



Proposition 11: An Ineffective Strategy to Achieve Open and Accountable Redistricting

Proposition 11, an initiative that would create a redistricting commission to draw lines for state Senate, Assembly, and Board of Equalization districts, will appear on California's November 2008 ballot. **The NALEO Educational Fund strongly opposes Proposition 11, because it violates key principles (attached) that should guide any redistricting process:**

I. Proposition 11 risks reducing coherency and public participation, because of its two-track process: Under the measure, the Legislature would establish the boundaries for Congressional districts, while the redistricting commission would establish them for California legislative and Board of Equalization districts. The use of two separate processes greatly heightens the risk of incoherent standards and criteria for California redistrictings. In addition, members of the public would confront difficulties when trying to fully participate in both processes. The bifurcation could increase the number of hearings that members of the public would have to attend to share their perspectives on all the proposed redistricting plans.

Ultimately, we can greatly enhance public participation if a single entity uses uniform criteria and a coherent approach for all jurisdictions covered. **Redistricting reform must promote openness, transparency, and accountability; a two-track process undermines this goal.**

II. Proposition 11 impairs compliance with the Voting Rights Act and the ability of under-represented groups to elect the candidates of their choice: Several of its redistricting criteria will make it more difficult for commissioners to construct maps that are fully compliant with the Voting Rights Act of 1965 ("VRA").

- **Its inflexible nesting requirement could reduce minority representation:** The proposition specifies that each Assembly district lie completely within a Senate district, and each Senate district lie completely within a Board of Equalization district. However, past redistrictings in California (particularly in 1991) have demonstrated that this rigid constraint can lead to districts that deny Latino and other federally-protected minority voters the opportunity to elect the candidates of their choice, in contravention of the VRA.
- *Research by the Institute of Governmental Studies (IGS) at the University of California at Berkeley supports this conclusion.* Its August 2007 report determined that nesting for California legislative districts impedes creation of majority minority seats, which are important for VRA compliance. The report suggests that the constraint imposed by nesting appears clearest for Latino seats.

- *Proposition 11 attempts to reconcile nesting with VRA compliance, but its provisions will breed further problems.* They are likely to create confusion for commissioners in deciding when and how to nest districts. In addition, it is difficult to envision how commissioners can make the determination that a Senate map of nested Assembly districts complies with the VRA, if the commissioners have not developed and evaluated a non-nested map for comparison.
- Proposition 11 insufficiently protects communities of interest: To provide Latinos and other under-represented groups the opportunity to elect candidates of their choice, redistricting plans must unite communities of interest—those with shared social, cultural, ethnic, geographic, or economic bonds—even if the communities are not within the same political subdivisions. However, Proposition 11:
 - *Provides inadequate guidance to commissioners about holding communities of interest together.*
 - *Could prevent the commissioners from hearing relevant testimony about relationships that unite different communities.* These restrictions could inhibit robust discussion from voting rights advocates and community members and deter them from providing the commissioners with key information about the complex set of factors that define communities of interest.

III. Proposition 11’s process for appointing commission members will not ensure

accountability, diversity, or expertise: By the terms of the proposition, a panel of randomly-chosen state auditors would first create a pool of 60 nominees for the 14-member commission. California’s legislative leaders could strike candidates from this pool. The State Auditor would then randomly draw names from the pool to fill eight commission seats, and the eight selected commissioners would vote to fill the remaining six seats from the applicant pool.

- Lack of accountability: The random selection process for the eight commissioners, who in turn choose the remaining six, does not vest decision-making authority for commissioner appointment in the hands of an entity accountable to the public.
- Lack of diversity: This procedure will make it difficult to create a commission whose membership reflects the geographic, racial, ethnic, gender, and age diversity of California. While the proposition includes some provisions that attempt to promote commissioner diversity, they are inadequate to achieve this goal.
- Lack of expertise: It is unclear whether the panel of auditors who would select the 60-member pool would have the expertise to effectively assess the skills and knowledge that commissioners require. State auditors have experience evaluating the use of state funds to ensure financial accountability and program compliance, but they are not necessarily familiar with the abilities needed to understand the technical aspects of the redistricting process, such as VRA compliance, evaluation of data and testimony provided at public hearings, application of redistricting criteria, and development of district maps.
 - *The selection standard is hazy.* As guidance, the proposition simply tells the panel of auditors to create the applicant pool on the basis of “relevant analytical skills.” It is unclear whether a selection process involving state auditors guided by this vague criterion would result in well-qualified applicants being chosen for the applicant pool.

IV. Proposition 11 would unreasonably prevent or discourage capable individuals from serving: While it is important that there be provisions to ensure that commissioners avoid conflicts of interest and the appearance of impropriety, these requirements must be reasonable. However, the proposition's provisions are overly broad. **They would deter qualified citizens 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.**

- *The proposition bars skilled individuals based on tenuous grounds.* For instance, its ten-year ban on applicants and their immediate family who have served as officers or employees of the campaign committee of a federal or state candidate would rule out individuals who had merely served in a titular or administrative campaign role many years earlier. 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 proposition excessively restricts post-redistricting service.* It would prevent a commissioner from serving as an appointee to a local public office for five years after joining the commission. As a result, a commissioner could not accept a position such as appointed service on a city or school board commission that addresses children and youth affairs, or cultural heritage matters. Yet it is almost impossible for a commissioner to influence appointments in these areas by drawing jurisdiction lines, and there is virtually no potential for the appearance of impropriety if the commissioner takes such a position after serving on the commission.

V. Proposition 11 allows too little time to conduct a sound and open redistricting: The measure creates a year-long application and selection process to constitute the commission. For the state's next redistricting, this process would take place in 2010. Thus, the commission could convene no earlier than January of 2011. Proposition 11 also requires that final maps be produced by September 15 of the year of its convening, which allows just nine months for the commission to carry out the entire process: meeting, hiring staff and consultants, organizing and holding hearings, disseminating proposed maps, and deliberating. This telescoped period is unlikely to provide enough time to conduct a sound and open redistricting process.

For more information about the NALEO Educational Fund's work on redistricting and its opposition to Proposition 11, please contact Rosalind Gold (213) 747-7606, ext. 4420, rgold@naleo.org.

ATTACHMENT



Educational Fund and National Association of Latino Elected and Appointed Officials

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
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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.