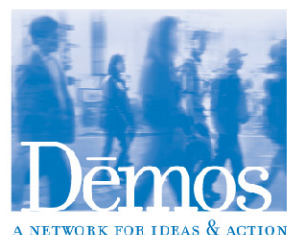


# DRAWING LINES: A Public Interest Guide to Real Redistricting Reform

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**Center for Governmental Studies**  
*Solutions for Democracy*





**Drawing Lines:**  
**A Public Interest Guide to Real Redistricting  
Reform**

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February 2005

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## **Preface**

The following report provides information and analysis to aid Californians as they consider whether and how to change their process for drawing electoral district lines. It reviews the overarching goals of redistricting efforts and describes how the membership, structure and instructions given to an Independent Redistricting Commission can be crafted to help it achieve these goals. It also evaluates three main proposals for Independent Redistricting Commissions and discusses how their best features can be combined and improved to create a Commission that will be both fair and effective for California's voters. The Center for Governmental Studies and Demos have prepared *Drawing Lines* in an attempt to inform policy makers, advocates and the media about how such a proposal might look.

### **Center for Governmental Studies**

The Center for Governmental Studies (CGS) creates innovative political and media solutions to help individuals participate more effectively in their communities and governments. CGS uses research, advocacy, information technology and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office, and help implement effective public policy reforms. CGS identifies governance, social and economic problems, conducts in-depth studies, and proposes solutions. CGS then works with government agencies and community organizations to implement solutions by drafting new laws, regulations, improved procedures, and designing technological systems.

### **Demos: A Network for Ideas & Action**

Demos is a nonprofit, nonpartisan public policy research and advocacy organization. Demos' Democracy Program supports the creation of a diverse, inclusive and national movement for far-reaching state and federal democracy reform. We strengthen reform efforts by linking democracy advocates and campaigns with their counterparts in other states, developing and advancing a broad agenda for reform, and producing both applied research products and new research on long-range trends that will alter the shape of American democracy in the 21<sup>st</sup> century.

### **James Irvine Foundation**

This report has been made possible through generous funding from The James Irvine Foundation. The Irvine Foundation is a private, nonprofit grantmaking foundation, with offices in San Francisco and Los Angeles. The Irvine Foundation is not responsible, however, for the findings and recommendations in this study.

## **Executive Summary**

In California's 2004 legislative and congressional elections, every incumbent running for reelection won and no seats changed party hands. This lack of competition is due significantly to the legislature's decision to redraw electoral districts to protect incumbents against challengers. When the deck is so stacked against competition, the public loses.

There are currently several California legislative bills and initiatives proposing to strip the legislature of the power to draw new districts and give it to an Independent Redistricting Commission. While redistricting should be conducted by a Commission, our analysis suggests that none of the various proposals under current consideration does enough to encourage the creation of more competitive districts or to improve representation of minorities, the two areas where California is most in need of improvement.

The public interest can be better served by amending these proposals to comply with the following public interest goals: insulating the redistricting process from legislative control; performing redistricting only once a decade; protecting minority influence in a judicious manner; increasing the number of close contests between candidates from different political parties; and ensuring that no party can capture and unfairly exert influence on the redistricting process.

### **Proposed Measures**

One significant ballot initiative and two significant legislative reform proposals have recently been introduced to reform the state's redistricting process – Ted Costa's ballot initiative (currently in circulation for signatures), ACAX1 3 (McCarthy, R-Bakersfield), which is supported by Governor Schwarzenegger, and SCA 3 (Lowenthal, D-Long Beach). These proposals have provoked an important discussion and shined a spotlight on California's flawed redistricting process.

### **Recommended Commission Features**

An Independent Redistricting Commission must have the following key features:

#### **1. Membership**

- The Commission should include: nine retired judges and other citizens; three Commissioners from each major party and three Commissioners from neither major party; and a membership that reflects California's diversity.
- There should be restrictions on previous and future political activities – such as running for partisan public office, lobbying, and working for a candidate's campaign – to ensure unbiased decision-making.

#### **2. Selection Process**

- The Judicial Council should select a pool of 36 potential Commissioners.
- The pool should reflect the racial diversity of California, have equal numbers of men and women, and include six retired judges registered with each major party, six citizens registered with each major party as well as six retired judges and six citizens registered with neither major party.

- The four legislative leaders should each have two preemptory vetoes on individuals in the candidate pool.
- A random process should be used to select nine Commissioners from the candidate pool. This process should also ensure fulfillment of diversity and partisan equality membership requirements.

### **3. Criteria**

- All districts must be: equal in population according to federal standards, contiguous, nested,<sup>1</sup> compliant with the Voting Rights Act and other federal law, and neutral with respect to political parties, incumbents and other candidates.
- The Commission's additional objectives, in priority order, should be: full representation of racial and ethnic minorities, more competitive districts, respecting identifiable communities of interest, conforming to geographic and political lines to the extent practicable, and creating compact districts.

### **4. Transparency and Public Accountability**

- All meetings and hearings should be public, with adequate notice given.
- Hearings should occur (i) before the Commission begins drawing maps, (ii) after an initial map is proposed, (iii) after any significant revisions are made to the draft maps and (iv) after the Final Plan is proposed.
- Redistricting information, expertise and tools should be provided on-site for use by individuals and organizations as soon as relevant information is available, and all proposed full or partial maps and agenda items should be posted to a web site one week before a meeting or hearing.
- The Commission must comply with the Bagley-Keane Act. No legislative privilege should be exercised or ex parte communication allowed (except between Commissioners and staff, who still must make public their communications once the Final Plan has been proposed).
- Independent experts should evaluate how well Commission-created draft maps comply with listed criteria, and the Commission should itself issue a report when releasing its Final Plan explaining how it met all the criteria.

### **5. Implementation and Review:**

- The state should be redistricted once every ten years, respecting traditional decennial redistricting principles.
- The Commission must be guaranteed sufficient resources to enact a plan and defend it in court.
- The Final Plan should be reviewable directly by the California Supreme Court.

We compare the major features of each proposal to those of our Ideal Plan below (and provide a more detailed description and analysis in the Appendix). While the Lowenthal proposal appears to provide the best starting point for an Independent Redistricting Commission, it is not yet optimal. In light of the current proposals' weaknesses, we advise amending all of the proposals to incorporate the public interest recommendations in this report.

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<sup>1</sup> Nested so that Board of Equalization districts are comprised of ten adjacent State Senate districts, and each Senate district is comprised of two adjacent Assembly districts.



**Comparative Analysis:**

1. Are major parties guaranteed equal representation on Commission?
2. Is the Commission instructed to make districts more competitive?
3. Is the Commission given the data and instructions necessary to make significantly more competitive districts likely?
4. Is Voting Rights Act compliance explicitly required and prioritized?
5. Is the Commission likely to reflect California's diversity?
6. Is the Commission prohibited from using incumbent residence when drawing districts?
7. Are all Commission meetings required to be open to the public?
8. Must most of the Commission's data and documents be made public?
9. Will the "once a decade" redistricting rule be maintained?
10. Will the Commission's proposals be implemented without requiring an additional legislative or popular vote?

<b>Lowenthal</b>	<b>McCarthy</b>	<b>Costa</b>	<b>Ideal Plan</b>
Yes	No	No	Yes
Yes	Yes	No	Yes
No	No	No	Yes
Yes	No	Yes	Yes
Maybe	No	No	Yes
Yes	No	Yes	Yes
Yes	No	Yes	Yes
Yes	No	Yes	Yes
Yes	No	No	Yes
Yes	Yes	No	Yes

## Introduction

California, like the rest of the country, has experienced a steady decline in the competitiveness of its congressional and state legislative electoral districts. In 2004, incumbents won every congressional and state election in which they ran, and only six of the state legislature's 100 races were truly competitive (a margin-of-victory of 10% or less.) Governor Schwarzenegger recently called a special legislative session to consider the adoption of an Independent Redistricting Commission to replace the legislature as the author of new legislative and congressional districts.

Experts cite redistricting – the process of drawing new district lines to determine which residents will be grouped together when electing representatives – as one of the causes of the declining number of competitive elections and, in some cases, of inequitable partisan legislative representation. The process, which usually takes place after each decennial census, is by its nature politically controversial. Many redistricting plans are met with charges that the revised congressional or state legislative districts – which are routinely gerrymandered into improbable shapes and sizes – are too partisan, too friendly to incumbents, not competitive enough and unrepresentative of minority populations. The courts are often drawn into the disputes when elected leaders (and electors) cannot agree and are forced to draw district lines themselves. When elected leaders choose their own constituencies instead of the reverse, it severely limits the power of the vote. Despite these drawbacks, most state legislatures still draw both congressional and state legislative districts themselves, but alternatives to this method are now being considered by a wide variety of individuals, public officials and public interest groups.

In recent months, several ballot initiatives and legislative bills have been introduced in California, all seeking to remove the legislature's power to implement redistricting. The approach proposed in all of these measures is to transfer responsibility from the legislature to an Independent Redistricting Commission. Proponents argue that a Commission will help eliminate some of the more egregious redistricting problems, thereby increasing representation, competitiveness and partisan fairness. Independent Redistricting Commissions have had mixed success overall, with some states experiencing increases in partisan fairness and competitiveness. A window of opportunity is opening for Californians to reflect on the problematic outcome of the current redistricting process and carefully consider what kind of proposal would be necessary to improve the next round of redistricting.

## Section 1: Overarching Goals of Independent Redistricting

Californians tend to live in pockets of racial and political homogeneity, requiring any process for designing new single-member districts to balance its objectives. California's current residential patterns would lead most compact districts to be politically "safe" for one political party. To produce more than modest gains in the number of competitive districts, district lines would have to cut across cities, suburbs, and surrounding areas, which might, in turn, hinder the ability of minority communities to gain fair representation.

Alternative voting systems, such as multi-member districts with proportional or cumulative voting,<sup>2</sup> could lessen the need for such dramatic trade-offs by allowing for meaningful competition in areas where one racial group or political party is dominant.<sup>3</sup> Regardless of whether a Commission is allowed to design such multi-member districts, clarifying the relative importance of redistricting criteria is a fundamental first step of redistricting in the public interest. This report postulates minority representation, competitiveness and partisan fairness as key objectives that must be encouraged and balanced in a successful redistricting plan.

### **Minority Representation**

A second important objective is ensuring that minority interests are properly represented by elected leaders. Redistricting has been used – both historically and recently – to crack minority communities into multiple districts, pack a larger community into a single district or otherwise dilute minority voting strength. The Voting Rights Act, passed in 1965, provides federal protection to traditionally disenfranchised minority communities to address dilution through redistricting. Different benchmarks for measuring successful efforts to increase minority representation have been used, including the number of effective majority-minority districts, the number of elected leaders of a particular race or ethnicity, and the number of districts with significant minority influence or likely multi-racial alliances capable of electing leaders who will be responsive to minority interests. Regardless of the measure, it is important to prioritize respect for the Voting Rights Act as an important redistricting criterion in drawing proposed district maps.

Those who draw the district lines are often asked to respect "communities of interest," which may include communities defined by shared socio-economic, ethnic, geographic, economic or other interests. The Supreme Court has accepted varying definitions of "communities of interest" and the criteria are seldom defined by local legislatures. Fair redistricting should engage traditionally underrepresented communities in drawing lines that do not result in the dilution of their voting strength and that respect defined communities of interest. Communities of interest should not be used as pretexts to justify district boundaries that do not further these and other legitimate objectives.

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<sup>2</sup> Although federal law requires single-member districts for congressional races, California could adopt such districts for the legislature. For illustrative congressional maps, see <http://www.fairvote.org/pr/super/2004/california.htm>.

<sup>3</sup> Lani Guinier, "No Two Seats: The Elusive Quest for Political Equality," 77 Va. L. Rev. 1413, 1489 (1991).

## **Competitive Districts**

Electoral competition is a basic requirement of democratic accountability in representative government. In most states, legislators can draw legislative and congressional district lines after each decennial census that will, to a significant extent, ensure their own reelection. Without competition from candidates of opposing parties, representatives become less responsive to their constituents, less subject to public criticism and scrutiny and more likely to defend more extreme liberal or conservative positions. Competition also helps to foster elected leaders that are more responsive to all of the interests, including those of racial and ethnic minorities, within their districts.

Civic groups, editorial boards and elected officials who support the use of an Independent Redistricting Commission hope to thwart both the adoption of increasingly uncompetitive districts and the machinations of state legislators attempting to lock-in the benefits of one-time electoral swings by drawing new district lines that virtually guarantee permanent party dominance, irrespective of the popular will. Although the state's lawmakers have not elected to maximize the number of districts in which the majority party has the advantage, they have drawn districts that ensure very few competitive general elections for incumbents of both parties. This "incumbent's agreement" is perhaps the most frequently cited by those calling for an Independent Redistricting Commission.

## **Partisan Fairness**

In theory, the aggregate party membership of an elected political body should roughly reflect the party preferences of those they represent. Therefore, a 60% share of the average districts votes should translate (roughly) to a 60% share of legislative seats.<sup>4</sup> In practice, however, this is often not the case. While not the only explanation available, redistricting may contribute a great deal to such imbalances. A party can use its power to manipulate the redistricting process, thus garnering a disproportionate number of representative seats when compared to the party preferences of the underlying population. The degree to which this can occur depends on many factors: who redistricts; what criteria are used; which party holds the governorship and the legislature; the composition and views of the judiciary; and, the power of the electorate, interest groups and opposition parties.

While both static (geographic and political boundaries) and dynamic (population and changing partisan identification) features make it impossible to ensure that single-member districts result in perfect partisan representation, a neutral, unbiased process would at least guarantee that neither party would benefit more than another party if the situation were flipped.

## **Inspiring Public Confidence**

Once established, Commissions must operate in a manner that gives the public full confidence in the fairness and openness of their procedures and transparency in the reasoning of Commissioners. In general, the ideal Independent Redistricting Commission should have strong requirements to open all meetings to the public, to publish all data and other documentation and to hold public hearings throughout the state.

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<sup>4</sup> Since 100% of a district's representation is given to candidates with even a small majority, the partisan leanings of the electorate tend to be magnified. For example: a 60% share of the vote may translate into a 65% seat share.

The complicated and highly controversial nature of the redistricting process requires that it be undertaken carefully. Although public interest groups and the public in general should be heard during the Commission's deliberations, a referendum on the final redistricting plan would be difficult to conduct in a manner that allowed the average voter to be fully informed of the complexities of various district maps. The redistricting process should respect the "once a decade" precedent in order to avoid more frequent partisan efforts to alter redistricting outcomes.

### **"Traditional" Redistricting Criteria**

Some traditional redistricting criteria, such as equal population, are important in their own right. Drawing districts that have equal populations ensures all voters have votes of the same weight in electing legislators.<sup>5</sup>

Requirements that districts be compact, on the other hand, are valuable primarily because they make it more difficult for line-drawers to enact racial or partisan gerrymanders or bipartisan incumbent-protection plans. Critics of these plans point to irregularly-shaped districts not because they are inherently problematic, but as evidence of efforts to benefit or harm political parties, particular racial or ethnic groups, or certain incumbents or other candidates. In order for compactness to effectively guard against such plans, it must be defined more precisely than the often-used instruction that "a contiguous area of population shall not be bypassed to incorporate an area of population more distant."<sup>6</sup>

Other requirements, such as contiguity and "nesting" of adjacent assembly districts within each senate district and adherence to county and municipal boundaries, are valuable in part because they reduce the scope of possible gerrymandering, but also because they simplify political participation for voters. Similarly, requiring districts not to cross municipal or county boundaries helps keep natural constituencies intact, allows voters to more easily hold their elected officials accountable, and may encourage representatives to be more responsive to their constituencies.

Although equal population, contiguity, and nesting districts should be required in order to enable citizens to have equal votes and to more easily identify their district, compactness and other related traditional redistricting requirements should be relaxed when necessary to ensure competitive and representative districts. Deviations from county and municipal boundaries and "compactness" should be allowed if they advance other specified objectives, but also be closely scrutinized to avoid more problematic gerrymandering attempts.<sup>7</sup>

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<sup>5</sup> The "one person, one vote" standard for equality is mandated under the Equal Protection Clause of the 14<sup>th</sup> amendment to the U.S. Constitution. The standard for state legislatures (established by a series of U.S. Supreme Court cases) is the following: plans where the overall deviation between the least populated and most populated districts is 10% or less are presumed legitimate; if the deviation is above 10%, the state must prove a compelling state interest requiring the deviation. The standard for Congressional districts is stricter, requiring a deviation of less than 1%.

<sup>6</sup> ACAX1 3, Sec 2(c).

<sup>7</sup> One possible way to aid this scrutiny would be to require the Commission to create an initial grid-like district map according to a precise mathematical formula for equal population and compactness, so that departures from the initial grid could be clearly identified and the extent to which they serve other specified objectives could be evaluated.

## Section 2: Lessons from Other Independent Commissions

Arizona, Iowa, New Jersey, and Washington State (the four states that use Commissions to design both congressional and state legislative districts) achieved some success in their most recent attempts to create district lines that ensure fair minority representation and partisan fairness, but they have failed to achieve significant gains in the number of competitive districts. In general, bipartisan Commissions often succeed in creating districts that do not allow one party to win significantly more seats than its average statewide support, but do not necessarily achieve the other objectives. Demos is preparing a detailed analysis of how Commissions of various kinds have performed throughout the country for a forthcoming report; preliminary evaluation of Commissions in other states is outlined below and is the basis for many of the recommendations outlined in the Section 3.

Arizona adopted a Commission most recently and serves as the model for Lowenthal's recent California Commission proposal. It is therefore instructive to examine and learn from Arizona's recent redistricting experience.

### **Competitive Districts**

In *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*,<sup>8</sup> the Maricopa County Superior Court found that the Commission improperly deemphasized competitiveness as an objective, decreased the competitiveness of districts in the course of applying each of the other redistricting criteria to the original grid-like maps, and improperly interpreted competitiveness as the “‘least important’ of the redistricting criteria and subordinate to the other redistricting criteria.” The Court further found that the Commission “adopted its Final Draft Map without even considering, let alone favoring, competitiveness” even though the printed arguments in favor of the proposition creating the Commission “emphasized that a primary purpose of Proposition 106 was to insure the creation of competitive congressional and legislative districts.”

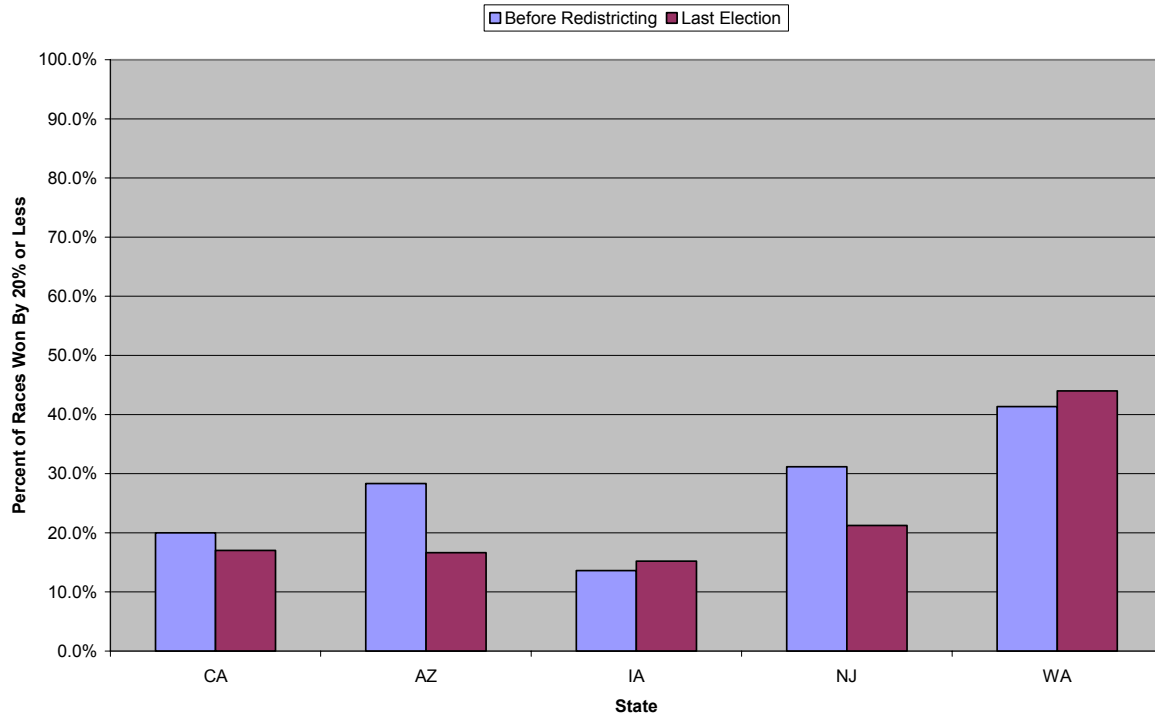
Unlike Arizona's Proposition 106, the Lowenthal proposal explicitly prioritizes the objectives for redistricting and, in its current form, ranks competitiveness last. Even without relying on language that so explicitly deemphasized competitiveness, the districts created by the Arizona Commission did in fact result in fewer competitive districts in 2002 and 2004 than in the 2000 elections. In fact, the pattern of decreasing competition during those elections in Arizona and the decreasing competition in California look remarkably similar. To avoid a similar failure in California, advocates of increased district competitiveness should insist that it be a more highly valued objective.

The following chart shows how four states that already used a Commission in their last redistricting had almost as much of a reduction as California in the percentage of legislative districts that were even mildly competitive (won by 20 percentage points or fewer). In Arizona's case, the drop in competitive districts was even larger than California's. This suggests that Commissions, without explicit instructions to define and prioritize competitiveness as a redistricting objective, are unlikely to achieve significant gains in the number of competitive districts.

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<sup>8</sup> Available at <http://azredistricting.org/2004legfinal/2004LegCourtOrder.pdf>.

### Competitive Legislative Elections Before and After Redistricting



Arizona’s Commission may have created more competitive districts if it had been given (or asked to adopt early in the process) specific definitions of “communities of interest” and other redistricting criteria. In *Arizona Minority Coalition for Fair Redistricting*, the Court found that:

The Commission never voted to adopt any objective criteria to determine the existence of a ‘community of interest’... Instead, each Commissioner individually and subjectively determined, based on public testimony or an individual Commissioner’s personal knowledge, whether a “community of interest” existed in a particular area... The reasons cited by Commissioners for not favoring the creation of competitive districts and particularly the Hall-Minkoff Plan were pretextual and did not amount to a finding of significant detriment.

Forcing Commissioners to spell out their rationale for preferring one set of districts over another explicitly (rather than allowing them to claim, of competitiveness or communities of interest, that they “know it when they see it”) can limit the opportunity for creating districts that are uncompetitive or favor one political party or incumbent over another.

## **Minority Representation**

Although the percentage of elected leaders of a particular race or ethnicity is only one way of measuring how well minorities are represented, the available data suggest that California already has a more representative legislature than many states with Independent Redistricting Commissions and that further improvement is likely to require that the membership and objectives of a Commission are carefully designed to make such improvements more likely.

Although the percentage of Latinos in both California and Arizona's legislature continue to lag behind the percentage of Latinos in each state's adult population, redistricting in both states contributed to shrinking this gap. In other states with Commissions, however, Latinos won the same number of legislative seats (and comprised an effective majority in the same number of legislative districts) after redistricting as they did before. The percentage of African American legislators, on the other hand, remained constant in California and Arizona, while increasing somewhat in the other sample states with Commissions.<sup>9</sup> Too few Asian Americans lived in the sample states with Commissions to meaningfully compare their lack of legislative representation in those states and in California.

## **Partisan Fairness**

The biggest success of Independent Redistricting Commissions has been their ability to create districts that treat both major political parties fairly. In general, a redistricting process that ignores partisan concerns will tend to create districts that magnify the partisan leanings of the electorate into a somewhat more lopsided legislature. This is inherent to the nature of single-member districts, which give 100% of a district's representation to candidates who sometimes win only a small majority or plurality of the district's votes. Chart 4 compares the percentage of major party votes the Democratic candidate received in the average legislative district<sup>10</sup> in the election that preceded redistricting to the percentage of legislative seats the Democrats won in that election; Chart 5 makes the same comparison for the most recent legislative elections after redistricting.

Chart 4 shows that, prior to redistricting, Democrats in California received 58% of the vote in the average district and 61% of the legislative seats – about what could be expected in a redistricting plan that discriminated against neither political party. Small Democratic and Republican majorities in the average districts in Washington and New Jersey, respectively, were similarly magnified into slightly larger legislative majorities. Arizona on the other hand, awarded a legislative majority to the Republican even though Democrats received more votes in the average district, while Iowa did the reverse – a result that is unfair to the voters of the party that won more votes but fewer legislative seats.

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<sup>9</sup> The National Association of Latino Elected Officials and the Joint Center for Political and Economic Studies in Washington, DC contributed the data on elected officials in these states.

<sup>10</sup> The percentage of votes received in the average legislative district is used, instead of a statewide percentage, because even neutrally-drawn districts will tend to reflect the fact that each vote cast in districts with low voter turnout has increased weight. Averaging unweighted district percentages takes this effect into account and provides for a more valid comparison.



**Chart 4: Partisan Fairness Before Redistricting**

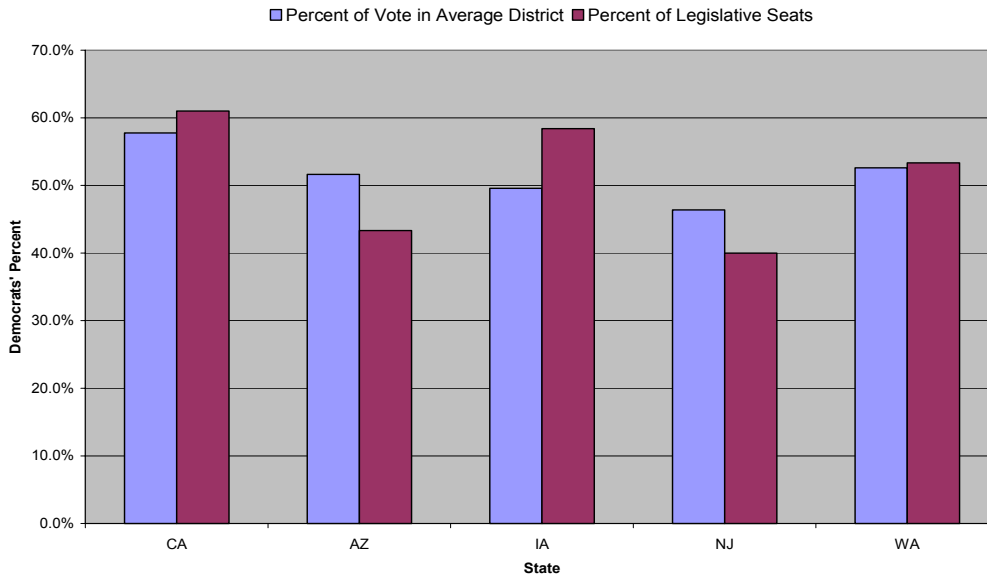
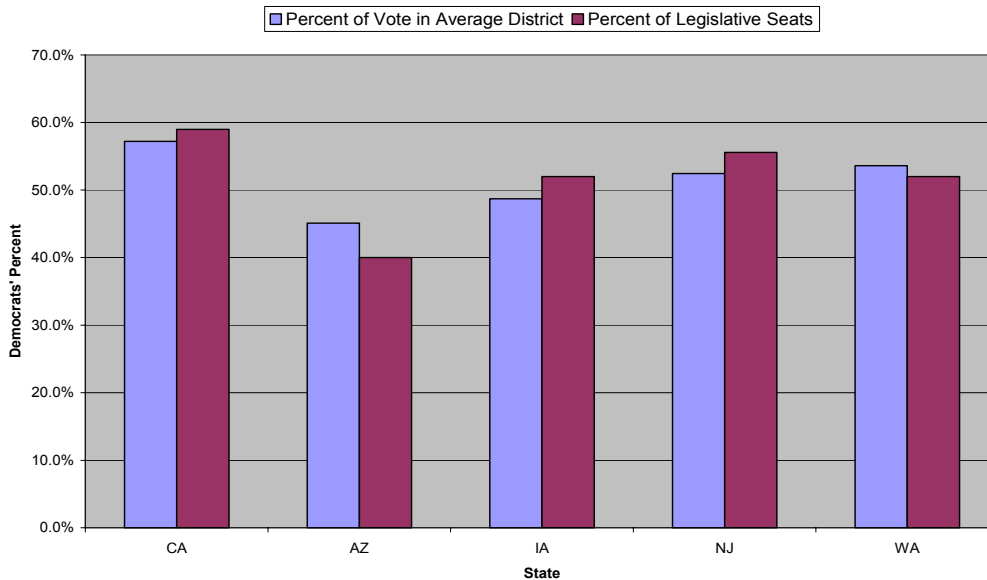


Chart 5 shows that, after redistricting, the states with Independent Redistricting Commissions made significant progress toward obtaining partisan fairness in the districts. In every state except Washington (where it still remained small), the “unfairness gap” – the gap between each party’s percent of votes in the average district and its percentage of legislative seats won – shrunk.

**Chart 5: Partisan Fairness After Redistricting**



Independent Redistricting Commissions in the sample states achieved consistent success at creating districts that were relatively fair to both major political parties. However, because California’s recent redistricting already made its small “unfairness gap” smaller, there appears to be little room for California to do more than hold the status quo.

## Section 3: Recommended Commission Features

The following recommendations are based on discussions with a number of California public interest organizations and seek to avoid the flaws in other Independent Redistricting Commission plans. The Center for Governmental Studies plans to release a more detailed analysis of the pros and cons of Independent Redistricting Commission plans and possibly a model redistricting law later in the year.

### A. Recommended Commission Composition:

1. The membership of the Commission should include retired judges and other citizens. Retired judges have valuable legal expertise and experience in making nonpartisan decisions. Citizens represent the public more directly, may provide the Commission with broader public credibility and can be selected for specific redistricting expertise.<sup>11</sup>
2. The membership of the Commission should be large enough<sup>12</sup> to reflect the gender and racial diversity of California's residents. Specific requirements that the Commissioners reflect the gender and racial diversity of California's residents should be included.
3. The following previous experiences, which might create the appearance or instance of partisan motivations or other conflicts, should automatically disqualify candidates from serving on the Commission: Within the previous ten years, serving 1) in a partisan office, 2) as a paid lobbyist registered with the state or 3) as an officer of a political party or a partisan candidate's campaign committee.
4. Commissioners should be ineligible to run for Congressional, State Assembly, State Senate or Board of Equalization (BOE) office or work for any holder of such office for ten years after serving on the Commission, so that they do not benefit from the districts they help create. Commissioners should also be barred from serving as paid lobbyists registered with the state for five years after the conclusion of their Commission service. Ineligibility is preferred over a signed pledge, thus further ensuring that Commissioners do not reap political benefit from their redistricting decisions.

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<sup>11</sup> New Zealand's "Representation Commission," for example, is made up of two political appointees. Four non-political appointees are the surveyor-general, government statistician, chief electoral officer and chairperson of the local government commission. Legislators in Massachusetts are currently proposing a "mixed" nine-member Commission using the following process: The Lawyers Committee on Civil Rights and the League of Women Voters would appoint one member each, the State Secretary would appoint either a former chief of the Secretary of State elections division, a former chief legal counsel to the division, or a member of a non-profit organization that advocates for voting rights; the Governor would appoint a dean or tenured professor of law, political science, or government in a private institution of higher learning; the Chief Justice of the Supreme Judicial Court would appoint a retired justice. The four legislative leaders would then nominate five citizens each, from which the five directly nominated commissioners would choose four (one from each leader's pool) by majority vote.

<sup>12</sup> Five Commissioners are more likely to be representative than three. We recommend at least nine in order to reflect racial, ethnic, and geographically defined populations that comprise less than 20% of the California electorate.

5. The Commission should give equal representation to California's two largest parties in order to promote fairness and discourage partisan gerrymandering. There should also be a mechanism for representation of persons who are not affiliated with either of the major parties.

## **B. Recommended Appointment Process**

1. An original pool of candidates of qualified retired judges and another pool of citizens should be selected by the Judicial Council. The pool of 36 candidates must reflect the racial diversity of California, have equal numbers of men and women, include six retired judge candidates registered with each major party, six citizens registered with each major party as well as six retired judges and six citizens registered with neither major party.
2. Legislators should have limited influence over the final composition of the panel. The Speaker of the Assembly, the Minority Leader of the Assembly, the President pro Tempore and the Minority Leader of the Senate should each have the ability to preemptively challenge two candidates (one retired judge and one citizen) in the pool who they feel will be overly partisan, but they should not have the ability to nominate Commissioners directly.
3. Once the pool has been established, a random process should be used to determine appointments in a manner that ensures fulfillment of requirements for racial diversity and selects three Commissioners from each major party and three Commissioners from neither.

## **C. Recommended Commission Redistricting Criteria:**

The objectives the Commission must pursue should be explicitly prioritized in the measure to aid Commissioners in balancing competing objectives and limit their ability to use objectives as pretexts for altering districts in order to aid incumbents or one political party.

1. All districts created by the Commission must be:
  - Equal in population according to federal standards
  - Contiguous
  - Nested so that Board of Equalization districts are comprised of ten adjacent State Senate districts, each of which is comprised of two adjacent assembly districts
  - Compliant with the Voting Rights Act and other federal laws
  - Neutral with respect to political parties, incumbents, and other candidates
2. The Commission's additional objectives, in priority order, should be:
  - a. Full representation of racial and ethnic minorities
  - b. More competitive districts
  - c. Respecting identifiable communities of interest<sup>13</sup>
  - d. Conforming to geographic and political lines to the extent practicable, except when crossing such boundaries will help achieve any of the higher-priority objectives
  - e. Creating compact districts, except when less compact districts will help achieve any of the higher-priority objectives

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<sup>13</sup> Communities of interest should not be defined in reference to incumbents, other candidates, or previous districts.

3. Voter histories and partisan voter registration data necessary for creating competitive districts must be available to the Commission or its designated experts so that they can effectively pursue this objective. The Commission or state should appoint such an expert to evaluate the competitiveness of competing plans or advise how a specific plan could be made more competitive.
4. The Commission should be given a clear definition of compactness (or instructed to adopt one before beginning to draft maps) based on a mathematical formula involving the cumulative length of district boundaries or other objective factors.
5. Communities of interest should be defined by similarities in social, cultural, ethnic and economic interest, prevalent occupations and lifestyles, school districts, and other formal relationships between municipalities. The definition should not include any relationship between a community and a political party, incumbent or candidate.

**D. Recommended Requirements for Transparency and Public Accountability:**

Inviting public participation and ensuring the accessibility of information to the public before, during, and after the map-drafting process will ensure the level of transparency necessary for the public to have confidence in the fairness of the redistricting process. During each specified stage of the redistricting process, the Commission should adhere to the following guidelines.

*Initial Stage*

1. Appointments should be made before the census data are available and as early as possible to allow the Commission more time for preliminary work.
2. Redistricting information, expertise and tools should be provided on-site<sup>14</sup> for use by individuals and organizations as soon as relevant census information is available.
3. The Commission should accept complete or partial redistricting proposals (maps) before the first scheduled hearings, catalog them, and make them publicly available via a website and other means. Maps may be submitted by partisan interests, elected officials, minority voting rights organizations or other interested parties.
4. The Commission should schedule its first set of public hearings around the state, with particular attention to geographic representation. The Commission must provide adequate notice and schedule these hearings to occur over several months. The initial stage of public hearings should occur before the Commission begins drawing maps.

*Commission Draft Map Stage*

1. After the initial stage, the Commission should make public its proposed redistricting proposal or proposals. Independent experts should evaluate how well the Commission-created maps comply with all of the listed criteria.
2. Following the publication of the first Commission draft map(s), the Commission should hold a second round of hearings around the state for at least two weeks.

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<sup>14</sup> For example, academic centers like the Rose Institute and the Institute of Governmental Studies could be used for this purpose.

### *Final Plan Stage*

1. Based on public comment on the Commission Draft Map(s), the Commission may make changes. Additional public hearings shall be held after any significant revisions are made to draft maps.
2. The Commission should receive public comment for at least 14 days on any proposed Final Plan (although the Commission would be under no obligation to make changes).
3. The Commission must explain how it met the criteria, especially compliance with the Voting Rights Act, in a report due when the Final Plan is proposed.

Throughout the redistricting process, the Commission should:

- Allow a minimum of six months for the redistricting process, including at least five months after the census data are available.
- Open all meetings to the public with adequate prior notification.
- Make all maps and agenda items to be discussed at a given meeting or hearing available to the public and post them to a website at least one week before the meeting or hearing (and with more notice when possible) to allow individuals and organizations the opportunity to analyze options and prepare statements before meetings or hearings.
- Post all hearing transcripts, meeting minutes, maps, narrative descriptions of proposed districts, and other data to a public website in a timely manner.
- Comply with the Bagley-Keene Open Meeting Act.
- Bar ex parte communications regarding redistricting except those that are exclusively between Commissioners and staff.
- Make available to the public all personal ex parte communication (such as email, memos, and phone calls) between Commissioners and staff once the Final Plan has been proposed.
- Bar legislators from invoking legislative privilege in regard to their communications with the Commission, including the submission of testimony or proposals.

**E. Recommended Procedures for Implementation and Review:**

1. The redistricting process should respect the “once a decade” precedent in order to avoid more frequent partisan efforts to alter redistricting outcomes.
2. The plan should require super-majority approval (six of the nine of the Commissioners, including at least one Commissioner affiliated with neither major party) in order to balance the risk of allowing a partisan plan (which can occur when a bare majority of Commissioners can enact a plan) and the risk of producing an incumbent-protection plan (which often occurs when Commissioners must come to a consensus).
3. New district plans should be implemented, subject to California Supreme Court review, without requiring a separate legislative vote or public referendum after each new round of redistricting. A legislative review would necessarily politicize the process, creating opportunities for partisan and incumbent-protection gerrymandering. A referendum on the final redistricting plan would be difficult to conduct in a manner that allowed the average voter to be fully informed of the complexities of various district maps.
4. The Commission should have dedicated funding for Commissioners, staff and consultants and the authority to determine if such funding is adequate to free the Commission from political control (e.g., a specified sum indexed to the California Consumer Price Index should be established as a minimum to which the legislature could add, but not subtract).
5. The Commission should have standing in legal actions regarding a redistricting plan and sole authority to determine whether the California Attorney General or other counsel hired and selected by the Independent Redistricting Commission will represent the people of California in the legal defense of a redistricting plan.
6. The Supreme Court should have original and exclusive jurisdiction in all proceedings where a plan adopted by the Commission is challenged. The Commission appointment process should be open for judicial review before the Commission is officially sworn in.

## Section 4: Overall Evaluation of Commission Proposals

Goal	Costa	McCarthy	Lowenthal
Minority Representation	Very Poor	Poor	Fair
Competitiveness	Very Poor	Poor	Fair
Avoidance of Partisan Gerrymandering	Fair	Fair	Fair
Avoidance of Bipartisan Deal-Making	Fair	Fair	Fair
Transparency/Public Participation	Fair	Poor	Fair

### Costa

#### *Competitive districts:*

Competitiveness, Costa's stated chief objective in advocating on behalf of his initiative, is not mentioned in the criteria for drawing district lines. To the extent that Costa's plan decreases incumbent-protection and prioritizes compactness, there may be increased competitiveness. Unfortunately, Costa's ban on the use of information about voter history or party registration information leaves competitiveness up to chance.

#### *Minority Representation:*

Three retired judges are unlikely to be able to reflect California's diversity. Although compliance with the Voting Rights Act is mentioned as a criterion, communities of interest are not. Moreover, creating such communities becomes difficult when geographic and political boundaries, compactness and equal population are given priority.

#### *Partisan Fairness:*

Costa's process may decrease the likelihood of a partisan gerrymander in several ways: barring the legislature from determining the candidate pool; allowing legislative leaders only to choose members of the opposite party; allowing legislative leaders to peremptorily strike one nominee; mandating a unanimous vote; using traditional redistricting criteria; maintaining a high level of transparency; and, eliminating information about voters from the map-making process.

#### *Traditional Redistricting Criteria:*

Costa uses very strict traditional redistricting criteria, including requirements that: legislative district population deviation not exceed 1% (when up to 10% can be used currently); geographic and political boundaries be respected; the splitting up of counties and cities into multiple districts be minimized; districts be as contiguous and compact as possible.

#### *Inspiring Public Confidence:*

Costa's proposal includes strong requirements for transparency. In addition to public hearings, all meetings, records and data are open to the public, no ex parte communication is allowed and the Commission must be in compliance with the Bagley-Keene Open Meeting Act.

Interestingly, Costa requires a citizen vote to enact a completed redistricting plan. While this may convey a feeling of power to voters, it is unlikely that the average voter will feel up to the task when confronted with as arcane and complex a subject as redistricting.

## **McCarthy**

### *Competitive districts:*

McCarthy defines competitiveness as a 7% spread between the two major parties, but then prohibits the use of voter history and party registration information necessary to distribute voters into competitive districts.<sup>15</sup> Additionally, the use of the single variable of party registration is unlikely to be as useful in predicting which districts will be competitive as a formula that takes into account multiple variables. In addition, the lack of public scrutiny and the requirement for a unanimous vote may increase the likelihood for a behind-closed-doors incumbent-protection deal.

### *Minority Representation:*

McCarthy does not provide for minority diversity on the Commission, but does provide for communities of interest in its criteria, even asking the Commission to respect such communities “to the greatest extent possible.” That extent, however, may be very limited once traditional redistricting criteria like geographic and political boundaries, compactness and strict equal population are first taken into account.

### *Partisan Fairness:*

McCarthy’s process may decrease the likelihood of an unfair partisan gerrymander in three ways: barring the legislature from determining the candidate pool; requiring the plan to fulfill traditional redistricting criteria; and, eliminating information about voters from the redistricting process.

### *Traditional Redistricting Criteria:*

McCarthy uses very strict traditional redistricting criteria, including requirements that legislative district population deviation not exceed 1% (when up to 10% can be used currently); districts be as contiguous and compact as possible; common county boundaries not be crossed more than once; and creating districts with the most whole counties and the fewest county fragments possible.

### *Inspiring Public Confidence:*

McCarthy requires the highest number of public hearings (one before and one after a draft map is created in each of at least six different regions of the state) and allows individuals to submit plans and testify before and after a draft map is created. While this will certainly inspire some public confidence, McCarthy fails to open all meetings to the public or require that data and other documents be shared with the public.

## **Lowenthal**

### *Competitive districts:*

Lowenthal includes competitiveness among the criteria, but designates it as the sixth and last criterion, which may lead the Commission to ignore it, as Arizona’s Commission did. Lowenthal, however, provides the tools – voter histories and party registration information – needed to distribute

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<sup>15</sup> See Michael McDonald, “Public Interest Guidelines for Redistricting.” United States Elections Project, George Mason University.



voters into competitive districts. Additionally, Lowenthal's use of a majority vote and the designation of a voting Commission Chair who belongs to neither major party may decrease the likelihood of a bipartisan deal and thus increase the likelihood of competitive districts.<sup>16</sup>

*Minority Representation:*

Lowenthal fails to require diversity on the Commission. Lowenthal's proposed Commission size is larger than 3, allowing for a greater possibility of diversity. Additionally, Lowenthal does not limit the pool of nominees to retired judges, making more diversity of representation possible, though not assured. Lowenthal requires adherence to the Voting Rights Act as its first priority and prioritizes communities of interest higher than adherence to geographic and political boundaries in the criteria. This provides an important structure and mechanism for protecting minority interests.

*Partisan Fairness:*

Lowenthal uses a balanced partisan commission, which may check some partisan tendencies.<sup>17</sup> Allowing legislative leaders to choose members, however, increases the likelihood that members will act in a partisan or incumbent-friendly manner. Lowenthal allows for the use of voter history and party registration information (once an initial map using more traditional redistricting criteria is complete) to assist in the creation of competitive districts. While voter history or party registration information is necessary for this reason, it can also be used for partisan gerrymandering. Public meetings and hearings are useful mechanisms for ensuring partisan fairness, but allowing only independent "competitiveness experts" to view party registration and voter history data and a requirement for a written report laying out the justifications for departures from traditional redistricting criteria would also be useful.

*Traditional Redistricting Criteria:*

Lowenthal includes all traditional redistricting criteria (equal population, compactness, contiguity, communities of interest, visible geographic features, and municipal and county lines), but does not provide assistance with defining them.

*Inspiring Public Confidence:*

Lowenthal should inspire a high degree of public confidence. In addition to public hearings, all meetings, records and data are required to be made public, except for preliminary drafts, notes, and communications between Commissioners.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

## **Other Redistricting Proposals**

There are some additional proposals that merit mentioning. Since most vary only slightly from the measures discussed in this report, we have chosen not to provide in-depth analysis.

### **Two initiatives submitted by David A. Gilliard**

Gilliard's first initiative is nearly identical to Costa's, while his second effort is almost indistinguishable from McCarthy's. The one exception to both initiatives is a call for mid-decade redistricting for state offices, while congressional districts would remain untouched until 2011.

### **ACA 8, Maze (R-Visalia)**

Maze appears to have been the model for the McCarthy's bill. Maze, however, differs in a few key respects: The measure includes five retired judges as Commissioners, specifically requires that at least one special master be female and at least one be a minority, and has slightly stricter qualifications on which retired judges would be allowed to serve.

### **ACAX1 5, Canciamilla (D-Pittsburg) and Richman (R-Chatsworth)**

This initiative is identical to Lowenthal's, except that it does not require the nesting of Assembly districts within Senate districts, has less rigorous requirements for public disclosure, and omits language guaranteeing the California Supreme Court original and exclusive jurisdiction over challenges to redistricting plans.

### **Initiative submitted by Allan Zaremberg, California Chamber of Commerce President**

This initiative is identical to Costa's, except that it eschews mid-decade redistricting for all offices and goes into effect only after the 2010 census.

### **Four initiatives submitted by Robert H. Harris, of Jim Gonzales & Associates**

These four different initiatives duplicate Costa's efforts, but additionally focus on equal representation for minorities. Gonzalez includes a section on the Voting Rights Act, notes that the dilution of minority voting strength is divergent from public policy and suggests that the representative system of government should be a reflection of California's diverse demographics. In terms of criteria, the equal population, compactness and geographic boundary requirements are softened slightly, communities of interest are defined and voting history is made permissible for map drawing.

## **Appendix: Detailed Comparison of Commission Proposals**

Interest in redistricting reform has been on the rise since 2001, when the California legislature passed a map likely to ensure the reelection of incumbents. The 2004 elections proved just how successful they were in this endeavor when no incumbents lost reelection campaigns and all legislative seats remained in the hands of the same party. In response to this development, several legislative and ballot initiatives have been proposed to transfer control of the redistricting process away from the legislature and into the hands of an Independent Redistricting Commission. In this appendix, the three most significant proposals – Kevin McCarthy’s ACAX1 3 (R-Bakersfield), whose endorsers include several Republicans and Governor Arnold Schwarzenegger, Alan Lowenthal’s (D-Long Beach) SCA 3, and a ballot initiative introduced by Ted Costa – are compared in reference to the recommendations outlined in this report.

### **A. Commission Membership**

#### **Composition of Commission:**

- Commissioners in the Costa and McCarthy proposals are retired judges nominated by the Judicial Council, while Lowenthal has a group of citizens nominated by a panel of 10 retired judges of the Courts of Appeal (who themselves are selected by the Commission on Judicial Appointments) and selected by legislative leaders.
- Costa and McCarthy require only three Commissioners, while Lowenthal requires five, allowing a greater opportunity for diversity.
- Costa and McCarthy require that at least one of the special masters be a member of each of the two major parties, but do allow for the possibility of partisan imbalance. Lowenthal requires an equal number of members of each major party.

#### **Qualifications and Limitations on Future Political Work:**

- All three proposals bar commission members who have held partisan office or have recently changed party registration.
- Lowenthal additionally takes the positive step of prohibiting commission members who have registered as paid lobbyists or served as officers of political parties or candidates’ campaign committees.
- Costa and McCarthy require that Special Masters pledge not to run for partisan office or accept political appointments for several years after their service as Special Masters. Since such a pledge could be broken, Lowenthal makes members of the Commission ineligible for such offices (and also for registration as paid lobbyists).

## Reference Chart: Commission Membership

	<b>Costa</b>	<b>McCarthy</b>	<b>Lowenthal</b>	<b>Ideal Plan</b>
Type of members	Retired judges	Retired judges	Citizens	Retired judges and other citizens
# of members	3	3	5	9
Member diversity required	No	No	No	Yes
Voting Requirement	Unanimous	Not mentioned	3 of 5	Super-majority of 6
Disqualifying past experience <sup>18</sup>	Having held partisan political office ever; changed party affiliation since appointment/election to judicial office; received income within previous 12 months from state or federal legislatures, parties or campaign committees	Having held partisan political office ever or changed party affiliation in the previous 5 years	Having registered as a lobbyist, held partisan office or office for a political party, or performed paid work for a party or candidate's campaign in the previous 3 years	In the past 10 years, having held partisan office or office for a political party; performed paid work for a party or candidate's campaign; or changed partisan affiliation. In the past 5 years having registered as a lobbyist
Limitations on future public office/public employment other than academic or judicial posts	Must pledge not to accept for 5 years	Must pledge not to accept for 5 years	Ineligible for 3 years	Ineligible for 10 years to run in districts created by the Commission or to work for those holding such offices
Limitations on lobbying	No	No	Yes, for 3 years after serving	Yes, for 5 years after serving
Requires equal commission representation of two largest political parties	For candidate pool, but not for Commission	No	Yes	Yes

## B. Appointment Process

### Selection of Special Masters/Commissioners:

- Costa instructs the Judicial Council to select twenty-four qualified retired judges, an equal number of whom must be registered with each major political party. The majority and minority leaders of both legislative houses each then nominate three judges from that pool who are not registered with that legislative leader's political party. Each legislative leader may peremptorily strike one nominee from the list. Three judges are then chosen at random to serve on the Commission, with the provision that at least one must be affiliated with each major political party, but allowing the possibility that two members of the same party may be chosen.

<sup>18</sup> The Ideal and Lowenthal plan partisan/public office restrictions exclude school board members or other officers of a school district or county office of education.

- McCarthy instructs the Judicial Council to identify qualified retired judges willing to serve as Special Masters and then select three (and three alternates) at random to serve on the commission – subject to the restriction that at least one Special Master be a member of each of the two largest political parties, but allowing the possibility that two members of the same party may be chosen.
- Lowenthal instructs the Commission on Judicial Appointments (comprised of the Chief Justice, the Attorney General, and the senior presiding justice of the Courts of Appeal) to select a panel of ten retired judges of the Courts of Appeal, who must in turn nominate a pool of twenty-five qualified citizens (including ten registered with each of the two largest political parties and five who are registered with neither of those two parties). The majority and minority leaders of both legislative houses each select one of those citizens to serve on the Commission. Those four appointees then choose a fifth member to chair the Commission from among the five nominees who are registered with neither major party.

**Reference Chart: Appointment Process**

	<b>Costa</b>	<b>McCarthy</b>	<b>Lowenthal</b>	<b>Ideal Plan</b>
Candidate pool selected by	Judicial Council selects 24 retired judges	Judicial Council identifies qualified judges willing to serve	10 retired judges on the Courts of Appeals (chosen by Commission on Judicial Appointments) establish a pool of 25 citizens	Judicial Council selects one pool of qualified retired judges and another equally-sized candidate pool of qualified other citizens
Candidate pool composition	Equal representation of parties, no more than 12 from any single party	All qualified retired state and federal judges willing to serve	10 Democrats, 10 Republicans, and 5 other citizens who are not registered with either of those parties.	Each pool must: reflect California’s racial diversity; include equal numbers of men and women; (for retired judges and citizens each) include 6 candidates registered with each major party and 6 registered with neither major party
Legislative leaders’ procedure for nomination or preemptory challenge of nominees	4 legislative leaders nominate 3 candidates who are not of the leader’s party, then may preemptively challenge 1 candidate each	None	4 legislative leaders each choose a member; those 4 members selects a chair from among the 5 other citizens	Each of the 4 legislative leaders may preemptively challenge 1 retired judge and 1 citizen and eliminate them from the pool
Final selection	3 special masters and 3 alternates are chosen at random from remaining nominees; 1 or more special master must be from each of the two major parties	3 special masters and 3 alternates are chosen at random from pool	4 legislative leaders each select one citizen. The 4 vote in a 5th member as chair who is not registered with either of the political parties already represented	3 Commissioners affiliated with each major party and 3 Commissioners affiliated with neither are randomly selected from the remaining candidate pool in a manner designed to ensure racial diversity

## C. Redistricting Criteria

### **Prioritization of Competitiveness and Minority Representation:**

- Lowenthal explicitly prioritizes the objectives the Commission must pursue, while Costa and McCarthy do not.
- Lowenthal ranks compliance with the Voting Rights Act as its first objective, Costa includes it as an objective, and McCarthy does not explicitly refer to the Voting Rights Act at all.
- Lowenthal includes competitiveness as a criterion, but ranks it as the least important of six criteria. McCarthy includes competitiveness, but prohibits any consideration of partisan data necessary to determine the competitiveness of districts. Costa does not list competitiveness as an objective.

### **Defining terms and avoiding bias:**

- None of the proposals adequately define, or require the Commission to define, “compact” or “communities of interest.” Unlike the other two proposals, McCarthy defines “competitiveness,” but uses an imperfect measure of party registration data that may tend to create Republican-leaning districts and does not even allow the Commission to access necessary data.
- All of the proposals prohibit aid to incumbents or parties, but only Lowenthal allows the Commission access to partisan registration data for the purpose of determining competitiveness.

**Reference Chart: Redistricting Criteria**

	<b>Costa</b>	<b>McCarthy</b>	<b>Lowenthal</b>	<b>Ideal Plan</b>
Explicitly prioritizes criteria	No	No	Yes	Yes
Explicitly defines criterion terms	No	No	No	Yes
VRA compliance explicitly mentioned	Yes	No	Yes	Yes
Population equality	Yes – defined as 1% deviation	Yes – defined as 1% deviation	Yes, within federal guidelines	Yes, within federal guidelines
Contiguousness required	Yes	Yes	Yes	Yes
Compactness Required	Yes	Yes	Yes	Yes
Requires conforming to geographic and political lines	Yes, and no census block shall be fragmented unless required by U.S. Constitution	Yes, as well as visible geographic features	Yes, as well as visible geographic features and undivided census tracts	Where reasonable, but as a lower priority than other objectives
Communities of Interest	No mention	Yes, to greatest extent possible	Yes	Yes
Competition	No mention	Listed after several other criteria, but not explicitly ranked. Defined as a district with a difference of no more than 7% between the numbers of voters who are registered with the two major political parties	Ranked as the least important criteria, to be favored where doing so would “create no significant detriment” to the other listed goals	Creation of as many competitive districts as reasonably possible should be a high priority and aided by independent experts who predict the number of competitive districts in various maps
Availability of partisan registration or voting history data	Commission cannot use information related to political party affiliation or the voting history of the electors	Consideration should not be given to the potential effect on political parties. Data regarding party affiliation or voting history may not be used in plan preparation	Party registration and voting history data must be excluded from first phase of mapping process, but can be used to test maps for compliance with the stated criteria	Consideration should not be given to the potential effect on political parties. Voter information can be used to ensure compliance to criteria only
Incumbents	Commission cannot use incumbent’s residence information when drawing maps	Consideration should not be given to the potential effect on incumbents	Commission cannot use information related to the incumbent’s residence or design districts to benefit incumbents	Consideration should not be given to the potential effect on incumbents or other potential candidates
Nesting	Yes	Yes	Yes	Yes

## D. Transparency and Public Accountability

### Public Hearings, Open Meetings, and Transparent Decision-Making:

- o McCarthy requires a public schedule and the opportunity for electors to submit plans, as well as public hearings in at least six different regions of the state – both before an initial set of maps is developed and after any substantial revisions are made. Costa only requires a minimum of three total public hearings. Lowenthal requires public comment “in a manner designed to achieve the widest public dissemination reasonably possible” for 30 days.
- o Lowenthal and Costa both require that all meetings be open to the public and that public notice be given. Lowenthal specifies at least 48 hours notice before each meeting. In addition, Lowenthal requires that all records and data (except preliminary drafts, notes, and communications between members) be made public. Costa also requires compliance with the Bagley Keene Open Meeting Act and makes ex parte communication impermissible.

### Reference Chart: Transparency and Public Accountability

	Costa	McCarthy	Lowenthal	Ideal Plan
Will Commission be governed by Bagley Keene Open Meeting Act?	Yes	No	No, but meetings are required to be open to the public	Yes
Are ex parte communications prohibited?	Yes	No	No	Yes, except between Commissioners and staff
Are transcripts, data and documents required to be publicly available?	Yes	Not mentioned	Yes, except preliminary drafts, notes and member communications	Yes; ex parte communications will be made public after Final Plan is proposed
Public hearings requirements	At least three public hearings throughout the state	Public hearings must take place before and after a draft map is prepared, in a minimum of six different geographic areas around the state	The Commission will display a draft map to the public for comment, in a manner designed to achieve the widest public dissemination reasonably possible	Public hearings must take place in several different geographic areas of the state both as part of the process of creating a draft map and in order to present and discuss draft maps
Period to receive public comment	Scheduled by Commission; no public comment planned after the Final Plan is adopted	Scheduled by Commission; no public comment planned after the Final Plan is adopted	At least 30 days on any proposed plan	Before initial plan is drafted, including submission of partial or full map proposals; at least 2 weeks after the initial plan; after significant changes; for 14 days on any Final Plan
Involvement of interest groups	No mention	Can propose plans to the Commission for consideration	No mention	To aid in determining communities of interest and maximize fair representation



**E. Procedures for Implementation and Review**

**Enactment, Court Review, and Litigation Funding:**

- McCarthy and Lowenthal make new districts effective as soon as the Commission certifies a final plan to the Secretary of State.
- Costa requires that the “final redistricting plan be approved by a single resolution adopted unanimously by the Special Masters” and only be used in the next statewide primary and general election unless it is “adopted by initiative...for succeeding elections.”
- Costa and McCarthy require a mid-decade round of redistricting immediately after adoption, while Lowenthal would wait to draw new lines until after the next decennial census.

**Reference Chart: Procedures for Implementation and Review**

	<b>Costa</b>	<b>McCarthy</b>	<b>Lowenthal</b>	<b>Ideal Plan</b>
Gubernatorial veto	No	No	No	No
Legislature votes	No	No	No	No
Citizens vote on each map of districts	Yes	No	No	No
Enactment time-table	Immediately (mid-term 2006)	Immediately (mid-term 2006)	After decennial census	After decennial census
Appeal directly to the Supreme Court	Yes	Yes	Yes	Yes

# Drawing Lines:

## A Public Interest Guide to Real Redistricting Reform

Drawing Lines calls for an Independent Redistricting Commission to shape California's future electoral districts. By transferring power from the state legislature to an Independent Redistricting Commission, competition and fairness will be strengthened.

Drawing Lines proposes the following "public interest" criteria for California redistricting:

- **Independence:** Redistricting should be performed by an Independent Commission of citizens, not legislators, and it should operate free of legislative or partisan influence.
- **Minority Representation:** The Commission should represent California's full range of ethnic diversity in both its membership and standards for drawing districts.
- **Competition:** Electoral districts should be drawn to maximize competition whenever possible, consistent with other important goals.
- **Transparency and Public Accountability:** The Commission must maintain public confidence through public hearings, open meetings, accessible data, and transparent decision-making.
- **Implementation and Review:** The Commission should receive sufficient resources to obtain expert consultants, conduct public hearings and defend against legal challenges.
- **Decennial Redistricting:** Redistricting should be undertaken only once every ten years.

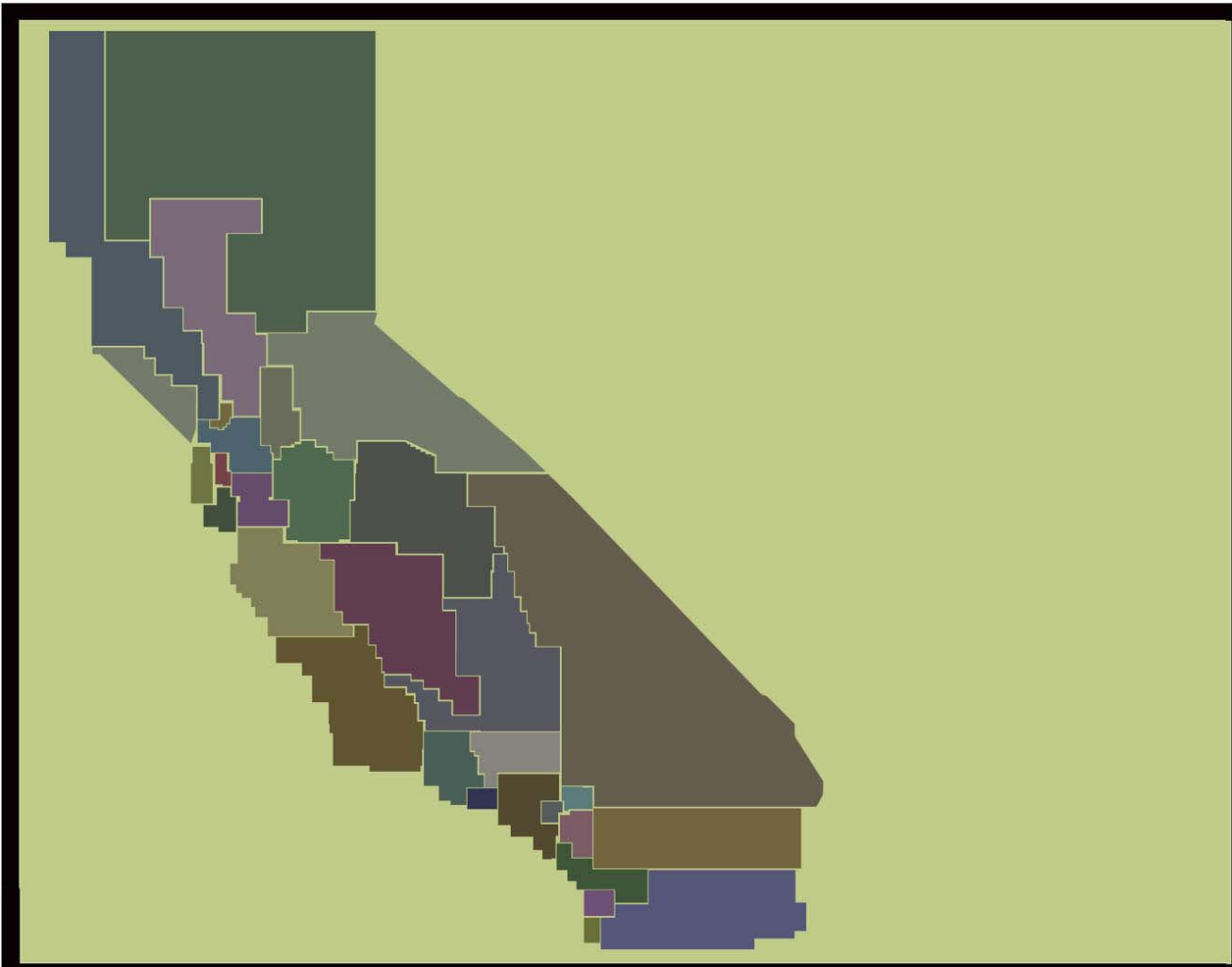
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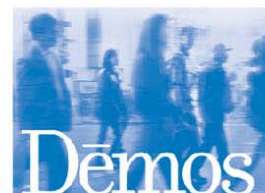
**DRAWING LINES:**

**A Public Interest Guide to Real Redistricting Reform**

**March 2005**



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# Analysis of Revised McCarthy Legislation (ACAX1 3)

## Section 1: Introduction

In February 2005, the Center for Governmental Studies (CGS) and Dēmos published ***Drawing Lines: A Public Interest Guide to Real Redistricting Reform.*** Based on in-depth research of current redistricting approaches and extensive discussions with public interest organizations from across California, **Drawing Lines** proposes that California take redistricting out of the hands of the legislature and empower an Independent Redistricting Commission to complete the decennial redistricting process.

**Drawing Lines** establishes overarching goals for redistricting; recommends specific Commission characteristics; compares and analyzes several current measures proposed in California; evaluates current measures against our recommendations; and assesses the ability of these measures to fulfill public interest redistricting goals.

Since the report's publication, ACAX1 3, authored by Assemblyman Kevin McCarthy (R - Bakersfield), has been amended. The following analysis compares the amended bill ("McCarthy II") to the proposed guidelines in **Drawing Lines**. This report has been made possible through generous funding from The James Irvine Foundation. The Irvine Foundation is not responsible, however, for the findings and recommendations in this study.

Our findings suggest that McCarthy II is a significant improvement in several key areas of concern including balanced partisan representation, transparency, public participation, panel size and candidate pool diversity. It does, however, still contain some aspects which warrant improvement.

## Section 2: Potential Improvements to McCarthy II

McCarthy II requires improvement in a number of respects, listed in order of their importance:

- 1) McCarthy II allows mid-decade redistricting. *We believe the state should be redistricted only once every ten years, respecting traditional decennial redistricting principles and allowing for use of current and accurate census information.*
- 2) The Commission has only five retired judges as members. *In order to reflect the full ethnic diversity of California, the membership should be larger and include citizens who are not judges. We suggest nine members made up of four retired judges and five other citizens.*
- 3) Although competitive districts are mentioned as criteria, competitiveness is prioritized last. Furthermore, the language, "where to do so would create no significant detriment to the other goals of this section," weakens it greatly. *We believe it should be higher in priority, below communities of interest, and listed without the caveat.*
- 4) Geographic boundaries are given higher priority than communities of interest and competition. *We believe geographic boundaries should be given comparatively lower priority.*

- 5) Compactness is given priority over competitiveness. *We believe compactness should be prioritized last. Although compactness is important, it is less so than other criteria.*
- 6) There are no hearings scheduled after a Final Map has been issued by the Commission, nor is there a report required explaining how the Commission met the criteria. *We believe hearings should continue for two weeks after the Commission releases the Final Map and makes the criteria compliance report public.*
- 7) The panel does not explicitly give standing to the Commission in legal actions regarding a redistricting plan. *We believe the Commission should have standing and sole authority to determine whether the California Attorney General or other counsel hired and selected by the Commission will represent the people of California in the legal defense of a redistricting plan.*
- 8) The legislature has the authority to raise or lower the Commission's funding. *We suggest a minimum be allocated and the legislature be given authority to appropriate more funding, but not to decrease it.*
- 9) Equal population is defined as 1% for state districts. Use of this stringent definition may make it difficult to draw districts that fairly represent minorities, protect communities of interest and increase competition. *We believe equal population criterion for state legislative districts should be defined as merely respecting federal constitutional standards as interpreted by the courts.*
- 10) The ban on future appointment to any elective government position or running for political office is five years. *In order to ensure that no Commissioner benefits from his or her redistricting decisions, we believe the limit should be extended to ten years for running for Congress, State Assembly, State Senate or Board of Equalization or for working for any holder of such office.*

### **Section 3: General Comments on McCarthy II**

#### *Competitive districts:*

McCarthy II includes competitiveness as the last criterion and weakens it considerably by stating “the panel shall create competitive districts where to do so would create no significant detriment to the other goals of this section.” Arizona’s experience with its redistricting commission suggests that de-prioritizing competitiveness may lead the Commission to ignore it. Should the Commission set out to draw competitive districts, it will have access to party registration and voter history data, which is the information necessary to distribute voters into competitive districts, an important amendment to the original McCarthy bill.

#### *Minority Representation:*

McCarthy II provides for diversity in the pool from which Commissions are chosen. This increases the likelihood of minority and female Commissioners, but does not guarantee it. In the criteria, McCarthy II also explicitly provides for and defines communities of interest in its criteria, and says that the Commission should respect such communities “to the greatest extent possible.” That,

however, may be somewhat limited once traditional redistricting criteria like geographic and political boundaries and strict equal population are first taken into account.

*Partisan Fairness:*

McCarthy II seeks to create a balanced partisan commission, which may check some partisan tendencies. The legislature has very limited influence on the membership process. The four legislative leaders are allowed one preemptory strike each on the pool. McCarthy II allows for the use of voter history and party registration information (once an initial map using more traditional redistricting criteria is complete) by independent experts to assist in the creation of competitive districts. Although voter history or party registration information is necessary for this reason, it can also be used for partisan gerrymandering. Public meetings and hearings are useful mechanisms for ensuring partisan fairness, as is allowing only independent “competitiveness experts” to view party registration and voter history data.

*Traditional Redistricting Criteria:*

McCarthy II uses strict traditional redistricting criteria, including requirements that legislative district population deviation not exceed a 1% difference in population between districts with the highest and lowest populations (when plus or minus 5% can be used currently); districts be as contiguous and compact as practicable; common county boundaries not be crossed more than once; and districts be created with the most whole counties and fewest county fragments possible.

*Inspiring Public Confidence:*

McCarthy II should inspire a very high degree of public confidence. Besides public hearings throughout the process (before the initial map is created, after an initial plan is selected by the Commission, and when significant revisions are made), independent experts will evaluate compliance with the criteria. In addition, all meeting minutes, hearing transcripts, maps, narrative descriptions of proposed districts and other data are required to be made public; no ex parte communication is allowed; and the Commission must be in compliance with the Bagley-Keene Open Meeting Act.

## Section 4:

### Comparative Analysis:

1. Are major parties guaranteed equal representation on Commission?
2. Is the Commission instructed to make districts more competitive?
3. Is the Commission given the data and instructions necessary to make significantly more competitive districts likely?
4. Is Voting Rights Act compliance explicitly required and prioritized?
5. Is the Commission likely to reflect California's diversity?
6. Is the Commission prohibited from using incumbent residence when drawing districts?
7. Are all Commission meetings required to be open to the public?
8. Must most of the Commission's data and documents be made public?
9. Will the "once a decade" redistricting rule be maintained?
10. Will the Commission's proposals be implemented without requiring an additional legislative or popular vote?

McCarthy	McCarthy II	Ideal Plan
No	Yes	Yes
Yes	Yes	Yes
No	No	Yes
No	Yes	Yes
No	Somewhat	Yes
No	Yes	Yes
No	Yes	Yes
No	Yes	Yes
No	No	Yes
Yes	Yes	Yes



## Appendix: Detailed Comparison of Commission Proposals

### A. Commission Membership

	<b>McCarthy I</b>	<b>McCarthy II</b>	<b>Ideal Plan</b>
Type of members	Retired judges	Retired judges	Retired judges and other citizens
# of members	3	5	9
Member diversity required	No	Yes (in pool)	Yes (in pool and panel)
Voting Requirement	Majority	Super-majority of 4	Super-majority of 6
Disqualifying past experience <sup>1</sup>	Having held partisan political office ever or changed party affiliation in the previous 5 years	Having held partisan public office, political party office, served as a registered lobbyist ever, or changed party affiliation in the previous 5 years	In the past 10 years, having held partisan office or office for a political party; performed paid work for a party or candidate's campaign; or changed partisan affiliation. In the past 5 years having registered as a lobbyist
Limitations on future public office/public employment other than academic or judicial posts	Must pledge not to accept for 5 years	Must pledge not to accept for 5 years	Ineligible for 10 years to run in districts created by the Commission or to work for those holding such offices
Limitations on future lobbying	No	No	Yes, for 5 years after serving
Requires equal commission representation of two largest political parties	No	Yes	Yes

<sup>1</sup> Lowenthal plan excludes school board members or other officers of a school district or county office of education.

**B. Appointment Process**

	<b>McCarthy I</b>	<b>McCarthy II</b>	<b>Ideal Plan</b>
Candidate pool selected by	Judicial Council identifies qualified judges willing to serve	Judicial Council identifies 25 qualified judges willing to serve	Judicial Council selects one pool of qualified retired judges and another equally-sized candidate pool of qualified other citizens
Candidate pool composition	All qualified retired state and federal judges willing to serve	To the extent possible, the list of qualified judges shall reflect the ethnic, racial, gender and geographical diversity of California	Each pool must: reflect California's racial diversity; include equal numbers of men and women; (for retired judges and citizens each) include 6 candidates registered with each major party and 6 registered with neither major party
Legislative leaders' procedure for nomination or preemptory challenge of nominees	None	Each of the 4 legislative leaders may preemptively challenge 1 retired judge and eliminate them from the pool	Each of the 4 legislative leaders may preemptively challenge 1 retired judge and 1 citizen and eliminate them from the pool
Final selection	3 special masters and 3 alternates are chosen at random from pool	5 special masters and 5 alternates are chosen at random from pool of remaining candidates	3 Commissioners affiliated with each major party and 3 Commissioners affiliated with neither are chosen at random from pool of remaining candidates in a manner designed to ensure racial diversity

### C. Redistricting Criteria

	<b>McCarthy I</b>	<b>McCarthy II</b>	<b>Ideal Plan</b>
Explicitly prioritizes criteria	No	Yes	Yes
VRA compliance explicitly mentioned	No	Yes	Yes
Population equality	Yes – defined as 1% deviation	Yes – defined as 1% deviation	Yes, within federal guidelines
Contiguousness required	Yes	Yes	Yes
Compactness Required	Yes	Yes	Yes
Requires conforming to geographic and political lines	Yes, as well as visible geographic features	Yes	Where reasonable, but as a lower priority than most other objectives
Communities of Interest	Yes, to greatest extent possible	Yes, to greatest extent possible	Yes
Competition	Listed after several other criteria, but not explicitly ranked. Defined as a district with a difference of no more than 7% between the numbers of voters who are registered with the two major political parties	Ranked as the least important criteria, to be favored where doing so would “create no significant detriment” to the other listed goals	Creation of as many competitive districts as reasonably possible should be a high priority and aided by independent experts who predict the number of competitive districts in various maps
Availability of partisan registration or voting history data	Consideration should not be given to the potential effect on political parties. Data regarding party affiliation or voting history may not be used in plan preparation	Party registration and voting history data must be excluded from first phase of mapping process, but can be used to test maps for compliance with the stated criteria	Consideration should not be given to the potential effect on political parties. Voter information can be used to ensure compliance to criteria only
Incumbents	Consideration should not be given to the potential effect on incumbents	Commission cannot use information related to the incumbent’s residence or design districts to benefit incumbents	Consideration should not be given to the potential effect on incumbents or other potential candidates
Nesting	Yes	Yes	Yes

## D. Transparency and Public Accountability

	<b>McCarthy I</b>	<b>McCarthy II</b>	<b>Ideal Plan</b>
Will Commission be governed by Bagley Keene Open Meeting Act?	No	Yes	Yes
Are ex parte communications prohibited?	No	Yes, except between Commissioners and staff	Yes, except between Commissioners and staff
Are transcripts, data and documents required to be publicly available?	Not mentioned	Yes	Yes; ex parte communications will be made public after Final Plan is proposed
Public hearings requirements	Public hearings must take place before and after a draft map is prepared, in a minimum of six different geographic areas around the state	Public hearings must take place before and after a draft map is prepared, in a minimum of six different geographic areas around the state	Public hearings must take place in several different geographic areas of the state both as part of the process of creating a draft map and in order to present and discuss draft maps
Period to receive public comment	Scheduled by Commission; no public comment planned after the Final Plan is adopted	Before initial plan is developed or selected; after an initial plan is selected; at least 2 weeks after the initial plan is released for review; after significant changes. (Also, independent experts will evaluate criteria compliance)	Before initial plan is drafted, including submission of partial or full map proposals; at least 2 weeks after the initial plan; after significant changes; for 14 days on any Final Plan (Also, independent experts will evaluate criteria compliance during initial draft plan and after Final Plan is released)
Involvement of interest groups	Can propose plans to the Commission for consideration	Can propose plans to the Commission for consideration	To aid in determining communities of interest and maximize fair representation

## E. Procedures for Implementation and Review

	<b>McCarthy I</b>	<b>McCarthy II</b>	<b>Ideal Plan</b>
Gubernatorial veto	No	No	No
Legislature votes	No	No	No
Citizens vote on each map of districts	No	No	No
Enactment time-table	Immediately (mid-term 2006)	Immediately (mid-term 2006)	After decennial census
Appeal directly to the Supreme Court	Yes	Yes	Yes

