

# **Transparency and Redistricting**

A supplemental report to

## **Competition and Redistricting in California: Lessons for Reform**

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## Overview

Transparency is an often neglected element in redistricting reform. The term refers to requirements for openness related to the process of drawing district lines. Currently, there is a great gap between the transparency required for local government redistricting in California as compared to the state and Congressional line-drawing processes. This is because California local governments are covered by the Brown act, a strict open meeting law that encompasses all interactions between elected officials, boards and commissions on any governmental matters. Consequently, local redistricting tends to be a relatively open process, with lots of public input before and after proposals are put forward. State redistricting, by comparison, is not covered by the Brown, and is often a more secretive affair with only limited public input.

The basic components of openness are: a definition of what constitutes a meeting, notification of the meeting time and place, an agenda prepared in advance, opportunities for public input and stipulations of exceptions. For this project, we collected the laws that govern state and Congressional redistricting processes in the fifty states, to be able to gauge whether the transparency requirements we outlined above were present. As California goes through the process of considering significant changes to the redistricting process, an overview of other states' procedures is helpful to assess whether working models are already present that can be modified and applied.

Our analysis showed, however, that there is very little in terms of transparency that is present in current legislation governing redistricting processes in the fifty states. We found that only 35 states have any legal requirement for some component of transparency, and in most cases, this covers public hearings. Only one state formally allows for the right of the public to participate by submitting their own redistricting plans for consideration (Oklahoma). Again, only one state (Idaho) provides for open deliberations during the redistricting process.

California has often been at the forefront of progressive changes in various policy arenas, especially those governing openness and the right for the public to participate in legislative processes. Even though the redistricting process in this state is not specifically mandated to include transparency components, some efforts to include the public have been made in the past, especially with regard to providing any interested party with access to redistricting data, so that participation in the line-drawing process, or some type of independent analysis of the districts that are developed by legislators is possible.

However, simply making data available does not go far enough in providing for meaningful public input, and neglecting to codify desired transparency requirements to ensure a minimum baseline of advanced information to the public leaves too much flexibility, and opportunity for mischief, to the redistricting body.

Based on our research and our collective experience with both local and state redistrictings, we conclude that any serious redistricting reform should include explicit

transparency provisions that would bring the state and Congressional line drawing practices more in line with that of the local governments.

A "Brown Act" for State Redistricting: Issues and Recommendations.

It would be unfair to say that the current system in Sacramento is totally lacking in transparency. The state has gradually increased the openness of the process since the beginning of the new redistricting era after *Baker v Carr*. The legislature has always held some hearings throughout the state both prior to and after plans have been drawn up. But most of its deliberations are not in public.

At the local government level, a meeting is defined as any discussion between a specified number of legislators or covered board members, based on the size of the deliberative body. For example, if a quorum of a five person board (i.e. three or more members) got together for lunch to talk about redistricting; this would constitute a Brown Act violation. Or if one member proceeded to call sequentially all the other members of the board to try to reach a consensus, that too would be deemed a meeting that should be notified and open to public participation, or else be in violation of the law.

Under such a rule, much of what the Assembly and Senate have done in the past would be illegal. Deals are often made by the chairs of the redistricting committees in informal meetings in offices, on the floor, in the computer rooms or in social settings. To be sure,

prohibiting all of this would be hard to enforce, but our experience with local governments is that under the guidance of the city attorneys, most elected officials make a good faith effort to observe the law.

Moreover, we would question whether it would be desirable to eliminate all informal discussion about legislators, or if a commission is formed, members of the commission. One on one conversation would still be possible, recognizing that there are times when agreement is more easily and productively achieved in a private as opposed to a public meeting. Sometimes the glare of publicity causes positions to harden for fear of seeming inconsistent. But if the law prohibited discussions of group members equal to three or more of the decision making body, this would cover the possibility of members making decisions and striking deals outside the public purview.

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**Recommendation #1:** Any proposed redistricting commission should adopt a Brown Act like provision that defines a meeting as any interaction, meeting or discussion concerning redistricting that involves a quorum or more commissioners.

The second important transparency element is notification. If the commission is to receive adequate public input, it needs to notify the public in advance of the time and place of the meetings, of the agenda for discussion, and provide supporting materials as appropriate. Members of the public should have the same amount of advanced notification and back-ground information about agenda items as commissioners do, to level the playing field and give everyone an equal opportunity to prepare for the meeting.

In our experience, some local government redistricting commissions, such as the one for the San Francisco Board of Supervisors, take great care in their planning for public participation. They chose sites that are accessible to the physically impaired and provide second-language translators as needed. They work with consultants to ensure that all the community and advocacy groups that might have a stake in the redistricting are notified in advance. And they ensure that the topics that will be discussed at the meetings are the ones that are posted on the agenda.

The latter is particularly important in redistricting since much of the discussion is quite technical and requires some preparation before someone can comment competently on what is put before them. If, for instance, there is a new version of a plan that leaves out some previously included areas or adds in previously excluded areas, the public needs time to view the new maps in order to understand what the changes mean to their city or neighborhood. Advocacy groups might want to study the political or demographic data to assess what effects the proposed changes might have for their group members (e.g. does the number of age eligible Latinos increase under the proposal or not).

Often the urge to run ahead of the agenda is strong. Items come up at the last minute, and commissioners will be frustrated that they cannot deal with things in a spontaneous fashion. But if meaningful public input is to be valued, then some agenda discipline is necessary to keep the discussion on announced items, and to avoid situations in which the

affected parties feel pressed into making comments before they have had time to study the specifics of what is being proposed.

**Recommendation #2:** Any proposed redistricting commission should adhere to rules about adequate notification of meetings and the posting of agenda items. Language should also be added that requires the commission to take steps to proactively reach out to a diverse array of potentially interested individuals and organizations in a series of regional meetings around the state.

The quality of public input depends on the kind of information that is made available to interested individuals and groups. In the past, the legislature built and controlled its own data sets (political merged to census data), and the public was at a great information disadvantage. Since 1993, the redistricting data for the State of California have been kept at the Statewide Database, accessible online without charge to all who would like to view and use them. While California is the only state that makes redistricting data available on an on-going base in various formats for download, individual users who can not visit the Database's offices to use the computers there must purchase their own software. All of the currently available Geographic Information System software programs needed to draw lines and perform the necessary analytic functions to ensure that a developed plan complies with various redistricting criteria are quite expensive, with prices starting at \$3500. The price alone presents a steep barrier to participation to most individuals as well as many groups.

It is likely that at some point in the future, both the data and the software to manipulate the data into district lines could be made available on the web, but an evaluation of the current technology existing at this time shows that this may not be a reasonable goal for the next round of redistricting. However, once the technology is in place, it would be the surest way to level the playing field for citizens versus incumbents, political parties, and others who have virtually monopolized the process in the past.

**Recommendation #3:** The proposed commission should continue to support the concept of a publicly constructed data set located in a nonpartisan setting that is made available to all members of the public. As the technology evolves, this should include online software for line-drawing and brief tutorials for those who want to learn more about the process. Until on-line mapping technology has advanced to be equal to software running on personal computers, the commission should consider making computers with redistricting software available in strategic locations throughout the State. The commission might consider teaming up with the state library system to equip one terminal in certain geographic locations with the appropriate software, or collaborate with the state's various colleges and universities to provide public access for redistricting purposes.

Many of the local redistricting efforts encourage the submission of plans by the public. Proposals are accepted whether they are single or partial district or neighborhood specific. During the hearing process, even single census block requests are considered. There are examples in California's cities and counties that can serve as a blue print to



designing a state submission plan. For example, in the early nineties, the City of Oakland conducted a redistricting that consisted entirely of publicly submitted plans. In 2001, the City of San Diego broadcasted its entire redistricting process on public television and set up an office at which members of the public could develop their own plans. The City and County of San Francisco went one step further and hired consultants that met with individuals and groups at their location of preference, to assist them in developing redistricting plans for submission to the commission. While all final plans have their critics, these three processes were unparalleled in their openness to public participation. Neither may be practical models for any new commission for the state, but a variation of these approaches may be considered. At the very least, a commission should encourage public submissions and use the best of the ideas that are put forward.

**Recommendation# 4:** The proposed commission should encourage the public submission of plans, both partial and complete.

Hearings before a plan is drawn are useful to learn about local preferences and to discover where informal communities of interest may exist. Preliminary hearings are also a good way to assess and learn about problems in the previous plans. However, hearings after the initial lines have been adopted by the commission are also useful as they allow for corrections and adjustments that will improve the plans and strengthen public confidence in the process.

**Recommendation #5:** The proposed commission should have at least one round of hearings after it has adopted a preliminary plan in order to hear reactions to it and make corrections as necessary.