

2020 CRC, Mapping Playbook – Attachment #1

Referenced in the Mapping Playbook outline, II.D.3., “Areas that are not specified . . .”

How Current District Lines Could Help Inform Future District Lines

As the Commission is aware, “Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.” (Cal. Const. art. XXI, § 2.) However, there may be other, valid bases for considering current district boundaries or the rationale for current district boundaries. Below are some thoughts regarding whether, when, and how the Commission might consider current district boundaries.

A. While the 2011 Commission had robust reasons to start with a blank slate, it also faced legal constraints against doing so.

1. 2011 - VRA Section 5: The 2011 Commission was legally obligated to consider the racial composition of districts in jurisdictions where the Section 5 of the federal Voting Rights Act applied. This provision of the law no longer applies after the Supreme Court’s decision in *Shelby County v. Holder*. However, we will examine 2011 Section 5 districts for relevance to 2021.

2. 2011 – Existing (2001) lines had been drawn by the Legislature: In non-Section 5 areas, the 2011 Commission discussed whether to use existing boundaries that had been drawn by a different entity (Legislature) using different rules (Propositions 11/20 modified redistricting criteria), and that were widely considered a bi-partisan incumbent gerrymander. The 2011 Commission decided not to use the existing districts.

3. 2021 – Different situation: The 2021 Commission is working in a changed environment because Section 5 no longer applies and because the existing baseline districts were established by the previous redistricting commission, using largely the same rules and criteria.

B. Bearing in mind that populations and Communities of Interest (COIs) change over time, the CRC may find it useful to refer to current district boundaries in some situations.

Given the plethora of demographic changes in the past decade, the 2021 Commission will not routinely proceed by simply assessing and then modifying existing districts. Nevertheless, the 2021 process may necessarily consider the current boundaries in specific situations and the 2021 CRC may decide to consider current district boundaries during at least some other aspects of the current process. Specifically, the current boundaries will be used to inform parts of the Racially Polarized Voting Analysis used for VRA compliance. This memo further identifies five other scenarios in which the 2021 Commission may wish to consider current boundaries under certain circumstances:

1. Implementing Public Input: A significant portion of public input during the COI hearings has referenced existing boundaries. This included input that a current boundary preserves a community and should be kept, or that a current boundary divided a community and should be changed. It is likely that public plans once submitted will similarly sometimes reference existing lines, either approving or disapproving of them. The Commission may decide that it is appropriate under these circumstances to refer to current district boundaries when providing direction.

2. Considering the Rationale of Current Lines: The 2011 Commission produced a wealth of data on why it constructed current district boundaries the way it did. Most notably, it produced a legally mandated

report¹ on the logic underlying each district. This record may either reinforce or challenge more contemporary input, allowing the 2021 Commission to make more informed decisions. Underlying facts may have changed to make these data less relevant in some areas, nevertheless in other areas this report might provide information useful to this Commission.

3. Bridging Data Gaps: As line drawing begins, the 2021 Commission has identified that there are likely to be places where the contemporary record is not as complete as in other areas, thus perhaps requiring supplemental outreach.² Meanwhile, the Commission will be making decisions as it moves toward the release of the draft maps. As the 2011 Commission's lines were similarly created by a commission using the same criteria, should the current record be sparse in new information, it may be appropriate to direct line drawers to consider current lines to fill in those gaps until additional information and input has been received. However, it may be necessary to revisit any reliance on current lines once new information, analysis, or input arrives. **Locally generated reports and studies may be particularly helpful in bridging such data gaps.**

4. Contextualizing Racially Polarized Voting Analyses: Understanding the ability to elect and cohesive bloc voting are some of the critical components of a Racially Polarized Voting analysis. These analyses necessarily rely to some extent on existing districts and the contests that have taken place over a period of time to ascertain the ability to elect a candidate of choice by certain protected minority groups. Relatedly, if current boundaries have allowed a protected community to achieve corresponding electoral power, that fact may be something the current Commission may want to consider.

5. Numbering of Senate Districts: Elections for California State Senate are staggered, with even numbered districts set to vote in 2022 and odd numbered districts set to vote in 2024. As a result, voters who are moved from even to odd districts may have to wait six years to vote for their State Senator, a concept known as deferral. The 2011 Commission sought to minimize deferral when deciding which districts to number odd and which to number even. **This is primarily a question of senate district numbering and not line drawing.**

In sum, considering current district boundaries in certain circumstances can offer the 2021 Commission another reference tool in constructing the new districts without favoring, disfavoring, or considering the relationship with political parties, incumbents, or candidates.

¹ https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/08/crc_20110815_2final_report.pdf

² https://d3n8a8pro7vhmx.cloudfront.net/ccrc/pages/282/attachments/original/1630369299/Outreach_and_Communication_Plan_%288-31-21%29.pdf