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REDISTRICTING AND TRANSPARENCY: RECOMMENDATIONS FOR REDISTRICTING AUTHORITIES AND COMMUNITY ORGANIZATIONS

Redistricting is the process where every 10 years, elected or appointed officials partition states and other geographical units for purposes of political representation. The process is constrained by federal and state law requirements to ensure fair representation for every person.

Despite the limited restrictions placed upon the redistricting process by the one-person, one-vote rule, the Voting Rights Act, and various redistricting criteria applied at the state level, redistricting presents both process- and outcome-based problems. The public pays little attention to the problem, and legislators who stand to benefit from the status quo have every incentive to leave the issue in the dark. Process problems include lack of opportunity for citizen input, opaque decisionmaking and lack of accountability in the outcomes. Outcome problems include splitting cohesive communities, thereby weakening their political power and representation, and using redistricting to protect incumbents or eliminate challengers. The lack of an effective and responsive redistricting process that results in balanced and fair outcomes is a fundamental failure of our democracy to adequately and appropriately represent Americans.

We offer a two-pronged solution: First, reforming the process to create opportunities for citizens to become a more consistent part of the redistricting process. In creating process solutions decisionmakers acknowledge the importance of communities within the redistricting process. A key part of this reform is for redistricting authorities to both create plans with public input, and create accountability to the public for the final plans. Second, requiring those drawing the districts to recognize and preserve communities of interest, to assure a fairer and more representative outcome that does not splinter and weaken communities. Clear criteria for how districts should be drawn together with limits on who can serve on the redistricting authorities will go a long way to limit the ability of partisan self-interest to control the redistricting process.

The purpose of this paper is to discuss the reforms that can be accomplished now to begin to address the process-based solutions to the current redistricting problems.

REDISTRICTING TRANSPARENCY RECOMMENDATIONS

Transparency is the key to accomplishing the process reforms necessary for communities to become effectively engaged in meaningful communication with redistricting authorities. Communities are the foundations of good districts. In order to recognize cohesive communities, legislators and other decisionmakers need to hear from their constituents about what they care about and where they believe the boundaries of their communities are located.

A redistricting process that is sufficiently accountable to voters must be open, transparent, allow public engagement and time for the public to provide feedback for the proposed redistricting plan. An open and transparent redistricting process can help ensure that public servants are elected who actually serve citizens. Sunlight will inspire confidence in a redistricting process and outcome recognized as fair.

Communities of interest as a value in redistricting are the most challenging for redistricting authorities to define. If communities do not advocate for themselves they are very likely to be defined by those who have differing interests or not to be considered at all. Unlike compactness, contiguity and many of the other typical redistricting priorities, public input is the only way communities of interest can be self-defined in this process. It is essential that individuals and groups representing communities can present testimony and review the testimony of other self-defined communities.

When redistricting bodies cannot agree on a plan, or when a plan is challenged in a lawsuit, courts often step in to draw the districts. Hearings and public comment will create a record on which courts can rely when determining how districts should be drawn. Public and legislative records play a critical role in informing the court's view of crafting an appropriate plan or the determination of the legality of a submitted plan. If a redistricting authority fails to state either its reasons for the plan design or its rationale from any deviation from guidelines set out by federal and state law, then the public's ability to support or challenge a plan is diminished.

Access, recordings, engagement and technology are all important parts to having an effectively transparent redistricting process that allows for the process to be as accountable as possible.

TO ACHIEVE A MORE OPEN, ACCOUNTABLE AND TRANSPARENT REDISTRICTING PROCESS, REDISTRICTING BODIES SHOULD:

Establish specific guidelines and procedures, whether through legislative reform or a less-formal process of rules adoption for committee, the redistricting authority should have a publicly stated process and procedure identified and made available prior to the inception of the redistricting process. Campaign Legal Center has created a draft redistricting transparency bill that serves as a good resource: <http://www.campaignlegalcenter.org/attachments/LEGISLATION/2058.pdf>.

Conduct public hearings in at least five different locations, or the total number of largest political subdivisions, within the jurisdiction of a redistricting authority. The redistricting authority should seek public comments so the decision-makers can be aware of what the public defines as communities-of-interest in addition to other important considerations. Hearings should be conducted both before and after a redistricting plan is proposed; to get public input on key considerations going into the line-drawing and public response once the plan is proposed.

Hearings should be held in diverse geographic locations, preferably within each political subdivision within the jurisdiction of the redistricting authority. For example, if a city has 11 city-council wards then a hearing should be held in each ward. If a state has 9 congressional districts, then a statewide redistricting hearing should be held in each of the nine congressional districts. Certainly the hearings should be reasonably manageable and no redistricting authority should be expected to conduct hearings in every statewide legislative district, but every effort should be made to conduct hearings in geographically accessible areas.

Provide an open and accessible website with key information available to the public. At a minimum, websites should contain information on who are the members of the redistricting authority, what data is being used and direct access to that data, clear definitions of what format proposed maps or plans from the public can best be utilized by the redistricting authority, hearing notices, hearing recordings and transcripts, capacity to stream hearings and all proposed plans, with rationale, at the time they are being produced to the public.

Provide adequate notice for all hearings, at least seven days in advance.

Every redistricting authority should have a website. At a minimum, the website should contain notice and location of all public meetings and recordings of those meetings. Public notice should be included in the newspaper as well as the applicable city, county and/or state website.

Clearly state the redistricting principles the redistricting authority intends to follow and in what order.

Federal and state law often prescribes what principles must be used by redistricting authorities but that is rarely the limit of what principles are considered by the redistricting authority. Determination of what principles will be considered and how they will prioritize them is essential to the determination of how final plans will look. Ideally redistricting authorities should have a public hearing prior to this decision to allow the public to have its priorities considered.

Limit off-the-record communications between the redistricting authority and parties with an interest in the final plan.

Discussions and negotiations regarding the redistricting process should be as public as possible. This includes not only public and community organizations, but legislators and their staff, members of congress and their staff, members of national, state and regional political parties and staff and any other entities with a clearly stated desire for a specific outcome in the final plan.

Make the demographic, political data used by the redistricting authority publicly available.

While every redistricting authority should provide a link to the US Census Bureau, all data used for redistricting purposes should be made directly available through the redistricting authority website or through staff. That data should be made available as soon as decision-makers determine which datasets will be used in order that the public can submit meaningful plans.

Make clear what software the redistricting authority is using to create maps but accept and consider proposed public plans in whatever form they are submitted. If there are software formats that cannot be utilized by the redistricting authority it should state which ones as soon as possible.

For input to be meaningful, it must be applicable. The public has access to mapping resources never seen before in open source software, public access to proprietary software and other organizing opportunities. Using these resources to generate maps and proposed plans is good but the redistricting authority must be able to read, understand and incorporate suggestions where possible and reasonable. It is the responsibility of the redistricting authority to let the interested public know what formats will be reviewable and best utilized by the authority and its staff.

Ensure that there is sufficient time to modify the final plan in response to public feedback.

The hearing process should not be illusory. Simply trotting out a dog-and-pony show where there is not meaningful opportunity to incorporate feedback is meaningless and insulting to the public who take their participation seriously. All redistricting authorities, upon completion of a final plan should leave time to rework the plan based upon public feedback, if necessary.

Explain its rationale for proposed district boundaries, with a written, public report. At a minimum the rationale should be provided at a public recorded and recordable meeting.

When submitting the final plan for public review, the presentation should include a written report explaining its rationale for the final district lines. If there is not time to create a written plan the meeting explaining the rationale should be recorded and easily accessible post-presentation.

TO ACHIEVE A MORE OPEN, ACCOUNTABLE AND TRANSPARENT REDISTRICTING PROCESS, ADVOCATES AND THE PUBLIC SHOULD:

Determine whether your redistricting authority is subject to your state open meeting laws and Freedom of Information Act (FOIA). If they are not being as open and transparent as you think they should, make a demand for production of information under state law or a formal FOIA request. If you are seeking background on making a FOIA Request, go to: http://www.justice.gov/oip/04_1.html.

Make sure you know the timeline for completion of redistricting for both the state and local authorities. If your jurisdiction is subject to VRA Section 5 Preclearance, then make sure you know the timeline for submission. The preclearance process is another opportunity to comment on the propriety of the redistricting plan. Here is the DOJ guidance on the application of Section 5 for 2011-2012 redistricting cycle: <http://edocket.access.gpo.gov/2011/pdf/2011-2797.pdf>.

Give your organization enough time to familiarize yourself with the software and guidelines for redistricting. If you are going beyond identifying key areas for a particular “community of interest,” make sure that you remain within the federal boundaries for congressional district (no more than one person variance between districts) and know the variance permitted by your state. For your plan to be fully considered it must propose district lines that can actually be implemented under law. A good place to start is: The Brennan Center for Justice Citizen’s Guide to Redistricting: http://brennan.3cdn.net/7182a7e7624ed5265d_6im622teh.pdf; The Impact of Redistricting in Your Community <http://naacpldf.org/files/publications/Impact%20of%20Redistricting%20in%20YOUR%20Community%202010.pdf>, a joint publication with NAACP Legal Defense Fund, MALDEF and the Asian American Justice Center.

Use the resources available to you. How you approach advocacy will bear on what happens if a particular redistricting plan is challenged in court. All public statements and communications are potential for a legal record in a redistricting case. Are you using legal, supportable language in your advocacy? Are you talking about race in a way that can be upheld in a VRA challenge? Brennan Center for Justice (www.brennancenter.org), NAACP Legal Defense Fund (www.naacpldf.org), MALDEF (www.maldef.org), Asian American Justice Center (www.naplc.org) and others have great resources for understanding the VRA and inter-related court decisions. All these organizations welcome direct outreach as well having a plethora of resources available on their websites.

If you are a 501(c)(3), please make sure that your advocacy efforts are within what is permitted under your federal non-profit status. Alliance for Justice has some guidance on this issue: http://www.afj.org/assets/resources/nap/standing-up-for-your-community_influencing-the-redistricting-process.pdf.

Prepare your testimony. Talk to your neighbors and others about what is important in order to articulate a tangible community of interest. Clearly identify your community and explain what makes it necessary to remain (or become) a singularly represented population. Use demographic, economic and sociological data to solidify your argument. Explain how where you live, your commonalities, your interests, your economic conditions, your transportation sources, your use of media, your use of infrastructure all work together to create an important community. If possible, identify the geographic boundaries of your community. Try to include as many members of the community as possible as part of your testimony.

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