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12/06

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December 21, 2007

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Dear Ms. English, Ms. Feng, and Mr. Fleming:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, I am writing to advise you of our opposition to the "Voters FIRST Act" (the "Initiative"), which would create a redistricting commission in California to draw the lines for state Senate, Assembly, and Board of Equalization districts. Redistricting is a fundamental component of our representative democracy and we firmly believe that the process should be constructed in a way that guarantees adherence to the Constitution, federal law and the Voting Rights Act of 1965 (VRA), and the full and meaningful participation of the public.

Our Board of Directors has developed principles that we believe should guide a redistricting process, whether it is conducted by a state legislature, an independent commission, or some other entity. In addition, our Board has set forth criteria that should be applied in the development and evaluation of independent redistricting commission proposals. These principles and criteria are contained in the attached document. In our past discussions with you on redistricting issues, we have shared these principles, and we have consistently adhered to them during our advocacy on these issues. We understand that as proponents of the Initiative, you share our overall vision for achieving a sound, open, and fair redistricting process in California; however, we believe that the specific provisions of the Initiative

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are not consistent with our principles and will not further the achievement of this goal. We discuss our specific concerns below.

I. Jurisdictions covered by the redistricting commission's plans: Under the Initiative, the California state legislature would establish the boundary lines for Congressional districts, while the redistricting commission would establish the boundary lines for California legislative and State Board of Equalization districts. We oppose this bifurcation of redistricting responsibilities for two reasons. First, we believe it is important that there be uniform standards and criteria for California redistrictings, and that there be consistency in applying those criteria. In addition, creating two separate redistricting processes would impair the ability of members of the public to fully participate in both of those processes. The bifurcation could increase the number of hearings that members of the public would be required to attend in order to share their perspectives on all of the proposed redistricting plans. Moreover, the ability of members of the public to effectively participate in the redistricting process would be greatly enhanced if only one entity uses uniform criteria and a coherent approach when creating plans for all the jurisdictions covered in Article XXI of the California Constitution. Redistricting reform should promote openness, transparency, and accountability in the redistricting process; a bifurcated process undermines this goal.

We recognize that the Initiative attempts to provide for coordination of the two separate redistricting processes, and sets forth similar criteria for the redistrictings conducted by the legislature and the commission. However, with two different entities conducting the redistricting, there is still a significant risk that there will be differing interpretations and application of the criteria. Moreover, given the competing legislative demands in the state legislative schedule, it will be difficult for the legislature and the commission to achieve the level of coordination needed to best facilitate public access to the redistricting process.

II. Redistricting criteria: We believe that several of the Initiative's redistricting criteria will make it more difficult for commissioners to construct maps that are fully compliant with the VRA. First, one of the criteria requires that Assembly districts be nested within Senate districts, and that Senate districts be nested within Board of Equalization districts. We have consistently opposed nesting requirements in redistricting criteria, because as past redistrictings in California (particularly in 1991) have demonstrated, this requirement can lead to the creation of districts that deny Latino and other federally-protected minority voters the opportunity to elect the candidates of their choice, in contravention of the VRA. During our discussions with you, we have debated the impact of nesting on VRA compliance, and because this debate has been so intense, the Institute of Governmental Studies (IGS) at the University of California at Berkeley conducted independent research on this question. Their research report released in August 2007 determined that nesting for California legislative districts impedes the creation of majority minority seats, which is important for VRA compliance. The report suggests that the constraint of nesting appears clearest for Latino seats, which may result from the fact that the Latino population is somewhat dispersed throughout the state. Thus, we are disappointed that despite this evidence, a nesting requirement still remains in the Initiative.

The Initiative does state that the nesting requirement should apply only if it does not conflict with VRA compliance. However, we believe its inclusion will complicate the work of the commissioners by adding an additional constraint to the list of criteria that the commissioners must use when developing maps, thereby creating confusion for the commissioners in determining when and how to nest districts. In addition, we do not see how commissioners can make the determination that a Senate map of nested Assembly districts is in compliance with the VRA, if the commissioners have not developed and evaluated a non-nested map for comparison.

The criteria also generally require districts to respect the “geographic integrity of any city, county, city and county, neighborhood, or community of interest...” We believe that this requirement does not provide adequate guidance to commissioners regarding when communities of interest should be kept together even when those communities cross the boundaries of city or county lines. In order to provide Latinos and other under-represented groups the opportunity to elect candidates of their choice, it is important the communities of interest be kept together even if those communities are not within the same political subdivision. The Initiative’s criteria do not clearly state this priority.

In addition, with regard to communities of interest, the Initiative provides, “Communities of interest shall not include relationships with political parties, incumbents or political candidates.” Moreover, the Initiative prohibits the consideration of the place of residence of incumbents when drawing maps. We are concerned that the reference to the exclusion of relationships with political parties, incumbents, or political candidates will inhibit testimony and robust discussion from voting rights advocates and community members about what constitutes a community of interest. Residents may feel that there is a complex set of factors that unite their communities, such as shared economic, social, or cultural ties, and their political relationships may be one of these factors that are relevant to defining what unifies them. The Initiative’s exclusion of these relationships could deter voting rights advocates or residents from providing the commissioners with relevant information about communities of interest.

With respect to consideration of incumbents’ residence, we believe that commissioners need to be aware of the impact of their maps on incumbent officeholders as part of their determination of whether the districts are VRA-compliant. We are aware that the U.S. Department of Justice has blocked redistricting plans where a district was created and the minority incumbent was removed from the district. Removing an incumbent from a district where a group of federally-protected voters do not comprise a clear majority of the district’s voters could well cause those voters to lose their elected representative of choice.

We understand that the Initiative’s proponents are concerned that the commissioners will make some decisions about district lines based solely on a desire to protect incumbents. However, we believe that the best way to prevent this outcome is to ensure that the Initiative has clear criteria for the redistricting plans, reasonable conflict-of-interest requirements for commissioners, and strong provisions for an open hearing and commission deliberation process. Provisions barring

the commissioners from having access to information about political relationships during the redistricting process create the risk that some commissioners will come to the redistricting hearings and deliberations with knowledge about certain political relationships from their own prior experiences that other commissioners do not possess. Under these circumstances, we believe there is a greater risk that individual commissioners will improperly use political relationship information in making redistricting decisions than if all commissioners have the same information obtained through open and public testimony.

III. Appointment of redistricting commission members: Under the Initiative, the State Auditor would establish a panel to review commission applicants, composed of three randomly chosen auditors employed by the State. This panel would select a pool of 60 qualified nominees to serve on the redistricting commission. California's legislative leaders are permitted to strike candidates from this pool, and the State Auditor would then randomly draw names to fill eight of the commission seats. Those eight commissioners then vote to fill the remaining six seats from the applicant pool.

We have several concerns about the foregoing process. First, in accordance with our Board principles, we believe that a majority of the commissioners must be appointed by individuals or entities that are accountable to the public. Thus, we are opposed to the random selection process for eight of the commissioners, because ultimately there is no entity that is accountable to the public that actually makes the decision on which specific nominees are appointed to the commission. Merely providing California state legislative leaders with the power to strike candidates from the nominee pool does not ensure the level of public accountability required for the appointment process.

In addition, under our Board's principles, the membership of the independent redistricting commission must reflect the geographic, racial, ethnic, gender, and age diversity of California. We do not believe the Initiative's random selection process for eight of the commissioners is adequate to achieve this goal.

We recognize that the Initiative has general provisions that attempt to promote the diversity of the applicant pool, and the selection of applicants on the basis of "an appreciation for California's diverse demographics and geography." We also acknowledge that the Initiative provides a strong mandate for the diversity of six of the commissioners. However, we do not believe that, overall, the Initiative's provisions are strong enough to ensure that the Commission will adequately reflect the state's diversity.

Finally, we question whether the panel of auditors who would select applicants for eight of the commission positions would have the expertise to effectively assess the skills and knowledge needed by applicants to serve in commission positions. State auditors have experience in evaluating the use of state funds to ensure financial accountability and program compliance. However, this experience does not ensure that the randomly chosen state auditors for the panel will be familiar with the kind of skills required to understand the redistricting process and the

importance of VRA compliance, evaluate the data and testimony provided at public hearings, apply redistricting criteria, and develop district maps. With regard to expertise, the only guidance the Initiative provides to the panel of auditors is that the applicant pool be created on the basis of “relevant analytical skills.” We question whether a selection process involving state auditors who are guided by this vague standard would result in the most qualified applicants being chosen for the applicant pool.

IV. Commissioner qualifications and restrictions on post-redistricting service: Our Board’s principles envision that there should be requirements for the qualifications and conduct of commissioners to ensure that they avoid conflicts of interest and the appearance of impropriety, but that such requirements must be reasonable. We believe that the Initiative’s provisions setting forth the types of service and activities that would disqualify an applicant from serving on the commission, as well as the restrictions on post-redistricting service, are overly broad and would prevent many qualified individuals from serving on the commission.

For example, the ten-year bar on applicants and their immediate family who have served as officers or employees of the campaign committee of a federal or state candidate would disqualify individuals who had merely served in a titular or administrative campaign role several years before the redistricting. Similarly, an individual who had contributed \$2,000 or more to a candidate for local elected office (such as a school board or city council race) in any one of the ten years preceding the application process would be disqualified. The bar on post-redistricting service would prevent a commissioner from serving as an appointee to a local public office for five years after appointment to the commission. This would prevent a commissioner from taking a position such as appointed service on a city or school board commission that addresses children and youth affairs, or cultural heritage matters. Yet the ability of a commissioner to influence the appointments to such positions by drawing jurisdiction lines while on the commission is extremely remote, and there is virtually no potential for the appearance of impropriety if the commissioner takes such a position after serving on the commission. The Initiative’s requirements for commissioners and post-redistricting service restrictions would prevent and deter qualified individuals who are engaged in some of the most basic acts of civic participation that create no meaningful risk of conflict of interest from serving on the commission.

V. Timing of redistricting process: The Initiative provides for a year-long application and selection process to constitute the commission. For the state’s next redistricting, this would occur in 2010. Thus, the earliest the commission could convene is in January of 2011. The Initiative also requires that final maps be produced by September 15 of the year of its convening, which only allows a nine-month period for the entire process of convening the commission, hiring of staff and consultants, organizing and holding hearings, dissemination of proposed maps, and commission deliberations. We question whether this nine-month period provides sufficient time to conduct a sound and open redistricting process.

In conclusion, we oppose the Initiative because we believe it is not an effective vehicle to achieve redistricting reform in California. Its bifurcated redistricting process for Congressional

Ms. Jeannine English, Ms. Kathay Feng, and Mr. David Fleming

December 20, 2007

Page 6

and state redistrictings could result in a lack of coherency in redistricting criteria and impaired public participation during commission hearings, both of which undermine the goal of achieving an open and accountable redistricting process, one of the main purposes of redistricting reform. Some of its redistricting criteria could make full compliance with the VRA difficult, and prevent open and robust discussion of information relevant to ensuring that Latinos and other under-represented groups have an opportunity to elect the candidates of their choice. The Initiative's provisions for the commission application and selection process do not adequately further the creation of a commission that reflects the diversity of the state's population. These provisions do not vest appointing authority for a majority of the commission in the hands of an entity that is accountable to the public, and do not ensure that individuals with expertise on redistricting will be involved in the selection of commissioners. The commissioner qualifications and restrictions on post-redistricting service are overly broad, and would disqualify or deter qualified individuals from serving on the commission merely because they have participated in the civic life of their communities in a manner that does not raise any meaningful risk of conflict of interest. Finally, the Initiative does not provide an adequate amount of time for the commission to conduct an effective redistricting process. If the Initiative qualifies for the ballot, we will vigorously oppose it.

Should you have any questions about this letter, please do not hesitate to contact me or Rosalind Gold, our Senior Director of Policy, Research and Advocacy at [rgold@naleo.org](mailto:rgold@naleo.org) or 213-747-7606, ext. 120.

Sincerely,



Arturo Vargas  
Executive Director

Attachment

cc: The Honorable Arnold Schwarzenegger, Governor of California  
Members of the California State Senate and Assembly

## ATTACHMENT



Educational Fund and National Association of Latino Elected and Appointed Officials

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### PRINCIPLES GUIDING REDISTRICTINGS OF POLITICAL SUBDIVISIONS AND INDEPENDENT REDISTRICTING COMMISSIONS

Adopted by the Boards of Directors of the National Association of Latino Elected  
and Appointed Officials (NALEO) and the NALEO Educational Fund  
October 2005

The process by which federal, state and local political jurisdictions draw their district lines has a significant impact on the ability of Latinos to have a meaningful opportunity to participate in our electoral process and to elect the candidates of their choice. The Boards of NALEO and the NALEO Educational Fund believe that in order to strengthen our democracy, the process and criteria used in redistricting must maximize the opportunity to achieve full Latino empowerment and representation. The Boards have adopted a set of principles which should apply to all redistrictings conducted by political jurisdictions, and a set of criteria to specifically assess independent redistricting commissions.

#### PRINCIPLES FOR REDISTRICTINGS

1. All districts must comply with the requirements of the U.S. Constitution and the Voting Rights Act of 1965. This principle must be the highest priority for any redistricting.

The remaining principles are important, equally ranked in priority.

2. To the extent practicable, district boundaries should respect existing political subdivisions and communities of interest. To achieve this objective, district lines should use the boundaries of political subdivisions and undivided census tracts; natural geographic features; and shared racial, ethnic, social and economic interests.
3. Redistricting plans should maximize Latino electoral opportunities. This includes maximizing districts where Latinos have the opportunity to elect the candidates of their choice, as well as districts where Latinos can influence the outcome of elections.
4. The process for developing redistricting plans must be transparent and provide interested parties and the public a meaningful opportunity to participate and be heard.
5. Redistricting should be limited to once following each decennial Census. This will ensure that redistricting is conducted with the most recent and reliable data on population growth and composition. It will also prevent opportunistic redistrictings between Censuses that are motivated by partisan considerations.

#### CRITERIA FOR INDEPENDENT REDISTRICTING COMMISSIONS

1. The membership of the independent redistricting commission must reflect the geographic, racial, ethnic, gender, and age diversity of the political jurisdiction. Thus, the size, composition, and criteria and process for selection of commissioners must further the achievement of this diversity.

2. A majority of the commissioners must be appointed by individuals or entities that are accountable to the public.
3. There should be reasonable requirements for the qualifications and conduct of commissioners to ensure that they avoid conflicts of interest and the appearance of impropriety.
4. The independent commission's appointment process should be subject to judicial review before the commission is officially sworn in. Jurisdictions should also establish a system that allows for judicial review of the plans developed by the independent commission, and for a clear process for timely review in the event of legal challenges.
5. An independent redistricting commission should have sufficient funding which enables it to carry out its responsibilities in an effective manner, including dedicated funding for commissioners, staff and consultants.