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CALIFORNIA INITIATIVE REVIEW

Proposition 27: Elimination of the Citizens
Redistricting Commission. Changes to the
Redistricting Process in California. Initiative
Constitutional Amendment and Statute.

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I. EXECUTIVE SUMMARY

Proposition 27 repeals Proposition 11, passed by voters in 2008. Proposition 11 created the Citizens Redistricting Commission, whose stated purpose is to open up the redistricting process so that the political party in control of the Legislature is not able to draw its own districts, ensuring their own reelection. The Commission, set to be comprised in 2011, will include 14 citizens charged with the task of drawing the new district lines for both the Legislature and the Board of Equalization. Proposition 27 would eliminate the Commission. The task of drawing boundaries for legislative and Board of Equalization districts would be returned to the Legislature. (The power to draw Congressional districts would remain with the Legislature, as Proposition 11 did not affect this power). Proposition 20, however, also on the ballot this November, would add Congressional redistricting to the powers of the Citizens Redistricting Commission.

Even though redistricting would be returned to the Legislature, Proposition 27 would change the rules for drawing lines in several ways. First, a firm spending cap of \$ 2.5 million would be placed on the amount of money that the Legislature could spend on the entire redistricting process. Second, all districts would be required to be exactly equal in size. The integrity of cities, counties and “communities in interest,” a term to be defined by the Legislature, must be taken into account when selecting district borders. Finally, and perhaps most importantly, the Legislature would be required to open up the redistricting process to the public, publicizing maps, and allowing public comment and input at nearly every stage of the process.

Proposition 27 would also eliminate a number of factors that are currently required to be taken into account when considering district lines. This enables the Legislature to consider political factors, such as incumbency when drawing district lines.

In sum, a “yes” vote on Proposition 27 will return the power of redistricting the State Legislature and Board of Equalization districts to the Legislature, while a “no” vote allows the Citizens Redistricting Commission to continue to be the entity responsible for redistricting.

II. THE LAW

a. Existing Law

i. *Proposition 11*

The Citizens Redistricting Commission (the “Commission”) was approved by voters via Proposition 11 in 2008 and was referred to as the Voters FIRST Act (the “Act”).¹ The measure transfers redistricting responsibilities from the Legislature to a 14-member Commission.² The reason behind this reallocation of power was to avoid the potential conflict of interest for legislators who have been accused of drawing districts to serve their own needs, such as benefitting their political party or their own chances at reelection, rather than the needs of the

¹ Text of Proposition 11 (available at <http://www.voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop11>).

² *Id.*

communities they represent.³ The Commission was created to allow for a more open redistricting process and to ensure fair representation of all voters.⁴

ii. General Provisions

The Commission is made of up 14 Commissioners.⁵ The Act mandates that five of the Commissioners will be from the largest political party in California, five from the second largest political party and four who are not registered with either of the two largest parties.⁶

The Act establishes certain criteria that the Commission must meet when drawing district lines. The Commission must respect the geographic integrity of any city, county, neighborhood or community of interest, should encourage geographical compactness when drawing district lines and must place two Assembly districts together within one Senate district and ten Senate districts together within one Board of Equalization district.⁷ The Commission must also comply with the federal Voting Rights Act as well as the United States Constitution.⁸ By September 15, 2011, the Commission is required to issue three final maps which show the district boundaries for the Senate, Assembly and Board of Equalization districts along with a report that describes the basis for its division of those districts. The final maps will be certified to the Secretary of State and will be subject to voter challenges through the use of the referendum process.⁹

iii. Selection Process

The Act imposes a lengthy selection process to create a Commission that would be independent from legislative influences and reflect the diversity of California's voters.¹⁰ The State Auditor initiated the application process through the elimination of applicants with conflicts of interest.¹¹ The State Auditor then selected three Qualified Independent Auditors which are currently serving on the Applicant Review Panel by randomly drawing names of those that were eligible.¹²

By August 1, 2010 the State Auditor was required (and will be in every year that ends in a "0" hereafter) to publicize the name of the applicants and provide their applications to the Applicant Review Panel.¹³ From the remaining applicants the Panel selected the 60 most qualified and separated them into sub-pools of 20 Democratic applicants, 20 Republican applicants and 20 unregistered applicants.¹⁴ The Panel assessed and selected these applicants based on their ability

³ *Id.*

⁴ *Id.*

⁵ California's first Citizens Redistricting Commission, <http://www.wedrawthelines.ca.gov/> (last visited Sept. 10, 2010).

⁶ Text of Proposition 11, *supra* note 6.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* (Qualified Independent Auditors are required to be licensed by the California Board of Accountancy and must have been in practice for 10 years prior to their appointment.).

¹³ *Id.*

¹⁴ *Id.*

to be impartial, their analytical skills and each applicant's interest in preserving California's diverse demographics and geography.¹⁵

As of October 1, 2010, the Applicant Review Panel was required to have submitted the 60 selected applicants to the Secretary of the Senate and the Chief Clerk of the Assembly which will in turn present the sub-pools of applicants to the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, and the Minority Floor Leader of the Assembly.¹⁶ Each of these leaders will have the ability to remove two applicants from each of the sub-pools of 20 applicants. Therefore, there can be up to eight removals per sub-pool.¹⁷ These strikes must be submitted to the Applicant Review Panel no later than November 15, 2010.¹⁸

After receiving the selection of the legislative leaders, the State Auditor will randomly select eight names (three democratic applicants, three republican applicants and two non-registered applicants).¹⁹ The eight selected applicants will serve on the Commission and will appoint six additional applicants from the remaining pool (two from each sub-pool) with 5 affirmative votes (two registered Democrats, 2 registered Republicans and 1 unregistered Commissioner must consent) no later than December 1, 2010.²⁰

b. Proposed Changes to the Law

i. Returns State Legislature and Board of Equalization Redistricting to the Legislature

Proposition 27 eliminates the Citizens Redistricting Commission described above.²¹ As currently structured, the Citizens Redistricting Commission is solely responsible for creating State Legislative and Board of Equalization districts, and the task of determining congressional seat boundaries remains with the Legislature.²² If Proposition 27 passes, the Legislature would assume the responsibility of redistricting for this and all future censuses, including the 2010 census which took place earlier this year.²³

ii. New Requirements for boundaries

New requirements would be created for district boundaries with the passage of Proposition 27. Under Proposition 27, the population of each district would be required to be equal. Only a population variation of plus or minus one person would be permitted in cases where precise

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Legislative Analyst's Office, *Ballot Propositions*, http://lao.ca.gov/ballot/2010/27_11_2010.aspx (July 15, 2010).

²² *Id.*

²³ *Id.*

population equality is mathematically impossible.²⁴ This would bring the Legislature and the Board of Equalization requirements into conformity with the population requirements already in place for the United States House of Representatives, which require equal districts.²⁵ This standard was enacted by the United States Supreme Court in *Baker v. Carr*, which held that unequal legislative districts violated the Equal Protection Clause of the 14th Amendment.²⁶ The Court came to this conclusion because the drawing of unequal legislative districts results in legislators with smaller districts having the same voting power as those with larger districts, who represent a larger portion of the population, therefore resulting in unequal representation.²⁷

The measure also requires that the geographical integrity of cities, counties, or “communities of interest” be taken into account to reduce division of those communities.²⁸ Under Proposition 27, the term “community of interest” would be defined by the Legislature.²⁹ The definition of “community of interest” has been defined in the past differently by each Legislature undertaking the redistricting process. Proposition 20 pre-defines the term “community of interest” as a “contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”³⁰

iii. Public Accessibility to the Redistricting Process

The Legislature would be required to provide notice 14 days before any meeting regarding redistricting. It could not amend redistricting bills within three days of their passage, and would need to provide public access to data regarding the redistricting process.³¹ All hearings would be conducted with public input and maps would be disseminated for public comment for at least 14 days.³²

iv. Spending Cap

Under Proposition 27, the Legislature would be strictly limited to a spending cap of \$ 2.5 million for the entire redistricting process.³³ The proposal would adjust the amount in accordance with the California Consumer Price Index or its equivalent for future years.³⁴

²⁴ Text of Proposition 27 (available at <http://www.voterguide.sos.ca.gov/pdf/english/text-proposed-laws.pdf#prop27>)

²⁵ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee, 2009-2010 Leg.*, (Ca. 2010) (Statement of Jason Sisney, Director, State Finance, Legislative Analyst’s Office).

²⁶ 369 U.S. 186, (1962).

²⁷ *Id.*

²⁸ Text of Proposition 27, *supra* note 24.

²⁹ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee, 2009-2010 Leg.*, (Ca. 2010) (Statement of Jason Sisney, Director, State Finance, Legislative Analyst’s Office).

³⁰ California Secretary of the State, *Official Voter Information Guide*, p. 19.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

v. *Deletion of Current Requirements*

Proposition 27 would eliminate certain existing constraints on factors that must be considered during the redistricting process. These requirements include not using political parties, incumbents, or political candidates as factors in deciding district boundaries, creating geographically contiguous districts, and creating Senate districts composed of two complete Assembly Districts and Board of Equalization Districts composed of ten complete Senate districts.³⁵

vi. *Power of Referendum*

Proposition 27 would alter Article 2, section 9 of the California Constitution by specifically stating that none of the exceptions to the referendum power will apply to statutes approving the final redistricting maps for the Congressional, Senate, Assembly or State Board of Equalization.³⁶ The proponents of Proposition 27 believe that under the current law, Californians can be denied the right of referendum but the proponents fail to provide a more detailed explanation as to how this could occur.³⁷ It appears from the text of the Constitution that the power of referendum could be bypassed by certain exceptions such as urgency statutes, statutes providing for tax levies, statutes calling elections or appropriations for current expenses of the State.³⁸ Proposition 27 provides that any redistricting maps would not be vulnerable to these exceptions and would therefore still be subject to the people's referendum power.

c. **Likely Fiscal Effect**

During the last redistricting process in 2001, the Legislature spent about \$3 million on redistricting activities.³⁹ Under the Proposition 11 process, which is already underway, the Legislature has approved a \$3 million expenditure for redistricting activities in 2011.⁴⁰ However, an additional \$3 million has already been spent by the State on the Proposition 11 process of selecting citizen commissioners to preside over the 2011 redistricting process. In the future, under current law (Proposition 11), the Citizens Redistricting Commission would be required to be funded at a level equal to the previous level taking into account inflation.⁴¹ It must be noted, though, that because the Commission members have yet to begin their work, and because no similar process has ever been undertaken, it cannot be said that the amount budgeted will be enough money to complete the process, and more funds may be required.⁴²

³⁵ *Id.*

³⁶ Text of Proposition 27, *supra* note 24.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Legislative Analyst's Office, *Ballot Propositions*, http://lao.ca.gov/ballot/2010/27_11_2010.aspx (July 15, 2010).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee, 2009-2010 Leg., (Ca. 2010) (Statement of Jason Sisney, Director, State Finance, Legislative Analyst's Office).*

Because spending under Proposition 27 would be capped at a lower level than what is currently allocated (the proposal prohibits spending more than \$2.5 million on redistricting every 10 years), the State would potentially save several million dollars over the Proposition 11 process every ten years.⁴³ However, because funds have already been expended on the Citizen's Redistricting Commission selection process, the savings in 2011 would be minor. The Legislative Analyst's office estimates that the savings in the next year would amount to about \$1 million as well as a possible reduction of a few million dollars in redistricting costs every ten years beginning in 2020.⁴⁴

III. STATUTORY INTERPRETATION/DRAFTING ISSUES

Proposition 27 may face a post election challenge if both Proposition 27 and Proposition 20 are passed since they involve conflicting redistricting issues. Proposition 20 proposes to extend the jurisdiction of the Commission to include the authority to adjust the boundary lines for Congressional Districts while Proposition 27 seeks to eliminate the Citizens Redistricting Commission in its entirety.⁴⁵ Currently, the process for Congressional redistricting plans is approved by the Legislature.⁴⁶

If both measures receive enough votes to become effective the courts will likely invoke Article II, section 10 of the California Constitution, which states, "if provisions of two or more measures at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail."⁴⁷ Therefore, if Proposition 27 and Proposition 20 are both passed, the Proposition which receives the highest number of affirmative votes will become effective.

IV. CONSTITUTIONAL ANALYSIS

Proposition 27 does not appear to conflict with either the United States Constitution or the California State Constitution.

V. PUBLIC POLICY CONSIDERATIONS

a. Proponents' views

Proponents of Proposition 27 include the Democratic State Central Committee of California and the American Federation of State, County and Municipal Employees.⁴⁸ Among some of the

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Legislative Analyst's Office, Analysis of Proposition 27, 2, http://www.lao.ca.gov/ballot/2010/27_11_2010.aspx (accessed August 29, 2010).

⁴⁶ *Id.*

⁴⁷ Cal. Const. Art. II, § 10(b).

⁴⁸ Dave Meyer, *A Look at the Money Behind Propositions 20 and 27*, Rose Institute of State and Local Government (April 8, 2010) (available at <http://rosereport.org/20100804/a-look-at-the-money-behind-propositions-20-and-27/>).

major private donors for Proposition 27 are several California Democratic Lawmakers and Haim Saban, a Los Angeles-based entertainment executive.⁴⁹

The proponents point out that the elimination of the Citizens Redistricting Commission will reduce State Redistricting costs and claim that the salary for the selected Commissioners could add up to \$1 million dollars.⁵⁰ The proponents strongly advocate that the passage of Proposition 27 will ensure that the legislators would be accountable to the voters, since the law as it stands can deny voters of their right to pass a referendum against unfair Congressional district gerrymanders.⁵¹

In addition the proponents argue that Proposition 27 would return control of redistricting to a democratically elected body that is accountable to the people, reduce the number of cities and communities that are split between districts, and strengthen community representation.⁵² Proponents also emphasize that Proposition 27 would ensure that all districts are same size and that every person's vote counts equally.⁵³

Supporters of this proposition have expressed their concern with potential deficiencies of the Commission in regards to representation. Proponents point out that despite the amount of research that the Commission would engage in once it is established; the members will never know and understand the communities as well as the legislators that represent them.⁵⁴ At a recent hearing of the of the Senate Committee on Elections, Reapportionment and Constitutional Amendments, Assemblymember Sandre Swanson voiced his opinion that there could be no sufficient substitute for the Legislature in terms of understanding their communities and deciding where to draw the redistricting lines.⁵⁵

Proponents are concerned that a variety of different people selected from throughout the state to be on the Citizens Redistricting Commission would not necessarily be representative of the people in the same way that elected officials are, due to their elected status.⁵⁶ In addition, while the Commission would select five Democrats, five Republicans and four unregistered voters to serve as members, those numbers are not subject to change in order to more accurately represent the people of the State of California. In contrast, if the power to draw redistricting lines was

⁴⁹ *Id.*

⁵⁰ Legislative Analyst's Office, *Voter Guide, Proposition 27 Arguments and Rebuttals*, <http://www.voterguide.sos.ca.gov/propositions/27/arguments-rebuttals.htm> (accessed Aug. 29, 2010).

⁵¹ *Id.*

⁵² Daniel Lowenstein, *No on Prop.20, Yes on 27*, (Sept. 5, 2010) (available at http://articles.sfgate.com/2010-09-05/opinion/23989913_1_political-districts-voters-first-act-mandate).

⁵³ *Id.*

⁵⁴ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee*, 2009-2010 Leg., (Ca. 2010) (Statement of Kevin Murray, Former State Senator (1998-2006)).

⁵⁵ *Id.*

⁵⁶ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee*, 2009-2010 Leg., (Ca. 2010) (Statement of Kevin Murray, Former State Senator (1998-2006)).

returned to the Legislature, the amount of Democrats and Republicans would vary based on the vote of the people and would arguably be able to better represent the people.⁵⁷

b. Opponents' views

The most notable opponent of Proposition 27 and proponent of Proposition 20 is Charles Munger, Jr., who is the son of Charles Munger, a billionaire and financial partner of Warren Buffett. As of September 24, 2010, he has spent \$ 5.9 million on Proposition 20. He also donated \$ 1 million towards the passage of Proposition 11 in 2008.⁵⁸

Both traditionally non-partisan and traditionally conservative groups are opposing Proposition 27 and simultaneously backing Proposition 20. Opposition to the measure includes the California NAACP, the League of Women Voters, AARP, the National Federation of Independent Business/California, the California Hispanic Chambers of Commerce, California NAACP, Cal-Tax, the California Chamber of Commerce, California Common Cause and the Asian Pacific American Public Affairs Association.⁵⁹

The opponents' main argument is that the passage of Proposition 27 will allow legislators to continue to draw their own districts and that it would be too much of a conflict of interest to be tolerated. The opponents argue that we should keep the power of redistricting with the voters and the Citizen's Redistricting Commission which voters have already approved.⁶⁰ The opponents have repeatedly stated that Proposition 27 was solely put on the ballot to confuse voters and that its very presence on the ballot is an insult to the voters.⁶¹

Opponents of Proposition 27 also refute the proponent's statements that Proposition 27 will save California money. They contend that hidden costs, such as legislative staffers' salaries and paid political consultants would not be included in the spending cap and would therefore result in the same or higher spending than redistricting under the Commission process.⁶²

To buttress their argument, opponents of Proposition 27 point to large amounts of funding that the Proposition 27 campaign has received from incumbent politicians. The vast majority of funding for the Proposition has come from sitting politicians. For example, sitting Assemblyman Charles Calderon, D-Whittier, and Assemblyman Mike Eng, D-Monterey Park, both gave \$100,000 to the campaign. Senator Alex Padilla, D-Pacomina, gave \$24,000, Assemblyman Felipe Fuentes, D-Los Angeles, gave \$30,000 and Assemblyman Bob Blumenfield, D-Santa

⁵⁷ *Id.*

⁵⁸ Daniel Lowenstein, *Viewpoints: Time to broaden redistricting reforms? No*, (Oct. 2, 2010). (available at <http://www.sacbee.com/2010/10/2/3073162/apportionment-power-play-could.html>).

⁵⁹ Yes on 20, No on 27 Media Kit, <http://www.yes20no27.org/pdf/MediaKit.pdf>

⁶⁰ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee*, 2009-2010 Leg., (Ca. 2010) (Statement of Kathay Feng, Executive Director, California Common Cause).

⁶¹ *Informational Hearing: Propositions 20 and 27. Before the Senate Elections and Constitutional Amendments Committee and the Assembly Elections and Redistricting Committee*, 2009-2010 Leg., (Ca. 2010) (Statement of Alice Huffman, President, California NAACP).

⁶² *Id.*

Monica gave \$75,000. The Speaker of the Assembly, John Perez, gave \$49,000 to the campaign. Other major donors include labor backed groups and over a dozen Congressional Democrats, including House Speaker Nancy Pelosi.⁶³ Opponents argue the sole reason for this showering of funding is that these “career politicians” are deathly afraid of losing power.

VI. CONCLUSION

If approved, Proposition 27 will eliminate the Citizens Redistricting Commission and will return the redistricting authority for State Assembly, Senate and Board of Equalization districts to the Legislature. There will be a spending cap on how much money the Legislature can spend for redistricting and could potentially save the State several million dollars that would have otherwise been spent on the selection process for future Citizens Redistricting Commissions. The legislature will be required to draw district boundaries that ensure that all districts are equal and will receive input from the voters through the use of mandatory public meetings. If Proposition 20 passes as well, the initiative with the greatest number of votes will become effective.

If Proposition 27 fails, the implementation of the Citizens Redistricting Commission will continue pursuant to Proposition 11. Costs could become significant as the funding level for the Commission must be maintained in future years and would include room for inflation. Costs would also be incurred due to salary for the Commissioners. If Proposition 20 is passed, the Citizens Redistricting Commission’s jurisdiction would be extended to include drawing the district boundaries for California Congressional Districts.

⁶³ Capitol Weekly, *Incumbent Democrats Open Wallets to Abolish Redistricting Commission*, September 2, 2010