

October 7, 2021

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

Sent via electronic transmission

Dear Commissioners:

We write to express our concerns on the Commission's compliance with the federal Voting Rights Act (VRA) and its analysis of racially polarized voting (RPV) in California. As always, we appreciate the Commission's commitment to protecting minority voting rights, and we fully support its devoting significant resources to legal and empirical work that ensure the Commission's adherence to federal law. We also appreciate the work of the VRA team, including attorney David Becker and Dr. Megan Gall, who have consistently offered clear and concise explanations of the underlying legal and empirical standards to the Commission and the public.

Nevertheless, **we are very concerned about the recent use of closed sessions to discuss VRA compliance outside of public view, as well as the growing uncertainty regarding the Commission's release of information that is essential to the public's analysis of visualizations and proposed districts.** We believe the Commission can adhere to both the spirit and the letter of the law by encouraging a more open process that allows the public to evaluate the Commission's rationales for its maps, while still protecting the Commission's legal interests and respecting attorney work product.

Under the Bagley-Keene open meeting law, closed sessions are appropriate for "pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation." (Cal. GOV Code § 11126(e)(1)) At present, no litigation has been initiated (see *id.* § 11126(e)(2)(A)), but the Commission's counsel has proposed that closed session can be appropriate when, "based on existing facts and circumstances, there is a significant exposure to litigation" against the Commission (see *id.* § 11126(e)(2)(B)(i)). The "significant exposure" rationale was used to justify the Commission's closed session on September 28, 2021, and we anticipate that future closed sessions may be invoked under this rationale to discuss details of Dr. Megan Gall's RPV analyses.

Unfortunately, based on remarks made during open sessions on September 28 and October 4, 2021, the Commissioners and their various counsel appear to be adopting an expansive interpretation of the pending-litigation exception – one that threatens to keep the most relevant and useful information out of the public eye, simply because some of the specific details might be the subject of litigation or might place the Commission at greater risk of lawsuit.

We consider such a risk-averse approach to be speculative and overly broad, and one that runs counter to the basic goals of the Bagley-Keene law. If the standard by which closed session is invoked is merely that it could be the topic of litigation or that the Commission might be placed at greater risk, then practically any topic related to the Commission's work and the application of its redistricting criteria could be shielded from

the public. Such an approach is particularly hard to justify when, at some point, the Commission must make open-session decisions on whether to create majority-minority districts or to consider various options affected by its RPV analyses.

We do recognize that limitations on attorney work product related to expert witnesses are fully applicable, and that communications, legal theories, research, and similar work products are not appropriate for public consumption. But there must be a balance struck that also accommodates the underlying values of openness and transparency, as well as the public's central role in providing informed input on the Commission's visualizations and proposed districts.

In addition to limiting the use of closed sessions, we believe the Commission should work proactively in providing the public with adequate information and resources to develop effective district proposals. The Statewide Database has supplied multiple tools to aid in creating communities of interests, individual districts, and even regional and statewide maps that can be submitted to the Commission. However, without access to basic information about racially polarized voting patterns, the public cannot effectively draw or comment on districts that comply with the federal Voting Rights Act.

To its credit, the Commission has devoted greater time and resources to VRA compliance and racially polarized voting than the 2010 Commission was able to develop. However, it should be noted that the previous Commission set a precedent of using closed sessions sparingly and only invoked them as concrete threats of litigation arose. While the 2010 Commission did treat the underlying research and communications of its VRA counsel and expert as attorney work product, it also made ample information related to RPV available to the public: it published a detailed legal memorandum from its VRA counsel and released a 52-page expert report (including testimony from non-profit data and policy analysts) involving Latinos in Southern California that was made available on the Commission's web site and was discussed in open session during its July 2011 meetings. We believe that this type of information is the bare minimum that the Commission should offer the public, and that the Commission should go even further by examining other parts of California, as well as other minority groups (alone and in combination).

The Commission's leadership on VRA compliance is vitally important. It has already committed significant resources to its RPV analyses. No other entity has such a large budget for RPV work, and most individuals and smaller organizations simply cannot be expected to develop RPV analyses on their own. **Limiting access to this critical information would effectively lock out many groups and individuals from taking part in VRA compliance. Accordingly, we strongly encourage the Commission:**

- 1. to limit its use of closed sessions to discuss RPV findings;**
- 2. to supply a road map of its RPV work going forward; and**
- 3. to offer summary information and conclusions on RPV as they become available.**

Thank you again for your service and commitment to an open and fair redistricting process. We look forward to working with you in the coming months.

Sincerely,

AAPIs For Civic Empowerment - Education Fund  
Advancement Project California  
Alliance San Diego  
Asian Americans Advancing Justice - California

Bay Rising  
California Black Census and Redistricting Hub  
California Calls Education Fund  
Central Coastal Alliance United for A Sustainable Economy  
Coalition for Humane Immigrant Rights  
Communities for a New California Education Fund  
Equality California  
IE United  
Mexican American Legal Defense and Educational Fund  
Mi Familia Vota  
National Association of Latino Elected and Appointed Officials Educational Fund  
Orange County Civic Engagement Table  
The People's Bloc  
Power California