

April 25, 2021

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

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Because of recent developments since the submission of my comments on April 16, 2021, I offer the following additional comments to discuss changes in projected deadlines and to respond to arguments offered by the firm of Olson Remcho on behalf of the Legislature. I also offer comments of a more personal nature as a conclusion. As with my previous comments, 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.<sup>1</sup>

At the outset, let me say that the Olson Remcho firm is a highly regarded and experienced firm in the fields of election law and redistricting law whose opinions deserve serious consideration. That is why the Legislature often calls on them for representation and why they worked on the *Legislature v. Padilla* case. The *Padilla* case was a friendly case, and neither the Secretary of State nor the 2010 Commission opposed the petition filed by the Legislature. We were allied in the case, and as Chair of the Commission at the time, I worked with Marian Johnston and Vice-Chair Gil Ontai to put together legal papers and declarations, and they were cited in the opinion. And we were all happy with the outcome of the case.

However, no one anticipated the availability of an alternative to the official P.L. 94-171 dataset. That is why the *Padilla* Court just calls it the "federal census data." There was no reason to distinguish between official data and legacy-format data because, until March 2021, there was only one choice available – the official P.L. 94 data. Now, I say "federal census data" still means the same as it did before the legacy-format data set was announced; the Legislature and Olson Remcho say that it has changed and now the pre-processed legacy data set is what counts; and there may even be a third way to interpret it, which is to count the trigger as when the Statewide Database finishes converting the legacy data set – the post-processed legacy data set.

But, we can all agree that the same basic data are contained in the legacy-format data set that will be used to produce the official P.L. 94-171 set -- why else would you want to use it? -- and that it will take several days of additional processing time before the data can be used to begin

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<sup>1</sup> 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.

construction of the Statewide Database. And I continue to hold that those extra days are highly significant and need to be factored into timelines, particularly given holiday schedules (and you do not have to quibble about the exact number of days, because you know intuitively that the public is going to be more concerned about things other than redistricting during Thanksgiving Weekend and much of December).

This is an example of lawyers disagreeing on an interpretation of law and language, which happens all the time in the profession. And there are clearly important differences in the underlying interests, the deadlines, and the effects on the electoral calendar that could occur, depending on which interpretation you prefer and how you set your timelines. But neither I nor the Olson Remcho firm represents you. You have your own counsel, and you should make a decision based on a combination of her advice, your assessment of options, and your own judgment of what is best for the Commission and the redistricting process. And if you want to be sure of things, then you should propose working deadlines and see if the issue can get back in front of the Court.

I thus stand by my previous comments, and add the following points: The Olson Remcho memo tries to provide some worst-case scenarios if you set deadlines too far out. But I've never recommended actually going out all the way to mid-February; my personal suggestions have always revolved around using mid-January deadlines for final maps because of the earlier availability of the Statewide Database. And Olson Remcho is right that the Court is not likely to change the 2022 primary date if they can avoid it. But, the Court can and has altered deadlines for in-lieu-of petitions, filing deadlines, and other election-calendar events in order to make the calendar work with new maps, and to avoid changing primary dates.

The 1992 case of *Wilson v. Eu*<sup>2</sup> is a good example. The California Supreme Court had to take over redistricting in the 1991 cycle because of an impasse between the Legislature and the Governor, and the Court asked Special Masters to receive input and produce draft maps. The draft maps were delivered on November 29, 1991, and the oral arguments were scheduled in mid-January 1992. The Court later made minor adjustments to the Special Masters' maps and published an opinion in late January 1992.

The Court's final opinion was issued on January 27, 1992, one day before the Court's self-imposed deadline. The Court had previously issued orders, consistent with the Secretary of State's recommendations, allowing counties to review the draft maps, and adjusting various petition and filing deadlines.<sup>3</sup> The June 2, 1992 primary was held as originally scheduled. So, it is entirely possible to have final maps become available near the end of January without having to change the date of a June primary, as long as adjustments can be made to key deadlines leading up to the primary.

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<sup>2</sup> 1 Cal. 4th 707, 823 P.2d 545, 4 Cal. Rptr. 2d 379 (1992).

<sup>3</sup> 54 Cal. 3d 546, 817 P.2d 890, 286 Cal. Rptr. 625 (1991).

There is also one statement that I am compelled to call out from the conclusion of the Olson Remcho memo: the intimation that the Commission could lose its authority over the redistricting process if it uses the wrong deadline. This strains credibility, and in my opinion it simply will not happen if you decide to set a reasonable deadline later than December 31. Are the Legislature and Olson Remcho actually suggesting that the Supreme Court would rather take on the task of redistricting themselves, instead of approving a deadline that's further out than late-December and making some adjustments to petition and filing deadlines, in order to avoid compromising the public input process and the Commission's work? The *Padilla* opinion suggests just the opposite of that,<sup>4</sup> and I think you run very little risk of having the Supreme Court take over a process that was put in place by voter-initiated amendments to the state constitution, unless you reach an impasse.

I conclude with a personal anecdote:

Recall the case of *Wilson v. Eu*. In 1991, I was one of the attorneys appearing before the Special Masters and the California Supreme Court in that case. I was working at the Asian Pacific American Legal Center and was counsel for the Coalition of Asian Pacific Americans for Fair Reapportionment (CAPAFR), which was the first organized redistricting effort in California to advocate for Asian American and Pacific Islander communities on a state level. I had never worked on redistricting before then; my caseload was primarily immigration and civil rights cases involving low-income immigrants and refugees. But once it was in the courts, CAPAFR needed attorneys to participate in the Special Masters' hearings and in the Supreme Court, and a couple of us were drafted for the work.

We represented a much smaller AAPI population at the time, had to try to reconcile our maps with the more populous Latino maps in Southern California, were not especially well organized, relied heavily on volunteers, and used technology that was primitive by today's standards. I recall sitting on the floor with co-counsel looking at paper maps in a Thomas Bros. Guide, and trying to figure out how census *tracts* might be included in proposed districts. We worked with a pair of social scientists, and submitted maps and briefs to the Special Masters and the Court, arguing that Asian American and Pacific Islander communities deserved protection under the Voting Rights Act and as communities of interest.

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<sup>4</sup> "There are, moreover, strong reasons to believe voters would not have preferred deploying this backstop—and thereby transferring primary responsibility for redistricting from the Commission to this court—to employing the usual redistricting procedures on an adjusted timeline. The voters enacted Propositions 11 and 20 to transfer the responsibility of drawing new district maps from the Legislature to an independent panel of citizens. (Voter Information Guide, Gen. Elec., *supra*, analysis of Prop. 11 by Legis. Analyst, pp. 70-71; see *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306].) In so doing, the voters tasked this court with redistricting only as a matter of last resort. (Cal. Const., art. XXI, § 2, subd. (j).) For this court to undertake to draw maps in the first instance would both displace the role voters envisioned for the Commission and preclude opportunities for the public to participate in the process as the voters intended. (See Cal. Const., art. XXI, § 2, subd. (b)(1) [instructing the Commission to "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines ..."].) Adjusting the August 15 deadline, by contrast, gives effect to the voters' intent that the Commission play the lead role in drawing new district maps, with input from the public received in a timely manner." 9 Cal. 5th at 880.

The oral arguments in mid-January featured arguments from high-powered attorneys representing the Governor, the Legislature, the major parties, and various officials, as well as civil rights organizations. We made our best case, knowing full well that we were representing some of the fastest-growing but least vocal communities in California and thinking that perhaps the Court had only been courteous in inviting us to speak there, because our communities just weren't that large or as politically active as the other interests.

But when the Court issued its opinion at the end of January, we realized that we had scored a victory, and it was the only one that any party was able to secure from the Court itself. The Court modified lines in Southern California to include more Asian American populations in two Assembly districts. It was not a major change, but our advocacy made a difference: a few years later the first Asian American assembly member from that area was elected from one of those new districts.

I offer this anecdote not to demonstrate some personal depth or length of experience in redistricting or voting rights, but to show that late-date advocacy from smaller, less powerful, and less organized groups can often make a difference when it comes to state redistricting. You do not have to be that experienced or be armed with the latest technology to get involved, but you do need an opportunity to participate, even when the electoral clocks are ticking in the background and even when the power players are taking up most of the oxygen in the room.

That is one of the reasons that you need to keep the process open to the public as often as you can and for as long as you can. Some of the most useful information comes in after draft maps have been published and circulated, and you want to give yourself the time to process that information. It could make a big difference to many communities in California.

Thank you for your consideration.