



TO: Daniel Claypool and Sharon Brumley
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Bureau of State Audits

FROM: Geoff Kors, Executive Director, Equality California

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DATE: September 14, 2009

RE: Proposed Regulations Regarding the Voters First Act (CCR Title 2, Division 10, Sections 60800-60828, 60830-60836 and 60840-60855)

Dear Mr. Claypool and Ms. Brumley:

As lesbian, gay, bisexual and transgender (LGBT) community centers and advocacy organizations from around the state, we have taken time to study the above referenced draft regulations released last month by the Bureau of State Audits. First, we wish to thank the Bureau for its extensive work that resulted in a strong initial proposal. However, on a few points we do believe changes would result in a stronger document and ultimately a commission better suited to representing the diverse people of California.

Diversity and the LGBT Community

The Bureau faced a difficult challenge determining what demographic characteristics should specifically be considered to ensure compliance with the requirements of subdivision (c) of Section 2 of Article XXI of the California Constitution and Government Code Section 8252(g) to create a commission that is representative of the state's diversity. Memorandum #5 sets up an effective two part test: 1) the characteristic that is selected should be related to redistricting; and 2) the inclusion of the characteristic should not lead to an application that dissuades potential applicants.

The Memorandum specifically cites sexual orientation as an example of the latter presumably leading to the exclusion of this characteristic in Section 60814 of the proposed regulations. We strongly object to this decision and encourage the Bureau to amend this provision of the regulations to add the words "sexual orientation," as well as "gender identity," to ensure appropriate LGBT inclusion.

First, the LGBT community clearly meets the test of being "related to redistricting." There are large, vibrant, geographically identifiable LGBT communities throughout the state, notably in San Francisco, Los Angeles and San Diego Counties. These communities enjoy protection under Article XXI, Section 2, subdivision (d), paragraph 4 of the California Constitution. Having representatives who understand the needs of these communities is of critical importance to ensuring a fair redistricting.

Second, the belief that the inclusion of sexual orientation on an application would dissuade potential applicants is reflective of a view of the LGBT community that belongs in another generation. According to a recent study by the Williams Institute at the University of California, Los Angeles School of Law, there are 107,772 same-sex couples in California and an estimated 1,338,164 gay, lesbian, and bisexual people in the state, both single and coupled.¹ Thousands of same-sex couples have registered for state recognized domestic partnership. In addition, over 18,000 same-sex couples legally married in California prior to the passage of Proposition 8. These men and women are proud of who they are and reject attempts to push them back into the closet.

The LGBT community shares the concern of the Bureau that people should not be forced to disclose their orientation, which may raise privacy concerns. Thankfully, there is an easy middle ground: include sexual orientation on the application as an optional response. This would allow a characteristic that clearly is related to redistricting to be considered by the Panel in meeting the diversity requirements while avoiding any chilling effect on potential applicants.

In summary, we strongly urge the Bureau to: 1) amend Section 60814 to add the words "sexual orientation" and "gender identity" and 2) to modify the recently released proposed application to include an optional question regarding sexual orientation and gender identity.

Identifying the Most Qualified Applicants

As the Bureau's memos state, Proposition 11 contains several vague requirements. The proposed regulations generally do an effective job of filling in some of these gaps. However, there are two points where the regulations go beyond the intent of the Proposition and unduly limit the pool of potential applicants.

Section 60826 defines the "relevant analytical skills" in a manner that biases the pool towards individuals who have prior experience with physically drawing lines using technical software. Based on the experience of the LGBT community in past redistricting efforts, we believe this is the wrong standard. In the 2001 redistricting, the LGBT community did not submit any plans to the Legislature. However, we did

¹ Gates, J., Gary, The Williams Institute, Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey (2006)

lobby as part of the public hearing process to either support proposed lines that benefited our communities or oppose lines that would divide them.

The “relevant analytical skills” for commissioners should not be their ability to draw a redistricting plan on their own but rather their ability to recognize the impacts of proposed lines so they can make informed decisions about what plans to support. This is particularly true as Proposition 11 specifically allows for the hiring of staff by the Commission who could fill the more technical roles described in the current regulations. We urge this section to be redrafted to reflect a commission made up of citizens, not technocrats.

Second, Section 60800 says applicants must have the ability to set aside support for social or political causes. This standard damages the interests of those who have struggled to protect underrepresented communities and voters. The current standard could create a bias against those who have worked for civil rights by labeling that work as evidence of a lack of impartiality. The goal of Proposition 11 was never to exclude a wide range of social viewpoints.

Put simply, having a distinct perspective will not harm the independence of the Commission as long as a diversity of opinions is represented. On the contrary, having a strong chorus of different voices will ensure that all Californians are represented. One does not need to “set aside” such considerations to be impartial or reach compromise. Therefore, we believe the words “social and political causes” should be struck from Section 60800(c)(3).

Ongoing Transparency

As stated in the beginning of our comments, we believe the Bureau should be commended for its work to create a process that is transparent and open. We have a few minor suggestions of changes that will strengthen this commitment: 1) Staff will likely play an important role in this process and its recommendations should be subject to the same level of sunshine as all other communications (see Section 60848(c)); 2) once the Commission selection process begins and until its completion, ex parte communications from all individuals and groups should be strictly limited to ensure that no one has undue influence and thereby biases the final make-up of the Commission; and 3) though not in the regulations, the proposed application period should be extended until the end of February to reflect that the last two weeks in December are traditionally travel periods for many of California’s families.

Thank you for your careful consideration of our suggested changes to strengthen these proposed regulations and ensure that all Californians, including those who are LGBT, are fairly represented in the next redistricting process.