



# William C. Velásquez Institute

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## **William C. Velasquez Institute Urges OPPOSITION of the “California Voters FIRST Initiative”**

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Dear Latino Elected Officials, Community Members, and WCVI Friends,

As a major participant of the 2001 California Redistricting process and a prominent non-partisan Latino public policy analysis organization with strong history of Voting Rights advocacy, the William C. Velasquez Institute (WCVI) urgently writes you to *oppose* the “California Voters First Initiative (CVFI).”

WCVI comes out in opposition to this ballot proposal as initiative authors California Common Cause, League of Women Voters, and Governor Arnold Schwarzenegger begin to aggressively promote their unqualified measure to Latino community groups and leaders, and city governments. Initiative authors have misrepresented neutral voting rights groups as sympathetic to the initiative.

While the California redistricting process is in dire need of reform, the CVFI is a flawed ballot measure that contains numerous suspect provisions that taken in concert prove to *not* be the answer. Full of unrealistic goals, harmful rules, and complex systems that would impede competent redistricting by commissioners and limit involvement by members of the public and experienced line drawers alike, this *regressive* initiative contains the following serious problems:

- 1) Congressional redistricting is not included, creating two systems with two distinct sets of rules; including leaving Congressional Redistricting in the hands of the same, unreformed, Legislative redistricters;
- 2) Redistricting Criteria that restrict the Voting Rights Act, place unrealistic limitations on political information, and present dangers to California’s minority communities of interest;
- 3) The Commission will not reflect California’s diversity, nor will it be fully accountable to the public;
- 4) Overly complex Commissioner Selection Process and disqualification rules will create an under-qualified body that would be extremely staff dependent for expertise, further eroding commission accountability;
- 5) Requirements for Plan Passage have difficult thresholds that risk leading to automatic Court cases;
- 6) The timeline does not start early enough and will hinder the inexperienced group of commissioners’ ability to develop a quality redistricting plan.

Below are detailed descriptions of the points listed above.

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## 1) Congressional Districts Not Included

WCVI's biggest concern is that this reform would separate the Congressional redistricting process from the rest of the statewide legislative bodies. This decision was made on a purely political basis to out of fear of a campaign challenge by the California Congressional delegation, led by House of Representatives Speaker Nancy Pelosi. While WCVI understands the political choice, this decision creates a barrier to public redistricting participation rather than remove barriers to meaningful participation.

The problems are two-fold. First, it creates two distinct systems, with two distinct sets of meetings. Groups, such as WCVI, MALDEF, and APALC who reach out to communities to educate them on redistricting would have their hands full educating them on rules of redistricting. Furthermore, it increases the difficulty of organizing and coordinating community attendance at public hearings. Communities, particularly low income, working class communities, would be hard pressed into attending two distinct sets of meetings to testify on their community of interest needs. While the proposed initiative calls for the Legislature to try to coordinate hearing schedules, there is absolutely no guarantee that this will happen. Public meetings are often very long and on weekday evenings, with long speakers lists to present testimony. Considering the burden to secure child care or schedule time away from family to attend hearings, two sets of outreach meetings are compounded by this dual track system.

Second, the CVFI creates two redistricting systems with two sets of rules. CVFI leaves Congressional Redistricting in the hands of an unreformed State Legislature. Considering Congress is where the Latino community faced the most intentional discrimination in 2001 (San Fernando Valley and San Diego), this is a major concern for community interest groups. CVFI authors will point to rules asking the State Legislature to conform to the same rules as the commission it creates, however it does still leave two different bodies for the public to appeal towards and counters their conviction that the State Legislature should not be involved in the redistricting process. Initiative authors did not include Congressional redistricting in their reform package because they feared a campaign challenge by the California Congressional Delegation. WCVI does not feel this entirely political decision is a sound basis for a bad public policy decision. Something is *not* better than nothing when it could create problems for the next century!

## 2) Redistricting Criteria Concerns.

Current law, as interpreted by the masters in 1991, help encourage the drawing of minority districts; those mandated by the VRA as well as those defined as influence districts.

For as long as redistricting reform has been debated in California, WCVI has been adamant that the Voting Rights Act be a paramount principle and that full access to information and data be available to help create the public record for Voting Rights Act (VRA) compliance. While the CVFI ranks the VRA in the proper order, the VRA language is not strong enough against protection from future VRA erosion. It is a sad fact that the VRA has seen a Court erosion in the recent years. One mechanism WCVI and the National Latino Congreso have advocated for in redistricting reform is language that interprets the VRA as in *Wilson v. Eu*; which is commonly held as the strongest VRA interpretation.

However another tool WCVI has advocated for to protect minority groups which are not sufficiently large enough to satisfy Section 2 of the Voting Rights Act are Communities of Interest (COI). While the VRA ensures that large and sufficiently compact minority communities are kept together, smaller communities are often at the mercy of line drawers. With small neighborhoods, particularly in large cities that are divided, neighborhoods are often the most at risk to be divided. This is particularly true for the African-American community, which is

dispersing throughout the State, and emerging Latino and Asian communities. The current state Constitution has been favorably interpreted in a manner to promote these minority influence seats. Any change to the Constitution, which the CVFI does represent, does risk reinterpretation of these protections and requires careful planning if it is indeed to be changed. WCVI believes the CVFI mis-ranks the respect for Communities of Interest (COI), by not ranking this criterion ahead of respect for Geographic and Political boundaries. WCVI and the National Latino Congreso Resolution specifically pick out COI and rank it ahead of respecting Political Boundaries as an extra tool for these communities to retain their influence.

Related to COI, the CVFI criteria specifically state that a COI "shall not include relationships with political parties, incumbents, or political candidates." CVFI authors include this comment as a knee jerk reaction because one tool used to defeat a MALDEF challenge to the 2001 Congressional redistricting in the San Fernando Valley were selected public testimony that residents, past and then-present, felt a COI with a positive relation with the Current Congressional Representative. However, there are serious unintended consequences to this rule. The concern here is the limitation of information for building Voting Rights cases. In many instances during public testimony, a relationship (cordial or adversarial) with a party or elected official is often a *component* of a COI's self description and an argument for why, or why not, they should be kept together AND together in (or not in) a specific district. The CVFI exclusion could limit or, worse, lead to accidental public record strikings of public testimony, thus weakening the VRA information needed to draw, and potentially litigate, VRA districts as well as influence areas where neighborhoods often describe how they vote in concert. WCVI does not support the notion of suppressing information. We certainly do not believe that political relationships are a *sole* definition of a COI, but it can be an *element*. WCVI favors language that asks line drawers to not gerrymander (pack, crack, or stack) politically cohesive communities.

Finally, another major problem with the redistricting criteria is the inclusion of nesting. Although ranked below VRA and COI, nesting is considered to be a limitation on line drawers hoping to provide maximum VRA compliance as well as draw well crafted districts throughout the state. Academic studies such as those published by the UC Berkeley Institute of Governmental Studies have shown that nesting criteria limit VRA opportunities, negate influence districts for minority communities, and minimize small COIs' ability to maximize their voice.<sup>1</sup> Further it is not practical to have "selected nesting" rules. Assuming redistricters draw VRA seats that cannot be modified, trying to nest districts near and far could be problematic. Problems such as lines may not always reasonably aligning, the forced disrespect of COIs on the Senate level could happen, you limit, and possible contiguity and compactness problems could arise. Nesting, in concert with the VRA and COI concerns above as well as the traditional rules in the craft of redistricting could prove unrealistic at best and disastrous at worst for the State Senate.

### **3) Commission Size/Diversity Questions.**

The Commission size is 14 members: 5 Democrats, 5 Republicans, and 4 Non-Republicans or Non-Democrats. Reducing the initial redistricting governing body of 120 members to 14 raises serious concerns about the ability to accurately reflect California's racial, ethnic, and geographic diversity.

Diversity is of paramount importance to the governing redistricting body, especially in the State of California. California is one of the most diverse states in the union. Without strong and fair representation by minorities on the redistricting body, many districts, particularly those that are politically cohesive, but not VRA protected, could be at risk. The 2001 process absolutely was not perfect and needs reform, but it is fair to say that Latino, African-American, and Asian representatives fought to preserve districts they represented.

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<sup>1</sup> [http://swdb.berkeley.edu/redistricting\\_research/](http://swdb.berkeley.edu/redistricting_research/)

Despite its claims, the CVFI commission does not have guaranteed diversity. It is a fact that the commission the CVFI would create will not accurately reflect California's partisan make-up, considering the state's current voter registration make-up. Latinos are currently registered 60% Democrat in the state, are left to compete with African-Americans, who are even more predominately registered Democrat, for the slotted 5 Democratic seats on the commission. Currently, Asian-Americans could prove to be small enough in Democratic, Republican, and Other registration that they may not earn a representative. The initiative's authors will point to language that speaks of encouraging commission diversity that can be found throughout the list of selection criteria, however, nothing *guarantees* it. With the complex selection process including a randomization element, it is difficult to achieve. The Latino community has worked hard under the current redistricting and VRA rules to earn its current representation. We should not have to ask our community, as well as other minorities, to give that up.

#### **4) Commissioner Criteria/Selection Process.**

There are numerous problems with the Selection Process in the proposed initiative. First, here is the general description of the Process:

- a) State Auditor establishes a Review Panel of "three qualified independent auditors" by random draw of auditors (1 Democrats, 1 Republican, 1 Non Democrat/Republican);
- b) State Auditor receives all applications, and removes those with conflicts of interest, then publishes list of all qualified applicants;
- c) Review Panel creates a pool of 60 of the "most qualified" candidates: 20 Democrats, 20 Republicans, 20 Non Democrat/Republican. The Review Panel is supposed to look for applicants "on the basis of relevant analytical skills, ability to be impartial and appreciation for California's diverse demographics and geography;"
- d) The 4 State Legislative Leaders each get to strike up to two applicants in each 20 person pool, for a possible 8 strikes per pool;
- e) From remaining pool, State Auditor gets to randomly draw 8 people: 3 Democrats, 3 Republicans, 2 Non Democrat/Republican;
- f) Initial 8 Commission Members select final 6 members from remainder pool, looking to fill geographic and diversity needs.

This complex six level system presents a series of problems in the Selection Process that will make it difficult to have a diverse applicant pool that is expert enough to conduct a proper redistricting.

First, there is no mention of Voting Rights expertise, or even *redistricting* expertise among the commissioner qualifications. This could create a Commission that is overly staff dependent. While there is language that staffs have VRA expertise, it is ultimately the commissioner's job to draw and they do not necessarily need to heed staff's recommendations, assuming the staff is qualified and experienced enough to offer quality recommendations.

Second, Commissioner qualifications include voting history requirements. Potential Commissioners must have voted in 2/3 of the last General elections. Considering the Latino percentage of the total state turnout is nowhere near representative of the Latino percentage of the State population, this could lead to diversity issues of the potential pools and panels. Furthermore, it limits the inclusion of newer Californian citizens in the

applicant pool. The Latino community has seen a large increase in citizenship this decade. Many Latinos have lived here all their lives but only recently became citizens for various reasons. This provision would unfairly limit our community's applicant pool.

Third, as stated earlier, there is no language that guarantees the three 20-person applicant pools be *diverse* and representative of the state. The language only encourages diversity.

Fourth, as stated earlier, considering that persons of color in California are overwhelmingly Democratic, there is serious concern that the final Commission could be diverse if only 5 persons are allowed to belong to the Democratic party.

Fifth, considering there are no Voting Rights or redistricting expertise requirements for commissioners, and the first 8 Commissioners have to select the final 6 members, there is a "blind leading the blind" worry in their ability to choose the most qualified Commissioners from the remainder of the pool as well as qualified staff members with proper VRA expertise.

Finally, considering there are no expertise provisions for the Commissioners at all, WCVI has grave concerns about allowing the State Auditor to have authority over the selection process. The State Auditor has never had a redistricting role. If a commission were to be created and judged, we would prefer the State Legislature or a State Court to retain or perform this role.

Related to the expertise question, there are a series of Commissioner exclusions that could limit the ability of experts to get on the panel. Commission Applicants, or members of their immediate families, may not have in the last 10 years:

- a) Have been appointed or elected officials to federal or state office;
- b) Have served as officer, employee, or paid consultant of a political party or campaign committee;
- c) Have been an elected or appointed central committee member;
- d) Have been a registered federal, state, or local lobbyist;
- e) Have been a paid congressional, legislative or Board of Equalization staff;
- f) Have contributed more than \$2,000 or more to any candidate for any state, federal, or local office in any year; and,
- g) Have been a staff member or paid consultant to a Legislative member, Governor, Congress member, or Board of Equalization member.

Redistricting is a much nuanced art of balancing a series of complex rules and competing mandates. Considering that the CVFI adds *even more* complex criteria and competing mandates than general redistricting law currently provides for, it would be *even more* imperative to have practiced and experienced line drawers as commission members.

Yet, the exclusions listed by the CVFI increase the difficulty of people with expertise to qualify. The exclusion of paid consultants could limit the number of expert persons who could be Commissioners or Commission staff members. Most experienced redistricters in the state would be disqualified by this initiative from becoming

Commissioners and staff as many either work for the state or have technical contracts with state or party officials, as many consultants are simply in the business of providing political data. Experts from outside the state are disqualified for residency and registration requirements. This leaves redistricting in the hands of a commission and staff that is unqualified, and unable to speak with other experts outside of a hearing.

And while not a traditional WCVI issue, we do question whether excluding campaign contributors might result in free speech court challenges to the process. The donation exclusionary clauses warrant more research.

### **5) Requirements for Plan Passage.**

This initiative creates a system that could encourage deadlocks, which would automatically shift the redistricting plan to the Courts. First, the commission must approve a plan with at least 9 out of 14 votes, with at least 3 Democrats, 3 Republicans, and 2 Independents. This essentially creates a super majority system which could put votes at deadlocks if one party refuses passage as a block. Further, *all* plans must be passed by these margins. Should one plan be held up, the other two would also be prevented from passage even if it attained the required votes. Finally, one could also argue by labeling the vote results by party label, it could encourage the commissioners to act with more bias than the impartiality the selection criteria is trying to encourage.

### **6) Start Date Concerns.**

The current proposed timeline is as follows:

- a) By Jan 1, 2010 - Application Process Opened;
- b) By Aug 1, 2010 - Publication of Qualified/Non-Conflicted Applicant Names;
- c) By Oct 1, 2010 - Review Panel creates 3 pools of 20 (60 names total);
- d) By Nov 15, 2010 - Leg Leaders Must Strike Desired Names;
- e) By Nov 20, 2010 - State Auditor Randomly Selects First 8 Commissioners;
- f) By Dec 31, 2010 - First 8 Commissioners Select Final 6 Commissioners;
- g) Commission Creates Own Hearing Schedule/Process. Only requirements are a set of pre-drawing hearings, and hearings after display of maps. There must be 14 days public notice from date of public display of map for a hearing;
- h) By Sept 15, 2011 - Commission must approve Final three maps.

Essentially, the Commission has only nine months to complete its plans from its first conception on January 1 to mid-September. WCVI has argued that with any redistricting process, the earlier it starts, the better. A Commission can start by mid-2010, taking care of procedural issues such as creating hearing rules, hiring staff and consultants, going about the business of making sure data and facilities are ready for the dissemination of information in the widest possible manners, practice with software, and, frankly, getting to know each other. An early start is *especially* important if there are expertise concerns. Second, this timeline does not guarantee a minimum set or rounds of hearing schedules. It only states hearings pre- and post-map drawing; two rounds. If different drafts of maps are drawn, there is no guarantee of new hearings to answer significant changes. Finally, the constraining timeframe increases the difficulty of the Commission to complete all of its mandated tasks such

as setting up publicly accessible data, reasonable hearing schedule for meaningful public comment, and creating a detailed final report. CVFI authors may argue that the commission *could* start earlier, but there is no guarantee.

## **Conclusion**

Redistricting reform is not an easy subject to tackle. Redistricting itself consists of following a series of complex rules and balancing competing legally required mandates. The 2001 California redistricting process indeed was a flawed and frustrating experience with elected officials trying to minimize public participation and promote incumbency protection plans.

However, redistricting reform is more than simply removing the Legislature's constitutional duty to redraw districts. The current process has been vetted through decades of legal evolution, including the Voting Rights Act, and already has an established set of rules. The 2001 experience, while difficult to stomach, is not enough to justify a completely radical experiment to change California's Constitution and redistricting rules for the next 100 years without deep and careful consideration. In changing the governing redistricting body from something other than the Legislature, there are serious questions of public accountability, respecting the diversity of the state's population, and the collection of expertise. Much like the current term limits have had unintended, negative consequences on the State Legislature, a poorly crafted commission could have serious repercussions for the state for decades to come.

While the authors of the initiative maybe well intentioned, they are unfortunately single-minded in their mistrust of elected officials and have either not thought out or are ignoring the consequences of their proposed initiative as most of their coalition lack serious redistricting expertise. If you question any redistricting expert or voting rights organization, we are confident many would echo concern of most or all of the problematic concepts outlined by the William C. Velasquez Institute.

WCVI hopes that by listing in detail the negative effects on the Latino community, as well as many other Californians, will give you pause in endorsing and supporting the CVFI and inform you that the CVFI is a redistricting reform far from universally accepted by voting rights advocates and experienced redistricters.

WCVI wishes to help Latinos and all Californians recognize that it is not a solution; the CVFI will cause more problems for California than it will solve.

Thank you for your time and consideration. Should you have more questions about the redistricting process or the William C. Velasquez Institute's position on the "California Voters First Initiative," please contact us at our offices at 323-222-2217 or via email at [agonzalez@wcv.org](mailto:agonzalez@wcv.org) or [sochoa@wcv.org](mailto:sochoa@wcv.org).