



## California Initiative Review (CIR)

Volume 2010

Article 6

1-1-2010

# Proposition 20: Redistricting of Congressional Districts. Initiative Constitutional Amendment.

Matt Vance

*University of the Pacific, McGeorge School of Law*

Steve Kelly

*University of the Pacific, McGeorge School of Law*

Follow this and additional works at: <https://scholarlycommons.pacific.edu/california-initiative-review>



Part of the [Legislation Commons](#)

### Recommended Citation

Vance, Matt and Kelly, Steve (2010) "Proposition 20: Redistricting of Congressional Districts. Initiative Constitutional Amendment.," *California Initiative Review (CIR)*: Vol. 2010 , Article 6.

Available at: <https://scholarlycommons.pacific.edu/california-initiative-review/vol2010/iss1/6>

This Article is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in California Initiative Review (CIR) by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# CALIFORNIA INITIATIVE REVIEW

## Proposition 20: Redistricting of Congressional Districts. Initiative Constitutional Amendment.

Copyright © by University of the Pacific,  
McGeorge School of Law

By,

**Matt Vance**

*J.D., University of the Pacific, McGeorge School of Law to be conferred May 2011  
B.A., Business Economics, University of California Santa Barbara, 2007*

&

**Steve Kelly**

*J.D., University of the Pacific, McGeorge School of Law to be conferred December 2012  
B.A., Political Science, University of California Berkeley, 2006  
M.A., Education, University of California Berkeley, 2008*

### I. EXECUTIVE SUMMARY

The California State Constitution requires that the State Legislature adjust the boundary lines of districts once every ten years following the federal census for the State Assembly, State Senate, State Board of Equalization, and California's congressional districts for the U.S. House of Representatives (80 Assembly lines, 40 Senate lines, and 53 congressional lines). The boundaries for these districts are adjusted to ensure each contains approximately the same number of people. This process is called “redistricting.” The State Legislature then draws maps for each congressional district.<sup>1</sup>

However, in 2008, California voters passed Proposition 11 which created the Citizens Redistricting Commission (“Commission”). The Commission is charged with drawing maps for the various state districts, starting in 2011. Proposition 11 also created a public process and implemented new redistricting guidelines in order to militate against designing districts which favor a candidate or political party.<sup>2</sup>

Proposition 20 – the topic of this review – extends the Commission’s responsibilities a step further. Proposition 20 would take the boundary determination of California's congressional districts away from the State Legislature and give it, instead, to the Commission.<sup>3</sup> Specifically, Proposition 20 seeks to accomplish the following: (1) remove elected representatives from the process of establishing congressional districts and transfer that authority to the recently authorized 14-member Citizens Redistricting Commission; and (2) require any newly-proposed district lines to be approved by nine of the fourteen commissioners including three democrats, three republicans, and three from neither party.<sup>4</sup>

### II. EXISTING LAW

#### a. Historical Background – Catalyst for the Creation of Proposition 20

Gerrymandering has long been a major concern in the creation of a fair and democratic election process. It is, indeed, the major motivation for Proposition 20. Gerrymandering is the process of dividing up geographic regions into voting districts in order to give an unfair advantage to one party in elections or to hinder particular groups of constituents based on their political, racial, linguistic, religion or class status. It takes the form of two different strategies. The first strategy is packing, which concentrates as many voters of one political affiliation into a single district.<sup>5</sup>

---

<sup>1</sup> Easy Voter Guide, [http://lwvc.convio.net/site/PageServer?pagename=easyvoter\\_guide\\_propositions](http://lwvc.convio.net/site/PageServer?pagename=easyvoter_guide_propositions).

<sup>2</sup> *Id.*

<sup>3</sup> California Secretary of the State, *California Official Voter Information Guide*, Proposition 20: Redistricting of Congressional Districts (2010) available at <http://www.voterguide.sos.ca.gov/propositions/20/>.

<sup>4</sup> *Id.*

<sup>5</sup> The Redistricting Game, <http://www.redistrictinggame.org/index.php?pg=learnaboutmission&mission=2>.

Packing reduces the voters of a particular type or group representation in a single district while denying them representation across districts.<sup>6</sup> Conversely, it can be positively used to obtain representation for a community of common interest which would otherwise dilute over several districts so as to render them politically insignificant.<sup>7</sup> The second strategy, often called cracking, involves spreading like-minded voters apart across multiple districts to dilute their voting power in each.<sup>8</sup> Cracking denies voters of a particular type or group representation in multiple districts.<sup>9</sup>

Many believe that California's current redistricting system feeds into the negative aspects of gerrymandering. For example, one article, written by [insert name of person/institution who wrote the article you got this information from] states that in California, the historically Democratic-controlled Legislature has perpetually created oddly shaped district lines which throw Republican incumbents together and carve out new districts that favor Democratic candidates.<sup>10</sup> As evidence of this, [name] points to the fact that Democrats, at times, are able to win a majority of California's U.S. Congressional seats, despite earning less than a majority of the votes.<sup>11</sup> In the same vein, one Republican consultant commented on California's latest redistricting effort, believing the effort unfairly protected incumbents of both parties. He states such redistricting arrangements "basically [do] away with the need for elections.

The map below contains two districts which some have accused as being a product of gerrymandering based on their distorted configuration.

---

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

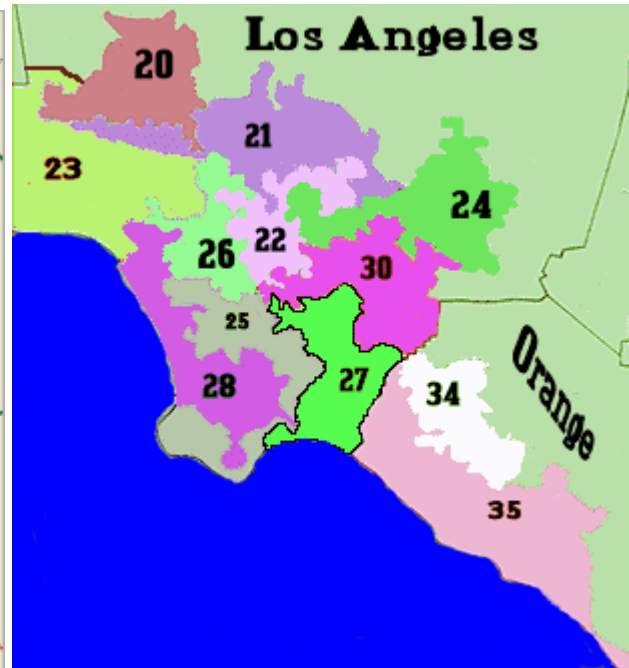
<sup>9</sup> *Id.*

<sup>10</sup> Douglas J. Amy, How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems, <http://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>.

<sup>11</sup> *Id.*



California's 11th Congressional District



State Senate Districts in the Los Angeles area

**b. Historical Background – Chronology of Events**

Article XXI of the California Constitution requires that the legal process of redrawing the boundaries of California's political districts be conducted through the legislative process.<sup>12</sup> In order to comply with the federal Voters Rights Act, the State Constitution requires that the state adjust the boundary lines of districts once every ten years following the federal census for the State Assembly, State Senate, State Board of Equalization, and California's congressional districts for the U.S. House of Representatives.<sup>13</sup> Redistricting legislation is introduced, moved through the hearing process, passed out of the Legislature and sent to the Governor much like any other bill.<sup>14</sup> In the past, district boundaries for all of the offices were determined in bills that became law after they were approved by the Legislature and signed by the Governor, except when the Legislature and Governor disagreed, in which case the California Supreme court performed the redistricting.<sup>15</sup>

In 1999, Republicans gathered enough signatures to propose a redistricting initiative that would have put the state Supreme Court in control of redistricting.<sup>16</sup> However, the Court found that the initiative violated the California Constitution's single-subject law by including a raise in lobbyist

<sup>12</sup> California State Senate, Elections and Reapportionment Committee, [http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/\\_home/Reapportionment/process.htm](http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/_home/Reapportionment/process.htm).

<sup>13</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>14</sup> California State Senate, Elections and Reapportionment Committee, [http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/\\_home/Reapportionment/process.htm](http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/_home/Reapportionment/process.htm).

<sup>15</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>16</sup> California's Redistricting Information, <http://archive.fairvote.org/redistricting/reports/remanual/ca.htm>.

fees.<sup>17</sup> Other initiative efforts to reform redistricting were pursued, but did not collect enough signatures to win a place on the ballot.<sup>18</sup>

In 2000, California boasted competitive elections in 9 out of 52 congressional districts.<sup>19</sup> (A competitive election is categorized as partisanship measures of 47% to 53%.)<sup>20</sup> However, in 2002, following the 2001 redistricting, California only had one competitive district.<sup>21</sup> Furthermore, no incumbents were defeated in the 2002 elections, meaning that the only competitive election was between non-incumbents who were not members of the Legislature during the 2001 redistricting process.<sup>22</sup>

In the 2004 elections there was no change of political party in any of the district-elected offices at either the State or Federal level and win by less than 55% of the vote was the exception to the rule. Only five of 80 State Assembly districts, and two of 39 State Senate district seats realized a more competitive race. Of the 53 U.S. Congressional seats, only three districts are less competitive than the state districts and only three were won with less than 60% majority. Even in those races, no party change occurred.

In 2006, a California constitutional amendment designed to encourage competitive districts was presented to state Congress. This amendment garnered strong political support. For example, Governor Schwarzenegger backed the constitutional amendment because he believed it would restore competition to state politics.<sup>23</sup> At a Capitol press conference, Schwarzenegger stated:

In the past three election periods, as we all know, only 4 out of 459 congressional and legislative seats that were up for grabs in California have changed party hands... To me that is evidence of a system that has become unresponsive and is stuck in the status quo. We must bring competition back into the political process.<sup>24</sup>

Other supporters of the amendment declared that incumbents have a conflict of interest because their chief goal is buttressing their chances for re-election.<sup>25</sup> Former Assembly member Fred Keeley proclaimed that the system permitting legislators to draw their own districts was “essentially an incumbent protection program.”<sup>26</sup> Despite the strong political backing of the

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Redistricting and Incumbent Protection in 2001-2002, <http://archive.fairvote.org/?page=715>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Greg Lucas, *Governor Proposes a Citizen Panel for Redistricting*, San Francisco Chronicle, December 6, 2006, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/12/06/BAG2IMQA4N1.DTL&hw=redistricting&sn=001&sc=1000>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

amendment, the issue was killed for the 2006 electoral cycle because State legislators claimed it was turned in late, leaving some observers to question whether the death of the bill was accidental.<sup>27</sup>

Finally, critics of the redistricting process attributed California's 2008 Budget impasse, which extended 76 days beyond the deadline, as a negative consequence of the districting scheme.<sup>28</sup> These critics asserted that the high turnover of legislators, due to term limits, combined with "safe" districts makes it more likely that "hard liners" will be elected. Accordingly, these critics allege, the legislators will lack experience in dealing across party lines in a collegial manner, creating a complete lack of senior leadership capable of building and enforcing cross-party compromise.<sup>29</sup>

### c. Proposition 11

In November 2008, voters passed Proposition 11, which created the Citizens Redistricting Commission to establish new district boundaries for the State Assembly, State Senate, and the State Board of Equalization beginning after the 2010 Census.<sup>30</sup> The commission consists of 14 members – 5 democrats, 5 republicans, and 4 non-affiliated members.<sup>31</sup> Proposition 11 left in place the Legislature's power to draw the state's congressional districts, but established new redistricting criteria for the Legislature to follow when redrawing congressional district lines.<sup>32</sup> As amended by Proposition 11 in 2008, Article 21 now requires the Legislature to create a congressional redistricting plan that meets the following criteria: (1) The population of all congressional districts shall be reasonably equal; (2) districts shall comply with the federal Voting Rights Act; (3) districts shall be geographically contiguous; (4) the geographic integrity of any city, county, neighborhood, or community of interest shall be respected to the extent possible without violating the requirements of any of the preceding subdivisions. Communities of interest shall not include relationships with political parties, incumbents, or political candidates; (5) to the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant population.<sup>33</sup> The criteria included in Article 21 are theoretically enforceable by courts, and in the past efforts to challenge redistricting plans for violating previous versions of redistricting criteria in the Constitution have been attempted. But, as the plaintiffs in *Nadler v.*

---

<sup>27</sup> Sign On San Diego, [http://www.signonsandiego.com/uniontrib/20060819/news\\_lz1ed19middle.html](http://www.signonsandiego.com/uniontrib/20060819/news_lz1ed19middle.html).

<sup>28</sup> Jennifer Steinhauer, California Embroiled in a Battle Over the Budget, *New York Times*, August 14, 2008, available at <http://www.nytimes.com/2008/08/15/us/15calif.html>.

<sup>29</sup> Politics of California, *Contra Costa Times*, July 26, 2009, section AA, page 1 available at [http://en.wikipedia.org/wiki/Politics\\_of\\_California#cite\\_note-2](http://en.wikipedia.org/wiki/Politics_of_California#cite_note-2).

<sup>30</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>31</sup> *Id.*

<sup>32</sup> Rose Institute of State and Local Government, The Weakness of California's Congressional Redistricting Criteria, <http://rosereport.org/20100524/the-weakness-of-california%E2%80%99s-congressional-redistricting-criteria/>.

<sup>33</sup> *Id.*

*Schwarzenegger*, 137 Cal. App. 4th 1327 (3rd Dist. 2006) learned the hard way, California courts historically adopt a deferential stance toward redistricting plans drawn by the Legislature.

In *Nadler*, a case that involved redistricting before the adoption of Proposition 11, the California Court of Appeals for the Third District found that the “provision for geographic integrity . . . is the most flexible of the reapportionment standards and provides the greatest discretion to our State Legislature.” More broadly, “a reapportionment plan enacted by the “[L]egislature and approved by the Governor is entitled to significant judicial deference. Such a plan is presumptively constitutional...”<sup>34</sup> Given the hierarchy of the standards and the difficulty of deciphering the motivations behind the drawing of legislative district lines, the *Nadler* Court adopted a deferential stance, stating “petitioners have the burden of proving that the redistricting plans are unconstitutional. There is no merit to the petitioner’s contentions that once they have made a certain showing of a lack of contiguity or a lack of geographic integrity, the burden shifts to respondents to justify the plan.”<sup>35</sup> Petitioners must also show that the Legislature acted “arbitrarily and capriciously” in violating these requirements.<sup>36</sup> Courts “must defer to the Legislature’s determination [that facts exist to support legislation] unless it is palpably arbitrary. Consequently we must uphold the challenged legislation so long as the Legislature could have rationally determined a set of facts that support it.”<sup>37</sup>

The selection of the members of the commission permits any registered California voter to apply.<sup>38</sup> Once the applications are received, the State Auditor, along with a newly created Applicant Review Panel of three independent auditors, screen them for qualifications and conflicts of interest.<sup>39</sup> Applicants' qualifications will be screened based on their analytical skill, impartiality, and appreciation of California's diversity.<sup>40</sup> Applicants will be removed from the process if they, or an immediate relative of theirs, has (1) been a political candidate for state or federal office; (2) been a lobbyist; (3) contributed \$2,000 or more in any year to a political candidate; or (4) changed their political party affiliation in the past five years.<sup>41</sup> Additionally, applicants must have voted in at least two of the last three general elections.<sup>42</sup> Upon completing the screening process, the Panel selects 60 recommended applicants.<sup>43</sup>

---

<sup>34</sup> *Nadler v. Schwarzenegger*, 137 Cal. App. 4th 1327 (3rd Dist. 2006).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (quoting *Schabarum v. California Legislature*, 60 Cal. App. 4th 1205, 1220 (3rd Dist. 1998)).

<sup>38</sup> Legislative Analyst’s Office, [http://www.lao.ca.gov/ballot/2008/11\\_11\\_2008.aspx](http://www.lao.ca.gov/ballot/2008/11_11_2008.aspx); League of Women Voters of California, Vote NO on Propositions 20 and 27, <http://ca.lwv.org/action/prop0811/prop11.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*



On September 23, 2010, the Panel selected its pool of 60 finalists; consisting of 20 democrats, 20 republicans, and 20 “others.”<sup>44</sup> The group of applicants is diverse ethnically, consisting of 20 (33%) White, 17 (28%) Hispanic or Latino, 10 (17%) Asian, 8 (13%) Black, 4 (7%) American Indian or Alaskan Native, and 1 (2%) is Pacific Islander.<sup>45</sup> Additionally, the applicants represent a wide range of economic status, with one applicant reported earning less than \$35,000 last year, 9 earning between \$35,000 and \$75,000, 20 earning between \$75,000 and \$125,000, 22 earning between \$125,000 and \$250,000, and 8 earning more than \$250,000.<sup>46</sup> The graph below depicts more details of the distribution of the 60 finalists.

| Demographic Data - Race/Ethnicity |                    |         |             |         |           |         |       |         |
|-----------------------------------|--------------------|---------|-------------|---------|-----------|---------|-------|---------|
| Race/Ethnicity                    | Other Party or DTS |         | Republicans |         | Democrats |         | TOTAL |         |
|                                   | Count              | Percent | Count       | Percent | Count     | Percent | Count | Percent |
| American Indian or Alaskan Native | 1                  | 5       | 2           | 10      | 1         | 5       | 4     | 6.67    |
| Asian                             | 1                  | 5       | 5           | 25      | 4         | 20      | 10    | 16.67   |
| Black                             | 3                  | 15      | 1           | 5       | 4         | 20      | 8     | 13.33   |
| Hispanic or Latino                | 6                  | 30      | 4           | 20      | 7         | 35      | 17    | 28.33   |
| Pacific Islanders                 | 0                  | 0       | 1           | 5       | 0         | 0       | 1     | 1.67    |
| White                             | 9                  | 45      | 7           | 35      | 4         | 20      | 20    | 33.33   |
| Other                             | 0                  | 0       | 0           | 0       | 0         | 0       | 0     | 0       |

| Demographic Data - Gender |                    |         |             |         |           |         |       |         |
|---------------------------|--------------------|---------|-------------|---------|-----------|---------|-------|---------|
| Gender                    | Other Party or DTS |         | Republicans |         | Democrats |         | TOTAL |         |
|                           | Count              | Percent | Count       | Percent | Count     | Percent | Count | Percent |
| Female                    | 10                 | 50      | 6           | 30      | 13        | 65      | 29    | 48.33   |
| Male                      | 10                 | 50      | 14          | 70      | 7         | 35      | 31    | 51.67   |

| Demographic Data - Party                               |                    |         |             |         |           |         |       |         |
|--|--------------------|---------|-------------|---------|-----------|---------|-------|---------|
| Gender   | Other Party or DTS |         | Republicans |         | Democrats |         | TOTAL |         |
|  | Count              | Percent | Count       | Percent | Count     | Percent | Count | Percent |
| Democratic Party                                       | 0                  | 0       | 0           | 0       | 20        | 100     | 20    | 33.33   |
| Green Party  | 2                  | 10      | 0           | 0       | 0         | 0       | 2     | 3.33    |
| Republican Party                                       | 0                  | 0       | 20          | 100     | 0         | 0       | 20    | 33.33   |
| Other  | 1                  | 5       | 0           | 0       | 0         | 0       | 1     | 1.67    |
| Decline to State/Not Registered with a Political Party | 17                 | 85      | 0           | 0       | 0         | 0       | 17    | 28.33   |

Amongst the 60 finalists, the majority and minority party leaders of the Assembly and Senate may strike up to 24 applicants from the pool.<sup>47</sup> Following the striking of, the State Auditor randomly draws eight names that then become part of the Commission.<sup>48</sup> The eight members appoint the final six members from the applicants left in the pool to round out the 14-member Commission.<sup>49</sup> The redistricting plan must be approved by nine members of the 14-member Commission, requiring three affirmative votes from each political group represented.<sup>50</sup>

To comply with federal law and other requirements, the Commission must not favor or discriminate against political parties, incumbents, or political candidates.<sup>51</sup> Additionally, the

<sup>44</sup> Rose Institute of State and Local Government, updated: California’s 60 Finalists for Redistricting Commission a diverse group, <http://rosereport.org/20100923/californians-60-finalists-for-redistricting-commission-a-diverse-group/>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Legislative Analyst’s Office, [http://www.lao.ca.gov/ballot/2008/11\\_11\\_2008.aspx](http://www.lao.ca.gov/ballot/2008/11_11_2008.aspx); League of Women Voters of California, Vote NO on Propositions 20 and 27, <http://ca.lwv.org/action/prop0811/prop11.html>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

commission is required, to the extent possible, to adopt district boundaries that (1) maintain the geographic integrity of any city, county, neighborhood, and “community of interest” in a single district; (2) develop geographically compact districts; (3) place two assembly districts together within one Senate district and place ten Senate districts together within one State Board of Equalization district.<sup>52</sup> Notably, Proposition 11 did not define the term “communities of interest.”<sup>53</sup>

In developing a redistricting plan, the Commission is required to hold public hearings and allow for public comment on proposed redistricting plans developed by the Commission.<sup>54</sup> The redistricting plan is subject to voter approval under the state’s referendum process.<sup>55</sup> Additionally, registered voters can challenge the constitutionality of a redistricting plan before the state Supreme Court.<sup>56</sup> Upon approval, the redistricting plan is implemented for the next decade.<sup>57</sup> The process repeats every 10 years, with a new 14-member commission for each future redistricting.<sup>58</sup>

While Proposition 11 allocated redistricting duties to the Commission with regards to State Assembly, State Senate, and the State Board of Equalization, it did not allocate redistricting duties in regards to Congressional districts. But, Proposition 11 made some changes to the requirement that the Legislature must meet in drawing congressional districts, requiring them to attempt to draw geographically compact districts and maintain geographic integrity of localities, neighborhoods, and communities of interest.<sup>59</sup> Additionally, Proposition 11 requires the Legislature to provide public access to data and maps used in the redistricting process, and solicit public comment on its proposals.<sup>60</sup> Essentially, Proposition 11 requires the State Legislature to apply the same criteria used by the Commission when drawing district lines.<sup>61</sup> However, Proposition 11 does not prohibit the Legislature from favoring or discriminating against political parties, incumbents, or political candidates when drawing congressional districts.<sup>62</sup>

### III. CHANGES TO EXISTING LAW

Proposition 20 amends the California Constitution to change the redistricting process for California's districts in the U.S. House of Representatives, removing the authority for congressional redistricting from the Legislature and giving the authority to the Citizen's

---

<sup>52</sup> *Id.*

<sup>53</sup> Legislative Analyst’s Office, [http://www.lao.ca.gov/ballot/2008/11\\_11\\_2008.aspx](http://www.lao.ca.gov/ballot/2008/11_11_2008.aspx); League of Women Voters of California, Vote NO on Propositions 20 and 27, <http://ca.lwv.org/action/prop0811/prop11.html>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>60</sup> Legislative Analyst’s Office, [http://www.lao.ca.gov/ballot/2008/11\\_11\\_2008.aspx](http://www.lao.ca.gov/ballot/2008/11_11_2008.aspx); League of Women Voters of California, Vote NO on Propositions 20 and 27, <http://ca.lwv.org/action/prop0811/prop11.html>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

Redistricting Commission.<sup>63</sup> This would allow the Commission to draw the district lines for California's 53 seats in the U.S. House of Representatives. The commission would be charged with drawing congressional districts in compliance with federal law, and the requirements of Proposition 11 pertaining to favoring or discriminating against political parties, incumbents, or political candidates, considering geographic integrity of cities, counties, neighborhoods, and communities of interest.<sup>64</sup>

#### IV. FISCAL IMPACT

In 2001, the Legislature spent approximately \$3 million for redistricting activities.<sup>65</sup> In 2009, under the Proposition 11 process, the Legislature approved \$3 million from the State's General Fund for redistricting activities related to the 2010 census along with approximately \$3 million from another state fund to support the application and selection process for commission members.<sup>66</sup> Proposition 11 specified that each decade the Legislature must provide a three-year appropriation for the Commission totaling the greater of (i) \$3 million or (ii) the amount appropriated in the previous redistricting cycle (adjusted for inflation).<sup>67</sup> These funds would be used to establish the application review process, communicate with the public, compensate commissioners, and employ legal and other experts in the field of redistricting.<sup>68</sup> Commission members would be compensated at a rate of \$300 per day, plus out of pocket expenses.<sup>69</sup> The Legislative Analyst's Office estimates that the minimum amount required for 2010 would be about \$4 million (the 2001 amount spent on redistricting adjusted for estimated inflation through 2010).<sup>70</sup>

Under Proposition 20, the Commission would experience increased costs from handling congressional redistricting activities; however, this would be offset by a reduction in the Legislature's redistricting costs.<sup>71</sup> Any net change in future redistricting costs under this measure probably would not be significant.<sup>72</sup>

#### V. CONSTITUTIONAL ISSUES

##### a. Conflicting Measures

While Proposition 20 was placed on the ballot in order to expand the redistricting responsibilities of the Citizen's Redistricting Commission to include congressional districts, Proposition 27 intends

---

<sup>63</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Legislative Analyst's Office, [http://www.lao.ca.gov/ballot/2008/11\\_11\\_2008.aspx](http://www.lao.ca.gov/ballot/2008/11_11_2008.aspx); League of Women Voters of California, Vote NO on Propositions 20 and 27, <http://ca.lwv.org/action/prop0811/prop11.html>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>72</sup> *Id.*

to abolish the Commission altogether.<sup>73</sup> Therefore, Proposition 20 and Proposition 27 are in direct conflict. The California Constitution states, “If provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.”<sup>74</sup> In the event that both Proposition 20 and Proposition 27 are approved, the one receiving the highest number of votes will be enacted, notwithstanding legal challenges.<sup>75</sup>

### **b. Constitutional Challenges under the Voting Rights Act and the 14<sup>th</sup> Amendment**

The United States Supreme Court has ruled, based on the Fourteenth Amendment of the United States Constitution, that the states are required to reconstruct the boundary lines of the Congressional, State Legislative and other districts after the year in which the national decennial census is conducted in order to ensure that the population of each district of a given kind is reasonably equal.<sup>76</sup> If one believes that a legislative district is in violation of the Equal Protection Clause of the Fourteenth Amendment because it is a product of gerrymandering, that person must prove both discriminatory intent and that the apportionment plan has an actual discriminatory effect on an identifiable political group.<sup>77</sup> Additionally, the discriminatory effect of a districting scheme must be presently demonstrable, not speculative or of a type that will only become apparent in the future.<sup>78</sup>

Conduct showing the intent to gerrymander districts for the purpose of minimization of the voting strength of a particular group is unlikely to be proven by direct or specific evidence, but rather by inferences based on particular circumstances.<sup>79</sup> The inferences generally must be proven by the totality of the circumstances.<sup>80</sup> For example, evidence that African Americans constitute a supermajority in one congressional district while amounting to less than a plurality in a neighboring district will not, by itself, suffice to prove that a jurisdiction was motivated by race in drawing its district lines. However, this would violate the Equal Protection Clause when the evidence also shows a high correlation between race and party preference.<sup>81</sup> In another example, a claim that Hispanic influence would be impermissibly diluted was insufficient to block

---

<sup>73</sup> California Propositions, Proposition 27: Financial Accountability in Redistricting Act, [http://www.californiaproposition.org/prop\\_27\\_2010](http://www.californiaproposition.org/prop_27_2010).

<sup>74</sup> Cal. Const. art. II, § 10(b).

<sup>75</sup> California Secretary of the State, *Official Voter Information Guide*, *supra* note 3.

<sup>76</sup> California State Senate, Elections and Reapportionment Committee, [http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/\\_home/Reapportionment/process.htm](http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/EL/_home/Reapportionment/process.htm).

<sup>77</sup> See *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Duckworth v. State Admin. Bd. of Election Laws*, 332 F.3d 769 (4th Cir. 2003); *Velasquez v. City of Abilene, Tex.*, 725 F.2d 1017 (5th Cir. 1984); *Stewart v. Waller*, 404 F. Supp. 206 (N.D. Miss. 1975); *In re Constitutionality of House Joint Resolution 1987*, 817 So. 2d 819 (Fla. 2002); *Erfer v. Com.*, 568 Pa. 128 (2002).

<sup>78</sup> *Gilbert v. Sterrett*, 509 F.2d 1389 (5th Cir. 1975).

<sup>79</sup> *Cousins v. City Council of City of Chi.*, 503 F.2d 912 (7th Cir. 1974).

<sup>80</sup> See *Perkins v. City of West Helena, Ark.*, 675 F.2d 201 (8th Cir. 1982); *Bailey v. Vining*, 514 F. Supp. 452 (M.D. Ga. 1981).

<sup>81</sup> *Hunt v. Cromartie*, 526 U.S. 541 (1999).

redistricting that moved some Hispanic voters into another district that already had Hispanic voting majority. However, the claim would have been viable if Hispanics were a majority in the district losing Hispanic voters, or evidence showed that Hispanic voters were able to elect candidates by forming coalitions with other minority groups, or where a history of white crossover voting showed possibility that Hispanics could elect candidate of their choice.<sup>82</sup> Furthermore, a mere showing that a political or racial group is not represented in a legislature in proportion to its numbers is insufficient to support a finding of unconstitutional vote dilution, since no racial or political group has a constitutional right to be represented in a legislature in proportion to its numbers.<sup>83</sup> Rather, the key inquiry is whether the minority group's members have been hindered in their attempts to participate in the political process.<sup>84</sup>

In regard to irregularly shaped legislative districts, courts have held that the Fourteenth Amendment does not require regularity of shape in legislative districts.<sup>85</sup> But, districts that look like “a bug splattered on a windshield, a Rorschach ink-blot test, a jigsaw puzzle, or a sacred Mayan Bird,” or are so irregular in shape on their face that they can be understood only as an effort to separate voters into different districts on the basis of race, are products of presumptively unconstitutional racial gerrymandering subject to strict scrutiny.<sup>86</sup> One such example of irregular districts is found in *Bone Shirt v. Hazeltine*. In *Bone Shirt*, the court ruled that the 2001 legislative redistricting plan violates Section 5 of the Voting Rights Act and that State officials must get federal approval under the Act before implementing a new legislative redistricting plan in a district that includes two Indian reservations.

## VI. PUBLIC POLICY CONSIDERATIONS

### a. Proponents

Proponents of Proposition 20 assert that it will accomplish the following desired goals: (1) create fair congressional districts; (2) make congressional representatives more accountable and responsive to voters; and (3) make it easier to vote out members of Congress.<sup>87</sup>

Proponents claim that its passage would empower voters by making it easier for them to vote politicians out of office.<sup>88</sup> In turn, the proponents believe, it will be easier to hold politicians accountable.<sup>89</sup> Proposition 20 would do this by giving the Citizens Redistricting Commission the

---

<sup>82</sup> *Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887 (D. Ariz. 2005).

<sup>83</sup> *White v. Regester*, 412 U.S. 755 (1973).

<sup>84</sup> See *U.S. v. Board of Sup'rs of Forrest County, Miss.*, 571 F.2d 951 (5th Cir. 1978); *Clark v. Marengo County*, 469 F. Supp. 1150 (S.D. Ala. 1979); *Greater Hous. Civic Council v. Mann*, 440 F. Supp. 696 (S.D. Tex. 1977).

<sup>85</sup> *Bone Shirt v. Hazeltine*, 387 F. Supp. 2d 1035 (D.S.D. 2005).

<sup>86</sup> *Id.*

<sup>87</sup> Yes on 20/No on 27, <http://www.yes20no27.org/>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

power to draw election districts for members of Congress, as opposed to politicians in Sacramento.<sup>90</sup>

In its current format, proponents believe that allowing California state politicians the ability to draw congressional districts ensures that they will get their political friends and allies reelected into Congress.<sup>91</sup> As a result, proponents suggest that there is little incentive for politicians to respond to their constituents.<sup>92</sup> The proponents cite the Los Angeles Times and Orange County Register as revealing that 32 Members of Congress and other politicians paid political consultants over \$1 million to draw district boundaries to guarantee their reelection in the last redistricting.<sup>93</sup> In response, according to the proponents, politicians and their consultants drew bizarrely-shaped districts, dividing up cities and communities, thereby stifling the power of voters.<sup>94</sup> Proponents contend that Proposition 20's passage will ensure that the congressional redistricting process is completely open to the public and transparent, whereas in the past redistricting was conducted behind closed doors amongst the politicians themselves.

Proponents contend that even though the California Constitution sets guidelines for redistricting, the Legislature has redrawn districts to the advantage of whatever party is in power and also protects incumbents.<sup>95</sup> As a result, proponents' state, legislative and congressional district lines too often are sprawled out over huge, unrelated regions that needlessly cross county and city boundaries.<sup>96</sup> They further opine that time and again "safe" districts have been drawn for incumbents and to maximize election victories for those in the dominant political party.<sup>97</sup> Proponents find it is a simple matter of fairness and voter service to have bipartisan commissioners, who do not have a personal stake in the outcome of elections, to draw all district lines for legislative and congressional districts.<sup>98</sup>

### **b. Opponents**

The League of Women Voters ("LWV") do not support Proposition 20 in the upcoming November elections.<sup>99</sup> LWV in theory supports Proposition 20, which would extend the independent commission's power to draw Congressional district lines.<sup>100</sup> But, for these opponents, problems are tucked into the proposed law.

---

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Contra Costa Times editorial: we recommend yes on Proposition 20, no on 27*, The Oakland Tribune, September 15, 2010, available at [http://www.insidebayarea.com/opinion/ci\\_15986353](http://www.insidebayarea.com/opinion/ci_15986353).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Vote No on Propositions 20 and 27, <http://ca.lwv.org/action/prop1011/prop20-27.html>.

<sup>100</sup> *Id.*

LWV asserts that Proposition 20 would reduce the amount of time the commission has to do its work while adding to the amount of work they do, and it would narrow the definition of communities of interest in ways that would make it harder for the commission to protect California’s diverse neighborhoods.<sup>101</sup> Definitions of communities of interest are always open to varying interpretations and subject to lengthy adjudication in the legal system.<sup>102</sup> However, LWV suggests that the new definition in Proposition 20 could restrict the commission’s choices, for example, by making it difficult to see how a community made up of the various Asian and Latino populations in the San Gabriel Valley—multiracial, multilingual, and with wide disparities in income level, education, employment, and political awareness—could easily fit the proposed definition.<sup>103</sup> As another example, a community of diverse racial, ethnic, social, economic, and educational components that organized around an environmental issue such as pollution from a port or an industrial brown field could also encounter challenges as to whether it fit the narrowed definition.<sup>104</sup> This is the first time the commission will do this work, and LWV proposes to give the commission a chance to make redistricting reform work before implementing Proposition 20.<sup>105</sup>

Further arguments in opposition to Proposition 20 are that it wastes taxpayer dollars and it turns back the clock on redistricting law.<sup>106</sup> Opponents argue that Proposition 20 is a disaster that must be defeated. These opponents include Daniel H. Lowenstein (Founding Chairman of California Fair Political Practices Commission), Aubry L. Stone (President of the California Black Chamber of Commerce), and Carl Pope (Chairman of the Sierra Club).<sup>107</sup> Their criticisms are directed toward Charles Munger, Jr. who is the sole bank-roller of Proposition 20. They argue that just for the Proposition’s qualification, Munger gave \$3.3 million, a figure that will probably multiply many times by Election Day,<sup>108</sup> and, if Proposition 20 passes, the taxpayers will shoulder this amount instead of Munger Jr. .<sup>109</sup> These opponents argue that Proposition 20’s rival, Proposition 27, is a better choice for California taxpayers.

Opponents in favor of Proposition 27 state, first, non-partisan experts have concluded that voting yes on Proposition 27 will save taxpayer dollars.<sup>110</sup> These experts claim that a “Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government report that a yes on Proposition 27 will likely decrease in-state redistricting costs

---

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Official Voter Information Guide, <http://www.voterguide.sos.ca.gov/propositions/20/arguments-rebuttals.htm>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

totaling several million dollars every ten years.”<sup>111</sup> Second, Proposition 20 adds to the cascade of waste that Proposition 27 would avoid, i.e.,<sup>112</sup> Governor Schwarzenegger has already proposed doubling the redistricting budget and spending millions more dollars to draw lines for politicians while the state is facing a \$19 billion deficit.<sup>113</sup>

Beyond being a waste of taxpayer dollars, these opponents argue that Proposition 20 mandates “Jim Crow” economic districts.<sup>114</sup> They argue that Proposition 20 turns back the clock on redistricting law, and inexplicably, mandates that all districts (including Assembly, Senate, and Congress) must be segregated by income level.<sup>115</sup> Proposition 20 mandates that all districts be segregated according to similar living standards and that districts include only people with similar work opportunities.<sup>116</sup>

### c. Political Indecision

As explained earlier, gerrymandering is generally the political strategy employed by the party in power at a particular time in order to maintain their power and assure their incumbents are reelected. Therefore, Democrats and Republicans have both been accused of gerrymandering tactics in the past and both parties support or oppose particular changes to the redistricting process based on political opportunism. This fact is particularly evident given the contrast of party support in California when compared to Florida.

In Florida, Republicans hold two-thirds of legislative and congressional seats due to creative redistricting in 2001. Citizens in Florida will have the opportunity to approve of Amendments 5 and 6, which will set standards the Legislature must follow when drawing the district lines. These standards will give those who wish to challenge a redistricting plan a legal mode of relief, while at the same time, presumably, deterring the Legislature from enacting a heavily partisan gerrymander.<sup>117</sup>

The notable distinction between California and Florida, in this circumstance, is that the Democratic Party supports the efforts to inhibit gerrymandering in Florida, while vigorously opposing Proposition 20 in California.<sup>118</sup> At the same time, Republicans also oppose Proposition 20 in California and Florida. The reason that Republicans and Democrats both oppose Proposition 20 (and support Proposition 27) in California is the result of a compromise struck between the two parties during the last round of redistricting in 2001. At that time, the incumbents in both parties

---

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Jeff Reichert, *Redistricting Reforms Worth Watching*, August 13, 2010, available at [http://www.huffingtonpost.com/jeff-reichert/redistricting-reforms-wor\\_b\\_680901.html](http://www.huffingtonpost.com/jeff-reichert/redistricting-reforms-wor_b_680901.html).

<sup>118</sup> *Id.*



agreed to draw district lines that would ensure they would be reelected for years to come. This has proven to be a savvy political move by both parties, as an incumbent has only lost in an election on 4 occasions in the last 9 years. Considering there are 60 members combined in the State Senate and Assembly who face reelection every two and four years, respectively, 4 incumbent defeats is a relatively low number. This further propagates the view that gerrymandering is prevalent in California politics.

### **d. Changes in the Makeup of California**

California's demographics have shifted dramatically since the last redistricting process in 2001. Such change is likely to cause concern for legislators seeking to assure their own reelection, especially if the redistricting process is no longer in their hands. From 2000 to 2010, the population in California has undergone a major shift eastward, with people moving to California's inland areas from its coastal enclaves.<sup>119</sup> This means that California's congressional district boundaries will certainly undergo major upheaval after the 2010 census.<sup>120</sup> As one example, the San Francisco bay area grew less than 1% since the last redistricting, while the central valley area has grown by 21%. Los Angeles County has grown 5%, while San Diego, Orange, Riverside, San Bernardino and Imperial Counties have grown by 17%.<sup>121</sup> The manner in which the districts are drawn according to California's current makeup, as well as its anticipated future makeup, will clearly affect the outcome of future elections.

## **VII. CONCLUSION**

If California voters pass Proposition 20, the Citizens Redistricting Commission will assume control of the redistricting authority of California's Congressional Districts. The Commission, which consists of 14 members (5 democrats, 5 republicans, and 4 non-affiliated members), already controls the redistricting authority of the State Assembly, the State Senate, and the Board of Equalization based on the power allocated to it by Proposition 11 in 2008. The Commission would need approval from at least 9 members (at least 3 from the Democratic members, Republican members, and non-affiliated members) in order for the district maps to be adopted.

If Proposition 20 fails, the Commission will only control the redistricting authority of the State Assembly, the State Senate, and the Board of Equalization. The redistricting authority of Congressional Districts will remain with the California Legislature. If Proposition 20 and 27 both pass, the proposition with the most affirmative votes will go into action and the proposition with the least affirmative votes will be negated.

---

<sup>119</sup> John Marelius, *Inland population tilt will reshape districts*, San Diego Union Tribune, November 16, 2009, available at <http://www.signonsandiego.com/news/2009/nov/16/inland-population-tilt-will-reshape-districts/>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*