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### THE PROP 11 REDISTRICTING PROCESS STARTS AND THE POLITICAL CLASS HAS TO SIT BACK AND WATCH

Bradley Benbrook

August 27, 2009

*[Publisher's Note: As part of an ongoing effort to bring original, thoughtful commentary to you here at the FlashReport, I am pleased to present this column from Republican attorney Bradley Benbrook - Flash]*

If you are new to the FlashReport, please check out the [main site](#) and the acclaimed FlashReport [Weblog](#) on California politics.

California voters approved Proposition 11 in 2008 to change the way California's legislative districts will be re-drawn in 2011. The theory behind Prop 11 is not just that legislators can't be trusted to draw fair lines for their own elections, they shouldn't be trusted to play any role in the process of re-drawing those lines.



Prop 11's constitutional and legislative changes go a long way toward locking the Legislature out of the process. After conducting public meetings around the state, the Bureau of State Audits has recently issued [regulations](#) that attempt to close any openings for the Legislature to work its way back in. Those rules will govern the selection of Prop 11's "Citizen Redistricting Commission," made up of 14 members – five Republicans, five Democrats, and four individuals with third-party or no party affiliation.

How we get to the 14-member commission will be a complicated and radically transparent process designed to assure the public that the Legislature is not behind the curtain controlling everything. It will also be a long process: Applicants can start applying this December, but the commissioners won't be chosen until November 2010 at the earliest.

As this important process gets underway, all followers of California politics should be aware of the Prop 11 basics:

#### **Who is (and who is not) eligible to serve on the commission?**

In short, members of the political class need not apply. They will be bounced for violating Prop 11's "conflict of interest" standard.

Prop 11 cuts a wide swath in barring political insiders from serving on the commission. To be eligible, neither the applicant nor any member of their immediate family may have done any of the following for the

10 years

prior to applying:

- Been appointed to, elected to, or a candidate for federal or state office;
- Served as an officer, employee, or paid consultant of a party or of the campaign committee of a candidate for federal or state office;

- Served as an elected or appointed member of a party central committee;
- Been a registered federal, state, or local lobbyist;
- Served as paid congressional or legislative staff, or  
Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate in any year.

Also barred are staff and consultants to, persons under a contract with, and any person with an immediate family relationship with the Governor, a member of the Legislature or a member of Congress.

Prop 11's drafters were so intent on keeping political pros out of the process that their amendments to the California Constitution even purport to bar commissioners from holding *future* elective office during the 10 years following their appointment to the commission. They also purport to impose a five-year ban on commissioners accepting appointments to public office, serving as a legislative staffer, or registering as a lobbyist.

Seeing this long list of limitations, the political junkie might ask: "Who does this possibly leave to serve?" (Indeed, many [FlashReport](#) readers won't be eligible.) Actually, it leaves several million of other Californians who aren't the usual suspects for a job this politically sensitive.

The only remaining eligibility criteria are that applicants must have maintained their party (or non-party) registration continuously for the last five years and voted in two of the last three statewide general elections, which still leaves a huge field of potential applicants. The BSA says it expects thousands of applications.

#### ***Who picks the commissioners?***

No one person or group picks all of the commissioners. The first step is narrowing the field of applicants to three pools of the 20 "most qualified" applicants – one pool of registered Republicans, one pool of registered Democrats, and a pool of "others." That job will be done by a panel of three "independent auditors" employed by the State Auditor – again, one Republican, one Democrat, and one third-party or decline-to-state. This trio will be randomly drawn from a pool of BSA employees currently licensed as accountants. The drawing will take place, bingo-style, in a public meeting no later than February 1, 2010.

After the initial field of applicants is narrowed down to three pools of 20 each, the Legislature gets to take its one and only shot at the process. Prop 11 gives the Legislature a small say in who *doesn't* get to serve on the commission. Each of the four legislative members of the "Big Five" can eliminate up to two applicants from each pool. Thus, each party leader in the Senate and Assembly will have the opportunity to strike two applicants from the other side's pool that they deem too partisan, two applicants from their own pool that they consider too squishy, and two from the pool of non-partisans for whatever reason.

There can be little doubt that the parties will be conducting research on the applicants to maximize the value of these strikes. The open application process gives researchers a head start: Applications will be posted online, and even the interviews of the finalists vying to make it into the three pools of 20 will be conducted in public.

After these strikes are exhausted, the first eight commissioners are chosen randomly from the three pools of applicants – three from the Republican pool, three from the Democrat pool, and two from the third pool. As with the drawing for the review panel, this will be conducted bingo-style in public to eliminate conspiracy theories that the process was rigged.

Finally, those first eight randomly-chosen members choose the remaining six (two from each of the final three pools) to round out the 14-member commission.

#### ***What "qualifications" will the review panel consider?***

In narrowing the field down to the final three groups of 20, the applicant review panel will judge applicants against each other using the three criteria set out in Prop 11: (1) "relevant analytical skills," (2) ability to be impartial, and (3) "appreciation for California's diverse demographics and geography."

Assuring objective application of these broad criteria will be difficult, to say the least. The public will have the opportunity to comment on the applicants, however. The broad standards and the transparent process (not to mention the stakes involved) will surely spark an intriguing public debate about which applicants should make the final cut.

What do these standards suggest about the types of applicants likely to succeed? The draft regulations say that "relevant analytical skills" for the redistricting process include a broad variety of skills, including legal, math, and computer know-how, as well as successful experiences on task forces, boards, or commissions. Given the makeup of the review panel, one can also expect that accountants will enjoy certain advantages under this standard.

The ability to be impartial is pretty self-explanatory and suggests that retired judges and professional mediators/arbitrators will have a leg up on the competition.

Evaluating applicants' "appreciation for California's diverse demographics and geography" will likely prove to be the most elusive and controversial aspect of the review panel's work. The BSA assures that this does not establish a racial, gender, or other quota system, and its draft regulations expressly forbid the use of "formulas or specific ratios." It also stresses that the review panel must consider geographic and economic diversity.

Interestingly, and helpfully to Republicans who don't typically gravitate towards activities promoting modern "diversity" dogma, the BSA's regulations state that applicants can demonstrate their diversity bona fides through broad experiences such as "traveling throughout the state and meeting with a broad range of individuals in order to build consensus on some issue of statewide concern." Or, they can rely on experience "studying the voting behavior of Californians in various areas of the state for the purpose of improving the effectiveness of the electoral process" – sounds like the BSA thinks a university professor or two should make the final cut.

In the end, will any ordinary citizens make it on to the Citizens Redistricting Commission? Maybe a few, much to the consternation of legislators and other insiders accustomed to having familiar faces making all the decisions. It will be a fascinating experiment in modern democracy.

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You can write to Benbrook, via the FR, [here](#).

