



CALIFORNIA  
LOCAL REDISTRICTING PROJECT

# California Local Redistricting Commissions

*Landscape, Considerations  
and Best Practices*



Nicolas Heidorn  
2017

## AUTHOR ACKNOWLEDGMENTS

In 2008, California voters passed Proposition 11 to strip the Legislature of its power to redraw its own election districts and to instead vest this responsibility with an independent citizens commission. As California has led the way on state-level redistricting reform, it is now leading the way on local redistricting reform as well. More and more of our local jurisdictions are abandoning political redistricting in favor of independent redistricting, often mirroring the state commission model. The California Local Redistricting Project was founded to provide educational research and resources on local best practices as this transformation continues. *California Local Redistricting Commissions: Landscape, Considerations and Best Practices* is the distillation of much of this work.

This report, one of the most comprehensive on local redistricting ever published, would not have been possible without the encouragement, research assistance, and support of many people and institutions.

I owe thanks to: Dean Jay Mootz, with McGeorge School of Law, and Executive Director Kathay Feng, with California Common Cause, for building with me, and investing in, the vision for this project; my research fellows Ian O'Grady and Rachel Simons, for their tireless work tracking down local ordinances and researching relevant state laws and legal precedents; and my colleagues at California Common Cause, including Jonathan Stein, Dan Vicuna, and Jack Blattner, for their expertise, recommendations, and edits.

Finally, I am deeply grateful to the University of the Pacific, McGeorge School of Law, California Common Cause, and the James Irvine Foundation for seeing the importance of creating an educational resource on local redistricting and breathing life into this project.

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## ABOUT THE CALIFORNIA LOCAL REDISTRICTING PROJECT

The California Local Redistricting Project is a joint effort of California Common Cause and the University of the Pacific, McGeorge School of Law to provide educational resources and assistance to local jurisdictions interested in moving away from political redistricting towards independent, commission-based redistricting. The Project is made possible due to a generous grant by the James Irvine Foundation.

For more information about the California Local Redistricting Project, visit us at:

[www.localredistricting.org](http://www.localredistricting.org).



*The opinions expressed in this report are those of the author and do not necessarily reflect the views of California Common Cause, the University of the Pacific, or the James Irvine Foundation.*

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# INTRODUCTION

Redistricting is the periodic process of redrawing election district boundaries so that they remain approximately equal in population. In most countries, redistricting is performed by a commission or by nonpartisan staff.<sup>1</sup> Unlike most of the democratic world, however, in the United States elected officials are primarily responsible for redrawing their own districts. This is true both at the state and local level, despite well-recognized problems with legislative redistricting.

Incumbents have a personal interest in drawing districts that further their own reelection on the one hand, and that frustrate challengers' and political opponents' electoral chances on the other. When district lines are redrawn to accomplish political ends, or "gerrymandered," it often comes at the expense of fair representation, the principal reason for redistricting.<sup>2</sup> Single political party-controlled state legislatures have drawn tortured legislative and Congressional district boundaries to enable their party to win seats vastly out of proportion with how their states' electorates are voting.<sup>3</sup> City councils and county boards of supervisors have drawn district boundaries that splinter neighborhoods, communities, and emerging minority populations to similarly protect incumbents or harm challengers.<sup>4</sup>

In 2008, voters passed an initiative removing the California State Legislature's power to redistrict. Instead, the new law gave a bipartisan commission of 14 citizens, none of whom were directly appointed by elected officials, the exclusive authority to redraw state legislative (and later congressional) district lines.<sup>5</sup> The guiding philosophy behind Proposition 11, the initiative which established the state Citizens Redistricting Commission, was that "allowing politicians to draw their own districts is a serious conflict of interest that harms voters."<sup>6</sup> Scholarly assessments of the Commission's 2011 redistricting have been overwhelmingly positive. Compared with the Legislature's 2001 redistricting, the Commission drew less gerrymandered maps that better represented California's diverse communities.<sup>7</sup>

The success of the state Commission inspired many national reformers; it also sparked a wave of redistricting reform that swept across California's local governments. Since 2008, eleven local jurisdictions have established independent redistricting commissions. (By comparison, up until that point, only two independent commissions had been created in the prior four decades.) Five cities and counties even put in place commissions directly modelled off of the state Commission, copying its structure and procedures. Combined, around 17.5 *million* Californians now reside in a local jurisdiction that uses an independent commission – more than the population of 46 states. In addition, dozens of local governments have established advisory commissions to recommend maps to the governing board.

While good government advocates had always hoped that California's Commission would spur independent redistricting in other states, few probably considered that this reform might take root at the local level. There is a popular misconception that, because California local elections are nonpartisan, local redistricting is neither political nor contentious. This is hardly the case. As Bruce Cain, one of the preeminent scholars of California redistricting, wrote over a decade ago:

“Is the line-drawing process any less political in local government? From our experience, the answer is an unqualified no. ... [N]onpartisan maps may be every bit as political as partisan ones. In many cases, ostensibly nonpartisan local politics is dominated by a power struggle among two or more factions which, though they lack official recognition, perform many of the duties common to conventional political parties, such as fundraising, candidate recruitment, coordinated campaigning, and the like. ... [I]t is hardly surprising that a faction or coalition in control of a local legislature’s redistricting process might attempt to draw lines to its own advantage and to the detriment of its opponents’ electoral prospects.”<sup>8</sup>

In further point of fact, California local redistricting is routinely described as “contentious,” “controversial,” and “political.”<sup>9</sup> The same problems of legislative self-interest that dog state redistricting are observed locally as well. Boxes of newspaper clippings describe local governing board majorities allegedly abusing the redistricting process to: protect incumbents;<sup>10</sup> defeat incumbents;<sup>11</sup> deter challengers;<sup>12</sup> promote successors;<sup>13</sup> disenfranchise growing minority communities;<sup>14</sup> reward political loyalty;<sup>15</sup> and exact political retribution.<sup>16</sup>

In contrast to governing board-controlled redistricting, local commissions have been promoted as a means of increasing public participation in redistricting, depoliticizing the process, and drawing more representative districts.<sup>17</sup> However, not all commissions are created equal. Some have true independence and are designed to be meaningfully free of governing board influence; others are advisory or stacked with political operatives. Local ordinances differ significantly along a number of considerations, for example in terms of commissioner qualifications; the appointment process; enumerated redistricting criteria; and transparency requirements.

This report has three goals: First, to survey the sudden growth of local commission-based redistricting reform in California. Second, to identify those major, recurring policy considerations that go into drafting a local redistricting ordinance, and the different ways jurisdictions have addressed them. Third and finally, to recommend local redistricting commission best practices from this multitude of local models, based on a review of local commission history, redistricting scholarship, and expert recommendations.

The survey results, major policy considerations, and recommendations are summarized below, and elaborated on in the sections that follow.

## SURVEY OF LOCAL COMMISSIONS

A total of 37 California local governments either used a commission to recommend or redraw election district boundaries after the 2010 census, or have since established one. This includes 37% of cities with by-district elections and 22% of counties. Commission use is widespread. Rural and urban counties, coastal and inland cities, and Republican and Democrat-leaning jurisdictions have established commissions.

While most commissions were temporary bodies, created just for the 2010 redistricting cycle, 17 are permanent commissions, meaning they are legally required to be re-established after each census. Of

these, 11 have the authority, independent of the local governing board, to adopt new district boundaries. The 17 permanent commissions, including the 11 independent commissions (**bolded**), are:

|                    |                           |                              |                         |          |
|--------------------|---------------------------|------------------------------|-------------------------|----------|
| <b>Berkeley</b>    | <b>Escondido</b>          | <b>Oakland</b>               | <b>San Diego County</b> | Stockton |
| <b>Chula Vista</b> | Los Angeles               | <b>Pasadena School Dist.</b> | <b>San Francisco</b>    |          |
| Dinuba             | <b>Los Angeles County</b> | <b>Sacramento</b>            | San Jose                |          |
| Downey             | <b>Modesto</b>            | <b>San Diego</b>             | Seal Beach              |          |

Most of this report focuses on the policies and history associated with these 17 commissions, as typically more thought and detail was put into their drafting.

## MAJOR POLICY CONSIDERATIONS

Most redistricting ordinances define core elements of the commission’s structure, like the size of the commission, how commissioners are appointed, and whether the district maps the commission adopts are recommendations or have the independent force of law. Other major elements, which are especially likely in ordinances establishing independent commissions, include commissioner qualifications, enumerated redistricting criteria, and transparency requirements.

The eight most common, major policy considerations in local redistricting ordinances are: (1) commission type; (2) commissioner selection method; (3) commission composition; (4) commissioner qualifications; (5) commissioner during and post-service restrictions; (6) public engagement and transparency; (7) redistricting criteria; and (8) administration.

**Commission Type:** Commissions have different authority to recommend or actually adopt new election district boundaries. Redistricting commissions can be characterized as one of three types:

- **Independent commissions** have the power to *independently* adopt new district maps. The local governing board does not approve, and cannot amend, the commission’s maps.
- **Advisory commissions** provide recommendations for election district boundaries, which the governing board may adopt, modify, or ignore.
- **Hybrid commissions** are a blend between independent and advisory commissions. Generally, the commission will have the power to adopt new district maps, but only after receiving some level of input from the governing board. For example, in Chula Vista, the commission adopts new district boundaries, but must consider city council objections before doing so.

**Selection Method:** There are four main approaches to appointing persons to serve on a redistricting commission. They differ primarily in whether and how they attempt to limit incumbents’ involvement in the selection process.

- **Political Appointment:** Elected officials directly appoint the commissioners, either individually or collectively as a governing board.
- **Independent Appointment:** An independent selection body, like a panel of retired judges, directly appoints the commissioners after an open application process.

- **Random Draw & Commission Appointment:** An independent selection body creates a subpool of the most qualified applicants. A subset of commissioners is selected by random draw from that subpool. Those commissioners then appoint the final commissioners from the remaining applicants in the subpool. This selection method is modeled after the state Commission's.
- **Retired Judges:** The commission is constituted entirely of retired judges who are generally selected by random draw.

**Commission Composition:** Commissions vary in size, from 5 members (San Diego County) to 21 (City of Los Angeles), and also in terms of their composition. Many ordinances require or encourage commission diversity in terms of: geography, race/ethnicity, gender, political party affiliation, and other factors.

**Commissioner Qualifications:** Some ordinances require prospective commissioners to meet certain subjective and objective eligibility qualifications, generally to ensure commissioners are independent, possess necessary skills, and are knowledgeable about the jurisdiction's diverse communities.

**Commissioner During- & Post-Service Restrictions:** A few ordinances restrict the political and employment activities of commissioners during and for a few years after their service. Examples include prohibiting commissioners, for four years after the new district maps are adopted, from running for office in those districts or registering to lobby the local governing board.

**Transparency & Public Engagement:** Ordinances frequently include specific requirements for transparency and public participation. Common requirements include holding a minimum number of hearings in different locations around the jurisdiction; requiring maps to be published for a week or longer before being adopted; and allowing the public to submit written comments and draft maps.

**Redistricting Criteria:** States law sets default redistricting criteria that local governments *may* consider in redistricting. Redistricting ordinances establishing commissions will often specify geographic, demographic, or political criteria that commissioners *must* follow in drawing new election district boundaries. Common criteria include: compactness, contiguity, compliance with the Voting Rights Act, and preserving neighborhoods, communities of interests, and political subdivisions.

**Administration:** Ordinances may include administrative provisions for the smooth functioning of the commission, including its budget, staffing, and map adoption procedures and deadlines.

## BEST PRACTICES RECOMMENDATIONS

The California Local Redistricting Project (CLRP) recommends the following:

### COMMISSION TYPE

1. Local redistricting commissions should have the independent power to adopt new election district maps.

### SELECTION METHOD

2. Commissioners should be selected through a process that ensures meaningful independence from the elected governing board. At minimum, commissioners should not be directly appointed by elected officials.

### COMMISSION COMPOSITION

3. Local redistricting commissions should have enough members to reasonably reflect the diversity of the jurisdiction, but not so many members that commission deliberation becomes difficult.
4. Local redistricting ordinances should require the appointment of alternates so that commission vacancies can be replaced quickly without disrupting the commission's work.
5. Commissions should reasonably reflect the diversity of the jurisdiction.
6. At least one commissioner should be appointed from each existing election district.
7. Redistricting ordinances should not encourage partisan redistricting by requiring commissioners' political party affiliations to match the jurisdiction's overall party registration rates.

### COMMISSION QUALIFICATIONS

8. Applicants should be required to meet minimum, objective commissioner qualifications to exclude persons who are highly likely to appear or be politically biased.
9. At minimum, local political candidates and elected officials in that jurisdiction, their immediate family, and their campaign staff should not be eligible for appointment to the commission.
10. Applicants should also be evaluated based on subjective criteria, including their collegiality, ability to be impartial, and relevant experiences or skills.
11. Commissioner qualifications should not be so strict that most civically active persons are ineligible for appointment.

### DURING- & POST-SERVICE RESTRICTIONS

12. Commissioners should be prohibited from engaging in political activity while on the commission.
13. Commissioners should be subject to during- and post-service activity and employment restrictions to prevent them from politically or financially benefitting for the maps they adopt; however, restrictions should not be so strict as to discourage most civically-active residents from applying.



14. At a minimum, commissioners should be prohibited from running for office for 4 years after the commission adopts final district boundaries.

#### PUBLIC PARTICIPATION & COMMISSION TRANSPARENCY

15. The commission should encourage broad public participation throughout the redistricting process; at minimum, the commission should be required to conduct direct outreach to less politically-engaged communities.
16. The commission should hold at least one public hearing in each existing election district before drawing its first draft map.
17. Public hearings should be scheduled and conducted so as to maximize the public's ability to participate in the redistricting process.
18. The commission should accept written comment and facilitate the public's ability to submit draft maps.
19. A proposed final map should be published electronically for at least one week prior to being adopted so that the public has time to review and comment on it.
20. To the greatest extent possible, redistricting materials and commission information should be available online, including: commission agendas, commission minutes, a calendar of public hearings, video recording of public meetings, redistricting data, draft maps, and commission contact information.

#### REDISTRICTING CRITERIA

21. A redistricting ordinance should enumerate and define the redistricting criteria that the commission should apply.
22. An ordinance should not require stricter than "substantially equal" population equality.
23. An ordinance should include criteria to ensure minority communities are not disenfranchised.
24. An ordinance should prohibit drawing district boundaries to advantage or disadvantage an incumbent, political candidate, or political party.

#### ADMINISTRATION

25. The governing board should be required to budget a reasonable amount for the commission's activities.
26. The commission should be authorized to hire its own redistricting consultants.
27. For charter cities, a redistricting ordinance establishing an independent commission should include an impasse procedure in case the commission fails to adopt new district lines.

## ENDNOTES

<sup>1</sup> Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, UNIVERSITY OF CHICAGO LAW REVIEW 783 (Spring 2013) (“The nearly universal answer [for how foreign democracies redistrict] is that they use independent redistricting commissions whose plans are subject to highly deferential judicial review.”).

<sup>2</sup> See *Reynolds v. Sims*, 377 U.S. 533, 565-66 (1964) (“the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment”).

<sup>3</sup> See, e.g., Sam Wang, *The Great Gerrymander of 2012*, NEW YORK TIMES (Feb. 2, 2013) (explaining that, although Democrats won 51% of the vote for congress in North Carolina, gerrymandered maps enabled Republicans to win 70% of seats). See also Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice 2 (2017) (concluding that “[s]ingle-party control of the redistricting process is closely linked with biased maps.”).

<sup>4</sup> See, *infra*, n. 8-16.

<sup>5</sup> Cal. Const. Art. XXI.

<sup>6</sup> Proposition 11, Sec. 2(a) (Nov. 4, 2008).

<sup>7</sup> See, e.g., Raphael Sonenshein, *When the People Draw the Lines*, League of Women Voters 50 (2013) (“This examination of the mapping process found that the commission was ultimately successful in attempting to meet the six constitutional criteria for redistricting.”) and Nicholas Stephanopoulos, *Communities and the California Commission*, STANFORD LAW AND POLICY REVIEW 281 (2012).

<sup>8</sup> Bruce Cain and David Hopkins, *Mapmaking at the Grassroots: The Legal and Political Issues of Local Redistricting*, ELECTION LAW JOURNAL 517 (2002)

<sup>9</sup> See, e.g., Jim Newton, *Council lines spark conflict*, LOS ANGELES TIMES (Dec. 9, 2011) (Los Angeles County redistricting “contentious, divisive and nakedly political”); Greg Mellen, *Drawn out of Long Beach's 8th District, candidate isn't giving up*, PRESS-TELEGRAM (Jul. 7, 2011) (Long Beach redistricting “controversial”); Lisa Vorderbrueggen, *CoCo supes OK new district maps on 3-2 vote*, Bay Area News Group Political Blotter (Jul. 26, 2011) (Contra Costa County redistricting “contentious”).

<sup>10</sup> SAN DIEGO UNION TRIBUNE, *Editorial: Supervisors' shameless self-preservation* (Jun. 30, 2011) (San Diego County redistricting “amounts to an incumbent protection plan”); Ed Sanders, *City Council takes heat for an avoidable redistricting issue*, SACRAMENTO PRESS (Aug. 17, 2011) (Sacramento city council rejected maps that would “threaten the political futures of” two incumbents) and Mike Layne, *Proposed council districts put Redlands politicians before voters*, REDLANDS DAILY FACTS (Feb. 20, 2017) (Redlands city council “opted for maps with gerrymandered voting districts” to protect incumbents).

<sup>11</sup> See, e.g., Austin Weinstein, *Internal Politics Color Gerrymandering Fight in Berkeley*, BERKELEY POLITICAL REVIEW (Apr. 21, 2015) (Berkeley city council attempted to “remove a sitting councilman” through redistricting).

<sup>12</sup> See, e.g., Greg Mellen, *Drawn out of Long Beach's 8th District, candidate isn't giving up*, PRESS-TELEGRAM (Jul. 7, 2011) (Long Beach city council candidate alleges council to intentionally draw him out of seat he was challenging) and David DeBolt, *One final step in Solano County redistricting process*, DAILY REPUBLIC (Jul. 29, 2011) (allegations that Board of Supervisors changed election schedule of one district to prevent challengers).

<sup>13</sup> See, e.g., LOS ANGELES TIMES, *Editorial: For a better L.A. City Council, make it bigger* (Mar. 5, 2012) (Los Angeles council districts drawn to “pave the way toward election for various aides and [politicians]”).

<sup>14</sup> See, e.g., Chris Nichols, *Prominent critic rips county redistricting*, SAN DIEGO UNION TRIBUNE (Jun. 16, 2011) (alleging racial gerrymandering against Latino community in San Diego County to protect incumbents); Elizabeth Marcellino, *L.A. Supervisors Deny Bid for Second Latino-Majority District*, NBC4 LOS ANGELES (Sep. 27, 2011) (alleging Latino community disenfranchised in Los Angeles County redistricting to protect incumbents); and National Association for the Advancement of Colored People (NAACP), Asian Americans Advancing Justice (AAAJ), and Mexican American Legal Defense and Educational Fund (MALDEF), *The Impact of Redistricting in YOUR Community 2* (2010) (Asian American community fractured in Los Angeles city redistricting).

<sup>15</sup> See, e.g., LOS ANGELES TIMES, *Editorial: For a better L.A. City Council, make it bigger* (Mar. 5, 2012) (Los Angeles council districts “secure districts and fundraising opportunities for favored incumbents”).

<sup>16</sup> See, e.g., Richie Duchon, *L.A. Council approves new redistricting map*, DAILY BREEZE (Mar. 16, 2012) (Los Angeles city council incumbent allegedly punished with worse district for not supporting council member’s bid for council presidency).

<sup>17</sup> See, e.g., Alameda County Registrar of Voters, *Measure W1 Argument in Favor*, Voter Information Guide (Nov. 8, 2016) (“Measure W1 will create an independent Citizens Redistricting Commission, completely free of political influence. ... This Commission is designed to be geographically diverse, independent of the Council, and ensure that fair districts are drawn that truly reflect Berkeley’s neighborhoods and communities. ... give power back to the people. Measure W1 will create fair districts and empower citizens to have a voice in our democracy.”).

## SURVEY OF LOCAL COMMISSIONS

Of California's 59 cities<sup>1</sup> and 58 counties that used by-district elections in 2016, 22 cities (37%)<sup>2</sup> and 13 counties (22%) either used a redistricting commission for the 2010 redistricting cycle or have created one since then. The embrace of commission-based redistricting is widespread. Local commissions could be found in all corners of the state, including:

- **Northern** (Shasta County) and **Southern** (San Diego County) California;
- **Coastal** (San Francisco) and **Inland** (Fresno County) California;
- **Urban** (Los Angeles County) and **Rural** (Alpine County) California; and
- **Red** (Escondido) and **Blue** (Berkeley) California.

### MAP: LOCAL REDISTRICTING COMMISSIONS



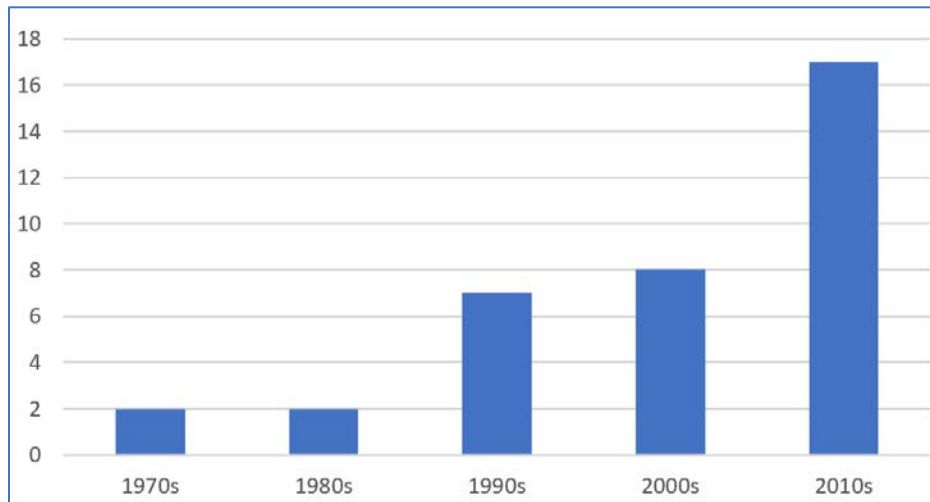
Most local commissions were temporary, one-time panels set up to advise the governing board in just the 2010 cycle. There are presently 17 permanent local commissions in California; these commissions will be re-established after every census to redraw or recommend new district boundaries.

### GROWTH OF PERMANENT & INDEPENDENT COMMISSIONS

The number of permanent commissions has expanded dramatically in recent years. In just the past 4 years, 9 local jurisdictions have established permanent commissions; this exceeds the 8 jurisdictions that established permanent commissions in the preceding 40 years. The growth in independent and hybrid commissions, most of which are permanent commissions, has been even more dramatic. Whereas only 2 permanent commissions in the 1990s had the power to independently adopt new district maps, by the 2010s that number had increased more than *fivefold* to 11. Only the cities of Merced and Santa Barbara have one-time hybrid and independent commissions, respectively.

Some jurisdictions have created “commissions” consisting entirely of the personal staff of elected officials; because these are commissions in name only they were not counted in this report.

GRAPH: GROWTH OF PERMANENT COMMISSIONS



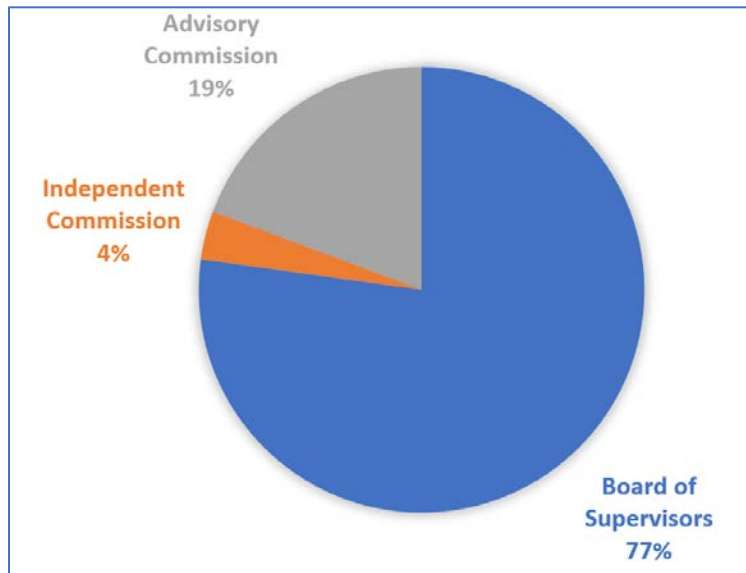
Two sometimes intersecting trends have been driving the rapid increase in local commission-based reform. First, the popularity<sup>3</sup> of the state Commission has had a trickle-down effect, inspiring many local reform efforts. Eleven of thirteen independent/hybrid commissions have been created since 2008, when Proposition 11 passed. Five of those commissions – in Berkeley, Chula Vista, Los Angeles County, Oakland, and Sacramento – consciously modelled their selection method off of the state Commission. Not surprisingly, good government organizations who supported Proposition 11, including California Common Cause and the League of Women Voters, either supported or initiated the efforts to create commissions in most of these jurisdictions.

Second, an uptick in California Voting Rights Act (CVRA) litigation has resulted in the creation of several commissions. The CVRA prohibits a local government from using at-large elections when it has the practical effect of diluting minority voting power.<sup>4</sup> The traditional remedy in a CVRA suit is to require the local government to transition to by-district elections, requiring that jurisdiction to draw election districts for the first time. However, rather than allow the unrepresentative governing board to draw its own election districts in the transition, many legal settlements required the creation of a commission to advise or adopt the new boundaries. For example, the permanent commissions in Chula Vista, Escondido, and Modesto all came out of negotiated CVRA settlements.

## COUNTY COMMISSIONS

Of the 13 county redistricting commissions, all but two were one-time advisory commissions, as then-required by state law. Los Angeles and San Diego counties have permanent independent commissions.

**GRAPH: COUNTRY APPROACHES TO REDISTRICTING**



Most of the 11 advisory commissions were created by minute order, with supervisors directly appointing the members. Minute orders are governing body directions to staff; generally, these orders contain very little detail in terms of commission qualifications, public participation requirements, or redistricting criteria. One notable exception is San Mateo, the last county in California to go to by-district elections, which created its nine-member advisory commission pursuant to a CVRA settlement.<sup>5</sup> The commission includes 4 elected officials and 5 public members selected by the board from a pool of nominees created by the CVRA plaintiff and the local League of Women Voters.

San Diego and Los Angeles are the only counties with independent commission. Both are creations of *state* law because, prior to 2017, counties were not legally authorized to establish independent commissions absent special legislative authorization. San Diego has a five-member commission composed of retired judges.<sup>6</sup> The commission was created at the request of the county in 2012; however, proposed legislation this legislative session would change the composition and selection method of the commission, which the county is opposing.<sup>7</sup>

Los Angeles county has a 14-member citizens commission, selected through a combination of random draw and commission appointment, like the state commission.<sup>8</sup> The commission was created by the Legislature over the county’s objection out of a concern that the current supervisorial lines do not “reflect Los Angeles County’s broad demographic and regional diversity.”<sup>9</sup> The county has filed suit to overturn the law.<sup>10</sup>

**COUNTY SURVEY: PERMANENT COMMISSIONS**

| County (population)             | Commission Name                      | Year Est. | Power       | Size | Selection Method | Authority |
|---------------------------------|--------------------------------------|-----------|-------------|------|------------------|-----------|
| <b>Los Angeles</b> (10,137,915) | Citizens Redistricting Commission    | 2016      | Independent | 14   | Random Draw      | State Law |
| <b>San Diego</b> (3,317,749)    | Independent Redistricting Commission | 2012      | Independent | 5    | Retired Judges   | State Law |

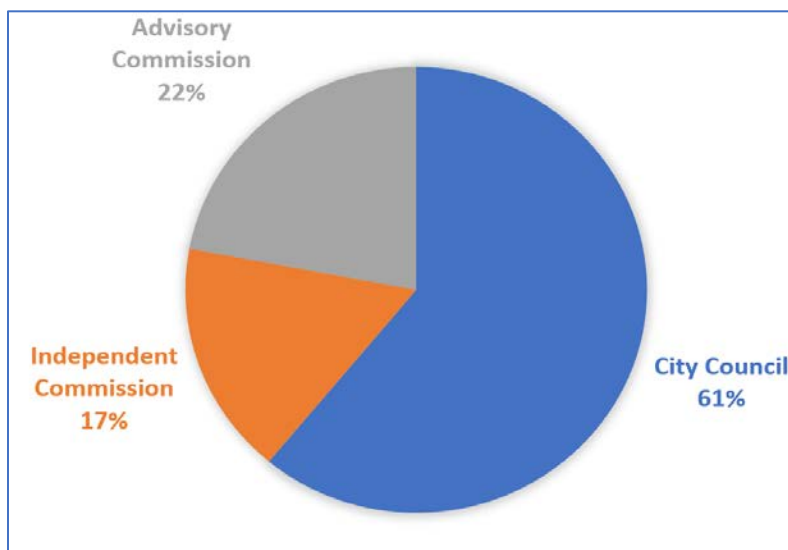
## COUNTY SURVEY: ONE-TIME COMMISSIONS

| County (population)            | Commission Name                                 | Year Est. | Power    | Size | Selection Method                   | Authority       |
|--------------------------------|---|-----------|----------|------|------------------------------------|-----------------|
| <b>Alpine</b><br>(1,100)       | Citizen Advisory Committee                      | 2011      | Advisory | 10   | Political Appointment              | Minute Order    |
| <b>Fresno</b><br>(979,915)     | Redistricting Task Force                        | 2011      | Advisory | 5    | Political Appointment              | Minute Order    |
| <b>Imperial</b><br>(180,883)   | Redistricting Advisory Committee                | 2011      | Advisory | 5    | Political Appointment              | Minute Order    |
| <b>Mendocino</b><br>(87,628)   | Citizen's Advisory Committee                    | 2011      | Advisory | 8    | Political Appointment              | Minute Order    |
| <b>Mono</b><br>(13,981)        | Redistricting Advisory Committee                | 2011      | Advisory | 10   | Political Appointment              | Resolution      |
| <b>Monterey</b><br>(435,232)   | Citizen Redistricting Committee                 | 2010      | Advisory | 15   | Political Appointment              | Resolution      |
| <b>San Mateo</b><br>(748,731)  | Redistricting Advisory Committee                | 2013      | Advisory | 9    | Political Appointment              | CVRA Settlement |
| <b>Shasta</b><br>(179,631)     | Citizen's Redistricting Advisory Committee      | 2011      | Advisory | 5    | Political Appointment              | Minute Order    |
| <b>Stanislaus</b><br>(541,560) | Ad Hoc Citizen Redistricting Advisory Committee | 2011      | Advisory | 11   | Random Draw/ Political Appointment | Minute Order    |
| <b>Tulare</b><br>(460,437)     | Citizens Advisory Committee                     | 2011      | Advisory | 11   | Random Draw/ Political Appointment | Minute Order    |
| <b>Yolo</b><br>(215,802)       | Redistricting Advisory Commission               | 2011      | Advisory | 5    | Political Appointment              | Minute Order    |

### CITIES

Out of 59 cities with by-district elections in 2016, 23 cities either used a redistricting commission in the 2010 redistricting cycle, or have since created one. Most (13) were advisory commissions and of those, in all but one case, the commissioners were directly appointed by the city council. Anaheim, pursuant to a CVRA settlement, instead established a panel of randomly-selected retired judges to recommend districts for the jurisdiction.<sup>11</sup>

## GRAPH: CITY APPROACHES TO REDISTRICTING



The other 10 cities established commissions with the power to adopt district boundaries on their own: 6 are fully independent of the city council and 4, described as “hybrid” commissions in this report, mostly have the power to adopt new districts but must first consult to varying degrees with the council on final lines. Nine of these 10 cities are charter cities; prior to 2017, general law cities, like counties, were not authorized to create independent commissions. The tenth, Escondido, created its commission as a court-approved remedy to a CVRA settlement.<sup>12</sup>

There is a great deal of diversity in terms of how commissioners are appointed to these independent or hybrid commissions. Four cities established a citizens commission, closely paralleling the state Citizens Redistricting Commission model: Berkeley, Chula Vista, Oakland, and Sacramento.<sup>13</sup> In San Diego and Escondido a citizens commission is *selected* by a panel of retired judges, whereas in Santa Barbara the commission will *consist* of retired judges.<sup>14</sup> In Modesto the city council directly appoints commissioners.<sup>15</sup> In Merced, the commissioners are also directly appointed, but must be nominated by the local League of Women Voters.<sup>16</sup> San Francisco has a blended approach, with the board of supervisors and the mayor appointing some commissioners, and the city’s nonpartisan Election Commission the remainder.<sup>17</sup>



## CITY SURVEY: PERMANENT COMMISSIONS

| City<br>(population)              | Commission Name                         | Year<br>Est. | Power       | Size | Selection<br>Method                      | Authority          |
|-----------------------------------|---|--------------|-------------|------|--|--------------------|
| <b>Berkeley</b><br>(121,000)      | Independent Redistricting<br>Commission | 2016         | Independent | 13   | Random Draw                              | City Charter       |
| <b>Chula Vista</b><br>(267,172)   | Redistricting<br>Commission             | 2012         | Hybrid      | 7    | Random Draw                              | City Charter       |
| <b>Dinuba</b><br>(23,961)         | Citizens Advisory<br>Committee          | 1994         | Advisory    | -    | Political<br>Appointment                 | City Charter       |
| <b>Downey</b><br>(113,267)        | Redistricting<br>Committee              | 1996         | Advisory    | -    | Political<br>Appointment                 | City Charter       |
| <b>Escondido</b><br>(151,613)     | Independent Redistricting<br>Committee  | 2013         | Hybrid      | 7    | Independent<br>Appointment               | CVRA<br>Settlement |
| <b>Los Angeles</b><br>(3,976,322) | Redistricting<br>Commission             | 1999         | Advisory    | 21   | Political<br>Appointment                 | City Charter       |
| <b>Modesto</b><br>(212,175)       | Citizen's Districting<br>Commission     | 2008         | Hybrid      | 9    | Political<br>Appointment                 | City Charter       |
| <b>Oakland</b><br>(420,005)       | Independent Redistricting<br>Commission | 2014         | Independent | 13   | Random Draw                              | City Charter       |
| <b>Sacramento</b><br>(495,234)    | Independent Redistricting<br>Commission | 2016         | Independent | 13   | Random Draw                              | City Charter       |
| <b>San Diego</b><br>(1,406,630)   | Redistricting<br>Commission             | 1992         | Independent | 7    | Independent<br>Appointment               | City Charter       |
| <b>San Francisco</b><br>(870,887) | Elections Task Force                    | 1996         | Independent | 9    | Independent/<br>Political<br>Appointment | Charter            |
| <b>San José</b><br>(1,025,350)    | Redistricting<br>Commission             | 1978         | Advisory    | 11   | Political<br>Appointment                 | City Charter       |
| <b>Seal Beach</b><br>(24,440)     | Redistricting<br>Committee              | 1974         | Advisory    | -    | Political<br>Appointment                 | City Charter       |
| <b>Stockton</b><br>(307,072)      | Advisory Commission                     | 2016         | Advisory    | 7    | Political<br>Appointment                 | City Charter       |

## CITY SURVEY: ONE-TIME COMMISSIONS

| City<br>(population)             | Commission Name                               | Year<br>Est. | Power       | Size | Selection<br>Method        | Authority                          |
|----------------------------------|---|--------------|-------------|------|----------------------------|------------------------------------|
| <b>Anaheim</b><br>(351,000)      | Advisory Committee on<br>Election Districts   | 2015         | Advisory    | 5    | Retired<br>Judges          | CVRA<br>Settlement                 |
| <b>Menifee</b><br>(88,531)       | Advisory Redistricting<br>Committee           | 2011         | Advisory    | 5    | Political<br>Appointment   | Minute<br>Order                    |
| <b>Merced</b><br>(420,005)       | District Lines Advisory<br>Committee          | 2015         | Hybrid      | ≥7   | Independent<br>Appointment | Legal<br>Settlement/<br>Resolution |
| <b>Pasadena</b><br>(142,059)     | Redistricting Task<br>Force                   | 2011         | Advisory    | 9    | Political<br>Appointment   | Minute<br>Order                    |
| <b>Salinas</b><br>(157,218)      | Redistricting<br>Committee                    | 2011         | Advisory    | 7    | Political<br>Appointment   | Minute<br>Order                    |
| <b>Sanger</b><br>(25,007)        | Redistricting<br>Committee                    | 2011         | Advisory    | 7    | Political<br>Appointment   | Minute<br>Order                    |
| <b>Santa Barbara</b><br>(91,930) | Independent Redistricting<br>Commission       | 2015         | Independent | 3    | Retired<br>Judges          | CVRA<br>Settlement                 |
| <b>Watsonville</b><br>(53,796)   | Community Redistricting<br>Advisory Committee | 2011         | Advisory    | 7    | Political<br>Appointment   | Resolution                         |
| <b>Woodland</b><br>(59,068)      | Citizens' Advisory<br>Committee               | 2013         | Advisory    | 5    | Political<br>Appointment   | Minute<br>Order                    |

### SENATE BILL 1108: THE FUTURE FOR COUNTIES & GENERAL LAW CITIES?

Until recently, counties and general law cities were only authorized to establish advisory commissions.<sup>18</sup> So, while charter cities could exercise their home rule power to establish independent commissions on their own, a county or general law city wanting to do the same had to seek a special exemption from the Legislature.<sup>19</sup> Few have done so, so most independent commissions have been created in charter cities.

This may be about to change. In 2016, the Legislature passed and the Governor signed Senate Bill 1108, authorizing any general law city or county to establish an independent redistricting commission.<sup>20</sup> The bill, which went into effect on January 1, 2017, allows jurisdictions to set the size of the commission and how commissioners are selected, provided the commission meets certain baseline standards for commissioner independence and commission transparency, which are discussed in the sections that follow.

### OTHER JURISDICTIONS

State law does not expressly authorize other local governments, besides cities and counties, to establish independent redistricting commission. Because state law instead specifically assigns redistricting to the governing boards of most local governments,<sup>21</sup> it seems unlikely that those boards, by passing an ordinance or resolution, could delegate this function to an independent commission.<sup>22</sup>

However, under the California Constitution and the state Education Code,<sup>23</sup> the *city charter* of a city overlapping any school or community college district may, upon approval of a majority of the voters of

the district, provide for the “manner in which” those school and community college district governing board members are elected. This exception has been used at least once to establish an independent redistricting commission for the Pasadena School District in the Pasadena city charter.<sup>24</sup>

## ENDNOTES

- <sup>1</sup> The number of cities with by-district elections is increasing rapidly as a result of civil rights lawsuit challenging the use of at-large elections as racially discriminatory. At the end of 2016, 59 cities held by-district elections. See Nicolas Heidorn, *Municipal Democracy Index 2016*, California Common Cause 4 (Dec. 2016).
- <sup>2</sup> Stockton, which would be #23, has established a permanent advisory redistricting commission to assist in its forthcoming transition to by-district elections.
- <sup>3</sup> A statewide public opinion poll found that, by a 2-1 margin, voters believed the state redistricting commission had produced maps that did a good job of keeping communities together, were fair to racial minorities, and were fair to the major political parties. See Field Research Corporation, *Release #2389* (Sep. 22, 2011), accessed at: <https://web.archive.org/web/20161230000508/www.field.com/fieldpollonline/subscribers/Rls2389.pdf> (last visited May 2017).
- <sup>4</sup> Cal. Elec. Code Sec. 14025 *et seq.*
- <sup>5</sup> Legal settlement, Section II.9, *Satorre v. San Mateo County Board of Supervisors*, Case No. 504866 (Feb. 20, 2013).
- <sup>6</sup> Cal. Elec. Code Sec. 21550.
- <sup>7</sup> See Assembly Bill 801 (Weber 2016).
- <sup>8</sup> Cal. Elec. Code Sec. 21530 *et seq.*
- <sup>9</sup> See Angela Mapp, *Senate Bill 958 Analysis*, Assembly Local Government Committee 7 (Jun. 29, 2016).
- <sup>10</sup> Cindy Chang, *L.A. County sues the state over a redistricting law it says is unconstitutional*, LOS ANGELES TIMES (Feb. 28, 2017).
- <sup>11</sup> Legal Settlement, Sec. 9 in *Moreno, et. al. v. City of Anaheim*, Case No. 30-2012-00579998-CU-CR-CXC (Jan. 8, 2014)
- <sup>12</sup> Legal Settlement, Sec. IX, in *Gomez v. Escondido*, Case No. 37-2011-00060480-CU-CR-NC (Dec. 20, 2011).
- <sup>13</sup> Berkeley Charter Sec. 9.5(b)(6); Chula Vista Charter Sec. 300.5(D); Oakland Charter Sec. 220(J); and Sacramento Charter Sec. 174.
- <sup>14</sup> San Diego Charter Sec. 5.1, ¶18; Escondido Legal Settlement, Sec. IX(A), in *Gomez v. Escondido*, Case No. 37-2011-00060480-CU-CR-NC (Dec. 20, 2011); and Santa Barbara Legal Settlement, Section II.8, in *Banales, et al. v. City of Santa Barbara*, Case No. 1468167 (Mar. 10, 2015).
- <sup>15</sup> Modesto Charter Sec. 501(b).
- <sup>16</sup> Merced, Resolution No. 2015-08, Sec. 1(C) (Mar. 2, 2015).
- <sup>17</sup> San Francisco Charter Sec. 13.110(d), ¶4.
- <sup>18</sup> See Former Cal. Elec. Code Sec. 21505. *Repealed by Senate Bill 1108* (Allen) (Ch. 784, Stats. of 2016).
- <sup>19</sup> Compare Cal. Const. Art. XI, Sec. 5(b) (charter cities have plenary authority over “the manner in which, the method by which, the times at which, and the terms for which the several municipal officers ... shall

be elected”) with Cal. Const. Art. XI, Secs. 7 (general law counties are able to make their own laws so long as not in conflict with state laws) & 4(a) (charter counties are “subject to statutes that relate to apportioning population of governing body districts”).

<sup>20</sup> Cal. Elec. Code Sec. 23003.

<sup>21</sup> See Educ. Code Sec. 5019.5 (community colleges and school districts) and Elec. Code Sec. 22000 (special districts). *But see* Educ. Code Sec. 1002 (redistricting for county boards of education is performed by the County Committee on School District Organization).

<sup>22</sup> See, e.g., *Totten v. Board of Supervisors of County of Ventura*, 139 Cal. App. 4th 826 (2006) (holding certain local government functions, when expressly delegated to the city council or board of supervisors by state law, were non-delegable functions).

<sup>23</sup> Cal. Const. Art. IX, § 16. See also Cal. Educ. Code §§ 5019(a)(1), 5221, 5222, & 5301. See also *Hazzard v. Brown*, No. A095375, 2002 WL 863186 (Cal. App. 1st Dist. May 7, 2002) (city charter can control the manner in which a board of education is elected even if it conflicts with state general law).

<sup>24</sup> Pasadena Charter Sec. 713.

## COMMISSION TYPE

State law authorizes general law cities and counties to establish independent or advisory commissions.<sup>1</sup> A charter city has inherent authority to create advisory or independent redistricting commissions, unless uniquely restricted by its city charter.<sup>2</sup> There are three types of local redistricting commissions in California, which vary in terms of how much autonomy each commission has to adopt district boundaries:

- **Advisory commissions** provide recommendations for election district boundaries, which the governing board may adopt, modify, or ignore.
- **Independent commissions** have the power to themselves adopt new election district boundaries.
- **Hybrid commissions** are somewhere in between. Generally, hybrid commissions assign the commission the power to adopt new election district maps, but only after receiving some level of consent or input from the governing board.

Of the 17 permanent local commissions, 6 (35%) are advisory commissions, 7 (41%) are fully independent commissions, and 4 (24%) are hybrid commissions.

### SURVEY OF LOCAL COMMISSIONS: COMMISSION TYPE

|                    | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|--------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Independent</b> | ✓        |             |        |        |           |                    | ✓                    |         | ✓       |                   | ✓                 | ✓                | ✓                  | ✓             |          |            |          | 7       | 41%     | ✓            |
| <b>Advisory</b>    |          |             | ✓      | ✓      |           | ✓                  |                      |         |         |                   |                   |                  |                    |               | ✓        | ✓          | ✓        | 6       | 35%     |              |
| <b>Hybrid</b>      |          | ✓           |        |        | ✓         |                    |                      | ✓       |         | ✓                 |                   |                  |                    |               |          |            |          | 4       | 24%     |              |

### ADVISORY COMMISSION

*“There shall be a Redistricting Commission to advise the Council on drawing of Council district lines.”*

**Los Angeles City Charter Sec. 204(B)**

Properly structured, advisory commissions can offer a number of benefits over traditional governing board redistricting. Like other commissions, advisory commissions generally have more time to receive,

consider, and incorporate public comment than governing boards. Because commissioners have no direct political interest in the districts being drawn, they are more likely to draw lines that fairly represent the different communities within a jurisdiction. (However, commissioner independence will also be influenced by the method for selecting commissioners and the qualifications required of commissioners.)

While often used, the risk with any advisory commission is that its recommendation, and the body of public comment and participation that went into that recommendation, will be entirely disregarded by the governing body. A disregarded recommendation can undermine public confidence in the redistricting process, particularly amongst members of the public and community groups that showed up and invested in the process. This is precisely what happened in Sacramento in 2011 when, as the *Sacramento Bee* reported, the “council majority ignored its own citizens advisory committee and drew its own district maps in private.”<sup>3</sup>

Despite the risk, advisory commission recommendations are frequently followed. Governing boards generally create commissions with good intentions, and often fully adopt their recommendations or only adopt them with small alterations. For example, the Pasadena City Council has a long history of establishing redistricting task forces and in both 2001 and 2011 adopted the task force recommendation without change.<sup>4</sup> A fair and inclusive commission process can also build community support behind the recommendation, creating political pressure for its adoption against incumbent attempts to alter maps for their own self-interest. In Anaheim, when the city council initially rejected the advisory district maps produced by a commission of retired judges, hundreds of constituents protested, convincing the council to reverse itself and adopt the commission’s recommendation, which had been dubbed the “People’s Map.”<sup>5</sup>

Advocates of advisory — over independent — commissions might argue that elected officials should retain control of redistricting because, unlike commissioners, elected officials are politically accountable at the ballot box for their decisions.<sup>6</sup> However, when a community is disenfranchised in the redistricting process — for example by having its voting strength “cracked” into several districts — it is deprived of the electoral tools to hold anyone accountable.<sup>7</sup> In Los Angeles’s 2011 redistricting, Asian-American leaders lobbied to have their community consolidated into a single city council seat; instead Asian-Americans were dispersed across several seats<sup>8</sup> and, because they accounted for only a minority of the vote in each seat, had little ability to make redistricting a decisive campaign issue for incumbents who supported the map.<sup>9</sup>

## INDEPENDENT COMMISSION

“... the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council is vested in the Redistricting Commission...”

**San Diego City Charter Sec. 5.1, ¶2.**

Independent commissions are created to entirely remove incumbents from the process of adopting a district map. After controversially and contentiously ignoring its advisory commission's recommendations in the 2011 redistricting, Sacramento councilmembers vowed to turn over all future redistrictings to an independent commission.<sup>10</sup> The ballot argument for the resulting Measure L, placed before voters by the council, explained: "It is a conflict of interest for politicians to draw the boundaries of city council districts they run in. Voters should be choosing their elected officials; elected officials should not be choosing their voters."<sup>11</sup>

To good government organizations, independent commissions are necessary to depoliticizing redistricting and addressing public cynicism that accompanies incumbents drawing their own districts. "Redistricting reform should give voters the power to participate in the creation of political districts," explains a recent Common Cause report, "and ultimately to choose our representatives."<sup>12</sup> Without the independent power to adopt a map, incumbents' self-interest may ultimately trump even the fairest commission-produced maps.

## HYBRID COMMISSION

*"... the Council shall either approve or disapprove [the Commission's] Recommended Districting Plan in its entirety. ... If the Council disapproves... the Council shall submit in writing to the Commission the reasons for such disapproval. ... After such consideration, the Commission shall submit its Final Districting Plan to the Council for implementation."*

**Modesto City Charter Sec. 501(b)(6)(C)**

Hybrid commissions attempt to split the proverbial baby between independent and advisory commissions. Generally, this type of commission will have the power to adopt new district maps, but only after receiving some level of input from the governing board. In some jurisdictions, the governing board may only offer its perspective; in others, the board has some limited power to alter the maps.

There are three models of local hybrid commissions in California:

- **Consultation Model:** In Chula Vista, Escondido, and Modesto,<sup>13</sup> the local commission submits a recommended map to the city council. The council then has the option of approving the draft map, in which case it goes into effect, or rejecting the map and returning it to the commission for further consideration. The commission may then adopt either its original map, unchanged, or an amended map that is responsive to the council's objections.
- **Choice of Alternatives Model:** In Merced,<sup>14</sup> the commission had to submit two draft maps to the city council. The council then had the option of adopting one of those two maps. The council was not authorized to adjust either map, except as might be required to comply with the federal Voting Rights Act.
- **Supermajority Amendment Model:** The Pasadena School District's<sup>15</sup> commission recommends a map to the school board, which is required to adopt the recommended map unless, by 2/3 vote, the school board votes to amend the map.



Hybrid commissions are generally the result of a political compromise between reformers who want a fully independent commission and a governing board that wants to retain some power over redistricting. Arguably, the “second-look” that the governing board provides in the consultation model may result in better maps without a great risk of incumbent self-interest compromising the process.

## CLRP RECOMMENDATIONS

1. **Local redistricting commissions should have the independent power to adopt new election district maps.** Independent commissions are more consistent with the democratic principle that voters should select their elected officials, instead of officials selecting their voters. While advisory commissions have benefits over legislative redistricting, particularly in terms of transparency and opportunities for public engagement, there is an ever-present risk that their recommendations will be discarded if they strongly conflict with incumbents’ electoral self-interest.

## ENDNOTES

<sup>1</sup> Cal. Elec. Code Sec. 23001.

<sup>2</sup> Cal. Const. Art. XI, Sec. 5 (providing charter city autonomy over elections).

<sup>3</sup> Foon Rhee, *Is it the right time to right a wrong?* SACRAMENTO BEE (Nov. 17, 2014).

<sup>4</sup> See Pasadena City Council, *Minutes* 4-6 (Apr. 30, 2012) and Pasadena City Council, *Minutes* 11-12 (Apr. 15, 2002).

<sup>5</sup> See Art Marroquin, *Anger boils over after new voting district map is scrapped by Anaheim City Council*, ORANGE COUNTY REGISTER (Dec. 16, 2015) and Adam Elmahrek, *Anaheim Council Gives Final Approval to 'People's Map'*, ORANGE COUNTY REGISTER (Feb. 10, 2016).

<sup>6</sup> See, e.g., California Secretary of State, *Voter Information Guide*, Ballot Argument Against Proposition 11, (Nov. 4, 2008) (“Prop. 11 gives the final say for the entire state to a 14-member ‘redistricting commission’ never elected by the people. *You don't get a choice*. There's no guarantee they'll represent you or your neighbors.”) (emphasis in original).

<sup>7</sup> See also Justin Levitt, *Essay: Weighing the Potential of Citizen Redistricting*, LOYOLA OF LOS ANGELES LAW REVIEW 520 (Winter 2011) (“... it strains credulity to believe that any legislator would in practice be removed from office because of the way in which she conducted redistricting. But more fundamentally, even if the public actually voted on the basis of redistricting performance, the public to which any legislator is ostensibly accountable for her redistricting decision disappears by virtue of the redistricting process. That is, redistricting performed by a representative on behalf of a particular group of constituents is necessarily an act that those constituents cannot review, because redistricting reshapes the represented group before the next election.”)

<sup>8</sup> See David Zahniser, *Asian Americans make new push for L.A. Council Seats*, LOS ANGELES TIMES (Dec. 15, 2014).

<sup>9</sup> NAACP, AAAJ, and MALDEF, *The Impact of Redistricting in YOUR Community 2* (2010) (“because Asian Americans did not make up a significant portion of any official’s constituency, officials were left with little incentive to respond to the Asian American community”).

<sup>10</sup> See Foon Rhee, *Is it the right time to right a wrong?* SACRAMENTO BEE (Nov. 17, 2014).

<sup>11</sup> Sacramento County, *Voter Information Guide*, Argument in Favor of Measure L (City of Sacramento) (Nov. 8 2016).

<sup>12</sup> Common Cause, *Activist Handbook to Redistricting Reform 7* (2017).

<sup>13</sup> Chula Vista City Charter Sec. 300.5(H); Escondido Legal Settlement, Sec. IX(I), in *Gomez v. Escondido*, Case No. 37-2011-00060480-CU-CR-NC (Dec. 20, 2011); and Modesto City Charter Sec. 501(b)(6).

<sup>14</sup> Merced City Council, Resolution No. 2015-08, Sec. 1(O) (Mar. 2, 2015).

<sup>15</sup> Pasadena City Charter Sec. 713(E).

## SELECTION METHOD

Under state law, counties and general law cities are authorized to “prescribe the manner in which members are appointed” to a redistricting commission, although independent commission members must be appointed through an open application process.<sup>1</sup> Charter cities may use any selection method for appointing commissioners that is consistent with their charters.<sup>2</sup>

In practice, there is a fair amount of variety in how redistricting commissioners are selected. The main methods differ primarily in how far they remove elected officials from the appointment process. They are:

- **Political Appointment:** Elected officials directly appoint commissioners.
- **Independent Appointment:** A selection body, which is independent of the governing board, appoints commissioners through an open application process.
- **Random Draw & Commission Appointment:** After an open application process, an independent body creates a subpool of the most qualified candidates. A subset of commissioners are selected at random from that subpool. Those commissioners then appoint the final commissioners from the remaining applicants in the subpool.
- **Retired Judges:** The commission is constituted entirely of retired judges from the county, generally selected by random draw.

In about half of jurisdictions (53%), elected officials directly appoint commissioners. In the other half, which includes the majority of independent and hybrid commissions, commissioners are selected through a process that excludes elected officials. Since the passage of the state Citizens Redistricting Commission in 2008, reformers have gravitated to the random draw and commission appointment selection method; 5 jurisdictions (29%) use this approach, making it the most popular selection method to not involve incumbents.

### SURVEY OF LOCAL COMMISSIONS: SELECTION METHOD

|                       | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|-----------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Political</b>      |          |             | ✓      | ✓      |           | ✓                  |                      | ✓       |         | ✓                 |                   |                  |                    | ✓             | ✓        | ✓          | ✓        | 9       | 53%     |              |
| <b>Independent</b>    |          |             |        |        | ✓         |                    |                      |         |         | ✓                 |                   | ✓                |                    | ✓             |          |            |          | 4       | 24%     |              |
| <b>Random Draw</b>    | ✓        | ✓           |        |        |           |                    | ✓                    |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 5       | 29%     | ✓            |
| <b>Retired Judges</b> |          |             |        |        |           |                    |                      |         |         |                   |                   |                  | ✓                  |               |          |            |          | 1       | 6%      |              |

## POLITICAL APPOINTMENT

*“This Advisory Commission shall consist of one (1) member from each District, who shall be appointed by the Council member from that District, and a Chairperson chosen from the City at large, who shall be appointed by the Mayor.”*

**San Jose City Charter Sec. 403, ¶4.**

Direct political appointment is the most common way to appoint commissioners. In some jurisdictions, each elected official gets to appoint their own representative on the commission. For example, in the city of Los Angeles, every councilmember, the elected city attorney, and the elected city controller appoint one commissioner each; the council president appoints two; and the mayor three.<sup>3</sup> In other cases – Modesto, for example – the governing board as a whole appoints the commissioners.<sup>4</sup>

Politically-appointed commissions, like other commissions, can increase opportunities for redistricting transparency and public input. While directly-appointed commissioners may not always be politically impartial, they do not have any direct electoral self-interest in the maps they draw. One prominent redistricting scholar argues that, even with political appointments, “the fact that commission members’ *own* careers will not be directly affected by the maps that they draw frees them to focus on the public good (or, at least, to consider it more seriously than legislators do).”<sup>5</sup>

Nonetheless, good government organizations strongly discourage the direct political appointment of commissioners.<sup>6</sup> Direct appointment opens the door to incumbents placing their political allies on the commission, which can undermine the impartiality of the commission and public confidence in the process. This seems to occur regularly in big cities. For example, in Los Angeles, Sacramento (before it adopted its current independent commission), and San Jose, the local press harshly criticized the commission appointments by the respective city councils:

- **Los Angeles:** “The roster for L.A.’s commission is an embarrassing who’s-who of career City Hall puppets -- those guys and gals repeatedly stuck into commission/committee seats by elected officials who can count on them to stick to the script. To say the 2012 redistricting commissioners are cloaked in this culture of self-preservation and nepotism is an understatement; they are the fibers that give it form.”<sup>7</sup>
- **Sacramento:** “When it comes to asking for advice on drawing the boundaries for their districts, some members of the City Council are asking for a little help from their friends.”<sup>8</sup>
- **San Jose:** “... the council has outdone itself in picking insiders [for the commission]. Along with a host of folks with political connections, San Jose’s elected officials have selected two registered lobbyists -- folks who owe their livelihood in part to council decisions -- and a chairman who nursed a dubious legal beef with the city.”<sup>9</sup>

Unsurprisingly, political commissions often prioritize incumbency protection over fairer community representation. Commissioners-as-proxies for their appointing officials often result in a redistricting process that is just as political as when incumbents control the lines. State studies comparing

commission types find that political redistricting commissions adopt far more partisan maps than nonpartisan or independent commissions.<sup>10</sup> One study found that maps drawn by a partisan commission had the “highest overall levels of partisan bias” whereas nonpartisan commission maps demonstrated a “near elimination of partisan bias.”<sup>11</sup>

There is evidence of this phenomenon at the local level as well. For example, in San Francisco’s 2002 redistricting process, the three appointees of the progressive Board of Supervisors all voted to adopt the final map, whereas the three appointees of the more moderate mayor all voted against.<sup>12</sup> In contrast, the three appointees of the city’s independent Elections Commission split 2-1 in favor of the map. One prevailing supervisorial appointee confessed, “[w]e started out politically and we ended up politically.”<sup>13</sup>

Observers of the city of Los Angeles’s redistricting commission process have been equally if not more critical:

*“The Los Angeles City Redistricting Commission, composed of 21 political appointees, has proposed a map of 15 reshaped City Council districts, which probably do what a majority of the current council members, the mayor, the city attorney and the controller intended them to do: They secure districts and fundraising opportunities for favored incumbents; they punish members who act too independently; and they pave the way toward election for various aides and pols who are looking for a start in electoral politics.”<sup>14</sup>*

Some jurisdictions, while keeping a political appointment process, try to address politicization and improve public confidence through strong commissioner qualifications and prohibitions. For example, Modesto’s charter prohibits city employees or the family members of elected officials from being commissioners and requires the council to give “strong consideration” to appointing a retired judge, a former member of a civil grand jury, and a member of a nonprofit “dedicated to encouraging informed and active participation in government.”<sup>15</sup>

## INDEPENDENT APPOINTMENT

*“... the Redistricting Commission ... shall be appointed by a panel of three retired Superior Court Judges ... drawn at random by the City Clerk...”*

**San Diego City Charter Sec. 5.1, ¶17.**

To reduce the possibility or appearance of incumbent bias in the selection of commissioners, some local jurisdictions instead require an entity that is independent of the governing board to appoint commissioners. Removing incumbent control or influence over a commission is an important step to reducing the politicization of redistricting. State studies confirm that nonpartisan commissions and independent commissions draw politically fairer lines than state legislatures.<sup>16</sup>

No state has turned over commission appointments to a single, independent entity, but Arizona comes the closest.<sup>17</sup> In that state, majority and minority party legislative leaders still appoint commissioners, but must do so from a list of 25 candidates proposed by the state’s panel for nominating appellate

judges. While the state Republican party did (unsuccessfully) challenge the commission's maps in court, scholarly assessment of Arizona's commission suggests the reform succeeded in producing less partisan maps and increasing competition compared with legislatively-controlled redistricting.<sup>18</sup>

The city of San Diego's redistricting commission, one of the oldest in the state, has some structural similarities to Arizona's commission. City registered voters may apply to serve on the commission. A randomly-drawn panel of 3 retired judges reviews the applications and directly selects the 9 most-qualified commissioners with a "demonstrated capacity to serve with impartiality in a nonpartisan role."<sup>19</sup> Like Arizona, the city commission was accused of partisan bias, but ultimately seemed to produce fair maps that demonstrated little pro-incumbency bias.

The commission's process was admirably transparent and inclusive. Over ten months, the commission held 45 public meetings and received input from more than 2,000 residents and stakeholders.<sup>20</sup> While the local Republican party alleged early-on that biased commissioners had snuck onto the panel,<sup>21</sup> the final map was approved unanimously by all commissioners, including Republican members. Moreover, far from discriminating against the party, some commentators believed the new districts gave Republicans an edge in upcoming elections.<sup>22</sup> Minority communities, who complained of underrepresentation on the council, also fared well: Latinos and Asian-Americans gained influence in two seats, better reflecting their share of the population, and a predominantly African-American district was strengthened.<sup>23</sup> And, providing evidence that the council was not secretly calling the shots, two incumbents – one Democratic and one Republican councilmember – were drawn out of their seats.<sup>24</sup>

The great challenge with independent appointment commissions is identifying a truly impartial appointing entity. Local government officials, like a city clerk or county registrar of voters, generally report to the governing board, and might therefore be, or appear to be, biased themselves. Only one jurisdiction, Los Angeles County, involves local government staff in selecting commissioners. Most jurisdictions opt for a more independent body. Some jurisdictions, like San Diego and Escondido, seek to create a one-time, neutral panel for the sole purpose of selecting commissioners; retired judges are a popular choice.

Where a jurisdiction already has a permanent board or commission that is perceived as nonpolitical, it might assign commissioner selection to that body. For example, in San Francisco a subset of commissioners is selected by the city's Elections Commission, which is a citizen commission responsible for administration and oversight of the city's elections.<sup>25</sup>

To some, the process of creating or identifying a neutral appointing entity may feel redundant: if the appointing panel is impartial, why not simply entrust *it* with redistricting? Generally, the reason is either that the appointing entity, while impartial, may not be representative of the broader community, or that, because of its other obligations, the entity does not have the capacity to add redistricting, a time-intensive undertaking.

The chart below provides examples of the different independent entities jurisdictions have chosen to either appoint commissioners or, in the random draw model discussed next, to screen commission applicants.

## SURVEY: INDEPENDENT SCREENING/APPOINTING BODIES

| Permanent Body  | Temporary Panel  |
|---|--|
| <b>Chula Vista:</b> Charter Revision Commission       | <b>California:</b> randomly-selected panel of auditors   |
| <b>Sacramento:</b> Ethics Commission                  | <b>Escondido/San Diego:</b> randomly-selected panel of retired judges  |
| <b>San Francisco:</b> Elections Commission            | <b>Merced:</b> board of the local League of Women Voters   |
| <b>Los Angeles County:</b> County Registrar of Voters | <b>Oakland:</b> randomly-selected panel consisting of: 1 retired judge, 1 law or public policy student, and 1 good government member |

### RANDOM DRAW & COMMISSION APPOINTMENT

*“From the eligible applicant pool, the screening panel shall select through an open and public process the thirty applicants most qualified to perform the duties of the Commission... The City Clerk... shall randomly draw at a public meeting six names from the remaining pool of applicants [to] serve on the Commission. The six Commissioners shall review the remaining names in the pool of applicants and ... appoint seven applicants to the commission and two alternates.”*

**Oakland City Charter Sec. 220(J)(7)-(9).**

Five jurisdictions<sup>26</sup> have followed the model of the state commission by using a combination of random draw and commission appointment to select commissioners. The California approach has been called the “gold standard” for independent redistricting: no state commission goes further to reduce legislative control or influence in the redistricting process.<sup>27</sup> Like independent commissions, the random draw model eliminates incumbents from the appointment process; however, to guard against the possibility of an independent appointing entity *itself* being biased, the first commissioners are selected by random draw, loosely evoking a jury selection process. Those screened and presumed impartial commissioners are then entrusted to select the final commissioners.

This process generally proceeds in five phases:

1. **Application:** There is an open application process where any registered voter in the jurisdiction may apply to serve on the commission.
2. **Neutral Screen:** Applicants who fail to meet the minimum qualifications or may have disqualifying relationships are removed from the pool of applicants.
3. **Independent Screen:** An independent screening body reviews all the eligible applications and creates a subpool of the most qualified and diverse applicants.
4. **Random Draw:** A number of commissioners are selected at random from that subpool.
5. **Commission Appointment:** Those randomly-selected commissioners appoint the final number of commissioners from the remaining applicants in the subpool.

How many commissioners are drawn at random versus commission appointments, and who performs the independent screening, varies greatly by jurisdiction.

### COMPARISON: RANDOM DRAW SELECTION METHODS

| Jurisdiction       | Commission Size | Random Draw | Commission Appointment | Independent Screening Body   | Other Requirements  |
|--------------------|-----------------|-------------|------------------------|--|---|
| California         | 14              | 8           | 6                      | Panel of 3 auditors  | Requires: 5 Democrats, 5 Republicans, 4 others.   |
| Berkeley           | 13              | 8           | 5                      | [None]   | Randomly draw 1 applicant from each existing district.  |
| Chula Vista        | 7               | 4           | 3                      | Charter Revision Commission  | Council can reject commission appointments.   |
| Los Angeles County | 14              | 8           | 6                      | County Registrar   | Randomly draw 1 applicant from each existing district. Requires county-proportional party registration. |
| Oakland            | 13              | 6           | 7                      | Panel of a: retired judge, law/policy student, member of good government nonprofit | Commission must have 1 member from each district.   |
| Sacramento         | 13              | 8           | 5                      | Ethics Commission  | Randomly draw 1 applicant from each existing district.  |

As the table above demonstrates, every jurisdiction has a different independent screening body to narrow down the field of commission applicants. Chula Vista and Sacramento have selected trusted, distinctly local screening bodies: their Charter Revision Commission and Ethics Commission, respectively. Oakland’s panel model is not jurisdiction-specific and could be replicated elsewhere. Los Angeles County stands out for having the County Registrar, who is appointed by the Board of Supervisors, screen applicants; of the different screening bodies listed above, this is the least independent.

Berkeley, alone, does not use an independent screening body to create a subpool of applicants; instead, the city randomly selects its first commissioners from the full pool of all eligible applicants. While this eliminates the possibility of a biased screening body, it introduces other problems. Without any screening, unqualified applicants or biased applicants who meet the minimum eligibility criteria could be randomly selected. Without a subpool, it is also more likely that the randomly selected commissioners will not be diverse if the full body of applicants is predominantly from one geographic area or of one race or gender, as was the case with the applicants to the California state Commission.<sup>28</sup>

The random draw and commission appointment method has been praised by academics and good government advocates. While it has only been used once, the state Citizens Redistricting Commission’s 2011 process and maps received abundantly positive reviews.<sup>29</sup> By almost every metric, the commission-lead process was an improvement over the Legislature-directed process in the prior decade. One study



comparing the Commission’s 2011 maps with the Legislature’s 2001 maps found the Commission’s lines kept more cities intact, increased minority representation, created more compact districts, and produced more competitive seats.<sup>30</sup> Other redistricting and legal experts concluded that:

- *“The California citizen redistricting process was largely successful in meeting the mandated goals of a nonpartisan and transparent process, with a level of incumbent influence that was considerably lower than in previous redistricting efforts. The final maps survived legal challenge, and the commission’s work was regarded positively by a majority of the voters.”<sup>31</sup>*
- *“The final plans ... avoid partisan gerrymandering with the districts.”<sup>32</sup>*
- *“California’s new ... districts are more congruent with geographic communities of interest than their predecessors.”<sup>33</sup>*
- *“[T]he commission was effective in following accepted [redistricting] techniques and processes in mapping ... [and] generally met accepted standards for addressing [Voting Rights Act] issues.”<sup>34</sup>*
- *“[N]ot only do the Commission-certified Senate districts appear to comply with all of the constitutionally mandated criteria... [they] also are a product of what generally appears to have been an open, transparent and nonpartisan redistricting process.”<sup>35</sup>*

Chula Vista’s commission, so far, is the only local random draw commission to have drawn new district boundaries. According to civil rights attorneys who monitored the process, the commission’s work was “very successful.”<sup>36</sup> The 7-member commission conducted “three months of public outreach and input, including 10 public workshops”<sup>37</sup> and produced a compromise map ensuring both Asian-American and Latino representation.<sup>38</sup> The City Council unanimously adopted the commission’s recommendation.

The random draw commission is not without critics. The selection process takes the longest, is the most complicated – some argue “convoluted”<sup>39</sup> – and requires the most staff time and resources. Randomly drawing the first commissioners may also mean that some lesser-qualified candidates will be chosen at the expense of more qualified candidates.

## RETIRED JUDGES

*“The commission shall be comprised of five members and two alternates who shall each meet the following qualifications: ... Be a former or retired state or federal judge. ... The clerk shall conduct a random drawing at a regularly scheduled meeting of the board to select the members of the commission.”*

**California Elections Code Section 21550(b)(2)-(3) (San Diego County).**

Whether using political, independent, or random draw appointment, most jurisdictions opt to create *citizen* commissions. Three jurisdictions – Anaheim, San Diego County, and the city of Santa Barbara – have taken a different approach, instead using a panel of retired judges to recommend or redraw election district boundaries.<sup>40</sup> Because the pool of eligible candidates – retired judges – is so narrow, this model is presented as an independent selection method, although how retired judges are appointed can

vary. In Anaheim and San Diego, any retired judge residing in the county may apply to serve on the commission; five applicants are *randomly* selected to serve on the commission. In Santa Barbara, any retired judge residing outside the county may apply; the city council *directly appoints* three applicants to form its three-member commission.

Retired judge commissions have frequently been proposed by redistricting reformers. Of the four failed initiatives to establish independent redistricting in California prior to Proposition 11, two proposed to assign redistricting to a panel of retired judges and a third involved retired judges in selecting commissioners.<sup>41</sup>

A retired judges commission has several advantages over the *status quo* of elected officials drawing their own districts, and potentially over citizens commissions as well. Americans generally trust judges, especially compared with elected officials.<sup>42</sup> In part, this is likely because judges are professionally required to be impartial and nonpartisan.<sup>43</sup> Judges are also used to acting in a nonpolitical role. The California Code of Judicial Ethics prohibits active judges, even off the bench, from engaging in “political activity that may create the appearance of political bias or impropriety.”<sup>44</sup> Finally, in a litigation-prone field like redistricting, having a highly-skilled legal practitioner draw the lines can help ensure people are treated fairly and that the maps comply with the law.

There is also a successful history in California of retired judges redrawing state and congressional election districts. In 1970 and again in the 1990 redistricting cycles, the California Supreme Court appointed a panel of three retired judges (called “special masters”) to redraw districts when the Legislature failed to adopt new maps.<sup>45</sup> The resulting maps survived legal challenge and resulted in more competitive districts than the prior, legislatively-drawn maps.<sup>46</sup> One analysis, comparing the 1991 court redistricting with the 2001 legislative redistricting, found that maps the special masters drew were more competitive, more compact, and resulted in fewer county splits.<sup>47</sup> Nor is this unique to California; a nationwide study of court-based redistricting similarly found that “elections in court-drawn ... districts are more likely to be competitive compared with their legislative-drawn counterparts.”<sup>48</sup>

Since 2010, Anaheim is the only city in California to have completed districting using an advisory commission of retired judges. The process and maps were perceived as fair and representative. After 10 public hearings, the judges produced a map that, according to one local news source, had “broad” community support, and would have significantly increased representation for the then-unrepresented Latino community.<sup>49</sup> There were no accusations of bias or gerrymandered districts; however, a council majority initially rejected the map, preferring to create one less Latino-leaning seat, before relenting in the face of community opposition and unanimously adopting the judges’ recommendation.<sup>50</sup>

Although successful in boosting minority representation in Anaheim, retired judge commissions are sometimes criticized for not being representative of the electorate at-large. As a profession, judges are generally older, wealthier, whiter, and more likely to be male than the general population. Retired judges even more so, as the judiciary as a whole was even less diverse 10 to 20 years ago than today. So, while California today is majority non-white and half female,<sup>51</sup> a 2007 report on diversity in the judiciary found that 70% of judges were white and 73% men.<sup>52</sup> In Anaheim, of the five commissioners and two alternates randomly selected to its commission, all seven were white and six of the seven were men.<sup>53</sup>

A retired judges commission also may not be feasible for jurisdictions located in smaller or rural counties that lack a significant population of retired judges. For example, even Anaheim, which is the tenth largest city in California located in the state’s third largest county (Orange), only had 14 retired judges apply to serve on its commission.<sup>54</sup>

## COMMISSION COMPARISON

### COMPARISON: ADVANTAGES & DISADVANTAGES BY SELECTION METHOD

|                             | Political Appointment  | Independent Appointment  | Random Draw & Commission Appointment  | Retired Judges  |
|-----------------------------|--|--|---|---|
| <b>Description</b>          | Elected officials appoint commission   | Independent entity appoints commission   | Some commissioners randomly selected; those members select final commissioners  | Retired judges constitute the commission  |
| <b>Advantages</b>           | <ul style="list-style-type: none"> <li>✓ Simplest method</li> <li>✓ Increased public participation over board redistricting</li> </ul>             | <ul style="list-style-type: none"> <li>✓ Independent</li> <li>✓ Can select best applicants</li> </ul>              | <ul style="list-style-type: none"> <li>✓ Independent; least board influence on appointment</li> </ul>                                       | <ul style="list-style-type: none"> <li>✓ Independent</li> <li>✓ Judges perceived as impartial and competent</li> </ul>      |
| <b>Disadvantages</b>        | <ul style="list-style-type: none"> <li>✗ Appointees may place incumbent interest over fair maps</li> <li>✗ Not perceived as independent</li> </ul> | <ul style="list-style-type: none"> <li>✗ Unbiased appointing entity may be difficult to identify/create</li> </ul> | <ul style="list-style-type: none"> <li>✗ Random appointees may not be best applicants</li> <li>✗ More costly and lengthy process</li> </ul> | <ul style="list-style-type: none"> <li>✗ Not diverse</li> <li>✗ Not feasible in counties with few retired judges</li> </ul> |
| <b>Sample Jurisdictions</b> | City of Los Angeles<br>Modesto<br>San Jose   | Escondido<br>Merced<br>City of San Diego   | Chula Vista<br>Oakland<br>City of Sacramento  | Anaheim<br>San Diego County<br>City of Santa Barbara  |

## CLRP RECOMMENDATIONS

- Commissioners should be selected through a process that ensures meaningful independence from the elected governing board. At minimum, commissioners should not be directly appointed by elected officials.** The direct political appointment of commissioners risks politicizing local redistricting, producing maps that prioritize incumbent protection over fair maps, and undermining public confidence in the process.

## ENDNOTES

<sup>1</sup> Cal. Elec. Code Secs. 23002(b) & 23003(b).

<sup>2</sup> Cal. Const. Art. XI, Sec. 5 (providing charter city autonomy over elections).

<sup>3</sup> Los Angeles Charter Sec. 204(B).

<sup>4</sup> Modesto Charter Secs. 501(b)(3) & 1200.

<sup>5</sup> Nicholas Stephanopoulos, *Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail*, UNIVERSITY OF CHICAGO JOURNAL OF LAW AND POLITICS 338 (2007).

<sup>6</sup> See, e.g., Ari Weisbard, *Drawing Lines: A Public Interest Guide to Real Redistricting Reform*, DEMOS 14 (Jun. 2005) (“Legislators should have limited influence over the final composition of the panel ... [and] should not have the ability to nominate Commissioners directly.”).

<sup>7</sup> Simone Wilson, *L.A. City Redistricting Land Grab*, L.A. WEEKLY (Jan. 25, 2012).

<sup>8</sup> Ryan Lillis, *For redistricting advice, City Council turns to friendly faces*, SACRAMENTO BEE (Mar. 17, 2011).

<sup>9</sup> Scott Herhold, *Conflicts of interest in San Jose redistricting*, SAN JOSE MERCURY NEWS (Jan. 16, 2011).

<sup>10</sup> See, e.g., Eric Lindgren and Priscilla Southwell, *The Effect of Redistricting Commissions on Electoral Competitiveness in U.S. House Elections, 2002-2010*, JOURNAL OF POLITICS AND LAW 16 (2013) (independent commissions result in more competitive elections than partisan commissions) and Barry Edwards *et al.*, *Institutional Control of Redistricting and the Geography of Representation*, UNIVERSITY OF CHICAGO JOURNAL OF POLITICS 724-25 (Apr. 2017) (independent commissions draw more compact districts than do state legislatures or partisan commissions).

<sup>11</sup> Noah Litton, *The Road to Better Redistricting*, OHIO STATE LAW JOURNAL 861 (2012).

<sup>12</sup> Rachel Gordon, *S.F. redistricting map OK'd by task force*, SAN FRANCISCO CHRONICLE (Apr. 15, 2002). See also Rachel Gordon, *S.F. supervisors prepare for redistricting battle*, SAN FRANCISCO CHRONICLE (Jan. 17, 2011) (“A decade ago, then-Mayor Willie Brown unsuccessfully tried to orchestrate a redistricting process to give more power to moderates allied with his pro-development agenda and punish his political opponents on the left, who held the board majority.”).

<sup>13</sup> Rachel Gordon, *S.F. redistricting map OK'd by task force*, SAN FRANCISCO CHRONICLE (Apr. 15, 2002).

<sup>14</sup> LOS ANGELES TIMES, *Editorial: For a better L.A. City Council, make it bigger* (Mar. 5, 2012).

<sup>15</sup> Modesto Charter Sec. 501(b)(3).

<sup>16</sup> See, *supra*, n. 10 (Lindgren & Sowell; Edwards *et al.*). See also Peverill Squire, *Iowa and the Political Consequences of Playing Redistricting Straight*, in REDISTRICTING IN THE NEW MILLENNIUM 271 (ed. Peter Galderisi 2005) (“Iowa’s [nonpartisan, staff-driven] redistricting system creates legislative elections where the desires of the electorate determine election outcomes rather than having them ordained in advance by the cartographical machinations of parties and politicians.”).

<sup>17</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, BRENNAN CENTER 22 (2010).

<sup>18</sup> See David Lubin and Michael McDonald, *Is It Time to Draw the Line?* ELECTION LAW JOURNAL 152 (2006) (“Redistricting institutions in Arizona and Iowa produced relatively neutral maps without overt political benefits for the parties or incumbents.”) (citing Michael P. McDonald, *A Comparative Analysis of Redistricting Institutions in the United States, 2001–02*, STATE POLITICS AND POLICY QUARTERLY 371–95).

(Winter 2004)); Kelsey Kober, *Competition under Arizona's Independent Redistricting Commission*, FairVote (Nov. 8, 2016), available at: [www.fairvote.org/arizona\\_independent\\_redistricting\\_2016](http://www.fairvote.org/arizona_independent_redistricting_2016) ("The notable exception is that Arizona [congressional competitiveness] was worse than average in the 1980s [when redistricting was under legislative control], indicating that taking power out of the hands of the state legislature has some impact."); and Laura Royden and Michael Li, *Extreme Maps*, Brennan Center 7 (2017) (finding a low level of partisan bias in Arizona's maps). *But see* Peter Miller and Bernard Goffman, *Redistricting Commissions in the Western United States*, UC IRVINE LAW REVIEW 666 (Aug. 2013) ("When we consider other aspects of the redistricting process, however, it becomes harder to determine if the aims of the reformers are supported by these data. The California commission successfully kept more cities and counties together in a single district than either the courts or the legislature, but that goal has—thus far—proved unobtainable for the Arizona commission.").

<sup>19</sup> San Diego Charter Sec. 5.1, ¶13.

<sup>20</sup> SAN DIEGO METRO MAGAZINE, *New City Council Districts Finalized* (Au. 26, 2011).

<sup>21</sup> SAN DIEGO UNION TRIBUNE, *County GOP sues for new redistricting panel* (May 23, 2011).

<sup>22</sup> Scott Lewis, *Redistricting Delivers for San Diego Republicans*, VOICE OF SAN DIEGO (Jun. 6, 2012).

<sup>23</sup> SAN DIEGO METRO MAGAZINE, *New City Council Districts Finalized* (Au. 26, 2011) and Adrian Florido, *Balance of Power Stays Steady in District 4*, VOICE OF SAN DIEGO (JUL. 28, 2011).

<sup>24</sup> Adrian Florido, *What SD's New Political Lines Would Look Like*, VOICE OF SAN DIEGO (Jul. 25, 2011).

<sup>25</sup> San Francisco Charter Sec. 13.110(d), ¶4.

<sup>26</sup> Berkeley Charter Sec. 9.5; Chula Vista Charter Sec. 300.5; Cal. Elec. Code Sec. 21530 *et seq.* (Los Angeles County); Oakland Charter Sec. 220; and Sacramento Charter Sec. 170 *et seq.*

<sup>27</sup> *See* Andrew Spencer et al., *Escaping the Thicket: The Ranked Choice Voting Solution to America's Districting Crisis*, CUMBERLAND LAW REVIEW 388 (2015/2016). *See also* Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer?* YALE LAW JOURNAL 1818 (Vol. 3 2013) (California's commission has the most "legislative conflict of interest" separation).

<sup>28</sup> *See* Raphael Sonenshein, *When the People Draw the Lines*, League of Women Voters 21 (2012) (71% of initial applicants were white, compared with 33% of the screened subpool).

<sup>29</sup> *For a contrary perspective, see* Bruce E Cain, *Redistricting Commissions: A Better Political Buffer?* YALE LAW JOURNAL 1808-09 (Vol. 121 2012) (save for compactness, commission made only "modest" improvements on enumerated criteria); Olga Pierce and Jeff Larson, *How Democrats Fooled California's Redistricting Commission*, PROPUBLICA (Dec. 21, 2011) (alleging Democrats manipulated the Commission). *But see* Raphael Sonenshein, *When the People Draw the Lines*, League of Women Voters 72 (2012) (disputing ProPublica's account).

<sup>30</sup> Vladimir Kogan & Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, CALIFORNIA JOURNAL OF POLITICS AND POLICY (2012).

<sup>31</sup> Raphael Sonenshein, *When the People Draw the Lines*, League of Women Voters 7 (2012).

<sup>32</sup> Eric McGhee, *California's 2011 Redistricting: The Commission's Final Plans*, Public Policy Institute of California (Aug. 2011), accessed at: [www.ppic.org/main/publication\\_show.asp?i=994](http://www.ppic.org/main/publication_show.asp?i=994).

- <sup>33</sup> Nicholas Stephanopoulos, *Communities and the California Commission*, STANFORD LAW AND POLICY REVIEW 281 (2012) .
- <sup>34</sup> Raphael Sonenshein, *When the People Draw the Lines*, League of Women Voters 71 (2012).
- <sup>35</sup> *Vandermost v. Bowen*, 53 Cal. 4th 421, 484 (2012).
- <sup>36</sup> California Local Redistricting Project, *Local Commission Case Studies* (forthcoming) (statement by Jonathan Stein, former ACLU attorney).
- <sup>37</sup> Allison Sampite-Montecalvo, *C.V. council approves council districts*, SAN DIEGO UNION TRIBUNE (Jul. 14, 2015).
- <sup>38</sup> Marielena Castellanos, *Chula Vista Leaders Approve Council Districts*, KPBS (Jul. 15, 2015).
- <sup>39</sup> Dan Walters, *California Democrats playing politics to win*, PRESS DEMOCRAT (Dec. 23, 2011).
- <sup>40</sup> Settlement in *Moreno, et al. v. City of Anaheim*, Case No. 30-2012-00579998-CU-CR-CXC, Sec. 9 (Jan. 8, 2014); Anaheim City Council Resolution No. 2015-147 (Ar. 7, 2015); Cal. Elec. Code Sec. 21530 *et seq.*; and Settlement in *Banales, et al. v. City of Santa Barbara*, Case No. 1468167, Sec. II.8 (Mar. 10, 2015).
- <sup>41</sup> See Proposition 14 (Nov. 1982) (commission); Proposition 39 (Nov. 1984) (commission of retired judges); Proposition 119 (June 1990) (commission appointed by retired judges); and Proposition 77 (Nov. 2005) (commission of retired judges).
- <sup>42</sup> Art Swift, *Honesty and Ethics Rating of Clergy Slides to New Low*, Gallup.com (Dec. 16, 2013) (45% of Americans consider judges to have “very high” or “high” honesty and ethical standards, compared with 8% for members of Congress).
- <sup>43</sup> California Code of Judicial Conduct, Canons 3 (Dec. 1, 2016 ed.).
- <sup>44</sup> California Code of Judicial Conduct, Canons 5 (Dec. 1, 2016 ed.).
- <sup>45</sup> Nicholas Mosich, *Judging the Three-Judge Panel*, SOUTHERN CALIFORNIA LAW REVIEW 208 (Nov. 2005).
- <sup>46</sup> Nicholas Mosich, *Judging the Three-Judge Panel*, SOUTHERN CALIFORNIA LAW REVIEW 208 (Nov. 2005).
- <sup>47</sup> Douglas Johnson *et al.*, *Restoring the Competitive Edge*, Rose Institute of State and Local Government 26-28 (Sep. 2005).
- <sup>48</sup> Jamie L. Carson, Michael H. Crespin and Ryan D. Williamson, *Reevaluating the Effects of Redistricting on Electoral Competition, 1972-2012*, STATE POLITICS & POLICY QUARTERLY 174 (Apr. 2014). See also Laura Royden and Michael Li, *Extreme Maps*, Brennan Center 8 (2017) (“maps drawn by ... courts ... exhibited much lower levels of partisan bias” than legislative maps).
- <sup>49</sup> Adam Elmahrek, *Anaheim Excludes Latino Majority District From 2016 Election*, VOICE OF OC (Nov. 18, 2015). See also Erika Aguilar, *Anaheim restarts the process of revamping elections*, KPCC (Jan. 12, 2016) (judges’ map “supported by many local community groups”).
- <sup>50</sup> Adam Elmahrek, *Anaheim Council Gives Final Approval to ‘People’s Map’*, VOICE OF OC (Feb. 10, 2016).
- <sup>51</sup> According to the *2011-2015 American Community Survey 5-Year Estimates* by the U.S. Census, only 40% of Californians are non-Hispanic whites.
- <sup>52</sup> Judicial Council of California, *Demographic Data Provided by Judges and Justices Relative to Gender and Race/Ethnicity* 1 (2007).

<sup>53</sup> The seven commissioners are listed in Anaheim City Council Resolution No. 2015-147 (Apr. 7, 2015).

<sup>54</sup> Anaheim City Council Resolution No. 2015-147 (Apr. 7, 2015).

## COMMISSION COMPOSITION

State law imposes no limits on redistricting commission size or composition. Permanent local commissions range in size from 5 to 21 members, with larger governing boards generally having larger commissions. Most redistricting ordinances also require or encourage commission diversity, particularly in terms of commissioners' race and geographic residence. Most jurisdictions do not require commissioners to be selected based on party registration; however, counties and general law cities cannot create commissions comprised entirely of members registered with one political party.<sup>1</sup>

### COMMISSION SIZE

*“The commission shall consist of 13 commissioners and 2 alternates. Alternates may fully participate in commission deliberations but may not vote and may not be counted towards the establishment of a quorum. Alternates are subject to the same terms of office, qualifications, restrictions, and standards of conduct as other commissioners under this article.”*

**Sacramento City Charter Sec. 172(a)**

Setting the right number of commissioners on a commission is important to its proper functioning. Too many commissioners can bog down committee meetings and impede compromise on final district boundaries. Too few commissioners can result in a non-diverse commission (discussed further in the next sub-section), which may exclude the perspective of certain communities or harm the commission's legitimacy.

The Brennan Center, discussing state redistricting commissions, offers the following advice as to commission size:

*A redistricting body of five or even seven individuals may be too small to reflect the diversity of a state in any meaningful way. Groups larger than 15 may be too large to function smoothly. Somewhere in between, a redistricting body may be able to represent – and effectively negotiate compromise among – many of the state's constituencies.<sup>2</sup>*

Of California's 17 permanent commissions, the smallest (San Diego County) has 5 members, whereas the largest (City of Los Angeles) has 21; the median commission has 9 members. Unsurprisingly, jurisdictions with a greater number of election districts tend to have larger commissions; no permanent local commission has fewer commissioners than governing board members.



## SURVEY OF LOCAL COMMISSIONS: COMMISSION SIZE

|                           | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | <b>MEDIAN</b> | (California) |
|---------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------------|--------------|
| <b>Election Districts</b> | 8        | 4           | 5      | 5      | 4         | 15                 | 5                    | 6       | 8       | 7                 | 8                 | 9                | 5                  | 11            | 10       | 5          | 6        | <b>6</b>      | 120          |
| <b>Commissioners</b>      | 13       | 7           | *      | *      | 7         | 21                 | 14                   | 9       | 13      | 9                 | 13                | 9                | 5                  | 9             | 11       | *          | 7        | <b>9</b>      | 14           |
| <b>Alternates</b>         | 13       |             |        |        |           |                    |                      |         | 2       |                   | 2                 | 2                |                    |               |          |            |          | <b>2</b>      |              |

*\*Commission size not specified*

Most commissions also have an odd number of members. Generally, even-numbered commissions should be avoided because they risk producing tie votes, which can deadlock commission action. This consideration is less significant in commissions that are designed to require consensus decision-making, for example by requiring a supermajority vote to act. Los Angeles County and the state Commission have even-numbered commissions and a supermajority vote requirement.

Finally, many independent commissions also include a requirement that a number of “alternate” commissioners be selected. Commission vacancies are sometimes inevitable: commissioners may move out of the jurisdiction, violate rules constraining commissioners’ political activities, or simply fail to attend meetings. Because many commissions use elaborate methods for selecting commissioners, choosing a number of alternates in advance can prevent disruption in the commission’s functioning if a vacancy occurs.

### COMMISSION DIVERSITY

*“The Appointing Authority shall appoint members who will give the Redistricting Commission geographic, social, and ethnic diversity and who, in the Appointing Authority’s judgment, have a high degree of competency to carry out the responsibilities of the Commission.”*

**San Diego City Charter Sec. 5.1, ¶13.**

Many jurisdictions, especially those creating independent commissions, strive to create a body of commissioners that reasonably represent the demographics of the jurisdiction. A commission that lacks diversity may miss important community perspectives and even struggle with public legitimacy if significant constituencies feel they were not adequately represented in the process.

The National Association for the Advancement of Colored People (NAACP), for example, cautions that “it is important that an [independent redistricting commission] be diverse and representative, fairly

created, and responsive to minority interests” and recommends as a best practice “establish[ing] a process structured to yield a diverse commission.”<sup>3</sup>

Many jurisdictions include in their commission ordinances provisions to specifically promote geographic and ethnic diversity. A few jurisdictions also promote other forms of diversity, like economic class, gender, and sexual orientation. While well in the minority, one county does require commissioners’ party registration to match the overall party registration figures of that county. Party registration requirements are controversial and discussed further down in their own subsection.

Of California’s 17 permanent local commissions, 11 (65%) include some diversity requirement for their commission.

### SURVEY OF LOCAL COMMISSIONS: COMMISSION DIVERSITY

|                                     | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|-------------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Geography</b>                    | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       | ✓       | ✓                 | ✓                 | ✓                |                    |               | ✓        |            | ✓        | 11      | 65%     | ✓            |
| <b>Race/Ethnicity</b>               | ✓        | ✓           |        |        | ✓         |                    | ✓                    |         | ✓       |                   | ✓                 | ✓                |                    |               | ✓        |            |          | 8       | 47%     | ✓            |
| <b>Gender</b>                       | ✓        | ✓           |        |        |           |                    | ✓                    |         |         |                   | ✓                 |                  |                    |               |          |            |          | 4       | 24%     | ✓            |
| <b>Social Circumstance</b>          |          |             |        |        | ✓         |                    |                      |         |         |                   |                   | ✓                |                    |               |          |            |          | 2       | 12%     |              |
| <b>Age</b>                          | ✓        |             |        |        |           |                    |                      |         |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      |              |
| <b>Political Party Registration</b> |          |             |        |        |           |                    | ✓                    |         |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      | ✓            |
| <b>“Demographic”</b>                |          |             |        |        |           |                    |                      | ✓       |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      |              |
| <b>Economic</b>                     |          |             |        |        |           |                    |                      |         | ✓       |                   |                   |                  |                    |               |          |            |          | 1       | 6%      |              |
| <b>Sexual Orientation</b>           |          |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 1       | 6%      |              |

#### Geographic Diversity

“The appointed Commissioners and Alternates shall be selected in an open and public process and as the most qualified to perform the duties of the commission and reflective of the geographic, racial, ethnic and economic diversity of the City of Oakland, including at least one Commissioner from each district.”

**Oakland City Charter Sec. 220(J)(9).**

Geographic representation is the most common commission diversity requirement. The benefits of broad geographic representation are obvious: a commission where members come from all parts of a jurisdiction will be better equipped to identify true neighborhood and community boundaries than a commission whose members' lived experience is clustered in one area of the jurisdiction. Because housing patterns in America exhibit a high degree of racial and economic segregation,<sup>4</sup> a geographic diversity requirement can indirectly promote other types of commission diversity as well.

Geographic diversity is promoted in two ways. Some jurisdictions, like Modesto,<sup>5</sup> have a soft requirement that commission appointments “reflect” the jurisdiction’s diversity. Other jurisdictions have a hard requirement that mandates at least one commissioner come from each existing election district. For example, Oakland requires at least one of its 13 commissioners to be appointed from each of the city’s existing eight council districts.<sup>6</sup> Larger commissions can better accommodate such a geographic diversity quota.

### Racial/Ethnic Diversity

*“[Commissioners] shall be chosen to ensure the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity. However, it is not intended that formulas or specific ratios be applied for this purpose.”*

**California Government Code Sec. 8252(g) (State of California).**

Commission racial or ethnic diversity is often encouraged in redistricting ordinances. Unfortunately, in America there is a shameful – and in some places continuing – history of the redistricting process being used to disenfranchise racial minorities.<sup>7</sup> Including provisions to promote commission diversity can help ensure all communities feel they have a voice in the redistricting process. The Brennan Center, which advocates for the creation of state redistricting commissions, notes that “the more the body drawing the lines represents the diversity of the state itself, the more likely it is that the final district plan will fairly balance the various interests and communities in the state.”<sup>8</sup>

However, unlike geographic diversity, precise formulas for racial diversity are not used. Strict racial or ethnic quotas for redistricting are very likely unconstitutional,<sup>9</sup> which is why the state and a few local commissions expressly forbid their use.<sup>10</sup> Instead, ethnic diversity considerations can be baked into each step a commission takes to recruit and select commissioners. For example, in Sacramento, diversity considerations were included in:<sup>11</sup>

- **Recruitment:** The city must widely publicize the application process and solicit the assistance of community based organizations to recruit a diverse pool of candidates to serve on the commission. The city clerk must report to the council on its recruitment efforts.
- **Screening:** The city’s Ethics Commission is responsible for creating a subpool of the most qualified candidates that reasonably reflects the city’s diversity; the first six commissioners are randomly selected from this pool.

- **Selection:** After the first six commissioners are randomly selected from the candidate subpool, those commissioners select the final seven commissioners from the remaining subpool candidates, ensuring the commission as a whole “reasonably reflects” the city’s diversity.

On the other hand, certain commission design choices may make racial diversity more difficult to achieve, including:

- **Small commissions** may have too few members to adequately represent very ethnically diverse communities.
- **Direct appointment commissions**, where each elected official gets to individually appoint a commissioner, can sometimes produce unrepresentative commissions because there is no person or body looking at the commission’s diversity as a whole. For example, prior to establishing its independent commission, Sacramento had a 13-member, politically-appointed advisory commission with no Latino members, despite Latinos being the city’s largest ethnic minority.<sup>12</sup>
- **Retired judges commissions** are less likely to be diverse, as discussed in the prior section, because the judiciary as a whole is less diverse than the state’s population.

### Other Diversity

“...the Citizens Redistricting Commission shall attempt to achieve community representation by taking into consideration geographic diversity, race, age and gender.”

**Berkeley City Charter Sec. 9.5(b)(6)(iii).**

Aiming for broader inclusiveness, a number of redistricting ordinances require consideration of other types of diversity in commission appointments, including diversity of gender, economic class, social class, age, and sexual orientation.

Some of these classifications, for example economic class or sexual orientation diversity, are intended to provide representation for disadvantaged or traditionally marginalized communities that may have the most to lose (or gain) through redistricting. Low-income communities are often thought to benefit from being drawn together, strengthening their voting power, because the policy challenges and preferences of these communities, be it concerning public safety or the allocation of public resources, usually differ from middle- or higher-income areas. Historically discriminated-against gay and lesbian neighborhoods are increasingly recognized as a community of interest and kept whole in redistricting, which can help a member of that community to win local office.<sup>13</sup>

Other classifications do not stand in for a geographically distinct community, but are put in place out of recognition that certain groups, for example women and young adults, are generally underrepresented in local government and on local boards and commissions.<sup>14</sup>

## POLITICAL PARTY COMPOSITION

*“...The political party preferences of the commission members, as shown on the members’ most recent affidavits of registration, shall be as proportional as possible to the total number of voters who are registered with each political party in the County of Los Angeles, as determined by registration at the most recent statewide election.”*

**California Elections Code Sec. 21532(c) (Los Angeles County).**

Under a recently enacted state law, Senate Bill 1108 (Allen 2016), counties or general law cities that establish independent commissions are required to appoint at least one commissioner who is not registered with the same political party as the other commissioners.<sup>15</sup> Most jurisdictions, however, do not go further and require political party diversity. Los Angeles County is the sole exception, requiring its commissioners’ political party registration to reflect, as exactly as possible, the jurisdiction’s overall party registration.<sup>16</sup>

Requiring proportional political party registration on a local commission is controversial. Unlike state or federal elections, California local elections are, by law, nonpartisan.<sup>17</sup> California Common Cause, for instance, objects to requiring party proportionality on local commissions because “[m]aking it clear to commissioners that they have been selected to fulfill a political party quota will make them see themselves as party representatives” which “risks politicizing the local redistricting process.”<sup>18</sup> And, in jurisdictions where voter registration lopsidedly favors one party, a party proportionality requirement would enable majority party commissioners to adopt maps that effectively disenfranchise the minority party, as frequently occurs with state partisan commissions.<sup>19</sup>

In local jurisdictions where partisan politics already dominates local redistricting, an alternative to party proportionality might be the balanced party registration approach of California’s state Commission.<sup>20</sup> Of the Commission’s 14 members, 5 must be registered with the largest political party, 5 with the next largest party, and 4 not registered with either of those parties (in other words, either third party or no party preference voters). Moreover, the state Commission may only adopt a map with the approval of a majority of each of those three political subgroups. This consensus-building structure is designed to check partisan abuse, unlike a party proportionality requirement which is likely to encourage it.

Thus far, no local jurisdiction has emulated the state party balance model. This may be because in many local jurisdictions, while redistricting remains very contentious, political divisions do not fall along the Democrat vs. Republican lines that typify state redistricting.<sup>21</sup> In other ideologically homogenous jurisdictions, a partisan balance requirement would also make it difficult to recruit sufficient qualified applicants to serve on the commission. For example, the city of Berkeley (which has no partisan requirement for its commission) has an electorate that is 69% registered Democrat and only 3% registered Republican.<sup>22</sup>

While there are potential problems with a purely proportional commission, there may be some benefit to SB 1108’s prohibition of an entirely one-party commission. Requiring token, other-party

representation is unlikely to politicize a commission, but may deter partisan abuse. Like a canary in the coal mine, it guarantees at least one non-aligned commissioner who may object if the commission becomes overtly and abusively partisan. While one commissioner could not stop a map from being adopted by a partisan commission, their vocal opposition can hold their colleagues accountable, alert the press and disenfranchised political party, and call public attention to the issue.

## CLRP RECOMMENDATIONS

1. **Local redistricting commissions should have enough members to reasonably reflect the diversity of the jurisdiction, but not so many members that commission deliberation becomes difficult.** As a general rule of thumb, commissions should have between 7 and 11 members, not including alternates.
2. **Local redistricting ordinances should require the appointment of alternates so that commission vacancies can be replaced quickly without disrupting the commission's work.** Allowing alternates to participate in commission deliberations, but without voting, can encourage alternates to remain engaged.
3. **Commissions should reasonably reflect the diversity of the jurisdiction.** Ethnic and geographic diversity are particularly important to building community support for the redistricting process.
4. **At least one commissioner should be appointed from each existing election district.** This promotes commission diversity and increases the likelihood that the commission, as a whole, will be familiar with all of the jurisdiction's different neighborhoods and communities.
5. **Redistricting ordinances should not encourage partisan redistricting by requiring commissioners' political party affiliations to match the jurisdiction's overall party registration rates.** Better alternatives include either no requirement as to commissioners' party affiliation or a requirement that commissions have a balanced number of majority and minority party commissioners.

## ENDNOTES

- <sup>1</sup> Cal. Elec. Code Sec. 23003(e).
- <sup>2</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 75 (2010).
- <sup>3</sup> NAACP Legal Defense and Educational Fund, *Independent Redistricting Commissions* 4 (Apr. 2010).
- <sup>4</sup> See, e.g., Richard Wright et al., *Patterns of Racial Diversity and Segregation in the United States: 1990–2010*, Health & Human Services Agency Author Manuscripts (2014), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4114976/> (Table 3 shows that around half of U.S. census tracts are “low-diversity”).
- <sup>5</sup> Modesto City Charter Sec. 501(b)(3)(B).
- <sup>6</sup> Oakland City Charter Sec. 220(J)(9).
- <sup>7</sup> See NAACP, AAAJ, and MALDEF, *The Impact of Redistricting in YOUR Community* 2 (2010) (“Minority voters have frequently faced discrimination in voting during the redistricting process”). See also *id.* at 2–3 (providing examples).
- <sup>8</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 27 (2010).
- <sup>9</sup> See *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (writing, in the context of college admissions to a public university, “a race-conscious admissions program cannot use a quota system, but instead must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application”) (quotations and citations omitted).
- <sup>10</sup> See, e.g., Cal. Gov. Code Sec. 8252(g) and Sacramento City Charter Sec. 174(i) (“The commission should reasonably reflect the city’s diversity; provided that no quotas, formulas, or ratios may be applied for this purpose.”).
- <sup>11</sup> Sacramento City Charter Secs. 174(a)-(d), (g), & (i).
- <sup>12</sup> Bowing to public pressure, the city later expanded the number of seats on the commission and reopened the application process. See Kathleen Haley, *Two new spots on redistricting committee*, SACRAMENTO PRESS (Mar. 30, 2011).
- <sup>13</sup> Lisa Vorderbrueggen, *Gays gaining ground in state political district boundary talks*, SAN JOSE MERCURY NEWS (Jul. 12, 2011) (“members of the redistricting commission already have indicated in public hearings that they will respect [gay community] boundaries where they can”) and *id.* (noting that certain cities, like San Diego, have districts drawn to be favorable to the gay community).
- <sup>14</sup> See, e.g., The Leadership California Institute, *Women 2014* 5 (2014) (women represent 25% of county elected officials and 28% of city elected officials in California) (2014) and George Dougherty and Rachel Boss, *Citizen Participation in Local Government Volunteer Boards and Commissions*, Center for Metropolitan Studies 5 (Spring 2017) (finding that, while half the population is female, women comprise only one-third of local government volunteer board positions).
- <sup>15</sup> Cal. Elec. Code Sec. 23003(e).
- <sup>16</sup> Cal. Elec. Code Sec. 21532(c).
- <sup>17</sup> Cal Const. Art. II, Sec. 6.

<sup>18</sup> Letter of Opposition to Assembly Bill 801 from Nicolas Heidorn, Legislation and Policy Counsel, California Common Cause, to Assemblymember Dr. Shirley Weber, State Assembly (Jun. 28, 2017) (on file with author).

<sup>19</sup> See, e.g., Noah Litton, *The Road to Better Redistricting*, OHIO STATE LAW JOURNAL 861 (2012).

<sup>20</sup> Cal. Const. Art. XXI, Sec. 2(c)(2).

<sup>21</sup> See Bruce Cain and David Hopkins, *Mapmaking at the Grassroots: The Legal and Political Issues of Local Redistricting*, ELECTION LAW JOURNAL 517 (2002) (describing non-party factionalism in local redistricting).

<sup>22</sup> Cal. Secretary of State, *Report of Registration - February 10, 2017*, available at: [www.sos.ca.gov/elections/report-registration/ror-odd-year-2017/](http://www.sos.ca.gov/elections/report-registration/ror-odd-year-2017/) (last visited Apr. 2017).



## COMMISSIONER QUALIFICATIONS

Most independent and hybrid commissions, and a few advisory commissions, have strong applicant eligibility requirements to prevent politically biased or ill-suited commissioners from serving. State law requires commissioners on county or general law city independent commissions to meet a detailed set of qualifications, including a prohibition on recent candidates or local major donors from serving on the commission.<sup>1</sup> Carefully tailored commissioner qualifications, recommends the Brennan Center, can help “preserve independence through [restricting] the body’s composition.”<sup>2</sup>

Many of these qualifications are *objective*, where a prospective commissioner’s eligibility can be verified by staff without exercising any personal judgment. A requirement that commission applicants have voted in the last two local elections is an example of an **objective qualifying criterion**. An **objective disqualifying criterion** would include a prohibition on an applicant having recently contributed more than \$500 to a candidate for local office. Most jurisdictions also require the commissioner-appointing or screening body to select commissioners who best meet certain more **subjective qualifications**, for example, that commissioners be “impartial.” Subjective qualifications require the appointing or screening body to exercise independent judgment.

Sixty-five percent of jurisdictions have some minimum commissioner qualification standards. While critical to creating an impartial commission, reformers and policymakers should resist the temptation to adopt overly-strict eligibility qualifications. The tighter the objective criteria, especially for smaller jurisdictions, the harder it will be recruit enough quality applicants to fill a commission.

### SURVEY OF LOCAL COMMISSIONS: COMMISSIONER QUALIFICATIONS

| Applicant eligibility is determined by... | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (SB 1108) |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------|
| <b>Objective Qualifying Criteria</b>      | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                | ✓                  |               |          |            | ✓        | 10      | 59%     | ✓            | ✓         |
| <b>Objective Disqualifying Criteria</b>   | ✓        | ✓           |        |        | ✓         | ✓                  | ✓                    | ✓       | ✓       |                   | ✓                 |                  | ✓                  |               |          |            |          | 9       | 53%     | ✓            | ✓         |
| <b>Subjective Qualifications</b>          |          | ✓           |        |        | ✓         | ✓                  | ✓                    | ✓       |         |                   | ✓                 | ✓                |                    |               |          |            |          | 7       | 41%     | ✓            | ✓         |

## OBJECTIVE QUALIFYING CRITERIA

*“All registered Berkeley residents who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age, are eligible for membership on the Citizens Redistricting Commission.”*

**Berkeley City Charter Sec. 9.5(b)(3).**

Many jurisdictions require commission applicants to demonstrate some level of civic commitment to the jurisdiction to be eligible for appointment. Typically, redistricting ordinances require commission applicants to show that they are registered to vote, have a history of voting in local elections, or that they have lived in the jurisdiction for some period of time. For example, to be eligible applicants in...

- **San Diego**, one must be a city registered voter;
- **Oakland**, one must have resided in the city for 3 years; and
- **Sacramento**, one must either have voted in 2 of last 3 city elections or be a 10-year city resident.<sup>3</sup>

These criteria provide, at best, a modest indication of an applicant’s good citizenship and knowledge of the jurisdiction. Registration and voting requirements have a certain intuitive appeal: if a person does not themselves care to vote, will they appreciate the importance of crafting fair election districts for others? Residency requirements also make some sense: people who have lived in a jurisdiction longer are likelier to know its different neighborhoods and communities than a relative newcomer. However, recent transplants and non-voters are unlikely to want to serve on a redistricting commission in the first place.

Sacramento’s either/or approach, where applicants must meet either a voting history or residency requirement, allows long-time residents but only recently-eligible voters (for example, by having just naturalized or turned 18) to serve. This is a more inclusive approach than a pure voting history requirement, although that city’s 10-year residency alternative is excessive. Oakland has a residency requirement, but no voter registration requirement, so that non-citizen residents are eligible.

The city of Santa Barbara is the only jurisdiction to have a *non-residency* requirement for its one-time, independent commission. Applicants must be retired judges who reside *outside* of Santa Barbara county.<sup>4</sup> This opposite approach prioritizes applicants’ independence from local politics over both civic engagement and familiarity with the jurisdiction’s diverse communities.

A few jurisdictions have adopted redistricting ordinances that strongly recommend, but fall short of requiring, that one or more commissioners be members of certain organizations or have certain professional credentials or experiences. These recommendations are aimed at producing a more well-rounded commission. For example, in Chula Vista one of the “goals” of the selection process is to create a commission that includes “persons who have experience in the areas of public communication and/or public outreach.”<sup>5</sup> Modesto has by far the most detailed commissioner resumé preferences. Its charter directs the city council to give “strong consideration” to appointing:

- “a retired Stanislaus County judge as chairperson
- “one member from a bona fide local taxpayer's association...
- “one member from a bona fide local nonpartisan political organization... dedicated to encouraging informed and active participation in government
- “one member from a bona fide local civil rights organization... [and]
- “one member from a former Civil Grand Jury who has served in that role within the previous five (5) years.”<sup>6</sup>

### SURVEY OF LOCAL COMMISSIONS: OBJECTIVE QUALIFYING CRITERIA

| Applicant is a /has...               | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (SB 1108) |
|--------------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------|
| Registered Voter                     | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       |         |                   | ✓                 | ✓                | ✓                  |               |          |            | ✓        | 9       | 53%     | ✓            |           |
| Voted in __ of __ Elections          | 2/2      |             |        |        |           |                    | 1/3                  |         |         |                   | 2/3               |                  |                    |               |          |            |          | 3       | 18%     | 2/3          |           |
| __-Year Resident                     |          |             |        |        |           |                    |                      |         | 3       |                   | 10                |                  |                    |               |          |            |          | 2       | 12%     |              | Now       |
| Certain Job or Civic Experience      |          | ✓           |        |        |           |                    |                      | ✓       |         |                   |                   |                  |                    |               |          |            |          | 2       | 12%     |              |           |
| Same Party Registration for __ Years |          |             |        |        |           |                    | 5                    |         |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      | 5            |           |

### OBJECTIVE DISQUALIFYING CRITERIA

“The City Clerk shall remove from the pool any individual who is not a qualified elector in the City of Escondido or who, within the ten preceding years... a. Was a candidate... b. Was a paid employee or paid consultant of [a] campaign... c. Was an official or paid employee of any California political party... d. Made monetary contributions to California political campaigns or political parties that exceed a total of \$5,000...”

**Escondido CVRA Settlement (2011), Sec. IX(A)(4).**

Objective disqualifying criteria do far more to shape commission eligibility than objective qualifying criteria. Most jurisdictions with independent commissions absolutely bar from appointment anyone who is closely related to or who works for an incumbent, or who has engaged in a high level of local political

activity. For example, under Senate Bill 1108, a commissioner serving on a county or general law city independent commission cannot, in the 8 years prior to their appointment, have been:

- a local elected official;
- a candidate for local office;
- a paid local campaign staffer;
- a major local campaign contributor;
- a local lobbyist;
- a county political party officer or staffer; or
- the immediate family member of someone who is disqualified under these criteria.<sup>7</sup>

These, and similar restrictions, are designed to prevent the appointment of strong partisans or persons biased in favor of an incumbent or candidate. Unsurprisingly, in jurisdictions without disqualifying criteria, there are many examples of commissioners whose political impartiality was questionable. In San Jose, the city council appointed to the commission two local lobbyists – people who earn at least part of their livelihood trying to influence council action.<sup>8</sup> In the city of Sacramento, prior to its 2016 commission reforms, a prominent Democratic Party consultant was appointed.<sup>9</sup> In Los Angeles, one city councilmember appointed a local campaign consultant who had bragged, a year prior, about “put[ting] a political bullet” in the forehead of a candidate who had challenged a different council incumbent.<sup>10</sup> In Orange County the board of supervisors appointed their own staff to the advisory committee.<sup>11</sup> And, in San Mateo County, incumbents were appointed to the commission.<sup>12</sup>

While important, disqualifying criteria should be carefully considered and not too strict. As the Brennan Center rightly warns, “it is possible to overcorrect: some proposals ... may exclude individuals with the knowledge and temperament to weigh the hard tradeoffs inevitable in the redistricting process.”<sup>13</sup>

## SURVEY OF LOCAL COMMISSIONS: OBJECTIVE DISQUALIFYING CRITERIA

| <i>In prior __ years, applicant cannot have been a...</i> | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL #  | TOTAL % | MEDIAN | (California) | (SB1108) |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|----------|---------|--------|--------------|----------|
| <b>Elected Official</b>                                   | 2        | 4           |        |        | 10        | Now                | 10                   |         | 10      |                   | 10                |                  | Now                |               |          |            |          | <b>8</b> | 47%     | 7      | 10           | 8        |
| <b>Family of an Elected Official</b>                      | Now      | Now         |        |        |           |                    | 10                   | Now     | 10      |                   | 10                |                  |                    |               |          |            |          | <b>6</b> | 35%     | 5      | 10           | 8        |
| <b>Elected Official Campaign Staff</b>                    | 2        | 4           |        |        | 10        |                    | 10                   |         | 10      |                   | 10                |                  |                    |               |          |            |          | <b>6</b> | 35%     | 10     | 10           | 8        |
| <b>Government Staff</b>                                   | Now      | Now         |        |        |           | Now                |                      | Now     | Now     |                   | 4                 |                  |                    |               |          |            |          | <b>6</b> | 35%     | Now    |              |          |
| <b>Lobbyist</b>   |          | 4           |        |        |           |                    | 10                   | Now     | 10      |                   | 4                 |                  |                    |               |          |            |          | <b>5</b> | 29%     | 4      | 10           | 8        |
| <b>Candidate</b>  | 2        |             |        |        | 10        |                    | 10                   |         |         |                   | 10                |                  |                    |               |          |            |          | <b>4</b> | 24%     | 10     | 10           | 8        |
| <b>Elected Official's Staff/Consultant</b>                | 2        |             |        |        |           |                    | 10                   |         |         |                   | 10                |                  |                    |               |          |            |          | <b>3</b> | 18%     | 10     | 10           | 8        |
| <b>Major Campaign Donor</b>                               |          |             |        |        | 10        |                    |                      |         | <2      |                   | <4                |                  |                    |               |          |            |          | <b>3</b> | 18%     | <6     | 10           | 8        |
| <b>Political Party Official or Staff</b>                  |          | Now         |        |        | 10        |                    | 10                   |         |         |                   |                   |                  |                    |               |          |            |          | <b>3</b> | 18%     | 10     | 10           | 8        |
| <b>Officer of an Active Political Committee</b>           |          |             |        |        |           |                    |                      |         | 10      |                   | 10                |                  |                    |               |          |            |          | <b>2</b> | 12%     | 10     |              |          |
| <b>Government Contractor</b>                              | Now      |             |        |        |           |                    |                      | Now     |         |                   |                   |                  |                    |               |          |            |          | <b>2</b> | 12%     | Now    |              |          |
| <b>Redistricting Consultant</b>                           |          |             |        |        |           |                    |                      |         | 5       |                   | 4                 |                  |                    |               |          |            |          | <b>2</b> | 12%     | 4.5    |              |          |
| <b>Appointee to Local Board</b>                           |          |             |        |        |           |                    |                      |         | Now     |                   |                   |                  |                    |               |          |            |          | <b>1</b> | 6%      | Now    |              |          |
| <b>Person with a Conflict of Interest</b>                 |          |             |        |        |           |                    |                      |         | Now     |                   |                   |                  |                    |               |          |            |          | <b>1</b> | 6%      | Now    |              |          |

## SUBJECTIVE QUALIFICATIONS

*“This subpool shall also be created on the basis of relevant analytical skills, ability to be impartial, and apparent ability to work together well with other potential commissioners.”*

**Oakland City Charter Sec. 220(J)(7).**

Many jurisdictions with independent commissions also require applicants to be evaluated based on more subjective criteria, such as how competent, impartial, collegial, familiar with local communities, or

civically engaged they are. For example, applicants for the state Commission should have an “appreciation for California’s diverse demographics and geography” whereas Modesto Commission applicants should demonstrate a history of “civic involvement and a capacity to serve in an honest, independent, and impartial fashion.”<sup>14</sup> These qualities cannot be assessed with a yes/no checkbox; they require a judgment call by some authority.

Because subjective criteria open the door to bias by the appointing or screening body, Berkeley does not use them to screen its randomly selected commissioners, who are instead picked from the full pool of applicants that passed the objective qualifying and disqualifying criteria.<sup>15</sup> Most other independent commissions, including commissions using the random draw selection method, uses subjective criteria on top of objective criteria to appoint or screen applicants.

Despite the risk of bias, subjective criteria are desirable because bad applicants may otherwise slip through the cracks and be appointed to the commission. For example, an applicant may meet all the objective qualifications to serve on the commission, but nonetheless be well-known in that community for being close friends with an incumbent, or for making sexist or racist comments, or for being quick to anger and difficult to collaborate with. Subjective criteria make it more likely that the best applicants will be selected and that the commission as a whole is well-rounded by including commissioners with diverse and complementary strengths.

### SURVEY OF LOCAL COMMISSIONS: SUBJECTIVE QUALIFICATIONS

| <i>Applicant is /has...</i>       | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|-----------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Impartial/Independent</b>      |          | ✓           |        |        | ✓         |                    | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                |                    |               |          |            |          | 7       | 41%     | ✓            |
| <b>Relevant Analytical Skills</b> |          | ✓           |        |        |           |                    | ✓                    |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 4       | 24%     | ✓            |
| <b>Civically Active</b>           |          | ✓           |        |        |           |                    |                      | ✓       |         |                   |                   |                  |                    |               |          |            |          | 2       | 12%     |              |
| <b>Highly Competent</b>           |          |             |        |        | ✓         |                    |                      |         |         |                   |                   | ✓                |                    |               |          |            |          | 2       | 12%     |              |
| <b>Collegial</b>                  |          |             |        |        |           |                    |                      |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 2       | 12%     |              |
| <b>Familiar with Communities</b>  |          |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 1       | 6%      |              |
| <b>Appreciates Area Diversity</b> |          |             |        |        |           |                    | ✓                    |         |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      | ✓            |
| <b>Honesty/Integrity</b>          |          |             |        |        |           |                    |                      | ✓       |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      |              |

## CLRP RECOMMENDATIONS

1. **Applicants should be required to meet minimum, objective commissioner qualifications to exclude persons who are highly likely to appear or be politically biased.**
2. **At minimum, local political candidates and elected officials in that jurisdiction, their immediate family, and their campaign staff should not be eligible for appointment to the commission.** The exclusion should apply to any person who ran for local office in a set number of years, not less than four, preceding their application to serve on the commission.
3. **Applicants should also be evaluated based on subjective criteria, including their collegiality, ability to be impartial, and relevant experiences or skills.** Subjective applicant qualifications, evaluated by an independent appointing or screening body, help create more well-rounded commissions and prevent technically-eligible but biased persons from appointment.
4. **Commissioner qualifications should not be so strict that most civically active persons are ineligible for appointment.** In particular, requirements that applicants have not been politically active for long periods of time, for example ten years, may be unduly restrictive and remove from consideration respected community leaders.

## ENDNOTES

- <sup>1</sup> See Cal. Elec. Code Sec. 23003(c). By contrast, advisory commissions, whose recommendations can always be disregarded by the governing board, generally have few commissioner qualifications. See, e.g., Seal Beach Charter Sec. 515, ¶12. See also Cal. Elec. Code Sec. 23002 (county and general law city advisory commission requirements).
- <sup>2</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 76 (2010).
- <sup>3</sup> San Diego Charter Sec. 5.1, ¶15; Oakland Charter Sec. 220(D)(1); and Sacramento Charter Sec. 173(a).
- <sup>4</sup> Santa Barbara Legal Settlement, Section II.8 in *Banales, et al. v. City of Santa Barbara*, Case No. 1468167 (Mar. 10, 2015).
- <sup>5</sup> Chula Vista Charter Sec. 300.5(D)(3)(d).
- <sup>6</sup> Modesto Charter Sec. 501(b)(3)(A).
- <sup>7</sup> Cal. Elec. Code Sec. 23003(c).
- <sup>8</sup> Scott Herhold, *Conflicts of interest in San Jose redistricting*, SAN JOSE MERCURY NEWS (Jan. 16, 2011).
- <sup>9</sup> Kathleen Haley, *Redistricting committee members appointed*, SACRAMENTO PRESS (Mar. 11, 2011).
- <sup>10</sup> Simone Wilson, *L.A. City Redistricting Land Grab*, L.A. WEEKLY (Jan. 25, 2012) and Jill Stewart, *Michael Trujillo's 'bullet in forehead' email*, L.A. WEEKLY (Feb. 7, 2011).
- <sup>11</sup> Kimberly Edds, *Redistricting committee rejects First District drafts*, ORANGE COUNTY REGISTER (Jul. 22, 2011). Because Orange County's committee only involved staff meeting, which also occurs in traditional governing board redistricting, it was not counted as a redistricting commission for the purposes of this report.
- <sup>12</sup> Legal settlement, Section II.9, *Satorre v. San Mateo County Board of Supervisors*, Case No. 504866 (Feb. 20, 2013).
- <sup>13</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 76 (2010).
- <sup>14</sup> Cal. Gov. Code Sec. 8252(d) and Modesto Charter Sec. 501(b)(3)(A)(vi).
- <sup>15</sup> Berkeley Charter Sec. 9.5(b)(6)(i).



# COMMISSIONER DURING- & POST-SERVICE RESTRICTIONS

Some redistricting ordinances restrict the activities of commissioners during or after their term of service. These restrictions are of two types:

- **Political activity bans** limit commissioners' local political activities, but only while the commission is active in considering or drawing maps. This restriction protects the commission's image as a nonpartisan, politically impartial body.
- **Financial or political benefits restrictions**, which apply during a commissioner's service and sometimes for a period of years thereafter, limit commissioners' ability to financially or politically benefit from the maps they draw. These restrictions prevent commissioners from drawing maps that advance their own political ambitions or someone else's in exchange for a job, contract, or plum appointment.

State law imposes during and post-service restrictions, including a during-service political activity ban, on commissioners serving on county or general law city independent commissions.<sup>1</sup>

## POLITICAL ACTIVITY BANS

*“A member of the commission shall not do any of the following: (1) While serving on the commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for an elective office of the local jurisdiction.”*

**California Elections Code Sec. 23003(d) (County and General Law Cities).**

Redistricting is a politically sensitive process. How the lines are drawn can greatly affect the political fortunes of incumbents, challengers, and political parties. When ostensibly unbiased commissioners engage in political activities, it can quickly become a local news scandal and undermine public confidence in the process. This happened with the city of Los Angeles's redistricting process when the press reported that a commissioner openly celebrated a candidate's advancing to city council runoff election.<sup>2</sup>

Many redistricting ordinances exhort or require commissioners to stay out of local politics until they have completed their service by adopting or recommending new maps. A few ordinances include broad language similar to Oakland's, which calls on commissioners to draw maps “in a manner that is impartial and that reinforces public confidence in the integrity of the redistricting process.”<sup>3</sup>

Sacramento's ordinance takes a stricter approach and prohibits commissioners from “contribut[ing] to or participat[ing] in any candidate campaign for city elective office.”<sup>4</sup> The state has adopted a similar restriction for county and general law city independent commissions. Under Senate Bill 1108, a commissioner may not, “[w]hile serving on the commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for an elective office of the local jurisdiction.”<sup>5</sup>

## FINANCIAL OR POLITICAL BENEFITS RESTRICTIONS

*“A commissioner shall be ineligible, for a period of ten years beginning from the date of their appointment, to hold city elective office. A commissioner shall be ineligible, for a period of four years beginning from the date of their appointment, to be appointed to another city commission, to serve as paid staff for or as a paid consultant to any city elected official, to receive a noncompetitively bid contract with the city, or to register as a city lobbyist.”*

**Sacramento City Charter Sec. 173(d).**

Jurisdictions with independent commissions, following the model of the state commission, generally adopt during and post-service restrictions to prevent commissioners from abusing their role for personal or political gain.

Perhaps the highest-profile risk of abuse is that politically ambitious commissioners will run for the seats they helped draw. Commissioners-turned-candidates invert one of the main justifications for creating an independent redistricting commission: to prevent persons with an electoral self-interest from drawing their own districts. Nonetheless, former commissioner candidates regularly emerge in jurisdictions without post-service restrictions. For example, in the two elections immediately following Sacramento’s redistricting, three former advisory commission members ran for city council, one of whom was elected.<sup>6</sup> In the city of Los Angeles, two candidates ran for city council (and one for school board), but were defeated.<sup>7</sup> One Fresno County advisory commission member ran for the board of supervisors and was elected.<sup>8</sup>

To preempt the politically ambitious, the state constitution prevents Citizens Redistricting Commission commissioners, for ten years after their appointment, from running for office in districts they helped create.<sup>9</sup> State law similarly prohibits the members of county or general law city independent commissions from running for local office for 10 years.<sup>10</sup> Eight local jurisdictions – Berkeley, Chula Vista, Escondido, Los Angeles County, Modesto, Oakland, the city of Sacramento, and the city of San Diego – have similar candidacy restrictions.<sup>11</sup>

Another risk is that commissioners may be rewarded, or perceived to be rewarded, for adopting districts that are favorable to a candidate or incumbent. Several jurisdictions have adopted other post-service restrictions, generally limiting for a few years an ex-commissioner’s ability to receive a financial benefit from an elected official, to avoid any appearance of a *quid pro quo*. For example, Oakland prohibits commissioners, for a period of four years following their appointment, from registering as city lobbyist, being hired as an employee or consultant to an elected official, or receiving a non-competitively bid contract with the city.<sup>12</sup>

The duration of these post-service restrictions ranges from 1 to 10 years. The ban on running for office is generally the longest, and often lasts 10 years through the next redistricting cycle; this prevents commissioners from being elected in districts they drew. Other post-service restrictions, for example local government employment restrictions, usually apply for only a few years.

## SURVEY OF LOCAL COMMISSIONS: DURING & POST-SERVICE RESTRICTIONS

| <i>While Serving,<br/>and for __ years<br/>afterwards, a<br/>Commissioner<br/>cannot...</i> | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL #  | TOTAL % | MEDIAN | (California) | (SB1108) |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|----------|---------|--------|--------------|----------|
| <b>Run for Office</b>   | <4       | 4           |        |        | 5         |                    | 5                    | <10     | 10      |                   | 10                | 5                |                    |               |          |            |          | <b>8</b> | 47%     | 5      | 10           | 10       |
| <b>Work for an Elected Official</b>   | 2        |             |        |        |           |                    | 3                    |         | 4       |                   | 4                 |                  |                    |               |          |            |          | <b>4</b> | 24%     | 3.5    | 5            | 4        |
| <b>Be Appointed to a Local Board</b>  | 2        |             |        |        |           |                    | 3                    |         | 4       |                   | 4                 |                  |                    |               |          |            |          | <b>4</b> | 24%     | 3.5    | 5            | 4        |
| <b>Register as a Lobbyist</b>   |          |             |        |        |           |                    | 3                    |         | 4       |                   | 4                 |                  |                    |               |          |            |          | <b>3</b> | 18%     | 4      | 5            | 4        |
| <b>Receive a Non-Competitively Bid Government Contract</b>                                  |          |             |        |        |           |                    |                      |         | 4       |                   | 4                 |                  |                    |               |          |            |          | <b>2</b> | 12%     | 4      |              | 4        |
| <b>Contribute to, or Work/Volunteer for, a Campaign</b>                                     |          |             |        |        |           |                    |                      |         |         |                   | 0                 |                  |                    |               |          |            |          | <b>1</b> | 6%      | 0      |              | 0        |

### CLRP RECOMMENDATIONS

1. **Commissioners should be prohibited from engaging in political activity while on the commission.** Local political activity is incompatible with service on a redistricting commission. Public confidence in redistricting requires that commissioners appear and be impartial. Prohibiting commissioners' local political activity for the duration of their term on the commission will also deter some strong partisans from applying to be commissioners in the first place.
2. **Commissioners should be subject to during and post-service activity and employment restrictions to prevent them from politically or financially benefitting for the maps they adopt; however, restrictions should not be so strict as to discourage most civically-active residents from applying.** Except for candidacy restrictions, most post-service restrictions should only be for a few years. It is unlikely that commissioners will draw favorable district lines on the promise of a financial or political benefit years in the future.
3. **At a minimum, prohibit commissioners from running for office for 4 years after the commission adopts new district boundaries.** Allowing a commissioner to run for office in a district they drew recreates the exact political conflict of interest that commissions are intended to eliminate. Requiring a cooling off period of *at least* 4 years – the standard term for a local elected official – ensures they cannot be the immediate beneficiaries of their new lines.

## ENDNOTES

<sup>1</sup> Cal. Elec. Code Sec. 23003(d).

<sup>2</sup> Dennis Romero, *Michael Trujillo's Controversial Pro-Buscaino Email Sent by Someone Else, He Says*, L.A. WEEKLY (Nov. 14, 2011).

<sup>3</sup> Oakland Charter Sec. 220(D)(4).

<sup>4</sup> Sacramento Charter Sec. 173(E).

<sup>5</sup> Cal. Elec. Code Sec. 23003(d)(1).

<sup>6</sup> They were: Julius Cherry, Stephen Hansen (elected), and Cyril Shah. See City of Sacramento, *Citizens Advisory Committee*, available at:

<https://www.cityofsacramento.org/Mayor-Council/Redistricting/Committee> (last visited May 2017).

<sup>7</sup> They were: Bobbie Jean Anderson, David Roberts, and Antonio Sanchez (school board). See City of Los Angeles, *City Council Redistricting Commissioners Bios*, available at:

<http://redistricting2011.lacity.org/LACITY/commissioners.html> (last visited May 2017).

<sup>8</sup> He was Buddy Mendes. See County of Fresno, *Redistricting Task Force Members*, available at

<http://www.co.fresno.ca.us/DepartmentPage.aspx?id=46989> (last visited May 2017).

<sup>9</sup> Cal. Const. Art. XXI, Sec. 2(c)(6).

<sup>10</sup> Cal. Elec. Code Sec. 23003(d).

<sup>11</sup> Berkeley Charter Sec. 10; Chula Vista Charter Sec. 300.5(E)(2); Escondido, Consent Decree, Sec. IX(A)(4); Cal. Elec. Code, Sec. 21535 (Los Angeles County); Modesto Charter Sec. 501(B)(3)(f); Oakland Charter Sec. 220(D); Sacramento Charter Sec. 173(d); and San Diego Charter Sec. 5.1, ¶17.

<sup>12</sup> Oakland Charter Sec. 220(D).

# PUBLIC PARTICIPATION & COMMISSION TRANSPARENCY

Transparency and public participation in redistricting are essential to drawing better district boundaries, maintaining public confidence in the fairness of the process, and building community support for the final maps. Open and inclusive redistricting is universally upheld as a best practice by good government and civil rights organizations.<sup>1</sup>

There are few transparency and public engagement requirements for local legislative redistricting. Governing boards are required to hold just one public hearing before adopting a draft map. They must also comply with generally-applicable state open meeting laws, which require 72-hours notice of meetings and prohibit the majority of a governing board from colluding beforehand on how to vote. However, there is nothing to prevent one member short of a board majority from devising a plan behind closed doors to divvy up the jurisdiction.<sup>2</sup>

Most redistricting ordinances require more openness of their commissions than state law requires of local governing boards. Of the 17 jurisdictions with permanent commissions, 14 (82%) provide greater transparency or more opportunities for public participation in local redistricting. Beginning in 2017, all county and general law city independent commissions must also meet higher openness standards.

## SURVEY OF LOCAL COMMISSIONS: TRANSPARENCY & PUBLIC PARTICIPATION

| <i>Requires more _<br/>than state law.</i>    | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena – School | Sacramento - City | San Diego – City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (SB 1108) |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------|
| <b>Transparency</b>                           | ✓        | ✓           |        |        | ✓         | ✓                  | ✓                    | ✓       | ✓       | ✓                 | ✓                 | ✓                | ✓                  |               | ✓        |            |          | 12      | 71%     | ✓            | ✓         |
| <b>Opportunities for Public Participation</b> | ✓        | ✓           |        |        | ✓         | ✓                  | ✓                    | ✓       | ✓       | ✓                 | ✓                 | ✓                | ✓                  |               | ✓        |            | ✓        | 12      | 71%     | ✓            | ✓         |

## TRANSPARENCY

*“A Draft Districting Plan approved by the Commission shall be made publicly available for at least thirty (30) days before the Commission may take any action to approve a Recommended Districting Plan. The Commission shall hold at least two (2) public meetings between the release of a Draft Districting Plan and approval of a Recommended Districting Plan; provided, however, that the first such public meeting shall not be held sooner than seven (7) days following the release of a Draft Districting Plan.”*

**Chula Vista City Charter Sec. 300.5(G)(3).**

“Transparency in redistricting is essential to a successful process,” reads a statement of principles by the Lawyers’ Committee for Civil Rights and 15 other good government and civil rights organizations.<sup>3</sup> Transparency enables the public to fully participate in the redistricting process. To meaningfully advocate for a district boundary or map, the public needs equal access to redistricting data, draft maps, and commission deliberations.

Transparency also builds public trust. When anyone can observe the deliberations that lead to different mapping decisions, it provides the public with some assurance that the process was fair, even if the final decision was controversial. By contrast, closed deliberation invites cynicism. When Los Angeles’s advisory commission subdivided into three, 7-member private subcommittees to draw districts for different regions of the city, many observers assumed the worst: the commission, alleged the *Los Angeles Times*, was “meet[ing] in cliques behind closed doors, receiving private instructions from emissaries sent from council offices.”<sup>4</sup>

Most redistricting ordinances require some measure of transparency to better engage the public or protect the integrity of the process. These include publication rules for draft maps, limitations on *ex parte* communication, requirements that the commission explain its decision-making, and general statements that the commission should act in an open manner.

### Publication of Draft Maps

Under the Brown Act, local government agencies, including redistricting commissions, must post a meeting agenda least 72 hours before a regular meeting.<sup>5</sup> Actual meeting materials, such as reports or draft maps, are not required to be posted in advance; however, such materials must be made available to the public for inspection once they are distributed to a majority of commissioners.<sup>6</sup>

Three days’ notice is not enough time for meaningful consideration of a draft district map. Members of the public, neighborhood groups, and advocacy organizations need more lead time to study how new draft maps will affect them, prepare a response, engage their neighbors, and move schedules around to testify before the commission.

One of the most common transparency provisions is to require maps to be published for a longer period of time before they can be taken up by the commission. State law now requires a draft map proposed by

a county or general law city independent commission to be published for at least 7 days prior to adoption.<sup>7</sup> Several permanent commissions also extend the notice period for draft or final maps to enable greater community engagement:

- Oakland requires draft maps to be published for 14 days.<sup>8</sup>
- Modesto, which has a hybrid commission, requires draft maps to be published for 7 days before being considered by the commission and requires the commission-recommended map to be published for 20 days before the city council can consider it.<sup>9</sup>
- The city of San Diego requires its commission to adopt a preliminary map then take public comment for 30 days prior to adopting a final map.<sup>10</sup>

### Compensated or Ex Parte Communication

When elected officials control redistricting, a lot of the line-drawing and negotiation goes on behind the scenes, away from public view. Commissions are intended to bring the redistricting process out into the open; however, in most jurisdictions, there is no prohibition on individual commissioners having private conversations with incumbents, political groups, or others about where borders should be drawn.

Two jurisdictions, Oakland and Sacramento, restrain such external (or *ex parte*) communications. Oakland requires disclosure of *ex parte* communications to deter improper lobbying of commissioners, particularly by incumbents.<sup>11</sup> Sacramento prohibits all *ex parte* communication.<sup>12</sup> A ban on *ex parte* communication promotes redistricting in full view of the public, but may impede commissioners from having conversations with community leaders or attending neighborhood meetings that might improve their understanding of community boundaries.

Sacramento also requires people who were paid to communicate with its Commission to disclose that fact in the communication.<sup>13</sup>

### Final Report

Almost half of the permanent commission ordinances require their commissions to submit, along with their final district map, a report “outlining the bases on which its decisions were made as to district boundaries and explaining its compliance with the [redistricting] criteria.”<sup>14</sup> When commissioners draw draft maps knowing they will later have to justify those boundary lines, it may prevent arbitrary decisions or decisions based on impermissible criteria. Final reports bolster the legitimacy of the line-drawing process and may preempt or counter criticism that boundary lines were drawn for political reasons.

### “Openness” Requirements

Finally, several redistricting ordinances direct commissioners to generally conduct an “open” or “accessible” process. Oakland directs the commission to “implement an open hearing process” and display draft maps to “achieve the widest public access reasonably possible,” whereas the city of San Diego calls on commissioners to “make every reasonable effort to afford maximum public access to its

proceedings.”<sup>15</sup> “Openness” and “accessibility” are not precise procedural requirements; instead, they remind commissioners that transparency is central to their mission.

### SURVEY OF LOCAL COMMISSIONS: COMMISSION TRANSPARENCY

|   | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena – School | Sacramento - City | San Diego – City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | MEDIAN | (California) | (SB 1108) |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------|--------------|-----------|
| <b>Publish Report with Maps</b>               | ✓        | ✓           |        |        | ✓         |                    |                      |         | ✓       | ✓                 | ✓                 | ✓                |                    |               | ✓        |            |          | 8       | 47%     |        | ✓            |           |
| <b>Publish Map ___ Days Prior to Adoption</b> |          | 30          |        |        | 30        | 30                 | 7                    | 14      |         |                   | 7                 | 30               |                    |               |          |            |          | 7       | 41%     | 30     | 14           | 7         |
| <b>Conduct “Open Process”</b>                 | ✓        |             |        |        | ✓         |                    |                      |         | ✓       |                   | ✓                 | ✓                |                    |               |          |            |          | 5       | 29%     |        | ✓            |           |
| <b>Comply with Brown Act</b>                  | ✓        |             |        |        |           | ✓                  |                      | ✓       |         |                   | ✓                 |                  | ✓                  |               |          |            |          | 5       | 29%     |        | ✓            | ✓         |
| <b>Comply with Records Act</b>                |          |             |        |        |           | ✓                  | ✓                    |         |         |                   | ✓                 | ✓                |                    |               |          |            |          | 4       | 25%     |        | ✓            | ✓         |
| <b>Limit Ex-Parte Communication</b>           |          |             |        |        |           |                    |                      | ✓       |         |                   | ✓                 |                  |                    |               |          |            |          | 2       | 12%     |        | ✓            |           |
| <b>Publish Calendar of Hearings</b>           |          |             |        |        |           | ✓                  |                      |         |         |                   |                   |                  |                    |               |          |            |          | 1       | 6%      |        |              |           |
| <b>Lobbying Disclosure</b>                    |          |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 1       | 6%      |        |              |           |
| <b>Video Recording</b>                        |          |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 1       | 6%      |        |              |           |

### PUBLIC PARTICIPATION

*“Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district. ... The commission shall take steps to encourage county residents to participate in the redistricting public review process.”*

**California Elections Code Sec. 21534(c)(2)&(6) (Los Angeles County).**

There is broad consensus among good government and civil rights advocates that meaningful public participation is key to ensuring fair and representative redistricting.<sup>16</sup> As Asian Americans Advancing Justice advocated to one city council:



“Robust public participation will result in maps that better reflect all of Fremont’s communities and neighborhoods. It will increase public faith in the maps that the City Council ultimately draws. It will make Fremont residents feel invested in their government and their city. And it will minimize after-the-fact claims by the public of exclusion, bias, and closed-door decision-making.”<sup>17</sup>

Academic study validates that public participation is not an empty exercise; it often has significant impact on where district boundaries are placed.<sup>18</sup> For example, researchers examined a sample of more than 200 mappable public comments made to the state Citizens Redistricting Commission and found that 64% were ultimately adopted in the Commission’s final map.<sup>19</sup> Other academics similarly concluded that, especially when it came to identifying communities of interest and neighborhoods, “testimony affected the lines for all district types throughout California.”<sup>20</sup>

For redistricting controlled by the local governing board, there are few requirements to facilitate or encourage public participation.<sup>21</sup> State law requires most local governing boards to hold at least one public hearing before adopting new election district maps.<sup>22</sup> California’s Ralph M. Brown Act also gives the public a general right to provide oral comment on local government policy decisions.<sup>23</sup> However, the public hearing can be incorporated into a regular meeting agenda and there is no requirement that the board do additional community outreach to solicit input on the new maps. The upshot is that community groups and members of the public are sometimes unaware that redistricting is even taking place.

Local commissions generally far exceed these minimal notice, outreach, and hearing requirements. San Diego’s commission, for example, gave 40 community presentations on redistricting, held 35 public meetings to solicit public comment before proposing a draft map, and then held an additional 10 public hearings on its draft proposal.<sup>24</sup> While never that extensive, most redistricting ordinances include provisions to guarantee certain minimum opportunities for public input.

There are a number of policies that jurisdictions have adopted to increase participation, often with special emphasis on reaching low-income or non-English-speaking communities. Some encourage participation through community outreach. Most ordinances require a minimum number of hearings, sometimes with requirements on where, when, and how these hearings are conducted to provide more opportunity for public input. Finally, many ordinances specify that the public can submit written comment, including draft maps.

### **Outreach**

Several redistricting ordinances include general guidance that the “Commission and [the local government] should actively encourage ... residents to participate in the districting process.”<sup>25</sup> Oakland’s redistricting ordinance requires the commission to engage in “an extensive outreach program to solicit broad public participation in the redistricting public review process” and Sacramento’s ordinance both requires the city to budget for outreach and authorizes the commission to hire outreach consultants.<sup>26</sup>

Government outreach, through mailers, advertising, and presentation to community and neighborhood groups, can promote broad and representative public participation in the redistricting process. According to MALDEF, Common Cause, and other civil rights organizations, outreach should be done with an awareness that some “communities face greater barriers to full participation” than others.<sup>27</sup> For example, low-income or non-English-speaking neighborhoods are less likely to be aware of redistricting than wealthier neighborhoods, which are often more politically active to begin with. Targeted outreach to these communities is important to ensure a more representative and inclusive process.

### **Number of Hearings**

The state requirement of a single public hearing on new district maps does not afford the public a meaningful opportunity to participate in the redistricting process. With only one hearing, many residents who want to participate will miss out due to scheduling conflicts or not knowing that redistricting was occurring. Multiple hearings increase opportunities for participation and public awareness of redistricting.<sup>28</sup> Multiple hearings can also produce better maps as they allow proposed election districts be refined through cycles of consideration, public input, amendment, and reconsideration.

State law requires county and general law city independent redistricting commissions to hold at least 3 hearings prior to adopting new maps.<sup>29</sup> Most redistricting ordinances also require multiple hearings, often equaling or exceeding the number of districts in the jurisdiction. The city of Sacramento, for instance, requires its commission to hold at least 8 public meetings, including one in each existing district.<sup>30</sup>

Some ordinances also require their commission to hold public hearings before drawing any draft maps.<sup>31</sup> Redistricting is likely to be less contentious where the public and community groups are invited to help shape the initial maps. Commissioners may be more open-minded about how to draw district maps before their own proposals are on the table. Inviting the public to comment only after draft maps are released can set up an adversarial relationship between the commission and community groups that feel overlooked in these initial drafts.

### **Hearing Accessibility**

A number of redistricting ordinances include provisions to make public hearings more accessible. This includes requirements as to where, when, and how hearings are held.

**Locations.** Several ordinances require or encourage hearings to be held in different areas of the jurisdiction. For example, San Diego County’s commission must “conduct at least seven public hearings with at least one public hearing held in each supervisorial district.”<sup>32</sup> Providing dispersed hearing locations is especially important in geographically expansive jurisdictions, like many counties, where residents may not be willing to travel long distances just to testify for a few minutes.

Moving around hearing locations can be beneficial in more compact urban areas as well. Many Californians don’t own cars or won’t want to brave traffic or parking problems to speak at city hall.

Varying locations can also provide a focal point for community and neighborhood groups to motivate residents to turn out for “their” public hearing.

**Timing.** In many jurisdictions, local commissions meet on a fixed schedule, for example on weekdays right after work hours. This can make commission meetings inaccessible to some residents, particularly those with nontraditional work hours. Los Angeles County requires hearings to be “scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.”<sup>33</sup> Because the commission’s meeting schedule is less predictable as a result, the commission is required to publish a calendar of all its regularly scheduled meetings.<sup>34</sup>

**On-Site Accessibility.** To prevent vulnerable communities from being excluded from the process, some redistricting ordinances require public hearings to meet certain accessibility standards. For example, to ensure non-English-speaking communities can fully participate, the legal settlement creating Anaheim’s commission required that public meetings to be noticed in Spanish, Chinese, Vietnamese, and Filipino and that live translation be available for those languages at public hearings.<sup>35</sup> Los Angeles County’s redistricting ordinance requires translators be made available upon request.<sup>36</sup>

While not included in any current redistricting ordinance, civil rights organizations also recommend that hearings be held near public transit and in wheelchair-accessible buildings to ensure equal access for low-income and disabled persons.<sup>37</sup>

### **Written Comment & Draft Maps**

A few jurisdictions specify that members of the public can submit their comments in writing.<sup>38</sup> This provides a convenient alternative for people who are unable to attend the public hearings. Written comment is also a better medium for some types of public comment, like suggesting complicated boundary revisions or delivering petitions in favor or against certain maps. In the city of San Diego, the Commission received 272 public comment letters, more than two-dozen maps, and petitions with more than 9,000 signatures.<sup>39</sup> Jurisdictions that adopt strict *ex parte* communication restrictions should strongly consider creating a formal process for accepting written public comment to avoid inadvertent violations.

One of the most valuable forms of written comment is the submission of full or partial district maps. Many redistricting ordinances expressly allow the public to submit draft maps.<sup>40</sup> To facilitate this, the national League of Women Voters, as a best practice, encourages local governments to “provide data, tools and opportunities for the public to have direct input into the specific plans under consideration by the redistricting body.”<sup>41</sup>

With advances in technology, it is increasingly possible to provide the public with free, online mapping software to draw their own districts. Several local jurisdictions provided an online mapping tool in the last redistricting cycle.<sup>42</sup> However, because these mapping tools use proprietary software and can be costly,<sup>43</sup> few jurisdictions promise it in law. Sacramento requires its commission to “make available to the public a free electronic mapping tool, loaded with relevant population and demographic data,” but only to the extent “practicable.”<sup>44</sup>

## SURVEY OF LOCAL COMMISSIONS: PUBLIC PARTICIPATION

|  | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | MEDIAN | (California) | (SB1108) |
|--|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------|--------------|----------|
| <b>Minimum # of Hearings Before Final Map Adoption</b>         |          | 4           |        |        | 10        |                    | 10                   | 2       |         | 1                 | 8                 | 15               | 7                  |               | 3        |            |          | 9       | 53%     | 7      |              | 3        |
| <b>Minimum # of Hearings Before Drawing 1<sup>st</sup> Map</b> |          |             |        |        | 6         |                    | 7                    | 1       | *       |                   |                   | 9                |                    |               |          |            |          | 5       | 29%     | 6.5    | *            |          |
| <b>Vary Hearing Locations</b>                                  |          | ✓           |        |        | ✓         |                    | ✓                    |         |         |                   | ✓                 | ✓                | ✓                  |               | ✓        |            | ✓        | 8       | 47%     |        |              |          |
| <b>Comply with Brown Act</b>                                   | ✓        |             |        |        |           |                    | ✓                    |         | ✓       |                   | ✓                 |                  | ✓                  |               |          |            |          | 5       | 29%     |        | ✓            | ✓        |
| <b>Encourage Broad Participation</b>                           | ✓        | ✓           |        |        |           | ✓                  | ✓                    |         | ✓       |                   |                   |                  |                    |               |          |            |          | 5       | 29%     |        | ✓            |          |
| <b>Community Outreach</b>                                      | ✓        |             |        |        |           |                    | ✓                    |         | ✓       |                   | ✓                 |                  |                    |               |          |            | ✓        | 4       | 24%     |        | ✓            |          |
| <b>Allow Written Comment</b>                                   | ✓        |             |        |        |           |                    | ✓                    | ✓       |         |                   | ✓                 |                  |                    |               |          |            |          | 4       | 24%     |        |              |          |
| <b>Provide Mapping Tools</b>                                   |          | ✓           |        |        |           |                    | ✓                    |         |         |                   | ✓                 |                  |                    |               |          |            |          | 3       | 18%     |        |              |          |
| <b>Vary Hearing Days/Times</b>                                 |          |             |        |        | ✓         |                    | ✓                    |         |         |                   |                   |                  |                    |               |          |            |          | 2       | 12%     |        |              |          |
| <b>Translation Services</b>                                    |          |             |        |        | ✓         |                    | ✓                    |         |         |                   |                   |                  |                    |               |          |            |          | 2       | 12%     |        |              |          |

\* Hearings required but minimum number not specified.

## CLRP RECOMMENDATIONS

1. **The commission should encourage broad public participation throughout the redistricting process; at minimum, the commission should be required to conduct direct outreach to less politically-engaged communities.** Targeted outreach to disadvantaged or less political-engaged communities, like low-income or non-English-speaking communities, is important to ensuring representative participation in the redistricting process.
2. **The commission should hold at least one public hearing in each existing election district before drawing its first draft map.** Holding hearings across a jurisdiction increases accessibility and can rally a community to testify at “their” hearing. Requiring one hearing per district also, in effect, requires a minimum number of hearings equal to the size of the governing board. Requiring some “listening” hearings before draft maps are drawn will encourage commissioners to be more attentive and responsive to community feedback.

3. **Public hearings should be scheduled and conducted so as to maximize the public's ability to participate in the redistricting process.** Hearing dates and times should be varied to accommodate different schedules. Hearing locations should be accessible to persons with disabilities and near public transit. If a jurisdiction has a substantial non-English speaking community, it should make sure either community or professional translators are present upon request.
4. **The commission should accept written comment and facilitate the public's ability to submit draft maps.** Redistricting data must be available to the public for free and online. Where feasible, jurisdictions should provide the public with free, online mapping software so they can more easily develop their own maps that comply with equal population requirements.
5. **A proposed final map should be published electronically for at least one week prior to being adopted so that the public has time to review and comment on it.**
6. **To the greatest extent possible, redistricting materials and commission information should be available online, including: commission agendas, commission minutes, a calendar of public hearings, video recording of public meetings, redistricting data, draft maps, and commission contact information.**

## ENDNOTES

<sup>1</sup> Coalition of 16 Civil Rights Organizations, *Redistricting Principles for a More Perfect Union*, Principles 6 & 7 (2014), available at: [http://www.commoncause.org/issues/voting-and-elections/redistricting/National\\_073114\\_Redistricting\\_Principles.pdf](http://www.commoncause.org/issues/voting-and-elections/redistricting/National_073114_Redistricting_Principles.pdf) (accessed May 2017) (redistricting should be “open and accessible to the public” and “maximize[ public] opportunity for input and participation”). See also League of Women Voters of California, *Action Policies and Positions* 5 (Updated 2016) (state redistricting should be conducted using an independent commission “with maximum opportunity for public scrutiny”).

<sup>2</sup> See, e.g., Ellen Garrison, *Sacramento City Council to discuss independent redistricting commission* SACRAMENTO BEE (May 23, 2016) (“The final map adopted by the council in 2011 was drawn by then-council members Sandy Sheedy, Steve Cohn and Kevin McCarty behind closed doors.”).

<sup>3</sup> Coalition of 16 Civil Rights Organizations, *Redistricting Principles for a More Perfect Union*, Principle 6 (2014).

<sup>4</sup> LOS ANGELES TIMES, *L.A.'s flawed redistricting process* (Feb. 17, 2012).

<sup>5</sup> Cal. Gov. Code Sec. 54954.2(a)(1). The one exception is for jurisdictions that are moving from at-large to by-district elections for the *first time* (as opposed to *re*-districting); transitioning jurisdictions must publish draft election maps for seven days prior to considering them. See Cal. Elec. Code Sec. 10010(a)(2).

<sup>6</sup> Cal. Gov. Code Sec. 54957.5(b)(1).

<sup>7</sup> Cal. Elec. Code Sec. 23003(h).

<sup>8</sup> Oakland Charter Sec. 220(L)(4).

<sup>9</sup> Modesto Charter Sec. 5(D) & (6)(B).

<sup>10</sup> San Diego Charter Sec. 5.1, ¶19.

<sup>11</sup> Oakland Charter Sec. 220(I).

<sup>12</sup> Sacramento Charter Sec. 176(d).

<sup>13</sup> Sacramento Charter Sec. 176(e).

<sup>14</sup> Escondido Legal Settlement, Sec. IX, in *Gomez v. Escondido*, Case No. 37-2011-00060480-CU-CR-NC (Dec. 20, 2011).

<sup>15</sup> Oakland Charter Sec. 220(L)(4) and San Diego Charter Sec. 5.1, ¶19.

<sup>16</sup> Campaign Legal Center, the League of Women Voters, and Americans for Redistricting Reform, *Statement of Essential Principles on Redistricting* (2009), available at: <http://www.campaignlegalcenter.org/news/press-releases/civil-rights-groups-reformers-agree-redistricting-principles> (accessed May 2017).

<sup>17</sup> Asian Americans Advancing Justice, *Guide to Best Practices in Districting 2* (2017).

<sup>18</sup> See Peter Miller and Bernard Grofman, *Evaluating Public Comment into the Redistricting Process in the American States*, Paper Presented at the International Political Science Association World Congress in Madrid (July 8-July 12, 2012), available at: <http://paperroom.ipsa.org/papers/view/19370> (researchers considered whether the California Commission listened to public comments and concluded the

“evidence supports the claim that yes, the comments from the public are heard and adopted by redistricting authorities”).

<sup>19</sup> *Ibid.*

<sup>20</sup> Karin MacDonald & Bruce E. Cain, *Community of Interest Methodology and Public Testimony*, U.C. IRVINE LAW REVIEW 628 (Vol. 3 2013).

<sup>21</sup> The one exception is for local jurisdictions that are transitioning from at-large to by-district elections for the *first* time. They must hold four hearings prior to adopting districts: two before any draft maps have been proposed, and two after. Cal. Elec. Code Sec. 10010(a)(1)-(2).

<sup>22</sup> Cal. Elec. Code Secs. 21507 (counties), 21607 (general law cities), 21621 (charter cities), and 22001 (special districts).

<sup>23</sup> Cal. Gov. Code Sec. 54954.3(a).

<sup>24</sup> 2010 San Diego Redistricting Commission, *Filing Statement and Final Redistricting Plan for the City of San Diego 2* (Aug. 25, 2011).

<sup>25</sup> Chula Vista Charter Sec. 300.5(G)(1).

<sup>26</sup> Oakland Charter Sec. 220(L)(4) and Sacramento Charter Sec. 178(a)&(c).

<sup>27</sup> Coalition of 16 Civil Rights Organizations, *Redistricting Principles for a More Perfect Union*, Principle 7 (2014).

<sup>28</sup> Asian Americans Advancing Justice, *Guide to Best Practices in Districting 2-3* (2017) (AAAJ recommends “a large number of hearings” so that “community members [have] multiple opportunities to contribute to the process and [can] participate even if they hear about districting late in the districting process”).

<sup>29</sup> Cal. Elec. Code Sec. 23003(h).

<sup>30</sup> Sacramento Charter Sec. 176(b).

<sup>31</sup> See, e.g., San Diego City Charter Sec. 5.1, ¶25.

<sup>32</sup> Cal. Elec. Code Sec. 21550(e).

<sup>33</sup> Cal. Elec. Code Sec. 21534(c)(4)(A).

<sup>34</sup> *Ibid.*

<sup>35</sup> Escondido Legal Settlement, Sec. IX(D)(3)-(4), in *Gomez v. Escondido*, Case No. 37-2011-00060480-CU-CR-NC (Dec. 20, 2011).

<sup>36</sup> Cal. Elec. Code Sec. 21534(c)(5)(A).

<sup>37</sup> Asian Americans Advancing Justice, *Guide to Best Practices in Districting 2* (2017) (public hearings should be held in locations that are “accessible via public transit and for people with disabilities”).

<sup>38</sup> See, e.g., Berkeley Charter Sec. 9.5(c)(1) (“Members of the public shall have the opportunity to provide written and oral comments to the Citizens Redistricting Commission.”).

<sup>39</sup> 2010 San Diego Redistricting Commission, *Filing Statement and Final Redistricting Plan for the City of San Diego 2* (Aug. 25, 2011).

<sup>40</sup> See, e.g., Berkeley Charter Sec. 9.5(c)(2) (“The Commission shall also accept and consider maps that are submitted by the public.”).

<sup>41</sup> Campaign Legal Center, the League of Women Voters, and Americans for Redistricting Reform, *Statement of Essential Principles on Redistricting* (2009).

<sup>42</sup> Cities that used a public, online mapping tool included Los Angeles, Oakland, Sacramento, and San Diego.

<sup>43</sup> Phil Kamlarz, *2010 Census: Redistricting Process and Timeline*, Berkeley City Council Staff Report 3 (Jun. 14, 2011). (“Staff notes that there are commercial options available to the City to provide an online redistricting tool for the public and community groups to redraw district boundaries. However, they are very costly (approximately \$46,000) and there are no additional funds budgeted for the redistricting process.”).

<sup>44</sup> Sacramento Charter Sec. 177(c).



## REDISTRICTING CRITERIA

Redistricting commissions must draw equal population districts. This is a fundamental constitutional requirement for all redistricting. However, most redistricting ordinances include additional, express redistricting criteria for commissioners to apply.

Enumerated criteria play a critical role in redistricting. They establish a redistricting goal for commissioners beyond equal population, like creating districts that are more representative of the diverse constituencies within the jurisdiction. Criteria are a statement of what values and outcomes a jurisdiction prioritizes in redistricting.

Express criteria also serve to limit the redistricting body's line-drawing discretion, which can prevent political gerrymandering.<sup>1</sup> This is especially true of commissions: state studies have found that commissioners, because they do not have a direct self-interest in the lines being drawn, are more likely to respect traditional redistricting criteria than state legislatures.<sup>2</sup>

Nearly all (88%) local redistricting ordinances specify some redistricting criteria for the commission to follow. California state law establishes seven redistricting criteria, after equal population, that a local government "may" consider: "topography, geography, cohesiveness, contiguity, integrity, and compactness of territory, and community of interests of the ... districts."<sup>3</sup> Some redistricting ordinances repeat this language;<sup>4</sup> others transform some or all of these discretionary criteria ("may consider") into mandatory criteria ("shall consider").<sup>5</sup>

Many ordinances require commissions to consider *additional* criteria beyond the seven listed in state law. While charter cities, exercising their home rule autonomy, may clearly do so, it is an open question whether other local governments, absent special state legislation, have the legal authority to do so.<sup>6</sup>

Most redistricting criteria, after equal population, can be classified into three broad categories:<sup>7</sup>

- **Geographic criteria**, like compactness and contiguity, relate to the shape or physical features of a district. Geographic criteria assume that persons living near each other share political interests, and on that basis should be grouped together. Because geographic criteria can usually be applied with a fair degree of objectivity, they can also function as a check on gerrymandering.
- **Demographic criteria**, like preserving communities of interest, relate to the relationships between groups of residents within a district. These criteria seek to ensure that demographically-similar groups, for example low-income communities or non-English-speaking communities, are kept together to strengthen their political representation.
- **Political criteria**, like maintaining the integrity of political subdivisions, relate to relationships between residents and incumbents, political parties, or local governments. In some cases, these criteria seek to strengthen these relationships; in other cases, these criteria seek to prohibit their consideration.

The subsections that follow summarize the different types of redistrict criteria that local commissions are often called on to apply.

While geographic, demographic, and political criteria can often be applied harmoniously, depending on a jurisdiction’s geography and population dispersal they are sometimes partially or even wholly irreconcilable. For example, the criterion that districts be compact may be at odds with a requirement that political subdivisions (like a city within a county) be kept intact, because many political subdivisions are not compact to begin with. Similarly, a requirement that communities of interest be kept intact may not align with either compactness or political integrity requirements, since communities often will not follow invisible political boundaries or grow in neat shapes. For this reason, a few local commissions follow the state model and adopt prioritized redistricting criteria to help resolve such conflicts.

### SURVEY OF LOCAL COMMISSIONS: USAGE OF REDISTRICTING CRITERIA

|                                 | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|---------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Express Criteria</b>         | ✓        | ✓           |        | ✓      | ✓         | ✓                  | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                | ✓                  | ✓             | ✓        | ✓          | ✓        | 15      | 88%     | ✓            |
| <b>Prioritized Criteria</b>     |          |             |        | ✓      |           | ✓                  |                      |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 4       | 24%     | ✓            |
| <b>May Adopt Other Criteria</b> |          |             |        |        |           |                    |                      |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 2       | 12%     |              |

### EQUAL POPULATION

*“The commission shall draw its final map so that: 1. Council districts are substantially equal in population.”*

**Sacramento City Charter Sec. 175(a)(1).**

The primary purpose of redistricting is to correct any imbalances in district population. The constitutional principle of “one person, one vote” requires all election districts within a jurisdiction – whether at the congressional, state, or local level – to have equal population.<sup>8</sup> Redistricting corrects for any population shifts that may have caused once-equal districts to become unequal over time. For example, prior to the Supreme Court holding that the constitution requires decennial redistricting,<sup>9</sup> Los Angeles County’s 6.4 million residents had the same number of representatives in the State Senate as the 14,000 residents of three rural counties.<sup>10</sup>

For local redistricting, the Supreme Court has explained that election districts must be “substantially equal” in population.<sup>11</sup> Local governments must “make an honest and good faith effort to construct

districts ... as nearly of equal population as is practicable.”<sup>12</sup> As a general rule, local governments can safely deviate from absolute equality to accomplish other traditional redistricting objectives so long as the “maximum population deviation between the largest and smallest district is less than 10%.”<sup>13</sup> Slightly larger deviations can sometimes be justified, but do not enjoy a presumption of constitutionality; deviations exceeding 16.4% are probably never be justifiable.<sup>14</sup>

All local governments must meet these minimum constitutional requirements for population equality; however, nothing prevents states or local governments from adopting stricter population equality standards.<sup>15</sup>

California state law directs most local governments to draw districts that are “as nearly equal in population as may be.”<sup>16</sup> Whether this requires more precise population equality than the constitutional minimum is legally unclear.<sup>17</sup> However, because an early case interpreted this provision to permit very large population deviations, the constitutional “substantially equal” standard is probably stricter than, and so satisfies, California’s statutory “as equal as may be” rule.<sup>18</sup>

Some local jurisdictions nonetheless require greater population equality between election districts. San Francisco’s charter provides that “[p]opulation variations between districts should be limited to 1 percent from the statistical mean,” unless additional variation is needed to prevent minority vote dilution or to keep neighborhoods intact.<sup>19</sup> A stricter equal population standard further reduces the possibility that some districts’ residents will be over- or under-represented.<sup>20</sup>

However, stricter population equality comes at a cost. The stricter the population standard, the harder it can be for the line-drawer to accommodate other important redistricting objectives, like keeping neighborhoods intact or protecting minority representation. For this reason, most good government and civil rights organizations urge redistricting decision-makers to use the “legally permitted population deviation among districts in state and local redistricting to serve legitimate redistricting considerations, including underpopulation of districts to ensure adequate representation of undercounted communities.”<sup>21</sup>

Some jurisdictions have used different legal language to require population equality than the “as equal as may be” or “substantially equal” terminology in state law or federal case law. Generally, jurisdictions should avoid doing so because it can create legal uncertainty as to what population equality standard is being adopted.

For example, Los Angeles County’s ordinance requires supervisorial districts to have “reasonably equal population.”<sup>22</sup> A court might interpret this standard to be no different than the U.S. Constitution’s substantially equal requirement. However, because this language was lifted from the state constitution’s requirement of “reasonably equal” state legislative districts,<sup>23</sup> which has been interpreted to usually permit no more than a 1% population deviation,<sup>24</sup> a court might conclude that the stricter 1% standard was intended.<sup>25</sup>

## SURVEY OF LOCAL COMMISSIONS: EQUAL POPULATION CRITERIA

|                               | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (Most CA Local Govs.) |
|-------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------------------|
| “Nearly Equal As Practicable” |          |             |        |        |           | ✓                  |                      |         |         | ✓                 |                   | ✓                |                    |               | ✓        |            |          | 4       | 24%     | ✓            |                       |
| “Reasonably Equal”            |          | ✓           |        |        | ✓         |                    | ✓                    |         | ✓       |                   |                   |                  |                    |               |          |            |          | 4       | 24%     | ✓            |                       |
| “As Equal As May Be”          | ✓        |             |        |        |           |                    |                      |         |         |                   |                   |                  |                    |               |          | ✓          |          | 2       | 12%     |              | ✓                     |
| “Substantially Equal”         |          |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 1       | 6%      |              |                       |
| “Nearly Equal”                |          |             |        |        |           |                    |                      |         |         |                   |                   |                  | ✓                  |               |          |            |          | 1       | 6%      |              |                       |
| Max __% Deviation             |          |             | 2      |        |           |                    |                      |         |         |                   |                   |                  |                    | 2             |          |            |          | 2       | 12%     |              |                       |
| Comply with Constitution      | ✓        | ✓           |        |        | ✓         |                    | ✓                    |         | ✓       |                   | ✓                 | ✓                |                    |               |          | ✓          |          | 8       | 47%     | ✓            |                       |

### GEOGRAPHIC CRITERIA

Most redistricting ordinances require their commissions to apply geographic redistricting criteria, with compactness and contiguity being the two most common. Geographic criteria tend to prevent sprawling or oddly-shaped districts. They prioritize keeping nearby residents together and provide an objective measure to deter gerrymandering.

#### Contiguity

“Districts shall ... be composed of contiguous territory with reasonable access between population centers in the district.”

**San Diego City Charter Sec. 5.1, ¶6.**

Contiguity was a local redistricting criterion in 76% of local redistricting ordinances. Even when not enumerated as a criterion, contiguity is such a universally accepted standard of redistricting that it is almost always followed.

Contiguity requires each district to be a single, unbroken shape. In other words, contiguity requires all parts of a district to be connected; stricter definitions of contiguity specify that residents should be able to travel from one end of the district to the other without existing.<sup>26</sup> Without a contiguity requirement, districts could be composed of islands of population scattered across the jurisdiction, which would undermine the purpose of geographic, district-based representation.

While the contiguity requirement is amongst the most straightforward in redistricting, its application can get complicated when a local jurisdiction is, itself, non-contiguous or when a jurisdiction is split by bodies of water. For example, the city of San Diego’s San Ysidro neighborhood is entirely separate from the remainder of the city. The city of Sacramento is split in half by the American River. Generally, non-contiguous territory is added to the nearest election district and territory split by waterways are considered contiguous if connected by a bridge or ferry service.<sup>27</sup>

The contiguity requirement has a number of virtues. Connected populations are more likely to share common interests than non-connected populations. Similarly, neighboring populations that have contact with each other are better able to collectively mobilize and advocate for shared interests than populations that have no connection. Finally, because contiguity is an objective standard for restricting a map-maker’s discretion, it offers some protection against gerrymandering.<sup>28</sup>

### Compactness

*“To the extent practicable, district boundaries shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant populations.”*

**Oakland City Charter Sec. 220(E)(5).**

Compactness, generally, requires that districts be made up of residents who live near each other.<sup>29</sup> Like contiguity, compactness has intuitive appeal. People who live near each other are more likely to share experiences and have similar concerns with each other than with people who live far away. In local politics especially, place-based issues can predominate. As one scholar argues, “the public concerns of virtually every local community tend first of all to things near to home: property taxes, roads, public schools, police and fire service, snow removal, trash collection, and so on.”<sup>30</sup> Voters in compact districts also have an easier time identifying their elected officials and politically organizing, which can improve political accountability.<sup>31</sup> Like contiguity, compactness is also a potential check against gerrymandering: compactness prevents a map-drawer from creating a district by choosing, then linking, scattered pockets of voters from across the jurisdiction.<sup>32</sup>

However, strict compactness rules can have hamper minority representation in jurisdictions where the minority population is dispersed.<sup>33</sup> For this reason, in drawing state legislative boundaries, California’s constitution requires compactness only “to the extent practicable” and where that criterion does not conflict with others, like complying with the Voting Rights Act and keeping communities of interest intact.<sup>34</sup> Similarly, Sacramento ranks compactness below keeping neighborhoods and communities of interest intact on its list of prioritized criteria.<sup>35</sup>

Surprisingly, despite the fact that compactness is one of the most common criteria in both state and local redistricting, courts have not settled on a standardized definition.<sup>36</sup> Courts generally take one of two approaches to compactness. One approach views compactness as a measure of district shape, where districts that are less dispersed and have smaller perimeters are more compact.<sup>37</sup> So, for

example, under this measure, a circular or square district would be more compact than a star-shaped district.

The other approach views compactness as requiring closely-united territory, prioritizing districts that facilitate strong political relationships between constituents, rather than a geographic measure.<sup>38</sup> The California Supreme Court, interpreting a compactness requirement in a since-repealed constitutional provision, endorsed this functional approach: “Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. [I]t speaks to relationships that are facilitated by shared interests and by membership in a political community.”<sup>39</sup>

California courts have yet to consider whether the present state law “compactness of territory” consideration for local redistricting refers to physical or functional compactness. In practice, there is considerable overlap in the two approaches, so resolving this question may be unnecessary. Even in announcing its compactness standard, the state Supreme Court endorsed the view that highly-dispersed or oddly-shaped districts may violate compactness because they frustrate, rather than strengthen, residents’ shared political interests.<sup>40</sup>

For state and congressional districts, the debate has been rendered moot by the passage of Proposition 11 (2008). The state constitution now clarifies that compactness, as regards state legislative and congressional districts, prohibits bypassing “nearby areas of population ... for more distant populations.”<sup>41</sup> In an effort to minimize ambiguity, several local governments have since adopted the state definition.<sup>42</sup>

### Geography/Topography

“In establishing and modifying district boundaries, the Citizens Redistricting Commission shall take into consideration topography [and] geography.”

**Berkeley Charter Sec. 9.5(f)(2).**

The geography/topography criterion requires line-drawers to consider geographic and topographic features in drawing districts. Where geography forms a natural boundary separating communities, like a river or mountain range, this criterion strongly encourages using that geographic feature as a district boundary.<sup>43</sup> However, where geography significantly defines the experience of residents in an area, this criterion would encourage grouping those area residents together in a district. For example, in the 1991 court-controlled state redistricting, the appointed special masters attempted to keep intact California’s “geographical regions (coastal, mountain, desert, central valley and intermediate valley regions).”<sup>44</sup> Remoteness, accessibility, and density are also sometimes respected as geographic considerations.<sup>45</sup>

The geography/topography criterion has many of the same benefits identified with compactness and contiguity. To the degree that geography accurately identifies distinct communities and common experiences, respecting this criterion promote better representation. Using prominent geographic or topographical features for district boundaries, where possible, reduces the opportunities for gerrymandering and creates more identifiable districts, which can promote political accountability.

Geographic considerations can sometimes conflict with other redistricting objectives.<sup>46</sup> While communities will often develop following geographic boundaries, sometimes they don't; in the latter case, inflexibly applying this criterion could fragment communities of interest. Similarly, geographic boundaries may conflict with the goal creating compact districts or preserving political subdivisions.

### Natural/Artificial Barriers

*“District boundaries shall follow visible natural and man-made features, street lines and/or City boundary lines whenever possible.”*

**Chula Vista Charter Sec. 300.5 (F)(3).**

The criterion that boundaries follow natural or artificial barriers may simply be an application of the geography/topography criterion, described above. Nonetheless, a few local jurisdictions include both criteria.<sup>47</sup> This is likely due to confusion as to whether respecting topography/geography only includes natural features, or natural *and* man-made features, like major roads or highways.<sup>48</sup> The natural/artificial barriers criterion also places greater emphasis on drawing clearly-identifiable districts.

### Census Units

*“The commission shall use federal census tracts and blocks in establishing the boundaries of supervisorial districts.”*

**California Elections Code Sec. 21550(c)(5) (San Diego County).**

Census tracts and census blocks are the smallest geographic areas for which the U.S. Census provides population and demographic data. They are the primary building blocks for redistricting. According to the U.S. Census,

*“Census Tracts are small, relatively permanent statistical subdivisions of a county or equivalent entity that are updated by local participants prior to each decennial census. ... Census tracts generally have a population size between 1,200 and 8,000 people, with an optimum size of 4,000 people. Census tract boundaries generally follow visible and identifiable features.”<sup>49</sup>*

Census blocks, which usually have between 600 to 3,000 people, are subdivisions of census tracts.<sup>50</sup>

Two larger local jurisdictions, the City of San Diego and San Diego County, have adopted a requirement that redistricting be done using whole census units. For state redistricting, it's been suggested that using whole census units can reduce some of the “fuzziness” around communities of interest;<sup>51</sup> because census tract and block lines are also clearly defined, and usually follow identifiable features, requiring their use may prevent some types of gerrymandering and build more identifiable districts. There is also a practical aspect to using census units, since it makes it possible to know with greater precision the social or economic characteristics of a district.<sup>52</sup>

However, especially in the context of local redistricting, where election districts may have only a few thousand residents, requiring the use of whole census units may be unduly restrictive and make it more difficult to keep neighborhoods and communities of interest intact.<sup>53</sup>

### SURVEY OF LOCAL COMMISSIONS: GEOGRAPHIC CRITERIA

|                                   | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (Most CA Local Govs.) |
|-----------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------------------|
| <b>Contiguous</b>                 | ✓        | ✓           |        | ✓      | ✓         |                    | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                | ✓                  |               | ✓        | ✓          | ✓        | 13      | 76%     | ✓            | ✓                     |
| <b>Compact</b>                    | ✓        | ✓           |        | ✓      | ✓         | ✓                  | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                | ✓                  |               | ✓        | ✓          | ✓        | 14      | 82%     | ✓            | ✓                     |
| <b>Geography/Topography</b>       | ✓        |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  | ✓                  |               | ✓        |            | ✓        | 5       | 29%     |              | ✓                     |
| <b>Identifiable Boundaries</b>    | ✓        | ✓           |        |        |           | ✓                  |                      | ✓       |         |                   | ✓                 | ✓                |                    |               | ✓        |            |          | 7       | 41%     |              |                       |
| <b>Whole Census Tracts/Blocks</b> |          |             |        |        |           |                    |                      |         |         |                   |                   | ✓                | ✓                  |               |          |            |          | 2       | 12%     |              |                       |

### DEMOGRAPHIC CRITERIA

Demographic criteria seek to keep together populations that identify as a community and are likely to have shared policy concerns and preferences. Keeping communities intact increases their political clout, which can improve political accountability and produce a more representative governing board.

#### Voting Rights Act

*“The districts shall comply with the applicable provisions of the United States Federal Voting Rights Act of 1965, Section 1973 of Title 42 of the United States Code, as amended and any other applicable provisions of federal or state law.”*

**Stockton Charter Sec. 202(b).**

Minority communities have frequently been discriminated against in state and local redistricting, often through the cracking and packing of minority voters.<sup>54</sup> Federal law provides important protections against this. Section 2 of the federal Voting Rights Act (VRA) of 1965 prohibits any government, including local governments, from adopting a redistricting map that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”<sup>55</sup> It is widely seen as one of the landmark legislative achievements of the civil rights movement.



While all jurisdictions must comply with Section 2 regardless of whether compliance is mandated in local redistricting ordinance, as a report by MALDEF and other civil rights groups explains, a number of jurisdictions nonetheless “identify compliance with the Act at the top end of their list of traditional redistricting principles to underscore the importance of complying with this federal law during the redistricting process.”<sup>56</sup> The NAACP endorses this approach as one way to encourage redistricting commissioners to draw districts that protect minority voting rights.<sup>57</sup>

In redistricting, the VRA may require the creation of a majority-minority voting district to avoid unfairly diluting minority voting strength, under certain specific circumstances. In *Thornburg v. Gingles* the Supreme Court laid out a three-prong test for determining minority vote dilution:

“First, the minority group must be ... sufficiently large and geographically compact to constitute a majority [of the voting population] in a single-member district....

“Second, the minority group must be ... politically cohesive....

“Third ... the white majority [must vote] sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.”<sup>58</sup>

If those three preconditions are met, and if the “totality of the circumstances” indicate that the minority population does not have an “equal opportunity to participate in the political processes and to elect candidates of their choice,” a majority-minority district must be created.<sup>59</sup>

A majority of federal circuit courts have also held that, where there is racially polarized voting and two or more minority communities that vote cohesively could be combined to form the majority of a single-member district (but one alone could not), the VRA requires the creation of a “minority coalition district” combining those communities.<sup>60</sup> The Ninth Circuit, where California is located, has not yet ruled on the question.

### Communities of Interest

*“The geographic integrity of any ... local community of interest shall be respected in a manner that minimizes its division to the extent possible... A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”*

**California Elections Code Sec. 21534(a)(4) (Los Angeles County).**

Most local redistricting ordinances include a provision directing the line-drawer to respect, to the degree possible, the integrity of local “communities of interest.” Deciding which populations constitute a community of interest is among the most difficult tasks in redistricting, especially because the term itself is somewhat vague.

The Brennan Center defines a community of interest as “a group of people concentrated in a geographic area who share similar interests and priorities – whether social, cultural, ethnic, economic, religious, or

political.”<sup>61</sup> The California Supreme Court has never itself defined what constitutes a community of interest; however, in *Wilson v. Eu*, the Court approved of a panel of special masters’ use of the following definition: “the social and economic interests common to the population of an area which are probable subjects of legislative action.”<sup>62</sup>

Proposition 11 (and its companion, Proposition 20) amended the state constitution to define communities of interest for the purposes of state and congressional redistricting. Many local governments have adopted this constitutional definition, which is very similar to the one found in *Wilson v. Eu*:

“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”<sup>63</sup>

The communities of interest criterion’s primary purpose is to create more representative districts and more politically responsive elected officials.<sup>64</sup> The Brennan Center observes that “[c]ommunities of interest are at the heart of what many consider to be the point of districts designed to have different character.”<sup>65</sup> Supporting this approach, one analysis of congressional voting records found that elected officials who represent districts that combine very dissimilar communities are less responsive to their constituents’ needs and interests than members representing more uniform districts.<sup>66</sup> Many of the other traditional redistricting principles, like compactness or preserving political subdivisions, are justified in part because they are presumed to be a good “proxy for ensuring that people with common interests are grouped within the same district.”<sup>67</sup>

The primary criticism of this criterion is that the open-endedness of defining a “community” invites political manipulation. As one legal scholar quipped, “‘community’ is a concept so squishy that we should hesitate to entrust its specific application to either judges or politicians.”<sup>68</sup>

While defining a community does of course require some judgment, line-drawers do not have unfettered discretion to conjure up previously unknown communities. The use of demographic data and local testimony, in particular, significantly reduces the likelihood of abuse. Many of the traditional indicators of a community of interest – factors like employment status, occupation, income, commute, education level, household size, tenancy status, race, and language spoken – are contained in the U.S. Census’s American Community Survey.<sup>69</sup>

Local testimony is also important to identifying communities, and was used extensively by the state Commission to adjust boundary lines. Two prominent scholars of California redistricting argue that public testimony is the best method of identifying communities of interest because “public testimony

gives a better snapshot of what matters to voters, residents, and communities at a given time and place.”<sup>70</sup>

### Race

Race is generally not its own redistricting criterion; however, racially homogenous communities are often identified and kept intact as communities of interest. Minority communities often have distinct policy preferences or challenges and might, therefore, benefit from being kept intact. Because minorities remain underrepresented on California local governing boards,<sup>71</sup> civil rights organizations particularly urge line-drawers to take affirmative steps, even when not required by the VRA, to “draw plans that fairly reflect minority voting strength at the beginning of the redistricting process.”<sup>72</sup>

The Supreme Court has said that line-drawers may legitimately consider race as a factor in redistricting.<sup>73</sup> Indeed, to ensure compliance with the VRA and to keep some communities of interest intact, line-drawers *must* consider race. However, the Supreme Court has also made clear that, under the U.S. Constitution’s Equal Protection Clause, race cannot be “the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.”<sup>74</sup> Maps that are inconsistent with traditional redistricting principles and explainable primarily by racial considerations are at-risk of being struck down.<sup>75</sup>

To avoid getting close to the line where consideration of race may cross over into racial gerrymandering, Asian Americans Advancing Justice recommends that local jurisdictions “look at other factors in addition to race – such as shared history and language, common social networks, and shared interests in schools, health, and public safety – that indicate whether members of racial groups in [that jurisdiction] also form communities of interest.”<sup>76</sup>

### Neighborhoods

*“All districts shall be drawn in conformance with requirements of state and federal law and, to the extent feasible, shall keep neighborhoods and communities intact.”*

**Los Angeles City Charter Sec. 204(d).**

This criterion requires neighborhoods to be kept intact, to the extent it is feasible to do so. It furthers the traditional redistricting goal of keeping together people who have a shared identity – in this case place-based – and who are likely to have a similar quality of life and local policy preferences due to proximity. Neighborhoods are often treated as a type of urban community of interest.<sup>1</sup> However, as a general rule, neighborhoods tend to be smaller and form some of the building blocks of larger communities of interest.<sup>1</sup>

Like communities of interest, neighborhood borders can be difficult to define. Public input from area residents is important to discerning where one neighborhood ends and another begins.<sup>77</sup> Some cities have created neighborhood maps for administration or service delivery reasons;<sup>78</sup> these maps can be a useful guide to neighborhood boundaries but are not a substitute for residents’ on-the-ground

perspective. The City of Sacramento, in attempting to define neighborhoods for redistricting purposes, listed the following as useful indicia: “Residents and neighborhood groups; Subdivision map; Parcel map; Welcome signs / gateway monument signs; Community Facilities (e.g., parks, community centers, schools, churches, historic buildings); Business corridors (e.g., Property & Business Improvement Districts); and Redevelopment area.”<sup>79</sup>

**“Fair” Representation**

“The boundaries so defined shall be established in such manner that the districts shall, as nearly as practicable, constitute natural areas of contiguous and compact territory and provide fair representation on the City Council and otherwise comply with applicable law.”  
**Downey City Charter Sec. 1306.**

A few redistricting ordinances require that districts provide “fair representation.” This is likely a reference to the Supreme Court’s statement that the touchstone purpose of redistricting is to provide “fair and effective representation for all citizens.”<sup>80</sup> While perhaps a valuable reminder of the reason for redistricting, it is unlikely this criterion has any independent legal effect.

**SURVEY OF LOCAL COMMISSIONS: DEMOGRAPHIC CRITERIA**

|                                | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | (Most CA Local Govs.) |
|--------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------------------|
| <b>Communities of Interest</b> | ✓        | ✓           |        |        | ✓         | ✓                  | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                | ✓                  | ✓             | ✓        |            | ✓        | 13      | 76%     | ✓            | ✓                     |
| <b>Voting Rights Act</b>       | ✓        |             |        |        | ✓         | ✓                  |                      |         | ✓       |                   | ✓                 |                  | ✓                  |               |          |            | ✓        | 8       | 47%     | ✓            | ✓                     |
| <b>Neighborhoods</b>           | ✓        |             |        |        | ✓         | ✓                  | ✓                    |         | ✓       |                   |                   |                  |                    | ✓             |          |            |          | 7       | 41%     | ✓            |                       |
| <b>“Fair” Representation</b>   |          |             |        | ✓      |           |                    |                      | ✓       |         |                   |                   | ✓                |                    |               |          | ✓          |          | 4       | 24%     |              |                       |

**POLITICAL CRITERIA**

Political criteria encourage – or disallow – drawing district boundaries based on residents’ relationships with incumbents, political parties, or local governments. While traditionally many political criteria protected incumbents or helped the majority party,<sup>81</sup> most California local ordinances have adopted political criteria to *prohibit* incumbent or partisan self-interest from being considered in the redistricting process.

## Incumbency

*“Districts may not be drawn for the purpose of favoring or discriminating against an incumbent or political candidate.”*

**Oakland City Charter Sec. 220(E)(6).**

Many of the worst abuses of the redistricting process stem from incumbents using the line-drawing process to insulate themselves from challenge, lessening the political accountability that elections are supposed to provide. For example, incumbents can use the redistricting power to remove a likely challenger from their district.<sup>82</sup> Incumbency protection can also come at the expense of more representative districts. For example, to avoid drawing proximate incumbents into the same district, districts may need to cut through neighborhoods and communities.<sup>83</sup>

Surprisingly, incumbency protection is generally a legal redistricting consideration.<sup>84</sup> Some jurisdictions have even codified this principle, for example by prohibiting incumbents from being drawn into the same district.<sup>85</sup> This invites politicization into the redistricting process.

Incumbency protection is antithetical to the goal of representative redistricting. Good government organizations promote an absolute “ban [on] favoring or discriminating against incumbents, candidates, or parties. Redistricting should also not take into account the address of any individual, including an officeholder.”<sup>86</sup> Proposition 11 followed this recommendation: the state Commission is prohibited drawing district boundaries to advantage or disadvantage an incumbent.<sup>87</sup> Similarly, every local ordinance to address incumbency prohibits its consideration in redistricting.

## Political Parties

*“District boundaries shall be drawn without regard for advantage or disadvantage to any political party.”*

**Chula Vista City Charter Sec. 300.5(F)(6).**

Local elections are officially nonpartisan but, of course, redistricting in some jurisdictions can in practice be quite partisan. The legal status of partisan gerrymandering – that is, to purposefully use the redistricting process to advantage or disadvantage a political party – is unclear. In 2004, a majority of the U.S. Supreme Court agreed that excessive partisan gerrymandering *may* be unconstitutional, but could not agree on a workable legal standard.<sup>88</sup> The Court is set to review partisan gerrymandering this term, and may finally adopt a standard *or* decide that courts are unable to grant relief in partisan gerrymandering claims.<sup>89</sup>

As to California state and congressional redistricting, Proposition 11 resolved this issue by prohibiting the state Commission from redistricting to accomplish partisan ends.<sup>90</sup> The California Supreme Court, in reviewing the Commission’s State Senate maps, concluded that the Commission had conducted an “open, transparent and nonpartisan redistricting process as called for by the [state Constitution].”<sup>91</sup> Several local ordinances, aiming to depoliticize the redistricting process, have emulated this state prohibition.

### Integrity of Political Subdivisions

*“The geographic integrity of any city... shall be respected in a manner that minimizes its division.”*

**California Elections Code 21534(a)(4) (Los Angeles County).**

Preserving the integrity of political subdivisions, for example cities or school districts within a county, is a common requirement in state and congressional redistricting.<sup>92</sup> While not an express criterion for California counties to follow,<sup>93</sup> courts have upheld county efforts to keep political subdivisions intact by placing them within a single supervisorial district.<sup>94</sup> This criterion would be inapplicable to local jurisdictions – like many cities and schools – that do not have any political subdivisions within their borders.<sup>95</sup>

There are a few justifications for maintaining the integrity of political subdivisions. First, residents of the same city (or other subdivision) will have common interests just because they reside in the same place and share a common government. Electing officials from whole subdivisions, therefore, has a tendency to improve the representativeness of districts.<sup>96</sup> Second, by minimizing subdivision splits, constituents of those subdivisions are better able to identify their representative and politically organize, which improves political accountability.<sup>97</sup> Finally, because local government boundaries are fixed and objective, following them reduces opportunities for gerrymandering.<sup>98</sup>

### District Cores

*“...the commission shall consider the following criteria when drawing the final map: ...Preservation of population cores that have consistently been associated with each council district.”*

**Sacramento City Charter Sec. 175(b)(6).**

The preservation of district cores prevents radical changes in district boundaries; keeping the same or similar lines is less likely to confuse voters and may provide more continuity in constituent services.<sup>99</sup> There also may be political accountability benefits to keeping together residents who have politically organized together in the past. By stabilizing existing district lines, this criterion may offer some limitation on future gerrymandering.<sup>100</sup>

Core retention may be difficult to apply in situations where a jurisdiction has experienced major shifts in population, for example if new territory is annexed to the jurisdiction. This criterion is also generally controversial because, by design and often by intent, it favors incumbents, who have won office in and built relationships based on the existing district configuration. A requirement of preserving district cores also risks locking-in redistricting abuses from earlier cycles. Sacramento, for this reason, ranks the preservation of district cores as the last of its prioritized criteria.<sup>101</sup>

## SURVEY OF LOCAL COMMISSIONS: POLITICAL CRITERIA

|   | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) | SB 1108 Jurisdictions |
|---|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|-----------------------|
| <b>No Discrimination for/against an Incumbent or Challenger</b> | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                |                    |               |          |            |          | 8       | 47%     | ✓            | ✓                     |
| <b>No Discrimination by Political Party</b>                     | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       |         |                   |                   |                  |                    |               |          |            |          | 5       | 29%     | ✓            |                       |
| <b>District Cores</b>   | ✓        |             |        |        |           |                    |                      |         |         |                   | ✓                 |                  |                    |               |          |            |          | 2       | 12%     |              |                       |
| <b>Integrity of Subdivisions</b>                                |          |             |        |        |           |                    | ✓                    |         |         |                   |                   |                  | ✓                  |               |          |            |          | 2       | 12%     | ✓            |                       |

## CLRP RECOMMENDATIONS

1. **A redistricting ordinance should enumerate and define the redistricting criteria that the commission should apply.** Prioritizing criteria may also aid commissioners in resolving conflicts between criteria.
2. **A redistricting ordinance should not require stricter than “substantially equal” population equality.** Stricter standards can limit commissioners’ discretion, resulting in maps that split more neighborhoods and communities and have irregular shapes.
3. **A redistricting ordinance should include criteria to ensure minority communities are not disenfranchised.** This may include listing the Voting Rights Act as a criterion, prioritizing the preservation of communities of interest, or specifying that some standards, like compactness, should be pursued “to the extent practicable, and where this does not conflict with other criteria.”
4. **An ordinance should prohibit drawing district boundaries to advantage or disadvantage an incumbent, political candidate, or political party.** Incumbency protection as a criterion reduces political accountability, results in less representative districts, and undermines public trust in the fairness of the process.

## ENDNOTES

<sup>1</sup> See Richard Forgette & Glenn Platt, *Redistricting Principles and Incumbency Protection in the U.S. Congress*, POLITICAL GEOGRAPHY (2005) (“states have significantly less incumbency protection when they specify specific population- and politically-based principles”); Jonathan Winburn, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING (2008) (finding that “traditional districting principles” can play “a key function in constraining the remappers from gerrymandering”); Richard Forgette et al., *Do Redistricting Principles and Practices Affect U.S. State Legislative Electoral Competition?* STATE POLITICS AND POLICY QUARTERLY (2009) (“political principles and some traditional, ‘politically-neutral’ redistricting principles significantly decrease the probability of uncontested state legislative elections”); Daniel Bowen, *Redistricting, Representation, and the Politics of Protecting Political Subdivisions*, Paper presented at the Annual State Politics and Policy Conference 19 (2012) (“Among procedural redistricting criteria, respecting political subdivisions is by far the most important predictor of county splits.”); and Todd Makse, *Strategic Constituency Manipulation in State Legislative Redistricting*, LEGISLATIVE STUDIES QUARTERLY (2012) (“parties ... gain advantages from constituency manipulation, but that these advantages are counteracted by geographic redistricting regulations”).

<sup>2</sup> Barry Edwards et al., *Institutional Control of Redistricting and the Geography of Representation*, JOURNAL OF POLITICS 722 (2017) (“independent redistricting commissions (IRCs) draw significantly more compact districts, show more respect for the boundaries of local governments, and may do a better job of preserving the population cores of prior districts compared to maps drawn by state legislatures.”).

<sup>3</sup> Cal. Elec. Code Sec. 21500 (counties) (subdivisions omitted). See also Cal. Elec. Code Secs. 21601 (general law cities) (same), 21620 (charter cities) (same), & 22000 (special districts) (same); Cal. Educ. Code Sec. 1002(a) (county boards of education) (same). But see Cal. Educ. Code Sec. 5019.5 (school and community college districts) (no criteria).

<sup>4</sup> See, e.g., San Jose Charter Sec. 403, ¶10.

<sup>5</sup> See, e.g., Berkeley Charter Sec. 9.5(f)(2).

<sup>6</sup> See Justin Levitt, *Report on the Legal Standards Pertaining to the Los Angeles County Redistricting Process* 9 (Aug. 9, 2011) (unpublished report accompanying testimony before the Los Angeles County Board of Supervisors) (“It is not clear whether the express grant of authority to consider these enumerated factors suggests the intent to preclude consideration of other factors not enumerated, including other ‘traditional redistricting criteria’ not included in the state statute’s express list.”) (citing *Clark v. Burleigh*, 4 Cal. 4th 474, 488-89 (1992)).

<sup>7</sup> See Richard Forgette and Glenn Platt, *Redistricting Principles and Incumbency Protection in the U.S. Congress*, POLITICAL GEOGRAPHY 936-37 (2005) (identifying form-based, population-based, and politically-based redistricting criteria).

<sup>8</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964) (congressional districts); *Reynolds v. Simms*, 377 U.S. 533 (1964) (state legislative districts); and *Avery v. Midland County*, 390 U.S. 474 (1968) (local election districts).

<sup>9</sup> *Reynolds v. Simms*, 377 U.S. 533, 583-84 (1964) (explaining that redistricting less frequently would “would assuredly be constitutionally suspect”).

<sup>10</sup> *Silver v. Jordan*, 241 F. Supp. 576, 579 (S.D. Cal. 1965).

<sup>11</sup> *Avery v. Midland County*, 390 U.S. 474, 476 (1968).



<sup>12</sup> *Reynolds v. Simms*, 377 U.S. 533, 577 (1964).

<sup>13</sup> *Evenwel v. Abbott*, 136 S.Ct. 1120, 1121 (2016).

<sup>14</sup> See *Mahan v. Howell*, 410 U.S. 315, 329 (1973) (stating that a 16.4 percent deviation “may well approach tolerable limits”) and *Brown v. Thomson*, 462 U.S. 835, 849-50 (1983) (conc. opn. of O’Connor, J.). See also *Vandermost v. Bowen*, 53 Cal.4th 421, 472 (2012).

<sup>15</sup> *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1263 (2015) (acknowledging the desirability of Alabama’s 2% deviation cap).

<sup>16</sup> Cal. Elections Code Secs. 21500 (counties), 21601 (general law cities), and 21620 (charter cities) and Education Code Sec. 1002(a) (county board of education). See also Cal. Education Code Sec. 5019.5(a)(2) (school and community college districts) (“The population of each area is, as nearly as may be, the same proportion of the total population of the district as each of the other areas.”). But see Cal. Elections Code Sec. 22000 (special districts must adjust its divisions so that they are “as far as practicable, equal in population”).

<sup>17</sup> *Pelfrey v. San Luis Obispo County Bd. of Sup’rs*, Case No. B241420, WL 3834331 at \*3 (Cal. App. 2013) (whether California’s statutory equal population requirement is interpreted the same as the federal Equal Protection Clause “is an open question”).

<sup>18</sup> *Griffin v. Bd. of Sup’rs of Monterey County*, 60 Cal.2d 751, 752 & 755 (1964) (upholding on statutory grounds districts where “the ratio between the districts of highest and lowest population is slightly more than 2.2 to 1”).

<sup>19</sup> San Francisco Charter Sec. 13.110(d) at ¶13.

<sup>20</sup> Note, however, that an ordinance setting a maximum deviation does not free a jurisdiction from having to justify deviations from perfect equality. See *Calderon v. City of Los Angeles*, 4 Cal.3d 251, 270 (1971) (invalidating Los Angeles city charter provision allowing 20 percent deviations and noting that “since the charter writes into law a permissible variance, it clearly dispenses with any legal requirement that the City justify each deviation”).

<sup>21</sup> Coalition of 16 civil rights organizations, *Redistricting Principles for a More Perfect Union*, Principle 2 (2014).

<sup>22</sup> Cal. Elections Code Sec. 21534(a)(1).

<sup>23</sup> Cal. Const., art. XXI, Sec. 2(d)(1).

<sup>24</sup> Citizens Redistricting Commission, *Final Report on 2011 Redistricting 10-11* (Aug. 15, 2011) (following the strict equal population standard adopted by special masters in *Legislature v. Reinecke*, 10 Cal.3d 396, 411 (1973), which may have been codified into the state constitution).

<sup>25</sup> See *Yeroushalmi v. Miramar Sheraton*, 106 Cal. Rptr.2d 332, 339-40 (Cal. App. 2001) (borrowed statutes should be given similar interpretation).

<sup>26</sup> See, e.g., Montana Code Annotated Sec. 5-1-115(c) (“The districts must be contiguous, meaning that the district must be in one piece. Areas that meet only at points of adjoining corners or areas separated by geographical boundaries or artificial barriers that prevent transportation within a district may not be considered contiguous.”).

<sup>27</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 50 (2010).

<sup>28</sup> Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness As A Procedural Safeguard Against Partisan Gerrymandering*, YALE LAW & POLICY REVIEW 330–31 (1991) (“A contiguity requirement exponentially shrinks the number of available districting options, because in constructing one district, the mapmaker necessarily forecloses the possibility of constructing countless others which would intersect the first.”).

<sup>29</sup> See Justin Levitt, *Where are the lines drawn*, All About Redistricting, available at: [redistricting.ils.edu/where-state.php#compactness](http://redistricting.ils.edu/where-state.php#compactness) (last visited May 2017) (“Few states define precisely what “compactness” means, but a district in which people generally live near each other is usually more compact than one in which they do not.”). See also Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 51 (2010) (“A district is generally considered compact if it has a fairly regular shape, with constituents all living relatively near to each other.”).

<sup>30</sup> Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness As A Procedural Safeguard Against Partisan Gerrymandering*, YALE LAW & POLICY REVIEW 303 (1991).

<sup>31</sup> Daniel Bowen, *Boundaries, Redistricting Criteria, and Representation in the U.S. House of Representatives*, AMERICAN POLITICS RESEARCH (2014) (“Respondents in compact and coterminous districts are more likely to report being ideologically similar to their House member, more satisfied when they contact their representative, more likely to recall the allocative work of the member on behalf of the district, more likely to contact their representative, and tend to remember more basic information about their [representative].”).

<sup>32</sup> See also Daniel D. Polsby & Robert D. Popper, *The Third Criterion: Compactness As A Procedural Safeguard Against Partisan Gerrymandering*, YALE LAW & POLICY REVIEW 303 (1991) (“Without the ability to distend district lines so as to include or exclude blocks of voters whose political loyalties are known, it is not practically possible to gerrymander. The diagnostic mark of the gerrymander is the noncompact district. Anyone who eyeballs a few legislative district maps quickly will learn to recognize gerrymanders, although admittedly with imperfect accuracy.”).

<sup>33</sup> Jason Barabas and Jennifer Jerit, *Redistricting Principles and Racial Representation*, STATE AND POLITICS QUARTERLY (2004).

<sup>34</sup> Cal. Const. Art. XXI, Sec. 2(d)(5).

<sup>35</sup> Sacramento Charter Sec. 175(b).

<sup>36</sup> Kurtis A. Kemper, *Application of Constitutional “Compactness Requirement” to Redistricting*, AMERICAN LAW REPORTS Sec. 1(2)(2003) (calling compactness an “elusive” concept and noting different state approaches). See also Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 51 (2010) (“A district shaped like a circle is very compact; a district with tendrils reaching far across a state is not. Beyond that I-know-it-when-I-see-it definition, there is little agreement about when a district is compact.”).

<sup>37</sup> Even here, however, there are many different and competing ways to measure shape-based compactness. *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Wilson v. Eu*, 1 Cal.4th 707, 719 (1992) (endorsing view of special master).

<sup>40</sup> *Id.* at 749 (“a district would not be sufficiently compact if it was so spread out that there was no sense of community, that is, if its members and its representatives could not effectively and efficiently stay in

touch with each other; or if its members and its representative could not easily tell who actually lived in the district”) (adopted special master’s report); *id.* at 759 (“Odd-shaped districts joining distant communities only by corridors, along beaches, highways, and waterways are discouraged.”).

<sup>41</sup> Cal. Const. Art. XXI, Sec. 2(d)(5).

<sup>42</sup> See Oakland City Charter Sec. 220(E)(5) and Cal. Elec. Code Sec. 21534(e)(5) (Los Angeles County).

<sup>43</sup> See *Miller v. Board of Supervisors*, 63 Cal. 2d 343, 348 (1965) (approving the use of a mountain range as a “broad, natural division”); Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 51 (2010) (“some states place a priority on drawing lines that conform to geographic boundaries: mountain ranges, significant rivers, prominent lakes or other bodies of water, and the like.”).

<sup>44</sup> *Wilson v. Eu*, 1 Cal.4th 707, 760 (1992). See also *id.* at 719 (endorsing the masters’ approach).

<sup>45</sup> See Lisa Handley, *A Comparative Survey of Structures and Criteria for Boundary Delimitation*, in REDISTRICTING IN COMPARATIVE PERSPECTIVE 274 (eds. Lisa Handley and Bernard Grofman 2008).

<sup>46</sup> See Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 55 (2010).

<sup>47</sup> See, e.g., Berkeley Charter Sec. 9.5(f)(2) and Sacramento Charter Sec. 175(b)(4) & (5).

<sup>48</sup> Compare City of Sacramento, *Redistricting Primer 7* (Apr. 25, 2011) (topographic/geographic features in Sacramento include the “American River, major drainage..., railways and freeways with limited permeability (i.e., limited crossings).”) with Colusa County, *2010 Census Redistricting FAQ*, available at <http://www.countyofcolusa.org/index.aspx?NID=521&PREVIEW=YES> (last visited May 2017) (“Geography and topography: Consider natural barriers, such as the mountains and rivers.”).

<sup>49</sup> U.S. Census, *Geographic Terms and Concepts - Census Tract*, available at: [https://www.census.gov/geo/reference/gtc/gtc\\_ct.html](https://www.census.gov/geo/reference/gtc/gtc_ct.html) (last visited May 2017).

<sup>50</sup> U.S. Census, *Geographic Terms and Concepts - Block Groups*, available at: [https://www.census.gov/geo/reference/gtc/gtc\\_bg.html](https://www.census.gov/geo/reference/gtc/gtc_bg.html) (last visited May 2017).

<sup>51</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 56 & 79 (2010).

<sup>52</sup> *Legislature v. Reinecke*, 10 Cal.3d 396, 414 (1973).

<sup>53</sup> See, e.g., Karin MacDonald and Bruce Cain, *Community of Interest Methodology and Public Testimony*, U.C. IRVINE LAW REVIEW 631 (2013) (noting San Francisco’s neighborhoods and census tracts often do not align).

<sup>54</sup> See NAACP, AAJ, and MALDEF, *The Impact of Redistricting in YOUR Community* 2-4 (2010).

<sup>55</sup> Voting Rights Act of 1965, 52 U.S.C. Sec. 10301(a).

<sup>56</sup> NAACP, AAJ, and MALDEF, *The Impact of Redistricting in YOUR Community* 2 (2010).

<sup>57</sup> NAACP Legal Defense and Educational Fund, *Independent Redistricting Commissions* 4 (Apr. 2010) (“It is critical, therefore, that the principles of Sections 2 and 5 of the Voting Rights Act are properly reflected by including language [in redistricting criteria] that reflects both the letter and the spirit of the Act.”).

<sup>58</sup> 478 U.S. 30, 50-51 (1986).

<sup>59</sup> *Id.* at 44.

<sup>60</sup> *Campos v. City of Baytown*, 840 F. 2d 1240, 1244 (5th Cir. 1998) and *Concerned Citizens of Hardee County v. Hardee County Bd. of Comm’rs*, 906 F. 2d 524 (11th Cir. 1990). But see *Nixon v. Kent County*, 76 F. 3d 1381, 1386 (6th Cir. 1996).

<sup>61</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 56 (2010).

<sup>62</sup> *Wilson v. Eu*, 1 Cal.4th 707, 760 (1992). The definition was developed by the special masters appointed for the 1970 state redistricting. See *Legislature v. Reinecke*, 10 Cal.3d 396, 412 (1973).

<sup>63</sup> Cal. Const. Art. XXI, Sec. 2(d)(6). The examples are directly lifted from those reported by the special masters in *Legislature v. Reinecke*, 10 Cal.3d 396, 412 (1973).

<sup>64</sup> Nicholas O. Stephanopoulos, *Communities and the California Commission*, STANFORD LAW & POLICY REVIEW, 288 (2012).

<sup>65</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 56 (2010).

<sup>66</sup> Nicholas O. Stephanopoulos, *Communities and the California Commission*, STANFORD LAW & POLICY REVIEW, 288 n.46 (2012), summarizing Nicholas O. Stephanopoulos, *Spatial Diversity*, Harvard Law Review 1945-47(2012).

<sup>67</sup> Justin Levitt, *A Citizen’s Guide to Redistricting*, Brennan Center 56 (2010).

<sup>68</sup> John Hart Ely, *Gerrymanders: The Good, the Bad, and the Ugly*, STANFORD LAW REVIEW 616 (1998).

<sup>69</sup> Compare NAACP, AAAJ, and MALDEF, *The Impact of Redistricting in YOUR Community* 7 (2010) (suggesting, as community of interest indicators: income, educational background, housing patterns, cultural and language characteristics, employment patterns, health and environmental conditions, and policy issues) with U.S. Census, *American Community Survey: Data Tables & Tools*, available at: <https://www.census.gov/acs/www/data/data-tables-and-tools/index.php> (last visited May 2017) (listing available data, including the following categories: education, employment, family, health insurance, language, race, and poverty). American Community Survey (ACS) data is routinely used in redistricting, but was not used by the state Commission. See Nicholas O. Stephanopoulos, *Communities and the California Commission*, STANFORD LAW & POLICY REVIEW, 289 (2012). For an argument that it should have, see *id.* at 314. For an argument that ACS data is not well suited for determining communities of interest, see Karin MacDonald and Bruce Cain, *Community of Interest Methodology and Public Testimony*, U.C. IRVINE LAW REVIEW 619-22 (2013).

<sup>70</sup> Karin MacDonald and Bruce Cain, *Community of Interest Methodology and Public Testimony*, U.C. IRVINE LAW REVIEW 611 (2013).

<sup>71</sup> Melanie Mason, *Report shows Latinos are underrepresented in state, local government*, LOS ANGELES TIMES (Jul. 9, 2015) (finding that only 15% of councilmembers are Latino, compared with 39% of the population).

<sup>72</sup> NAACP, AAAJ, and MALDEF, *The Impact of Redistricting in YOUR Community* 17 (2010).

<sup>73</sup> *Bush v. Vera*, 517 U.S. 952, 958 (1996).

<sup>74</sup> *Bethune-Hill v. State Bd. of Elections*, 137 S. Ct. 788, 797 (2017). The Court has yet to definitively state whether compliance with the VRA is a compelling interest that could nonetheless justify using race as the predominant factor in redistricting. *id.* at 801.

<sup>75</sup> *Id.* at 798.

<sup>76</sup> Asian Americans Advancing Justice, *Guide to Districting Law* 9 (2017).

<sup>77</sup> See California Citizens Redistricting Commission, *Guide To Redistricting and the Public Input Hearing Process 2* (2011) (asking the public to describe their neighborhoods at public hearings).

<sup>78</sup> Karin MacDonald and Bruce Cain, *Community of Interest Methodology and Public Testimony*, U.C. IRVINE LAW REVIEW 625 n. 77 (2013) (“The [state Commission] attempted to collect ‘official’ neighborhood boundaries for jurisdictions where such boundaries were available, including Los Angeles and San Francisco. These boundaries were heavily debated and modified during line drawing. ... Changes to the adopted boundaries were made based on public input.”). For examples of official maps, see, e.g., City of Los Angeles, Neighborhood Council roster, available at: <http://empowerla.org/councils/> (last visited May 2017); City of Oakland, Neighborhood Councils, available at: <http://www2.oaklandnet.com/government/o/OPD/s/NSD/s/ncpc/index.htm> (last visited May 2017); and City of Sacramento, Neighborhood Maps, available at: <https://www.cityofsacramento.org/ParksandRec/Neighborhood-Services/Maps> (last visited May 2017).

<sup>79</sup> City of Sacramento, *Redistricting Primer: Neighborhoods 3* (May 9, 2011) (bullets omitted).

<sup>80</sup> *Reynolds v. Sims*, 377 U.S. 533, 565 (1964).

<sup>81</sup> For example, the traditional redistricting criteria of protecting incumbents, not placing two incumbents in the same district, party affiliation, and preserving district cores. See *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1270 (2015) (identifying “incumbency protection” and “political affiliation” as traditional criteria) (citation omitted) and *Abrams v. Johnson*, 521 U.S. 74, 98 (1997) (identifying “preserving the cores of prior districts” and “avoiding contests between incumbents” as traditional criteria) (citation and brackets omitted).

<sup>82</sup> See, e.g., Robert Gammon, *Oakland Council Should Let Voters Decide on Redistricting Commission* EAST BAY EXPRESS (Jul. 1, 2014) (“the state legislature around the same time drew then-Councilmember Jane Brunner’s house out of her Assembly district so she could not run for the seat”).

<sup>83</sup> Mike Layne, *Proposed council districts put Redlands politicians before voters*, REDLANDS DAILY FACTS (Feb. 20, 2017) (alleging council created gerrymandered districts so that four councilmembers who live near each other would not be in the same district).

<sup>84</sup> See *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1270 (2015) (identifying “incumbency protection” as a traditional redistricting principle).

<sup>85</sup> See, e.g., former Berkeley City Charter Sec. 9(c)(2) (“no change in the boundary or location of any district by redistricting may result in the residences of two sitting Council members being located in the same district.”).

<sup>86</sup> California Common Cause, *Activist Handbook to Redistricting Reform 7* (2017).

<sup>87</sup> Cal. Const. Art. XXI, Sec. 2(e).

<sup>88</sup> See *Vieth v. Jubelirer*, 541 U.S. 267 (2004) (Kennedy, J., concurring).

<sup>89</sup> See *Gill v. Whitford*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), petition for cert. granted, (June 19, 2017) (No. 16-1611).

<sup>90</sup> Cal. Const. Art. XXI, Sec. 2(e).

<sup>91</sup> *Vandermost v. Bowen*, 53 Cal.4th 421, 484 (2012).

<sup>92</sup> See *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

<sup>93</sup> Cal. Elec. Code Sec. 21500. *See also Miller v. Board of Supervisors*, 63 Cal. 2d 343, 349 (1964) (stating that the redistricting “factors upon which the board relies in apportioning the districts are not the fundamental factors prescribed in section 25001” and later noting that “the present districting ... is primarily compelled by a desire and the result of an effort to preserve traditional political subdivisions”).

<sup>94</sup> *See Griffin v. Board of Supervisors*, 60 Cal. 2d 751, 754 (1964).

<sup>95</sup> However, many cities or school districts may have special districts that intersect with only some parts of their territory. Some cities, for example Los Angeles, have “neighborhood councils” with elections, which have been recognized for redistricting purposes as a political subdivision. *See Lee v. City of Los Angeles*, 88 F.Supp.3d 1140, 1142 n.2 (C.D.Cal.,2015) (“Neighborhood Councils are smaller than Council Districts, but are recognized political subdivisions with defined geographic boundaries that share political interests.”).

<sup>96</sup> Daniel Bowen, *Boundaries, Redistricting Criteria, and Representation in the U.S. House of Representatives*, AMERICAN POLITICS RESEARCH (2014) (“Residents of the same city share much in common - the same taxation levels, the same public problems and the same municipal government. ... District boundaries which keep these political units together should make it easier for voters to hold their representatives accountable for representing those shared interests and may result in a districting system more reflective the diversity of interests within a state”).

<sup>97</sup> *See Jonathan Winburn and Michael W. Wagner, Carving Voters Out: Redistricting’s Influence on Political Information, Turnout, and Voting Behavior*, POLITICAL RESEARCH QUARTERLY (2010) (voters had best recall of their congressional representative when their county had not been split into different congressional districts).

<sup>98</sup> Daniel Bowen, *Redistricting, Representation, and the Politics of Protecting Political Subdivisions*, Paper presented at the Annual State Politics and Policy Conference 19 (2012) (“While not a cure all for gerrymandering, the one-two punch of equal population and protection of political subdivisions can be an important deterrent.”).

<sup>99</sup> One Wisconsin Institute, *Local Opportunities for Redistricting Reform* 4 (2016).

<sup>100</sup> Royce Croker, *Congressional Redistricting: An Overview*, Congressional Research Service 12 (Nov. 21, 2012) (“preserving the cores of previous congressional districts are thought by some to prevent, or at least minimize the impact of, attempts at gerrymandering”).

<sup>101</sup> Sacramento Charter Sec. 175(b)(6).

# ADMINISTRATION

Most ordinances are silent on how the commission should carry out its duties. Some ordinances, however, specify how the commission should be administered; often, these rules are adopted to politically insulate the commission from the governing board.

Common administrative rules address:

- **Vote threshold:** how many votes it takes for the commission to adopt a final map;
- **Staffing:** whether the commission must rely on government staff or has the authority to contract out for services;
- **Budget:** whether the budget is in the governing board’s discretion or set in the redistricting ordinance; and
- **Deadlines & impasse procedures:** when the commission must adopt the new district boundaries by and what occurs should the commission fail to do so.

## SURVEY OF LOCAL COMMISSIONS: ADMINISTRATION

|                                  | Berkeley | Chula Vista | Dinuba | Downey | Escondido | Los Angeles - City | Los Angeles - County | Modesto | Oakland | Pasadena - School | Sacramento - City | San Diego - City | San Diego - County | San Francisco | San Jose | Seal Beach | Stockton | TOTAL # | TOTAL % | (California) |
|----------------------------------|----------|-------------|--------|--------|-----------|--------------------|----------------------|---------|---------|-------------------|-------------------|------------------|--------------------|---------------|----------|------------|----------|---------|---------|--------------|
| <b>Map Adoption Minimum Vote</b> | 7/13     | 5/7         | Maj.   | Maj.   | Maj.      | Maj.               | 9/14                 | Maj.    | 9/13    | Maj.              | 9/13              | 5/7              | Maj.               | Maj.          | Maj.     | Maj.       | Maj.     | -       | -       | 9/14         |
| <b>Contracting Authority</b>     | ✓        | ✓           |        |        | ✓         | ✓                  |                      | ✓       | ✓       |                   | ✓                 | ✓                |                    |               |          |            |          | 8       | 47%     | ✓            |
| <b>“Adequate” Budget</b>         | ✓        | ✓           |        |        | ✓         |                    | ✓                    | ✓       | ✓       |                   | ✓                 | ✓                |                    |               |          |            |          | 8       | 47%     | ✓            |
| <b>Impasse Procedures</b>        | ✓        |             |        |        |           |                    |                      |         | ✓       |                   | ✓                 |                  |                    |               |          |            |          | 3       | 18%     | ✓            |

## VOTE THRESHOLD

*“The removal of a commissioner or alternate; the approval of additional redistricting criteria; and the approval of a proposed final map, final map, and final report require the affirmative votes of nine commissioners. All other commission actions require the affirmative vote of a majority of commissioners present.”*

**Sacramento City Charter Sec. 172(c).**

Most permanent commissions require only a majority vote to adopt a final map. However, a substantial minority (35%) require a supermajority vote. Supermajority votes require commissioners to reach greater consensus on the final maps, which decreases the likelihood that the commission will adopt a map that is manifestly unfair to a political party or group.

However, a high threshold also increases the likelihood that the commission will deadlock, which may trigger state law impasse procedures or require a court to draw new district boundaries.

## STAFFING

*“The Commission shall elect a chair and a vice chair and shall employ a chief of staff, who shall serve at the Commission’s pleasure, exempt from Civil Service, and shall contract for needed staff, technical consultants and services, using existing City staff to the extent possible.”*

**San Diego City Charter Sec. 5.1, ¶22.**

Many redistricting ordinances, to save money, require jurisdiction staff to assist the commission or leave staffing in the discretion of the governing board. For example, Los Angeles County’s ordinance requires the county to “provide for reasonable funding and staffing for the commission.”<sup>1</sup>

However, since a jurisdiction’s staff are ultimately accountable to the governing board, some jurisdictions enable or require the commission to hire outside staff to bolster commission independence. Modesto requires its commission to hire “independent” redistricting consultants.<sup>2</sup> The city of San Diego requires its commission to hire a chief of staff, and outside consultants as needed.<sup>3</sup> Sacramento’s redistricting ordinance assigns staff to assist the commission and permits the commission to hire its own staff and consultant, subject to funds appropriated by the city council; however, the ordinance also specifies that “[t]he city attorney’s only client on matters relating to redistricting is the commission.”<sup>4</sup>



## BUDGET

*“The City Council shall appropriate funds to meet the operational needs of the Commission and any outreach program to solicit broad public participation in the redistricting process of at least the amount spent in 2013 on redistricting adjusted for inflation using the Consumer Price Index.”*

**Oakland City Charter Sec. 220(L)(5).**

Most redistricting ordinances leave the commission’s budget in the governing board’s discretion. However, with competing priorities, the governing board may decide to underfund the commission. Even more concerning, the governing board might use its budgetary control to threaten the commission or hamper its efforts. In Alaska, for example, the Brennan Center reports that “the legislature expressed its displeasure with a commission’s lines by limiting the commission’s budget and funding a lawsuit against the commission’s work.”<sup>5</sup>

To prevent a governing board from exerting financial leverage over the commission, some ordinances require the appropriation of “sufficient,” “reasonable,” or “adequate” funding for the commission.<sup>6</sup> The Brennan Center recommends this approach for independent commissions: “With funding secure, the commission may draw the district lines without feeling beholden to the legislature’s power of the purse.”<sup>7</sup>

A few jurisdictions, including Oakland, also set a hard funding floor by requiring the governing board to appropriate at least as much as it did in the prior redistricting, adjusted for inflation.<sup>8</sup>

## DEADLINES & IMPASSE

*“If the Commission is unable to achieve seven affirmative votes to adopt a redistricting plan, then ... the map which received the most votes of the Commission [shall] be placed on the ballot. In the event that redistricting plan is rejected by the voters, the Commission shall have 30 days to adopt a new redistricting plan by seven affirmative votes. If the Commission... [cannot,] then the Commission shall ... select a special master, by majority vote, to develop a redistricting plan [which shall be adopted by the council].”*

**Berkeley City Charter Sec. 9.5(d)(4).**

Except for charter cities, state law establishes redistricting deadlines for most local governments.<sup>9</sup> Counties and general law cities must adopt new election district boundaries before November 1 of each year following the decennial census.<sup>10</sup> So, following the 2020 census, the upcoming county and general law city redistricting deadline is October 31, 2021. County and general law city redistricting commissions have earlier deadlines: August 1, 2021 for advisory commissions and September 30, 2021 (but no later than November 1) for independent commissions.<sup>11</sup>

State law also establishes alternative procedures, should the governing board deadlock or otherwise fail to adopt new district boundaries by the deadline. For counties, if the board of supervisors does not adopt lines by the deadline, redistricting becomes the responsibility of a three-member “supervisorial redistricting commission” which has until December 30 of that year to adopt new lines.<sup>12</sup> The commission consists of the “district attorney, who shall be chairman, the county assessor, and the county elections official if he or she is elected by the qualified electors of the county, or, if not, the county superintendent of schools if he or she is elected by the qualified electors of the county, or, if not, the sheriff.”<sup>13</sup>

For general law cities, there is no immediate impasse procedure if the governing board misses the November 1 deadline. However, “if the council fails to adjust the boundaries prior to the 90th day before the final date for registration of electors for an election of council members in the city, each council member to be elected at that election ... shall be elected at large.”<sup>14</sup>

Unlike counties and general law cities, there is no state law deadline for charter cities to complete redistricting.<sup>15</sup> Because of this, some charter cities adopt their own redistricting deadline and impasse procedures. In Oakland and Sacramento, if the deadline is missed, the superior court is called upon to adopt new district boundaries, which last until the commission agrees on a map.<sup>16</sup>

Berkeley’s process is more complicated.<sup>17</sup> Once the deadline is missed, the map receiving the most votes is adopted and simultaneously placed on the next ballot for voter approval. If voters reject the map, the commission must adopt a new map or appoint a special master to adopt new boundaries.

## CLRP RECOMMENDATIONS

- 1. The governing board should be required to budget a reasonable amount for the commission’s activities.** For jurisdictions that have already redistricted in the past, the governing board may be required to appropriate the same amount it did previously, adjusted for inflation.
- 2. The commission should be authorized to hire its own redistricting consultants.** Few jurisdictions have the capacity to redistrict without hiring a demographics consultant. The redistricting ordinance should specify that the consultant works for and reports to the commission, not the governing board.
- 3. For charter cities, a redistricting ordinance establishing an independent commission should include an impasse procedure in case the commission fails to adopt new district lines.** State law already includes consequences for county and general law city commissions that fail to meet redistricting deadlines.

## ENDNOTES

<sup>1</sup> Cal. Elec. Code Sec. 21534(c)(8).

<sup>2</sup> Modesto Charter Sec. 501(b)(5)(A).

<sup>3</sup> San Diego Charter Sec. 5.1, ¶22.

<sup>4</sup> Sacramento Charter Sec. 178(b).

<sup>5</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 77 (2010).

<sup>6</sup> Chula Vista Charter Sec. 300.5(B)(2) (“sufficient”); Cal. Elec. Code Sec. 21534(c)(8) (Los Angeles County) (“reasonable”); *and* Modesto Charter Sec. 501(b)(2) (“adequate”).

<sup>7</sup> Justin Levitt, *A Citizen's Guide to Redistricting*, Brennan Center 77 (2010).

<sup>8</sup> Oakland Charter Sec. 220(L)(5).

<sup>9</sup> *See infra*, n. 10; Cal. Educ. Code Sec. 5019.5(b) (school and community college redistricting must be complete before “the first day of March of the year following the year in which the results of each decennial census are released”); *and* Cal. Educ. Code Sec. 1002(c) (county board of education redistricting must be complete after the decennial census and “not later than the first day of March of any school year”). *But see* Cal. Elec. Code Sec. 22000(a) (special districts must redistrict “after each federal decennial census”).

<sup>10</sup> Cal. Elec. Code Secs. 21501 (counties) & 21602 (general law cities).

<sup>11</sup> Cal. Elec. Code Secs. 23002(d) (advisory commission) & 23003(h) (independent commission).

<sup>12</sup> *Id.*

<sup>13</sup> Cal. Elec. Code § 21502.

<sup>14</sup> *Id.* *See also* Cal. Elec. Code § 21606(c).

<sup>15</sup> *See* Cal. Elec. Code Sec. 21620.

<sup>16</sup> Oakland Charter Sec. 220(G)(2) *and* Sacramento Charter Sec. 171(c).

<sup>17</sup> Berkeley Charter Sec. 9.5(d)(4).

## APPENDIX: COMPARING PERMANENT COMMISSIONS

|                            | Berkeley  | Chula Vista   | Dinuba   | Downey   | Escondido   | Los Angeles – City   | Los Angeles – County  | Modesto   | Oakland   |
|----------------------------|---|---|--|--|---|--|---|---|---|
| <b>Established</b>         | 2016  | 2012  | 1994   | 1964   | 2013  | 1999   | 2016  | 2008  | 2014  |
| <b>Used</b>                | Forthcoming   | 2016  | 2001, 2011   | 2001, 2011   | 2013  | 2001, 2011   | Forthcoming   | 2008, 2011  | Forthcoming   |
| <b>Authority</b>           | Charter §9.5  | Charter §300.5  | Charter §2.02  | Charter §1306  | CVRA Settlement, §IX  | Charter §204; Admin. Code §§ 2.21 <i>et seq.</i>   | Cal. Elec. Code, §§21530 <i>et seq.</i>   | Charter §501 & §1102  | Charter §220  |
| <b>Type</b>                | Independent   | Hybrid: adopts map after Council input  | Advisory   | Advisory   | Hybrid: adopts map after Council input  | Advisory   | Independent   | Hybrid: adopts map after Council input  | Independent   |
| <b>Size (+ alternates)</b> | 13 (13)   | 7   | Not specified  | Not Specified  | 7   | 21   | 14  | 9   | 13 (2)  |
| <b>Diversity</b>           | <ul style="list-style-type: none"> <li>- Geography: at least 1 member per district</li> <li>- Consider:                             <ul style="list-style-type: none"> <li>~ Geography</li> <li>~ Race</li> <li>~ Gender</li> <li>~ Age</li> </ul> </li> </ul>            | <ul style="list-style-type: none"> <li>Consider:                             <ul style="list-style-type: none"> <li>- Geography</li> <li>- Race/Ethnicity</li> <li>- Gender</li> </ul> </li> </ul>  | -  | -  | <ul style="list-style-type: none"> <li>Reasonably representative of:                             <ul style="list-style-type: none"> <li>- Geography</li> <li>- Race/Ethnicity</li> <li>- Social Circumstance</li> </ul> </li> </ul> | -  | <ul style="list-style-type: none"> <li>- Geography: at least 1 member per district</li> <li>- Reflect:                             <ul style="list-style-type: none"> <li>~ Geography</li> <li>~ Race/Ethnicity</li> <li>~ Gender</li> </ul> </li> <li>- Political Party: members' party registrations must mirror county's</li> </ul>                          | <ul style="list-style-type: none"> <li>- Reflect:                             <ul style="list-style-type: none"> <li>- Geography</li> <li>- Demographics</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>- Geography: at least 1 member per district</li> <li>- Reasonably representative of:                             <ul style="list-style-type: none"> <li>~ Geography</li> <li>~ Race/Ethnicity</li> <li>~ Economic Class</li> </ul> </li> </ul>   |
| <b>Selection Method</b>    | <ul style="list-style-type: none"> <li>Random Selection:                             <ul style="list-style-type: none"> <li>- Random selection of 8 members from applicant pool</li> <li>- Those members appoint final 5 from remaining applicants</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Random Selection:                             <ul style="list-style-type: none"> <li>- Charter Revision Commission creates subpool of 10 best applicants</li> <li>- Random selection of first 4 members from subpool</li> <li>- Those members appoint final 3 from remaining subpool, with Council approval</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Political Appointment by Council</li> </ul> | <ul style="list-style-type: none"> <li>Political Appointment by Council</li> </ul> | <ul style="list-style-type: none"> <li>Independent Appointment: Selection Panel of 3 randomly-selected retired judges appoints 7 best members from applicant pool</li> </ul>  | <ul style="list-style-type: none"> <li>Political Appointment by:                             <ul style="list-style-type: none"> <li>- Mayor: 3 members</li> <li>- Council President: 2</li> <li>- Other 14 Council-members: 1 each</li> <li>- City Attorney: 1</li> <li>- Controller: 1</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Random Selection:                             <ul style="list-style-type: none"> <li>- County registrar creates subpool of 10 best applicants</li> <li>- Random selection of 8 members from subpool, including 1 member per district</li> <li>- Those members appoint final 6 from remaining pool</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Political Appointment by Council</li> </ul>  | <ul style="list-style-type: none"> <li>Random Selection:                             <ul style="list-style-type: none"> <li>- Panel (retired judge, law/public policy student, good gov. member) creates subpool of 30 best applicants</li> <li>- Random selection of 6 members from subpool</li> <li>- Those members appoint final 7 from remaining subpool</li> </ul> </li> </ul> |

|                            | Pasadena - School  | Sacramento - City  | San Diego - City  | San Diego - County   | San Francisco   | San Jose   | Seal Beach                       | Stockton   | (California)   |
|----------------------------|--|--|---|--|---|--|----------------------------------|--|--|
| <b>Established</b>         | 2012   | 2016   | 1992  | 2012   | 1996  | 1978   | 1974                             | 2016   | 2008   |
| <b>Used</b>                | 2012   | Forthcoming  | 2001, 2011  | Forthcoming  | 2001, 2011  | 2011   | 1981, '91, 2001, '11             | Forthcoming  | 2011   |
| <b>Authority</b>           | Charter §713   | Charter §§170 <i>et seq.</i>   | Charter §5 & §5.1; Muni. Code, §§27.1401 <i>et seq.</i>   | Cal. Elec. Code, §21550.   | Charter §13.110   | Charter §403   | Charter §515                     | Charter §§201 <i>et seq.</i>   | Cal. Const., Art. XXI; Gov. Code, §§8251 <i>et seq.</i>  |
| <b>Type</b>                | Hybrid: board can amend by 2/3 vote  | Independent  | Independent   | Independent  | Independent   | Advisory   | Advisory                         | Advisory   | Independent  |
| <b>Size (+ alternates)</b> | 9  | 13 (2)   | 9 (2)   | 5  | 9   | 11   | Not Specified                    | 7  | 14   |
| <b>Diversity</b>           | Geography:<br>- 3 from District<br>- 3 from Pasadena<br>- 2 from Altadena<br>- 1 from Sierra Madre   | - Geography: at least 1 member per district<br><br>- Reasonably reflect:<br>~ Race/Ethnicity<br>~ Gender<br>~ Sexual orientation   | Consider:<br>- Geography<br>- Social Circumstance<br>- Ethnicity  | -  | -   | - Geography: at least 1 member per district<br><br>- Representative of ethnicity                     | -                                | Geography: at least 1 member per district  | - Political Party:<br>~ 5 Democrats<br>~ 5 Republicans<br>~ 4 other or No Party Preference<br><br>- Consider:<br>~ Geography<br>~ Race/Ethnicity<br>~ Gender   |
| <b>Selection Method</b>    | Political & Independent Appointment:<br>- 3 by Board of Education<br>- 3 by Pasadena City Council<br>- 2 by Altadena-area County Supervisor(s)<br>- 1 by Sierra Madre City Council | Random:<br>- Ethics Commission creates subpool of 25-30 best applicants<br>- Random selection of 8 members from subpool, 1 member per district<br>- Those members appoint final 5 from remaining subpool | Independent Appointment:<br>Panel of 3 randomly-selected retired judges appoints 7 best members from applicant pool | Retired Judges:<br>5 members randomly selected from applicant pool of retired judges | Political and Independent Appointment:<br>- Mayor: 3 members<br>- Board of Supervisors (collectively): 3<br>- Elections Commission: 3 | Political Appointment:<br>- Mayor appoints chair<br>- Other 10 Council-members appoint 1 member each | Political Appointment by Council | Political Appointment:<br>- Mayor appoints 1 member<br>- Other 6 Council-members appoint 1 member each | Random:<br>- Panel of 3 randomly-selected auditors creates subpool of 60 best applicants<br>- Legislative leaders of both parties veto up to 24 applicants<br>- Random selection of 8 members from remaining subpool<br>- Those members appoint final 6 from remaining subpool |

|   | Berkeley  | Chula Vista   | Dinuba | Downey | Escondido   | Los Angeles - City   | Los Angeles - County  | Modesto  | Oakland  |
|---|---|---|--------|--------|---|--|---|--|--|
| <b>Subjective Qualifying Criteria</b>   | -   | - Relevant analytical skills<br>- Impartiality<br>- Civically active  | -      | -      | - Impartiality<br>- High degree of competency   | -  | - Relevant analytical skills<br>- Impartiality<br>- Appreciation for LA County's diversity  | - Impartiality<br>- Civically active<br>- Honesty<br>- Independence  | - Relevant analytical skills<br>- Impartiality<br>- Collegiality   |
| <b>Objective Qualifying Criteria</b>    | - Voted in 2 of 2 last city elections (unless underage)<br>- Disclose city campaign donations for prior 4 years   | - City registered voter<br>- Preference for applicants with public outreach/communications experience   | -      | -      | City registered voter   | -  | - LA County registered voter for 5 years with same political affiliation<br>- Voted in at least 1 of 3 prior state elections  | - City registered voter<br>- Strongly consider 1 member who is a:<br>~ retired judge (chair)<br>~ local taxpayer's association member<br>~ civic participation nonprofit member<br>~ civil rights non-profit member<br>~ former civil grand juror  | Resident for past 3 years  |
| <b>Objective Disqualifying Criteria</b> | - Cannot, in prior 2 years, have been a:<br>~ Mayor or Councilmember<br>~ Staff or unpaid intern to a Mayor or Councilmember<br>~ Candidate for Mayor or Council<br>~ Candidate's campaign staff or consultants<br>- Cannot now be a:<br>~ Another city elected official<br>~ Family of a Mayor or Councilmember<br>~ City employee<br>~ City contractor or subcontractor | - Cannot, in prior 4 years, have been a:<br>~ City elected official<br>~ Campaign staff or consultant to a current official<br>~ City lobbyist<br>- Cannot now be a:<br>~ Family member of a city elected official<br>~ City employee<br>~ Officer of a political party | -      | -      | Cannot, in prior 10 years, have been a:<br>- Candidate for federal, state, or local elected office<br>- Campaign staff or consultant to a candidate or a CA political committee<br>- Officer or staff of a political party<br>- \$5,000+ donor to a candidate or party during a two-year period | Cannot now be a:<br>- City elected official<br>- City employee | Applicant and family cannot, in prior 10 years, have been a:<br>- Federal, state, or local elected official representing Los Angeles County<br>- Candidate for federal, state, or local elected office<br>- Staff or consultant to an elected official or candidate<br>- Officer or staff of a political party<br>- State or local lobbyist | Cannot now be a:<br>- Family member of a city elected official, charter officer, or department head (or their deputy)<br>- City employee<br>- City bargaining unit staff or consultant<br>- City lobbyist<br>- Person with business before the city that constitutes a material financial interest | - Applicant and family cannot, in prior 10 years, have been a:<br>~ City elected official<br>~ Staff or consultant to an official<br>~ City candidate<br>~ Candidate campaign staff or consultant<br>~ City lobbyist<br>~ Principle officer of an active city political committee<br>- Cannot, in prior 5 years, have been a redistricting consultant<br>- Cannot, in last election, have contributed >50% of the limit to a city candidate<br>- Cannot now be a:<br>~ City employee<br>~ City commissioner<br>~ Subject to a conflict of interest |

|                               | Pasadena - School | Sacramento - City   | San Diego – City                              | San Diego - County  | San Francisco | San Jose | Seal Beach | Stockton              | (California)   |
|-------------------------------|-------------------|---|---|---|---------------|----------|------------|-----------------------|--|
| <b>Subjective Criteria</b>    | -                 | - Relevant analytical skills<br>- Impartiality<br>- Collegiality<br>- Knowledge of neighborhoods and communities  | - High degree of competency<br>- Impartiality | -   | -             | -        | -          | -                     | - Relevant analytical skills<br>- Impartiality<br>- Appreciation of state's diverse demographics and geography   |
| <b>Objective Criteria</b>     | -                 | - City registered voter<br>- Voted in 2 of 3 last city elections, or a 10-year city resident  | City registered voter                         | - Former or retired federal or state judge<br>- County registered voter | -             | -        | -          | City registered voter | - Voted in at least 2 of last 3 general elections<br>- Registered with same party for past 5 years   |
| <b>Disqualifying Criteria</b> | -                 | - Applicant and family cannot, in prior 10 years, have been a:<br>~ City elected official<br>~ Staff or consultant to an official<br>~ City candidate<br>~ Staff or consultant to a candidate<br>~ Principle officer of an active city political committee<br><br>- Applicant and family cannot, in prior 4 years, have been a:<br>~ City employee<br>~ City lobbyist<br>~ Redistricting contractor<br><br>- Applicant and family cannot, in last two elections, have contributed >50% of the max limit to a city candidate | -   | - Cannot now be a county Supervisor                                     | -             | -        | -          | -                     | - Applicant and family cannot, in prior 10 years, have been a:<br>~ Federal or state elected official<br>~ Congressional or legislative staff<br>~ Federal or state candidate<br>~ Staff or consultant to a candidate<br>~ Elected or appointed officer of a political party<br>~ Federal, state, or local lobbyist<br>~ A \$2,000+ contributor to a federal, state, or local candidate campaign<br><br>- Cannot now be a staffer or consultant to, or in contract with, a state or federal elected official |

|                               | <b>Berkeley</b>   | <b>Chula Vista</b>  | <b>Dinuba</b>                                       | <b>Downey</b>  | <b>Escondido</b>   | <b>Los Angeles - City</b>   | <b>Los Angeles – County</b>   | <b>Modesto</b>  | <b>Oakland</b>  |
|-------------------------------|---|---|---|--|--|---|---|---|---|
| <b>Redistricting Criteria</b> | <ul style="list-style-type: none"> <li>- As nearly equal population as may be</li> <li>- Comply with Constitution, federal, &amp; state law</li> <li>- Comply with federal VRA</li> <li>- Respect integrity of neighborhoods and communities of interest</li> <li>- Consider:               <ul style="list-style-type: none"> <li>~ Contiguity</li> <li>~ Compactness</li> <li>~ Topography</li> <li>~ Geography</li> <li>~ Cohesiveness</li> <li>~ Integrity</li> <li>~ Easily understood boundaries</li> <li>~ Existing district boundaries</li> </ul> </li> <li>- Cannot consider incumbent residence</li> <li>- Cannot discriminate for or against a candidate, incumbent, or party</li> </ul> | Adhere to following criteria: <ul style="list-style-type: none"> <li>- Reasonably equal population as required by federal &amp; state constitutions</li> <li>- Contiguity</li> <li>- Compactness</li> <li>- Follow natural and man-made features</li> <li>- Respect communities of interest</li> <li>- Cannot discriminate for or against a candidate, incumbent, or party</li> </ul> | Districts cannot vary in population by more than 2% | <ul style="list-style-type: none"> <li>- Districts must be fair and logical</li> <li>- As nearly as practicable:               <ul style="list-style-type: none"> <li>~ Contiguous</li> <li>~ Compact</li> <li>~ Constituted of natural area</li> <li>~ Provide fair representation</li> </ul> </li> </ul> | In order of priority: <ul style="list-style-type: none"> <li>- Comply with Constitution, including reasonably equal population</li> <li>- Comply with federal VRA</li> <li>- Contiguous &amp; compactness</li> <li>- Respect integrity of neighborhoods &amp; communities of interest</li> <li>- Cannot consider incumbent or candidate residence &amp; cannot discriminate for or against a candidate, incumbent, or party</li> </ul> | <ul style="list-style-type: none"> <li>- As nearly equal population as practicable</li> <li>- Conform with state &amp; federal law</li> <li>- Where feasible:               <ul style="list-style-type: none"> <li>~ Keep communities &amp; neighborhoods intact</li> <li>~ Utilize natural boundaries or street lines</li> <li>~ Be compact</li> </ul> </li> </ul> | - In order of priority: <ul style="list-style-type: none"> <li>~ Comply with Constitution &amp; have reasonably equal population</li> <li>~ Comply with federal VRA</li> <li>~ Contiguity</li> <li>~ Respect integrity of neighborhoods, communities of interest, &amp; cities</li> <li>~ Encourage Compactness</li> <li>- Cannot consider incumbent or candidate residence</li> <li>- Cannot discriminate for or against a candidate, incumbent, or party</li> </ul> | <ul style="list-style-type: none"> <li>- Ensure fair and effective representation for all citizens</li> <li>- Consider:               <ul style="list-style-type: none"> <li>~ Contiguity</li> <li>~ Compactness</li> <li>~ Follow visible natural and man-made features</li> <li>~ Respect communities of interest</li> <li>~ Should not discriminate for or against a candidate, incumbent, or party</li> </ul> </li> </ul> | In order of priority: <ul style="list-style-type: none"> <li>- Comply with Constitution &amp; have reasonably equal population</li> <li>- Comply with federal VRA &amp; federal and state law</li> <li>- Contiguity</li> <li>- Respect integrity of neighborhoods &amp; communities of interest</li> <li>- Encourage compactness</li> <li>- Cannot discriminate for or against a candidate or incumbent</li> <li>- May establish additional criteria</li> </ul> |
| <b>Map Vote Threshold</b>     | 7/13  | 5/7   | Majority  | Majority   | Majority   | Majority  | 9/14  | Majority  | 9/13  |



|                               | <b>Pasadena - School</b>   | <b>Sacramento - City</b>   | <b>San Diego - City</b>  | <b>San Diego - County</b>  | <b>San Francisco</b>  | <b>San Jose</b>  | <b>Seal Beach</b>  | <b>Stockton</b>   | <b>(California)</b>  |
|-------------------------------|--|--|--|--|---|--|--|---|--|
| <b>Redistricting Criteria</b> | <ul style="list-style-type: none"> <li>- As nearly equal population as practicable</li> <li>- Comply with applicable laws</li> </ul> | <ul style="list-style-type: none"> <li>- Requirements:               <ul style="list-style-type: none"> <li>~ Substantially equal population</li> <li>~ Comply with Constitution, federal VRA, &amp; federal and state law</li> <li>~ Contiguity</li> </ul> </li> <li>- Consider, in order of priority:               <ul style="list-style-type: none"> <li>~ Neighborhoods and community boundaries</li> <li>~ Communities of interest</li> <li>~ Integrity and compactness of territory</li> <li>~ Geography and topography</li> <li>~ Natural and artificial barriers</li> <li>~ Preservation of population cores</li> <li>~ May adopt other criteria</li> </ul> </li> <li>- Cannot consider incumbent or candidate residence</li> </ul> | <ul style="list-style-type: none"> <li>- As nearly equal population as practicable</li> <li>- Provide fair and effective representation for all citizens, including minorities</li> <li>- Conform to Constitution &amp; federal laws</li> <li>- To the extent practicable:               <ul style="list-style-type: none"> <li>~ Preserve identifiable communities of interest</li> <li>~ Contiguity</li> <li>~ Compactness</li> <li>~ Composed of whole census units</li> <li>~ Bounded by natural boundaries or streets</li> <li>~ Cannot be drawn to protect incumbents</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>- Nearly equal population</li> <li>- Comply with federal VRA</li> <li>- Consider:               <ul style="list-style-type: none"> <li>~ Topography</li> <li>~ Geography</li> <li>~ Cohesiveness, contiguity, integrity, and compactness of territory</li> <li>~ Community of interests</li> </ul> </li> <li>- Use census tracts &amp; blocks for boundaries</li> </ul> | <ul style="list-style-type: none"> <li>- Districts cannot vary in population by more than 2%, except to:               <ul style="list-style-type: none"> <li>~ Prevent diluting minority voting power</li> <li>~ Keep intact neighborhoods</li> </ul> </li> <li>- Reflect communities of interest</li> </ul> | <ul style="list-style-type: none"> <li>- As nearly equal population as may be practicable</li> <li>- Consider:               <ul style="list-style-type: none"> <li>~ Natural boundaries, street lines, &amp; city boundaries</li> <li>~ Geography</li> <li>~ Cohesiveness, contiguity, integrity &amp; compactness of territory</li> <li>~ Communities of interest</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>- Comply with Constitution</li> <li>- Districts must be fair and logical</li> <li>- As nearly as practicable:               <ul style="list-style-type: none"> <li>~ Contiguous</li> <li>~ Compact</li> <li>~ Constituted of natural area</li> <li>~ Provide fair representation</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>- As nearly equal in population as may be</li> <li>- Comply with federal VRA &amp; state and federal law</li> <li>- Consider:               <ul style="list-style-type: none"> <li>~ Topography</li> <li>~ Geography</li> <li>~ Cohesiveness, contiguity, integrity, and compactness of territory</li> <li>~ Communities of interests</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>- In order of priority:               <ul style="list-style-type: none"> <li>~ Comply with Constitution and as nearly equal as practicable (for Congress) and reasonably equal (for state offices) population</li> <li>~ Comply with federal VRA</li> <li>~ Contiguity</li> <li>~ Respect integrity of neighborhoods, communities of interest, cities, &amp; counties</li> <li>~ Encourage compactness</li> <li>~ Where practicable, nest two Assembly districts in a Senate district</li> </ul> </li> <li>- Cannot consider incumbent or candidate residence</li> <li>- Cannot discriminate for or against a candidate, incumbent, or party</li> </ul> |
| <b>Map Vote Threshold</b>     | Majority   | 9/13   | 5/7  | Majority   | Majority  | Majority   | Majority   | Majority  | 9/14<br>(≥ 3 Democrats; ≥ 3 Republicans; & ≥ 3 Others)   |

|                          | <b>Berkeley</b>  | <b>Chula Vista</b>  | <b>Dinuba</b> | <b>Downey</b> | <b>Escondido</b>   | <b>Los Angeles - City</b>                | <b>Los Angeles – County</b>   | <b>Modesto</b>   | <b>Oakland</b>   |
|--------------------------|--|---|---------------|---------------|--|--|---|--|--|
| <b>Transparency</b>      | <ul style="list-style-type: none"> <li>- Comply with Brown Act</li> <li>- Provide widest public access reasonably possible</li> <li>- Meetings open to public with closed meeting exceptions</li> <li>- Publish report justifying final map</li> </ul> | <ul style="list-style-type: none"> <li>- Requires 30 days public comment on adopted draft map</li> <li>- Final map published for 14 days prior to Council consideration</li> <li>- Publish report justifying final map</li> </ul> | -             | -             | <ul style="list-style-type: none"> <li>- Conduct open and transparent process</li> <li>- Provide notice in multiple languages</li> <li>- Requires 30 days public comment on adopted draft map</li> <li>- Publish report justifying final map</li> </ul>                                  | -  | <ul style="list-style-type: none"> <li>- Comply with Brown Act</li> <li>- Publish agendas and draft maps 7 days in advance of hearing</li> <li>- Requires 30 days public comment on adopted draft map</li> <li>- All records and data used are public record</li> </ul>   | <ul style="list-style-type: none"> <li>- Publish agendas and draft maps 7 days in advance of hearing</li> <li>- Final map published for 14 days prior to Council consideration</li> <li>- All commission information must be provided to the public</li> </ul>           | <ul style="list-style-type: none"> <li>- Comply with Brown Act &amp; city Sunshine Ordinance</li> <li>- Conduct open and transparent process</li> <li>- Requires 14 days of public comment on draft maps</li> <li>- Disclose <i>ex parte</i> communications</li> <li>- Display draft maps to produce widest public access possible</li> <li>- Publish report justifying final map</li> </ul> |
| <b>Public Engagement</b> | <ul style="list-style-type: none"> <li>- Allow ample public participation</li> <li>- Conduct public outreach</li> <li>- Allow written comment, including submitting draft maps</li> </ul>  | <ul style="list-style-type: none"> <li>- Minimum 4 hearings</li> <li>- Vary meeting locations</li> <li>- Commission should encourage participation and facilitate submitting maps</li> </ul>                                      | -             | -             | <ul style="list-style-type: none"> <li>- Minimum 10 hearings, including 6 before drafting maps</li> <li>- Vary meeting times and locations communities</li> <li>- Translation services at hearings</li> <li>- City Council holds at least 1 public hearing on recommended map</li> </ul> | Seek public input throughout the process | <ul style="list-style-type: none"> <li>- Minimum 10 hearings, including 7 before drafting maps (with at least 1 in each district)</li> <li>- Vary meeting times and locations</li> <li>- Post calendar &amp; draft maps online</li> <li>- Translation services at hearings</li> <li>- Encourage public participation, including through public outreach</li> <li>- Allow written comment</li> <li>- Provide public with mapping software</li> </ul> | <ul style="list-style-type: none"> <li>- Minimum 1 hearing before drafting maps</li> <li>- Minimum 1 hearing on a draft map</li> <li>- Council holds at least 1 hearing on Commission's map</li> <li>- Allow written comment, including submitting draft maps</li> </ul> | <ul style="list-style-type: none"> <li>- Receive public before drafting maps and after every draft map</li> <li>- Conduct public outreach</li> <li>- Solicit broad public participation</li> </ul>   |

|                          | Pasadena - School  | Sacramento – City  | San Diego - City  | San Diego - County  | San Francisco | San Jose   | Seal Beach | Stockton  | (California)  |
|--------------------------|--|--|---|---|---------------|--|------------|---|---|
| <b>Transparency</b>      | Publish report with final map  | <ul style="list-style-type: none"> <li>- Conduct open &amp; transparent process</li> <li>- Comply with state and local open meeting laws</li> <li>- Comply with Public Records Act</li> <li>- Draft final map published 7 days before adoption</li> <li>- Requires meeting minutes, &amp; video recording where practicable</li> <li>- Prohibits <i>ex parte</i> communications</li> <li>- Disclose all compensated communications</li> <li>- Publish report justifying final map</li> </ul> | <ul style="list-style-type: none"> <li>- Afford maximum public access</li> <li>- Records available for inspection</li> <li>- Draft final map published 7 days before adoption</li> <li>- Publish report with final map</li> </ul> | Comply with Brown Act   | -             | Publish report with final map  | -          | -   | <ul style="list-style-type: none"> <li>- Conduct open &amp; transparent process</li> <li>- Comply with Bagley-Keene Act</li> <li>- 14 days notice of any public meeting</li> <li>- Requires 14 days of comment on first draft maps, 7 days on other draft maps, &amp; 3 days on final draft maps</li> <li>- Prohibits <i>ex parte</i> communications</li> <li>- Commission records are public records</li> <li>- Publish report justifying final map</li> </ul> |
| <b>Public Engagement</b> | <ul style="list-style-type: none"> <li>- Minimum 1 hearing before drafting maps</li> </ul> | <ul style="list-style-type: none"> <li>- Minimum 8 hearings, including at least 1 in each district</li> <li>- Conduct public outreach</li> <li>- Allow written comment</li> <li>- Provide public with mapping software</li> </ul>  | <ul style="list-style-type: none"> <li>- Minimum 9 hearings before drafting maps</li> <li>- Minimum 5 hearings on a draft map</li> <li>- Vary hearing locations</li> <li>- Solicit public comment</li> </ul>                      | <ul style="list-style-type: none"> <li>- Minimum 7 hearings, including at least 1 in each district</li> </ul> | -             | <ul style="list-style-type: none"> <li>- Minimum 3 hearings</li> <li>- Vary hearing locations</li> </ul> | -          | <ul style="list-style-type: none"> <li>- Vary hearing locations</li> <li>- Conduct public outreach</li> <li>- Council holds at least 1 hearing on Commission's map</li> </ul> | <ul style="list-style-type: none"> <li>- Receive public input prior to drafting first maps and after every draft</li> <li>- Conduct public outreach</li> <li>- Solicit broad public participation</li> <li>- Provide public with mapping software</li> </ul>  |

|   | Berkeley  | Chula Vista  | Dinuba | Downey | Escondido   | Los Angeles - City   | Los Angeles – County   | Modesto  | Oakland  |
|---|---|--|--------|--------|---|--|--|--|--|
| <b>Budget</b>   | Must allocate sufficient funds  | Must appropriate sufficient funds                  | -      | -      | Must appropriate necessary funds, including to hire expert consultants. | In Council’s discretion  | Must appropriate reasonable funds  | Must appropriate adequate funds  | - Must appropriate operational and outreach funds<br>- No less than last redistricting adjusted for inflation  |
| <b>Staff</b>  | - May hire consultants or outside counsel<br>- City staff provides support<br>- City Clerk is secretary<br>- City Manager produces maps                                       | - May hire consultants<br>- May consult city staff | -      | -      | Shall hire an expert consultant   | May appoint director and other personnel, consistent with budget | Board provides reasonable staffing   | Shall hire consultants   | - May hire consultants<br>- City Administrator provides other staff<br>- City Attorney is legal counsel  |
| <b>Impasse Procedures</b>                                 | - Map receiving most votes placed on ballot<br>- If rejected, Commission selects a special master from 3 recommended by the Clerk<br>- Council must adopt that map            | -  | -      | -      | -   | -  | -  | -  | City Attorney petitions state court for temporary maps until Commission adopts final maps  |
| <b>Commissioner During- and Post-Service Restrictions</b> | - Cannot for 2 years:<br>~ Serve on another city commission<br>~ Be hired as staff to the Mayor or a Councilmember<br>- Cannot in next election run for Mayor or City Council | Cannot for 4 years run for City Council            | -      | -      | Cannot for 5 years run for city or school district elected office       | -  | - Cannot for 5 years run for federal, state, county, or city elected office<br>- Cannot for 3 years:<br>~ Be appointed to federal, state, or local public office<br>~ Be a paid consultant to a federal, state, local elected official<br>~ Register as a lobbyist | Cannot run for a City Council district that the Commission drew (generally, redistricting occurs every 10 years) | - Cannot for 10 years run for City Council<br>- Cannot for 4 years:<br>~ Be appointed to city or school district public office<br>~ Be staff or a paid consultant to a City or School Board elected official<br>~ Receive a non-competitively bid city contract<br>~ Register as a city lobbyist |

|   | Pasadena - School | Sacramento - City   | San Diego - City   | San Diego - County                 | San Francisco | San Jose | Seal Beach | Stockton | (California)   |
|---|-------------------|---|--|------------------------------------|---------------|----------|------------|----------|--|
| <b>Budget</b>   | -                 | - Must appropriate sufficient funds<br>- No less than last redistricting adjusted for inflation   | Must appropriate adequate funds  | -                                  | Must fund     | -        | -          | -        | - Must appropriate adequate funds<br>- Minimum \$3 million or amount of last redistricting, adjusted for inflation   |
| <b>Staff</b>  | -                 | - May hire director and consultants, subject to budget<br>- Requires City Attorney, Clerk, and Manager to provide staff   | - Shall hire a chief of staff<br>- May contract for consultants, but use city staff to the extent possible | Board provides reasonable staffing | -             | -        | -          | -        | May hire staff and consultants   |
| <b>Impasse Procedures</b>                                 | -                 | City Attorney petitions Superior Court for temporary maps until the Commission adopts final maps  | -  | -                                  | -             | -        | -          | -        | Supreme Court appoints special masters to adopt maps, subject to its approval  |
| <b>Commissioner During- and Post-Service Restrictions</b> | -                 | - Cannot for 10 years run for city elected office<br>- Cannot for 4 years:<br>~ Be appointed to another city commission<br>~ Be staff or a paid consultant to a city elected official<br>~ Receive a non-competitively bid city contract<br>~ Register as a city lobbyist<br>- During service, cannot contribute to or participate in a city candidate campaign | Cannot for 5 years run for city elected office   | -                                  | -             | -        | -          | -        | - Cannot for 10 years run for federal, state, or local office<br>- Cannot for 5 years:<br>~ Be appointed to federal, state, or local public office<br>~ Be staff or a paid consultant to federal or state elected officials<br>~ Register as a federal, state or local lobbyist<br>- During service, cannot be a staffer to, in a contract with, or a family member of a state or federal elected official |