

## Proposition 20: Voters FIRST Act for Congress Brief Summary

SDCTA **supports** Prop 20 because it consolidates the State's redistricting efforts by giving all of the redistricting authority to the Citizens' Redistricting Commission. Additionally, it would remove any conflict of interest that may have existed as a result of the State Legislature having the authority to redistrict for U.S. Congressional elections.

- Prop 20 would amend Prop 11 (2008), the "Voters FIRST Act", to provide an independent Citizens' Redistricting Commission (Commission) the authority to conduct redistricting for U.S. Congressional elections. Currently this authority is given to the State Legislature.
- 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.
- In the five California general elections held since 2000, incumbent U.S. Congressional candidates have had a reelection rate of 98.4%.
- The Legislative Analysts' Office (LAO) reports that the State Legislature has appropriated \$3 million for redistricting activities under Prop 11. In addition, another \$3 million in State funds have been used to conduct the application process for Commission members. Under Prop 11, the State Legislature is still responsible for redistricting for U.S. Congressional elections. This measure could result in cost savings related to consolidating all redistricting responsibilities for the State of California in one entity. The LAO estimates that these savings will probably not be significant.

**Prop 20: Voters FIRST Act for Congress**

May 2010

**Board Recommendation:**

**SUPPORT**

**Rationale:**

SDCTA supports Prop 20 because it consolidates the State's redistricting efforts by giving all of the redistricting authority to the Citizens' Redistricting Commission. Additionally, it would remove any conflict of interest that may have existed as a result of the State Legislature having the authority to redistrict for U.S. Congressional elections.

**Background:**

**Title:** "Voters FIRST Act for Congress"

**Election:** November 2010 General Election

**Description:** Extends the provisions of the Voters FIRST Act (2008) related to redistricting to include U.S. Congressional districts.

**Jurisdiction:** State

**Type:** Constitutional Amendment

**Vote:** Simple Majority

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.”

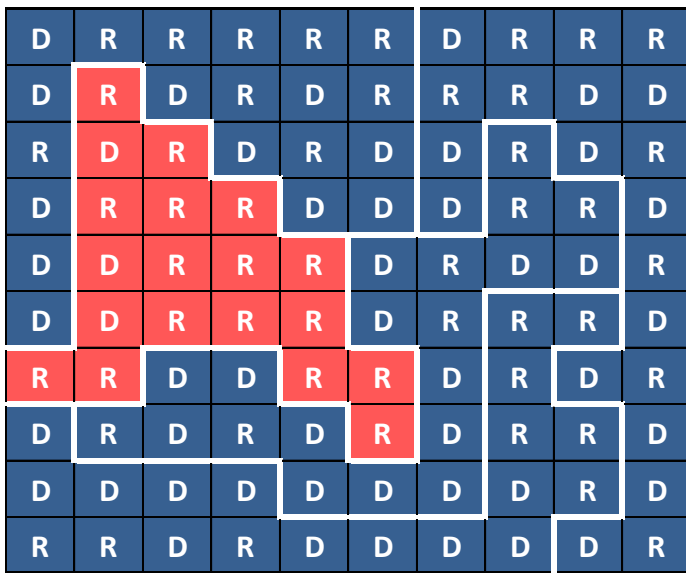
In 1985, several citizens filed suit against the State of North Carolina arguing that a recently passed redistricting plan violated their rights under Section 2 of the Voting Rights Act by inhibiting the ability of several African-American communities to elect the representative of their choice (*Thornburg 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**

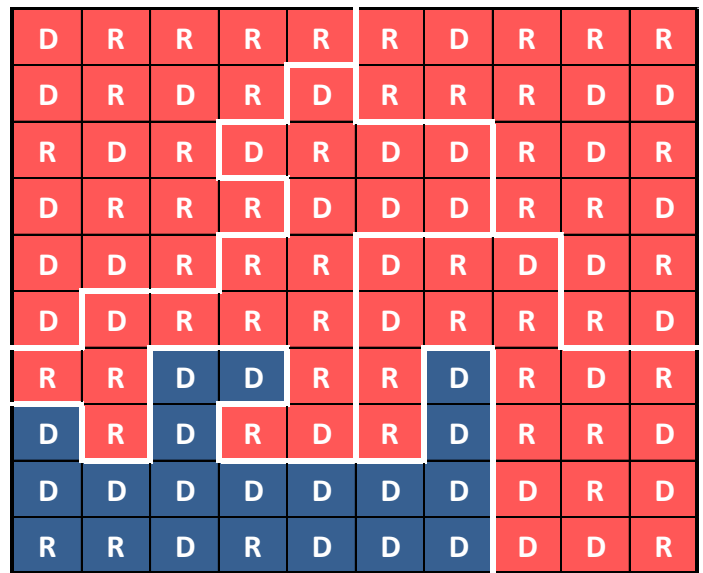
In most states, including California, the process of redistricting for U.S. Congressional elections is carried out by elected state representatives.<sup>1</sup> Critics have argued that elected officials often use this authority to intentionally redraw boundaries in ways that benefit particular incumbent 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**

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

Since the most recent U.S. Congressional redistricting in 2001, each of California's 53 Congressional Districts has held four general elections (for a total of 212 elections). In all 212 elections, only one non-incumbent candidate defeated an incumbent<sup>2</sup>, while nine other non-incumbents won elections in which incumbents did not participate.<sup>3</sup>

### ***Voters FIRST Act***

In 2008, California voters approved Prop 11 the "Voters FIRST Act" by a margin of 1.65%.<sup>4</sup> 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 registered<sup>5</sup> 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:<sup>6</sup>

- 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.

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<sup>2</sup> Jerry McNerney (Dem) defeated incumbent Richard W. Pombo (Rep)

<sup>3</sup> California Secretary of State, Statement of Vote, November 2000-2008 General Election

<sup>4</sup> Ibid

<sup>5</sup> The commission member must be continuously registered to vote in California with the same political party for a minimum of five year preceding appointment.

<sup>6</sup> California State Auditor, We Draw the Lines, [www.wedrawthelines.ca.gov](http://www.wedrawthelines.ca.gov), Accessed 5/24/2010, Last Updated 5/10/2010

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 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.<sup>7</sup>
- 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.

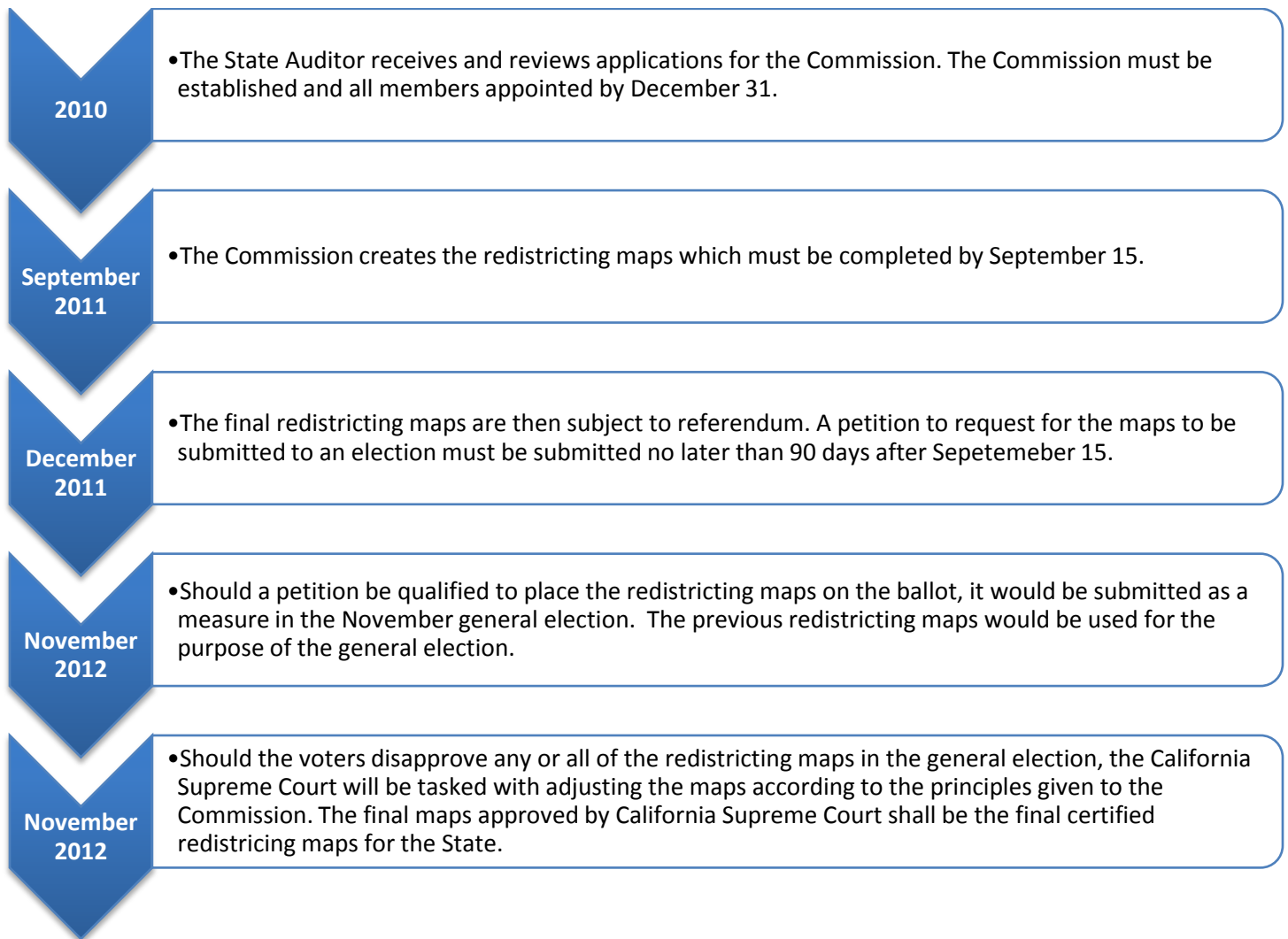
The Voters FIRST Act also includes a clause that all commission members shall be banned for a period of ten years from running for elected office and a period of five years from holding an appointed, paid federal, state, or local position, serving as paid staff for the State Legislatures or individual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

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<sup>7</sup> Community of interest may not include consideration for political parties, incumbents, or political candidates.

**Figure 2: Timeline of Citizens Redistricting Commission**



**Proposal:**

The “Voters FIRST Act for Congress” is a voter generated, Constitutional Amendment that would extend the provisions of the original Voters FIRST Act to include redistricting for U.S. Congressional elections. The amendment would not substantially change any of the existing provisions of the Voters FIRST Act; however it would amend two sections to provide further clarification.

The original Voters FIRST Act required that the Commission “respect” cities, counties, local neighborhoods, and local communities of interest. The Voters FIRST Act for Congress specifies that “respect” shall constitute limiting the division of such areas. Additionally, communities of interest are defined as, “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.”

The Voters FIRST Act for Congress would also add a provision to ban, for a period of five years, Commission members from serving as a paid consultant to the Board of Equalization, the Congress, or the State Legislature.

## **Fiscal Impact:**

The Legislative Analysts' Office (LAO) reports that the State Legislature has appropriated \$3 million for redistricting activities under Prop 11. In addition, another \$3 million in State funds have been used to conduct the application process for Commission members. Under Prop 11, the State Legislature is still responsible for redistricting for U.S. Congressional elections. This measure could result in cost savings related to consolidating all redistricting responsibilities for the State of California in one entity. The LAO estimates that these savings will probably not be significant.

Commission members would be paid \$300 per day that they are engaged in Commission related business, in addition to re-imbusement for personal expenses incurred while conducting Commission business.

## **Policy Implications:**

### ***Incumbent Advantage***

In the five California general elections held since 2000, incumbent U.S. Congressional candidates have had a reelection rate of 98.4%.<sup>8</sup> In the November 2008 general election, incumbent candidates running against majority party challengers had an average margin of victory of 38.2%.

Proponents of the Voters FIRST Act have argued that gerrymandering has allowed representatives to create such a prominent 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.<sup>9</sup>

To the extent that incumbency advantage can be attributed to gerrymandering, this measure would reduce the level of incumbency advantage currently present in U.S. Congressional elections.

### ***Accountability***

Under this measure, the responsibility for redistricting of U.S. Congressional elections would shift from elected officials who are directly accountable to voters to non-elected Commission members who are not accountable to voters, potentially decreasing the ability of voters to express their approval or disapproval of redistricting processes. However, the measure does include a provision which requires all maps created by the Commission to be subject to referendum, providing a mechanism for voters to express disapproval with the redistricting maps created by the Commission.

## **Proponents:**

- 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

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<sup>8</sup> Ibid

<sup>9</sup> Friedman and Holden, "The Rising Incumbent Reelction Rate: What's Gerrymandering Got to Do With It?", The Journal of Politics, April 2009



## Opponents:

The following people signed onto the ballot argument against Prop 20:

- Mark Murray, Californians Against Waste
- Hank Lacayo, Congress of California Seniors
- Daniel H. Lowenstein, Fair Political Practices Commission
- Carl Pope, Sierra Club
- Aubry L. Stone, California Black Chamber of Commerce

The official proponent of Prop 27, which would undo the provisions of the Voters FIRST Act, 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.<sup>10</sup>

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<sup>10</sup> State of California, Secretary of State, Cal-Access, Campaign Finance