



REDISTRICTING REFORM IN CALIFORNIA:

Proposition 11 on the November 2008 California Ballot

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CGS uses research, advocacy, information technology and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office and help implement effective public policy reforms.

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Table of Contents

Foreword.....	4
Executive Summary.....	5
Introduction.....	9
Selection of the Redistricting Body.....	10
Disqualifying Criteria.....	13
Racial Diversity.....	15
Partisan Diversity.....	18
Redistricting Priorities and Criteria.....	20
Public Input.....	22
Redistricting Expertise.....	23
Mapmaking Process and Timeline.....	24
Challenges to Final Maps.....	25
Competitiveness.....	26
Conclusion.....	27

FOREWORD

The Center for Governmental Studies (CGS) has studied a number of redistricting proposals over the past several years; publishing several comparative analyses of California redistricting proposals and a Model Redistricting Law.¹ CGS prepared this report to compare California's current system of redistricting by the state legislature with the predicted impacts of redistricting by an independent redistricting commission ("commission") as proposed by Proposition 11 on the November 2008 California ballot.

Sasha Horwitz, former CGS California Governance Project Manager, principally authored this report. Horwitz also authored CGS reports *Public Campaign Financing in Michigan: Driving Towards Collapse* (2008) and *Termed Out: Reforming California's Legislative Term Limits* (2007). CGS Chief Executive Officer Tracy Westen, President Bob Stern and Director of Political Reform Jessica Levinson provided invaluable oversight and significant editorial comments.

CGS is a non-profit, non-partisan organization that creates innovative political and media solutions to help individuals participate more effectively in their communities and governments. CGS uses research, advocacy, information technology and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office, and help implement effective public policy reforms.

The James Irvine Foundation and Carnegie Corporation provided generous funding to make this report possible, although they are not responsible for the statements and views it expresses.

¹ *California Fair Redistricting Act*, Center for Governmental Studies (2005); *Drawing Lines: A Public Interest Guide to Real Redistricting Reform*, Center for Governmental Studies (2005); *Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals*, Center for Governmental Studies (2006); *A Comparative Overview of California Redistricting Reform Proposals in 2008*, Center for Governmental Studies (2008).

EXECUTIVE SUMMARY

This Center for Governmental Studies (CGS) report compares California's existing system of redistricting by the state legislature with the proposed new system of redistricting by an independent commission as proposed in Proposition 11 on the November 2008 California ballot.² Much is known about legislative redistricting; however, estimating and comparing the future impact of redistricting decisions by the legislature and by the proposed new independent redistricting commission necessarily requires assumptions and projections. This memorandum therefore bases its predictions, to the fullest extent possible, on statistical methods and plausible political assumptions.

A nonpartisan coalition, including Common Cause, AARP and the Los Angeles Chamber of Commerce drafted Proposition 11. It has the support of prominent politicians of both parties including Governor Schwarzenegger and former Governor Gray Davis. The California Democratic Party, some labor organizations and several minority rights organizations oppose the measure.

This report is divided into ten topic areas; each discusses a key criterion or attribute of the redistricting process. Each topic, in turn, contains three sections. The first section explains redistricting as it is currently defined in the California Constitution. The second section discusses what the redistricting process would look like under Proposition 11. The last section analyzes and contrasts the two redistricting systems and explains what voters can expect under each system.

Selection of Redistricting Body

Under the California Constitution, every ten years legislative leaders appoint the members of the Assembly and Senate redistricting committees, and they in turn draw all the electoral districts for the Assembly and Senate, State Board of Equalization and members of congress. These district lines are then offered to the governor for approval.

Under Proposition 11, an independent panel of state auditors selects 14 members for an Independent Redistricting Commission (the commission) through a multi-step process designed to guarantee that commissioners are independent and not motivated by political concerns. Congressional districts are still drawn by legislators.

Unlike the legislature's procedures, which are designed to maximize political control of redistricting, the independent commission's procedures seem likely to maximize political independence in the commission's membership.

² While this memo provides an objective analysis, it should be noted that CGS supports the concept of an independent redistricting commission and assisted in the drafting and editing of Proposition 11.

Disqualifying Criteria

Current state law imposes no membership requirements on the state legislature's redistricting committees. Proposition 11, however, contains a number of disqualifying factors to ensure that people with conflicts of interest cannot serve, including holding a previous job as a candidate, politician, political staff member, political consultant or lobbyist.

Racial Diversity

Composition of Committees: Under current law, the legislature is not required to make its redistricting committees representative of the state's ethnic or racial composition. Nevertheless, the legislature does generally create committees with racial representation in line with the ethnic composition of the state's voters; although these committees are less diverse than the state's citizens.

Proposition 11, has specified criteria to ensure that the independent redistricting commission reflects the state's diversity.

Both the legislative and independent commissions must follow the guidelines in the federal Voting Rights Act, but a statistical analysis indicates that the independent commission is more likely to represent the state's racial diversity than the legislative committees.

Membership in Legislature: In 1971 and 1991, Special Masters appointed by the California Supreme Court redistricted the state when the legislature and governor could not agree on a redistricting plan. In 1981 and 2001, the legislature redistricted the state. As a result, two side-by-side comparisons exist of legislative versus independent redistricting.

Under the Supreme Court's plan in 1971 and 1991, the number of minorities elected to the legislature increased. Under the legislature's two plans in 1981 and 2001, the numbers remained constant. This suggests that an independent commission would be more likely to draft electoral districts that would encourage minorities to run successfully for office.

Partisan Diversity

Under current state law, the party in power has substantial if not total control to select members of the redistricting committees. When the legislature redistricted the state in 2001, the number of Democrats on the Assembly and Senate redistricting committees was twice as large as the number of Republicans, and there were no members of any other parties in the legislature or on the committees.

Under Proposition 11, the proposed commission must have five members from the largest political party, five from the second largest political party and four registered as decline-to-state voters, or voters affiliated with other parties. Hence, the commission would be balanced between Republicans and Democrats.

The proposed commission will be more balanced between Republicans, Democrats and members of neither party than legislative committees.

Redistricting Priorities and Criteria

Under current state law and Proposition 11, districts must be single member, have reasonably equal populations, be geographically contiguous and be numbered consecutively from north to south.

The greatest difference between current law and Proposition 11 is that Proposition 11 specifically lists “communities of interest” as a factor to be respected in the mapmaking process. Current law says that the geographic integrity of any city, county, city and county, or geographic region should be respected, but there have been egregious cases in which this has not been followed. Proposition 11, by contrast, provides that mapmakers must respect the geographic integrity of neighborhoods, city and county boundaries and communities of interest.

Public Input

Current state law does not require the legislature to seek public input, but it has in the past held public hearings. Proposition 11 sets standards for public hearings at several stages in the mapmaking process. Proposition 11 will lead to more public hearings and will almost certainly lead to increased transparency in the mapmaking process.

Redistricting Expertise

Under current law, there are no expertise requirements for legislators; however some may have been in the legislature or on a redistricting committee during the previous redistricting cycle. Proposition 11 provides that commission members should be selected based on relevant analytical skills and racial and geographic diversity.

Both options allow for the hiring of staff and consultants with relevant skills. It is not clear that either redistricting body will have more expertise than the other.

Mapmaking Process and Timeline

Current law requires mapmakers to make and complete the maps in the year following the census. The maps must be approved by both legislative houses and be signed by the governor. By contrast, Proposition 11 requires that commissioners be selected by December 31 of the year of the census. The commission then has 8.5 months until September 15 of the following year to make and approve the maps. Approval would

require votes from nine of the 14 commissioners: three Democrats, three Republicans and three affiliated with other parties or registered as decline-to-state voters.

Challenges to Final Maps

Under both current law and Proposition 11, maps may be subjected to a referendum, challenged in court or rejected for violating the federal Voting Rights Act. Under both options the California Supreme Court may appoint special masters if necessary. The current law regarding challenges to a final plan is very similar to Proposition 11.

Competitiveness

Competitiveness is not required under either current law or Proposition 11.

INTRODUCTION

“Voters are supposed to choose their representatives, but in California political parties choose their voters. That kind of power is destructive and inherently anti-democratic.”

*Editorial, Los Angeles Times,
September 12, 2008*

Article XXI of the California Constitution outlines the state’s current system of legislative redistricting. It might be described as a minimalist approach. The six-sentence law basically gives the legislature free reign to draw any lines it wishes, in any manner it chooses, with or without public input, so long as it can survive a governor’s veto, a referendum or legal challenges.

Proposition 11 (also known as “California Voters FIRST”), on the November 4, 2008 California ballot, is a constitutional amendment and statutory initiative that, if adopted, will take redistricting power away from the legislature and give it to an independent redistricting commission that will draw new boundaries for State Senate, State Assembly and Board of Equalization districts. The legislature, however, will retain the power to draw congressional district lines. Rejection of this measure will likely mean that the legislature in 2011 will redistrict the state for the following decade.

The following discussion analyzes and compares California’s current system of legislative redistricting with the predicted impacts of Proposition 11 on a number of key factors.

ANALYSIS

Selection of the Redistricting Body

A critical factor in any redistricting system is the membership of the body drawing the redistricting maps. There are major differences between the way the members of the current-law legislative redistricting committees and the proposed independent redistricting commission are chosen.

1. Legislature (Article XXI of California Constitution)

The California Constitution requires the legislature to draw new boundaries for the State Senate, State Assembly, Board of Equalization and congress in the year following the federal decennial census. Under the legislature's procedures, the primary responsibility for drafting redistricting bills belongs to the Assembly Committee on Elections and Redistricting and the Senate Committee on Elections, Reapportionment and Constitutional Amendments. The size, partisan composition, ethnic representation and individual member assignments of these committees are determined by the Assembly Speaker and Senate Rules Committee, respectively. Traditionally, the Assembly and Senate draw their own maps, and they give members of the California delegation of Congress major input into the drawing of Congressional districts. Legislative redistricting plans must be approved by the Assembly and Senate and signed by the governor. If the legislature and governor cannot agree, as happened in the 1970s and 1990s, the California Supreme Court appoints Special Masters to draw the district lines.³

- The Assembly Speaker and the Senate Rules Committee (chaired by the Senate President pro Tem) determine committee size, partisan division and specific legislator assignments.
- The committees are not required to be racially, ethnically, regionally or politically balanced and have no other composition requirements.
- The committees may use their legislative staffs or hire outside consultants to draw maps.

2. Independent Commission (Proposition 11)

Proposition 11 creates a 14-member independent redistricting commission responsible for redrawing boundary lines for the State Senate, Assembly and Board of Equalization in 2011 and each decade thereafter. The commission will not draw congressional boundaries, although Proposition 11 enumerates criteria that the legislature must use when drawing those lines.

³ The Supreme Court said that it could intervene because it needed to protect the constitutional guarantees of equal protection and equal access to the voting process.

Under Proposition 11, the members of the proposed independent redistricting commission are chosen via a multi-stage process in an attempt to decrease partisan or political influence over its members.

Step One: Any of California’s approximately 15 million registered voters may apply to serve on the commission, provided that they:

- Voted in two of the last three statewide general elections,
- Have been continuously registered with the same party or unaffiliated with a party for the past five years, and
- Are not disqualified by other factors (see Disqualifying Criteria below).

Step Two: The independent State Auditor selects a panel of three independent auditors to screen applicants. The panel of auditors is selected randomly from a pool of all independent auditors employed by the state and licensed by the California Board of Accountancy. The panel must consist of:

- 1 Democrat,
- 1 Republican, and
- 1 other (neither Democrat nor Republican).

Step Three: The panel of auditors chooses three “sub-pools” of 20 persons each from the 60 most qualified persons who have applied.

- 20 Democrats,
- 20 Republicans, and
- 20 others.

The panel must make every effort to ensure that the pool of candidates has relevant analytical skills, the ability to be impartial and an appreciation for California’s diverse demographics and geography.

Persons with specified political conflicts of interest are ineligible for service on the panel or commission (see Disqualifying Criteria below).

Step Four: The four legislative leaders (Assembly Speaker and Minority Leader, and Senate President pro Tem and Minority Leader) may each strike two people from each 20 person “sub-pool.”

- If every strike is used (24 maximum), the 60 person pool becomes a 36 person pool.

Step Five: The three auditors randomly select eight commissioners:

- 3 Democrats,
- 3 Republicans, and
- 2 others.

These eight individuals become the first members of the Citizens Redistricting Commission.

Step Six: The eight commissioners select six more members from sub-pools based on relevant analytical skills, impartiality, racial, ethnic and geographic diversity and gender. The six members must consist of:

- 2 Democrats,
- 2 Republicans, and
- 2 others.

The final Citizens Redistricting Commission has 14 members:

- 5 Democrats,
- 5 Republicans, and
- 4 others

3. Analysis and Comments

Partisan politics heavily influences California’s current legislative redistricting system. Legislators draw districts to maintain or maximize a party’s political advantage or to preserve incumbent seats. Bizarrely shaped or “gerrymandered” districts often divide existing cities or communities.

Article XXI of the California Constitution currently requires sitting legislators to draw district lines. These legislators have a direct personal stake in the shape of district boundaries. These lines can determine whether legislators will win or lose future elections. The Speaker of the Assembly and the members of the Senate Rules Committee select the redistricting committee members with an eye toward preserving or increasing their respective party’s electoral strength.

If the governor is a Democrat in 2011, the redistricting committees will likely seek to draw districts favorable to the Democratic Party, because both chambers will probably be dominated by Democrats. Republicans’ only option to mitigate this tendency may be threatening to circulate a referendum that would overturn any overly-partisan plan. Republicans did this in 1981.

If the governor is a Republican, he or she may veto redistricting maps that excessively favor the Democratic Party. In 1971 and 1991, with a Democratic legislature and a Republican governor, the legislature and governor could not agree on redistricting maps and the California Supreme Court appointed Special Masters to draw the districts.

To avoid a veto by the governor or redistricting by Special Masters, the political parties may compromise by drawing district lines that favor the re-election of incumbents from both parties. Democrats and Republicans used this approach in 2001. As a result, only one seat has changed parties due to competition,⁴ and only one incumbent has lost in the 459 legislative and Congressional general election races held this decade.

⁴ However, in 2002 three seats changed parties as the redistricting committees of the legislature intended.

By comparison, the composition of the independent redistricting commission in Proposition 11 is insulated from the political process in several ways. First, anyone from among the state's 15 million registered voters may apply for the redistricting commission. Although registered voters do not perfectly reflect the state's ethnic diversity (see charts below), it is reasonable to assume that the lists of applicants will at least yield significant numbers of representatives from all ethnic and political groups. This will be due in large part to the expected efforts of political parties and interest groups to encourage volunteers representing their interests to apply for the commission.

Second, a panel of independent auditors will use stated criteria to select the first 60-member pool. This will enable the auditors to select commission members based on ethnic diversity and specific skills, thereby potentially offsetting partisan efforts to "stack" the commission.

Third, legislative leaders will have up to 24 vetoes to remove "ringers" from the 60-person pool of applicants. Fourth, from the remaining 36 members of the pool a 14-member commission will be selected. The first eight members will be chosen through random selection. These eight members will select the final six members, choosing them based on analytical skills, impartiality, racial, ethnic and geographic diversity and gender.

Finally, the independent commission must approve its redistricting maps by a super-majority vote of nine out of 14 members. Moreover, the majority must consist of at least three of the five Democrats, three of the five Republicans and three of the four "Decline to States" or representatives of other parties. This will force a consensus and prevent a specific partisan interest from dominating the outcome.

Although the selection of the independent commission is not perfect—it is possible that partisans may slip through the multiple layers of review—the proposed process is certainly more objective than the current legislative process. In 1971 and 1991, the California Supreme Court appointed Special Masters to redistrict the state. The Special Masters drew districts that were widely praised as objective and that resulted in greater competition for electoral office. The proposed independent redistricting commission could, if anything, be more independent than even the Supreme Court, whose membership, after all, is partly influenced by political considerations.

Disqualifying Criteria

Applicants for the independent redistricting commission will be disqualified from serving if they have certain conflicting past experiences. Their future employment opportunities will be limited by the terms of the proposed constitutional amendment. The current legislative redistricting process has no such specific criteria on the composition of the assembly and senate redistricting committees.

1. Legislature (Article XXI of California Constitution)

Legislative redistricting committees must be composed of sitting legislators. Current law imposes no ethnic or past employment disqualifications on the members of these committees.

2. Independent Commission (Proposition 11)

Proposition 11 excludes persons with certain past experiences that might bias them for or against one political party. It also prevents members from accepting subsequent employment that might give them an incentive to favor a particular party or interest group.

Disqualifying Past Experience:

An individual may not serve on the independent commission if in the past 10 years he or she:

- Ran for, was elected, to or was appointed to a federal or state office,
- Held office, was employed by or served as a paid consultant to a political party or campaign committee of a candidate for elected federal or state office,
- Registered as a federal, state or local lobbyist,
- Served as a paid congressional, legislative or Board of Equalization staff member,
- Contributed \$2,000 or more to a candidate for congressional, state or local office in any one year, or
- Had a financial interest or family relationship with the governor, a state legislator, member of Congress or Board of Equalization member.

These restrictions also apply to the immediate family, such as one who has a bona fide relationship established through blood or legal relation, including, spouse, parent, child, sibling and in-laws.

Disqualifying Future Experience:

- For 10 years after the date of appointment, a commissioner may not run for public office in California.

- For 5 years after the date of appointment, a commissioner may not be appointed to public office, register as lobbyist, or serve as paid staff to the legislature or a legislator.

3. Analysis and Comments:

Under current law, members are typically picked to maximize each party’s chances of gaining or at least preserving their electoral strength by drawing lines favorable to their own political parties.

Proposition 11 excludes individuals from serving on the independent commission if they have potential conflicts of interest. By excluding former elected officials, political consultants and lobbyists, the chances of partisan bias are reduced. Although these disqualifications may affect a small subset of the 15 million registered voters, there should remain ample numbers of qualified applicants to serve on the commission.

Some have expressed concern that the disqualification of “public officials” is unfairly limiting and might exclude capable individuals who pose no potential conflicts of interest. If they wished to serve on the commission, the law might force them to resign their posts or prevent them from taking up those positions for 5 years thereafter. Commissioners, for example, would be prevented from running for school board for 10 years, even though they are not responsible for drawing school board district lines.

Racial Diversity

Two primary questions are whether the redistricting body will reflect California’s ethnic diversity, and whether the district maps that the proposed independent commission would draw will encourage the election of candidates that reflect California’s diversity.

1. Legislature (Article XXI of California Constitution)

Redistricting Body Diversity:

- The California Constitution has no requirements that the legislature’s redistricting committees reflect California’s ethnic diversity.

Electoral District Diversity:

- The California Constitution does not require the legislature’s redistricting maps to reflect the state’s diversity.
- The legislature’s maps, however, cannot violate provisions of the federal Voting Rights Act.⁵

⁵ 42 U.S.C. § 1973–1973aa-6

2. Independent Commission (Proposition 11)

Redistricting Body Diversity:

- The independent auditors selecting the initial 60 person candidate pool are required to select pool members who have “an appreciation for California’s diverse demographics and geography.”⁶ Moreover, the independent auditors will select the initial candidate pool from a large number of applicants, presumably many of whom will represent California’s ethnic groups.
- Diversity is not required in selecting the first eight commissioners since they are chosen at random.
- The eight members of the commission will choose the final six commissioners to shape the overall commission membership to reflect the state’s diversity, including, but not limited to, racial, ethnic, geographic and gender diversity.

District Diversity:

- The independent commission’s maps cannot dilute minority voting rights or violate the federal Voting Rights Act.

3. Analysis and Comments:

Table 1 shows the current ethnic diversity of the state, as recently projected by the Census Bureau (first column), as well as the ethnic compositions of registered voters (second column) and of the current assembly and senate (third and fourth columns).

Table 1:

Potential Ethnic Composition of State Legislative Redistricting Committees And Independent Redistrict Commission

	<i>Current Population (census projection)</i>	<i>Current Voter Registration</i>	<i>Current Assembly (# of members)</i>	<i>Current Senate (# of members)</i>	<i>Membership of the Closest Commission can come to actual population</i>
<i>White</i>	<i>43.1%</i>	<i>64.9%</i>	<i>61.3% (49)</i>	<i>67.5% (27)</i>	<i>42.9% (6)</i>
<i>Latino</i>	<i>35.9%</i>	<i>16.2%</i>	<i>22.5% (18)</i>	<i>25.0% (10)</i>	<i>35.7% (5)</i>
<i>Asian</i>	<i>12.4%</i>	<i>8.7%</i>	<i>8.8% (7)</i>	<i>2.5% (1)</i>	<i>14.3% (2)</i>
<i>African American</i>	<i>6.7%</i>	<i>8.1%</i>	<i>7.5% (6)</i>	<i>5.0% (2)</i>	<i>7.1% (1)</i>
<i>Other</i>	<i>1.9%</i>	<i>2.1%</i>	<i>None</i>	<i>None</i>	<i>0.0% (0)</i>

⁶ Proposition 11, Proposed Cal. Const. Article XII, Sec. 3.3(d).

When compared to the population, the current membership of the legislature over-represents Whites, somewhat under-represents Latinos and Asians, and approximately represents African Americans. Predictably, the legislature more closely reflects registered voters than the general population.

Legislative committees are selected by legislative leaders who may use ethnic as well as non-ethnic criteria (past experience, advocacy skills and political favors) in their decisions. It is reasonable to assume that the legislative committees may use ethnic criteria, possibly to the extent that the legislature itself reflects ethnic diversity, and may also seek to reflect the ethnic diversity of the general population in their redistricting decisions.

Table 2 shows the composition of the 2001 legislative redistricting committees. As in the legislature itself, whites were over-represented compared to the population. Latinos and Asians were under-represented.

**Table 2:
Ethnic Composition in 2001 of Legislative Redistricting Committees, General Population and Registered Voters**

	<i>Population (2000 census)</i>	<i>Registered Voters</i>	<i>Assembly Redistricting Committee (15): Percentage (Number)</i>	<i>Senate Redistricting Committee (9): Percentage (Number)</i>
<i>White</i>	46.7%	68.7%	60% (9)	66.6% (6)
<i>Latino</i>	32.4%	14.7%	26.7% (4)	22.2% (2)
<i>Asian</i>	12.3%	7.7%	6.7% (1)	0% (0)
<i>African American</i>	7.4%	7.9%	6.7% (1)	11.1% (1)
<i>Other</i>	1.2%	1.0%	None	None

If similar patterns occur in 2011, then the legislative committees may over-represent Whites, under-represent Latinos and Asians, and approximately represent African Americans. Political pressure from ethnic communities, however, may serve to counter this tendency.

The independent commission may, in theory, closely represent the general population's diversity, and, for a variety of reasons, there is a good chance it will do so. First, it is reasonable to assume that, out of 15 million registered voters, a significant number of Whites, Latinos, Asians, African Americans and members of other ethnicities will apply for the independent commission. It is a virtual certainty that organizations representing ethnic constituencies will make a concerted effort to ensure that significant numbers of their representatives will apply to the commission. The independent auditors will therefore be able to choose from large numbers of applicants from all ethnic groups.

Second, in choosing the initial 60-member pool, the independent auditors are required to ensure that pool members have an appreciation of California’s diverse demographics and geography. Third, although majority and minority party leaders may veto up to 24 members of the 60-member initial pool (leaving at least 36), political pressures from other legislators, ethnic organizations and the general public may prevent leaders from striking a disproportionate number of ethnic representatives. It can be assumed statistically that the remaining pool of at least 36 members will be ethnically representative, and that each sub-pool (Democrats, Republicans and Others) will have at least one minority, if not more.

Fourth, although the independent auditors will randomly select the first eight commission members from the remaining group of up to 36 candidates (comprised of three sub-pools of 12 candidates each), the estimates below predict that the racial composition of each of these three sub-pools will tend to represent the state’s diversity. For simplicity, it is assumed that no preemptory strikes by legislative leaders have been used.

Predicted racial composition of each 20 members sub-pool:

- 45% white (9)
- 35% Latino (7)
- 10 – 15% Asian American (2 or 3)
- 5 – 10% African American (1 or 2)

Using this projection, there is a high probability that minorities will be among the eight randomly selected commissioners.

- Democratic sub-pool: 92.6% probability of selecting at least one non-White.⁷
- Republican sub-pool: 92.6% probability of selecting at least one non-White.⁸
- Other sub-pool: 81.1% probability of selecting at least one non-White.

The probability that all of the initial eight commissioners are White is 0.1%.

Finally, the eight commissioners will be able to select an additional six commissioners seeking, among other things, to achieve racial and ethnic diversity on the overall commission.

For the commission to be racially representative of the California population, eight of the 14 members should be non-white. With six commissioners selected specifically to meet

⁷ Probability of selecting no minorities from Democratic (or Republican) sub-pool:

$$\frac{9}{20} \times \frac{8}{19} \times \frac{7}{18} = \frac{504}{6840} \approx 7.4\%$$

Probability of selecting at least one minority from Democratic (or Republican) sub-pool:

$$100\% - 7.4\% = 92.6\%.$$

⁸ Probability of selecting no minorities from Other sub-pool:

$$\frac{9}{20} \times \frac{8}{19} = \frac{72}{380} \approx 18.9\%.$$

Probability of selecting at least one minority from Other sub-pool:

$$100\% - 18.9\% = 81.1\%.$$

diversity criteria and each of the three sub-pools likely to select at least one minority, the resulting commission should be racially representative of California.

One caveat: This projection assumes that the 20 person sub-pools are each representative of the California population. If the auditors select sub-pools with different racial compositions, the commission's diversity may diverge from that of the state's population.

With respect to redistricting lines that reflect racial diversity, Tony Quinn, co-editor of the non-partisan California Target Book, used a historical analysis to conclude that districts created by independent commissions (Special Masters) "boosted minority representation" by protecting majority-minority districts and drawing new districts that gave minority populations the opportunity to elect minority representatives. Quinn further stated, "[m]inority representation has never significantly grown when legislators have drawn the district lines."⁹

Quinn's analysis also shows that the 1981 legislature-drawn plan undid some of the gains from the previous decade, in one case diluting the Latino population of an eastern Los Angeles district to protect the incumbent. While some may argue that the 2001 legislature-drawn plan resulted in California's most diverse legislature, Quinn dismissed the gains as remnants of the 1991 plan.

Partisan Diversity

1. Legislature (Article XXI of California Constitution)

In 2011, the Assembly and Senate redistricting committees are likely to include more Democrats than Republicans, because Democrats will control membership selection. Decline to States and smaller parties are not currently represented in the legislature and thus will have no representation on the legislative committees.

2. Independent Commission (Proposition 11)

Under Proposition 11, the 14-member independent commission must have:

- 5 Democrats,
- 5 Republicans, and
- 4 others.

3. Analysis and Comments:

Democrats are over-represented in the state legislature and Decline to States and third parties are not represented or only occasionally represented (see Table 3). Republicans are appropriately represented compared to registered voters. Assembly and Senate redistricting committees will tend to represent the partisan makeup of each legislative

⁹ Tony Quinn, "Would Prop 11 help minorities?" *Los Angeles Times*, July 27, 2008

body. For this reason, Article XXI will favor the party in control of the legislature and will not represent Decline to State or third party voters.

In 2001, Democrats outnumbered Republicans two-to-one on both the Assembly (10 Democrats to five Republicans) and Senate (six Democrats to three Republicans) committees. There is no indication that the partisan division will be different in 2011.

If the governor and legislature are Democratic, the committees may draw district lines to increase the election of Democrats and decrease the election of Republicans. Republicans may have only the threat of the referendum to counter this tendency. One tactic, used in 2001, may be for the parties to agree by creating incumbent-safe districts for both parties. This may leave the partisan balance of the state intact, but it may also reduce or eliminate effective competition for seats in the general election.¹⁰

Table 3:

Partisan Composition of Legislative Redistricting Committees (2001)

	<i>Registered California Voters (2000 election)</i>	<i>Assembly Redistricting Committee (2001)</i>	<i>Senate Redistricting Committee (2001)</i>
<i>Democrats</i>	45.4%	66.7% (10 members)	66.7% (6 members)
<i>Republicans</i>	34.9%	33.3% (5 members)	33.3% (3 members)
<i>Others</i>	19.6%	None	None

The independent commission will be more balanced between Republicans, Democrats and members of neither party than the legislative committees. The independent auditors will select three groups of 20 potential commission members composed of Democrats, Republicans and third party members or Decline to States (Others). Republican and Other representation will be approximately equal to their party registration, although Democrats will be under-represented (see Table 4). Voters, however, despite their partisan affiliations, may agree that a partisan balance in the redistricting commission is desirable, since polls indicate Californians want redistricting to be fair and representative.

Table 4:

Partisan Composition of Independent Redistricting Commission

	<i>Registered California Voters (2008)</i>	<i>Initial 60 person Pool</i>	<i>Final pool including legislative strikes</i>	<i>Total Commission</i>
<i>Democrats</i>	43.8%	33.3% (20)	33.3% (12 - 20)	35.7% (5)
<i>Republicans</i>	32.5%	33.3% (20)	33.3% (12 - 20)	35.7% (5)
<i>Others</i>	23.7%	33.3% (20)	33.3% (12 - 20)	28.6% (4)

¹⁰ It should be noted that a recent report by the Public Policy Institute of California, “Redistricting and Legislative Partnership,” concludes that there is little evidence that redistricting reform would decrease partisanship in the legislature. See www.ppic.org.

Redistricting Priorities and Criteria

The criteria used by the redistricting body to draw the district maps are also important. California law imposes few criteria on the legislature, while the independent commission must follow several enumerated criteria.

1. Legislature (Article XXI of California Constitution)

Article XXI lists the following criteria that the legislature must follow:

- Senate, Assembly, Congressional and Board of Equalization districts must be single-member districts.
- Districts of a particular type should have populations that are reasonably equal.
- Each district shall be contiguous (that is, not broken into separated parts).
- Districts of each type shall be numbered consecutively, commencing at the northern boundary of the state and ending at the southern boundary.
- The geographical integrity of any city, county, city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.

2. Independent Commission (Proposition 11)

Under Proposition 11, the boundaries of the maps must meet the following criteria in the following order of priority:

- Compliance with the United States Constitution.
- Reasonably equal population with other districts for the same office, except when a deviation is required to comply with the federal Voting Rights Act or otherwise allowable by law.
- Compliance with the federal Voting Rights Act of 1965.
- Geographic contiguity.
- Respect for geographic integrity of neighborhoods, city and county boundaries, and communities of interest, without violating the requirements of the previous criteria.
- Geographic compactness to the extent practicable and where it does not conflict with the criteria above.
- Nesting—that is, Senate districts comprised of two whole, complete and adjacent Assembly districts, and Board of Equalization districts comprised of ten whole, complete and adjacent Senate districts, to the extent practicable and where it does not conflict with the criteria above.
- No consideration of the place of residence of any incumbent or political candidate in the creation of a map.
- Inability to favor or discriminate against an incumbent, political candidate or political party.

3. Analysis and Comments:

Respect for communities of interest is not currently required of the legislature, as it is for the commission. Some have criticized legislative maps drawn under Article XXI for diluting the voices of underrepresented neighborhoods and dividing cities and communities of interest into multiple districts.

Proposition 11 places significant value on the geographic integrity of neighborhoods, cities, counties, cities and counties and communities of interest, whereas current constitutional provisions only require the legislature to emphasize geographical integrity and city, county or city and county boundaries. Under Proposition 11, the commission is responsible for defining the term “communities of interest,” but that term cannot include relationships with political parties, incumbents or political candidates. This criterion will encourage the commission to consider keeping together communities of interest.

Nesting, the process by which two Assembly districts are encapsulated in one Senate district, is required under Proposition 11 to the extent practicable and where nesting does not conflict with higher priority criteria. Article XXI of the State Constitution does not mention nesting. According to a study by Bruce Cain and Karin Mac Donald of UC Berkeley’s Statewide Database, the advantages of nesting are that it simplifies map making and may deter the drawing of lines for incumbent or party purposes. The disadvantages are that it adds some complexity to the line drawing process and may “double a wrong” if the boundaries of one Senate district and its nested Assembly district both split a community.¹¹

Nesting is a lower priority in the Proposition 11 criteria and is only required as long as it is practicable and does not conflict with other criteria, including the federal Voting Rights Act and respect for communities of interest.

Public Input

Once the composition of the redistricting body is determined and its decision-making criteria defined, it is critical that the body receive and take into consideration public comments before it makes its final decisions.

1. Legislature (Article XXI of California Constitution)

The California Constitution does not currently require the legislature to hold any public redistricting hearings. Although the legislature has voluntarily held such hearings, it has sometimes done so with only a few days notice to the public.

¹¹ Bruce Cain and Karin Mac Donald, “The Implications of Nesting in California Redistricting,” Institute for Governmental Studies, (August 2007).

2. Independent Commission (Proposition 11)

Proposition 11 is designed to encourage public input and participation through multiple regional open hearings and public outreach.

The commission must ask for public input at two stages:

- Before the maps are drawn; and
- Once the maps are drawn and displayed.

Proposition 11 further requires the commission to:

- Publicly display the redistricting maps incorporating the prioritized criteria for at least 14 days and invite public comment.
- Make redistricting data and map drawing software accessible to the public.
- Make public the records of all its decision-making.
- Conduct meetings in compliance with the Bagley-Keene Open Meeting Act, which prevents certain non-public communications between individual commissioners.

3. Analysis and Comments:

Because the legislature's redistricting decisions have been principally driven by partisan considerations, it has typically not given much consideration to public comments. In previous years, consultants or the staff of the legislature prepared maps behind closed doors and displayed them for only a short period before the legislature adopted them. Legislative committees also limited comments from interested parties—for example, by displaying proposed maps on a Friday before a three day weekend and scheduling hearings the next Tuesday.

Interested persons have complained about the difficulty of attending multiple hearings—for example, one hearing for each set of maps (Assembly, Senate and Congress). Low-income or minority communities have the most at stake, yet they may have the greatest difficulty attending multiple hearings.

The independent commission will be less likely to make redistricting decisions for partisan political purposes and will be more open to public comments. Proposition 11 also requires the commission to hold hearings in different parts of the state and display draft maps long enough for it to receive public comments.

Redistricting Expertise

1. Legislature (Article XXI of California Constitution)

Members of relevant redistricting committees are not required to have redistricting knowledge, expertise or skills. They may hire staff and consultants with those skills.

2. Independent Commission (Proposition 11)

The pool of 60 potential commission members is selected for:

- Appreciation of California's diverse demographics and geography,
- Relevant analytic skills, and
- Impartiality.

Eight commissioners are selected randomly from the pool.

In addition, six commissioners are selected for:

- Relevant analytical skills
- Impartiality
- Diversity, including, but not limited to,
 - Race,
 - Ethnicity,
 - Geography, and
 - Gender.

The commission may hire staff, legal counsel and consultants as needed. The commission must hire at least one legal counsel who has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act. Nine or more commissioners (including three Democrats, three Republicans, and three others) must vote to hire or fire staff members or consultants.

3. Analysis and Comments:

Term limits make it unlikely that any Assembly members will have redistricting experience in 2011. Few or none of them will have been in office during the previous 2001 redistricting effort. At least 20 Senators, however, who are expected to hold office during the next redistricting cycle, were in the Assembly in 2001, when the last redistricting took place. Two such members, Kehoe and Oropeza, served on the Assembly redistricting committee in 2001.

There is no reason to believe that the Proposition 11 independent commission will possess more or less expertise than the Assembly in drawing lines. Both the legislative and independent redistricting bodies will have the ability to rely upon outside expertise.

Mapmaking Process and Timeline

1. Legislature (Article XXI of California Constitution)

In the year following federal census, the legislature must adjust the boundary lines of the Assembly, Senate, Congress and Board of Equalization. Redistricting bills must pass the full legislature with a majority vote of both houses and be signed by the governor.

2. Independent Commission (Proposition 11)

The commission membership must be finalized by December 31, 2010. Census data is available to the commission by the end of March 2011. Maps must be approved by September 15, 2011.

For approval, each map must receive nine votes of the commission including three Democrats, three Republicans and three others. Once the three maps are approved, they are sent to the Secretary of State to be certified.

3. Analysis and Comments:

In 1991, the legislature worked on the maps for seven months before the California Supreme Court exercised jurisdiction in September, when the legislature and governor reached an impasse. The Special Masters' maps were approved by the California Supreme Court on January 27, 1992, after four months of work.

The Proposition 11 independent commission has 8.5 months to construct new maps, and longer if commission membership is finalized early.

Challenges to Final Maps

1. Legislature (Article XXI of California Constitution)

Article XXI makes no reference to challenges to the legislature's redistricting plans. Redistricting decisions require legislative and gubernatorial approval. Those decisions are therefore subject to referendum. If a referendum qualified, it would appear before the voters as a ballot measure. A referendum requires opponents to collect 5% of the signatures cast in the last gubernatorial election. The legislature's decisions may also be challenged in court like any other statute. If the governor vetoes the maps, the Supreme Court may intervene and appoint Special Masters to draw new maps.

2. Independent Commission (Proposition 11)

Maps drawn by the independent commission may also be challenged by referendum and court decision.

If voters reject the maps, or the commission cannot finalize a map, the California Supreme Court will appoint Special Masters to set the boundaries. The California Supreme Court has original and exclusive jurisdiction in all state court proceedings in which a certified map is challenged.

In addition, while not specifically stated in the initiative, challenges regarding the federal Voting Rights Act and other federal questions can be filed in federal court.

3. Analysis and Comments:

The first Special Masters did not complete the maps until 1973, but the second Special Masters drew maps in time for the 1992 elections. In 1981, the legislature and governor approved maps for the Senate, Assembly and Congress, but three successful referenda overturned them the next year. The California Supreme Court held that the maps would still be valid in the general election of November 1982. The legislature quickly redrew maps after the November 1982 election.

The legislature and independent commission appear equally subject to review by referenda and the courts. The courts can also review the maps of either body for compliance with the federal Voting Rights Act.

Some have expressed concern that future court decisions may give less deference to an independent commission's efforts to preserve racial diversity as opposed to the decisions of the legislature. Their fear is that redistricting by an independent commission may therefore, be less protective of minority rights than legislative redistricting. There is no way to assess the accuracy of this prediction.

Competitiveness

Competitiveness is not a criterion for either body.

1. Legislature (Article XXI of California Constitution)

The legislature is under no requirement to increase competitiveness.

2. Independent Commission (Proposition 11)

The independent commission is under no mandate to include competitiveness in its considerations.

3. Analysis and Comments:

In some states, partisan majorities have designed redistricting plans to maximize their own party's power and minimize that of their opponents (e.g., the Republican majority in Texas). In California, tempting as this may seem to the party in power, a governor of the opposing party or a referendum brought by the minority party could block these efforts.

Some observers contend that district lines should be drawn to increase competition between the political parties. They believe this will increase voter interest in elections and encourage candidates to occupy more centrist positions. They point out, however, that the California legislature in 2001 primarily sought to eliminate competition for incumbents by making districts strongly Democratic or Republican. This effort was wildly successful. Only one challenger has unseated an incumbent in a general election in California's last three election cycles, and that race represented the only seat to change parties due to competition.

Proposition 11 does not require the independent commission to use competition as one of its redistricting criteria. There are at least two possible reasons for this.

First, Arizona, which is the only state to require competitiveness as a redistricting criterion, was in litigation over its 2001 maps for seven years. Opponents of the maps drawn by Arizona's independent redistrict commission unsuccessfully challenged that the maps were not sufficiently competitive. Proponents of Proposition 11 may have felt that requiring commissions to account for competitiveness was risky and subject to delay and potential reversal through judicial review.

Second, increasing competition in California would be difficult. Large parts of California's population are concentrated in regions dominated by a single party. For example, Los Angeles and the San Francisco Bay Area are strongly Democratic, while the Central Valley and much of Riverside and Orange Counties are heavily Republican. If competitiveness was a criterion, it would force the creation of districts that would stretch from areas dominated by one party to areas dominated by another. The resulting boundaries would conflict with the compactness requirements and possibly divide communities of interest.

Despite these factors, an independent commission will almost certainly generate more competitive districts than the legislature. For one thing, an independent commission's decisions, focused in part on preserving communities of interest, would inevitably create more competition. For another, it is probably not possible to create *less competitive districts* than the legislature has drawn.

CONCLUSION

In November 2008, California voters may have their last opportunity to change the redistricting process before maps are redrawn in 2011, when new districts will be locked into place for another decade. Voters must choose between the state's current redistricting law, which allows legislators to carve out safe districts with little competition or create a partisan gerrymander, or Proposition 11, which, while complicated, could increase the fairness of and public involvement in the redistricting process and decrease political manipulation of district boundaries.

The independent redistricting commission proposed in Proposition 11 will probably be superior to legislative redistricting in several respects:

- The independent commission is likely to be more ethnically diverse than the legislature's redistricting committees.
- The independent commission will be more balanced between Republicans, Democrats and members of neither major party than the legislature's redistricting committees.
- The independent commission will be more open to public input than legislative committees.
- The districts created by the independent commission will almost certainly be more competitive than districts created by the legislature.
- The independent commission will almost certainly produce redistricting maps through a process that has improved transparency and public access.

However, while Proposition 11 could be a significant improvement over the current law it should not be considered a cure for all the ills of the redistricting process:

- The likelihood of challenges by referenda or judicial review to the redistricting plans of the independent commission will remain roughly the same as challenges to the legislature's plans.
- The racial composition of the commission cannot be guaranteed to reflect California's diversity more accurately than the legislative committees.
- Some districts drawn by the independent commission will not become more competitive than districts drawn by the legislature because voters naturally tend to live near others with similar political views and no amount of reasonably line drawing will separate them.