

April 16, 2021

To: California Citizens Redistricting Commission
From: Angelo Ancheta
Subject: Setting Deadlines to Complete the Commission's Preliminary and Final Maps

I offer the following comments to assist the Commission with its decision making on setting tentative deadlines to complete its preliminary and final maps. The comments may also be useful to the Commission in working with the Legislature or if it becomes involved in actions in the California Supreme Court related to its deadlines. The research, analysis, and recommendations are my own, do not represent those of any other individuals or entities, and were not produced for compensation or in consultation with any client or prospective client.¹

For the reasons set forth below, I conclude that the Commission's court-ordered deadlines are likely to be the following: January 1, 2022 for preliminary maps and February 14, 2022 for final maps. These dates assume that the official P.L. 94-171 data set, the only data set considered by the California Supreme Court in *Legislature v. Padilla*, will become available on September 30, 2021. The Commission is, however, empowered to set its own deadlines within these limits, and, given the expected availability of the state redistricting database as early as the end of September, it should consider earlier target dates: for example, the beginning of December 2021 for completion of its preliminary maps and mid-January 2022 for completion of its final maps.

I. The 2020 Citizens Redistricting Commission is An Independent Commission with the Authority to Establish Its Own Deadlines Based on Limits Set by the Voters FIRST Act and the California Supreme Court in *Legislature v. Padilla*.

The Voters FIRST Act amended the state constitution to create a redistricting commission empowered to act in the public interest, with a selection process that is "designed to produce a Citizens Redistricting Commission that is independent from legislative influence and reasonably representative of this State's diversity."² The intent of the voters of California was to make the Commission's decision making open and free from the Legislature's control, while also taking into account the coordination necessary between the two bodies during each decennial redistricting cycle: "The reform takes redistricting out of the partisan battles of the Legislature and guarantees redistricting will be debated in the open with public meetings."³

¹ I disclose this information to assure the Commission that the analysis is my own and that my appearance before the Commission in this communication is not subject to any prohibitions under the state's "revolving door" law applicable to former members of the California Citizens Redistricting Commission. See Cal. Code Reg. § 18746.2.

² Cal. Const. art. XXI, § 2(c)(1).

³ Official Voter Information Guide, California General Election, Nov. 4, 2008, Prop. 11, § 2(d).

And the California Supreme Court has agreed with this core prerogative, stating in *Legislature v. Padilla* that the Commission should “play the lead role in drawing new district maps, with input from the public received in a timely manner.”⁴

Nevertheless, in its Letter of March 26, 2021 to the Commission, the Leaders of the California State Legislature proposed that because the Census Bureau is expected to release “an interim data product (‘legacy format summary redistricting data’) for the 2021 Census by mid-to-late August,” the “deadline to adopt maps will need to be extended two to four weeks from the original deadline set by the Court, depending on the actual date the legacy format data is received.”⁵

The legislative leaders thus propose that the availability date for the legacy-format data set (i.e., approximately two to four weeks after July 31, 2021) should be the date contemplated by the Court in *Legislature v. Padilla* as the triggering event for further extending the Commission’s deadlines. The legislative leaders assert this even though, as discussed below, neither the Court nor the parties had reason to believe that an unofficial, interim Census data product might be used as a substitute for the official P.L. 94-171 data set.

Without question, it is the Legislature’s role to ensure that a usable redistricting database is made available to the Commission following the receipt of P.L. 94-171 data from the Census Bureau and after processing by the Statewide Database.⁶ And the Legislature has chosen to limit delays in preparing the redistricting database by opting for legacy-format data that should be available from four to six weeks earlier than the official data set. Given optimistic timelines and normal processing periods by the Statewide Database, the official redistricting database could be available by late September of 2021.

However, the California Supreme Court has made clear that it is the Commission’s prerogative, not the Legislature’s, to set deadlines consistent with the Voters FIRST Act and the Court’s ruling in *Legislature v. Padilla*. The Court stated:

In the event additional federal delay occurs, the Commission is directed to release the first preliminary statewide maps *by no later than* the date following November 1, 2021, that extends the November 1 deadline by the additional federal delay, and to approve and certify the final maps *by no later than* the date following December 15, 2021, that extends the December 15 deadline by the additional federal delay.⁷

⁴ 9 Cal. 5th 867, 880 (2020). This echoes the Court’s language in the 2010 cycle, when it rejected challenges to the Commission’s lines in *Vandermost v. Bowen*: “The constitutional provision creates a body that excludes career politicians, reflects citizen participation at every level, and is expected to rise above partisanship.” 53 Cal. 4th 421, 443 (2012).

⁵ Letter from Legislative Leaders, Mar. 26, 2021, available at https://www.wedrawthelinesca.org/3_29_21_handouts.

⁶ Cal. Gov. Code § 8253(b).

⁷ 9 Cal. 5th at 882 (emphasis added).

The *Padilla* Court also stated: “In the event the federal government transmits the census data to the state before July 31, 2021, the Commission should make every effort to expedite its process and release the preliminary and final maps in advance of the deadlines set forth above.”⁸ The Supreme Court thus established the outer boundaries for the Commission, but it clearly allowed the Commission to set its own deadlines, as long as those deadlines are earlier than the limits established by the Court.

The Legislature is no doubt mindful of candidate filing deadlines and related timelines tied to the 2022 primary elections, and it is certainly in the interest of all Californians to see minimal disruptions to the electoral calendar. Nonetheless, the *Padilla* Court’s discussion of electoral timelines and potential judicial remedies signals that the Court anticipated the strong possibility that extended deadlines could cause delays in the 2022 electoral cycle:

[W]hile we today grant a minimum four-month adjustment to the relevant deadlines, we also order that the deadlines be further extended by the length of any additional delay in release of the federal census data beyond four months. *In the event that an additional extension of time risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court.*⁹

The Supreme Court’s language suggests that the Commission’s work should not be tied to, or be unduly burdened by, the electoral calendar; indeed, the Court openly invites affected parties to seek subsequent relief from the Court.

All of this indicates that the Court in *Legislature v. Padilla* fully contemplated the independence of the Commission’s work, the importance of an open process with sufficient time for public input and line drawing, and the overriding interest of the Commission’s constitutional mandates relative to electoral timelines that could be adjusted by statute or by the Court itself.

II. The "Additional Federal Delay" That Extends the Deadline for Completion of Commission Maps Is Triggered by the Availability of the Official P.L. 94-171 Data Set, Not a Legacy-Format Data Set.

Throughout its opinion in *Legislature v. Padilla*, the Court consistently references only the official P.L. 94-171 data set as “the federal census data,” which under normal circumstances would have been delivered on a rolling basis to the states no later than March 31, 2021.¹⁰ For example, in referring to the change in the expected release of P.L. 94-171 data from March 31 to July 31, 2021, the Court stated: “Because the release of *the federal census data* will be delayed by four months under the Census Bureau’s plan, it will be impossible for the

⁸ *Id.*

⁹ *Id.* at 881 (emphasis added).

¹⁰ 13 U.S.C. § 141(c).

Commission to meet the July 1, 2021, deadline for displaying the first round of draft maps for public comment.”¹¹

Similarly, in referencing the processing of P.L. 94-171 data by the Statewide Database, the Court stated: “[T]he redistricting process begins with the Legislature preparing a dataset that combines *the federal census data* with voter registration data and historical statewide election results.”¹² And, in discussing the appropriateness of extending deadlines because of the delay in P.L. 94-171 data, the Court stated: “The remedy the Legislature seeks is both temporary and limited in nature: a one-time adjustment of the statutory deadline, for purposes of this redistricting cycle, in accordance with the adjustment to the schedule for releasing *the federal census data*.”¹³ Comparable language runs through the full opinion.

In a February 12, 2021 press release,¹⁴ as well as in federal court declarations by the Census Bureau’s Assistant Director for Decennial Census Programs, Systems, and Contracts and its Chief of the Redistricting and Voting Rights Data Office, in which they detail the Census Bureau’s data preparation process and working plan,¹⁵ the Census Bureau has indicated that the new target date for a single, nationwide release of the P.L. 94-171 data set is September 30, 2021.

The September 30, 2021 target date is sixty-one days later than the July 31st operative delivery date that the *Padilla* Court relied upon to extend the Commission’s deadlines. Using sixty-one days as the “additional federal delay” contemplated by the Supreme Court, the Commission’s court-ordered deadline for preliminary maps would be **January 1, 2022** (November 1, 2021 + 61 days) and the court-ordered deadline for final maps would be **February 14, 2022** (December 15, 2021 + 61 days). The Commission could, of course, set earlier deadlines to conform with these judicial deadlines and to accommodate electoral calendars.

There is no indication from the Court’s opinion in *Legislature v. Padilla* or from filings by the parties that any member of the Court or any party to the litigation expected that a data set other than the official P.L. 94-171 data set would be transmitted to the State of California, or that any alternative data set could be used to demarcate the “additional federal delay.” Nor

¹¹ 9 Cal. 5th at 877 (emphasis added).

¹² *Id.* at 872 (emphasis added).

¹³ *Id.* at 878 (emphasis added).

¹⁴ Census Bureau Statement on Redistricting Data Timeline, Feb. 12, 2021, available at <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

¹⁵ Declarations of Michael Thieme and James Whitehorne, *Ohio v. Raimondo*, S.D. Ohio No. 3:21-cv-00064-TMR, available at https://www2.census.gov/programs-surveys/decennial/rdo/technical-documentation/2020Census/Combined_Declarations_Document.pdf. James Whitehorne, the Chief of the Redistricting and Voting Rights Data Office, has also developed a blog to keep states informed about recent developments in the preparation of the official P.L. 94-171 data set. See <https://www.census.gov/newsroom/blogs/random-samplings/2021/02/timeline-redistricting-data.html>.

has the Legislature cited any legal authority to support a departure from the unambiguous language of the *Padilla* Court referencing the official P.L. 94-171 data set and no other data set.

Nevertheless, the legislative leaders have asserted that the availability of legacy-format data in mid- to late-August would necessarily trigger the availability of “the federal census data.” This reasoning suggests that the “additional federal delay” should range from approximately fifteen to thirty-one days, based on projected availability of legacy-format data from August 15 to August 31. This approach would create deadline ranges of November 16 to December 2, 2021 for the Commission’s preliminary maps, and December 30, 2021 to January 15, 2022 for its final maps.

The reasoning that legacy-format data triggers the availability of “the federal census data” is flawed, however. The Census Bureau has made clear that the legacy data set is unusable for redistricting purposes without additional processing by a state or a third-party vendor. Although it acknowledges that the legacy-format data are rooted in the same data that will be contained in the P.L. 94-171 data set, the Census Bureau has also recognized that “most states lack the capacity or resources to tabulate the data from these summary files on their own,” and it has reaffirmed its “commitment to providing all states tabulated data in our user-friendly system by Sept. 30, 2021.”¹⁶

In his recent declaration in the federal lawsuit of *Ohio v. Raimondo*, James Whitehorne, the Census Bureau’s Chief of the Redistricting and Voting Rights Data Office, further elaborated on the limitations of legacy-format data:

It would be possible to have fully reviewed redistricting data for all States available by mid to late August, but the data would be in an older format of data the Census Bureau developed decades ago. These are a difficult-to-use series of files that are used in databases capable of creating relationships between tables and files. In order to be used correctly, the files must be imported into a database, relationships must be established between the files, and the State must pull a subset of records in those files and fields for only the geography and data categories the State wants to use. Given the difficulty in using data in this format, any State using this data would have to accept responsibility for how they process these files, whether correctly or incorrectly. The official census user-friendly DVDs/Flash Drives and data.census.gov webpage—that States expect for redistricting and do not require those types of

¹⁶ U.S. Census Bureau Statement on Release of Legacy Format Summary Redistricting Data File, Mar. 15, 2021, available at <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>.

databases or technical expertise—would still only be available on our current working schedule [i.e., by September 30, 2021.]¹⁷

Mr. Whitehorne’s declaration makes clear that the legacy-format data set is far from official and even offers a strong disclaimer, which bears repeating: “Given the difficulty in using data in this format, any State using this data would have to accept responsibility for how they process these files, whether correctly or incorrectly.”

Karin Mac Donald, the Director of the Statewide Database, has stated via memorandum that her office does possess the technical capacity to process the legacy-format data and that “a 2-week period of time from the release of the ‘legacy’ data would be a reasonable timeframe to complete the processing, run accuracy checks, compare the data and allow for any discrepancies to be analyzed and resolved.”¹⁸ Ms. Mac Donald has also made clear that “[t]his 2-week period would be in addition to, and precede, the 30-day period of time that the SWDB will require to build the State’s official redistricting database.”

The two-week processing period is predicated on the assumption that the data transmitted will be in the format previously specified by the Census Bureau, although, as of this writing, the Statewide Database had not yet obtained the technical documentation necessary to process the data.¹⁹ Ms. Mac Donald’s memorandum also does not indicate whether any formal comparisons will be made between the state-processed legacy-format data set and the official P.L. 94-171 data set, but presumably these comparisons will be made to ensure the accuracy of the data. Once comparisons are conducted, any discrepancies between the data sets could necessitate modifications to the state’s redistricting database, which could in turn delay its use by the Commission and the public.

But even if one treats a legacy-format data set processed by the Statewide Database as the functional equivalent of the official P.L. 94-171 data set, the legislative leaders’ use of the legacy-format’s *initial* availability date (mid- to late-August) is problematic because the data are expected to be unusable for fourteen days. As the *Padilla* Court acknowledged, “the redistricting process begins with the Legislature preparing a dataset that combines the federal census data with voter registration data and historical statewide election results.”²⁰ But legacy-format data, by definition, is unprocessed for redistricting purposes and requires additional manipulation to make it equivalent to “the federal census data,” i.e., the official P.L. 94-171 data set. The Statewide Database has made clear that it cannot even begin its normal thirty-day preparation of the state’s redistricting database until it has converted the legacy-format data.

¹⁷ Declaration of James Whitehorne, *Ohio v. Raimondo*, S.D. Ohio No. 3:21-cv-00064-TMR, available at https://www2.census.gov/programs-surveys/decennial/rdo/technical-documentation/2020Census/Combined_Declarations_Document.pdf.

¹⁸ Memo from Karin Mac Donald, Statewide Database, Mar. 26, 2021, available at https://www.wedrawthelinesca.org/3_29_21_handouts.

¹⁹ Author’s Communication with Karin Mac Donald, Statewide Database, Apr. 15, 2021.

²⁰ 9 Cal. 5th at 872.

Even assuming for the sake of argument that state-processed legacy-format data is the type of census data contemplated by the *Padilla* Court, the necessity of making the data functional should logically increase the census data delay by fourteen days. This would result in extensions ranging from twenty-nine to forty-five days, with a deadline range of November 30 to December 16, 2021 for the preliminary maps and a deadline range of January 13 to January 29, 2022 for the final maps.

Setting deadlines using a functional equivalency approach may be apt for the Commission as an *aspirational* goal, since the *Padilla* Court had no factual predicate for using any data set other than the official P.L. 94-171 data set to extend the Commission's deadlines. Because the Legislature and the Statewide Database appear fully committed to moving forward with using legacy-format data – and given the Legislature's clear prerogative to prepare a redistricting database for the Commission and other California redistricting bodies – it may be appropriate for the Commission to consider tentative deadlines that fall within the 29-to-45-day-delay ranges outlined above. One example is setting a deadline on or around December 1, 2021 for the preliminary maps and a deadline on or around January 15, 2022 (or January 18, to accommodate the weekend and the M.L.K. holiday) for the final maps.

III. The Commission Should Set Deadlines That Do Not Compromise the Public Input Process Envisioned in the Voters FIRST Act and Underscored by the Court in *Legislature v. Padilla*.

Beyond the formal mandates contained in *Legislature v. Padilla*, the Commission should consider deadlines that maintain the robust public input process contemplated in the Voters FIRST Act. In setting deadlines for the Commission, the *Padilla* Court was fully mindful of the public input process, indicating that the four-and-one-half months (137 days) between the Census Bureau's statutory deadline for transmission of official data and the Commission's deadline for producing final maps was inherent in the voters' intent and was necessary to provide adequate public input and line-drawing time for the Commission:

The August 15 deadline was enacted against the backdrop of the federal deadline that requires the Census Bureau to transmit census data to the states by March 31 of the year following the census. We presume that the voters who approved the initiatives establishing the Commission and the deadline for the approval of the final redistricting maps were aware of this federal deadline, and that the choice of the August 15 date reflects their judgment about the amount of time that is ordinarily appropriate for an effective redistricting process after the necessary federal census data are released.²¹

A comparable public input and mapping period is one that the *Padilla* Court itself employed in extending the Commission's deadlines. The Court's tentative deadline of December 15, 2021

²¹ 9 Cal. 5th at 879 (citations omitted).

for final maps was calibrated to be 137 days after the Census Bureau's previous projected release date for P.L. 94-171 data of July 31, 2021. Similarly, a court-ordered deadline of February 14, 2022 for final maps would establish a public input and mapping period of 137 days based on the current projection of September 30, 2021 for release of the official P.L. 94-171 data.

The Legislature's timeline using legacy-format data ostensibly retains a similar period for public input and line drawing. However, this timeline does not consider the extra two weeks that will be lost to process the legacy-format data. The projected timeline also places key periods of public review within the range of holidays in November and December of 2021, and possibly early January 2022, further compromising the public's ability to provide meaningful input to the Commission.

More precisely, the Legislature's proposed timeline could effectively reduce the overall post-Census redistricting period from 137 days to 123 days. In addition, the normal post-Census redistricting period contains only two holiday days: Memorial Day and Independence Day. The Legislature's proposed timeline in the present cycle could contain up to five holiday days: Veterans Day, Thanksgiving Day, Friday After Thanksgiving, Christmas Day, and New Year's Day. (Christmas Day 2021 and New Year's Day 2022 each fall on a Saturday; state offices will be open on December 24 and December 31, but many members of the public will treat those Fridays as holidays, while state employees will receive holiday credit.)

Another problem with an abbreviated timeline is that it may not adequately accommodate the public's increased use of mapping software, which enables users to present district-level maps, not merely community-of-interest or neighborhood information that can be collected by the Commission prior to the release of the census data. To propose district maps, members of the public must wait to use the same data set that the Commission will employ in 2021: the state's official redistricting database.

Under normal circumstances, the redistricting database would be expected to be available by April 30th of the year ending in "1," which would be three-and-one-half months (107 days) before the deadline for final maps on August 15th of the same year. If during this delayed cycle the redistricting database becomes available as early as September 30, 2021, then a comparable deadline for the final maps ought to be January 15, 2022 (107-day difference), rather than an earlier deadline of December 30 (93-day difference) contemplated by the Legislature's logic.

It is also important to consider that many individuals and groups who are expecting to rely on the redistricting database have also signaled that they will be seeking feedback on regional or statewide maps from community members. These database users could be even more adversely affected by a shortened input and mapping period, particularly those who are working with rural, low-income, or racial and ethnic minority communities.

A loss of two weeks might appear trivial, but it amounts to approximately 11% of the normal post-Census period in the Commission’s redistricting process – and even more time would be lost, given the increased number of holidays during the projected cycle. This amount of time is not insignificant. The Commission should carefully weigh any proposal that could so seriously compromise its own line drawing and the public’s ability to participate meaningfully in the redistricting process.

Conclusion

In setting tentative deadlines for completing preliminary and final maps, the Commission faces critical decisions that go to the core of its mission and its constitutional responsibilities. Maintaining its independence from legislative influence and ensuring an open redistricting process that offers robust public participation are essential, and they should not be compromised solely for the sake of political or electoral expediency. Both the Commission and the Legislature have important and well-defined roles in the redistricting cycle and must work cooperatively given those roles. Nonetheless, the requirements of *Legislature v. Padilla* are clear, and the Commission should set deadlines that are consistent with both that ruling and the voters’ intent in the Voters FIRST Act.