

Reapportionment and Redistricting in the West

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LEXINGTON BOOKS

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27. Mapes, "GOP Gains," 2010.

28. As Michael Kasper, "The Almost Rise and Not Quite Fall of the Political Gerrymander," *Northern Illinois University Law Review*, 27 (2007): 409–25 concludes: "To date, no federal court has ever upheld a claim of partisan political gerrymandering" (p. 409). His explanation is that no court, even the Supreme Court, has been able to establish a standard by which claims of political fairness can be measured. However, Chung-I Chou and Sai-Ping Li, "Taming the Gerrymander: Statistical Physics Approach to Political Redistricting Problem," *Physica A: Statistical Mechanics and its Applications*, 369 (2006): 799–808, argue that a statistical physics approach offers a quantitative and therefore more objective method of performing the redistricting process.

Chapter 11

Great Expectations and the California Citizens Redistricting Commission

Vladimir Kogan and Thad Kousser

Established through an initiative that won by the narrowest of margins in November 2008, California's Citizens Redistricting Commission represents the dreams of a diverse collection of reformers united only by their conviction that the state's post-2000 redistricting had been a nightmare. That plan, a classic incumbent gerrymander, created few competitive districts, kept some minority groups on the outskirts of the process, and did little to moderate the nation's most polarized legislature. The new commission was designed to ensure that history would not repeat itself when state¹ (and then federal)² legislative district lines were redrawn after the 2010 Census figures arrived.

While many of its proponents acknowledged that the commission could bring only modest changes to the eventual outcome of the redistricting process, its strongest boosters and most ardent supporters portrayed it as a silver bullet aimed at solving all of the vexing problems of redistricting: taking politics out of the most inherently political act that a state government performs, molding a bipartisan consensus around a bitterly polarizing issue, reserving a seat at the table for a diverse set of racial and ethnic minority groups and other loosely defined "communities of interest," and maximizing a series of redistricting criteria that are all in tension with each other. Pursuing all of these improvements at once can make each of them difficult to deliver, creating a set of great expectations that will be a constant challenge for the commission to meet.

This chapter tells the story behind the creation of the Citizens Redistricting Commission. We argue that knowing the history of redistricting in California and previous attempts to reform the process are crucial to both understanding the eventual design of the commission and the political campaign that led to its enactment.³ We begin by asking how this campaign succeeded when so many past attempts to establish independent redistricting boards for

California had failed. We then make the case that reformers' revulsion with the redistricting process at the beginning of the decade, along with their need to fashion a coalition to change it by the decade's end, influenced how they constructed the commission and campaigned for its passage. We summarize the design of the commission and the claims made by both its authors and its proponents during the November 2008 election.

These factors, in turn, put in place a set of expectations for the commission's performance that will pose a tremendous challenge. We review those hopes, speculating about which ones the commission is best positioned to fulfill and which will pose its most difficult tests. Already, the experience of selecting commissioners and hiring their support staff provide hints that realities of modern-day politics in California have begun to show how difficult it will be to keep many of the campaign's promises. We conclude by setting forth a simple framework for evaluating the performance of the commission when California's new district lines are drawn once and for all. We contrast this framework to the ways in which we predict that its performance will, in fact, be evaluated.

THE MYSTERY OF 2008: WHY DID PROP. 11 SUCCEED WHEN SO MANY PAST ATTEMPTS FAILED?

During the fall 2008 campaign season, the issue of redistricting reform was largely overshadowed by a historical presidential election and other hot-button initiatives—including a constitutional amendment to overturn a recent state court decision guaranteeing same-sex couples the right to marry. In the days after the election, however, Proposition 11, which proposed the creation of an independent redistricting commission, attracted new attention. In an electoral photo finish, the measure had eked out a tiny lead on Election Night, and the final outcome of the election remained uncertain for weeks as election officials continued to count hundreds of thousands of vote-by-mail ballots. In the final tally, the measure maintained its lead—but just barely. It won by fewer than 200,000 votes out of more than 12 million cast.

More surprising than the closeness of the vote was the fact that the measure passed at all. In the three decades leading up to 2008, California voters had considered the creation of an appointed redistricting commission on four occasions and each time decided against doing so by wide margins. These failed measures are summarized in Table 11.1. Just three years earlier, voters handed Gov. Arnold Schwarzenegger a stinging defeat by rejecting his proposal for a commission of retired judges to draw political boundaries, with the initiative losing by nearly 20 percentage points.

Table 11.1. Failed Redistricting Reform Proposals in California

| Year | Proposition | Percent | |
|------|-------------|---------|--|
| | | Yes | Proposal |
| 1982 | 14 | 45.5 | Create 10-person Districting Commission, with four members (including chairman) selected by a panel of justices from California appellate court and three members appointed by each political party. Specifies criteria for drawing districts. |
| 1984 | 39 | 44.8 | Create commission of at least 10 members, all selected by the president of the University of California through random drawing using lists of retired appellate court judges. Half of the judges would be Republican appointees and half Democratic appointees. Requires at least two other appointed nonvoting members. Specifies criteria for drawing districts. |
| 1990 | 119 | 36.2 | Create 12-person commission appointed by a panel of retired appellate court justices from list of registered voters nominated by nonprofit, nonpartisan organizations. Specifies criteria for drawing districts. |
| 2005 | 77 | 40.2 | Create three-member panel of retired federal and/or state judges combining nomination by legislative leaders and random lottery. Requires that each major party have at least one representative. Specifies criteria for drawing districts. |

Source: University of California Hastings College of the Law, *California Ballot Propositions Database*.

The unexpected success of Proposition 11 was a testament to the political acumen of its authors, who were able to bring together an unusual, diverse coalition of interests that included good-government activists, some minority-voting-rights leaders,⁴ and members of the state's rapidly shrinking Republican Party. Republicans were motivated primarily by fear of the political fate they might suffer at the hands of an entirely Democratic-controlled government at the beginning of the decade. With the likely victory of Democrat Jerry Brown in the 2010 gubernatorial election and the near-certain Democratic control of both houses of the state legislature, the Democrats would be in a strong position to devise a plan favorable to the majority party. Reformers and some members of minority communities were mobilized by their indignation over the maps drawn after the 2000 Census and their worry of a repeat a decade later.

Indeed, the 2000 redistricting plan and the outrage it engendered provided a critical talking point in the campaign for Proposition 11. After the 1998

gubernatorial election, when Pete Wilson was replaced by Gray Davis, the Democrats secured control of both the legislative and executive branch for the first time in nearly two decades. However, their ability to parlay the power created through unified control of government into political districts that favored Democratic candidates was largely constrained by the threat of direct democracy and legal challenges, two key but largely overlooked factors that have had tremendous influence in California redistricting politics since the late 1960s. A common view of the way that redistricting operated in California before the creation of the Citizens Redistricting Commission was enunciated by journalist and author Lou Cannon, writing in support of Proposition 11: "As it presently stands, California is a state where legislators choose their voters rather than the other way around."⁵ If legislators were truly in control of the redistricting process during this era, then the Democratic majority that held a firm grip on legislative power during the 2001–2002 session would have had a free hand to draw a "partisan gerrymander"—a plan that would favor their own party by delivering the maximum number of legislative seats for the next decade. Instead, the plan that legislators eventually passed was an "incumbent gerrymander"—a plan that favored current officeholders of both parties, because it contained relatively few competitive districts in which the parties were evenly matched.⁶

Why did lawmakers take this approach? They did so because legislators alone were not in control of redistricting in California before 2008; they merely began the process. A more complicated but more accurate summary of the pre-commission process is that legislators negotiated with governors to draw district lines, often under the threat of a proposition and always in the shadow of the state Supreme Court ready to step in to draw lines should the elected branches of government deadlock. In California's hybrid system of representative and direct democracy, controversial issues with high stakes frequently generate proposition campaigns and initiative threats, either one of which can be strong enough to constrain the behavior of legislators.⁷ All across the nation, the specter of courts stepping in to redraw lines if elected officials deadlock or violate voting rights laws exerts a powerful effect on the process. In some cases, legislators are directly replaced by courts and court-appointed "special masters" as the line drawers. In other cases, the courts exert an indirect effect when the threat of losing this power is enough to convince legislators to cut a deal that will benefit the party of the governor or president who appointed more of the relevant judges.⁸

In California, courts have played a direct role in drawing lines in half of the redistricting battles that occurred since the Supreme Court's "one person, one vote" decisions in the 1960s began the modern era of redistricting. In both 1970 and 1990, divided government and vetoes by Republican governors of

redistricting plans drawn up by Democratic legislatures handed the matter to the Supreme Court, which appointed "special masters" who drew the new boundaries. These masters then drew plans that, as demonstrated by both qualitative and quantitative analysis, appeared to benefit the party of the governor who had appointed a majority of Supreme Court judges. Divided government has led to deadlock over redistricting legislation in California, with the party most heavily represented in the judiciary holding the tiebreaking vote.⁹

Even when members of one party have controlled both the legislature and the governorship in California, they have not exerted unchecked power over how to draw lines. In the early 1980s, unified Democratic control was undermined by a popular referendum funded by Republicans that led to voter rejection, in the June 1982 primary, of redistricting plans drawn up by Democratic leaders. Emboldened by this victory at the ballot box, Republicans allied with the good-government group Common Cause to put forth a proposition to establish a redistricting commission on the November ballot (Proposition 14, described in Table 11.1). Yet the measure lost, leaving the state with no clear district lines during a time of partisan transition in the executive branch. Democratic legislators rushed to redraw lines, passing a compromise redistricting plan after the November election but before-lame duck Democratic Gov. Jerry Brown had left office and his Republican successor George Deukmejian had been sworn in.¹⁰ The plan was generous enough to Republicans to garner a two-thirds vote in each house, allowing it to go into effect swiftly and to avoid another referendum.¹¹ Those lines stayed in place for the decade,¹² but a clear lesson of the entire episode was that direct democracy's usage or its mere threat imposes a significant constraint on legislators when they redraw California's districts.

This contentious history—in particular the defeat of the post-1980 Democratic redistricting plan at the ballot box—provided an important backdrop as Governor Davis and Democratic leaders prepared for reapportionment after the 2000 census. With slower population growth bringing just one new congressional seat to California, any significant Democratic seat gain would need to be offset by Republican losses. However, Republicans made it clear that any plan that reduced the size of the party's congressional and legislative delegations would face legal challenges, a referendum, or both. The stalemate laid the groundwork for a bipartisan gerrymander that protected the incumbents from both parties by drawing safe districts that minimized partisan turnover. "We Republicans have an incentive to work with Democrats because we know they can do the redistricting without us," one Republican legislative leader explained. "They have an incentive to work with us because they know we can do a referendum and throw it into the court."¹³ By attracting

enough Republican votes, the Democrats could pass a redistricting plan as an “urgency” measure, exempting it from any referendum challenges.

The plan that emerged from the post-2000 redistricting was a model of bipartisan compromise. It pleased incumbents and legislative leaders from both parties—but few others. Some minority group leaders argued that the plan represented a lost opportunity to increase representation for historically excluded groups. “The Latino community feels very strongly that they have been victims of a lot of political deals and their voice has been lost,” complained Amadis Valez of the Mexican American Legal Defense and Educational Fund, which unsuccessfully challenged a portion of the plan in court.¹⁴ “We believe that the concerns for incumbency protection and having a bipartisan deal overrode giving a full opportunity to the Latino community in Los Angeles County and other ethnic communities as well,” he said in another interview.¹⁵

Not every ethnic representative felt left out of the process; indeed, the many Latino legislators who exerted great influence in the state assembly and senate received favorable districts. Asian-American representation in the assembly doubled from three seats in 2000 under the old districts to six seats under the new lines in place in 2002.¹⁶ Still, in specific geographic areas where these groups were growing the fastest, some felt that incumbents had been protected at a cost to their communities. Latino groups particularly objected to boundary changes that shifted a significant number of Latino voters out of a San Fernando Valley district north of Los Angeles represented by long-time Democratic Congressman Howard Berman. The changes, no doubt made by Berman’s brother Michael, one of the Democratic redistricting consultants, helped protect Berman from a likely Latino primary challenger.¹⁷ Asian-American groups similarly objected to portions of the plan that divided growing Asian and Pacific Islander communities in the west San Gabriel Valley. Critics complained that the legislative plan “sliced and diced” the Asian-American community, and Kathay Feng, a young Los Angeles lawyer representing the Coalition of Asian Pacific Americans for Fair Redistricting, led the charge against the gerrymander. A decade later, Feng would become the executive director of Common Cause, a major government reform group whose support would play a key role in the passage of Proposition 11.¹⁸

Even as some minority interests complained about the representational implications of the new plans, newspaper editorial boards and government reformers blasted what they saw as an outcome of a corrupt political bargain. Many observers complained that, by creating safe districts, the plan protected incumbents from political competition, weakening the democratic link between voters and their elected representative. By shifting the locus of political competition from general to primary elections, critics warned the

new district lines encouraged candidates to woo the extreme activists in their parties, exacerbating already high levels of political polarization in the state legislature.

How accurate was the claim that the post-2000 plan, by eliminating any vestige of political competition from the state legislature, made all incumbents safe, locked in one-party rule, and accelerated partisan polarization in Sacramento? Though not entirely unfounded, this complaint exaggerated the impact of new maps by attributing to them all of the effects of the demographic and political dynamics that were at work in California and the nation over this period. All three of the political changes attributed to district lines were also driven by long-term trends that show few signs of reversing themselves. In a later section of this chapter, we evaluate the conventional critique that the post-2000 plan prevented political competition, drawing lessons for the prospects that the Citizens Redistricting Commission will be able to deliver much more meaningful competition and less polarization. For now, it suffices simply to note that this critique was indeed conventional and that it brought good government activists and many newspapers into the coalition of the outraged that came together to cleanse the many sins of the post-2000 process through a new independent commission.

THE CAMPAIGN FOR PROPOSITION 11

While discontent over the redistricting plan produced after the 2000 reapportionment created significant potential support for redistricting reform, it would take the political skills of Proposition 11’s authors to activate this latent coalition in the electorate and sell the measure to voters historically distrustful of appointed redistricting commissions. Since the 1980s initiatives for appointed commissions, proposed redistricting reforms have largely—and accurately—been associated with Republican interests, limiting the broader appeal of the measures.¹⁹ By failing to provide explicit protections for the representation of ethnic and racial minority groups, the unsuccessful commission proposals did little to attract support from Latinos and Asian-Americans who may have been dissatisfied with the existing process. For example, critics assailed Gov. Schwarzenegger’s 2005 plan, which proposed giving retired judges power over redistricting, by pointing out that most of the state’s retired jurists were upper-class white men.

Proposition 11’s proponents clearly learned the lesson from the earlier campaigns. Their measure proposed to open up the process to all Californians, and its language provided for a complicated selection process for choosing redistricting commissioners that combined a rigorous review by

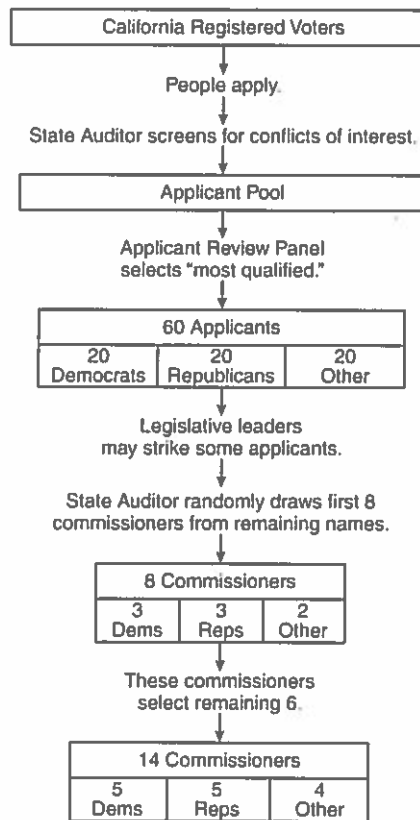


Figure 11.1. Proposition 11 Commissioner Selection Process Source: California Secretary of State, Voter Information Guide.

the respected state auditor to eliminate unqualified applicants with a random lottery (see Figure 11.1), appealing to grassroots reformers. Since it specified that all political staffers, public officials, and future candidates would be ineligible to serve, the initiative eliminated concerns that it was a political power play cooked up by political insiders. By requiring that the proposed 14-member commission include five Democrats, five Republicans, and four members unaffiliated with either major party, and specifying that the final district boundaries would need to be approved by at least three Democratic commissioners, three Republican commissioners, and three independents, the measure appeared to ensure that neither party would be advantaged in the process. In limiting the scope of the new commission to state legislative districts and the state board of equalization, leaving control over congressional redistricting in the hands of the legislature, the measure's authors also avoided a large influx of campaign money from Democratic congressional leaders who would have, no doubt, fought any proposal that involved changes

to how the congressional districts were drawn.³⁰ Finally, and perhaps most importantly, the language of Proposition 11 explicitly required that commissioners demonstrate "appreciation for California's diverse demographics and geography" and specified that the final six members of the commission would be selected explicitly "to ensure that the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity."³¹

Although the authors of Proposition 11 did not explicitly argue that the creation of a redistricting commission would inject new competition into the political process—indeed, the language of Proposition 11 actually prohibited the districts from being drawn "for the purpose of favoring or *discriminating against* an incumbent" (emphasis added)—they did little to correct the record when such arguments were made by newspaper editorials and supporters. For example, one Yes on Proposition 11 commercial explicitly made a case for the measure by implying that it would increase the competitiveness of existing legislative districts. "Let's hold politicians accountable if they don't do their job," a firefighter featured in the ad said. "If they don't do their job, Proposition 11 makes it easier to vote them out of office." A similar argument was repeated in the official voter pamphlet mailed to registered voters: "If Legislators don't have to compete to get re-elected, they have no accountability to voters. That meant they don't have to work together to solve problems like education, health care, roads, crime, and the state budget. Proposition 11 will keep politicians tuned-in to voter needs."³² The editorial board of the *San Diego Union-Tribune* argued that passage would result in political lines "in which incumbents are at risk every election if they let problems continue to fester."³³

In short, by carefully designing the proposal to address every weakness and complaint lodged against previous redistricting reform initiatives and by capitalizing on anger over the post-2000 incumbent gerrymander, the authors of Proposition 11 largely anticipated and muted the criticisms that could be levied against their proposal. The success of their electoral strategy can be assessed by comparing the voter coalition for Proposition 11 to those who had voted in favor of Proposition 77, the Arnold Schwarzenegger-backed redistricting commission initiative that appeared on the ballot three years earlier. Table 11.2 provides a summary of polling data drawn from statewide surveys carried out by the Public Policy Institute of California in October of each election year. The data suggest that Proposition 77 received its strongest support from Republican voters, with only one in five Democrats reporting that they planned to vote for the measure in a survey done a month before the 2005 election. By contrast the two parties were almost evenly divided on Proposition 11 in 2008—even though financial support for the initiative came almost exclusively from Republican donors.³⁴ Although the Democratic

Table 11.2. Public Opinion on Redistricting Reform

| | Prop. 77 (2005) | | | Prop. 11 (2008) | | |
|--------------|-----------------|-----|------------|-----------------|-----|------------|
| | Yes | No | Don't Know | Yes | No | Don't Know |
| Democrats | 18% | 63% | 19% | 37% | 35% | 27% |
| Republicans | 56% | 28% | 16% | 47% | 28% | 26% |
| Independents | 31% | 52% | 17% | 41% | 30% | 29% |
| White | 36% | 48% | 16% | 42% | 28% | 29% |
| Asian | 35% | 44% | 22% | 33% | 39% | 28% |
| Black | 24% | 54% | 23% | 28% | 41% | 31% |
| Latino | 23% | 42% | 37% | 21% | 22% | 57% |

Source: Public Policy Institute of California Statewide Surveys.

Party had taken an official position against the measure, Proposition 11 proponents attracted endorsements from high-profile Democrats such as former governor Gray Davis and several other prominent elected officials. In addition, although minority voters came out sharply against Proposition 77, their opinions remained evenly divided on Proposition 11. Across all groups, voters remained far more uncertain about the 2008 measure than they had been about Proposition 77 three years earlier.

WHICH EXPECTATIONS WILL BE DIFFICULT TO MEET?

To satisfy the varied interests included in their big-tent coalition, supporters of Proposition 11 promised that the reform would deliver a variety of political and practical benefits. Some of these promises were actually written into the wording of the measure. For example, the initiative added new language into the state constitution laying out explicit criteria the citizen commission would use to draw lines, in order of priority. First and foremost, these required the commission to comply with the federal Constitution by drawing equally sized districts and to abide by the requirements of the federal Voting Rights Act. In addition, the language stated that the districts would be geographically contiguous; would respect the “geographic integrity” of existing local governments, neighborhoods, and “communities of interest”; and be drawn to maximize geographic compactness.

Despite their importance, these formal requirements rarely appeared in the ads and campaign materials created by the measures’ supporters. In the voter pamphlet, the Proposition 11 authors stressed that the lines would be

drawn by independent citizens rather than politicians, creating “fair districts that truly respect California’s communities and neighborhoods for the first time.”²⁵ Endorsements by newspapers stressed that the commission would use objective standards, rather than subjective political considerations. Tony Quinn, a veteran political observer and former Republican operative, predicted that the passage of Proposition 11 “will create more competitive districts for the next decade and will require both parties to run more candidates who can win in politically marginal territory.”²⁶

In some cases, however, the soothing campaign rhetoric appeared to conflict with the formal language written into the measure. In others, the promises appeared to rest on reformers’ belief that an appointed commission would, due to the political virginity of its members, be inclined to put the best interests of the state against their personal and partisan loyalties. These beliefs were quickly tested as the commission began its work. In this section, we review the early challenges to meeting the promises made to voters by Proposition 11 supporters that emerged in the 30 months since the measure’s passage.

An Apolitical Commission?

The hope that a commission of citizens would be insulated from the rough and tumble of daily politics largely ignored the reality that drawing boundaries is inherently a political process, implicating the representational goals and values about which reasonable people can disagree. Although Proposition 11 delegated the task to a commission, the fact that individuals had to apply to serve—a comparatively costly effort that required the completion of a series of essays and the submission of letters of recommendation—naturally resulted in a pool of applicants far more knowledgeable, sophisticated, and political than the average California voter. Although none of the individuals eventually picked for the commissions could be described as partisan activists, several had strong views on the redistricting process and had been active in the area.

The first major political test for the commission came in early 2011, when it was scheduled to hire two consultants—a law firm to advise the commission on relevant voting rights requirements, and a technical team to help the commission draw the maps. Naturally, because redistricting in California had long been a partisan affair, nearly all of the top consultants in the state had a history of partisan ties. Having to choose among competing firms with dramatically different partisan reputations created a source of significant political controversy for the commission. The requirements for an extraordinary majority—three votes from each major party and from the

nonpartisan delegation were required to select each consultant—did little to mute controversy.

In late March, the commission took up the task of hiring its legal advisor. Although a number of firms had submitted bids, the commission identified two contenders as finalists, and each struggled to overcome a reputation developed through previous work with partisan actors. Democrats and nonpartisan members objected to the hiring of Nielsen Marksamer because the firm was a registered lobbyist in the state and had strong ties to the Republican Party. By contrast, Republicans raised concerns about the other main competitor, Gibson, Dunn & Crutcher, whose lawyers had a record of donating to Democratic candidates and had led the legal battle to overturn the state's ban on same-sex marriage.²⁷

At the end, the commission voted 11–3 to hire Gibson, Dunn & Crutcher. However, all three dissenting votes came from Republican members of the commission, leaving too few Republican supporters to meet the voting threshold required by Proposition 11. The deadlock highlighted the crucial weakness of the initiative—although it required bipartisan approval for most major commission decisions, it did not specify what would happen if such approval failed to materialize. Fortunately, the immediate crisis was averted when Nielsen Marksamer announced that it was withdrawing its bid, clearing the way for the selection of the firm favored by Democratic and nonpartisan commissioners.

Similar partisan bickering surrounded the choice of a technical consultant to be hired to assist the commission with drawing the political boundaries. Only two organizations submitted bids, and again, each had a prominent reputation for working with partisans. One proposal came from the Rose Institute of State and Local Government at Claremont McKenna College, a research outfit founded by Republican donors in the 1970s to set up a computerized redistricting center.²⁸ The other came from Q2 Data and Research, run by UC Berkeley demographer Karin Mac Donald. Although Mac Donald, a registered independent, was widely respected for her work running Berkeley's Statewide Database, a collection of demographic maps and data available to the public, her firm was co-owned by Bruce Cain, a prominent Berkeley political science professor despised by many Republicans for his role in helping Democrats draw up the 1980 redistricting plan.

When the commission moved to disqualify the Rose Institute because its hastily prepared proposal failed to disclose potential conflicts of interest among its staff, the partisan divisions on the commission were again laid bare. As before, three of the five Republican members voted against throwing out the bid. By contrast, the Democratic and nonpartisan members were strongly in favor of doing so. Because the special majority requirement did not apply to the vote, Republican support was not enough to salvage the Rose Institute bid. With Q2 left as the only bidder, the commission voted unanimously to hire Mac Donald.

Table 11.3. Contentious Commission Votes

| | Party | Motion to hire Gibson, Dunn & Crutcher as legal consultant | Motion to disqualify bid from Rose Institute |
|------------------------|----------------------------|--|--|
| Connie Galambos Malloy | Decline to State/ Other | Yes | Yes |
| M. Andre Parevnu | Decline to State/ Other | Yes | Yes |
| Michelle R. DiGuilio | Decline to State/ Other | Yes | Yes |
| Stanley Forbes | Decline to State/ Other | Yes | Yes |
| Angelo Ancheta | Democrat | Yes | Yes |
| Cynthia Dai | Democrat | Yes | Yes |
| Gabino Aguirre | Democrat | Yes | Yes |
| Jeanne Raya | Democrat | Yes | No |
| Maria Blanco | Democrat | Yes | Yes |
| Jodie Filkins Webber | Republican | No | No |
| Libert "Gil" R. Ontai | Republican | Yes | Absent |
| Michael Ward | Republican | No | No |
| Peter Yao | Republican | No | No |
| Vincent Barabba | Republican | Yes | Yes |

For Republican observers, the two contentious votes, presented in Table 11.3, were evidence that the commission had been polluted by politics. In commentary published on a prominent conservative website, the respected Republican analyst Tony Quinn charged that the Citizens Redistricting Commission "has now descended into a cesspool of corruption, and the promise of fair new districts has been compromised by brutal politics instigated by the commission itself."²⁹ Although Republicans had been satisfied enough with the commissioner selection process to endorse a November 2010 initiative expanding the scope of the commission's work to cover congressional districts, Quinn now argued that the state auditor had compromised the process by disqualifying conservatives, leaving Republican commissioners too moderate and weak to take on the Democratic partisans on the commission. Widely read *Sacramento Bee* columnist Dan Walters agreed that the commission was beginning to show "true colors of ideology," noting that the nonaligned, independent commissioners had a "liberal bent."³⁰ Although

many good government reformers continued to defend the commission, the two early votes revealed that their early hopes for a citizen commission that could take political considerations out of inherently political decisions had already been tempered.

Balancing Criteria

The second serious challenge facing the commission will involve balancing the objective redistricting criteria added into the state constitution by Proposition 11 with the strong desire of some of its supporters that redistricting reform inject new competition into the political process. The central problem is that many of the required criteria—especially those dealing with adherence to existing political boundaries and geographic compactness—actually make drawing competitive districts more difficult.

The tension between the formal criteria and competitiveness is the result of what political scientists call “partisan sorting”—the natural tendency of people to live with those similar to themselves. As one recent study of redistricting reform in California has noted, “California’s political geography is such that Democrats predominate in many urban areas and Republicans in suburban and rural areas. When city and county boundaries are kept intact, the consequence is a baseline of non-competitiveness in most areas.”³¹

The political reality of residential sorting can be made clear by examining the results from the 2008 presidential election in California. In Figure 11.2 below, the solid black line plots the distribution of the vote share that President Obama won in each assembly district. The distribution is bimodal—in most districts, either Obama won a sizeable majority of the votes or lost by a significant margin, with few areas where the election was truly close—confirming that the post-2000 redistricting produced political boundaries highly favorable to political incumbents. What is surprising, however, is the distribution of Obama’s vote share within California’s incorporated cities, represented by the dashed black line in Figure 11.2. Although a greater share of cities were competitive than assembly districts, a close vote was still relatively rare. As was the case among the assembly districts, the outcome of the presidential election in most cities was also highly bimodal. Simply drawing political districts based on pre-existing municipal boundaries, as is required by the Proposition 11, would, in other words, produce few additional competitive elections,³² one of the primary arguments made in favor of the measure.

Although residential patterns alone will result in the creation of mostly lopsided districts, efforts to increase minority incorporation and comply with the Voting Rights Act will further limit the commission’s ability to create more competition. The creation of majority-minority districts, where minority

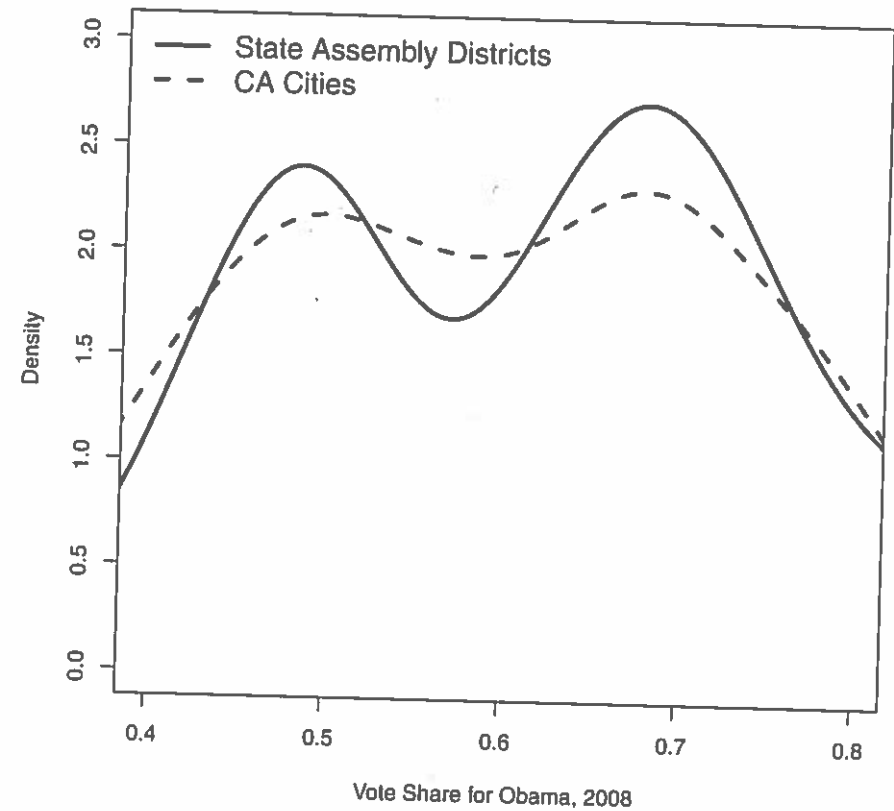


Figure 11.2. Residential Sorting in California *Source:* California Secretary of State, Statement of the Vote.

voters have the greatest ability to elect representatives of their choosing, almost always entails drawing districts where the Democratic Party has an overwhelming majority—because most minority voters are Democrats, as are many whites or members of other minority groups who live among them.³³

Redistricting by Consensus?

One of the primary attractions of Proposition 11 for many voters was the idea that, for the first time, regular people rather than elected officials would get to write the rules of the political game. The requirement that commissioners of all political persuasion—members of both major parties and independents—sign off on the final plan was also promoted by the measure’s proponents as a guarantee that the reapportionment plan drawn by the commission would

not tilt that playing field to favor any political party. The same super-majority rule, however, also increases the chance that the courts, rather than the commission, may get the final say.

The early skirmishing about the hiring of commission staff raises worries that the commissioners' partisan loyalties will color their views about the redistricting process. Having failed to garner the necessary votes for the rather mundane task of hiring a legal counsel, it remains far from clear that the commission will be able to reach consensus on far weightier questions and agree on a final set of maps. What would happen if the commission plan did not receive majority support from each partisan delegation remains far from clear—with Proposition 11 requiring the State Supreme Court to appoint a panel of special masters to draw the districts as in the 1970 and 1990 redistricting cycles. Anticipating this possibility, and realizing that Republican appointees currently make up a significant majority of the state supreme court, Democratic members of the commission will face strong incentive to compromise to reach the necessary vote threshold. (For the same reason, Republican commissioners may prefer to hold out, since doing so would hand the matter to a court and special masters who might who might draw maps sympathetic to the concerns of Republican groups.)

In addition to anticipating the possibility of deadlock, the commissioners will also likely face significant pressure from outside groups, who may use the threat of a referendum on the final maps to extract favorable concessions. In San Diego, for example, such threats proved incredibly powerful during the city's redistricting process after the 2000 Census, where the city's appointed redistricting commission responded to demands from homeless advocates to change the maps in the face of threats of a direct democracy campaign to overturn its final boundaries.³⁴ Together, the possibility of court intervention and referendum will serve as a powerful gun behind the door, introducing strategic political considerations into the redistricting process that the new commission process has promised to avoid. Although the Citizens Redistricting Commission will get the first shot at drawing the maps, it is far from clear that it will have the last word.

WHICH EXPECTATIONS WILL BE EASIER TO MEET?

The challenges presented by high expectations do not mean that redistricting carried out by an independent redistricting commission will mean business as usual in California. Indeed, the process of selecting the commissioners and the early months of its deliberations suggest that the new process presents a dramatic break with the past, creating new opportunities for citizen participation and the previously excluded voices.

ENHANCING MINORITY REPRESENTATION

The promise that redistricting reform would increase the voices of California's minority populations were quickly tested as the process laid out in Proposition 11 began to take shape. Although the state auditor worked closely with grassroots groups to encourage individuals from all walks of life to apply for a seat on the commission, the initial pool of applicants heavily underrepresented racial and ethnic minorities. Of the 4,500 individuals who completed an application in early 2010, more than 70 percent were white. Latinos were by far the most underrepresented, making up more than a third of the state's population but fewer than one in ten applicants.³⁵

The initial review by state auditors, who were tasked by Proposition 11 with examining potential conflicts of interest and identifying whether individual applicants met the qualifications required by the ballot measure, did not dramatically correct the imbalance. By June 2010, the auditors had narrowed the pool to 314 applicants. Whites made up more than 60 percent of the remaining individuals, with Latinos still heavily underrepresented. With more than three-quarters of all applicants reporting an annual income of above \$75,000, the remaining pool was also significantly more affluent than the California population.³⁶

By August, in the face of significant media scrutiny and early rumblings of criticism, the numbers began to change dramatically. As the auditors worked to identify the finalists, they may have paid close attention to the requirements that applicants demonstrate an "appreciation for California's diverse demographics and geography," because the demographic profile of the applicant pool changed dramatically at this stage. Among the 60 finalists, the proportion of whites dropped to less than one third, with significant increases in representation for blacks, Latinos, and Asian-Americans.

The 14 commissioners selected to serve on the commission represented a further improvement in minority representation, as can be seen from Table 11.4. Overall, whites accounted for less than a fifth of the commissioners, with Asian-Americans, blacks, and Latinos collectively making up nearly three-quarters of the commission. For the first time in California history, these groups would lead the process of designing political districts that would determine the nature and quality of political representation in the state.

However, despite winning a greater seat at the table for the 2010 round of redistricting, minority groups will also face new challenges to translating their newfound influence into political representation. One such challenge concerns changes to the census, which will make it more difficult for demographers to estimate the size of the eligible, voting-age population, especially for fast-growing minority groups like Latinos. Through 2000, estimates of

Table 11.4. Demographic Evolution of Commissioner Selection Process

| | Completed Applications | First Round of Review | Second Round of Review | Finalists | Selected Commissioners |
|------------------------|------------------------|-----------------------|------------------------|-----------|------------------------|
| Asian/Pacific Islander | 5% | 9% | 9% | 18% | 36% |
| Black | 10% | 9% | 9% | 13% | 14% |
| Latino | 9% | 10% | 14% | 28% | 21% |
| White | 72% | 68% | 62% | 33% | 21% |
| Other | 4% | 4% | 6% | 8% | 7% |
| TOTAL | 4,547 | 622 | 314 | 60 | 14 |

Source: Applicant Review Panel; authors' calculations.

the citizen voting-age population (CVAP) were constructed by combining demographic data from the regular census with citizenship data from the census "long form," a more extensive questionnaire sent to 15 percent of the country's households. Over the past decade, however, the long form has been replaced with the annual American Community Survey, which, due to a smaller sample size and the need to pool data across years, results in far less precise estimates of the number of eligible voters for various ethnic subgroups.³⁷

Creating More Competitive Districts

While we have noted that partisan sorting in the population and the need to meet redistricting criteria that are in tension with competition will limit the number of closely matched districts that the commission can create, a saving grace is that commissioners will be hard-pressed to draw maps that deliver less competition than the ones that they replace. Indeed, the lack of competition was a prime complaint about the post-2000 plan. As we have noted, a conventional critique claimed that the plan made all incumbents safe, preventing partisan shifts in the legislature as a whole and accelerating partisan polarization in Sacramento. Evaluating all three interwoven claims reveals that long-term trends, along with aspects of the post-2000 plan, are to blame for the scarcity of competition over the past decade. If these trends continue to operate in California, the new lines drawn by the Citizens Redistricting Commission will help, although they will not bring the radical changes in political competition and partisan polarization for which many of its proponents hope.

The complaint lodged against the post-2000 plans holds that political competition at the district level has radically declined in California, with new district lines to blame. Indeed, the number of closely competitive "swing" districts in California—as predicted by the Republican versus Democratic registration balance of their residents—has been historically small since 2002. One measure, built on the recognition that Democratic registrants traditionally turn out at lower rates than Republicans in California and exhibit less loyalty to their party, identifies a swing district as one where the Democratic registration advantage is zero to 10 percentage points or the Republican advantage is zero to three points. By this measure, only five out of 80 assembly seats were competitive in the post-2000 plan.³⁸ The bipartisan gerrymander deserves much of the blame (or credit, depending on one's perspective)³⁹ for this lack of close competition, but so does the process of residential segregation that has occurred in recent decades in California. Working from California's current political geography, one study has drawn many simulated district lines to ask just how many close seats could be created in the state. Plans that balanced the desire to create competition with the sorts of legal constraints that bind the mapmakers generated, on average, 15 competitive assembly seats.⁴⁰ This shows that, while there is clear room for improvement in district-level competition, no plan can fill a chamber of the legislature with swing seats.

The second contention of the post-2000 critique is that, by creating few close districts, the reapportionment plan prevented significant partisan turnover among those elected in each district. Indeed, throughout most of the 2000s (at least, prior to the passage of Proposition 11), the Democratic seat share in the state assembly was quite stable. By contrast, the 1990s had seen large fluctuations in the shares of seats in the legislature held by the two major parties, with the Republicans taking control of its lower house in 1994 and Democrats retaking more and more seats in the next two elections. While some argued that these political transitions were a sign that the post-1990 plan allowed for greater responsiveness to changes in voter sentiment, Figure 11.3 shows that seats shares shifted in the 1990s simply because voters in that decade were more likely to change their minds. It charts election-to-election changes in the share of assembly seats held by Democrats along with fluctuations in the share of the major-party vote won by all Democratic assembly candidates, totaled across all districts.⁴¹ When the Democratic vote share plunged by five percentage points during the "Gingrich Revolution" in 1994, the party's seat share declined along with it. Seat shares followed the Democrats' electoral uptick in the next two elections. The primary reason for why seat shares remained constant from 2002 to 2006, Figure 11.3 demonstrates, is that the party's aggregate vote share remained largely constant. When it

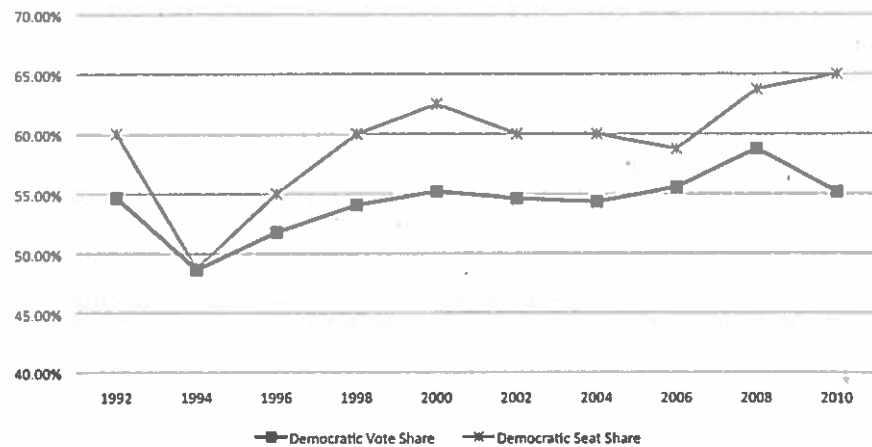


Figure 11.3. Democratic Party Seat and Vote Shares, 1992–2010 Source: California Secretary of State, *Statement of the Vote*, various editions; Census Bureau, *Statistical Abstract of the United States*, various editions.

rose with Obama's California landslide in 2008, so did the Democratic seat share in the assembly, indicating that the post-2000 redistricting plan was responsive to changes in voter sentiment. The only puzzle here is that in 2010, when Republican assembly candidates performed better than usual, Democrats actually gained one seat.⁴² On the whole, though, the post-2000 plan shows nearly as much responsiveness to shifting voter preferences, when such shifts occurred, as the post-1990 plan. The new districts drawn by the commission, this analysis suggests, will only produce meaningful changes in seat share if the next decade features significant changes in voter preferences and behavior.

Finally, the third charge made about the post-2000 plan is that safe districts freed legislators to act as ideologues, heightening partisan polarization. Indeed, a recent study linking roll call voting patterns and candidate surveys across the country finds that California's legislature holds the ignoble title of the nation's most polarized body.⁴³ Yet rising polarization is nothing new for California and does not set it apart from the national trend evident in Congress. One analysis of roll call voting on the floor of the state assembly shows that polarization—the breadth of the ideological gap between the average Democratic and the average Republican in the legislature—has been widening consistently since the 1960s.⁴⁴ The new district lines in place for the 2002 election did not accelerate this trend. Instead, California's growing legislative polarization has largely tracked similar development in Congress over this period, and an analysis at the federal level finds no evidence that

gerrymandering is to blame for that rise in polarization.⁴⁵ The broadening gap between the two parties is a result of larger societal and political forces other than redistricting, and it appears unlikely that any new set of district lines will be able to reverse this trend.

THE PEOPLE'S REDISTRICTING

Although Proposition 11 may not have a significant impact on the nature of the maps produced by the reapportionment process, it has certainly transformed the way redistricting is done in California, opening up the process to public scrutiny and participation as never before. Unlike redistricting done by the legislature behind closed doors, the Citizens Redistricting Commission will deliberate in public and solicit significant public testimony. In anticipation of the process, the commission has divided the state into nine regions and has scheduled at least one public hearing in each region. In the month of April 2011 alone, the commission held 11 public hearings up and down the state.

The commission's work has also been supplemented by significant interest from the philanthropic community, which has provided large sums of money to mobilize historically underrepresented communities and help empower regular voters in the process. One of the most significant efforts, funded by the Irvine Foundation, has led to the creation of six regional redistricting assistance sites across the state, where technical staff will be on hand to provide individuals with access to census data, train them in the use of the redistricting process, and provide assistance in creating maps that can be presented to the commission. Presumably, this investment reflects the foundation's calculation that public meetings will matter this decade much more than they have in the past. Legislative committees did hold hearings and take public testimony in earlier decades, but it was never clear that this public input significantly shaped their final products. With the new commission has come a renewed hope that, when community groups testify that some area contains a "community of interest," when local officials plead the case for placing their cities or counties all within a single district, and when private citizens bring in the maps they have drawn themselves at the Fresno redistricting assistance site, they will be heard.⁴⁶

CONCLUSION: HOW TO EVALUATE THE PERFORMANCE OF THE COMMISSION

When the commission's work is complete and new sets of lines have been drawn by its members—or perhaps by court-appointed special masters or

through an initiative—how will its performance be judged? We conclude by outlining three ways to evaluate the commission, beginning with how we think it *should* be judged, and then predicting how we think it in fact *will* be judged by distinct sets of observers.

Scholars generally evaluate new institutions like the commission by posing a counterfactual: how well did things work, compared to what would have happened under the old rules? How did the new process perform in the post-2010 cycle, compared to the redistricting outcomes that we could have expected if Proposition 11 had instead narrowly failed, leaving elected officials in charge of the initial phase of redistricting? Given Democratic ambitions to pick up seats in a closely contested U.S. House of Representatives and to maximize the chances of obtaining two-thirds control of the state assembly and senate, legislative leaders and Gov. Brown would likely have reached quick agreement on a partisan, rather than a bipartisan, gerrymander. This plan would look wholly different from the post-2000 plan, with many more competitive seats designed to give Democrats the chance to conquer new political territory. Democrats would likely attempt to draw lines biased in favor of their party, but the extent of this bias—which would come from efficiently spreading out their party's voters while packing Republicans together—would be limited by the Voting Rights Act provisions that effectively mandate packing many Democrats into seats where minority voters can influence outcomes. Republicans, in a battle for their political lives and for the policy influence that comes from holding one-third of the legislature, would fight an all-out war. They would likely qualify referendums on the plans, as they did in 1982, although victory at the ballot box would be less assured. The process would be contentious and drawn out, but the final product would probably feature more competitive districts than in the 2000s and would reflect the desires of the many minority legislators who hold sway in Sacramento's Democratic caucuses.

Of course, others are free to make different predictions about what might happen if the commission had not been created. In our view, though, the approach of comparing the commission's product to this sort of "What if?" scenario is a reasonable way to judge its work. We do not expect that most observers will, in fact, take this approach. Proponents of the commission will most likely want to judge it against the outcome of the post-2000 process. Even if this year's process does not operate as smoothly as they hope, their saving grace is that it will be hard to do worse than last decade's process in its transparency and the levels of competition that it produced. Yet the state's broader population may take a third approach to judging the commission. Voters who supported Proposition 11—and who, if California political history tells us anything about the future, may be asked to decide yet again the

high-stakes question of who should draw the state's lines—will likely judge the outcomes of redistricting under the commission against the promises made in the campaign for its creation. In this analysis, the great expectations that a diverse collection of reformers has tied to the Citizens Redistricting Commission may prove its greatest burden.

NOTES

1. Proposition 11, which passed by a 50.9 percent-49.1 percent margin in the November 2008 election, created the Citizens Redistricting Commission and gave it the authority to redraw lines for state senate, assembly, and board of equalization districts. California Secretary of State, *November 4, 2008 General Election—Statement of Vote* (Sacramento, CA, 2008). This proposition did not, however, transfer to the commission authority over drawing the lines for congressional districts within California, leaving that power in the hands of state legislators. The presumable rationale behind this limited approach was that since many other states allowed their legislatures to redraw congressional districts, taking this power away from the Democrats who controlled California's legislature might have a partisan impact that was not balanced by parallel reforms in Republican-controlled states.
2. Proposition 20, which passed by a 61.3 percent-38.7 percent margin in the November 2010 election, added the authority to redraw congressional district lines to the newly created commission's mandate. On the same ballot, Proposition 27, which would have eliminated the commission before it ever met, was defeated by a 41.5percent-59.5percent margin. California Secretary of State, *November 2, 2010 General Election—Statement of Vote* (Sacramento, CA, 2010).
3. J. Morgan Kousser, "Reapportionment Wars: Party, Race, and Redistricting in California, 1971–1992," in *Race and Redistricting in the 1990s*, ed. Bernard Grofman, (New York: Agathon Press, 1998), 134–190; J. Morgan Kousser, "Redistricting: California, 1971–2001," in *Governing California: Politics, Government and Public Policy in the Golden State*, eds. Gerald C. Lubenow and Bruce E. Cain, (Berkeley: Institute of Governmental Studies Press, 1997), 137–155; T. Anthony Quinn, "California," in *Reapportionment Politics: The History of Redistricting in the 50 States*, eds. Leory Hardy, Alan Heslop, and Stuart Anderson, (Beverly Hills: Sage Publications, 1981), 53–57; Richard Santillan, *California Reapportionment and the Chicano Community: An Historical Overview, 1960–1980* (Claremont: Rose Institute of State and Local Government, 1980); David Lester Wilkening, *Political History of California Legislative Reapportionment, 1849–1977*, (Master's thesis, California State University, Sacramento, 1997).
4. The California State Conference of the NAACP came out in support of Proposition 11, while other major Latino and black organizations opposed it. The measure, however, received favorable endorsements from several prominent minority leaders.
5. Lou Cannon, "California Dreaming," *StateNet Capitol Journal*, Vol. 16 No. 22, July 21, 2008.

6. For a discussion of the difference between partisan and pro-incumbent gerrymanders, see Bruce E. Cain, "Assessing the Partisan Effects of Redistricting," *American Political Science Review* 79 (1985): 320–33.

7. Elizabeth Garrett, "Hybrid Democracy," *George Washington Law Journal* 72 (2005): 1096–1130; Elisabeth R. Gerber, "Legislative Response to the Threat of Popular Initiatives," *American Journal of Political Science* 40 (1996): 99–128.

8. Gary W. Cox and Jonathan N. Katz, *Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution* (Cambridge: Cambridge University Press, 2002).

9. Kousser, "Redistricting: California, 1971–2001"; J. Morgan Kousser, "Estimating the Partisan Consequences of Redistricting Plans—Simply," *Legislative Studies Quarterly* 21 (1996): 521–41.

10. The Jerry Brown who won the 2010 gubernatorial election was the same Jerry Brown who finished his second term as governor in 1982. Because term limits for the governor's office were not instituted until 1990, Brown was eligible to run again in 2010.

11. Kousser, "Redistricting: California, 1971–2001."

12. Even after this late-1982 maneuver, California's redistricting wars of the 1980s were not over. Republican assemblyman and winery owner Don Sebastiani funded an initiative to draw new plans in 1983, but the measure was thrown out by the state supreme court on the grounds that it violated the state constitution's requirement that redistricting occur once a decade. In the November 1984 election, Gov. Deukmejian pushed another initiative to create an independent commission, which was defeated, as was Proposition 119 in 1990; Kousser, "Redistricting: California, 1971–2001."

13. Carl Ingram, "Democrats Have Luck of Draw in Redistricting," *Los Angeles Times*, Aug. 19, 2001, B7.

14. Carl Ingram, "Davis Oks Redistricting that Keeps Status Quo," *Los Angeles Times*, Sept. 28, 2001, B2; Despite its displeasure with the 2000 plan, MALDEF opposed Proposition 11.

15. Carl Ingram, "Plan to Redraw Districts Passes," *Los Angeles Times*, Sept. 14, 2001, B6.

16. Bruce E. Cain and Thad Kousser, *Adapting to Term Limits: Recent Experiences and New Directions* (San Francisco: Public Policy Institute of California, 2004).

17. Kenneth Reich, "Latino Group Sues Over Redistricting," *Los Angeles Times*, Oct. 2, 2001, B1.

18. Carl Ingram, "Revised Districts Hinder Minorities," *Los Angeles Times*, Sept. 6, 2001, B8.

19. Kousser, "Reapportionment Wars: Party, Race, and Redistricting in California, 1971–1992"; Kousser, "Redistricting: California, 1971–2001."

20. As we note in note 2, the commission's jurisdiction was expanded to include congressional districts in the November 2010 election.

21. California Secretary of State, *Official Voter Information Guide: California General Election Tuesday, November 4, 2008*.

22. California Secretary of State, *Voter Information Guide*.

23. *San Diego Union-Tribune*, "Redistricting Fix Would Spur Other Reforms," Sept. 11, 2008, www.signonsandiego.com/uniontrib/20080911/news_lz1ed11top.html.

24. Jim Sanders, "Prop. 11 Gets GOP Money Push," *Sacramento Bee*, Nov. 3, 2008, A3.

25. California Secretary of State, *Voter Information Guide*.

26. Tony Quinn, "Proposition 11—What Will It Do?" *California Journal of Politics & Policy* 1 (2009).

27. Lisa Vorderbrueggen, "Lawyer's Connections Put Contract on Hold," *San Jose Mercury News*, March 29, 2011; Tony Quinn, "Inspector Clouseau Would Feel Right at Home at the Redistricting Commission," *Capital Weekly*, April 7, 2011.

28. Kousser, "Reapportionment Wars: Party, Race, and Redistricting in California, 1971–1992."

29. Tony Quinn, "Corrupting the Redistricting Commission," *Fox & Hounds Daily*, March 22, 2011, foxandhoundsdaily.com/blog/tony-quinn/8774-corrupting-redistricting-commission.

30. Dan Walters, "Redistricting Panel Shows True Colors of Ideology," *Sacramento Bee*, March 25, 2011.

31. Bruce E. Cain, Karin Mac Donald and Iris Hui, *Competition and Redistricting in California: Lesson for Reform* (Berkeley: Institute of Governmental Studies, 2006).

32. One provision required in the commission's design that will likely lead to a sharp increase in competitiveness, at least in the short run, requires that commissions may not consider the addresses of incumbent officeholders when they draw lines. In crowded urban areas, this will inevitably lead some of the new districts to contain multiple incumbents and leave others as open seats with no prior officeholder in 2012. Because open seats typically lead to closer races, this may cause political competition to spike in 2012, but decline again in 2014 and future years as each new district gains a new incumbent.

33. Kevin Hill, "Does the Creation of Majority Black Districts Aid Republicans?" *Journal of Politics* 57 (1995): 384–401.

34. Vladimir Kogan, "The Politics of San Diego Redistricting," *Voice of San Diego*, Oct. 11, 2010, www.voiceofsandiego.org/peoplespost/vkogan/article_82e22f56-d3f1-11df-ae1d-0019bb2963f4.html.

35. Aside from purely demographic differences, other evidence pointed to the fact that the applicants were not a random sample of the California electorate. For example, one panel on California politics held at the 2010 Western Political Association Meeting included two political science professors and one political science graduate student who had applied to serve on the commission. Had the applicants comprised a random sample of the commission, the probability of three applicants turning up in the sample place at the same time would be virtually zero. Many candidates were unusual in other ways. One, for example, was a member of the International Cat Association, and her letters of recommendations highlighted her commitment to representing the interests of cat owners.; Vladimir Kogan, "How We Draw Our Lines," *Voice of San Diego*, April 20, 2010.

36. Dan Walters, "Redistricting Pool Mostly Affluent White Male Democrats," *Sacramento Bee*, June 22, 2010, blogs.sacbee.com/capitolalert/latest/2010/06/redistricting-pool-mostly-affl.html.

37. Jorge Chapa, "Estimating Citizen Voting Age Population by Race/Ethnicity for 2010 Redistricting," working paper.

38. Bruce E. Cain, Karin Mac Donald and Iris Hui, "Sorting or Self-Sorting: Competition and Redistricting in California," in *New Political Geography of California*, eds. Frederick Douzet, Thad Kousser, and Kenneth P. Miller (Berkeley: Institute of Governmental Studies Press, 2008).

39. Justin Buchler, "Competition, Representation and Redistricting: The Case Against Competitive Congressional Districts," *Journal of Theoretical Politics* 17 (2005): 431-63; David Butler and Bruce E. Cain, *Congressional Redistricting: Comparative and Theoretical Perspectives* (New York: Macmillan, 1992).

40. Cain, Mac Donald, and Hui, "Sorting or Self-Sorting: Competition and Redistricting in California."

41. In nearly every year in Figure 11.3, Democratic seat shares exceed Democratic vote shares. This is due to the fact the seats held by Democratic legislators typically contain far fewer voters than the seats won by Republicans (but equal numbers of residents, in keeping with the one person, one vote doctrine). Consider, for instance, the Forty-Sixth Assembly District, located in East LA, and represented by Democrat John Perez. It had a total of 60,736 voters casting ballots in the 2008 General Election. By contrast, the Second Assembly District, represented by Republican Jim Neilsen, saw 180,659 voters turn out in the same election. Although not every Republican district has three times as many voters in it as every Democratic district, there is a clear difference in turnout (driven both by eligibility to vote and the factors that predict the turnout of those who are eligible to vote) across these two sorts of districts. This in turn means that Democrats win seats by smaller absolute margins, making their seat share exceed their overall vote share simply because their constituencies turn out at lower rates.

42. A possible explanation is that, because the total vote share depends in part upon how many districts (many of them hopeless) each major party actually contests, the expectation of a Republican landslide in 2010 may have led fewer Democrats to contest in Republican strongholds and more Republicans to run in Democratic-dominated areas, skewing the aggregate vote share measure without shifting the balance of votes in closely contested districts.

43. Boris Shor, Christopher Berry and Nolan McCarty, "A Bridge to Somewhere: Mapping State and Congressional Ideology on a Cross-Institutional Common Space," *Legislative Studies Quarterly* 35 (2010): 417-48.

44. Seth E. Masker, "It Takes an Outsider: Extralegislative Organization and Partisanship in the California Assembly, 1849-2006," *American Journal of Political Science* 51 (2007), pp. 482-97.

45. Nolan McCarty, Keith T. Poole and Howard Rosenthal, *Polarized America: The Dance of Ideology and Unequal Riches* (Cambridge: MIT Press, 2005); Nolan McCarty, Keith T. Poole and Howard Rosenthal, "Does Gerrymandering Cause Polarization?" *American Journal of Political Science* 53 (2009): 666-80.

46. Personal communication with Irvine Foundation.