

May 23, 2021

California Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814

Sent via electronic transmission

Dear Commissioners,

Thank you for your steady leadership and continued engagement with the public to inform what you need for a transparent and robust participatory redistricting process. The conditions and challenges you are facing are unprecedented. In the midst of everything, including the federal government's inability to provide usable census data timely, we ask that you continue to stay true to the spirit of the Voters FIRST Act.

On behalf of the Integrated Voter Engagement (IVE) Redistricting Alliance, the undersigned community-based organizations and civil rights advocates respectfully write to provide you with our recommendations for the amount of time needed to ensure meaningful public participation at every stage of the redistricting process. Below, we provide you with the following information: (1) a review of your draft deadline scenarios; (2) a legal analysis on the authority given to the Commission by *Legislature v. Padilla*, 9 Cal. 5th 867 (2020); (3) a recommendation to plan for a map approval by January 28; and (4) a recommendation to seek clarification from the California Supreme Court if the Commission is uncertain of its authority.

I. Review of the Commission's Deadline Scenarios

The IVE Redistricting Alliance was formed to empower low-income, Black, Indigenous, and people of color (BIPOC) residents to participate in the 2021 state and local redistricting processes and empower community residents to participate. Partners include statewide and regional networks of community-based organizations (CBOs) that prioritize issues of racial and economic equity, grassroots organizing, and provide capacity building for residents most impacted by systemic inequities. From census, to redistricting, to elections – the Alliance members are committed to strengthening California's democracy from the grassroots up.

We bring a valuable voice to redistricting that centers community and prioritizes a public participation process that is inclusive, accessible, and shaped *with* the people of California. Our review of the deadline scenarios took into account what it takes for community-based organizations to organize, build up residents' capacity, and mobilize low-income and BIPOC communities to fully participate in the redistricting process. Our goal is not only to ensure that

underrepresented communities submit COI testimony and maps, but also to achieve the following: (1) analyze and understand census data; (2) engage and coordinate across various COIs and community groups to understand how they share similar interests and how they fit together; (3) participate in developing and advocating for maps; and (4) analyze and provide feedback to the Commission's draft and final maps.

The IVE Alliance reviewed the proposals under consideration by the Commission and is concerned that the proposals compromise key periods of the public input process.

There Must Be Time for the Public to Review Redistricting Data and Propose Draft District Maps

The Commission should set a timeline that allows the public to analyze the data and submit proposed maps prior to the Commission's posting of its first draft maps. Many community groups will hold workshops and meetings to create community district maps.

Community-created district maps can help the Commission think about areas of complexity and conflict between different communities of interest, the Voting Rights Act, and other criteria. Community-mapping often occurs in collaboration with many community-based groups who represent impacted communities and can help streamline input to the Commission. Draft maps from the public often reflect conversations and deliberations between communities of interest and can help address and resolve challenges. The more communities and the public see themselves and their views in the draft maps, the more quickly the commission can move and focus on areas of the state where there may be particularly complicated issues. We are very concerned that proposed Scenario 2 provides no time for this type of community input. We recommend that the Commission's map-drafting should not start before November 1, so that the public has time to work with the adjusted data released by the Statewide Database and to propose community-created draft district maps.

There Must Be Meaningful Opportunity for the Public to Review Draft Maps and Provide Input

It is important that the public have time to review both initial draft maps and subsequent drafts, and to provide input on these maps. The Commission's work will inevitably overlap with multiple important holidays, which will make it more challenging for the public to review the Commission's draft maps and provide input. We ask the Commission to account for the holidays and add time so that no key periods occur *primarily* during the holidays. With many people reuniting with family and traveling for the first holiday season after the Covid-19 pandemic, communities will not be able to meaningfully participate during the second half of December through the New Year. We recommend a minimum of 6 weeks outside of the holiday period for public input on draft maps--this could be achieved with initial posting of draft maps in early

December and continued time for feedback and revision in January. We have concerns that the proposed scenarios do not account for this time.¹ For example, in Scenario 1, draft maps are posted for community review during the Thanksgiving holiday and public input on subsequent changes occurs during December, with maps finalized during the December holidays. Scenario 4 similarly sets discussion of draft refinements and map finalization during the December holidays and the New Year. Scenario 4 does suggest the possibility of a later January deadline, which *would* remedy this issue by allowing public engagement after the holidays, in mid-January.

II. The Commission Has the Authority to Extend the Deadline to February and an Extension Would Serve the Purposes of the Voters FIRST Act

In *Legislature v. Padilla*, 9 Cal. 5th 867 (2020), the California Supreme Court authorizes the Commission to extend its deadline if the census data needed for redistricting are provided after July 31, 2021. The Court directs the Commission to approve and certify the final statewide maps by no later than December 15, 2021. However, the Court states that, “If the federal government transmits the census data to the state later than July 31, 2021, the number of days of additional delay shall be considered to be the ‘additional federal delay.’” *Padilla*, 9 Cal.5th at 882. The Court provides the Commission the authority to extend the final maps by the additional federal delay. Because the federal redistricting data product, commonly referred to as P.L. 94-171, will not be released until September 30, 2021, 61 days after the July 31, 2021 release date contemplated by the Court, the Commission is authorized to extend the deadline for the final maps an additional 61 days to February 14, 2022. Although the Commission may set earlier deadlines, *Padilla* provides the legal authority to select any deadlines that will allow the delivery of the final maps on or before February 14.

The fact that the U.S. Census Bureau can provide “legacy”-format data before it can provide the P.L. redistricting file does not change the meaning of the *Padilla* decision. Nothing in *Padilla* requires the deadlines to move up if the federal government provides a different format of data earlier than it provides the P.L. redistricting file. A close read of the *Padilla* decision demonstrates that the Court provided an extension based on the period of delay in the release of the *P.L. redistricting file*. The Court twice describes the federal census data at issue in the case as the data released by the Census Bureau to the states for redistricting, citing to section 141(c) of title 13 of the U.S. Code. *See Padilla*, 9 Cal.5th at 871, 879. The Court also explains that the federal census data at issue is typically made available by April 1 following a census year. *Id.* at 873. The redistricting data that must be delivered by April 1, as required by section 141(c), is the

¹ Scenario 2 avoids the December holidays, but only by cutting out all opportunity for communities to review redistricting data and propose district maps before line-drawing commences. Scenario 2 also shortens the time between the statewide database’s redistricting data being ready for use and the final deadline from the originally-planned 15 weeks to 12.5 weeks. The time is even shorter when you account for the Thanksgiving holiday.

P.L. 94-171 data product. See U.S. Census Bureau, *Redistricting Data Program Management*, Mar. 16, 2021, <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html>. While the legacy-format data allows the Commission to begin the process earlier, it does not set a new deadline. Such a reading of *Padilla* would put the Commission in a position where its deadlines remain uncertain until the actual release of the data.

Although February 14, 2022 is the outermost date by which the Commission would need to approve and certify the maps, the Commission could select a date before that date, so long as it provides sufficient time for public participation in the redistricting process.

III. The Commission Should Plan for Map Approval by January 28, 2022 to be Consistent with the Purposes of the Voters FIRST Act

We recommend that the Commission select January 28, 2022 as its deadline for final map approval, although it has authority under *Padilla* to use a February deadline. This balances the interests of a meaningful, robust, and engaged public participation process against the need to finalize maps to facilitate a timely primary process. The *Padilla* Court recognized that allowing public participation in the mapping process was an essential element of the Commission’s design and purpose. The Court explained, “The framework reflects a policy judgment that the public should have the opportunity to be involved throughout the redistricting process.” *Padilla*, 9 Cal. 5th at 877.

As the Commission knows, the people of California passed the Voters FIRST Act to create a public redistricting process in which the Commission must “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” Cal. Const., art. XXI, § 2, subd. (b). The Act included numerous requirements to ensure opportunities for public engagement in the process, including the requirement to hold open hearings for public input and public deliberation and a mandate to display “maps for public comment in a manner designed to achieve the widest public access reasonably possible.” Gov. Code, § 8253. After the 2011 redistricting cycle, additional steps were taken to ensure a full and fair process: the legislature added a requirement that draft maps be posted before July 1, “to guarantee that the public will have the ability and time to review the maps and respond to the Commission.” Assem. Com. on Elections & Redistricting, Analysis of Sen. Bill No. 1096 (2011–2012 Reg. Sess.) July 3, 2012, p. 5.

The *Padilla* Court relied on the clear intent of the voters as the basis for its decision to extend the Commission’s deadlines. The Court extended the draft map deadline in order to “effectuate the policy judgment underlying the provision and preserve the public’s right to provide input on electoral district maps before those maps are finalized.” *Id.* at 879. Similarly, the Court extended

the final map deadline to “give[] 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.” *Id.* at 880.

A December deadline for final maps would severely limit community participation, in contravention of the principles set out in *Padilla*. First and foremost, a December deadline would shorten the timeline for drafting maps as set out in *Padilla*. In a typical year, the P.L. redistricting data are released on or before March 31 and the final map deadline is August 15, 137 days later. When the *Padilla* Court provided its extension, the P.L. redistricting data were anticipated to be released on or before July 31, so the Court extended the final map deadline to December 15. Now, the P.L. data product will be provided to the states by September 30, and the Census Bureau has announced that it will release a legacy format of the data on August 16.² Even if the Commission uses the legacy-format data to begin its work, the timeline should be extended based on the delayed release of P.L. data. The legacy-format data will be released more than two weeks after the date anticipated by the *Padilla* Court. Additionally, the legacy-format data is not equivalent to the P.L. file for purposes of calculating the timeline. The legacy-format data must be manipulated, extracted, and reformatted and quality checks must occur. These extra steps take time. Neither the Voters FIRST Act nor the *Padilla* decision contemplated the time needed for legacy-format data processing when setting out the four-and-a-half-month timeline from data release to map approval.

The continuing delay of the census data has created an additional extraordinary challenge that interferes with the Voters FIRST Act’s goal of displaying maps for “public comment in a manner designed to achieve the widest public access reasonably possible.” Gov. Code, § 8253. The overlap of the timeline and the December holiday will seriously limit public opportunity to engage in the process if a December deadline is adopted. The holiday period is often a time when families and communities travel and gather. Key holidays include Thanksgiving, Christmas, the December break, when students are out of school for two to three weeks, and the New Year. Moreover, due to the pandemic, the public is likely to take vacation time to visit and spend time with family.³ In light of the likely severe reduction to public participation in December and early January, we respectfully request that the Commission use the time the *Padilla* Court has

² U.S. Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data*, March 15, 2021, <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

³ See Erin Allday, *California Confirms State Will Reopen June 15*, San Francisco Chronicle, May 21, 2021, Berkeley Lovelace Jr., *Biden Covid advisor says Christmas is a ‘reasonable’ timeline for getting back to normal*, CNBC, Feb. 18, 2021, <https://www.cnbc.com/2021/02/18/biden-covid-advisor-says-christmas-is-a-reasonable-timeline-for-getting-back-to-normal.html>. Vaccination rates in California are predicted to reach 85% by the end of Aug. Audrey Carlsen at al., *How is the Covid-19 Vaccination Campaign Going in Your State?*, May 22, 20221, <https://www.npr.org/sections/health-shots/2021/01/28/960901166/how-is-the-covid-19-vaccination-campaign-going-in-your-state>.

authorized and acknowledge its formal authority to adopt a deadline of February 2022 while adopting a planned deadline of January 28, 2022.⁴

IV. The Commission May Seek Clarification from the Court

As discussed above, the Commission has the authority to extend the deadline to February 2022. If the Commission prefers the California Supreme Court to articulate its authority, we urge the Commission to file a writ with the Court.

If the Commission seeks confirmation from the Court, there are compelling arguments that a late-January or February deadline is needed to effectuate the intent behind the Voters FIRST Act and its amendments. First, the Commission can ask for clarification that the release of the P.L. 94-171 data product is the starting point for calculating the four-and-a-half month period, since it is the redistricting data product that has traditionally been used for redistricting in California.⁵

In the alternative, if the Court finds that the timeline starts when the legacy-format data are released, the Court should make adjustments to the timeline to allow a late-January deadline, in order to effectuate the intent of the Voters FIRST Act. In extraordinary circumstances, the Court can modify Constitutional and statutory deadlines to effectuate the policy goals and judgments underlying the law. That is exactly what it did in the *Padilla* case. This would be no different. Setting a late-January deadline would allow public input opportunities that are functionally equivalent to the public input opportunities set out by the Voters FIRST Act and its amendments. The Commission already has the authority to do this, but could consult again with the Court if it feels necessary.

The Commission can ask the Court to account for the extra time needed to reformat and check legacy-format data and to account for the overlap of key public input periods to the December holidays. *At a minimum*, the deadline should be extended to reflect the release of the data in mid-August plus the additional time needed to reformat the legacy data and undertake accuracy

⁴ As noted previously, the Commission can plan to complete its process earlier than the official deadline. We recommend a January 28 deadline, to allow robust public input while minimizing changes to the elections calendar.

⁵ See, e.g., *Kenneth McCue*, *Creating California's Official Redistricting Database*, Aug. 2011, <https://statewidedatabase.org/d10/Creating%20CA%20Official%20Redistricting%20Database.pdf> (“PL94-171 is the law under which population data is provided to the states for redistricting.”); *Raphael J. Sonenshein*, *When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission*, pp. 54-55 (citing to P.L. 94-171, codified as amended at 13 U.S.C. 141(c), when discussing the “census data” used in the 2011 California redistricting process). See also U.S. Census Bureau, *Redistricting File (Public Law 94-171) Dataset*, Feb. 3, 2011, <https://www.census.gov/data/datasets/2010/dec/redistricting-file-pl-94-171.html>; U.S. Census Bureau, *Redistricting File (Public Law 94-171) Dataset*, 1991, <https://www.census.gov/data/datasets/1990/dec/redistricting-data-pl-94-171.html>.

checks and comparisons. Every day of the time period between the data being ready for use and the final map deadline is important. During this period, the data are needed for Statewide Database staff to construct the State's redistricting database, to assess Voting Rights Act districts, to create map visualizations and formal draft maps, to receive public input on the draft maps, to finalize the maps, and to write the Commission's report explaining the basis for all four final maps. During this period, the community will be creating community-proposed district maps, analyzing the Commission's draft maps, creating responsive mapping proposals, providing testimony, and participating in any live-drawing sessions held by the Commission. To provide equal opportunity for public input as that contemplated by the Voters FIRST Act and its amendments, the timeline should be further adjusted because key portions of the public input periods will occur during the Thanksgiving and December holidays, where the public will be unavailable not only for official holidays but for extended periods of time due to travel and family events.

Conclusion

Given that the Commission has the authority to extend the deadline to February in accordance with the *Padilla* Court's decision, in order to uphold the spirit of the Voters FIRST Act, we recommend that the Commission adopt January 28, 2022 as the deadline for final map approval. Additionally, we uplift that the Commission may seek clarification from the Court if it feels necessary.

Please reach out to Alejandra Ponce de León with Advancement Project California at aponcedeleon@advanceproj.org should you need more information. Thank you for your service and consideration.

Sincerely,

APIs for Civic Empowerment Education Fund
Advancement Project California
Alliance San Diego
Asian Americans Advancing Justice-Asian Law Caucus
Bay Rising
California Black Census and Redistricting Hub
California Calls
California League of Conservation Voters Education Fund
California Native Vote Project
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