

Proposition 27: Financial Accountability in Redistricting Act Brief Summary

SDCTA **opposes** this measure as it could create a conflict of interest issue by providing State Legislators the authority to conduct redistricting for elections in which they may take part in the future. Additionally, a provision currently in State law prohibiting the consideration of the political affiliation of a community during the redistricting process would be removed weakening the safeguards created by voter supported Prop 11 (2008) to protect against gerrymandering.

- In 2008, voters approved Prop 11 (2008), the “Voters FIRST Act”, which gave the authority for redistricting related to State Legislature and Board of Equalization elections to an independent Citizens’ Redistricting Commission.
- The Commission is created every 10 years following the decennial census and consists of 14 members. Commission members are screened by the Bureau of State Auditors for conflict of interest and are barred from running for office for a period of 10 year or being employed by an elected official for a period of 5 years.
- Prop 27 would repeal Prop 11. This would return all redistricting authority to the State Legislature and remove provisions currently in law that prohibit redistricting processes to consider a community’s political affiliation or relation to a particular incumbent official.
- The LAO estimates that the costs of redistricting under Prop 11 will be \$6 million. Under the provisions of the FAIR Act, spending on redistricting would be capped at \$2.5 million dollars. As a result, the LAO finds that the FAIR Act would result in a “likely decrease in state redistricting costs totaling several million dollars every ten years.”

Prop 27 - Financial Accountability in Redistricting (FAIR) Act
July 2010

Board Recommendation:

OPPOSE

Rationale:

SDCTA opposes this measure as it could create a conflict of interest issue by providing State Legislators the authority to conduct redistricting for elections in which they may take part in the future. Additionally, a provision currently in State law prohibiting the consideration of the political affiliation of a community during the redistricting process would be removed weakening the safeguards created by voter supported Prop 11 (2008) to protect against gerrymandering.

Background:

Title: “Financial Accountability in Redistricting Act”

Election: November 2010 General Election

Description: Repeals the provisions of Prop 11 (2008) and returns all authority for redistricting for California elections to the State Legislature.

Jurisdiction: State

Type: Constitutional Amendment

Vote: Simple Majority

Fiscal Impact: Likely decrease in state redistricting costs totaling several million dollars every ten years.

Redistricting is the process of redrawing the boundaries of electoral districts to account for changes in population over time. Redistricting is typically conducted by each state in the year following the federal decennial census. Minimal federal regulation exists guiding redistricting practices; however precedents have been set by various U.S. Supreme Court rulings.

The primary purpose of redistricting is to avoid malapportionment which is the distribution of population across electoral districts such that some citizens are not provided fair representation.

Case Law

Prior to the 1960’s, minimal federal guidelines existed to govern redistricting at the state level. Practices varied across states and were based upon the provisions of each state’s constitution. Two U.S. Supreme Court cases, *Baker v. Carr* (1962) and *Reynolds v. Sims* (1965), established the framework for universal redistricting guidelines.

Baker v. Carr found that redistricting, historically considered a political issue, is justiciable for the purpose of ensuring the enforcement of the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution. This provided the precedence for future redistricting disputes to be tried by state and federal courts.

In *Reynolds v. Sims*, several voters in the state of Alabama filed suit against Alabama government officials arguing that their Fourteenth Amendment rights were being violated by malapportioned voting districts. The Supreme Court ruled that application of the Fourteenth Amendment called for substantially equal state legislative representation for all citizens.

Voting Rights Act

In 1965, the U.S. Congress passed the Voting Rights Act as a response to practices in many states that were abridging the Fifteenth Amendment rights of African-Americans by requiring voters to pass literacy tests or meet other qualifications prior to voting. Section 2 of the Voting Rights Act states, “No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.”

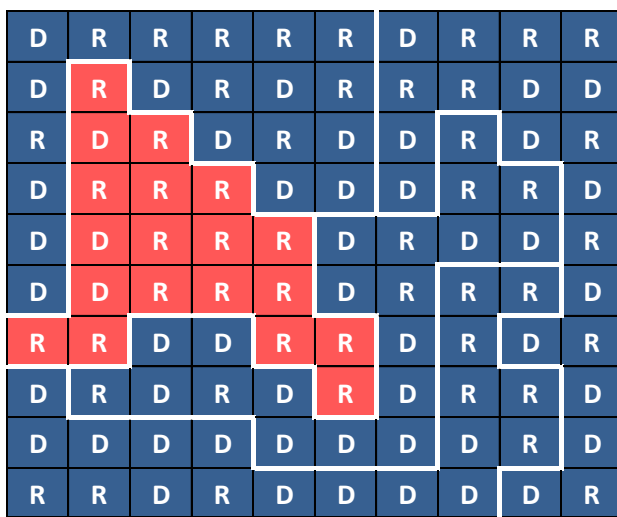
In 1985, several citizens filed suit against the State of North Carolina arguing that a recently passed redistricting plan violated their rights under Section 2 of the Voting Rights Act by inhibiting the ability of several African-American communities to elect the representative of their choice (*Thornburg v. Gingles*). The Court ruled that the redistricting had indeed violated the rights of the citizens by diluting the power of their collective vote. A subsequent case, *Bartlett v. Strickland* (2009), found that in order for a redistricting plan to be found to be in violation of Section 2, the minority group in question must constitute a numerical majority within a given area.

Gerrymandering

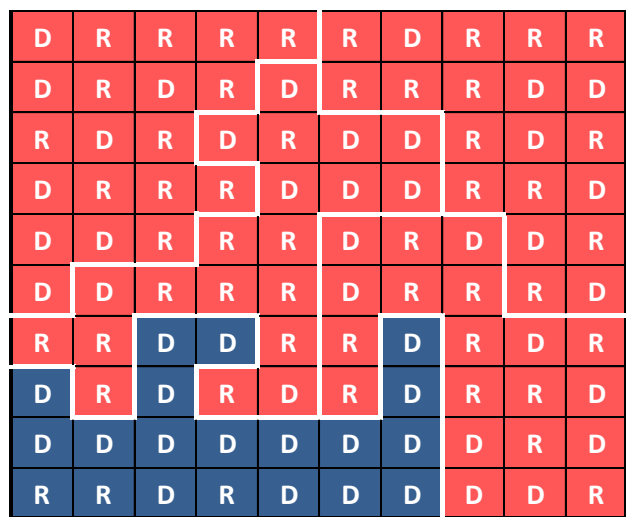
In most states, including California, the process of redistricting for U.S. Congressional elections is carried out by elected state representatives.¹ Critics have argued that elected officials often use this authority to intentionally redraw boundaries in ways that benefit particular incumbent officials or political parties, in a process known as gerrymandering.

Consider Figure 1 below to see how gerrymandering could be used to favor specific political parties. Political party designation was randomly assigned to each of one hundred squares (each representing 1/100 of the population) such that fifty are controlled by Democrats and fifty are controlled by Republicans. Figure 1 shows that given the same distribution of political party control, a potential arrangement of equally populated districts exists for both parties such that they gain a dramatic advantage.

Figure 1: Example of gerrymandering



Democratic Party has majority in 4 of 5 districts



Republican Party has majority in 4 of 5 districts

¹ Arizona, Hawaii, Idaho, New Jersey, and Washington conduct redistricting through an independent panel whose members are appointed by elected officials.

Voters FIRST Act

In 2008, California voters approved Prop 11 the “Voters FIRST Act” by a margin of 1.65%.² Prop 11 was a Constitutional Amendment that changed the redistricting process for Board of Equalization and State Legislature elections by mandating that redistricting be carried out by an independent organization, the Citizens’ Redistricting Commission (Commission).

The Commission is to consist of 14 members, with five members being registered³ with the State’s largest political party (based on registration), five members being registered with the State’s second largest political party, and four members who are registered with neither of the two largest parties. Subsequent implementing legislation, Government Code Sections 8251-8253, established additional restrictions on potential Commission members and outlined a process for appointing members to the Commission. To avoid conflict of interest neither an applicant, nor a member of his or her immediate family, may have done any of the following in the 10 year period prior to serving on the Commission:

- “(i) Been appointed to, elected to, or have been a candidate for federal or state office.
- (ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
- (iii) Served as an elected or appointed member of a political party central committee.
- (iv) Been a registered federal, state, or local lobbyist.
- (v) Served as paid congressional, legislative, or Board of Equalization staff.
- (vi) Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year.”

The process to select the 14 members is as follows:⁴

- 1) Interested citizens can submit a phase I application to be pre-screened by the State Auditor to ensure they meet the basic registration requirements established in the Voters FIRST Act.
- 2) Applicants that pass the phase I screening are asked to submit a supplemental phase II application to demonstrate their qualifications.
- 3) A review panel created by the State Auditor narrows the pool of applicants to the 60 most qualified applicants (20 from each sub-category of political affiliation).
- 4) Majority and minority leaders from both houses of the State Legislature are then permitted to strike 2 applicants from each sub-category of 20, narrowing each sub-category to 12 applicants.
- 5) The State Auditor then randomly selects 8 members from the remaining pool of applicants.
- 6) The 8 commission members who were randomly selected then collectively select the remaining 6 Commission members.

The Commission is to be created no later than December 31 of each year ending in the number zero (beginning in 2010).

The Commission is tasked with drafting three redistricting maps for State Senatorial, Assembly, and Board of Equalization elections, to be completed by September 15 of the year following the Commission creation. The Voting

² Ibid

³ The commission member must be continuously registered to vote in California with the same political party for a minimum of five year preceding appointment.

⁴ California State Auditor, We Draw the Lines, www.wedrawthelines.ca.gov, Accessed 5/24/2010, Last Updated 5/10/2010

Rights Act provides the criteria for creation of the redistricting maps, stating (in order of importance) that election districts shall:

- 1) Be “reasonably equal” in population.
- 2) Comply with the Voting Rights Act.
- 3) Be geographically contiguous.
- 4) Respect the geographic integrity of any city, county, local neighborhood, or local community of interest.⁵
- 5) Geographically compact, whenever practically possible.

In addition, each Senate District shall be comprised of two adjacent Assembly Districts and each Board of Equalization District shall be comprised of ten adjacent Senate Districts, whenever practically possible.

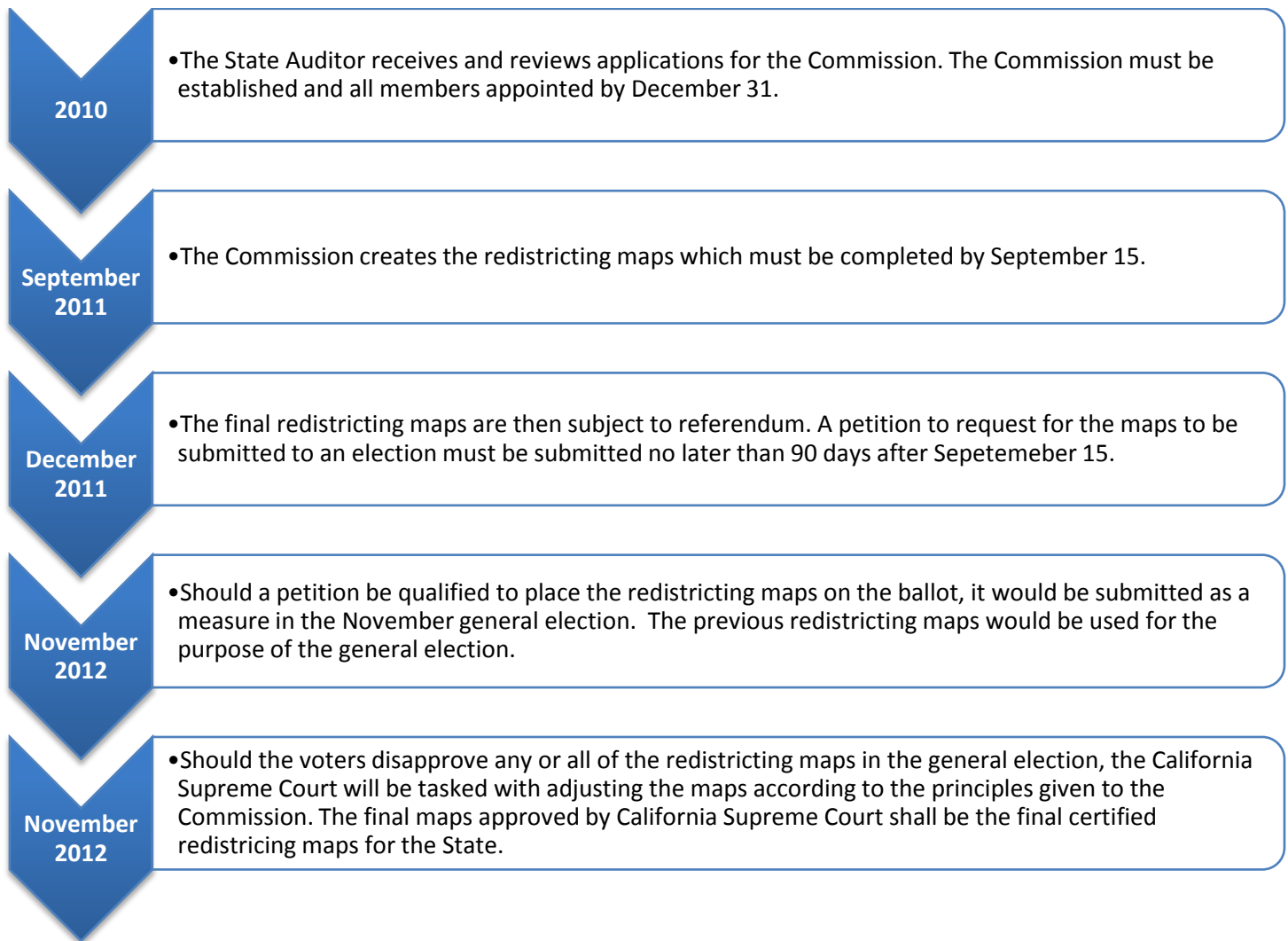
Upon completion of the three final redistricting maps, the Commission shall certify the maps with the Secretary of State. If voters disapprove any of the three final maps through referendum or the Commission fails to produce the maps on time, the California Supreme Court will be asked to adjust the boundaries lines of the map based on the above criteria. The final map created by the California Supreme Court shall be the effective map of State electoral districts.

The Voters FIRST Act also includes a clause that all commission members shall be banned for a period of ten years from running for elected office and a period of five years from holding an appointed, paid federal, state, or local position, serving as paid staff for the State Legislatures or individual legislatures, or registering as a federal, state, or local lobbyist.

SDCTA did not evaluate Prop 11, and as a result took did not take a position on this measure.

⁵ Community of interest may not include consideration for political parties, incumbents, or political candidates.

Figure 2: Timeline of Citizens Redistricting Commission



Proposal:

The Financial Accountability in Redistricting Act (FAIR Act) is a voter generated Constitutional Amendment to amend Article 2 of the California Constitution for the purpose of repealing the provisions of the Voters FIRST Act by returning the authority for all redistricting processes to the State Legislature. The measure would also make three other notable changes to the redistricting process by (1) requiring all spending on redistricting to be capped at \$2.5 million, (2) establishing procedures to increase transparency of the redistricting process and (3) alter the guidelines that should be followed when redistricting maps are being drawn.

The FAIR Act includes two provisions for the purpose of increasing the transparency of the redistricting process (1) requiring a public hearing process to obtain public input on redistricting and (2) classifying all records pertaining to redistricting as public record. In addition, the measure requires that all public records (including computerized databases and redistricting software) pertaining to redistricting be made readily available to the public.

The table below compares the redistricting guidelines under current law (established by Voters FIRST Act) to those proposed by the FAIR Act.

Voters FIRST Act	FAIR Act
Be <i>“reasonably equal”</i> in population, <i>except where deviation is required to meet the requirements of the Voting Rights Act.</i>	Be <i>precisely equal</i> in population, <i>allowing only for a deviation of plus or minus one person across districts.</i>
Comply with the Voting Rights Act.	Comply with the Voting Rights Act.
Be geographically contiguous.	Be geographically contiguous.
Respect the geographic integrity of any city, county, local neighborhood, or local community of interest. <i>Communities of interest shall not include relationships with political parties, incumbents, or political candidates.</i>	Respect the geographic integrity of any city, county, local neighborhood, or local community of interest.
Geographically compact, whenever practically possible.	

Fiscal Impact:

The LAO estimates that the costs of redistricting under the Voters FIRST Act will be \$6 million. Under the provisions of the FAIR Act, spending on redistricting would be capped at \$2.5 million dollars. As a result, the LAO finds that the FAIR Act would result in a “likely decrease in state redistricting costs totaling several million dollars every ten years.”

Policy Implications:

Incumbent Advantage

Proponents of the Voters FIRST Act have argued that gerrymandering has allowed representatives to create an incumbency advantage by establishing electoral districts conducive to the reelection of incumbent officials. However, scholarly research has suggested that while incumbency advantage certainly exists, there is insufficient evidence to conclude that it can be attributed to gerrymandering.⁶

The FAIR Act would remove the provisions of the Voters FIRST Act that protect against gerrymandering by returning all redistricting authority back to the State Legislature and removing a clause in redistricting guidelines which states that “communities of interest” shall not include consideration for affiliation with political parties or incumbents. To the extent that incumbency advantage can be attributed to gerrymandering, the FAIR Act will contribute to the increase in incumbency advantage.

Accountability

The FAIR Act would shift redistricting responsibilities for State Legislature and Board of Equalization elections from the Citizens’ Redistricting Commission to the State Legislature. The Citizens’ Redistricting Commission is comprised of unelected representatives, while the State Legislature is comprised of elected representatives who are directly accountable to voters. Therefore, the FAIR Act provides voters a greater ability to hold redistricting officials accountable for their decisions.

⁶ Friedman and Holden, “The Rising Incumbent Reelction Rate: What’s Gerrymandering Got to Do With It?”, The Journal of Politics, April 2009



Proponents:

The official proponent of Prop 27 is Daniel Lowenstein, a UCLA professor. The primary financial supporters of Prop 27 are incumbent U.S. Congressional Representatives and their supporters including: Congresswoman Judy Chu, Congressman Adam Schiff, Congresswoman Nancy Pelosi, Congresswoman Anna Eshoo, Congresswoman Linda Sanchez, Congresswoman Lynn Woolsey, Congresswoman Lois Capps, Congresswoman Laura Richardson, Congresswoman Zoe Lofgren, Congressman Bob Blumenfield, Congresswoman Doris Matsui, Congressman Howard Berman, Congressman Mike Honda, and Congresswoman Diane Watson.⁷

Opponents:

- California Chamber of Commerce
- AARP
- California Common Cause
- San Diego Tax Fighters
- California Taxpayers' Association
- California State Conference of the NAACP
- California Senior Advocates League
- San Diego Regional Chamber of Commerce

⁷ State of California, Secretary of State, Cal-Access, Campaign Finance