



MALDEF

Mexican American Legal Defense and Educational Fund

MALDEF Opposes the California Voters First Initiative A Summary of MALDEF's Position

The California Voters First Initiative (the Initiative) fails to provide effective reform trading one set of problems for another and jeopardizing access of Latinos and other minorities to the redistricting process. Over the last four decades MALDEF has been involved in numerous statewide and local redistricting campaigns, both as advocates and litigants. Our perspective is how redistricting complies with the U.S. Constitution and the Voting Rights Act and how a plan affects Latinos and other minority groups. MALDEF supports redistricting reform but it must be real and effective reform that ensures that California's diversity is represented and that all diverse communities have a meaningful opportunity to participate in the process. The Initiative fails to accomplish these goals.

Our opposition to the Initiative is joined by other civil rights organizations such as the NAACP Legal Defense and Educational Fund, NALEO Educational Fund, the Willie C. Velasquez Institute and others.

I. THE REDISTRICTING COMMISSION WILL NOT REFLECT CALIFORNIA'S DIVERSITY AND IT LACKS PUBLIC ACCOUNTABILITY

Under the Initiative, the State Auditor would randomly select eight commissioners from a pool of sixty applicants. There is no guarantee that the applicant pool will be diverse. While the proposal seeks an open and transparent process, random selection is neither open nor transparent. When there are no guarantees that the applicant pool will be diverse, we will never be able to arrive at a diverse commission.

The only mandate in the selection process is that three commissioners are Republican, three are Democrat and two are from independent parties. Given the predominance of minorities in the California Democratic Party, this partisan requirement significantly limits the potential for diversity.

The Initiative removes decision-making power from a legislative body that is increasingly representative of California's racial, ethnic, and gender diversity. It contains no mechanism for ensuring diversity in the applicant pool or among the final commissioners.

Additionally, there is no accountability. State auditors select the commissioners and are not accountable to the electorate. The commissioners are unelected appointees and insulated from public accountability.

II. THE INITIATIVE MANDATES NEW PROBLEMATIC REDISTRICTING CRITERIA THAT WILL UNDERMINE THE ABILITY TO ACHIEVE FULL REPRESENTATION FOR MINORITY COMMUNITIES

The Initiative adds the criterion of nesting – where two whole assembly districts create one whole senate district – which will nearly always have the potential to diminish the ability to achieve full representation for minority communities. A recent report from U.C. Berkeley's Institute of Governmental Studies has demonstrated this trend.¹ There is no guarantee that the placement of nesting criteria as a lower priority than compliance with the Voting Right Act will prevent it from undermining minority interests. If the commissioners determine that a violation of the Voting Right Act is not certain or provable, the secondary criteria will be viewed as paramount and their impact on minority communities would be considerable.

We also find problematic the ranking of respecting communities of interest. This should be ranked higher than maintaining city and county boundaries. There is no guarantee that the commission will properly consider communities of interest given the competing interests of the other criteria such as nesting and the maintenance of city and county boundaries.

Additionally, we have concerns about the implications of *Bartlett v. Strickland*, a redistricting case before the U.S. Supreme Court to be heard later this year, on California redistricting. The case will determine whether state redistricting criteria, similar to that proposed in the Initiative, takes precedence over a minority group's interest of not being divided. California's minority voting interests are at risk if the Initiative takes effect because, like *Bartlett*, it will impose state criteria that could diminish the ability to create districts that provide minority voters an opportunity to elect a candidate of their choice. This level of risk is unacceptable for any reform effort.

III. THE INITIATIVE DOES NOT INCLUDE CONGRESSIONAL REDISTRICTING AND AS A RESULT WILL SIGNIFICANTLY DIMINISH PUBLIC PARTICIPATION BECAUSE COMMUNITY GROUPS WILL BE FORCED TO PARTICIPATE IN TWO SEPARATE AND SIMULTANEOUS REDISTRICTING PROCESSES

The Initiative provides for the independent commission to redistrict only the state legislative districts (including the Board of Equalization) and leaves Congressional redistricting to the state legislature. We oppose redistricting reform that separates redistricting authority into separate bodies because it makes it considerably more difficult for community groups to provide meaningful input into two separate and simultaneous processes.

The resources and personnel of community organizations are already stretched during the long process of garnering community input in the redistricting process. Doubling these efforts via two separate processes will have serious consequences on community input. Low income and working class communities would be hard pressed to attend two distinct sets of meetings to testify on their communities of interest. The language of the initiative encourages coordination with the Congressional line drawing process but does not guarantee it. This will likely result in separate, and perhaps even, competing hearings that will diminish public input.

This Initiative's problems outweigh its benefits and we urge you to oppose it.

¹ Bruce E. Cain and Karin MacDonald, "The Implications of Nesting in California Redistricting," August 2007. http://swdb.berkeley.edu/redistricting_research/Nesting_&_Redistricting.pdf.