

ADDENDUM TO:

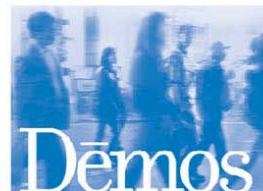
DRAWING LINES:

A Public Interest Guide to Real Redistricting Reform

March 2005



Center for Governmental Studies
Solutions for Democracy



A NETWORK FOR IDEAS & ACTION

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Analysis of Revised McCarthy Legislation (ACAX1 3)

Section 1: Introduction

In February 2005, the Center for Governmental Studies (CGS) and Dēmos published *Drawing Lines: A Public Interest Guide to Real Redistricting Reform*. Based on in-depth research of current redistricting approaches and extensive discussions with public interest organizations from across California, *Drawing Lines* proposes that California take redistricting out of the hands of the legislature and empower an Independent Redistricting Commission to complete the decennial redistricting process.

Drawing Lines establishes overarching goals for redistricting; recommends specific Commission characteristics; compares and analyzes several current measures proposed in California; evaluates current measures against our recommendations; and assesses the ability of these measures to fulfill public interest redistricting goals.

Since the report's publication, ACAX1 3, authored by Assemblyman Kevin McCarthy (R - Bakersfield), has been amended. The following analysis compares the amended bill ("McCarthy II") to the proposed guidelines in *Drawing Lines*. This report has been made possible through generous funding from The James Irvine Foundation. The Irvine Foundation is not responsible, however, for the findings and recommendations in this study.

Our findings suggest that McCarthy II is a significant improvement in several key areas of concern including balanced partisan representation, transparency, public participation, panel size and candidate pool diversity. It does, however, still contain some aspects which warrant improvement.

Section 2: Potential Improvements to McCarthy II

McCarthy II requires improvement in a number of respects, listed in order of their importance:

- 1) McCarthy II allows mid-decade redistricting. *We believe the state should be redistricted only once every ten years, respecting traditional decennial redistricting principles and allowing for use of current and accurate census information.*
- 2) The Commission has only five retired judges as members. *In order to reflect the full ethnic diversity of California, the membership should be larger and include citizens who are not judges. We suggest nine members made up of four retired judges and five other citizens.*
- 3) Although competitive districts are mentioned as criteria, competitiveness is prioritized last. Furthermore, the language, "where to do so would create no significant detriment to the other goals of this section," weakens it greatly. *We believe it should be higher in priority, below communities of interest, and listed without the caveat.*
- 4) Geographic boundaries are given higher priority than communities of interest and competition. *We believe geographic boundaries should be given comparatively lower priority.*

- 5) Compactness is given priority over competitiveness. *We believe compactness should be prioritized last. Although compactness is important, it is less so than other criteria.*
- 6) There are no hearings scheduled after a Final Map has been issued by the Commission, nor is there a report required explaining how the Commission met the criteria. *We believe hearings should continue for two weeks after the Commission releases the Final Map and makes the criteria compliance report public.*
- 7) The panel does not explicitly give standing to the Commission in legal actions regarding a redistricting plan. *We believe the Commission should have standing and sole authority to determine whether the California Attorney General or other counsel hired and selected by the Commission will represent the people of California in the legal defense of a redistricting plan.*
- 8) The legislature has the authority to raise or lower the Commission's funding. *We suggest a minimum be allocated and the legislature be given authority to appropriate more funding, but not to decrease it.*
- 9) Equal population is defined as 1% for state districts. Use of this stringent definition may make it difficult to draw districts that fairly represent minorities, protect communities of interest and increase competition. *We believe equal population criterion for state legislative districts should be defined as merely respecting federal constitutional standards as interpreted by the courts.*
- 10) The ban on future appointment to any elective government position or running for political office is five years. *In order to ensure that no Commissioner benefits from his or her redistricting decisions, we believe the limit should be extended to ten years for running for Congress, State Assembly, State Senate or Board of Equalization or for working for any holder of such office.*

Section 3: General Comments on McCarthy II

Competitive districts:

McCarthy II includes competitiveness as the last criterion and weakens it considerably by stating “the panel shall create competitive districts where to do so would create no significant detriment to the other goals of this section.” Arizona’s experience with its redistricting commission suggests that de-prioritizing competitiveness may lead the Commission to ignore it. Should the Commission set out to draw competitive districts, it will have access to party registration and voter history data, which is the information necessary to distribute voters into competitive districts, an important amendment to the original McCarthy bill.

Minority Representation:

McCarthy II provides for diversity in the pool from which Commissions are chosen. This increases the likelihood of minority and female Commissioners, but does not guarantee it. In the criteria, McCarthy II also explicitly provides for and defines communities of interest in its criteria, and says that the Commission should respect such communities “to the greatest extent possible.” That,

however, may be somewhat limited once traditional redistricting criteria like geographic and political boundaries and strict equal population are first taken into account.

Partisan Fairness:

McCarthy II seeks to create a balanced partisan commission, which may check some partisan tendencies. The legislature has very limited influence on the membership process. The four legislative leaders are allowed one preemptory strike each on the pool. McCarthy II allows for the use of voter history and party registration information (once an initial map using more traditional redistricting criteria is complete) by independent experts to assist in the creation of competitive districts. Although voter history or party registration information is necessary for this reason, it can also be used for partisan gerrymandering. Public meetings and hearings are useful mechanisms for ensuring partisan fairness, as is allowing only independent “competitiveness experts” to view party registration and voter history data.

Traditional Redistricting Criteria:

McCarthy II uses strict traditional redistricting criteria, including requirements that legislative district population deviation not exceed a 1% difference in population between districts with the highest and lowest populations (when plus or minus 5% can be used currently); districts be as contiguous and compact as practicable; common county boundaries not be crossed more than once; and districts be created with the most whole counties and fewest county fragments possible.

Inspiring Public Confidence:

McCarthy II should inspire a very high degree of public confidence. Besides public hearings throughout the process (before the initial map is created, after an initial plan is selected by the Commission, and when significant revisions are made), independent experts will evaluate compliance with the criteria. In addition, all meeting minutes, hearing transcripts, maps, narrative descriptions of proposed districts and other data are required to be made public; no ex parte communication is allowed; and the Commission must be in compliance with the Bagley-Keene Open Meeting Act.

Section 4:

Comparative Analysis:

1. Are major parties guaranteed equal representation on Commission?
2. Is the Commission instructed to make districts more competitive?
3. Is the Commission given the data and instructions necessary to make significantly more competitive districts likely?
4. Is Voting Rights Act compliance explicitly required and prioritized?
5. Is the Commission likely to reflect California's diversity?
6. Is the Commission prohibited from using incumbent residence when drawing districts?
7. Are all Commission meetings required to be open to the public?
8. Must most of the Commission's data and documents be made public?
9. Will the "once a decade" redistricting rule be maintained?
10. Will the Commission's proposals be implemented without requiring an additional legislative or popular vote?

McCarthy	McCarthy II	Ideal Plan
No	Yes	Yes
Yes	Yes	Yes
No	No	Yes
No	Yes	Yes
No	Somewhat	Yes
No	Yes	Yes
No	Yes	Yes
No	Yes	Yes
No	No	Yes
Yes	Yes	Yes

Appendix: Detailed Comparison of Commission Proposals

A. Commission Membership

	McCarthy I	McCarthy II	Ideal Plan
Type of members	Retired judges	Retired judges	Retired judges and other citizens
# of members	3	5	9
Member diversity required	No	Yes (in pool)	Yes (in pool and panel)
Voting Requirement	Majority	Super-majority of 4	Super-majority of 6
Disqualifying past experience ¹	Having held partisan political office ever or changed party affiliation in the previous 5 years	Having held partisan public office, political party office, served as a registered lobbyist ever, or changed party affiliation in the previous 5 years	In the past 10 years, having held partisan office or office for a political party; performed paid work for a party or candidate's campaign; or changed partisan affiliation. In the past 5 years having registered as a lobbyist
Limitations on future public office/public employment other than academic or judicial posts	Must pledge not to accept for 5 years	Must pledge not to accept for 5 years	Ineligible for 10 years to run in districts created by the Commission or to work for those holding such offices
Limitations on future lobbying	No	No	Yes, for 5 years after serving
Requires equal commission representation of two largest political parties	No	Yes	Yes

¹ Lowenthal plan excludes school board members or other officers of a school district or county office of education.

B. Appointment Process

	McCarthy I	McCarthy II	Ideal Plan
Candidate pool selected by	Judicial Council identifies qualified judges willing to serve	Judicial Council identifies 25 qualified judges willing to serve	Judicial Council selects one pool of qualified retired judges and another equally-sized candidate pool of qualified other citizens
Candidate pool composition	All qualified retired state and federal judges willing to serve	To the extent possible, the list of qualified judges shall reflect the ethnic, racial, gender and geographical diversity of California	Each pool must: reflect California's racial diversity; include equal numbers of men and women; (for retired judges and citizens each) include 6 candidates registered with each major party and 6 registered with neither major party
Legislative leaders' procedure for nomination or preemptory challenge of nominees	None	Each of the 4 legislative leaders may preemptively challenge 1 retired judge and eliminate them from the pool	Each of the 4 legislative leaders may preemptively challenge 1 retired judge and 1 citizen and eliminate them from the pool
Final selection	3 special masters and 3 alternates are chosen at random from pool	5 special masters and 5 alternates are chosen at random from pool of remaining candidates	3 Commissioners affiliated with each major party and 3 Commissioners affiliated with neither are chosen at random from pool of remaining candidates in a manner designed to ensure racial diversity

C. Redistricting Criteria

	McCarthy I	McCarthy II	Ideal Plan
Explicitly prioritizes criteria	No	Yes	Yes
VRA compliance explicitly mentioned	No	Yes	Yes
Population equality	Yes – defined as 1% deviation	Yes – defined as 1% deviation	Yes, within federal guidelines
Contiguousness required	Yes	Yes	Yes
Compactness Required	Yes	Yes	Yes
Requires conforming to geographic and political lines	Yes, as well as visible geographic features	Yes	Where reasonable, but as a lower priority than most other objectives
Communities of Interest	Yes, to greatest extent possible	Yes, to greatest extent possible	Yes
Competition	Listed after several other criteria, but not explicitly ranked. Defined as a district with a difference of no more than 7% between the numbers of voters who are registered with the two major political parties	Ranked as the least important criteria, to be favored where doing so would “create no significant detriment” to the other listed goals	Creation of as many competitive districts as reasonably possible should be a high priority and aided by independent experts who predict the number of competitive districts in various maps
Availability of partisan registration or voting history data	Consideration should not be given to the potential effect on political parties. Data regarding party affiliation or voting history may not be used in plan preparation	Party registration and voting history data must be excluded from first phase of mapping process, but can be used to test maps for compliance with the stated criteria	Consideration should not be given to the potential effect on political parties. Voter information can be used to ensure compliance to criteria only
Incumbents	Consideration should not be given to the potential effect on incumbents	Commission cannot use information related to the incumbent’s residence or design districts to benefit incumbents	Consideration should not be given to the potential effect on incumbents or other potential candidates
Nesting	Yes	Yes	Yes

D. Transparency and Public Accountability

	McCarthy I	McCarthy II	Ideal Plan
Will Commission be governed by Bagley Keene Open Meeting Act?	No	Yes	Yes
Are ex parte communications prohibited?	No	Yes, except between Commissioners and staff	Yes, except between Commissioners and staff
Are transcripts, data and documents required to be publicly available?	Not mentioned	Yes	Yes; ex parte communications will be made public after Final Plan is proposed
Public hearings requirements	Public hearings must take place before and after a draft map is prepared, in a minimum of six different geographic areas around the state	Public hearings must take place before and after a draft map is prepared, in a minimum of six different geographic areas around the state	Public hearings must take place in several different geographic areas of the state both as part of the process of creating a draft map and in order to present and discuss draft maps
Period to receive public comment	Scheduled by Commission; no public comment planned after the Final Plan is adopted	Before initial plan is developed or selected; after an initial plan is selected; at least 2 weeks after the initial plan is released for review; after significant changes. (Also, independent experts will evaluate criteria compliance)	Before initial plan is drafted, including submission of partial or full map proposals; at least 2 weeks after the initial plan; after significant changes; for 14 days on any Final Plan (Also, independent experts will evaluate criteria compliance during initial draft plan and after Final Plan is released)
Involvement of interest groups	Can propose plans to the Commission for consideration	Can propose plans to the Commission for consideration	To aid in determining communities of interest and maximize fair representation

E. Procedures for Implementation and Review

	McCarthy I	McCarthy II	Ideal Plan
Gubernatorial veto	No	No	No
Legislature votes	No	No	No
Citizens vote on each map of districts	No	No	No
Enactment time-table	Immediately (mid-term 2006)	Immediately (mid-term 2006)	After decennial census
Appeal directly to the Supreme Court	Yes	Yes	Yes

