Prepared December 7, 2010
For the December 10, 2010 meeting of the California Redistricting Commission

Good morning (afternoon) commissioners.

I would like to make a comment today about the process by which you will select the remaining 6 members of the commission.

I will refer to Robert's Rules, but what follows is just my opinion. You should ask staff about the proper way to interpret Robert's Rules and the regulations related to carrying out meeting procedures.

My comment today deals with a very specific issue. My concern is that unless you are very careful you may end up applying subdivision (e) of regulation 60860 in a manner that results in decision-making which is neither fair nor transparent. This subdivision allows for an exception to Robert's Rules which I believe should only be applied in very narrow circumstances.

The relevant part of subdivision (e) of regulation 60860 (legal handbook p. 43) which allows for an exception to Robert's Rules is the first sentence which reads:

> "A slate may be modified by the member proposing it at any time prior to the slate being voted upon by the eight members."

This subdivision is part of the regulation which describes how the commission will approve the slate identifying the final six members. The most extreme concern is that a member would propose a slate, allow for various modifications and then, right before the vote, ask that the proposal revert to the original proposal (or some other proposal). Most likely the other members of the commission would not appreciate this sort of maneuver and would reject the slate.

Still, I can imagine at least one circumstance in which a member might forthrightly use the subdivision in this way. The circumstance would occur when the proposer states, from the outset, that the proposer will allow only an up or down vote on the proposal (in other words the member states that they have no intention of modifying the proposal and any changes made through the traditional amendment process under Robert's Rules will be removed by the member right before the vote is taken). Members have this right under 60860 (e) and if they plan to assert it, they should let the other members know that they plan to do so in advance. Then deliberation could proceed with all members knowing that there would be no modifications to the proposal before the final vote and deliberation would focus on the merits of just that proposal.

In all other situations I suggest that the members use the traditional amending process under Robert's Rules to modify proposals. Subdivision (e) of regulation 60860 does not preclude members from using the traditional amending process in Robert's Rules; it provides an alternative method for modifying proposals.

Perhaps subdivision (e) was intended as a way to deal with uncontroversial modifications. But Robert's Rules has a simple way of dealing with uncontroversial amendments. If the chair

believes the amendment is uncontroversial, the chair may ask if there is "any objection" to the amendment. If no one objects, then the amendment is accepted. Keep in mind, you have the right and a responsibility to object if you are not in favor of the amendment or even if you think it is important to have deliberation on the amendment even if you favor the amendment. If there is an objection this leads to deliberation and then a formal vote on the amendment.

Robert's Rules has this very simple way of dealing with uncontroversial amendments. The question is what to do about amendments which are controversial? For controversial amendments should you use Robert's Rules to make amendments or use subdivision (e) of regulation 60860?

I will give a few examples to explain why I think Robert's Rules is preferable to subdivision (e) of regulation 60860.

Imagine that a member has gained recognition from the chair and makes a motion to adopt a slate of six applicants to be the final six members of the commission. After that the motion receives a second and so deliberation begins on the proposal. Imagine that the first member to seek and gain recognition from the chair expresses an opinion that one applicant in the slate should be removed and replaced with another applicant for various reasons.

According to Robert's Rules a member may only speak on a motion again until all other members have had the opportunity to speak. So according to Robert's Rules the proposer would not be able to respond to this request for modification until all the other members have an opportunity to speak. Now one interpretation is that subdivision (e) may allow the proposer to make a modification to the proposal at any time (trumping Robert's Rules), so perhaps after each person expresses an opinion involving a modification this allows the proposer to state whether they approve or reject (or as of yet have no opinion about) the modification. If this were the case the proposer would become something like a "mini-judge" of each member's comments. This would seem to give the proposer a rather dominant position during the deliberation. This is just one problem, there are other problems.

Another problem is, how should the proposer decide whether or not to accept or reject a modification proposed by a member during deliberation?

If a member proposes a modification perhaps the remaining seven members prefer the original proposal to the modification. Could the proposer really know after just one person has spoken whether or not the modification should be accepted? After each comment should the proposer go around and poll the body as to the opinion of other members with regard to the modification?

What happens, if while the first person is speaking, the proposer notices that three other members are nodding their heads and the first proposer also hears someone outside of the proposer's field of view say, "yeah, that's a good idea"? Does that mean there are now five people in favor of this modification and the proposer should accept the modification? Does the proposer know whether the people nodding are signaling approval or perhaps it is just a case of a member briefly looking down and then up? Does the proposer know if the voice was a member of the commission or someone from the audience?

If the original person who speaks in favor of the modification speaks emotionally and with great rhetorical flourishes, should the proposer accept the modification?

Should the proposer wait until all seven other members have had a chance to speak before making any decisions about modifications? What if, in that case, the seven members talk about different modifications and express numerous different ideas?

What if a member proposes several different, perhaps contradictory modifications, which should the proposer consider?

I think you can see where this is going.

The purpose of having an open deliberative process is so that it is clear, not just what votes are taken, but how those votes and proposals were arrived at and to allow all members to deliberate on the proposals. If only subdivision (e) is used for making modifications then whatever final slate is approved will appear to be completely determined by the decisions of the single individual who first proposed that slate (all modifications will be at that person's pleasure).

Aside from the appearances of control by a single individual, even under subdivision (e) a conscientious proposer should carry out the steps required under Robert's Rules anyway. So why not just use Robert' Rules? The reason I say that a conscientious proposer would follow the steps required under Robert's Rules is that the proposer should first determine if there is minimal support for the modification (i.e. is there a second for the amendment under Robert's Rules) the proposer should listen to deliberation on the modification (i.e. deliberation on the amendment under Robert's Rules) and then the proposer should assess whether or not the majority of the body is in favor of the modification (i.e. a vote on the amendment under Robert's Rules).

Under Robert's Rules this process is clearly laid out and each commission member knows exactly how to participate in this process (second or not as they prefer and then seek recognition and make statements about the specific amendment being considered) and they know exactly how to make their preferences known (when the vote comes they approve or oppose the amendment). Under Robert's Rules no member has a special, privileged role in the process.

Under Robert's Rules once a motion is moved and seconded no one "owns" it. The proposal is open to amendment by all and approval by all. Robert's Rules removes the personalization of the process inherent under subdivision (e) of regulation 60860.

Under subdivision (e) of regulation 60860 how members will make their preferences known is not clear. Should members address all modifications suggested by all other members in addition to making their own suggested modifications each time they have a chance to speak? Is that even possible? A major problem is that, unlike in Robert's rules where all members make the decision about whether or not to accept an amendment, under subdivision (e) of regulation 60860 the final decision of whether or not a modification is accepted depends, not on a vote of the body, but on the proposer's assessment by of all statements (and body language?) by members of the body. One member is privileged above all the others.

I urge you to assert your right under subdivision (e) of regulation 60860 only in those situations when you want to restrict deliberation to your proposal, with no modifications, and then have the deliberation followed by an up or down vote on your proposal. If you plan to allow modifications to your proposal I suggest that you follow Robert's Rules. Following Robert's Rules is the best way to know if modifications to proposals are really needed and the best way to create a transparent record of the deliberative process.

I hope you find these comments helpful in carrying out your deliberation.

-- Dr. Lawson

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