, and other assets only 12 months prior to the date of completion and thus provides incomplete information for the required ten-year conflict of interest period under the Voters First Act. Further, requiring completion of the lengthy and complicated Form 700 – a document subject to public disclosure – places undue burdens on the applicant without sufficiently furthering the purposes of the Act. Requiring completion of the Form 700 at this stage in the application process would likely deter applicants from proceeding. It would be more appropriate to require submission of the Form 700 once an applicant has been named as a Commissioner.

Again, we appreciate the opportunity to present these comments to you. We encourage you to contact us if you have any questions.

Sincerely,

Janis R. Hirohama  
President  
League of Women Voters of California

Kathay Feng  
Executive Director  
California Common Cause

Alice A. Huffman  
President  
California State NAACP

Arturo Vargas  
Executive Director  
National Association of Latino Elected and  
Appointed Officials (NALEO) Educational Fund

Kim Alexander  
President and Founder  
California Voter Foundation

James P. Mayer  
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California Forward

Robert M. Stern  
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Center for Governmental Studies

Stewart Kwoh  
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Douglas Johnson  
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Rose Institute for State and Local Government  
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Steven J. Reyes  
Associate Attorney  
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\*Former Voting Rights Attorney,  
**MALDEF (for identification purposes only)**

**Appendix to Letter to Elaine Howle of September 21, 2009: Proposed Statement  
Regarding the Specific Duties of Commissioners**

Applicants for the Commission should be aware that Commissioners will need to devote a substantial amount of time, attention and care to their Commission duties.

Selection of Remaining Six Commissioners: Under Regulation 60853, the first eight members of the Commission selected by random drawing must choose the remaining six Commissioners from a specified pool of applicants, in accordance with criteria set forth in the Voters First Act. This process will involve, at the minimum, reviewing application materials of individuals in the applicant pool, conducting deliberations about the applicants, and voting to determine who will fill the remaining six Commission seats. The process is likely to start around November 20, 2010, and must be completed by December 31, 2010.

Establishing District Maps for the California Senate, Assembly and Board of Equalization (the “redistricting process”): The Commission as a whole must establish the district maps for the Senate, Assembly and Board of Equalization in accordance with criteria set forth in the Voters First Act. This redistricting process will involve, at the minimum:

- Selection of a chair and vice chair of the Commission;
- Hiring of staff, legal counsel, and consultants as needed; these staff, legal counsel and consultants will be available to assist with all Commission activities;
- Establishing and implementing an open hearing process which allows public input to the redistricting process; this will involve at least two sets of hearings which the Commissioners must attend;
- Developing district maps which must conform to certain criteria set forth in the Voters First Act; this will involve the evaluation of data, statistical materials and other relevant information, as well as the application of appropriate legal standards to drawing district boundaries;
- Soliciting and evaluating public testimony and comment on the maps, which will involve attendance at hearings and listening to and formulating questions about public testimony;
- Conducting deliberations with other Commissioners about the district maps, and voting on the approval of maps; this will involve reaching nine affirmative votes for each map, distributed among Commissioners of different political party affiliation as directed by the Voters First Act;
- Issuing a report on the maps that explains the basis on which the Commission made its decisions in achieving compliance with the criteria set forth in the Voters First Act; and
- Conducting all of the foregoing activities in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process, including, but not limited to, holding meetings in public, making all records of the

Commission public, and refraining from Commission-related communications outside of a public hearing.

The redistricting process will start on January 1, 2011, and must be completed by September 15, 2011.

On average, Commissioners will spend anywhere from 10 to 20 hours per week fulfilling their Commission responsibilities, but there will be times where significantly more hours are required in a given week. In order to ensure widespread public accessibility of the hearings, it is likely that several will be scheduled at times that are convenient for public attendance. Thus, Commissioners will need to participate in several hearings which will be scheduled on weekday evenings after business hours and on weekends.

In addition, while the Commissioners' primary redistricting responsibilities must be completed by September 15, 2011, their terms of service officially extend for ten years until the next decade's Commission is seated. The Commissioners may have continuing duties if the Commission's maps are subject to court review and/or initiative challenge. Additionally, the Commissioners may choose to propose changes to the Voters First Act and related rules and regulations, which may involve time for both deliberations and public hearings.

Commissioners shall be compensated the rate of \$300/day for each day engaged in Commission business. Commissioners are also eligible for reimbursement of personal expenses incurred in the connection of duties performed pursuant to the Voters First Act.

Individuals appointed to the Citizens Redistricting Commission are ineligible for a period of 10 years beginning from the date of the appointment to hold elective public office at the federal, state, county, or city level in California. A Commissioner shall be ineligible for a period of five years beginning from the date of appointment to hold appointive federal, state, or local public office, or serve as paid staff for the Legislature or any individual legislator, or to register as a federal, state, or local lobbyist in California.