

No. S22530

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA,

*Petitioner,*

v.

ALEX PADILLA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF THE  
STATE OF CALIFORNIA,

*Respondent.*

---

**RESPONSE OF THE 2010 CITIZENS REDISTRICTING  
COMMISSION TO EMERGENCY PETITION AND REQUEST  
FOR RELIEF FILED BY THE STATE OF CALIFORNIA  
LEGISLATURE**

**CRITICAL DATE: JULY 13, 2020**

---

\*MARIAN M. JOHNSTON (SBN 61643)

Email: [marianmjohnston@comcast.net](mailto:marianmjohnston@comcast.net)  
6419 Grangers Dairy Drive  
Sacramento, CA 95831  
Telephone: (916) 832-5534

*Attorney for 2010 California Citizens Redistricting Commission*

**TABLE OF CONTENTS**

	<u>PAGE</u>
I. INTRODUCTION.....	4
II. CALIFORNIA’S DISTRICT LINE DRAWING PROCESS MUST COMPLY WITH SPECIFIC, DETAILED CONSTITUTIONAL STANDARDS .....	8
III. THE DISTRICT LINE DRAWING PROCESS REQUIRES SUBSTANTIAL PUBLIC OUTREACH AND INPUT .....	11
IV. CONCLUSION .....	13

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>State Cases</b>	
<i>Vandermost v. Bowen</i> (2012) 53 Cal.4th 421 .....	6
<b>Federal Statutes</b>	
13 U.S.C. § 141 .....	6
42 U.S.C. § 1971 .....	9
<b>State Statutes</b>	
Cal. Gov't. Code § 8251 .....	4
Cal. Gov't. Code § 8252 .....	4
Cal. Gov't. Code § 8253 .....	5, 6, 11, 12
Cal. Gov't. Code § 11120 .....	12
<b>Constitutional Provisions</b>	
Cal. Const., Article XXI, § 1 .....	8
Cal. Const., Article XXI, § 2 .....	<i>passim</i>

## I. INTRODUCTION

As permitted by this Court’s letter of June 5, 2020, the 2010 California Citizens Redistricting Commission (Commission) submits this response to the Emergency Petition for Writ of Mandate filed by the Legislature of the State of California.<sup>1</sup> The Commission strongly supports, and urges this Court to grant, the relief requested therein. Specifically, based on the Commission’s experience in drawing the voter district boundaries following the 2010 Census and its unique, first-hand knowledge of the redistricting tasks its successor 2020 Commission will face, the Commission requests relief from the constitutional and statutory deadlines of Article XXI of the California Constitution, as amended by ballot measures approved by the voters in 2008 (Prop. 11, the Voters First Act (Gen. Elec., Nov. 4, 2008) and 2010 (Prop. 20 (Gen. Elec., Nov. 2, 2010), and California Government Code Section 8251 et seq., as enacted by Proposition 11 and Proposition 20, and as amended by Cal. Stats. 2012, Ch. 271.

The 2020 Commission will face impossible deadlines if relief is not granted. Specific constitutional time limits, most importantly a final deadline

---

<sup>1</sup> The June 5, 2020 letter references the “2011 California Redistricting Commission.” However, this Commission was actually created in 2010. (Cal. Const., art. XXI, § 2(a)). The current commissioners were selected in 2010 pursuant to California Government Code § 8252. The terms of the current commissioners will end when the first member of the 2020 Commission is appointed. (Cal. Const., art. XXI, § 2(b)(4)). This will occur no later than July 5, 2020. (Cal. Gov’t Code § 8252 (f)).

of August 15, 2021, now face the 2020 Commission. It is to “approve four final maps that separately set forth the district boundary lines for the congressional, Senatorial, Assembly, and State Board of Equalization districts” by August 15, 2021. (Cal. Const., art. XXI, § 2 (g)). These maps must also be accompanied by “a report that explains the basis on which the commission made its decisions” (*Id.*, art. XXI, § 2 (h)). And, the 2020 Commission faces even an earlier statutory deadline as it must publicly display draft district maps no later than July 1, 2021. (Cal. Gov’t Code § 8253 (a)(7)).

These are not mere ministerial tasks, as the districts must comply with specific and detailed criteria, in the order of priority mandated by the California Constitution. (Cal. Const., art. XXI, § 2 (d), (e)). As described below in the Declarations of Commission Chair Angelo N. Ancheta and Vice Chair Lilbert Roy Ontai, the map drawing process was extremely laborious and time-consuming. It required the Commission to hold many hearings to seek public input and more hearings to consider this input. The redistricting process also required consultation with voting rights experts.

The need for time to solicit public input is particularly important because the Commission is required to perform its work “in an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const., art. XXI, § 2 (b)(1)). The map drawing process requires “a thorough outreach program to solicit broad

public participation” in the redistricting process. (*Ibid.*). As this Court explained, this Commission “held more than 70 business meetings and 34 public hearings in 32 cities throughout the state” and “received, in addition to oral testimony, more than 2,000 written submissions“ (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 445).

Allowing public input is both a constitutional and statutory requirement. (Cal. Const., art. XXI, § 2 (b)(1); Cal. Gov’t Code § 8253 (a)(1) and (7)). The 2020 Commission faces the same obligations to seek and consider public participation.

The ability to allow time to ensure that maps for the 2020 Census are drawn in compliance with all these requirements is adversely and seriously affected by the current COVID-19 pandemic. As explained in detail in the Petition and supporting documents, the Census Bureau has been forced to delay the collection, and thus the release, of census data to the states. Under current law, this process was to be based on census data as of April 1, 2020, gathered by the United States Census Bureau, and this data was to be released no later than 90 days later. (13 U.S.C. § 141 (a), (b)). Public Law 94-171, enacted by Congress in December 1975, requires the Census Bureau to provide the states with the small area census data necessary for legislative redistricting within one year of the census date of April 1, 2020, which would be April 1, 2021. This schedule, if followed, would give the 2020

Commission from at least April 1, 2021 to August 15, 2021, which would be a minimum of four and a half months to complete its line drawing.

However, because of COVID-19, the Census Bureau has already substantially delayed the collection of census data for the 2020 Census. (Exh. A, U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Chief Steven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19 (2020 Census Adjustment) (Legislature of the State of California’s Request for Judicial Notice; Declaration of Thomas A. Willis (RJN)). The Census Bureau now anticipates that redistricting data will be delivered to the states by July 31, 2021 (*ibid.*). Legislation has been introduced in the House of Representatives to modify the deadline to complete the 2020 Census and require the census data to be transmitted to each state “within 16 months after the decennial census date of April 1, 2020.” (H.R. 7034, 116 Cong., § 2(3)). If the Census Bureau’s estimate is accurate and this bill is enacted, the 2020 Commission would not be guaranteed to receive the census data until August 1, 2021, even though it must release its district maps by August 15, 2021.

Under these revised time schedules for the release of census data to the states, the 2020 Commission would face an impossible task. Instead of the anticipated four and a half months, it would have a scarce 15 days to draw all four maps. Relief from its constitutional and statutory deadlines is

essential to allow the 2020 Commission time to apply the prioritized criteria and allow meaningful public input as it conducts the redistricting process.

## **II. CALIFORNIA’S DISTRICT LINE DRAWING PROCESS MUST COMPLY WITH SPECIFIC, DETAILED CONSTITUTIONAL STANDARDS**

Like this Commission, the 2020 Commission must “adjust the boundary lines of the congressional, State Senatorial, Assembly, and Board of Equalization districts (also known as “redistricting”) in conformance with the standards and process set forth in Section 2 of Article XXI of the California Constitution. (Cal. Const., Art. XXI, § 1). Section 2 (d) of Article XXI requires that districts be established “pursuant to a mapping process using the following criteria as set forth in the following order of priority.” These criteria are not only numerous, but also demanding. To the extent possible, districts must first comply with the United States Constitution and the federal Voting Rights Act and must be as nearly equal in population as possible. Districts must be geographically contiguous; respect geographic integrity and communities of interest; to the extent possible, be compact; and have Assembly districts nested in Senate districts. As demonstrated by the Declarations of Angelo N. Ancheta, Chair of the Commission, and Lilbert Ontai, Vice Chair of the Commission, filed herewith, the work required to draw district boundary lines that satisfy these criteria is voluminous and requires substantial time and effort.



First, as to the requirements of the United States Constitution and the federal Voting Rights Act, the California Constitution provides that the first two priorities in the mapping process require compliance with federal law.<sup>2</sup> To comply, the Commission consulted with Voting Rights Act Counsel (Declaration of Angelo N. Ancheta, ¶¶ 4, 6 (Ancheta Decl.)). It also engaged “a consultant with expertise in statistical methodologies to conduct racially polarized voting analyses for multiple areas of the state to help ensure that the Commission’s proposed districts complied with the federal Voting Rights Act.” (Ancheta Decl., ¶ 6).

Other criteria required the Commission to collect substantial information regarding the characteristics of each area of California. (Cal. Const., art. XXI, § 2 (3)-(6)). Perhaps the most demanding requirement was for the Commission to consider, among other things, communities of interest, defined as populations sharing “common social and economic interests.”<sup>3</sup>

---

<sup>2</sup> The first order of priority in the Commission’s mapping process is that “[d]istricts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as practicable, and Senatorial, Assembly, and State Board of Equalization districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law.” (Cal. Const., art. XXI, § 2 (d)(1)). The second criteria is that “[d]istricts shall comply with the federal Voting Rights Act (42 U.S.C. Sec. 1971 and following).” (*ibid.*, § 2 (d)(2)).

<sup>3</sup> “The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subdivisions. A community of interest is a contiguous population which shares common

The Commission gathered this information by conducting numerous community meetings, inviting oral and written submissions from members of the public, and then holding work sessions to review and consider this input. (Ancheta Decl., ¶ 6; Declaration of Lilbert Roy Ontai, ¶¶ 4, 5 (Ontai Decl.)). The Commission received “testimony from approximately 2,700 speakers and 22,000 written comments, and contained a range of statewide maps, regional maps, individual district lines, and articulations of local communities of interest and neighborhoods deserving protection within districts.” (Ancheta Decl., ¶ 7; see also Ontai Decl., ¶ 6).

It is certain that the 2020 Commission, subject to the same mandates to apply specific criteria in ranked order, will need substantially more than 15 days after receiving the 2020 census data to complete its line drawing, as time will necessarily be required both to consult experts and to receive and consider public input.

---

social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.” (Cal. Const., art. XXI, § 2 (d)(4)).

### **III. THE DISTRICT LINE DRAWING PROCESS REQUIRES SUBSTANTIAL PUBLIC OUTREACH AND INPUT**

The Commission was, and the 2020 Commission will be, compelled to seek substantial public participation in the map drawing process. The California Constitution orders the Commission to “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const., art. XXI, § 2 (a)). The constitutional requirement to consider shared interests in establishing districts (Cal. Const., art. XXI, § 2 (d)(4)) also required the Commission to survey the public, and this is reinforced by statute. The Commission was required to strive for “broad public participation” and to hold public meetings both to receive input from the public and to consider this input.<sup>4</sup>

The Commission was also required to receive public comment before it drew any maps as well as to publicly display and receive comment on its first preliminary maps, any subsequent maps, and its final maps.<sup>5</sup> To satisfy

---

<sup>4</sup> “The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process.” (Cal. Gov’t Code § 8253 (a)(7)).

<sup>5</sup> “The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display

this requirement, the Commission held many hearings to receive public input and then work sessions to review and consider this public input before finalizing its maps. (Ancheta Decl., ¶ 6).

Public participation in the Commission's hearings is subject to the Bagley-Keene Open Meeting Act (Cal. Gov't Code § 11120 et seq.). But, while other state agencies need only provide 10 days' notice of meetings, the Commission had to comply with an extended 14-day public notice requirement, except that in August of years ending in one it may hold meetings to receive public testimony with 3 days' notice. (Cal. Gov't Code § 8253 (a)(1)). In addition, it had to publicly display its first preliminary maps for a 14-day period, subsequent preliminary maps for a 7-day period, and final maps for a 3-day period (Cal. Gov't Code § 8253 (a)(7)).

The 2020 Commission will be subject to these same notice requirements, leading to the ridiculous result that if census data is not received until August 1, 2021, it will still have to allow 14 days for public

---

of the first preliminary statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed no later than July 1 in each year ending in the number one. The commission shall not display any other map for public comment during the 14-day period. The first preliminary statewide maps and all subsequent statewide maps shall comply, to the extent practicable, with the criteria set forth in subdivision (d) of Section 2 of Article XXI of the California Constitution. Public comment shall be taken for at least seven days from the date of public display of any subsequent preliminary statewide maps and for at least three days from the date of public display of any final statewide maps." (*Ibid.*)

comment on its first draft maps, leaving no time to hold subsequent hearings before the August 15 deadline for final maps.

This would defeat the strong mandate for broad public participation in the redistricting process.

#### **IV. CONCLUSION**

The delay of the Census Bureau's collection of census data due to COVID-19 will, absent intervention by this Court, defeat the voters' decision to have a Citizens Redistricting Commission draw district lines subject to specified criteria and with broad public participation.<sup>6</sup> Action by this Court is essential to address the COVID-19 caused delay is essential if the 2020 Commission is to be able to fulfill the voters' decision to have redistricting done by "a commission that is independent from legislative influence . . . ." (Cal. Const., art. XXI, § 2(c)(1)).

The only alternative if the 2020 Commission cannot complete its work within the current deadlines would be for this Court itself to appoint special masters. (Cal. Const., art XXI, § 2(j)). But although this is a theoretic possibility, the Commission urges the Court to grant the 2020 Commission time to do the redistricting work as the voters provided in Proposition 11 (the

---

<sup>6</sup> While the Legislature has also considered the alternative of a constitutional amendment to address the redistricting havoc caused by the census delay, as it states in its petition, this avenue of relief is both costly and no guarantee of success. A statutory solution is not possible, as the Commission's statutes may not be amended in years ending in 9, 0, or 1. (Cal. Gov't Code § 8251 (c)(5)).

Voters First Act (Gen. Elec., Nov. 4, 2008) and Proposition 20 (Gen. Elec., Nov. 2, 2010).

For the foregoing reasons, the Commission supports the petition filed by the Legislature, and urges this Court to grant relief so as to permit the 2020 Commission to carry out the redistricting process as the voters intended.

Respectfully submitted,

Dated: June 9, 2020

A handwritten signature in black ink, appearing to read "Marian M. Johnston", written in a cursive style.

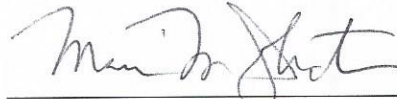
MARIAN M. JOHNSTON

Attorney for the 2010 California  
Citizens Redistricting Commission

## CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court 8.504(a), 8.504(d)(1) and 8.204(c)(1), and in reliance upon the word count feature of the software used, I certify that the attached RESPONSE OF THE CITIZENS REDISTRICTING COMMISSION TO EMERGENCY PETITION AND REQUEST FOR RELIEF FILED BY THE STATE OF CALIFORNIA LEGISLATURE contains 2948 words, excluding parts not required to be counted under Rule 8.204(c)(3).

Dated: June 8, 2020



---

MARIAN M. JOHNSTON